I. Introduction

Representative Wayne Krieger raised the issue of whether the Oregon Forest Practices Act (FPA) and forest practice rules would allow a landowner to establish food plots on portions of a recent harvest unit in lieu of replanting forest trees on those areas. The American Tree Farm System (ATFS) includes addressing wildlife as one of four key areas in their 2010-2015 Standards of Sustainability. The standards are the tool that ATFS uses to validate the good forestry done by private woodland owners. Under Standard 5: Fish, Wildlife, and Biodiversity, performance measure 5.2 states that forest owners should address the desired species (fish, aquatic, wildlife, and plant) and/or desired forest communities in the management plan and forest management activities.

Representative Krieger’s example was a ¾ acre deer food plot left on a 5.5 acre clearcut. The whole property is in excess of 200 acres.

Another example: Evidence suggests that Oregon's wild Band-tailed Pigeon (BTP) populations are suffering from a lack of native feed during their breeding season. Cascara, elderberry and choke cherry, all favorite foods for these birds, are suppressed or killed during brush control on replanted units. Part of the landowner’s management plan is to enhance these plants for BTP feeding areas, but to do so we must exclude conifers and large hardwoods. An alternate plan could be written to allow the planting of these wildlife habitat species, instead of acceptable conifers or hardwoods. The question would then be the scale. In this case, the landowner is trying to maintain about 3 acres of feeding habitat out of 40 acres.

Preliminary staff work on the concept indicates that the practice appears to be allowed under current rules, subject to some limitations. However, the rules can be difficult to interpret, and additional work is required to clarify the situation. The initial analysis raised several issues that need to be resolved. These issues include (1) clarity in interpretation of rules and uniform application of the interpretation, (2) how to develop a standard plan for alternate practice, (3) potential effect on tax status, (4) concurrence and support by Oregon Department of Fish and Wildlife (ODFW), and (5) need to modify FPA and/or administrative rules.
II. Body of Information

Interpretation of Rules

First, it appears that the forest practice rules would allow the Oregon Department of Forestry (ODF) to approve a plan for an alternate practice to allow the establishment of food plots. Basically, the rules allow ODF to approve a plan for an alternate practice that will improve wildlife habitat, as long as ODF consults with the Oregon Department of Fish and Wildlife (ODFW). The alternate plan must also meet the purposes of the FPA and the specific rule being modified. The rules also allow ODF to approve a plan for an alternate practice for reduced stocking after harvest if the purposes of the reforestation rules will be met. The purpose of the reforestation rules is to ensure the timely replacement of forest trees after harvest, considering landowner objectives and consistent with the sound management of timber and other forest resources. Therefore, the establishment and maintenance of limited food plots in lieu of replanting forest trees would fit within the rules.

Details

- Forest practice rules allow the Oregon Department of Forestry (ODF) to approve a plan for an alternate practice.
  - Oregon Administrative Rule 629-605-0100(2)(c) allows ODF to approve a plan for an alternate practice that will improve wildlife habitat, as long as ODF consults with the Oregon Department of Fish and Wildlife (ODFW).

- Any alternate plan must also meet the purposes of the FPA and the specific rule that is being modified. Oregon Administrative Rule 629-610-0020(10) also allows ODF to approve a plan for an alternate practice for reduced stocking after harvest if the purposes of the reforestation rules will be met.
  - The purpose of the FPA is to ensure the continuous growing and harvesting of forest trees consistent with the sound management of soil, air, water, and fish and wildlife resources (ORS 527.630 (1)).
  - The purpose of the reforestation rules is to ensure the timely replacement of forest trees after harvest, considering landowner objectives and consistent with the sound management of timber and other forest resources (OAR 629-610-0000(1) and (3)).

Standard Plan for Alternate Practice

It is possible to develop a standard plan for an alternate practice to assist landowners who are interested in this practice. The standard should be based on limits and conditions on the practice to help ensure that the rule purposes are met.

Questions

- What sort of limits and conditions there should be on the practice to help ensure that those purposes are met? For example, it may be appropriate to establish a maximum figure for the acreage or proportion of a harvest unit or total forest ownership that could be in food plots.
Should a landowner be required to have a forest management plan that described how the practice would be implemented? There is the potential that a stewardship plan, Tree Farm Plan, or other existing plan would serve this purpose.

**Potential Effect on Tax Status**

ODF needs to investigate the potential effect of establishing deer feeding areas on the forestland tax status for a parcel. Under Oregon tax law (ORS 321.257 (2)), forestland tax status is granted only for parcels for which the predominant use is growing and harvesting of forest trees. State tax law does allow for some non-stocked areas on parcels under forestland taxation, but how that would work with the proposed deer feeding areas is uncertain. ODF plans to work with the Oregon Department of Revenue to help resolve this question.

**Coordination with Oregon Department of Fish and Wildlife**

OAR 629-605-0100(2)(c) requires coordination with ODFW. To facilitate efficient process, ODF needs to gather information on accepted and beneficial practices for establishing food plots. We will discuss these concepts with ODFW at our annual meeting on forest practices. We would like to develop information and agreement on accepted and beneficial practices to avoid having to consult with ODFW on a case-by-case basis.

**Need to Modify FPA and/or Administrative Rules**

As discussed above, ODF may be able to adequately address the issue under current regulations. However, doing so does require some interpretation of purpose statements in those regulations. Regulations must balance the need for clarity and specificity with the need to avoid excessive complexity and rigidity. In this instance, it may be helpful if the FPA and/or forest practice rules specifically addressed the issue of allowing wildlife habitat enhancement in lieu of replanting after harvesting, but again, there is the question of whether that level of detail should be in the regulations.

**Questions**

- Do we need changes in the FPA and/or forest practice rules to accommodate the food plots area practice?

**III. Summary**

To be completed.