



THE OSPREY

A Newsletter Published by the Steelhead Committee
Federation of Fly Fishers



Dedicated to the Preservation of Wild Steelhead • Issue No. 59 • JANUARY 2008

Washington's Forest Practices Habitat Conservation Plan: Adaptive Management or Gridlock?

by Peter Goldman

— Washington Forest Law Center —

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the best salmonid habitat remains in forest zones. So how logging takes place in the 10 million acres and 60,000 stream miles of Washington forests is critical to protecting what little salmonid and steelhead habitat remains.

Species Act (ESA) and when watershed-specific protective measures were proposed under the Clean Water Act. In 1999 and 2000, at the urging of the politically powerful timber industry (and other forest State, federal, and tribal "stakeholders" who were anxious to accept any improvements for forestry in salmon country), the State signed on to a negotiated document specifying salmon-friendly logging practices — called the "Forests and Fish Report." The Report was supposed to be a substantial re-write of the pre-1999 forest practice rules to protect and recover salmon.

The political deal implementing the Report went like this. Washington would immediately adopt forest practices (logging) rules based on the Forests and Fish report, develop a federal Habitat Conservation Plan (HCP), and apply to the two federal agencies that have ESA jurisdiction (NOAA Fisheries and the U.S. Fish and Wildlife Service) for a 50 year Incidental Take Permit. The

As a public interest environmental lawyer, I spend a lot of time talking about whether logging practices protect the habitat of threatened and endangered fish, such as salmon, steelhead, and bull trout. Yet some ask, "what does protecting forests have to do with protecting and recovering endangered salmon and steelhead?"

As a fly-fisher you probably know the answer, but in case you don't here it is: some of the most crucial "life stages" of wild salmon, steelhead and trout occur in the forest and, while industrial logging has taken a heavy toll on salmon habitat in the forests, some of

Old school forestry in Washington got a wake-up call when runs of salmon and steelhead were listed under the ESA.

Old school forestry in Washington got a wake-up call in the late 1990s when most Washington runs of salmon and steelhead were listed as threatened or endangered under the Endangered

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Incidental Take Permit would immunize the State (and possibly timber companies receiving logging permits from the State) from any ESA liability for “take” of endangered fish. No watershed-specific restoration plans would be required under the Clean Water Act. After years of federal and State review, the deal, known as the Washington Forest Practices HCP, was signed in May of 2006. Any actions to clean-up Washington’s waters under the Clean Water Act were deferred until 2009.

There was, however, a major condition attached to the deal. Because the Report and several of the key stream protection prescriptions were based on little science, numeric defaults, and assumptions that were experimental and unverified, the State agreed to conduct an extensive long-term “Adaptive Management” program. Specifically, the State agreed to prioritize and test (based on the lack of science underlying key protection measures and concomitant risk to fish and amphibians) these multiple numeric assumptions on which the HCP was based, to monitor the HCP’s effectiveness, and to determine whether the State was enforcing the HCP’s rules on the ground through compliance monitoring.

This Adaptive Management program has been operating since 1999, at a cost of approximately \$3 million per year in state and federal funds. The program is staffed by dozens of salaried and donated in-kind professionals. It has a science side (Cooperative Monitoring, Evaluation and Research Committee, or CMER) and a policy side (Forests and Fish Policy Committee). Its cumulative budget through 2010 is expected to be about \$30 million.

Half-time report: what’s the “score”?

So is this Adaptive Management process “working” as promised? Do we even know what was “promised?” Can the HCP and its Adaptive Management program substitute for direct enforcement of the ESA and Clean Water Act? Here is a snapshot of progress made to date; you be the judge.

Study # 1: How wide must the buffers on fish-bearing streams be?

One of the key commitments in the Forests and Fish Report was to grow conifer forest buffers around fish-bearing streams that mimicked the natural conditions of 140-year-old stream-side forests, as measured in

change proposal to the Washington Forest Practices Board in August of 2005.

Has the Board changed the basal area retention requirement in the rules during the past 2 1/2 years? No, the timber industry caucus convinced the Board to evaluate “alternative” ways to protect riparian areas aside from requir-



Intact conifer forests provide a wide range of benefits to steelhead, salmon and other fish and aquatic species including shade, instream debris for habitat and anchoring the soil to prevent erosion. Photo by Jim Yuskavitch.

