

January 5, 2017

## TFW Policy Presentation of SFLO Perspective

### OUTLINE:

INTENT

YEARS OF DISCONNECT

REINVIGORATION/FRESH START/NEW HOPE

CORE ELEMENTS/ISSUES OF OUR TEMPLATE PROPOSAL

RECOGNITION OF ISSUES LIKELY NEEDING TO BE ADDRESSED

COMMON INTERESTS

SUMMARY

OUR INTENTIONS & HOPES FOR NEXT FEW MONTHS

THANKS FOR LISTENING!!

### Ken's presentation notes/storyline:

**INTENT** – We appreciate the opportunity to share our perspective on our template efforts. Collaboration requires transparency, but in my efforts to be completely transparent this became more scripted than I really wanted – I apologize. I'll ask for clarifying questions along the way – I hope you have some. Claire will put some pages on the screen from the background info submitted with agenda.

### **WHY SO MANY YEARS OF DISCONNECT?**

Although it was an entirely different struggle, I think there is a clue to this question in a true story of my ignorance from the 60's: *"I remember the news about Billy Frank flaunting the law by illegally fishing in the Nisqually. **I'm embarrassed** to remember thinking/saying "what right does he have to fish when the rest of us can't?" - "they should keep his ass in the jail and throw away the key!" In my ignorance, it wasn't until after the 1974 Boldt decision that I even started thinking he might have been in the right. Just because I thought he didn't have any special rights didn't make it so!*

*It seems to me the root cause of our SFLO struggles with the 1999 Forest and Fish commitments are similar, at least in a small way, to what the tribes faced with their 1854 treaty – **the parties to a common language agreement understood what it meant at the time – but the institutional memory faded over time.***

I believe most TFW Policy folks here respect and appreciate SFLOs, but may no longer, or have ever(?), felt empowered to provide SFLOs with any meaningful deference in the forest practice regulations.

I want to spend a little time touching on the SFLO perspective of what we believe was intended in our Forest and Fish regulations – The deal we made with the state!

- Our support of Forest and Fish in 1999 was contingent on general language commitments made to us – Our leadership’s support for Forest and Fish cost WFFA 30% of our membership because they believed we were unjustly giving up property rights – when we were confident F & F still protected SFLOs, just in alternative ways in the RCWs.
- I do believe there has been good intentions by other stakeholders wanting to help achieve meaningful templates but it seems the disconnect is whether (or not) you are empowered to provide alternate harvest restrictions. To us it’s clear you are empowered, in fact required to provide alternate harvest restrictions for SFLOs – but what is meant by “alternate harvest restrictions”?

To help add context to why we believe deference to SFLOs is required:

- **Small Business Economic Impact Statement** (show page 3 on screen)  
Finding of Disproportionate impact on SFLOs resulted in:
  - Model mitigation via FREP, but “when funds available”
  - Small Forest Landowner Office within DNR – started with 10-15 folks helping smalls, nearly all gone, struggling to rebuild in cooperation with DNR
  - Deference SFLOs in Alternate Plans/Templates/Alternate Harvest restrictions (smaller buffers for smaller streams on smaller harvests)
- **Section 21 Guidelines for Alternate Plans** (show on screen) – 1<sup>st</sup> bullet confirms/requires deference to SFLOs due to disproportionate impacts.
- Point to **list of mitigating RCWs/WACs**(show on screen) that show Legislature clearly intended deference to SFLOs.
- Highlight & discuss two most important/meaningful to us – “relatively low impact”??-
  - **RCW 76.13.100 (2) partial** (show on screen)
  - **RCW 76.09.368 Intent** (show on screen) – in 2003 Pat McIlroy chair of FPB made a very positive report to Legislature advising them that SFLOs now had Overstocked Stand Template and described several others in the works nearing completed (that in the end didn’t happen)

