



"STEWARDSHIP IN FORESTRY"

Riparian Rulemaking Advisory Committee

Minutes for February 19, 2016

Pursuant to public notice made by news release with statewide distribution, a committee meeting of the Riparian Rulemaking Advisory Committee [an advisory body to the Oregon Board of Forestry with authority established in Oregon Revised Statute 527.650] was held on February 19, 2016 in the Tillamook Room, Bldg. C, ODF Headquarters, 2600 State St., Salem, OR

Committee members present:

Mike Barnes, NW Regional Forest Practices Committee
Seth Barnes, Oregon Forest Industries Council
Dick Courter, Small forestland owner, consultant
Eugene Foster, DEQ Watershed Management Division
Kevin Godbout, Weyerhaeuser
Randy Hereford, Starker Forests
Jim James, Oregon Small Woodlands Association
Dana Kjos, SW Regional Forest Practices Committee
Bruce McIntosh, ODF&W
Mary Scurlock, Oregon Stream Protection Coalition
Rex Storm, Associated Oregon Loggers
Bob Van Dyk, Wild Salmon Center

Alternates present:

Randy Silbernagel, NW RFPC
Scott Hayes, Oregon Tree Farm System
Rick Barnes, Barnes and Associates
Heath Curtiss, OFIC
Meghan Tuttle, Weyerhaeuser
Paul Betts, Miami Corp.
Jon Bowers, ODFW

Project Team members

Peter Daugherty, ODF Chief Private Forests Division
Lena Tucker, ODF Deputy Chief Private Forests Division
Marganne Allen, ODF Policy and Monitoring Manager
Angie Lane, Project Team Manager, ODF Ops & Policy Analyst
Nick Hennemann, ODF Public Affairs Specialist
Kyle Abraham, ODF Water Quality Specialist
Susan Dominique, ODF Private Forests Administrative Support

Guests:

Gary Springer, Starker Forests
Kim Parrett, ODF Volunteer
Sara Duncan, OFIC
Josh Barnard, ODF
Sabrina Perez, ODF
Jennifer Erdmann, ODF
Jeri Aster, Mackenzie River Coalition
Terry Frueh, ODF Monitoring Specialist

Meeting Facilitation

DS Consulting, Portland

- Donna Silverberg
- Robin Gumpert

Peter Daugherty, Chief ODF Private Forests Division, called the meeting to order at 10:00 am.

1. Welcome, Introductions

Peter thanked members for committing the time it's going to take to serve on the Advisory Committee. Note that Bob Van Dyk will be serving as a regular member of the committee. He was listed as an alternate.

2. Public Comment

Public comment was invited. None was offered.

3. Setting the Stage: Review of Rulemaking Advisory Committee Charter and Operating Principles

Purpose, Background and Scope

A draft Charter and Operating Principles was posted for the Committee's review prior to today's meeting. Daugherty reviewed the purpose, background and scope of the committee.

“The Purpose of the advisory committee is to collaboratively discuss and provide feedback on the draft Forest Practices Act (FPA) rule language to implement the Board of Forestry's (BOF) November 2015 decision.” The Board decided on the elements of the final riparian prescription package for new riparian protection standards for small and medium fish streams. Daugherty advised that the advisory committee is not a forum for re-writing the Board's decision, rather, to implement that decision in rules that are clear, understandable and effective. He shared that he anticipated that some of the rule language will be a straight forward implementation of the Board decision while other language will involve clarification and determination of definitions as implied by the decision. Daugherty clarified that to date the Department has not drafted any rule language as they have not had any input from this committee, particularly on those issues that require clarification.

To summarize, the Advisory Committee's role is to discuss and provide feedback on policy issues that need further clarification or decisions by the Board to assist ODF to develop and write in clear language the Board's new riparian rule for meeting EQC's Protecting Cold Water criterion to the Maximum Extent Practicable (MEP). The Committee is also asked to discuss and provide input on the fiscal impacts of the proposed rule which is required as part of the APA process.

Daugherty reviewed the BOF's decision package to ensure members are clear on the components of the package. The scope of this committee to describe how to best implement that decision. Out-of-scope would be to re-visit the decision where the Board has made a clear statement of policy; for example the specific riparian buffer widths of 60 feet for small streams and 80 feet from medium streams. An example of in-scope would be that the Rule includes options to provide economic relief for smaller parcels and needs guidance on the particular formula. Particular standards that staff has identified for the members to consider are listed in the Charter, and include:

- How to define and identify SSBT streams as a subset of ODF Small and Medium Fish Streams.
- Defining the approach of extending standards above the immediate harvest unit and above the end of the mapped SSBT streams along the main stem of Fish-bearing streams.
- Defining the term “well-distributed” throughout the riparian management area (RMA).
- Identify conflicts, overlapping areas with current rules that require clarification as “all current rules that apply to Small and Medium Type F streams” not included in the rule change continue to apply.
- Defining and verifying a parcel, determining encumbrance and equity relief.
- Defining south-sided buffers and at what geographic scale.

