



# **Washington's Water Quality Management Plan to Control Nonpoint Sources of Pollution**

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## **Water Quality Program**

Washington State Department of Ecology  
Olympia, Washington

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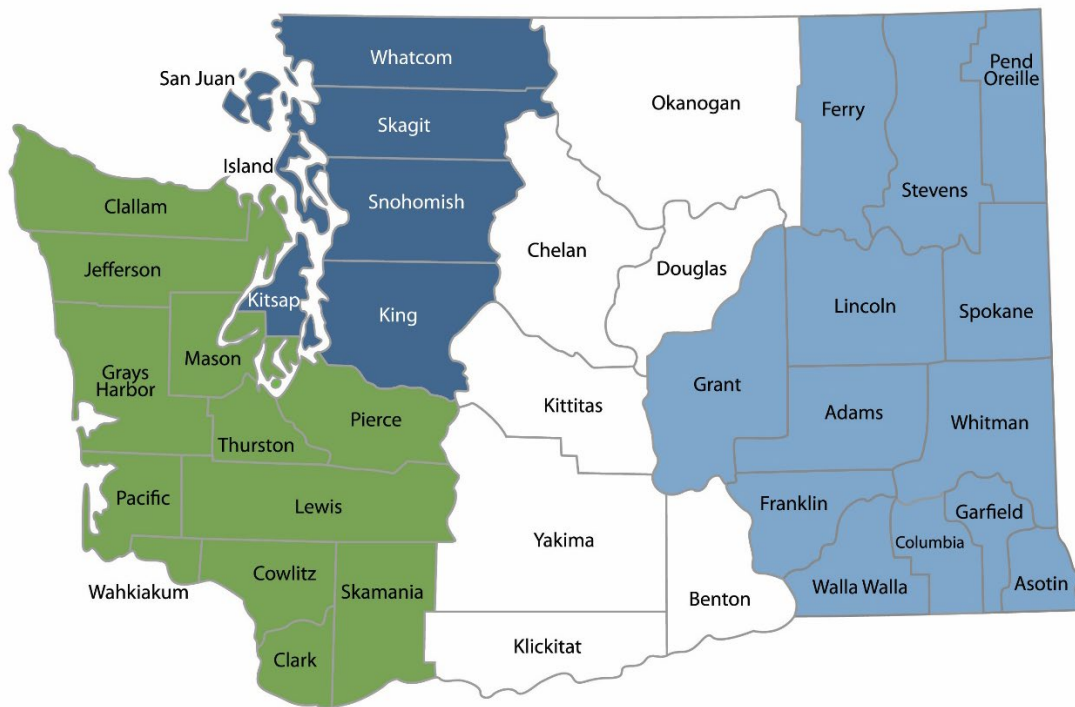
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# Department of Ecology's Regional Offices

## Map of Counties Served



**Southwest Region**  
360-407-6300

**Northwest Region**  
206-594-0000

**Central Region**  
509-575-2490

**Eastern Region**  
509-329-3400

Region	Counties served	Mailing Address	Phone
<b>Southwest</b>	Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Mason, Lewis, Pacific, Pierce, Skamania, Thurston, Wahkiakum	P.O. Box 47775 Olympia, WA 98504	360-407-6300
<b>Northwest</b>	Island, King, Kitsap, San Juan, Skagit, Snohomish, Whatcom	P.O. Box 330316 Shoreline, WA 98133	206-594-0000
<b>Central</b>	Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan, Yakima	1250 West Alder Street Union Gap, WA 98903	509-575-2490
<b>Eastern</b>	Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman	4601 North Monroe Spokane, WA 99205	509-329-3400
<b>Headquarters</b>	Statewide	P.O. Box 46700 Olympia, WA 98504	360-407-6000

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## Executive Summary

This document outlines Washington State's approach to addressing water quality impacts from nonpoint sources (NPS) of pollution. This statewide management plan meets U.S. Environmental Protection Agency (EPA) Clean Water Act requirements, and ensures Washington State's eligibility for Section 319 (federal NPS Program) funding.

The Washington State Department of Ecology (Ecology) is the regulatory agency charged with protecting the quality of Washington State's water. Ecology acts as the lead agency in restoring, maintaining and enhancing water quality collaboratively with citizens, stakeholder groups, tribes, local governments, state agencies, and federal agencies. Ecology's NPS program uses a combination of technical assistance, financial assistance, and regulatory tools to help citizens understand and comply with state and federal water quality laws and regulations.

The passage of the state Water Pollution Control Act and federal Clean Water Act helped Washington State make important progress in cleaning up our rivers, lakes, and coastal waters largely by controlling pollution from factories, sewage plants, and other "point" sources of pollution.

Yet, based on the available water quality data, there remain a significant number of waterways that are not meeting the state Water Quality Standards which protect all beneficial uses.

Runoff from streets, farms, forest lands and other sources continue to pollute our waters. These are considered NPS of pollution, and they represent the largest remaining challenge in achieving compliance with state Water Quality Standards. Both point and NP sources of pollution must be addressed to reverse the trend of impairment and achieve the goals outlined in state and federal law.

This plan aims to protect public health and restore our state's waters by setting clearer goals and standards, and emphasizing the implementation of proven suites of best management practices to prevent pollution.

# Chapter 1: Nonpoint Source Pollution in Washington State

## Land use and Nonpoint Source Pollution

Nonpoint source pollutants are introduced into water through:

- Runoff (typically rainfall and snow melt washing pollutants from the land into rivers, streams, lakes, oceans, and underground aquifers).
- Direct deposition of pollutants into state waters.
- Habitat alteration and hydromodification (the alteration of the natural flow of water across a landscape, including channel modification or channelization).
- Atmospheric deposition.

Land use is strongly correlated to nonpoint pollution. Therefore, to manage nonpoint source (NPS) pollution, we must focus on land use activities. The major sources of nonpoint pollution can be divided into the following categories.

Categories	Associated Land Uses
Agriculture	Livestock keeping; crop production; grazing; non-commercial agriculture.
Atmospheric Deposition	Emissions from various sources; wind borne erosion.
Forest Practices	Road construction and maintenance; harvesting; chemical applications.
Habitat Alteration/ Hydromodification	Filling of wetlands and alteration of riparian areas; shoreline development; stream channelization; dikes; dredging; riprap; and dams.
Recreation	Marinas and boats, off-road vehicles.
Urban/Suburban Areas	Stormwater runoff; on-site sewage systems; hazardous materials; construction and maintenance of roads and bridges; residential use of fertilizers and pesticides.

## What is the quality of Washington State's water?

### Water quality assessment

Ecology's primary means of reporting on the status of water quality is through the development of an integrated water quality monitoring and assessment report, based on EPA's *2002 Integrated Water Quality Monitoring and Assessment Report Guidance* (November 2001). *Washington State's Water Quality Assessment* satisfies Clean Water Act requirements for both

Section 305(b) water quality reports and Section 303(d) lists. Washington's Integrated Report combines the statewide assessment of all of the state's waters, which is required by Section 305(b), and the list of impaired waters, which is required by Section 303(d).

Ecology's Water Quality (WQ) Program has adopted Policy 1-11 that describes the methods used for assessing information to evaluate attainment of WQ Standards. The policy includes criteria for compiling, analyzing, and integrating data on ambient conditions with project implementation information. The policy describes how the state integrates data from numerous sources, collected for a variety of purposes under a variety of quality control practices. *Washington State's Water Quality Assessment* places waterbody segments into one of five categories. All waters in Washington (except those on reservation lands) fall into one of the five categories which describe the status of water, from clean to polluted. *Washington State's Water Quality Assessment* may be found on Ecology's website at: <https://ecology.wa.gov/303d>.

The assessment helps us prioritize the use of state resources more efficiently by focusing on water bodies that need the most work, and to address the problem pollutants that show up most often. It should be noted, however, that the water quality assessment is not a full accounting of the water quality problems in Washington. There are still many water bodies with very little water quality data or that have not been monitored yet.

## **Nonpoint pollution in Washington State**

To support development of the NPS Plan, Ecology conducted a study of existing information regarding nonpoint source pollution in Washington.<sup>2</sup> The objective of this study was to research and document the current known extent of NPS pollution, evaluate the land uses and human activities that can generate NPS pollution, and look at the linkage between land uses, human activities, and NPS pollution in Washington.

To accomplish this, Ecology evaluated technical reports and other information sources produced from 2005-2014. The study employed several distinct areas of research:

- A review of existing U.S. Environmental Protection Agency guidance.
- A review and summary of recent research on NPS pollution relevant to Washington State.
- Compilation of calculated NPS load reduction targets in 49 Total Maximum Daily Load (TMDL) studies conducted in Washington since 2005-2014.
- An exploratory analysis of TMDL load allocations and associated land uses, using Geographic Information Systems.
- An evaluation of Section 319 grants used for NPS pollution control.

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<sup>2</sup> To access the full report see Appendix A.



- Four case studies in data-rich watersheds: Walla Walla River, Lower Yakima River, Dungeness River and Bay, and Samish Bay.

Results of these areas of analysis were synthesized to draw conclusions for different categories of nonpoint pollution sources, including agriculture, urban and residential areas, hydromodification, marinas and boating, forests, atmospheric deposition, and natural sources. The study found that nonpoint pollution sources are widespread in Washington and cause a variety of water pollution problems. Application of best management practices will help reduce and prevent these pollution impacts.

## The impacts of land use practices - summary

### Agricultural

Agricultural areas have consistently been cited as a significant source of impairment in freshwaters nation-wide. Documented water quality impacts from agricultural areas include elevated levels of fecal coliform bacteria, suspended sediment, turbidity, pesticides, PCBs, nutrients, and pH, as well as decreased levels of dissolved oxygen, and elevated water temperatures through loss of riparian shade.

Table 1 Pollutant categories associated with nonpoint pollution from agricultural areas.

Pollutant Category	Typical Sources	Impacts
Fecal coliform bacteria	Direct animal access to streams; manure overspray, or runoff; runoff from pastures, grazing areas, application areas, manure piles, or heavy use areas. Lack of riparian protection.	Human health, shellfish harvest
Suspended sediment/ Turbidity	Erosion from animal access to stream banks, runoff from heavy use areas or cultivated fields, runoff from irrigated farm fields. Lack of riparian protection.	Aquatic life uses, aesthetics
Pesticides	Direct overspray, runoff from fields	Human health, aquatic life uses
Nutrients/ Dissolved oxygen/pH	Direct animal access to streams, manure or fertilizer overspray or runoff, runoff from pastures, grazing areas, heavy use areas or cultivated fields. Lack of riparian protection.	Aquatic life uses, aesthetics
Shade/Temperature	Loss of riparian shade due to clearing, suppression of riparian vegetation by grazing animals, degradation of riparian condition from animal access or cultivation in riparian areas	Aquatic life uses

## Atmospheric Deposition

Atmospheric deposition of nitrogen, sulfur, mercury, and other toxic compounds such as polychlorinated biphenyls (PCBs) and dioxins enter surface waters via direct fallout or when soils contaminated via atmospheric deposition erode and enter surface waters. Fallout may occur as wet deposition, in which emissions react with water vapor in the air and fall as precipitation (e.g., nitric and sulfuric acids—*acid rain*), or as dry deposition, in which emissions fall in gaseous or particulate form. Emission sources include industrial facilities, vehicle exhaust, and agriculture-related activities, as well as volatilization, or open burning of PCB/dioxin-laden materials. Forest fires can also be a source of pollutants entering the water from atmospheric deposition. Surface water deposition from atmospheric emissions have been found to occur at local, regional, and global scales.

Table 2 Pollutant categories associated with nonpoint pollution from atmospheric deposition.

Pollutant Category	Typical Sources	Impacts
Nitrogen (ammonia, nitrate), Phosphorus, Sulfur dioxide	Vehicle, agricultural, and industrial emissions, wind-borne erosion	Aquatic life uses
Mercury	Mining, coal burning, atmospheric deposition	Human health, aquatic life uses
PCBs, Dioxin, Furans	Backyard burning of pollutant-laden trash, volatilization from soils or water	Human health, aquatic life uses

## Forest Practices

The main pollutants associated with activities in forested areas include temperature, sediment, and nutrients. Nonpoint pollution from toxic chemicals, including heavy metals and pesticides, has also been associated with forest activities.

Table 3 Pollutant categories associated with nonpoint pollution from forested areas

Pollutant Category	Typical Sources	Impacts
Suspended sediment/ Turbidity	Loss of riparian vegetation, concentration of flow from roads, road failures	Aquatic life uses
Temperature	Loss of riparian vegetation	Aquatic life uses
Nutrients/dissolved oxygen	Loss of riparian vegetation, forest fertilization	Aquatic life uses
Toxic chemicals (heavy metals, pesticides)	Sedimentation, aerial forest pesticide applications	Human health, aquatic life uses

The primary means by which timber harvest impacts water quality is through: 1) removal of the trees which provide shade, leaf litter and woody debris, 2) removal of trees and vegetation in sufficient amounts to change the flow of water and nutrients, and 3) compacting and disturbing soils such that excess sediment is delivered to streams with precipitation events.

Poorly located roads, outdated construction practices, and lack of maintenance of forest roads can have a large impact on water quality. Road activities can increase sedimentation through soil compaction and increased runoff from these compacted surfaces.

The loss of shade through removal of streamside canopy is a well-established mechanism leading to elevated stream temperatures. Elevated stream temperatures can contribute to lowered dissolved oxygen levels. Other riparian functions and watershed characteristics, including streambank stability, filtration, and surface water-groundwater connectivity, are affected by forestry and can affect stream temperatures.

The mechanisms and specific risks of water quality impacts from forestry may change with the location in the watershed. Areas in the upper portions of watersheds tend to have steeper, more unstable slopes relative to lower-gradient areas further downstream, and are thus more prone to sediment erosion and debris flows affecting water quality, both locally and downstream. Throughout the watershed forest harvest activities and their associated roads can impact water quality with higher sediment loads when those activities directly discharge to streams or are located too near to streams.

### **Habitat Alteration/Hydromodification**

Hydromodification or habitat alteration, a category found widely in EPA NPS guidance, is comprised of a variety of impacts ranging from large dams to development in riparian zones. Typical forms of hydromodification include:

- Dams and weirs forming reservoirs or ponded areas
- Channelized streams
- Bank armoring and levees
- Bank excavation and removal of riparian vegetation
- Streambank and shoreline erosion
- Removing vegetation and/or large woody debris
- Drain or fill of wetlands
- Irrigation diversions
- Culverts

This category overlaps with many of the other categories since agriculture, urban and residential development, and forestry can affect riparian zones. However, many hydromodification impacts occur directly from channel modification, or from activities on vacant or open space lands. In general, the term “hydromodification” used in this context refers to modifications to the geomorphological channel structure that impair water quality or aquatic

habitat. Restoration activities may involve a channel “remodification” to restore ecological function.

The critical aspects of hydromodification are that:

- It can affect any kind of water body – marine, river, stream, lake, or wetland.
- It can be associated with almost any kind of land use or human activity.
- It impacts the aquatic ecosystem physically through loss of habitat and ecosystem function.
- It also impacts the aquatic ecosystem through the discharge of contaminants from construction, building materials, erosion, and the lack of a riparian vegetated buffer to prevent the transport of contaminants from overland flow.

Table 4 Pollutant categories associated with nonpoint pollution from hydromodification.

Pollutant Category	Typical sources	Impacts
Temperature	Loss of riparian canopy, changes in channel morphology, changes in surface water-groundwater interactions	Aquatic life uses
Suspended sediment/ Turbidity	Erosion, alteration of transport and deposition dynamics	Aquatic life uses
Bacteria, Nutrients/ Dissolved oxygen/pH, Pesticides	Loss of the riparian buffer	Aquatic life uses, human health, aesthetics

## Recreation

Although generally a less pervasive nonpoint issue compared to agriculture and urban/residential areas, the impacts of NPS pollution from marinas and recreational boating can be present in our coastal areas and lakes.

This is especially true in Puget Sound waters that are poorly flushed and mixed. At the same time, Puget Sound waters contain economically important fish and shellfish areas, marine protected areas, aquatic reserves, and public beaches.

Table 5 Pollutant categories associated with nonpoint pollution from recreation and marine/boating areas.

Pollutant Category	Typical sources	Impacts
Fecal coliform bacteria	Direct sewage discharge	Contact recreation, shellfish harvest

<b>Pollutant Category</b>	<b>Typical sources</b>	<b>Impacts</b>
Toxic chemicals (heavy metals, organic toxics)	Anti-fouling paint, solvents, sealers, lubricants	Human health, aquatic life uses
Nutrients from soaps and detergents	Direct sewage discharge, boat cleaning	Aquatic life uses, aesthetics
Petroleum hydrocarbons	Engine fueling and operation, bilge water	Human health, aquatic life uses, aesthetics

### Urban and Residential Areas

Urban (including commercial, industrial, and residential) areas and non-urban residential areas have long been recognized as one of the top sources of nonpoint pollution across the United States. A mix of land use and human activities typically contribute to overall nonpoint pollution issues in urbanized watersheds.

The key transport mechanism involved is stormwater runoff from impervious surfaces, although direct dumping and hydromodification also contribute. The most common pollutants associated with nonpoint pollution in urban areas are fecal coliform, toxic chemicals, suspended sediment and turbidity, and nutrients.

Table 6 Pollutant categories associated with nonpoint pollution from urban areas.

<b>Pollutant Category</b>	<b>Typical Sources</b>	<b>Impacts</b>
Fecal coliform bacteria	Onsite sewage systems, pet waste, urban wildlife	Contact recreation, shellfish harvest
Suspended sediment/ Turbidity	Erosion from construction or landscaping, road runoff, road maintenance, bank erosion from increased peak flows	Aquatic life uses, aesthetics
Toxic chemicals (heavy metals, pesticides)	Landscaping chemicals, road runoff, commercial or industrial spills, leaking storage tanks	Human health, aquatic life uses
Nutrients/Dissolved oxygen/pH	Landscaping chemicals, road runoff, commercial or industrial spills, pets, and urban wildlife	Aquatic life uses, aesthetics
Petroleum hydrocarbons	Road runoff, commercial or industrial spills, leaking storage tanks	Aquatic life uses
Temperature	Loss of riparian canopy, changes in channel morphology, changes in surface water-groundwater interactions	Aquatic life uses

## Chapter 2: Washington State's Regulatory Framework

This chapter describes Washington State's statutory and regulatory framework for implementing the NPS program. The authority to implement the NPS program is based primarily on the State Water Pollution Control Act and two federal laws—the Clean Water Act (CWA) and Coastal Zone Act Reauthorization Amendments of 1990 (CZARA). Further, three additional state laws provide enforceable mechanisms that address NPS pollution from forest practices, dairies, and on-site-sewage systems. Finally, other relevant state, and local laws are also included to provide a full picture of the legal framework in Washington State.<sup>3</sup>

### State water quality laws-regulatory

In Washington State, the Water Pollution Control Act (Chapter 90.48 RCW) is the principal state law governing water quality. It provides the primary authority to regulate NPS pollution, achieve compliance with the state WQ Standards, and require the implementation of best management practices (BMPs) to address NPS pollution. Other state and local authorities can also provide authority to address NPS pollution. In addition to the Water Pollution Control Act, this section describes three other state laws and associated regulations (the Forest Practices Rules, the Dairy Nutrient Management Act, and On-Site Sewage Systems Regulations) that provide enforcement authority to address nonpoint sources of pollution.

### Washington State Water Pollution Control Act

The Washington State Water Pollution Control Act (Chapter 90.48 RCW) is the principal law governing water quality in Washington State. It establishes a comprehensive program to protect water quality and the beneficial uses of water. The goal of the Water Pollution Control Act is to “maintain the highest possible standards to insure the purity of all waters of the state....”<sup>4</sup> Further, to achieve this goal the state will “require the use of all known available and reasonable methods by industries and others to prevent and control the pollution of the waters of the state....”<sup>5</sup> The Water Pollution Control Act applies to surface waters, wetlands and ground water.

Under the Washington State Water Pollution Control Act, Ecology is given the jurisdiction “to control and prevent the pollution of... waters of the state of Washington.”<sup>6</sup> Pollution is broadly defined in RCW 90.48.020, and includes the contamination or other alteration of the physical, chemical, or biological properties of any waters of the state. Under state law, it does not matter whether the pollution comes from a point or NP sources, all pollution of state waters is subject to Ecology's authority to control and prevent pollution.

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<sup>3</sup> While this chapter discusses most of the relevant authorities in Washington State, it is not intended to be comprehensive of all possible legal authorities that can be used to address nonpoint sources of pollution. In some cases other legal authorities may be better suited to address a specific nonpoint pollution problem.

<sup>4</sup> See RCW 90.48.010.

<sup>5</sup> See RCW 90.48.010.

<sup>6</sup> See RCW 90.48.030.

The Water Pollution Control Act makes it unlawful for any person to “cause, permit or suffer to be thrown, run, drained, allowed to seep or otherwise discharged ... any organic or inorganic matter that shall cause or tend to cause pollution of” waters of the state.<sup>7</sup> Any person who violates or creates a substantial potential to violate the provisions of Chapter 90.48 RCW is subject to an enforcement order from Ecology pursuant to RCW 90.48.120. Ecology is authorized to “issue such order or directive as it deems appropriate under the circumstances[.]”<sup>8</sup>

In addition to administrative orders, violating Chapter 90.48 RCW may result in injunctions, civil penalties, and notices of violations.<sup>9</sup> Finally, any “person who conducts a commercial or industrial operation of any type which results in the disposal of solid or liquid waste material into the waters of the state” must obtain a state waste discharge permit before discharging to state waters.<sup>10</sup> Ecology issues three types of wastewater discharge permits: (1) State Waste Discharge Permit; (2) National Pollutant Discharge Elimination System (NPDES)/State Waste Discharge Permits; and (3) General Permit (may be issued under combined NPDES/State or State-only authority).

It is worth noting that while RCW 90.48.120 gives Ecology the authority to take action in response to NPS pollution, the statute also gives Ecology the authority to take action based on a “substantial potential” to pollute state waters via either a point or nonpoint pollution source. Consequently, Ecology not only has authority to take action following a NPS pollution occurrence (i.e. there was a discharge), but has specific statutory authority to act proactively to prevent NPS pollution from occurring in the first place.

Finally, Ecology’s authority includes the ability to require a nonpoint source polluter to implement specific best management practices (BMPs). Ecology’s authority can be used to prevent nonpoint pollution and require BMPs, as necessary.<sup>11</sup>

The Washington State Supreme Court affirmed Ecology’s authority to regulate nonpoint source pollution. *Lemire v. Dep’t of Ecology*, 178 Wn.2d 227, 309 P.3d 395 (2013). In that case, Ecology identified Joseph Lemire’s ranch as having conditions detrimental to water quality during a watershed evaluation. Livestock at the property had uncontrolled access to Pataha Creek. As a result, Ecology observed overgrazing, bare ground, manure, erosion, riparian vegetation damage, cattle trails, and bank trampling in the stream corridor.

Ecology issued an order after multiple offers of financial and technical assistance to make management changes to help curb pollution and protect water quality at the property were rejected by Mr. Lemire. The Order prescribed a number of corrective action including requiring Mr. Lemire to construct permanent riparian livestock fencing to exclude cattle from surface

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<sup>7</sup> See RCW 90.48.080.

<sup>8</sup> See RCW 90.48.120.

<sup>9</sup> See RCW 90.48.037, RCW 90.48.144, RCW 90.48.120, and RCW 90.48.240.

<sup>10</sup> See RCW 90.48.160.

<sup>11</sup> See Appendix B.

water and develop off-stream water for livestock. The order also required the Mr. Lemire to set back a confinement area from the stream.

In upholding the Order the Court recognized that the plain language of RCW 90.48.080 gives Ecology “the authority to regulate nonpoint source pollutant discharge.” In its decision the Court observed that “Ecology is authorized to issue orders remedying not only actual violations of the State WPCA, but also those activities that have a substantial potential to violate the WPCA.” The Court’s decision also supported Ecology’s authority to require the implementation of prescribed BMPs to curb pollution.

Subsequent to the Lemire decision the Pollution Control Hearings Board, as well as the Court of Appeals of the State of Washington Division Three, have reaffirmed Ecology’s authority and upheld enforcement actions.

## **Forest Practices Rules**

The Forest Practices Rules establish protection standards for forest practices activities such as timber harvest, pre-commercial thinning, road construction and maintenance, fertilization, forest chemical application, required reforestation, and specific riparian and wetland protection measures.<sup>12</sup> They give direction on how to implement the Forest Practices Act<sup>13</sup> and the Stewardship of Non-industrial Forests and Woodlands.<sup>14</sup> The rules are designed to protect public resources, such as water quality and fish habitat while maintaining a viable timber industry. They are under constant review through an adaptive management program.

The Forest Practices Board, an independent state agency, adopts Forest Practices Rules. The Department of Ecology needs to concur with proposed rules involving water quality protection prior to adoption by the Forest Practices Board.

The Forest Practice Rules requires trees to be left within streamside areas to shade streams (which keep them cool), to protect stream bank integrity, to capture surface run-off sediment, and to provide the woody debris that builds in-stream salmon habitat. They also establish road construction standards and required road maintenance, provide protection for wetlands, and set restrictions on pesticide use. An approved Forest Practices Application from the state Department of Natural Resources (DNR) is required for any forest practices activities on forestlands in the state meeting certain criteria. DNR is authorized to inspect operations and enforce all rules related to forest practices. Ecology is also authorized to take enforcement action if needed to prevent damage to water quality.

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<sup>12</sup> See Title 222 WAC.

<sup>13</sup> See Chapter 76.09 RCW.

<sup>14</sup> See Chapter 73.13 RCW.



## Dairy Nutrient Management Program (DNMP)

The Dairy Nutrient Management Act<sup>15</sup> is administered by the Washington State Department of Agriculture (WSDA). Chapter 90.64 RCW requires all grade “A” licensed dairies under Chapter 15.36 RCW to:

- Register with the DNMP.
- Develop a nutrient management plan (NMP) that describes how manure and process waste water will be managed including collection, storage and utilization. The NMP must be approved within six months of licensing, and certified within twenty-four months of licensing by their local conservation district.
- Prevent discharges to waters of the state.
- Maintain land applications records demonstrating agronomic use of all nutrients.

Chapter 90.64.026 required the Washington State Conservation Commission (WSCC) to develop a document that clearly describes the elements that a dairy nutrient management plan must contain to gain local conservation district approval by November 1, 1998. In addition, WSCC may authorize other methods and technologies than natural resources conservation service if they meet specific standards (see RCW 90.64.026(3)).

The NMP development process is completed by the dairy producer in consultation with a local conservation district, the Natural Resources Conservation Service (NRCS), or a private planner. The NMP development includes a process to assess the number of animals and nutrient inventory, surface and ground water risk(s), manure and process waste water collection, conveyance and storage needs, crop production history, and land application acreage needs. The NMP process identifies the producer’s goals, resource risk(s), and BMPs to protect the Resource.

16-611 WAC specifies requirements for recordkeeping and the penalty matrixes for recordkeeping and water quality violations.

Chapter 90.64 RCW requires DNMP to implement an inspection program to monitor dairy operations for NMP implementation, recordkeeping violations, and conditions that create a risk of discharge to waters of the state. If a discharge to surface water or ground water is documented, DNMP has the authority to issue civil penalties.

In addition, Chapter 43.05 RCW (Technical Assistance) requires DNMP to identify dairies that could benefit from additional technical assistance. Under Chapter 43.05 RCW, DNMP may provide regulatory technical assistance that includes evaluating applicable best management practices outlined in the Dairy Nutrient Management Plan, an evaluation of BMP implementation status and effectiveness and identification of potential additional BMPs or management changes that need to occur to protect water quality, providing consultation on

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<sup>15</sup> Chapter 90.64 RCW.

applicable state laws and rules, and using informal enforcement to incentivize compliance. Alternatively, DNMP may refer dairy producers for technical assistance to local conservation districts, Natural Resource Conservation Service or private consultants and engineers. Often the local conservation districts are the first stop as they can provide cost share dollars for some projects.

The program is managed in conformance with a Memorandum of Understanding established between WSDA and Ecology in 2011. Ecology is responsible to EPA for Clean Water Act compliance for animal feeding operations (AFO)s and confined animal feeding operations (CAFOs) and retains the authority under Chapter 90.48 RCW to take compliance actions on any livestock operations where human health or environmental damage has or may occur due to potential or actual discharges. However, in accordance with the MOU, Ecology recognizes WSDA as the lead on all compliance actions against non-permitted dairies.

According to the Dairy Nutrient Management Act RCW 90.64 WSDA is required to

*Provide to the commission and the \*advisory and oversight committee an annual report of dairy farm inspection and enforcement activities.*

The last report was done in 2021 and that report is included as Appendix E.

## **On-Site Sewage Systems**

### **Small On-Site Sewage Systems**

Small on-site sewage systems (OSS), also known as septic systems, treat domestic sewage from private residences, restaurants, and other small-scale developments. They are used extensively statewide in rural and suburban infill settings.<sup>16</sup> In Washington State, small OSS are regulated by Chapter 246-272A WAC (state OSS rule), Chapter 70.118A RCW (marine recovery area statute), Chapter 43.20 RCW, and Chapter 70.05 RCW. The state OSS rule is adopted by the State Board of Health<sup>17</sup> (SBOH) and administered by the State Department of Health. Local codes must be consistent with, and at least as stringent as the state laws.<sup>18</sup>

Chapter 246-272A WAC provides minimum requirements for the location, design, and performance of OSS. Anyone proposing the installation, repair, modification, connection to, or expansion of an OSS, is required to obtain a permit from the local health officer prior to construction.

Local Health Jurisdictions (LHJs) work with local boards of health to adopt and administer the local codes. The LHJs are responsible for permitting all OSS and implementing other significant

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<sup>16</sup> Small on-site sewage systems (OSS) are those sewage systems that have flows of less than 3,500 gallons per day. See Chapter 246-272A WAC. There are about 950,000 OSS in Washington. See

<sup>17</sup> RCW 43.20.050 authorizes the State Board of Health to “adopt rules for the design, construction, installation, operation, and maintenance” of small on-site sewage systems.

<sup>18</sup> The State Department of Health’s On-site Sewage Program reviews local health jurisdiction codes to ensure they are consistent with state regulations.

aspects of the state OSS rule This includes developing and overseeing management plans (see next section), approving OSS designs, inspecting installations, certifying industry professionals, maintaining system records, and educating homeowners on program requirements and the proper use and care of systems.

OSS owners are responsible for operating, monitoring and maintaining OSS to minimize the risk of failure. Owners are required to have systems pumped when necessary, to avoid damage or improper use of the system, and to ensure the flow of sewage does not exceed the approved design in both quantity and waste strength.

The State Department of Health may take enforcement action if an LHJ fails to regulate OSS in compliance with state law. The Department of Ecology also has authority to take enforcement actions under the Water Pollution Control Act if there is a discharge to state waters.

### **On-Site Sewage System-Management Areas**

The state OSS and marine recovery area (MRA) laws require LHJs to designate areas where OSSs present added risk to public health or water quality. Areas adjacent to Puget Sound that have pollution problems linked to OSS may be designated as MRAs. Consistent with the state OSS rule, Chapter 70.118A RCW requires LHJs to adopt management plans, and implement enhanced programs in these areas to protect public health and Puget Sound water quality. As part of the enhanced programs in MRAs, LHJs are required to:

- Inventory and inspect all OSS.
- Identify failing systems and ensure they are either repaired or replaced.
- Develop and maintain electronic data systems capable of sharing OSS information with other regulators.

The state OSS rule complements this with the following management plan requirements from WAC 246-272A-0015 for Puget Sound counties:

- Progressively inventory all systems.
- Identify high-risk areas and designate MRAs.
- Develop and tailor operation and maintenance (O&M) requirements to these areas.
- Facilitate education of owners on their O&M responsibilities for all types of systems.
- Remind and encourage system owners to inspect their systems.
- Maintain records of O&M activities.
- Find failing systems, and enforce system owner requirements.
- Assure coordination with local comprehensive plans.
- Assess the capacity of the LHJ to adequately fund the program.

For most Puget Sound counties, requirements are higher and tracked more closely inside designated areas than in other parts of the county. Efforts continue at the State Department of Health and LHJs to strengthen and standardize both baseline and enhanced program requirements.

To see a map that shows counties with management plans, please see:

<http://www.doh.wa.gov/CommunityandEnvironment/WastewaterManagement/OnsiteSewageSystemsOSS/ManagementStrategy/ManagementAreas>

## **Large On-Site Sewage Systems**

Large On-site Sewage Systems (LOSS) convey, store, treat, and provide subsurface soil treatment and disposal of domestic sewage. Their design flow is between 3,500 and 100,000 gallons per day.

LOSS offer an alternative to centralized municipal sewage treatment plants. They can serve about 10 to 370 individual residences, or equivalent flows from schools, churches, campgrounds, recreation vehicle parks, resorts or state park sites, or smaller cities or towns.

The state Department of Health reviews and approves all LOSS project applications. The state LOSS rule is Chapter 246-272B WAC, developed under authority of Chapter 70.118B RCW. The rule took effect July 1, 2011. Among other significant policy changes captured in the rule, it consolidated previously piecemeal regulatory and permitting authority for LOSS at the Department of Health, and assigned responsibility for public health and environmental protection to the agency. The rule is not a SBOH rule.

All existing LOSS are required to obtain and renew annual operating permits from the Department of Health. There are approximately 570 LOSS statewide, and about 290 in the Puget Sound region.

## **Additional State Authorities (Regulatory and Non-regulatory)**

### **State Environmental Policy Act**

Washington's State Environmental Policy Act (SEPA)<sup>19</sup> requires that all state and local agencies consider the likely consequences of agency actions before making decisions that affect the natural and built environment. Among other things, the law requires all state and local governments within the state to:

- "Utilize a systematic, interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man's environment;" and
- Ensure that "...environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations...."<sup>20</sup>

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<sup>19</sup> Chapter 43.21C RCW

<sup>20</sup> RCW 43.21C. 030(2)(a) and (2)(b)

The policies and goals in SEPA supplement those in existing authorizations of all branches of government of this state, including state agencies, counties, cities, districts, and public corporations. Any governmental action may be conditioned or denied pursuant to SEPA.<sup>21</sup>

SEPA is intended to ensure that environmental values are considered during decision-making by state and local agencies.

## **Land Use Planning: Growth Management Act, and Shoreline Management Act**

The Shoreline Management Act (SMA)<sup>22</sup> and, Growth Management Act (GMA)<sup>23</sup> are the two primary state statutes related to land use planning. They share some commonalities, but are separate statutes with different purposes, jurisdictions, and requirements.

The overarching goal of the SMA is, "to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines." Under the SMA, each city and county with "shorelines of the state" must prepare and adopt a Shoreline Master Program (SMP) that is based on state laws and rules, but is tailored to the specific geographic, economic, and environmental needs of the community. The local SMP is essentially a shoreline-specific combined comprehensive plan, zoning ordinance, and development permit system.

The SMA establishes a balance of authority and partnership between local and state government. Towns, cities, and counties are the primary regulators. The state Department of Ecology acts primarily in a support and review capacity. Ecology provides technical assistance to local governments. Ecology also provides funding in the form of grants. Finally, Ecology is also required to review certain kinds of permits (*conditional use* and *variance permits*) for compliance with the law, and must review local shoreline master programs to ensure they also comply.

Local governments may modify (amend) master programs to reflect changing local circumstances, new information, or improved shoreline management approaches. There are two types of amendments: limited and comprehensive. All changes to master programs require public notice. Comprehensive amendments require more extensive public involvement.

SMPs and any amendments are effective only after Ecology approval. In reviewing and approving master programs, Ecology is limited to a decision on whether or not the proposed changes are consistent with the policy and provisions of the SMA and the shoreline master program guidelines.<sup>24</sup>

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<sup>21</sup> RCW 43.21C.060

<sup>22</sup> Chapter 90.58 RCW, and more information at:  
<http://www.ecy.wa.gov/programs/sea/shorelines/smp/handbook/index.html>.

<sup>23</sup> Chapters 36.70A and 36.70B RCW.

<sup>24</sup> WAC 173-26, Part III.

The GMA requires that each Washington city and county establish a public participation program and procedures for amendments, updates, and revisions of comprehensive plans and development regulations.

The GMA requires all jurisdictions in the state to designate and protect critical areas; designate farm lands, forest lands, and other natural resource areas; and determine that there are appropriate public services and facilities for new residential subdivisions. In addition, 29 of the state's 39 counties, and the 218 cities within them, are planning for growth. These jurisdictions develop comprehensive land use plans.

All cities and counties in Washington are required to adopt critical areas regulations by the GMA.<sup>25</sup> As defined by the GMA, "Critical areas" include the following areas and ecosystems: (a) wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas.<sup>26</sup>

Counties and cities are required to include the best available science in developing policies and development regulations to protect the functions and values of critical areas.<sup>27</sup>

The Voluntary Stewardship Program (VSP) was passed in 2011 as an amendment to the GMA. Its goals are to protect and enhance critical areas, maintain and improve the long-term viability of agriculture, and reduce the conversion of farmland to other uses. To accomplish these goals the VSP relies primarily on incentives and voluntary stewardship practices.

Counties that opt into the VSP are responsible for designating a local watershed group that will develop a watershed plan that describes how critical areas on agricultural lands will be protected and enhanced.

## **Shellfish Protection Districts**

Chapter 90.72 RCW encourages, and in some cases, requires counties to establish shellfish protection districts and programs to curb the loss of productive shellfish beds caused by nonpoint sources of pollution, such as stormwater runoff, failing on-site sewage systems, and runoff from farm animal wastes.

## **Salmon Recovery Act, and Salmon Enhancement Program**

In response to Endangered Species Act listings, Washington State passed the Salmon Recovery Act, Chapter 77.85 RCW. The Act provides for a planning and implementation process that is

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<sup>25</sup> RCW 36.70A.060. More information on the GMA and CAO can be found at: <http://www.commerce.wa.gov/Services/localgovernment/GrowthManagement/Growth-Management-Planning-Topics/Pages/default.aspx>.

<sup>26</sup> RCW 36.70A.030(5).

<sup>27</sup> RCW 36.70A.172.

focused on fish habitat. The Salmon Recovery Funding Board provides grants to local organizations in watersheds to restore and protect salmon habitat.

Regional Fisheries Enhancement Groups (RFEs) are a statewide network of non-profit, community-based, salmon enhancement organizations. Created by the Washington State Legislature in 1990, the RFE program involves citizen volunteers and landowners in the state's salmon recovery efforts.<sup>28</sup> The RFE program consists of 14 sanctioned non-profit community-based organizations, with program support provided by the Washington Department of Fish and Wildlife. The long-term vision of the RFE program is that Washington State communities actively care for, and become stewards of, abundant salmon populations for future generations.

## **Biosolids**

Biosolids are the nutrient-rich organic materials resulting from the treatment of sewage sludge (the name for the solid, semisolid or liquid untreated residue generated during the treatment of domestic sewage in a treatment facility). Biosolids facilities in Washington operate under a statewide General Permit for Biosolids Management issued by Ecology.<sup>29</sup> This permit covers land application of biosolids and other related processes and aspects of operations related to biosolids.<sup>30</sup> The state biosolids program regulates biosolids (including septage) applied to the land, biosolids sold or given away in a bag or other container, biosolids being stored, biosolids transferred from one facility to another, and sewage sludge disposed in a municipal solid waste landfill. The general permit was updated in 2022. Information on the biosolids program and general permit can be found at this website - [Biosolids permit system - Washington State Department of Ecology](https://www.ecy.wa.gov/programs/swfa/biosolids/).

## **Oil and Hazardous Substance Spill Prevention and Response Act**

Oil and hazardous materials spills present a danger to human health and the environment. Ecology is responsible for rapidly responding to, and overseeing the cleanup of oil spills and hazardous material incidents. The law also includes prevention and preparedness requirements, and authorizes Ecology to assess and collect damages and fines for spills.<sup>31</sup>

## **Toxics Cleanup, Hazardous Waste, Solid Waste, and Air Quality**

Various other laws administered by Ecology can have a nexus with nonpoint pollution. Examples include the Model Toxics Control Act,<sup>32</sup> Hazardous Waste Management Act,<sup>33</sup> Solid

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<sup>28</sup> Chapter 77.95 RCW and Chapter 220-140 WAC.

<sup>29</sup> Chapter 70.95J RCW and Chapter 173-308 WAC.

<sup>30</sup> More information on the biosolids program can be found here: <http://www.ecy.wa.gov/programs/swfa/biosolids/>; More information on the permit can be found here:

<http://www.ecy.wa.gov/programs/swfa/biosolids/pdf/BiosolidsManagement.pdf>

<sup>31</sup> Chapter 90.56 RCW and Chapter 88.46 RCW & Chapter 173-182 WAC, and Chapter 173-183 WAC.

<sup>32</sup> Chapter 70.105 D RCW.

<sup>33</sup> Chapter 70.105 RCW.

Waste Management-Reduction and Recycle Act,<sup>34</sup> and Washington Clean Air Act.<sup>35</sup> For additional information on laws and regulations administered by Ecology visit our website:

<http://www.ecy.wa.gov/laws-rules/index.html>

## **Hydraulic Project Approval (HPA)**

Anyone planning any construction activity or other work that uses, diverts, obstructs, or changes the natural flow or bed of state waters is required to obtain an environmental permit from Washington Department of Fish and Wildlife (WDFW) commonly known as an HPA. Thousands of HPAs are issued each year for activities ranging from work on bulkheads, piers, and docks to culvert replacement.

The WDFW administers the HPA program under the state Hydraulic Code.<sup>36</sup> The purpose of the HPA is to ensure that design, construction, or performance of work is done in a manner that protects fish life.

All hydraulic projects associated with forest practices activities are administered by the DNR. These projects require an approved Forest Practices Application containing a request for approval of Forest Practices Hydraulic Projects.

## **Aquatic Invasive Species (AIS) Program**

Aquatic invasive species pose an ongoing threat to Washington's environment and economy. The Washington Department of Fish and Wildlife (WDFW) administer the AIS program.<sup>37</sup> Penalties for transporting aquatic invasive species in Washington include up to one year in jail and a maximum fine of \$5,000. Additionally, WDFW administers the state's ballast water management laws under Chapter 77.120 RCW. Ballast water management regulations are found at Chapter 220-150 WAC.

## **Secondary Containment Rules (Fertilizer and Pesticide)**

The Secondary Containment Rules<sup>38</sup> are administered by the Washington State Department of Agriculture (WSDA). Fertilizer and pesticide secondary containment rules were implemented to protect ground and surface water. Secondary containment rules are not intended to prevent spills in the event of a catastrophic incident occurring to the primary container. The rules are intended to contain the spill of bulk pesticides or fertilizers in the event the primary bulk container should fail.

## **Chemigation and Fertigation Technical Assistance Program (CFTAP)**

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<sup>34</sup> Chapter 70.95 RCW.

<sup>35</sup> Chapter 70.94 RCW.

<sup>36</sup> Chapter 77.55 RCW and Chapter 220-660 WAC.

<sup>37</sup> Chapter 77.135 RCW.

<sup>38</sup> Chapter 16-201 WAC (Fertilizers) and Chapter 16-229 WAC (Pesticides).



WSDA has regulatory authority involving the application of pesticides<sup>39</sup> and fertilizers<sup>40</sup> through irrigation systems. The Chemigation and Fertigation Rules apply to any irrigation system that is used to apply a pesticide or plant nutrient in a greenhouse or to a plant nursery, farm, residential or commercial property.

These rules require that chemigation and fertigation systems must have the appropriate safety devices in place and must be properly installed, maintained, and operating to protect human health and the environment. Equipment performance standards, operational procedures, and applicator competencies are protective of existing and future uses of surface water and groundwater quality.

Individuals who chemigate must also adhere to provisions of the Washington Pesticide Control Act<sup>41</sup> concerning the formulation, distribution, storage, transportation, and disposal of any pesticide; the Washington Pesticide Application Act,<sup>42</sup> involving the use of various pesticides, application recordkeeping, and applicator licensing; the General Pesticide Rules<sup>43</sup> and the Worker Protection Standards,<sup>44</sup> which are co-enforced with the Washington State Department of Labor and Industries. In instances where the water source is a public water system or a domestic water supply, Chemigation and Fertigation Technical Assistance Program (CFTAP) staff collaborate with the Washington State Department of Health, Drinking Water Unit. In counties that have codified the Uniform Plumbing Code to include irrigation wells used in agricultural operations, CFTAP staff advise growers about local permitting requirements and inspection procedures.

## **Federal Laws (Regulatory and Non-Regulatory)**

### **Clean Water Act**

The Federal Clean Water Act (CWA)<sup>45</sup> is the principal federal statute for water quality protection. The CWA's goal is "to restore and maintain the chemical, physical and biological integrity of the Nation's waters."<sup>46</sup>

In Washington State, the Department of Ecology is designated "as the state water pollution control agency for all purposes of the federal clean water act..." and is "authorized to participate fully in the programs of the act as well as to take all action necessary to secure to the state the benefits and to meet the requirements of the act."<sup>47</sup>

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<sup>39</sup> WAC 16-202-1000.

<sup>40</sup> WAC 16-202-2000.

<sup>41</sup> Chapter 15.58 RCW.

<sup>42</sup> Chapter 17.21 RCW.

<sup>43</sup> Chapter 16-288 WAC.

<sup>44</sup> Chapter 16-233 WAC.

<sup>45</sup> 33 U.S.C. §§1251 et seq.

<sup>46</sup> 33 U.S.C. § 1251(a).

<sup>47</sup> RCW 90.48.260.

Historically, efforts to protect water quality under the CWA focused on the establishment of technology-based limitations on individual discharges into navigable waters from point sources. Point sources are “any discernible, confined and discreet conveyance . . . from which pollutants are or may be discharged,” such as any pipe, ditch, channel, or tunnel.<sup>48</sup> This technology-based approach to addressing point source discharges has had demonstrated success.

Much of the improvement in our waters is attributable to the control of traditional point sources through permits. A majority of the remaining water quality impairments are largely caused by NP sources. While the CWA does not authorize EPA to control NP sources of pollution through a permit system, several sections of the CWA provide a basis for addressing NP sources. In general, the federal CWA addresses nonpoint sources by:

- (1) Supporting the development of state NPS plans and programs.
- (2) Requiring the development of WQ Standards, the identification of impaired waters (including waters impaired by nonpoint sources) and the development of clean-up plans (TMDLs) for those waters.
- (3) Providing financial incentives to states to accomplish those tasks.

This section will cover the key sections of the CWA that address nonpoint pollution.

### **Section 319-Nonpoint Source Management Programs**

In the 1987 CWA Amendments, Congress added Section 319<sup>49</sup> to the act. Section 319 required states to develop Assessment Reports that described the states’ NPS problems, and establish Management Programs to address these problems. The required elements of state management programs are outlined at 33 USC §1329(b)(2). EPA supports implementation of NPS programs by providing funding to states. Ecology is designated as the section 319 lead agency for Washington State’s nonpoint program. As the lead agency, Ecology is responsible for the administration of Section 319 pass-through and internal grant funds, the identification and establishment of priorities for NPS-related water quality problems, and the development of the state’s NPS pollution control plan.

According to EPA guidance,<sup>50</sup> under section 319(b) of the CWA, Washington State’s NPS management program must include all of the following components:

- (i) An identification of measures (i.e., systems of practices) that will be used to control NPS pollution, focusing on those measures which the state believes will be most effective in achieving and maintaining WQ Standards. These measures may be individually identified or presented in manuals or compendiums, provided that they are specific and are related to the

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<sup>48</sup> 33 U.S.C. § 1362(14).

<sup>49</sup> 33 USC §1329

<sup>50</sup> See *Section 319 Program Guidance: Key Components of an Effective State Nonpoint Source Management Program* (November 2012).

category or subcategory of NPS. They may also be identified as part of a watershed approach towards achieving WQ Standards, whether locally, within a watershed, or statewide.

(ii) An identification of the key programs to achieve implementation of the measures, including, as appropriate, nonregulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects. The state is free to decide the best approaches for solving NPS problems. These approaches may include one or all of the following:

- Watershed or water quality-based approaches aimed at meeting WQ Standards directly.
- Iterative, technology-based approaches based on best management practices or measures, applied on either a categorical or site-specific basis.
- An appropriate mix of these approaches.

(iii) A description of the processes used to coordinate and, where appropriate, integrate the various programs used to implement NPS pollution controls in the state.

(iv) A schedule with goals, objectives, and annual milestones for implementation at the earliest practicable date; legal authorities to implement the program; available resources; and institutional relationships.

(v) Sources of funding from federal (other than section 319), state, local, and private sources.

(vi) Federal land management programs, development projects, and financial assistance programs.

(vii) A description of monitoring and other evaluation programs that the state will conduct to help determine short- and long-term NPS management program effectiveness.<sup>51</sup>

EPA expects all states to review and, as appropriate, revise their NPS program at least every five years. An updated program allows EPA and states to ensure that resources are efficiently and effectively directed in a manner that will support state's efforts to address water quality issues.

In 2017 a lawsuit was filed against EPA and NOAA related to Washington's Clean Water Act (CWA) Section 319 program (nonpoint program). Washington participated in settlement negotiations with Northwest Environmental Advocates (NWEA) and EPA to resolve the case. The Washington Cattlemen's Association and the Washington Farm Bureau intervened in the

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<sup>51</sup> Further according EPA guidance, "In addition, the state incorporates existing baseline requirements established by other applicable federal or state laws to the extent that they are relevant. For example, a coastal state or territory with an approved coastal zone management program incorporates its approved state coastal nonpoint pollution control programs required by section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA) of 1990, into its NPS management program since CZARA requires implementation through the state's NPS management program. In this manner, the state ensures that this program and other relevant baseline programs are integrated into, and consistent with, Section 319 programs."

case. The lawsuit was filed in 2017 and we negotiated the commitments in 2018 - 2019. Many of the commitments aligned with actions we planned on completing. The actions from that settlement agreement are located in Appendix F; they are part of our annual reporting.

The Department of Ecology is required to report annually to EPA on our nonpoint pollution program. That annual report is lengthy and includes specific information on the projects we fund, the best management practices that have been implemented, the site specific water clean up plans being developed, the focused implementation work we are doing across the state, our technical assistance and enforcement work and all of the requirements from the above references litigation agreement. These annual reports have good information and data and they inform our nonpoint plan updates in addition to reporting on all aspects of our program to EPA. We are happy to provide copies of these lengthy annual reports to anybody that requests them.

### **Section 303(d) and 303(c)-Water Quality Standards and Water Clean-up Plans (TMDLs)**

WQ Standards are regulations comprised of: 1) a description of the designated use or uses of a water body; 2) the criteria necessary to protect the use or uses; and 3) a statement by the applicable state that the standard will maintain and protect the existing use and the water quality of the water body (antidegradation requirements). Additionally, CWA Section 303(d) requires states to list surface waters not attaining (or not expected to attain) WQ Standards after the application of technology-based effluent limits. States must complete a total maximum daily load (TMDL, water clean-up plan) for all waters on the Section 303(d) list.

In Washington State, the WQ Standards (Chapter 173-201A WAC) are the basis for protecting and regulating the quality of surface waters. The WQ Standards are established to sustain public health and public enjoyment of state waters, and for the propagation and protection of fish, shellfish, and wildlife. A three-part approach was designed to set limits on pollution in Washington State's lakes, rivers, and marine waters in order to protect beneficial uses such as aquatic life, swimming, and fishing. The three-part approach covers:

- Designated uses, such as fishing, swimming, and aquatic life habitat.
- Numeric and narrative water quality criteria limits to protect the uses.
- Policies, such as antidegradation, to protect higher quality waters from being further degraded.

Washington's antidegradation policy is designed to protect waters of a quality that is higher than the state standards. The policy has three tiers.

- **Tier I.** [WAC 173-201A-310](#)  
Tier I is used to ensure existing and designated uses are maintained and protected. It does this by focusing on fully applying the water quality criteria and correcting problems using our existing regulatory and TMDL processes. Tier I applies to all waters and all sources of pollution.

- **Tier II.** [WAC 173-201A-320](#)

Tier II is used to ensure that waters of a higher quality than the criteria assigned in the standards are not degraded unless such lowering of water quality is necessary and in the overriding public interest. Tier II applies only to new or expanded sources of pollution from specific types of activities directly regulated by Ecology (e.g., NPDES, 401, 404, Forest Practices). Any new or expanding dischargers that would cause a measurable degradation of water quality:

- a. Must go through a technology review to identify and apply any feasible alternatives to that degradation.
- b. Must show that overriding public benefits would occur from allowing the lowering of water quality.

- **Tier III.** [WAC 173-201A-330](#)

Tier III is used when a high-quality water is designated as an “outstanding resource water.” The water quality and uses of these waters must be maintained and protected against all sources of pollution.

A request for designation of Tier III may be made by the Department of Ecology (department). A Tier III designation may also be requested through public nominations that are submitted to the department in writing. Public nominations must include sufficient information to show how the water body meets the appropriate conditions of an outstanding resource water. If the information proposed demonstrates that the waterbody meets the eligibility requirements, the department will schedule a review of the nominated water for designation. The review will include a public process and consultation with recognized tribes in the geographic vicinity of the water. The rules allow two levels of Tier III protection. A qualifying water body may be designated as:

- Tier III(A), which prohibits any and all future degradation [[WAC 173-201A-330\(5\)\(A\)](#)].
- Tier III(B), which allows for de minimis (below measurable amounts) degradation from well-controlled activities [[WAC 173-201A-330\(5\)\(B\)](#)].

To fully achieve and maintain compliance with the WQ Standards in Washington, the standards state that the intent of Ecology is to “apply the various implementation and enforcement authorities at its disposal.”<sup>52</sup> The primary means to be used for “controlling municipal, commercial, and industrial waste discharges shall be through the issuance of waste discharge permits, as provided for in RCW 90.48.16, 90.48.162, and 90.48.260.”<sup>53</sup> Further, “[w]aste discharge permits, whether issued pursuant to the National Pollutant Discharge Elimination

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<sup>52</sup> WAC 173-201A-500

<sup>53</sup> WAC 173-201A- 510(1) states that “[a]ctivities which generate nonpoint source pollution shall be conducted so as to comply with the water quality standards. The primary means to be used for requiring compliance with the standards shall be through best management practices required in waste discharge permits, rules, orders, and directives issued by the department for activities which generate nonpoint source pollution.”

System or otherwise, must be conditioned so the discharges authorized will meet the WQ Standards.”<sup>54</sup>

The standards require activities which contribute nonpoint source pollution to use best management practices (BMPs) to prevent exceedences of water quality criteria.<sup>55</sup> The Standards define BMPs as “physical, structural, and/or managerial practices approved by the department that, when used singularly or in combination, prevent or reduce pollutant discharges.”<sup>56</sup> Given that much of nonpoint pollution cannot easily be measured, the Standards express compliance with the law by implementing Ecology approved BMPs.<sup>57</sup>

Washington’s WQ Standards, along with the Washington Water Pollution Control Act, provide Ecology with the tools to fully implement TMDLs, including the requirement that the state provide reasonable assurance that nonpoint sources can be required to meet TMDL load allocations if the wasteload allocations established for point sources depend on those nonpoint reductions being made in the TMDL area.

### **Section 312-No Discharge Zone**

Under Section 312 of the CWA, vessel sewage may be controlled through the establishment of areas in which discharges of sewage from vessels are not allowed. These areas are also known as “no discharge zones.”<sup>57</sup> A No Discharge Zone (NDZ) is a designated body of water where the discharge of sewage (blackwater/toilet waste) from boats, whether treated or not, is prohibited. Under Section 312 of the CWA, the U.S. Coast Guard and the state in which the NDZ has been designated may enforce the NDZ requirements.<sup>58</sup> Without a no discharge zone, federal regulations would allow “treated” sewage to be discharged anywhere in Puget Sound, and untreated sewage could be discharged as long as the boat is more than three miles from shore.

After thorough scientific evaluation, a lengthy public process, and approval from the U.S. EPA, the Puget Sound Vessel Sewage NDZ (Chapter 173-228 WAC) was adopted on April 9, 2018. The rule became effective May 10, 2018. With the NDZ in place, it is illegal for any vessel sewage to be discharged in the designated area, which means vessels must hold their sewage onboard until they are able to pump it out at a proper facility (stationary pumpout, mobile pumpout, pumping service) or discharge outside the NDZ. The designated area of the Puget Sound NDZ includes all Washington marine waters east of New Dungeness Lighthouse, at the east end of the Strait of Juan de Fuca, plus Lake Washington, Lake Union, and the waters that connect them to Puget Sound. Due to the cost and effort to retrofit some systems, four types of vessels have

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<sup>54</sup> Id. See also, 40 C.F.R. § 130.2(i).

<sup>55</sup> WAC 173-201A- 510(3)(c)

<sup>56</sup> WAC 173-201A-020

<sup>57</sup> WAC 173-201A- 510(3)(a) states that the “primary means to be used for requiring compliance with the standards shall be through best management practices required in waste discharge permits, rules, orders, and directives issued by the department for activities which generate nonpoint source pollution.” Additionally, WAC 173-201A-020 defines best management practices as “physical, structural, and/or managerial practices approved by [Ecology] that, when used singularly or in combination, prevent or reduce pollutant discharges.”

until May 10, 2023 to comply with the NDZ, including tug boats, commercial fishing vessels, small commercial passenger vessels (<249 overnight passengers), and NOAA research and survey vessels.

Ecology is the lead agency for implementing the Puget Sound NDZ. Under WAC 173-228-060, Ecology may enforce the NDZ rule by using any of the enforcement provisions in chapter 90.48 RCW. In addition, other federal, state and local agencies may provide enforcement, as authorized; in other words, other agencies do not require Ecology's permission to enforce the Puget Sound NDZ.

### **Section 320-National Estuary Program**

The National Estuary Program (NEP) was established under the 1987 CWA amendments as a program to "restore and maintain the chemical, physical, and biological integrity of the estuary, including restoration and maintenance of water quality, a balanced indigenous population of shellfish, fish, and wildlife, and recreational activities in the estuary, and assure that the designated uses of the estuary are protected".

The NEP is designed to encourage local communities to take responsibility for managing their own estuaries. Each NEP is made up of representatives from federal, state, and local government agencies responsible for managing the estuary's resources, as well as members of the community such as citizens, business leaders, educators, and researchers. These stakeholders work together to identify problems in the estuary, develop specific actions to address those problems, and create and implement a formal management plan to restore and protect the estuary.

### **Coastal Zone Act Reauthorization Amendments of 1990 (CZARA)**

The Coastal Zone Management Act (CZMA) of 1972<sup>58</sup> established a national framework for effective management, protection, development, and beneficial use of the coastal zone. Recognizing that the CZMA did not specifically mention water quality, in 1990 Congress amended CZMA Section 306(d)(16)<sup>59</sup> and added Section 6217<sup>60</sup> to focus on NPS pollution problems and the protection of coastal waters. Coastal Zone Act Reauthorization Amendments (CZARA) Section 6217 requires state water quality agencies to develop and implement management measures to restore and protect coastal waters from adverse impacts of NPS pollution. States are to implement this requirement through updates to their state nonpoint and coastal zone programs. CZMA Section 306(d)(16)<sup>61</sup> requires that state nonpoint and CZM programs contain enforceable policies and mechanisms to implement applicable requirements of CZARA Section 6217. To achieve these goals, states were directed to coordinate and

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<sup>58</sup> 16 USC §§1451 et seq.

<sup>59</sup> 16 USC §1455(d)(16)

<sup>60</sup> 16 USC §1455b

<sup>61</sup> 16 USC §1455(d)(16)

integrate their existing CZM and water quality plans and programs, including the states' NPS plans. Washington State has yet to receive CZARA program approval.

On June 15, 2020, NOAA and EPA announced in the Federal Register their proposed decision, with documentation, that Washington has satisfied all the federal conditions. NOAA and EPA solicited public comment on their proposed decision for 60 days, the proposed comment period closed on Aug. 15, 2020.

## **Safe Drinking Water Act**

The Safe Drinking Water Act (SDWA)<sup>62</sup> is the main federal law that ensures the quality of Americans' drinking water. Under SDWA, EPA sets standards for drinking water quality and oversees the states, localities, and water suppliers who implement those standards.

The SDWA includes drinking water standards, sampling, treatment, and public notification requirements. The 1996 amendments added new requirements related to annual water quality reports, operator certification requirements, system capacity, and source water assessment and protection. The Washington State Department of Health, through an agreement with EPA, is authorized and responsible for implementing the SDWA in Washington.

Generally, the SDWA applies to water systems with 15 or more connections, or those regularly serving 25 or more people daily, 60 or more days per year. Approximately 4,200 public water systems in Washington are subject to the SDWA.

## **Sole Source Aquifer (SSA) Protection Program**

The Sole Source Aquifer (SSA) Protection Program is authorized by Section 1424(e) of the Safe Drinking Water Act, which states:

"If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the Federal Register. After the publication of any such notice, no commitment for federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for federal assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer."

EPA defines a sole or principal source aquifer as one which supplies at least 50 percent of the drinking water consumed in the area overlying the aquifer. EPA guidelines also stipulate that these areas can have no alternative drinking water source(s) which could physically, legally, and

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<sup>62</sup> 42 U.S.C. 300 et seq.



economically supply all those who depend upon the aquifer for drinking water. For convenience, all designated sole or principal source aquifers are usually referred to simply as "sole source aquifers."

If an SSA designation is approved, proposed federal financially-assisted projects which have the potential to contaminate the aquifer are subject to EPA review.<sup>63</sup> Proposed projects that are funded entirely by state, local, or private concerns are not subject to EPA review. Examples of federally funded projects which have been reviewed by EPA under the SSA protection program include:

- Highway improvements and new road construction.
- Public water supply wells and transmission lines.
- Wastewater treatment facilities.
- Construction projects that involve disposal of storm water.
- Agricultural projects that involve management of animal waste.
- Projects funded through Community Development Block Grants.

## **Endangered Species Act**

The Endangered Species Act provides for the conservation of ecosystems upon which threatened and endangered species of fish, wildlife, and plants depend. The Act:

- Authorizes the designation and listing of species as endangered and threatened.
- Prohibits unauthorized taking, possession, sale, and transport of endangered species.
- Provides authority to acquire land for the conservation of listed species, using land and water conservation funds.
- Authorizes establishment of cooperative agreements and grants-in-aid to states that establish and maintain active and adequate programs for endangered and threatened wildlife and plants.
- Authorizes the assessment of civil and criminal penalties for violating the Act or regulations.
- Authorizes the payment of rewards to anyone furnishing information leading to arrest and conviction for any violation of the Act or any regulation issued thereunder.

Section 7 of the Endangered Species Act requires federal agencies to consult with the Fish and Wildlife Service and/or the National Marine Fisheries Service (Services) to ensure that actions the agencies authorize, fund, or carry out are not likely to jeopardize threatened or endangered species or destroy or adversely modify their critical habitat.

## **Federal Farm Bill Programs**

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<sup>63</sup> Information on sole source aquifers in Washington State can be found here: [Sole Source Aquifers for Drinking Water | US EPA](#) A map of sole source aquifers in Washington State can be found here: [Map of Sole Source Aquifer Locations | US EPA](#)

Federal agricultural conservation assistance programs date back to the 1930s with a focus on soil erosion and water issues associated with agricultural production. During the 1980s agricultural conservation policies were broadened to include environmental issues beyond soil and water concerns, and many of the current agricultural conservation programs were enacted as part of the Food Security Act of 1985. Since 1985 conservation programs have been reauthorized, modified, and expanded, and several new programs have been created. While programs and techniques to address nature resource concerns and production challenges continue to evolve, the basic federal approach continues to rely on voluntary farmer participation in conservation programs designed to help agricultural producers make and maintain improvements on their land. Participation in these conservation programs is primarily encouraged through technical and financial assistance.

The 2018 Farm Bill was enacted on December 20, 2018. The Farm Bill continues to fund many conservation programs that can benefit agricultural producers and forest landowners along with the environment<sup>64</sup>. The U.S. Department of Agriculture (USDA) administers the suite of agricultural conservation programs through two primary agencies—the Natural Resources Conservation Service (NRCS) and the Farm Service Agency (FSA).

In 2010 Ecology, the Natural Resource Conservation Service (NRCS), The Washington State Conservation Commission, Northwest Indian Fisheries Commission, Washington State Department of Agriculture and the Environmental Protection Agency met for a year to better understand the federal NRCS programs, how they are implemented and whether they are designed to meet Washington’s water quality standards. These are important and valuable programs to get conservation activities on the ground. While these federal funding programs and their associated practices are important for getting conservation on the ground, we found that they are not designed to achieve each of our state’s Clean Water Act approved water quality standards. This gap between the federal programs and Washington’s need to ensure BMPs are designed to meet our state’s water quality standards emphasized the need for Ecology to develop BMPs that will fully meet state water quality standards. The Voluntary Clean Water Guidance for Agriculture chapters included in this Nonpoint Plan begin to address this gap. A copy of Ecology’s memo sent to participants that worked on this effort in 2010 can be found in Appendix G.

See Chapter 5 for more information on some of the Farm Bill’s financial incentive programs.

## **State Revolving Fund Program**

The United States Congress established the Clean Water State Revolving Fund (CWSRF) as part of the Clean Water Act (CWA) Amendments of 1987. The EPA offers states capitalization grants

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<sup>64</sup> More information on the 2014 Farm Bill can be found at:

<https://www.usda.gov/farmbill>

voluntary farmer participation encouraged by financial and technical assistance, education

<https://crsreports.congress.gov/product/pdf/R/R45698#:~:text=The%20two%20main%20working%20lands,ways%20and%20to%20different%20degrees.>

each year according to a formula established in the CWA. The capitalization grants are required to be matched with 20 percent state funds and are added to payments of principal and interest from previous loans. The combined funds are loaned out to eligible public bodies and repaid to the CWSRF with interest. This means that the CWSRF continues to revolve and grow, and more money becomes available to fund water quality projects. Today, the majority of the fund consists of repaid principal and interest.

The CWSRF must be managed in accordance with federal regulations associated with timely use of funds, adherence to specific accounting principles, fund perpetuity, project eligibility, financial capacity assessments of borrowers, implementation of state rules, extensive public outreach and public accountability, and strong coordination of multiple environmental cross-cutters required under the State Environmental Review Process, such as the Endangered Species Act, and state and federal regulations for archeological and cultural resources.

The CWSRF supports a variety of water quality projects, including NPS BMP implementation projects, on-site septic system projects, stormwater projects, and wastewater facility projects.

Additionally, CWSRF has the potential to address a wide range of additional projects. For example, within urbanized areas where sewer service is available, service connections from individual homes and businesses can be a source of NPS pollution. Once the wastewater from homes and businesses reaches the sewer pipes in the public right-of-way, it is collected and treated at the local wastewater treatment facility. However, sewage leaking from the pipe that connects buildings to the public sewer can be a problem. These side sewers, or service laterals, are very near the surface (compared to sewer lines buried in the street) and are susceptible to damage. Tree roots, landscaping, digging, and heavy vehicles can all damage side sewer laterals. Maintenance, repair, and inspection of these privately-owned service laterals is generally the responsibility of the individual property owners. CWSRF could support projects that address problems from side sewers or service laterals.

## Local Ordinances and Regulations

Local ordinances can supplement federal and state law. While a comprehensive review of local authorities is outside the scope of this section, the most common sources of authority that can be used to address nonpoint pollution sources at the local level are found in local solid waste regulations, illicit discharge ordinances, and animal or pet waste disposal ordinances. Additionally, planning and development codes and regulations can provide authority to address NPS pollution. For example, critical area ordinances can provide protection to critical areas that have a nexus with water quality.

Following are two examples of local regulatory tools that can be used to address nonpoint pollution: Kitsap County Board of Health's Onsite Sewage System and General Sewage Sanitation Regulations and Solid Waste Regulations, and Kitsap County's illicit discharge code.

*Example - Kitsap County Public Health:*

Kitsap County Board of Health Ordinance 2008-01A, *Onsite Sewage System and General Sewage Sanitation Regulations*, May 1, 2008 and Amended June 7, 2011. Regulatory authority includes nonpoint discharges from failing onsite sewage systems, recreational vehicle dumping, and broken sanitary side sewers.

Section 6. B. Sewage Discharged to Approved or Health Officer-Accepted Systems, Only.

1. All plumbing fixtures in residences, places of business, or other buildings, structures, etc., where sewage is created shall be connected to, and discharge to, an approved public sewer system, large onsite sewage system, onsite sewage system, or other Health Officer-accepted system, only (e.g., temporary holding tanks, portable toilets, RV sewage dumpsites, certified septic tank pumping trucks or facilities, etc.).

2. Sewage shall not be discharged to the surface of the ground, surface water, ground water, cesspools, un-permitted sewage systems, or allowed to backup.

Kitsap County Board of Health Ordinance Number 2010-1, *Solid Waste Regulations*, July 6, 2010. Regulatory authority includes nonpoint sources from animal manure as related to pollution of water. Other typical solid wastes, such as vehicle fluids, paint, and construction are included in other sections.

Section 305 1.(c)

(c) Animal Manure. Animal manure shall not be deposited, or allowed to accumulate, in any ditch, gulch, ravine, river, stream, lake, pond, marine water, or upon the surface of the ground, or on any highway or road right of way, where it may become a nuisance or menace to health, as determined by the Health Officer, through the breeding of flies, harboring of rodents, or pollution of water. Manure shall not be allowed to accumulate in any place where it can pollute any source of drinking water.

