

Oregon Department of Forestry
Riparian Rulemaking Advisory Committee
August 19, 2016

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:

Alternates present:

Mike Barnes, NW Regional Forest Practices Committee
Seth Barnes, Oregon Forest Industries Council
Eugene Foster, DEQ Watershed Management Division
Jim James, Oregon Small Woodlands Association
Dana Kjos, SW Regional Forest Practices Committee (served as proxy for Randy Hereford, Starker Forests)
Rod Sando, Northwest Sportfishing
Mary Scurlock, Oregon Stream Protection Coalition (served as proxy for Bob Van Dyk, Wild Salmon Center)
Rex Storm, Associated Oregon Loggers
Meghan Tuttle, Weyerhaeuser (alternate for Kevin Godbout)

Heath Curtiss, Oregon Forest Industries Council

Project Team members present

Meeting Facilitation

Marganne Allen, ODF Forest Health and Monitoring Manager
Keith Baldwin, ODF Forest Practices Field Coordinator
Brad Knott, ODF Forest Practices Field Coordinator
Josh Barnard, ODF Field Support Unit Manager
Peter Daugherty, ODF Private Forests Division Chief
Lena Tucker, ODF, Deputy Chief Private Forests Division

DS Consulting, Portland, OR:
Donna Silverberg and Emily Plummer

Welcome & Introductions

Facilitator, Donna Silverberg, welcomed the Riparian Rulemaking Advisory Committee (RRAC) and noted that the purpose of this session is to check for consensus on the RRAC report and the proposed rule language for Divisions 600, 635, and 642. Donna explained that the outcomes of the day's session will be reflected in the RRAC report and the facilitation team will provide a session summary, which also will be attached to the report once the committee has reviewed and approved the summary.

→ **ACTION:** DS Consulting will prepare a meeting summary for the day's session, it will be sent to ODF as a separate document within a week. If there is consensus support for ODF's proposed rule language, it will be noted within the meeting summary.

Lena Tucker, ODF, noted that ODF is not taking public comment at this time; the public comment period will begin with public hearings on November 1st and will continue through November/December. The final deadline for public comments is March 1st. Comments should be addressed to RiparianRule@oregon.gov.

Final Consensus Check: Facilitator Summary Report (version 4)

Donna noted that the RRAC provided edits on three versions of the report and tracked changes were passed back to the RRAC so that they could see how suggested refinements were incorporated. Today,

the intention is to check for RRAC member's final approval on the latest version of the report. Donna asked RRAC members to state whether or not they approved the report. RRAC members responded:

- Yes - Mike Barnes, NW Regional Forest Practices Committee
- Yes - Seth Barnes, Oregon Forest Industries Council
- Yes - Eugene Foster, DEQ Watershed Management Division
- Yes - Jim James, Oregon Small Woodlands Association
- Yes - Dana Kjos, SW Regional Forest Practices Committee
- Yes - Dana Kjos (as proxy for Randy Hereford, Starker Forests)
- Yes - Rod Sando, Northwest Sportfishing
- Yes - Mary Scurlock, Oregon Stream Protection Coalition
- Yes - Mary Scurlock (as proxy for Bob Van Dyk, Wild Salmon Center)
- Yes - Rex Storm, Associated Oregon Loggers
- Yes - Meghan Tuttle, Weyerhaeuser

Donna noted that Bruce McIntosh, ODFW, indicated via email that ODFW approved the report. Dick Courter, Small forestland owner, was not present.

➤ **CONSENSUS:** RRAC members approved the Facilitator's Report v.4 as the final report which will be submitted to the Board of Forestry.

→ **ACTION:** DS Consulting will finalize the report (including updating the report with decisions reached during this session) and send it to ODF.

Review, Questions and Answers on "All Other Rules Apply"

Marganne Allen, ODF, reported on a document that ODF put together which clarifies some aspects of the rule under the Board of Forestry's 'all other rules apply' clause. The intention was to address any conflicts or overlapping areas that need to be clarified between the old and new rules. The document does not include all of the areas of overlap, however, it does address those areas that were flagged as 'of interest' to the RRAC.

There was a question about whether the desired future condition (DFC) still applies and whether or not the new rule meets DFC. Peter Daugherty, ODF, explained that DFC does apply. ODF has not discussed how/if the new rules meet DFC yet. He noted that they have flagged this issue as something that needs to be discussed by the Board. He also noted that in the report to the Board, ODF suggested that the new rules are more likely to meet the DFC than the old rules are.

