# Skokomish Natural Resources

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**RE: NEPA Comments on the State of Washington Final Forest Practices Habitat Conservation Plan (FPHCP), Final Environmental Impact Statement (FEIS) for the FPHCP and associated documents.**

Sally and Laura,

The Skokomish Department of Natural Resources appreciates the opportunity to review and comment on the above referenced documents. In most cases, comments that address specific portions of the FEIS also relate to and address corresponding themes and elements in the FPHCP and related documents.

The Tribe's comments focus primarily on three major elements in the FEIS/FPHCP including implementation and Tribal involvement, adaptive management and small landowner rules. In addition, in situations where the affects analysis or effects of the proposal particularly pertain to areas affecting the Skokomish Tribe's Usual and Accustomed Treaty Area (U&A), we will note these in our comments as well.

## IMPLEMENTATION AND TRIBAL INVOLVEMENT

The Skokomish Tribe has been engaged in the Washington State forest practices program since the beginning of the Timber Fish and Wildlife Agreement (TFW). The Tribe has continually been engaged from TFW through Forest and Fish and now into the early stages of the proposed HCP. The Tribal role in FFR has been positive and Tribal participation has been one of the guiding principals of FFR. In TFW it was recognized that:

> *"the real world, on the ground experiences will determine if the needs of the parties are being met. That is the final test of the validity and value of the agreement."*

The Tribe has been working on "the real world, on the ground experiences" since TFW began, almost 20 years ago. We have worked within the TFW agreement on elements ranging from site level reviews and ID teams to membership on the Instream Scientific Advisory Group (ISAG). We assisted DNR and other stakeholders in the early 1990's in setting up WAU boundaries in anticipation of the watershed analysis program and have participated on two state sponsored watershed analyses and two federal sponsored

watershed analyses. We collected some of the initial fish presence data and co-authored a report with the Port Gamble S'Klallam tribe that provided the technical data necessary to support the emergency stream typing rule when we found during our field reviews that large numbers of streams were mistyped. We have been at the table from the beginning and expect to be involved in the process through the term of the HCP. In essence, FFR was a package deal, where compromise on everyone's part led to an agreement. Even though the legislature included non-negotiated elements such as the "20-Acre Exemption" into the package, the Tribe continues to be engaged in the process and believes that the package deal also includes funding for Tribes that would allow us to remain engaged throughout the term of the HCP.

ESHB2091 which brought about Forest and Fish was *"enacted on the assumption that the federal assurances described in the forest and fish report.....will be obtained"*. Appendix M: Assurances in the Forest and Fish Report states *"circumstances under which the permit may be revoked...shall include but not limited to the failure...to provide adequate funding for relevant state agencies and Tribal governments"*

At this point, there are no federal FFR moneys to support continued Tribal involvement in the FPHCP past FY2006. If funding is not available for tribal participation, then it would seem that the services should not give federal assurances and an Incidental Take Permit (ITP), as outlined in Appendix M: Assurances referred to above. However the Skokomish Tribe believes that this is also part of the "package" that the service is charged with assessing in this document. Even though discussions on funding to implement the FPHCP are few in the HCP and FEIS, discussions regarding tribal funding are non-existent. The Skokomish Tribe and others Tribes would not have accepted a 50 year HCP in exchange for 5 years of funding if we were not led to believe that funding of Tribal programs and participation throughout the term of the FPHCP was part of the package.

The Tribes are now at a crossroads and wonder how the agreement will proceed if Tribes are not at the table. In the FPHCP-Issuance Criteria, there is a statement that says, *"The applicant will ensure that adequate funding for the plan will be provided."* We believe this includes adequate funding to ensure continued tribal involvement.