*Example - Kitsap County:*

Kitsap County has an illicit discharge code, as required for the Phase II National Pollutant Discharge Elimination Permit, which specifies the prohibition of non-stormwater discharges into or from the municipal storm sewer system, including pipes and ditches.

Kitsap County Code Title 12.30

12.30.020 *Illicit Discharges*

*Illicit discharges to storm water drainage systems are prohibited.*

12.30.020 *Illicit Connections and Uses.*

*The storm water system of Kitsap County, natural and artificial, may only be used to convey storm water runoff. Violation of this chapter can result in enforcement action being taken as prescribed in Chapter 12.32.*

*No person shall use this system, directly or indirectly, to dispose of any solid or liquid matter other than storm water. No person shall make or allow any connection to the storm water system which could result in the discharge of polluting matter. Connections to the storm water system from the interiors of structures are prohibited. Connections to the storm water system for any purpose other than to convey storm water or ground water are prohibited and shall be eliminated.*

In summary, regulatory authority and enforcement for nonpoint sources can be a combination of efforts by Washington State and local jurisdictions. *Domestic Animal Waste Rule, WAC 246-203-130 (formally named Keeping of Animals)*

Among other powers and duties, RCW 43.20.050 authorizes the State Board of Health to adopt rules and standards to prevent, control, and abate health hazards and nuisance related to the disposal of human and animal excreta and animal remains. The Keeping of Animals rule was a longstanding rule codified in 1960 meant to address health, sanitation, and nuisance associated with animal keeping as it relates to manure handling and disposal.

In September 2022, the State Board of Health updated its Keeping of Animal rule to modernize its language, standards, and structure to better reflect current animal waste handling concerns and outline clearer expectations for proper handling and disposal of pet and domestic animal waste to prevent and correct nuisance condition. Updates included a revised purpose and definitions, clearer roles and responsibilities, and specific standards for the prevention, control and abatement of health and nuisance hazards. Local health officers are responsible enforcing the rule.

## Chapter 3: Strategies for Addressing Nonpoint Source Pollution

The Washington State Department of Ecology (Ecology) is the regulatory agency charged with protecting the quality of Washington State's water. Ecology acts as the lead agency in restoring, maintaining, and enhancing water quality collaboratively with citizens, stakeholder groups, tribes, local governments, local governmental entities, state agencies, and federal agencies. Ecology's NPS program uses a combination of public education, technical assistance, financial assistance and regulatory tools to help citizens understand and comply with state and federal water quality laws and regulations that protect water quality.

The NPS plan aims to protect public health and restore our state's waters by setting clear goals and objectives. Ecology's strategy to address NPS pollution focuses on cleaning up impaired watersheds, completing watershed evaluations to identify NPS pollution issues, and implementing suites of best management practices (BMPs) to address identified pollution sources and ensure compliance with the WQ Standards.

Ecology will apply the following key principles in the implementation of this nonpoint strategy:

- Communicate clear standards and compliance expectations.
- Implement BMPs that ensure compliance with state WQ Standards and state law.
- Implement watershed-based plans/strategies designed to meet WQ Standards.
- Identify and correct nonpoint pollution sources in impaired watersheds.
- Be proactive in addressing pollution problems (i.e. incentives/education and outreach).
- Escalate to enforcement when education, outreach, and technical assistance fail.
- Be accountable by collecting data on watershed evaluations and tracking BMP implementation.
- Target effectiveness monitoring where implementation of BMPs has occurred.
- Promote adaptive management.
- Develop and/or strengthen partnerships to achieve water quality goals.

The primary tools that Ecology will use to guide and promote the implementation of this strategy are:

1. Water Clean-Up Plans - TMDLs, which are plans for restoring impaired waters, as required by the federal Clean Water Act.
2. Straight to Implementation (STI) projects, which implement BMPS to achieve compliance with state water quality law using Ecology's state nonpoint authority.
3. Other water clean-up projects in advance of a TMDL.
4. Grant and loan programs.
5. Complaint Response and Inspectors.
6. Education and outreach, and voluntary programs.
7. Partnerships.

Ecology will also support locally led programs that are designed to identify nonpoint pollution sources and cleanup those sources of pollution. For example, locally led Pollution Identification and Correction (PIC) programs have been developed around the Puget Sound. Also, Shellfish Protection Districts provide a framework for locally led programs to address areas where pollution is impacting shellfish resources.

When an opportunity exists we will support the development and use of other tools to address NPS pollution. Current examples include:

- Water Quality Trading.
- Certification/Certainty Programs.

Ecology will continue to support the implementation of the following key regulatory programs:

- State's Forest Practice Rules.
- Dairy Nutrient Management Program.
- Local regulation of on-site sewage systems.
- NPDES/State Waste Discharge Permit program.

Finally, Ecology will coordinate our nonpoint program with key state initiatives connected to water quality:

- Results Washington.
- Governor's Shellfish Initiative.
- Puget Sound Action Agenda.
- Puget Sound Vessel Sewage No Discharge Zone.
- Ocean acidification/Washington Marine Resources Advisory Council.
- Washington's efforts to recover salmon species.

The state has many programs designed to address some segment of the nonpoint problem. However, these efforts are generally not coordinated and are not necessarily designed to achieve compliance with state water quality law. The ideal is to have all of the agencies managing these disparate programs working together to create a single unified program that links all of these efforts into a more cost-effective program to address nonpoint pollution and achieve compliance with the WQ Standards. While we have a long way to go to achieve that ideal, Ecology will continue to work with partner agencies to better align programs and coordinate activities to address nonpoint problems and achieve compliance with the water quality standards.

Details of each of these implementation areas follow.

## **Balancing Restoration and Protection**

Solving the state's water quality problems requires correcting existing problems as well as preventing future degradation. With limited resources, Ecology's first priority is to correct

known water quality impairments from nonpoint source pollution. Our second priority is to support projects that protect threatened and high quality waters from present and future nonpoint source pollution impacts. Ecology will follow the WQ Standards' antidegradation policy when supporting projects that protect threatened and high quality waters.

## **Watershed Clean-up Programs**

### **Total Maximum Daily Loads, Straight to Implementation and other water clean-up projects**

Ecology's primary strategy for addressing nonpoint pollution is implementing watershed clean-up projects. There are three related approaches that Ecology uses to clean up impaired water bodies: Total Maximum Daily Load (TMDL), Straight to Implementation (STI) projects and other water clean-up projects in advance of a TMDL. Additionally, Ecology supports locally led programs to clean-up impaired water bodies such as; Pollution Identification Correction (PIC) programs, and Shellfish Protection District efforts discussed later in this chapter.

All three of Ecology's approaches to cleaning up waterbodies (TMDLs, STI projects and other water clean-up projects in advance of a TMDL) utilize a combination of education and outreach, technical assistance, financial incentives, and enforcement to meet the requirements of the WQ Standards, and promote compliance with water quality laws.

### **Total Maximum Daily Loads (TMDLs)**

As required by Section 303 of the federal Clean Water Act, Ecology develops TMDLs for water bodies on the state's list of impaired waters. TMDLs are a regulatory tool that sets the maximum quantity (or "load") of a pollutant that may be added to a water body from all sources, including natural background sources, at levels necessary to attain and maintain the applicable narrative and numerical water quality standards. It must take into consideration seasonal variations in water quality conditions, and must include a margin of safety to account for any lack of knowledge concerning the relationship between effluent limitations and water quality.

There are two types of loads that are allocated by TMDLs: wasteload allocations (WLAs) that include the portion of the TMDL allocated to existing and future point sources with NPDES permits; and load allocations (LAs) that include the portion of the TMDL allocated to existing and future nonpoint pollution sources and natural background sources.

### **The TMDL Process in Washington State**

Washington State's TMDL process starts by choosing where TMDLs will be developed. Once a TMDL area is finalized, Ecology typically conducts field monitoring and computer modeling of watershed conditions. A TMDL study identifies pollution sources within a watershed and determines what needs to change so that pollution is reduced or eliminated.



Pollution sources are broken down into two categories. The first is *nonpoint pollution*, where the source runs directly off the land into the water. The allowable discharge from all the nonpoint sources is called the *load allocation*. The second category is *point source pollution*, which typically flows out of a pipe and is regulated by a NPDES permit. The allowable discharge from a permitted point source is called a *wasteload allocation*. The TMDL then sets out the actions required for each point source and land use in the project area to ensure TMDL allocations are met.

In short, our TMDL approach:

- Assigns load allocations to specified nonpoint pollution sources.
- Assigns wasteload allocations to point sources which may require more protective NPDES permit limits.
- Designates suites of BMPs for various land-use categories. For agricultural land uses TMDLs and their Implementation Plans will use the Voluntary Clean Water Guidance to develop recommended suites of BMPs to meet load allocations. If watershed specific information requires more protective BMPs or suites of BMPs than the guidance, TMDLs and their implementation plans will include modified BMPs to reflect the load allocations in the TMDL.
- Details the technical data, analyses, and actions needed to attain standards and return waters to good health.

Each TMDL project is unique, but there are essential elements common to all. As long as these elements are included, the TMDL project should result in a water quality improvement plan that is complete, acceptable to the public, and approvable by EPA. These elements include:

- *An initial study of water quality problems.* This includes a monitoring study identifying the sources and amounts of pollutants causing the water quality problem, and a technical analysis to determine how much pollution sources must be reduced to protect the water.
- *Public involvement.* Public involvement, along with coordination with tribal governments and consideration of environmental justice issues (as appropriate), is important at all key decision steps of the process.
- *Loading capacity for the pollutant.* This is the sum total of all of the pollutant loading the waterbody can absorb without violating WQ Standards.
- *Load allocations (LAs) for nonpoint sources.* The LA quantifies how much of the pollutant(s) can be discharged from nonpoint sources, along with the other sources, and have the water body still meet WQ Standards.
- *Wasteload allocations (WLAs) for point sources.* The WLA quantifies how much of the pollutant(s) can be discharged from point sources, along with other sources, and have the water body still meet WQ Standards.
- *A margin of safety.* An allowance so that surface WQ Standards will be met under the worst conditions likely to be experienced.

- *A reserve capacity.* This factor estimates the effect of population growth and future land uses on pollutant WLAs and LAs so they will continue to be adequate in the future.
- *Consideration of seasonal variation of flows and contaminant concentrations.* This ensures that WQ Standards are met during all seasons of the year.
- *An implementation plan.* A detailed plan to prevent, reduce, or clean up excess pollution.
- *A follow-up monitoring plan.* To demonstrate the success of pollution controls contained in the implementation plan or the need for additional action.
- *Reasonable assurance.* For TMDLs that allocate pollutant loads to both point and nonpoint sources, the state must demonstrate reasonable assurance that the LAs will be achieved and WQ Standards will be attained. The purpose of reasonable assurance is to ensure that the WLAs and LAs established in the TMDL are not based on overly generous assumptions regarding the amount of nonpoint source pollutant reductions that will occur.
- *An administrative record.*
- *An estimate of when the waterbody will meet WQ Standards.*

## **TMDLs and Nonpoint Source Pollution**

Ecology relies on TMDL implementation plans to ensure that we accomplish the reductions needed from nonpoint pollution sources to meet the LA required by the TMDL. Our goal is to secure the load reductions required of nonpoint sources through voluntary implementation and the use of education and outreach, technical assistance, and financial assistance. However, enforcement authority under state law provides a regulatory backstop. This regulatory backstop is necessary because there must be *reasonable assurance* that the abatement strategies for nonpoint sources will actually take place. If nonpoint sources are not addressed, federal law shifts reduction requirements to point source dischargers.

## **History of TMDLs in Washington State**

Starting in 1998, Ecology was placed on a schedule to produce 1,566 TMDLs in 15 years as the result of a citizens' suit filed against EPA. For the first few years, TMDL production met the schedule. However, as time went on, TMDL development became more complicated and controversial for several reasons.

- Instead of focusing on individual segments and individual pollutants when developing TMDLs, Ecology began to focus on entire watersheds and multiple pollutants. Focusing on multiple pollutants for an entire water body provided the opportunity for the same set of actions being able to address an array of related pollutants. Although focusing on multiple pollutants and the entire watershed gained more for the same set of actions, these TMDLs required more data, more analyses, and more time to complete.
- As it became necessary to set more and more stringent wasteload allocations in TMDLs, point source dischargers concerned about the costs of installing advanced treatment technologies began debating Ecology's technical work supporting TMDLs. Additional and more detailed modeling was required to predict outcomes of TMDL implementation and support TMDL wasteload allocations.

When the TMDL settlement agreement completion date passed in 2013, significant work remained to produce the required 1,566 TMDLs. The 1998 litigants have reinitiated the litigation related to TMDL production. As of the publication date for the nonpoint plan there has not been a resolution to that case.

Additionally, implementing the load allocations in TMDLs has been an increasing challenge, because it has been more controversial as we identify solutions to address the problem. This is in spite of the fact that compared to the technology and investments required of point source industries to meet wasteload allocations, the remedial measures necessary to meet load allocations are usually simple, straight forward, practical, low-tech and inexpensive.

Slow-paced implementation of the load allocation component in TMDLs puts at risk the state's ability to provide reasonable assurance that load allocations will be met. This would have serious consequences for point sources. If Ecology is unable to require nonpoint sources to meet the load allocations in TMDLs, then the loads assigned to nonpoint sources must be assigned to the point sources and required by the point sources' NPDES permits. This is not Ecology's preferred option. We would rather assign pollutant loads to the sources discharging them and then use our nonpoint authority to require the nonpoint sources to meet their load allocations.

### **Aligning Ecology's Nonpoint and TMDL Programs**

As Ecology moves forward, we will deploy our resources in a more systematic manner by aligning our TMDL and NPS programs. Ecology has already taken several important steps to more closely align our TMDL and NPS programs to better leverage an array of staff expertise and to orient programmatic efforts toward cleaning up impaired watersheds. For example, all TMDLs include an implementation plan that contains the required elements of a watershed based plan.

Moving forward, we intend to continue improving implementation plans to designate the specific actions necessary to comply with TMDL load allocations. Additionally, while Ecology will continue to work with and rely on partners to implement load allocation requirements, Ecology will utilize watershed evaluations to identify sites with nonpoint pollution issues and secure the implementation of BMPs that ensure compliance with the WQ Standards and state law. The watershed evaluation process is used most often in agricultural lands, and it has been vetted through the Ecology director's Agriculture and Water Quality Committee as an approach that the group understands and supports. Once problem sites are identified, Ecology will first work with partners in the watershed to implement those suites of BMPs that will address the identified pollution problems. If implementation stalls, for instance because of recalcitrant landowners, Ecology will utilize enforcement tools as necessary and appropriate.

### **Straight to Implementation (STI)**

Straight to Implementation (STI) is a strategy that uses Ecology's nonpoint authority and state resources to clean up a watershed. In watersheds in which the sources of nonpoint pollution

are known and the suites of BMPs necessary to control those sources have been identified by Ecology, we simply begin working directly with landowners to implement those BMPs.

In general, Ecology identifies watersheds that are good candidates for STI using the following criteria:

- Are the pollution problems in the watershed caused primarily by nonpoint sources?
- Are there a limited number of land uses in the watershed?
- Do we understand which land uses are causing pollution problems?
- Do we have suites of known effective BMPs that will solve the pollution problems caused by land uses in the watershed?

If the answer to any of these questions is no, then a TMDL is most likely a better tool.

As with implementing TMDLs, Ecology's emphasis is on a collaborative approach to addressing pollution problems. Once Ecology has identified the specific suites of BMPs that will achieve compliance, it will use education programs and outreach to landowners and potential implementation partners to inform citizens about the necessary BMPs. Ecology will first use technical assistance and incentives to secure the proactive implementation of BMPs to address nonpoint sources of pollution. However, Ecology also identifies and utilizes all available federal, state, and local enforceable authorities to secure implementation if the technical and financial assistance fails to address nonpoint sources of pollution. This is a similar approach to that used by local Pollution Identification and Correction programs outlined later in the report.

While a STI project is being implemented, Ecology monitors the rate of implementation and, when possible, performs water quality monitoring to ensure that the water body is actually getting cleaner.

If STI is successful, the impaired water bodies will be cleaned up and move from Category 5 (impaired water body) to Category 1 (clean water body) of the Water Quality Assessment without the need to develop a TMDL. While a STI project is being implemented, the affected water bodies will remain in Category 5. If they do not move to Category 1 by the end of the project, Ecology will develop a TMDL.

STI projects are intended to implement nonpoint source controls as quickly as possible. When we use STI, compliance with the WQ Standards is to be achieved in no more than 10 years after the start of STI work in the watershed. The only exception to this time requirement is for parameters such as temperature, which might take longer because of the time it takes for trees to grow and achieve site potential shade. However, even in this case, all implementation actions necessary to achieve compliance must be completed within 10 years.

STI is more appropriate for watersheds with few pollution inputs, and rural watersheds with few contributors tend to make the best candidates for this methodology. STI projects are guided by an internal staff work plan that includes EPA's required elements of a watershed based plan, which makes project implemented in support of STIs eligible for Section 319 grants.

## **Other Water Clean-up Projects in Advance of a TMDL**

As noted above STI projects have been successful at getting implementation actions on the ground faster than the traditional TMDL process. However, the STI approach is not appropriate for all watersheds. In watersheds that are more complicated, and ones with a mix of point and nonpoint sources, Ecology is exploring other restoration approaches in advance of a TMDL.

Like TMDLs and STIs the goal of these other water clean-up approaches is meeting water quality standards. To reach that goal, like STIs, the focus is on doing, not planning. While there is still a planning step, these water clean-up projects move to implementation actions quicker than the traditional TMDL process. These projects focus on implementing corrective actions and working with local stakeholders. They generally do not assign formal load allocations and wasteload allocations. When waters are clean enough to meet water quality standards, they are delisted. In cases where these other water clean-up projects use modeling, the goal is to move faster to on-the-ground implementation actions than if a TMDL was pursued.

Some form of planning is necessary to guide implementation actions for these projects. For projects with nonpoint sources of pollution, plans at a minimum include EPA's '9 Minimum Elements of Successful Watershed Plans'.

Ecology completed the East Fork Lewis River Alternative Restoration Project (ARP) in 2021, which was submitted to and accepted by EPA. Ecology worked with local, state, federal, and tribal governments, non-profits, and private landowners to develop goals, management measures, and implementation actions to address water quality impairments. The alternative restoration plan addresses EPA's watershed planning elements for both bacteria and thermal pollution. This project has moved to an implementation phase.

Additionally, Ecology started the Burnt Bridge Creek TMDL ARP and convened a working group to begin developing the water quality restoration plan. Water quality monitoring was also completed on the Lacamas Creek Watershed ARP, with the Source Assessment to be worked on in 2022.

While a TMDL is ultimately required if standards are not achieved, Ecology sees value in exploring other approaches to getting BMPs and other actions implemented more quickly.

## **Focus on Implementation – TMDLs, STIs and other water clean-up efforts**

Ecology uses watershed evaluations to support implementation efforts by identifying specific nonpoint pollution problems and prioritizing sites to be contacted for technical and financial assistance. While watershed evaluations can be used to identify and address multiple types of nonpoint source pollution, Ecology primarily uses them to address agricultural nonpoint

pollution sources because there is no specific statewide regulatory oversight/permit program designed to meet WQ Standards for this sector.<sup>65</sup>

## **Watershed Evaluations**

During watershed evaluations, Ecology assesses site-specific conditions to determine if water quality problems exist. While water quality monitoring may be used to help document pollution in the water body and/or stormwater flowing into surface water,<sup>66</sup> Ecology relies on visual site conditions as the primary evidence for identifying nonpoint source pollution problems. An evaluation of site conditions is supported by numerous scientific studies that clearly link site conditions to pollutant discharges. It is also important to use site conditions because unlike many point sources, nonpoint pollution does not discharge continuously. Instead, nonpoint source pollution discharges are intermittent; pollution is moved to state waters through run-off events, atmospheric deposition, direct deposition and irrigation. It is not possible to be on a site every time there is a discharge. Evaluating site conditions provides a more constant and reliable tool for identifying most nonpoint source pollution issues.

In general, when evaluating a site for nonpoint pollution problems Ecology considers the following questions:

- Are there sources of nonpoint pollution present?
- Is surface water present at the site or in proximity to the site? Are there groundwater concerns?
- Are there pathways for pollution to get to state waters?
- Is there evidence that pollutants have left the site and entered state waters?
- Are management practices in place for identified sources of nonpoint pollution to prevent the delivery of pollution to state waters?

After a site is identified as having a nonpoint source pollution problem, Ecology then promotes the use of technical and financial assistance to correct the problem. If technical and financial assistance fail to address the pollution issue, Ecology may utilize enforcement tools to secure compliance. Ecology will discuss and recommend BMPs consistent with the Voluntary Clean Water Guidance for Agriculture when addressing agriculture sources.

### **Watershed Evaluation Process:**

- Coordination with partners (local conservation districts, local government, health districts, producer groups, tribes, environmental groups, etc.).

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<sup>65</sup> As covered below the other major sources of nonpoint source pollution are addressed through permit or other regulatory programs: urban/suburban development and stormwater is addressed through permits and requirements in TMDLs, forestry is addressed through the state Forest Practices Rules, and on-site sewage systems are regulated through local ordinances and regulations. Additionally, dairies are regulated through the Dairy Nutrient Management Program and are also not addressed by Ecology through watershed evaluations.

<sup>66</sup> See Chapter 7 for more information on Ecology's monitoring efforts.

- Secure resources—Technical and financial assistance.
- Complete watershed outreach with partners.
- Complete watershed surveys and site prioritization.
- Contact producers or landowners.
- Complete site visits and/or inspections.
- Work cooperatively to implement recommended BMPs to address identified problems.
- Complete follow-up outreach.
- Use of enforcement tools if technical and financial assistance tools fail.

The watershed evaluation process provides accurate and specific information about pollution problems in a watershed. A statewide system of suites of BMPs that could be used for different land uses would likely be as effective at addressing pollution problems.

### Implementing Key Changes Recommended by the Agriculture and Water Quality Advisory Committee

Ecology strives to continually improve the way it performs its work. As part of this process, in 2014 the Director of Ecology convened the Agriculture and Water Quality Advisory Committee<sup>67</sup> to give us input on our water quality work on agricultural lands. One of the areas where Ecology received input is on ways to improve our watershed evaluation process when using it in agricultural areas. The group made several recommendations, which Ecology is implementing.

- Increasing education and outreach efforts in watersheds where we work, communicating with willing conservation districts, and engaging with producer groups when conducting education and outreach in watersheds.
- When contacting producers our letters will include specific information on the pollution problem observed at the site, a clear timeline for producers to contact Ecology, and an offer for the producer to access the documentation related to their operation and an offer for Ecology staff to make a site visit.
- Ecology will send letters as close as possible to when we observe the site, with the goal of sending letters to prioritized sites within sixty days of observing the site. Letters will provide producers thirty days to contact Ecology and/or set up a site visit. After the thirty days, Ecology will send second letters to producers who fail to contact Ecology and/or set up a site visit.
- If we can verify that land is being leased, Ecology will send the first communication to the lessee.

These changes were made to promote better upfront communication, better engage producer groups, increase clarity around nonpoint pollution problems and promote consistency between regions of our state.

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<sup>67</sup> For more information on the Agriculture and Water Quality Advisory Committee see Chapter 4.

## TMDLs and Stormwater

Stormwater pollution from new and existing development and roads is a significant contributor of pollution to state waters. However, due to their coverage under the National Pollution Discharge Elimination System (NPDES)/State Waste Discharge permit program, many stormwater sources of pollution have shifted from our NPS program to our point source pollution/permit program. These include:

- New Development (geographically limited)
- Construction Site Erosion and Sediment Control
- Construction Site Chemical Control
- Existing Development (geographically limited)
- Road, Highway and Bridge Construction Projects
- Road, Highway and Bridge Construction Site Chemical Control
- Road, Highway and Bridge Operation and Maintenance (geographically limited)
- Road, Highway and Bridge Runoff Systems (geographically limited)

Where there is a legal requirement to obtain a permit the NPS program does not address or cover that source. However, stormwater sources that are not required to obtain a permit remain a nonpoint source of pollution. Ecology's primary strategy to address those sources is to utilize TMDLs.

For TMDLs that cover watersheds that contain Municipal Separate Storm Sewer Systems (MS4s) that are not legally required to obtain an NPDES permit, Ecology will:

1. Design the TMDL study to clearly identify whether or not the MS4 causes or contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the state.
2. Establish, to the extent possible, specific load or wasteload allocations to areas of MS4s where they are identified as a potential source of impairment.
3. If the MS4 is deemed a significant and/or contributing source of the water quality impairment Ecology will, at a minimum, specify and include by reference in the TMDL the management practices in Ecology's most recently issued Stormwater Manuals as the minimum required BMPs necessary to achieve compliance with the TMDL allocations.
4. If the TMDL contains information relevant to the determination of whether the MS4s meet the criteria for coverage as specified in *Ecology's Municipal Stormwater Permit Criteria for Designating Phase II Bubble Cities*, the TMDL will be used to support the designation of the jurisdiction as needing to discharge under a new or existing MS4 permit issued by Ecology pursuant to CWA Section 402(p)(2)(E) and 40 C.F.R. § 122.26(a)(9)(i)(C) and (D).

## Data Tracking, Effectiveness Monitoring, and Adaptive Management



Tracking implementation data is important for accountability, transparency, effectiveness monitoring and adaptive management. At a minimum, Ecology will track the following implementation data for TMDL and STI projects:

- The location of nonpoint source problems identified by Ecology during watershed evaluations.
- Sites that Ecology has contacted after the evaluations.
- The BMPs that were implemented in the watershed and their location.

A specific description of the BMPs that are implemented at a site is the most important information to track in order to support effectiveness monitoring efforts and promote accountability and transparency. For BMPs implemented with funds from an Ecology grant, specific information is collected on our BMP approval form. For other BMPs implemented in support of a TMDL or STI project, Ecology will collect data consistent with the BMP approval form. Additionally, we will work with partners to promote the collection of consistent implementation data, and share that data with partners and the public.

### **Nonpoint & Implementation Tracking System**

In support of Ecology's efforts to address nonpoint sources of pollution and develop and implement TMDLs, field staff routinely conduct windshield surveys in priority watersheds to assess conditions that may be negatively affecting water quality. These staff also respond to water quality related environmental complaints from the public.

When field staff conduct windshield surveys and complaint responses, they typically collect a variety of site information such as field notes and photographs. These efforts also require staff to manage additional information such as communications with property owners and related documents such as letter or other correspondences. To meet both staff and programmatic needs to better collect, store and track nonpoint data in a consistent and streamlined manner and manage data in a way that can be integrated with other water quality efforts such as TMDLs, the Program invested in the development of a state-wide system to collect and store nonpoint data.

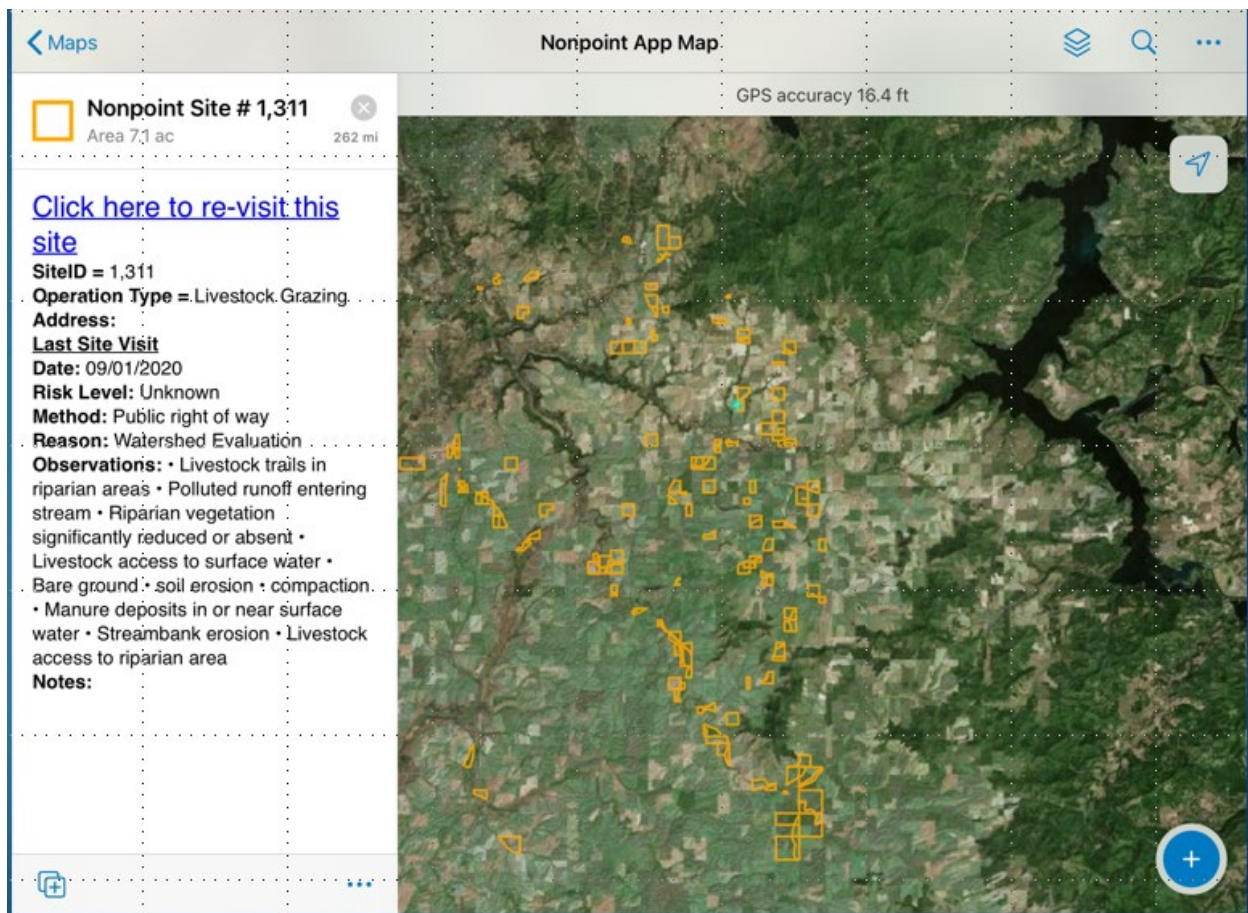


Photo 1 Screen view of the Nonpoint Collector Application shows how Ecology staff can track site visits at particular locations.

The statewide system includes the following components:

1. Mobile applications to view, collect and submit data in the field via cloud-based services
2. Web application to view, manage, track and report data
3. Internal database to store all records/data

Key nonpoint data to be collected and managed includes:

- Field observations and notes
- Photographs (geo-located)
- Communications with property owners
- Best management practice implemented

Benefits of this system are:

- Streamlined data collection in the field & reduction in equipment needed
- Increased data quality and consistency (across all regional offices)

- Simplified data management including data automation
- Field access to important information
- Ability to input, store and manage all nonpoint data in a single Ecology database
- Centralized location for pulling nonpoint data and information
- Improved ability to track efforts, produce reports and evaluate progress
- Increased ability to utilize, integrate and synthesize data e.g. spatial information
- Elimination of the need for long-term, cloud-based data storage

The Water Quality Program has completed and deployed the nonpoint data management system and some field staff have been trained and are using the system as their primary tool for data collection and management. Additionally, we successfully added over five years of previously collected data to the statewide system including spatial locations, site level observations and photos.

Having a single, statewide single system used by all nonpoint staff has many clear advantages. It supports better data consistency and quality, creates predictability in the way nonpoint field work is conducted and significantly increases data accessibility to both staff and management. It also helps with continuity and gaps when staff turnover occurs. Equally important is the actual data that is collected and managed. This information allows users to better assess changes over time at the site and watershed levels to determine if water quality is improving, and can easily be integrated into other watershed level activities such as TMDLs, effectiveness monitoring, source identification monitoring and other project planning and implementation efforts.

Future enhancements to the system are planned in the coming years and will focus on increasing our ability to utilize and share data including with external partners.

## Ecology Grant and Loan Programs

Ecology's Water Quality Program administers four major funding programs that provide grants and low-interest loans: The Centennial Clean Water Fund, The State Revolving Fund, Section 319 grants, and Stormwater Financial Assistance Program. These funding programs are for projects to protect and improve water quality in Washington State. Applicants use one integrated financial assistance application to apply for funds to address both point and nonpoint source water pollution. Ecology reviews, rates, and ranks applications and then distributes funds to the highest priority projects.

Each of the funding programs, based on fund source, has different eligibility requirements and limitations and may have specific set-asides or funding priorities. All projects are rated and ranked on a standard set of criteria. Scoring criteria cover:

- Scope of Work - The Scope of Work represents a complete and concise description of the project tasks and outcomes, including deliverables and timelines, and the project directly and measurably addresses a water quality problem.

- Task and Project Budget - The cost estimate process is reasonable, and the project budget represents a good value for the work and water quality benefits achieved. For nonpoint source activity projects requesting grant funding, the applicant identifies adequate matching funds.
- Water Quality and Public Health Improvements - Consideration of the severity of the water quality problem, whether the project will achieve substantial water quality and public health benefits, how project success can be measured, and how the project will provide long-term water quality benefits.
- Coordination with State and Federal Priorities - TMDL or STI implementation, other state or federal water quality requirements, the Puget Sound Partnership Action Agenda or current approved plan or program specifically designed to address water quality problems such as a watershed-based plan containing EPA's required elements.<sup>68</sup> Also, consideration is given to how well the applicant and the project address greenhouse emission reductions in accordance with RCW 70.235.070.
- Project Team - Applicant defines team members' roles and responsibilities. Additionally, scoring considers team members' past experience, and whether the staffing commitment is well described.
- Project Development, Local Support, and Past Performance—A comprehensive decision-making process was used to arrive at the proposed project, and plans for long-term project success and sustainability were considered during project development. Additionally, scoring considers the level of local support and commitment for the project, and the applicant's past performance on other water quality projects, including Ecology funded projects.
- Readiness to Proceed - Project elements are in place for the project to proceed and documentation is provided.

Successful proposals will demonstrate how the project solves or addresses a water quality problem and how the applicant will document that benefit. Projects must have a well-defined scope of work that has goals, objectives, timelines, and measurable outcomes in addition to an accurate and reasonable budget. Proposals are also prioritized based on their readiness to proceed through documentation that items are in place to begin as soon as funds may be offered.

The funds for nonpoint source pollution help to provide an incentive to support the achievement of clean water objectives and meet the WQ Standards. Eligible activities covered by these nonpoint source funds include implementation of one or more of a limited set of effective BMPs, education and stewardship programs, pollution identification and correction, water quality monitoring, and watershed planning. Ecology prioritizes nonpoint projects that implement eligible BMPs such as livestock exclusion fencing, agricultural waste management, restoring riparian vegetation, irrigation system improvements, stream habitat restoration,

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<sup>68</sup> See Appendix C.

control of invasive species, bank stabilization projects, and promoting practices that decrease soil erosion such as direct seed.

To ensure that effective BMPs are implemented, Ecology funds only a small set of BMPs that we have determined will achieve compliance with state law if implemented, operated, and maintained correctly. The program funding guidelines are reviewed and updated annually to ensure that funded projects meet WQ Standards and to decide whether additional known effective BMPs should be made eligible for funding. Ecology will update the funding guidelines based on the Voluntary Clean Water Guidance to reflect the recommendations of the guidance. Eligibility requirements apply statewide to all proposed projects. The guidelines for state fiscal year 2016 are found at <https://fortress.wa.gov/ecy/publications/publications/1410045.pdf>. The funding guidelines also include statutory requirements, the administrative rule defining uses and limitations of funds, and program and agency policy that guide our programs.

Additionally, Ecology recognizes the need to measure outputs and outcomes, as well as, BMP costs to improve accountability and better target future clean water investments. To better track BMP implementation Ecology started collecting more specific implementation data through a BMP approval form. The form includes specific BMP metrics that must be reported by the grantee, and the requirement to submit a site plan that clearly identifies the location of BMPs that will be implemented by the project. Ecology will work with other funding programs to collect consistent data to measure the effectiveness of funded projects.

In addition to our combined funding program, other grant programs can help with implementation. More detailed information on other funding programs is provided in Chapter 5. Important sources of financial assistance come from local conservation districts, Natural Resource Conservation Service, the State Conservation Commission, Salmon Recovery Funding Board, and EPA. Ecology will look to support our partners' grant programs and pursue opportunities for coordinated investment.

Ecology uses an online grant and loan management system called Ecology Administration of Grants and Loans (EAGL). Applicants apply for and manage their funded projects in EAGL throughout the grant and loan life cycle.

## **Complaint Response and Inspectors**

Ecology's complaint response system provides a tool to address reported nonpoint pollution problems through technical assistance, education, referrals, or in limited circumstances, escalating enforcement. All of Ecology's regional offices have staff dedicated to responding to nonpoint source pollution complaints.

Ecology complaint response staff and field inspectors are the first line of Ecology employees that a nonpoint discharger will interact with after a discharge is reported. These staff are responsible for verifying complaints, conducting field visits or inspections, providing technical assistance, highlighting financial assistance opportunities, and referring landowners (if need be) to local conservation districts or other resources for additional support. Ecology will discuss and

recommend BMPs consistent with the Voluntary Clean Water Guidance for Agriculture when responding to agriculture related complaints.

Ultimately, Ecology is responsible for ensuring that individuals comply with state law, and that the BMPs implemented at a site are sufficient to address the identified water quality problem.

Finally, nonpoint inspectors can also support the implementation of TMDLs and STIs, local programs (PIC and Shellfish Protection), and other programs with a nexus to water quality.

## **Education and Outreach, and Voluntary Programs**

Public outreach and education are an important part of the state's NPS program. Developing education and outreach programs that increase the public's understanding of nonpoint source pollution, the technical and financial assistance resources available to address nonpoint pollution, and how the public can be involved in preventing pollution before it happens, are fundamental to the success of our nonpoint strategy. Our education and outreach efforts take advantage of a variety of delivery mechanisms.

Ecology will continue to work with partners including producer groups, tribes, state and federal agencies, local governments, conservation districts, environmental organizations, and other stakeholder organizations in a collaborative effort to maximize participation and increase stakeholder adoption of practices that protect and enhance water quality. These collaborative efforts take advantage of the skills and knowledge of partner organizations to complement education and outreach expertise at Ecology.

Ecology will also support locally led voluntary programs that address nonpoint sources of pollution and promote compliance with the WQ Standards. This includes programs designed specifically to address nonpoint pollution, as well as programs that focus on broader natural resource goals that have a nexus with water quality including salmon recovery programs, voluntary stewardship programs, irrigation efficiencies, and floodplains by design projects.

Ecology will use the Voluntary Clean Water Guidance when developing education and outreach materials related to agricultural sources.

## **Partnerships**

Ecology works collaboratively with other key state and local entities to coordinate the implementation of NPS control measures. In some cases a partner agency or local government is the lead regulatory agency. In other cases they are the on-the-ground implementers of nonpoint pollution control activities. The importance of partnerships to addressing nonpoint pollution sources cannot be overstated. Whether it is implementing TMDL or STI projects, administering our grants and loans program, responding to complaints, or developing education and outreach programs, partners are fundamental to successfully implementing our nonpoint program.



Additionally, we recognize the importance of existing locally led efforts (both voluntary and regulatory) to reduce nonpoint pollution. We will look for ways to help strengthen and augment existing programs that address and prevent the harmful effects of nonpoint pollution. Further, we will look to support programs that bring together farmers, landowners, communities and local organizations to address nonpoint pollution.

Chapter 4 provides a detailed description of current and future partnership efforts.

### **Environmental Justice**

In 2021 Washington State Legislature passed the [Healthy Environment for All Act](#) (HEAL Act), Chapter 70A.02 Revised Code of Washington. This was Washington’s first state law that defines Environmental Justice.

The law establishes a clear definition for Washington that builds on the Environmental Protection Agency's definition of environmental justice:

“Environmental justice means the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, rules, and policies. Environmental justice includes addressing disproportionate environmental health impacts in all laws, rules, and policies with environmental impacts by prioritizing vulnerable populations and overburdened communities, the equitable distribution of resources and benefits, and eliminating harm.”

The HEAL Act seeks to create a coordinated approach to implementing Environmental Justice among the seven state agencies that are identified in the Act. This will be done by integrating Environmental Justice principles, practices, and assessments into these state agency activities.

The departments of Agriculture, Commerce, Ecology, Health, Natural Resources, Transportation and the Puget Sound Partnership.

Agencies are required to:

- Develop and implement a community engagement plan.
- Develop and implement tribal consultation framework and offer tribal consultation.
- Incorporate environmental justice in implementation plans of agency strategic plans.
- Incorporate environmental justice into budget development process and in funding and grant decisions.
- Conduct environmental justice assessments on significant agency actions
- Develop metrics, measure progress, and report progress to the Environmental Justice Council and Office of Financial Management.

Prior to the passage of the HEAL Act the Department of Ecology included Environmental Justice actions in our most recent Agency Strategic plan that was put into place in 2020. In that strategic plan we identified the following strategies to address environmental justice in our Agency work.

- Evaluating and implementing service equity in our programs and decision-making, assessing and mitigating impacts to overburdened and underserved populations, and creating accountability measures to eliminate environmental and health disparities.
- Being mindful of inclusivity and access, planning for and engaging in meaningful public involvement, and ensuring potentially affected populations have an opportunity to learn about, participate in, and influence decisions and actions.

Addressing nonpoint pollution is critical for making sure Washington State’s waters are attaining and protecting the beneficial uses identified in our State Water Quality Standards. Protecting and meeting those beneficial uses is an essential element to addressing environmental justice and equity issues. The Water Quality Program made changes to our nonpoint funding based on feedback. There are no longer match requirements for our nonpoint source funding. Previously, applicants were required to cover 25% of the project cost with non-Ecology funds as “match” for Ecology grants. EPA’s National Nonpoint Program, in collaboration with Tribes, identified match funding requirements as a barrier for some communities to obtain nonpoint project funding, especially for smaller and less resourced communities. We hope removing this requirement will improve equity of access to grant funding and encourage projects from more organizations.

## Locally Led Water Clean-up Programs

### Pollution Identification and Correction (PIC) Programs

Pollution Identification and Correction (PIC) programs identify and address pathogen and nutrient pollution from a variety of nonpoint sources, including on-site sewage systems, farm animals, pets, sewage from boats, and stormwater runoff. The corrective actions taken by local agencies or tribes may include outreach and education, technical assistance, incentives for best management practices, and enforcement.

To promote PIC programs, the state Departments of Health and Ecology have offered federally-funded grants to county governments, local health jurisdictions, and tribal governments adjacent to Puget Sound to establish or enhance PIC programs.<sup>69</sup> The goal of these grants is to launch new, and improve existing PIC programs that can eventually be sustainable in the long term by integrating planning across local water quality programs, interests, and concerns.

An effective program will have the following components:

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<sup>69</sup> EPA is providing the funding for these grants through the National Estuary Program grant program. They are currently available from November 2011 through September 2014.



- A defined process for engaging polluters to reduce or eliminate pathogen and nutrient pollution caused by on-site sewage systems, farm animal waste, pet waste, boat sewage, and stormwater. The capacity to address diverse sources may be accomplished through partnerships.
- An on-going assessment and monitoring program to identify and prioritize problem areas for correction. A monitoring program should include both targeted monitoring to identify pollution sources and monitoring to assess effectiveness of control efforts to ensure that waters stay clean. Assessments from other programs can be used to identify and prioritize water quality problems, for instance the Washington State Water Quality Assessment.
- Corrective action work which includes outreach and education, technical assistance, and incentives, such as cost share for the installation of best management practices. The program includes enforcement as a backstop when other methods don't fix the problem.
- A sustainable funding source.
- PIC programs should use the Voluntary Clean Water Guidance for Agriculture.

While PIC programs are administered at the local level, Ecology will continue to take an active role in supporting these programs because our nonpoint strategy shares the objectives of identifying and addressing water pollution issues. Additionally, Ecology provides the regulatory enforcement backstop for counties to help implement the agriculture-related components of their programs.<sup>70</sup> Specifically, as EPA pushed for National Estuary Program (NEP) funding to be focused on local PIC programs, there was an acknowledgement that it would take some local programs time to have a complete and sustainable program similar to Kitsap County's program. Ecology was asked to provide enforcement backup until those local programs developed their own comprehensive enforcement programs that address all sources of nonpoint pollution.

### **Example: Kitsap County's Clean Water Kitsap Program**

Kitsap County's Clean Water Kitsap Program is a comprehensive, interagency partnership to address local issues related to stormwater management, nonpoint source pollution, and water quality. County leaders created the program in 1993 to protect public health and natural resources, meet state and federal requirements, minimize costs, and provide stable, ongoing funding to address nonpoint source pollution.

This partnership is led by Kitsap County Public Works Stormwater Division. Stormwater management fees fund the Stormwater Division and, through interlocal agreements, also fund selected programs at Kitsap Public Health District, Kitsap Conservation District, Washington State University Kitsap Extension, and the Kitsap County Department of Community Development.

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<sup>70</sup> See Appendix D.

Through this interagency model, the partners work collaboratively to accomplish many programs and projects for the ultimate goal of clean water. The following descriptions are some programs that are uniquely relevant to the State NPS Plan.

### Water Pollution Identification & Correction (PIC) at Kitsap Public Health District

Kitsap's PIC program is nationally recognized for its innovation and effectiveness. Their mission is to protect the public from waterborne illness and other water quality related hazards. Water that is polluted with fecal bacteria is the primary concern. Kitsap defines their job as ensuring that surface waters are safe and sanitary so you don't get sick when you swim in them or eat the shellfish. Their work includes:

- Collecting water samples
- Investigating fecal bacteria sources of water pollution
- Taking steps to correct problems

### How it Works

Kitsap uses standard procedures for doing PIC work, as outlined in:

- [Pollution Identification and Correction Protocol Manual 2012](#)
- [Pollution Identification and Correction Guidance Document 2014](#) (written with the Washington State Departments of Health and Ecology).

### Looking For Trends

Kitsap starts with the big picture by monitoring long-term water quality trends for Kitsap County's marine (salt) waters, lakes and streams (known as surface waters). All Kitsap streams run into the Puget Sound or Hood Canal, so if the streams are polluted, they can impact marine waters. The streams are relatively small, so signs of pollution appear early and damage occurs more quickly.

### Early Warnings

Surface water quality gives an early warning that development, land uses, and other human activities are beginning to harm the public's health, shellfish resources, and the environment.

The primary sources of pollution are:

- Failing septic and sewer systems
- Faulty storm water systems
- Pet and livestock waste
- Runoff from farms.

### Correcting Pollution Problems: Strength of the Clean Water Kitsap Partnership

Each year Kitsap's PIC team uses their monitoring data to prioritize a list of the waterways that are the most polluted. Working through this list, they investigate to find the source of the

pollution. When they locate the source, they work with property owners to eliminate it. When sources are from failing septic systems or other sewage issues, Kitsap Public Health spearheads the education, enforcement, and technical assistance to work through the correction process.

When the source is animal waste from a farm, the Kitsap Conservation District is available for non-regulatory technical assistance while the owner has the option of a voluntary compliance process to address the documented water quality problem. When the source is a faulty stormwater system, Kitsap Public Works will perform smoke and dye testing to find and confirm an illicit connection to the storm drain system and follow up with the established escalating enforcement strategy required in the stormwater NPDES Permit.

### Water Quality Reports

Public communication about the state of the public's local water bodies is an important part of the PIC Program. Kitsap's PIC team publishes annual [reports](#) about the relative fecal coliform levels in streams, bays and lakes, their ongoing efforts to improve water quality, and the current priority list of polluted areas. The Kitsap PIC has demonstrated success at cleaning up polluted waters. On the 2015 WQ Assessment, seven polluted segments covered by the PIC program were moved into Category 1—meets WQ Standards.

## Shellfish Protection Districts

RCW 90.72 authorizes counties to establish shellfish protection districts to include areas in which nonpoint pollution threatens the water quality upon which the continuation or restoration of shellfish farming or harvesting is dependent. The shellfish protection program should be designed to address the pollution sources that affect shellfish, including, but not limited to requiring the elimination or decrease of contaminants in storm water runoff, establishing monitoring, inspection, and repair elements to ensure that on-site sewage systems are adequately maintained and working properly, assuring that animal grazing and manure management practices are consistent with best management practices, and establishing educational and public involvement programs to inform citizens on the causes of the threatening nonpoint pollution and what they can do to decrease the amount of such pollution.

The State Department of Health routinely samples water around commercial and recreational shellfish growing areas to make sure it meets health standards. If water quality fails to meet those standards, they restrict or close that area to shellfish harvest. This is called a classification downgrade.

When a shellfish area's classification is downgraded due to poor water quality, the county authority must create a shellfish protection district (SPD) and implement a program to find and correct the pollution source(s) that are causing water quality to decline (see [RCW 90.72.045](#)). Shellfish protection districts have proven to be very effective in reversing pollution of Washington's saltwater beaches, preventing new pollution sources, and reopening shellfish areas to harvest.

More information on Shellfish Protection Districts can be found at:

## Other Tools to Promote Implementation

In addition to the ongoing nonpoint efforts outlined previously, Ecology continues to pursue and support other tools and strategies to address nonpoint source pollution.

### Draft Water Quality Trading Framework

Ecology's Water Quality Program developed a water quality trading framework to guide the development of trading programs in watersheds in which the point sources determine that they will need trading to meet TMDL wasteload allocations and the subsequent NPDES permit limits. Water quality trading has the specific goal of helping point source dischargers meet permit limits through the purchase of pollution reduction credits from a source of the same pollutant that is able to reduce pollution at a lower cost than the point source. This narrow definition of trading is the only one supported by EPA's trading guidance, which Washington must follow.

EPA's trading policy recommends:

- Timely public access to information on trades.
- Public participation during program development and implementation.
- Mechanisms to monitor progress, evaluate program effectiveness, and revise the program as necessary.
- Legal mechanisms to facilitate trading.
- Clearly defined units of trade.
- Methods to quantify credits and address uncertainty.
- Compliance and enforcement provisions.
- Accountability for all trades. Assurance that NPDES permit holders meet their permit limits.

Ecology supports the concept of pollution trading markets that:

- Meet the requirements and objectives of Washington's WQ Standards and the federal Clean Water Act.
- Promote cost-effective water quality protection and restoration.
- Result in water quality trades that are verifiable and fully enforceable.
- Ensure credits generated by a nonpoint source from the installation of best management practices must be beyond those required to meet the most stringent load allocation applicable to that nonpoint source.
- Measure or calculate nonpoint source credits and trading ratios from the same baseline used in the TMDL and consistent with the assumptions used to develop the load allocation.

Ecology considers the most logical pollutants for trading are phosphorus, nitrogen, other oxygen-related pollutants, and sediment. We will consider trades involving temperature, although the lengthy time lag to produce shade may prohibit temperature trades in many watersheds.

## **Certification and Certainty Programs**

Certification programs take a market-based approach to address environmental problems. They can verify to retailers and consumers that a product has been produced using environmentally sustainable management practices. Ecology supports the concept of certification programs that include a focus on protecting water quality from nonpoint sources of pollution and support the key principles of Ecology's nonpoint source pollution strategy. Additionally, when organizations develop certification programs in consultation with Ecology, we can provide regulatory certainty to participating landowners, businesses, and agricultural producers who participate in the program. Agriculture related certification and certainty programs should be consistent with the Voluntary Clean Water Guidance.

A current example is the Farmed Smart Certification. The Farmed Smart Certification is a sustainable farm certification program developed by the Pacific Northwest Direct Seed Association (PNDSA) and a conservation farming technical stakeholder committee, comprised of conservation producers, managers from conservation districts, Ecology, and researchers with NRCS and Washington State University. The certification criteria were developed using best management practices from multiple environmental and conservation entities including NRCS and Ecology. The certification program was vetted by SureHarvest, a third party certification company and several regional commodity marketing companies with positive feedback that this is a market-ready program.

The Farmed Smart certification objectives include:

- Define a set of conservation standards that will provide a clear understanding of economic and environmental benefits of direct seeding.
- Certify producers that are utilizing sustainable practices.
- Educate and develop environmental markets for certified sustainable products and producers.

Further, the Farmed Smart certification has six initiatives that will be evaluated and proven in order to become certified:

- *Improving Water Quality* – through less soil disturbance, less soil erosion, precision placement of fertilizers and implementing buffer strips along water sources.
- *Improving Air Quality* – by keeping crop residue on the field to avoid wind erosion, and reducing fuel emissions from equipment.
- *Improving Soil Quality* – by reducing the amount of tillage which increases organic matter, earthworm activity, and yield potential.

- *Improving Wildlife habitat* – by providing food and cover for wildlife and fish habitats.
- *Conserving Energy and Reducing Carbon Footprint* – through planting in 1 – 2 passes allowing a significant reduction in fossil fuel usage and sequestering carbon in the soil.
- *Improving Economic Viability and Sustainability* – Reducing input costs of fuel, labor, and chemicals through precision agriculture and direct seeding practices ensures the family farm can continue to produce a safe food supply for the growing population.

## Continued Implementation of Key Regulatory Programs

### Forest Practices

Washington's streams benefit from a well-regulated Forest Practices Program. In Washington, forest practices are mandated under law to meet the state WQ Standards, and are implemented using forestry prescriptions developed and refined through a science-based adaptive management system. In response to the strength and focus of the current regulatory system, the Department of Ecology in cooperation with the United States Environmental Protection Agency established the Clean Water Act Assurances. To the extent that the current rules continue to be tested and refined as appropriate by a well-funded adaptive management program, the rules will be relied upon to ensure streams in the forested environment meet the state WQ Standards.

### History of the Current Forest Practices Rules

#### The Forests & Fish Report

Leading up to the current Forest Practices Rules was the Forests and Fish Report (FFR). This document, issued in 1999, was the result of the collaboration of stakeholders including tribes, forest landowners, local governments, environmental groups, and state and federal resource agencies. These diverse stakeholders outlined ways to protect water quality and aquatic and riparian-dependent species on non-Federal forestlands in Washington.

The FFR identified four goals:

1. Provide compliance with the federal Endangered Species Act for aquatic and riparian-dependent species on state and private forestlands.
2. Restore and maintain riparian habitat to support a harvestable supply of fish.
3. Meet the requirements of the Clean Water Act for water quality.
4. Keep the Washington timber industry economically viable.

#### The Salmon Recovery Act of 1999

Following the release of the Forests and Fish Report was passage and enactment of the state's Salmon Recovery Act of 1999 (sometimes called the 'Forests and Fish Law'). This act directed the adoption of the goals of the Forests and Fish Report into the State Forest Practices Rules. Those rules are guided by the state's Forest Practices Board, and set standards for timber

harvests, pre-commercial thinning, road construction, and other forest practices on over 10 million acres of state and private forestland.

### The Forest Practices Habitat Conservation Plan

The Washington State Forest Practices Habitat Conservation Plan (HCP) is a direct result of the Forests and Fish Report. The HCP was approved in 2006 by the U.S. Fish and Wildlife Service and NOAA's Marine Fisheries Service. Covering 60,000 miles of stream habitat across 9.3 million acres of private and state forestlands, this 50-year agreement protects the habitat of aquatic species, supports economically viable and healthy forests, and creates regulatory stability for landowners.

### The Forest Practices Act

The Washington State Legislature found that the 1999 Salmon Recovery Act and the resulting Forests and Fish Rules "...taken as a whole, constitute a comprehensive and coordinated program to provide substantial and sufficient contributions to salmon recovery and water quality enhancement in areas impacted by forest practices..." (RCW 77.85.180(2)). It also recognized that federal and state agencies, tribes, county representatives, and private timberland owners have spent considerable effort and time to develop the Forests and Fish Report (RCW 76.09.055), and authorized the development of Forest Practices Rules based on the analyses and conclusions of the Forests and Fish Report (FFR). The rules include the development of an adaptive management program to:

*... make adjustments as quickly as possible to forest practices that are not achieving the resource objectives ... (and) shall incorporate the best available science and information, include protocols and standards, regular monitoring, a scientific and peer review process, and provide recommendations to the board on proposed changes to forest practices rules to meet timber industry viability and salmon recovery. (RCW 76.09.370(7))*

These provisions for the forest practices Adaptive Management Program are designed to meet the goals and objectives for water quality and fish habitat within the jurisdiction of the Forest Practices Program.

The state Forest Practices Act (Chapter 76.09 RCW) and the Stewardship of Non-industrial Forests and Woodlands (Chapter 76.13 RCW) set up the foundation for management by the state and private landowners in Washington. Landowners must either follow the prescriptions established in the state Forest Practices Rules see appendix H for the Chapter 222-30 Timber Harvest regulations, or follow prescriptions established in federal Habitat Conservations Plans established for their specific lands. There are currently eight other HCPs that cover some of the state and private forest lands.

### The Forest Practices Rules

The Forest Practices Rules in Washington are detailed and comprehensive. The rules cover a wide range of issues associated with forest harvesting, roads, and unstable slopes. The specific

prescriptions are dependent on site factors such as the size of streams and the type and size of wetlands, as well as the productivity of the soils and the method of harvest (e.g. clear cutting vs. thinning, ground based vs. cable yarding). As such, the rules are too complicated to restate here.

However, some generalized elements related to water quality protection are worth noting. These include leaving streamside forested buffers that range from 90 - 200 feet wide along each side of fish-bearing streams west of the Cascade Mountains and 75-130 feet wide buffers on the east side of the mountains (the dry side). Fifty-foot wide buffers typically protect most of the flowing reaches of the non-fish-bearing waters on the westside, with an allowance for more variable width buffers on the eastside to mimic historic forest fire cycles.

All new forest roads must be constructed to the rule standards and Road Maintenance and Abandonment Plans exist statewide to replace barriers to fish passage and bring roads into compliance with current road standards. Based on current rates of improvement, most ownerships will meet the initial target date of 2016 for bringing all of their roads up to current standards, with only a small number of ownerships formally granted a 5 year extension due to economic hardship incurred during the economic recession that began in 2008.

The enhancements made to the forest practices rules in response to the 1999 Forests and Fish Report targeted the protection five key riparian functions: shade, stream bank stability, woody debris availability and recruitment, sediment filtering, and nutrients and leaf litter fall. This occurs through the combined results of maintaining mature forested stands along streams, rivers, and wetland impoundments; by disconnecting road runoff from natural drainages to the fullest extent feasible; and identifying and protecting potentially unstable slopes which if otherwise were allowed to fail could contribute deleterious amounts of sediment to waterways.

It is important to note that the Forest Practices Board may not adopt or amend any rule that would affect water quality without the agreement of the Director of Ecology.

## **Framework for Administering the Forest Practices Rules**

### **Overview of the Adaptive Management Program**

The Adaptive Management program was created to provide science-based recommendations and technical information to assist the Forest Practices Board in determining if and when it is necessary or advisable to adjust rules and guidance for aquatic resources to achieve the resource goals and objectives of the Forests and Fish Report.

The Forest Practices Adaptive Management Program is a multi-caucus program that includes representatives from state departments (including Fish and Wildlife, Ecology, and Natural Resources), federal agencies (particularly National Marine Fisheries Service, U.S. Fish and Wildlife Service, and Environmental Protection Agency), forest landowners, county governments, the environmental community, and tribal governments. Representatives of these caucuses participate on two key Adaptive Management Program committees established by the



Forest Practices Board: the [Timber, Fish and Wildlife Policy Committee](#) (Policy) and the [Cooperative Monitoring, Evaluation, and Research Committee](#) (CMER).

The Policy Committee makes recommendations to the Board for decision. CMER reviews existing science and contributes original research to the program. This science function is designed to produce unbiased technical information for consideration by the Policy Committee and the Board, as illustrated by the interactive structure of the Adaptive Management Program in the following diagram. The Department of Natural Resources (DNR) operationally implements the Forest Practices Program. The Department of Ecology, the Department of Fish and Wildlife, and many of the state's Tribes are active cooperators with DNR in implementing key provisions of the state's Forest Practices Rules in the field.

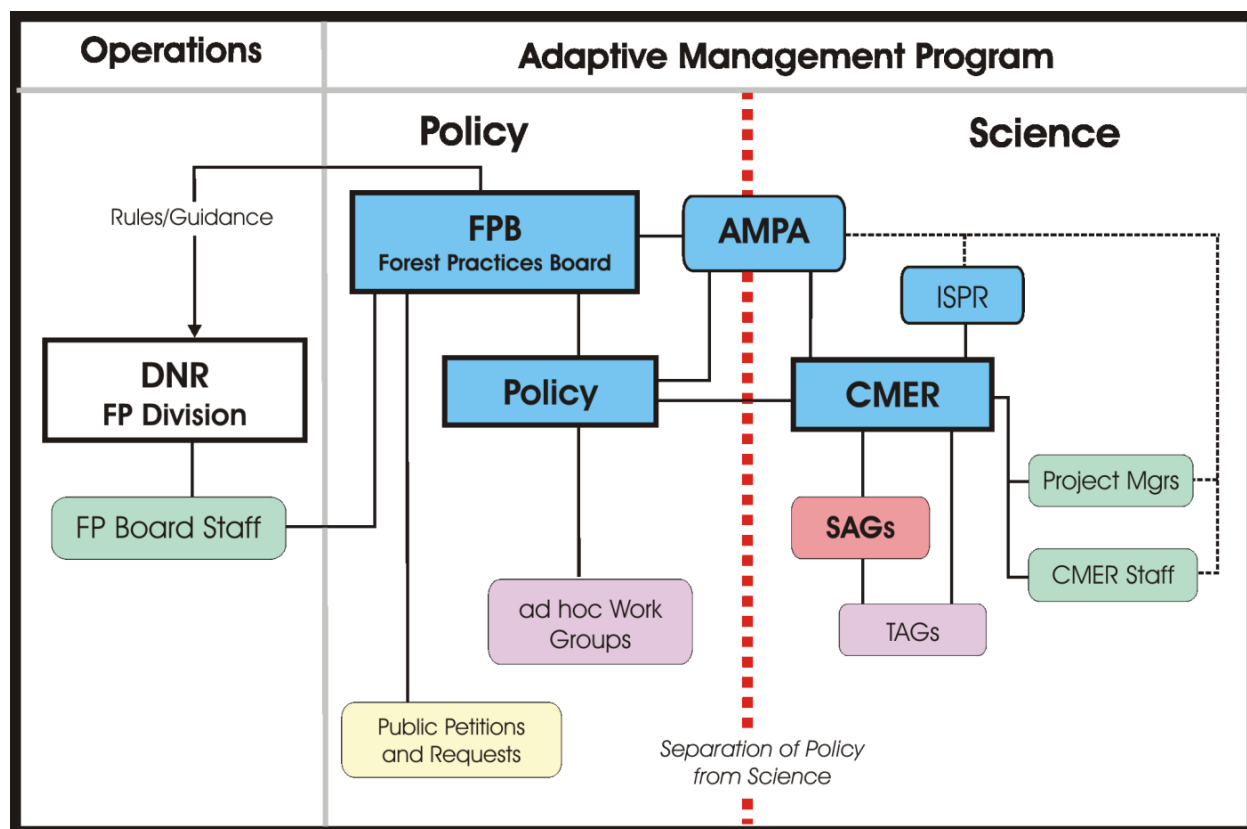


Figure 1 Forest Practices Adaptive Management Program

### Forest Practices Board (Board)

The Board has approval authority over proposed CMER projects, annual work plans, and expenditures. It establishes resource objectives to inform and guide the activities of the program and sets priorities for action. If consensus or an otherwise acceptable conclusion is not reached in Policy, the Board makes the final determination. The Board also:

- Directs the program to complete work according to the CMER master project schedule.

- Determines whether the program is in substantial compliance with the CMER master project schedule.
- Notifies the National Marine Fisheries Service and the US Fish and Wildlife Service if the program is not in substantial compliance with the CMER master project schedule.
- Approves nominations for CMER committee members.
- Ensures that fiscal and performance audits of the Adaptive Management Program are conducted.
- Forwards to the Adaptive Management Program all proposals affecting aquatic resources for new rules and board manual content.
- Approves proposed updates to Schedules L-1 and L-2 of the Forests and Fish Report, “Key Questions, Resource Objectives, and Performance Targets for Adaptive Management.”

#### Timber, Fish and Wildlife Policy Committee (Policy Committee)

The Policy Committee is a consensus- based policy forum to support the Adaptive Management Program. The Policy Committee consists of members selected by and representing the following State of Washington Timber, Fish, and Wildlife (TFW) caucuses:

- Industrial private timber owners.
- Nonindustrial (small) private timber owners.
- Environmental community.
- Western Washington tribal governments.
- Eastern Washington tribal governments.
- County governments.
- Department of Natural Resources.
- Departments of Fish and Wildlife and Ecology.
- Federal agencies (National Oceanic & Atmospheric Administration Fisheries, US Fish and Wildlife Service, and US Environmental Protection Agency).

The function of the Policy Committee is to develop solutions to issues that arise in the Forest Practices Program. These issues may be raised by science reports on rule or program effectiveness, or policy questions on implementation of forest practices. Solutions may include the preparation of rule amendments and/or guidance recommendations.

The Policy Committee also assists the Board by providing guidance to CMER and recommendations on adaptive management issues. The Policy Committee reviews and makes recommendations on the key questions, resource objectives, and performance targets, and recommends CMER program priorities for CMER work plans containing specific research projects to the Board. In cooperation with CMER, the Policy Committee reports to the Board the status of the CMER master project schedule prioritizing CMER research and monitoring projects, and provides an update of the CMER master project schedule at least every four years.

#### The Cooperative Monitoring Evaluation and Research Committee (CMER)

The purpose of CMER is to advance the science needed to support adaptive management. For the Adaptive Management Program, best available science is considered to be relevant science from all credible sources including peer-reviewed government and university research, other published studies, and CMER research products. Applicable historic information, privately produced technical reports, and unpublished data may have value and are considered as long as they can be assessed for accuracy and credibility. CMER is responsible for understanding available scientific information that is applicable to the questions at hand, selecting the best and most relevant information, and synthesizing it into reports for the Policy Committee and the Board.

CMER is composed of scientific representatives of TFW participating caucuses who are expected to maintain an objective scientific perspective. CMER operates on the basis of consensus. Because CMER is charged with producing credible, peer-reviewed technical reports based on best available science, participating caucuses are encouraged to nominate research scientists with research and publication experience.

The CMER work plan provides a long-term integrated strategy for how CMER supports the Adaptive Management Program. The work plan identifies six objectives towards this goal:

1. State critical research and monitoring questions that are pertinent to evaluating rule, guidance, and DNR products (i.e., rule tools) effectiveness.
2. Organize these questions into coherent program groupings.
3. Assess feasibility, resource risk, and scientific uncertainty addressed by each program.
4. Develop an integrated strategy for accomplishing the work.
5. Rank programs/projects for implementation.
6. Develop budget estimates and timelines.

During 2020 the Washington State Auditor's Office (SAO) conducted a performance audit of the Adaptive Management Program. This review resulted in a report, [Adaptive Management Program: Improving Decision-Making and Accountability - Office of the Washington State Auditor](#). The Audit contains recommendations for improvement. DNR and the Adaptive Management Program have committed to many of these recommendations.

## **The Clean Water Act Assurances**

### **Overview**

Under Washington State law (Chapters 90.48 RCW & 76.09 RCW) Forest Practices Rules are to be developed so as to achieve compliance with the state WQ Standards and the federal Clean Water Act (CWA). Ecology has been designated as the state water pollution control agency for all purposes of the CWA, and has been directed to take all action necessary to meet the requirements of that Act. The original Clean Water Act assurances (CWA assurances) granted by Ecology in 1999 as part of the Forests and Fish Report (FFR) were reviewed after June 30, 2009. The assurances established that the state's Forest Practices Rules and programs, as updated

through a formal adaptive management program, would be used as the primary mechanism for bringing and maintaining forested watersheds into compliance with the state WQ Standards.

The foundation for granting the CWA assurances was the belief that the Forest Practices Rules were a substantial step forward in environmental protection, and when implemented would provide the quickest and most efficient means for achieving environmental goals and compliance with the state's WQ Standards. Developing CWA mandated TMDLs to serve as regulatory water cleanup tools for forested watersheds was therefore viewed as a low priority, and the CWA assurances established that Ecology would rely on the FFR-based forest practices program for an initial ten-year period. It was assumed in 1999 that research and monitoring would occur to demonstrate that implementing the Forest Practices Rules would improve water quality and eventually bring forested waters into full compliance with the state's surface WQ Standards and thereby also satisfy the conditions under Section 303 of the federal CWA. The value of offering formal assurances is that they provide landowners and agencies with a predictable and consistent regulatory system, and in doing so provide an additional motivation for stakeholders to participate in the adaptive management program.

In July of 2009, Ecology completed a re-examination on progress in meeting the conditions for providing the CWA Assurances ([2009 Clean Water Act Assurances Review of Washington's Forest Practices Program](#)). At that time, Ecology determined the forest practices program had not achieved the level of information needed to verify that water quality in the forested environment will meet WQ Standards, or to verify that the conditions for offering the assurances in 1999 had been satisfied. In spite of these shortcomings, Ecology believed the forest practices program still offered a viable and compelling management strategy for achieving water quality goals in the forested environment. As such, Ecology concluded that continuation of CWA assurances would be warranted if specific actions were taken to improve the program's performance.

Taken in total, the forest practices program provides a substantial framework for bringing the Forest Practices Rules and activities into full compliance with the WQ Standards. Ecology concluded it remained in the best interests of water quality, and was most consistent with legislative intent, to work with the other participants to make needed improvements to the existing program. Ecology therefore conditionally extended the CWA assurances with the intent to stimulate needed improvements to the forest practices and adaptive management programs. Ecology, in consultation with key stakeholders, established specific corrective milestones. The extension of the assurances remains conditioned on meeting these research and administrative milestones by the specific target dates described. These milestones serve as a corrective action plan necessary to retain the assurances into the foreseeable future.

