

Oregon Department of Forestry
Riparian Rulemaking Advisory Committee
June 21, 2016 - Work Session

FACILITATOR'S SUMMARY

The following Facilitator's Summary is intended to capture basic discussions, actions and agreements, as well as point out future actions or issues that may need further discussion at upcoming meetings.

Committee members present:

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, ODFW
Rod Sando, Northwest Sportfishing
Mary Scurlock, Oregon Stream Protection Coalition
Randy Silbernagel, NW Regional Forest Practices Committee
Rex Storm, Associated Oregon Loggers
Bob Van Dyk, Wild Salmon Center

Alternates present:

Meghan Tuttle, Weyerhaeuser
Paul Betts, Miami Corp.
Jon Bowers, ODFW GIS
Heath Curtiss, Oregon Forest Industries Council

Project Team members

Kyle Abraham, ODF Water Quality Specialist
Keith Baldwin, ODF Forest Practices Field Coordinator
Peter Daugherty, ODF Private Forests Division Chief
Susan Dominique, ODF Private Forests Administrative Support
Angie Lane, Project Team Manager, ODF Ops & Policy Analyst

Guests:

Kristin Dodd, ODF
Allen Henning, EPA
Greg Wagenblast, ODF

Meeting Facilitation

DS Consulting, Portland
Donna Silverberg and Emily Plummer

1. Welcome, Introductions

Donna Silverberg, Facilitator, welcomed the Riparian Rule Making Advisory Committee (RRAC) to their fifth rule making discussion. She noted that the day's session will focus on the fiscal impact and policy discussion, followed by next steps, as this is the last of the Riparian Rule Advisory Committee meeting until September.

Donna revisited the *Five Fingers of Consensus*, a tool used to gauge the level of support for actions or decisions amongst group members. Using this tool, individuals are asked to show the group where they are on an issue by raising one or more fingers, as follows:

- 1 - I can say an enthusiastic yes to the decision (or action).
- 2 - I find the decision acceptable and have no serious objections. Improvements could be made, but aren't necessary.

- 3 - I can live with the decision, but I'm not overly enthusiastic. I have questions about the strengths and weaknesses and need more discussion or more work done.
- 4 - I do not fully agree with the decision and need to register concern. However, I will not block the decision. More discussion is necessary for full support.
- 5 - I do not agree with the decision and will actively block its movement. More discussion is necessary or an alternative resolution is needed.

She noted that RRAC will be asked to use this tool to check approval for the June meeting summary via email.

2. Public Comment

Public comment was invited. None was offered.

3. Follow Up from May 12th Riparian Rule Advisory Committee Session

The RRAC reviewed and approved the May 12th Facilitator summary pending the following changes:

- Change *criteria* to *criterion* in bullets on page 2.
- Change *within* to *just outside of* in Mary Scurlock's statement in the second paragraph on page 5.
- Remove *of ¼ acre gap* from Mary Scurlock's statement in the sixth paragraph on page 5.
- Change *foresters* to *landowners*, and remove *some of* in the first paragraph on page 6.
- Change section title and associated references from *Fish Habitat Database (FHD)* to *Fish Habitat Distribution database* on page 8.
- Clarify that Jon Bowers works work ODFW and not ODF on page 9.
- Move *of* to follow *downstream* in the fourth paragraph on page 9.

Peter Daugherty, ODF, shared that this is the last RRAC meeting on policy topics, and that the RRAC has gotten to consensus on a number of topics, however, has not come to full consensus on the Fish Habitat Distribution database, well distributed, or relief concepts. Peter noted that the RRAC will continue discussions on these concepts today; aiming to clarify where there is agreement and where there is not. Where the RRAC comes to consensus, the Department of Forestry (ODF) will make a decision for the recommendation, which will be provided to the Board of Forestry (BOF). Before ODF goes to the BOF with recommendations, they will allow RRAC members to review the characterization of the areas of agreement/disagreement to make sure that are accurately represented.

4. Fiscal Impact Statement/Economic Analysis

Peter presented the results of the fiscal impact assessment and the statement that will be presented to the BOF in September. He walked the group through the *Draft Riparian Rule Economic Impact Analysis* so that the RRAC was familiar with the content. He explained that the information contained in the assessment is the same as presented in the PowerPoint discussion at the April 15 meeting. The analysis model the rule change by adding 30 feet of buffer on both sides for both small and medium streams. For the analysis, they ran the model using all streams, and then scaled it back 25-35 percent to scale the answer to the estimated proportion of small and medium Salmon Steelhead and Bull Trout (SSBT) streams in the geographic regions.