- The Approval Standard for Alternate Plans **WAC 222-12-0401 (6)** (show on screen) often seems misinterpreted to focus primarily on comparisons to existing rules -when we believe it's far more holistic:
  - It's about "effectiveness" relative to rules with a focus on RMZ functions – more discussion later in this presentation on Table 3 that actually compares relative effectiveness of our template vs the current rules.
  - It's also about deference to SFLOs as required by RCWs:
    - Which includes effectiveness in the "act" as well as the "rules"
    - The "act" includes consideration for disproportionate impacts confirmed by the SBEIS finding of disproportionate impacts
    - Is intended to be interpreted as a whole based on the collective best professional judgement of the ID team, and ultimately the DNR Forester – not one size fits all rules/interpretations from Olympia.

To better understand where SFLOs are today it's worth a quick review of our prior efforts to achieve RCW requirements - utilizing goodwill of Forest and Fish stakeholders:

- **"Farm Plan"** shepherded by Sherry Fox and Steve Bernath
- **15 year Permit** – only surviving bullet from "Farm Plan"
- **Overstocked Stand Template** by SFLO subcommittee of TFW Policy
- **Exempt 20-acre rule changes**, 2-3 legislative efforts to change from 20 acre "parcel" to 20 acre "harvest". Legislative support but easily killed by other caucuses ☹️ – Maybe we needed a Billy Frank! 😊
- **Fixed Width Buffer Template**– simplicity/parity with Industry– **SUCCESSFUL & FREQUENTLY USED - Thanks Adrian!** (dealt with simplicity but fell far short of F & F commitments)
- **Draft Eastside Forest Health template** – helped define "imminent mortality" – got close – got so process heavy SFLOs gave up. Has to be obvious to all the eastside forests need more, not less management – not economical to do Alternate Plans!
- **Draft Conifer Restoration Templates** – 3 separate attempts, progress, but couldn't get across finish line – plenty of blame to go around, including on myself.
- **Draft "Low Impact" Template** based mostly on current Hardwood Conversion metrics – non-consensus, rushed, no traction beyond SFLO AC, process fouls.
- **Draft State caucus RMZ thinning template** – well intended, not collaborative, eligibility improvements, thinning metrics more

restrictive than existing rule – food fight to a draw in front of FPB – soured all participants.

- **SFLO take-ways after 10-12 years of effort:**
  - Landowners in SFLO AC gave up on future template efforts.
  - SFLOs felt treated like “special needs” caucus (charity, not a right), not full partners in Forest and Fish.
  - SFLOs feel disrespected and unappreciated – yet I personally know none of you have intended these feelings, they are just the natural result of several years of not achieving the promises of the Forest and Fish that we supported in good faith.
  - Delegation of SFLOs came to TFW Policy, hat in hand, begging for help and advice on how to achieve promises of Forest and Fish – “go find new friends” was only real response. ☹
  - During these years the SFLO Community provided thousands of selfless volunteer hours and uncompensated personal expenses for essentially no meaningful movement towards “. . . alternate harvest restrictions on smaller harvest units that may have a relatively low impact on aquatic resources.”
  - I’ve heard most of you acknowledge SFLOs “were tossed under bus” in Forest and Fish and most have expressed genuine desire to help. Thank You!
  - **We know** we are doing good work benefiting society, critters, air, water - but not feeling the societal love. ☹
  - We felt a sense of despair, resignation to the inevitable conversion of our lands over time – started looking more seriously at options outside Adaptive Management.
  - I know this all sounds like whinning, but in a way that’s our “Trail of Tears”, not even close to that suffered by our tribal folks, but to those of us who have personally given so much it feels comparable.