The key result of the corrective milestones was to more directly prioritize water quality-based operational and science issues and concerns. But even before the assurances review had been completed, steps were already being taken to proactively address some of the corrective milestones associated with operational issues, compliance monitoring, and assessing progress under Road Maintenance, Abandonment, and Planning (RMAP) rules.

Compliance with the corrective milestones is intended to demonstrate sufficient progress to satisfy the CWA assurances and the adaptive management provisions of the state WQ Standards (WAC 173-201A-510(3)). Because extending the assurances was based on meeting the specific research and administrative milestones by the specific dates listed, failure to meet any milestone would be considered a basis for potentially withdrawing the assurances at that time.

The 2009 corrective milestones included 21 operational or administrative milestones, and phase-specific milestones covering 20 research projects examining prescription effectiveness questions. Between 2009 and 2019 Ecology made changes in the milestones in response to new information, natural disasters, and the global economic recession. While the initial list in 2009 is different from the list today, neither the number nor the complexity of the milestones has been reduced in scale, and the priority research remains focused on water quality protection issues. At the end of 2019, only a few operational and administrative milestones remain incomplete, and most of the priority water quality research is either in field implementation or in the study design phase.

In 2018 one of these studies, [\*Effectiveness of Experimental Riparian Buffers on Perennial Non-fish-bearing Streams on Competent Lithologies in Western Washington\*](#) (Type Np Hardrock), was completed, with a consensus recommendation from TFW Policy to the Forest Practices Board that action should be taken to address the findings from this adaptive management study identified existing prescriptions were impacting water quality.

The TFW Policy recommended the formation of a technical workgroup to address these findings that came from the Adaptive Management Program. A charter for a technical workgroup was formed to develop buffer prescription recommendations. The purpose of these recommendations was to have this technical committee identify a set of prescriptions to place in rule that would meet Washington State Water Quality Standards while minimizing economic impact to landowners. The Forest Practices Board unanimously accepted the recommendations and directed the formation of the Type Np Technical Workgroup.

In a letter dated December 9, 2019, then Director Bellon extended the Assurances, despite ongoing performance concerns, for a 2 year period citing “Ecology views this (the formation of the workgroup to make recommendations to update the rules) as a positive step and looks forward to the establishment of a clear timeline for such rulemaking.” The two year extension referenced alignment with the workgroup charter timeline of developing a CR101 (Pre-notice Statement of Inquiry\_for rulemaking) by the summer of 2021, and a draft CR102 (Proposed Rule-Making) by December of 2021. The Technical Workgroup timeline also took into account completion of two companion studies out of the adaptive management program to the Type Np Hardrock study, *Effectiveness of Experimental Riparian Buffers on Perennial Non-fish-bearing Streams on Competent Lithologies in Western Washington– Phase 2 (Nine Years after Harvest)* (Type Np Hardrock, Phase 2) and *Effectiveness of Forest Practices Buffer Prescriptions*

*on Perennial Non-fish-bearing Streams on Marine Sedimentary Lithologies in Western Washington* (Type Np Softrock). Due to issues in forming the workgroup and difficulties in conducting meetings of the workgroup because of the COVID-19 pandemic the timeline was not met.

Despite the delays, the workgroup report was completed in June of 2021. TFW Policy began its process in reviewing the report and preparing recommendations to the Forest Practices Board. It was clear that the timeline set in Director Bellon's letter would not be met. Director Watson has allowed for one additional year for TFW Policy to develop rule recommendations to take to the Forest Practices Board and for the Board to direct staff to start the rule making process to put updated forest practices prescriptions for Type Np waters in place that meet Washington's Water Quality Standards. Director Watson and Director Bellon's letters are in Appendix I.

On November 9, 2022 the Forest Practices Board voted to move forward with a rule that was the majority recommendation for updated prescriptions on Type Np waters. The majority recommendation was developed by: WDFW, Conservation Caucus, Eastside Tribal Caucus, Westside Tribal Caucus and Department of Ecology.

This recommendation was designed to meet the Washington State Water Quality Standards. That Forest Practices Board decision is reflective of the Forest and Fish agreement, the adaptive management program and the stated objective to meet water quality standards. This demonstrative action was called for in Ecology's December 2021 letter to the Forest Practices Board as necessary for retaining the Clean Water Act Assurances.

The Department of Ecology remains committed to the Assurances and will continue to report on the DNR rule effort in the Clean Water Act Assurances updates that we provide to the Forest Practices Board in spring of each year and in our annual Nonpoint Plan report to the Environmental Protection Agency.

Currently the CMER research program invests about 4 million dollars per year in examination of the effectiveness of the Forest Practices Rules. To be successful in meeting these milestones and consequently retaining the CWA assurances, the caucus principals will need to continue to work together to ensure continued funding and support for the actions needed to meet the specific milestones. Based on ongoing progress and the continued commitment by key stakeholders, Ecology fully expects these steps to be successful. More information about CMER's work may be found here: <https://www.dnr.wa.gov/about/boards-and-councils/forest-practices-board/cooperative-monitoring-evaluation-and-research>

### **Small Forest Landowners - Alternate Rules**

The state legislature enacted special rules for some landowners. Small forest landowners are defined as entities that harvest less than 2 million board feet per year on average. The vast majority of these small forest landowners own less than 20 contiguous acres. These smaller forest landowners were provided with rules that allow for greater harvests near streams and

they are only required to correct problems on their roads at the time the associated land is harvested. The Legislature established the Small Forest Landowner Office to be housed in the Washington State Department of Natural Resources to help landowners and to proactively improve environmental conditions on their lands through the use of targeted financial, technical, and regulatory opportunities, as well as education.

Small forest landowners are provided with limited cost share funding and technical assistance to fix road crossing fish barriers on their properties, and limited additional appropriations to help compensate them for leaving trees along streams to protect water quality and other public resources in recognition of the disproportionate impact the Forest Practices Rules were estimated to have on small forest landowners.

With the exception of those rules established directly by the legislature, all the programs provided to small forest landowners were initially designed with the intention of meeting the goals of the federal Clean Water Act and the state WQ Standards, and are scheduled to be tested through science based adaptive management. While no programs exist to directly examine the effectiveness of the rules established for small forest landowners, research designed to evaluate the rules applied to larger landowners will have value in providing feedback to the state legislature and the state Forest Practices Board on the effectiveness of the small forest landowner rules as well.

## **Agricultural**

### **Ecology and Agriculture**

As detailed elsewhere in this Chapter, Ecology will continue to use its nonpoint source authority to address pollution problems on agricultural lands, and to develop additional strategies that might help us accomplish the goal of achieving clean water in Washington. As the state water quality agency, Ecology will continue to work on better defining what compliance with state water quality law means and to provide that feedback to landowners so they can make informed decisions.

### **Dairy Nutrient Management Program-Washington State Department of Agriculture (WSDA)**

The Dairy Nutrient Management Program (DNMP), located at the Washington State Department of Agriculture (WSDA) within its Pesticide Management Division uses several tools to work with dairy, CAFO permitted livestock, and non-dairy operations including:

- DNMP conducts routine inspections at all dairy and permitted CAFO operations approximately every 22 months, including a wet-weather inspection every five years.
- DNMP conducts specialized inspections to address components of nutrient management, such as fall and spring lagoon storage assessments, clean water diversion checks, record keeping and agronomy reviews, and nutrient application assessments.
- DNMP's inspection process includes a review of on-farm BMPs outlined in the Dairy Nutrient Management Plan, including an evaluation of BMP implementation status and

effectiveness, and identification of potential additional BMPs or management changes that need to occur to protect water quality.

- DNMP partners with other agencies and technical assistance providers to educate manure users and to identify and correct actual or potential violations from livestock operations in watersheds with documented water quality issues. DNMP has an established compliance pathway to provide clarity for dairy producers and encourage compliance with water quality laws through the use of regulatory technical assistance, warning letters, notices of correction notices of violation and administrative orders, and, when necessary and appropriate, civil penalties.

DNMP works with state and local agencies to promote nutrient management and water quality protection and build programs that support its mission: to protect water quality and support a healthy agricultural business climate. While the DNMP's regulatory authority is limited to dairy farms, they provide technical assistance to a broader range of agricultural producers including permitted CAFOs, crop growers, and non-dairy 3<sup>rd</sup> party manure applicators.

More information about the program may be found here:

<https://agr.wa.gov/departments/land-and-water/livestock-nutrients>

## **On-Site Sewage Systems (OSS) Regulation**

There are about 950,000 small on-site sewage systems (OSS) in Washington. Failing on-site sewage systems can pose a threat to shellfish resources, impact groundwater, and cause nutrient enrichment of receiving waters.

In Washington, on-site sewage systems are regulated by Chapter 246-272A of the Washington Administrative Code, "On-site Sewage System." This rule is adopted by the State Board of Health, developed and administered by the state Department of Health, and primarily implemented by local health jurisdictions for small systems with flows less than 3,500 gallons per day.

The regulations prohibit the discharge of sewage to surface waters and provide a permitting system for on-site sewage systems. Conditions for permits and system design requirements are set in state and local code, including minimum land area, horizontal setback and other site characteristics, soil and treatment standards, and more. Circumstances are described which require connection to a public sewer system. On-site sewage system designers must be licensed by the state Department of Licensing, and installers and pumpers must be certified by local health jurisdictions. Local health jurisdictions are authorized to inspect on-site systems under construction as part of the permitting process.

As noted previously, local health jurisdictions implement front-line provisions of Chapter 246-272A WAC and have authority to promulgate more stringent regulations (RCW 70.118.050). Enforcement of rules related to onsite sewage systems is authorized in Chapter 70.05 RCW.



The state Department of Health has back-up enforcement authority under RCW 43.0.130, “Powers and duties of the Secretary of Health.” The Department of Ecology also has the authority to take enforcement action under the Water Pollution Control Act.

To ensure that local programs are consistent with the state rule, the state Department of Health must approve local health codes. If a local government does not follow the state rule, the Department of Health works with the local health officer and local board of health to bring the local code into compliance with the state rule. If necessary, the Secretary of Health may exercise enforcement authority if a local health jurisdiction fails to enforce the state public health rules.

The Department of Health uses a technical advisory group made up of government and industry representatives to provide advice on technical wastewater issues and guidelines governing the design and use of public domain and proprietary on-site sewage treatment and distribution technologies approved for use in the state.

The state recognizes that proper operation and maintenance of on-site systems is essential to ensure they function properly. Chapter 246-272A WAC describes the operation, monitoring, and maintenance responsibilities of system owners and the local health jurisdictions. System owners are responsible for properly operating their systems, periodically evaluating them, and pumping when necessary to avoid problems and to ensure ongoing performance. The Department of Health and local health jurisdictions provide technical support, oversight services, and information on proper operation and maintenance (O&M) to homeowners. One example of an information source on the Department of health website:

<https://doh.wa.gov/community-and-environment/wastewater-management/septic-system/caring-your-system>

Local health jurisdictions are responsible for developing and implementing management plans describing their methods and financial capacity to educate and remind system owners of their O&M responsibilities. The state rule and chapter 70.118A RCW on marine recovery areas, establishes more rigorous requirements for the 12 Puget Sound counties. The Department of Health has produced numerous guidance documents and administers a small amount of state grant funding (about \$1.2 million biennially) to support implementation of these management plans. The local plans and programs are all uniquely designed and implemented, and involve such activities as inventorying systems, tracking system status and inspection/maintenance activities, facilitating and enforcing work on failures, and educating system owners. Funding for the local management programs is limited and uneven. The department is working closely with the local health jurisdictions and other interests to establish dedicated sustainable funding for these programs.

In implementing the plans, local health jurisdictions generally focus their oversight on more complex systems that require regular O&M and in areas where site risks are greatest, such as marine recovery areas and other sensitive areas.

To supplement this regulatory framework, the Washington Department of Ecology (Ecology) has loaned significant money from the Water Pollution Control State Revolving Fund (SRF) to local governments to set up low-interest loan programs to repair or replace failing on-site sewage systems. The following is an overview of the funding program:

- Water Pollution Control State Revolving Fund loans can be used by counties and cities to, in turn, loan money to land owners to repair or replace their failing systems.
- Centennial Clean Water Program grant funds can help defray some of the operating costs and lending risks for these programs. Counties and cities can use the grant funds to cover operating costs for the program, provide small grants to property owners, and to establish a loan loss reserve account to cover their obligations if a property owner defaults on a loan.

To capture greater economies of scale, Ecology is working with the Department of Health and counties to establish and capitalize a regional scale loan program that would complement or potentially replace many county-based loan programs in the state's coastal counties. Once established, this program could scale up to cover additional parts of the state.

After working with Department of Health and some specific geographic areas in the state on some pilot septic loan programs the Department of Ecology has established a statewide Regional On-Site Sewage System Loan Program. The Regional On-site Sewage System Loan Program (RLP) provides financing for the repair and replacement of OSS through Craft3, a non-profit third-party lender. The RLP is a partnership between us, Department of Health (DOH), local counties and health departments, and Craft3.

Craft3 offers affordable Clean Water Loans to help property owners repair or replace their failing septic systems and — if approved by the county — to connect to municipal sewer systems.

Shellfish restoration projects provide an important opportunity to address on-site sewage systems. When a shellfish bed is downgraded, the state works with the local government and other interests to develop and carry out a restoration strategy, which typically includes work to find and fix failing on-site systems. The local jurisdiction must also create a shellfish protection district to implement long-term solutions to the problems, including on-site septic measures such as inspections, corrections, education, and operation and maintenance. Local watershed plans must include nonpoint pollution control strategies for addressing on-site septic systems which can include voluntary, educational, and regulatory programs. The good news is that stronger local septic management programs are helping to effectively protect shellfish beds and preempt reactive work in many areas.

When a TMDL or a ground water study indicates that further restrictions must be placed on on-site systems, Ecology may impose those restrictions.

Additives to and loadings from onsite sewage systems have been addressed by restrictions at the retail level:

- Chapter 70.118 RCW prohibits the use of Chemical additives in onsite sewage systems unless certified by the state Department of Health.
- Chapter 70.95L RCW bans the retail sale of laundry and dishwashing detergents which contain 0.5 percent or more phosphorus by weight.

Complementing the management and regulation of small on-site sewage systems, the Department of Health directly regulates and permits large on-site sewage systems with flows between 3,500 and 100,000 gallons per day. There are approximately 570 LOSS statewide, roughly half of which are located in the Puget Sound region. The Department of Health provides oversight to approve plans and inspects newly constructed systems, issues and renews permits annually for all systems, and tracks annual operation and maintenance reports to monitor system performance and operational activities.

## **Water Quality Permits**

Ecology will work to ensure that the nonpoint program is well-integrated with our regulation of point source pollution. Specifically, Ecology will focus on connections between the nonpoint and TMDL programs, and the regulation of stormwater and confined animal feeding operations. We are also researching trading structures for the Puget Sound Nutrient General Permit that would encourage more timely implementation of nutrient control technologies.

## **State Initiatives**

Several important initiatives are underway that our nonpoint program supports. Ecology can support these efforts through our TMDL and STI implementation efforts, grant and loan programs, technical expertise and research support, and by providing a regulatory backstop.

## **Governor's Results Washington**

Governor Inslee believes we can do more to ensure a faster, smarter and more accountable state government — a government focused on key goals that will help strengthen our economy, improve our schools, and make Washington an ideal place to live and do business. By setting clear goals and continually tracking results, the state will be better equipped to engage its employees, partners, and the public in building a healthier, better-educated and more prosperous Washington.

In 2014 the state launched Results Washington, a new system combining the best aspects of Government Management Accountability and Performance (GMAP) with a significantly expanded Lean initiative that involves all state agencies. Results Washington will use the latest technology to routinely gather, review, and display performance data which will make it easier for citizens to see for themselves how well state government and its many partners are delivering services and meeting key performance goals.

In 2021, Results Washington released a strategic framework, which is focused on three objectives:

1. Position RW to serve as a small-scale project management office (PMO “lite”) within the Governor’s office.
2. Highlight agency performance in partnership with agency experts and in line with agency strategic priorities.
3. Focus intentional effort on Lean/Continuous Improvement for modern times and modern needs.

The Results Washington Measure that most clearly aligns with the objectives of the NPS plan is under the category of Healthy Fish and Wildlife. Under this category the state has committed to the following:

2.1 Increase improved shellfish classification acreage in Puget Sound from net increase of 3,038 acres from 2007-13 to net increase of 8,614 acres by 2016.

2.1.a. Increase percentage of inspections that are current for on-site sewage systems in marine recovery areas and other specially designated areas from 37% to 50% by 2016.

2.1.b. Increase the number of implemented agricultural BMPs to improve water quality in shellfish areas in Puget Sound, Grays Harbor, and Pacific counties from 345 in 2008 to 750 by 2016.

More information on Results Washington can be found at:

<http://www.results.wa.gov/>

## Washington Shellfish Initiative

The Washington Shellfish Initiative is an agreement among federal and state governments, tribes, and the shellfish industry to restore and expand Washington’s shellfish resources, to promote clean-water industries and create family-wage jobs.

To restore and expand shellfish resources, Washington must renew its protection, restoration and enhancement efforts. These efforts will pay off in increased recreation, additional clean water jobs, and a healthier Puget Sound and coastal marine waters.

The Initiative launched in 2011, and moved into its second phase, renewing commitment to protecting Puget Sound. This phase aims to:

1. **Ensure clean water.** Prevent and fix pollution problems and re-open shellfish beds.
2. **Embrace strategies to address ocean acidification's impact on shellfish.** Implement strategies through the Marine Resource Advisory Council, the Washington Ocean Acidification Center, and other collaborative efforts.
3. **Advance shellfish research topics.** Study diverse topics from harmful algal blooms to economic impacts and ecosystems services.
4. **Improve permitting processes to maintain and increase sustainable aquaculture.** Increase predictability and timeliness in aquaculture permitting.

5. **Restore native shellfish.** Grow and plant baby Olympia oysters and Pinto abalone in native habitat.
6. **Enhance recreational shellfish harvest.** Connect people with shellfish and harvest experiences, protecting shoreline environments and restoring water quality around Puget Sound, Willapa Bay, Grays Harbor, and the outer coast.
7. **Educate the next generation about shellfish.** Engage students and the public in understanding local shellfish resources, ecosystems services and water quality.

In 2017 the Governors initiative moved to the Washington State Department of Agriculture. They established the office of the shellfish aquaculture coordinator. The Shellfish Aquaculture Coordinator is a liaison to the Governor's Office, other state agencies and external partners. They coordinate efforts within the Washington Shellfish Initiative and co-chair the state's [Interagency Permitting Team](#).

## **Puget Sound Partnership Puget Sound Action Agenda**

The 2022-2026 Action Agenda charts the course for Puget Sound recovery. It presents the most effective and beneficial outcomes, strategies, and actions for Puget Sound recovery and resilience, supported by science and robust partner engagement. The Action Agenda addresses the magnitude of the challenges present in Puget Sound from the pressures of human activities including climate change and population growth. It calls for bold leadership to direct and support recovery by maximizing expertise, experience, and networks. It incorporates human wellbeing, tribal nations' treaty rights, environmental justice, and climate justice. It provides clear guidance for funding and policy proposals protecting Puget Sound. Finally, it fulfills the Puget Sound Partnership's statutory mandate and purpose of the Clean Water Act's National Estuary Program (NEP).

The 2022-2026 Sound Action Agenda addresses nonpoint source pollution by addressing a number of relevant topics such as stormwater runoff, on-site sewage system runoff, runoff from timber harvest, and agricultural runoff. There are targets ranging from reducing specific types of nonpoint pollution (e.g., from on-site sewage systems) to protecting natural resources and local economies by reducing resulting harms from nonpoint pollution. For more information about the targets (the "Vital Signs") see: <http://www.psp.wa.gov/vitalsigns/index.php>.

The current Action Agenda emphasizes three areas of priority, referred to as the Strategic Initiatives, as follows:

1. *Prevent pollution from urban stormwater runoff.* Polluted runoff from roads, roofs, parking lots, and other paved areas is the biggest threat to Puget Sound's water quality. Although many tools and technologies exist for reducing stormwater pollution, much broader use of them needs to be made for the scale of impact that is necessary for Puget Sound.
2. *Protect and restore habitat.* The rate of habitat destruction still outpaces recovery efforts, a fact that must be reversed. Restoring damaged shorelines and protecting salmon habitat

along the many rivers and streams that flow into Puget Sound is necessary to save salmon (as a keystone species) and honor tribal treaty rights.

3. *Restore and re-open shellfish beds.* Shellfish harvesting is a major Puget Sound industry, and a tribal treaty right. Both are threatened by pollution that has closed more than 7,000 acres of Puget Sound beaches. Shellfish health begins on land, through reduction of pollution from rural and agricultural lands and maintenance and repair of failing septic tanks.

## **Department of Ecology Puget Sound Nutrient Source Reduction Project**

The Puget Sound Nutrient Source Reduction Project is a collaborative effort with Puget Sound communities and stakeholders to address human sources of nutrients. The project is focused on addressing low dissolved oxygen levels in Puget Sound that do not meet state water quality standards. In 2017, the Puget Sound Nutrient Forum was formed as a large public advisory group for the project to discuss, learn, and provide input on how to reduce human sources of nutrients entering Puget Sound. With stakeholder input, Ecology is in the process of developing the Puget Sound Nutrient Reduction Plan, which will identify nutrient reduction targets for point and nonpoint nitrogen sources in the greater Puget Sound area. More information on the Puget Sound Nutrient Reduction plan: [Puget Sound Nutrient Reduction Project - Washington State Department of Ecology](#)

## **Sound Vessel Sewage No Discharge Zone**

A No Discharge Zone (NDZ) is a designated body of water where the discharge of sewage (blackwater/toilet waste) from boats, whether treated or not, is prohibited. There are currently more than 90 NDZs in the United States. The Puget Sound NDZ is the first NDZ established in Washington.

Prior to petitioning EPA for NDZ status under the Clean Water Act, Ecology conducted a detailed evaluation included gathering data on Puget Sound vessels, pumpout facilities, the conditions of Puget Sound, marine sanitary device performance, boater surveys, research on other states with NDZs, an evaluation of implementation, and outreach to stakeholders. Ecology's 2014 draft petition received 26,000 public comments, with the vast majority supporting the draft petition. After Ecology submitted a final petition, EPA reviewed it, accepted it, and published information in the Federal Register for formal comment prior to a final determination by EPA. The Puget Sound NDZ was adopted on April 9, 2018, and the NDZ rule (WAC 173-228) became effective on May 10, 2018. Four types of vessels have until May 10, 2023 to comply with the NDZ, including tug boats, commercial fishing vessels, small commercial passenger vessels (<249 overnight passengers), and NOAA research and survey vessels.

The designated area of the Puget Sound NDZ includes all Washington marine waters east of New Dungeness Lighthouse, at the east end of the Strait of Juan de Fuca, plus Lake Washington, Lake Union, and the waters that connect them to Puget Sound. Any boats within that area, even if they are typically housed outside the NDZ (like in Canada, other U.S. States or elsewhere in Washington outside the NDZ), must manage their sewage in accordance with the rule when

inside the NDZ boundary. The NDZ rule also applies whether a boat has an onboard toilet or not. Vessels with toilets must have the ability to hold their sewage onboard and secure their devices to prohibit the discharge of sewage. They can then use a stationary pumpout facility, mobile pumpout service, or pumping services (trucks, barges) to dispose of their sewage, or discharge outside the NDZ. Vessels without installed toilets must dispose of any collected sewage from portable toilets or other containment devices at proper facilities, which could mean at onshore restrooms or dump stations.

Ecology's NDZ team works closely with other agencies involved in promoting better boating practices, like Washington State Parks' Clean Boating Program and Clean Vessel Act Grant Program, Washington Sea Grant, and the Clean Marina Program. These partners, and others such as the Washington Department of Health and local (City and County) agencies, participate in the NDZ Education and Outreach Committee. That Committee is intended to inform Ecology's NDZ education/outreach approach, share information and resources, and coordinate in order to engage and educate boaters about the NDZ and vessel sewage management. In 2020, Ecology used National Estuary Program-funds to conduct a Social Marketing Research Study to better understand the recreational boating community, identify barriers to NDZ compliance, and develop research-supported education and outreach recommendations. The study involved focused interviews and two online surveys that gathered about 6000 responses. Ecology began implementing the study's recommendations in 2021, with the roll out of placed-based NDZ signage at boat launch locations, a new coordinated social media campaign, webpage updates, a new [logo](#), slogan (Pump Out, Don't Dump Out – It's the law!) and mascot ([Sam the Clam](#)), [infographics](#) to explain why the NDZ matters, and the addition of the NDZ boundary to an existing pumpout-locator app (Pumpout Nav). Ecology also conducted a number of virtual educational webinars to different groups such as Counties, various Ecology Programs, and the boating community. More information about the Pump Out, Don't Dump Out campaign, including free resources, can be found at [www.ecy.wa.gov/pumpout](http://www.ecy.wa.gov/pumpout). As COVID-19 pandemic precautions lessen, Ecology will share NDZ information at in-person boating events. Behavior change will occur over time, with frequent well-placed and well-designed reminders, so Ecology will continue rolling out these educational tools over the next few years.

While Ecology's approach to NDZ rule compliance has focused on education and outreach, Ecology developed its first NDZ Enforcement Strategy in 2021. The Strategy was informed by the NDZ Enforcement Committee, which is primarily composed of staff from agencies involved with marine law enforcement or other water quality or health-related regulatory Programs, such as the Washington Department of Natural Resources, Washington Department of Fish and Wildlife, County Aquatic Units, and U.S. Coast Guard. The NDZ Enforcement Strategy lays out how illegal sewage discharges should be reported, how those reports are handled, and what follow-up enforcement actions Ecology will take. The NDZ Enforcement Committee determined that Ecology's existing Environmental Report Tracking System (ERTS) should be used to report illegal sewage discharges in the NDZ. As a result, Ecology's Northwest Region and Southwest Region ERTS Coordinators have been trained to ask vessel-specific questions and follow a "quick-guide" when they receive calls about possible sewage discharges. Continuing with education as the first response, once an ERTS report is received, Ecology staff will contact the



vessel owner and make sure they are aware of the NDZ rule and how to comply. If a second report is received, Ecology will follow-up with more education and resources and issue a warning letter to the vessel owner. On the third report, Ecology will issue a Notice of Violation. This “three strikes” policy is consistent with how the U.S. Coast Guard typically regulates on-water activities.

Between 2022 and 2025, Ecology is focused on a few key NDZ education/outreach tasks including: distributing more placed-based metal signs across the Sound to remind boaters about the NDZ and to properly pump out sewage; sharing NDZ and pumpout information to recreational boaters through signage at marine and fishing supply stores; implementing a Y-valve Education Pilot Program by having marinas and yacht clubs educate boaters about their vessel sewage systems and how to prevent discharges by closing and securing Y-valves; continuing to provide NDZ-related social media messaging during the annual boat season; updating existing resources such as the NDZ webpage, Focus Sheets, and lists of commercial pumpout options; educating the “delayed implementation group” who must comply with the NDZ rule by May 10, 2023; and communicating with tribes and Canadian agencies.

During the same period, Ecology will continue to implement the NDZ Enforcement Strategy, and specifically will: provide learning opportunities to marine law enforcement, municipalities, state and federal agencies and others who should know about NDZ requirements and enforcement processes; document illegal sewage discharges in the NDZ using ERTS, and share that reporting mechanism with the community and agencies; and pursue the establishment of Memoranda of Understanding (MOUs) or other mechanisms with agencies to improve NDZ compliance among recreational and commercial boaters.

More information about the Puget Sound Vessel Sewage NDZ can be found at:

<http://www.ecy.wa.gov/programs/wq/nonpoint/CleanBoating/nodischargezone.html>

## **Marine Resources Advisory Council**

The 2013 Legislature enacted Engrossed Senate Bill 5603 Section 4 creating the Washington Marine Resources Advisory Council (MRAC), within the Office of the Governor. The Marine Resources Advisory Council’s membership includes legislative, executive, and elected officials, nongovernmental organizations, and the private sector. The Governor invited representatives from academic institutions and federal agencies to participate.

The Marine Resources Advisory Council was initially informed by the extensive work of the Washington Blue Ribbon Panel on Ocean Acidification. The Council maintains a sustainable and coordinated focus on ocean acidification in Washington state by:

- Advising and working with the [Washington Ocean Acidification Center \(WOAC\)](#) on the effects and sources of ocean acidification
- Delivering recommendations to the governor and Legislature on ocean acidification



- Seeking public and private funding resources to support the MRAC's recommendations
- Assisting in conducting public education activities regarding ocean acidification

Specifically, their strategy looks to implement effective nutrient reduction programs in locations where these pollutants are causing or contributing to multiple water quality problems. In 2022, MRAC's expiration date was extended by the legislature to a sunset date of June 30, 2032.

More information can be found at:

<http://oainwa.org/mrac/>

## **Salmon Recovery in Washington**

To recover salmon, Washington is trying to protect the wild salmon that remain and help them increase their numbers by restoring where they live.

The network of individuals dedicated to restoring salmon starts with people in communities and includes watershed groups, regional organizations, state and federal agencies, city and county governments, tribes, conservation districts, nonprofit groups, as well as the legislature, Governor, and Congress.

*Regional Organizations* - To coordinate the work of recovery planning and implementation, seven regional organizations formed, and recovery plans in each of those regions have been accepted by the federal government and are being implemented.

*Lead Entities* - Lead entities are watershed-based organizations authorized by the Legislature in 1998 (Revised Code of Washington 77.85.050 - 77.85.070) to develop habitat restoration and protection strategies, and look for projects to meet those strategies.

*Project Applicants* - Project applicants develop habitat restoration and protection projects based on regional recovery plans or strategies developed by lead entities. Project applicants typically are regional fisheries enhancement groups, local governments, tribes, state agencies, community groups, land trusts, and others. They apply for grants from the Salmon Recovery Funding Board and others to pay for projects to protect or restore salmon and bull trout habitat.

More information on Salmon Recovery in Washington can be found at:

[Governor's Salmon Recovery Office - Recreation and Conservation Office \(wa.gov\)](http://governor.wa.gov/salmon-recovery)

and <https://rco.wa.gov/wp-content/uploads/2021/12/GSRO-GovSalmonStrategy-2021.pdf>

## **Chemical Action Plan (CAP) Development**

Toxic chemicals pollute stormwater, streams and lakes in Washington. Exposure to these chemicals affects people's health and the health of the environment. Ecology will continue to

use our TMDL and STI approaches to address impairments caused by toxics. In addition, Ecology will look for additional tools outside the Clean Water Act to address toxics. For example, we will continue to support the development of chemical action plans (CAP).

A CAP is a comprehensive plan to identify, characterize and evaluate all uses and releases of a specific persistent, bioaccumulative toxic (PBT), a group of PBTs or metals of concern. A CAP is a plan, not legislation or a rule. It recommends actions to protect human health and the environment. Some of the recommendations may lead to new legislation or rules. These would go through the normal legislative or rulemaking process.

The CAPs can serve as a list of BMPs for our TMDLs in identifying actions to get particular toxic out of the water.

The PBT Initiative focuses on one toxic substance at a time. Ecology develops each CAP in collaboration with other agencies and experts representing various business, agricultural and advocacy sectors.

More information can be found at:

<http://www.ecy.wa.gov/programs/swfa/pbt/caps.html>

## **The Voluntary Stewardship Program (VSP)**

The VSP is a relatively new program implemented by the Washington State Conservation Commission. The VSP was passed in 2011 as an amendment to the Growth Management Act (GMA). Its goals are to protect and enhance critical areas, maintain and improve the long-term viability of agriculture, and reduce the conversion of farmland to other uses. To accomplish these goals, the VSP relies primarily on incentives and voluntary stewardship practices. Counties that opt into the VSP are responsible for designating a local watershed group to develop a watershed plan that describes how critical areas on agricultural lands will be protected and enhanced.

Counties opting into this program are eligible for funding for the development of watershed work plans to set goals and benchmarks for protection and enhancement of wetlands and other critical areas on agricultural lands. At this time, only two counties (Thurston and Chelan) have received funding to develop watershed work plans. If additional funding is not received, counties that have opted into the program and not received funding will need to develop regulations addressing agriculture and critical areas.

Improved compliance with state and federal clean water law was a critical part of the Ruckelshaus agreement that led to the creation of the VSP. While this “regulatory backstop”—which was to take the form of better enforcement of clean water law *separate* from the VSP—was not included in the VSP statutory language, it was seen as a critical element by those involved with the Ruckelshaus process. The expectation that state and federal clean water laws will serve as a regulatory backstop is documented in correspondence to legislative leadership, the implementation budget for the law, and other sources.

Finally, even though they have different purposes and standards, both clean water laws and the VSP should provide protection to the riparian corridor. This provides an opportunity for the two programs to take advantage of each other to achieve shared goals and intended outcomes. An effective VSP program could complement the protection and pollution reduction goals of federal and state clean water laws by helping to implement the best management practices needed to meet the water quality standards and clean water laws.

More information can be found at:

[Voluntary Stewardship Program \(VSP\)](#)

More information on the relationship between VSP and clean water laws can be found in Appendix J.

## **Climate Change**

Washington State is at the forefront of combatting the environmental impacts of climate change.

Water Quality is affected by climate impacts and that makes the nonpoint work that is identified in this nonpoint plan critical. Riparian shade is critical for all of our waters especially those smaller streams where shade provides critical shade and habitat for aquatic life. Temperature impaired listings continue to increase with each water quality assessment. If the nonpoint sources are not corrected then the burden of addressing these impacts is passed on to point source dischargers that need permits to discharge.

The work that is included in this plan that relates to protecting and establishing riparian areas is critical to addressing temperature issues in Washington. This work is essential for protecting the beneficial uses of “fishable” that is a core foundation of the Clean Water Act.

In May 2021, Washington’s legislature passed the Climate Commitment Act (CCA), a sweeping bill that directs Ecology to develop and implement a statewide cap-and-invest program to reduce greenhouse gas emissions. Only the second such program in the U.S., this program works alongside other critical climate policies to help Washington achieve its commitment to reducing greenhouse gas emissions by 95% by 2050.

Through our new cap-and-invest program and other comprehensive and integrated strategic responses, we have enabled state and local agencies, public and private businesses, nongovernmental organizations, and individuals to prepare for, address, and respond to harmful greenhouse gas emissions, warmer temperatures, loss of natural water storage, more extreme weather events, and other climate change effects. Ecology’s nonpoint program will continue to increase climate change resiliency by:

- Encouraging integrated watershed management.
- Facilitating holistic and cross disciplinary water management approaches.
- Prioritizing the implementation of temperature TMDLs.

- Considering potential climate change impacts to water quality during TMDL development.
- Adjusting BMP implementation as appropriate relative to water quality standards attainment expectations.
- Working with our partners to increase levels of riparian protection and restoration through our Voluntary Clean Water Guidance and DNR's Forest Practices Program.

## Chapter 4: Water Quality Partnerships

### Working with Local, State, Tribal, and Federal Agencies

It is important that Ecology's NPS Program take a lead role in coordinating interagency efforts related to the NPS Plan. It is the responsibility of the NPS Program to reach out to its partner organizations, support them in their efforts related to NPS pollution, and coordinate with them to ensure that mutual goals are met.

Developing and strengthening partnerships is a continuous process. Efforts to address nonpoint source pollution are most effective when local partners engage in getting implementation on the ground. Further, the scope of the nonpoint source pollution issue and the effect it has on NPDES permittees in the state necessitates multiple agencies and entities working to address pollution problems.

Ecology works collaboratively with key local and state entities to coordinate the implementation of NPS control measures in high priority watersheds. While recognizing the importance of statewide coordination, Ecology also emphasizes the need to coordinate with partners at the local level. Regional offices lead local coordination efforts through multiple avenues.

#### **Environmental Justice**

In 2021 Washington State Legislature passed the [Healthy Environment for All Act](#) (HEAL Act), Chapter 70A.02 Revised Code of Washington. This was Washington's first state law that defines Environmental Justice.

The law establishes a clear definition for Washington that builds on the Environmental Protection Agency's definition of environmental justice:

“Environmental justice means the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, rules, and policies. Environmental justice includes addressing disproportionate environmental health impacts in all laws, rules, and policies with environmental impacts by prioritizing vulnerable populations and overburdened communities, the equitable distribution of resources and benefits, and eliminating harm.”

The HEAL Act seeks to create a coordinated approach to implementing Environmental Justice among the seven state agencies that are identified in the Act. This will be done by integrating Environmental Justice principles, practices, and assessments into these state agency activities.

The departments of Agriculture, Commerce, Ecology, Health, Natural Resources, Transportation and the Puget Sound Partnership.

Agencies are required to:

- Develop and implement a community engagement plan.
- Develop and implement tribal consultation framework and offer tribal consultation.
- Incorporate environmental justice in implementation plans of agency strategic plans.
- Incorporate environmental justice into budget development process and in funding and grant decisions.
- Conduct environmental justice assessments on significant agency actions
- Develop metrics, measure progress, and report progress to the Environmental Justice Council and Office of Financial Management.

While the Department of Ecology is one of the named agencies under the HEAL Act we have had Environmental Justice actions in our most recent Agency Strategic plan that was put into place in 2020. In that strategic plan we identified the following strategies to address environmental justice in our Agency work.

- Evaluating and implementing service equity in our programs and decision-making, assessing and mitigating impacts to overburdened and underserved populations, and creating accountability measures to eliminate environmental and health disparities.
- Being mindful of inclusivity and access, planning for and engaging in meaningful public involvement, and ensuring potentially affected populations have an opportunity to learn about, participate in, and influence decisions and actions.

The Water Quality (WQ) Program carries out our commitment to Diversity, Equity, Inclusion, and Respect (DEIR) through federal, state, agency, and program-level laws and policies.

We address DEIR through compliance with the following federal laws:

- Title VI of the Civil Rights Act of 1964
- Title IX of the Education Amendments of 1972
- Section 504 of the Rehabilitation Act of 1973
- Age Discrimination Act of 1975
- Section 13 of the Federal Water Pollution Control Act Amendments of 1972

On the state level, the Healthy Environment for All (HEAL) Act, adopted in 2020, addresses environmental health disparities by implementing recommendations by the state's Environmental Justice Task Force. As an outcome of this law, Ecology created the Office of Equity and Environmental Justice, which provides leadership on environmental justice, HEAL implementation, Title VI compliance, equity analysis, and diversity and inclusion.

On the program level, this commitment is represented through our Environmental Justice Policy 1-29 (EJ Policy), adopted in January 2020. This policy commits the WQ Program to,

“Ongoing strategic environmental justice and civil rights actions that include:

- Evaluating and implementing equity in our programs and decision-making, assessing and mitigating impacts to historically overburdened populations, and creating accountability measures to eliminate environmental and health disparities.
- Being mindful of inclusivity and access, planning for and facilitating meaningful public involvement, and ensuring potentially affected populations have an opportunity to learn about, participate in, and influence the program’s decisions and actions.”

The EJ Policy directs WQ Program staff to “identify potential environmental justice, civil rights, and non-discrimination considerations for a project or activity that involves or affects the public.” This includes:

- Examining the demographics and background of those affected by a project
- Evaluating known or potential environmental and health impacts
- A transparent and inclusive public participation process.

In 2020, the WQ Program convened an Environmental Justice Working Group to implement the EJ Policy, by providing guidance and procedures for staff to include in their daily work. The primary objective of the working group is to ensure that the WQ Program incorporates the elements of the EJ Policy across all business practices to provide Washingtonians with an equal opportunity for their voices to matter in our efforts to protect, preserve, and enhance our natural environment.

The Water Quality Program made changes to our nonpoint fuuunding based on feedback. There are no longer match requirements for our nonpoint source funding. Previously, applicants were required to cover 25% of the project cost with non-Ecology funds as “match” for Ecology grants. EPA’s National Nonpoint Program, in collaboration with Tribes, identified match funding requirements as a barrier for some communities to obtain nonpoint project funding, especially for smaller and less resourced communities. We hope removing this requirement will improve equity of access to grant funding and encourage projects from more organizations.

## Statewide Coordination

State Advisory groups that Ecology uses to coordinate with stakeholders:

- Agriculture and Water Quality Advisory Committee.
- Water Quality Partnership.
- Water Quality Financial Assistance Council.

## Agriculture and Water Quality Advisory Committee

The goal of the Ecology Director’s Agriculture and Water Quality Advisory Committee is to improve working relationships, and ensure both water quality protection and a healthy agricultural industry. Ecology formed the committee in 2014 and it includes a broad array of agricultural interests. Director Laura Watson co-chairs the committee with a representative from one of the agricultural groups. The co-chair role rotates on a semi-regular basis.

The committee discusses issues and provides advice and guidance associated with the work Ecology does to prevent agricultural pollution, including issues related to the implementation of our nonpoint program. The purpose is to provide an open forum for producers and stakeholders to meet our staff, learn about our work, and provide guidance as we tackle the challenge of ensuring water quality protection and a healthy agricultural community.

The Committee currently meets twice a year. If possible, the meetings are held in person, with meeting locations alternating between the west and east sides of the state. The public can attend the meetings. More information on the committee, committee members, previous meetings, and future meetings can be found at:

<https://ecology.wa.gov/About-us/Accountability-transparency/Partnerships-committees/Agriculture-and-Water-Quality-Advisory-Committee>

## **Water Quality Partnership**

The Water Quality Partnership is the standing stakeholder group for the Ecology's Water Quality Program. The goal of the Water Quality Partnership is to:

- Help the Water Quality Program maintain a dialogue with key interests about our work.
- Give key interests regular access to decision makers in the Water Quality Program.

The Water Quality Partnership meets quarterly at the Ecology headquarters building. Stakeholders that attend the Water Quality Partnership meetings include representatives from agricultural producer groups, tribes, environmental groups, state and federal agencies, businesses, and local government.

## **Financial Assistance Council**

The Water Quality Financial Assistance Council (Council) provides Ecology with advice and guidance for the effective and efficient administration of its state and federal grant and loan programs. The Council is not mandated in state law, but was formed by Ecology to help ensure that the process of administering state and federal grants and loans is transparent and is supported by Ecology's clients and stakeholders. The Council is comprised of representatives from cities, counties, tribes, conservation districts, special purpose districts, environmental groups, and state and federal agencies.

## **Landowners, Businesses, and Agricultural Producers**

Private landowners in both urban and rural areas, business owners, and agricultural producers are the most important partners in protecting water quality. Ultimately, they are the ones responsible for implementing BMPs that address nonpoint sources of pollution. Garnering their support and participation provides one of the best ways to make direct changes to protect water quality in the watersheds where they live.



In many areas of the state, Ecology staff have created strong and productive relationships with landowners. This is usually through a person to person approach, in which the Ecology staff works directly with a landowner to offer technical assistance to solve a nonpoint pollution problem. When there is a conservation district willing to work with Ecology, the landowner contact is often made by Ecology and the conservation district together. This approach has resulted in the implementation of BMPs in several watersheds in the east side of the state and grant projects on the ground.

In addition to this landowner by landowner approach, the Agriculture and Water Quality Committee proposed that Ecology do more outreach to inform citizens and producer groups in the area about what is needed to address water quality problems before it starts work in a watershed. Ecology has begun to implement this recommendation. Ecology will continue to look for ways to better communicate and partner directly with landowners, businesses and producers.

## **Agricultural Producer Groups**

Based on feedback from the Agriculture and Water Quality Advisory Committee, Ecology is committed to better utilizing and engaging producer groups as partners in conducting education and outreach in watersheds where we are working to address nonpoint pollution problems. Producer groups can help provide a more direct line to producers, and their forums (conventions, newsletters, and meetings) to communicate our nonpoint goals and strategies.

## **Grant Recipients**

One of our primary strategies to implement the NPS program is our grant program. Our grant recipients are the on-the-ground organizations that implement BMPs, provide technical assistance, and work with landowners and producers to address pollution problems. One of Washington's strengths is the wide range of recipients that have received grants. Past recipients have included conservation districts, salmon enhancement groups, tribes, cities, counties, health districts, environmental groups, land conservancies, reclamation districts, universities, and groups supporting specific watersheds.

Ecology's funding guidelines allow funds to be used only for a limited number of BMPs that Ecology determined will achieve compliance with state water quality law. The BMPs must be implemented as suites of BMPs, for instance, we will not provide funds for off-stream watering or for a winter feeding area unless cattle exclusion from a stream is also installed. The wide range of grant recipients who have used funds for these BMPs now understand what Ecology has determined is required to achieve compliance with the water quality standards.

## **Local Governments**

The three basic forms of local government in Washington are:

- Counties

- Cities
- Special purpose districts

The 39 counties of Washington were established by acts of the legislature, and are considered subdivisions of state government. Basically, the county was designed to serve as an administrative unit of the state in rural areas. The same holds true for cities and special purpose districts. As subdivisions of state government, all three are called upon to implement state legislative mandates.

Prior to 1960, several types of districts were formed to deal with an array of issues, which sometimes include environmental protection:

- Conservation districts
- Health districts
- Water districts
- Sewer districts
- Public utility districts
- Weed control districts

Since 1960, many new types of special purpose districts have been authorized by the legislature, especially with regard to environmental protection. These environmentally-oriented districts include:

- Groundwater protection districts
- Lake protection districts
- Shellfish protection districts
- Solid waste management districts
- Stormwater utility districts

Many state laws are implemented by local governments, with state agencies in an oversight and/or support role. With regard to the environment, local governments and special districts have primary authority or major implementation efforts in:

- Solid waste management.
- Growth management and land use.
- Stream restoration and rehabilitation.
- Sewage systems, both on- and off-site.
- Road construction and maintenance.
- Shorelands management.
- Stormwater management.
- Drinking water protection.
- Used oil and household toxics.
- Irrigation water and return flows.

Local governments and special purpose districts are the on-the-ground implementers of many nonpoint pollution control activities. Ecology relies heavily on the continued commitment of energy and resources by these entities. Additionally, local governments can often play an important role in monitoring and correcting nonpoint source pollution. Ecology is committed to assisting local governments with monitoring and enforcement.

State agencies can also assist with financial assistance to local governments through the various funding programs they administer. Ecology supports the goals of the nonpoint program by funding local projects and programs designed to achieve the WQ Standards and support the implementation of watershed based plans.

## **Conservation Districts and State Conservation Commission**

Conservation districts are county-based, non-regulatory governmental entities that assist in meeting local resource needs with technical assistance and financial resources. These districts report to the Washington State Conservation Commission (WSCC) and help landowners with on-the-ground conservation projects that enable them to be good stewards of their property. Each conservation district is directed by a board of supervisors: three elected locally, two of which must be landowners or operators of a farm. This ensures a local perspective on projects to protect both working lands and ecological functions.

WSCC is the coordinating state agency for all 45 conservation districts in Washington State. WSCC was established in 1939 as a non-regulatory state agency providing assistance to conservation districts across the state. WSCC has no regulatory function, but works primarily through education and through facilitating dialogue between land owners, land managers, local stakeholders, and state and federal agencies on critical natural resource conservation issues.

Incentive-based programs at the WSCC provide funding and technical assistance for the protection of water quality and other important resources. Programs implemented by the WSCC include the Conservation Reserve Enhancement Program, which provides rental payment to landowners to lease riparian habitat for protection from agricultural activities. The WSCC also administers a Water Quality grant program.

The Voluntary Stewardship Program is implemented by the WSCC.

It's an alternative planning process that uses incentives instead of regulations to promote the protection of critical areas on agricultural lands. Counties opting in to this program are eligible for funding for the development of watershed work plans to set goals and benchmarks for protection and enhancement of wetlands and other critical areas on agricultural lands.

Districts offer a range of voluntary services including assistance with erosion control, habitat restoration, manure management, wildfire prevention/mitigation, stormwater management,

forest plans, irrigation efficiency, noxious weed control, fish barrier removals, livestock stream crossings, and more.<sup>71</sup>

Beyond grant programs, districts are a key partner in the delivery of technical and financial assistance to private landowners and producers. Further, districts play a critical role in landowner and producer outreach and engagement, and help create support for water quality goals in their communities.

Many districts are active participants in the development and implementation of TMDLs. Districts represent one of the major recipients of federal 319 grant funds, and many conduct monitoring projects to determine effectiveness of completed projects.

Although not all districts work with Ecology, those that accept Ecology grants to implement BMPs follow our funding guideline that allow the use of only a few specific suites of BMPs that Ecology determined will achieve compliance with state water quality law.

Through grants and other opportunities, Ecology partners with districts working on soil erosion, stream protection and restoration, and livestock projects. In addition, Ecology supports districts working on direct-seed projects and the Farmed Smart certification program, along with other efforts that support the implementation of the goals of the NPS plan. Some districts have also expanded their services to include implementing stormwater BMPs and Ecology sees this as an emerging opportunity. Ecology will continue to look for the right opportunities to partner on stormwater projects, low impact development, and green infrastructure strategies/initiatives.

Districts are a key partner in our watershed evaluation process. Districts have helped with education and outreach efforts, partnered on site visits, and have been a primary resource for technical and financial assistance. Ecology will continue to partner with districts during watershed evaluations, and look to tailor how we work with individual districts to meet their local needs. Across all districts we will work on increasing communication around what we are seeing and about the best fixes to assist districts in being able to better serve landowners.

Finally, Ecology will work to respond to feedback from districts that highlighted the need for Ecology to be clear about the BMPs needed to protect water quality. With that guidance they can reduce risk for the landowners they work with. Additionally, they expressed their desire to provide flexibility, and recognize that there can be multiple ways of achieving equivalent water quality results. We will also work to respond to feedback that our strategies and programs need to be cost effective and balance environmental goals, available funding, cost benefits, return on investment, and landowner participation.

## **Local Health Departments and Districts**

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<sup>71</sup> For more information on the services provided by conservation districts as well as the financial and technical assistance programs they administer please see: <https://www.scc.wa.gov/what-are-conservation-districts>.

Washington has 31 county health departments, three multi-county health districts, and two city-county health departments. We refer to them as local health jurisdictions. They are local government agencies that carry out a wide variety of programs to promote health, help prevent disease, and build healthy communities. Related to nonpoint source pollution, they regulate on-site sewage systems (see Chapter 3), and can fill key roles in PIC programs.

## Washington Tribes

Washington is home to 29 federally recognized and seven non-federally recognized Native American tribes.: The Governors Office of Indian Affairs office has a complete list of the these tribes on their [website](#).

Traditional fishing areas for tribes encompass essentially all of Washington. There are nine tribes in Washington State that have federally approved Clean Water Act water quality standards. EPA has a copy of these water quality standards on their tribal water quality standards website- [EPA Actions on Tribal Water Quality Standards and Contacts | US EPA](#)

Tribal representatives participate in the development and implementation of TMDLs, and are also recipients of federal 319 grant funds. They provide technical expertise on natural resource issues and are an important partner in implementing the state's nonpoint program.

Tribal resources, including shellfish and salmonids, continue to be negatively impacted by nonpoint source pollution. Many rivers and streams in the state exceed temperature standards. High water temperatures threaten the health and survival of salmon. Likewise, nonpoint source pollution in the form of sediment and nutrient inputs threaten the health and survival of salmon. Pathogen pollution from a variety of nonpoint sources, including on-site sewage systems, farm animals, pets, sewage from boats, and stormwater runoff can cause shellfish bed closures.

Ecology recognizes the importance of salmon and shellfish resources to the tribes and will utilize the following regulations, policies and guidance to implement the NPS plan:

- Clear guidance related to BMPs necessary for all nonpoint sources to achieve compliance with all WQ Standards.
- Enforceable mechanisms in place to ensure compliance with the WQ Standards.
- Transparency and accountability for collecting sufficient implementation data to determine whether programs are achieving compliance with WQ Standards.
- Ecology will work collaboratively to address improper manure management and application that affect tribal fishing areas and shellfish beds. At a minimum we will look to work on the following issues:
  - Need for manure sources to be analyzed for nutrient content prior to application, and include an accurate accounting of N-P-K rates.
  - Manure application timing that optimizes nutrient uptake by plants and eliminates runoff or leaching.

- Manure application occurring in the right location, including adequate setbacks from surface waters, drainage, and other locations that are likely to result in transport away from the root zone.
- Manure being applied in correct amounts, i.e., agronomic rates, such that the nutrients applied will be utilized by target crops, and excess nutrients will not accumulate in or on soils and be subject to runoff or leaching.
- Manure storage and location and the potential for leaching to groundwater via unlined lagoons, overtopping due to insufficient storage capacity, or subject to breaches and leaks.
- Implementation of temperature standards and addressing thermal loading.
- Address hydromodification issues including the following sources: agricultural ditching, dredging and maintenance of degraded streamside and instream conditions; transportation projects, stream crossings, and culverts; flood control projects; and land development.
- Sediment loading issues.
- Water quality and water withdrawal issues and their nexus with water quality.
- The need for a consistent outreach program that can uniformly convey to the public the practices needed to achieve compliance with the WQ Standards.

## State Agencies

State agencies play a key role in implementing authorities that can help in preventing and controlling NPS pollution. No single state agency has all the tools to solve nonpoint source pollution problems. The state natural resource agencies in the following outline have some type of program or resources that can support the implementation of the NPS plan. The primary authorities of state agencies are outlined in Chapter 2. Ecology recognizes the need to share resources, coordinate efforts and programs, and send consistent messages on what is needed to meet WQ Standards and the goals of the NPS plan.

State agencies include:

- Washington State Department of Health (DOH) – The mission of the DOH is to protect and improve the health of people in Washington State. Its programs and services help prevent illness and injury, promote healthy places to live and work, provide education to help people make good health decisions and ensure the state is prepared for emergencies. DOH and local health districts regulate on-site sewage systems.
- Puget Sound Partnership (PSP) - PSP serves as the backbone agency for Puget Sound recovery. The PSP coordinates the efforts of tribes, scientists, businesses, and non-profit groups to set priorities, implement a regional recovery plan, and ensure accountability for results.
- Washington State Recreation and Conservation Office (RCO) - RCO is a state agency that manages grant programs to create outdoor recreation opportunities, protect the best of the state's wildlife habitat and farmland, and help return salmon from near extinction.

The Salmon Recovery Fund managed by RCO provides financial assistance to a wide variety of projects that address nonpoint sources of pollution.

- Washington State Conservation Commission (WSCC) - The WSCC is the coordinating state agency for all 45 [conservation districts](#) in Washington State. Together, the WSCC and conservation districts provide incentive-based programs that make it easier and more affordable for private landowners to implement conservation on their property (see previous section on Conservation Districts and State Conservation Commission for more information on these entities).
- Washington State Department of Agriculture (WSDA) - is headquartered in Olympia, with employees in every county in the state. Their staff carries out a broad spectrum of activities that support the producers, distributors, and consumers of Washington's food and agricultural products. WSDA manages the Dairy Nutrient Management program.
- Washington State Department of Natural Resources (DNR) - In partnership with citizens and governments, the Washington State DNR provides innovative leadership and expertise to ensure environmental protection, public safety, perpetual funding for schools and communities, and a rich quality of life. DNR is the primary implementer of the state Forest Practices Rules.
- Washington State Department of Fish and Wildlife (WDFW) - The mission of WDFW is to preserve, protect and perpetuate fish, wildlife and ecosystems while providing sustainable fish and wildlife recreational and commercial opportunities. WDFW implements the state Hydraulic Project Approval Program.
- Washington State Department of Commerce (Commerce) - Grow and improve jobs in Washington State by championing thriving communities, a prosperous economy, and sustainable infrastructure. Commerce oversees the state Growth Management Act.
- Washington State University (WSU) - WSU Extension is the front door to the University. Extension builds the capacity of individual, organization, businesses and communities, empowering them to find solutions for local issues and to improve their quality of life. The WSU Puyallup Research and Extension Center is the home of the Stormwater Center, which serves as a clearinghouse for stormwater technology, information, and permittee assistance.
- Washington State Department of Transportation (DOT)--The Washington State Department of Transportation is the steward of a multimodal transportation system and responsible for ensuring that people and goods move safely and efficiently. Many of the roads, highways and bridges managed by DOT are covered by stormwater permits.
- Washington State Parks and Recreation Commission - The Washington State Parks and Recreation Commission cares for Washington's most treasured lands, waters, and historic places. State parks connect all Washingtonians to their diverse natural and cultural heritage and provide memorable recreational and educational experiences that enhance their lives.
- University of Washington SeaGrant (WSG) - Washington Sea Grant (WSG) identifies, addresses, and funds important marine issues, shares its expertise with coastal businesses and communities, provides tools for the management of ocean and coastal resources, and engages the public in protecting and sustainably using those resources.

## Federal Agencies

There are many federal agencies in Washington that operate with different mandates and responsibilities. This is, in large part, due to the diversity and complexity of Washington's natural environment.

For example, the strategic location of the Puget Sound region makes it an ideal home for several military installations such as Joint Base Lewis-McChord, Puget Sound Naval Shipyard, Bangor submarine base, and Whidbey Island Naval Air Station. The Puget Sound region is surrounded by U.S. Forest Service (USFS) lands and the Olympic National Park.

The Palouse region of eastern Washington is the home of some of the most productive non-irrigated agricultural lands found anywhere in the United States. These lands are in close proximity to the Snake River and Columbia River. Interested federal agencies are the Natural Resource Conservation Service (NRCS), Farm Service Agency (FSA), The Bureau of Reclamation (BOR), Bonneville Power Administration (BPA), and the Army Corps of Engineers (COE).

The Yakima Valley is another good example of federal agency presence. Not only are NRCS and FSA actively engaged with agricultural activities, the BOR, the COE, and the BPA all have responsible roles and mandates. In addition, the US Army's Yakima Firing Range is one of the largest military bases in the United States.

These are a few examples of the roles federal agencies play in using and managing land in the state. Federal agencies are the second largest group of landowners in the state (next to private individuals), and a major source of funding for cost share and restoration efforts.

If Ecology identifies federal lands and activities that are not managed consistently with state nonpoint program objectives, we will work with EPA and those federal agencies to resolve issues at the federal agency level.

## List of Federal Agencies and Responsibilities

Many federal agencies in Washington either contribute to nonpoint source pollution, or help control nonpoint source pollution through their water quality programs – or both.

- Army Corps of Engineers (COE) - is responsible for maintenance of harbors and navigable waterways and wetlands management. COE operates and maintains many large dams along the Columbia and Snake Rivers.
- Bonneville Power Administration (BPA)-controls numerous dams along the Columbia and Snake Rivers.
- Bureau of Land Management (BLM) - has relatively small holdings within the state on which grazing activities occur.
- Bureau of Reclamation (BOR) - owns and manages hundreds of miles of irrigation canals in eastern Washington, and some hydroelectric dams.
- Department of Energy (DOE) - manages the Hanford Reservation.



- Department of Defense (DOD) - has several bases in Washington, due to the strategic location of the state and its access to the Pacific Rim.
- Environmental Protection Agency (EPA) administers the Clean Water Act. It also partners with NOAA's National Ocean Service to administer the Coastal Nonpoint Program under CZARA.
- Federal Highway Administration (FHA) - has hundreds of miles of highways in Washington.
- Fish and Wildlife Service (FWS) - is responsible for habitat conditions related to the health and well-being of fish and wildlife. FWS works to protect ESA-listed resident fish such as bull trout and cutthroat trout.
- U. S. Geological Survey (USGS) - routinely monitors both surface and ground water through its National Water Quality Assessment Program.
- Natural Resource Conservation Service (NRCS) - develops conservation practices for its *Field Office Technical Guides* and provides financial and technical assistance to landowners to implement the practices that a landowner chooses.
- National Park Service (NPS) - owns thousands of acres of parkland, including Mount Rainier National Park, Olympic National Park, and North Cascades National Park.
- National Oceanic and Atmospheric Administration (NOAA) - The National Marine Fisheries Service oversees the status of endangered species and the National Ocean Service partners with EPA to administer the Coastal Nonpoint Program under CZARA.
- US Forest Service (USFS) - manages about 20% of the land area in the state.

## **Federal Lands - Forestry**

Federal agencies are required to conduct their activities so as to be at least as protective as the complementary state programs. Thus in Washington, federal agencies must design their programs in a manner that will comply with the state WQ Standards. They need not use the same forestry prescriptions as those required by the state Forest Practices Rules, but the results need to achieve the same regulatory objective of meeting the state WQ Standards. Ecology will continue to work with federal agencies to ensure their actions are designed to be as protective as what is required by state rules, and that they comply with the WQ Standards.

Although there are numerous federal agencies that affect forest management in Washington, it is primarily the USDA Forest Service that affects water quality attainment through forest management activities.

### **United States Department of Agriculture-Forest Service**

The US Department of Agriculture (USDA) - Forest Service manages its lands under federal land and resource conservation plans and strategies such as those established under the Northwest Forest Plan. Ecology entered into a Memorandum of Agreement (MOA) with the USDA Forest Service, Region 6 in 2000. Since 2000 the MOA has been updated several times, with its most recent update in 2018. The purpose of the MOA is to clarify roles and Ecology's expectations so that the Forest Service would achieve compliance with state WQ Standards. Ecology hopes to

continue to strengthen its formal working relationship with the US Forest Service to ensure the WQ Standards are met on these key federal lands.

The 2000 MOA contained a specific requirement that roads on Forest Service lands would be brought up to current state standards by 2015. Approximately five years into the MOA, however, the Forest Service recognized it would not be able to comply with the road requirements at current funding levels. The 2018 update to the MOA moved the focus to implementing and evaluating the performance of Best Management Practices (BMPs). BMPs are recognized as the primary mechanism to control nonpoint source pollution on National Forest Service lands. Under the MOA the Forest Service and Ecology will conduct joint reviews of project implementation areas to determine if BMPs are being implemented and if management efforts are effective in protecting water quality.

There are an estimated 22,000 miles of USDA Forest Service roads in Washington. Deteriorating, unmaintained, and poorly located forest roads add sediment-laden runoff into streams, changing stream flow dynamics and harming dwindling runs of threatened and endangered salmon that need cold, clear water to thrive and reproduce. Sediment decreases drinking water quality and increases the need for expensive community water filtration systems. Two-thirds of the runoff from problem roads drains into an already ailing Puget Sound. Unlike private and state forests, there has been no program designed to aggressively identify and correct road problems on federal forest lands. In the past Ecology has worked in partnership with other key stakeholders in Washington and has helped the Forest Service receive congressional funding to help address its growing backlog of road projects as part of the Legacy Roads and Trails program. This funding, while helpful, did not keep pace with the growing backlog of needed road repairs. Ecology is interested in helping the Forest Service find additional sources of funding to bring more roads into compliance.

### **Other Federal Landowners**

Bonneville Power Administration (BPA) and Bureau of Land Management (BLM) (only about 10,000 acres) are the two federal agencies besides the USDA Forest Service with noteworthy presence in Washington's forested watersheds. Similar to the USDA Forest Service, the BLM may establish roads and harvest timber so long as the prescriptions applied result in compliance with the state WQ Standards.

The BPA primarily harvests timber within and adjacent to power transmission line rights of way. BPA rights of way situated adjacent to streams are often targeted for heavy use by recreational off-road vehicle users. This can result in significant localized damage to stream beds and excessive sedimentation. The responsibility of federal agencies to manage their lands in compliance with state regulations is unfortunately not always matched with the necessary commitment of resources to accomplish that objective. Ecology currently has no written agreement with either of these agencies on managing their lands for water quality.

## Chapter 5: Financial Incentive Programs

Both state and federal funding programs are available to landowners, businesses, and agricultural producers which can support the goals of the nonpoint program. Ecology will work with partners to coordinate funding and promote consistency with the goals of the state NPS plan. Additionally, Ecology will work to coordinate the collection of consistent and detailed implementation data to better understand the effectiveness of financial incentive programs.

### Coordinated Investment

Ecology will look to support coordinated investment strategies that help meet the goals of the NPS plan. Specifically, Ecology will look to support coordinated investments that target projects that implement TDMLs and STIs, while also solving multiple environmental problems in a more efficient way. Where possible we will work to leverage multiple sources of funding and fund projects that meet water quality, salmon and shellfish goals. Further, we will look to support efforts that include multiple parcels in a watershed and maximize opportunities to secure continuous BMP implementation over longer stretches of streams and rivers.

Key coordinated investment principles include:

- Focusing on the implementation of BMPs and projects that ensure compliance with state WQ Standards at the parcel level.
- Supporting projects communicating clear standards and compliance expectations.
- Supporting the implementation of TMDLs and STIs.
- Supporting projects that provide multiple environmental benefits—water quality, salmon and shellfish goals.
- Focusing on outcomes and accountability through collecting specific BMP implementation data.
- Maximizing opportunities to secure continuous BMP implementation over longer stretches of streams and rivers.

In March 2015, Ecology formalized creation of a Coordinated Strategic Investment Group made up of Ecology managers. The purpose of the group is to coordinate agency investments that support salmon recovery, habitat restoration, and toxics cleanup. The idea is that the agency can use funds from different sources to create integrated investment packages that will advance watershed-based ecosystem improvement and recovery.

### Financial Assistance Sources

Here is a summary of key sources of financial assistance available in Washington State:

#### *Ecology Water Quality Combined Financial Assistance Program*

Department of Ecology runs an annual competitive water quality funding cycle program that includes funding from the state Centennial Clean Water program, federal Section 319 nonpoint

grant program, State Revolving Fund loan program, and the state Stormwater Financial Assistance grant program. Centennial Grants are state funds that provide grants for water quality infrastructure and nonpoint source pollution projects. Eligible nonpoint projects include: livestock fencing, off-stream water development, stream crossings, riparian plantings, and subsidization of on-site sewage repair and replacement local loan programs. There is also limited funding available for education and outreach.

In addition, the federal EPA provides Section 319 grant funds to Washington State. The Section 319 program offers funds for nonpoint source pollution control projects similar to the state Centennial program. These two funding sources are combined with the Clean Water State Revolving Fund loan program and stormwater grant program into a single combined financial assistance funding cycle. The Revolving Fund loan program can also fund nonpoint source projects. The Stormwater Financial Assistance Program provides funds to reduce impacts of non-point source stormwater runoff from existing development. Projects may integrate green infrastructure solutions.

#### *Conservation Reserve Program (CRP)*

CRP is a land conservation program administered by the Farm Service Agency (FSA). In exchange for a yearly rental payment, farmers enrolled in the program agree to remove environmentally sensitive land from agricultural production and plant species that will improve environmental health and quality. Contracts for land enrolled in CRP range from 10 to 15 years in length. The long-term goal of the program is to re-establish valuable land cover to help improve water quality, prevent soil erosion, and reduce loss of wildlife habitat. CRP operates under two types of enrollment—general and continuous. General enrollment provides an opportunity for landowners to enroll in CRP through a nationwide competition during a specific period of time. Continuous enrollment is designed to enroll the most environmentally desirable land into CRP through specific conservation practices or resource needs. Unlike general enrollment, under continuous enrollment, land is typically enrolled at any time and is not subject to competitive bidding. CRP provides cost-share to producers to implement a variety of conservation practices on agricultural land including riparian buffers.

#### *Conservation Reserve Enhancement Program (CREP)*

CREP is similar to CRP. It provides funding to farmers and ranchers to help protect stream corridors and conserve priority salmon stocks. Landowners enroll land located along water bodies to create buffer zones. These buffers are planted with native trees and shrubs to cool stream temperatures and filter polluted run-off. Participants are reimbursed for 100% of the costs to establish the buffer. They also receive an annual rental payment per acre enrolled based on NRCS soil rental rates. The main difference between CREP and Continuous CRP is that CREP is primarily available on streams where threatened runs of salmon or steelhead are currently present or part of their historic range. CREP is funded by the USDA Farm Service Agency and the state of Washington. The state portion is managed by the Conservation Commission.

### *CLEAR 30*

The 2018 farm bill created a new pilot program referred to as CLEAR 30 which allows agricultural producers to re-enroll expiring CRP contracts into new 30-year contracts. CLEAR refers to the Clean Lakes, Estuaries, And Rivers initiative which authorized the ability to re-enroll lands into long-term CRP contracts. These long-term contracts will help ensure that conservation impacts and benefits remain in place for 30 years. Traditional CRP contracts expire after 10 to 15 years. Annual rental payments for landowners who enroll in CLEAR30 are equal to the current Continuous CRP annual payment rate plus a 20% water quality incentive. Technical assistance is required for each contract and agreement. USDA must create the CRP plan for a contract.

### *Bonneville Power Administration (BPA)*

BPA funds salmon recovery projects. The funding is appropriated through a process developed by the Northwest Power and Conservation Council (NWCC). Over 60 subbasins exist within the Columbia basin and each has developed a subbasin plan to help guide salmon recovery and wildlife habitat protection. Millions of dollars are made available every year to address priority projects throughout the Columbia Basin.

### *Environmental Quality Incentive Program (EQIP)*

The Environmental Quality Incentives Program (EQIP) is designed to promote agricultural production, forest management, and environmental quality. Through EQIP, NRCS provides financial assistance to eligible farmers and ranchers to address soil, water, and air quality, wildlife habitat, surface and groundwater conservation, energy conservation, and related natural resource concerns. The program requires the development of lists showing practices eligible for payment, allowed payment rates, criteria used to rank applications, and a description of the program and the application process. This is a locally driven process where “local work groups” made up of local governments, agencies, and agricultural producers identify specific annual priorities for funding.