An advisory committee member asked how detailed the committee's involvement is in crafting the rule language. Daugherty suggested that for efficiency it may be better not to jointly craft or wordsmith language at the meetings; rather, get feedback and if possible, consensus on recommendations which ODF can help craft in to rule language. The group will start at a more conceptual level of what the intent of the rule is, what the major issues are, and how to define key elements. Once staff receives that guidance, ODF will begin to draft rule language then bring draft language back to the committee for technical review. The Regional Forest Practices Committees will be used for the technical review also which is required in statute. There will be a continuous loop of communication. The Board is the policy decision maker but the Department will be making recommendations based upon committee input in those areas that need clarification. If the Board's intent is not clear the committee will take time to reach consensus if possible.

This committee will also provide input and continue to be included through the APA process once rule language has been drafted. The Fiscal Impact will be reviewed through the APA process and the Department will provide reporting to the Committee on what has been done up till now and the methods used, at the March meeting. Allen, noted that the full Secretary of State (SOS) process dictates when to file Fiscal Impact Statements and make that available as part of the bigger public comment period.

Operating Principles and Process

The second section of the Charter, Operating Principles, was shared as a draft for feedback and refinement by the Committee. Members were thanked for their participation in facilitator interviews prior to this meeting to help set the stage for what issues and format will work best for the Committee members to provide constructive feedback to the Board. The facilitators shared that they heard in the interviews that members are clear about their role in helping to put this rule together and are committed to doing their best to provide useful feedback and where possible, consensus recommendations for consideration. The role of the facilitation team is to help members communicate back and forth with each other and DOF staff, with an adequate exchange of information and to the extent possible, work to develop some consensus recommendations. Where there is not consensus, the goal is to clarify and document the different perspectives so the Board can make an informed final decision.

The facilitators suggested these Principles will help establish group norms and a process of how to work together both in and outside of the meetings with these ideas. It was noted that there are some general participant commitments requested in the Charter regarding consistent participation from members and alternates, and ways of working together in and out of the meetings. Facilitator Summaries will be provided to serve as group memory, capturing high level discussions, and agreements and divergent ideas. The summaries will be shared with the Committee for review and approval prior to publishing the notes for public consumption. A “Five Finger consensus tool” was offered to help the group and facilitators gauge the level of agreements on proposals brought forth.

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.

The Facilitators shared their intent to quantify, as soon as possible where there is agreement, and where not, and at the end of the process provide a final summary report that includes the full packet of summaries and outcomes of the discussions. Individual members will be given the opportunity to decide how any agreement or disagreement is articulated, with the goal of reaching consensus on the final report.

Comments regarding how to capture majority/minority opinions:

- A member suggested an option of articulating the polarized views and presenting them to the Board with equal weighting with no attribution of who is in favor/opposed.
- Another option raised for consideration is to allow the Board to see what the range of views are, who has those views and why, and be able to articulate those views in their own words.
- Everyone agreed with using the final Facilitator’s Report to capture agreements, disagreements, and minority reports where applicable – the report will be reviewed and approved by the Committee to make sure it accurately captures the views on all issues.
- The point is to streamline stakeholder input, not to paper over someone else’s views. The facilitators suggested that if it starts turning into a conversation where papers are being volleyed back and forth, this will signal a need to stop and have a process conversation of what needs to be done differently to get back on track.
- The Facilitators will work with staff to ensure the report meets the APA requirements. It was also noted that this is a big public process and the Board will additional opportunities to anyone to provide information to the Board, beyond this Advisory Committee’s work.

Daugherty clarified that a Staff Report is required to be submitted with any report to the Board, so it will be included with the Facilitators Summary as the primary attachment (but not a separate report). Board materials are always public documents, and the Department will try to have those posted well in advance. He also noted that ODF has asked ODFW and DEQ to participate as technical resources and to meet requirement to coordinate with other agencies whenever developing rules. The agencies’ role is to provide the Committee adequate information on what will or won’t work and why. Additional suggestions to the Operating Principles in the Charter were:

- Public Comment will be welcomed and given time on the agenda at the beginning and end or when decisions are being made and consensus isn't reached.
- Alternates are encouraged to work with their Committee Members to communicate their views; and if they hold a different opinion will be welcomed to make comment during the public comment period.
- Language will be added to clarify the process for capturing issues when there is not a consensus.
- A member expressed serious concern about the Public Meetings Act and asked for clarification on what committee obligations are under the Oregon law about communications with members and others.