### **Clarifying questions regarding our understanding of the past?**

#### **REINVIGORATION/FRESH START/NEW HOPE as result of the “settlement agreement 3-4 years ago**

- SFLOs given a full seat/vote at the table
- Dispute resolution processes seemed more workable

- We decided to come back to the TFW Policy table after couple years absence (although we never left the SFLO AC).
- Dick Miller became our Policy rep, who as a scientist was totally convinced the Forest and Fish Commitments to SFLOs could be achieved by:
  - Utilizing best available science in our alternate harvest restriction prescriptions (He used to believe 95% of Adaptive Management Program decisions were directed by good science – & maybe 5% policy/negotiation – the reverse of what he believed upon his retirement 😊)
  - Following the AMP processes exactly (which we believe has been done – I encourage all to read our cover 1/21/2015 cover letter, Attachment 1, and Attachment 3)
  - We truly believe we've put our best foot forward with this very professional and thorough template proposal.

### **CORE ELEMENTS/ISSUES WITHIN OUR TEMPLATE PROPOSAL**

- We really would have preferred these template prescriptions be included in “rule” like the exempt 20-acre rule – most SFLOs are fearful of just the possibility of an ID team - but we recognize a Template allows:
  - the added regulatory flexibility of a template if prescriptions become problematic
  - Additional review of site-specific conditions that can be weighed and conditioned by ID teams and DNR Foresters.
  - Our real hope with a template approach is that TFW Policy folks will be more inclined to support an Alternate Plan Template than a more hardened rule – therefore might be inclined to accept a little more perceived risk, at least until more experience in the field?
- Prescriptions were determined by following the BAS on RMZ function protection as if normal Alternate Plan.
- The science supports our prescriptions – to extent there is grey area for some of you we believe we are still well within the “relatively low impact” standards required by RCWs.
- It's my understanding RMZ widths in rule were based on political/negotiated agreement that buffers would be “1 tree length” wide
  - Subsequent RMZ widths by site class was intended to treat all landowners equally regardless of how fast/slow their ground would grow trees. From a functional standpoint the best sites should have the smallest RMZs – Our system of using Site Class to determine RMZ width seems nonsensical to SFLOs and at a minimum adds unnecessary complexity.

- On the other hand, Alternate Plans/Alternate Harvest Restrictions rightly are based on functional needs of RMZs, not negotiated rules. “Functions Are Us” was coined by Steve Bernath when we wrote the Alternate Plan Guidance. When we all leave our biases out, RMZ functions are really all any of us should care about. Stream Widths are key in determining RMZ width needs.
- **Draft Template Simplified** (show on screen) overview:
  - Site Specific – based on the most critical RMZ functional determinant: stream widths.
  - SFLOs need simplicity to ensure understanding and compliance
    - Despite necessarily complex tables in our science based proposal, the prescription options are easily understood once the stream type and stream width are known.
    - Larger SFLOs might be looking at all these options, but the vast majority of SFLOs would only be looking at A, B, or C if Fish, or D if Np stream.
    - Most SFLOs will treat this template just as they do with the popular Fixed Width Template – measure the BFW and flag a single harvest/no harvest line.
    - Those wishing to further enhance the RMZ functionality &/or their economic viability may additionally choose between 1 of 3 additional site specific options within the appropriate BFW RMZ:
      - Thinning of an additional 25’ of the RMZ on the larger streams, or
      - Conifer restoration (on conifer sites) of an additional 25’ of the RMZ on larger streams (leaving any conifer –and limited to 500’ stream reach segments), or
      - More aggressive thinning to streambank on 150’ stream reach segments on Nutrient deficient streams.
    - Additional common sense (our opinion) & important options include “variable width” RMZs that still average the same, and a de minimus option for individual tree selection when clearly not impacting functions – utilizing Best Professional Judgement of our experienced DNR Foresters/ID teams to look for small win-wins as they have done on some Alternate Plans. At a minimum we hope to be able to work on these two options while awaiting Science Literature reviews.

- The rules for Np streams require 50' buffers on each side for the first 300' and no buffers (or maybe 50%) thereafter. The current rule seems to work for industrial sized ownerships but not smaller SFLO parcels who typically don't have full access to entire stream reach. We care a lot about all perennial water so our proposal buffers all Np water, but for 25' on both sides. We do allow some thinning but generally not in the lower 300'.

