

Board of Forestry (BOF) Riparian Rulemaking Advisory Committee (RRAC)
Consensus Decisions
As of August 19, 2016

The RRAC was asked to consider components of the Board's decision, which required clarification of policy. Those specific considerations included:

1. How to identify Salmon, Steelhead, Bull Trout (SSBT) streams as a subset of ODF's small and medium fish-bearing streams.
2. Defining the approach of extending standards along the main-stem of fish bearing streams within the immediate harvest unit and above the end of mapped SSBT streams.
3. Defining what it means to have basal area "well-distributed throughout the Riparian Management Area (RMA)".
4. Identifying conflicts, overlap, and rules that require clarification as a result of the Board's decision that, unless otherwise mentioned, all current rules apply.
5. Defining, verifying, and/or determining recommendations around:
 - i. "Parcel"
 - ii. "Encumbrance"
 - iii. "Equity relief"
6. Defining north-sided buffers and at what geographic scale this option is applied.
7. Reviewing and providing input on Fiscal Impact Statement/Economic Analysis that was prepared by ODF for the new rule.

Furthermore, the RRAC considered two additional policy clarification issues; those issues included:

8. What does it mean that 50% of wildlife trees can be counted in the RMA and can those trees be 'double-counted' to meet basal area requirements?
9. What is the desired future condition under the new rules?

Consensus Decisions by Policy Topic

1. How to identify SSBT streams as a subset of ODF's small and medium fish-bearing streams.

Fish Habitat Distribution (FHD) database: Peter explained that based on RRAC input, ODF will adopt Oregon Department of Fish and Wildlife (ODFW) FHD layers at a particular point in time to use as the regulatory layer (ODF regulatory layer), will have a short-term update process, and will implement a long-term update process as well. ODFW will continue updating the ODFW FHD database, which ODF can adopt by the long term process without reinitiating rulemaking. Peter checked for consensus on the concept of ODF adopting the ODFW FHD database as the regulatory layer, assuming that there will be both short- and long-term updating processes.

CONSENSUS: The RRAC reached consensus that the ODF should adopt the ODFW FHD database as their regulatory layer, incorporating short- and long-term updating processes (all 1, 2, and 3s).

The RRAC member who responded with a '3' registered concern, noting that the fish population fluctuation is significant, thus observed presence may not be a reliable way to determine presence.

Starting Regulatory Layer and Programmatic Updates: Peter recapped what he heard in regards to where the group is, noting that the RRAC generally agreed to include all stream segments in FHD (except for the use of habitat evaluation by modeling) as the starting regulatory layer and long-term updates will include all new stream segments in the FHD except concurrence of professional opinion. The long-term update process is subject to change if the survey protocol changes prior to the programmatic update.

CONSENSUS: The RRAC agreed with consensus to include all stream segments in FHD (except for the use of habitat evaluation by modeling); long-term updates will include all new stream segments in the FHD except concurrence of professional opinion. This process is subject to change if the survey protocol changes prior to the programmatic update (all 1, 2, and 3s).

RRAC members who registered a '3' expressed concern with biologists making presence calls that are not appropriate. Additionally, they expressed concern that the end of SSBT will be moved up to the end of fish use. Peter clarified that if the end of SSBT is above the end of fish use, the end of fish use moves up, depending on the quality of data behind the decision, or there would be another survey to resolve the conflict.

Rule application /implementation: Discussed during the discussion on SSBT.

CONSENSUS: The RRAC reached strong consensus that whatever rule was in place when the notification was filed applies to that unit plan, as long as there is no evidence of gaming the system and notifications cannot be expanded beyond the two-year allocation (all 1's and 2's).

2. Defining the approach of extending standards along the main-stem of fish bearing streams within the immediate harvest unit and above the end of mapped SSBT streams.

Stream Extent: Peter summarized what he heard from the members in regards to the meaning of 'immediate harvest unit.' He noted that for distance, a unit that contains the end of SSBT segment is immediate; administrative units cannot be created for the purpose of circumventing the new rule; for timing, adjacent operations within the same calendar year and/or while the notification is valid (1-2 years) is immediate. There would option for exception for unusual disturbance.