Action: ODF will work to get a DOJ opinion and advice for members on their obligations around public meeting laws and confidentiality. This item will be added to the March meeting agenda.

- There was discussion regarding expectations for members communicating with the BOF on behalf of and/or before the Advisory Committee has finished deliberating on an issue. The facilitator shared that from the facilitation team's experience the groups who commit to work within the process and not speak before there is clarity/approval from the group to do so have built enough trust with each other and are more successful. Facilitators asked if members were comfortable with this understanding as a commitment to not talk specifically about the committee's work to the press or the Board as a whole until the work is done. The Committee members agreed in general that they will not talk to a BOF quorum of members or the press about the Committee efforts until they have spoken to the Committee itself or the process is done. But some still expressed that they felt that they should be free to talk about the Committee's efforts. The group will revisit this issue at the next meeting.

4. Getting Grounded: Review of the Board of Forestry Decision on Riparian Rule for Protecting Cold Water

Peter and ODF staff overviewed the Board's decision on the Forest Practices Act Riparian Rule Package from November 5, 2015.

Comments:

- Do you include the Main stem of Type F streams in the extent upwards of the SSBT?
- How is the end of the Main Stem determined?
- There was grammatical clarification needed in the way the extent required reads.
- On clarification requested on Basal Area Targets, Wildlife trees and the description of 'well-distributed'.
- Defining 'well-distributed' as that would influence how you would go about doing a mid-rotation or early thinning. And that definition influences the practicability and likelihood of actual implementation.
- We don't want to define well-distributed in a way that would be in conflict with the Board's recommendation.
- Focusing on this makes me want to ask whether the intention of the Board to encourage thinning under appropriate circumstances, could be interpreted to imply we should be considering rule language that would encourage/discourage that.
- When we define what well-distributed means do we want to consider the silviculture goals of the landowner as well as considering riparian functions and aquatic impacts which may be different?
- We need clarification on how to implement Option D, South-sided Buffers as an Alternate Prescription.

Daugherty offered that the goal was a package prescription to give landowners flexibility through options the landowner can choose from that best suits his/her ground and silviculture regime. ODF encourages focus on riparian vigor and reaching desired future conditions. All distances are slope distances. All current rules that apply to Small, Medium and not mentioned above continue to apply. This process will review potential conflicts with existing rules. The Board did make a series of related decisions finding that the policy options adopted insured to the Maximum Extent Practicable (MEP) that forest operations will meet the EQC's PCW criteria, and establishing this rule advisory committee.

Timeline for Rulemaking Process – Angie Lane, Policy Analyst/Project Manager

Angie Lane shared a timeline that includes the Secretary of State's (SOS) process.

She reviewed the Advisory Committee's schedule, suggesting the group will meet again next month with even more clarification on some of the items shared and discussed today, and at that time ODF plans to have a very rough draft to share as a place to start to get to a proposed rule package. A third meeting will be held in early April to prepare for the

Board meeting at which a checkpoint report will be shared with the Board on the rulemaking advisory committee's progress. Angie suggested another potential meeting in June or July might be needed in order to meet the September 1st, 2017 Rule Effective Deadline. Upon the Board's Approval on the Draft documents, ODF will file with the SOS office and a public comment period will begin. Five public meetings are targeted for October and November 2016, spread out geographically to give opportunity for affected and interested citizens to go to a meeting that is close to their communities. ODF anticipates comment on this proposed rule. Angie encouraged Committee members to plan to attend the public meetings to answer questions. Public comment will be reported to the Board and the Rule is projected to be in effect September 1st, 2017.

Comment/Questions:

- Is there an opportunity for additional (more than 5) public hearings? The number may not be adequate and may limit testimony. Those affected by the rule should have an opportunity to comment.
 - ODF response: We are meeting our obligation with 5 meetings and there will be opportunity to provide written testimony as well. There are work load concerns, however, ODF is open to exploring ideas for additional meetings. It was also noted that information about this process will also be shared via other constituent gatherings outside the ODF public meeting process.

Action: Committee Member Jim James will discuss this with the ODF Project Team.

