

Report to the Oregon Board of Forestry Riparian Rulemaking Advisory Committee

August 2016

Prepared by DS Consulting on behalf of the Riparian Rulemaking Advisory Committee

Introduction

The Oregon Department of Forestry (ODF) convened a stakeholder-based Riparian Rulemaking Advisory Committee (RRAC) to help draft Forest Practices Act (FPA) rule language to implement the Board of Forestry’s (Board) November 2015 decision related to elements of a final riparian prescription package for new riparian protection standards for small and medium fish streams. Through its Charter, the RRAC was tasked with: 1) discussing and providing feedback on policy issues that ODF identifies as needing further clarification or decision by the Board of Forestry; 2) providing feedback to assist ODF in developing clear language that describes the Board’s new riparian standards; and 3) discussing and providing input on the fiscal impacts of the proposed regulations. Since February 2016, the RRAC has worked to collaboratively discuss and provide feedback on the draft rule concepts and language for the Oregon Board of Forestry’s proposed riparian protection standards.

The RRAC is comprised of representatives from regional forest practices committees, small woodland owners’ association, the conservation community, industrial forestland owners and affected agencies. Most representatives had an alternate who could attend in the event of a scheduling or other conflict.

Name (Alternate)	Organization	Name	Organization
Rex Storm (Jim Giesinger)	Associated Oregon Loggers	Mary Scurlock	Oregon Stream Protection Coalition
Mike Barnes (Randy Silbernagel)	NW Regional Forest Practices Committee	Dick Courter (Rick Barnes)	Small Forestland Owner
Rod Sando	NW Sportfishing Industry Association	Randy Hereford (Paul Betts)	Industrial Forestlands Starker Forests and Miami Corp.
Gene Foster (Jennifer Wigal)	Oregon Department of Environmental Quality	Dana Kjos (Sanford Hillman)	SW Regional Forest Practices Committee
Bruce McIntosh (Jon Bowers)	Oregon Department of Fish and Wildlife	Kevin Godbout (Meghan Tuttle)	Industrial Forestlands Weyerhaeuser
Seth Barnes (Heath Curtiss)	Oregon Forest Industries Council	Bob Van Dyk	Wild Salmon Center
Jim James (Scott Hayes)	Oregon Small Woodlands Association		

The ODF Project Team provided the RRAC with information, reports and additional study to support discussions. Over the course of six months, the full RRAC met five times and a subcommittee met once in

July to help finalize proposed rule language. A final telephone call was held on August 19th to allow all members to state whether they were willing to live with this report (yes) and their level of consensus with the rule language being proposed by ODF staff. Meetings were held in Salem at a time that supported nearly all members to attend each of the meetings. In addition, ODF hired an impartial, professional facilitation team to help the RRAC discuss and formulate consensus-based recommendations for the Board, and to provide session summaries that tracked the discussions and areas of consensus. Meeting summaries are included in Appendix A. The RRAC agreed that ‘consensus’ would be defined as a willingness of all members “to actively support or live with the recommendations of the group”.

This report, drafted by the Facilitation Team with input from and approval of the RRAC, details the RRAC’s collaborative process and areas of consensus. In addition, this report clarifies the perspectives and concerns voiced on topics for which consensus was not achieved and a Board discussion and policy decision is needed.

The RRAC acknowledged that consensus on specific issues addressed by the committee would not limit individual or stakeholder groups in their future advocacy around the rules on related subject matter outside the purview of this Committee.

Background

The Board approved the final riparian prescription package in November 2015 with the goal of meeting the Oregon Department of Environmental Quality’s (ODEQ) ‘Protecting Cold Water Criterion’ (PCW) to the maximum extent practicable (see Appendix B). The package addresses small and medium, salmon, steelhead and/or bull trout (SSBT) streams in the Coast, South Coast, Interior and Western Cascades regions of Oregon and outlines options for harvest along these streams as follows:

