



# **Private Forest Accord Rulemaking**



# **Adaptive Management Program Rules**

# Adaptive Management Program key to HCP

Program Purpose:

1. Apply best available science in Board decisions
  - Rules effective in meeting Biological Goals and Objectives (BGOs)?
  - Validity of BGOs, methods for designing rules



# Adaptive Management Program key to HCP

Program purpose continued:

2. Timely, effective change to meet BGOs
3. Predictability, stability of rule change process
4. Meet BGOs with less expensive Rx when feasible



# Adaptive Management Program

## Biological Goals and Objectives (BGOs)

- Key to Adaptive Management Program
- Goals: desired future conditions of HCP
- Objectives: measurables to achieve Goals



# The Adaptive Management Program Committee (AMPC) Participants

1. Oregon Forest and Industries Council
  2. Coalition of Oregon Land Trusts
  3. Associated Oregon Loggers
  4. A conservation organization
  5. Oregon Small Woodlands Association
  6. Commission on Indian Services
  7. Recreational or commercial angling organization
  8. Association of Oregon Counties
  9. ODFW
  10. DEQ
  11. ODF\*
  12. USFWS\*
  13. NOAA/NMFS\*
- \* Non-voting members



# AMP Participants

## Independent Research and Science Team (IRST)

Odd # of members, at least 5 including 1 each:

1. A public institution
2. Timber industry
3. Freshwater aquatic conservation NGO



# AMP Participants

AMPC and IRST:

- Self-developed charters
- May receive participation grants
- Super-majority votes