“basal area” (area of a stumps surface at breast height), minimum buffer widths, and density of “leave” trees. The Report estimated that the basal area for these buffers should be 190-285 s.f./acre depending on site class (quality of growing ground). In 2005, after a four year study of the riparian conditions in unmanaged forests, however, the science side of the Adaptive Management program found that the basal area for 140 year old stands was 300 to 369 s.f./acre and that, over all site classes of forests, the Report’s defaults were off by a margin of 18-44%. The science side forwarded the correct targets to the “policy” side of the Adaptive Management program in 2005 which, in turn, forwarded a rule

ing basal area “leave” trees, and to reconsider whether other riparian protection rules can be adjusted downward to make up for the increase in basal area target number. Moreover, to make its “alternative” analysis, the Board chose to by-pass the Adaptive Management science process and asked the State’s Department of Natural Resources to evaluate these alternatives after conducting a prolonged environmental and economic study of each of them. The gridlock result is that the new basal area targets have ping-ponged back and forth in rulemaking since 2005 while logging continues under the old, invalid stream buffer width rule defaults.



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Study # 2: Where does a non-fish-bearing perennial stream begin?

Another key commitment in the 1999 Report was to leave 50-foot buffers on half the length of non-fish-bearing streams, streams which may have intermittent dry portions and whose initiation point can be difficult to detect during the wettest times of the year. To estimate the perennial initiation point of these streams, the Report made a critical assumption which it adopted as a default: a perennial stream's initiation point exists at the upstream end of a defined basin containing an area of 52 acres on the west side of the Cascade mountains, 300 acres on the east side, and 13 acres in the Coastal Zone.

But, just as with the buffer width study described above, the science side of the Adaptive Management program later found in 2003 that these defaults were off by nearly an order a magnitude (10 times) throughout Washington. The Report's underestimation of the length of perennial streams by default had the effect of eliminating a vast acreage of buffers next to perennial streams.

When the issue finally reached the Board in 2006, and only after intense lobbying, the Board agreed to strike the erroneous basin area default numbers but capitulated to timber industry pressure and refused to substitute the accurate defaults for the corrected ones. Rather, the Board decided to allow forest landowners to find their own perennial initiation points in the field, which presents a "fox-watching-the-henhouse" problem. To make matters worse, the Board refused to adopt a field board manual directing landowners how to identify perennial initiation points in the field, even though the State DNR, at the Board's direction, had spent almost a year developing such a manual with the cooperation of all other forest stakeholders except the timber industry.

Study # 3: Are The Fish Getting The Protections They Were Promised?

If the "prescriptions" of the Forests and Fish rules are not being laid out correctly on the ground, threatened and endangered salmon are not getting

the habitat protection and restoration measures they need — and were promised — in the HCP. But compliance and enforcement is a huge challenge and unknown risks for fish, since the State has only the resources — and the political commitment— to verify a small percentage of the thousands of forest practice applications submitted each year. The problem is compounded by the fact that the State's "stream typing" maps for determining whether or not a stream or river contains fish — which determines the existence and width of the buffer — have been historically inaccurate by as much as 40-50%.

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Unfortunately, the State's compliance monitoring program has not yet yielded any conclusions regarding landowner protections of salmon and trout streams. First it took the State DNR five years to even design and implement a compliance monitoring study. Once the first round of sampling was conducted, it showed that compliance with the rules was approximately 60% overall but that sampling was considered tentative and non-conclusive. So again the study is underway but a new obstacle has arisen: the State DNR made the tentative decision, over the protest of several stakeholders, not to assess whether forest landowners correctly "typed" their streams when laying out timber harvest units. Not determining whether streams were correctly typed will skew effectiveness monitoring, since one cannot conclude whether the rules are working if the correct buffers were not prescribed in the first place.

How these problems could have been avoided.

It remains to be seen what happens to this HCP in the future. It is no secret that some forest stakeholders are growing increasingly impatient and frustrated with the slowness and political vulnerability of the Adaptive Management process. It offers little comfort that the federal Services are only passively watch-dogging the process.