- Option A (regulatory): For both small and medium streams, 60ft and 80ft no-cut riparian management areas (RMAs) respectively. Up to 50% of the wildlife trees can be counted in the RMA.
- Option B (regulatory): For both small and medium streams, up to 50% of wildlife leave trees can be in the RMA. Hardwoods can be counted equal to conifers; hardwood conversion options are retained. All targets should be met with trees well-distributed throughout the RMA.
 - For small streams: 60ft RMA with a no-cut buffer in the 0-20ft zone. Basal area target of 80ft²/acre. The standard target is 110ft²/1,000ft: a maximum of 37 ft² out of the 1,000ft can be counted in the 0-20 no cut zone; the remaining 73ft² must be trees well-distributed throughout the 20-60ft zone. Minimum conifer tree count per 1,000ft is 15 within the 20-60ft zone.
 - For medium streams: 80ft RMA with a no-cut buffer in the 0-20ft zone. Basal area target of 100ft²/acre. The standard target is 184ft²/1,000ft: a maximum of 46 ft² out of the 1,000ft can be counted in the 0-20 no cut zone; the remaining 138ft² must be trees well-distributed throughout the 20-80ft zone. Minimum conifer tree count per 1,000ft is 30 within the 20-80ft zone.
- Option C: RMA Thinning (voluntary): Encourage early/mid rotation thinning to grow wind-firm trees and understory development (same as current rule).
- Option D (regulatory): North Sided Buffers – A 40ft no-cut buffer for streams with a general valley azimuth with 30 degrees of east-west.

In the prescription package, the Board also stated that under the new rule:

- Landowners can pick the best option that suits the conditions on the ground and silvicultural regime, while encouraging a focus on riparian vigor and desired future conditions (DFC).
- All distances are slope distances for purposes of measuring RMAs.

- All current rules for small and medium F-type streams that are not mentioned above continue to apply.
- Equity exemption for any landowner: If the rule encumbers more than 10% of ownership for any parcel, the landowner may implement 50 and 70ft no-cut buffers for small and medium streams respectively.

Advisory Committee Process

The RRAC met five times (February 19th, March 22nd, April 15th, May 12th, and June 21st) and had full participation from all stakeholder representatives at the meetings, with the exception of the NW Sportfishing Industry Association, who was not present at the February 19th meeting. Additionally, a sub-group, made up of representatives from the NW and SW Regional Forest Practices Committees, Oregon Forest Industries Council and the Wild Salmon Center met on July 22nd to discuss and integrate group edits on the draft proposed rule language. Finally, the entire RRAC joined a ‘final consensus check’ call on August 19th to finalize this report and give their final views on the rules drafted by staff.

All meetings, including the sub-group meeting, were open to the public. A total of 17 guests attended the sessions, including representatives from the McKenzie River Coalition, Oregon Department of Forestry, Oregon Forest Industries Council, Starker Forests, U.S. Environmental Protection Agency and Weyerhaeuser. Meeting materials, including agendas, accompanying documents and meeting summaries were posted on the ODF RRAC website a week in advance of the meeting (<https://www.oregon.gov/ODF/Board/Pages/RiparianRuleTechnicalAdvisoryCommittee.aspx>). Meeting notices were provided via news releases sent to Oregon media outlets, posted on social media and posted on the State of Oregon’s transparency webpage.

At the March 22nd meeting, the RRAC adopted their Charter which clarified the RRAC’s purpose, operating principles and process (see Appendix C). Additionally, the group agreed on the following rules of engagement and adhered to them for the course of their work together:

- Be prepared for and attend meetings and then follow through on commitments;
- Consult regularly with constituencies and provide their input at the earliest point in the process;
- Keep their organizations or constituents informed of the advisory committee process and substance;
- Actively participate in meetings and review meeting materials prior to meetings;
- Treat everyone and his or her opinions with respect;
- Allow one person to speak at a time;
- Comment constructively and specifically;
- Engage in honest, constructive and good faith discussions in all aspects of the process, including any on-line discussions which may occur between meetings;
- Operate according to, and stay focused on, the advisory committee’s specific charge;
- Represent the views of himself or herself only, and not any other member, group, or the advisory committee as a whole to the public; and
- To support the consensus building process, committee member will wait to make presentations about substantive issues under discussion at the committee to either a quorum of the Board of Forestry or the press until the committee’s work is completed.
 - If a member has concerns about the process or the direction the committee is taking, he or she will raise those concerns first with the facilitation team and the committee prior to raising these issues with the Board of Forestry, the press or the public.

