

STAFF REPORT

Agenda Item No.:	7
Work Plan:	Private Forests Work Plan
Topic:	Water Quality Protection
Presentation Title:	Riparian Rules/SSBT Rulemaking – Final Rule Language
Date of Presentation:	April 26, 2017
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SUMMARY

This agenda item presents final rule language and necessary supporting documentation for the Riparian Rules/ Salmon-Steelhead-Bull Trout (SSBT) rulemaking. Upon direction and approval from the Board of Forestry (Board), the Department of Forestry (department) will complete any final edits and file the final rules with the Secretary of State's office (SOS).

Following the September 2016 Board meeting, the Department initiated the public comment period for the SSBT rules. The Department held nine public meetings throughout the affected geographic regions, which consisted of an open house session followed by public testimony on the proposed rules. In addition to the comments provided during these nine events, the Department also received comments via mail and email. The Riparian Rulemaking Advisory Committee (RRAC) met in March to review and approve minor rule changes, hear preliminary themes from public testimony, and receive updates for implementation of proposed rules, thus completing the work of the RRAC.

The department is requesting approval from the BOF on the final SSBT rules (Attachment 4) along with the rule housekeeping package (Attachment 5) and asks the BOF to direct the department to file the final SSBT rules with the SOS.

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 bearing streams in western Oregon. The package described the elements to include in rule language. Specifically, the adopted decision applies to small and medium SSBT streams that are located in the Coast Range, South Coast, Interior, and Western Cascades Forest Practices Act (FPA) geographic regions. The Board also directed the department to establish a rulemaking advisory committee.

The rulemaking advisory committee's role was 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.

Discussion focused on remaining aspects of the Board's decision package, including:

- Oregon Department of Fish and Wildlife's Fish Habitat Distribution database and how that relates to determination and location of SSBT streams;
- The meaning and criteria for "well-distributed" throughout the riparian management area;
- Equity relief;
- Issues with Board direction that "all other rules apply;"
- Rule language structure within the FPA; and,
- Draft Economic Impact Analysis and Statement of Need and Fiscal Impact.

The RRAC met eight times in total, once each in the months of February, March, April, May, and June; a subgroup of the RRAC meeting in July, August and a final meeting in March 2017. The purpose of the March 2017 committee meeting was to review and approve minor rule changes, hear preliminary themes from public testimony, and receive updates for implementation of proposed rules completing the work of the RRAC. The RRAC reached consensus on all major policy topics, except equity relief. The RRAC approved the facilitator report (Attachment 2), which captures the full history of RRAC proceedings and was asked to review and provide input on the draft Economic Impact Analysis and Statement of Need and Fiscal Impact for the proposed rules. The Department would like to thank the RRAC for their dedication to the process and work to find solutions.

As discussed at the September 2016 Board meeting, the Board directed the department to move forward with formal administrative rule making for the SSBT rules following the SOS process. The department initiated the formal comment period, held nine public hearings, and received both mail and email comments on the proposed rule language. In addition, as required by ORS 527.714(7), the Board reviewed and accepted the economic impact analysis's of the proposed rules at the January 2017 meeting.

ANALYSIS

The department has reviewed and compiled all comments received during the public comment period, which closed at 5:00 p.m. March 1, 2017. The department has summarized and provided responses per the comments received (Attachment 1). Staff and field review of the proposed SSBT rules identified minor changes need to clarify the rules. The department reviewed proposed rule language edits with the RRAC (Attachment 2). This work resulted in the rules (Attachment 4 and 5) presented to the Board for final approval of rule language.

RECOMMENDATIONS

The department is requesting approval from the BOF on the final SSBT rules (Attachment 4) along with the rule housekeeping package (Attachment 5) and asks the BOF to direct the department to file the final SSBT rules with the SOS.

NEXT STEPS

- 1) The department will file the final rules with the Secretary of State's office and Legislative Counsel in order to complete the rulemaking.

ATTACHMENTS

- 1) Summary of public comments and responses.
- 2) Final meeting summary: Riparian Rulemaking Advisory Committee March 2017 (Prepared by DS Consulting).
- 3) Reader-friendly version: Proposed rule language - OAR Chapter 629 Division 642.
- 4) Rule language for submission to Secretary of State.
 - a. OAR Chapter 629 Division 600
 - b. OAR Chapter 629 Division 635
 - c. OAR Chapter 629 Division 640
 - d. OAR Chapter 629 Division 642
- 5) Rule language "housekeeping" package for submission to Secretary of State.