### *Salmon Recovery Funds*

In 1999, the Washington State Legislature created the Salmon Recovery Funding Board. The board provides grants to protect or restore salmon habitat and assist related activities. Since 1999, the board has awarded more than \$477 million in grants to more than 1,700 projects in 31 of the state’s 39 counties. The Salmon Recovery funds are offered through an annual competitive process. The funds can be utilized for many types of fish passage and habitat improvements including projects that can help to protect water quality.

### *Ecology Direct Implementation Funds (DIF)*

The Department of Ecology may identify a small amount of the federal Section 319 funds it receives to implement a TMDL or install nonpoint pollution control BMPs in support of an STI

project. These are small grants that focus on specific implementation actions. The projects are sponsored by Ecology staff to achieve a specific water quality objective. Often, these projects involve funding riparian protection and planting.

#### *Ecology Coastal Protection (Terry Husseman) grants*

The Coastal Protection (Terry Husseman) grants are small grants (less than \$50,000) available for specific on-the-ground actions. The coastal protection account was created to utilize money collected via water quality penalties for water quality protection. Availability of funds varies.

#### *Floodplains by Design*

The Department of Ecology's Floodplains by Design program is intended to reduce flood risk to communities while also improving natural ecosystem functions and improving habitat. The program seeks to combine efforts for flood reduction and salmon and habitat recovery, while also protecting working lands like agriculture, forestry, and shellfish production. It relies on broad stakeholder support to promote approaches that are beneficial to all involved parties.

#### *State Conservation Commission grants*

The WSCC has historically made funds available for projects proposed by conservation districts. Additionally, the WSCC has provided salmon and shellfish grants for projects proposed by conservation districts.

#### *Regional Conservation Partnership Program*

The Regional Conservation Partnership Program (RCPP) fund is part of the 2014 Farm Bill. It promotes coordination between NRCS and its partners to deliver conservation assistance to producers and landowners. The Columbia River Basin is one of eight priority watersheds that will receive 35% of the annual funding available through the program. Projects that address multi-state issues are also prioritized. The fund is competitive and uses the rules of existing NRCS programs (EQIP, CSP, ACEP and HFRP).

#### *National Estuary Program Funds*

The EPA provides federal funding to support efforts to protect and restore Puget Sound. Most of the funds are used for financial assistance to state, local and Tribal governments for their efforts to implement the [Puget Sound Action Agenda](#). EPA passes these grants through state agencies.

#### *Family Forest Fish Passage Program*

The Family Forest Fish Passage Program (FFFPP) provides state cost share money to small forest landowners for replacing culverts and other stream crossing structures that keep trout, salmon, and other fish from reaching upstream habitat. Road culverts and other structures that are aging, too small, or improperly installed can block fish from reaching their spawning grounds.

The same barriers then impede the movement of young rearing salmon to the ocean. FFFPP funds the replacement of eligible barriers with new structures. Since 2003, landowners have taken advantage of the program that has replaced 424 barriers and opened more than 1099 miles of stream habitat. FFFPP funding is provided by the legislature on a biennial basis. There are currently 1,273 landowner projects waiting for funding. Fish passage barrier replacement also provide for the effective movement of woody debris downstream where it contributes to the physical and chemical integrity of the stream to the benefit of water quality.

#### *Forestry Riparian Easement Program*

The Forestry Riparian Easement Program compensates eligible small forest landowners in exchange for a 50-year easement on “qualifying timber.” This is the timber the landowner is required to leave unharvested as a result of 2001 forest practices rules protecting Washington’s forests and fish. Landowners cannot cut or remove the qualifying timber during the easement period. Since 2002 435 easements have been purchased. The landowner still owns the property and retains full access, but has “leased” the trees and their associated riparian function to the state. The intent of this program is to reduce the economic incentive to take land out of forestry in recognition that well-managed forest lands provide significant benefits to water quality and the fish and wildlife that depend on healthy streams.

## Chapter 6: Recommended Management Measures

Best Management Practices (BMPs) can be implemented to prevent, mitigate, or eliminate nonpoint source pollution resulting from a particular land-use activity. Under the Federal Clean Water Act (CWA) and the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA), Ecology is responsible for designating management measures and suites of BMPs that comply with Washington State's WQ Standards. Additionally, Ecology is the agency responsible for articulating how nonpoint pollution sources can comply with the state Water Pollution Control Act and the state WQ Standards.

Nonpoint source pollution has been documented to occur from urban and residential development, hydromodification, marinas and boating areas, agricultural activities, and forest practices. Ecology recognizes the need to have specific guidance covering all categories of nonpoint source pollution.

When identifying suites of BMPs and measures to control each category and subcategory of nonpoint sources, Ecology will meet the following objectives:

- Identified suites of BMPs and measures will be designed to comply with the WQ Standards at the site level and contribute to the protection of beneficial uses of the receiving waters, and ensure compliance with state and federal law.
- Utilize best available science to identify BMPs and measures.
- Apply the concept of AKART.<sup>72</sup>

This chapter lays out the process that Ecology will use to identify management measures and BMPs for each category of nonpoint pollution in compliance with the CWA and CZARA.

### Federal Requirements

Section 319 of the CWA requires that state nonpoint source (NPS) management programs *"identify best management practices and measures to control each category and subcategory of nonpoint sources..."* EPA guidance for NPS programs reinforces that state NPS management programs must include an "identification of measures (i.e., systems of practices) that will be used to control NPS pollution, focusing on those measures which the state believes will be most effective in achieving and maintaining WQ Standards." Furthermore, EPA guidance allows for states to identify measures "individually ... or presented in manuals or compendiums, provided that they are specific and are related to the category or subcategory of nonpoint sources."

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<sup>72</sup> WAC 173-201A-020 states: "AKART" is an acronym for "all known, available, and reasonable methods of prevention, control, and treatment." AKART shall represent the most current methodology that can be reasonably required for preventing, controlling, or abating the pollutants associated with a discharge. The concept of AKART applies to both point and nonpoint sources of pollution. The term "best management practices," typically applied to nonpoint source pollution controls is considered a subset of the AKART requirement.



CZARA requires states to develop management measures necessary to ensure attainment of the WQ Standards. Management measures are defined as “economically achievable measures” reflecting the “greatest degree of pollutant reduction achievable” through the “best available nonpoint pollution control practices, technologies, processes, siting criteria, operating methods or other alternatives.” Management measures are intended to prevent and control nonpoint source pollution, and are implemented through the use of management practices.

While the management measures must be developed to ensure attainment of WQ Standards, the “management measure” approach is more akin to a technology-based rather than water-quality-based approach to addressing nonpoint pollution.

Any manuals, compendiums, or other guidance that identify BMPs and measures adopted by Ecology to fulfill the requirements of Section 319 do not have any independent regulatory authority and will not establish new environmental regulatory requirements.

## **Ecology Guidance**

Ecology presently has manuals that identify appropriate BMPs in place for several kinds of land uses that can generate pollution. Current Ecology manuals and guidelines include:

- Stormwater Management Manual for Western Washington
- Stormwater Management Manual for Eastern Washington
- Voluntary Clean Water Guidance for Agriculture (in progress)

## **Existing Regulatory Programs and Permits**

Where existing regulatory programs provide specific oversight and enforcement authority related to a category of NPS pollution, Ecology will generally defer to the implementation of those programs, and not develop independent guidance. Current regulatory programs include:

- Forest Practices Rules
- Onsite Sewage Systems Regulations and Ordinances
- Dairy Nutrient Management Program

Additionally, some sources that previously may have been considered nonpoint pollution sources are now regulated as point source discharges and covered under NPDES and/or State Waste Discharge general permits. Any source that is ultimately regulated under a NPDES permit is no longer subject to the BMP guidance requirements of Section 319 and CZARA. However, as covered in Chapter 3, Ecology will work to ensure that our nonpoint pollution source, CZARA, and TMDL programs are well-integrated with our permit programs by clearly defining when an activity requires a permit versus being covered under our NPS program, and utilizing consistent guidance to inform the implementation of both programs. Further, state waste discharge permits can cover sources that may be considered nonpoint in nature.

Current permits include:

- Aquatic Pesticide Applications
- Boatyards
- Bridge and Ferry Terminal Washing
- Concentrated Animal Feeding Operation (CAFO) - Facilities that have a discharge
- EPA Vessel General Permit
- Fresh Fruit Packing
- Sand and Gravel mining operations
- Stormwater:
  - Construction Stormwater
  - Industrial Stormwater
  - Municipal Phase I and Phase II Permits
  - WSDOT Municipal Stormwater
- Upland Fin-Fish Hatching and Rearing
- Vessel Deconstruction

Information on these statewide regulatory programs and permits is provided in Chapters 2 and 3, and details on the above permits can be found at: <https://ecology.wa.gov/Water-Shorelines/Water-quality/Water-quality-permits>

## Voluntary Clean Water Guidance for Agriculture

The Voluntary Clean Water Guidance for Agriculture is a technical resource for agricultural producers that describes Ecology's recommended best management practices (BMPs) to protect water quality. It is intended to help producers meet clean water standards. Ecology is working with an advisory group to research and write the guidance. Information on the advisory group process and the latest chapters can be found on our [Voluntary Clean Water Guidance for Agriculture website](#). The first set of chapters are included in appendix K of this Nonpoint Plan and they are:

- [Cropping Methods: Tillage & Residue Management](#)
- Livestock Management-Pasture & Rangeland Grazing
- Sediment Control: Soil Stabilization & Sediment Capture (Structural)
- Riparian Areas & Surface Water Protection

The **remaining** chapters will be completed by 2025. Ecology will include numeric values for the BMPs except where it does not make sense to do so and provide approximate pollutant removal/reduction information for those BMPs in the guidance chapters that have pollutant removal/reduction information available in the existing literature.

Ecology commitments to use the BMP guidance:

- In Ecology's CWA section 319 grant funding program;

- To develop and implement Total Maximum Daily Loads (“TMDLs”) and other water clean up plans (including but not limited to Straight To Implementation projects), with nonpoint components;
- And for technical assistance work.

## **Support for Updates**

Ecology will support updates to BMP guidance as necessary to ensure compliance with the WQ Standards.

- Support updates to the Stormwater Management Manual for Western Washington.
- Support updates to the Stormwater Management Manual for Eastern Washington.
- Support the Forest Practices Rules’ adaptive management process.
- Support adaptive management and updates to any new BMP guidance that is developed to ensure that the state WQ Standards are achieved and maintained.

## **Stakeholder Involvement**

Ecology recognizes the need for early stakeholder involvement in any process that develops new management measure and BMP guidance, or updates existing guidelines or manuals. Ecology will seek involvement from local, state, tribal and federal agencies, as well as public interest groups, industries, academic institutions (including the Washington Stormwater Center), private landowners and producers, and concerned citizens during all steps of this process. Further, Ecology will seek the input of tribal governments, the Agriculture and Water Quality Advisory Committee (agriculture-related management measures), the Water Quality Partnership and the Financial Assistance Council on developing any processes necessary under this chapter.

## Chapter 7: Monitoring

The federal Clean Water Act (CWA) gives states the primary responsibility for implementing programs to protect and restore water quality, including monitoring and assessing the nation's waters and reporting on their quality. In Washington State, Ecology is the delegated agency primarily responsible for implementing the requirements and provisions of the CWA. Consequently, Ecology is also the agency responsible for satisfying the majority of the water quality monitoring and reporting requirements of the CWA. The purpose of this section is to describe Washington State's current water quality monitoring program.<sup>73</sup>

While the monitoring program's focus is broader in scope than the nonpoint program, it supports the nonpoint program in a variety of ways. For example, the monitoring program is used to identify waters of the state that have impairments, help connect impairments to nonpoint sources of pollution, help identify unimpaired waters, help prioritize waters for implementation, and support effectiveness monitoring.

This section starts by describing the overall state monitoring strategy and Water Quality Assessment (WQA). Then key monitoring programs are briefly described to provide an overview of ongoing monitoring efforts in the state. After describing these key Ecology monitoring efforts, a brief description of other monitoring programs in the state is included to provide a more complete picture of ongoing monitoring that can support the state's nonpoint program. Finally, this section concludes with a description of effectiveness monitoring, quality assurance, and data management.

### Ecology's Monitoring Strategy

Washington State adopted a tiered approach to monitoring in order to most efficiently meet its highest priority monitoring objectives at the various geographic and temporal scales needed for effective environmental management. This means that Ecology and its partner agencies will continue to conduct a variety of extensive and intensive, short- and long-term monitoring programs, and employ a number of monitoring designs to meet a wide range of monitoring objectives.

At Ecology the Environmental Assessment Program (EAP) serves as the technical arm of the agency and conducts much of the water quality monitoring needed to inform regulatory actions. The mission of EAP is to "To measure, assess, and communicate environmental conditions in Washington State."

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<sup>73</sup> More information on Ecology's Monitoring program and strategy can be found at [Report title] and [link to EAP's webpage].

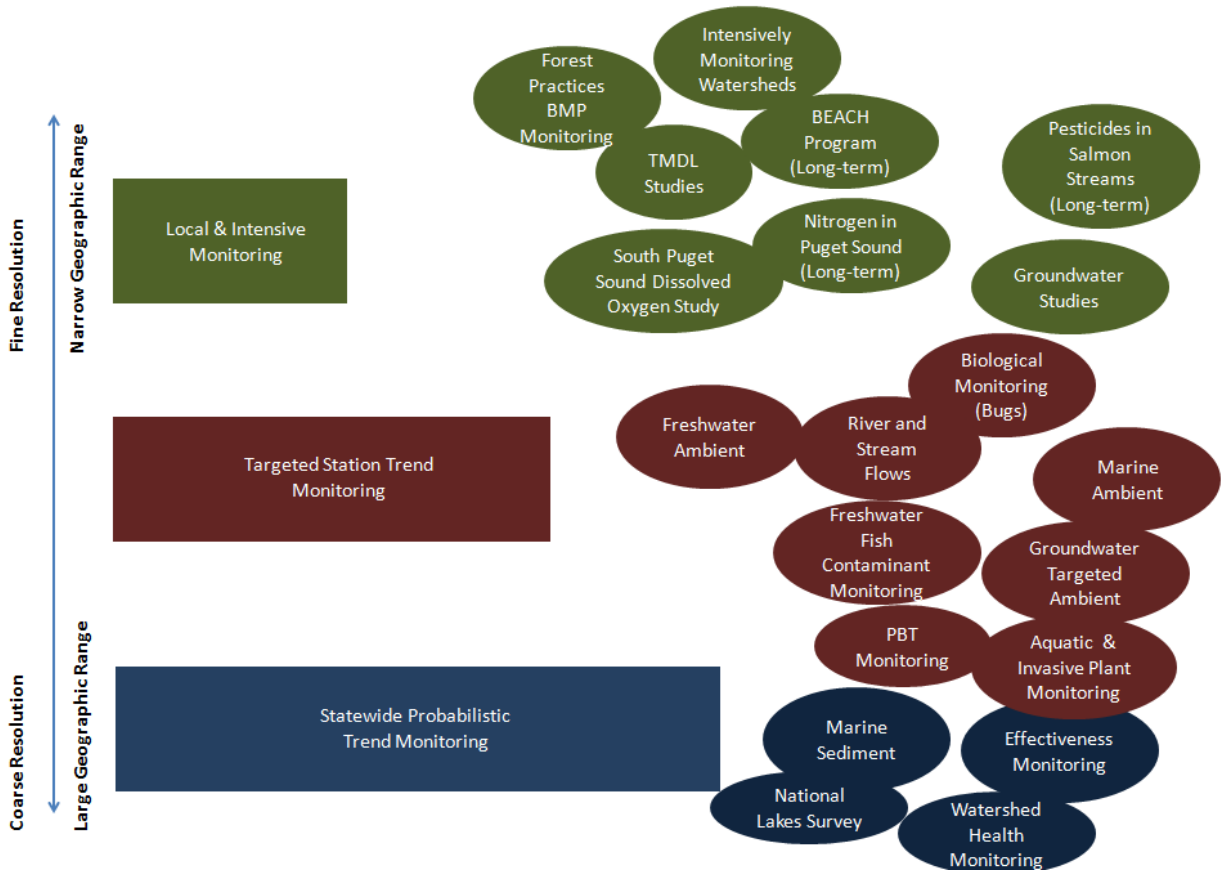


Figure 2 Ecology's Tiered Monitoring Strategy

## Water Quality Assessment

The Water Quality Assessment (WQA) is the main tool for identifying impaired waterbodies for clean-up projects. The WQA uses all available data from Ecology's monitoring programs, plus data submitted by external entities.

### Compiling Existing Sources of Data and Information

Ecology encourages all interested parties to submit data to Ecology's Environmental Information Management System (EIM) for the water quality assessment. Data are specifically solicited from many sources including federal, state, and local government agencies, and tribal governments. Ecology also publicizes a "call for data" period and assesses all data from all sources that are received.

### Data Quality Requirements

Ecology's policy specifies the quality assurance requirements that must be met by all data used for the assessment. Sampling and analysis must be conducted under a documented Quality Assurance (QA) Project Plan or other quality assurance procedures that Ecology determines to be equivalent for providing high quality data. Documentation must be provided with all data

submitted for assessment indicating that the objectives of the QA Project Plan or equivalent quality assurance procedures were met. If this documentation (or other equivalent assurance) is not provided, the data are not to be used in the assessment. If Ecology determines there are flaws in quality assurance planning or implementation that significantly reduce confidence in any submitted data, including in data previously provided during earlier assessment cycles, then those data are not to be used as a basis for placing a water segment on the CWA Section 303(d) list, known as Category 5.

## **Data Review, Verification, and Validation**

Once the measurement results have been recorded, they are examined to ensure that:

- Data are consistent, correct, and complete, with no errors or omissions.
- Results for quality control (QC) samples accompany the sample results.
- QC results indicate that acceptance criteria were met.
- Data qualifiers are properly assigned where necessary.
- Data specified in the sampling design were obtained.
- Methods and protocols specified in the QA Project Plan were followed.

Data review involves examination of the data for errors or omissions. Data verification involves examination of the QC results for compliance with acceptance criteria. Laboratory results are reviewed and verified by qualified and experienced laboratory staff and documented. Data validation involves detailed examination of the complete data package using standardized guidelines to determine whether the procedures in the methods, standard operating procedures, and QA Project Plan were followed. Validation is the responsibility of the project manager, who may wish to arrange for a qualified specialist to conduct the validation and document it in a technical report if the project needs dictate so.

Once the data have been verified and validated, they are examined to determine if the Measurement Quality Objectives (MQOs) have been met. MQOs are established for precision, bias, and required reporting limit. An experimental design for preliminary estimation of precision and bias and the use of control charts provide the best way to determine whether MQOs have been met. Results of QC samples analyzed during the project can also provide an indication as to whether the MQOs have been met.

## **Data Analysis Procedures**

Ecology's Policy 1-11 specifies assessment criteria and describes assessment methods for different media and indicators. Specific assessment criteria are described for toxic pollutants in sediment and water, temperature, dissolved oxygen as well as for fecal coliform bacteria and other pollutants. In addition to assessing data using numeric standards, the assessment of water quality can be based on narrative information. For example, listings may be based on toxics in edible fish tissue, or swimming, fishing, or shellfish advisories from appropriate agencies. Impairments can also be caused by non-pollutants, as legally defined. Examples of non-pollutants are: Physical habitat alterations (e.g., stream channelization, loss of spawning

gravels, reduced pool/riffle ratios, loss of large woody debris), physical barriers to fish migration (e.g., dams and culverts), loss of habitat due to invasive exotic species, flow alterations (e.g., low flows and flashier systems), and impaired biologic communities.

## Reporting

Ecology's primary means of reporting on the status of water quality is through the development of *Washington State's Water Quality Assessment*, based on EPA's guidance, which integrates Clean Water Act requirements for both Section 305(b) water quality reports and the Section 303(d) list of impaired waters. Ecology's Water Quality and Environmental Assessment programs have jointly adopted Policy 1-11 that describes the methods used for assessing information to evaluate attainment of WQ Standards. The Policy includes criteria for compiling, analyzing, and integrating data on ambient conditions with project implementation information.

In preparing the assessment, Ecology evaluates data from all readily available sources that are received during the "call for data" period. This includes not only data from Ecology's freshwater and marine ambient monitoring program and other Ecology studies, but also data from a wide array of entities external to Ecology who collect and submit data, including:

- Federal, state, and local government agencies
- Tribes
- Quasi-governmental entities, such as watershed planning councils
- Businesses
- Academic institutions
- Not-for-profit groups
- Private citizens

Ecology uses the *Water Quality Assessment* report to assign waterbody segments into one of five categories (see the following descriptions). All waters in Washington State (except on tribal lands) fall into one of the five categories describing our knowledge of the status of that waterbody.

**Category 1 - Meets tested standards for clean waters:** placement in this category does not necessarily mean that a water body is free of all pollutants. Most water quality monitoring is designed to detect a specific array of pollutants, so placement in this category means that the water body met standards for all the pollutants for which it was tested. Specific information about the monitoring results may be found in the individual listings.

**Category 2 - Waters of concern:** waters where there is some evidence of a water quality problem, but not enough information to require production of a water quality improvement (WQI) project (including total maximum daily load [TMDL]) at this time. There are several reasons why a water body would be placed in this category. A water body might have pollution levels that are not quite high enough to violate the WQ

Standards, or there may not have been enough violations to categorize it as impaired according to Ecology's listing policy. There might be data showing water quality violations, but the data were not collected using proper scientific methods. In all of these situations, these are waters that we want to continue to test.

**Category 3 - Insufficient data:** water where there is insufficient data to meet minimum requirements according to Policy 1-11. Waterbodies with no available water quality data would fall into Category 3.

**Category 4 - Polluted waters that do not require a TMDL:** waters that have pollution problems that are being solved in one of three ways:

- **Category 4A** - has a TMDL: water bodies that have an approved TMDL in place and are actively being implemented.
- **Category 4B** - has a pollution control program: water bodies that have a program in place that is expected to solve the pollution problems. While pollution control programs are not TMDLs, they must have many of the same elements and there must be some legal or financial guarantee that they will be implemented.
- **Category 4C** - is impaired by a non-pollutant: water bodies impaired by causes that cannot be addressed through a TMDL. These impairments include low water flow, stream channelization, and dams. These problems require complex solutions to help restore streams to more natural conditions.

**Category 5** - Polluted waters that require a TMDL or other WQI project: the traditional list of impaired water bodies traditionally known as the **303(d) list**. Placement in this category means that Ecology has data showing that the WQ Standards have been violated for one or more pollutants, and there is no TMDL or pollution control program in place. TMDLs or other approved WQI projects are required for the water bodies in this category.

*Washington State's Water Quality Assessment* can be found on Ecology's website at <https://ecology.wa.gov/Water-Shorelines/Water-quality/Water-improvement/Assessment-of-state-waters-303d>.

Policy 1-11, which Ecology uses to assess water quality data and determine if water bodies are polluted is found here: <https://ecology.wa.gov/Water-Shorelines/Water-quality/Water-improvement/Assessment-of-state-waters-303d/Assessment-policy-1-11>

## 2018 Water Quality Assessment

Ecology's most current *Water Quality Assessment* (2018) was approved by EPA August 26, 2022. The assessment evaluated approximately 66 million water, fish/shellfish tissue, and sediment data points. Data were collected in both fresh and marine waters. Table X below summarizes 303(d) listings in the 2018 *Water Quality Assessment* compared to our previously approved *Water Quality Assessment* (2012). Temperature, dissolved oxygen, and bacteria



continue to be the most prevalent water quality impairments identified through the assessment process. The number of 303(d) listed waters have continued to increase in nearly all parameter groups. However, without further analysis, it is unclear whether this increase is due to degradation of water quality over time, a by-product of an increase in water quality monitoring quantity and quality, or combination of the two factors.

Table 7 Current (2018) and 2012 303(d) listing counts by parameter group.

Parameter	2018 303(d) Listings	2012 303(d) Listings
Bacteria	1357	629
Dissolved Oxygen	1099	931
Other	209	187
pH	454	465
Temperature	1358	1106
Toxics	969	746
Total	5446	4064

As monitoring programs continue to build capacity, both in the quantity of data collected and spatial coverage of monitoring locations, we are very likely to continue to see an increase in 303(d) listings in the future. Development of TMDLs, permitting of point-source dischargers, and implementation of non-point source pollution strategies will be the main drivers in reducing an inevitable increase in the number of 303(d) listings.

## Ecology Monitoring Programs

### Water Quality Improvement (WQI) Projects

Under the CWA and implementing federal regulations, Ecology is required to develop Water Quality Improvement Projects for impaired waters listed under Category 5 of the Water Quality Assessment (the 303(d) list). These projects could be Total Maximum Daily Load (TMDL) projects, or could involve simply implementing the appropriate pollution controls in watersheds impaired by nonpoint pollution. Implementing nonpoint pollution controls without a TMDL in place works well in watersheds in which the pollution problems are easy to identify and the solutions are known. Many of these projects are led by Ecology staff, but successful projects are also being implemented by a county, a watershed planning group, and the U.S. Forest Service.

When an impaired body is selected as a priority for a TMDL project, Ecology conducts scientific studies to identify sources and amounts of pollutants causing the water quality problem, and a technical analysis to determine how much pollution sources must be reduced to protect the water. These studies typically consist of multiple, several-day field surveys over the course of several months to a year or more. The studies may focus on conventional pollutants, or they may be conducted for a variety of metals and organic compounds. The most complex toxic projects may require sampling a wide range of media including surface water, stormwater,

effluents from municipal and industrial facilities, suspended particulates, bottom sediments, bottom cores, and resident fish. In addition, biological evaluation of surface waters is being incorporated into TMDL study designs to provide a broader approach because degradation of sensitive ecosystem processes is more frequently identified. Since many of the waters identified on the CWA Section 303(d) list have diffuse pollutant sources, Water Cleanup Plans are usually conducted on a broad watershed scale. Implementation plans are developed to implement TMDLs.

## **River and Stream Ambient Monitoring**

Ecology's river and stream monitoring program will continue to rely predominantly on a fixed station monitoring design. Ecology currently collects samples monthly from 62 long-term (core), 12 basin, and 8 sentinel monitoring stations (82 total) ( Von Prause 2021). The 62 core stations were all selected using a *"judgmental sample survey monitoring design"* (EPA, 1997) which is based on the nonrandom selection of sampling sites to infer estimates of overall water quality for these basins. Core stations are generally located in a downstream reach of a mainstem river (often at bridge crossings for efficient sampling).

Data from these stations are used to assess overall condition or status of their respective basin, and to evaluate long-term trends. A few core stations are located in upper watersheds to reflect un-impacted conditions. Many core stations have been sampled for extended periods (some for over 40 years) allowing for site-specific trend analyses.

Basin stations are sampled monthly for (usually) one year, and new station locations are chosen each year to support Ecology's five-year watershed management process or to target specific concerns identified by Ecology's regional office staff. Ecology also records continuous temperature data at about 60 stations to determine compliance with current and proposed WQ Standards. Furthermore, Ecology conducts continuous monitoring for temperature, dissolved oxygen, pH, and conductivity at 10 stations, including six stations in support of "Intensively Monitored Watersheds" (IMW) research which is funded by the Salmon Recovery Funding Board (SRFB) and two stations supporting effectiveness monitoring efforts. Results are delivered in near-real-time to the Internet by satellite telemetry at most continuous stations.

## **Marine Water Ambient Monitoring**

Ecology's Marine Waters Monitoring (MWM) Program employs a monitoring strategy composed of multiple components in order to assess marine ecosystem processes and water quality status and trends at various spatial and temporal scales. Marine water column monitoring uses Ecology's R/V Skookum and Shannon Point Marine Science Center's R/V Magister to conduct monthly sampling at 39 core monitoring stations in Puget Sound, the Strait of Juan de Fuca, and from Willapa Bay and Grays Harbor on the Washington coast. Temporal and spatial representative monitoring of environmental conditions is achieved by station redundancy in the larger basins and monthly data collection to capture the seasonality of marine ecosystems.

Physical variables are continuously resolved using in-situ sensors from surface to bottom. Discrete samples are resolved at higher resolution primarily in the upper 30m of the water column to account for the connectivity between nutrient loading from freshwater inputs and biological response in the sunlit portions of surface water. Near bottom conditions are monitored using water column particulates paired with Marine Sediment Monitoring Stations to resolve the connection between ambient water quality and long-term sediment trends.

Sample analyses use consistent and approved techniques to determine long-term status and trends in water quality indicators over long temporal scales.

Data from the monthly water column monitoring provides the backbone of Ecology's Marine Waters Monitoring program. These data are augmented by higher spatially-resolved information from en route ship and ferry transects, and aerial photography.

Within the complex morphology of Puget Sound, near-surface variability in physical, chemical, and biological constituents is very high. Regional influences by rivers, local winds, density structure, tides, variable phytoplankton species and growth create a horizontally patchy and dynamic environment. Taking representative near-surface point samples is therefore challenging, and to overcome this challenge the program expanded monitoring by using en route ship and ferry observations to capture this variability and integrate these observations into a spatially and temporally nested monitoring approach. En-route sensors obtain comprehensive data records with high horizontal and temporal resolution which can be used to reconstruct the evolution of near surface features (e.g. stormwater, algal bloom, location of isotherms and isohalines).

## Marine Sediment Monitoring

Ecology's Marine Sediment Monitoring Program (MSMP) is a long-term effort that assesses the health of Puget Sound sediments. Our goal is to provide easily accessed, high-quality data and information to assist the Puget Sound Partnership, managers, and others in evaluating the overall condition of Puget Sound sediments, as well as to document change in benthic condition over time in response to inputs of carbon, nutrients, and chemicals to the system, and in response to climate-related pressures. The sample design and analyses used by the MSMP are approved and documented techniques which are detailed in the [Sediment Program's Quality Assurance Monitoring Plan](#). Ecology's MSMP employs two sampling strategies in order to assess sediment quality status and trends at various spatial and temporal scales.

1. **Puget Sound Ecosystem Monitoring Program (PSEMP) Sediment Component Long-Term** - Annual status and trends assessments of sediment quality and the condition of benthic invertebrates (benthos) Puget Sound-wide as estimated from samples collected from 50 stations, 20 of which are co-located with Ecology's Marine Waters Monitoring.
2. **PSEMP Urban Bays** - Periodic status and trends assessments of sediment quality and benthos condition in six urban bays (one bay each year) as estimated from samples collected from 30 to 36 stations.

## Stream Biological Monitoring

Traditional measurements of chemical and physical components for rivers and streams may not provide sufficient information to detect all surface water problems. Biological evaluation of surface waters provides a broader approach because degradation of sensitive ecosystem processes is more frequently identified.

The Environmental Assessment Program at Ecology has three major projects monitoring biological condition in Washington's streams and rivers. The Sentinel Biological Projects monitor macroinvertebrates and periphyton from 108 reference or "least impacted" sites throughout the state. Seventeen Sentinel sites are sampled annually, while an additional 91 sites are sampled on a rotating basis for the Biological Monitoring Project. Since 2009, Ecology has collected samples from 483 reference site visits throughout Washington. This monitoring has provided a base of information describing biological characteristics of reference or "least impacted" condition. Additionally, since 2009 the Watershed Health Monitoring Project has sampled macroinvertebrates from over 616 randomly selected sites throughout Washington. Using a Washington master sample list and a probabilistic sampling design, 50 sites from each of seven Status and Trends Regions (STRs) throughout the state are sampled on a rotating basis (i.e. 1-2 STRs sampled per year). Each time an STR is revisited, 25 new randomly selected sites are sampled and another 25 sites visited previously are sampled again.

One of the goals of Ecology's monitoring program is to develop biocriteria using benthic macroinvertebrates, and to apply these biocriteria appropriately within the framework of the CWA. Two types of numeric biocriteria, based on biometrics and predictive modeling, are being developed for use throughout Washington State. When used alone or together, these criteria can give a statistically defensible case for determining the overall condition of a stream or waterbody.

Ecology now uses macroinvertebrate samples to assess potential streams for listing on the state's 303(d) list.

## Stream Flow Monitoring

Ecology manages 82 streamflow monitoring stations across the state. (Shedd, J.R. 2022. DRAFT) All of the 82 stations consist of automated, telemetered capabilities providing near real time reporting. Streamflow, as well as other parameters depending on the configuration of individual stations are presented on Ecology's web site.

Washington's *Comprehensive Monitoring Strategy* recommends additional stream gages be installed on ungaged mainstem rivers and major tributary streams in priority (i.e., salmon-critical) watersheds first, but in all watersheds eventually.

## Invasive Aquatic Plant Monitoring

Ecology has been monitoring the occurrence and distribution of aquatic plants in lakes and rivers throughout the state since 1991. The program's main objective is to track aquatic plant

community changes, concentrating on invasive non-native species such as Eurasian milfoil. Other objectives are to provide technical assistance on aquatic plant identification and control of invasive species, and to conduct special projects evaluating the impacts of invasive non-native species and their control. To date, aquatic plant (macrophyte) data have been obtained from approximately 550 lakes, reservoirs, and rivers across Washington. Monitoring locations are targeted each year based on requests or problems identified by regional office staff and local cooperators.

## **Beach Environmental Assessment, Communication and Health (BEACH) Program**

EPA initiated the Beaches Environmental Assessment, Communication, and Health (BEACH) Program in response to the passage in 2000 of the BEACH Act. The Act amends the Clean Water Act and authorizes EPA to appropriate funds to states for the development of monitoring and notification programs to provide a more uniform system for protecting the users of marine waters.

In Washington, a BEACH Coordinator manages the development and implementation of the Program, including facilitating the Inter-agency BEACH Committee. The committee includes Ecology, the state Department of Health, and nine county health jurisdictions including Grays Harbor, Tacoma-Pierce, Seattle-King, Whatcom, Clallam, Jefferson, Island, Thurston and Kitsap.

The monitoring program focuses on sampling for indicator bacteria at about 60 public marine beaches in Washington State. Ecology implements the BEACH program collaboratively with the Department of Health and with the assistance and cooperation of local county health jurisdictions, non-profit organizations, a tribal government volunteers and universities. The information is communicated to the public on Ecology's BEACH Program website, Ecology's social media websites, GovDelivery email notification, and by signs posted on the beaches.

## **Freshwater Fish Contaminant Monitoring Program**

The Freshwater Fish Contaminant Monitoring Program (FFCMP) was developed to address continuing concerns about toxic compounds in Washington's aquatic environments. Historical monitoring efforts identified many areas where levels of contamination were high enough to harm humans and wildlife, sometimes resulting in fish consumption advisories issued by the state Department of Health. The goal of the FFCMP is to provide information to resource managers and the public about the status of toxic contamination in edible fish tissue from freshwater lakes, rivers, and streams that have not yet been monitored, or to track trends over time in areas that are undergoing cleanup activities. The FFCMP has conducted exploratory monitoring to identify occurrences of toxic contamination in fish tissue since 2003 in lakes, reservoirs, and rivers annually.

## **Lake/Reservoir Monitoring**

*National Lakes Assessment*

Ecology participated in EPA's National Lakes Assessment (NLA) in the summers of 2007, 2012, 2017, and 2022. Sites were randomly selected using a probability-based sampling design which resulted in locations throughout the state. These surveys contribute to a national assessment of lake water quality. These surveys help to assess current conditions, evaluate change over time, and monitor the impacts of key stressors on nationwide lake environments (NLA; EPA 2012).

Sites sampled include:

- 30 lakes in 2007
- 33 lakes in 2012
- 50 lakes in 2017
- 27 lakes scheduled for 2022

### *Aquatic Plants Monitoring*

Aquatic plant monitoring, focused on invasive species, takes place at 40 to 60 lakes per year. Results are maintained in a publicly accessible database

<http://www.ecy.wa.gov/programs/eap/lakes/aquaticplants/index.html>.

### *Lakes Coastal Atlas Module*

Information about lakes was added to Ecology's Coastal Atlas database in 2014. The lakes module provide access to Ecology's lake data.

### *Toxic Algae Program*

Ecology's Water Quality Program hosts the toxic algae program. In 2005, the Washington State Legislature established funding for an algae control program and asked the Washington Department of Ecology (Ecology) to develop the program. Reducing nutrient input to lakes is the only long-term solution to prevent algae blooms. However, the amount of money available for this program (about \$250,000 per year) is not enough to fund comprehensive lake-wide and watershed-wide nutrient reduction projects. Instead, the goal of the program is to provide local governments with the tools they need to manage algae problems. The program targets blue-green algae (also known as cyanobacteria) because these algae pose a health risk to humans, pets, and livestock.

<http://www.ecy.wa.gov/programs/wq/plants/algae/index.html>

## **Groundwater Monitoring**

There is currently no state-level program to monitor ambient groundwater quality trends over time in Washington, and no long-term funding source has been identified to date to support such an effort. In late 2007, Ecology's Watershed Advancement Group (WAG) convened an internal agency workgroup to develop a strategy for implementing a state-level ambient groundwater monitoring and reporting program to support the sustainable management of Washington's groundwater resources. The resulting 2008 report, adopted by WAG, laid out a

phased approach which we are using as a road map to form a foundation for a statewide program, in the absence of dedicated funding. To date, accomplishments include:

- Inventory and consolidation of Ecology groundwater monitoring data (ongoing).
- Standardization of data collection and quality assurance procedures (ongoing).
- Development of an agency-level groundwater data management interface for Ecology's EIM system (completed).
- Creation of an agency-level web site to improve access to state groundwater information (completed).

Future steps include:

1. Capture and, where appropriate, migration of external groundwater data to Ecology's EIM system.
2. Evaluation of existing ambient groundwater data.
3. Expansion of regional water level monitoring networks already in operation.
4. Establishment of a state-level groundwater status and trends monitoring program, by compiling data from an established network of index wells.

**Following is a summary of current groundwater monitoring activities.**

### **Sumas-Blaine Aquifer**

The Environmental Assessment Program (EAP) has been collecting nitrate in groundwater data in the Sumas-Blaine Aquifer (SBA) in Whatcom County since the mid-1990's. Results of the first aquifer wide sampling by Ecology were reported by Erickson (1998). Groundwater monitoring, primarily at domestic monitoring wells for nitrate in the SBA has been ongoing since then. In 2021, Ecology installed six dedicated groundwater monitoring wells in Whatcom county near the U.S.-Canadian Border. The SBA is an international transboundary aquifer under, managed under a joint agreement between the U.S. and Canada. The SBA is also one of ten North American UNESCO Transboundary Aquifer Systems (TAS) monitored under the International Shared Aquifer Resource Management Initiative (ISARM) and described by Rivera (2015).

### **Lower Yakima Valley Aquifer**

The Lower Yakima Valley has been the site of known groundwater nitrate contamination. Starting in October 2008, the Yakima Herald Republic ran a series of article entitled "Hidden Wells, Dirty Water" to highlight nitrate in drinking water used in large part by low income, farm families. At the request of Yakima Valley and in cooperation with the Department of Ecology the Lower Yakima Valley Groundwater Management Area advisory committee was formed. The committee has initiated sampling of groundwater at 170 domestic groundwater wells and in 2019 installed 30 dedicated groundwater monitoring wells to assess nitrate distribution and concentration in groundwater throughout the Lower Yakima Valley (PGG, 2019).

<https://ecology.wa.gov/Water-Shorelines/Water-quality/Groundwater/Protecting-aquifers/Lower-Yakima-Valley-groundwater>

## **Statewide Groundwater Nitrate Assessment**

A Statewide review of groundwater nitrate contamination has been compiled and is available at the “Nitrate groundwater data assessment” at the Ecology website. In the webpage, the Sumas-Blaine Aquifer, Lower Yakima Valley, and Columbia River Basin are highlighted as critical areas of concern. A detailed assessment of nitrate in groundwater throughout Washington State is reported in “Washington Nitrate Prioritization Project” reported by Morgan (2016).

<https://ecology.wa.gov/Water-Shorelines/Water-quality/Groundwater/Nitrate-data-assessment>

## **EAP Nitrate Monitoring and Reporting**

The Environmental Assessment Program is currently providing water quality data for the Sumas-Blaine Aquifer and is planning on adding the Lower Yakima well information to the submissions to the National Ground-Water Monitoring Network (NGWMN). The NGWMN is an aggregation of wells selected from Federal, multi-State, State, Tribal, and local groundwater monitoring networks completed in selected aquifers across the nation. The program is coordinated and administered by the United State Geological Survey (USGS). The program is summarize in ACWI (2013).

<https://cida.usgs.gov/ngwmn/>

## **Intensively Monitored Watersheds**

The Intensively Monitored Watersheds (IMW) monitors fish, stream habitat and water quality to better understand the complex relationships between salmon habitat restoration actions and the response of fish habitat, and multiple life stages of targeted salmonid species (parr, smolts, and spawners). The cause-effect relationships between restoration actions and salmon response is needed to assess the effectiveness of habitat restoration actions implemented to restore salmon. Concentrating and integrating monitoring and research efforts at a few locations may enable enough data on physical and biological attributes of the system to be collected to develop a comprehensive understanding of the factors affecting salmon production in fresh water. Ecology participates in four IMWs in western Washington: Skagit River Estuary, Strait of Juan de Fuca, Hood Canal, and Lower Columbia. Each of these IMWs is built upon existing fish monitoring programs conducted Washington Department of Fish and Wildlife, the Lower Elwha Tribe, or the Skagit River Systems Cooperative. Other participated entities include: NOAA-Northwest Fisheries Science Center and Weyerhaeuser.

## **Water Quality Grants Projects**

Ecology grant projects capture environmental outcomes and performance measures in the grant and loan competitive application process and in funding agreements. The program does



not require water quality monitoring, but where monitoring is conducted under a grant or loan, monitoring data must be entered into EIM as a funding condition. The program coordinates with the technical arm of Ecology regarding BMP effectiveness monitoring and use of this data to help quantify benefits. The grant program has integrated “post project assessment” language in agreements that ensures follow-up to review the status and capture a summary of ongoing environmental outcomes or water quality improvements after 3 years.

## **Stormwater Work Group**

The Stormwater Work Group (SWG) is a coalition of federal, tribal, state, and local governments; business; environmental; agriculture; and research interests that was convened at the request of the Puget Sound Partnership and Department of Ecology to develop a Stormwater Monitoring and Assessment Strategy for the Puget Sound Region. The strategy is intended to provide a coordinated, integrated approach to quantifying the stormwater problem in Puget Sound and to help us efficiently and effectively manage stormwater to reduce harm to the ecosystem.

The SWG has numerous subgroups overseeing implementation of regional stormwater monitoring and developing recommendations. Each subgroup has its own purpose and goals. The chair, staff, and meeting schedule support each work group in achieving its goals. Subgroups include:

- Agricultural Runoff
- Effectiveness Study Selection
- Small Streams Status and Trends Oversight
- Marine Nearshore Status and Trends
- Pooled Resources Oversight
- Source Identification and Diagnostic Monitoring
- Roads and Highways

## **Other Monitoring Programs**

### **U.S. Geological Survey**

The U.S. Geological Survey (USGS) conducts monitoring for the National Water Quality Assessment (NAWQA) Program. Data collected from NAWQA are used to summarize the status and trends of the surface water and groundwater quality, describe the processes affecting water quality and aquatic ecology, and provide timely results to watershed managers, policy makers, and the public.

The USGS also operates and maintains the National Streamgaging Network collecting long-term streamflow data nationwide. Although the National Streamgaging Network is operated primarily by the USGS, it is funded by a partnership of federal, state, tribal, and local agencies.

USGS also manages the National Streamflow Information Program which was created in response to Congressional and stakeholder concerns about (1) a loss of streamgages, (2) a

disproportionate loss of streamgages with a long period of record, (3) the inability of the USGS to continue operating high-priority streamgages when partners discontinue funding and (4) the increasing demand for streamflow information due to new resource-management issues and new data-delivery capabilities.

## **U.S. Forest Service**

The U.S. Forest Service conducts monitoring of aquatic resources in support of two broad scale plans: (1) the Northwest Forest Plan (i.e., Western Washington) and (2) Pacfish/Infish Biological Opinion (PIBO). Both plans require implementation and effectiveness monitoring of management activities that address issues with the Endangered Species Act. The goal of the regional monitoring program under the Northwest Forest Plan (NWFP) is to evaluate its effectiveness in achieving management objectives which include restoring and maintaining the ecological integrity of watersheds and aquatic ecosystems. The individual forest plans also have implementation and effectiveness monitoring of BMPs. Each national forest produces a Forest Plan Monitoring Report each year that covers all the implementation and effectiveness monitoring accomplished. Additionally, to assess the effectiveness of the Legacy Roads and Trails Program in decreasing the potential risk of forest roads impacting water quality, the US Forest Service – Rocky Mountain Research Station is monitoring 47 sites across the western United States.

## **Habitat Conservation Plans**

Habitat Conservation Plans (HCPs) are administered by the National Oceanic and Atmospheric Administration (NOAA) Fisheries and the U.S. Fish & Wildlife Service. Most of the HCPs in Washington are focused on the conservation of salmonids. These include programs administered under the Endangered Species Act, the Federal Power Act, the Clean Water Act, and the Magnuson-Stevens Act, among others. The HCP program provides policy and technical expertise to non-federal entities that want to develop HCPs.

Monitoring is a mandatory element of all HCPs and is part of the permittee's implementation obligation. The scope of a monitoring plan is directly related to the significance of the HCP's biological impacts. Monitoring data are needed to ensure proper compliance with an HCP and to determine whether biological goals and objectives are being met. Monitoring serves not only to ensure compliance and gauge the effect and effectiveness of HCPs, it also informs choices under the adaptive management provisions and assists in redefining biological goals. Applicants work with the Services to determine the level of monitoring appropriate for their specific HCP.

Four HCPs have been issued by NOAA Fisheries in Washington for the protection of anadromous salmonids.

## **Shellfish Growing Area Monitoring**

The Office of Environmental Health and Safety of the Washington State Department of Health (DOH) is mandated to evaluate commercial shellfish growing areas to determine if shellfish are safe to eat. To this end, DOH operates a variety of monitoring programs that track conditions in

marine waters. One program monitors the level of the marine biotoxins Paralytic Shellfish Poison (PSP), Diarrhetic Shellfish Poison (DSP) and Amnesic Shellfish Poison (ASP) in mussels sampled biweekly from sentinel mussel cages or scraped off substrate from 100-110 locations throughout Puget Sound and the coastal estuaries. In addition, commercial shellfish species from active commercial harvest areas are sampled. When biotoxin levels in the mussels or commercial shellfish species from individual areas exceed the appropriate FDA levels, DOH informs the public and orders a halt to commercial/recreational harvest. DOH also operates a phytoplankton monitoring program that acts as an early warning system for Harmful Algal Bloom (HAB) events. This network helps the DOH to prioritize where shellfish samples are collected and to test samples more frequently during HAB events resulting in more effective closures that better protect public health.

DOH also operates another monitoring program to support the classification of commercial shellfish areas. At present, there are 115 classified growing areas. DOH uses standards and guidelines set by the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish to monitor and classify the growing areas. Classification is based on analysis of marine water quality, meteorology, hydrography, and an intensive survey of shoreline and uplands for fecal pollution sources. An area cannot be approved for harvest if there are significant pollution threats despite acceptable marine water quality.

Once classified, all active growing areas are regularly monitored. Marine water samples are collected throughout the year. Shoreline surveys are conducted less frequently, but each year dozens of shellfish growing areas are surveyed. During those surveys, all potential pollution sources that may impact water quality are evaluated. The purpose of continued marine water sampling and shoreline surveys is to make sure that growing areas continue to meet the standards associated with their classification, to modify classifications when needed, and to notify the responsible agencies about identified and potential pollution sources. If a commercial shellfish growing area has its classification downgraded due to nonpoint pollution, state law calls for local governments to form a shellfish protection district within 180 days. The shellfish protection district is tasked with developing a pollution control plan (shellfish closure response plan) in order to address the pollution sources and improve water quality.

## **Salmon Recovery Act**

The Salmon Recovery Funding Board funds several types of monitoring related to salmon recovery. These include project effectiveness monitoring, intensively monitored watersheds for validation monitoring, and implementation monitoring of the funded projects. In the past, they funded habitat status and trends monitoring. This is now funded by the Department of Ecology.

## **Strategy to Recover Salmon**

In 1999, the State of Washington Joint Natural Resources Cabinet published the statewide strategy to recover salmon (JNARC, 1999). To evaluate success of the recovery strategy, the state uses the Salmon Recovery Scorecard published in the biennial *State of the Salmon* report. The Scorecard essentially is the state's business plan for salmon recovery. It's a performance

management system for tracking data, measuring progress, and changing course where needed. However, of the 18 indicators tracked on the scorecard, only one is an outcome indicator related to nonpoint pollution sources. Scorecard element E-2 tracks the percentage of WRIsAs that have acceptable scores according to Ecology's Water Quality Index (WQI).

The WQI is represented by numbers ranging from 1 to 100, indicating the general water quality at each station. The higher index numbers are indicative of better water quality. Multiple constituents of the water quality measured are combined, and the results are aggregated to produce a single score for each sample station. The WQI was calculated for the long-term monitoring locations in each WRIA sampled by Ecology in 2002. Results show that 5% of the WRIsAs are in poor condition, 61% are fair, and 34% are considered in good condition.

## **Aquatic Nuisance Species Management Plan**

The purpose of the Washington State Aquatic Nuisance Species (ANS) Management Plan is to coordinate all ANS management actions currently in progress within Washington, and to identify additional ANS management actions, especially those relating to ANS animals. The development of a state management plan is called for in Section 1204 of the National Invasive Species Act of 1996, which provides an opportunity for federal cost-share support for the implementation of state plans approved by the National Aquatic Nuisance Species Task Force. Management actions are undertaken and funded by the responsible state agencies. The Washington State Plan, published in December 1998, was developed by the Washington State Aquatic Nuisance Species Planning Committee.

Several agencies are responsible for current efforts to monitor for ANS populations already present in Washington. The Washington State Aquatic Nuisance Species Planning Committee continues to revise the monitoring program to quickly detect new ANS introductions or the spread of those already present. They are working to collect accurate information about which ANS are present, where they are present, and an estimate of their population numbers and/or densities. The Committee established the following "Strategic Action": Monitor waters that are vulnerable to new ANS introductions and track the distribution of existing ANS populations. Survey Washington lakes, rivers, estuaries, wetlands, and coastlines on a periodic basis to establish an accurate assessment of the presence of non-native species that have become, or have the potential to become, nuisance species, and make these data available statewide.

## **Surface Water Monitoring for Pesticides in Salmon-Bearing Streams**

WSDA's Surface Water Monitoring Program for Pesticides in Salmon-Bearing Waters is entering its 20<sup>th</sup> year of existence. The study assesses pesticide-presence in salmon-bearing streams during a typical pesticide use period (March – September). Currently, the assessment evaluates samples for more than 150 pesticide active ingredients and their breakdown products, and compares those results with known toxicity criteria. Sampling at a few select sites continues into November to assess the persistence of pesticides that remain in the environment beyond the application season. Also, at a few select sites water samples are collected for nutrient analysis (ammonia, nitrite+nitrate, orthophosphorus, and total phosphorus) in addition to

pesticide analysis to provide an interpretive benefit for determining possible pathways of pesticide movement. The data generated by the monitoring program is used by WSDA, the U.S. Environmental Protection Agency, (EPA), the National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service, and the U.S. Fish and Wildlife Service (USFWS) to refine exposure assessments for pesticides registered for use in Washington State. Understanding the fate and transport of pesticides allows regulators to assess the potential effects of pesticides on endangered salmon species while minimizing the economic impacts to agriculture.

### **Pesticide Stewardship Partnerships**

Beginning in 2020 WSDA initiated several Pesticide Stewardship Partnerships aimed at pairing education and outreach activities with water monitoring at a watershed level. This work was conducted in cooperation internally with WSDA's Technical Services and Education unit, and externally with conservation districts, WSU and agricultural pesticide dealers. Ambient surface water monitoring results were used to direct education efforts to particular watersheds, as well as additional water sampling activities to refine exposure estimates from off-target pesticides. Additional sampling activities that occur depend on the location, but generally consist of one of the following; 1) composited 24-hour water samples, 2) grab samples collected in paired watersheds with varying BMP participation, or 3) grab samples collected in a stream where data is lacking. Currently, these activities are ongoing in Chelan (Brender Creek), Whitman (Kamiach, Thorn and Dry Creek), and Okanogan (Whitestone Creek) counties.

### **Tribal Monitoring**

Most of the monitoring reported by tribal governments has a geographic focus at the watershed level and, to a lesser degree, upon the area within the jurisdictional boundaries. More information on monitoring programs conducted by tribal governments is available in Crawford et al. (2003).

### **Local Government Monitoring**

Most of the monitoring conducted by local governments has a geographic focus at the watershed level and, to a lesser degree, upon the area within the local government's jurisdictional boundaries. Only 26% of local governments surveyed for the Comprehensive Monitoring Strategy (2002) had been monitoring for more than five years. More information on monitoring programs conducted by local governments is available in Crawford et al. (2003).

### **Effectiveness Monitoring**

Effectiveness monitoring uses a combination of monitoring types to evaluate whether specified activities have achieved the desired effect. It is an essential component to the adaptive management process when BMPs are implemented to control human-caused pollution. It is also one of the several required components when (1) we develop Total Maximum Daily Loads (TMDLs) or other watershed-based pollution control plans, or (2) state and federal funds are used to implement nonpoint-source pollution control strategies.

In Washington State, the Department of Ecology is the agency primarily responsible for implementing the requirements and provisions of the Clean Water Act, including monitoring the effectiveness of water pollution cleanup plans. In 2013, Ecology released the guidance document *“Guidance for Effectiveness Monitoring for Total Maximum Daily Loads in Surface Waters”* (Collyard, S., 2013). This document will serve as a guide for determining the effectiveness of TMDL projects and other water quality clean-up efforts, and informing adaptive management.

Effectiveness monitoring evaluates whether management activities have achieved the desired effect. Rather than monitoring the effectiveness of a particular project, it is the intent of Ecology’s NPS effectiveness monitoring program to measure the cumulative effect of all activities in the watershed.

Effectiveness monitoring is a fundamental component of any water clean-up project and its associated implementation activity. It is an important tool in the adaptive management process because it informs and allows restoration strategies to be adjusted if clean-up goals are not being achieved. If implemented thoughtfully, it will increase the likelihood that activities to control NPS pollution will succeed.

The benefits of effectiveness evaluation include:

- More efficient allocation of funding.
- Optimization in planning/decision-making (program benefits).
- Watershed recovery status (how much restoration has been achieved, how much more effort is required).
- Adaptive management or technical feedback to refine restoration treatment design and implementation.

The effectiveness evaluation addresses four fundamental questions about restoration or implementation activity:

- Is the restoration or implementation work achieving the desired goal of significant improvement?
- How can restoration or implementation techniques be improved?
- Is the improvement sustainable?
- How can the work become more cost-effective?

## **Effectiveness Monitoring of the Forest Practices Rules**

Ecology is participating in a monitoring program to evaluate the performance of the riparian management prescriptions in the Washington Forest Practices Rules. Statutes and rules governing the Forests & Fish program include a multi-stakeholder monitoring component that systematically evaluates the effectiveness of the forest practices rules. The program includes a full time administrator, a scientific monitoring committee, independent scientific peer review, and a policy committee.

To date, the program has completed more than 28 peer-reviewed monitoring and effectiveness studies. Seventeen studies are under way and several more are in the process of being scoped. An additional \$5.9 million/biennium for studies and science is currently being considered by the Washington Legislature and supported by all of the Forests & Fish collaborators. DNR established a compliance monitoring program (CMP) in 2006 that is now in its ninth biennial measurement cycle. The compliance monitoring team includes specialists from Ecology.

The CMP made significant modifications in the 2014-15 study design to increase precision in statistical estimates for each prescription type observed. The CMP reports on riparian protection and road construction and maintenance activities -- the two areas of forest practices most likely to affect water quality. There are 5 rule categories reviewed during a standard sample; riparian protection, wetland protection, water typing, road construction, maintenance, and abandonment near water, and harvest or road construction on unstable slopes. Periodic samples and emphasis samples are also conducted, with the most recent being unstable slopes (2020-2021). Each time, substantial overall compliance with the rules exceeds 90% or better.

For more information on the compliance monitoring program see

<https://www.dnr.wa.gov/programs-and-services/forest-practices/rule-implementation>.

Forest practices research examines the effectiveness of current and alternative riparian buffering strategies in protecting key water quality (stream temperature, water chemistry, sediment), habitat/channel stability (large woody debris [LWD]), and riparian (vegetation type, mortality rates, LWD recruitment) resources. The following table illustrates the type of projects and the current pace of monitoring the effectiveness of Washington's forestry rules. See the discussion in Chapter 3 for a more detailed discussion of the Forest Practices Rules and the adaptive management program.

Table 8 Projects-Forest Practice Rules Effectiveness

<b>Projects Completed in 2019-2021</b>
Buffer Integrity - Shade effectiveness (amphibian response)
Type N Experimental Buffer Treatment Project - Hard Rock- Amphibian Genetics, Nutrients, Temperature – (longer-term effects and recovery pattern analysis)
Riparian Hardwood Conversion (efficacy – post year 5 and 10)
Eastside Type F Riparian Effectiveness Monitoring (BTO Add-on)
Westside Type N Buffer Characteristics, Integrity, and Function (BCIF)

Wetland Intrinsic Potential (WIP) Tool
Extensive Alternative (remote sensing pilot study)
<b>Projects in Study Design or Initial Field Phase in 2022</b>
Eastside Type N Riparian Effectiveness
Unstable Slopes Criteria – Object-based Landform Mapping
Unstable Slopes Criteria – Shallow Landslide Susceptibility
Unstable Slopes Criteria – Shallow Landslide Runout
Road Prescription-Scale Effectiveness Monitoring
Type N Experimental Buffer Treatment Project in Hard Rock Lithologies, Phase III – Amphibian Demographics
Deep Seated Research Strategy – Toolkit Development
Riparian Characteristics and Shade Response
Forested Wetland Effectiveness Study
Extensive Monitoring: Type F/N Stream Temperature
<b>Projects Completed or expected in 2022-2023</b>
Unstable Slopes Criteria – Object-based Landform Mapping
Type N Experimental Buffer Treatment Project in Hard Rock Lithologies Phase II (extended) h)
Extensive Monitoring: Type F/N Stream Temperature
Type N Experimental Buffer Treatment Project in Soft Rock Lithologies (initial 2 year post harvest response)
Riparian Literature Synthesis Project



<b>Ongoing Projects expected to be completed by 2025</b>
Type N Experimental Buffer Treatment Project in Hard Rock Lithologies, Phase III – Amphibian Demographics
Forested Wetlands Effectiveness Monitoring Study
Unstable Slopes Criteria – Shallow Landslide Susceptibility
Unstable Slopes Criteria – Shallow Landslide Runout
<b>Projects to be completed or designed after 2025</b>
Eastside Type N Riparian Effectiveness
Westside Type F Riparian Prescription Monitoring
Road Prescription-Scale Effectiveness Monitoring
Wetland Management Zone Effectiveness Monitoring
Forested Wetlands Effectiveness Monitoring Study
Unstable Slopes Criteria – Management Susceptibility Modeling
Deep Seated Research Strategy – Mapping Objectives
Deep Seated Research Strategy – Pilot Classification
Deep Seated Research Strategy – Groundwater Modeling
Deep Seated Research Strategy – Physical Modeling
Deep Seated Research Strategy – Landslide Monitoring
Temperature and Amphibians in discontinuously flowing Np reaches
<b>Research priorities after 2025</b>
Wetlands Management Zone Effectiveness Monitoring
Wetlands Intensive Monitoring

Road Sub-Basin-Scale Effectiveness Monitoring (Resample)
Watershed Scale Assessment of Cumulative Effects (roads and riparian)

As these research projects are completed their findings are provided to the Forests and Fish Policy Committee. The Policy committee then determines what action, including changes in regulations or further clarifying research, should be recommended to the State's Forest Practices Board.

## Quality Assurance

Most of the monitoring activities conducted by Ecology identify the primary use of the data in a Quality Assurance (QA) Project Plan. Ecology's Executive Policy 22-01 states that "A Quality Assurance Project Plan is prepared for each environmental study/activity that acquires or uses environmental measurement data." It further states that "This policy applies to environmental data collection studies/activities conducted or funded by Ecology." The *Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies* (Ecology, 2004b) describes 14 elements to be addressed in a plan and provides supporting information and examples relevant to the content of each element.

Quality assurance and quality control responsibilities for management and staff are described in the most recent *Ecology Quality Management Plan*, which can be found at <http://www.ecy.wa.gov/programs/eap/quality.html>. EPA's approval of the *Quality Management Plan* delegates to Ecology the authority to review and approve QA Project Plans prepared in that agency.

*Washington State's Water Quality Assessment* has specific quality assurance requirements identified in Water Quality Policy 1-11. Policy 1-11 directs the reader to several sources for guidance on how to develop the proper QA Project Plan.

- Washington State Department of Ecology: *Guidelines for Preparing Quality Assurance Plans for Environmental Studies*, publication 04-03-030, revised 2016 (available at <https://apps.ecology.wa.gov/publications/SummaryPages/0403030.html>).
- *Sediment Sampling and Analysis Plan Appendix: Guidance on the Development of Sediment Sampling and Analysis Plans Meeting the Requirements of the Sediment Management Standards*, December 1995 Draft.
- Washington State Department of Natural Resources: *Timber/Fish/Wildlife Monitoring Program Method Manual for the Stream Temperature Survey*, TFW-AM9-99-005, DNR publication 107.
- U.S. Environmental Protection Agency: *The Volunteer Monitor's Guide To Quality Assurance Project Plans*, EPA 841-B-96-003.

In 2004, the Washington State Legislature passed the Credible Data Act (engrossed substitute Senate Bill 5957) with the intent to ensure that credible water quality data are used as the basis for the assessment of the status of a waterbody relative to the surface WQ Standards.

The Act requires Ecology to use credible information for:

- Determining whether any water of the state is to be placed on or removed from any Section 303(d) list.
- Establishing a Total Maximum Daily Load (TMDL) for any surface water of the state.
- Determining whether any surface water of the state is supporting its designated use or other classification.

The Act further states that data interpretation, statistical, and modeling shall be those methods that are generally acceptable in the scientific community as appropriate for use in assessing the condition of water.

In collecting and analyzing water quality data for any of these purposes, the Credible Data Act specifies that data will be considered credible if:

- Appropriate quality assurance and quality control procedures were followed and documented in collecting and analyzing water quality samples.
- The samples or measurements are representative of water quality conditions at the time the data were collected.
- The data consist of an adequate number of samples based on the objectives of the sampling, the nature of the water in question, and the indicators being analyzed.
- Sampling and laboratory analysis conform to methods and protocols generally acceptable in the scientific community as appropriate for use in assessing the condition of the water.

## **Data Management**

### **Environmental Information Management System (EIM and MyEIM)**

The Environmental Information Management System (EIM) is the Department of Ecology's main database for environmental monitoring data. EIM is a database containing data collected by the Washington State Department of Ecology and affiliates such as local governments and cleanup sites. EIM contains records on physical, chemical, and biological analyses and measurements. Supplementary information about the data (metadata) is also stored, including information about environmental studies, monitoring locations, and data quality. In 2013, EIM was upgraded and now includes a new search app with an improved map. Many fields were updated in the database and the ability to accept time series data from field instruments was added.

Finally, MyEIM was added to EIM. It is an advanced toolset for searching and analyzing data. MyEIM replaced SEDQUAL, the former sediments database. MyEIM allows users to customize searches, analyze chemical and biological data, and map EIM data.

<http://www.ecy.wa.gov/eim/>

## **Water Quality Assessment Search Tool**

*Washington State's Water Quality Assessment* uses the Water Quality Assessment Search Tool to manage the five category determinations and any supporting data analysis or information for waterbody segments. Data come from a variety of Ecology sources, as well as sources outside of Ecology. The search tool can be used to query and download assessment results. The search tool also links to the Water Quality Atlas, which is a mapping tool where users can plot assessment results with other spatial data sets or create maps of assessment results.

<https://apps.ecology.wa.gov/ApprovedWQA/>

<https://apps.ecology.wa.gov/waterqualityatlas/>

## **Ecology Administrative Grants and Loans Database (EAGL)**

EAGL is an integrated web-based grant and loan management system. EAGL allows Ecology's grant and loan clients to complete grant applications, submit payment requests with progress reports, collect specific BMP implementation data, submit closeout reports, and request amendments online. The system provides a streamlined application and reporting process for both external clients and Ecology staff. EAGL is used to manage State Revolving Fund loans; Centennial Grants; and Clean Water Act Section 319 Grants.

<https://ecology.wa.gov/About-us/Payments-contracts-grants/Grants-loans/Grant-loan-guidance>

## **Laboratory Information Management System**

The Laboratory Information Management System (LIMS) is a database that contains analytical data for samples analyzed by Ecology's Manchester Environmental Laboratory. It is also a software system that provides capabilities in project management, sample scheduling, sample receiving, and sample control. The LIMS also interfaces with analytical instrumentation allowing direct upload of data results. The LIMS provides a platform allowing for statistical analyses of data, quality assurance monitoring and data review, approval and reporting in both electronic and hardcopy formats.

## **The Pacific Northwest Water Quality Data Exchange**

The Pacific Northwest Water Quality Data Exchange (Exchange) comprises a number of related information management projects that collectively seek to facilitate the aggregation of and access to a comprehensive source of data related to water quality in the Pacific Northwest. The project is supported by funds allocated from the EPA Network Challenge Grant program, and

with these projects the States are applying the concepts embodied in the National Environmental Information Exchange Network.

<https://exchangenetwork.net/data-exchange/pacific-northwest-water-quality-exchange/>

## **Coastal Atlas**

The Coastal Atlas contains information about Washington's marine shorelines and the land areas near Puget Sound, the outer coast, and the estuarine portion of the Columbia River, including public access and beach closures.

<https://apps.ecology.wa.gov/coastalatlas/>

## **TMDL and Nonpoint Source Implementation Tracking Database**

As stated in Chapter 3, tracking implementation data is important for accountability, transparency, effectiveness monitoring, and adaptive management. At a minimum, Ecology will track the following implementation data for TMDLs and STI projects:

- The location of nonpoint source problems identified by Ecology during watershed evaluations.
- Sites that Ecology contacted after the evaluations.
- The BMPs that were implemented in the watershed and their location.

A specific description of the BMPs that are implemented at a site is the most important information to track to support effectiveness monitoring efforts and promote accountability and transparency. For BMPs implemented with funds from an Ecology grant, specific information is collected on our BMP approval form. For other BMPs implemented in support of a TMDL or STI, Ecology will collect data consistent with the BMP approval form. Additionally, we will work with partners to promote the collection of consistent implementation data and share that data with partners and the public.

Finally, to support implementation tracking, Ecology is working to develop a TMDL and Nonpoint implementation database.

## Chapter 8: Groundwater

A majority of Washington State citizens (approximately 60%) get drinking water from groundwater. Not counting Seattle, which is supplied by a surface water reservoir, the percentage of citizens who rely on groundwater is even higher. In fact, most rural residents get water from groundwater wells, although some get water from springs and surface water. A significant number of wells in specific areas of the state have been shown to violate standards. Impacts to groundwater are not distributed evenly throughout the state.

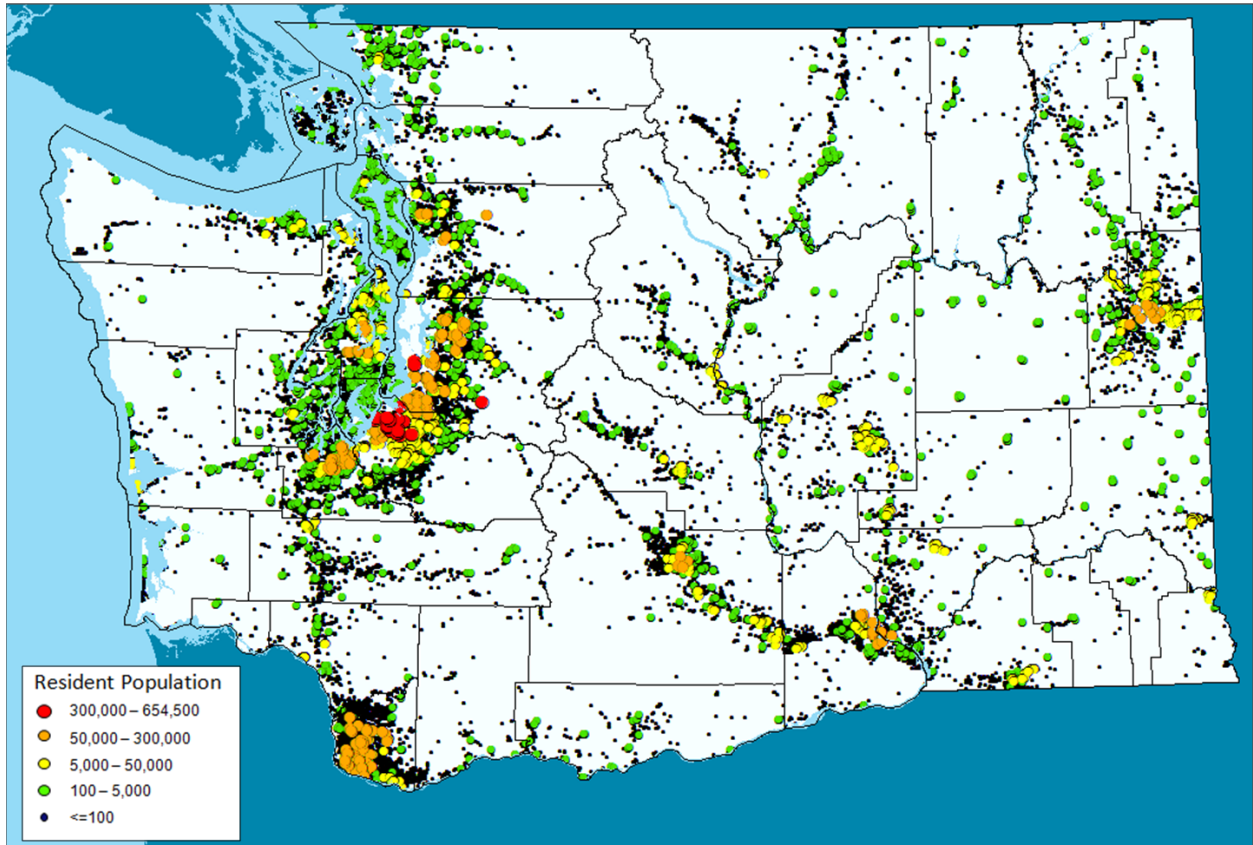


Figure 3 Public water supply system groundwater sources

Because groundwater is recharged from precipitation and snow melt, various chemicals and constituents of other materials used or dumped on the ground's surface can infiltrate into the ground, and pollute groundwater. Once these pollutants enter groundwater, they can be difficult to detect by taste or smell, and difficult to remove. The pollutants can then end up in drinking water and water used for irrigation. Because groundwater also supplies many of our rivers and streams, especially in the late summer, pollutants such as nutrients in groundwater can end up in those water bodies and negatively affect surface water quality.