## Clarifying questions about our vision for this template?

### RECOGNITION OF ISSUES LIKELY NEEDING TO BE ADDRESSED

- **Science review**
  - The core question is: Does the science really support our assertions in (Table 3)(show on screen) that there isn't much functional effectiveness between FFR and our Template proposal – are our prescriptions “relatively low impact”?
  - Any ID Team members or DNR Foresters thinking they might have been too generous in Alternate Plan approval should be reassured by this more scientific analysis of the overall effectiveness of smaller buffers compared to FFR.
  - We expect the Literature Review to evaluate this analysis **Scientific Justification** (show on screen only page 1 of 26).
  - We also expect our **References** (show only page 20 of 26) to match our template proposals from a science and function standpoint – if not we expect to see alternative analyses and supporting literature.
  - We additionally hope the science review will further inform any need for further stream reach limitations or RMZ width revisions **if** our stream reach limitations are ultimately deemed insufficient to ensure “relatively low impact” required by the RCWs.
- **Legislative intent of “relatively low impact”** – Thanks to Mark Hicks for starting this process – the intent of this language is the key! We think the legislative intent is clear (smaller buffers for smaller harvests on smaller streams by SFLOs) and additional guidance to “relatively low impact” surely is found in the Hardwood Conversion and Exempt 20-acre rules.
- **Potential Cumulative Effects** – we don't believe there are any substantive cumulative effects on this science based proposal but do recognize needs of others for assurance/monitoring – we believe the current procedure for tracking the Exempt 20-acre FPAs could be expanded to fulfill this need, perhaps in conjunction with review/understanding of RTI parcel data as it relates to landscape level risk.

- **Review of metrics from prior approved SFLO Alternate Plans** as they relate to our proposal. Thanks to Tami Miketa’s research, we believe there is ample history of relatively similar harvest restrictions previously approved in the full Alternate Plan processes. We are however very concerned that every time there is a review of approved APs here in Olympia flexibility and best professional judgement of our field folks seems to get restricted – perhaps a conversation for another time?
  - Despite our concerns about erosion of the usefulness of this tool, I/we continue to believe there is still goodwill and intent to meet the spirit of Alternate Plans by most DNR Foresters & ID Team members, particularly by the more senior field folks looking at the entirety of the AP guidance, including the deference intended for SFLOs disproportionately impacted by Forest and Fish. Most professionals do want to find win-wins in Alternate Plan processes.
- **“Monitoring” expectations need to be clarified** to ensure appropriate regeneration – but do so in processes that don’t negate the legislative intent (RCW 76.13.110 (3)) for “less regulatory prescriptions”, or dissuade reasonable SFLOs from using a template.

## **Clarifying questions about our view of some of these issues?**

### **COMMON INTERESTS**

We are here for our constituency interests, but also here because **we believe we matter to each of you:**

- We are joined at the hip with industry on many issues; we rely on their expertise, counsel, the markets, & the infrastructure they help create that benefit our survival
- We live in the Counties who benefit from our taxes (that exceed services required 😊); whose citizens benefit from: our scenic viewscapes, recreational opportunities, and jobs. We are part of what draws new county visitors and residents.
- DOE, WDFW, DNR, and the Federal Services all depend on SFLOs sticking around to be able to fulfill your mandates to land stewardship, clean air, clean water, & critter habitat – we are half the private forestland in Washington – we strongly believe we are the preferred land use for the environment - the future of Washington’s natural resources requires we work together in win-win relationships.



- Although it's not obvious, we have unique commonalities with tribal folks: We love the land and critters in our care; we like to hunt and fish; we value: stewardship, conservation, & legacies for generations to come; we are zealous about protecting our rights; and we really don't like being told what we can/can't do! 😊
- Of all the common stakeholder interests, I believe the vast majority of SFLOs are more aligned with those of the greater environmental community. Economics almost always rises to the top of our lists for short periods, only to fall back in priority for the majority of our stewardship time. We own and work forestland primarily because we have an affinity with the forest, the plants, and all the dependent critters – it's an emotional connection with our small part of the earth. In your role as “sticklers of the rules & laws” 😊 we hope you will do your part to ensure the rules for SFLOs are followed as intended.

