

Oregon Department of Forestry
Riparian Rulemaking Advisory Committee- Final Session
March 13, 2017

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:

Mike Barnes, NW Regional Forest Practices Committee
Seth Barnes, Oregon Forest Industries Council
Jon Bowers, Oregon Department of Fish and Wildlife
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
Rod Sando, Northwest Sportfishing
Mary Scurlock, Oregon Stream Protection Coalition
Rex Storm, Associated Oregon Loggers
Bob Van Dyk, Wild Salmon Center)

Alternates present:

Paul Betts,
Miami Corp.
Heath Curtiss, Oregon Forest Industries
Council
Randy Silbernagel, NW Regional Forest
Practices Committee
Meghan Tuttle, Weyerhaeuser

Others:

Rod Krahmer, Oregon Department of Fish
and Wildlife
Gary Springer, Starker Forests

Project Team members present

Kyle Abraham, ODF Private Forest Deputy Chief
Josh Barnard, ODF Field Support Unit Manager
Susan Dominique, ODF Private Forests Admin. Support
Mike Lathrop, ODF, GIS Specialist
Lena Tucker, ODF, Private Forest Division Chief
Greg Wagenblast, ODF Interim Policy Analyst

Meeting Facilitation

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

Welcome & Introductions

Facilitator, Donna Silverberg, welcomed the final Riparian Rulemaking Advisory Committee (RRAC) meeting. She noted that ODF had convened the RRAC to collaboratively discuss and provide feedback on draft Oregon Forest Practices Act (OFPA) proposed salmon, steelhead and bull trout (SSBT) rule language. Oregon Department of Forestry (ODF) proposed the rules to respond to the Board of Forestry's (Board) November 2015 decision regarding new riparian protection standards for small and medium fish streams. Donna noted that, while the RRAC has completed their task, ODF asked that the group be reconvened to provide one last round of feedback on changes ODF made to the proposed rule. ODF will present the final draft rule language to the Board in April 2017.

Public Comment

Public comment was invited. None was offered.

Summary of What ODF Heard via the Public Comment Period

Josh Barnard, ODF, reported that ODF had completed its scheduled public comment period on the draft rule language. In total, ODF conducted nine public hearings and open houses throughout the affected

area. Over 200 people attended those sessions and ODF received over 500 comments on the rule proposal. He noted that ODF received form letter email comments and comments written by individuals. ODF is working to summarize the comments into themes, and they will provide written response to each of the themes. Their main task is to identify if the comments suggested anything ODF had not previously considered or addressed in the rulemaking process. While the summary was not complete at the time of today's meeting, Josh summarized the themes they have identified thus far, as well as a snapshot of ODF's planned response:

- Buffers drew a range of responses:
 - Too narrow
 - Too much of an increase (too wide)
 - Should be a no-cut zone
 - ODF Response: The Board found that the package they adopted last fall (which included the proposed buffer area) insured that, to the maximum extent practicable, forest operations would meet the Environmental Quality Commission's Protecting Cold Water criteria, considering the available science.
- Agreement with the Proposed Rules (in general)
- Need for Upstream/N-Type protections
 - ODF Response: This was not in scope of this rulemaking; however, the concern may be addressed in other areas via future monitoring work.
- Opposition to all variable retention options (North-sided, East/West, Variable retention zones)
 - ODF Response: The Board directed ODF to include active management as an option.
- The rules are too complex (and, as a result, increase cost, will result in 'no-cut' as a way to manage the complexity, and won't achieve desired future conditions)
 - ODF Response: The Board found that the adopted package represented the least burdensome alternative (as per ORS 527.714(5)(e)) and the resource benefits achieved by the package were proportional to the harm caused by the forest practices (ORS 527.714(5)(f)). Also, the rules reflected the consensus agreements of the RRAC.
- Support for hardwoods inclusion.
- Opposed to the effective date (majority stated that the implementation date was too soon)
 - ODF Response: ODF considered this input and established the current effective date based on that input.
- Request for monitoring to be a part of this rule
 - ODF Response: This will be determined in the future; ODF will address monitoring as workload and budget allows.
- The Siskiyou should be included
 - ODF Response: ODF determined it was not appropriate to extrapolate Rip Stream data for this area and so it was out of the scope for this rulemaking.
- Relief responses ranged from:
 - Change to 4%
 - Provide compensation
 - Against any exemptions
 - ODF Response: ODF and the RRAC discussed relief at length, and with lack of RRAC consensus, the Board approved ODF staff's recommendation of 8% based on the data analysis.
- Science used
 - Science used for the proposed rules was 'lacking'