The most typical nonpoint pollutants associated with groundwater pollution are nitrates, pathogens, and chemical constituents of pesticides, fungicides and herbicides. Failed residential septic systems, forestry and agriculture are common sources of these pollutants.

The affects of nonpoint source pollution of groundwater is costly. Costs are typically incurred when wells must be deepened or replaced, treatment systems are installed and maintained, water delivery infrastructure to alternative sources are developed, and when bottled water has to be supplied to affected citizens until permanent clean water sources can be secured.

For example, millions of dollars have been spent to address nitrate contamination of groundwater in Washington State. Royal City alone had to remove an existing well due to high nitrates and then construct a new well at a cost of nearly \$1.5 million dollars (Washington State Dept. of Health, 2012).

## **Causes of Nonpoint Pollution in Groundwater**

Cities, rural residences, agriculture, and forestry can all contribute to nonpoint pollution of groundwater. Pesticides and fertilizers are used on crops, lawns, park fields, and golf courses. Animal manure is used as a fertilizer, and human waste is delivered to the ground by septic systems or land application of biosolids. Constituents of fertilizers, pesticides, and septic waste have all migrated to groundwater, causing groundwater pollution in multiple areas of the state. There are demonstrably many locations in various areas of the state where nitrate has exceeded 10 mg/L in groundwater. Over-application of commercial fertilizers and manure in sensitive areas is a nonpoint nitrate contamination source.

## **Regulatory Framework Nonpoint Pollution Control for Groundwater**

### **Water Pollution Control Act**

Under Chapter RCW 90.48 RCW, Ecology has authority for water pollution control. Under RCW 90.48.030, Ecology has the jurisdiction to “control and prevent the pollution of streams, lakes, rivers, ponds, inland waters, salt waters, water courses, and other surface and underground waters of the state of Washington.”

Under RCW 90.48.80 it is illegal to pollute waters of the state including groundwater. Discharges to waters of the state, including groundwater, require a State Waste Discharge Permit.

### **Ground WQ Standards**

Groundwater Quality Standards list criteria for a variety of groundwater contaminants. The numeric criteria values and the narrative standards represent contaminant concentrations which are not to be exceeded in groundwater.

WQ Standards are designed to protect the beneficial uses of the waters of the state. Examples of such beneficial uses are drinking water and other domestic uses, stockwatering, industrial, commercial, and agricultural uses, and fish and wildlife maintenance and enhancement. For example, the criteria for nitrate is 10 mg/L, which is established to protect drinking water uses.

Washington's Groundwater Quality Standards require that groundwater is kept as clean as possible and to prevent man-made groundwater pollution. To achieve this, dischargers must implement "all known, available, and reasonable methods of prevention, control and treatment" (AKART) to reduce the contaminant load sufficiently to assure the criteria will not be exceeded, and AKART must be applied to all wastes prior to entry into groundwater.

Additionally, antidegradation policy mandates the protection of background water quality, and prevents degradation of water quality which would harm a beneficial use or violate the Groundwater Quality Standards. Whenever groundwaters are of a higher quality than the criteria assigned for said waters, the existing water quality shall be protected. Additional treatment may be necessary to achieve the antidegradation policy.

## **Washington State's Safe Drinking Water Act**

Washington has a formal agreement with the Environmental Protection Agency (EPA) for meeting the requirements of the federal [Safe Drinking Water Act \(SDWA\)](#), which was passed in 1974 and amended in 1986 and 1996.

The SDWA includes WQ Standards, sampling, treatment, and public notification requirements. The 1996 amendments added new requirements related to annual water quality reports, operator certification requirements, system capacity, and source water assessment and protection.

Generally, the SDWA applies to water systems with 15 or more connections, or those regularly serving 25 or more people daily, 60 or more days per year. Approximately 4,200 public water systems in Washington are subject to the SDWA. Here is a link to the website for more information: <https://doh.wa.gov/community-and-environment/drinking-water/office-drinking-water>

## **Current Groundwater Pollution Control for Nonpoint Sources**

Nonpoint pollution control programs that have a nexus to groundwater in Washington State include the following:

### **Washington State Department of Ecology**

[Chapter 173-200 WAC](#) establishes groundwater quality standards to help us meet that goal. The standards apply to any activity that has potential to contaminate groundwater quality.

Together with the state's technology-based treatment requirements, the standards protect the environment, human health, and existing and future beneficial uses of groundwater.



The Department of ecology developed [implementation guidance for groundwater quality standards](#). The guidance explains and interprets the standards, providing clear direction to promote consistent statewide implementation for activities that have a potential to degrade groundwater quality.

Ecology has regulatory authority over Ground Water Management Areas, which apply both to water resources and water quality. The department also administers state financial assistance for pollution prevention/mitigation through grants and loans.

## **Washington State Department of Agriculture**

Washington State Department of Agriculture (WSDA) administers the following programs:

- Dairy Program under the Dairy Nutrient Management Act.
- Pesticide use, which regulates the use of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

## **On-Site Sewage System Regulation**

See Chapter 3 for more information on the regulation of on-site sewage systems.

## **Washington State Department of Health Drinking Water Program**

The DOH Drinking Water program requires that public water systems inventory potential contamination sources within their wellhead protection zones and report results to the state.

## **Ground Water Management Areas (GWMA's)**

Washington State Law (RCW 90.44.400) allows the Department of Ecology to identify groundwater management areas in order to protect groundwater quality, to assure groundwater quantity, and to provide for efficient management of water resources for meeting future needs. The intent of GWMA's is to develop partnerships between local, state, tribal and federal interests to cooperatively protect the state's groundwater resources. Chapter 173-100 WAC establishes rules for establishing GWMA's.

### *Columbia Basin Ground Water Management Area*

The Columbia Basin GWMA consists of Adams, Franklin, Grant and Lincoln counties. Nitrate control efforts focused on voluntary incentives. Incentives included distributing cost-share funds for converting irrigation systems to conserve water. They also conducted soil tests so that producers could find out how much nitrogen was being lost below the root zone. This was an educational effort to encourage producers to use less fertilizer.

### *Lower Yakima Valley Groundwater Management Area*

In 2011, the Lower Yakima Valley GWMA was formed to address nitrate contamination in groundwater. The GWMA is a response to the elevated nitrate levels found in the Lower Yakima Valley which often exceed the state groundwater standard of 10.0 mg/L. The goal of the Lower

Yakima Valley GWMA is to reduce nitrate contamination concentrations in groundwater below state drinking water standards.

Yakima County requested that Ecology recognize the GWMA and provide assistance for helping reduce the nitrate level in the groundwater. Tasks include:

- Data collection, monitoring and analysis.
- Public education and outreach.
- Problem identification.
- Potential measures or practices for reducing groundwater contamination.

Pollution prevention will be a guiding principle for all work in the Yakima GWMA. Further, they are looking to get nitrate contamination addressed by:

- Identifying the primary sources of nitrate contamination using scientific data.
- Identifying or develop practices that will minimize nitrate contamination of groundwater.
- Developing a plan that recommends strategies for implementing improved practices.
- Providing appropriate education and outreach on health risks and how to prevent exposure.

#### Ecology Implementation Efforts

- The Implementation Committee meets on a monthly basis to prioritize recommended actions, and track progress throughout the group.
- In 2021, Ecology began the Ambient Groundwater Monitoring network, sampling 170 wells in the Lower Yakima Valley GWMA area, and is currently completing the 5th quarter of monitoring.
- Ecology conducted a community outreach effort in the Lower Yakima Valley that included door to door outreach to private landowners on private wells to obtain volunteers for the monitoring program.
- Ecology is currently seeking funding to develop and implement a community engagement plan to inform the Lower Yakima Valley on LYV GWMA, and other non-point programs in the area.
- Ecology coordinated with Implementation Committee partners to supply the local community with nitrate test strips and guidance pamphlets in English and Spanish for testing, and information on resources available for obtaining bottled water.

## Nitrate

Nitrate is a primary indicator of nonpoint groundwater pollution and is one of the most widespread known nonpoint contaminants of groundwater in Washington State. Groundwater contamination by nitrate has increased as use of fertilizer, and manure production has increased, and the population of the state has increased.

Many studies over the years have clearly demonstrated that there are areas of the state where groundwater has been particularly susceptible to contamination from nonpoint sources. Both public water supply wells and individual residential wells have been contaminated in multiple areas of the state. The detection of excessive levels of nitrate in groundwater also indicates that chemicals used on land can reach groundwater.

The primary way nitrate pollution of groundwater is prevented and controlled is to reduce loading at the land surface. Nitrate is needed to grow crops, and this makes it especially challenging to regulate as a pollutant. Loading can be reduced by applying only what is needed by growing crops and lawns; timing nutrient applications closest to plant utilization; placing nutrients away from surface waters; eliminating late season nutrient applications; and managing irrigation to prevent over-watering and subsequent nitrate leaching.

Although most drinking water wells in Washington State have not been contaminated by nitrates (see Figure 5 at the end of this chapter), a significant number in specific areas have (see Figure 4 at the end of this chapter). Among others, these include the Sumas Blaine Aquifer in Whatcom County, the Lower Yakima Valley, and the Columbia Basin. Millions of dollars have been spent to cope with nitrate contamination of groundwater.

- Sumas Blaine aquifer in Whatcom County is impacted. Several public water supply systems are under state compliance orders for exceeding the nitrate limit. New treatment systems are being installed, bottled water is being provided and the area is investigating ways to transport in clean water.
- The Columbia Basin GWMA was formed to address widespread nitrate contamination in Adams, Franklin, Grant and Lincoln Counties.
- In the Lower Yakima Valley many people depend on ground water as a drinking water source. Nitrate contamination of people's wells has been an issue of serious concern. EPA has become involved and there is more information on their groundwater website.- [Lower Yakima Valley Groundwater | US EPA](#). In addition there is now an established GWMA (see above).

## Nitrate Prioritization Project

This project was an outcome of a multi-agency discussion, at the director level which focused on how resource agencies could coordinate their data to produce tools to help address identified water quality concerns. This project aggregated available groundwater data throughout the state to identify areas where nitrate contamination of groundwater is of greatest concern, and to examine information that would help us understand why these areas are more at risk of contamination than other area.

### Objectives:

- Identify areas of the state where groundwater has been contaminated by nitrates.
- Examine the conditions that lead to contamination.
- Prioritize these areas by the affected population and severity of contamination.

Through the nitrate prioritization project, Ecology collected and aggregated nitrate sampling data collected by the U.S. Geological Survey, DOH and Ecology. The sampling history shows where monitoring was done and where nitrates were found to be high.

Ecology also examined the conditions that lead to contamination. This information is used to understand where the nitrate contamination “hot spots” are in our state. Based on the nitrate monitoring data and examination of regional conditions, Ecology developed preliminary nitrate prioritization boundaries and risk categories. These area boundaries and categorization may change upon review.

Maps in the report show statewide landscape patterns of conditions that tend toward nitrate contamination of groundwater or indicate these conditions are present. These include where soils and geologic materials drain water quickly, where loading sources are concentrated and where numerous wells that have tested for high nitrates are clustered.

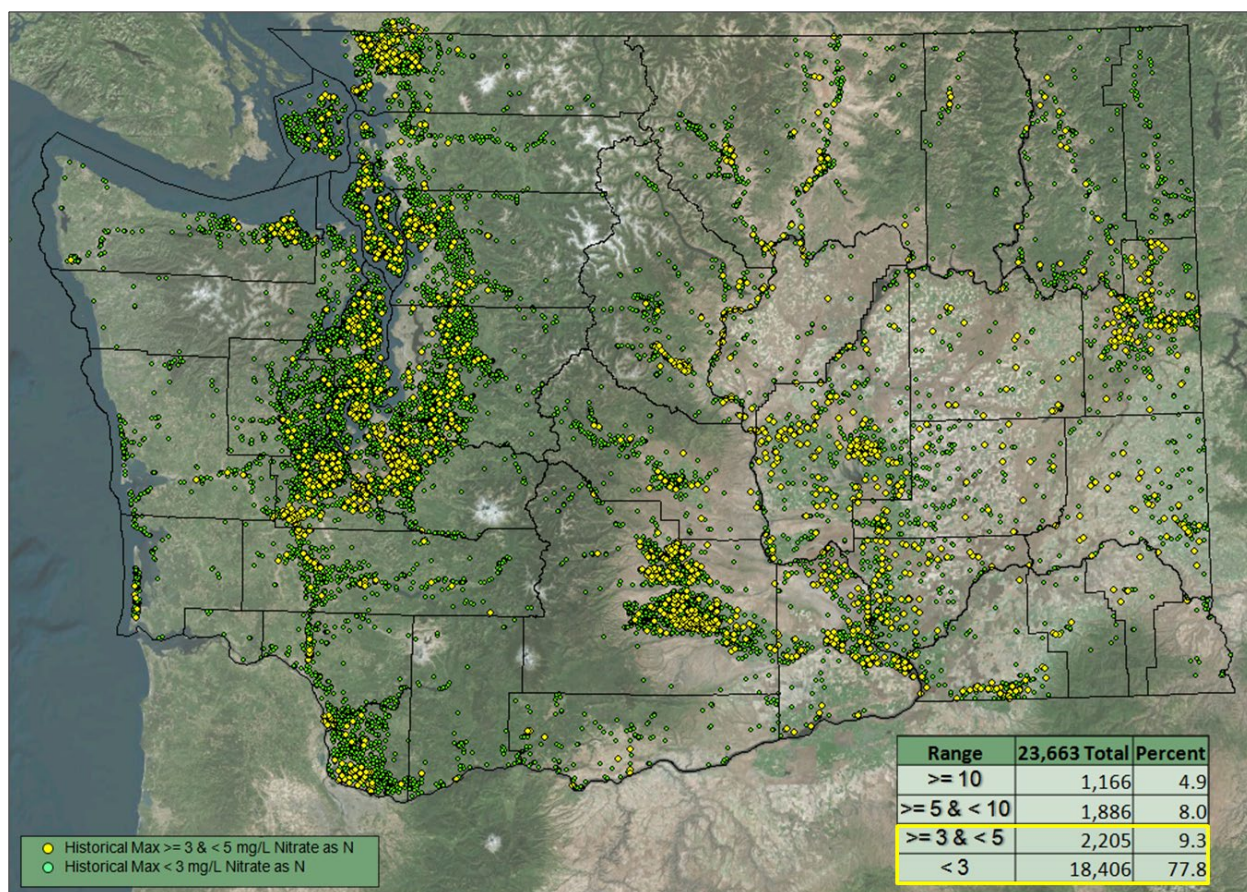


Figure 4 Groundwater Nitrate Sample Record Max  $< 5$  mg/L as N.



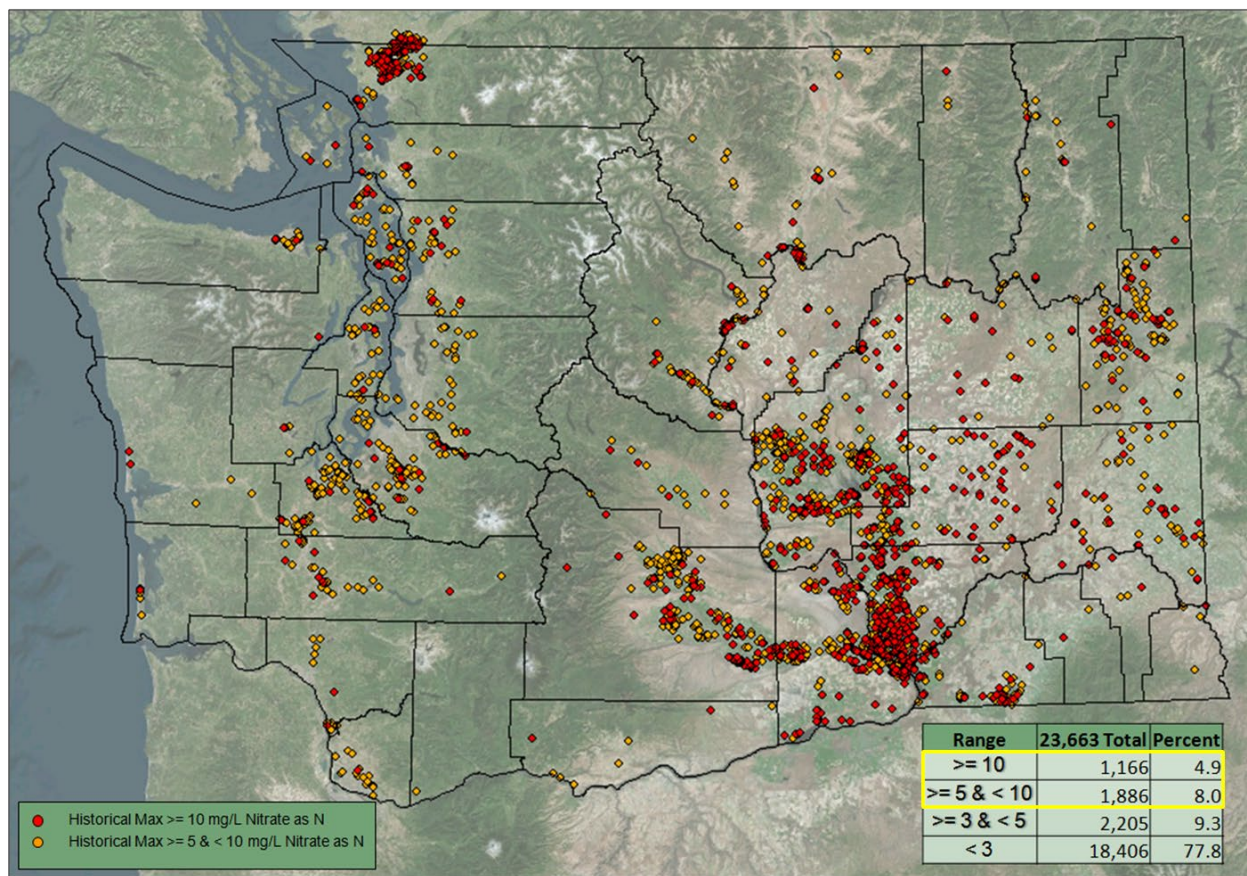


Figure 5 Groundwater Nitrate Sample Record Max  $>5$  mg/L as N.

## Chapter 9: Goals and Strategies

This chapter addresses Element No. 1 of the *“Key Components of an Effective State Nonpoint Source Management Program”* guidance issued by the USEPA in April 2013. It contains set of goals, objectives, and strategies to restore and protect surface water and groundwater in Washington State. The table also provides measurable outputs that could be used to track progress and specific measurable milestones that will be used over the next five years.

Ecology’s ultimate goal for tracking our goals, strategies, and accomplishments is to use a database instead of the following table. Use of a database would offer several advantages:

1. Track implementation in real time, instead of simply providing a snapshot in time.
2. Provide an up-to-date accounting of what’s been implemented and what hasn’t.
3. Contain information that would help us assess the effectiveness of our implementation work and to make management decisions if we need to change or adapt strategies.

Table 9 Goals, Objectives, Strategies and Measurable Milestones

<b>Goal 1: Clean-up impaired waters and meet water quality standards.</b>			
<i>Objectives</i>	<i>Strategies</i>	<i>Measurable Outputs</i>	<i>Measurable Milestones (2023-2025)</i>
Provide incentives to drive implementation of watershed based plans.	Provide grants and loans to applicants for projects that will meet WQ Standards, ensure compliance with state law and implement a watershed based plan.	<ul style="list-style-type: none"> <li>Number and types of BMPs implemented. Number of sites where complete suites of BMPs were implemented.</li> </ul>	
Develop and implement watershed clean-up plans (TMDLs and STI projects).	Complete TMDLs and STI/Other Restoration work plans that include all elements of a watershed based plan.	<ul style="list-style-type: none"> <li>Number of TMDLs and STI/Other Restoration workplans completed.</li> <li>Number of watershed evaluations completed.</li> <li>Number of sites identified as having nonpoint source pollution problems.</li> <li>Number of these sites that now have BMPs that protect water quality</li> <li>Number and type of BMPs implemented to address nonpoint sources of pollution.</li> <li>Watersheds where we are doing effectiveness monitoring and results of that effectiveness monitoring</li> </ul>	Complete 159 TMDLs/STI/ Other Restoration plans by 2025 (average 53 per year).
	Implement TMDLs and STIs/Other Restoration Plans.		<ul style="list-style-type: none"> <li>Focus on a minimum of 8 priority watersheds to implement our nonpoint strategy per year.</li> <li>In the 8 watersheds implement 10% of the STI/TMDL per year.</li> </ul>
	Completing watershed evaluations. <ul style="list-style-type: none"> <li>Identify sites with nonpoint pollution sources.</li> <li>Implement BMPs (stormwater, septic, forestry, agricultural) that ensure compliance with the WQ Standards.</li> </ul>		
	If working in agricultural areas, implement the key changes to Ecology's Watershed evaluation process as recommended by the Agriculture and Water Quality Advisory Committee.		

<b>Goal 1: Clean-up impaired waters and meet water quality standards.</b>			
<i>Objectives</i>	<i>Strategies</i>	<i>Measurable Outputs</i>	<i>Measurable Milestones (2023-2025)</i>
Respond to complaints received.	Resolve complaints received by confirming whether a water quality problem exists and implementing BMPs as necessary.	<ul style="list-style-type: none"> <li>• Number of complaints received, and responded to by Ecology.</li> <li>• Number of complaints resolved.</li> </ul>	Respond to 100% of complaints received.
Support local PIC Programs that help meet WQ Standards and promote compliance with state law	<ul style="list-style-type: none"> <li>• Ecology and DOH will provide technical and policy support to develop PIC programs as necessary.</li> <li>• Ecology will provide a regulatory backstop for PIC programs as necessary.</li> </ul>	<ul style="list-style-type: none"> <li>• Number of PIC programs developed.</li> <li>• Number and type of BMPs implemented to address nonpoint sources of pollution.</li> </ul>	4 PIC programs established in accordance with DOH and Ecology guidance.



<b>Goal 1: Clean-up impaired waters and meet water quality standards.</b>			
<i>Objectives</i>	<i>Strategies</i>	<i>Measurable Outputs</i>	<i>Measurable Milestones (2023-2025)</i>
Support market based programs that help meet WQ Standards and support compliance with state law.	<p>Support water quality trading programs that address WQ Standards and promote compliance with state law.</p> <ul style="list-style-type: none"> <li>• Continue to coordinate with EPA Region 10 on water quality trading.</li> <li>• Provide technical and policy support to develop water quality trading programs as necessary.</li> <li>• Explore trading structures for nutrients in Puget Sound.</li> </ul>	<ul style="list-style-type: none"> <li>• Number and type of BMPs implemented to address nonpoint sources of pollution in these programs.</li> <li>• Conservation Commission report completed.</li> <li>• Number of NPDES Permits using water quality trading as a method to meet their permit limits.</li> <li>• Develop legislative report that recommends nutrient trading structures for Puget Sound. The first focus is on trading in the nutrient general permit.</li> </ul>	

<b>Goal 1: Clean-up impaired waters and meet water quality standards.</b>			
<i>Objectives</i>	<i>Strategies</i>	<i>Measurable Outputs</i>	<i>Measurable Milestones (2023-2025)</i>
	<p>Support certification/certainty programs address WQ Standards and promote compliance with state law.</p> <ul style="list-style-type: none"> <li>• Support the implementation of the Farmed Smart certification program.</li> <li>• Continue to coordinate with the Pacific Northwest Direct Seed Association on the Farmed Smart Certification.</li> <li>• Work with other groups interested in similar certification or certainty programs.</li> </ul>	<ul style="list-style-type: none"> <li>• Number of acres enrolled in the Farmed Smart program.</li> <li>• Number of certification or certainty programs developed with Ecology support.</li> <li>• Number of BMPs implemented to address nonpoint sources of pollution.</li> </ul>	
Support implementation of the Puget Sound Vessel Sewage No Discharge Zone (NDZ)	<p>Share key NDZ messages with recreational and commercial boaters and related groups and promote compliance with the rule.</p> <ul style="list-style-type: none"> <li>• Continue to share information about the NDZ rule, how and where to pump out boat sewage, and why it matters.</li> <li>• Continue to share the use of Environmental Report Tracking System (ERTS) as the primary tool to report illegal sewage discharges within the NDZ.</li> </ul>	<p>Increasing trend in annual gallons of sewage pumped out from CVA-funded pumpouts.</p> <p>Share NDZ messages using a variety of tools included in the 2021 NDZ Implementation Plan.</p>	<p>Number of gallons of recreational boat sewage collected at Clean Vessel Act (CVA)-funded pumpout facilities.</p> <p>Number of education/outreach tools (actions or products) developed to share NDZ key messages.</p>

<b>Goal 1: Clean-up impaired waters and meet water quality standards.</b>			
<i>Objectives</i>	<i>Strategies</i>	<i>Measurable Outputs</i>	<i>Measurable Milestones (2023-2025)</i>
Work to coordinate our nonpoint program with state initiatives.	Support the Governor's Results Washington	<ul style="list-style-type: none"> <li>Each one of these initiatives has its own set of performance measures that have a connection to the goals and strategies in the Nonpoint Source Plan. More information on these initiatives is found in Chapter 3.</li> </ul>	
	Support the Washington Shellfish Initiative		
	Support the Puget Sound Action Agenda		
	Support the Marine Resources Advisory Council and efforts to address ocean acidification.		
	Support Salmon Recovery in Washington		
	Support Chemical Action Plans (CAP) Development		
Support implementation of other state authorities and promote consistency with the WQ Standards.	Support the implementation of forest practice rules statewide.	<ul style="list-style-type: none"> <li>Periodic reviews of the Forest Practices Rules adaptive management program and the Clean Water Act Assurances performed.</li> <li>MOU between Ecology and WSDA is followed and updated as necessary.</li> </ul>	
	Support implementation of the Dairy Nutrient Management Program.		
	Ecology and WSDA continue to work on the gaps identified in the Dairy Nutrient Management Act.		

<b>Goal 1: Clean-up impaired waters and meet water quality standards.</b>			
<i>Objectives</i>	<i>Strategies</i>	<i>Measurable Outputs</i>	<i>Measurable Milestones (2023-2025)</i>
	Support DOH and LHJ implementation of OSS laws.	<ul style="list-style-type: none"> <li>Continue to fund projects that will address failing OSS.</li> </ul>	
Support education and outreach and support for voluntary programs.	<p>Use public education and outreach to build support of Ecology's nonpoint program by explaining nonpoint problems in clear and engaging language and pictures.</p> <p>Support partners' education and outreach programs and voluntary programs</p>	<ul style="list-style-type: none"> <li>Number of workshops.</li> <li>Number of students/attendees.</li> <li>Number of outreach tools used to explain nonpoint issues.</li> </ul>	

Goal 2: Ensure clear standards			
Objectives	Strategies	Measurable Outputs	Measurable Milestones (2023-2025)
Identify BMPs and measures that are designed to comply with the WQ Standards and contribute to the protection of beneficial uses of the receiving waters, and ensure compliance with state and federal law.	Support updates to the forest practice rules based on adaptive management process. Support Forest and Fish rule updates to address new Type NP prescriptions.	<ul style="list-style-type: none"> <li>Number and type of efforts Ecology initiates or participates in to achieve this goal.</li> <li>Completed BMP guidance in the form of manuals, compendiums or other guidance documents for each category of nonpoint pollution.</li> <li>Rule proposal is out for public review with new prescriptions for Type Np</li> </ul>	<ul style="list-style-type: none"> <li>Complete Voluntary Clean Water Guidance for Agriculture Chapters December, 2025.</li> <li> <ul style="list-style-type: none"> <li>Cropping Methods: Crop System</li> <li>Nutrient Management</li> <li>Pesticide Management</li> <li>Sediment Control: Soil Stabilization &amp;</li> </ul> </li> </ul>
	Support updates to stormwater manuals.		
	Continue work to provide information about what BMPs or suites of BMPs Ecology considers provide presumed compliance with state water quality laws.		

Goal 2: Ensure clear standards			
Objectives	Strategies	Measurable Outputs	Measurable Milestones (2023-2025)
Utilize best available science.	Support DOH in updates to Washington's OSS rules if needed.	waters in the Forest and Fish Rules.	Sediment Capture (Vegetative) <ul style="list-style-type: none"> <li>○ Water Management: Irrigation Systems &amp; Management</li> <li>○ Water Management: Field Drainage &amp; Drain Tile Management</li> <li>○ Water Management-Stormwater Control &amp; Diversion</li> <li>○ Suite of Recommended Practices</li> <li>● Complete Tier 2 antidegradation analysis for DNRs Type NP rule.</li> </ul>

<b>Goal: 3 Develop and strengthen partnerships</b>			
<i>Objectives</i>	<i>Strategies</i>	<i>Measurable Outputs</i>	<i>Measurable Milestones (2023-2025)</i>
Strengthen relationships and receive input from stakeholders.	Continue using the Agriculture and Water Quality Advisory Committee to receive input and recommendations from agriculture stakeholders, environmental stakeholders and tribes on agriculture related issues.	<ul style="list-style-type: none"> <li>Ideas generated by these groups are used by Ecology to improve its work, to improve communication and understanding, and to help Ecology put improved policy and procedural changes into practice.</li> <li>Number of meetings at which Ecology solicits ideas for improvement.</li> </ul>	
	Continue using the Financial Assistance Council to receive input from stakeholders on Ecology administrated grants and loans.		
	Continue using the Water Quality Partnership to maintain a dialogue with key interests on our nonpoint source pollution work.		

Goal: 3 Develop and strengthen partnerships			
Objectives	Strategies	Measurable Outputs	Measurable Milestones (2023-2025)
Strengthen relationships with federal and state agencies, and local governments and special purpose districts.	Coordinate with local governments and special purpose districts including conservation districts, and local health districts.	<ul style="list-style-type: none"> <li>Regional staff meet with CDs to talk about regional nonpoint priorities.</li> <li>Meetings with the other resources agencies on water quality and better aligning programs to meet water quality standards.</li> </ul>	
	Coordinate with other state agencies <ul style="list-style-type: none"> <li>Implement MOA with Department of Agriculture</li> <li>Support DNRs implementation of the forest practices rules.</li> <li>Continue to meet with state agencies to better coordinate work. Examples of agencies that we will coordinate with include the SCC, WDFW, Commerce, RCO, DOH, and PSP.</li> </ul>		
	Coordinate with state and federal land managers to ensure they meet the WQ Standards and prevent nonpoint pollution from reaching state waters.		
	Coordinate with federal agencies.		
	Coordinate with Interagency Team to receive input on how to improve the Water Quality Assessment and TMDL programs in Washington.		



<b>Goal: 3 Develop and strengthen partnerships</b>			
<i>Objectives</i>	<i>Strategies</i>	<i>Measurable Outputs</i>	<i>Measurable Milestones (2023-2025)</i>
Strengthen relationships with Tribes.	Coordinate with tribes. Invite tribes to provide input on nonpoint policy development early in the process.	Set up regular meetings with tribes on our nonpoint work	Hold at least 2 tribal workshops a year where we discuss our nonpoint activities.
Strengthen relationships with producer groups and agricultural producers.	Find opportunities to meet with producer groups and producers to explain nonpoint issues.	<ul style="list-style-type: none"> <li>• Number of producer groups Ecology staff met with.</li> <li>• Increased implementation rates of BMPs that ensure compliance with the water quality standards as a result of meetings with producer groups and producers.</li> </ul>	

<b>Goal 4: Monitor waters for nonpoint source impairments, and program effectiveness.</b>			
<i>Objectives</i>	<i>Strategies</i>	<i>Measurable Outcomes</i>	<i>Measurable Milestones (2023-2025)</i>
Continue monitoring efforts.	<ul style="list-style-type: none"> <li>• Perform monitoring in locations and using methods that help Ecology make management decisions.</li> <li>• Ensure all Ecology monitoring efforts are supported with up-to-date QAPPs.</li> <li>• Ensure all Ecology funded monitoring efforts are supported with up-to-date QAPPs and work with partners to ensure the use of QAPPs for monitoring efforts and studies that will be used by Ecology.</li> </ul>	<ul style="list-style-type: none"> <li>• All projects (both Ecology projects and external projects) are guided by QAPPs.</li> <li>• All QAPPs are approved by Ecology environmental assessment program before data collection begins.</li> </ul>	100% of Ecology led projects have an approved QAPP.
Effectiveness Monitoring.	Ensure adequate implementation data is collected prior to starting effectiveness monitoring.	<ul style="list-style-type: none"> <li>• Number of effectiveness monitoring projects performed in which there is adequate implementation data to determine whether or not our efforts are driving a change in water quality.</li> </ul>	Initiate 3 effectiveness monitoring studies per year in TMDL/STI watersheds.

<b>Goal 5: Ecology will administer its Nonpoint Source Program as effectively and efficiently as possible.</b>			
<i>Objectives</i>	<i>Strategies</i>	<i>Measurable Outcomes</i>	<i>Measurable Milestones (2023-2025)</i>
Align the nonpoint program with other relevant programs.	Align the nonpoint program with the following programs: <ul style="list-style-type: none"> <li>• TMDL</li> <li>• CZARA</li> <li>• Point source program</li> <li>• National estuary program.</li> </ul>	<ul style="list-style-type: none"> <li>• Annual Section 319 project reports document accomplishments in aligning programs.</li> </ul>	
Promote accountability.	<div>Continue support of the nonpoint implementation tracking system.</div> <div>Continue support of EAGL.</div> <div>Continue using BMP approval form to track specific BMP implementation metrics.</div> <div>Work with partners to collect consistent implementation data.</div> <div>Information about projects funded with 319 funds entered into GRTS.</div>	<ul style="list-style-type: none"> <li>• Nonpoint implementation tracking system and database completed.</li> <li>• Grants Reporting Tracking System (GRTS) data entered by EPA deadlines.</li> </ul>	<ul style="list-style-type: none"> <li>• Achieve the following estimated reduction per year: Achieve the following estimated reductions per year: <ul style="list-style-type: none"> <li>○ 14,000 lbs. of phosphorous.</li> <li>○ 8,000 tons of sediment.</li> <li>○ 40,000 lbs. of nitrogen.</li> </ul> </li> <li>• 70 OSS repair/replacement projects completed by SRF/ Centennial funded local loan programs.</li> <li>• 100% of sites evaluated by Ecology are entered into the nonpoint tracking system.</li> </ul>
Keep the nonpoint program up-to-date.	Update plan as necessary.	<ul style="list-style-type: none"> <li>• Nonpoint plan updated in 2025 or before.</li> </ul>	<ul style="list-style-type: none"> <li>• One updated plan submitted to EPA in 2025.</li> </ul>

<b>Goal 5: Ecology will administer its Nonpoint Source Program as effectively and efficiently as possible.</b>			
<i>Objectives</i>	<i>Strategies</i>	<i>Measurable Outcomes</i>	<i>Measurable Milestones (2023-2025)</i>
Administer grants and loans.	Oversight of grants and loans ensures that projects proposed are completed and that public money is spent appropriately.	<ul style="list-style-type: none"> <li>• Final project reports document that project was completed.</li> <li>• Projects are closed out as soon as possible after completion.</li> </ul>	

## Appendices

### Appendix A. Assessment of Nonpoint Pollution in Washington State

Appendix A, which includes the report titled *Assessment of Nonpoint Pollution in Washington State* is attached as a separate pdf on the web. See also:

<https://apps.ecology.wa.gov/publications/SummaryPages/1403028.html>

## **Appendix B. Letter from Ron Lavigne, Assistant Attorney General**

Ecology's authority to prevent Nonpoint Source Pollution and Require Implementation of Management Measures



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**MEMORANDUM**

DATE: July 12, 2019

TO: Ben Rau, Watershed Planning Unit Supervisor *Ron*  
Water Quality Program

FROM: Ronald L. Lavigne, Senior Counsel

SUBJECT: **Ecology's Authority to Prevent Non-Point Source Pollution and Require Implementation of Management Measures**

This memo is in response to your request for a legal analysis of Ecology's authority to prevent non-point source pollution and to require implementation of management measures. As discussed below, it is my opinion that ch. 90.48 RCW provides Ecology with statutory authority to both prevent non-point source pollution and require implementation of section 6217 management measures pursuant to the Coastal Zone Reauthorization Amendments of 1990 (CZARA).

RCW 90.48.030 specifically gives Ecology the jurisdiction "to control and prevent the pollution of . . . waters of the state of Washington." Pollution is broadly defined in RCW 90.48.020 and includes the contamination or other alteration of the physical, chemical, or biological properties of any waters of the state. Under state law, it does not matter whether the pollution comes from a point or a non-point source, all pollution of state waters is subject to Ecology's authority to control and prevent pollution.

RCW 90.48.080 makes it unlawful for any person to "cause, permit or suffer to be thrown, run, drained, allowed to seep or otherwise discharged . . . any organic or inorganic matter that shall cause or tend to cause pollution of" waters of the state. Any person who violates or creates a substantial potential to violate the provisions of ch. 90.48 RCW is subject to an enforcement order from Ecology pursuant to RCW 90.48.120. Ecology is authorized to "issue such order or directive as it deems appropriate under the circumstances . . ." RCW 90.48.120(1).

The Supreme Court has affirmed Ecology's authority to regulate non-point source pollution. *Lemire v. Dep't of Ecology*, 178 Wn.2d 227, 240, 309 P.3d 395 (2013) (the plain language of RCW 90.48.080 gives Ecology "the authority to regulate nonpoint source pollutant discharge").

July 12, 2019

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It is worth noting that while RCW 90.48.120 gives Ecology the authority to take action in response to non-point source pollution, the statute also given Ecology the authority to take action based on a “substantial potential” to pollute state waters via either a point or non-point source. Consequently, Ecology not only has authority to take action following non-point source pollution but also has statutory authority to act proactively to prevent non-point source pollution from occurring in the first place. Ecology’s authority includes the authority to require a non-point source polluter to implement specific management measures. *See Lemire*, 178 Wn.2d at 233 (Ecology is authorized to issue orders to remedy “activities that have a substantial potential to violate the [Water Pollution Control Act].”). Ecology’s authority can be used to prevent non-point pollution and require 6217 management measure implementation, as necessary.

For the reasons set out above, it is my opinion that the Department of Ecology has the statutory authority to prevent non-point source pollution and to require implementation of specific management measures to address non-point source pollution.

RLL:df



## Appendix C. Minimum Elements of a Watershed-based Plan

Although many different elements may be included in a watershed plan, EPA has identified nine minimum elements that are critical for achieving improvements in water quality. In general, EPA requires that nine-element watershed-based plans (WBPs) be developed prior to implementing project(s) funded with § 319 watershed project funding. In many cases, state and local groups have already developed watershed plans and strategies for their rivers, lakes, streams, wetlands, estuaries, and coastal waters that address some or all of the nine elements. EPA encourages states to use these plans and strategies, where appropriate, as building blocks for developing and implementing WBPs. If these existing plans contain all nine elements listed below, they can be used to fulfill the WBP requirement for watershed projects. If the existing plans do not address all nine elements or do not include the entire watershed planning area, they can still provide valuable components to inform, develop, and update WBPs.

For example, some watershed management plans contain information on hydrology, topography, soils, climate, land uses, water quality problems, and management practices needed to address water quality problems, but lack the quantitative analysis of current pollutant loads or expected load reductions from proposed management practices. In this case, the WBP developer could incorporate such existing information into the plan to help fulfill the nine WBP elements. If separate documents contain information that help meet the following list of nine WBP elements, but are too lengthy to be included in the WBP, they can be summarized and referenced in the appropriate sections of the plan, as long as the information is readily available.

Note: EPA recognizes that in select cases (outlined in section IX.B.ii of these guidelines) alternatives to WBPs can provide an effective roadmap to achieve the water quality goals of a § 319 funded watershed project. These alternative plans do not need to address the following nine elements, but must include the planning components listed in section IX.B.ii of these guidelines. EPA still encourages plan developers to build on prior planning efforts and incorporate related information, as described previously, when developing these alternative plans.

### *Nine Elements of Watershed-based Plans (WBPs)*

Following are the nine elements, as well as short explanations of how each element fits in the context of the broader WBP. Although they are listed as *a* through *i*, they do not necessarily take place sequentially. For example, element *d* asks for a description of the technical and financial assistance that will be needed to implement the WBP, but this can be done only after you have addressed elements *e* and *i*.

The level of detail needed to address the nine elements of WBPs will vary in proportion to the homogeneity or similarity of land use types and variety and complexity of pollution sources. For example, densely developed urban and suburban watersheds often have multiple sources of pollution from historic and current activities (Superfund sites, point sources, solid waste disposal, leakage from road salt storage, oil handling, stormwater-caused erosion, road

maintenance, etc.), in addition to some agricultural activities. Plans will be more complex than in predominantly rural settings in these cases. For this reason, plans for urban and suburban watersheds may need to be developed and implemented at a smaller scale than watersheds with agricultural lands of a similar character.

*Element a. Identification of causes of impairment and pollutant sources or groups of similar sources that need to be controlled to achieve needed load reductions, and any other goals identified in the watershed plan. Sources that need to be controlled should be identified at the significant subcategory level along with estimates of the extent to which they are present in the watershed (e.g., X number of dairy cattle feedlots needing upgrading, including a rough estimate of the number of cattle per facility; Y acres of row crops needing improved nutrient management or sediment control; or Z linear miles of eroded streambank needing remediation).*

*What does this mean?*

Your WBP source assessment should encompass the watershed of the impaired waterbody(ies) throughout the watershed, and include map(s) of the watershed that locates the major cause(s) and source(s) of impairment in the planning area. To address these impairments, you will set goals to meet (or exceed) the appropriate WQ Standards for pollutant(s) that threaten or impair the physical, chemical, or biological integrity of the watershed covered in the plan.

This element will usually include an accounting of the significant point and nonpoint sources in addition to the natural background levels that make up the pollutant loads causing problems in the watershed. If a TMDL or TMDLs exist for the waters under consideration, this element may be adequately addressed in those documents. If not, you will need to conduct a similar analysis (which may involve mapping, modeling, monitoring, and field assessments) to make the link between the sources of pollution and the extent to which they cause the water to exceed relevant WQ Standards.

*Element b. An estimate of the load reductions expected from management measures.*

*What does this mean?*

On the basis of the existing source loads estimated for element *a*, you will similarly determine the reductions needed to meet WQ Standards. After identifying the various management measures that will help to reduce the pollutant loads (see element *c*), you will estimate the load reductions expected as a result of implementing these management measures, recognizing the difficulty in precisely predicting the performance of management measures over time.

Estimates should be provided at the same level as that required in the scale and scope described in element *a* (e.g., the total load reduction expected for dairy cattle feedlots, row crops, eroded streambanks, or implementation of a specific stormwater management practice). For waters for which TMDLs have been approved or are being developed, the plan should identify and incorporate the TMDLs. The plan needs to be designed to achieve the applicable load reductions in the TMDLs. Applicable loads for downstream waters should be included so

that water delivered to a downstream or adjacent segment does not exceed the WQ Standards for the pollutant of concern at the water segment boundary. The estimate should account for reductions in pollutant loads from point and nonpoint sources identified in the TMDL as necessary to attain the applicable WQ Standards.

*Element c. A description of the nonpoint source management measures that will need to be implemented to achieve load reductions in element b, and a description of the critical areas in which those measures will be needed to implement this plan.*

*What does this mean?*

The plan should describe the management measures that need to be implemented to achieve the load reductions estimated under element *b*, as well as to achieve any additional pollution prevention goals outlined in the watershed plan (e.g., habitat conservation and protection). Pollutant loads will vary even within land use types, so the plan should also identify the critical areas (critical areas are those producing disproportionately high pollutant loads) in which those measures will be needed to implement the plan. This description should be detailed enough to guide needed implementation activities throughout the watershed, and can be greatly enhanced by developing an accompanying map with priority areas and practices. Thought should also be given to the possible use of measures that protect important habitats (e.g. wetlands, vegetated buffers, and forest corridors) and other non-polluting areas of the watershed. In this way, waterbodies would not continue to degrade in some areas of the watershed while other parts are being restored.

*Element d. Estimate of the amounts of technical and financial assistance needed, associated costs, and/or the sources and authorities that will be relied upon to implement this plan.*

*What does this mean?*

You should estimate the financial and technical assistance needed to implement the entire plan. This includes implementation and long-term operation and maintenance of management measures, information/education (I/E) activities, monitoring, and evaluation activities. You should also document which relevant authorities might play a role in implementing the plan. Plan sponsors should consider the use of federal, state, local, and private funds or resources that might be available to assist in implementing the plan. Shortfalls between needs and available resources should be identified and addressed in the plan.

*Element e. An information and education component used to enhance public understanding of the plan and encourage their early and continued participation in selecting, designing, and implementing the nonpoint source management measures that will be implemented.*

*What does this mean?*

The plan should include an involvement effort (I/E) component that identifies the education and outreach activities or actions that will be used to implement the plan. These I/E activities

may support the adoption and long-term operation and maintenance of management practices and support stakeholder involvement efforts.

*Element f. Schedule for implementing the nonpoint source management measures identified in this plan that is reasonably expeditious.*

*What does this mean?*

You should include a schedule for implementing the management measures outlined in your watershed plan. The schedule should reflect the milestones you develop in *g*, and you should begin implementation as soon as possible. Conducting baseline monitoring and outreach for implementing water quality projects are examples of activities that can start right away. It is important that schedules not be “shelved” for lack of funds or program authorities; instead, they should identify steps towards obtaining needed funds as feasible.

*Element g. A description of interim measurable milestones for determining whether nonpoint source management measures or other control actions are being implemented.*

*What does this mean?*

The WBP should include interim, measurable implementation milestones to measure progress in implementing the management measures. These milestones will be used to track implementation of the management measures, such as whether they are being implemented according to the schedule outlined in element *f*, whereas element *h* will develop criteria to measure the effectiveness of the management measures by, for example, documenting improvements in water quality. For example, a watershed plan may include milestones for a problem pesticide found at high levels in a stream. An initial milestone may be a 30% reduction in measured stream concentrations of that pesticide after 5 years and 50 percent of the users in the watershed have implemented Integrated Pest Management (IPM). The next milestone could be a 40% reduction after 7 years, when 80% of pesticide users are using IPM. The final goal, which achieves the water quality standard for that stream, may require a 50% reduction in 10 years. Having these waypoints lets the watershed managers know if they are on track to meet their goals, or if they need to re-evaluate treatment levels or timelines.

*Element h. A set of criteria that can be used to determine whether loading reductions are being achieved over time and substantial progress is being made toward attaining WQ Standards.*

*What does this mean?*

As projects are implemented in the watershed, you will need water quality benchmarks to track progress towards attaining WQ Standards. The *criteria* in element *h* (not to be confused with *water quality criteria* in state regulations) are the benchmarks or waypoints to measure against through monitoring. These interim targets can be direct measurements (e.g., fecal coliform concentrations, nutrient loads) or indirect indicators of load reduction (e.g., number of beach closings). These criteria should reflect the time it takes to implement pollution control

measures, as well as the time needed for water quality indicators to respond, including lag times (e.g., water quality response as it is influenced by groundwater sources that move slowly or the extra time it takes for sediment-bound pollutants to break down, degrade or otherwise be isolated from the water column). Appendix B of these guidelines, “Measures and Indicators of Progress and Success,” although intended as measures for program success, may provide some examples that may be useful. You should also indicate how you will determine whether the WBP needs to be revised if interim targets are not met. These revisions could involve changing management practices, updating the loading analyses, and reassessing the time it takes for pollution concentrations to respond to treatment.

*Element i. A monitoring component to evaluate the effectiveness of the implementation efforts over time, measured against the criteria established under element h.*

*What does this mean?*

The WBP should include a monitoring component to determine whether progress is being made toward attaining or maintaining the applicable WQ Standards for the waterbody(ies) addressed in the plan. The monitoring program should be fully integrated with the established schedule and interim milestone criteria identified previously. The monitoring component should be designed to assess progress in achieving loading reductions and meeting WQ Standards. Watershed-scale monitoring can be used to measure the effects of multiple programs, projects, and trends over time. Instream monitoring does not have to be conducted for individual BMPs unless that type of monitoring is particularly relevant to the project.

For more detailed information on developing watershed-based plans, please see *A Handbook for Developing Watershed Plans to Restore and Protect Our Waters*, U.S. EPA, EPA 841-B-08-002 March 2008, [water.epa.gov/polwaste/nps/handbook\\_index.cfm](http://water.epa.gov/polwaste/nps/handbook_index.cfm).

## **Appendix D. Letter from the Department of Health to Ecology concerning shellfish protection**



STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
OFFICE OF SHELLFISH AND WATER PROTECTION  
*PO Box 47824 • Olympia, Washington 98504-7824*  
*(360) 236-3330 • TDD Relay Service: 1-800-833-6388*

July 8, 2013

Kelly Susewind, P.E., P.G.  
Water Quality Program Manager  
Washington State Department of Ecology  
P.O. Box 47600  
Olympia, Washington 98504-7600

Dear Mr. Susewind:

The purpose of this letter is to express our support for the Department of Ecology's (Ecology's) assistance to the Department of Health (department) in protecting shellfish resources in Washington State. It relates our experience working with Ecology on controlling pathogen pollution in Puget Sound and explains why we think this partnership is important for achieving the shellfish restoration goals.

The shellfish industry in Washington is valued at over \$270 million dollars and provides jobs in rural parts of the state. Shellfish are part of the cultural and tribal heritage in Puget Sound. Protecting this resource now and for future generations is a priority for Washington State and consequently was recognized as a major initiative in the Puget Sound Action Agenda.

We are one of the Lead Organizations that received a multi-year National Estuary Program (NEP) grant for shellfish restoration and other human health related targets in the Puget Sound Action Agenda. We're currently managing NEP investments of almost \$5 million dollars to support Pollution Identification and Correction (PIC) programs. These PIC programs control pollution sources through monitoring, education, technical assistance, and incentives backed up by enforcement.

For many years our staff has worked with local communities to establish shellfish protection districts. These districts improve management of pollution sources when they impact water quality in shellfish growing areas. Working with counties to correct pathogen pollution has yielded insights into the strengths and weaknesses of local PIC programs. It has also provided insight into where we need help from partners in managing PIC awards. We believe that local governments are in the best position to deal with local pollution problems. Counties can carry out most of the activities of a comprehensive PIC program because most landowners are willing to clean up pollution when provided with technical and financial assistance.

Counties are challenged when landowners deny access to property or refuse to cooperate. For example; while counties have regulatory authority to require landowners to fix failing onsite sewage systems,

Kelly Susewind, P.E., P.G.  
July 8, 2013  
Page 2

addressing livestock pollution from farm owners is difficult. If one county has difficulty with an area of enforcement, it's a local problem; when many counties are stymied over the same issue, it's a systemic problem. To address this problem, we turned to Ecology's Water Quality staff to fill the regulatory gap. Specifically, when local governments cannot secure the regulatory authority or there is not the willingness to utilize the authority where it exists, we look to Ecology to use their nonpoint authority and compliance staff to support local governments' PIC programs by providing the correction support for nonpoint sources of pollution such as livestock. While local governments should still lead the identification portion of PIC programs, by recognizing clear roles around the correction portion of these programs we hope to make PIC efforts as effective and long lasting as possible while recognizing the realities of who can most consistently address different sources of nonpoint pollution.

When we make an offer for a PIC award, we require that the county provides evidence of its regulatory authority or be willing to work with Ecology as the regulatory backstop. We rely on Ecology's broad water quality experience and experience managing pollution from agriculture as we negotiate awards and manage projects. Over the past year, we've seen progress in local/state PIC collaborations. For example: Ecology and Skagit County inspectors both work in the Samish watershed and have developed an integrated inspection protocol; they meet frequently to coordinate the work and Ecology plays a significant role on the Clean Skagit Initiative steering committee. Ecology has contributed leadership as well as financial, technical and staff resources to the Whatcom Clean Water Program, which was recently launched as a multi-agency shellfish initiative in the lower Nooksack basin to reverse declining water quality.

We expect to see these state/local collaborations grow as PIC programs become established in Puget Sound. They are fueled by NEP now, but to protect water quality, they need to transition into self-supporting programs. The success of long term sustainable PIC programs in Puget Sound depends on a supportive regional infrastructure with smart leveraging of local, state and federal resources, identification and sharing of best practices, and identification of the most effective roles for local and state partners. We are working with Ecology to develop criteria to guide grant funding and which would help create self-sustaining local PIC programs designed to meet state water quality standards.

Much work remains to establish comprehensive, stable, and effective PIC programs in Puget Sound. Every week, we work with local, tribal and state partners to identify barriers and figure out solutions. We appreciate the value that Ecology adds to shellfish recovery and encourage our local and federal partners to support Ecology in this work.

Sincerely,



Jerrod Davis, P.E.  
Director

cc: Tom Eaton, US Environmental Protection Agency



## Appendix E. Dairy Nutrient Management Act Annual Report



Washington  
State Department of  
Agriculture

# DAIRY NUTRIENT MANAGEMENT PROGRAM

## Annual Report

JULY 1, 2020 – JUNE 30, 2021

### Working with change

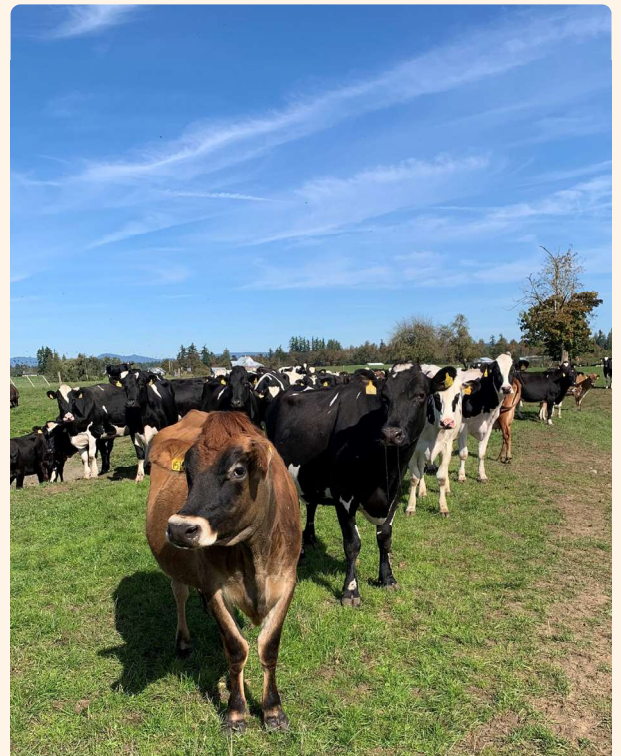
As COVID-19 continued to impact our core work of inspections, investigations, and collaboration with water quality partners, the Dairy Nutrient Management Program (DNMP) team continued to adapt. DNMP tested almost every virtual meeting platform, and those platforms have tested DNMP! We completed one virtual inspection for a small dairy with the help of Face Time and electronic records submission. Other conferences, trainings, and staff and partner meetings occurred through various virtual platforms — if they exist, we probably tried them. While some critical relationship building is lost, we discovered that the change to virtual meetings allowed us to reach a broader audience. For example, the Virtual CAFO Region 10 Roundtable drew almost twice as many participants from Washington, Oregon, and Idaho in fall 2020.

Changing weather impacted some of Washington's livestock owners. From the 2019 blizzard in central Washington to the extreme heat event in June 2021, we saw higher than usual animal losses. These events emphasized the need for more mortality composting training to help manage both routine and emergency mortalities. DNMP, along with the Washington State Department of Agriculture's (WSDA) Natural Resource Assessment Section, funded livestock mortality composting webinars developed by Washington State University. We continue to collaborate with partner agencies to identify grant funds that will build mortality compost subject matter expertise in Washington State.

A very positive change came through the 2021 legislative session, where DNMP received permanent funding to add an employee to our Northwest Region inspector team. This position will focus on livestock impacts to shellfish beds, primarily in Snohomish, Skagit, and Whatcom counties. We've had a project position filling this role funded through National Estuary Program grants since 2014. Permanent funding allows DNMP to put considerable time towards core work, rather than towards grant task tracking, reporting, and invoicing. It also allows us to continue the work beyond grant funding, using the tools and expertise built during our National Estuary Program work to create a permanent fixture of our program.

DNMP's core work of inspections, investigations, and collaboration with water quality partners continues to support our dual mission:

- Protect water quality from livestock nutrient discharges.
- Help maintain a healthy agricultural business climate



## DNMP Field Work

Five DNMP inspectors cover three regions in Washington where they collaborate with partner agencies and conduct outreach, inspections, and investigations to help approximately 300 dairies and permitted livestock operations meet state water quality requirements.

### Inspections

The Dairy Nutrient Management Act (Chapter 90.64 RCW) gives DNMP authority to conduct inspections and investigations, provide regulatory technical assistance, and identify enforcement necessary to protect state waters. Table 1 summarizes inspection activity over the past two years.

Table 1: Dairy inspections between July 1, 2019 and June 30, 2021

INSPECTION TYPE	FY21	FY20	TOTAL
Routine	119	163	282
Follow Up	80	72	152
Investigation	24	31	55
Technical Assistance	7	33	40
Other (Recordkeeping Review, Lagoon Assessment, etc.)	3	9	12
Closeout	17	16	33
Initial	8	12	20
<b>TOTAL</b>	<b>258</b>	<b>336</b>	<b>594</b>

Routine inspections are scheduled every 18 to 26 months; therefore most operations should receive one routine inspection each biennium. Despite several months of inspection suspensions and ongoing delays due to COVID-19, routine inspections have remained largely on track.

### Investigations and enforcement

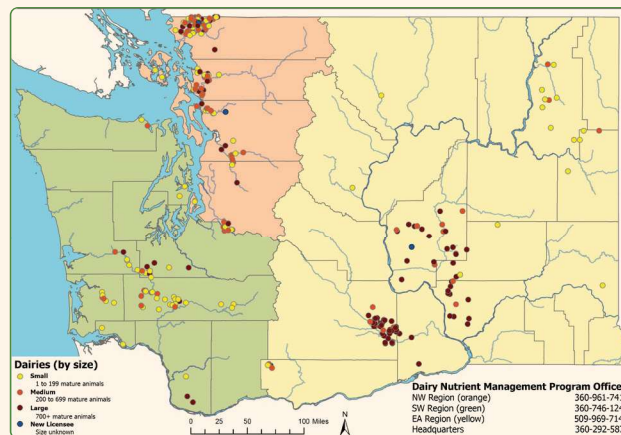
DNMP observations through routine inspections, surveillance, citizen complaints, or referrals from other agencies may lead to investigations into water quality violations. Investigations result in one of three outcomes:

- No Violation; May refer for technical assistance
- Potential to Pollute Violation; May refer for technical assistance
- Discharge Violation; May refer for technical assistance

If DNMP identifies a Discharge or Potential to Pollute Violation of Chapter 90.64 RCW through water sampling, visual evidence, or records review, depending on the severity of the violation, the inspector may issue a Warning Letter, or draft a Recommendation for Enforcement (RFE). Washington State Department of Ecology also reviews RFEs if DNMP confirms a surface water discharge has occurred or if the facility is a permitted CAFO, or Concentrated Animal Feeding Operation.

After the RFE review, DNMP's regulatory lead and program manager determine the appropriate enforcement action. Depending on the nature of the violation, enforcement follows a compliance path that starts with technical assistance,

Figure 1: Regions covered by DNMP Inspectors



Map shows where dairies are clustered, with 29 of Washington's 39 counties hosting one or more dairies.



Manure application splash plate

then moves progressively to a Warning Letter, a Notice of Correction, and finally a Notice of Penalty. DNMP may also issue a notice of violation which requires the producer to respond with solutions to fix the issues that resulted in enforcement, or an Administrative Order which requires the producer to take specific actions but does not have a penalty associated with the order.

Regardless of the enforcement action, DNMP continues to offer technical assistance and direct operators to professional technical assistance providers at conservation districts or the federal Natural Resources Conservation Service to prevent, avoid, minimize, or mitigate future violations.

Table 2 details enforcement actions taken by DNMP in the last five years, based on incident date. This table combines enforcement for both potential and actual discharge violations.

**Table 2: Enforcement Actions by Year and Type**

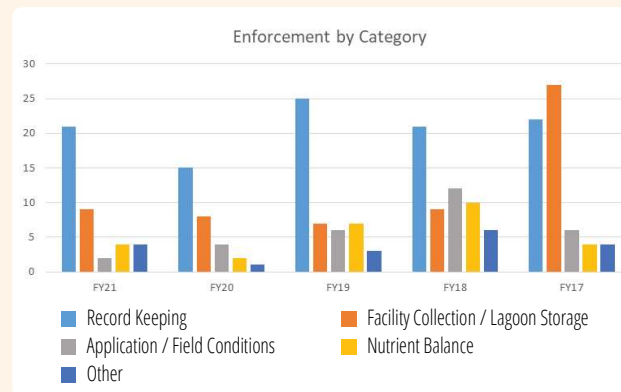
ENFORCEMENT TYPE	FY21	FY20	FY19	FY18	FY17
Warning Letter	22	16	31	32	37
Notice of Correction	13	11	11	22	25
Notice of Penalty	4	2	4	6	7
Notice of Violation	1	0	2*	0	0
<b>TOTAL</b>	<b>40</b>	<b>29</b>	<b>48</b>	<b>60</b>	<b>69</b>

*\*Of three Notices of Violation, one was issued by Washington Department of Ecology for a CAFO permit violation in FY2019.*

Sorting the enforcement activities by compliance category, such as recordkeeping, or land application/field conditions, provides a snapshot of how nutrient management issues have changed year by year. Chart 1 shows a breakdown of categories over the last five years.

In FY21, DNMP issued 11 more enforcement documents than in FY20, mostly in the recordkeeping category. While recordkeeping violations continue to be the primary compliance issue resulting in enforcement, the majority of recordkeeping violations are resolved with a Warning Letter. The decrease in violations associated with application/field conditions in FY21 is noteworthy, as violations in that category have a higher likelihood of being associated with a surface water discharge.

**Chart 1: Annual Enforcement by Compliance Category**



*Manure lagoon pump*

## Complaint Response

In FY21, DNMP followed up on 25 (up from 17 in FY20) unique dairy-related complaints through Ecology's Environmental Report Tracking System (ERTS). While the majority of complaints are submitted by citizens, agencies (including WSDA) also enter complaints into ERTS as a way of tracking issues. This lets partner agencies know an issue has been identified in their region and who is taking the lead on investigating the complaint. Primarily, DNMP addresses complaints associated with manure application and farm odors. We resolve many issues with education to the complainant and through technical assistance to the producer.



In FY21, DNMP complaint follow-up resulted in 25 individual dairy issues to address. Approximately one-third of the complaints were minor or were unfounded with no violation identified. The remaining seven issues resulted in the following enforcement for discharge or potential to pollute violations:

- Notice of Correction = 6
- Notice of Penalty = 1

## Technical Assistance Referrals

When a DNMP inspector identifies an issue with a producer's production facility or a manure application area and the issue requires technical expertise to address, the inspector issues a Technical Assistance Referral (TAR) to the producer. After receiving the TAR, the producer is expected to reach out to their local conservation district or private technical service provider to address the problem(s) identified in the TAR. A TAR is also issued when a dairy's nutrient management plan

Table 3: FY21 TARs Issued by Region and Category

	CS	NMP-U	NMP-A, NMP-C	LS	LARK	Other	TOTAL
NW	28	15	6	7	2	0	58
SW	3	6	4	8	1	5	27
EA	4	7	7	0	8	0	26
TOTAL	35	28	17	15	11	5	111

**CS** = Nutrient Collection and Storage

**NMP-U** = Nutrient Management Plan Update

**NMP-A and C** = Nutrient Management Plan  
Approval and Certification

**LS** = Lagoon Storage

**LARK** = Land Application Recordkeeping

**Other** = Animal Mortality Management,  
Manure Transport, Land Application  
Field Conditions

is outdated or no longer provides accurate information for informed decision-making. A copy of the TAR is sent to the corresponding conservation district and the TAR is tracked in DNMP's database.

Often a single facility will receive multiple TARs to address more than one issue. For example, a TAR may include issues such as updating the farm's nutrient management plan to include new field maps and a request for the producer to address nutrient collection and storage issues. Most conservation districts offer planning and engineering help to the producer free of charge and may even help the producer apply for state or federal cost-share to offset the expense of addressing issues that require structural fixes.

In FY21, DNMP issued 111 Technical Assistance Referrals (TAR) to 65 facilities. Similar to the previous year, nutrient collection and storage issues remain high. This is in part due to aging and failing infrastructure at facilities. Changing weather patterns also play a role where increasingly heavy rains may be concentrated in the shoulder seasons, such as spring when a lagoon may be full but fields are too wet to access, or fall when a lagoon may need to be emptied to provide winter storage.

While inspectors issued twice as many TARs to facilities in the NW Region than other regions, proportionally, SW Region facilities received the most TARs. Percentage of facilities that received a TAR by region:

- 34% Southwest Region
- 20% Northwest Region
- 17% Eastern Region

With over 20 percent of our facilities in the state receiving TARs, the need for technical assistance is clearly high. Time and financial pressures increasingly affect producers who struggle to fund and fix problems **and** put pressure on conservation districts working hard to provide technical assistance with limited resources.

## National Estuary Program (NEP) Grant

Since 2014, our NW Region DNMP team has partnered with Snohomish, Skagit, and Whatcom county pollution identification and correction programs. In addition to routine water sampling and focused technical assistance for the dairies in the priority watersheds, we've developed the [Water Quality Results Map](#) to increase transparency and public awareness about water quality conditions. Collaboration with our partners (county public works, Ecology, tribes, and conservation districts) keeps extensive and timely data updated on the map, showing areas being monitored and water quality "hot" spots. DNMP also hosts a story map, [The Waterfront: Diving into Water Quality](#), that highlights weather, events, and stories about water quality in the north Puget Sound region.

In FY21, we amended our NEP grant, adding several new tasks including the following:

- Expanded surveillance and targeted water sampling in the South Skagit Bay area.
- Analyzing 10 percent of all water samples for *E. coli* in addition to fecal coliform.
- Collaborating with Skagit Public Works to provide manure samples for their chemical tracer research.
- Providing sub-award grants to Snohomish, Skagit, and Whatcom conservation districts to use Coliscan® analysis as a technical assistance tool to identify sources of *E. coli* bacteria.

We are very excited about the Coliscan® sub-award grants. Helping the conservation districts build their own Coliscan® stations through the sub-awards allows them to provide meaningful (and non-regulatory) information to facilities about livestock impacts on water quality. Identifying the source of bacterial pollution is the first step to correcting the problem.

## The Licensed Dairy Community and Permitted CAFOs

Washington State continues to lose more dairies than it gains. Twenty-two dairies went out of business (OOB) in FY21 with the NW Region losing 68 percent of that total. Fifty percent of all OOB dairies were small (less than 200 mature cows). A number of factors influence the decline:

- Aging facility infrastructure and producers
- Depressed milk prices
- High feed prices
- Labor costs
- Scarcity of dairy support services
- Increasing regulatory pressures associated with water quality

While some producers retire, others are moving their operations to Oregon, Idaho, or to Midwestern states. Non-dairy CAFO permitted operations, such as beef feedlots, have maintained consistent facility and animal numbers.

Washington's soil health emphasis and national carbon market opportunities may be a bright spot on the dairy horizon, possibly playing a role in how dairies operate in our state. Our producers rely on manure as a valuable nutrient to replace commercial fertilizer. In the future there may be additional value to tracking methane reduction through feed and manure management, and increasing soil carbon sequestration through manure or manure-based product applications.



## Appendix F. Stipulated Order of Dismissal

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

NORTHWEST ENVIRONMENTAL  
ADVOCATES,

Plaintiff,

v.

THE U.S. DEPARTMENT OF COMMERCE,  
*et al.*,

Defendants.