Heath Curtiss, Oregon Forest Industries Council, suggested that it is possible that the cost of implementation will be greater than estimated as operators may need to err on the side of a larger buffer as to not violate the rule, thus the assumed 72-foot buffer will likely be between 72 and 80 feet. Peter noted that Heath's claim assumes that all landowners choose to use the 'no-cut' option versus the 'variable retention' option under the new rule. Peter continued that the assumption for the old rule within the analysis is that all landowners chose the variable retention option, and under the new rule, they all choose the no-cut option. Peter noted that ODF considered the assumptions to be reflective of a

‘conservative’ approach that ODF feels will illustrate the ‘worst case’ economically. Jim James, Oregon Small Woodlands Association, pointed out that this is a complex problem to assess and that the approach that ODF has taken seems to be a good one.

Peter explained the model uses a supply and demand approach and estimates the total ‘net social surplus,’ which is the sum of consumer surplus and producer surplus. He noted that there is an estimated \$99 million dollar decrease of net social surplus; this estimate includes land values. He continued to explain the expected impact to jobs: noting that impact is based on the IMPLAN estimate of 8.9 jobs per million board feet, 62-89 jobs are expected to be affected. Bob Van Dyk, Wild Salmon Center, suggested that it might be best to display this information in more of a range, as there is not a direct correlation between million board feet harvested and jobs. Bob said that he will provide additional material for ODF to consider, as well as comments on the analysis. Rob Sando, Northwest Sportfishing, asked if the analysis distinguished between raw and processed logs. Peter responded that the job effects are driven by harvest volume, with the assumption that timber supply to mills can be derived from other sources. Mary Scurlock, Oregon Stream Protection Coalition, suggested that the BOF is presented the total number of jobs and the estimated change in the number of jobs as a result of the rule.

Jim James clarified that Family Forest Landowners are small business owners as well. This should be clarified in the document. Peter acknowledged this change to be made in the document.

Peter explained the Economic Impact Assessment meets ODF requirements under Section ORS 527.714. ODF is also required to provide a Statement of Need and Fiscal Impact to the Secretary of State; the statement was also included in the RRAC packet and addresses the statutory authority, statutes implemented, fiscal and economic impact, and cost of compliance. Peter explained that ODF is expecting an increase in operating costs under the new rule.

Peter reminded the group that ODF is required to conduct a fiscal impact assessment. For this assessment, they relied on Oregon State University and ODF economists. He asked the RRAC to provide input on any clarifications that are needed in the analysis within two weeks. ODF plans to take the economic impact assessment and analysis to the BOF in September. The draft analysis will be posted to the RRAC website.

→ **ACTION: RRAC will provide input on clarifications needed to the Economic Impact Analysis to ODF by July 5, 2016.**

5. Timeline Changes and Policy Topics

It was noted that there have been some minor changes made to the rulemaking timeline. Angie Lane, ODF, noted that during a recent training the Department of Justice suggested that ODF convene the RRAC before the close of public comment, so the RRAC can review the rulemaking package that will become permanent based on any comment brought forward during the comment period. Thus, ODF decided to extend the public comment period to allow for the RRAC to meet in January/February 2017. The public hearing and written comments will be compiled into a report for the BOF and RRAC. Angie noted that at that point, only small changes can be made to the rules; significant changes in the intent of the rule would require them to start over with the process.

Angie continued that the BOF will make decisions on proposed rule language and the fiscal impact in September, 2016. Public hearings will take place in November and December, 2016, with the public comment period open from the start of the hearings to March 1st 2017. The RRAC will meet in January or February, 2017 to review the public hearings packet and rule language. In April 2017, the BOF is scheduled to adopt the new rules and in June/July 2017 the new rule will be in effect.