Getting Grounded: Issues and Definitions Needing Clarification on Board Decision

- Issues Identified by ODF:
 - **SSBT Alternatives** – Kyle Abraham, ODF Water Quality Specialist

Abraham started by sharing some background on the Salmon, Steelhead and Bull Trout (SSBT) definition that has been used throughout this process, then go into what current FPA requirements are on termination of fish-bearing streams. It was noted that these brief presentations are just kick-offs for discussion. The Department wants to hear back from the Committee: Is the ODFW Fish Habitat Distribution (FHD) layer the appropriate data layer to use? A 'hybrid layer' made up of our ODF Stream Classification Layer and the ODFW Fish Habitat Distribution layer was the basis for all of our analysis up to this point. There is no current plan to change the FPA Stream Classification System; however there is a potential for disagreement between the two layers in a particular zone.

Comments/Questions:

- I look at it in terms of the EPA endangerment finding which had to deal with the application of the Protecting Cold Water criteria to stream segments that had fish but specifically talking about where the SSBT are *present*. The fundamental driver of the policy change was a presence determination, not habitat. That to me is the decision the Board made and the context to which that has to be taken. Is the endangerment finding and the presence layer associated with what the PCW says we are supposed to be achieving?
- In my way of thinking, there is no reason to modify the current process.
- We are talking about a species, not all fish. So it does get more difficult. It's not just a habitat call, it's the actual presence of the species.
- We have a different regulatory system so we have to think about that information as informative but not determinative. The regulatory cast that we have is looking at the SSBT distribution within the layers of fish, trying to find that point when determining what management activities can occur. It's important that we distinguish between other habitat layers that are not regulatory for the purposes of forest practices and developing our own map if you will, which I think you have done. Going forward, you have to think about this as the ODF regulatory program that may be different from other regulatory needs.

Daugherty provided more background about why ODF chose to use the FHD layer in its analysis with the Board, to characterize the presence of SSBT. ODFW Fish Habitat Distribution GIS layer is the best data available on presence where presence is defined as species being present within so many life cycles. Other agencies use that data where State Policy was needed based on the presence of salmon. He acknowledged that any kind of GIS data layer is a model, not perfect. Bruce McIntosh, ODFW further clarified that a lot of information goes into the database we've been building since 2001 based upon empirical information.

Kyle Abraham presented the alternatives. In summary:

- Alternative 1: Adopt FHD layer for where SSBT are present and becomes the regulatory layer. Disadvantages, there is no process for updating it other than the current update process in ODFW.
- Alternative 2: Other people could help improve the FHD layer using the ODFW protocol which allows a correction to the data. That would require collaboration between ODF and ODFW.
- Alternative 3 is the data resides with ODF and it creates a divergence of data. We could end up with a different representation of SSBT that may occur.

Comment/Questions:

- Based upon the example, would we be stuck applying a buffer on a non-fish stream? If there are natural barriers contrary to that would you enforce it?
- Do we have information or understanding of how the two fish distribution maps stack up against each other?
- Would updates be triggered when there are differences in layers?
 - If say there was a natural barrier, a waterfall, we could say that is where SSBT ends.

Action: Bruce will share a copy of the ODFW protocol in advance of the next meeting. There are two documents that exist which look at what the actual FHD data standard is and the protocols for update.

Action: Agency staff will determine additional information and ways of presenting the info to the group to further inform the discussion at the March meeting. Some members indicated they would benefit from understanding the FHD a little better as useful background for these discussions.

- **Defining “Well-distributed” throughout the RMA**

Marganne Allen began an overview of this topic by clarifying that the intent is clear, that the RMA will now be managed with trees distributed throughout the length and width of the RMA. Marganne noted that there could not be a hard edge clear-cut. It should be characterized to not discourage early stand thinning. The challenge in thinking about this is how do we take measurements to give landowners flexibility *and* provide regulatory certainty? Daugherty added that many on this committee have operational experience and can bring ideas for this.

Member Comments:

- I think it is important to distinguish well-distributed from even distribution. We can allow some flexibility like that. We also need to consider there are operational challenges to distribute basal area in the RMA. The flexibility piece could be accomplished and still accomplish the goal.
- It may be easier to agree on what we don't want. Nature doesn't distribute trees evenly. What I heard was everything but a hard edge. I could agree to that.

- **Parcel/tax lot**

Daugherty said a definition and verification of 'parcel' is needed as a parcel can be created any number of ways. The big issue is there are no maps of parcels and counties verify parcels. Having equity tied to parcel creates the need for a definition and verification of parcel on ODF's part before granting equity relief. We also need to agree on a definition of encumbrance. Throughout the Board analysis process, encumbrance has been presented as additional land encumbered by the rule. But what are the differences between current rule and this rule? The final thing the Board asked the Committee to look at is the alternative of dropping back to a 50 and 70 foot no-cut to provide equity. During that discussion, several Board members identified needing clarity in understanding the principle about wanting to have equity but none were clear about the 50 and 70. It doesn't mean it will be re-considered, but the Board clearly asked for feedback on this.