Space does not permit a treatise on federal HCPs. But based on my experience with Washington's Forests and Fish HCP, several structural provisions might have prevented this Adaptive Management program from hitting a log jam.

HCPs should be based on the precautionary principle.

One of the reasons the Forests and Fish HCP's Adaptive Management program is so important is because many of its forest management prescriptions protecting rivers and streams were experimental, untested, and pose a potentially high risk to aquatic resources. It is no secret that many of these prescriptions were political compromises and were not based on conservatively interpreted best available science. Also, powerful and plentiful timber industry negotiators worked hard to make sure that the most costly prescriptions were placed in an Adaptive Management "parking lot" and studied rather than being implemented immediately in the HCP. Yet logging continues under the original rules while the supposedly "adaptive" process endlessly churns. If, as urged by the environmental community, the HCP had applied the precautionary principle, delay and obstruction would not cut against protecting threatened and endangered fish.

Adaptive management programs for federal HCPs should not be subject to state political vetos.

While the Forests and Fish HCP is supposed to be science-based and science-driven, the HCP's Adaptive Management program is designed so that any changes to the rules proposed

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by the process must be approved by a consensus-guided “policy” committee and the 13-member Washington Forest Practices Board, a governor-appointed board that consists of a variety of forest stakeholders including many from the timber industry. State law — and the HCP — allow this Board and the Policy Committee to disapprove rule changes to preserve the “viability of the timber industry.” Nor does the HCP define “viability.” To make matters worse, the process is overseen by the elected Commissioner of Public Lands, who may be dependent on the timber industry for campaign contributions. In short, the process contains a fundamentally flawed political bottleneck.

HCP adaptive management programs should be overseen by an independent science review team.

Theoretically, the federal Services are supposed to enforce the HCP and keep its Adaptive Management program following the science. Yet, particularly during the past seven years, the federal government has not made enforcement of the ESA a priority. Moreover, federal agencies do not want to discourage landowners from negotiating federal HCPs, so they tend to “tread lightly” in enforcing HCPs. To make matters worse, some say the HCP is enforceable only by its participants, and its “dispute resolution” procedure is onerous and not independent. The process needs an independent “science stick” to monitor its progress, as recommended by the Governor’s science panel in 2000.

Adaptive management programs must have a dedicated, ample, and reliable budget.

Thanks to a salmon-friendly Washington Congressional delegation anxious to catalyze improvements to industrial forestry practices, the federal government financed the development of the Forests and Fish HCP and the initial years of Adaptive Management. However, the federal money has now dried up and the State has been left with the bill. It also does not help that the Washington State Legislature gave the timber industry a



A key component of Washington’s Forests and Fish Report was to ensure that stream-side buffers would mimic 140-year-old riparian forests. Photo by Jim Yuskavitch.

tax-cut when it agreed to the HCP, and the industry does not directly fund the Adaptive Management program, except by providing in-kind contributions of timber industry scientists and policy staff. Now funding the HCP’s Adaptive Management program stands in line in Olympia with every other environmental cause that desperately needs State money. This is not the best way to guarantee science-driven change.

Conclusion

After 10 years of working in this process, it is my view that whether or not the Forests and Fish HCP works as promised and survives the test of time depends on the timber industry’s willingness to allow the process to “follow the science.”

The industry should be commended for agreeing to be bound by a process designed to improve forest practice rules that affect salmonids and their habitat. In contrast, Oregon and Idaho forest practice rules lag far behind Washington’s, and both of those states

have zealously resisted attempts to bring their rules into compliance with the ESA and the Clean Water Act.

That the Washington timber industry agreed to take this step forward, however, does not give it or the State a license to abandon science for politics. The Forests and Fish HCP and its Adaptive Management program is supposed to be a science-driven roadmap to protection and recovery of salmonids in the forest. The Adaptive Management program cannot have a “glass ceiling” over it that prevents rule improvements over time.

It is good forest policy to have a timber industry that is both economically viable and protective of endangered salmonids. But it is neither lawful nor good policy for a federally-approved HCP to be manipulated or delayed to neutralize the ESA and Clean Water Act, increasing risks to the fish.

I encourage all readers to e-mail, Doug Sutherland, Washington’s Commissioner of Public Lands, at doug.sutherland@dnr.wa.gov, urging him to keep the process moving along as promised.