Seth Barnes, Oregon Forest Industries Council, voiced concern that in July, 2016 the BOF would be discussing concepts that the RRAC has not had consensus on. He suggested that in July the BOF clarifies their intent on those concepts and then the RRAC would have more information to incorporate into their discussions and rule writing. Peter shared that the Governor's Office was hoping to have the rule done before the Legislative session; however, this is not likely. Seth recognized the Governor's Office concerns, however, shared that he wants to make sure that the process allows for the best outcomes possible; he suggested that the BOF discuss policy in September, 2016 and that rulemaking is postponed until after that. Peter noted that ODF had planned to bring recommendations to the RRAC today, showing what they were planning to take the BOF in July, however, during the last meeting it was noted that additional discussion on the three policy topics was needed. Peter suggested that ODF draft rule for the topics where there is consensus, and draft language for potential alternatives on topics that may not reach consensus. The RRAC rulemaking sub-group will make sure that the language accurately captures the concepts being described; the BOF will evaluate the options generated by the RRAC and make the call from a policy perspective.

Seth Barnes continued that providing multiple rule sets to the BOF changes the tone of the RRAC discussions. Previously, the RRAC agreed to work together towards solutions, now they may need to promote their positions more strongly. Donna reiterated that the RRAC will assist in ensuring that the report to the BOF accurately characterizes areas of agreement and disagreement. Peter noted that if absolutely necessary, the process and timeline can be adjusted. Mary Scurlock expressed support for the timeline outlined and that there has been a lot of time dedicated to these discussions. She asked for clarification on what will be discussed at the July, 2016 BOF meeting. Peter noted that the RRAC actions to date will be presented, including May and potentially June meeting summaries (if approved before July 20th), with a focus on where consensus has been reached, and where it has not.

Rex Storm, Associated Oregon Loggers, expressed concern regarding the timeline and implementation on the ground, he noted that previously ODF said the rule would be implemented in September 2017 and now they are saying July 2017. He noted s this is during the summer season and thus it will be difficult to communicate the changes with operators as they will be busy. He noted that there will be a learning curve for the operators in order to learn and comply with the new rule. Angie Lane noted that in April-June, 2017 there will be a robust training program for landowners, Stewardship Foresters, etc. Mary Scurlock clarified that this coming field season, operators will be implementing projects under the old rules. Seth Barnes suggested a transition period or 'delayed effective date' for training purposes. Peter clarified that the rules will be adopted in April, 2017 and implemented in September, 2017, so there is time for training and transition. There was a question regarding when and where the training will take place, and a request for ODF to take into consideration fire season and locations to make sure operators can be there. Peter recognized the constraints and said that his staff will work with the operators to make it as accessible as possible. Donna recapped the shared interest that she heard multiple RRAC members expressing: it is important to make sure that there is time to learn the new rules so that operators know what to do to implement and have time to transition to new rule implementation.

Policy Topic Discussion

Fish Habitat Distribution database – Peter recapped that the RRAC has approximately 80% agreement on the layers that should be included in the regulatory Fish Habitat Distribution database (FHD), and some agreement on how the database should be updated. He clarified that the RRAC still needs to discuss the short- and long-term processes for updates, as well as the frequency of updates.

ODF staff drafted a *Regulatory Layer Adoption* white paper and provided it to the RRAC. The document details where the RRAC has come to agreement, what attributes are required to be included in the database, and lays out the alternatives discussed by the RRAC. Peter noted that currently, ODF bases

their regulation on ‘non-fish’ and ‘fish’ streams, and has not, up to this point, separated the streams out by species. For this reason, ODF does not have species information in those stream layers, however, ODF will need species information for the regulatory layer for the new rule.

Peter noted that the following questions need to be addressed:

1. Should ODF adopt a version of the FHD layer at a particular point of time to use as the regulatory layer or should ODF use the ODFW data layer as the regulatory version?
2. How will the current-state presence or absence of SSBT use be determined throughout the affected streams and geographic regions given existing data sets?
3. Should updates occur dynamically, as with the current ODF process for updating un-surveyed streams or systematically as formal surveys occur? Or should ODF use a combination of update procedures?
4. What happens when data sources for regulations conflict on SSBT determination?

He started by clarifying that ODF will adopt a version of the FHD database, a static layer, which will become the ODF regulatory layer. This layer will remain the same until short term updates, completed by ODF or the programmatic update, completed by ODFW. Kevin Godbout, Weyerhaeuser, thought that having an ODF regulatory database was a good idea and noted that over time, there could be a statewide regulatory database for fish. He noted that over time there needs to be better data on fish use. Rod Sando suggested State agencies can create efficiencies by working together to coordinate their various databases to make sure they are utilizing data efficiently and the data is consistent.