Throughout their conversations, the RRAC used a 1-5 tool to gauge the level of support for actions or decisions amongst group members. Using this tool, individuals were asked to show the group where they were on an issue or proposal by raising one or more fingers, as follows:

- One finger signified enthusiastic support for the issue;
- Two fingers signified acceptance or no objections;
- Three fingers signified a willingness to live with the decision, although questions still existed or improvements could be made;
- Four fingers signified a need to register serious concern with the issue or proposal, however, the individual would not actively block the issue moving forward; and
- Five fingers signified serious concern and, if not changed, the individual would actively block the issue or proposal if it were to move forward to the Board.

For the purposes of the RRAC conversations and their summaries, group support registering ‘1-2’ fingers are called a ***strong consensus***, whereas group support registering ‘3-4’ are called a ***weak consensus***. For this report, we are noting all items ranging from 1-4 as the group having reached a consensus with which they are willing to support or live. Group polls that included at least one ‘5’ are considered to be **no consensus** and dissenting perspectives were noted in both the meeting summary and are shown in grey boxes in the following pages. At the end of the process, the RRAC encouraged the ODF project team to carry forward their consensus recommendations to the Board and to clarify where there was not consensus and why.

RRAC’s Charge

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 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 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 the Fiscal Analysis Report 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?

RRAC Areas of Consensus and Stakeholder Perspectives

Over the course of the five meetings, the RRAC deliberated on these policy issues, developing consensus recommendations for the majority of the concepts, and clarifying areas of dissenting perspectives. They came to the following conclusions:

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

ODF Regulatory Database: The RRAC reached a consensus that the ODF should adopt ODFW Fish Habitat Distribution (FHD) database layers to use as the ODF regulatory layer. In addition, they agreed that the database layer should be adopted from the ODFW database at a particular point in time to provide a clear starting point for regulatory purposes. The RRAC also agreed that ODF should include all SSBT stream segments in the ODFW FHD, except for those stream segments derived from habitat evaluation modeling (of which there is none in the current FHD).

Database Updates: The RRAC reached a consensus that ODF should conduct short-term updates to ensure that the regulatory layer is as accurate as possible. The short-term updates should seek to clarify any discrepancies between the end-of-fish-use and SSBT layers, and to document natural barriers downstream of the mapped SSBT extent. Furthermore, the RRAC agreed that ODF should also do long-term, programmatic updates and review ODFW's database updates over time to incorporate new information on fish distribution into ODF's regulatory layer. The RRAC agreed that long-term updates should include all new stream segments in the ODFW FHD except those derived from concurrence of professional opinion (ODFW's database updates consist predominately of documented observation, not concurrence of professional opinion). The RRAC acknowledged that this update process could be subject to change if the survey protocol were to change prior to the programmatic update.

Although the RRAC came to consensus on the database, concerns were expressed regarding the accuracy of the data layers and the process for updating the database. Individual RRAC members expressed the following ideas, concerns, and perspectives:

- Observed presence may not be a reliable way to determine presence of SSBT because of high fluctuations in fish populations. A species may not be observed during the survey, however, could be utilizing the habitat during another season or year.
- Surveyors may not be able to accurately identify SSBT species and may mistakenly record presence of an SSBT species, resulting in increased buffers in non-SSBT streams.
- SSBT habitat may be overestimated, resulting in increased buffers on non-SSBT streams.
- Conversely, habitat may be underestimated, resulting in smaller buffers being applied to some SSBT 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.

Stream Extent: The RRAC reached a consensus that the harvest unit which contains the end of the upstream mapped SSBT presence is to be considered the 'immediate harvest unit'. Adjacent operations commenced within a year from the date the first unit is completed are also considered to be 'immediate'. Furthermore, administrative units must not be created for the purpose of circumventing the new rule. The rule language should incorporate an option for exceptions for "unusual disturbance."

