



MEMORANDUM

- Association of Northwest Steelheaders
Audubon Society of Portland
Cascadia Wildlands
Center for Biological Diversity
Coast Range Association,
Defenders of Wildlife
Hells Canyon Preservation Council
Institute for Fisheries Resources
KS Wild
McKenzie Flyfishers
Native Fish Society
Northwest Environmental Advocates
Northwest Guides and Anglers
Northwest Sportfishing Industry Association
Oregon Wild
Pacific Coast Federation of Fishermen's Associations
Pacific Rivers Council
Rogue Riverkeeper
Sierra Club
Trout Unlimited
Umpqua Watersheds
The Wetlands Conservancy
Wild Earth Guardians
Wild Salmon Center

To: Oregon Board of Forestry
Fr: Mary Scurlock, Oregon Stream Protection Coalition
Re: Key Issues in Development of Riparian Rule Language
Dt: 21 July 2016

This memorandum is the basis for oral testimony to the Board at its public meeting on July 20, 2016.

We generally concur with staff's characterization that with the exception of equity relief major policy issues identified by the Department were successfully addressed by consensus of the Riparian Rules Technical Advisory Committee. However, there are two other issues of continuing concern for OSPC around the draft rules that are not considered major policy issues by the Department that committee discussions did not resolve in our view for purposes of this stage of rule development: ending SSBT classification at man-made barriers and the presumed appropriateness of riparian thinning.

Also worth noting is that while consensus was reached, conservation interests had serious reservations about how the rules will attain "well-distributed" basal area within the RMA. We strongly advocated for explicit gap size limitations and large tree retention requirements. We have some confidence that the solution proposed is both simple to apply and effective in ensuring distribution of trees within the BA. However, we are not confident that retention of large trees will occur. The lack of direction from the Board on this issues prevented consensus from being reached around the need for large tree retention language.

1. Equity Relief: OSPC cannot support a higher threshold for equity relieve than is proposed, which we believe already is too low.

The technical committee did not come to agreement on either eligibility for equity relief or what the equity relief should be. OSPC urges the Board to stand firm on its original proposal, or to consider deleting this piece from the rule proposal.

Your November 2015 decision package proposed the landowners would be eligible for alternative prescriptions if the new rule added 10% or more to the acres encumbered on a single parcel.

ODF analysis shows that very few landowners – less than 1% are affected to the tune of more than 10% incremental increase. We do not see this as a reason to change the threshold: this is simply proof that the rule doesn't have a significant impact on very many landowners. The fact that few will be eligible for the proposed alternative prescription (50 and 70 foot no cut) does not spur us to question whether 10% is too low of a threshold. Rather, it leads us to question the necessity of any blanket equity relief in the form of alternative prescriptions in the first place.

As to what the relief should be, the urge the Board to provide very little relief because the burden is generally quite small to begin with. The option of a 50 and 70 foot no cut is therefore adequate relief, and is what you originally proposed. It is not necessary to allow current rules to be used. Your original proposal did not include variable retention or North-sided buffer options, and we do not support availability of these experimental prescriptions with the smaller buffer.

2. Extension of SSBT Protection above Artificial Barriers to SSBT Habitat

We propose that SSBT "use" should extend to *habitat that would be used if man-made obstructions did not block such use*. This is consistent with how man-made obstructions on other types of fish streams are handled. Considering the time scale of impact from logging in riparian zones can extend for decades, and that many such barriers are being removed annually, protecting potential SSBT habitat that is only unoccupied because of man-made obstructions seems essential if SSBT fish habitat is to be fully protected.

Unfortunately, the draft rules now under consideration by the Department and a subcommittee of stakeholders ends SSBT classification at artificial obstructions to SSBT. Several reasons for this have been enunciated for this position, none of which OSPC finds compelling.

Reason 1: ODF / ODFW do not have physical habitat criteria that can predict the upper extent of SSBT use above the artificial barrier.

Given that we have never regulated streams on the basis of SSBT versus all protected fishes, the lack of species-specific barrier criteria is not surprising. But it is not a compelling reason to default to the old riparian standards above artificial barriers. Unless and until some other default criteria for determining end of SSBT habitat above barriers are developed, that end should be the first natural barrier to fish passage – which we do have criteria for, and are now refining.

It is our understanding that at the resolution of existing data in Oregon, mapped natural barriers to migration are barriers to all salmonids, with certain, relatively few documented exceptions. The upstream extent of the distribution of SSBT is in a general sense, mapped with consideration of known barriers to SSBT migration. (Cutthroat trout (or rainbow trout, or introduced brook trout) above these mapped barriers are, as far as we know, isolated headwater populations).