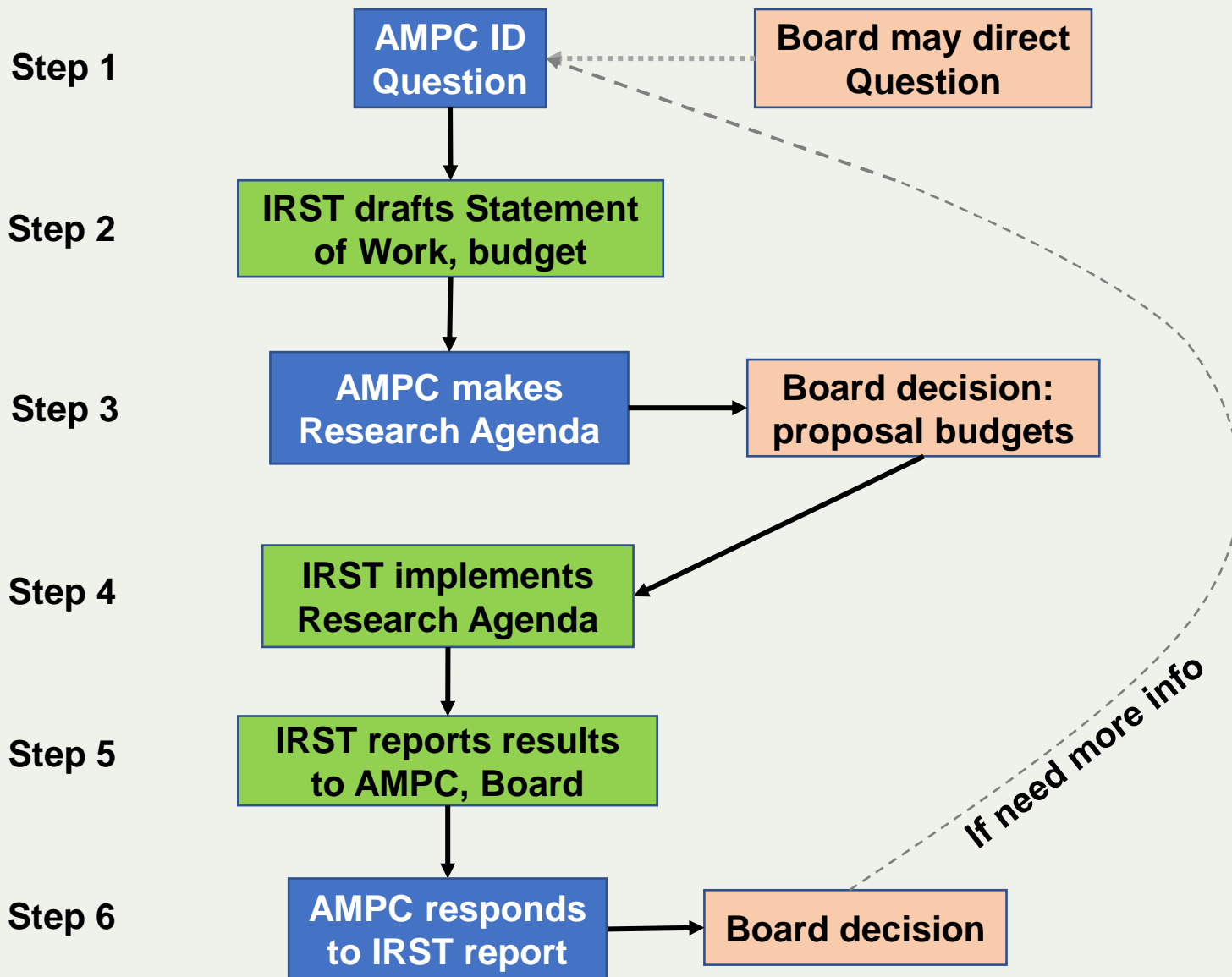


# AMP Participants

- IRST supported by contracted public body (OSU/INR = first)
- ODF supporting Program via Coordinator
- Accountability via performance audits, annual reporting



# Adaptive Management Process Steps





# **Notification of Completion & Compliance Monitoring Program**

# Notification of Completion

## Goal:

- Improve Compliance Monitoring Program implementation by requiring landowners to notify of completed operations.



# Notification of Completion

## Objective:

- Create process for landowners to report on the completion of activities.
- Improve sample set available for compliance monitoring assessments.



# Rule Division 629

This will be an addition to existing rules in  
Division 629-605-0150

Notification to the State Forester - When,  
Where and How.



# Rule Division 629-605-0150

## Landowners will need to...

- Notify by the end of the calendar year of the notification.
- If original notification is extended, report by the end of the calendar year of the continued notification.
- Report out on each notified activity



# Compliance Monitoring Program





# New Division 678

A new rule division has been created for the Compliance Monitoring Program.

- New Compliance Monitoring Program framework outlined in rule.



# Purpose & Goals

1. Assess rule compliance and report findings (Board of Forestry, legislature, and federal services).
2. Identify areas needing improvement for training purposes
3. Increase the public's trust in the implementation of the Forest Practice Act and Rules.



# Administration

Department staff, contractors or both.

Stakeholder group (Not limited to department staff, landowners, tribes, and public representative)

Board of Forestry may direct analysis



# Administration continued

**New:** Forest landowners will accommodate access.

**New:** State Forester may petition the circuit court with jurisdiction for warrant authorizing access.

Landowners will be notified before assessment



# Administration continued

New draft rules will increase statistical rigor compared to past efforts.

- Statistician involved in study design and analysis
- Notification of completion and site access



# Priorities

Compliance Monitoring Program will prioritize the following rules:

- New Water Protection Rules – Division 643
- New Harvesting\_Rules – Division 630
- New Forest Road Construction and Maintenance Rules – Division 625
- Other rules as directed by Board



# Reports

Program shall provide information to support

- Any required reporting to the federal services in support of a habitat conservation plan
- Annual report to the public on the overall habitat conservation plan performance



# Reports continued

Program shall provide information to support

- Two-year report summarizing the results and progress on efforts
- Eight years an aggregate cumulative report that includes compliance trends
- As directed by the board







# **HARVESTING ON STEEP SLOPES**

# Goal

Provide high-quality habitat that supports the recovery, protection, and long-term conservation of covered species on private forestlands



# Objectives

## Leave trees:

- In slopes model designated areas to deliver materials for fish stream habitat and provide non-fish stream habitat for covered species.
- In field identified areas to reduce timber-harvest-related mass wasting events to fish streams and to contribute large wood to fish streams.
- On unstable steep slopes next to fish streams to provide slope stability and large wood for habitat.



