

Agenda Item No.:	3
Work Plan:	Private Forests Work Plan
Topic:	Water Quality Protection
Presentation Title:	Forest Practices Act (FPA) Riparian Rule Review
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SUMMARY

This agenda item presents the work completed by the Board of Forestry (Board) Riparian Rule Analysis Subcommittee to develop options for meeting the Protecting Cold Water criterion. The goal of the subcommittee was to develop one or possibly two working proposals that create a durable solution to bring to the full Board. The subcommittee developed two prescription packages, with discussion guides and a discussion guide for alternate prescriptions. At their September 25, 2015 meeting, the subcommittee members presented and discussed the packages and alternative prescriptions.

Staff and Board Subcommittee Members will present outcomes from the September 25 subcommittee meeting and discuss: (1) proposed rule prescription(s) and associated ecological and economic information; (2) opportunities to consider landowner equity concerns and other unintended consequences; (3) considerations for their geographic and stream reach extent; and (4) proposed range of regulatory and non-regulatory prescription scenarios. These results form the foundation for a Board decision on which prescription(s) to adopt to meet the protecting cold water temperature standard to the maximum extent practicable, their geographic and stream reach extent, and if the prescription(s) will have a regulatory component.

CONTEXT

There are three primary decisions for the Board to make in the riparian rule analysis:

1. Which prescription(s), if any, to move into rule language,
2. The geographic extent to which these prescriptions apply, including:
 - Which Geographic Regions, and
 - Which small and medium streams [i.e., those with Salmon/Steelhead/Bull Trout, ODF fish-bearing (Type F), or some combination thereof], including the extent upstream to minimize warming from contributing waters; and
3. Whether the rules are regulatory, voluntary, or a combination thereof.

The Board's deliberation of these decisions occurs under the ORS 527.714 findings; the remaining ORS 527.714 findings are:

- Restrictions on practices directly relate to, and substantially advance the objective 527.714(5)(d)

- Must choose the least burdensome alternative 527.714(5)(e) and resource benefits achieved by the rule must be proportional to the harm caused by the forest practices 527.714(5)(f).

BACKGROUND

At the July 2015 Board meeting, Chair Imeson created a subcommittee to further refine prescription options and bring one or two packages back to the Board at a future meeting. Chair Imeson named Board members Sybil Ackerman-Munson, Gary Springer, Nils Christoffersen, and himself to the Subcommittee. The principles guiding the subcommittee discussion were:

- Temperature must be the lens used for evaluation due to Ballot Measure 49 concerns;
- Role of monitoring to evaluate implementation action;
- Must consider regulatory and voluntary approaches;
- Notion of equity and relief for non-industrial landowners;
- Goal of developing one or two proposals to bring to full Board for decision; and
- Developing a discussion guideline for the Board.

ANALYSIS

The Board subcommittee met on September 25, 2015 to discuss options for meeting the Protecting Cold Water criterion. Doug Decker, State Forester, opened the meeting by welcoming Board members and the public. He highlighted the degree and depth of thought and consideration by Board members as they approach a final decision on rule concepts associated with riparian protections for small and medium fish bearing streams. He also discussed the purpose and guiding principles for the subcommittee work. Brett Brownscombe presented opening comments for Richard Whitman, the Governor's Natural Resources Policy Advisor. He thanked the Board members for their time and care in addressing a complex issue that will not get any easier. He urged the Board to continue with their deliberate path and recognized it is a challenging task, with a water quality standard at play. He stated that the Board must work to meet the standard to the maximum extent practicable and if the Board's selected prescriptions will not meet standard, the Board needs to identify why it is not practicable.

Peter Daugherty, Private Forests Division Chief, described the process used to develop the subcommittee material. He described how staff worked with subcommittee members to support them as they developed prescription packages to bring to the subcommittee, and a guide for walking through discussion. He also discussed the packages and discussion guides developed. See the staff report for the subcommittee meeting (Attachment 1) for more details.

Tom Imeson, Board Chair opened the discussion of the prescription packages by discussing the concept of maximum extent practicable (MEP) and the criteria they would use for determining the best package for this rule making process. He noted that the Board needed to consider a wide array of factors including desired future condition of riparian areas, economic impacts on forest operations and land use decisions, social / economic equity impacts. He stated that he did not think that they should worry about trying to define MEP as a group. He noted that under standard definition, practicable essentially means feasible and that more than one set of rules can achieve MEP. He reminded the subcommittee to consider the five factors under ORS 527.675, and that determining MEP is a balance of risks and desired outcomes and the determination of MEP will vary by Board members as they weigh tradeoffs.

Staff and subcommittee members then presented and discussed the packages and alternative prescriptions. Peter Daugherty introduced and described Prescription Package #1 (Attachment 2), which builds on the minimize temperature concern package presented in the July Board materials. The subcommittee discussed this package, following topics covered in the support notes for Package #1 (Attachment 3). Gary Springer introduced and described Prescription Package #2 (Attachment 4), which builds on the Regional Forest Practices Committee (RFPC) work and focuses on achieving desired future riparian conditions to protect cold water. The subcommittee discussed this package (see the support notes for Package #2 in Attachment 5). Nils Christoffersen discussed concepts in the discussion guide on alternate prescriptions (Attachment 6). He expressed a preference for recognizing inherent complexity and desire to have flexible, feasible approaches, which uses adaptive management to allow responsive rulemaking. See September 25, 2015 subcommittee minutes for more details on the subcommittee discussion of prescription packages.

RECOMMENDATIONS

The Department recommends that the Board discuss the subcommittee prescription packages, using the discussion guides and all the information it has received to decide on a set of prescription components that meet the PCW criterion to the maximum extent practicable, consistent with the ORS 527.765 factors and required ORS 527.714 findings.

NEXT STEPS

If the Board directs the Department to develop rule language around one or more prescriptions, staff will develop a proposed project process and timeline for Board review and approval. The Oregon Administrative Rule Making process, which includes a public involvement process, will be followed and a timeline will describe anticipated work necessary to complete the formal Secretary of State rule change process. Engagement with the Regional Forest Practice Committees, stakeholders, the public, and Department field staff will be critical elements. The timeline will be dependent on the complexity of the rule language to be developed and the amount of review needed prior to submitting notice of proposed rule language.

ATTACHMENTS

- (1) Riparian Rule Subcommittee staff report.
- (2) Riparian Rule Subcommittee Package #1: Minimize Temperature Concern.
- (3) Information for Package #1: Minimize Temperature Concern.
- (4) Riparian Rule Subcommittee Package #2: Protecting Cold Water and Achieving Desired Future Riparian Conditions.
- (5) Information for Package #2: Protecting Cold Water and Achieving Desired Future Riparian Conditions.
- (6) Information for Alternate Prescriptions.