In reviewing the alternatives analysis, the Skokomish Tribe believes that the protections provided by implementing provisions included in Alternative 4 are superior to those provided by Alternative 2, the preferred alternative of the FPHCP. However, the Tribe also recognizes that Alternative 2 was a compromise. Compromise was an important element in the original Timber Fish and Wildlife (TFW) Agreement and also in the Forest and Fish agreement (FFR). However, part of the compromise involved Tribal participation in FFR and a strong and scientifically based adaptive management program. FFR provides the forum where stakeholder involvement and adaptive management can lead to better compliance, resource conditions and improved protections over the long-term. Protections provided through the Forest and Fish Report (FFR) were not necessarily dictated and based on the *best available scientific and commercial data available*, but rather were the upper limit of what industry representatives and others would agree to in order to still be involved in the agreement and move forward towards an HCP.

Similarly the Skokomish Tribe and others viewed the protections provided by FFR as the minimum necessary in order to support the agreement as long as it included a strong and well-funded adaptive management program and Tribal funding and participation. Since many important elements were either not addressed at all or were not fully addressed during the original Forest and Fish negotiations, these elements were relegated to adaptive management. The adaptive management program is moving forward on rule petitions (PIP, DFC) and Tribal participation and involvement has been critical in the success of the program up to this point.

## ADAPTIVE MANAGEMENT

While some tribes are engaged in FFR's Scientific Advisory Group's (SAG's) and other Adaptive Management Program elements, many more are out in the field working with the other FFR stakeholders where the reality of the agreement is realized "on the ground." Relationships have been fostered between Tribes, landowners and state agencies for nearly 20 years. Early research and data collection by the "on the

ground" Tribal biologists facilitated the establishment of the emergency stream typing rule in 1996. Tribes were instrumental in spearheading water type surveys to gather real data to field verify the stream typing system. Since Tribal biologists were on the ground, reviewing FPA's and recognizing mistyped streams on a nearly a daily basis, we were able to gather enough data to convince the Forest Practices Board that a change was needed. This was accomplished because on the ground Tribal biologists recognized the need and were involved in the process.

Tribes are engaged in the adaptive management program on many different levels. Some Tribes participate at the CMER or SAG level while others participate in studies (PIP, etc) that support the adaptive management process. There have been at least two petitions (DFC, PIP) from Policy to the Forest Practices Board to initiate rule making that heavily involved the Tribes in data collection and analysis.

In order for the Adaptive Management program to be successful there has to be swift action by the Forest Practices Board when petitions for rule making are brought before them. Success will also be determined by funding. Funding for both the important research topics identified as well as funding for Tribal involvement. In the FFR Appendix N: Funding N.1 (b) states:

> *The monitoring and adaptive management provisions of the Report will require the Tribes' active participation... [and the] authors further agree to support federal Tribal funding to participate in the processes in subsequent fiscal years."*

The Skokomish Tribe takes it role in the forest practices process seriously. We have been engaged with federal and state resource agencies and Green Diamond (formerly Simpson Timber Company) in the development and review of their HCP. In fact, Skokomish has the only remaining science staff on the Scientific Advisory Team (SAT) set up to provide technical advice, review and dissemination of HCP conservation strategy to Green Diamond and the federal services. All other SAT members from the other Tribes and state agencies are relatively new and have become engaged after the signing of the HCP. In addition, Skokomish TFW/FFR staff was involved in the Simpson Timber Company/DNR South Fork Watershed Analysis, the withdrawn Simpson Landowner Landscape Plan and the approved Simpson Habitat Conservation Plan over the last 10 years.

## 20 – ACRE EXEMPTION (SMALL LANDOWNER RULES)

The small landowner exemption was not a negotiated item in FFR but rather was passed by the state legislature in the 1999 Salmon Recovery Act after FFR was negotiated. The Act required that these parcels be included as part of the FFR package seeking federal assurances. The small landowner exemption refers to landowners that own less than 20 contiguous acres or less than 80 acres of total acreage in Washington State.

The road maintenance and riparian protection strategies provided through the exemption are not only inadequate and not based on the best available scientific and commercial data available, but they provide the landowner financial benefits at the expense of treaty protected resources. Small landowners have reduced riparian prescriptions, reduced road maintenance requirements and are not required to maintain their land in forestland through the term of the HCP. However, since the 20-Acre Exemption is included as a program element in the FPHCP, it seeks to obtain assurances and ESA protection.