Peter shared that ODF drafted an update process, which is consistent with Oregon Department of Environmental Quality (DEQ) and Department of State Lands (DSL) processes. Bob Van Dyk asked if the other agencies also adopt a database and then update it internally. Eugene Foster, DEQ, noted that DEQ adopted the ODFW database and has not updated it since 2002. He stated that the DEQ would have to change their rule in order to incorporate updated maps. Jon Bowers, ODFW, said that the DSL does not make updates to the data layers themselves, they periodically have adopted new versions of the ODFW database – they have done this three times in the last fifteen years through a rule making process.

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 FHD database, which ODF can adopt via 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.

Peter shared two options to address areas where consensus has not yet be reached on the FHD. He offered:

- Scenario A – Include all stream segments in FHD (except habitat evaluation based on modelling).
- Scenario B – Include only stream segments with fish observation and downstream of observation; exclude stream segments where professional opinion was used to classify distribution.

Peter reiterated that the professional opinion segments make up ~15-25 percent of the data in the current database. Jon Bowers noted that there are potential and real overestimated habitat segments in the database. Additionally, there are a number of streams where SSBT have not been identified to date, and thus are not included in the stream layers.

Peter noted that stream segments upstream of artificial obstructions will be outside of the scope of the rule. Mary Scurlock asked for clarification as to why an artificial barrier would be considered the end of fish habitat, noting that this seems to be outside of the current policy and disincentivizes the removal of the barrier. Peter agreed that it could provide a disincentive, but said that they do not have a way to determine where the end of SSBT is in those cases. It was recognized that this is inconsistent with the current policy; however, the current policy is for fish streams, not SSBT streams. Mary noted that the SSBT were determined to be the most important fish in the stream and that if not included in the rule, valuable habitat upstream of barriers will be degraded. She said that to disincentivize the removal of a barrier is unacceptable. Bob Van Dyk asked if ODF or ODFW knows the extent of the habitat that is upstream of the artificial barriers. Jon Bowers noted that they do not have a fine point on the habitat upstream of artificial barriers, they do have some idea of habitat upstream of significant barriers; however, he was not able to give an estimate on the quantity of habitat. Bob noted that it is important for the BOF to understand the impact of the current versus historical habitat and the concept of artificial obstruction being used to determine the end of SSBT use.

Seth Barnes stated that the BOF's direction was to apply the rule where SSBT are present. Randy Hereford, Starker Forests, thought that the largest percentage of barriers are on public highways.

Peter asked the RRAC for their input on if concurrence of professional opinion should be included in the starting regulatory and/or included in the long-term update to ODF's regulatory layer. Jon Bowers explained that the ~15-25 percent of professional opinion streams are mostly streams that were identified in an exercise 15 years ago. These streams had not been surveyed, thus biologists came together to assess where SSBT could be. This exercise was done at the 1:24,000 scale for low gradient streams using topographic maps, and took into consideration known fish in other similar streams, terrain characteristics and knowledge of the area. Jon shared that there have only been a few changes to the database in the last 15 years based on professional opinion and that when surveys are conducted, it typically adds more habitat than was previously estimated to the stream layers.

Peter discussed a proposal for the short-term update process for the ODF regulatory layer, which would be focused on correcting inconsistencies between the ODF fish layers and new SSBT layer on a case-by-case basis. He provided a list of situations and potential survey options that ODF could implement. The situations discussed included:

- A. Streams where ODF has not completed end of fish use surveys.
- B. Streams where SSBT have previously been observed, and where observation exists further upstream than where end of fish use has been identified by field based survey.
- C. Streams where SSBT have previously been observed, and where that observation exists further upstream than where end of fish use has been identified by non-field based methods.
- D. Streams where SSBT have previously been identified using habitat or professional opinion, and where that identification extends further upstream than where end of fish use has been identified by field based survey.
- E. Streams where SSBT have previously been identified using habitat or professional opinion, and where that observation exists further upstream than where end of fish use has been identified by non-field based methods.
- F. Landowner identifies a natural barrier that could cause the end of SSBT use.

The RRAC members discussed the short-term update processes and suggested that both situations D and E be broken into two different situations, one for SSBT previously identified using habitat and one for SSBT previously identified using professional opinion. ODF agreed with the suggestion.