- Science used supported larger buffers
 - **ODF Response:** The Board found that the adopted package insured that, to the maximum extent practicable, forest operations would meet the Environmental Quality Commission’s Protecting Cold Water criteria, considering the available science and factors, including, but not limited to:
 - (a) Beneficial uses of waters potentially impacted;
 - (b) The effects of past forest practices on beneficial uses of water;
 - (c) Appropriate practices employed by other forest managers;
 - (d) Technical, economic and institutional feasibility; and
 - (e) Natural variations in geomorphology and hydrology.

RRAC members asked about the method ODF used to process the comments and determine whether or not comments warrant change to the proposed rule language. Josh explained that ODF uses the Secretary of State’s process for processing public comments: ODF staff compiles the comments into a master list and reviews comments to pull out high-level themes. They then assess whether or not the content of the comment was addressed in the rule. If the Department finds they omitted something in the rulemaking process, they would need to incorporate that information moving forward. Additionally, they are looking for errors in the rule that would cause implementation to be different from the Board’s direction. So far, ODF has not found any substantive comments which would require changes to the rules; instead, the majority of the changes will be focused on clarifying language for ease of implementation.

Josh noted that ODF would share the themes derived from the public comment period with the Board at its April 2017 meeting. There will also be final opportunity for public testimony at that meeting. Lena Tucker, ODF, shared that they are still working on how to report the details of the comments with the Board and plan to share the proposed changes to rule language as well. She also noted that ODF would present the RRAC’s final consensus decisions from last fall, as well as the summary from this session to the Board in order to refresh their memory on the RRAC recommendations.

Proposed Rule Modifications

Kyle Abraham, ODF, reported on the proposed rule language modifications that flowed from the public comment period. He noted that most of the changes come from conversations with Stewardship Foresters and others, do not change the meaning of the rule, and seek to clarify the intent to ensure proper implementation. He noted the following suggested changes:

- 629-642-0105 - Prescription 3: Clarify requirement of a 40ft, no-cut buffer on the North side.
 - Suggested language change: “Retain all trees within 40 feet of the high water level on the north side of a Type SSBT stream.”
- 629-642-0105 - Prescription 3: Clarify the stream segment length. The RRAC consensus was for a 200ft minimum length for stream segments; however, if the stream length were over 200ft this prescription could still be applied.
 - Suggested language change: “The field-based evaluation shall measure the stream valley direction with a minimum of 200 foot stream segments. The stream segment must meet the stream valley direction criteria listed above to apply this alternative prescription.”
- 629-642-0105 (12) - Prescription 3: Clarify wildlife leave tree requirements. Trees that meet the wildlife leave tree requirements that are retained within 40 feet of the high water level can be counted as wildlife leave trees.
 - Suggested language change: “Operators may count all trees that meet the wildlife tree requirements retained within 40 feet of the high water level as wildlife leave trees.”