In addition to relaxed rules, small landowners receive additional benefits and opportunities from being included in the FPHCP. The Family Forest Fish Passage Program will pick up 75% to 100% of the cost of replacing fish passage barriers on their land. Even if the culvert was put in illegally without and HPA, the landowner is only responsible for 25% of the costs of the project through this program. Small landowners receive special tax incentives and can engage in the Forestry Riparian Easement Program.

For these exempt lands, maximum buffer widths on small fish bearing waters (<5feet wide bankfull width) are 29 feet wide with 29 trees, 6 inches are larger per 1000 lineal feet of stream. That is approximately a single tree every 34 feet. For fish bearing streams greater than 5 feet wide, the protections are basically

double. For the largest fish bearing streams (>75 feet bankfull width) including type S streams (shorelines of the state), maximum buffer widths are wider (115 feet) but only 58 trees, representative of stand, are required to be left. These protections in no way will provide adequate riparian function nor assist in restoring channel conditions. These protections are not based on sound science.

The two studies completed to determine effectiveness and ecological benefits of exempt 20 acre exempt parcels were both flawed. The DNR study's conclusion assumed that RMZ harvest is rare when in actuality it will become the norm. The DNR study also concluded that LWD loading from the 20 acre exempt parcels "range from 45 percent (for small streams) to 100 percent (for large streams) of that expected from unmanaged, mature forest conditions". These conclusions are not at all supported by credible scientific data. Wood loading at levels similar or equal to unmanaged, mature forest conditions can not be achieved with buffers of 29 to 115 feet when only 29 to 58 trees per 1000 feet of stream are required to be left standing. If this is true then standard FPHCP riparian prescriptions would be the same for everyone, which they are not.

Similarly, assumptions and conclusions in the 2002 Rural Technology Institute (RTI) analysis were flawed and any analysis based on their assumptions is bound to be flawed as well. The RTI data showed varying levels of lands falling into this category statewide and considered them almost inconsequential. Their analysis of total stream length in each of the 46 WRIA's studied, encompassed only two percent of the total WRIA length and only 8 percent in two out of 53 WRIA's included in the study. However, the study conducted by Waldo and Wyman (2005) came out with much different results. Despite which of the studies are deemed the most accurate, it is likely that much of the land not included in the RTI study eventually will be covered under the small landowner exemption as landowners continue to sub-divide their holdings into smaller exempt parcels.

If the small landowner exemption was limited to those qualifying parcels that were current as of the signing of the legislation (1999) that inserted this non-negotiated item into the Forest and Fish Agreement, it would be easier to support. However, since the exemption provides neither incentives nor requirements for long term forestry, the Tribe expects to see the 20-acre exemption be abused and aggressive riparian harvest to be common.

The impact on treaty resources in the Skokomish Tribe's U&A has the potential to be quite large. Despite the RTI data, the reality is that on the Kitsap Peninsula (WRIA 15) in North Mason and West Kitsap County's (with the exception of Washington Department of Natural Resources lands), virtually all the forest land falls under the provisions of the FPHCP. However, Mason and Kitsap County have not designated these private forestlands as long term commercial forest land under their Comprehensive Plan in their Growth Management planning. Most of the land can be broken into 5 to 20 acre exempt parcels and then be eligible for the 20-acre exemption, which is likely to occur during the term of this HCP. Any analysis that contemplates the environmental benefits realized from these exempt lands by assuming they will remain in forestry during the entire 50 year term of the HCP is not based on reality. This eventual conversion to non-forest uses are even contemplated by two of the largest timber companies on the Kitsap Peninsula, both who have sought legal action to assure that their ownerships were never designated as Long Term Commercial Forestland in both the Mason and Kitsap County GMA planning efforts. These lands of the largest owners even have the ability to be carved up into 20-acre or less exempt parcels.