Mary Scurlock asked if some conception of the update process will be included in the rule and if details will be fleshed out in a protocol document. She noted that important parts of the update process could be stated in the rule to hardwire them in. Peter responded that the concept will go to the BOF, and details will be outlined in protocol documents which will be referenced in the rule language.

Peter described ODF's ideas around the programmatic update, noting that currently, ODFW updates the FHD layers as needed or required. Similarly, ODF will do periodic programmatic updates to their regulatory layer. ODF needs to define the frequency of these programmatic updates, as well as how the short term data layer corrections will be added to the regulatory database.

Peter offered two scenarios:

- A. Include all new stream segments in the FHD (excluding habitat evaluation based on modelling).
- B. Include only stream segments with fish observations and downstream of observation.

Peter walked the group through the pros and cons of the two scenarios, noting that ODF sees scenario A as 'bias neutral', as there will likely be some streams that are not SSBT streams included in the data and also some streams with SSBT that are included in the data. There were different interpretations of the idea of 'bias neutral' and Bob Van Dyk suggested that ODF describe the situation of both scenarios so that the BOF understands the intricacies. It was noted that 60% of the fish network (by length) is above the current mapped distribution of SSBT, however, there are not enough resources at this point to look at the streams that SSBT is below the end of fish use to move it up. It was noted that the programmatic update will attempt to capture these streams.

Peter noted that Scenario A is a starting point for the State and that they want to develop a robust case-by-case update process. He noted that with Scenario A, the programmatic update could be through documented observation and asked for RRAC input on using Category 1 or 2 data provider for those updates. The group reviewed the categories of professional opinion providers: Category 1 consists of state and federal agency biologists and Category 2 consists of non-agency biologists. A biologist is determined by the individual's position in the agency.

Mary asked for more information on the current updates to stream layers from professional opinion. Jon Bowers noted that typically updates from professional opinion consist of removing streams from the database due to confirmation of natural barriers. He continued that the ODFW stream surveys are not designed to document the end of fish use, unless there is a natural barrier.

There was inquiry as to the extent of an SSBT stream and if the determination continues up to the next barrier. Peter responded yes, if an SSBT stream is determined, the extent of the habitat would continue up to the next natural or human-made barrier, or the end of surveyed segment. He continued that if a survey is conducted and SSBT are observed, the entire length of the survey would be included as a SSBT stream.

Seth Barnes reiterated that the buffers need to be based on SSBT presence and that ODF is outlining a good process to reconcile the professional opinions moving forward. Jim James agreed, noting that if there is assurance that future stream segment additions are documented observations only and there are provisions to correct errors in the database, then he can support Scenario A as a starting point. He continued that the BOF is requiring that SSBT streams are protected and that he wants to make sure that the layers are as accurate as possible. Kevin Godbout echoed Seth and Jim, and added that the update processes add in the flexibility that they desired. Kevin stated that in terms of using Category 1 or 2 data

providers, he is fine either way as long as the surveys are done in cooperation with the agency to ensure some level of impartiality. Jon Bowers noted that ODFW has always been involved in any change made to the database. Bruce McIntosh, ODFW, said that the collaborative approach of using both Category 1 and 2 is necessary because if ODFW had to do it all they would not be able to get the data for updates.

Bob Van Dyk expressed concern that there may be quite a few SSBT streams that are outside of the dataset at this point and that this will be difficult to reconcile over time. He suggested that this is part of a longer term, systemic issue. Bruce acknowledged the larger issues; he noted that 25 percent of the habitat surveys are outside of the known habitat, however and that is where we pick up new SSBT information. Jon Bowers added that there are side tributaries that will likely not be surveyed.

It was noted that ‘documented observation’ could be of fish or fish habitat and the group generally supported using habitat observation to determine the end of fish habitat. Jon Bowers noted that only 1-2 percent of the habitat in the database is habitat observation based. Mary Scurlock noted that the observation of habitat needs to be included in the process to include the segment of stream from the end of observation up to a natural barrier. Jon Bowers noted that the ODFW surveys are not designed to determine the end of fish habitat, thus they do not document up to the end of fish habitat. Instead, they are trying to determine if fish are using the area and the suitability of habitat. Bob Van Dyk asked what happens outside of the survey area if it is clearly still SSBT habitat, will habitat observations be sufficient data to add the stream segment to the database. Heath Curtiss suggested that the habitat above the end of the survey point is not added to the database, however, prioritized for future surveys.