# Rules Changes

- Division 600 Definitions
  - 17 new definitions
- Division 630 Harvesting
  - Purpose
  - Steep slope areas
  - Small Forestland Owner Minimum Option
  - Written plan
  - Minor rule edits for Accord alignment

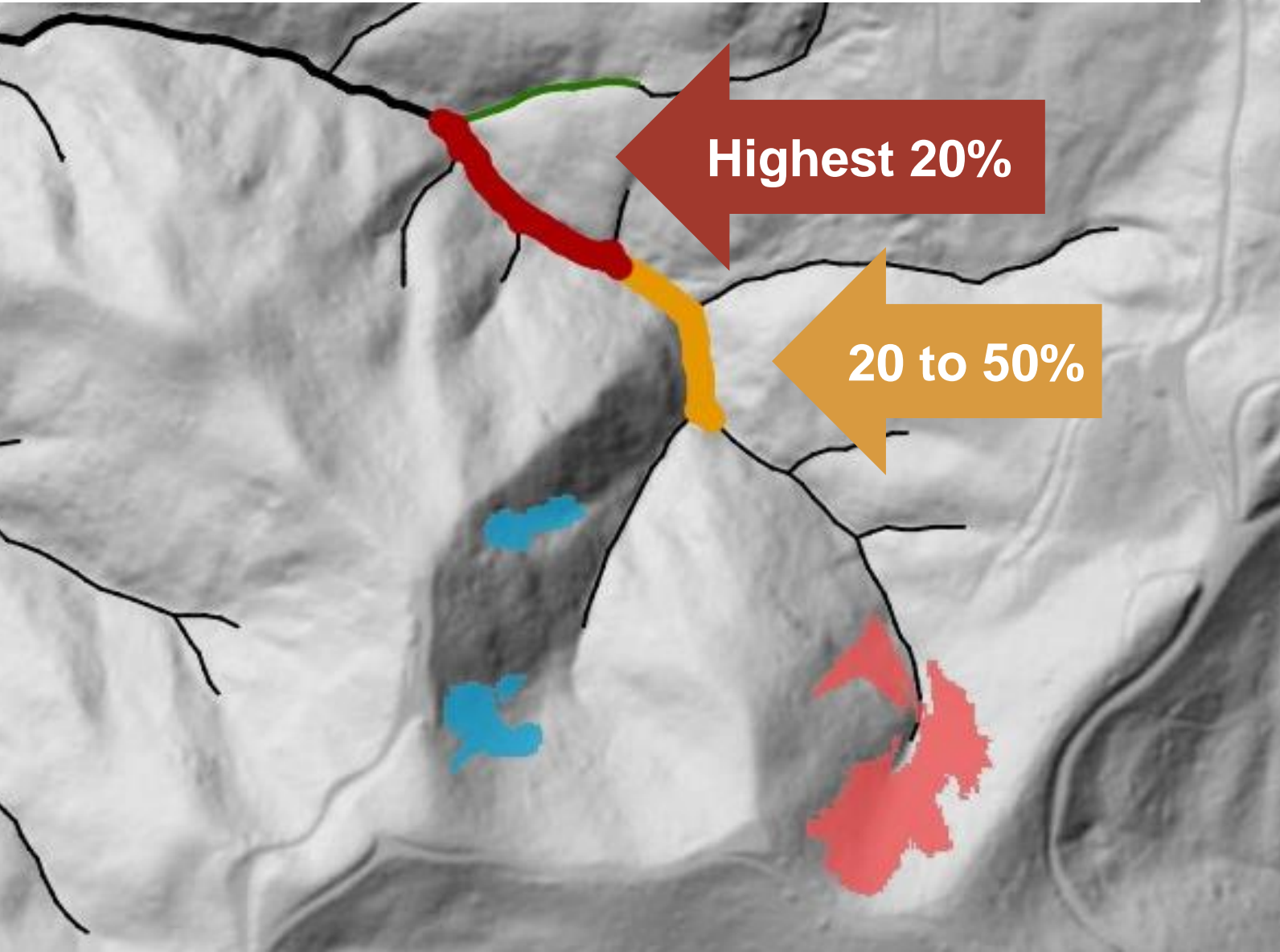


# Designated Debris Flow Traversal Areas

- Western Oregon
- E-Notification displays the **Slopes Model** designations
- Slopes Model persists with stream changes