Main-stem: The RRAC reached a consensus that the "main-stem" should be defined as the stream with the largest annual flow average at a confluence of two or more streams. If there are two stream branches of similar size, an operator should be encouraged to implement vegetation retention and riparian management area widths on both streams if they are fish bearing. Main-stem should be addressed in the written operations plan, with the option to be verified and corrected in the field.

3. Defining "well distributed" throughout the RMA.

Well-Distributed: The RRAC reached a consensus that basal area targets, including the well-distributed requirements, should be measured in 500-foot increments and have a minimum of 25% basal area and 50%

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).

The RRAC supported the concept that the rule should include both a narrative description and metrics to clarify the intent for operators. The RRAC discussed the well-distributed concept at length with the goal of determining clear criteria and implementable metrics to apply the Board's decision.

- Conservation representatives wanted additional requirements to prevent creation of large gaps and to favor retention of larger trees. They expressed deep concern that:
 - Although the 500-foot increments for measuring basal area will compel more distribution of basal area, this requirement does not prevent some concentration of retained trees ('packing and whacking'), creation of large gaps or enlargement of existing gap size, thereby impacting stream shade and water quality.
 - The required buffers should be considered experimental, and for that reason both effectiveness and compliance monitoring are needed to ensure the intent of the rule is attained with respect to both the PCW and the subsidiary goal of "well-distributed" basal area of the retained vegetation.
 - Further metrics that do not go to the distribution of retained riparian basal area would be necessary to ensure that riparian harvest under this option is consistent with attainment of riparian stand conditions capable of providing the aquatic/ riparian functions associated with mature forests (i.e. DFC).
- Landowner representatives reluctantly supported the proposed outer zone minimums. They also expressed deep concern about any additional requirements regarding gap size limits because:
 - The rule needs to be clear and simple enough that a landowner/operator can lay out a plan and later ODF Stewardship Forester can verify that it was done correctly.
 - Implementing the rule needs to be cost effective for the landowner/operator. These additional metrics around 'outer zones' and percentages of basal area will be costly and difficult for some to implement, and will result in some landowners simply implementing the no-cut buffer option.
 - On the ground factors, such as topography, will inform how the unit is laid out and will pose difficulties if the metrics are too complicated or prescriptive.

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

ODF highlighted areas where the previous rule should be maintained, including: safety, hardwood conversions, site-specific plans for alternate practices, basal area credit for active management and, varied width of riparian areas.

Safety: The RRAC did not propose any clarifications or changes to the previous rules regarding safety.

Hardwood conversions: The RRAC did not propose any clarifications or changes to the previous rules regarding hardwood conversions. However, there was concern voiced that hardwood conversions might exceed the 0.3-degree allowance under the Protecting Cold Water Criterion. ODF noted that hardwood conversions are defined under the rules as a restoration activity and, if a landowner wants to do hardwood conversions, then they go through a separate process.

Site-specific plans for alternate practices: The RRAC did not propose any clarifications or changes to the previous rules regarding site-specific plans for alternate practice; however, it was noted that these plans will need to meet the intention of the new rule.

Basal area credit and active management targets: ODF shared with the RRAC that the current rule has a 2:1 credit for large and medium Type F streams which allows operators to take two trees if they place one tree in the stream as large wood. For small Type F streams, the current rule has a 1:1 credit which allows operators to take one tree if they place one tree in the stream as large wood.

- ODF proposed that the new rule be a 1:1 credit for placing large wood for medium and small SSBT streams. This changes the rule so that there is neither an incentive nor a disincentive for placing large wood.

Vary the width of riparian area: The current rule allows for the RMA width to be below the requirement so long as the standards are met on average. ODF clarified that 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. One RRAC member noted that this language allows sufficient operational flexibility for the variable retention option. Another RRAC member requested a reduction in the limit of allowed variability, noting that this is a revised shade standard.

Conifer Count: ODF asked the RRAC whether if they could support maintaining the same 8-inch diameter requirement for conifer leave trees; the RRAC **did not object** to the 8-inch diameter requirement.

Rule application/implementation: The RRAC **reached a consensus** that: whatever rule is in place when a notification is filed should apply to that unit plan, as long as there is no evidence of gaming the system. Notifications cannot be expanded beyond the two-year allocation.