Reason 2: ODF already protects stream buffers upstream of artificial obstructions that prove to be the end of fish use and therefore believes that when an artificial obstruction is replaced that would allow SSBT use, an existing stream buffer would already exist.

We take little comfort in this because the existing buffer is patently inadequate to meet the PCW and otherwise protect SSBT.

Reason 3: The stream temperature impacts from harvesting operations along current non-SSBT streams are short-lived (temperature increases are reduced to pre-harvest levels in about 5 years).

This is not relevant and/or compelling for at least the following reasons:

- While the effects from any given unit may attenuate in 5 years there are likely be other units right behind them.
- The standard limits post-harvest increases, period. There is no acceptable time window.
- Pre-harvest levels on private lands reflect an elevated baseline.

In conclusion, we can see no logical reason for ODF to make the speculative, unlikely and biologically indefensible assumption that stream reaches above *man-made* barriers to migration, where they occur downstream of the recognized natural migration barriers such as waterfalls, "might be" theoretically inaccessible if the manmade barrier is removed. The opposite is the only defensible assumption and is consistent with current public policy that provides "F" protection above artificial obstructions.

Note: If there are unrecognized natural barriers to possible SSBT migration above artificial obstructions and below recognized natural barriers to fish use, landowners and ODF can certainly bring this information forward. However, it seems likely that most "natural barriers" to SSBT use would have been recognized and mapped already where they exist.

3. Blanket allowance for pre-commercial thinning and other release activities in the SSBT RMA

The proposed rule allows pre-commercial thinning and other release activities that "contribute to" and "are consistent with enhancing the stand's ability to meet the desired future condition." The rationale for including this language is that the Board instructed the Department to draft the new rule such that "all other rules apply" and this language appears now in the Type F rules.

We question whether this rule should be presumed appropriate to protect SSBT streams. *Has the Board made an explicit finding that these activities are consistent with its protection goals for SSBT streams?*

We summarize our understanding of the Department's response to our concerns below as "reasons" and comment on each in turn.

ODF Thinning Reason 1: The FPA rules have always allowed management of plantations within the RMA, and classify pre-commercial thinning as an operation requiring a written plan, (even though it's not commercial).

We cannot support the Board's rubber-stamping this 22-year-old provision in this rulemaking – particularly without substantive deliberation based on best available science. We refer you to two prior submittals that we hope are considered to be in the record of this rulemaking regarding the lack of a scientific basis to find that thinning should be presumed to advance aquatic conservation goals: OSPC memo to the BOF Riparian Rule Subcommittee, 9/15/2015 (8 pages) and the Memorandum from Scurlock, Sando and Van Dyk to the Riparian Rules TAC on Defining Well-Distributed (April, 2016).

ODF Thinning Reason 2: A statutory written plan would be required for management activities such as pre-commercial thinning, chemical applications, or slash treatment within an RMA. (A written plan would not be required for tree planting within an RMA.)

This does not assuage our concern because there is no “approval” of such plans and no required finding that these activities promote water quality or fish protection goals.

ODF Thinning Reason 3: There are and will continue to be plantation stands in RMAs that need treatment.

ODF staff has indicated that this provision is appropriate because under the current rules there are several cases that would lead to “plantations” in the RMA, and there will continue to be areas that would benefit from management under the new rules. Under current rules: 1) an operator may leave trees closest to the stream, leaving the outer part of RMA with a reforestation requirement and subsequent plantation that extends into the RMA; 2) hardwood conversions also result in plantations in the RMA. 3) other incentive activities (i.e. CREP, Afforestation) may provide a need for PCT operations within an RMA. ODF opines that: under the new rules: “there will be less opportunity for reforestation in the RMA. . . . but operators may extend plantations in the RMA to fill existing or created gaps” and the hardwood conversion option and other incentive programs are still allowed, so plantations would still. Furthermore, with many different stand types affected by the new rules, it is possible that some will be in the young stand condition where the SSBT rules would apply. Therefore, this rule remains relevant.”

We don’t question that there are still young plantation stands in RMAs. What we question is the clear presumption that the manipulation of these stands to favor conifer growth should be permitted as a matter of right without oversight and sideboards to ensure that attainment of water quality and fish goals is not impeded.

ODF Reason 4: The rule limits such activities by stating that “Such activities shall contribute to and be consistent with enhancing the stand’s ability to meet the desired future condition.” The term “shall” equals “must.”

It is unclear how this determination is made, and we are not convinced that the attainment of DFC as currently conceived of in the rules is an adequate proxy for a requirement that such activities be necessary to attain water quality and fish protection goals.