

STAFF REPORT

Agenda Item No.:	9
Work Plan:	Private Forests Work Plan
Topic:	Water Quality Protection
Presentation Title:	Riparian Rules/SSBT Rulemaking Update
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SUMMARY

This agenda item presents an update on the Riparian Rules/ Salmon-Steelhead-Bull Trout (SSBT) Rulemaking. Per Board of Forestry (Board) direction, the department established a Rulemaking Advisory Committee (Attachment 1). The department contracted with DS Consulting, a professional facilitation firm located in Portland, Oregon, to facilitate advisory committee meetings. The department and DS Consulting drafted a committee charter and operating principles for review by the advisory committee (Attachment 2). The advisory committee reviewed and revised the charter at their first meeting (February 19, 2016) and approved it at their second meeting (March 22, 2016). 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 November 2015 decision (Attachment 3) on elements of the final riparian prescription package for new riparian protection standards for small and medium fish streams in western Oregon outside of the Siskiyou region.

The advisory committee time line includes four meetings from February through May, during which the committee will provide feedback on needed policy clarification and rule language. The department is using that input and advice to develop draft rule language and policy recommendations for the Board. When the committee does not reach consensus, the department will describe and address the full range of committee views when bringing recommendations to the Board. The department expects to bring policy recommendation, draft rule language, and documentation of the advisory committee input to the Board in July 2016.

CONTEXT

The Board of Forestry's 2011 Forestry Program for Oregon supports an effective, science-based, and adaptive FPA as a cornerstone of forest protection on private lands in Oregon. The Board's guiding principles and philosophies includes a commitment to continuous learning, evaluating, and appropriately adjusting forest management policies and programs based upon ongoing monitoring, assessment, and research (Value Statement 11). The Board values broad-based, informed public participation and consensus-based decision-making whenever possible (Value Statement 10).

BACKGROUND

At their November 5, 2015 meeting, the Board adopted a final riparian prescription package for small and medium fish streams in western Oregon. The package describes the elements that need to be included in rule language. Specifically, the decision applies to small and medium Salmon, Steelhead, and/or Bull Trout (SSBT) streams that are located in the Coast Range, South Coast, Interior, and Western Cascades FPA geographic regions.

The Board also directed the department to establish a Rulemaking Advisory Committee:

The Board directs the department to appoint a rule making advisory committee that includes the stakeholders and agencies, who have participated in the rule analysis process. The department should make a good faith effort to ensure that the committee's members represent the interests of persons likely to be affected by the rule.

ANALYSIS

The department discussed the composition of the rule advisory committee with stakeholders, Regional Forest Practice Committees, agencies, and the Governor's Natural Resource Office. Advisory committee members (see Attachment 1) include the stakeholders, Regional Forest Practice Committee members, forestland owners, and agencies, who have participated in the rule analysis process. The department included forestland owners and owner representatives to ensure that the committee's members represent the interests of persons likely to be affected by the rule.

The Board's adopted riparian prescription package for small and medium fish streams in western Oregon describes the elements that need to be included in rule language. Specifically, the decision applies to small and medium Salmon, Steelhead, and/or Bull Trout (SSBT) streams that are located in the Coast Range, South Coast, Interior, and Western Cascades FPA geographic regions. The Board decision specified riparian buffer width on these streams of 60 feet for small streams and 80 feet for medium streams that meet the above criteria. The decision describes several final harvest prescription options for the riparian management areas (RMA), including a no harvest option and variable retention harvest option, with leave tree requirements.

While the Board has described elements of new standards, there are certain components that require clarification of policy. These issues include:

- How to define/identify SSBT streams as a subset of ODFs small and medium fish-bearing streams?
- Defining the approach of extending standards within the immediate harvest unit above the end of mapped SSBT streams, along the main stem of fish-bearing streams.
- Defining well distributed throughout the RMA.
- Implementing the decision that "all current rules that apply to Small and Medium Type F streams not mentioned above continue to apply (e.g., trees leaning over the channel).
- Definition / verification of a parcel, and definition, determination of encumbrance,

and equity relief.

- Defining South-sided buffers and determining the appropriate geographic scale for applying this option.

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's November 2015 decision on elements of the final riparian prescription package for new riparian protection standards for small and medium fish streams. The department anticipates that some of the rule language will be straightforward implementation of the Board decision, while other rule language will involve clarification of policy implied by the decision and involve substantive issues.

The advisory committee's role is to 1) discuss and provide feedback on policy issues that need further clarification / decision by the Board; 2) provide feedback to assist ODF in developing/writing clear language that describes the Board's new riparian standards; and 3) discuss and provide input on the fiscal impacts of the proposed regulations.

The advisory committee understands that, under statutes and regulations governing forest practices, the Board of Forestry has final decision-making authority on all policy issues. The department is committed to considering input and advice from the advisory committee and acting on such advice to the extent possible when making recommendations to the Board. When consensus is not reached, the department will describe and address the full range of views of the committee and make a recommendation to the Board when final rules are considered.

RECOMMENDATIONS

This item is informational only.

NEXT STEPS

The department will continue to work with the advisory committee to develop rule language and recommendation to submit for Board review and approval.

ATTACHMENTS

1. Rulemaking Advisory Committee Members.
2. Rulemaking Advisory Committee Charter and Operating Principles.
3. Board of Forestry Decisions on Agenda Topic 3 Forest Practices Act (FPA) Riparian Rule Review. November 5, 2015.