# Designated Debris Flow Traversal Areas

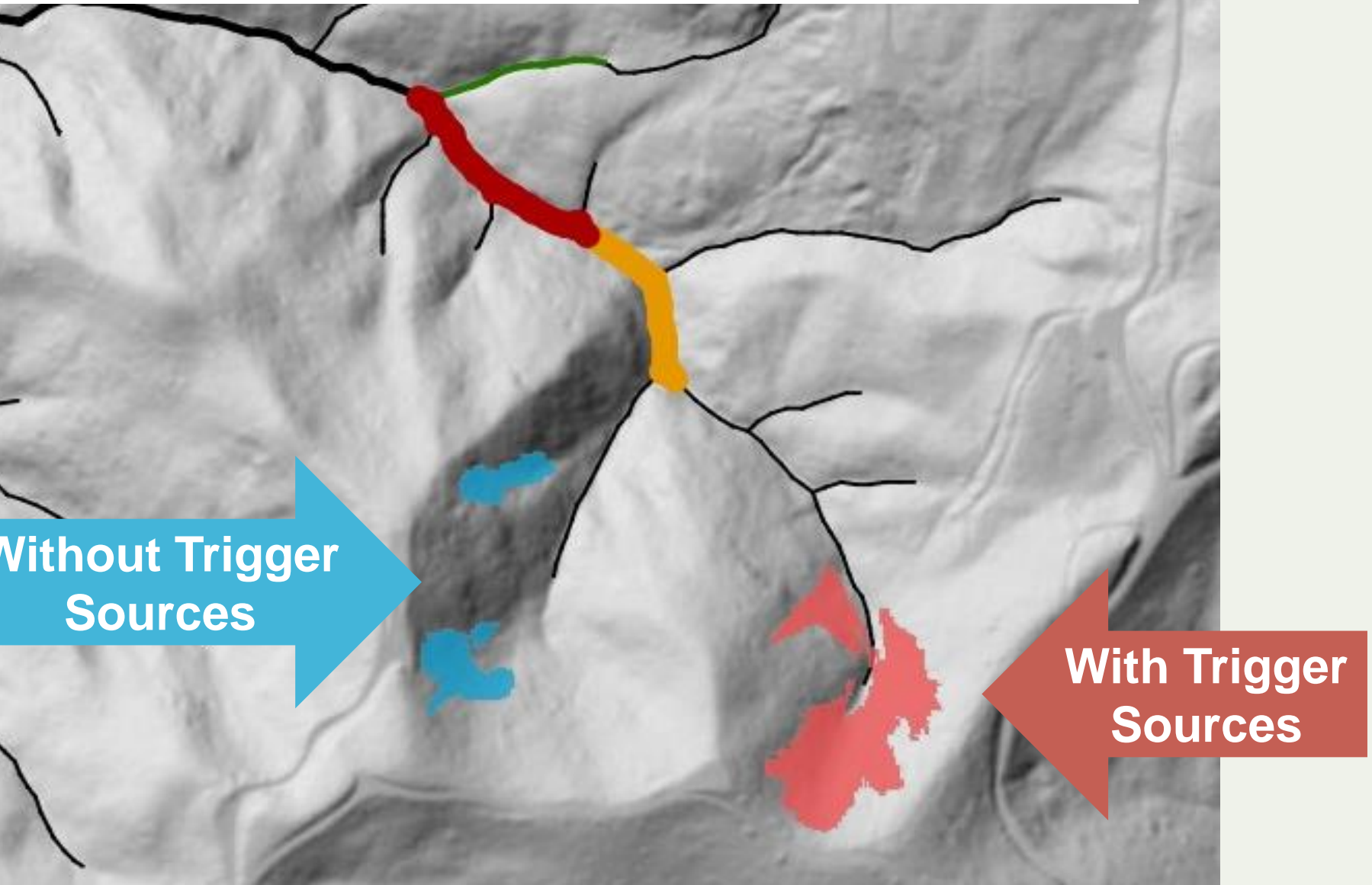


# Designated Sediment Source Areas

- Western Oregon
- E-Notification displays the **Slopes Model** designations
- Slopes Model persists with stream changes
- *Not required for forestland under the Small Forestland Owner Minimum Option*



