

Department Recommendations: “All other rules apply” for the Salmon, Steelhead and Bull Trout Riparian Rulemaking

In February 2016 the Riparian Rule Advisory Committee (committee) was convened at the direction of the Board of Forestry (Board) to address a number of topics associated with their decision to modify riparian protection standards for small and medium streams where salmon, steelhead or bull trout (SSBT) are present (November 2015 meeting). The committee’s charter included the following work topic for members to consider:

“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.”

The committee was further charged with proposing clarifications on key policy elements of the November 2015 Board decision, including provisions relating regulatory encumbrance and relief.

The current riparian protection rules have a complex structure to address vegetation retention standards for water quality protection, and fish and wildlife habitat. The Oregon Department of Forestry (department) has worked with the committee and other key groups such as the Regional Forest Practices committees to reconcile current rules with new proposed rules. The committee was provided an opportunity to comment on the department’s decisions on how to carry current rule constructs into the new SSBT rules. This work relates to the Board’s policy decision that “all other rules apply.”

Table 1 below but summarizes key department decision points where: proposed SSBT rules differ from current small and medium fish-bearing rules (the “all other rules apply” notion), where proposed rules modify the November 2015 Board decision, and the department’s proposal for the equity provision.

Table 1: Department recommendations for salmon, steelhead and bull trout streams: how they will differ from 1994 rules for small and medium fish-bearing streams and provide landowner equity.

Topic	Current Type F Rules	New SSBT Rules	Department Rationale/Decision
How wildlife leave trees count in riparian areas of small streams	OAR 629-640-0100(11)(b) All qualifying live trees in the riparian management area may count for leave trees.	OAR 629-642-0105(16) All qualifying trees within 0-20 feet of the high water level of SSBT streams count and only 50% in the rest of the riparian management area count for wildlife trees until you exceed the basal area requirement.	The department sought to align current and new policy on wildlife leave trees in riparian management areas. Current rules broadly include qualifying trees throughout riparian management area for small streams, but cap qualifying conifers relative to the standard targets and hardwood trees beyond 20 feet of the high water level for medium streams. Board direction for SSBT streams indicated an intent to treat hardwoods and conifers equally and to cap qualifying leave trees relative to standard targets (50%) but did not indicate intent with regards to stream size or the spatial distribution of qualifying trees. The proposed SSBT rules broadly include hardwood and conifer qualifying trees within 20 feet of the high water level, but put a 50% cap on qualifying trees outside of 20 feet if stocking levels are at or below basal area targets. Trees in excess of the standard target may count without the 50% cap. The new rules apply equally to both small and medium streams.
How wildlife leave trees count in riparian areas of medium streams	OAR 629-640-0100(11)(a) All qualifying live conifer trees in the riparian management area that are in excess of the active management target and hardwoods retained beyond 20 feet of the high water level may count for leave trees.	OAR 629-642-0105(16) All qualifying trees within 0-20 feet of the high water level of SSBT streams count and only 50% in the rest of the riparian management area count for wildlife trees until you exceed the basal area requirement.	

Topic	Current Type F Rules	New SSBT Rules	Department Rationale/Decision
Conifer leave trees count based on length of operation in the riparian management area	OAR 629-640-0100(5) Per 1,000 feet of stream proportionally	OAR 629-642-0150(11) Board decision identified metrics per 1,000 feet. Prescription 2 counts conifer leave trees in 500 foot stream compliance blocks proportionally.	The smaller measurement distance was proposed by the committee to address the goal of defining of well-distributed trees in the riparian management area.
Basal Area measurements based on length of operation in the riparian management area	OAR 629-640-0100(6) Per 1,000 feet of stream proportionally	OAR 629-642-0105(11) Board decision identified metrics per 1,000 feet. Prescription 2 measures basal area in 500 foot stream compliance blocks proportionally	The smaller measurement distance was proposed by the committee to address the goal of defining of well-distributed trees in the riparian management area.
Minimum tree diameters to qualify for live conifer targets in riparian areas of small streams	Currently no minimum conifer count per distance or minimum diameter for small streams. Basal area targets currently require a six (6) inch minimum diameter.	OAR 629-642-0105(11) Specifies a minimum diameter of eight (8) inches for live conifer counts.	Adopts eight (8) inch minimum diameter for live conifers consistent with that currently used for medium streams.
Upstream extent of fish use beyond artificial barriers	OAR 629-635-0200(11)(b) Fish use currently extends upstream of artificial obstructions to the first natural barrier.	OAR 629-635-0200(11) If a mapped SSBT use ends at an artificial obstruction, SSBT protections will end at that point.	Species-specific criteria for barriers to SSBT use currently do not exist. Oregon Department of Fish and Wildlife is currently working to resolve this issue. This work will involve the department and key stakeholders

Topic	Current Type F Rules	New SSBT Rules	Department Rationale/Decision
Active placement of large wood in streams	<p>OAR 629-640-0110(4) and (5)</p> <p>Basal area of conifer logs placed in medium streams may count twice for the basal area credit, only equal credit on small streams.</p> <p>OAR 629-640-0110(11)</p> <p>Standing basal area must not be less than active management target.</p>	<p>OAR 629-642-0300</p> <p>Basal area of conifer logs placed in medium or small only counts for equal basal area credit.</p>	<p>Desire to have a more incentive-neutral approach for SSBT streams.</p>
Site specific and alternative prescriptions available to Type SSBT streams	<p>OAR 629-640-0100(6)(c)</p> <p>RMA's with less than half of required conifer stocking may use alternative prescriptions (629-640-0300), site specific prescriptions (629-640-0400) or unnamed prescription in 629-640-0100(6)(c)(B).</p>	<p>OAR 629-642-0105(9)</p> <p>SSBT RMA's with less than half of required conifer stocking of Type F streams may use alternative prescriptions (629-642-0300) OR site specific prescriptions (629-642-0700).</p>	<p>Department has desire to maintain options to actively manage RMA's needing restoration or needing site-specific considerations in light of purpose of SSBT rules.</p>
Modified version of hardwood and snag requirements to count for basal area targets	<p>OAR 629-640-0100(7)</p> <p>Places limits on the species, diameter, height, soundness and percentage of hardwoods and snags that count towards basal area targets.</p>	<p>OAR 629-642-0105(11)(g)</p> <p>Removes species and diameter limits on hardwood inclusion but maintains limitations on snag inclusion for basal area targets.</p>	<p>Board made a decision to treat conifers and hardwoods equally for basal area targets but was silent on snags. Department considered this to fall under the "all other rules apply" concept.</p>