- **South Sided Buffers**

Regarding south-sided buffers, the main clarification needed for implementation is at what geographic scale the rule applies; the entire unit or some discreet segment? It was suggested that Regional Committee notes may provide clarity in this policy area.

Additional areas needing clarification were identified by Committee members:

- What is meant by 50% of wildlife trees can be counted in the RMA, and double-counting concerns?
 - ODF Response: This will be added for further discussion. However, Peter said there is no policy question regarding what the Board said. Leave trees can count for both basal area in a riparian area and if it meets the size requirement of the residual tree it can count as a wildlife tree *and* basal area contribution. If there are disagreements we can document them.
- The rule should result in the Desired Future Conditions; this needs more discussion.

Communication Strategy - *Nick Hennemann, Public Affairs*

Nick Hennemann reviewed the Riparian Rulemaking communication plan and ODF's role. Public Affairs ensures there is adequate public meeting notice. The Department's responsibility is to help get information on what all constituencies are interested in knowing and how it's going to impact them as well as having the opportunity to continue being part of this process to create the rule language that reflects the Board's decision. The website has a link to this project housed under the Proposed Rules and Laws page which has a drop down menu with basic overview and the Committee's documents and meeting information. Newly provided information will be housed under the applicable meeting date and materials for that meeting. There will also be an option to link to an email address to provide multiple ways for the public to comment: email, correspondence and attending public hearings. To address questions about Public Meetings law and specifically a quorum regarding decisions made by the committee, Nick urged Committee members not to 'reply all' to information received from the Department; instead, just contact Angie or other staff individually. Nick committed to helping coordinate additional information about Public Meetings Law to share with the Committee at the next meeting. He concluded with a request to the Committee members to share information from this process on their respective list serves, so people have a greater understanding about what it is.

Wrap Up

The facilitators asked if there were any additional issues not already raised today for consideration and future discussion.

Member Comments:

- We may need more time for discussions.
 - The group agreed to extend their all-day meetings to 9am-4pm.
- Some issues will take more time than others, e.g. SSBT, Relief Equity, and Well-Distributed. Suggest prioritizing these first and saving those needing less time for the final session, so we know better what it is we need to spend more time on and focus on those at the next meeting.
- Need a common understanding of SSBT to inform next meeting's conversations.
- What can be done in between meetings to cue us up for success? Some members were interested in working separately with others on the Committee who have expertise or experience implementing Forest Practice operations to get a sense of the issues and how best to address them. Ideas and proposals can be developed and brought to the full Committee for consideration.
- Generally, the group agreed that it will be helpful for committee members to share if they know their views are not going to change on an issue, to streamline the process.

Action: Kevin, Seth and Jim will take the lead on exploring ideas for the policy areas SSBT, well distributed and relief for future discussions.

- The facilitators suggested reaching out to those who you think might not agree with you, to help develop proposals that could move a step forward toward consensus. They also suggested sharing proposals in advance of the meetings to the extent possible to allow committee members to review and absorb the information and be prepared to discuss at the meeting. Proposals should be sent to Angie or Susan for distribution to the Committee. All documents should clearly show 'DRAFT for internal discussions' before they are ready for public posting.

Action items from today included:

- The DS Consulting team will Update the Charter and share the next draft with the Committee for approval at the March meeting.
- ODF/ODFW will coordinate an information-sharing opportunity to support better understanding of SSBT, and consider ways to characterize it so it is clear.

- ODF will gather more information to share about public meeting laws at the next meeting.
- ODF staff will review information from the past two years of Regional Forest Practices Committee work as a good repository of information and thought about some of these issues, and provide a summary back to this committee to inform their discussions.

Next Meeting, March 22

It was agreed that a 9am to 4pm meeting was acceptable to everyone. The next meeting date is March 22nd. The April meeting date was set for Friday, April 15th from 9am to 4pm.

- Topics of discussion for committee on March 22, 2016
 - Continue discussion at next meeting re: SSBT, Well-distributed, parcels/tax lots, stream extent within immediate harvest unit, south-sided buffers, fiscal impact
 - Review overlap/conflict with FPA
 - Review a very rough draft of rule language

Public Comment

Public comment was invited. Gary Springer, BOF member: “On behalf of the Board, thank you all for your support in this challenging effort. You are off to a good start”.

Adjourned at 3:00pm