CONSENSUS: The group agreed that Peter's summary was an accurate recap of where they got in their conversation (all 1's and 2's, and 3's).

The Committee discussed the concept of the 'main stem' as it pertains to the upstream extent prescription. Kyle explained the proposed concept for 'main-stem' is to consider the main-stem to be the stream with the largest drainage area. The group was comfortable with this definition and also agreed that there should there be an option to correct this based on field verification.

CONSENSUS: The RRAC agreed that the main stem is the stream with the largest drainage area, and there is option to correct with field verification. If there are two stream branches with similar size, an operator can voluntary treat both as the main stem. This will be addressed in the written plan, with the option to be verified and corrected in the field (all 1's and 2's).

3. Defining what it means to have basal area "well distributed throughout the RMA".

Well Distributed: Peter recapped the intention of the well distributed concept, noting that when actively managing the riparian area, the intent is to:

- Leave trees well-distributed by length and width,
- Minimize operational large gaps,
- Favor small openings in canopy, and
- Leave residual trees in a manner which promotes understory as well as diameter and crown growth.

RRAC discussions for potential criteria for determining well distributed focused on having a minimum of 25 percent basal area and 50 percent conifer live tree requirements in an outer zone, one-half width of management zone (50-80 feet for medium and 40-60 feet for small streams). Both the basal area targets and the well distributed requirements will be measured in 500-foot increments.

CONSENSUS: The RRAC agreed with weak consensus that both the basal area and well distributed requirements should be measured in 500 foot increments (all 1, 2, 3s, and a 4). The representative who gave a '4' registered concern over the sizes of gaps that could be created and suggested a gap size limit.

4. Identifying conflicts, overlap, and rules that require clarification as a result of the Board's decision that, unless otherwise mentioned, all current rules apply.

Conifer Count: Peter asked if there is any opposition from the RRAC if the ODF staff recommends an 8" diameter for the conifer leave trees. There was no active opposition, however, some expressed that they do not know if it will be an issue in the future, depending on other decisions made.

Peter explained that ODF wanted to specifically point out areas where the previous rule is maintained; he listed safety, hardwood conversions, site-specific plans for alternate practices, basal area credit in active management and, varied width of riparian areas.

- Safety – As discussed, the previous rule language around safety that will be referenced in the new rule; there are no changes to safety from the new rule.
- Hardwood conversions – Peter noted that the BOF and RRAC have not talked about hardwood conversions during this rulemaking process. There was concern that hardwood conversions would violate the Protecting Cold Water Criterion, however, hardwood conversions are a restoration activity and if a landowner wants to do hardwood conversions, they go through a separate process. One member clarified that there are two types of hardwood conversions: one addressed via the rule and the other an alternate plan for the practice.
- Site-specific plans for alternate practices – Site-specific plans for alternate practice are still an option; however, will need to meet the intention of the new rule.
- Basal area credit and active management targets – The current rule has a 2:1 credit for medium streams and a 1:1 credit for small streams that allows operators to take equivalent basal area from the RMA if they place basal area in the stream. The new rule will be a 1:1 credit for placing large wood. This changes the rule so that there is no incentive or disincentive for placing large wood.

- Vary the width of riparian area – Riparian management area width can be below the requirement as long as standards are met on average. This part of the old rule is being maintained for clarity, however, in action, this will likely be different because of the well distributed concept that is being implemented.
 - Peter asked the group what is needed operationally to have the flexibility, specifically for the variable retention. One member noted that the language as is has enough flexibility to implement on the ground.
 - Another member noted interest in a reduction in the limit of allowed variability, noting that this is a revised shade standard.