Given the uncertainties of management on these exempt parcels and their long term commitment to forestry and salmon recovery efforts, the services should consider an option of providing the 20-acre exemption landowners, only partial coverage. Assurances can be given for 10 year increments and be renewed for additional 10 year increment if it can be shown that assurances are still waranted.

Uncertainties surrounding a 50 year term of the FPHCP package leave the Skokomish Tribe concerned about the sufficiency of the commitments by the timber industry and state and federal resource agencies. We also wonder how these entities view the Tribes role in this package and what if any role they think the Tribes can play throughout the term of the HCP. The Skokomish Tribe has had to live with a long term forest management plan that was developed without regard to treaty protected resources. In the Shelton Cooperative Sustained Yield Unit agreement between the Simpson Timber Company and the U.S. Forest

Service, the Tribe observed first hand how a long term agreement and intensive forest management can alter the terrestrial and aquatic landscape of treaty protected resources. This agreement has only recently been terminated between the Simpson Timber Company (now Green Diamond) and the United States Forest Service, both agreeing to let the contracts lapse.

Fifty years of federal assurances is a long term commitment by the federal government and also a long term commitment by the timber industry. However, if funding is not adequate for Tribal involvement throughout the term of the plan, then risk to treaty resources increases considerably. There remain many uncertainties about the agreement in addition to uncertainties of how other outside influences of things like climate change and regional development patterns may influence the effectiveness of the FPHCP conservation strategy. However, without continued Tribal involvement throughout the term of the plan, the risks and level of uncertainty are multiplied.

If the services feel they can not pick and choose what elements of FFR they will give assurances to, that the FPHCP is a basically a "package" to either be approved or rejected, then the lack of identified funding of Tribal programs past FY2006 needs to be given consideration as well. The Skokomish Tribe believes that funding of Tribal programs is part of the "package" and without some assurances that adequate funding is there for the Tribes, we look at this deal as a poorly executed one and a major setback for Tribes and salmon recovery efforts statewide.

**4d. Rationale for the Plan**
**Exempt 20-acre parcels (pg. 246)**

The rationale used to evaluate these parcels is flawed and is based on a statewide sample size of 37 and 39 RMZ's over a two year period finding few received harvest down to the minimum rules. The analysis should assume that harvesting will be conducted according to the exemption in order to assess long term impacts to the aquatic system. There are many cases where harvesting done under the 20-acre exemption has been performed down to the 29 feet, 29 tree standard. Additionally, an assumption that RMZ standards for 20-acre exempt parcels will provide 45% to 95% of the potential wood recruitment of mature conifer forests is not accurate. These standards provide less protection than those in TFW that were in place throughout the late 1980's and mid 1990's. The services agreed that TFW era rules were insufficient for the protection and maintenance of aquatic resources, particularly listed fish stocks. If this analysis is correct then why are larger buffers proposed for the rest of the forestland owners and why did the increased protection in FFR have to be implemented at all? Developing weak riparian guidelines for small landowners and then try to justify them by spurious scientific analysis is disingenuous at best.

**4e. Direct and Indirect Effects of Activities Covered by the Plan**

In this section, the bulk of the discussion is to be focused on "impacts that are likely to result from the proposed taking of the species for which the [incidental take] permit coverage is requested." While this is one of the most important elements in the document to focus the alternatives analysis on, the discussion is rather brief and is included in one of the shortest chapters in the entire HCP. Given that the analysis assumes compliance with the rules, wood levels approaching mature conifer conditions (even in 20-acre exempt parcels) and that all lands will remain in forestry throughout the term of the HCP without a reduction in riparian function, then the analysis is prone to give positive results. In reality, in the case of the West Puget Sound Region, particularly West Kitsap (WRIA 15), WRIA 17 (Quilcene-Snow) and North Kennedy-Goldsborough (WRIA 14), these areas will see significant reduction in lands dedicated to forest production and resource protection over the term of the HCP. Since there is no mechanism requiring landowners covered under the plan to remain in forestry for the term of the plan, there will be no incentive.