# Designated Sediment Source Areas





# Slope Retention Areas

- Western Oregon
- 50% of Designate Sediment Source Areas
- **Field identified** and prioritized areas
- *Not required for forestland under the Small Forestland Owner Minimum Option*

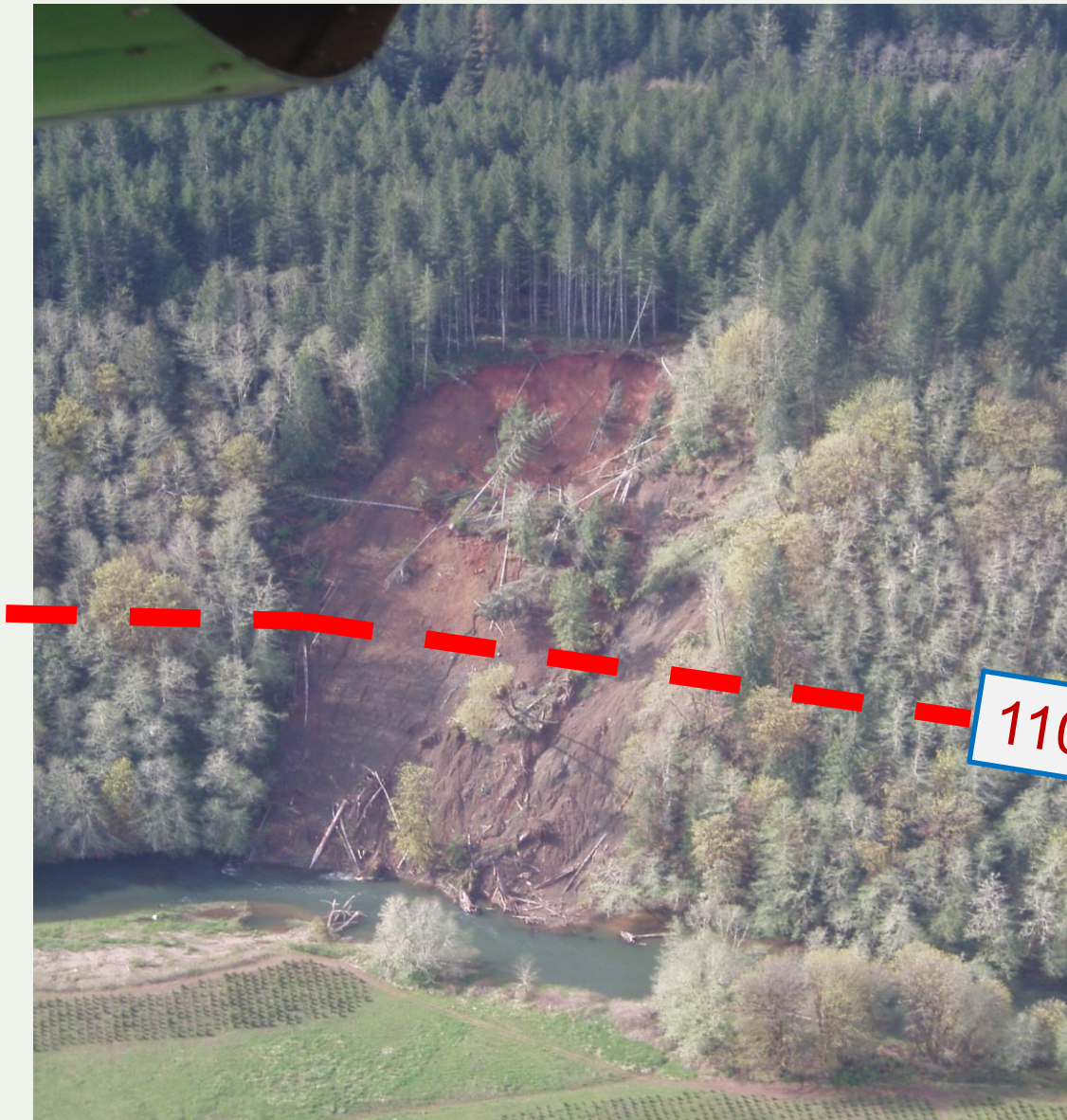


# Stream Adjacent Failures

- Statewide
- **Field identified** areas next to fish streams:
  - Actively failing or
  - Unstable slopes
- Areas are located upslope of the riparian management area of the fish stream