CASE NO. C16-1866-JCC

STIPULATED ORDER OF  
DISMISSAL

Plaintiff Northwest Environmental Advocates (“Plaintiff”), Defendants the U.S. Department of Commerce, the National Oceanic and Atmospheric Administration, and the United States Environmental Protection Agency (“EPA”) (collectively, “Defendants”), and Defendant-Intervenor the State of Washington (“Washington”) (collectively “Parties” or individually a “Party”) state as follows:

WHEREAS, on January 23, 2018, Plaintiff filed its Second Amended and Supplemental Complaint (Dkt. No. 74) against Defendants alleging violations of the Administrative Procedure Act (“APA”), the Coastal Zone Act Reauthorization Amendments of 1990 (“CZARA”), the Clean Water Act (“CWA”), and Endangered Species Act (“ESA”);



1 WHEREAS, CWA section 319(b), 33 U.S.C. § 1329(b), requires each state, after notice  
2 and opportunity for public comment, to prepare and submit to EPA for approval a management  
3 program for control of nonpoint sources of pollution that the state proposes to implement in the  
4 first four years beginning after the date of the submission;

5 WHEREAS, CWA section 319(b)(2), 33 U.S.C. § 1329(b)(2), provides that each  
6 management program proposed for implementation include, among other things, an  
7 identification of the best management practices (“BMPs”) and measures to be undertaken to  
8 reduce pollutant loadings resulting from categories of nonpoint sources that the state identifies as  
9 adding significant pollution in amounts contributing to not meeting water quality standards; an  
10 identification of programs to achieve implementation of the BMPs; and a schedule containing  
11 annual milestones for utilization of the program implementation methods and implementation of  
12 the BMPs identified in the management program. The section further specifies that the schedule  
13 provide for utilization of the BMPs at the earliest practicable date;  
14

15 WHEREAS, CWA section 319(d)(1), 33 U.S.C. § 1329(d)(1), provides that EPA shall  
16 either approve or disapprove a nonpoint source management program, including a portion of a  
17 nonpoint source management program, submitted by a state and that, if EPA does not disapprove  
18 a management program or portion of a management program within 180 days, such management  
19 program or portion shall be deemed approved for purposes of CWA section 319;  
20

21 WHEREAS, CWA section 319(h), 33 U.S.C. § 1329(h), provides that a state that has  
22 submitted a management program approved pursuant to CWA section 319(d), 33 U.S.C.  
23 § 1329(d), may apply for a federal grant in any fiscal year for the purpose of assisting the state  
24 with implementation of such management program;  
25  
26

1 WHEREAS, CWA section 319(h)(8), 33 U.S.C. § 1329(h)(8), provides that no grant to a  
2 state may be made under CWA section 319 in any fiscal year unless the EPA determines that  
3 such state made “satisfactory progress” in the preceding fiscal year in meeting the schedule  
4 specified by such state under subsection (b)(2) (“satisfactory progress determination”);

5 WHEREAS, on April 12, 2013, EPA issued *Nonpoint Source Program and Grant*  
6 *Guidelines for States and Territories* that emphasizes the importance of states maintaining  
7 current and relevant nonpoint source management programs to guide the use of CWA section  
8 319 grant funds and urging states to review and update such programs every five years or risk a  
9 determination of unsatisfactory progress under CWA section 319(h)(8), 33 U.S.C. § 1328(h)(8);  
10

11 WHEREAS, on September 14, 1988, Washington submitted its *Nonpoint Source Water*  
12 *Quality Assessment and Management Program* under CWA section 319, 33 U.S.C. § 1329, to  
13 EPA for review and approval;

14 WHEREAS, on October 13, 1989, EPA approved Washington’s *Nonpoint Source Water*  
15 *Quality Assessment and Management Program* pursuant to CWA section 319(d), 33 U.S.C.  
16 § 1329(d);  
17

18 WHEREAS, Washington also transmitted and EPA approved Nonpoint Source Program  
19 submissions in 2000 and 2005;

20 WHEREAS, on July 20, 2015, Washington submitted its *Water Quality Management*  
21 *Plan to Control Nonpoint Sources of Pollution* to EPA for review and approval (“Washington’s  
22 2015 Submission”);  
23

24 WHEREAS, on August 21, 2015, EPA approved Washington’s 2015 Submission  
25 (“EPA’s 2015 Approval”);  
26

1 WHEREAS, for the fiscal years 2014, 2015, 2016, 2017, and 2018, EPA determined  
2 under CWA section 319(h)(8), 33 U.S.C. § 1329(h)(8), that Washington had made “satisfactory  
3 progress” in meeting the schedule specified by Washington under CWA section 319(b)(2), 33  
4 U.S.C. § 1329(b)(2);

5 WHEREAS, upon application by Washington and based on available appropriations,  
6 EPA has made annual grants under CWA section 319(h) to assist with implementation of  
7 Washington’s nonpoint source management program;

8 WHEREAS, ESA section 7(a)(2), 16 U.S.C. § 1536(a)(2), requires each federal agency to  
9 insure that any action authorized, funded, or carried out by such agency is not likely to  
10 jeopardize the continued existence of any endangered or threatened species or result in the  
11 destruction or adverse modification of the critical habitat of such species;

12 WHEREAS, by letter dated September 22, 2016, Plaintiff provided Defendants with 60-  
13 days’ notice of Plaintiff’s intent to sue under the ESA, alleging, among other things, that EPA  
14 had failed to initiate or complete consultation under ESA section 7(a)(2) for EPA’s approval of  
15 Washington’s 2015 Submission, and for EPA’s findings and funding decisions associated with  
16 CWA section 319 grants for Washington; and

17 WHEREAS, Plaintiff, EPA, and Washington, through their authorized representatives  
18 and without any admission or final adjudication of any issues of fact or law or waiver of any  
19 factual or legal claim or defense with respect to Plaintiff’s Second Amended and Supplemental  
20 Complaint, have stipulated to terms that they consider to be a fair, adequate, and equitable  
21 resolution of Plaintiff’s claims and to be in the public interest;

22 NOW, THEREFORE, the Parties agree and stipulate as follows:  
23  
24  
25  
26

1           1.       Effective upon the date of entry of this Stipulated Order of Dismissal, EPA’s 2015  
2 Approval of Washington’s 2015 Submission is remanded without vacatur to EPA, for  
3 reconsideration as provided for in Paragraphs 3, 4, and 7;

4           2.       Washington shall complete agricultural BMP guidance to control nonpoint source  
5 pollution, known as the Clean Water Guidance for Agriculture (“guidance”), implement  
6 Washington’s nonpoint source management program as set forth below, and submit to EPA  
7 updates to Washington’s nonpoint source management program (“319 Plan Updates”), as  
8 follows:  
9

10           a.       Washington shall complete the development of five chapters of the  
11 agricultural BMP guidance, consistent with 33 U.S.C. § 1329(b)(2)(A)–  
12 (B), including the chapter that addresses riparian areas on agricultural  
13 lands, on or before December 31, 2022 but in any event in time to be  
14 included in the 319 Plan Update identified in subsection (i) below;

15                   i.   On or before December 31, 2022, Washington shall submit to EPA a  
16 319 Plan Update that includes the agricultural BMPs identified to  
17 date, and a commitment: to use the BMPs for Washington’s CWA  
18 section 319 grant funding program; to develop and implement Total  
19 Maximum Daily Loads (“TMDLs”) and TMDL alternatives,  
20 including but not limited to Straight To Implementation projects,  
21 with nonpoint components; and for technical assistance work;

22                   ii. Washington shall complete the development of the remaining  
23 eight planned chapters of agricultural BMP guidance, consistent  
24 with 33 U.S.C. § 1329(b)(2)(A)–(B), on or before December 31,  
25  
26

2025 but in any event in time to be included in a 2025 319 Plan Update;

iii. Agricultural BMP guidance chapters shall be made available to the public in draft form on an ongoing basis not later than December 31, 2020;

iv. In the agricultural BMP guidance chapters, Washington shall include numeric values for the BMPs except where it does not make sense to do so. For the BMPs involving riparian areas, Washington shall establish necessary widths, and base riparian buffer plant composition guidance on mature vegetation communities composed of native species and consistent with ecological site potential, to meet water quality standards to the extent possible;

v. Washington shall provide approximate pollutant removal/reduction information for those BMPs in the guidance chapters that have pollutant removal/reduction information available in the existing literature;

vi. Washington's future 319 Plan Updates shall specify that the BMPs in the guidance chapters shall be used in Washington's CWA section 319 grant funding program; to develop and implement TMDLs with nonpoint components; and for technical assistance work;

vii. Washington shall include Plaintiff, the Washington Farm Bureau Federation, and the Washington Cattlemen's Association on the

1 emails for all of the BMP guidance committees' correspondence;

2 b. Update Funding Guidelines.

- 3 i. As agricultural BMP guidance chapters are developed for each  
4 practice category, Washington shall update its grant funding  
5 guidelines (for BMP project eligibility) to reflect the  
6 recommendations of the guidance;

7 c. New TMDLs - Incorporate Recommended BMPs.

- 8 i. Washington shall include recommended suites of BMPs in TMDLs  
9 or TMDL implementation plans to meet load allocations;  
10 ii. If watershed specific information requires more protective BMPs or  
11 suites of BMPs than the guidance, TMDLs or TMDL  
12 implementation plans shall include modified BMPs to reflect the  
13 load allocations in the TMDL;  
14

15 d. Watershed Evaluations, Complaint Response and Technical Assistance.

- 16 i. When pollution sources are identified and property operators are  
17 contacted, Washington shall discuss and recommend BMPs  
18 consistent with the agricultural BMP guidance;  
19 ii. Washington shall track what BMPs are implemented at those sites.  
20 iii. Washington shall provide training to its field staff on how to use the  
21 BMP guidance;  
22 iv. Washington shall develop outreach materials for each set of BMPs  
23 that can be used by field staff to assist in Washington's  
24 communication and recommendation of BMPs;  
25  
26

1 e. CWA section 319(h) Annual Work Plans.

- 2 i. Washington shall identify the priority watersheds in which  
3 Washington will focus its non-grant implementation efforts (*e.g.*,  
4 TMDL implementation, other nonpoint source control  
5 implementation);  
6 ii. Washington shall include a description of priority actions to be  
7 conducted in each priority watershed;  
8

9 f. CWA section 319(h) Annual Reports.

- 10 i. Washington shall submit annual reports to EPA that address each  
11 component in Washington's nonpoint source management plan that  
12 addresses the elements of 33 U.S.C. § 1329(b)(2);  
13 ii. Washington shall add a section that pertains to non-grant  
14 related BMP adoption and efforts pertaining to the annual  
15 work plans; and  
16 iii. Washington shall also include the following information in each  
17 annual report to EPA:  
18  
19 A. Update about the status and progress of BMP  
20 guidance development;  
21 B. Description of updates to Washington funding  
22 guidelines based on BMP guidance development;  
23 C. Use of BMP guidance for technical assistance;  
24 D. Use of BMP guidance in new TMDLs and TMDL  
25 implementation plans, TMDL implementation, and  
26

1 TMDL alternatives;

2 E. BMP outreach materials developed and training provided  
3 to field staff;

4 F. Number of watershed evaluations conducted per  
5 watershed; and

6 G. Number of complaints received and summary of complaint  
7 types.  
8

9 3. EPA's reconsideration of Washington's 2015 Submission shall be stayed until  
10 January 2, 2023 (or the next business day after Washington submits the December 2022 319 Plan  
11 Update required by Paragraph 2(a)(i) if that submission date is extended under Paragraphs 10 or  
12 11), and such reconsideration shall not be required in the event that Washington transmits to  
13 EPA Washington's December 2022 319 Plan Update in a timely manner under Paragraph 2(a)(i);  
14

15 4. If Washington does not transmit a 319 Plan Update in a timely manner under  
16 Paragraph 2(a)(i), or as extended by Paragraphs 10 or 11, then EPA shall take final action on its  
17 reconsideration of EPA's 2015 Approval of Washington's 2015 Submission within 180 days of  
18 the date by which Washington was required to transmit its 319 Plan Update under Paragraph  
19 2(a)(i) or as extended by Paragraphs 10 or 11;

20 5. If Washington transmits a 319 Plan Update in a timely manner under Paragraph  
21 2(a)(i), or as extended by Paragraphs 10 or 11, then within 180 days of EPA's receipt of that  
22 319 Plan Update, EPA shall review it and take final agency action either approving or  
23 disapproving it. In conducting its review EPA shall consider EPA's *Nonpoint Source Program*  
24 *and Grants Guidelines* (April 2013), including Appendix A. Plaintiff, EPA, and Washington  
25 agree that EPA's discretion shall not be constrained as to the substance of that review;  
26



1           6.       If Washington transmits a 319 Plan Update that is timely under Paragraph 2(a)(i),  
2 or as extended under Paragraphs 10 or 11, then within 150 days of EPA's receipt of that 319  
3 Plan Update, EPA shall make an effects determination, pursuant to 50 C.F.R. § 402.14(a), on  
4 EPA's approval, if any, of that 319 Plan Update and, as appropriate, request initiation of ESA  
5 section 7 consultation with the U.S. Fish and Wildlife Service and/or the National Marine  
6 Fisheries Service;

7           7.       If Washington does not transmit a 319 Plan Update that is timely under Paragraph  
8 2(a)(i), or as extended by Paragraphs 10 or 11, then by the next business day that is 150 days  
9 after the deadline for submitting the 319 Plan Update established by Paragraphs 2(a)(i), 10, or  
10 11, EPA shall make an effects determination pursuant to 50 C.F.R. § 402.14(a), on EPA's  
11 action upon reconsideration of Washington's 2015 Program Submission and, as appropriate,  
12 request initiation of ESA section 7 consultation with the U.S. Fish and Wildlife Service and/or  
13 the National Marine Fisheries Service;

14           8.       EPA shall make an effects determination pursuant to 50 C.F.R. § 402.14(a), on  
15 the satisfactory progress determination for Washington that EPA makes after the deadline set  
16 forth in Paragraph 2(a)(i), or as extended by Paragraphs 10 or 11, and, as appropriate, request  
17 initiation of ESA section 7 consultation with the U.S. Fish Wildlife Service and/or National  
18 Marine Fisheries Service. If EPA determines that Washington made satisfactory progress in the  
19 preceding fiscal year, then EPA shall make an effects determination pursuant to 50 C.F.R.  
20 § 402.14(a), on Washington's next CWA section 319 grant award after the date in Paragraph  
21 2(a)(i), or as extended by Paragraphs 10 or 11, and, as appropriate, request ESA section 7  
22 consultation with the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service;  
23  
24  
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1           9.       Notwithstanding the commitments in Paragraphs 6–8, EPA does not concede that  
2 CWA section 319(b) program submissions, CWA section 319(h)(8) satisfactory progress  
3 determinations, or CWA section 319(h) grant awards are “actions” within the meaning of 50  
4 C.F.R. § 402.02 and EPA reserves all available defenses to Plaintiff’s ESA claims. EPA’s  
5 commitments under Paragraphs 6–8 shall not be admissible in any proceeding except one to  
6 resolve Plaintiff’s motion for costs and attorneys’ fees in this case, or one to enforce this  
7 Stipulated Order of Dismissal;  
8

9           10.     If, due to unforeseen circumstances, EPA or Washington are unable to meet the  
10 deadlines in this Stipulated Order of Dismissal, EPA and Washington may seek reasonable  
11 modifications of the deadlines. In such a circumstance, EPA or Washington will notify Plaintiff  
12 of the requested modification and the reasons therefor, as set forth in Paragraph 11 below. By  
13 signing below, the Parties specifically acknowledge that Washington is using a multi-agency  
14 effort to address riparian buffers and anticipates that it will be able to meet the 2022 deadline for  
15 completing the riparian buffer BMP. If it appears that the 2022 deadline may be in jeopardy,  
16 Washington will give Plaintiff the earliest possible notice and Plaintiff agrees to take into  
17 account the multi-agency effort in considering a request by Washington to extend the deadline;  
18

19           11.     This Stipulated Order of Dismissal may be modified by the Court upon good  
20 cause shown, consistent with the Federal Rules of Civil Procedure, by written stipulation  
21 between the Parties filed with and approved by the Court, or upon written motion filed by one of  
22 the Parties and granted by the Court. In the event that any Party seeks to modify the terms of this  
23 Stipulated Order of Dismissal, or in the event of a dispute arising out of or relating to this  
24 Stipulated Order of Dismissal, or in the event that any Party believes that another of the Parties  
25 has failed to comply with any term or condition of this Stipulated Order of Dismissal, then the  
26

1 Party seeking the modification, raising the dispute, or seeking enforcement shall provide the  
2 other Parties with notice of the claim. The Party raising the dispute shall commence an informal  
3 dispute resolution period to be no shorter than 30 days or other reasonable time under the  
4 circumstances, by giving written notice to the other Parties stating the nature of the matter to be  
5 resolved and the position of the Party asserting the controversy. The Parties agree that they will  
6 meet and confer (either telephonically or in-person) at the earliest possible time during the  
7 informal dispute resolution period in a good faith effort to resolve the claim before seeking relief  
8 from the Court. If the Parties are unable to resolve the claim themselves, any Party may seek  
9 relief from the Court;  
10

11 12. In the event that either EPA or Washington or both fail to meet a deadline or fail  
12 to perform an obligation established by this Stipulated Order of Dismissal, and have not sought  
13 to modify it pursuant to the procedures set forth in Paragraphs 10 and 11, Plaintiff shall not move  
14 for contempt; rather, Plaintiff's sole remedy shall be to enforce the terms of this Stipulated Order  
15 of Dismissal, which may include having the Court establish a new deadline for any action  
16 required by this Stipulated Order of Dismissal. Additionally, Plaintiff shall not challenge the  
17 content of EPA's effects determinations under Paragraphs 6–8 in a motion to enforce this  
18 Stipulated Order of Dismissal;  
19

20 13. *Force Majeure*—The possibility exists that circumstances outside the reasonable  
21 control of EPA or Washington could delay compliance with the deadlines contained in this  
22 Stipulated Order of Dismissal. Such situations include, but are not limited to, sufficient funds not  
23 being appropriated as requested, appropriated funds not being available for expenditure, a federal  
24 government shutdown, or a catastrophic environmental event requiring an immediate and/or  
25 time-consuming response by EPA or Washington. Should a delay occur due to such  
26

1 circumstances, any resulting failure to meet the timetables set forth herein shall not constitute a  
2 failure to comply with the terms of this Stipulated Order of Dismissal, and any deadlines so  
3 affected shall be extended one day for each day of the delay. EPA or Washington (whichever is  
4 affected by *Force Majeure*) will provide Plaintiff and the Court with reasonable notice in the  
5 event that EPA or Washington invokes the terms of this Paragraph, at which point the Parties  
6 will meet and confer on extending the deadline and modifying this Stipulated Order of Dismissal  
7 under Paragraphs 10 and 11 herein;  
8

9 14. Plaintiff hereby forever covenants not to assert against EPA (by way of the  
10 commencement of an action, the joinder of EPA in an existing action or in any other fashion) any  
11 and all claims, causes of action, suits or demands of any kind whatsoever in law or in equity, that  
12 Plaintiff may have had, or may now have, against EPA based upon the same transactions or  
13 occurrences that are at issue in the Complaint, Amended Complaint, and Second Amended and  
14 Supplemental Complaint in this case. The Parties agree not to appeal any earlier Order of the  
15 District Court in this case;  
16

17 15. Upon entry of this Stipulated Order of Dismissal, this action is dismissed with  
18 prejudice under Federal Rule of Civil Procedure 41(a)(2). Except as provided in Paragraph 14  
19 herein, nothing in this Stipulated Order of Dismissal shall preclude Plaintiff from challenging, in  
20 a separate suit, any final agency action taken pursuant to the obligations set forth herein or any  
21 final decisions under CWA section 319, ESA section 7(a)(2), or 16 U.S.C. § 1455b;  
22

23 16. Plaintiff reserves the right to seek recovery of its attorneys' fees and costs  
24 incurred in connection with this action. Pursuant to 28 U.S.C. § 2412 and Federal Rule of Civil  
25 Procedure 54(d), Plaintiff shall file its petition for fees and costs for all of its claims within 30  
26 days of entry of this Stipulated Order of Dismissal. By entering into this Stipulated Order of

1 Dismissal, EPA does not waive any right to contest attorneys' fees or costs sought by Plaintiff  
2 in this action;

3 17. Plaintiff reserves the right to seek additional fees and costs incurred subsequent to  
4 this Stipulated Order of Dismissal arising from a need to enforce this Order with respect to any  
5 EPA deadline or action;

6 18. This Court shall retain jurisdiction over this matter to construe, carry out, enforce,  
7 modify, or resolve any dispute regarding the terms and conditions of this Stipulated Order of  
8 Dismissal;

9 19. This Stipulated Order of Dismissal shall become effective upon the date of its  
10 entry by the Court. If for any reason the Court does not enter this Stipulated Order of Dismissal,  
11 the obligations set forth in this Stipulated Order of Dismissal are null and void;

12 20. This Stipulated Order of Dismissal is not to be construed as a concession by any  
13 Party as to the validity of any fact or legal position concerning the claims or defenses in this  
14 action;

15 21. Nothing in this Stipulated Order of Dismissal shall be interpreted as, or shall  
16 constitute, a commitment or requirement that EPA is obligated to pay any funds exceeding those  
17 available, or take any action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or  
18 any other appropriations law; and

19 22. No provision of this Stipulated Order of Dismissal shall be interpreted as or  
20 constitute a commitment or requirement that EPA take action in contravention of the CWA,  
21 ESA, the APA, or any other law or regulation, either substantive or procedural. Nothing in this  
22 Stipulated Order of Dismissal shall be construed to limit or modify the discretion accorded to  
23  
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1 EPA by law with respect to the procedures to be followed in completing the actions set forth  
2 above or the substance of any EPA decision under CWA section 319.

3 Each undersigned representative of the Parties certifies that he or she is fully authorized  
4 to enter into and execute the terms and conditions of this Stipulated Order of Dismissal.

5 IT IS SO STIPULATED. Dated this 15th day of December, 2020.

6 **For the State of Washington and the Washington State Department of Ecology:**

7 /s/Ronal L. Lavigne  
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10 Senior Counsel  
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15 *Attorneys for Defendant-Intervenor State of Washington*

16 **For the Federal Defendants including the U.S. Environmental Protection Agency:**

17 /s/ Briena L. Strippoli  
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26 /s/ Michele L. Walter  
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27 *Attorneys for Federal Defendants*

28 **For plaintiff Northwest Environmental Advocates:**

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4 *Attorneys for Plaintiff Northwest Environmental Advocates*

5  
6 IT IS SO ORDERED.

7  
8 DATED this 8th day of January 2021.

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12 John C. Coughenour  
13 UNITED STATES DISTRICT JUDGE  
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## Appendix G. 210 Ecology memo



## Memorandum

To: Water Quality BMP Work Group

From: Melissa Gildersleeve, Water Quality Section Manager, Department of Ecology

Date: 8/16/10

Re: NRCS standards and Washington's Water Quality Standards

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Dear participating members,

As you are likely aware, NWIFC presented a series of questions concerning the farm planning process to several state and federal agencies. The Department of Ecology, Washington State Conservation Commission, and NRCS all provided responses to those questions. A copy of WSCC and NRCS responses to NWIFC questions was sent to the Water Quality Program.

The following memorandum serves to reiterate points made in Ecology's presentation at the July 7, 2010 work group meeting and the August 3, 2010 meeting, and to reply to several assertions made in the WSCC responses to NWIFC questions. The purpose of this memo is to make it clear that we disagree with the information provided in some of the responses (numbered 2, 16 and 23) because Ecology finds them inconsistent with the Ag and Water Quality talks and our interpretation of Washington's water quality standards. Specifically, the responses clearly stated that "in Washington, NRCS practices standards are designed to meet state water quality standards<sup>1</sup>." Based on information from the water quality BMP talks, Ecology's review of the NRCS technical guidance, and Ecology's experiences in working with this issue, we find that NRCS performance standards are not designed to ensure that a producer will comply with Washington state water regulations.

As we discussed at these last two meetings, for a performance standard to ensure compliance with state water quality law it needs to address the following:

**1. Meet the technology based standards established by the WAC 173-201A and RCW 90.48.** (1) be approved by Ecology as all known available and reasonable methods of treatment, so that when employed in correct combinations the BMPs will (2) prevent violation of water quality criteria, including the antidegradation standards of Washington State's Water Quality Standards, and the pollution prohibitions of Washington's Water Pollution Control Act. When Ecology undertakes this analysis and subsequently approves suites of practices, the implementation of the approved BMPs serve as the expression of compliance.

**2. Use adaptive management to meet the numeric and narrative criteria established by WAC 173-201A and RCW 90.48; upon showing that technology based standards do not achieve compliance with**

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<sup>1</sup> Responses to Questions from NWIFC, question 23, pages 7 & 8

**the water quality criteria.** If a practice has been approved by the department as meeting the thresholds established in 1, but a violation is documented, then sources which generate nonpoint pollution need to undertake adaptive management. Adaptive management operates such that if a violation of water quality criteria occurs, the discharger shall modify existing practices or apply further water pollution control measures, selected or approved by the department, to achieve compliance with water quality criteria.

NRCS performance standards are not designed to meet these requirements. Therefore, they cannot serve as a water quality BMP performance standard for state law compliance, because they cannot ensure that each and every landowner who undertakes the NRCS planning process will achieve compliance with state water quality regulations as defined above.

The following provides further explanation as to why NRCS performance standards are not designed to ensure landowner compliance with state water quality regulations. This analysis does not negate that fact that we think the NRCS process could be helpful in Washington and that it may have achieved improvements in water quality at locations where operators have been willing to implement adequate practices.

**A. NRCS technical guidance has not been determined to meet the technology- based standards established by Washington’s water quality regulations.**

Ecology has not made any formal determination that NRCS technical guidance constitutes AKART in Washington State. Nor does NRCS claim to have developed or verified that its technical guidance constitutes AKART in Washington State. Moreover, the nature of a voluntary and discretionary planning process precludes Ecology from making a blanket determination that the process will ensure the implementation of appropriate combinations of BMPs that will prevent violations of all water quality criteria, including the antidegradation provisions.

**B. Ecology needs a clearly identified process that has or will incorporate compliance with state water quality regulations into NRCS performance standards.**

Per the conversations at the BMP and water quality work group, NRCS technical guidance is largely a nationally developed standard. Ecology recognizes that the production of technical notes and the modification of practice standards does occur by some localized process, and therefore local information is brought into the development process. However, it is clear that there is no defined state process to consistently incorporate important state regulations into all pertinent NRCS written documents in a manner consistent with the policies of the respective implementing state agencies. Notably, Washington’s NRCS standards have not undergone a Water Quality Standards consultation with the appropriate implementing agency.

**C. NRCS technical guidance needs to establish performance standards with levels of protection that comply with state water quality regulation.**

NRCS technical guidance is designed to address a “resource concern.” NRCS has also made it clear that the practice standards treat the resource concern to levels laid out in the quality criteria found in section III of the Field Office Technical Guide. While water quality in the general sense is often identified as a resource concern, the quality criteria do not necessarily provide a level of protection equal to that of Washington state’s water quality standards or of the state’s Water Pollution Control Act. Our review of section III confirms this. Additionally, the practice standards found in section IV of the Field Office Technical Guide do not provide a level of protection needed to ensure that a producer will comply with state water quality regulations, because the FOTG standards are either silent or not detailed enough. In fact, section IV practice standards often contain broad statements to merely consider applicable local, state and federal regulations. Therefore, an individual planner, not a water quality specialist employed by Ecology, is left with the responsibility of interpreting the technical guidance materials to dictate levels of protection required by the state water quality regulations. Because there has been no process for adjusting NRCS practices and standards to comply with Washington water quality standards, NRCS (and Conservation District) planners lack the necessary information and guidance to adequately address compliance with state water quality standards. This is the gap that we are trying to fill with the Water Quality BMP Manual.

**D. Planner or Landowner discretion is not a performance standard that ensures Washington’s water quality regulations will be met.**

Understandably, the nationally developed standards cannot anticipate every possible permutation of state and local compliance. Absent clear guidance about compliance with state water quality regulations, the current NRCS technical guidance and planning process leaves the consideration of compliance with most regulations (including state water quality regulations) up to either the planner or the landowner. Generally, performance standards are defined as benchmarks against which actual performance is measured. In the absence of clear guidance, neither the planner nor the landowner are in a position to make an informed decision as to whether the proposed suite of practices will meet the requirements of the applicable performance standards -- state water quality standards. While there may be situations where a planner’s discretion and a landowner’s choices have resulted in water quality improvements, given the discretionary nature of the process, outcomes equivalent to state law compliance cannot reasonably be assured.

**E. NRCS’s technical guidance needs to provide an adaptive management process consistent with what is required by Washington State’s Water Quality standards.**

As noted above, and according to the Water Quality Standards, adaptive management operates such that if a violation of water quality criteria occurs, point and nonpoint source dischargers shall modify existing practices or apply further water pollution control measures, selected or approved by the department, to achieve compliance with water quality criteria. However, NRCS technical guidance does not incorporate water quality monitoring, or sufficient input from state water quality authorities, such that consistent water quality based adaptive management occurs. Lacking a water quality based adaptive management system consistent with the water quality standards, the NRCS technical guidance

cannot serve as a water quality BMP performance standard designed to achieve landowner compliance with state water quality regulations.

\* \* \*

In summary, this does not mean that NRCS technical guidance cannot serve an important function in the planning and development of Best Management Practices to protect water quality in Washington State. Instead, it merely demonstrates that current NRCS technical guidance cannot serve as a water quality BMP performance standard that ensures that landowners seeking to resolve water pollution problems will be in compliance with all relevant state water quality regulations. Therefore, articulating a point of compliance has been, and remains the task of the state agencies implementing their respective state and federal statutory obligations.

## Appendix H. WAC 222-30 Timber Harvest

## Chapter 222-30 WAC TIMBER HARVESTING

Last Update: 2/22/21

### WAC

222-30-010	Policy—Timber harvesting.
222-30-020	*Harvest unit planning and design.
222-30-021	*Western Washington riparian management zones.
222-30-022	*Eastern Washington riparian management zones.
222-30-023	Riparian management zones for exempt 20-acre parcels.
222-30-025	Even-aged harvest—Size and timing.
222-30-030	Stream bank integrity.
222-30-040	Shade requirements to maintain water temperature.
222-30-045	Salvage logging within riparian management zones.
222-30-050	Felling and bucking.
222-30-060	Cable yarding.
222-30-062	*Large woody debris removal or repositioning.
222-30-065	Helicopter yarding.
222-30-070	Ground-based logging systems.
222-30-080	Landing cleanup.
222-30-090	Postharvest site preparation.
222-30-100	Slash disposal or prescribed burning.
222-30-110	Timber harvesting on islands.
222-30-120	Rate of harvest monitoring.

**Reviser's note:** For an explanation of the rules marked with an asterisk (\*), see WAC 222-12-010.

**WAC 222-30-010 Policy—Timber harvesting.** \*(1) This chapter covers all removal of timber from forest lands in commercial operations, commercial thinning, salvage of timber, relogging merchantable material left after prior harvests, postharvest cleanup, and clearing of merchantable timber from lands being converted to other uses. It does not cover removal of incidental vegetation or removal of firewood for personal use. To the extent practicable, the department shall coordinate activities using a multiple disciplinary planning approach.

\*(2) The goal of riparian rules is to protect aquatic resources and related habitat to achieve restoration of riparian function; and the maintenance of these resources once they are restored.

\*(3) The rules provide for the conversion and/or treatment of riparian forests which may be understocked, overstocked or uncharacteristically hardwood dominated while maintaining minimum acceptable levels of function on a landscape scale. The diversity of riparian forests across the landscapes is addressed by tailoring riparian prescriptions to the site productivity and tree community at any site.

\*(4) Wetland areas serve several significant functions in addition to timber production: Providing fish and wildlife habitat, protecting water quality, moderating and preserving water quantity. Wetlands may also contain unique or rare ecological systems. The wetland management zone and wetland requirements specified in this chapter are designed to protect these wetland functions when measured over the length of a harvest rotation, although some of the functions may be reduced until the midpoint of the timber rotation cycle. Landowners are encouraged to voluntarily increase wetland acreage and functions over the long-term. Other laws or rules and/or permit requirements may apply. See chapter 222-50 WAC.

[Statutory Authority: Chapter 34.05 RCW, RCW 76.09.040, [76.09.]050, [76.09.]370, 76.13.120(9). WSR 01-12-042, § 222-30-010, filed 5/30/01, effective 7/1/01. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW. WSR 92-15-011, § 222-30-010, filed 7/2/92, effective 8/2/92. Statutory Authority: RCW 76.09.040. WSR 88-19-112 (Order 551, Resolution No. 88-1), § 222-30-010, filed 9/21/88, effective 11/1/88. Statutory Authority: RCW 76.09.040 and 76.09.050. WSR

82-16-077 (Resolution No. 82-1), § 222-30-010, filed 8/3/82, effective 10/1/82; Order 263, § 222-30-010, filed 6/16/76.]

**WAC 222-30-020 \*Harvest unit planning and design. (1) Preapplication consultation and harvest-related forest practices hydraulic projects.**

(a) Landowners contemplating forest practices hydraulic projects related to timber harvest are encouraged to consult with the department and the department of fish and wildlife prior to submitting an application to help ensure that project plans and specifications meet fish protection standards.

(b) Harvest-related forest practices hydraulic projects include, but are not limited to, projects associated with:

(i) Felling and bucking (WAC 222-30-050);

(ii) Cable yarding (WAC 222-30-060); and

(iii) Large woody material removal or repositioning (WAC 222-30-062).

(2) **Logging system.** The logging system, including forest biomass removal operations, should be appropriate for the terrain, soils, and timber type so that yarding or skidding can be economically accomplished and achieve the ecological goals of WAC 222-30-010 (2), (3) and (4) in compliance with these rules.

\* (3) **Landing locations.** Locate landings to prevent damage to public resources. Avoid excessive excavation and filling.

\* (4) **Western Washington riparian management zones.** (See WAC 222-30-021 and 222-30-023.)

\* (5) **Eastern Washington riparian management zones.** (See WAC 222-30-022 and 222-30-023.)

\* (6) **Riparian leave tree areas.** (See WAC 222-30-021, 222-30-022, and 222-30-023.)

\* (7) **Forested wetlands.** Within the wetland, unless otherwise approved in writing by the department, harvest methods shall be limited to low impact harvest or cable systems. Where feasible, at least one end of the log shall be suspended during yarding.

(a) When forested wetlands are included within the harvest area, landowners are encouraged to leave a portion (thirty to seventy percent) of the wildlife reserve tree requirement for the harvest area within a wetland. In order to retain undisturbed habitat within forested wetlands, these trees should be left in clumps. Leave tree areas should be clumped adjacent to streams, riparian management zones, or wetland management zones where possible and they exist within forested wetlands. Green recruitment trees should be representative of the size and species found within the wetland. Leave nonmerchantable trees standing where feasible.

(b) If a RMZ or WMZ lies within a forested wetland, the leave tree requirement associated with those areas may be counted toward the percentages in (a) of this subsection.

(c) Where riparian associated wetlands are present in the outer zone of a RMZ, trees may be left in the zone to maximize wetland function. See WAC 222-30-021 \*(1)(c)(ii).

(d) If the conditions described in (a) and (b) of this subsection are met, the distribution requirements for wildlife reserve trees and green recruitment trees (subsection (12)(e) of this section) are modified as follows: For purposes of distribution, no point within the harvest unit shall be more than one thousand feet from a wildlife reserve tree and green recruitment tree retention area.

(e) Approximate determination of the boundaries of forested wetlands greater than three acres shall be required. Approximate boundaries and areas shall be deemed to be sufficient for harvest operations.

(f) The department shall consult with the department of fish and wildlife and affected Indian tribes about site specific impacts of forest practices on wetland-sensitive species in forested wetlands.

\* (8) **Wetland management zones (WMZ)**. These zones shall apply to Type A and B Wetlands, as indicated in (a) of this subsection, and shall be measured horizontally from the wetland edge or the point where the nonforested wetland becomes a forested wetland, as determined by the method described in the board manual section 8, and shall be of an average width as described in (a) of this subsection. These zones shall not be less than the minimum nor more than the maximum widths described in (a) of this subsection. When these zones overlap a riparian management zone the requirement which best protects public resources shall apply.

\* (a) Wetland management zones (WMZ) shall have variable widths based on the size of the wetland and the wetland type, described as follows:

**Wetland Management Zones**

Wetland Type	Acres of Nonforested Wetland*	Maximum WMZ Width	Average WMZ Width	Minimum WMZ Width
A (including bogs)	Greater than 5	200 feet	100 feet	50 feet
A (including bogs)	0.5 to 5	100 feet	50 feet	25 feet
A (bogs only)	0.25 to 0.5	100 feet	50 feet	25 feet
B	Greater than 5	100 feet	50 feet	25 feet
B	0.5 to 5			25 feet
B	0.25 to 0.5	No WMZ required	No WMZ required	

\* For bogs, both forested and nonforested acres are included.

(b) Within the WMZ, leave a total of seventy-five trees per acre of WMZ greater than six inches dbh in Western Washington and greater than four inches dbh in Eastern Washington, twenty-five of which shall be greater than twelve inches dbh including five trees greater than twenty inches dbh, where they exist. Leave trees shall be representative of the species found within the WMZ.

(c) Retain wildlife reserve trees where feasible. Type 1 and 3 wildlife reserve trees may be counted among, and need not exceed, the trees required in (b) of this subsection. Leave all cull logs on site.

(d) Partial-cutting or removal of groups of trees is acceptable within the WMZ. The maximum width of openings created by harvesting within the WMZ shall not exceed one hundred feet as measured parallel to the wetland edge. Openings within WMZs shall be no closer than two hundred feet. Landowners are encouraged to concentrate leave trees within the WMZ to the wetland edge.

\* (e) Tractors, wheeled skidders, or other ground based harvesting systems shall not be used within the minimum WMZ width without written approval of the department.

\* (f) When ten percent or more of a harvest unit lies within a wetland management zone and either the harvest unit is a clearcut of thirty acres or less or the harvest unit is a partial cut of eighty acres or less, leave not less than fifty percent of the trees required in (b) of this subsection.



\* (9) **Type A or B Wetlands.** Within the boundaries of Type A or B Wetlands the following shall apply:

(a) Individual trees or forested wetland areas less than 0.5 acre in size may occur. These trees have a high habitat value to the non-forested wetland. Leave individual trees or forested wetlands less than 0.5 acre. These trees may be counted toward the WMZ requirements.

(b) Harvest of upland areas or forested wetlands which are surrounded by Type A or B Wetlands must be conducted in accordance with a plan, approved in writing by the department.

(c) No timber shall be felled into or cable yarded across Type A or B Wetlands without written approval of the department.

(d) Harvest shall not be allowed within a Type A Wetland which meets the definition of a bog.

(10) **Future productivity.** Harvesting shall leave the land in a condition conducive to future timber production except:

(a) To the degree required for riparian management zones; or

(b) Where the lands are being converted to another use or classified urban lands as specified in WAC 222-34-050.

(11) **Wildlife habitat.** This subsection is designed to encourage timber harvest practices that would protect wildlife habitats, provided, that such action shall not unreasonably restrict landowners action without compensation.

(a) The applicant should make every reasonable effort to cooperate with the department of fish and wildlife to identify critical habitats (state) as defined by the board. Where these habitats are known to the applicant, they shall be identified in the application or notification.

(b) Harvesting methods and patterns in established big game winter ranges should be designed to ensure adequate access routes and escape cover where practical.

(i) Where practical, cutting units should be designed to conform with topographical features.

(ii) Where practical on established big game winter ranges, cutting units should be dispersed over the area to provide cover, access for wildlife, and to increase edge effect.

(12) **Wildlife reserve tree management.** In areas where leaving wildlife reserve trees under this section will not create a significant fire hazard, or significant hazard to overhead power lines and operations that are proposed in the vicinity of wildlife reserve trees will not create a significant safety or residential hazard nor conflict with achieving conformance with the limitation of or performance with the provisions of chapter 76.04 RCW (snag falling law) and chapter 49.17 RCW (safety), wildlife reserve trees will be left to protect habitat for cavity nesting wildlife in accordance with the following:

(a) For the purposes of this subsection the following defines eastern and western Washington boundaries for wildlife reserve tree management. Beginning at the International Border and Okanogan National Forest boundary at the N1/4 corner Section 6, T. 40N, R. 24E., W.M., south and west along the Pasayten Wilderness boundary to the west line of Section 30, T. 37N, R. 19E.,

Thence south on range line between R. 18E. and R. 19E., to the Lake Chelan-Sawtooth Wilderness at Section 31, T. 35N, R. 19E.,

Thence south and east along the eastern wilderness boundary of Lake Chelan-Sawtooth Wilderness to the west line of Section 18, T. 31N, R. 19E. on the north shore of Lake Chelan,

Thence south on the range line between R. 18E. and R. 19E. to the SE corner of T. 28N, R. 18E.,

Thence west on the township line between T. 27N, and T. 28N to the NW corner of T. 27N, R. 17E.,

Thence south on range line between R. 16E. and R. 17E. to the Alpine Lakes Wilderness at Section 31, T. 26N, R. 17E.,

Thence south along the eastern wilderness boundary to the west line of Section 6, T. 22N, R. 17E.,

Thence south on range line between R. 16E. and R. 17E. to the SE corner of T. 22N, R. 16E.,

Thence west along township line between T. 21N, and T. 22N to the NW corner of T. 21N, R. 15E.,

Thence south along range line between R. 14E. and R. 15E. to the SW corner of T. 20N, R. 15E.,

Thence east along township line between T. 19N, and T. 20N to the SW corner of T. 20N, R. 16E.,

Thence south along range line between R. 15E. and R. 16E. to the SW corner of T. 18N, R. 16E.,

Thence west along township line between T. 17N, and T. 18N to the SE corner of T. 18N, R. 14E.,

Thence south along range line between T. 14E. and R. 15E. to the SW corner of T. 14N, R. 15E.,

Thence south and west along Wenatchee National Forest boundary to the NW corner of T. 12N, R. 14E.,

Thence south along range line between R. 13E. and R. 14E. to the SE corner of T. 10N, R. 13E.,

Thence west along township line between T. 9N, and T. 10N to the NW corner of T. 9N, R. 12E.,

Thence south along range line between R. 11E. and R. 12E. to the SE corner of T. 8N, R. 11E.,

Thence west along township line between T. 7N, and T. 8N to the Gifford Pinchot National Forest boundary,

Thence south along forest boundary to the SE corner of Section 33, T. 7N, R. 11E.,

Thence west along township line between T. 6N, and T. 7N to the SE corner of T. 7N, R. 9E.,

Thence south along Skamania-Klickitat County line to Oregon-Washington.

(b) In Western Washington, for each acre harvested three wildlife reserve trees, two green recruitment trees, and two down logs shall be left. In Eastern Washington for each acre harvested two wildlife reserve trees, two green recruitment trees, and two down logs shall be left. Type 1 wildlife reserve trees may be counted, at the landowner's option, either as a wildlife reserve tree or as a green recruitment tree. If adequate wildlife reserve trees are not available, no additional green recruitment trees will be required as substitutes. Landowners shall not under any circumstances be required to leave more than two green recruitment trees per acre for the purpose of wildlife reserve tree recruitment, or be required to leave Type 3 or 4 wildlife reserve trees.

(c) In Western Washington, only those wildlife reserve trees ten or more feet in height and twelve or more inches dbh shall be counted toward wildlife reserve tree retention requirements. In Eastern Washington, only those wildlife reserve trees ten or more feet in height and ten or more inches dbh shall be counted toward wildlife reserve tree retention requirements. Green recruitment trees, ten or more inches dbh and thirty or more feet in height and with at least one-third of their height in live crown, left standing after harvest may be counted toward green recruitment tree requirements. Green recruitment

trees and/or wildlife reserve trees left to meet other requirements of the rules or those left voluntarily by the landowner shall be counted toward satisfying the requirements of this section. Large, live defective trees with broken tops, cavities, and other severe defects are preferred as green recruitment trees. Only down logs with a small end diameter greater than or equal to twelve inches and a length greater than or equal to twenty feet or equivalent volume shall be counted under (a) of this subsection. Large cull logs are preferred as down logs.

(d) In the areas where wildlife reserve trees are left, the largest diameter wildlife reserve trees shall be retained to meet the specific needs of cavity nesters. Where the opportunity exists, larger trees with numerous cavities should be retained and count as recruitment trees.

(e) In order to facilitate safe and efficient harvesting operations, wildlife reserve trees and recruitment trees may be left in clumps. For purposes of distribution, no point within the harvest unit shall be more than eight hundred feet from a wildlife reserve tree or green recruitment tree retention area. Subject to this distribution requirement, the location of these retention areas and the selection of recruitment trees shall be at the landowner's discretion. Closer spacing of retention areas through voluntary action of the landowner is encouraged. Wildlife reserve tree and green recruitment tree retention areas may include, but are not limited to, riparian management zones, riparian leave tree areas, other regulatory leave areas, or voluntary leave areas that contain wildlife reserve trees and/or green recruitment trees.

(f) In order to provide for safety, landowners may remove any Type 3 or 4 wildlife reserve tree, which poses a threat to humans working, recreating, or residing within the hazard area of that tree. In order to provide for fire safety, the distribution of wildlife reserve tree retention areas, described in (e) of this subsection, may be modified as necessary based on a wildlife reserve tree management plan proposed by the landowner and approved by the department.

\*(13) **Channel migration zones.** No harvest, construction or salvage will be permitted within the boundaries of a channel migration zone except for the construction and maintenance of road crossings in accordance with applicable rules and the creation and use of yarding corridors consistent with WAC 222-24-020(6), 222-30-060(1), and 222-30-045(2).

(14) **Bankfull width.** No harvest or construction will be permitted within the bankfull width of any Type S or F Water or any buffered length of Type Np Water, except for the construction and maintenance of road crossings in accordance with applicable rules and creation and use of yarding corridors consistent with WAC 222-30-020 \*(6) and 222-24-060(1). No salvage may take place within the bankfull width of any typed water (see WAC 222-30-045).

[Statutory Authority: RCW 76.09.040. WSR 21-06-020, § 222-30-020, filed 2/22/21, effective 3/25/21. Statutory Authority: RCW 76.09.040(3). WSR 13-21-032, § 222-30-020, filed 10/8/13, effective 12/30/13. Statutory Authority: RCW 76.09.040. WSR 05-12-119, § 222-30-020, filed 5/31/05, effective 7/1/05. Statutory Authority: Chapter 34.05 RCW, RCW 76.09.040, [76.09.]050, [76.09.]370, 76.13.120(9). WSR 01-12-042, § 222-30-020, filed 5/30/01, effective 7/1/01. Statutory Authority: RCW 76.09.040 and chapter 34.05 RCW. WSR 97-24-091, § 222-30-020, filed 12/3/97, effective 1/3/98; WSR

97-15-105, § 222-30-020, filed 7/21/97, effective 8/21/97; WSR 94-17-033, § 222-30-020, filed 8/10/94, effective 8/13/94; WSR 93-12-001, § 222-30-020, filed 5/19/93, effective 6/19/93. Statutory Authority: RCW 76.09.060, 76.09.040 and chapter 34.05 RCW. WSR 92-23-056, § 222-30-020, filed 11/17/92, effective 12/18/92. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW. WSR 92-15-011, § 222-30-020, filed 7/2/92, effective 8/2/92. Statutory Authority: RCW 76.09.040. WSR 88-19-112 (Order 551, Resolution No. 88-1), § 222-30-020, filed 9/21/88, effective 11/1/88; WSR 87-23-036 (Order 535), § 222-30-020, filed 11/16/87, effective 1/1/88; Order 263, § 222-30-020, filed 6/16/76.]

**WAC 222-30-021 \*Western Washington riparian management zones.**

These rules apply to all typed waters on forest land in Western Washington, except as provided in WAC 222-30-023. RMZs are measured horizontally from the outer edge of the bankfull width or channel migration zone, whichever is greater, and extend to the limits as described in this section. See board manual section 7 for riparian design and layout guidelines.

\*(1) **Western Washington RMZs for Type S and F Waters** have three zones: The core zone is nearest to the water, the inner zone is the middle zone, and the outer zone is furthest from the water. (See definitions in WAC 222-16-010.) RMZ dimensions vary depending on the site class of the land, the management harvest option, and the bankfull width of the stream. See tables for management options 1 and 2 below.

None of the limitations on harvest in each of the three zones listed below will preclude or limit the construction and maintenance of roads for the purpose of crossing streams in WAC 222-24-030 and 222-24-050, or the creation and use of yarding corridors in WAC 222-30-060(1).

The shade requirements in WAC 222-30-040 must be met regardless of harvest opportunities provided in the inner zone RMZ rules. See board manual section 1.

(a) **Core zones.** No timber harvest or construction is allowed in the core zone except operations related to forest roads as detailed in subsection (1) of this section. Any trees cut for or damaged by yarding corridors in the core zone must be left on the site. Any trees cut as a result of road construction to cross a stream may be removed from the site, unless used as part of a large woody debris placement strategy or as needed to reach stand requirements.

(b) **Inner zones.** Forest practices in the inner zone must be conducted in such a way as to meet or exceed stand requirements to achieve the goal in WAC 222-30-010(2). The width of the inner zone is determined by site class, bankfull width, and management option. Timber harvest in this zone must be consistent with the stand requirements in order to reach the desired future condition targets.

**"Stand requirement"** means a number of trees per acre, the basal area and the proportion of conifer in the combined inner zone and adjacent core zone so that the growth of the trees would meet desired future conditions. The following table defines basal area targets when the stand is one hundred forty years old.

Site Class	Desired future condition target basal area per acre (at 140 years)
I	325 sq. ft.

Site Class	Desired future condition target basal area per acre (at 140 years)
II	325 sq. ft.
III	325 sq. ft.
IV	325 sq. ft.
V	325 sq. ft.

Growth modeling is necessary to calculate whether a particular stand meets stand requirement and is on a trajectory towards these desired future condition basal area target. The appropriate growth model will be based on stand characteristics and will include at a minimum, the following components: The number of trees by diameter class, the percent of conifer and hardwood, and the age of the stand. See board manual section 7.

(i) **Hardwood conversion in the inner zone.** When the existing stands in the combined core and inner zone do not meet stand requirements, no harvest is permitted in the inner zone, except in connection with hardwood conversion.

The landowner may elect to convert hardwood-dominated stands in the **inner zone** to conifer-dominated stands. Harvesting and replanting shall be in accordance with the following limits:

(A) Conversion activities in the **inner zone** of any harvest unit are only allowed where all of the following are present:

- Existing stands in the combined core and inner zone do not meet stand requirements (WAC 222-30-021 (1)(b));
- There are fewer than fifty-seven conifer trees per acre eight inches or larger dbh in the conversion area;
- There are fewer than one hundred conifer trees per acre larger than four inches dbh in the conversion area;
- There is evidence (such as conifer stumps, historical photos, or a conifer understory) that the conversion area can be successfully reforested with conifer and support the development of conifer stands;
- The landowner owns five hundred feet upstream and five hundred feet downstream of the harvest unit;
- The core and inner zones contain no stream adjacent parallel roads;
- Riparian areas contiguous to the proposed harvest unit are owned by the landowner proposing to conduct the conversion activities, and meet shade requirements of WAC 222-30-040 or have a seventy-five foot buffer with trees at least forty feet tall on both sides of the stream for five hundred feet upstream and five hundred feet downstream of the proposed harvest unit (or the length of the stream, if less);
- If the landowner has previously converted hardwood-dominated stands, then postharvest treatments must have been performed to the satisfaction of the department.

(B) In addition to the conditions set forth above, permitted conversion activities in the **inner zone** of any harvest unit are limited by the following:

- Each continuous conversion area is not more than five hundred feet in length; two conversion areas will be considered "continuous" unless the no-harvest area separating the two conversion areas is at least half the length of the larger of the two conversion areas.

• Type S and F (Type 1, 2, or 3) Water: Up to fifty percent of the inner zone area of the harvest unit on one side of the stream may be converted provided that:

♦ The landowner owns the opposite side of the stream and the landowner's riparian area on the opposite bank meets the shade requirements of WAC 222-30-040 or has a seventy-five foot buffer of trees at least forty feet tall or:

♦ The landowner does not own land on the opposite side of the stream but the riparian area on the opposite bank meets the shade requirements of WAC 222-30-040 or has a seventy-five foot buffer of trees at least forty feet tall.

- Not more than twenty-five percent of the inner zone of the harvest unit on both sides of a Type S or F Water may be converted if the landowner owns both sides.

(C) Where conversion is allowed in the **inner zone**, trees within the conversion area may be harvested except that:

- Conifer trees larger than twenty inches dbh shall not be harvested;

- Not more than ten percent of the conifer stems greater than eight inches dbh, exclusive of the conifer noted above, within the conversion area may be harvested; and

- The landowner must exercise reasonable care in the conduct of harvest activities to minimize damage to all residual conifer trees within the conversion area including conifer trees less than eight inches dbh.

(D) Following harvest in conversion areas, the landowner must:

- Reforest the conversion area with **conifer** tree species suitable to the site in accordance with the requirements of WAC 222-34-010; and

- Conduct postharvest treatment of the site until the conifer trees necessary to meet acceptable stocking levels in WAC 222-34-010(2) have crowns above the brush or until the conversion area contains a minimum of one hundred fifty conifer trees greater than eight inches dbh per acre.

- Notify the department in writing within three years of the approval of the forest practices application for hardwood conversion, if the hardwood conversion has been completed.

(E) **Tracking hardwood conversion.** The purpose of tracking hardwood conversion is to determine if hardwood conversion is resulting in adequate enhancement of riparian functions toward the desired future condition while minimizing the short term impacts on functions. The department will use existing or updated databases developed in cooperation with the Washington Hardwoods Commission to identify watershed administrative units (WAUs) with a high percentage of hardwood-dominated riparian areas and, thus have the potential for excessive hardwood conversion under these rules. The department will track the rate of conversion of hardwoods in the riparian zone: (1) Through the application process on an annual basis; and (2) at a WAU scale on a biennial basis as per WAC 222-30-120 through the adaptive management process which will develop thresholds of impact for hardwood conversion at the watershed scale.

(ii) **Harvest options.**

(A) No inner zone management. When the existing stands in the combined core and inner zone do not meet stand requirements, no harvest is permitted in the inner zone. When no harvest is permitted in the inner zone or the landowner chooses not to enter the inner zone, the width of core, inner and outer zones are as provided in the following table:

**No inner zone management RMZ widths for Western Washington**

Site Class	RMZ width	Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	Inner zone width (measured from outer edge of core zone)		Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width >10'	stream width ≤10'	stream width >10'
I	200'	50'	83'	100'	67'	50'
II	170'	50'	63'	78'	57'	42'
III	140'	50'	43'	55'	47'	35'
IV	110'	50'	23'	33'	37'	27'
V	90'	50'	10'	18'	30'	22'

(B) Inner zone management. If trees can be harvested and removed from the inner zone because of surplus basal area consistent with the stand requirement, the harvest and removal of the trees must be undertaken consistent with one of two options:

(I) **Option 1. Thinning from below.** The objective of thinning is to distribute stand requirement trees in such a way as to shorten the time required to meet large wood, fish habitat and water quality needs. This is achieved by increasing the potential for leave trees to grow larger than they otherwise would without thinning. Thinning harvest under option 1 must comply with the following:

- Residual trees left in the combined core and inner zones must meet stand requirements necessary to be on a trajectory to desired future condition. See board manual section 7 for guidelines.

- Thinning must be from below, meaning the smallest dbh trees are selected for harvest first, then progressing to successively larger diameters.

- Thinning cannot decrease the proportion of conifer in the stand.

- Shade retention to meet the shade rule must be confirmed by the landowner for any harvest inside of seventy-five feet from the outer edge of bankfull width or outer edge of CMZ, whichever is greater.

- The number of residual conifer trees per acre in the inner zone will equal or exceed fifty-seven.

**Option 1. Thinning from below.**

Site class	RMZ width	Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	Inner zone width (measured from outer edge of core zone)		Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width >10'	stream width ≤10'	stream width >10'
I	200'	50'	83'	100'	67'	50'
II	170'	50'	63'	78'	57'	42'
III	140'	50'	43'	55'	47'	35'
IV	110'	50'	23'	33'	37'	27'
V	90'	50'	10'	18'	30'	22'

(II) **Option 2. Leaving trees closest to the water.** Management option 2 applies only to riparian management zones for site class I, II, and III on streams that are less than or equal to ten feet wide and RMZs in site class I and II for streams greater than ten feet wide. Harvest must comply with the following:

- Harvest is not permitted within thirty feet of the core zone for streams less than or equal to ten feet wide and harvest is not

permitted within fifty feet of the core zone for streams greater than ten feet wide;

- Residual leave trees in the combined core and inner zone must meet stand requirements necessary to be on a trajectory to desired future condition. See board manual section 7 for calculating stand requirements;

- A minimum of twenty conifers per acre, with a minimum twelve inch dbh, will be retained in any portion of the inner zone where even-age harvest occurs. These riparian leave trees will be counted towards meeting applicable stand requirements. The number of riparian leave trees cannot be reduced below twenty for any reason.

- Trees are selected for harvest starting from the outer most portion of the inner zone first then progressively closer to the stream.

- If (b)(ii)(B)(II) of this subsection results in surplus basal area per the stand requirement, the landowner may take credit for the surplus by harvesting additional riparian leave trees required to be left in the adjacent outer zone on a basal area-for-basal area basis. The number of leave trees in the outer zone can be reduced only to a minimum of ten trees per acre.

**Option 2. Leaving trees closest to water.**

Site Class	RMZ width	Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	Inner zone width				Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width ≤10'	stream width >10'	stream width >10'	stream width ≤10'	stream width >10'
				minimum floor distance		minimum floor distance		
			(measured from outer edge of core zone)	(measured from outer edge of core zone)	(measured from outer edge of core zone)	(measured from outer edge of core zone)		
I	200'	50'	84'	30'	84'	50'	66'	66'
II	170'	50'	64'	30'	70'	50'	56'	50'
III	140'	50'	44'	30'	**	**	46'	**

\*\* Option 2 for site class III on streams >10' is not permitted because of the minimum floor (100') constraint.

(iii) **Where the basal area components of the stand requirement cannot be met** within the sum of the areas in the inner and core zone due to the presence of a stream-adjacent parallel road in the inner or core zone, a determination must be made of the approximate basal area that would have been present in the inner and core zones if the road was not occupying space in the core or inner zone and the shortfall in the basal area component of the stand requirement. See definition of "stream-adjacent parallel road" in WAC 222-16-010.

(A) Trees containing basal area equal to the amount determined in (b)(iii) of this subsection will be left elsewhere in the inner or outer zone, or if the zones contain insufficient riparian leave trees, substitute riparian leave trees will be left within the RMZ width of other Type S or F Waters in the same unit or along Type Np or Ns Waters in the same unit in addition to all other RMZ requirements on those same Type S, F, Np or Ns Waters.

(B) When the stream-adjacent road basal area calculated in (b)(iii) of this subsection results in an excess in basal area (above



stand requirement) then the landowner may receive credit for such excess which can be applied on a basal area-by-basal area basis against the landowner's obligation to leave trees in the outer zone of the RMZ of such stream or other waters within the same unit, provided that the number of trees per acre in the outer zone is not reduced to less than ten trees per acre.

(C) When the basal area requirement cannot be met, as explained in (b)(iii) of this subsection, the shortfall may be reduced through the implementation of an acceptable large woody debris placement plan. See board manual section 26 for guidelines.

(iv) If a harvest operation includes both yarding and harvest activities within the RMZ, all calculations of basal area for stand requirements will be determined as if the yarding corridors were constructed prior to any other harvest activities. If trees cut or damaged by yarding are taken from excess basal area, these trees may be removed from the inner zone. Trees cut or damaged by yarding in a unit which does not meet the basal area target of the stand requirements cannot be removed from the inner zone. Any trees cut or damaged by yarding in the core zone may not be removed.

(c) **Outer zones.** Timber harvest in the outer zone must leave twenty riparian leave trees per acre after harvest. "**Outer zone riparian leave trees**" are trees that must be left after harvest in the outer zone in Western Washington. Riparian leave trees must be left uncut throughout all future harvests:

**Outer zone riparian leave tree requirements**

<b>Application</b>	<b>Leave tree spacing</b>	<b>Tree species</b>	<b>Minimum dbh required</b>
Outer zone	Dispersed	Conifer	12" dbh or greater
Outer zone	Clumped	Conifer	12" dbh or greater
Protection of sensitive features	Clumped	Trees representative of the overstory including both hardwood and conifer	8" dbh or greater

The twenty riparian leave trees to be left can be reduced in number under the circumstances delineated in (c)(iv) of this subsection. The riparian leave trees must be left on the landscape according to one of the following two strategies. A third strategy is available to landowners who agree to a LWD placement plan.

(i) **Dispersal strategy.** Riparian leave trees, which means conifer species with a diameter measured at breast height (dbh) of twelve inches or greater, must be left dispersed approximately evenly throughout the outer zone. If riparian leave trees of twelve inches dbh or greater are not available, then the next largest conifers must be left. If conifers are not present, riparian leave trees must be left according to the clumping strategy in (c)(ii) of this subsection.

(ii) **Clumping strategy.** Riparian leave trees must be left clumped in the following way:

(A) Clump trees in or around one or more of the following **sensitive features** to the extent available within the outer zone. When clumping around sensitive features, riparian leave trees must be eight inches dbh or greater and representative of the overstory canopy trees

in or around the sensitive feature and may include both hardwood and conifer species. Sensitive features are:

- (I) Seeps and springs;
- (II) Forested wetlands;
- (III) Topographic locations (and orientation) from which leave trees currently on the site will be delivered to the water;
- (IV) Areas where riparian leave trees may provide windthrow protection;
- (V) Small unstable, or potentially unstable, slopes not of sufficient area to be detected by other site evaluations. See WAC 222-16-050 (1)(d).
- (VI) Archaeological sites or historic archaeological resources as defined in RCW 27.53.030;
- (VII) Historic sites eligible for listing on the National Register of Historic Places or the Washington Heritage Register as determined by the Washington state department of archaeology and historic preservation. See WAC 222-16-050 (1)(f); or
- (VIII) Sites containing evidence of Native American cairns, graves or glyptic records as provided for in chapters 27.44 and 27.53 RCW. See WAC 222-16-050 (1)(f).

(B) If sensitive features are not present, then clumps must be well distributed throughout the outer zone and the leave trees must be of conifer species with a dbh of twelve inches or greater. When placing clumps, the applicant will consider operational and biological concerns. Tree counts must be satisfied regardless of the presence of stream-adjacent parallel roads in the outer zone.

(iii) **Large woody debris in-channel placement strategy.**

(A) In order to reduce the number of required outer zone trees, a landowner may design a LWD placement plan for department approval consistent with guidelines in board manual sections 5 and 26. Landowners are encouraged to consult with the department and the department of fish and wildlife while designing the plan and prior to submitting a forest practices application.

(B) Reduction of trees in the outer zone must not go below a minimum of ten trees per acre.

(C) If this strategy is chosen, a complete forest practices application must include the LWD placement plan.

(iv) **Twenty riparian leave trees must be left after harvest** with the exception of the following:

(A) If a landowner agrees to implement a placement strategy, see (iii) of this subsection.

(B) If trees are left in an associated channel migration zone, the landowner may reduce the number of trees required to be left according to the following:

(I) Offsets will be measured on a basal area-for-basal area basis.

(II) Conifer in a CMZ equal to or greater than six inches dbh will offset conifer in the outer zone at a one-to-one ratio.

(III) Hardwood in a CMZ equal to or greater than ten inches dbh will offset hardwood in the outer zone at a one-to-one ratio.

(IV) Hardwood in a CMZ equal to or greater than ten inches dbh will offset conifer in the outer zone at a three-to-one ratio.

**\* (2) Western Washington protection for Type Np and Ns Waters.**

(a) An **equipment limitation zone** is a thirty-foot wide zone measured horizontally from the outer edge of the bankfull width of a Type Np or Ns Water where equipment use and other forest practices that are

specifically limited by these rules. It applies to all perennial and seasonal streams.

(i) On-site mitigation is required if any of the following activities exposes the soil on more than ten percent of the surface area of the zone:

- (A) Ground based equipment;
- (B) Skid trails;
- (C) Stream crossings (other than existing roads); or
- (D) Cabled logs that are partially suspended.

(ii) Mitigation must be designed to replace the equivalent of lost functions especially prevention of sediment delivery. Examples include water bars, grass seeding, mulching, etc.

(iii) Nothing in this subsection (2) reduces or eliminates the department's authority to prevent actual or potential material damage to public resources under WAC 222-46-030 or 222-46-040 or any related authority to condition forest practices notifications or applications.

(b) **Sensitive site and RMZs protection along Type Np Waters.** Forest practices must be conducted to protect Type Np RMZs and sensitive sites as detailed below:

(i) A fifty-foot, no-harvest buffer, measured horizontally from the outer edge of bankfull width, will be established along each side of the Type Np Water as follows:

**Required no-harvest, 50-foot buffers on  
Type Np Waters.**

<b>Length of Type Np Water from the confluence of Type S or F Water</b>	<b>Length of 50' buffer required on Type Np Water (starting at the confluence of the Type Np and connecting water)</b>
Greater than 1000'	500'
Greater than 300' but less than 1000'	Distance of the greater of 300' or 50% of the entire length of the Type Np Water
Less than or equal to 300'	The entire length of Type Np Water

(ii) No timber harvest is permitted in an area within fifty feet of the outer perimeter of a soil zone perennially saturated from a headwall seep.

(iii) No timber harvest is permitted in an area within fifty feet of the outer perimeter of a soil zone perennially saturated from a side-slope seep.

(iv) No timber harvest is permitted within a fifty-six foot radius buffer patch centered on the point of intersection of two or more Type Np Waters.

(v) No timber harvest is permitted within a fifty-six foot radius buffer patch centered on a headwater spring or, in the absence of a headwater spring, on a point at the upper most extent of a Type Np Water as defined in WAC 222-16-030(3) and 222-16-031.

(vi) No timber harvest is permitted within an alluvial fan.

(vii) At least fifty percent of a Type Np Waters' length must be protected by buffers on both sides of the stream (2-sided buffers). Buffered segments must be a minimum of one hundred feet in length. If an operating area is located more than five hundred feet upstream from the confluence of a Type S or F Water and the Type Np Water is more

than one thousand feet in length, then buffer the Type Np Water according to the following table. If the percentage is not met by protecting sensitive sites listed in (b)(i) through (vii) of this subsection, then additional buffers are required on the Type Np Water to meet the requirements listed in the table.

**Minimum percent of length of Type Np Waters  
to be buffered when more than 500 feet up-  
stream from the confluence of a Type S or F  
Water**

<b>Total length of a Type Np Water upstream from the confluence of a Type S or F Water</b>	<b>Percent of length of Type Np Water that must be protected with a 50 foot no harvest buffer more than 500 feet upstream from the confluence of a Type S or F Water</b>
1000 feet or less	Refer to table in this subsection (i) above
1001 - 1300 feet	19%
1301 - 1600 feet	27%
1601 - 2000 feet	33%
2001 - 2500 feet	38%
2501 - 3500 feet	42%
3501 - 5000 feet	44%
Greater than 5000 feet	45%

The landowner must select the necessary priority areas for additional two-sided buffers according to the following priorities:

- (A) Low gradient areas;
- (B) Perennial water reaches of nonsedimentary rock with gradients greater than twenty percent in the tailed frog habitat range;
- (C) Hyporheic and groundwater influence zones; and
- (D) Areas downstream from other buffered areas.

Except for the construction and maintenance of road crossings and the creation and use of yarding corridors, no timber harvest will be allowed in the designated priority areas. Landowners must leave additional acres equal to the number of acres (including partial acres) occupied by an existing stream-adjacent parallel road within a designated priority area buffer.

(c) None of the limitations on harvest in or around Type Np Water RMZs or sensitive sites listed in (b) of this subsection will preclude or limit:

(i) The construction and maintenance of roads for the purpose of crossing streams in WAC 222-24-030 and 222-24-050.

(ii) The creation and use of yarding corridors in WAC 222-30-060(1).

To the extent reasonably practical, the operation will both avoid creating yarding corridors or road crossings through Type Np Water RMZ or sensitive sites and associated buffers, and avoid management activities which would result in soil compaction, the loss of protective vegetation or sedimentation in perennially moist areas.

Where yarding corridors or road crossings through Type Np Water RMZs or sensitive sites and their buffers cannot reasonably be avoided, the buffer area must be expanded to protect the sensitive site by an area equivalent to the disturbed area or by providing comparable functions through other management initiated efforts.

Landowners must leave additional acres equal to the number of acres (including partial acres) occupied by an existing stream-adjacent parallel road within a Type Np Water RMZs or sensitive site buffer.

[Statutory Authority: RCW 76.09.040(3). WSR 13-21-032, § 222-30-021, filed 10/8/13, effective 12/30/13. Statutory Authority: RCW 76.09.040. WSR 12-05-083, § 222-30-021, filed 2/17/12, effective 3/19/12. Statutory Authority: RCW 76.09.040 and 76.09.370. WSR 09-18-032, § 222-30-021, filed 8/25/09, effective 9/25/09. Statutory Authority: RCW 76.09.040. WSR 08-24-011, § 222-30-021, filed 11/21/08, effective 12/22/08; WSR 05-12-119, § 222-30-021, filed 5/31/05, effective 7/1/05. Statutory Authority: Chapter 34.05 RCW, RCW 76.09.040, [76.09.]050, [76.09.]370, 76.13.120(9). WSR 01-12-042, § 222-30-021, filed 5/30/01, effective 7/1/01.]