In fact, the incentive is just the opposite. Landowners can harvest under a forest practice permit, accept a 6 year moratorium (if this still exists throughout the 50 year term of the HCP) and then convert the land to non-timber uses. In doing so, they can avoid restrictions that the Mason, Kitsap and Jefferson County resource ordinances would have demanded which are generally provide greater protections than those in the FPHCP. They get to harvest more of the riparian zone and then convert, all backed up by this plan and

federal assurances. We do not see many incentives in this plan that keep landowners committed to timber production and aquatic resource protection for the term of the HCP.

## FPHCP APPENDIX A: IMPLEMENTATION AGREEMENT (IA)

### 7.0 FUNDING

A significant aspect of the original FFR agreement was to have Tribes engaged in the FPHCP throughout the proposed 50 year term. There needs to be language inserted in the IA that speaks to potential funding streams to keep the Tribe engaged and how the "Services" fulfill their responsibilities to the Tribe over the next 5 decades. As we have indicated elsewhere in our comments, funding and involvement by the Tribe was seen as necessary in order to support the original FFR agreement. Without commitments to locate and identify funding sources, the Skokomish Tribe will remain skeptical about the nature of this HCP.

## FEIS APPENDIX A: WEST PUGET SOUND REGIONAL SUMMARY

This section in Appendix A directly pertains to the Skokomish Tribe and their U&A because it includes the entire Hood Canal watershed where the Skokomish Tribe has primary rights. The West Puget Sound Region within the Skokomish treaty area consists of the eastern flanks of the Olympics from the Quilcene River south to the Skokomish River. It also includes watersheds of the West Kitsap Peninsula that drain into Hood Canal. Finally the land mass north of Shelton that drains north into the South Shore of Hood Canal (north WRIA 14) generally makes up the southern boundary of the Skokomish Tribes treaty area.

### 3.0 FORESTLAND OWNERSHIP AND MANAGEMENT (Pg A-65)

An analysis of the 20-acre exempt parcels by Rogers (2003) indicated that the 20 acres exemption only makes up between 2.2 percent and 3.8 percent of the forestland in the region. The discussion goes on to say "this analysis may represent an overestimate because of a potential anomaly in the Kitsap (WRIA 15), where an unusually high number of parcels were tallied." Rogers found that the percentage of all fish bearing streams in this region is about 5.5 percent but may be "unrealistically high" because of the Kitsap anomaly.

Combining data sets for lowland Puget Sound basins in the Kitsap and South Shore of Hood Canal with larger basins draining the Olympic Mountains (WRIA's 16 and 17) skews the data. Watersheds within WRIA 16 (Skokomish-Dosewallips) and WRIA 17 (Quilcene-Snow) have a considerable amount of acreage and stream length within land managed by the USFS and Olympic National Park Service. In the case of the Skokomish, much of the private timber land is under a separate Green Diamond (formerly Simpson Timber Company) HCP. The Kitsap Peninsula is completely under the provisions of the FPHCP (except for the Tahuya State Forest and other DNR holdings). Given that there is no limitation on subdividing land and that Mason and Kitsap County chose not to designate any of the private forest land as "Long-Term Commercial Forest Land" under their Comprehensive Plan, it is likely that most of it will eventually fall under the 20-acre exemption. This is actually a foreseen circumstance given current county zoning so the analysis by Rogers is not only flawed, but underestimates the effects the exemption will have on Kitsap Peninsula streams, hence Skokomish treaty resources.

### 4.0 HABITAT LIMITING FACTORS

#### Primary Regional Factors (Pg A-68)

The first two paragraphs included discussion of the hydropower dams blocking the Elwha River but failed to mention the Cushman Dams on the North Fork Skokomish River. These dams do not just block "anadromous fish access" to the upper river as in the Elwha, but removes the majority of the flow out of the

basin and directs it to a powerhouse on the shore of Hood Canal. Leaving out this huge "regional limiting factor" and impediment to salmon production in the West Puget Sound Regional Summary provides little confidence that the remainder of the summary is accurate.