5. Defining, verifying, and/or determining recommendations around:

- i. "Parcel"
- ii. "Encumbrance"
- iii. "Equity relief"

Parcel definition: The RRAC revisited the working definition of 'parcel' on which they had agreed at the April meeting. Peter noted that there is already a definition of a 'single ownership' in the Forest Practices Act (FPA), so ODF staff added an Oregon Revised Statute (ORS) citation to clarify the definition. Staff also made non-substantive edits to the definition:

'Parcel, for the purposes of calculating whether a forested property is eligible for relief from SSBT riparian rules adopted in ___ 2017, means contiguous single ownership recorded at the assessor's office within the county or counties where the property is located, including parcel(s) of any size or shape touching along a boundary, but can be intersected by a railroad, road, stream, or utility right-of-way. Single ownership is defined in ORS 527.620(14).

CONSENSUS: There was consensus to accept the revised definition of 'parcel' (all 1's).

It was noted that there is still a need to define 'boundary'. The group supported that "a corner" is one way to distinguish a boundary.

The RRAC discussed at length how to determine encumbrance and equity relief, however, they were not able to reach a consensus on these points

6. Defining north-sided buffers and at what geographic scale this option is applied.

North-sided buffers: Peter checked with the group on what he heard, recapping that the inclusion of stream reaches will be made through a GIS-based map algorithm for screening purposes, landowners are responsible to ensure that the stream reach meets the intent of the rule, is within 30 degrees of East/West and that the field based operations can supersede the map.

CONSENSUS: The group generally agreed that GIS algorithms can be used as an initial screening to determine eligibility of the prescription; the written plan, approved by the Stewardship Forester would then need to verify the direction of the stream. Field verification can supersede the map, but need not be made (all 1's 2's and 3's).

The group continued conversation around the minimum length of the stream segment, noting that the length needs to be realistic to measure in the field. One member suggested that a 200-foot segment is an appropriate length for what is realistically going to be laid out in the field and can accurately be measured in the field.

CONSENSUS: The group generally agree that 200ft should be the length for a stream segment to implement the option in the field (all 1's, 2's and 3's).

7. Reviewing and providing input on Fiscal Impact Statement/Economic Analysis that was prepared by ODF for the new rule.

ODF provided the RRAC with an Economic Impact Assessment which met the ODF requirements under Section ORS 527.714. ODF is required to provide a Statement of Need and Fiscal Impact to the Secretary of State; this statement was provided to the RRAC and addressed the statutory authority, statutes implemented, fiscal and economic impact, and cost of compliance. ODF noted that it is expecting an increase in operating costs under the new rule. The RRAC was asked to provide input on any clarifications that are needed.

8. What does it mean that 50% of wildlife trees can be counted in the RMA and can those trees be 'double-counted' to meet basal area requirements?

The RRAC drafted a suggested rule to provide to the Board: "For both small and medium SSBT streams, any tree in the RMA that meets the wildlife tree requirements can count as a wildlife tree. And, up to 50 percent of required wildlife trees can count towards meeting basal area requirements."

CONSENSUS: The RRAC agreed, with strong consensus, that this suggested language should be provided to the Board as a RRAC recommendation (all 1's and 2's).

9. What is the desired future condition under the new rules?

The RRAC suggested that there needs to be policy clarification around whether the new rule is consistent with the concept of desired future condition expressed in current rule.

General Rule Considerations

Rule Language Review: Angie presented a hybrid approach to integrating the new rule language into the current riparian rule (Division 640). She provided working copies of Division 600 (definitions), Division 635 (water protection rules), and Division 642 (formerly Division 640, and now including the SSBT vegetation prescription).

Angie explained that, as requested by the RRAC, ODF consulted with Department of Justice and were advised that either combining the new rule language into the old Division or creating a new Division is acceptable. ODF decided that for easy transition it is more advantageous to build a new division. She asked the RRAC if they support this decision. The RRAC supported creating the new Division.

CONSENSUS: There was strong consensus to create a new Division to communicate the new rule and old rule that will be preserved (all 1's and 2's).

Consensus Decisions by Meeting Date

February 19, 2016

CONSENSUS: The Advisory Committee agreed to use the Five Finger Consensus tool to gauge their level of agreements throughout the process. This tool will be defined in the Operating Principles.