Rule Language Review: The RRAC **reached a consensus** with ODF staff to create a new Division to clearly communicate the difference between the new rules and old rules that will be preserved.

5. Definition of a parcel, and definition, determination of encumbrance, and equity relief.

Parcel definition: The RRAC **reached a consensus** on the following definition of a ‘parcel’, which includes, via citation, the FPA definition of ‘single ownership’:

Parcel, for the purposes of calculating whether a forested property is eligible for relief from SSBT riparian rules adopted in (date), 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).

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. The RRAC generally agreed that the Board intended to provide relief to some landowners; however, there were differing perspectives around: the degree of encumbrance that should trigger relief; whether the number of landowners eligible for relief should be a factor in determining whether the trigger for relief is appropriate; and what might constitute appropriate relief. Individual RRAC members expressed the following ideas, concerns, and perspectives:

Views on Equity Relief:

- Both the ecological and economic impacts should be examined to find the appropriate balance of equity relief.
- It is important to determine and clarify the public policy goal that is being advanced by identifying a specific level of impact as an ‘undue regulatory burden’; this relief is intended for those whom the Board determines are unfairly burdened by the new rule.
- The new rule will provide increased buffers on only less than 25 percent of fish streams in western Oregon (less than 11 percent of F and N streams), and there is good evidence that an increase is also needed on these streams. Adding exemptions to what is already a fraction of streams needing protection, will jeopardize the attainment of resource goals and limit future options.
- To avoid reducing effective stream protection through less restrictive harvest options, the Board should instead explore a means of need-based financial relief, such as income tax credits, to reduce the financial burden on those landowners.
- Consider giving relief on a ‘needs and means’ basis to provide relief to small, family landowners, as opposed to large for-profit corporations.
- The relief given to those landowners who are unfairly impacted by the new rule needs to be sufficient relief.
- Some RRAC members felt that the Board intended for the relief to apply to a larger portion of landowners than the 10 percent would apply to and that the Board also intended for relief to be given to landowners who own more than 15 acres of land.

6. North-sided buffers and geographic scale.

North-sided buffers: The RRAC **reached a consensus** that the initial screening to determine stream reaches with north-sided buffers, and thus eligibility of the prescription, should be made through a GIS-based map algorithm. They agreed that landowners are responsible to ensure that the stream reach meets the intent of the rule (within 30 degrees of East/West). Stewardship Foresters should verify the direction of the stream and field-based verification can supersede the map. The RRAC also agreed that 200-foot segments should be the minimum length used to determine if the segment is eligible for the prescription, as this is a realistic length to measure in the field.

7. Input on the fiscal impact of 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. Individual RRAC members expressed the following ideas, concerns, and perspectives:

- Consider utilizing the Forest Projection System (FPS) instead of Forest Vegetation System (FVS) for industrial timberlands.
- Under the ‘no-cut’ option, the cost of implementation may be greater than estimated as operators may need to err on the side of a larger buffer in order to assure compliance with the rule. As a result, the assumed 72-foot buffer will likely be between 72 and 80 feet.
- The analysis likely overstates the impact because it assumes that harvest under the current rules is conducted to the maximum legal extent, while the harvest under the new rules will not reflect logs from thinning in the riparian zone. In order to compare similar impacts, a range of possible options should be shown, including the assumption of maximum thinning under the new rules.

- Depending on the equity relief options, the impact might be even less. Also the north side buffer exceptions reduce the impact of the rule.
- Consider displaying the information as a range rather than a set number, as there is not a direct correlation between million board feet harvested and jobs.
- Present the information to the Board as the total number of jobs and the estimated change in the number of jobs as a result of the rule.
- The local or county-level employment impacts of the rule are so small as to be virtually un-measurable.
- Committee members also conveyed information on the impact to ODF staff in separate meetings.
- This is a complex issue and the fiscal impact approach that ODF has taken seems to be a good one.

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

Wildlife leave trees: The RRAC discussed the Board’s decision that 50 percent of wildlife trees can be counted in the RMA and whether those trees can be ‘double-counted’. There was confusion around what this meant and the RRAC **reached a consensus** to suggest the following 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.