**WAC 222-30-022 \*Eastern Washington riparian management zones.**

For eastside forests, riparian management is intended to provide stand conditions that vary over time. It is designed to mimic eastside disturbance regimes within a range that meets functional conditions and maintains general forest health. These desired future conditions are a reference point on the pathway to restoration of riparian functions, not an end point of riparian stand development. These rules apply to all typed waters on forest land in Eastern Washington, except as provided in WAC 222-30-023. RMZs are measured horizontally from the outer edge of the bankfull width or channel migration zone, whichever is greater, and extend to the limits as described in the following section.

**Eastern Washington RMZ for streams with  
bankfull width of less than or equal to 15  
feet wide**

Site Class	Total RMZ Width	Core Zone Width From outer edge of bankfull width or outer edge of CMZ, whichever is greater	Inner Zone Width	Outer Zone Width
I	130'	30'	45'	55'
II	110'	30'	45'	35'
III	90'	30'	45'	15'
IV	75'	30'	45'	0'
V	75'	30'	45'	0'

**Eastern Washington RMZ for streams with  
bankfull width of greater than 15 feet wide**

Site Class	Total RMZ Width	Core Zone Width From outer edge of bankfull width or outer edge of CMZ, whichever is greater	Inner Zone Width	Outer Zone Width
I	130'	30'	70'	30'
II	110'	30'	70'	10'
III	100'	30'	70'	0'

Site Class	Total RMZ Width	Core Zone Width From outer edge of bankfull width or outer edge of CMZ, whichever is greater	Inner Zone Width	Outer Zone Width
IV	100'	30'	70'	0'
V	100'	30'	70'	0'

\* (1) **Eastern Washington RMZs on Type S and F Waters** have three zones: The core zone is nearest to the edge of the bankfull width or outer edge of the CMZ, whichever is greater. The inner zone is the middle zone, and the outer zone is furthest from the water. Permitted forest practices vary by timber habitat type and site class.

None of the limitations on harvest in each of the three zones listed below will preclude or limit the construction and maintenance of roads for the purpose of crossing streams in accordance with WAC 222-24-030 and 222-24-050, or the creation and use of yarding corridors in accordance with WAC 222-30-060 (1).

The shade requirements in WAC 222-30-040 must be met regardless of harvest opportunities provided in the inner zone RMZ rules. See board manual section 1.

(a) **Core zones.** The core zone extends thirty feet measured horizontally from the edge of the bankfull width or outer edge of the CMZ, whichever is greater, for all timber habitat types. No harvest or construction is allowed in the core zone except as detailed in subsection (1) of this section. Any trees cut for or damaged by yarding corridors must be left on site. Any trees cut as a result of road construction to cross a stream may be removed from the site unless used as part of a large woody debris replacement strategy.

(b) **Inner zones.** Width and leave tree requirements of the inner zone vary by timber habitat type as outlined below.

(i) **Ponderosa pine timber habitat type.**

(A) The width of the inner zone is seventy feet measured horizontally from the outer edge of the core zone on streams greater than fifteen feet bankfull width or forty-five feet measured horizontally from the outer edge of the core zone on streams with a bankfull width of fifteen feet or less.

(B) No harvest is allowed in the inner zone except as described in (b)(i)(C) or (D) of this subsection, and as allowed for stream crossings and yarding corridors as described in this subsection (1).

(C) **Stands with a high basal area:** Harvest is permitted in the inner zone if the basal area in the inner zone is greater than one hundred ten square feet per acre for conifer and hardwood trees equal to or greater than six inches dbh. The harvest must leave at least fifty trees per acre AND subject to (b)(i)(C)(III) of this subsection, a minimum leave tree basal area of at least sixty square feet per acre. The trees to be left shall be selected as follows:

(I) The twenty-one largest trees per acre must be left; and

(II) An additional twenty-nine trees per acre that are 10-inch dbh or greater must be left. If there are less than twenty-nine ten-inch dbh or greater trees per acre, leave the twenty-nine largest trees. If there are more than twenty-nine ten-inch dbh or greater trees per acre, leave twenty-nine ten-inch dbh or greater trees per acre based on the following priority order:

- Trees that provide shade to water;

- Trees that lean towards the water;
- Trees of the preferred species, as defined in WAC 222-16-010;
- Trees that are evenly distributed across the inner zone.

(III) If more than fifty trees per acre are needed to meet the minimum leave tree basal area of sixty square feet per acre, then additional trees greater than six-inch dbh must be left. If the minimum basal area cannot be met with fewer than one hundred trees of at least six inches dbh, then no more than one hundred trees per acre of the largest remaining trees will be required to be left regardless of the basal area.

(D) **Stands with low basal areas and high density:** Thinning is permitted if the basal area of all species is less than sixty square feet per acre AND there are more than one hundred trees per acre. The thinning must leave a minimum of one hundred trees per acre. The trees to be left must be selected as follows:

(I) The fifty largest trees per acre must be left; and

(II) An additional fifty trees per acre that are greater than six inches dbh must be left. If there are not fifty six-inch dbh or greater trees per acre, then all six-inch dbh or greater trees per acre must be left plus the largest remaining trees to equal fifty trees per acre. Select the additional fifty trees based on the following priority order:

- Trees that provide shade to water;
- Trees that lean towards the water;
- Trees of the preferred species, as defined in WAC 222-16-010;
- Trees that are evenly distributed across the inner zone.

(E) To the extent down wood is available on site prior to harvest, at least twelve tons of down wood per acre must be left following harvest as follows:

(I) Six pieces greater than sixteen inches diameter and twenty feet in length; and

(II) Four pieces greater than six inches in diameter and twenty feet in length.

(III) Landowner/operator is not required to create down wood.

(F) See **stream-adjacent parallel roads for all timber habitat types** in (iv) of this subsection if there is a stream-adjacent parallel road in this zone.

(ii) **Mixed conifer timber habitat type.**

(A) The width of the inner zone is seventy feet measured horizontally from the outer edge of the core zone on streams greater than fifteen feet bankfull width or forty-five feet measured horizontally from the outer edge of the core zone on streams with a bankfull width of fifteen feet or less.

(B) No harvest is allowed in the inner zone except as described in (b)(ii)(C) or (D) of this subsection, and as allowed for stream crossings and yarding corridors as described in subsection (1).

(C) **Stands with a high basal area:**

(I) Harvest is permitted in the inner zone if the combined conifer and hardwood basal area for trees greater than six inches dbh is:

- Greater than one hundred ten square feet per acre on low site indexes (site index less than ninety); or
- Greater than one hundred thirty square feet per acre on medium site indexes (site index between ninety and one hundred ten); or
- Greater than one hundred fifty square feet per acre on high site indexes (site index greater than one hundred ten).

(II) The harvest must leave at least fifty trees per acre AND a minimum leave tree basal area of at least:

- Seventy square feet per acre on low site indexes; or
- Ninety square feet per acre on medium site indexes; or
- One hundred ten square feet per acre on high site indexes.

(III) The trees to be left shall be selected as follows:

- The twenty-one largest trees per acre must be left; and
- An additional twenty-nine trees per acre that are ten-inch dbh

or greater must be left. If there are less than twenty-nine ten-inch dbh or greater trees per acre, leave the twenty-nine largest trees. If there are more than twenty-nine ten-inch dbh or greater trees per acre, leave twenty-nine ten-inch dbh trees per acre based on the following priority order:

- Trees that provide shade to water;
- Trees that lean towards the water;
- Trees of the preferred species, as defined in WAC 222-16-010;

or

- Trees that are evenly distributed across the inner zone.

• If more than fifty trees per acre are needed to meet the minimum leave tree basal area for the site index in (b)(ii)(C)(II) of this subsection, then additional trees greater than six inches dbh must be left. If the minimum basal area cannot be met with fewer than one hundred trees at least six inches dbh, then no more than one hundred trees per acre of the largest remaining trees will be required to be left regardless of the basal area.

(D) **Stands with low basal areas and high density:** Thinning is permitted if the basal area of all species is less than the minimum requirements for the site index in (b)(ii)(C)(II) of this subsection AND there are more than one hundred twenty trees per acre. The thinning must leave a minimum of one hundred twenty trees per acre. The trees to be left shall be selected as follows:

(I) The fifty largest trees per acre must be left; and

(II) An additional seventy trees per acre greater than six inches dbh must be left. If there are not seventy six-inch dbh or greater trees per acre, then all six-inch dbh or greater trees per acre must be left plus the largest remaining trees to equal seventy trees per acre. Select the additional seventy trees based on the following priority order:

- Trees that provide shade to water;
- Trees that lean towards the water;
- Trees of the preferred species, as defined in WAC 222-16-010;

or

- Trees that are evenly distributed across the inner zone.

(E) To the extent down wood is available on site prior to harvest, twenty tons of down wood per acre is required to be left following harvest as follows:

(I) Eight pieces greater than sixteen inches diameter and twenty feet in length; and

(II) Eight pieces greater than six inches in diameter and twenty feet in length.

(III) Landowner/operator is not required to create down wood.

(F) **See stream-adjacent parallel roads for all timber habitat types** in (b)(iv) of this subsection if there is a parallel road in this zone.

(iii) **High elevation timber habitat type.**

(A) The width of the inner zone is forty-five feet measured horizontally from the outer edge of the core zone on streams equal to or less than fifteen feet bankfull width or seventy feet measured hori-



zonally from the outer edge of the core zone on streams with a bankfull width of greater than fifteen feet.

(B) Follow stand requirements for Western Washington riparian management zones, WAC 222-30-021 (1)(b).

Note: Option 2 is not permitted for eastside use, because of the minimum floor (100') constraint.

(C) To the extent down wood is available prior to harvest, thirty tons per acre of down wood per acre must be left following harvest as follows:

(I) Eight pieces greater than sixteen inches diameter and twenty feet in length; and

(II) Eight pieces greater than six inches in diameter and twenty feet in length.

(III) Landowner/operator is not required to create down wood.

(D) See **stream-adjacent parallel roads for all timber habitat types** in (b)(iv) of this subsection if there is a parallel road in this zone.

(iv) **Stream-adjacent parallel roads for all timber habitat types in the inner zone.** The shade rule, WAC 222-30-040, must be met whether or not the inner zone includes a stream-adjacent parallel road. Where a stream-adjacent parallel road exists in the inner zone and the minimum required basal area cannot be met due to the presence of the road, then the location of the road determines the allowable operations as follows:

(A) For streams with a bankfull width that is greater than fifteen feet:

(I) If the edge of the road closest to the stream is seventy-five feet or more from the outer edge of bankfull width of the stream or outer edge of CMZ, whichever is greater, **no harvest is permitted in the inner zone.** This includes trees within the inner zone on the uphill side of the road.

(II) No harvest is permitted within the inner zone on the streamside of the road. If the edge of the road closest to the stream is less than seventy-five feet from the outer edge of bankfull width of the stream or outer edge of CMZ, whichever is greater then:

- Additional leave trees equal in total basal area to the trees lost due to the road must be left near the streams in or adjacent to the unit to be harvested; (See board manual section 7.)

- Where the additional leave trees providing fish habitat for water quality function are determined to be not available or not practical by the department, landowners and operators will employ site specific management activities to replace lost riparian functions that may include placement of large woody debris in streams. (See board manual section 7.)

(B) For streams with a bankfull width less than fifteen feet:

(I) If the edge of the road closest to the stream is fifty feet or more from the outer edge of bankfull width or outer edge of CMZ, whichever is greater, no harvest is permitted in the inner zone. This includes trees within the inner zone on the uphill side of the road.

(II) No harvest is permitted within the inner zone on the stream side of the road. If the edge of the road closest to the stream is less than fifty feet from the bankfull width or CMZ, whichever is greater then:

- Additional leave trees equal in total basal area to the trees lost due to the road must be left near the streams in or adjacent to the unit to be harvested. (See board manual section 7.)

- Where the additional leave trees providing fish habitat for water quality function are determined to be not available or not practical by the department, landowners and operators will employ site specific management activities to replace lost riparian functions that may include placement of large woody debris in streams. (See board manual section 7.)

(C) **Wildlife reserve trees.** Leave all wildlife reserve trees within the inner zone of the riparian management zone where operations in the vicinity do not violate the safety regulations (chapter 296-54 WAC and chapter 49.17 RCW administered by the department of labor and industries, safety division). Live wildlife reserve trees will contribute to the basal area requirements for inner zone leave trees and to leave tree counts if they are among the twenty-one largest trees per acre; or meet the requirement of an additional twenty-nine leave trees per acre as per (b)(ii)(E) of this subsection.

(c) **Outer zones.** This zone has three categories based on timber habitat type: Ponderosa pine, mixed conifer and high elevation. The width of this zone is zero to fifty-five feet measured horizontally from the outer edge of the inner zone depending on the site class and stream width. (See WAC 222-16-010 definition of "RMZ outer zone.")

(i) Tree counts that must be left per acre, regardless of the presence of an existing stream-adjacent parallel road in the zone, are:

(A) Ponderosa pine habitat type - Ten dominant or codominant trees.

(B) Mixed conifer habitat type - Fifteen dominant or codominant trees.

(C) High elevation habitat type - See requirements for Western Washington RMZs in WAC 222-30-021 (1)(c).

(ii) Outer zone leave tree requirements in (c)(i) of this subsection may be reduced to five trees per acre in the ponderosa pine zone, eight trees per acre in the mixed forest habitat type and ten trees per acre in the high elevation habitat type, if the landowner voluntarily implements a LWD placement plan consistent with board manual sections 5 and 26. Landowners are encouraged to consult with the department and the department of fish and wildlife while designing the plan and prior to submitting a forest practices application. If this strategy is chosen, a complete forest practices application must include the LWD placement plan.

\* (2) **Eastern Washington protection along Type Np and Ns Waters.**

(a) An **equipment limitation zone** is a thirty-foot wide zone measured horizontally from the outer edge of bankfull width of a Type Np or Ns Water where equipment is limited. It applies to all perennial and seasonal streams.

(i) On-site mitigation is required if any of the following activities exposes the soil more than ten percent of the surface area of the zone:

(A) Ground based equipment;

(B) Skid trails;

(C) Stream crossings (other than existing roads); or

(D) Cabled logs that are partially suspended.

(ii) Mitigation must be designed to replace the equivalent of lost functions, especially prevention of sediment delivery. Examples include water bars, grass seeding, mulching, etc.

(iii) Nothing in this subsection reduces or eliminates the department's authority to prevent actual or potential material damage to

public resources under WAC 222-46-030 or 222-46-040 or any related authority to condition forest practices notifications or applications.

**(b) Type Np Waters.**

Within fifty horizontal feet of the outer edge of bankfull width of the stream, the landowner must identify either a partial cut and/or clearcut strategy for each unit to be harvested:

Once approved by the department, the selected strategy will remain in effect until July 1, 2051. If a landowner transfers title of the harvest unit, the landowner must provide written notice of this continuing obligation to the new owner and send a copy to the department. See WAC 222-20-055.

**(i) For partial cuts:**

(A) Basal areas requirements are the same as those specified for the timber habitat type in the Eastern Washington RMZ inner zone.

(B) Where a stream-adjacent parallel road exists, the basal area required in (b)(i)(A) of this subsection is required to be left. (See stream-adjacent parallel roads for Type Np Waters in (c) of this subsection.)

(C) The trees to be included in the basal area determination and left after harvest must include:

(I) The ten largest trees per acre;

(II) Up to an additional forty trees per acre greater than or equal to ten inches dbh must be left. If all or some of the trees are not at least ten inches dbh, then the largest of the remaining trees must be left. Select trees based on the following priority order:

- Provide streambank stability;
- Provide shade to water;
- Lean towards the water;
- Preferred species, as defined in WAC 222-16-010; or
- Evenly distributed; and

If the basal area target has not been met with the trees required above, up to an additional fifty trees are required greater than six inches in dbh based on the above priority order.

(D) Side slope seeps must be protected with a fifty-foot partial cut buffer that meets the basal area and leave tree requirements of (b)(i)(A), (B), and (C) of this subsection. The buffer shall be measured from the outer perimeter of the perennially saturated soil zone.

**(ii) For clearcuts:**

When the clearcut strategy in this subsection is selected, the landowner must simultaneously designate a two-sided no-harvest fifty-foot buffer along the stream reach in the harvest unit that:

(A) Is equal in total length to the clearcut portion of the stream reach in the harvest unit; and

(B) Meets the upper end of basal area requirements for each respective timber habitat type in the Eastern Washington RMZ inner zone. See WAC 222-30-022 (1)(b)(i), (ii) or (iii).

(C) The streamside boundary of all clearcuts must:

(I) Not exceed in total thirty percent of the length of the stream reach in the harvest unit;

(II) Not exceed three hundred continuous feet in length;

(III) Not be located within five hundred feet of the intersection of a Type S or F Water; and

(IV) Not occur within fifty feet of the following sensitive sites as defined in WAC 222-16-010:

- The outer perimeter of a soil zone perennially saturated from a headwall seep;

- The outer perimeter of a soil zone perennially saturated from a side-slope seep;
- The center of a headwater spring;
- An alluvial fan;
- The center point of intersection of two or more Type Np Waters.

(c) **Stream-adjacent parallel roads for Type Np Waters.** If a road exists in a Type Np RMZ and the basal area required to be left cannot be met within fifty feet of the outer edge of bankfull width of the stream measured horizontally due to the presence of the road, then the distance of the road to the stream determines the allowable operations as follows:

(i) A road that is within thirty to forty-nine feet measured horizontally from the outer edge of bankfull width of the stream requires:

(A) A total of one hundred feet of riparian management zone measured horizontally (both sides of the stream count towards the total) must be left in a manner to provide maximum functions for nonfish use streams. If harvest is taking place on only one side of the stream, then fifty feet of RMZ width must be left, regardless of presence of a stream-adjacent parallel road. The width of the road is not counted as part of the total width of the RMZ.

(B) The location of the riparian management zone required in (A) of this subsection shall be based on the following priority order:

(I) Preferred: The area between the stream and the stream side edge of the road.

(II) The area that provides the most shade to the channel.

(III) The area that is most likely to deliver large woody debris to the channel.

(ii) A road that is within less than thirty feet from the outer edge of bankfull width of the stream measured horizontally requires, in addition to (c)(i)(A) and (B) of this subsection, that all trees between the stream and the streamside edge of the road must be left.

[Statutory Authority: RCW 76.09.040(3). WSR 13-21-032, § 222-30-022, filed 10/8/13, effective 12/30/13. Statutory Authority: RCW 76.09.040. WSR 05-12-119, § 222-30-022, filed 5/31/05, effective 7/1/05. Statutory Authority: Chapter 34.05 RCW, RCW 76.09.040, [76.09.]050, [76.09.]370, 76.13.120(9). WSR 01-12-042, § 222-30-022, filed 5/30/01, effective 7/1/01.]

## **WAC 222-30-023 Riparian management zones for exempt 20-acre parcels.**

Note: Compliance with this section does not ensure compliance with the federal Endangered Species Act or the Clean Water Act.

On parcels of 20 contiguous acres or less, landowners with total parcel ownership of less than 80 forested acres shall not be required to leave the riparian buffers described in WAC 222-30-021 and 222-30-022. These landowners are required to follow applicable watershed analysis riparian prescriptions in effect as of January 1, 1999, or if there are no watershed analysis riparian prescriptions in effect these landowners are required to follow the riparian management zone rules below.

**\* (1) Western Washington RMZs for exempt 20-acre parcels.** Riparian management zones are measured horizontally from the outer edge of bankfull width of a Type S or F Water and extend to the line where vegetation changes from wetland to upland plant community, or the line

required to leave sufficient shade as required by WAC 222-30-040, whichever is greater, but must not be less than 29 feet in width nor more than the maximum widths described in (f) of this subsection, provided that the riparian management zone width shall be expanded as necessary to include wetlands or ponds adjacent to the stream. When the riparian management zone overlaps a Type A or B Wetland or a wetland management zone, the requirement which best protects public resources shall apply.

(a) Harvest units shall be designed so that felling, bucking, yarding or skidding, and reforestation can be accomplished in accordance with these rules, including those rules relating to stream bank integrity and shade requirements to maintain stream temperature. Where the need for additional actions or restrictions adjacent to waters not covered by the following become evident, WAC 222-12-050 and 222-12-060 may apply.

(b) When requested in writing by the applicant, the department shall assist in preparation of an alternate plan for the riparian management zone.

(c) Landowners must meet the following shade requirements in effect January 1, 1999, to maintain stream temperature.

\* (i) Determination of adequate shade. The temperature prediction method in (c) (ii) and (iii) of this subsection shall be used to determine appropriate shade levels for flowing Type S and F Waters to prevent excessive water temperatures which may have detrimental impact on aquatic resources.

\* (ii) Temperature prediction method. In addition to the riparian management zone requirements described in (f) of this subsection, leave trees shall be retained within the maximum riparian management zones on flowing Type S and F Waters as provided by the method described in the board manual which includes the following considerations:

- (A) Minimum shade retention requirements; and
- (B) Regional water temperature characteristics; and
- (C) Elevation; and

(D) Temperature criteria defined for stream classes in chapter 173-201A WAC.

\* (iii) Leave tree requirements for shade. The method described in (c) (ii) of this subsection shall be used to establish the minimum shade cover based on site-specific characteristics. When site-specific data indicate that preharvest conditions do not meet the minimums established by the method, no additional shade removal from riparian management zones will be allowed.

(iv) Waivers. The department may waive or modify the shade requirements where:

(A) The applicant agrees to a staggered setting program producing equal or greater shade requirements to maintain stream temperature; or

(B) The applicant provides alternative means of stream temperature control satisfactory to the department; or

(C) The temperature method indicates that additional shade will not affect stream temperature.

(d) For wildlife habitat within the riparian management zone, leave an average of 5 undisturbed and uncut wildlife trees per acre at the ratio of 1 deciduous tree to 1 conifer tree equal in size to the largest existing trees of those species within the zone. Where the 1 to 1 ratio is not possible, then substitute either species present. Forty percent or more of the leave trees shall be live and undamaged on completion of harvest. Wildlife trees shall be left in clumps whenever possible.

(e) When 10 percent or more of the harvest unit lies within any combination of a riparian management zone of Type S or F Waters or a wetland management zone and the harvest unit is a clearcutting of 20 acres or less, leave not less than 50 percent of the trees required in (f) of this subsection.

(f) Within the riparian management zone, trees shall be left for wildlife and fisheries habitat as provided for in the chart below. Fifty percent or more of the trees shall be live and undamaged on completion of the harvest. The leave trees shall be randomly distributed where feasible; some clumping is allowed to accommodate operational considerations. The number, size, species and ratio of leave trees, deciduous to conifer, is specified by the bed material and average width of the water type within the harvest unit. Trees left according to (c) of this subsection may be included in the number of required leave trees in this subsection.

**Western Washington Riparian Leave Tree Requirements  
For exempt 20-acre parcels**

Water Type/Average Bankfull Width	RMZ Maximum Width	Ratio of Conifer to Deciduous/ Minimum Size Leave Trees	# Trees/1000 ft. each side	
			Gravel/Cobble <10" Diameter	Boulder/Bedrock
S or F Water greater than or equal to 75'	115'	representative of stand	58 trees	29 trees
S Water less than 75' and F Water less than 75' and greater than or equal to 10'	86'	representative of stand	115 trees	60 trees
F Water less than 10' and greater than or equal to 5'	58'	2 to 1 12" or next largest available <sup>1</sup>	86 trees	29 trees
F Water less than 5'	29'	1 to 1 6" or next largest available <sup>1</sup>	29 trees	29 trees

<sup>1</sup> "Or next largest available" requires that the next largest trees to those specified in the rule be left standing when those available are smaller than the size specified.

Ponds or lakes which are Type S or F Waters shall have the same leave tree requirements as boulder/bedrock streams.

**\* (2) Eastern Washington riparian management zones for exempt 20-acre parcels.** These zones shall be measured horizontally from the outer edge of bankfull width of Type S or F Waters and extend to the line where vegetation changes from wetland to upland plant community, or to the line required to leave sufficient shade as required by WAC 222-30-040, whichever is greater, but shall not be less than the minimum width nor more than the maximum widths described in (c) of this subsection, provided that the riparian management zone width shall be expanded as necessary to include wetlands or ponds adjacent to the stream. When the riparian management zone overlaps a Type A or B Wetland or a wetland management zone, the requirement which best protects public resources shall apply.

(a) Harvest units shall be designed so that felling, bucking, yarding or skidding, and reforestation can be accomplished in accordance with these rules, including those rules relating to stream bank integrity and shade requirements to maintain stream temperature. Where the need for additional actions or restrictions adjacent to waters not covered by the following become evident, WAC 222-12-050 and 222-12-060 may apply.

(b) When requested in writing by the applicant, the department shall assist in preparation of an alternate plan for the riparian management zone.

(c) Within the riparian management zone, trees shall be left for wildlife and fisheries habitat as provided for below. Fifty percent or more of the trees shall be live and undamaged on completion of the harvest. The leave trees shall be randomly distributed where feasible; some clumping is allowed to accommodate operational considerations.

(i) The width of the riparian management zone shall be based on the adjacent harvest type as defined in WAC 222-16-010 "Partial cutting." When the adjacent unit harvest type is:

Partial cutting - The riparian management zone width shall be a minimum of 35 feet to a maximum of 58 feet on each side of the stream.

Other harvest types - The riparian management zone shall average 58 feet in width on each side of the stream with a minimum width of 35 feet and a maximum of 345 feet on each side of the stream.

(ii) Leave tree requirements within the riparian management zones of Type S or F Waters:

(A) Leave all trees 12 inches or less in diameter breast height (dbh); and

(B) Leave all wildlife reserve trees within the riparian management zone where operations in the vicinity do not violate the state safety regulations (chapter 296-54 WAC and chapter 49.17 RCW administered by department of labor and industries, safety division); and

(C) Leave 18 live conifer trees per acre between 12 inches dbh and 20 inches dbh distributed by size, as representative of the stand; and

(D) Leave 4 live conifer trees per acre 20 inches dbh or larger and the 2 largest live deciduous trees per acre 16 inches dbh or larger. Where these deciduous trees do not exist, and where 2 wildlife reserve trees per acre 20 inches or larger do not exist, substitute 2 live conifer trees per acre 20 inches dbh or larger. If live conifer trees of 20 inches dbh or larger do not exist within the riparian management zone, then substitute the 5 largest live conifer trees per acre; and

(E) Leave 3 live deciduous trees per acre between 12 inches and 16 inches dbh where they exist.

(iii) Minimum leave tree requirements per acre for Type S or F Waters. Trees left for (c)(ii) of this subsection shall be included in the minimum counts.

(A) On streams with a boulder/bedrock bed, the minimum leave tree requirements shall be 75 trees per acre 4 inches dbh or larger.

(B) On streams with a gravel/cobble (less than 10 inches diameter) bed, the minimum leave tree requirement shall be 155 trees per acre 4 inches dbh or larger.

(C) On lakes or ponds, the minimum leave tree requirement shall be 86 trees per acre 4 inches dbh or larger.

Note: See the board manual for guidelines for calculating trees per acre and average RMZ widths.

(d) When 10 percent or more of the harvest unit lies within any combination of a riparian management zone of Type S or F Waters or a wetland management zone and the harvest unit is 20 acres or less, leave not less than 50 percent of the trees required in (c) of this subsection. (See WAC 222-16-010 "Partial cutting.")

**\* (3) Riparian leave tree areas for exempt 20-acre parcels.** The department will require trees to be left along Type Np Waters where such practices are necessary to protect public resources. Where such

practices are necessary, leave at least 29 conifer or deciduous trees, 6 inches in diameter or larger, on each side of every 1000 feet of stream length within 29 feet of the stream. The leave trees may be arranged to accommodate the operation.

(4) For the purposes of this section RMZ means: A specified area alongside Type S and F Waters where specific measures are taken to protect water quality and fish and wildlife habitat.

[Statutory Authority: RCW 76.09.040. WSR 10-23-077, § 222-30-023, filed 11/15/10, effective 12/16/10; WSR 08-24-011, § 222-30-023, filed 11/21/08, effective 12/22/08; WSR 05-12-119, § 222-30-023, filed 5/31/05, effective 7/1/05. Statutory Authority: Chapter 34.05 RCW, RCW 76.09.040, [76.09.]050, [76.09.]370, 76.13.120(9). WSR 01-12-042, § 222-30-023, filed 5/30/01, effective 7/1/01.]

**WAC 222-30-025 Even-aged harvest—Size and timing.** Except as provided in WAC 222-30-110, unit size and timing of timber harvesting by even-aged harvest methods is subject to the following requirements:

(1) Timber harvest which would result in an area larger than one hundred twenty acres and smaller than or equal to two hundred forty acres harvested by even-aged harvest methods on land owned or controlled by one landowner shall be reviewed by an interdisciplinary team, if the department determines that review is necessary. The area harvested by even-aged harvest methods, for the purposes of this subsection, shall be determined in accordance with subsection (3) of this section.

(2) Timber harvest which would result in an area larger than two hundred forty acres harvested by even-aged harvest methods on land owned or controlled by one landowner shall be prohibited. The area harvested by even-aged harvest method for the purposes of this subsection shall be determined in accordance with subsection (3) of this section.

(3) In calculating areas harvested by even-aged harvest methods, the area harvested by even-aged harvest methods shall include the acreage of that harvest unit and, all contiguous acreage harvested by even-aged harvest methods which is owned or controlled by the same landowner, except that acreage harvested by even-aged harvest methods sharing 10% or less of the common perimeter with the harvest unit under consideration shall not be considered contiguous for the purposes of this section.

(4) Harvest units shall be designed so that each harvest unit meets at least one of the following criteria:

(a) At least thirty percent of the unit's perimeter is in stands of trees that are thirty years of age or older;

(b) At least sixty percent of the unit's perimeter is in stands of trees that are fifteen years of age or older; or

(c) At least ninety percent of the unit's perimeter is in stands of trees that have survived on site a minimum of five growing seasons or, if not, have reached an average height of four feet.

Evaluation of unit perimeters is subject to the conditions specified in subsection (6) of this section.

(5) The requirements of subsections (2), (3), and (4) of this section shall apply only to timber harvest by even-aged harvest methods and shall not apply to timber harvest to salvage timber damaged by wind, disease, insects, fire, or other natural causes or to forest



practices involving the clearing of land of brush or understocked hardwoods to convert to managed hardwoods or conifers.

(6) In evaluating the perimeters of harvest units pursuant to subsection (4) of this section, the following conditions shall apply:

(a) The following shall be treated as fully stocked, mature stands that will not be counted as contiguous acreage harvested by even-aged methods for the purposes of subsections (1) and (2) of this section and which will be counted as thirty-year-old stands for the purposes of subsection (4) of this section:

(i) In Western Washington, a wetland management zone that is twice the width required by WAC 222-30-021 and 222-30-023(1) along Type S or F Waters;

(ii) In Eastern Washington, wetland management zone that is the width required by WAC 222-30-022 and 222-30-023(2);

(iii) Designated upland management areas;

(iv) Lands in a shoreline of statewide significance where harvest is limited under RCW 90.58.150;

(v) The portions of a perimeter consisting of land in uses other than forest land, such as land in agricultural or residential use and natural openings, and land not owned or controlled by the landowner who has proposed the harvest unit subject to the application under consideration;

\*(vi) Along Type S and F Waters, a continuous buffer meeting the requirements of WAC 222-30-021 and 222-30-022;

\*(vii) Along Type Np Waters, a continuous 50-foot wide no-harvest, no-salvage buffer.

(b) A stand of trees other than those described in (a) of this subsection shall be treated as a certain age class only if the stand is at least three hundred feet wide;

(c) Timber harvest units subject to an approved application or a notification for timber harvesting shall be treated as if the timber harvesting operation proposed in the application or notification were completed and regeneration not yet established.

[Statutory Authority: RCW 76.09.040. WSR 05-12-119, § 222-30-025, filed 5/31/05, effective 7/1/05. Statutory Authority: Chapter 34.05 RCW, RCW 76.09.040, [76.09.]050, [76.09.]370, 76.13.120(9). WSR 01-12-042, § 222-30-025, filed 5/30/01, effective 7/1/01. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW. WSR 92-15-011, § 222-30-025, filed 7/2/92, effective 8/2/92.]

**WAC 222-30-030 Stream bank integrity.** \*In the RMZ core zone for Type S and F Waters and RMZs for Type Np Waters, the operator shall:

(1) **Avoid disturbing brush** and similar understory vegetation;

(2) **Avoid disturbing stumps** and root systems and any logs embedded in the bank;

(3) **Leave high stumps** where necessary to prevent felled and bucked timber from entering the water;

(4) Leave trees which display large root systems embedded in the bank.

[Statutory Authority: Chapter 34.05 RCW, RCW 76.09.040, [76.09.]050, [76.09.]370, 76.13.120(9). WSR 01-12-042, § 222-30-030, filed 5/30/01, effective 7/1/01. Statutory Authority: RCW 76.09.040. WSR 87-23-036 (Order 535), § 222-30-030, filed 11/16/87, effective 1/1/88; Order 263, § 222-30-030, filed 6/16/76.]

**WAC 222-30-040 Shade requirements to maintain water temperature.**

\*(1) Within the bull trout overlay, all available shade will be retained within 75 feet from the edge of the bankfull width or the outer edge of the CMZ (whichever is greater) along Type S or F Waters. (See board manual, section 1.)

\*(2) Determination of adequate shade outside the bull trout overlay. The temperature prediction method mentioned in subsections (2) and (3) of this section shall be used to determine appropriate shade levels along Type S and F Waters to prevent excessive water temperatures, which may have detrimental impact on aquatic resources. No tree may be harvested within 75 feet from the edge of the bankfull width or the outer edge of the CMZ (whichever is greater) of any Type S or F Water if, according to the methodology, that tree is providing shade to the stream necessary to maintain compliance with temperature standards. If a landowner elects to remove any tree within 75 feet of any Type S or F Water, the landowner must demonstrate, using the methods in the board manual section 1, that the removal of the tree would not be contrary to the restrictions of this subsection.

\*(3) **Temperature prediction method.** In addition to the riparian management zone requirements, leave trees shall be retained in riparian management zones on Type S and F Waters as provided by the method described in the board manual which includes the following considerations:

- (a) Minimum shade retention requirements; and
- (b) Regional water temperature characteristics; and
- (c) Elevation; and
- (d) Temperature criteria defined for stream classes in chapter 173-201A WAC.

\*(4) Leave tree requirements for shade. The method described in subsection (3) of this section must be used to establish the minimum required shade cover based on site specific characteristics. When site specific data indicate that preharvest conditions do not meet the minimums established by the method, no additional shade removal from riparian management zones will be allowed.

\*(5) Shade requirements must be satisfied whether or not the inner zone includes a stream-adjacent parallel road. Nothing will preclude or limit the harvest of shade trees in connection with the construction and maintenance of road crossings or the creation and use of yarding corridors. (See WAC 222-30-060(1).)

\*(6) **Waivers.** The department may waive or modify the shade requirements where:

The temperature method indicates that additional shade will not affect water temperature.

[Statutory Authority: Chapter 34.05 RCW, RCW 76.09.040, [76.09.]050, [76.09.]370, 76.13.120(9). WSR 01-12-042, § 222-30-040, filed 5/30/01, effective 7/1/01. Statutory Authority: RCW 76.09.040 and chapter 34.05 RCW. WSR 93-12-001, § 222-30-040, filed 5/19/93, effective 6/19/93. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW. WSR 92-15-011, § 222-30-040, filed 7/2/92, effective 8/2/92. Statutory Authority: RCW 76.09.040. WSR 87-23-036 (Order 535), § 222-30-040, filed 11/16/87, effective 1/1/88. Statutory Authority: RCW 76.09.040 and 76.09.050. WSR 82-16-077 (Resolution No. 82-1), § 222-30-040, filed 8/3/82, effective 10/1/82; Order 263, § 222-30-040, filed 6/16/76.]

**WAC 222-30-045 Salvage logging within riparian management zones.**

Salvage logging within a riparian management zone is based upon the zone (core, inner or outer) in which the tree was originally located, applicable riparian stand requirements and the extent of previous harvest activities in the zone.

**\*(1) Salvage logging within the outer edge of bankfull width of any typed water.** No salvage may take place within the outer edge of bankfull width of any typed water.

**(2) Salvage logging in a core zone or channel migration zone.** No salvage may take place within the RMZ core zone or a channel migration zone, including any portion of those trees that may have fallen outside of these zones.

**(3) Salvage logging in the inner zone.** Salvage may not take place within the inner zone if the stand requirements cannot be met by the residual stand. If the proposed salvage involves down tree(s) that originated from the inner zone, salvage of down wood may only be permitted if the down wood was not needed to meet stand requirements in the inner zone. Salvage of any existing down wood may not take place if the unremoved balance of down wood is insufficient to meet the regional down wood guidelines in (a) and (b) of this subsection. Salvage within the inner zone must be conducted to protect residual undamaged trees within the inner zone. Down wood guidelines for salvage in RMZ inner zones are:

**(a) In Western Washington:**

Logs with a solid core	< 1 foot diameter	1-2 foot diameter	> 2 foot diameter	Total
Number of logs/acre	85	83	26	194

**(b) In Eastern Washington** ponderosa pine, mixed conifer, and high elevation habitat types:

Follow the down wood requirements for each habitat type in WAC 222-30-022.

**(4) Salvage logging in the outer zone.** Salvage may not take place within the outer zone if the riparian leave tree requirements cannot be met by the residual standing or down trees. If the proposed salvage involves tree(s) that are down that originated from the outer zone, salvage may only be permitted of down wood if the down wood was not needed to meet riparian leave tree requirements in the outer zone.

**(5) Salvage logging in sensitive sites or Type Np riparian management zones.** No salvage may take place within a sensitive site or a Type Np RMZ.

[Statutory Authority: Chapter 34.05 RCW, RCW 76.09.040, [76.09.]050, [76.09.]370, 76.13.120(9). WSR 01-12-042, § 222-30-045, filed 5/30/01, effective 7/1/01.]

**WAC 222-30-050 Felling and bucking. \*(1) Felling along water.**

**(a)** Except when removing or repositioning large woody debris per WAC 222-30-062, no trees will be felled into Type S and F Waters RMZ core zones, sensitive sites, or Type A or B Wetlands except trees which cannot practically and safely be felled outside these areas using techniques in general use. Such felling and removing in Type S or F Waters shall incorporate mitigation measures necessary to achieve no-net-loss of productive capacity of fish and shellfish habitat as follows:

(i) Trees shall not be felled into or across the stream except where approved by the department.

(ii) Trees or logs that enter a stream during felling shall remain where they enter unless parts or all of the trees or logs are specifically approved to be removed by the department.

(iii) If limbs or other small debris enter the watercourse as a result of felling timber, they shall be removed concurrently with each change in yarding road or within seventy-two hours after entry into the watercourse and placed on stable locations outside the stream's influence. Limbs or other small debris shall be removed from dry watercourses prior to the normal onset of high flows. Large woody material which was in place prior to felling timber shall not be disturbed.

(iv) Precautions shall be taken to minimize the release of sediment to waters downstream from the felling activity. See board manual section 5 for technical guidance.

(b) Within RMZ inner and outer zones, and wetland management zones, fell trees favorable to the lead consistent with safety standards to yard or skid away from the waters. The use of directional felling, lining, jacking and staged felling techniques are required.

(c) Trees may be felled into Type Np Water if logs are removed as soon thereafter as practical. See forest practices board manual section 4 guidelines for clearing slash and debris from Type Np and Ns Water.

**\* (2) Bucking or limbing along water.**

No bucking or limbing shall be done on trees or portions thereof lying within the bankfull width of Type S, F or Np Waters, in the RMZ core zones, in sensitive sites, or in open water areas of Type A Wetlands, except as necessary to remove the timber from the water, or unless it is part of a proposal to remove or reposition large wood debris per WAC 222-30-062. Such bucking or limbing in Type S or F Waters shall incorporate the mitigation measures in subsection (1)(a) of this section.

**\* (3) Felling near riparian management zones, wetland management zones and setting boundaries.** Reasonable care shall be taken to avoid felling trees into riparian management zones, wetland management zones and areas outside the harvest unit.

**(4) Felling in selective and partial cuts.** Reasonable care shall be taken to fell trees in directions that minimize damage to residual trees.

**(5) Disturbance avoidance for northern spotted owls.** Felling and bucking within a SOSEA boundary shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1st and August 31st provided that, this restriction shall not apply if:

(a) The landowner demonstrates that the owls are not actively nesting during the current nesting season; or

(b) The forest practice is operating in compliance with a plan or agreement developed for the protection of the northern spotted owl under WAC 222-16-080 (6)(a), (e), or (f).

**(6) Disturbance avoidance for marbled murrelets.** Felling and bucking shall not be allowed within 0.25 mile of an occupied marbled murrelet site during the daily peak activity periods within the critical nesting season, provided that, this restriction shall not apply if the forest practice is operating in compliance with a plan or agreement developed for the protection of the marbled murrelet under WAC 222-16-080 (6)(a) or (c).

[Statutory Authority: RCW 76.09.040(3). WSR 13-21-032, § 222-30-050, filed 10/8/13, effective 12/30/13. Statutory Authority: RCW 76.09.040. WSR 05-12-119, § 222-30-050, filed 5/31/05, effective 7/1/05. Statutory Authority: Chapter 34.05 RCW, RCW 76.09.040, [76.09.]050, [76.09.]370, 76.13.120(9). WSR 01-12-042, § 222-30-050, filed 5/30/01, effective 7/1/01. Statutory Authority: RCW 76.09.040 and chapter 34.05 RCW. WSR 97-24-091, § 222-30-050, filed 12/3/97, effective 1/3/98; WSR 97-15-105, § 222-30-050, filed 7/21/97, effective 8/21/97. Statutory Authority: Chapters 76.09 and 34.05 RCW. WSR 96-12-038, § 222-30-050, filed 5/31/96, effective 7/1/96. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW. WSR 92-15-011, § 222-30-050, filed 7/2/92, effective 8/2/92. Statutory Authority: RCW 76.09.040. WSR 87-23-036 (Order 535), § 222-30-050, filed 11/16/87, effective 1/1/88. Statutory Authority: RCW 76.09.040 and 76.09.050. WSR 82-16-077 (Resolution No. 82-1), § 222-30-050, filed 8/3/82, effective 10/1/82; Order 263, § 222-30-050, filed 6/16/76.]

**WAC 222-30-060 Cable yarding.** \*(1) **Type S and F Waters and sensitive sites.** No timber shall be cable yarded in or across Type S or F Waters except where the logs will not materially damage the bed of waters, banks of sensitive sites, or riparian management zones. If yarding across Type S or F Waters is permitted, then yarding is limited to cable or other aerial logging methods. Any work in or above Type S or F Waters requires an approved forest practices application. Logs must be fully suspended above the water unless otherwise allowed in the applicable forest practices application. Yarding corridors or full suspension shall be required to prevent damage to the bed, banks, and riparian vegetation. Yarding corridors must be no wider or more numerous than necessary to accommodate safe and efficient transport of logs. Generally, yarding corridors should be located no closer to each other than one hundred fifty feet (measured edge to edge) and should be no wider than thirty feet. Safety is a prime consideration in the location of yarding corridors. Total openings resulting from yarding corridors must not exceed twenty percent of the stream length associated with the forest practices application. When changing cable locations, care must be taken to move cables around or clear of the riparian vegetation to avoid damage to riparian vegetation.

Trees, logs, limbs, and other small debris that enter the water shall be managed as follows:

(a) Trees or logs that enter Type S and F Waters with identifiable bed or banks during yarding shall remain where they enter unless parts or all of the trees or logs are specifically approved to be removed by the department.

(b) Logs transported across Type S or F Waters shall be suspended so no portion of the logs or limbs can enter the watercourse or damage the bed and banks.

(c) If limbs or other small debris enter Type S or F Waters with identifiable bed or banks as a result of yarding timber, they shall be removed concurrently with each change in yarding road or within seventy-two hours after entry and placed on stable locations outside the stream's influence. Limbs or other small debris shall be removed from dry portions of watercourses prior to the normal onset of high flows. Large woody material that was in place prior to yarding of timber shall not be disturbed.

\* (2) **Type A or B Wetlands.** No timber shall be cable yarded in or across Type A or B Wetlands except with approval by the department.

\* (3) **Deadfalls.** Logs which are firmly embedded in the bed or bank of Type S or F Waters shall not be removed or disturbed except with approval by the department.

\* (4) **Yarding in riparian management zones, sensitive sites, and wetland management zones.** Where timber is yarded from or across a riparian management zone, sensitive site, or wetland management zone reasonable care shall be taken to minimize damage to the vegetation providing shade to the stream or open water areas and to minimize disturbance to understory vegetation, stumps and root systems. Where practical and consistent with good safety practices, logs shall be yarded in the direction in which they lie and away from Type A or B Wetlands or Type S, F or Np Waters until clear of the wetland management zone or riparian management zone.

\* (5) **Precautions shall be taken to minimize the release of sediment** to waters downstream from the yarding activity. See board manual section 5 for technical guidance.

(6) **Direction of yarding.**

(a) Uphill yarding is preferred.

(b) Where downhill yarding is used, reasonable care shall be taken to lift the leading end of the log to minimize downhill movement of slash and soils.

\* (c) When yarding parallel to a Type S or F Water channel below the 100-year flood level or within the riparian management zone, reasonable care shall be taken to minimize soil disturbance and to prevent logs from rolling into the stream, lake, pond, or riparian management zone.

(7) **Disturbance avoidance for northern spotted owls.** The operation of heavy equipment within a SOSEA boundary shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1st and August 31st provided that, this restriction shall not apply if:

(a) The landowner demonstrates that the owls are not actively nesting during the current nesting season; or

(b) The forest practice is operating in compliance with a plan or agreement developed for the protection of the northern spotted owl under WAC 222-16-080 (6) (a), (e), or (f).

(8) **Disturbance avoidance for marbled murrelets.** Yarding or operation of heavy equipment shall not be allowed within 0.25 mile of an occupied marbled murrelet site during the daily peak activity periods within the critical nesting season, provided that, this restriction shall not apply if the forest practice is operating in compliance with a plan or agreement developed for the protection of the marbled murrelet under WAC 222-16-080 (6) (a) or (c).

[Statutory Authority: RCW 76.09.040(3). WSR 13-21-032, § 222-30-060, filed 10/8/13, effective 12/30/13. Statutory Authority: RCW 76.09.040. WSR 08-24-011, § 222-30-060, filed 11/21/08, effective 12/22/08. Statutory Authority: Chapter 34.05 RCW, RCW 76.09.040, [76.09.]050, [76.09.]370, 76.13.120(9). WSR 01-12-042, § 222-30-060, filed 5/30/01, effective 7/1/01. Statutory Authority: RCW 76.09.040 and chapter 34.05 RCW. WSR 97-24-091, § 222-30-060, filed 12/3/97, effective 1/3/98; WSR 97-15-105, § 222-30-060, filed 7/21/97, effective 8/21/97. Statutory Authority: Chapters 76.09 and 34.05 RCW. WSR 96-12-038, § 222-30-060, filed 5/31/96, effective 7/1/96. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW. WSR 92-15-011, § 222-30-060, filed

7/2/92, effective 8/2/92. Statutory Authority: RCW 76.09.040. WSR 87-23-036 (Order 535), § 222-30-060, filed 11/16/87, effective 1/1/88. Statutory Authority: RCW 76.09.040 and 76.09.050. WSR 82-16-077 (Resolution No. 82-1), § 222-30-060, filed 8/3/82, effective 10/1/82; Order 263, § 222-30-060, filed 6/16/76.]

**WAC 222-30-062 \*Large woody debris removal or repositioning.**

Large woody debris removal or repositioning projects shall incorporate mitigation measures as necessary to achieve no-net-loss of productive capacity of fish and shellfish habitat. The following shall apply to large woody debris removal or repositioning:

(1) Large woody debris removal from streams shall only be approved where necessary to address safety considerations, or where its removal would not diminish the fish habitat quality of the watercourse. The department may approve the repositioning of large woody debris within the watercourse to protect life and property or as needed to conduct a forest practices hydraulic project. Repositioned large woody material shall be placed or anchored to provide stable, functional fish habitat.

(2) Large woody debris removal shall be conducted by equipment stationed on the bank, bridge, or other approved methods.

(3) Unless otherwise authorized, large woody debris shall be suspended during its removal so no portion of the large woody debris or limbs can damage the bed or banks. Yarding corridors or full suspension shall be required to avoid damage to riparian vegetation. It may be necessary to cut the large woody debris in place, to a size that allows suspension during removal.

(4) Smaller limb and bark debris associated with the large woody material shall be removed and disposed of so as not to reenter the typed water.

(5) Large woody debris embedded in a bank or bed shall be left undisturbed and intact except where authorized for removal.

(6) Large woody debris removal or repositioning shall be accomplished in a manner which minimizes the release of bedload, logs, or debris downstream.

(7) Depressions created in gravel bars shall be filled, smoothed over, and sloped upwards toward the bank on a minimum two percent gradient.

[Statutory Authority: RCW 76.09.040(3). WSR 13-21-032, § 222-30-062, filed 10/8/13, effective 12/30/13.]

**WAC 222-30-065 Helicopter yarding.**

(1) Helicopter operations within a SOSEA boundary shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1 and August 31, provided that, this restriction shall not apply if:

(a) The landowner demonstrates that the owls are not actively nesting during the current nesting season; or

(b) The forest practice is operating in compliance with a plan or agreement developed for the protection of the northern spotted owl under WAC 222-16-080 (6)(a), (e), or (f).

(2) Helicopter operations shall not be allowed:

(a) Over an occupied marbled murrelet site or the required managed buffer zone adjacent to that site during the critical nesting season; or

(b) Within 0.25 mile of an occupied marbled murrelet site during the daily peak activity periods within the critical nesting season.

(c) Provided that, these restrictions shall not apply if the forest practice is operating in compliance with a plan or agreement developed for the protection of the marbled murrelet under WAC 222-16-080 (6) (a) or (c).

[Statutory Authority: RCW 76.09.040 and chapter 34.05 RCW. WSR 97-15-105, § 222-30-065, filed 7/21/97, effective 8/21/97. Statutory Authority: Chapters 76.09 and 34.05 RCW. WSR 96-12-038, § 222-30-065, filed 5/31/96, effective 7/1/96.]

**WAC 222-30-070 Ground-based logging systems. \*(1) Typed waters and wetlands.**

(a) Ground-based equipment shall not be used in Type S or F Water, except with approval by the department. Yarding across Type S or F Waters is limited to cable or other aerial logging methods.

(b) Ground-based transport of logs across Type Np and Ns Waters shall minimize the potential for damage to public resources.

(i) Skidding logs and driving ground-based equipment through defined channels with flowing water is not allowed.

(ii) Ground-based transport of logs to landings across any Typed Np or Ns Water shall minimize the potential to damage public resources.

(iii) Whenever skidding across Type Np or Ns Waters, the direction of log movement between stream banks shall be designed to minimize sediment delivery to the stream.

(c) In order to maintain wetland water movement and water quality, and to prevent soil compaction, ground-based logging systems shall not be used in Type A or B wetlands.

(d) Where harvest in wetlands is permitted, ground-based logging systems shall be limited to low impact harvest systems. Ground-based logging systems operating in wetlands shall only be allowed during periods of low soil moisture or frozen soil conditions.

(e) Locations of temporary stream crossings to Np Waters shall be shown on the base map of the forest practices application. Whenever skidding in or across Type Np or Ns Waters, the direction of log movement between stream banks shall be designed to minimize sediment delivery to the stream. BMPs for stream crossings can be found in board manual section 5.

**\*(2) Riparian management zone.**

(a) Logging will be permitted within the riparian management zone subject to riparian management zone protection in chapter 222-30 WAC. However, any use of ground-based yarding machines within the zone must be as described in an approved forest practices application or otherwise approved in writing by the department.

(b) When transporting logs in or through the riparian management zone with ground-based equipment, the number of routes through the zone shall be minimized.

(c) Logs shall be transported so as to minimize damage to leave trees and vegetation in the riparian management zone, to the extent practical and consistent with good safety practices.

**\*(3) Wetlands management zones.**

(a) Logging will be permitted within wetland management zones subject to restrictions in WAC 222-30-020(8).



(b) Where feasible logs shall be skidded with at least one end suspended from the ground so as to minimize soil disturbance and damage to leave trees and vegetation in the wetland management zone.

(c) Ground-based harvesting systems shall not be used within the minimum WMZ width unless described in an approved forest practices application or otherwise approved in writing by the department.

\* (4) **Deadfalls.** Logs firmly embedded in the bed or bank of Type S or F Waters shall not be removed or disturbed without approval from the department.

\* (5) **Moisture conditions.**

(a) Ground-based logging systems shall not be used on exposed erodible soils or saturated soils if sediment delivery is likely to disturb a wetland, stream, lake or pond.

(b) When soil moisture is high and unrestricted operation of ground-based equipment would result in unreasonable soil compaction, operations shall be restricted to methods that minimize widespread soil compaction, or postponed until site conditions improve such that yarding may proceed without causing unreasonable soil compaction and the long-term impacts to soil productivity and moisture absorption capacity that can result.

(6) **Protection of residual timber.** Reasonable care shall be taken to minimize damage from skidding to the stems and root systems of residual timber and to young reproduction.

\* (7) **Skid trail location and construction.**

(a) Skid trails shall be kept to the minimum width.

(b) Reasonable care shall be taken to minimize the amount of sidecast required and shall only be permitted above the 100-year flood level.

(c) Skid trails shall be outsloped where practical, but be insloped where necessary to prevent logs from sliding or rolling downhill off the skid trail.

(d) Skid trails running parallel or near parallel to streams shall be located outside the no-harvest zone of all typed waters and at least thirty feet from the outer edge of the bankfull width of the unbuffered portions of Type Np or Ns Water unless approved in writing by the department.

(e) Skid trails shall cross the drainage point of swales at an angle to minimize the potential for delivering sediment to a typed water or where channelization is likely to occur. See board manual section 3.

\* (8) **Skid trail maintenance.**

(a) Upon completion of use and termination of seasonal use, skid trails on slopes in exposed soils shall be water barred where necessary to prevent soil erosion.

(b) Skid trails located within two hundred feet horizontal distance of any typed water that directly delivers to the stream network shall use water bars, grade breaks, and/or slash to minimize sediment delivery to the stream. Water bars shall be placed at a frequency to minimize gullying and soil erosion. In addition to water barring, skid trails with exposed soil that is erodible and may be reasonably expected to cause damage to a public resource shall be seeded with a noninvasive plant species (preferably a species native to the state) and adapted for rapid revegetation of disturbed soil, or treated with other erosion control measures acceptable to the department.

\* (9) **Slope restrictions.** Ground-based systems shall not be used on slopes where in the opinion of the department this method of opera-

tion would cause actual or potential material damage to a public resource.

(10) **Disturbance avoidance for northern spotted owls.** The operation of heavy equipment within a SOSEA boundary shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1st and August 31st, provided that, this restriction shall not apply if:

(a) The landowner demonstrates that the owls are not actively nesting during the current nesting season; or

(b) The forest practice is operating in compliance with a plan or agreement developed for the protection of the northern spotted owl under WAC 222-16-080 (6) (a), (e), or (f).

(11) **Disturbance avoidance for marbled murrelets.** Operation of heavy equipment shall not be allowed within 0.25 mile of an occupied marbled murrelet site during the daily peak activity periods within the critical nesting season, provided that, this restriction shall not apply if the forest practice is operating in compliance with a plan or agreement developed for the protection of the marbled murrelet under WAC 222-16-080 (6) (a) or (c).

[Statutory Authority: RCW 76.09.040(3). WSR 13-21-032, § 222-30-070, filed 10/8/13, effective 12/30/13. Statutory Authority: RCW 76.09.040. WSR 08-24-011, § 222-30-070, filed 11/21/08, effective 12/22/08. Statutory Authority: Chapter 34.05 RCW, RCW 76.09.040, [76.09.]050, [76.09.]370, 76.13.120(9). WSR 01-12-042, § 222-30-070, filed 5/30/01, effective 7/1/01. Statutory Authority: RCW 76.09.040 and chapter 34.05 RCW. WSR 97-24-091, § 222-30-070, filed 12/3/97, effective 1/3/98; WSR 97-15-105, § 222-30-070, filed 7/21/97, effective 8/21/97. Statutory Authority: Chapters 76.09 and 34.05 RCW. WSR 96-12-038, § 222-30-070, filed 5/31/96, effective 7/1/96. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW. WSR 92-15-011, § 222-30-070, filed 7/2/92, effective 8/2/92. Statutory Authority: RCW 76.09.040. WSR 87-23-036 (Order 535), § 222-30-070, filed 11/16/87, effective 1/1/88. Statutory Authority: RCW 76.09.040 and 76.09.050. WSR 82-16-077 (Resolution No. 82-1), § 222-30-070, filed 8/3/82, effective 10/1/82; Order 263, § 222-30-070, filed 6/16/76.]

**WAC 222-30-080 Landing cleanup.** Except as approved by the department, the following rules shall be met within 60 days after completion of hauling logs from any landing, or as soon thereafter as practical.

\* (1) **Drainage.**

(a) Clean any ditches and culverts obstructed by dirt or debris during operation(s).

(b) Establish a slope that will prevent water from accumulating on the landing or running from the landing down any erodible fill.

\* (2) **Other erosion control measures.**

(a) Cut slopes shall be cut back to an angle expected to remain stable.

(b) Where exposed soil is unstable or erodible and may be reasonably expected to cause damage to a public resource, it shall be seeded with grass, clover or ground cover or compacted, riprapped, water barred, benched or mulched, or be treated by other means approved by the department.

(3) **Cleanup.**

(a) Slash accumulations which would prevent reforestation of otherwise plantable fills, sidecast or cut slopes of landings shall be disposed of or be piled on the landing floor for future disposal.

(b) Slash shall not be buried in any filled portion of the landing in connection with landing cleanup operations.

(c) All cables, machine parts and other inorganic debris resulting from harvest operation(s) shall be removed at the time of landing cleanup.

[Order 263, § 222-30-080, filed 6/16/76.]

**WAC 222-30-090 Postharvest site preparation.** Unless the application or notification indicates that the landowner or forest landowner specifically agrees to assume responsibility for compliance with this section, the operator shall leave the site in a condition suitable for reforestation following any clear cutting, or any partial cutting west of the summit of the Cascades where 80 percent or more of the cubic volume is removed within any 5 consecutive years unless the department determines that the live trees remaining will reasonably utilize the timber growing capacity of the soils. Lands being converted to another use or classified as urban development lands under WAC 222-34-050 are exempt.

**The following** site preparation is required when necessary to establish a condition suitable for reforestation:

(1) Cutting, slashing, or other treatment of all noncommercial tree species, other competing vegetation, and nonmerchantable size trees commonly known as "whips" which will not reasonably utilize the growing capacity of the soil except in wetland management zones, riparian management zones; or

(2) Pile or windrow slash; or

(3) Mechanically scatter slash; or

(4) Leave the cutover area in a condition for controlled broadcast burning, and subsequently burn.

[Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW. WSR 92-15-011, § 222-30-090, filed 7/2/92, effective 8/2/92. Statutory Authority: RCW 76.09.040. WSR 87-23-036 (Order 535), § 222-30-090, filed 11/16/87, effective 1/1/88. Statutory Authority: RCW 76.09.040 and 76.09.050. WSR 82-16-077 (Resolution No. 82-1), § 222-30-090, filed 8/3/82, effective 10/1/82; Order 263, § 222-30-090, filed 6/16/76.]

**WAC 222-30-100 Slash disposal or prescribed burning. (1) Slash disposal or prescribed burning are prohibited in the core zone.**

(2) **Slash disposal techniques:**

\*(a) Any conventional method of slash disposal may be used, except in Type A or B Wetlands, wetland management zones, and RMZ core and inner zones, Type Np RMZs, sensitive sites, and on sites where the department determines that a particular method would cause unreasonable risk to leave trees, public resources or site productivity. Conventional methods of slash disposal include the following: Controlled broadcast burning; pile or windrow and burn; pile or windrow without burning; mechanical scatter and compaction; scarification; chip, mulch or lop and scatter; burying; and physical removal from the forest lands: Provided, That on land shown to have low productivity potential

the landowner or operator shall obtain the department's approval of its regeneration plan prior to utilizing controlled broadcast burning as a slash disposal technique. In riparian management inner zones, slash disposal shall be by hand, unless approved by the department. Slash disposal methods that employ machine piling, mechanical scatter and/or compaction, scarification or other techniques that result in soil disturbance shall not be allowed in equipment limitation zones. Scarification shall not be allowed within wetlands. Machine piling is not allowed in Type A and B Wetlands. Department approval, through a burning permit, is required for burning within an equipment limitation zone.

(b) All slash burning requires a burning permit from the department which provides for compliance with the smoke management plan and reasonable care to protect Type A and B Wetlands, wetland management zones, riparian management zones, equipment limitation zones, soil, residual timber, public resources, and other property.

(3) **Slash isolation, reduction, or abatement** is required when the department determines there is an extreme fire hazard according to law (see chapter 332-24 WAC).

(4) **Slash disposal** is required where the forest landowner has applied for and been granted an extension of time for reforestation on the grounds that slash disposal is necessary or desirable before reforestation.

\* (5) **Removing slash and debris** from streams.

"Slash" or "debris" which can reasonably be expected to cause significant damage to the public resource shall be removed from Type S, F or Np Waters, to above the 100-year flood level and left in a location or manner minimizing risk of re-entry into the stream, lake or pond and if substantial accumulations of slash exist below the 100-year flood level of Type S, F or Np Waters, slash disposal is required. See WAC 222-16-025(4) for general provisions that apply to forest practices hydraulic projects in Type S and F Waters, and board manual section 4, Guidelines for clearing slash and debris from Type Np and Ns Waters.

\* (6) **Fire trails.**

(a) Construct drainage structures as needed to control erosion.

(b) Reasonable care shall be taken to minimize excavation during fire trail construction and sidecast shall only be permitted above the 100-year flood level.

(c) Fire trails shall not be located within Type A or B Wetlands, wetland management zones, equipment limitation zones or riparian zones without prior written approval of the department. Hand constructed fire trails are preferred within forested wetlands. When machine built fire trails are necessary for control of burning, trail width and excavation shall be minimized.

(7) **Disturbance avoidance for northern spotted owls.** Burning within a SOSEA boundary shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1st and August 31st, provided that, this restriction shall not apply if:

(a) The landowner demonstrates that the owls are not actively nesting during the current nesting season; or

(b) The forest practice is operating in compliance with a plan or agreement developed for the protection of the northern spotted owl under WAC 222-16-080 (6)(a), (e), or (f).

(8) **Disturbance avoidance for marbled murrelets.** Slash disposal or prescribed burning shall not be allowed within 0.25 mile of an occupied marbled murrelet site during the critical nesting season, pro-

vided that, this restriction shall not apply if the forest practice is operating in compliance with a plan or agreement developed for the protection of the marbled murrelet under WAC 222-16-080 (6)(a) or (c).

[Statutory Authority: RCW 76.09.040(3). WSR 13-21-032, § 222-30-100, filed 10/8/13, effective 12/30/13. Statutory Authority: Chapter 34.05 RCW, RCW 76.09.040, [76.09.]050, [76.09.]370, 76.13.120(9). WSR 01-12-042, § 222-30-100, filed 5/30/01, effective 7/1/01. Statutory Authority: RCW 76.09.040 and chapter 34.05 RCW. WSR 97-24-091, § 222-30-100, filed 12/3/97, effective 1/3/98; WSR 97-15-105, § 222-30-100, filed 7/21/97, effective 8/21/97. Statutory Authority: Chapters 76.09 and 34.05 RCW. WSR 96-12-038, § 222-30-100, filed 5/31/96, effective 7/1/96. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW. WSR 92-15-011, § 222-30-100, filed 7/2/92, effective 8/2/92. Statutory Authority: RCW 76.09.040. WSR 87-23-036 (Order 535), § 222-30-100, filed 11/16/87, effective 1/1/88. Statutory Authority: RCW 76.09.040 and 76.09.050. WSR 82-16-077 (Resolution No. 82-1), § 222-30-100, filed 8/3/82, effective 10/1/82; Order 263, § 222-30-100, filed 6/16/76.]

**WAC 222-30-110 Timber harvesting on islands.** On an island:

(1) A landowner shall not harvest by clearcut so that more than forty contiguous acres of that landowner's forest land are in a clear-cut condition;

(2) Forest land harvested by clearcut remains in the clearcut condition until it has reached canopy closure or it has been reforested for at least ten years;

(3) Clearcut harvest units are contiguous unless separated by a buffer at least two hundred feet wide that has reached canopy closure, has been reforested for at least ten years, or is in a land use other than timber production.

(4) Within two hundred feet of the bankfull width of saltwater timber harvest shall be by selective harvest only, so that no more than thirty percent of the merchantable trees are harvested in any ten-year period: Provided, That other timber harvesting methods may be permitted in those limited instances where the topography, soil conditions, or silvicultural practices necessary for regeneration render selective harvest ecologically detrimental: Provided further, That harvest by clearcut on lands being converted to another use may be approved.

(5) The requirements of this section shall not apply to timber harvest or salvage timber damaged by wind, disease, insects, fire, or other natural causes.

[Statutory Authority: RCW 76.09.040. WSR 05-12-119, § 222-30-110, filed 5/31/05, effective 7/1/05. Statutory Authority: Chapter 34.05 RCW, RCW 76.09.040, [76.09.]050, [76.09.]370, 76.13.120(9). WSR 01-12-042, § 222-30-110, filed 5/30/01, effective 7/1/01. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW. WSR 92-15-011, § 222-30-110, filed 7/2/92, effective 8/2/92.]

**WAC 222-30-120 Rate of harvest monitoring.** (1) Purpose. A monitoring program will be established to determine the rate of timber harvest so that this information will be available, in combination with other information, for examining the relationship of the rate of

timber harvest to sustainability of the timber industry and protection of public resources.

(2) Monitoring program. The department shall monitor the rate at which forest land is harvested. The geographic base for monitoring will be a water resource inventory area.

(3) Annual report to the board. In addition to the report provided for in WAC 222-08-160, the department shall report monitoring results to the board, annually, beginning in August 1992, including:

(a) A summary of rate of harvest by water resource inventory area; and

(b) Any other information considered to be significant in understanding the status of the rate of harvest.

Actual reporting periods may be modified as dictated by the availability of satellite imagery.

[Statutory Authority: RCW 76.09.040. WSR 08-24-011, § 222-30-120, filed 11/21/08, effective 12/22/08; WSR 92-08-025, § 222-30-120, filed 3/23/92, effective 4/23/92.]

## **Appendix I. Director Manning, Director Bellon and Director Watson Letters to the Forest Practices Board**



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000

711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

October 9, 2009

Forest Practices Board Members  
PO Box 47012  
Olympia, WA 98504-7012

**RE: Forests and Fish Program – Completion of Clean Water Act Review**

Ladies and Gentlemen:

The Washington State Department of Ecology has completed the 2009 Clean Water Act (CWA) review of the state's forest practices and adaptive management programs. We are now releasing the enclosed findings paper broadly to stakeholders and the public. Although the paper was completed in early July 2009, I wanted to have a chance to evaluate the commitment forests and fish participants have in taking the steps needed to strengthen the existing program. Such a commitment is crucial to ensuring the state's forest practices program can be depended upon to bring or maintain forested waters in full compliance with the state water quality standards and the federal CWA.

In September, I had a chance to meet with the key stakeholders as part of the Forest Ecosystem Collaborative sponsored by Commissioner Goldmark. While the group grappled with many thorny and complicated issues, and its work is not done, it is clear that we all share a goal of finding ways to strengthen the existing programs and to look for innovative approaches to resolve many of the broader problems facing the timber industry in Washington.

After carefully weighing the level of stakeholder commitment and the benefit of providing a clear path to maintaining CWA coverage, I have decided to conditionally extend the CWA assurances. This extension is based on meeting a scheduled set of milestones for program improvements and research development. It is vital to maintaining the assurances into the future that the list of CWA milestones is incorporated into the planning process of the state's forest practices and adaptive management programs. My hope is that by releasing the CWA findings now, and thereby formalizing the milestones, partners in the forest practices and adaptive management programs will move swiftly to take the required action necessary to accomplish the needed improvements and research milestones.

Sincerely,

Jay J. Manning,  
Director

Enclosure

cc: EPA  
Forests and Fish Policy  
Forest Practices Board Liaisons  
NMFS  
USFWS







2009 Clean Water Act Assurances Review of  
Washington's Forest Practices Program

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*Examining the effectiveness of Washington's forest practices  
program in bringing waters into compliance with state water  
quality standards and the federal Clean Water Act*

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Washington State Department of Ecology

July 15, 2009

For information on this review contact:  
Mark Hicks, Forest Water Quality Coordinator

[mhic461@ecy.wa.gov](mailto:mhic461@ecy.wa.gov)  
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## Introduction

Under Washington state law (Chapter 90.48 RCW) forest practices rules are to be developed so as to achieve compliance with the state water quality standards and the federal Clean Water Act (CWA). The Department of Ecology (Ecology) has been designated as the state water pollution control agency for all purposes of the CWA, and has been directed to take all action necessary to meet the requirements of that Act. The Clean Water Act assurances (CWA assurances) granted by Ecology in 1999 as part of the Forests and Fish Report (FFR) expired June 30, 2009. The assurances established that the state's forest practices rules and programs, as updated through a formal adaptive management program, would be used as the primary mechanism for bringing and maintaining forested watersheds into compliance with the state water quality standards.

This paper summarizes the findings of a review by Ecology on the progress the state's forest practices program is making in bringing waters into compliance with state surface water quality standards (Chapter 173-201A WAC) and the federal Clean Water Act. This review is being used as the basis for determining whether or not to extend the CWA assurances into the future.