March 22, 2016

Clarification regarding decision-making described in Charter: When consensus is not reached, ODF will describe and address the full range of views, which the Advisory Committee discussed, and make a recommendation to the Board when final rules are considered.

CONSENSUS: The RRAC approved the Charter with a strong consensus (all 1's and 2's).

The RRAC drafted a suggested rule to provide to the Board: "For both small and medium SSBT streams, any tree in the RMA that meets the wildlife tree requirements can count as a wildlife tree. And, up to 50 percent of required wildlife trees can count towards meeting basal area requirements."

CONSENSUS: The RRAC agreed, with strong consensus, that this suggested language should be provided to the Board as a RRAC recommendation (all 1's and 2's).

Conifer Count: Peter asked if there is any opposition from the RRAC if the ODF staff recommends an 8” diameter for the conifer leave trees. There was no active opposition, however, some expressed that they do not know if it will be an issue in the future, depending on other decisions made.

SSBT Layer: The RRAC expressed general agreement that the FHD layers that have documented observation, or presence designated downstream of documented observation are legitimate to use in the rule; however, there is a need for more conversation once ODF drafts language for the rule.

CONSENSUS: The RRAC reached strong consensus that whatever rule was in place when the notification was filed applies to that unit plan, as long as there is no evidence of gaming the system and notifications cannot be expanded beyond the two-year allocation (all 1’s and 2’s).

The group expressed general agreement that the database needs to be updated on a case by case basis and that there needs to be established interval of programmatic update and criteria developed, however, more conversation is needed at the RRAC. The group also agreed that they still need to discuss the frequency of updating.

Peter summarized where the committee is in agreement and where there is disagreement on the SSBT topic: the committee has agreement around 80% of the current FHD layer and agreement around correcting on a case-by-case activity-basis as described under a clear set of criteria that can be implemented. There is agreement that there needs to be a programmatic update, however, the RRAC did not reach agreement on the current criteria in use. Peter noted that there seems to be agreement on the frequency of programmatic update and active notification. The RRAC did not reach agreement on the 20 to 30% of the FHD layer based solely on professional opinion, or using concurrence of professional opinion in the update process.

CONSENSUS: The group expressed strong agreement (all 1’s and 2’s) that above statement was a fair characterization of where they have agreement and where they have disagreement.

April 15, 2016

CONSENSUS: The group approved the February and March summaries with strong consensus (all 1’s and 2’s).

North-sided buffers: Peter checked with the group on what he heard, recapping that the inclusion of stream reaches will be made through a GIS-based map algorithm for screening purposes, landowners are responsible to ensure that the stream reach meets the intent of the rule, is within 30 degrees of East/West and that the field based operations can supersede the map.

CONSENSUS: The group generally agreed that GIS algorithms can be used as an initial screening to determine eligibility of the prescription; the written plan, approved by the Stewardship Forester would then need to verify the direction of the stream. Field verification can supersede the map, but need not be made (all 1’s 2’s and 3’s).

The group continued conversation around the minimum length of the stream segment, noting that the length needs to be realistic to measure in the field. One member suggested that a 200-foot segment is an appropriate length for what is realistically going to be laid out in the field and can accurately be measured in the field.

***CONSENSUS:** The group generally agree that 200ft should be the length for a stream segment to implement the option in the field (all 1's, 2's and 3's).*

Stream Extent: Peter summarized what he heard from the members in regards to the meaning of 'immediate harvest unit.' He noted that for distance, a unit that contains the end of SSBT segment is immediate; administrative units cannot be created for the purpose of circumventing the new rule; for timing, adjacent operations within the same calendar year and/or while the notification is valid (1-2 years) is immediate. There would option for exception for unusual disturbance.

***CONSENSUS:** The group agreed that Peter's summary was an accurate recap of where they got in their conversation (all 1's and 2's, and 3's).*

The Committee discussed the concept of the 'main stem' as it pertains to the upstream extent prescription. Kyle explained the proposed concept for 'main-stem' is to consider the main-stem to be the stream with the largest drainage area. The group was comfortable with this definition and also agreed that there should there be an option to correct this based on field verification.