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. Some members felt that DFC was important to consider and should be highlighted in the RRAC recommendations, as they need to be sure that the metrics support DFC. Other members felt that the Board requested the RRAC to develop the metrics with reference only to the new proposals, as opposed to addressing DFC in the recommendations. RRAC members expressed different perspectives as to whether DFC is intended to be prioritized within the active management prescription: some felt that this prescription’s primary goal was economic viability; and others expressed that the prescription must have been intended to be consistent with meeting DFC as well as to attain the Protecting Cold Water Criterion and the rules should reflect this. The RRAC moved forward notwithstanding lack of clarity on how to integrate DFC as a guiding principle into their overall conversations. Conservation interests shared in writing the technical basis for their perspective that active management in RMAs cannot be presumed to benefit either the tree growth or aquatic/riparian functions of DFC, calling into question assumptions about the benefits of active riparian management that permeate current rules. Both the conservation and landowner representatives registered concerns over how the new rule relates to DFC and questioned if the current concept of DFC is consistent with the new rule and sound management of the RMA.

RRAC Rule Language Subcommittee

Finally, to work through language issues with the rules themselves, a small sub-group of the RRAC met on July 22nd to work with staff to review and refine the proposed rule language related to these issues. Each member of the sub-group had worked in advance with other RRAC members who had similar concerns and came prepared to offer changes. They then worked with other sub-group members to resolve concerns raised by wording and/or language construct. At the end of this discussion, the subgroup **reached a consensus** on proposed rule language and those rules were sent to rest of RRAC for review and final input/consensus check.

The full RRAC reached a consensus (with the scale ranging from 2-4 on the above noted consensus check scale) on the rule language that staff will present to the Board.

RRAC Consensus Recommendations to the Board

The RRAC reached a consensus to include the following recommendations in rule language which will be provided to the Board for their consideration:

- ODF should adopt the ODFW FHD database as its regulatory layer, incorporating short- and long-term updating processes.
- Include all stream segments in the ODFW FHD in the ODF regulatory layer, except those based on modeled habitat. Long-term updates will include all new stream segments in the FHD, except those stream reaches added by concurrence of professional opinion.
- The “main-stem” is the stream with the largest drainage area, with an option to correct this determination with field verification. If there are two stream branches with similar size, an operator can voluntarily treat both as the main stem.
- Variable retention basal area minimums on both stream sizes can meet well-distributed requirements if measured in 500-foot increments with a minimum of 25% of required basal area and 50% of required live conifers in an outer zone one-half the total width of the managed portion of the riparian management zone (i.e. the outer 30 feet of the 80 foot medium stream RMA and the outer 20 feet of the 60 foot small stream RMA).
- 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.
- Create a new Division to communicate the new rules and clarifying which old rules will be preserved.
- Parcel, for the purposes of calculating whether a forested property is eligible for relief from SSBT riparian rules, 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).
- GIS algorithms can be used as an initial screening to determine eligibility of the north-sided buffer 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.
- 200 feet should be the length for a stream segment used to determine eligibility and to implement the north-sided buffer option in the field.
- 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.

ODF Decisions and RRAC Feedback

The ODF Project Team opted not to bring all issues to the RRAC for input, in part due to time limitations and the controversial nature of the issues. Instead, ODF reported to the RRAC regarding the recommendations that will be in the staff report and heard RRAC responses to these ideas.

SSBT protection upstream of artificial passage obstructions: ODF reported that they will recommend that stream segments upstream of artificial obstructions should be outside of the scope of the rule because ODF does not have a way to determine where the end of SSBT is in those cases. This is a diversion from the current policy; however, the current policy is for fish streams, not SSBT streams. Individual RRAC members expressed the following ideas, concerns, and perspectives:

- ODF’s decision is aligned with the Board’s direction to apply the rule where SSBT are present, if there is a passage barrier, there likely will be no SSBT present upstream of it.