# Stream Adjacent Failures



110 Feet RMA

# Common Elements - Designated and Identified Areas

- Written plan required
- Wildlife leave trees may count



# Next Steps

- Create Forest Practices Technical Guidance to **field identify** Slope Retention Areas
- Create certified training to **field identify** the Slope Retention Areas





# **Stream Classification & Vegetation Retention**

# Objectives

- Develop new stream network for fish use and perennially
- Ensure an equitable and consistent riparian management system
- Simplify geographic regions to Eastern and Western Oregon
- Provide options for Small Forestland Owners





# Rule Changes

- Division 635 Stream Classification
- Division 643 Vegetation Retention
- Retained or revised existing rule
  - Desired future condition
  - Wildlife leave trees
  - Harvest activities near stream
  - Alternative prescriptions





# Division 635

- Revised streams classification for fish use
- Added processes for identifying perennial streams
- Simplified geographic regions
- Increased coordination with ODFW



# Division 643

- Revised goals
- Added Equipment Limitation Zones
- Retained alternative prescriptions
- Developed standard practices
  - Large landowners
  - Available to Small Forestland Owners



# Western Oregon

## Standard Practice Riparian Management Areas

<b>Stream Type</b>	<b>Large</b>	<b>Medium</b>	<b>Small</b>
Type F or SSBT	110 feet	110 feet	100 feet
Type N	75 feet	75 feet	See Type Np
Type Np into Type SSBT	N/A	N/A	75 & 50 feet
Type Np into Type F	N/A	N/A	75 feet

The width of tree retention areas for Type F and Type N streams increased significantly



# Eastern Oregon

## Standard Practice Riparian Management Areas

	Large		Medium		Small	
	Inner	Outer	Inner	Outer	Inner	Outer
Type F or SSBT	30	70	30	70	30	45
Type N	30	45	30	45	-	-
Type Np, Terminal					30	30
Type Np, Lateral					30	N/A

- No touch Inner Zone and managed Outer Zone
- Tree retention areas for portions of Type N streams that flow into fish use streams



# Small Forestland Owner

- Minimum option has reduced requirements to acknowledge inherent differences between forestland owner types
- Minimum option capped at 5% of available streams miles in a defined watershed
- May use standard practice and apply for tax credit for the trees retained outside the minimum option riparian management area





# **Road Construction & Inventory**

# Objectives

- Removal of barriers to fish passage.
- Removal or stabilization of unstable road fills of on forest roads.
- Revise rules designed to avoid or minimize delivery of sediment to waters of the state.
- Assessment of and select treatment of abandoned roads.



# Rule Changes Hydrologic Connectivity

- Hydrologic connectivity – Direct routes of drainage of road runoff to waters of the state.
- Identify and correct existing connectivity
- Limit the amount of connectivity in all new construction and reconstruction.





# Rule Changes Fish Passage

- Removal of barriers to fish passage within 20 years.
- Rules establish stream simulation as the required strategy when feasible.
- Increases stream crossing capacity to coincide with a 100-year peak flow for all streams.



# Rule Changes Critical Locations

- Road construction in critical locations is limited to instances where alternate locations are not feasible.
- Critical locations:
  - High Landslide Hazard Areas
  - Within 50 feet of all streams
  - Within all wetlands over .25 acres
  - Within an RMA for more than 500 feet
  - Through toe of deep-seated landslide deposits
  - Highly dissected steep slopes



# Forest Road Inventory & Assessment

- 20-year process to identify and correct:
  - Fish passage barriers
  - Hydrologic connectivity
  - Other issues of non-compliance with road rules
- Includes annual reporting of accomplishments and plans for upcoming year.



# Abandoned Road Inventory

- ODF lead inventory of abandoned roads.
- Process is LIDAR based with field verification.
- Identified abandoned road segments that are verified as high priority are added to the FRIA list for improvement through that process.



# Small Forestland Owners

- Are not required to complete the FRIA.
- Must complete a Road Condition Assessment when notifying to harvest.
- Some road improvements may be eligible for funding through Small Forestland Investment in Stream Habitat program .