***CONSENSUS:** The RRAC agreed that the main stem is the stream with the largest drainage area, and there is option to correct with field verification. If there are two stream branches with similar size, an operator can voluntary treat both as the main stem. This will be addressed in the written plan, with the option to be verified and corrected in the field (all 1's and 2's).*

Parcel definition provided by Jim James: A contiguous ownership by a single individual, company, or other entity that owns all or a portion of the property, recorded at the Assessor's Office within the County or Counties where the property is located. Contiguous means a polygon of any size or shape connected by at least one common corner but can be interrupted by a publicly owned easement such as a railroad, public road or utility right of way.

***CONSENSUS:** The RRAC agreed with the definition of 'parcel' and contiguous as stated above (all 1's).*

May 12, 2016

***CONSENSUS:** The RRAC approved the April 15th Facilitator's Summary, pending the stated edits.*

Parcel definition: The RRAC revisited the working definition of 'parcel' on which they had agreed at the April meeting. Peter noted that there is already a definition of a 'single ownership' in the FPA, so ODF staff added an ORS citation to clarify the definition. Staff also made non-substantive edits to the definition:

'Parcel, for the purposes of calculating whether a forested property is eligible for relief from SSBT riparian rules adopted in ____ 2017, means contiguous single ownership recorded at the assessor's office within the county or counties where the property is located, including parcel(s) of any size or shape touching along a boundary, but can be intersected by a railroad, road, stream, or utility right-of-way. Single ownership is defined in ORS 527.620(14).

CONSENSUS: There was consensus to accept the revised definition of 'parcel' (all 1's).

It was noted that there is still a need to define 'boundary'. The group supported that "a corner" is one way to distinguish a boundary.

Rule Language Review: Angie presented a hybrid approach to integrating the new rule language into the current riparian rule (Division 640). She provided working copies of Division 600 (definitions), Division 635 (water protection rules), and Division 642 (formerly Division 640, and now including the SSBT vegetation prescription).

Angie explained that, as requested by the RRAC, ODF consulted with Department of Justice and were advised that either combining the new rule language into the old Division or creating a new Division is acceptable. ODF decided that for easy transition it is more advantageous to build a new division. She asked the RRAC if they support this decision. The RRAC supported creating the new Division.

CONSENSUS: There was strong consensus to create a new Division to communicate the new rule and old rule that will be preserved (all 1's and 2's).

June 21, 2016

CONSENSUS: The RRAC approved the May 12th Facilitator's Summary, pending the stated edits.

Fish Habitat Distribution database: Peter explained that based on RRAC input, ODF will adopt ODFW FHD layers at a particular point in time to use as the regulatory layer (ODF regulatory layer), will have a short-term update process, and will implement a long-term update process as well. ODFW will continue updating the ODFW FHD database as well, which ODF can adopt by the long term process without reinitiating rulemaking. Peter checked for consensus on the concept of ODF adopting the ODFW FHD database as the regulatory layer, assuming that there will be both short- and long-term updating processes.

CONSENSUS: The RRAC reached consensus that the ODF should adopt the ODFW FHD database as their regulatory layer, incorporating short- and long-term updating processes (all 1, 2, and 3s).

The RRAC member who responded with a '3' registered concern, noting that the fish population fluctuation is significant, thus observed presence may not be a reliable way to determine presence.

Starting Regulatory Layer and Programmatic Updates: Peter recapped what he heard in regards to where the group is, noting that the RRAC generally agreed to include all stream segments in FHD (except for the use of habitat evaluation by modeling) as the starting regulatory layer and long-term updates will include all new stream segments in the FHD except concurrence of professional opinion. The long-term update process is subject to change if the survey protocol changes prior to the programmatic update.