- All fish bearing streams are currently protected by RMAs and temperature impacts caused by thinning are short term impacts. As such, additional protection upstream of artificial barriers likely is not necessary.
- Since 1994, many of the artificial barriers have been fixed. All new road construction or re-construction must provide for fish passage. A large portion of the remaining barriers are due to public roads, railroad crossings, utility lines, etc., and are not the responsibility of the landowners to remove.
- The Board considered this issue when they discussed how far above the end of SSBT presence to require the new restrictions; in the end the Board chose not to use a fixed length but rather the verbiage regarding 'extending SSBT buffers up the main-stem within the immediate harvest unit'.
- The result of ending SSBT streams at an artificial barrier is that this dis-incentivizes the voluntary removal of those barriers by landowners: fish would be able to move upstream and a bigger buffer would be required.
- Ending SSBT streams at an artificial barrier is inconsistent with the current policy; the Board said that unless otherwise stated, all other rules apply.
- The actual ecological impact of this decision is unknown as, the extent of the habitat that is upstream of the artificial barriers is largely unknown by ODF and ODFW.
- If not included in the rule, valuable SSBT habitat upstream of barriers will be degraded.
- It is important for the Board to understand the impact of protecting only current versus historical or restorable habitat and the concept of artificial obstruction being used to determine the end of SSBT use.
- It is not clear that the Board intended to end SSBT streams at artificial obstructions.

Pre-commercial Thinning: ODF reported that despite the requirements indicated in this rule, operators may conduct pre-commercial thinning and other release activities to maintain the growth and survival of conifer reforestation within riparian management areas. Such activities should contribute to and be consistent with enhancing the stand's ability to meet the desired future condition. Individual RRAC members expressed the following ideas, concerns, and perspectives:

- Thinning and other release activities may not be consistent with the DFC.
- How will the consistency and enhancement of the DFC be measured and monitored?
- Any pre-commercial thinning and release activities should not cause stream temperature changes prohibited by the Protecting Cold Water Criterion.
- Both the conservation and landowner representatives wanted to register concern over how the new rule is incorporated into the DFC and questioned if the current DFC is consistent with the new rule.

ODF agreed to share the RRACs differing perspectives with the Board to help inform their decision.

Conclusion

Over the course of six months, the RRAC met five times and participated in one final telephone call-in session to discuss and provide feedback on policy issues and to assist ODF in developing clear rule language. The RRAC spent more than 35 hours together, and countless hours on their own preparing for and, then, deliberating questions posed by the Board related to proposed riparian rules. They recommended how to establish and update the SSBT regulatory database. They recommended definitions and concepts regarding "main-stem", "well-distributed", "parcel", "encumbrance", and "equity relief". They recommended how to define and prescribe the north-sided buffer approach and wildlife leave trees. They provided input regarding the DFC and fiscal impacts of the new rule. In short, they reached a consensus on aspects of all of the concepts they were asked to address.

Additionally, the RRAC members provided their stakeholder perspectives for the Board to consider regarding concepts on which they were not able to reach a full consensus, including encumbrances and equity relief. The RRAC also provided input on the DFC, artificial barriers, and pre-commercial thinning and other release activities.

Given the differing perspectives of those seated at the RRAC table, the Board should appreciate the commitment each RRAC member made—and kept—in order to work collaboratively toward the development of consensus-based recommendations for the Board to consider. The RRAC looks forward to providing additional information or guidance to the Board as it moves forward to finalize and implement newly proposed riparian rules.

This report was written by the facilitation team at DS Consulting. RRAC members were given the opportunity to review an initial draft, and their edits were included in a 'near final' draft. The near final draft was sent again for final review and refinements. RRAC members, ODF & ODFW staff responded to one or more drafts with edits. A Version 4 report was sent to the RRAC members for a final discussion and consensus check on a public call, held at 2 pm on August 19, 2016. A summary of that call will be drafted, reviewed and attached to this report as soon as possible (but not in time to attach to this report for early submittal to the September Board of Forestry).

The final report was approved with consensus by the RRAC members on a public telephone call held August 19th, 2016.

Final Report respectfully submitted this 19th of August, 2016.

Donna Silverberg, facilitator and owner, DS Consulting

Appendix A: RRAC Meeting Summaries

Appendix B: Board Adopted Package and Decisions November 2015

Appendix C: RRAC Charter and Operating Principles