- 629-642-0105 (16) - Prescription 1 and 2: Clarify which wildlife leave trees can be counted for both wildlife leave trees and basal area targets. Clarify how to quantify basal area trees (count or measure?). The language was so broad that there were two interpretations by Stewardship Foresters, and ODF needed to clarify further.
 - Suggested language change: “For type SSBT streams and the mainstem of any Type F stream described in Section 3 of this rule, operators may count all trees that meet the wildlife leave tree requirements from zero to 20 feet of the high water level. Outside of 20 feet from the high water level, operators may count up to 50 percent of the trees retained to meet the basal area target as wildlife leave trees, if they meet the wildlife leave tree requirements. Outside of 20ft from the high water level, all trees retained in excess of the basal area requirements, may also be counted as wildlife leave trees if they meet requirements.”
- 629-642-0110 (1): Clarify that for assessing “relief”, encumbered acres are calculated using the total forested parcel acres (in addition to the stream area), not total parcel acres. This is consistent with how the acres were originally calculated when encumbrance was analyzed. This pertains to the actual area of the parcel that is forested and should not be seen as a proxy for zoning.
 - Suggested language change: “To determine the additional percentage forested stream area encumbered, the increase in acres is divided by the total forested parcel acres.”
- 629-642-0105 (11) - Table 5 Prescription 2: Clarify the minimum amount of live conifer trees per 500 foot stream segments.
 - Suggested language change: Add “minimum” to the number of trees required, so that people understand 7-8 trees are the minimum required for the various zones.

RRAC Input on the Proposed Changes

The RRAC reflected on these proposed changes and suggested that, from an initial review, they seem to be appropriate. Because this was the first they had seen the changes, many felt that further review of the final proposed language would be helpful in order for the RRAC to confirm the changes meet the original intent.

RRAC members wondered if there were other changes that the Department did not bring forward to the RRAC that are within the Board’s direction. ODF Staff explained they had presented all of the changes made and they do not expect any additional changes, other than minor grammatical edits. Lena noted the purpose of bringing these edits to the RRAC was to be transparent and to get the RRAC’s input.

ODF noted that they did not feel that any of the comments were significant enough to change the course of the rules; however, there still is opportunity for RRAC members, and the public, to provide input at the Board meeting in April. Again, it was clarified that the RRAC was not convened to provide ideas as to how the new riparian rule could be improved and implemented: they were tasked with providing ODF input on policy questions and review of rule language within the sideboards of the RRAC approved charter.

RRAC members were asked to provide final input and comment, those interested shared:

- Rod Sando, Northwest Sportfishing: There is still interest and need to explore options for the Department to offer some kind of financial structure or incentive for the relief, instead of limiting the rules and subsequently having a negative ecological impact on the streams. There are examples of conservation programs in Oregon and elsewhere which provide incentives to landowners from which ODF could learn. Thus far, the response to this concept has been that the legislature would be unlikely to approve these incentives; however, requesting assistance is the

first step. The entire premise of the new rules is to meet the water quality temperature requirements. Recognizing the limitations and restrictions on landowners, the State needs to work to find a solution that works for fish, water, and landowners, especially given climate change impacts and the expected duration of these rules.

- Lena agreed that it would be great to develop an incentive program; however, at this point ODF is too late for proposing language for this legislative session. She noted that Rod could ask the Board to pursue incentives. Kyle added that ODF is continuously pursuing options for incentives for forest landowners to improve riparian areas.
- Jim James, Oregon Small Woodlands Association: Would like the RRAC to reconsider his previously proposed 4% threshold for equity relief. He noted that the number of small woodland landowners and acreage affected is small, but the impact to those landowners is significant. Jim said he had presented data to those representing the conservation community and asked if any were interested in additional discussion on why 4% is a logical threshold to use. He noted that he will be presenting to the Board again, as he believes that it was their intent to provide relief to these disproportionately impacted landowners.
 - Representatives for the Conservation community thanked him for the information and agreed that this subject warrants focused attention. However, they did not believe that the prescriptions of the proposed rule were sufficient enough for water quality and fish to provide additional relief for landowners. This is a bigger issue that should be addressed through a different forum. Additionally, there was discomfort in trying to refine the percentage without more clarity on the policy direction.
- Rex Storm, Associated Oregon Loggers: Would like to urge ODF to propose a later implementation date. However, if ODF does not change the date, Rex recommended due diligence to communicate out to the regulated community as soon as possible. One of the strengths of the Forest Practices Act is that there has been cooperation between the State and those regulated. ODF needs to maintain this relationship, so they will need to make sure cooperators are familiar with the changes. Another option would be to consider implementing the new rule sooner than July, in case there is a reduction in ODF staff and resources to help implement the changes.
 - Multiple RRAC members echoed Rex's concern on the implementation date, noting that effective implementation is key to the success of the rule, there is a need for a transition plan from one rule to the next, and, without clear guidance, operators may be forced to lay out a plan twice.
- Randy Hereford, Industrial Forestlands: Given the parameters that the RRAC was working within, ODF (and the RRAC) did a good job. The rules are complex, but we will figure it out.