CONSENSUS: The RRAC agreed with consensus to include all stream segments in FHD (except for the use of habitat evaluation by modeling); long-term updates will include all new stream segments in the FHD except concurrence of professional opinion. This process is subject to change if the survey protocol changes prior to the programmatic update (all 1, 2, and 3s).

RRAC members who registered a '3' expressed concern with biologists making presence calls that are not appropriate. Additionally, they expressed concern that the end of SSBT will be moved up to the end of fish use. Peter clarified that if the end of SSBT is above the end of fish use, the end of fish use moves up, depending on the quality of data behind the decision, or there would be another survey to resolve the conflict.

Well Distributed: Peter recapped the intention of the well distributed concept, noting that when actively managing the riparian area, the intent is to:

- Leave trees well-distributed by length and width,
- Minimize operational large gaps,
- Favor small openings in canopy, and
- Leave residual trees in a manner which promotes understory as well as diameter and crown growth.

RRAC discussions for potential criteria for determining well distributed focused on having a minimum of 25 percent basal area and 50 percent conifer live tree requirements in an outer zone, one-half width of management zone (50-80 feet for medium and 40-60 feet for small streams). Both the basal area targets and the well distributed requirements will be measured in 500-foot increments.

CONSENSUS: The RRAC agreed with weak consensus that both the basal area and well distributed requirements should be measured in 500 foot increments (all 1, 2, 3s, and a 4). The representative who gave a '4' registered concern over the sizes of gaps that could be created and suggested a gap size limit.

All Other Rules Apply: Peter explained that ODF wanted to specifically point out areas where the previous rule is maintained; he listed safety, hardwood conversions, site-specific plans for alternate practices, basal area credit in active management and, varied width of riparian areas.

- Safety – As discussed, the previous rule language around safety that will be referenced in the new rule; there are no changes to safety from the new rule.

- Hardwood conversions – Peter noted that the BOF and RRAC have not talked about hardwood conversions during this rulemaking process. There was concern that hardwood conversions would violate the Protecting Cold Water Criterion, however, hardwood conversions are a restoration activity and if a landowner wants to do hardwood conversions, they go through a separate process. One member clarified that there are two types of hardwood conversions: one addressed via the rule and the other an alternate plan for the practice.
- Site-specific plans for alternate practices – Site-specific plans for alternate practice are still an option; however, will need to meet the intention of the new rule.
- Basal area credit and active management targets – The current rule has a 2:1 credit for medium streams and a 1:1 credit for small streams that allows operators to take equivalent basal area from the RMA if they place basal area in the stream. The new rule will be a 1:1 credit for placing large wood. This changes the rule so that there is no incentive or disincentive for placing large wood.
- Vary the width of riparian area – Riparian management area width can be below the requirement as long as standards are met on average. This part of the old rule is being maintained for clarity, however, in action, this will likely be different because of the well distributed concept that is being implemented.
 - Peter asked the group what is needed operationally to have the flexibility, specifically for the variable retention. One member noted that the language as is has enough flexibility to implement on the ground.
 - Another member noted interest in a reduction in the limit of allowed variability, noting that this is a revised shade standard.

August 19, 2016

Facilitator Summary Report: The facilitator conducted a consensus report on version 4 of the Facilitator Summary Report by asking if the RRAC members could live with the report as written.

CONSENSUS: The RRAC approved the Facilitator Summary Report version 4.

Proposed Rule Language: Marganne reviewed the decisions on how to carry current rule constructs into the new SSBT rules. This work relates to the Board’s policy decision that “all other rules apply.” Lena and Peter discussed comments provided by the RRAC on the proposed rule language, and reviewed the department’s proposed modifications to the rule language based on these comments. Peter also identified areas where comments would not result in changes to the proposed rule language. Peter briefly discussed the status of the equity relief discussion and noted that the group did not reach consensus on equity relief, therefore the department was not asking the RRAC for consensus on the equity relief section of the proposed rule language. The facilitator conducted a consensus check.

CONSENSUS: The RRAC agreed with consensus on the proposed rule language (excluding the equity relief section) and the department’s proposed modifications (all 2, 3, and 4s).