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.

Relief

Peter provided a graph indicating the additional encumbrance for parcels within the planning area. He explained that the at the time of compilation they were not able to address the parcels that are intercepted by roads, however, they will be incorporated and he does not expect that it will change the outcomes significantly. The graphs included data for all four regions in the planning area. The results show that:

- 90% of acres have 1.2% of additional encumbrance,
- 28,000 acres have greater than 4.7% marginal increases in encumbrance, and
- None of the parcels over 250 acres have as much as 5% additional encumbrance.

Peter asked the RRAC where the line should be drawn to allow for relief. He recapped previous RRAC conversations in which the group talked about tradeoffs such as granting encumbrance to landowners based on the percentage of land affected. The RRAC also discussed the percentage of SSBT stream miles under each category of encumbrance. ODF staff is working to determine the number of landowners affected versus the number of stream miles that would not get SSBT protection under the relief stipulation.

It was suggested that ODF add the number of landowners granted relief to the table presented to the BOF. Peter noted that this was taken out because the calculation was adjusted, however, they could add in the number of parcels. Mary Scurlock noted that the numbers of landowners impacted is important, because if the numbers are small, they may be able to have a more targeted response instead of a programmatic exemption. There was also consideration of the amount of land owned by those impacted. Peter reminded the group that the BOF asked not to separate out the landowners by ownership type; however, one could use acreage as rough surrogate.

Jim James suggested that it would be helpful to understand both the ecological and economic impacts; he noted that even if there is not agreement, they will have a better idea of the impact and balance needed. Peter agreed that ODF will assess the number of SSBT stream miles that are impacted. Peter checked for consensus on the approach to try and balance the economic and ecological impacts. Mary Scurlock noted that it is important to determine what constitutes an 'undue regulatory burden', noting that the relief is intended for those who are unfairly burdened by the new rule. She continued that this is an important decision, which establishes precedent. This new rule is the first significant adaptive management event that has come up in a while and it should not be watered down before it is implemented. Mary continued that they should not back into the relief based on how many landowners are impacted; instead, they should be looking at the small landowners who are unfairly impacted. She said that this rule will provide increased buffers on only 25 percent of streams, and there is good evidence that the increase is also needed on the remaining 75 percent however, adding exemptions now to those 25 percent of streams will limit options in the future. Bob Van Dyk echoed Mary's concerns around precedent-setting. He noted that they need to consider how much of the resource goal is being jeopardized through the relief program.

Rod Sando noted that these incremental disagreements lead to large scale ecological degradation. He suggested that if this is an economic issue there are ways to address it other than at the cost of fish habitat; he suggested considering tax breaks or subsidies. Rod thought that the relief should be applied to small family landowners, not large multi-million dollar companies; if someone can afford the new requirements they should not erode fish habitat to limit that impact. Peter noted that ODF had not yet considered basing the relief on need and means. Jim James noted that for some of these landowners these trees are important assets.

Bob Van Dyk reminded the group that they have not yet come to agreement on what constitutes 'relief'. Peter noted the BOF suggested a 10 foot decrease to the no-cut area. It was pointed out in previous discussions that the variable retention option allows for more relief. Peter proposed a hybrid approach at the May meeting which included a proportional reduction in basal area requirement. He noted that he thought that there was some level of agreement on this; however, more information was needed regarding the stream miles impacted before a decision could be made.

→ **ACTION: ODF will do an economic/ecological comparison of the impact of relief. ODF will discuss the results with interested individuals and then bring the concept back to the RRAC.**

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.

To illustrate what this could look like on the ground, Peter provided three examples of what the distribution could look like based off of previous RRAC discussions around potential criteria for determining well distributed. The examples that Peter provided were based on having a minimum of 25 percent basal area and 50 percent conifer live tree requirements (CLT) in the outer zone. He suggested that these requirements could be measured in 40x500, 30x333, or 40x250 foot sections, the only difference is in how the unit is laid out.

Dana Kjos and Seth Barnes noted that it is important to make the rules clear and simple enough that a forester can lay out the plan and someone can walk out into the forest to check and see that it was done correctly. It was noted that when laying out the plan, the forester will need to clearly mark where they started the length measurement so that it is clear where the measurement was taken. Randy Silbernagel, noted that this is only possible if there is enough basal area to meet the requirements.