So, after many years working to actually realize the SFLO promise of Forest and Fish, we really don't feel on top of the pedestals our common interests would seem to dictate. 😊

## TO SUMMARIZE

We strongly believe:

- The RCW requirements are clear!
- We are following all the template rules and processes!
- We have ample supporting metrics from approved Alternate Plans!
- We have provided science based prescriptions equivalent to FFR effectiveness, or at a minimum have met the legislative requirements for “relatively low impact”.

## OUR INTENTIONS & HOPES FOR NEXT FEW MONTHS

- We hope to meet with each of you over next few weeks/months to actively listen to your concerns about this draft template to facilitate greater understanding before any significant decision making begins.
- We believe we've gone the extra mile to offer multiple pathways over the years to meet the legislative intent for alternate harvest restrictions on smaller, relatively low impact harvest units. We have little appetite to generate additional metric options but are eager to hear prescriptions others are ultimately willing to support in front of the Forest Practice Board. If compromising becomes necessary for science or policy reasons:

acres, stream reach, &/or intervening forested area lengths likely provide opportunity.

- We very sincerely want to take a consensus recommendation to the Forest Practice Board and commit to working in that direction with each of you – but we are also committed to seeing this legislative commitment to SFLOs realized - somehow.
- Many/most SFLOs that supported Forest and Fish in 1999 no longer do – I still believe SFLOs were treated fairly in word, if not yet in deed. It will be up to this group and ultimately the Forest Practice Board to make good on Forest and Fish for SFLOs.

**Before I share some closing thoughts, are there any further clarifying questions to help you better understand SFLOs or our reasoning behind our template proposal?**

**The following poem I think best describes who I am; who SFLOs are; and why we matter to each of you.**

## **When You're So Old By Robert Mealey**

My friends quite often ask of me,  
why does an old man plant a tree?  
It grows so slow it will not pay,  
a profit for you anyway.  
Then why in storm and winter cold,  
do you plant when you're so old?

Answers seem hard to define,  
when muscles ache and they are mine.  
But I just cannot stand to see,  
a space where there should be a tree.  
So that in part as years unfold,  
is why I plant when I'm so old.

I know that animals, bugs and things love trees,  
and so do such as go on wings.  
So creatures wild that benefit,  
is one more reason I can't quit,  
from planting trees while I can hold,  
my planting hoe, though I'm so old.

They say that those retired from labor,  
should fish and play and talk to neighbor.  
They say also that folks in leisure  
should do the things that give them pleasure.  
And so the thought on which I'm sold,  
I'll plant some trees though I'm so old.

As time goes on my trees will grow,  
so tall and clean and row on row.  
The furry folk will have a home,  
the birds can nest and kids can roam.  
All of this, as I have told,  
because I planted trees though I'm so old.

And then there is my family,  
young folks who will follow me.  
I'd like to leave them with some land,  
stocked with trees and looking grand.  
These gifts I value more than gold,  
so I plant some trees though I'm so old.

And taxes too, for schools and roads,  
with jobs and lumber for abodes.  
I won't see these things, I won't be here,  
but in my mind it's very clear.  
The words of some who could be polled,  
might thank a man who is so old.

Man should be proud of what's his own,  
and how he's managed what he's grown,  
But management must be begun,  
by planting seedlings one by one.  
And so my pride I will uphold,  
I'll plant some trees though I'm so old.

So when my friends ask of me,  
why does an old man plant a tree?  
Perhaps the lines above explain,  
how aching back and limbs in pain  
may by commitment be controlled,  
to plant some trees though I'm so old.

**THANKS FOR LISTENING!!** If anyone is interested in copies of all my presentation notes let me know and I'll forward them to you, along with a request for an appointment with you to reciprocate by listening to your perspectives.