As detailed below, Ecology finds that the Forests and Fish program has not achieved the level of information needed to verify that water quality in the forested environment will meet water quality standards, or to verify that the conditions for offering the assurances in 1999 have been satisfied. In spite of these shortcomings, Ecology believes the Forests and Fish program still offers a viable and compelling management strategy for achieving water quality goals in the forested environment. Ecology has concluded, therefore, that continuation of CWA assurances is warranted if specific actions are taken to improve the program's performance.

## Summary of Findings

In 1999 as part of the FFR ([http://www.dnr.wa.gov/Publications/fp\\_rules\\_forestsandfish.pdf](http://www.dnr.wa.gov/Publications/fp_rules_forestsandfish.pdf)), Ecology in consultation with the United State Environmental Protection Agency established the CWA assurances. In 1999, Ecology assumed ten years would be sufficient time to test the forest practices rules and to identify trends in water quality improvement. That expectation has not been met. After ten years, no studies have been completed or data collected that provide an indication of whether or not the forest practices rules are improving water quality or maintaining forested waters in compliance with the water quality standards. Similarly, data is lacking with which to conduct a thorough analysis of how effective operational and enforcement programs are in applying the forest practices rules.

The foundation for granting the CWA assurances was the belief that the FFR was a substantial step forward in environmental protection, and when implemented would provide the quickest and most efficient means for achieving environmental goals and compliance with the state's water quality standards. Developing CWA mandated total maximum daily loads (TMDLs) to serve as regulatory water cleanup tools for forested watersheds was therefore viewed as a low priority, and the CWA assurances established that Ecology would rely on the FFR-based forest practices program for an initial ten-year period. It was assumed in 1999 that research and

monitoring would occur to demonstrate that implementing the FFR would improve water quality and eventually bring forested waters into full compliance with the state's surface water quality standards and thereby also satisfy the conditions under Section 303 of the federal CWA.

The original FFR language is not clear on whether or not it was intended that the assurances could be extended beyond the 2009 deadline, but nothing in the report fundamentally alters Ecology's authority to continue to rank conducting TMDLs on forest lands subject to the FFR rules as a low priority with or without the existence of formal assurances. The value of offering formal assurances is that they provide landowners and agencies with a predictable and consistent regulatory system; and in doing so provide an additional motivation for stakeholders to participate in the adaptive management program.

As part of this 2009 review, Ecology has examined all of the written conditions for maintaining the assurances established in Schedule M-2 of the 1999 Forests and Fish Report. Ecology has also examined all of the issues highlighted in a supplemental 2006 Ecology White Paper. The 2006 paper was written to let stakeholders to the FFR process know some of the specific information Ecology would need for this 2009 review.

Ecology has concluded the forest practices and adaptive management programs have not fully met the expectations of research and program performance that underlie the basis for providing the CWA assurances. The adaptive management program has not provided the information needed to validate the effectiveness of the rules in protecting water quality. In fact, no field studies or assessments have been completed that test the ability of the rules to meet state water quality standards. Moreover, these studies are still many years away from completion, and the budget for the science program is set to be significantly reduced. Staffing cuts are expected over the next year or two that may further impact the ability of the various elements of the forest practices and adaptive management programs to operate at past levels. Added to the direct effect of reduced staffing, several key stakeholder groups openly express a growing lack of support for continuing with the current adaptive management program.

The lack of information to evaluate the effectiveness of the rules can in part be attributed to the initial priorities established in the FFR that placed validating operational aspects of the rules ahead of water quality studies. However, the adaptive management program (AMP) has also had significant trouble developing and using the research results developed as part of these initial prioritization agreements (i.e., last fish habitat model, uppermost point of perennial flow, desired future conditions basal area target).

Improvements in the system are necessary to create a program that participants can rely on to provide a more efficient and confident program for testing the effectiveness of the rules in protecting water quality and modifying the rules as appropriate.

State laws establish that the forest practices rules must be designed to achieve compliance with the state water quality standards and placed Ecology in the lead for making this determination. However, the Legislature also formally established the adaptive management program as the primary mechanism for bringing the rules into alignment with the state standards. The current program, even with its challenges, creates a well established foundation for moving ahead.

Policy and procedure manuals guide the process; full time professional project managers and Cooperative Monitoring, Evaluation, and Research (CMER) program staff are available to assist CMER volunteer scientists in carrying out their projects; and Forest and Fish Policy (Policy) representatives of the various stakeholder caucuses remain engaged at present and have advanced strategic plans to improve their own performance as well as the performance of the overall program. On the operational side, the compliance monitoring program has been established and is constantly expanding as time goes on, guidance documents and training continue to improve, and experienced agency staff stand ready across the state to implement the rules.

Taken in total, the forest practices program provides a substantial framework for bringing the forest practices rules and activities into full compliance with the water quality standards. Ecology has concluded it is in the best interests of water quality, and is consistent with legislative intent, to work with the other participants to make needed improvements to the existing program. Ecology is therefore conditionally extending the CWA assurances with the intent to stimulate the needed improvements to the forest practices and adaptive management programs. Ecology, in consultation with key stakeholders, has established specific corrective milestones (shown in the next section). The extension of the assurances is conditioned on meeting these research and administrative milestones by the specific target dates described. These milestones serve as a corrective action plan necessary to retain the assurances into the foreseeable future.

Steps are already being taken to address many of the corrective milestones associated with operational issues, compliance monitoring, and assessing progress under Road Maintenance, Abandonment, and Planning (RMAP) rules. Based on this ongoing progress, Ecology fully expects these steps to be successful in the short-term. Ecology's highest concern going forward is with the adaptive management program. These concerns are greatest regarding the ability to fund the needed studies and assessments at a rate that creates a viable science-based program. Scientific studies and assessments need to be designed to provide Policy and the Forest Practices Board (Board) with information sufficient to enable these policy makers to make informed science-based policy decisions. Just as importantly, policy makers must be committed to using science to fairly and efficiently revise the forest practices rules and programs as needed.

Compliance with the milestones described herein will demonstrate sufficient progress to satisfy the CWA assurances and the adaptive management provisions of the state water quality standards (WAC 173-201A-510(3)). Because extending the assurances is based on meeting the specific research and administrative milestones identified above by the specific dates listed, failure to meet any milestone would be considered a basis for potentially withdrawing the assurances at that time. In evaluating compliance with the milestones established herein, Ecology will consider the cause for missing any milestones and be considerate of the fact that:

- The state and nation are both experiencing a severe economic recession and it may take a couple of years before funding to fully support the AMP is available.
- Unexpected and uncontrollable circumstances may cause deviations from this schedule, such as catastrophic events causing the loss of study sites.
- Until a project has a study design developed, it is not possible to identify an accurate time frame for its completion (or in some cases to determine if the project remains a CWA priority).

To be successful in meeting these milestones and consequently the CWA assurances, the caucus principals will need to work together to find funding and to support the actions needed to meet the specific milestones. Ecology is working therefore to support the strategic goal to bring together the principals as soon as practical to renew and maintain a spirit of cooperation and collaboration among the six caucuses.

## **Considerations and Corrective Milestones**

The following lists the conditions<sup>1</sup> that are the basis for continuing to provide the CWA assurances to the state's forest practices program (shown in bold font). Similar conditions have been grouped together into categories. Following the list of conditions is a summary of the key findings (shown in italics) and the corrective remedies identified as "milestones". These milestones are intended to create a corrective action plan that ensures steady incremental improvement and provides a basis to continue the assurances. Failure to meet any milestone by the deadline established would be cause for Ecology to revoke the assurances at that point in time.

Many of the remedies identified necessarily focus on the state Department of Natural Resources (DNR). This focus recognizes DNR has primary responsibility for implementing the Forest Practices Act and rules and supporting the adaptive management program. DNR has been working cooperatively with Ecology and others to enact solutions to many of the issues noted below both prior to and independent of this CWA review.

### ***I. Establish Rules and Funding to Implement the Forests and Fish Report***

Conditions for retaining the assurances include:

- 1. Having final regulations consistent with the Report.\***
- 2. No significant loss of funding or staffing to the state regulatory agencies dedicated to forest practice regulation or monitoring.\***
- 3. Court orders, changes to the CWA, state or federal regulatory changes that cannot be otherwise addressed.\***
- 4. No weakening of enabling State statutes or regulations which affect the Report and its implementation.\***

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<sup>1</sup> Conditions in this context refers to the "Reopeners, Modifications, and Causes of Withdrawal of Assurances" noted in Schedule M-2 of the Forests and Fish Report as well as to those described as necessary in Ecology's January 11, 2006, Clean Water Act Assurances White Paper provided to the Forests and Fish Policy Committee and the Forest Practices Board to help provide a more detailed description of some of the information Ecology would need for this 2009 review. Items directly called out in Schedule M-2 are shown followed by an asterisk.



*Discussion: The CWA Assurances were provided based on establishing and maintaining an adequately funded and operationally effective forest practices program that implements the FFR. Meeting this requires that DNR and the other resource agencies and cooperators provide and maintain adequate staffing and funding to keep the field operations and adaptive management programs running effectively. It also requires that no significant changes to laws and regulations take place that undermine the foundation of water quality protection established in the FFR.*

*These conditions for retaining the assurances have not been fully met. Rules were initially adopted to implement the FFR, and substantial resources were put into action to implement a formal adaptive management program. Countering these successes, however, staffing has not been adequate to fully implement the rules and programs, changes have been made to the laws that weaken some of the original protections established in the FFR, and significant reductions in staffing and funding have recently occurred that are likely to remain over the next two to three years as the state's economy recovers from the current recession.*

**Remedies identified to support continuation of the assurances include:**

- (a) Federal pass-through funding has diminished since the inception of the FFR and is predicted to be depleted in the second half of the 10-11 biennium. In addition, the state and nation are both suffering through the worst economic period on record since the great depression. Continued CMER funding is based partially on general fund state revenue in DNR's budget and partially on timber tax revenue. At this time the state is experiencing cuts to the general fund, and harvesting with its associated revenue stream has declined by approximately fifty percent. Recognizing the likelihood of budget shortfalls in the adaptive management program, it is important that water quality studies be designated as high priority, and efforts made to ensure their timely completion. The adaptive management program should also develop strategies to make better use of partnerships (e.g., monitoring consortium, Puget Sound Partnership, USFS) and to prepare to compete for grant monies. This may in part necessitate developing study plans with the intention of having them ready to compete for outside funding as sources emerge. In addition, it is imperative that new dedicated long term funding sufficient to carry out the requirements of the FFR be secured as soon as possible, as a reliance on grants is unlikely to be either workable or sufficient to maintain an adequate program.

**Milestones:**

- 1) By July 2009, and in subsequent budget and planning years, the AMP Administrator with the assistance from the Policy and CMER committees will send to the Forest Practices Board a revised CMER work plan and budget that places key water quality studies as high priorities as described in section II(c) regarding the adaptive management program.
- 2) By September 2009, the Forest and Fish Policy Budget Committee will identify a strategy that will be implemented with caucus principal support to secure stable, adequate, long-term funding for the AMP.

- (b) Ecology recognizes some procedures can have the practical effect of creating shortfalls in staffing where those same staff resources would otherwise be adequate. Problems with the water type modification (WTM) requests are an example of this. WTM requests often do not receive field reviews due to the inadequacy of resource agency staffing. This situation occurs predominately when the water type modification request forms are passed along to the tribal and state resource agency personnel in large batches for the DNR-mandated 30-day review period. This makes it problematic for existing staff in the resource agencies and tribes to review all of the requests. As a consequence, many are approved without an appropriate level of review. Efforts are needed to ensure water type modification requests are adequately evaluated by resource agency staff. Compounding the workload issues associated with reviewing WTM forms, concerns continue to persist about how protocol surveys are conducted and the conditions established for multidisciplinary teams to conduct their reviews in the field. The practical effect is that resource agency staff must invest substantial time to re-affirm what is established in formal protocols and guidance. Most of these problems relate to the improper recognition of what constitutes barriers to fish migration and can likely be remedied by the use of more training and guidance and adherence to the Board Manual Section 13 and WAC 222-16-30 and -31. Problems also occur related to placing unreasonable expectations on multidisciplinary review teams - such as scheduling the site visit during periods of heavy snow cover or at the same time interdisciplinary teams have been called elsewhere in the region. These types of issues interfere with the effective use of available staff resources and generally impair the overall integrity of the program.

**Milestones:**

- (1) By February 2010, DNR in consultation with WDFW, Ecology, and the tribes will develop a prioritization strategy for water type modification. The intent of this strategy will be to manage the number of change requests sent to cooperating agencies for 30-day review so it is within the capacity of those cooperators to respond to effectively. The strategy should consider standardizing the current ad hoc process of holding monthly coordination meetings with agency and tribal staff in all the DNR regions. This should allow group knowledge and resources to be more efficiently used to evaluate change requests.**
  - (2) By March 2010, DNR Forest Practices will establish online guidance that clarifies existing policies and procedures pertaining to water typing. The intention is to ensure regional staff and cooperators remain fully aware of the most current requirements and review processes for changing water type and coordinating the review of multidisciplinary teams.**
  - (3) By February 2011, DNR in consultation with WDFW, Ecology, and the Tribes will complete an evaluation of the relative success of the water type change review strategy. Results of this review would be used to further refine the strategy.**
- (c) Approximately fifty percent of the state's private forests are owned by small forest landowners (SFL). Subsequent to the FFR, the Legislature modified the inventory, planning, and reporting requirements for SFL roads (RCW 76.09.410 and 76.09.420).

Rather than requiring Road Maintenance and Abandonment Plans (RMAPs) for all their roads, SFLs must submit a checklist RMAP in association with any forest practice application (FPA). This checklist RMAP process requires that roads used in association with that FPA be brought up to current road standards, but it does not address any of the landowner's roads that would not be used for that harvest. To understand if SFL roads are posing a threat to water quality, DNR should work with Ecology to find innovative ways to follow through with its current proposal to assess the condition and rate of compliance of SFL roads. Ecology believes this is an important survey and intends to work with DNR to develop a means that could be used to get this work done with existing staff and funding, if additional resources are not made available by the Legislature. Ecology's focus is on assessing the potential delivery of sediment to waters of the state. In developing a survey plan, DNR should consider opportunities to add this task to site visits associated with funding fish passage projects on SFL parcels, to use cooperative assistance similar to that used to evaluate the success of hardwood conversions on SFL properties, and other cost effective means to accomplish this work.

**Milestone:**

- (1) By July 2010 Ecology in partnership with DNR, and in consultation with the SFL advisory committee, will develop a plan for evaluating the risk posed by SFL roads for the delivery of sediment to waters of the state.**
- (2) By November 2013 Ecology in partnership with DNR, and in consultation with the SFL advisory committee will prepare a summary report that assesses the progress of SFLs in bringing their roads into compliance with road best management practices, and any general risk to water quality posed by relying on the checklist RMAP process for SFLs. If a significant portion of SFL roads are estimated to pose a risk of damage to public resources, then a report will be prepared in time to brief the Legislature in December 2013.**

## ***II. An Adaptive Management Program to Update Rules and Guidance***

**Conditions for retaining the assurances include:**

- 1. No new water quality standards not anticipated in this (Forests and Fish) Report unless those new standards can be accommodated with adaptive management.\***
- 2. No general failure to upgrade regulations or guidance called for in adaptive management. This includes failure to develop agreed upon resource objectives, research priorities, and compliance monitoring programs.\***
- 3. Development of an approved Adaptive Management Program (AMP) section in the Forest Practices Board Manual that will provide formal procedures for participants to successfully link science questions to policy decisions.**

4. Establishment of a Cooperative Monitoring, Evaluation, and Research Committee (CMER) Work Plan that includes water quality-related projects that have been prioritized for funding and includes program integration across spatial scales.
5. Easy access to reports and data from the AMP on the Internet so the information can be used in existing public processes associated with the Clean Water Act.
6. Specific resolution by CMER of the following issues:
  - Develop a protocol for identifying perennial stream initiation points.
  - Estimate the current status of stream temperature and riparian stand conditions on forest lands.
  - Evaluate the reach-scale effectiveness of riparian buffer prescriptions at providing adequate shading post-harvest to protect stream temperatures.
  - Evaluate the cumulative effects of harvest on stream temperature.
  - Evaluate the cumulative effects of forest practices on sediment input and stream habitat.

*Discussion: The CWA assurances were established on the condition that an effective adaptive management program (AMP) would be established and maintained. A healthy and effective AMP is central to the ability of Ecology to offer the CWA assurances. The AMP needs to provide a scientific framework for testing whether the forest practices rules are effective in protecting water quality, and for identifying any changes needed to rules not found effective. Substantial progress has been made through establishing the structure and formal operational procedures of the AMP. An AMP board manual was developed to further outline how the program should operate, and significant funding and effort has occurred to get scientific studies underway to test various portions of the rules and guidelines governing forest practices.*

*In spite of these substantial efforts, the AMP has not completed any studies that directly test the effectiveness of the rules in protecting water quality. The science arm of the AMP has also been largely unsuccessful in providing research findings the Forest and Fish Policy Committee (Policy) and the Forest Practices Board (Board) will reliably use to validate or to revise the forest practices regulations and guidance. There are significant problems with the ability of the policy and science arms of the AMP to work together to test and revise the rules in a timely and effective manner. Part of the problem is simply inherent in a program that seeks to develop consensus among stakeholders with competing interests. But the problems also seem rooted in the foundation of the AMP itself. AMP participants frequently disagree about the appropriate roles of science and policy, as well as what role the initial negotiated forests and fish rules should play in evaluating the acceptability of future changes. These disagreements appear in part to stem from a lack of clarity in the underlying rules and guidance. Combined with poor communication between the science and policy arms of the program, this is compromising the AMP's effectiveness. To the credit of its participants, strategic planning efforts are underway with the intention of identifying and correcting the shortcomings of the program. The Policy committee has developed a strategic plan (see Appendix) with five broad goals supported by multiple objectives and specific tasks designed to revitalize the adaptive management program. There is also general understanding that*

*testing the effectiveness of the rules for protecting water quality must be a top priority if Ecology is to continue the assurances.*

*The state legislature (RCW 76.09.370) directed that forest practices rules covering aquatic resources only be adopted or changed by the Board where those changes are consistent with recommendations resulting from a scientifically based adaptive management process. The stated purpose of having the adaptive management process is to make adjustments as quickly as possible to portions of the forest practices rules that are not achieving resource objectives. Both as a participant and reviewer, Ecology has concluded that fundamental improvements are needed to ensure the rules and associated programs will be tested and revised in a timely manner based on scientific inquiry, as intended by the legislature and consistent with CWA assurances.*

**Remedies identified to support continuation of the assurances include:**

- (a) Much of the recent conflict among participants of the adaptive management program is centered on disagreements about what constitutes the proper roles of the Board, Policy, and CMER in revising rules and guidelines; and what the role of science and economics should be in the decision making process. The roles of CMER and Policy should be clarified, and revisions should be made to the decision-making process as needed to ensure science remains the foundation for changing the forest practices rules. Improved communication between CMER and Policy is needed with the aim of ensuring that CMER studies have the greatest potential to provide answers that Policy will use to validate or suggest revisions to the forest practices regulations and guidance. The adaptive management program (CMER, Policy, and Board) would benefit from an outside audit on its performance, structure, and decision-making framework. Such outside audits should occur periodically (perhaps every five years) and be used to actively improve the program. This remedy is consistent with the first goal of the Strategic Goals, Objectives, and Tasks document recently completed by the Policy Committee (see Appendix). To ensure the AMP's operations are transparent to the public, the results of these audits should be discussed at the Forest Practices Board.

**Milestones:**

- (1) By December 2009, the AMP program administrator, with the assistance of CMER and Policy, will complete the ongoing training sessions on the AMP protocols and standards for CMER, and Policy. This is intended to remind participants of the agreed upon protocols. Opportunity should also be provided to identify portions of the protocols and associated rules that need revision to improve performance or clarity. Any identified improvements to the Board Manual or regulations should be implemented at the soonest practical time. Subsequent to this effort, the administrator will offer to provide this training to the Board.
- (2) By December 2010, the AMP Program administrator shall initiate the process of obtaining an independent review of the Adaptive Management Program. This review shall be done by representatives of an independent, third party research organization and include:

- i. **An examination of the structure and function of the program, based on its technical performance, fiscal efficiency, and overall accountability.**
- ii. **An assessment of the performance and efficiency of the consensus-based decision processes.**
- iii. **A review of the rigor of CMER science and whether it productively adds to the body of Pacific Northwest region science to confidently address the L-1 Questions.**
- iv. **An evaluation of the interactions of science and policy within the AMP.**
- v. **Identification of any different approach the AMP could employ to assure a more certain and timely outcome of projects and commensurate changes to rules and guidelines.**

**Upon completion, the results of this independent review shall be taken to CMER and Policy to develop responses and recommendations for any needed corrections. Within six months of completion, the report along with the responses of the CMER and Policy committees will be provided to the Board. Ecology will be engaged in discussions with cooperators to examine ways to initiate this important task as soon as possible.**

- (b) The amount of forest that must be retained in buffers to protect water quality and other public resources is dependent on the type of the waterbody. Non-fish bearing perennial streams (Type Np) receive substantially less forested buffers than do fish bearing waters. Ecology contends that the prescriptions associated with the Type Np rules have the greatest potential risk of violating the water quality standards. To apply the Np rules as intended requires the identification of the point at which the flow becomes perennial (flows year round in a normal water year). Ecology needs to know at the soonest possible time if the Np rules are effective in protecting water quality. At this time, however, there is no protocol for determining the highest point of perennial flow initiation, no information for assessing how accurate the current best professional judgment-based approach is in identifying the uppermost point, and no studies completed to test the effectiveness of the Np rules in protecting water quality and other public resources. Sufficient Type N studies are contained within the CMER work plan to allow a science-based assessment of the protection and relative risks provided by the existing prescriptions. However, the first study to assess the effectiveness of the Np rules in protecting water quality will not be done until September 2012. To support sound decision-making, it is important that Policy and CMER work together to establish a strategy to expediently ensure rules associated with Type Np waters maintain those waters in compliance with the state water quality standards. This strategy needs to include at a minimum: (1) development of a protocol for identifying with reasonable accuracy the uppermost point of perennial flow - this could be a new approach or validation and documentation of the existing approach; (2) an updated review of the scientific literature pertaining to buffering streams sharing the physical characteristics of Np streams; (3) ranking and funding of the Type N studies as highest priorities for CMER research; and (4) identification of key research questions that caucus participants want answered in preparation for a review of the Type N rules -such as the effect of not-buffering dry stream segments.

#### **Milestones:**

- (1) By July 2010, Policy, in consultation CMER, will develop a strategy to examine the effectiveness of the Type N rules in protecting water quality at the soonest possible time. This strategy needs to include at a minimum:**
  - i. Ranking and funding of the Type N studies as highest priorities for CMER research.**
  - ii. By July 2012, developing a protocol for identifying with reasonable accuracy the uppermost point of perennial flow, or develop documentation demonstrating the spatial and temporal accuracy of the existing practice used to identify this point;**
  - iii. By September 2012, completing a comprehensive literature review examining the effect of buffers on streams physically similar to the Type Np waters in the forest practices rules prior to completion of the Type N basalt effectiveness study. This should be conducted or overseen by CMER (or conducted by an independent research entity).**
- (c) After almost ten years, no CMER studies have been completed that inform whether or not the forest practices rules can be relied on to bring waters into compliance with the state water quality standards and the CWA. In addition, the state in general, and the AMP in particular, are facing an increasingly difficult budget situation and will not be able to maintain the level of research effort it has in the past without an infusion of new resources. To directly address the need to have water quality-related projects prioritized for funding, the annual CMER work plan and budget exercise should be used to formally establish and maintain water quality studies as high priorities in the adaptive management program. A prioritized list of projects and milestones is presented in Table 1 below to help focus the budget prioritization effort and to ensure water quality studies are expediently pursued. Table 1 shows the water quality priorities and general timeframes for study development needed to support continuation of the CWA assurances. Ultimately, the success of any program of studies will be determined when the studies are finished. It will be critical, therefore, that ongoing and planned studies be designed to assess compliance with the water quality standards, and that follow-up studies needed to provide finer resolution are expediently planned and implemented. Such follow-up studies are not described in this document but will need to be addressed as they arise and as the milestones listed herein are met.**

#### **Milestones:**

- (1) By July 2009, and in subsequent planning years, the projects identified by Ecology in Table 1 will be reflected in the CMER budget and work plan in a manner that establishes a priority schedule for study development. Failure to meet any of the milestones identified without prior consent by Ecology may be viewed as a basis to revoke the CWA assurances at that point in time.**
- (2) By December 2009, the AMP Manager with the assistance of the co-chairs of Policy and CMER will initiate a process for flagging projects for the attention of Policy that are having trouble with their design or implementation. This process should identify projects not proceeding on a schedule reflecting a realistic but**

expedient pace (i.e., a normal amount of time to complete scoping, study design, site selection, etc.).

<b>Table 1: List of Research Milestones to Support Continuation of CWA Assurances</b>	
	<b>Task Description</b>
2009	Complete: <u>Hardwood Conversion – Temperature Case Study</u>
	Study Design: <u>Wetland Mitigation Effectiveness</u>
	Study Design: <u>Testing the Accuracy of Unstable Landform Identif.</u>
2010	Complete: <u>Mass Wasting Prescription-Scale Monitoring</u>
	Implement: <u>Wetland Mitigation Effectiveness (Pilot)</u>
	Study Design: <u>Amphibians in Intermittent Streams (Phase III)</u>
	Study Design: <u>Type N Experimental in Incompetent Lithology</u>
	Scope: <u>Mass Wasting Landscape-Scale Effectiveness</u>
	Scope: <u>Eastside Type N Effectiveness (new study needed)</u>
2011	Complete: <u>Bull Trout Overlay Temperature</u>
	Complete: <u>Solar Radiation/Effective Shade</u>
	Implement: <u>Eastside Type N Effectiveness</u>
	Implement: <u>Amphibians in Intermittent Streams (Phase III)</u>
	Implement: <u>Type N Experimental in Incompetent Lithology</u>
	Study Design: <u>Mass Wasting Landscape-Scale Effectiveness</u>
	Scope: <u>Wetland Management Zone Effectiveness Monitoring</u>
2012	Complete: <u>Type N Experimental in Basalt Lithology</u>
	Complete: <u>Buffer Integrity-Shade Effectiveness</u>
	Complete: <u>Wetland Mitigation Effectiveness</u>
	Complete: <u>Amphibians in Intermittent Streams (Phase III)</u>
	Implement: <u>Testing the Accuracy of Unstable Landform Identif.</u>
	Scope: <u>Wetland/Stream Water Temperature Interactions</u>
2013	Complete: <u>First Cycle of Extensive Temperature Monitoring</u>
	Scope: <u>Effectiveness of RMAP Fixes</u>
	Scope: <u>Wetland Hydrologic Connectivity</u>
2014	Study Design: <u>Effectiveness of RMAP Fixes</u>
	Scope: <u>Type F Experimental Buffer Treatment</u>
2016	Complete: <u>Type N Experimental in Incompetent Lithology</u>
	Scope: <u>Watershed Scale Assess. of Cumulative Effects</u>
2017	Complete: <u>Eastside Type N Effectiveness (new study needed)</u>
	Study design: <u>Watershed Scale Assess. of Cumulative Effects</u>
2018	Complete: <u>Roads Sub-basin Effectiveness</u>
	Implement: <u>Watershed Scale Assess. of Cumulative Effects</u>



### **III. Consistent Compliance and Enforcement of the Forest Practices Rules**

Conditions for retaining the assurances include:

1. No failure to implement the rules for any reason.\*
2. No lack of enforcement of forest practices on the part of state regulatory agencies.\*
3. No broad scale landowner non-compliance exists with meeting the forest practice regulations or the FFR.\*
4. If an individual landowner fails to implement forest management practices or demonstrates a pattern of non-compliance, such as repeated enforcement actions, the assurances may be withdrawn for that landowner. All available enforcement and other options under federal and state law will be considered. This will include, but not be limited to: the requirement for a TMDL; enforcement of water quality standards violations and forest practice laws and regulations.\*
5. Documentation based on compliance monitoring data demonstrating that the rules are being implemented in a reasonably consistent manner across in each DNR region.
6. Documentation based on compliance monitoring data demonstrating when the rules are different for small landowners than for large landowners, what level of compliance is being achieved by each landowner category.
7. Documentation based on compliance monitoring data demonstrating how well rules regarding water quality protection measures such as riparian buffers; road construction, maintenance and abandonment; alternate plans; and unstable slope requirements are being implemented.
8. Results of an analysis of alternate plan compliance with standards in the rules that evaluates whether alternate plans provide protection to public resources at least equal in overall effectiveness as default forest practices prescriptions.

*Discussion: The CWA assurances were conditioned on the ability to demonstrate the forest practices rules are being consistently and effectively applied at all scales – statewide, DNR region, and individual landowner. In the discussion and milestones that follow, the CMP is often identified as a vehicle for satisfying the formal corrective milestones; however, Ecology would support the use of alternative programs and stand alone initiatives if they would be more effective.*

*Statewide compliance patterns. From a statewide perspective, DNR has done an admirable job in developing a formal program to assess compliance. The compliance monitoring program (CMP) does a good job at assessing overall compliance rates with selected conditions in approved forest practices applications (FPA). The draft 2006/2007 biennial*

compliance report, for example, provides sound evidence that no significant difference exists in rates of compliance with FPA conditions between large and small forest landowners. Preliminary results from the draft report found that seventy-five percent of the riparian activities evaluated were in compliance on both small and industrial landowner lands. Of the road activities evaluated, eighty-seven and eight-six percent were in compliance on small and industrial landowner lands, respectively. Ecology field staff actively participating in the forest practices program support the contention that landowner compliance is reasonably good statewide. However, the statistics demonstrate that approximately one out of every four riparian prescriptions evaluated experienced at least some level of non-compliance. This fact suggests initiatives are needed to identify the causes of non-compliance and to reduce the incidence level.

A significant concern for Ecology is that the CMP is focused on assessing compliance with only select provisions of approved FPAs. This means the CMP is not providing an adequate assessment of compliance with other important provisions of the forest practices rules related to water quality protection. Only compliance with provisions established in an approved FPA that can be readily evaluated during a short field visit are currently being assessed in the CMP. Critical areas of omission from formal compliance assessment efforts include:

1. Water typing decisions (wetland versus lake or stream, fish-bearing versus non fish-bearing, seasonal versus perennial).
2. Designation of channel migration zones and inundated and associated wetlands.
3. Unstable slope rules.
4. Measurements of bankfull stream width.
5. Adherence to streamside shade rules.
6. Haul roads used to remove the harvested timber.

In addition, no program exists to determine if approved alternate plans are equal in overall effectiveness as compared with the default forest practices rules.

Regional and landowner compliance patterns. The CMP has not provided information that allows compliance patterns to be assessed at either regional or landowner scales. Ecology staff reports that forestry staff within the DNR regions are generally doing an excellent job of applying and enforcing the rules. However, staff and other cooperators often express the belief that regional differences exist in the application of the forest practices rules and in undertaking enforcement actions. Without unbiased data on regional compliance patterns, however, these concerns can neither be confirmed nor dismissed.

General issues. There is no effective mechanism in place to resolve disagreements between members of field review teams or conflicts over enforcement decisions in a timely manner. This is particularly a problem when DNR staff is a party to the disagreement since DNR is the final arbitrator of the forest practices rules.

**Remedies identified to support continuation of the assurances include:**

- (a) Past problems with getting concerns addressed over the content and procedures included in the CMP suggests significant value may accrue through the formation of the newly authorized CMP stakeholder guidance committee. Ecology strongly encourages DNR to continue to engage key cooperators in finalizing a charter for the committee that defines the roles and the decision-making process to be used. Many of the remedies discussed would be appropriately handled by that committee.

**Milestone:**

- (1) **By October 2009, DNR will complete the Charter for the Compliance Monitoring Stakeholder Guidance Committee and determine which issues identified herein related to compliance monitoring will be dealt with by the committee. This is intended to help move these issues forward on schedule as well as to flag the items for which an alternative process for resolution is needed.**
- (b) The Compliance Monitoring Program (CMP) does not currently examine compliance with numerous rule elements of importance to protecting water quality. The existing structure of the CMP may preclude an assessment of compliance with some of these rule elements. In such cases, separate studies are needed to supplement the current CMP. Separate studies or CMP assessment methodology are needed to examine the level of compliance with rule requirements for water typing, shade, wetland identification and mitigation, unstable slopes, channel migration zones, and haul roads. More detailed guidance and training should also occur to enhance consistency in defining the boundaries for measuring bankfull width and channel migration zones.

**Milestone:**

- (1) **By December 2009, DNR in partnership with Ecology and with the aid of the CMP stakeholder guidance committee, will develop general plans and timelines for exploring options and data collection methods for assessing compliance with rule elements such as water typing, shade, wetlands, haul roads and channel migration zones. The goal is to initiate these programs by December 2011.**
- (c) Disagreements occur at both the field and policy level regarding interpretations of regulations and guidance. These disputes are often allowed to continue unresolved and carry-over to other situations for very long periods of time. These disputes result in the unequal application of the rules and guidelines between landowners and regions, as well as wasting limited staff resources and harming professional working relationships. DNR should ensure an effective formal procedure exists to efficiently resolve field disputes. This procedure should include participation by appropriate representation of policy and technical experts from participating caucuses. The objective is to ensure timely investigations occur of the concerns of any participating cooperators regarding field determinations, but the more paramount objective should be to identify the underlying basis for the disagreement and minimize its reoccurrence in the future through revised training, guidance, or rules.

**Milestone:**

- (1) By December 2009, DNR with assistance of Ecology and WDFW, will evaluate the existing process for resolving field disputes and identify improvements that can be made within existing statutory authorities and review times. Although resolution of the specific issue at hand should be a goal, the overarching purpose of this milestone is to establish a process that will identify the basis for the dispute and to put in place revised guidance, training, reporting pathways, other measures that will minimize the reoccurrence of similar disputes in the future. This process should consider how to best involve the appropriate mix of both policy and technical participants to thoroughly resolve the issue at hand.
- (d) Training is needed to decrease conflict among cooperators engaged in compliance assessments, and to minimize noncompliance rates that may be due to a misunderstanding of the forest practices rules and guidance.

**Milestone:**

- (1) By June 2010, DNR with consultation with Ecology and WDFW (or with the CMP stakeholder guidance committee), will establish a framework for certification and refresher courses for all participants responsible for regulatory or CMP assessments. This will be focused on aiding in the application of rules regarding bankfull width, CMZ boundaries, application of road rules, and wetlands. Consideration should be given to including a curriculum of refresher courses on assessing difficult situations.
- (e) The current compliance rate of seventy-five percent for riparian prescriptions contained in approved FPAs is not sufficient to support long-term maintenance of the assurances.

**Milestone:**

- (1) By July 2010, DNR with the assistance of Ecology, will assess the primary issues associated with riparian noncompliance (using the CMP data) and formulate a program of training, guidance, and enforcement believed capable of substantially increasing the compliance rate – with a goal of getting greater than ninety percent compliance by 2013. Ecology will consider of the rating of noncompliance since not all infractions have the same effect on public resources (e.g., is it predominately at levels within reasonable field method limits or likely to occur even with due diligence) when determining if this compliance target rate milestone has been satisfied.
- (f) The conditions established in the FFR for granting the assurances necessitate tracking compliance at both a broad scale and at the landowner level. The existing CMP has not been collecting information at a pace that allows comparisons to occur at the regional or landowner level. In addition to satisfying the CWA Assurances, there is a need to track compliance issues at the landowner level to support both voluntary (training) and regulatory (escalating enforcement) corrective mechanisms as part of DNR's existing compliance and enforcement programs. Recognizing that a random sample-based program will unlikely be capable of identifying non-compliance patterns at the landowner

scale, DNR should work with Ecology, WDFW, and the Tribes to determine the best alternative mechanism to identify problem landowners. In resolving this issue, the use of both informal and formal enforcement documents should be evaluated as an adjunct to the data collected from the CMP.

**Milestone:**

- (1) By June 2010, DNR, Ecology, and WDFW will meet to review existing procedures and recommended improvements needed to more effectively track compliance at the individual landowner level. The goal will be to ensure the compliance pattern of individual landowners can be effectively examined by October 2010. This should consider the types and qualities of enforcement actions that occur (e.g., conference notes, notices of correction, stop work orders, penalties). These procedures and their effectiveness in identifying compliance trends at the landowner level will be reassessed by Ecology by October 2012 to ensure the program provides sufficient information to take action where appropriate to remove the CWA assurances and take any other necessary corrective action with landowners having persistent compliance problems.**
- (g) Alternate plans allow significant deviations from the forest practices rules and result in trading different forms of natural resource protections in space and time (such as sacrificing short-term shade to get large woody debris more quickly) so long as the resulting alternate plan “provides protection to public resources at least equal in overall effectiveness as provided by the act and rules” (WAC 222-12-040). No program exists to validate that approved plans are complying with this foundational element of the alternate plan rules. At present, the program represents the application of the best professional judgment of DNR foresters and other cooperators invited to participate as part of field advisory teams. It is important to begin collecting a sample of baseline data (a resource inventory) on alternate plans before and after the harvest. This is needed to create a foundation that will allow a general assessment of whether alternate plans are equal in overall protection to the baseline rules and whether they are meeting the state water quality standards.

**Milestone:**

- (1) By October 2010, DNR in partnership with Ecology, and in consultation with WDFW, the Tribes, and the SFL advisory committee, will design a sampling plan to gather baseline information sufficient to reasonably assess the success of the alternate plan process. This sampling plan should include how to select sample sites, how to best document the content and assumptions contained in the alternate plan, what to monitor and how frequently to do so, and responsibilities for who will conduct the sampling. The goal of this effort is to initiate data collection in the 2011 field season.**

#### **IV. Programs to Bring Roads up to Design and Maintenance Standards**

Conditions for retaining the assurances include:

1. Road Maintenance and Abandonment Plan (RMAP) results that are readily available, including: where RMAPs are complete, a summary of all active, orphan, and abandoned roads.
2. Results of an analysis of small forest landowner roads not yet covered by RMAPs or checklist RMAPs. The goal of the analysis is to estimate whether these roads potentially threaten water quality, so that strategies can be developed or modified to assure they reach the 2016 goal.

*Discussion: Ecology maintains that it is very important to ensure roads are on track to comply with construction and maintenance standards by 2016 as mandated in the forest practices rules. This recognizes the high concern regarding the impact of road design and maintenance on protecting water quality. DNR reports that large landowners are predominately on schedule to meet the 2016 target date for bringing all their roads into compliance. This, coupled with successful CMER studies on the effectiveness of road prescriptions, should allow Ecology and the forest practices program to identify a level of prescriptions and ongoing maintenance and monitoring that will meet the CWA objectives into the long term. This would be a substantial success and one that Ecology, DNR, and the other cooperators should continue to focus on. One problem with the RMAP program is that it was not designed to allow an outside assessment of its progress or input into the priorities chosen for road and culvert repair. Such an assessment is made more difficult by the fact that the data is collected and stored in different formats by different landowners and regions. While Ecology is reasonably confident that DNR is correctly assessing that landowners are on track to meet the 2016 goal and are not deferring priority work, some effort is needed to help provide tools that will better illustrate the basis for that assessment.*

*The story is much less clear for the roads maintained by small forest landowners (SFL). These landowners occupy approximately fifty percent of the private forestlands in the state, and it is critical that they also be on a course to success. The state Legislature eliminated the planning requirements for SFL, making it very difficult to know how well their roads are being maintained in compliance with water quality standards and other resource objectives. DNR was charged by the Legislature with conducting two interim assessments on the status of roads on SFL properties. The first briefing period was in December 2008, but provided no actual direct assessment of the condition, risk, or progress of SFL roads. The second briefing date is December 2013. But if substantial problems exist that are not identified until 2013, there is little chance corrective action can be taken in time to reach the 2016 target for bringing roads into compliance with current management practices. Ecology's concurrence at the Forest Practice Board regarding the action taken to revise the SFL RMAP requirements in April 2006 was based in part on commitments by DNR to in part assess the overall compliance rate of SFL roads. This commitment remains important and is reflected below as a formal milestone.*

**Remedies identified to support continuation of the assurances include:**

- (a) It would facilitate tracking progress with RMAPs if the original plan to complete a GIS forest roads layer and getting all the RMAPs into a GIS framework could be accomplished. Alternatively, a reporting structure is needed that summarizes progress to date and activities still remaining to allow Ecology and other interested parties to gain more confidence that roads are on target to meet the 2016 deadline.

**Milestones:**

- (1) By January 2010, as part of the regional RMAP annual meeting process, DNR should ensure opportunities are being provided in all the regions to obtain input from Ecology, WDFW, and tribes formally participating in the forests and fish process regarding road work priorities.
  - (2) By December 2011, DNR with the assistance of large landowners, will provide summary information for all industrial landowners having RMAPs. The summary information will include at a minimum: Date RMAP completed, total miles of road covered under the RMAP, total miles of road brought up to standards, total number of fish barriers removed, and a brief statement describing the strategy for bringing all roads into compliance by 2016 that demonstrates even-flow or otherwise provides confidence compliance will be attained by 2016. If reasonable and feasible, the summary will show the annual progress on road and barrier improvement that has occurred since the inception of the RMAP, and DNR will provide a master summary for all industrial landowners combined.
- (b) To understand if the checklist RMAP process is effective in protecting waters of the state, it is critical DNR work with small forest landowners (SFLs) to assess the rate of compliance with road maintenance and abandonment requirements on road segments with the potential to deliver sediment to waters of the state prior to the 2013 legislative update.

**Milestones:**

- (1) Milestones to address this issue were established in Part I of this paper.

## **V. Landowners to Share Data**

**Conditions for retaining the assurances include:**

1. Landowners will share water quality data collected in cooperative research, adaptive management, and TDML development. Landowners are further encouraged to share all pertinent data to assist in water quality planning efforts.

*Discussion: Within the CMER program, landowners have actively participated in conducting scientific studies and supplying environmental data associated with those studies. Some landowners have also cooperated in sharing data to assist in developing TMDLs in*

*mixed use watersheds (includes non-forestry activities). Landowners have not otherwise freely shared water quality data collected on their land. It is important to note, however, the specific language in the assurances encourages but does not require landowners to share water quality data outside of the listed programs.*

Ecology considers this condition to currently be met and no remedies needed.

## **VI. Training and Technical Assistance to Improve Implementation**

Conditions for retaining the assurances include:

1. Establishing a manual with detailed guidance regarding contents and approval processes for alternate plans.
2. Implementing the regional unstable landform Identification project.
3. Identifying high landslide hazard areas.
4. Training to identify potentially unstable slopes.
5. Training programs for operators on road maintenance and construction standards.
6. Outreach to small forest landowners on protecting public resources.

*Discussion: The CWA assurances were conditioned on developing tools and programs that provide ongoing guidance to landowners and cooperators on the effective implementation of the forest practices rules.*

- *The requisite alternate plan board manual was developed in 2007, and processes are in place to continue to revise and improve that manual over time as issues arise.*
- *An evaluation occurred to verify that no regionally unique forms of unstable slopes existed that would need supplemental guidance, and DNR provides regular training around the state for foresters and other professionals interested in enhancing their ability to identify unstable slopes. DNR also provides lists of qualified experts who are available to assist landowners in identifying potentially unstable slopes and meeting the forest practices rule requirements for those sites.*
- *Rules and a board manual have been produced that describe the requirements for constructing and maintaining roads. In addition, Ecology has assisted DNR in providing training to the DNR regional offices on road standards and, working together, have just completed an updated round of training for forestry and water quality staff. Training on road BMPs also takes place through the contract loggers' association, and some of the large landowners require loggers to have taken this before they will contract with them.*

*In 1999, the Washington State Legislature authorized a Small Forest Landowner Office (SFLO) within DNR. The SFLO was directed to serve as a "resource and focal point for small forest landowner concerns and policies" with a goal to improve the economic viability and environmental quality of small forestland holdings. The Family Forest Fish Program*



*administered out of the SFLO has provided twelve million dollars in assistance that has opened up 439 miles of fish habitat, helping also to reduce sediment and improve water quality. The SFLO provides training on road maintenance twice a year to hundreds of small forest landowners and provides stewardship planning classes to help SFLs manage their land.*

*Given the generally high confidence that guidance and outreach programs will continue to be updated as needed, all of the training and outreach conditions linked to the CWA assurances are considered to have been met except where noted as a milestone elsewhere herein. One element that has not been completed satisfactorily is the identification of high landslide hazard areas. The Landslide Hazard Zonation (LHZ) project was created to provide an improved screening tool by describing and mapping all potentially unstable slopes in priority watersheds. The LHZ project also provides information useful for selecting appropriate mitigation action. GIS data created from this project (landslides and hazard zones) are available from DNR. Considerable progress has been made in completing the LHZ project. Staff vacancies were recently filled and the program was making reasonable progress in mapping landslide hazards. Against these fine accomplishments, however, there still remains a majority of the state to map and even at the current pace it will be many more years before all the commercial forest lands in the state have been completed. Of the 229 watersheds that were originally prioritized, 129 were deemed critical. DNR estimates they may be able to complete the 129 by 2013 if all goes as planned and they can retain their current workforce. Unfortunately, the recent budget cuts associated with the current economic downturn has resulted in proposed cuts to the LHZ program that may impede its progress.*

**Ecology considers this condition to currently be met and no remedies needed.**

## Supplemental Recommendations

The preceding section established milestones intended to serve as a mandatory corrective action plan for extending the CWA assurances. Some issues were identified as part of this review that do not rise to the level of a mandatory milestone, but that if addressed may benefit the forest practices and adaptive management programs. These are provided as recommendations that do not affect Ecology's decision on whether or not to continue to offer the CWA assurances.

- (a) To better assess the adequacy of staffing and funding, DNR should continue to audit the forest practices program's ability to effectively and consistently implement the forests and fish rules. To the extent feasible, these audits should consider the staffing of all cooperators integral to field teams and address whether a lack of staffing is affecting the overall success of the program in effectively implementing forests and fish rules and protecting water quality. As has been noted by several cooperators in reflecting on this concern, adequacy is not just boots on the ground but includes having the right people trained correctly with the right tools and implementing the rules correctly. For just this reason, it is imperative that the issue be addressed through a broad framework of assessment, training, and audits. DNR has a process for conducting audits of regional office performance. Ecology recommends that those audits continue at regular intervals with some method provided to track changes in performance. While serving as a mechanism to assess general adherence to standard processes and to identify potential weaknesses, the audits do not directly assess adequacy of staffing or success in meeting rule elements. This gap in performance assessment information, however, can likely be filled by strengthening the compliance monitoring program. Needed improvements to the compliance monitoring program are discussed separately in this document.
- (b) Ecology provides necessary water quality expertise that is at risk of loss due to a lack of dedicated, dependable, and adequate funding. Ecology should explore alternate funding opportunities for Ecology staff. A work assessment should also be conducted by Ecology with the assistance of DNR to identify where additional resources may be needed, or where they should be redirected to better protect water quality.
- (c) The AMP Administrator with assistance from the Policy and CMER committees should identify a strategy to work in partnership with other research institutions and entities, and to be in the best position to apply for new monies as they become available.
- (d) Past and ongoing CMER studies and their associated data are not readily available or housed in any defined location. This puts this information at risk of being lost, and makes it largely inaccessible to the public as well as to AMP participants who could otherwise use the information to improve the efficiency of ongoing and planned studies. To help ensure the availability of reports and data generated through the AMP, the current efforts by DNR to scan all CMER reports into digital formatting should be supported. The effort of CMER and the Northwest Indian Fisheries Commission to develop an archival and GIS-based data acquisition system should similarly be supported.

- (e) Ecology and the Adaptive Management Program should actively encourage voluntary efforts to further expand the role of landowners and other cooperators in data collection programs. Expanding the ability of landowners, tribes, and other cooperators to provide data to assess status and trends would enable a more robust sampling program, and potentially provide an ability to separate regional from statewide trends.
- (f) The potential damage to water quality and public resources from unstable slopes is significant, and completion of the LHZ mapping program provides important supplementary information to help landowners identify unstable slopes. DNR should continue to look for ways to fully fund the LHZ mapping program to ensure that all of the priority watersheds are completed in the shortest practical time.
- (g) Ecology finds a need for a summary of the state of the knowledge with regards to the potential impact of the forest practices rules on amphibians. This should be done at the earliest practical opportunity and include both CMER and Policy representatives in an effort to understand whether the program is collecting the information needed to address rule effectiveness.

## **Appendix: Adaptive Management Program Strategic Goals, Objectives, and Tasks**

Forests & Fish Report Vision for Adaptive Management: "An Adaptive Management program is necessary to monitor and assess implementation of forest practices rules and achieve desired resource objectives. Adaptive Management is a formal process for evaluating the current resource status and, over time, for evaluating the effectiveness of rules and guidance in protection, maintenance, and enhancement of habitat necessary to meet resource goals and objectives, for making adjustments to forest practices on a regional or statewide basis, and for requiring mitigation, where necessary, to achieve resource objectives." (Forests & Fish Report, p. 70)

### **Goal 1: Assess and improve Adaptive Management Program efficiency and effectiveness**

**Objective 1:** On an ongoing basis, assess the efficiency and effectiveness of the program in meeting the Program's mission and vision.

***Task 1:*** AMPA / CMER Co-Chairs - By December 2008, develop a timeline estimating when critical questions in the CMER work plan will be answered.

***Task 2:*** Forest Practices Operations ADM/ CMP Manager - By December 2008, a steering committee or other collaborative process, shall be established to guide and make recommendations on compliance monitoring efforts. Such a steering committee will need to meet in a timely manner so delays don't occur in the training of survey crews and the collection of field data.

***Task 3:*** AMPA / CMER Co-Chairs - By January 2009, synthesize CMER work completed since 2000, summarize knowledge gained and assess progress towards answering FFR Adaptive Management key questions.

***Task 4:*** Policy Co-Chairs / AMPA / CMER Co-Chairs - By January 2009, clarify when and how research and monitoring results will be used to assess current rules and policies, i.e., should action be recommended in response to each project in a program, or should all projects in a program be completed before action is recommended, or something in between? Review and document decision with caucus principals as necessary.

***Task 5:*** AMPA / CMER Co-Chairs / CMP Manager - By March 2009, determine timing and coordination between compliance monitoring and effectiveness monitoring projects, and report results to Policy. (Note - Task 5 is dependent upon the timing of task 2. The intent is to complete task 5 within three months of the compliance monitoring steering committee's (or similar collaborative process) acceptance of the revised compliance monitoring design. More will be known about the timing of task 2 by the end of this month.)

**Task 6:** Policy Co-Chairs / AMPA / CMER Co-Chairs - By March 2009, review the CMER Work Plan to ensure programs/projects are prioritized appropriately tightly focused on FFR resource objectives/performance targets and key deadlines/time frames are identified.

**Task 7:** CMER Co-Chairs - By April 2009, revise the CMER Work Plan to incorporate key components of CMER science synthesis, reflect Policy's prioritization of projects, and include project schedule estimates.

**Task 8:** AMPA / CMER Co-Chairs - By December 2009, synthesize applicable non-CMER research for priority topic areas identified as a result of completing Tasks 1, 2, and 6.

**Objective 2:** Every ten years the structure, process, and performance of the Adaptive Management Program will be independently reviewed.

**Task 1:** Policy Co-Chairs / AMPA / CMER Co-Chairs - By January 2010, obtain independent review of the Adaptive Management Program. This review shall be done by representatives of independent, third party research organizations and include:

- An examination of the structure and function for technical performance, fiscal efficiency and overall accountability.
- An assessment of the performance and efficiency of the consensus-based decision processes.
- A review of the rigor of CMER science and the responsiveness of CMER work to body of PNW region science that is applicable to the L-1 Key Questions.
- An evaluation of the interactions of science and policy within the AMP.

## **Goal 2: Reestablish and maintain productive, collaborative caucus relationships**

**Objective 1:** In order to more productively resolve contentious forest practices issues, the Department of Natural Resources (DNR) will lead efforts to renew and maintain cooperation and collaboration among the six caucuses as an alternative to competitive lobbying and litigation.

**Task 1:** Commissioner of Public Lands - By January 2009, convene a meeting of caucus principals to determine their commitment to the Timber, Fish & Wildlife (TFW)/Forests & Fish Report (FFR) vision and ground rules, review caucus relationships, reinforce responsibilities and recognize capacity challenges of caucus representatives, and review how economic viability intersects with the Adaptive Management Program.

**Task 2:** Caucus Principals - By February 2009, write a joint letter summarizing outcomes of Task 1 and giving appropriate direction to caucus representatives.

**Task 3:** Policy Co-Chairs / AMPA / CMER Co-Chairs - By April 2009, develop and implement a plan to improve understanding and conformance with WAC 222-12-045, the TFW / FFR ground rules and responsiveness to Board Manual Section 22 guidance.

### **Goal 3: Secure adequate program funding and enhance communications**

**Objective 1:** To ensure funding is available for caucus participation in the AMP as well as priority research and monitoring projects, the Forest Practices Division Manager, in cooperation with caucus principal support, will lead efforts to obtain stable, adequate, long-term funding.

*Task 1:* F&F Policy / Caucus leads - Support DNR's unstable slopes decision package, which includes a request to double the GF-S Adaptive Management fund from \$1.2M per biennium to \$2.4M.

*Task 2:* Policy Budget Committee - By June 2009, develop a plan to obtain dependable, long-term funding adequate for participation, research and monitoring projects, and program management.

**Objective 2:** Raise the public profile of the AMP.

*Task 1:* AMPA / Policy Co-Chairs / CMER Co-Chairs - By July 2009, develop and implement an AMP communication and outreach strategy.

### **Goal 5: Increase research capabilities and scientific knowledge**

**Objective 1:** Strengthen and develop partnerships with other research organizations.

*Task 1:* AMPA / CMER Co-Chairs - On an ongoing basis, explore and develop partnerships with other natural resource research organizations. Report back to CMER and Policy biannually on progress.





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December 2, 2019

Forest Practices Board  
PO Box 47012  
Olympia, WA 98504

**Re: Forests and Fish Program – End of 10 year Clean Water Act Extension Period**

Dear Forest Practices Board Members:

Twenty years have passed since the adoption of the 1999 Forests and Fish Report. During the intervening years, the Department of Ecology (Ecology) with the support of the U.S. Environmental Protection Agency, has maintained the commitment to provide the Clean Water Act Assurances (Assurances) for forest practices in Washington State. The Assurances provided promised federal guarantees covering both the Clean Water Act, as well as the Endangered Species Act, to serve as a predictable and a consistent regulatory framework for the forest industry.

Ecology's original Assurances provided a Schedule M-2 of the 1999 Forests and Fish Report. The Assurances established a conditional, ten-year agreement to treat the development of traditional Clean Water Act water cleanup plans (Total Maximum Daily Loads) on Washington's forest lands as a low priority, while relying on the state's forestry rules to ensure water quality standards would be met on forest lands. Maintaining an effective Adaptive Management Program to test the forestry rules and revise them if found inadequate, was a critical condition for maintaining these Assurances.

The original 1999 Assurances established a 2009 milestone to verify that the state's forestry rules were on-track for bringing waterbodies into compliance with water quality standards. In 2009, Ecology's review of the Adaptive Management Program found that it could not demonstrate success in meeting water quality objectives. With commitments from key stakeholder groups, Ecology extended the Assurances for another ten years until 2019, in order to provide more time to verify the effectiveness of the rules or revise them as needed. The extension included key milestones to demonstrate steady incremental improvement in the program.





Key Adaptive Management Program achievements to date include:

- The establishment of long term funding for the Adaptive Management Program.
- The Type F (fish-bearing streams) buffers the effectiveness of monitoring studies conducted in eastern Washington and provides a measure of confidence that the riparian rules are meeting performance targets for thermal water quality protection for these fish-bearing waters.
- The priority Westside Type N (non-fish-bearing streams) hard rock study is complete and a package of Westside Type N studies are due for completion in 2020.

Establishing long term funding for the Adaptive Management Program and completing the above referenced studies is a major achievement since 2009. The challenge we now face is implementing the required adaptive management.

The first two years of the 2009 extension showed good progress in meeting key milestones identified, but the momentum was not sustained through the ten-year extension of the Assurances. A number of milestones established to ensure progress of the Adaptive Management Program to support certainty of meeting water quality objectives remain incomplete. Milestones associated with priority research projects delayed the completion dates for some of the milestones projected to be complete five years beyond their original target dates. Ecology has consistently raised concerns about these missed milestones to the Forest Practices Board during routine updates.

Looking specifically at the science, we have found that the Type N studies clearly show Type N riparian rules need strengthening to protect water quality. Revising the rules to meet water quality objectives was the precursor for the establishment of the Adaptive Management Program. The Timber Fish and Wildlife Policy Committee and the Forest Practices Board have recently agreed to a workgroup process aimed at developing new rule prescriptions. Ecology views this as a positive step and looks forward to the establishment of a clear timeline for such rulemaking.

With the Assurances expiring at the end of this calendar year, I have conducted an in-depth review of the Adaptive Management Program, weighed the many positive features of the program with the ongoing performance concerns and delayed progress. Based on my review, I have decided to extend the Assurances to December 31, 2021. This will provide ample time for Board Members to reach an agreement on the revision of the Type N rules, to protect temperature better.

This extension aligns with the existing Timber Fish and Wildlife Policy Technical Type N Prescriptions Workgroup charter (dated March 7, 2019). Evidence of adaptive management success would be the Board issuing a draft rule available for public comment before the end of 2021. This will require a CR101 filing in the summer of 2021, a draft CR102 developed, and distributed for public review by the end of November 2021.

At the end of 2021, I will consider another extension to the Assurances. If the Type N rules are effectively improved, we will be able to conclude that the Forests and Fish Report and the Adaptive Management Program are working to achieve water quality standards, in which case Ecology will be supportive of extending the Assurances for a longer period.

Ecology believes that, in addition to committing to rulemaking to protect water temperature on Type N streams, improvements to the Adaptive Management Program process are necessary to create a program that participants can rely on to test the effectiveness of the rules in protecting water quality and to timely modify those rules as the science dictates. Therefore, we urge the Board and the Adaptive Management Program Cooperators to identify and implement system improvements, over this two-year period, and to continue to prioritize the completion of the remaining uncompleted research milestones identified in the 2009 Assurances review.

Thank you very much for working with Ecology on protecting Washington State's waters.

Sincerely



Maia D. Bellon  
Director

Enclosure

cc: Environmental Protection Agency  
National Marine Fisheries Service  
United States Fish and Wildlife Service  
Forest Practices Board Liaisons  
Timber Fish and Wildlife Policy



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December 3, 2021

Forest Practices Board Members

*Sent by email only:* [patricia.anderson@dnr.wa.gov](mailto:patricia.anderson@dnr.wa.gov)

Dear Forest Practices Board Members:

Twenty-two years have passed since the adoption of the 1999 Forests and Fish Report. During the intervening years, the Department of Ecology (Ecology), with the support of the U.S. Environmental Protection Agency (EPA), has maintained the commitment to provide the Clean Water Act Assurances (Assurances) for forest practices in Washington State. The Assurances provided promised state and federal guarantees covering both the Clean Water Act as well as the Endangered Species Act, to serve as a predictable and a consistent regulatory framework for the forest industry.

The Assurances require Ecology's considered determination that the Adaptive Management Program (AMP) established under the Timber, Fish, and Wildlife (TFW) agreement is effective at improving water quality in the short term and meeting water quality standards in the longer term. For Ecology to continue to uphold the assurances, we must determine that the AMP is functioning as originally envisioned in order to meet these objectives.

As a result of Forests and Fish, we have seen improvements across lands covered by the Forest Practices Act. Through the Road Maintenance and Abandonment Planning (RMAP) requirement, nearly all RMAP plans were completed by the October 31, 2021, deadline, resulting in more than 8,300<sup>1</sup> fish passage barriers corrected, opening more than 5,100 miles of fish habitat. The Washington Department of Natural Resources (DNR) is working with landowners to make sure the few remaining obligations are completed. The Cooperative Monitoring, Evaluation, and Research Committee has completed many studies. The Policy Committee and the Board have implemented and refined the Desired Future Conditions as well as provided two template alternate plans for small forest landowners.

Washington's AMP serves as a model for others. Stakeholders in Oregon have recently committed to a similar process to address regulatory practices within the forestry industry. The Board's motion to direct staff to file a CR-101, to notify the public of their intent to amend existing rules related to non-fish bearing perennial streams (Type Np riparian buffers) in Western Washington, is an encouraging signal to me that the TFW stakeholders are committed to water quality, TFW, and the AMP.

However, there is still much work that remains to be done. The TFW parties must consider process improvements to ensure that the AMP functions effectively and efficiently into the future. It is also imperative that the parties move expeditiously to develop a proposal for Type Np buffer prescriptions. Because I believe the parties are committed to accomplishing both things, Ecology has concluded that it

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<sup>1</sup> 2020 Forest Practices Habitat Conservation Plan Annual Report, Chapter 11

is appropriate to allow time for the adaptive management process to demonstrate measurable progress over the next year.

### **Documented Problems with the Adaptive Management Program**

On October 9, 2009, Ecology conditionally extended the Clean Water Act Assurances for a ten-year period. The extension was conditioned on the AMP meeting a scheduled set of milestones for program improvements and research development.

A detailed set of findings accompanied the 2009 extension decision. Those findings identified a number of existing problems with the adaptive management process:

*The CWA assurances were established on the condition that an effective adaptive management process (AMP) would be established and maintained. A healthy and effective AMP is central to the ability of Ecology to offer the CWA assurances. The AMP needs to provide a scientific framework for testing whether the forest practices rules are effective in protecting water quality, and for identifying any changes needed to rules not found effective. Substantial progress has been made through establishing the structure and formal operational procedures of the AMP. An AMP board manual was developed to further outline how the program should operate, and significant funding and effort has occurred to get scientific studies underway to test various portions of the rules and guidelines governing forest practices.*

*In spite of these substantial efforts, the AMP has not completed any studies that directly test the effectiveness of the rules in protecting water quality. The science arm of the AMP has also been largely unsuccessful in providing research findings the Forest and Fish Policy Committee (Policy) and the Forest Practices Board (Board) will reliably use to validate or to revise the forest practices regulations and guidance. There are significant problems with the ability of the policy and science arms of the AMP to work together to test and revise the rules in a timely and effective manner. Part of the problem is simply inherent in a program that seeks to develop consensus among stakeholders with competing interests. But the problems also seem rooted in the foundation of the AMP itself. AMP participants frequently disagree about the appropriate roles of science and policy, as well as what role the initial negotiated forests and fish rules should play in evaluating the acceptability of future changes. These disagreements appear in part to stem from a lack of clarity in the underlying rules and guidance. Combined with poor communication between the science and policy arms of the program, this is compromising the AMP's effectiveness. To the credit of its participants, strategic planning efforts are underway with the intention of identifying and correcting the shortcomings of the program. The Policy committee has developed a strategic plan...with five broad goals supported by multiple objectives and specific tasks designed to revitalize the adaptive management program. There is also general understanding that testing the effectiveness of the rules for protecting water quality must be a top priority if Ecology is to continue the assurances.*

*The state legislature (RCW 76.09.370) directed that forest practices rules covering aquatic resources only be adopted or changed by the Board where those changes are consistent with recommendations resulting from a scientifically based adaptive management process. The stated purpose of having the adaptive management process is to make adjustments as quickly as possible to portions of the forest practices rules that are not achieving resource objectives. Both as a participant and a reviewer, Ecology has concluded that fundamental improvements are needed to ensure the rules and associated programs will be tested and revised in a timely*

*manner based on scientific inquiry, as intended by the legislature and consistent with CWA assurances.*

On February 23, 2021, the State Auditor issued a performance audit report describing the significant issues that continue to plague the AMP. The Auditor's Office concluded that the program is not "operating as intended" and that, without needed changes, the "program would continue to languish." The Auditor's Office recognized that, while the program was "designed to allow nimble changes to forest practices rules," the program has in fact only resulted in two science-based rule revisions since 2006. The Audit Report contains a number of recommendations designed to get the program on track so that it can perform its functions as intended.

Ecology is aware that the Forest Practices Board has submitted a budget request to address some of the recommendations contained in the Audit Report, and Ecology commends the Board's clear commitment to doing so. In addition, Ecology is grateful that the Public Lands Commissioner is convening a meeting of TFW principals so that we can address these issues at the highest levels of accountability within our respective organizations. Of course, the TFW stakeholders themselves must also commit to program improvement. This will necessarily entail an openness to changing current aspects of the program, such as revisiting the unanimous voting requirement and/or streamlining the dispute resolution process. Because fixing problems with the AMP is so integrally tied to the Clean Water Act Assurances, making clear and measurable progress toward addressing the Auditor's recommendations is necessary to provide Assurances that the forest industry is making progress towards protecting water quality.

### **Rulemaking for Type Np Streams**

The maintenance of forested buffers is critical to protect water quality. Under current rules, non-fish bearing perennial streams (Type Np) receive less forested buffers than fish bearing streams. As a result, the 2009 findings recognized that "the prescriptions associated with the Type Np rules have the greatest potential risk of violating the water quality standards."

On December 2, 2019, Ecology issued another conditional extension of the Clean Water Act Assurances. In doing so, Ecology concluded that the Type Np Hard Rock study<sup>2</sup> clearly demonstrates the need to strengthen the Type Np riparian rules to protect water quality. Ecology noted that the TFW Policy Committee and the Forest Practices Board "recently agreed to a workgroup process aimed at developing new rule prescriptions."<sup>3</sup> In light of this commitment to rulemaking by TFW stakeholders, Ecology extended the Assurances for an additional two years so that the Board would have ample time "to reach an agreement on the Type N rules." As evidence that the Adaptive Management Program was working, Ecology noted that there would need to be a CR101 filing in the summer of 2021 and a draft CR102 distributed for public review by the end of November 2021.

While we are pleased that the Board directed staff to issue a CR101 at its November 2021 meeting, Washington Department of Natural Resources (DNR) staff have not distributed a draft CR102, and there is no feasible pathway for them to distribute a draft by the end of this year. It is clear that the Board did not meet the conditions included in Ecology's 2019 extension of the Assurances insofar as DNR has not issued a draft CR102. Nevertheless, I have spoken with representatives of the TFW stakeholders and perceive a genuine commitment to moving this rulemaking forward. Despite this commitment, it is

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<sup>2</sup> "Effectiveness of Experimental Riparian Buffers on Perennial Non-fish-bearing Streams on Competent Lithologies in Western Washington", McIntyre et al, September 2018, CMER #18-100

<sup>3</sup> Timber Fish and Wildlife Policy Technical Type N Prescriptions Charter – March 7, 2019

evident that we cannot make progress without meaningfully addressing the issues identified in the 2021 Audit Report. Achievement of our objectives will require a concerted effort by all TFW stakeholders in the TFW process over the next several months.

### **Clean Water Act Assurances**

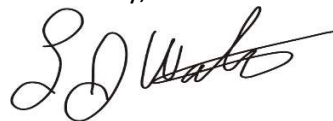
Ecology has determined that it is appropriate to allow time for the AMP to make measurable progress implementing the 2021 Audit Report recommendations and for Policy to make a final recommendation on Type Np buffer prescriptions to the Board, with the Board directing Board staff and DNR to develop a rule package and prepare the CR102. Achievement of these objectives during this extension of the assurances for an additional year will help all of us continue to meet the obligations we committed to when we signed onto the groundbreaking Forests and Fish Agreement.

By December 31, 2022, Ecology must submit to EPA and the National Marine Fisheries Service/United States Fish and Wildlife Service (Services) an updated statewide non-point source pollution management plan under Section 319 of the Clean Water Act. EPA and the Services will review the non-point plan under both the Clean Water Act and Endangered Species Act following its submittal at the end of 2022.

The performance of the Forests and Fish Agreement and associated Forest Practices Rules are key components of the non-point plan regarding the protection of water quality on forest lands. Therefore, the achievements over the next year will help us evaluate the effectiveness of the AMP as we complete the plan. In the plan, Ecology must document whether the rules are effective in protecting Washington's waters, and this determination is key to the Clean Water Act Assurances. If the rules are not achieving the resource objectives, Ecology must document the steps it will take instead to address the protection of water quality.

My sincere hope is that the TFW stakeholders will use the next year to demonstrate that we can work together to improve the Adaptive Management Program so that forest lands are managed in a way that protects water quality now and into the future. I look forward to working with all TFW stakeholders to accomplish our important shared mission of providing regulatory certainty for the industry while protecting our cherished natural resources.

Yours truly,

A handwritten signature in black ink, appearing to read 'Laura Watson', with a stylized, flowing script.

Laura Watson  
Director

cc: Hilary Franz, Commissioner of Public Lands, DNR  
Michelle Pirzadeh, Acting Regional Administrator/Deputy Regional Administrator, EPA Region 10

## Appendix J. The Voluntary Stewardship Program and Clean Water

Appendix J, is the issue paper on [The Voluntary Stewardship Program and Clean Water](#).<sup>74</sup>

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<sup>74</sup> <https://apps.ecology.wa.gov/publications/documents/1310030.pdf>

## Appendix K. Voluntary Clean Water Guidance for Agriculture

Appendix K, is the [Voluntary Clean Water Guidance for Agriculture](https://apps.ecology.wa.gov/publications/SummaryPages/2010008.html)<sup>75</sup>.

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<sup>75</sup> <https://apps.ecology.wa.gov/publications/SummaryPages/2010008.html>



## Appendix L. Response to Comments

Appendix L, <https://apps.ecology.wa.gov/publications/SummaryPages/2210025.html>