ODF's Recommendation on Equity

Peter shared that he met with Bob Van Dyk, Wild Salmon Center, and Jim James, Oregon Small Woodlands Association, to discuss the equity relief option. He noted that Bob thought equity relief should only be provided to those with more than 10% encumbrance, whereas Jim thought relief should be granted to those with 4% encumbrance. Peter explained that 10% would capture 10% of those encumbered and 4% of stream miles; the 4% would capture 30% of those encumbered and 15% of the stream miles. The two did not agree on what relief should be. From ODF's perspective, there cannot be too much exemption on stream miles and Peter thought that 15% is too much.

[Facilitator's Note: It was clarified through the Facilitator's Summary editing process that comments shared among those gathered in the room at the ODF office were not heard by all who called in on the conference line. Through the summary review process, Jim James clarified in

writing what he intended to express to the group: A 4% equity relief threshold is the correct threshold based on what we know about the impacts to fish when timber is harvested next to streams using the old riparian rules from the paired watershed studies. Science clearly shows the small temporary increases in stream temperature that may occur have no negative impact on fish, when the stream temperature is already below the numeric standard. All of the RipStream study areas were well below the numeric standard which shows small and medium streams in Oregon's forests meet the numeric standards for SSBT. The locations of the 30% of potentially effected stream miles with a 4% relief threshold are small parcels (average 21 acres) scattered throughout Western Oregon. The likelihood that even the 4% of SSBT stream miles with a 10% threshold would ever experience a harvest activity in the same window of time is extremely remote and highly unlikely. I believe it was the board's intent to provide equity relief when the impact to SSBT streams is extremely minor and of no consequence to fish. The 4% threshold is the right level for relief. These properties belong to real people who rely on the value of their forestland. In this situation, there will be no benefit to any fish species by taking more of their assets.

The recording of the session found that Rod Sando, NW Sportfishers, was in the room with Jim and disagreed with his statement and asked Jim for evidence of his claims. Jim pointed to the "watershed studies".

The facilitators feel it is important to note that due to the audio complications, many RRAC members did not hear Jim and Rod's comments nor had the opportunity to respond to them during the call. The included clarified statement was shared after the call, and while at least one other member disagreed with the written statement, the facilitation team has included them here for the record of the RRAC's deliberations with ODF.]

Peter continued that his next steps will be to work with the State Forester, DEQ and ODFW to draft an Equity recommendation to include in Division 642. Once defined, ODF will provide the recommendation to the RRAC. The RRAC understood that, for the purposes of the rule language consensus check, recommendations on the equity provision will not be included.

Final Review Draft Rule Language and Consensus Check

Mary Scurlock, Oregon Stream Protection Coalition (OSPC), noted her understanding that the RRAC did not specifically state an intent to come to consensus on every aspect of the specific rule language, and the RRAC has already exceeded expectations in this regard by resolving issues that came up for the first time during rule drafting. RRAC worked together to find solutions that everyone could live with within the sideboards of the November 2015 decision by the Board of Forestry; however, she reminded the group that, from the beginning of the RRAC, members retained the right to express differing views on issues outside of the RRAC agreements about how to implement the Board's direction. Heath Curtiss, Oregon Forest Industry Council, acknowledged Mary's point and noted that all RRAC members have made concessions in this process in order to try to reach a mutually supportable consensus. Jim James expressed that he would be deeply disappointed if RRAC members did not stand behind the agreements they made. Mary assured Jim and the group that this was not her intent in raising the issue.

The RRAC reviewed the draft rule language for Divisions 600, 635 and 642. ODF reported that they did not receive any additional comments on Division 600, however, did receive additional comments from two parties on Divisions 635 and 642. ODF walked the RRAC through the edits that ODF made in response to those comments:

Division 635

- Section 13(a-f) (pg.6): There was a question regarding the threshold for revising the SSBT database. ODF reported that the rule was clarified to state that the Board of Forestry will work with the State Forester to address changes to the SSBT database. The Regional Forest Practices Committees still may bring concerns to the Board; however, that step is not a formal part of the revision process.
- Section 12(e) (pg.5): ODF was concerned about creating unrealistic expectations regarding surveying for fish presence and they want to avoid an infinite loop of surveying. Thus, for case E, field based surveys will be conducted by ODF on request. The current rules allow for reconsideration of classification, however, does not require a re-survey.
- Section 12 (pg. 5-6): ODF clarified that ODFW has not completed new natural barrier criteria, and ODF will not be using new criteria as was previously stated. Thus, ODF will use current ODFW natural barrier criteria to verify any potential changes to end of SSBT use due to natural barriers. ODF will add a section 12(f) to address natural barriers identified by landowners.
- Section 12 (pg. 5-6): ODF will treat habitat surveys like field-based observation surveys for the purpose of establishing SSBT streams. This is because the habitat surveys are a field-based survey method.
 - Heath noted that this is a good example of where the landowner community is compromising, as they prefer actual observation as the determining criteria for SSBT streams.
 - Rod Sando, NW Sportfishers, noted that fish presence is seasonal based on their lifecycle, thus, visual observation is not reliable in and of itself for determining presence.
- Regarding human made barriers: ODF is using the FHD layer as a starting point, and decided not to address human made barriers for a variety of reasons. There will not be any exemptions for human made barriers. Segments upstream of barriers will not be exempt, nor will SSBT streams be extended upstream of a barrier (unless already included in the SSBT layer). Corrections will need to be addressed through the programmatic update process.

Division 642

- Section 629-642-0105 (pg. 6): ODF changed the language regarding general prescriptions to match current rule language stated in Division 640.
- Prescription 2 (pg. 8): ODF described concern that there was no minimum criteria for well distributed for the 20-40 foot and 20-50 foot areas of the small and medium SSBT RMAs respectively. ODF clarified that the consensus minimums for basal area and conifer trees would apply to these areas.
 - Some from the landowner community expressed concern that adding more description of the zones will increase complexity for operators.
 - Rod asked Peter if he thought this prescription would meet the cold water standard. Peter noted that the Board thought that the rule will meet the standard to the extent practicable.
- ODF described Mary Scurlock's comment and concern that alternate prescriptions will still be an option on SSBT streams under the new rule. Peter noted that alternate prescriptions are considered to be part of the 'all other rules apply' clause and are out of scope for the RRAC. Mary acknowledged that it is out of scope for the RRAC; however, she clarified the need for clear criteria for alternate prescriptions on SSBT streams.

Donna asked RRAC members to provide their level of support for the rule language, including the changes made today, and excluding the equity relief provision. She reminded them of the 1-5 scale: 1 signifies enthusiastic support; 2 signifies acceptance; 3 signifies reservations and a willingness to live with it; 4 signifies a need to register serious concerns and willingness to live with it; and 5 signifies an active block. RRAC members responded with the following:

- 2 - Mike Barnes, NW Regional Forest Practices Committee
- 3 - Seth Barnes, Oregon Forest Industries Council
- 2 - Eugene Foster, DEQ Watershed Management Division
- 4 - Jim James, Oregon Small Woodlands Association
- 3 - Dana Kjos, SW Regional Forest Practices Committee
- 3 - Randy Hereford, Starker Forests (by proxy Dana Kjos)
- 4 - Rod Sando, Northwest Sportfishing
- 3 - Mary Scurlock, Oregon Stream Protection Coalition

- 3 - Bob Van Dyk, Wild Salmon Center (by proxy Mary Scurlock)
- 4 - Rex Storm, Associated Oregon Loggers
- 3 - Meghan Tuttle, Weyerhaeuser

- **CONSENSUS:** The RRAC agreed with consensus on the proposed rule language (excluding the equity relief section) and the department's proposed modifications (all 2, 3, and 4s).

Next Steps, Timeline & Thank you!

The DS Consulting Team will finalize the report and provide it to ODF; they will also draft a summary of the day's session and provide it to the RRAC for review. ODF will finalize the rule language as discussed today and present it to the Board of Forestry in September. They will also finalize the ODF recommendation for equity relief and provide that to the RRAC as soon as possible.

The public comment period will begin with public hearings in November and end with the close of comment by March 1st. RRAC members and the public may provide additional comments at RiparianRule@oregon.gov by March 1, 2017.

Peter expressed appreciation for all of the work that the RRAC members have done to get to this point. He noted that they accomplished more than was originally expected and their efforts are greatly appreciated. With that, Peter and Donna thanked the group and the session was adjourned.