Update on SSBT Stream Layer

Mike Lathrop, ODF, provided an update on the SSBT stream layer. He shared that, to create the layer, ODF used ODFW fish habitat distribution database and applied ODF mapping standards and best practices. They then overlaid the data with ODF "fish presence" data and filtered it to reflect where ODF "fish presence" meets ODFW "SSBT" streams. Additional screening was conducted for data integrity and quality.

Mike provided an example of the filtering process that they went through and explained that all of the agreed upon criteria for the ODF SSBT streams is included in the stream layer, including habitat observation. Jon Bowers, ODFW, reminded the group that, a year ago, roughly 80% of the fish habitat distribution stream miles were opinion based. Now they have reduced that to 20% and continue to improve the layers. In regards to the layers used, it was noted that, because ODF did not previously have a SSBT layer and ODFW does not distinguish the size of stream, they (ODF) had to create a subset of

SSBT streams. This means that the actual layers may be slightly off because they are from separate databases.

ODF is still working to finish up the layer and is conducting quality assurance to get the datasets as accurate as possible. The layer is expected to be complete sometime in April or May, pending ODFW updates and ODF processing time. RRAC members suggested that the sooner the maps are available the better. While ODF and ODFW understand the need for urgency, they also need to make sure that the data and maps are as accurate as possible. The layer will be provided via FERNs and those with capacity may download the GIS layer into their GIS database. ODF is also working to create a way for small landowners to see the SSBT layers outside of FERNs. Once available, Lena will send out the links to the maps and RRAC members will help distribute them to their constituents.

Next Steps, Timeline & Thank you

Lena noted that they are starting internal training for ODF staff in March with the caveat that the Board will decide whether or not to approve the proposed rules, and could make changes in April. While the timing is a bit off, they need to get rolling in order to meet the timeline needs discussed by RRAC.

Josh asked for input about the best way to provide training to the landowner and forester community. He explained that originally, ODF had envisioned a 1 to 1½ day training. However, they had heard from field that might not be the best format. Now, ODF is exploring: a 1½ day training with field and office segments; a full day training; or a morning session in office with a Stewardship Forester. RRAC members responded:

- Do not make it more than one day of training; 1-2 hours would likely be best.
- Include both in office and field options.
- Include both Stewardship Foresters and landowners at the same meeting so that they can build understanding on how the rule will be interpreted and enforced.
- Create a 1-page brochure for small family landowners who do not have time for training or do not need the information immediately.
- Provide one-on-one assistance when cooperators are going out to do the work.
- Have follow-up conversations on monitoring and enforcement.

ODF staff thanked the RRAC for all of their input. They noted that the Board meeting will be on April 26th and staff will present a public hearing report, as well as the proposed rule language. Pending direction from the Board, ODF hopes to file the proposed rule language on May 15th. It would then be published on June 1st. Updated rules will be posted on the website and a link will be provided to landowners, ideally, before any training is held. Formal written publications will be revised in January 2018.

DS Consulting will provide a draft summary of the session to the RRAC for review and approval prior to it being shared with the Board in April.

Lena gave thanks to the RRAC for their efforts today, noting that they helped ODF think through key remaining items. Additionally, she thanked each person for being a RRAC member as it was incredibly helpful to have their minds on the topics that ODF was dealing with.

Donna thanked everyone for their efforts and the RRAC was officially adjourned.