Click to add text

# **Enforcement & Civil Penalties**

# Division 670

## Enforcement and Civil Penalties

- Updates to rule sets to include:
  - Pesticide Applications by Helicopter Statutes
    - Began under SB 1602
    - Updates give clear civil penalty policy
  - ORS 527.680 additions
  - ORS 527.685 modifications and additions



# Standard Civil Penalties

- Maximum civil penalty increased
  - From \$5,000 to \$10,000
- Base fines doubled
- Civil penalty formula remains the same
- Civil penalties able to consider company name changes and previous violations





# Significant Violations

An Operator is considered a Landowner, Timber Owner, or Operator who has:

- Failed to file notification of operation
- Non-compliance with an order of the State Forester
- Violation with resource damage with estimated 10+ years to restore.



# Repeat Violators

An Operator who:

- Has a history of significant violations
- A pattern of willful disregard of the FPA rules or orders

State Forester will maintain a list of Repeat Violators:

- 3 significant violations within 3 years
- List will be utilized to inform civil penalty calculations process
- Removal from the list 3 years after last citation



# Repeat Violator Civil Penalty Calculations

- Criteria:
  - Must be a Significant Violation
  - Must be a Repeat Violator
- Considerations for imposing civil penalty:
  - Total operations related to significant violations compared to total number of operations conducted while evaluating the organizational structure
  - Derived economic benefits from the significant violation



# Repeat Violator Civil Penalty Calculations continued

- Use of the standard Civil Penalty Formula with additions:
  - Base penalty is \$2,000
  - Incorporates average number of notifications and organizational structure
  - Max fine is \$50,000 or value derived by the CP formula, whichever is less



# Repeat Violator Financial Assurances

- Required when the Operator meets the criteria for Repeat Violator
  - History of significant violations that show willful disregard to the FPA or orders within the previous 3 years
- State Forester may require Violator to acquire, post, and maintain a bond or other form of financial assurance



# Repeat Violator Financial Assurances

- Amount is determined either by the acreage of the operation or protected resources at risk, whichever value is greater
  - Maximum amount up to \$250,000
  - State Forester may submit claims for damage repairs completed by State Forester or Civil Penalty fines



# Orders to Prohibit

- Failure to obtain financial assurance added to the criteria for prohibiting new operations for the violator



# Division 672

## Forest Practices Administration

- Addition to Orders of the State Forester that can be contested
  - Determination of Repeat Violator
  - Financial assurance requirement







# **Small Forestland Owner**

# SFO Program

- Recognize unique role of SFOs
- SB 1501 establishes the SFO Assistance Office
- Housing for SFO Program
  - Provide landowner assistance
  - Small Forestland Investment in Stream Habitat
  - Forest Conservation Credit
  - Leveraging of other programs



# SFO Defined

- Owns less than 5,000 acres of *forestland*
- Has harvested no more than 2MMBF averaged annually over the last 3 years
- Not intending to remove more than 2MMBF annually over the next 10 years
- Self-certification



# SFO Rule Structure

- SFO (Div 607) as a directory
  - Greater detail provided in divisions by topic
- Focused on:
  - SFO specific requirements
  - Core functions of the SFO Assistance Office
  - Programs available to SFOs



# SFISH

- Small Forestland Investment in Stream Habitat Program
- Funding mechanism provided by agency Policy Option Package



# SFISH continued

- Program managed by SFO Assistance Office in consultation with ODFW
- To provide 100% grant funding on high value conservation sites, including:
  - Chronic sedimentation
  - Fish passage
  - Stream Diversions
  - Perched fill



# SFISH continued

- Eligibility
  - Verification of SFO criteria
  - Road Condition Assessment
- Voluntary and proactive program
  - Road repairs may otherwise be required by Forest Practices Rules



# Forest Conservation Credit

- Forest Conservation Area
  - Width: Standard Practice - SFO minimum option
  - Length: RMA distance adjacent to harvest area
  - No harvesting allowed for 50 years
  - Recorded as a deed restriction at county office
- Area can be removed
  - Original LO must repay if credit was used
  - New LO would need to repay full amount





# Forest Conservation Credit continued

- Credit Value
  - 100% of the stumpage value in FC Area
    - 50% of stumpage value in dry channel areas
  - 125% of stumpage value if minimum option isn't available
  - Credit is transferrable to heirs
  - Can be applied year after year until depleted