**Riparian, Floodplain and Wetland Conditions (Pg A-69)**

The discussion about the Skokomish River floodplain misrepresents the impact that forest practices has had on aggradation in the Skokomish River. While it is true that *"a large influx of sediment from the upper south fork has occurred in the past 20 years"* it is not the primary cause of observed aggradation in the river channel. The primary cause is the removal of over half the flow from the basin by the Cushman Project mentioned in the paragraph above. Flows necessary for sediment transport have been removed from the basin from 1930 to the present due to the diversion of the North Fork Skokomish and this lack of flow combined with excessive sediment rates from forest practices has lead to aggradation. The statement *"A combination of historic forest practices and natural events have contributed to this bedload influx (WDNR 1997)."* is partially correct but misses the significant influences caused by the Cushman Project.

**Channel/Hydrology Conditions (Pg A-69)**

Again, the discussion about the Skokomish basin misrepresents the facts. Historical anadromous use above the current dam sites is not uncertain. Only Tacoma Power disagrees that fish utilized the upper North Fork Skokomish River and that is because they have a vested interest to keep future hydropower operations and mitigation costs low.

## 6.0 FISH RESOURCES

**Salmonid Stocks (Pg A-73)**

Both this section and Table 7 (on the next page) should have included the listing of Hood Canal/Strait of Juan de Fuca summer chum as *"threatened"* under the Endangered Species Act. Leaving out basic information regarding current listings again reinforces the notion that the analysis is potentially misleading or at least suffers some credibility.

On page A-74, in Table 7 titled, Salmonid species present by WRIA within West Puget Sound Region, summer chum should have been included as noted above. Also, bull trout critical habitat has been designated in north WRIA 14 (Kennedy-Goldsborough Basin) along the South Shore of Hood Canal. Summer steelhead should be included in the Dungeness and Elwha River Basins in WRIA 18. The table should reflect these changes.

Additionally on Pg A-75 the Table 8 titled "Other non-salmonid freshwater species by WRIA within West Puget Sound Region" should have included Three-Spine Stickleback in the Kitsap (WRIA 14) and Skokomish (WRIA 16) Basins as well as non-native largemouth bass and yellow perch in WRIA 16.

In closing, The Skokomish Tribe would like to reiterate our previous comments that we see the FPHCP "package" as a compromise on many different fronts. In particular, the Tribes have compromised the most because it is our treaty protected resources that are put at risk if the plan does not succeed. For this reason and many others, the FPHCP package must include reasonable time limits and identified funding streams dedicated to the Tribes so we can remain involved as this HCP moves into the next phase.

Additionally, the services need to give serious thought to the length of time identified for plan assurances. This is particularly true for the more uncertain aspects of the FPHCP, principally the assurances for 20-acre exempt parcels and small landowners. The services could choose not to cover small landowners at all, but we assume that this is politically not a possible outcome. Since this was not part of the original Forest and Fish agreement and that these lands are subject to increased harvest rates and eventual conversion to non-forest use during the proposed 50 year term of the HCP, there needs to be a more realistic time frame for assurances (10 years) with opportunities for renewal after that.

We also believe that the FEIS and alternatives analysis are deficient and inadequate in comparing the effects of the various alternatives. We have identified several shortcomings throughout our comments. A remedy under NEPA would be for the services to conduct adequate environmental planning by re-doing the NEPA analysis. Given the promotion of the program as being adequate to protect and restore aquatic habitat and its link to salmon recovery efforts statewide in addition to the long-term nature of the federal assurances, we feel like this is a feasible outcome.

We understand that formal consultation will occur soon after the biological opinion is issued and the Skokomish Tribe expects to be contacted to set up the consultation schedule. Please call Dave Herrera, Skokomish Fish and Wildlife Policy Director at (360) 877-5213, ext. 508 or email him at davidh@skokomish.org.

If you have any questions regarding these comments, please feel free to call me at (360) 877-5213, ext. 504 or email me at marty@skokomish.org.

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