The group noted that the basal area requirement would still be evaluated every 1000 feet, and the different length requirements could cause confusion. Jim James expressed that this approach is too complicated for family foresters to implement. He suggested a more simple approach using only the outer edge for well distributed trees, where 25 percent of the BA and 50 percent of the CLT are required in the outer 20x500 feet of the RMA. Mary Scurlock asked why they would measure BA and well distributed using two different lengths; she suggested using 500 feet to measure both. There was a lot of discussion around the rationale behind using 500 and 1,000 feet.

Bob Van Dyk mentioned a gap size limit, which was previously discussed by the RRAC. Seth Barnes noted that it is difficult to measure the gaps, however, distribution is easier to measure on the land. Seth recapped that there was concern that the 1,000 foot interval for measuring BA allowed too much of opportunity to create large gaps, thus the 500 foot interval was derived. Seth suggested that when coupled, the well distributed metrics and narrative statement are sufficient to limit the gap size and ensure trees are well distributed. Seth continued that the goal for OFIC is to make sure landowners can layout a cut without so much work that it makes the cut economically inviable.

The landowner-representatives met in caucus and discussed the potential 500 foot segment requirement. They returned to the large group and noted that the precision is difficult to hit, however, in interest of moving forward, they proposed using the 500 foot length for both the basal area and the well distributed requirements. Peter clarified that both the BA and well distributed will be measured in the 500 foot increments, and all of the criterion would be scaled to 500 feet; the narrative language for well distributed would remain the same.

Mary Scurlock noted that this does not eliminate concerns over basal area, however, noted that she could live with it. Bob Van Dyk expressed concern over the potential to 'pack and whack' and asked that they discuss a bit more about how this will be monitored in the future, requesting compliance monitoring to make sure that the intention of the rule is being met. Peter noted that there will be a 5-year rule review and a compliance review could be part of it. There was push back, from landowner representatives, who

noted that the intention of the rule is to protect stream temperature, thus the temperature of the stream should be reviewed, not the compliance of the well-distributed.

- **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.**

It was noted that Rod Sando and Dick Courter were not present for the consensus vote. Peter will follow up with them on this concept.

- **ACTION: Peter will explain the RRAC's decision on the 500 foot increments to Rod and Dick to see if they support the decision.**

6. Discussion on Concepts -“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. Seth Barnes 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 as a result 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. Paul Betts, Miami Corps, noted that the language as is has enough flexibility to implement on the ground.
 - Mary Scurlock noted that she would be interested in a reduction in the limit of allowed variability, noting that this is a revised shade standard.

7. Draft Rule Language

The RRAC did not review the rule language, however, draft language was provided to them and comments can be sent to the project manager.

8. Public Comment

Public comment was invited. None was offered.

9. Next Steps

Peter noted that ODF has enough material to start drafting rule language for all of the concepts. ODF staff will draft language and send it out to the RRAC by July 1st. Peter asked that RRAC members review the language and send comments back to ODF by July 15th. DS Consulting will help schedule a sub-committee meeting for July 22nd. The sub-committee will work to clarify areas of disagreement for the BOF report. Heath pointed out that substantive issues should be addressed by the full RRAC; there was general support for this. It was clarified that the subgroup will be focused on clarifying the language, not the policy. The RRAC will have the opportunity to identify the issues prior to the sub-groups work.

Peter suggested that the sub-committee consist of Mike Barnes, Dana Kjos, and Bob Van Dyk. The RRAC will review the work of the sub-committee prior to presenting it to the BOF. Bob Van Dyk requested the opportunity to check in with Mary Scurlock and Rod Sando and to look into his availability. Peter thought that the sub-committee work would likely be a 4-6 hour commitment. Heath Curtiss asked if others can attend to help with the drafting of the language, he suggested Mary and himself. Mary was not available and Donna suggested that the DOJ attorney may be available to help.

DS Consulting will incorporate edits to the May Facilitator's Summary and a final draft will be posted online. They will also provide a draft summary of the day's meeting to the group for review.

With that, Peter and Donna thanked the RRAC for their participation and the meeting was adjourned.

[Facilitator's Note: this summary was approved by the RRAC via email. Dick Courter, OSWA, abstained from weighing in on the consensus vote, as he was unable to review the summary.]