# Forest Conservation Credit continued

- Eligibility
  - Landowner must meet the definition of an SFO
  - Submit a NOAP for Type 1, 2, or 3 harvest
  - Follow the Standard Practice
  - Submit stumpage value documentation





# **Tribal Engagement**

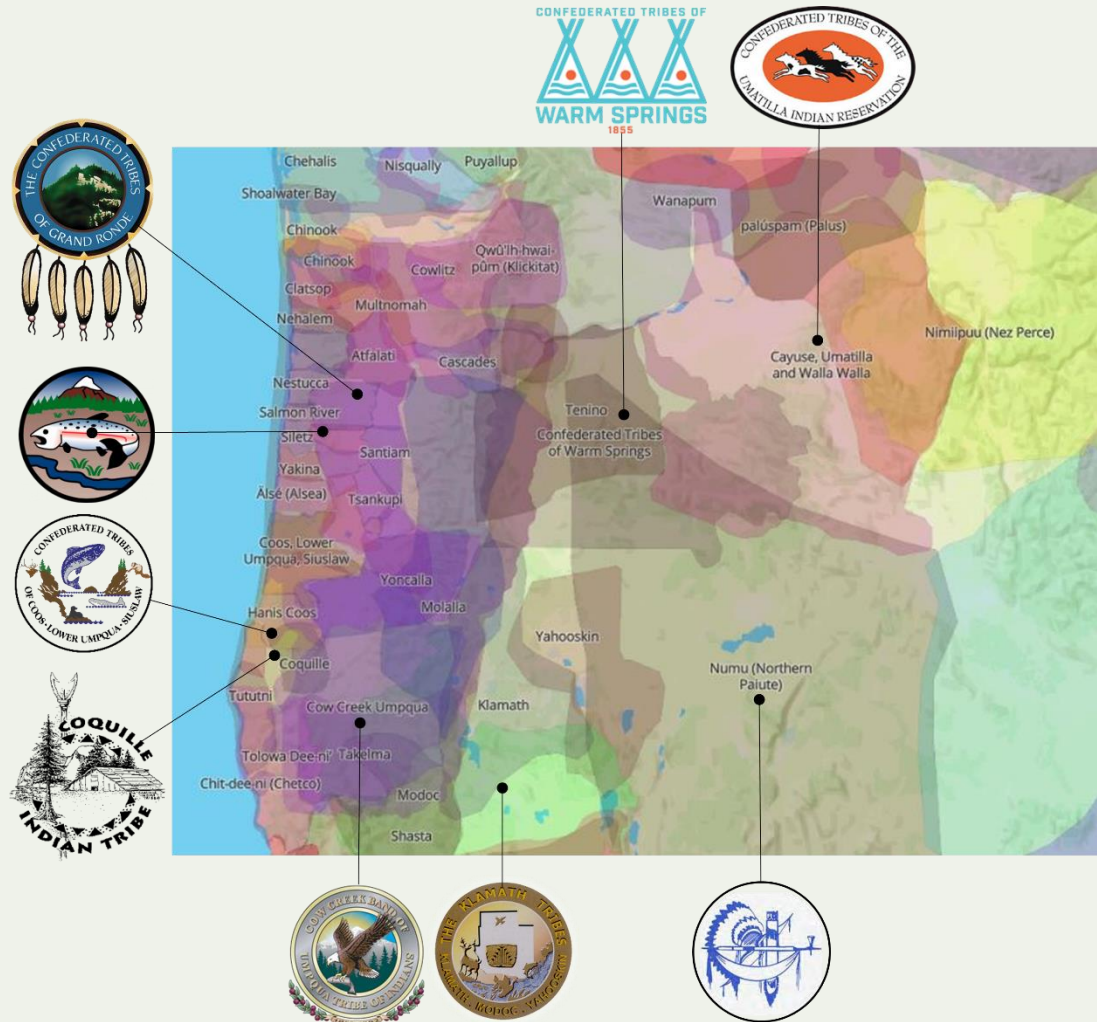
# Objective

- Provide tribes with background on the Private Forests Accord and Habitat Conservation Plan
- Invite tribes to individually opt-in to the HCP
- Engage tribes in developing a process to opt-in

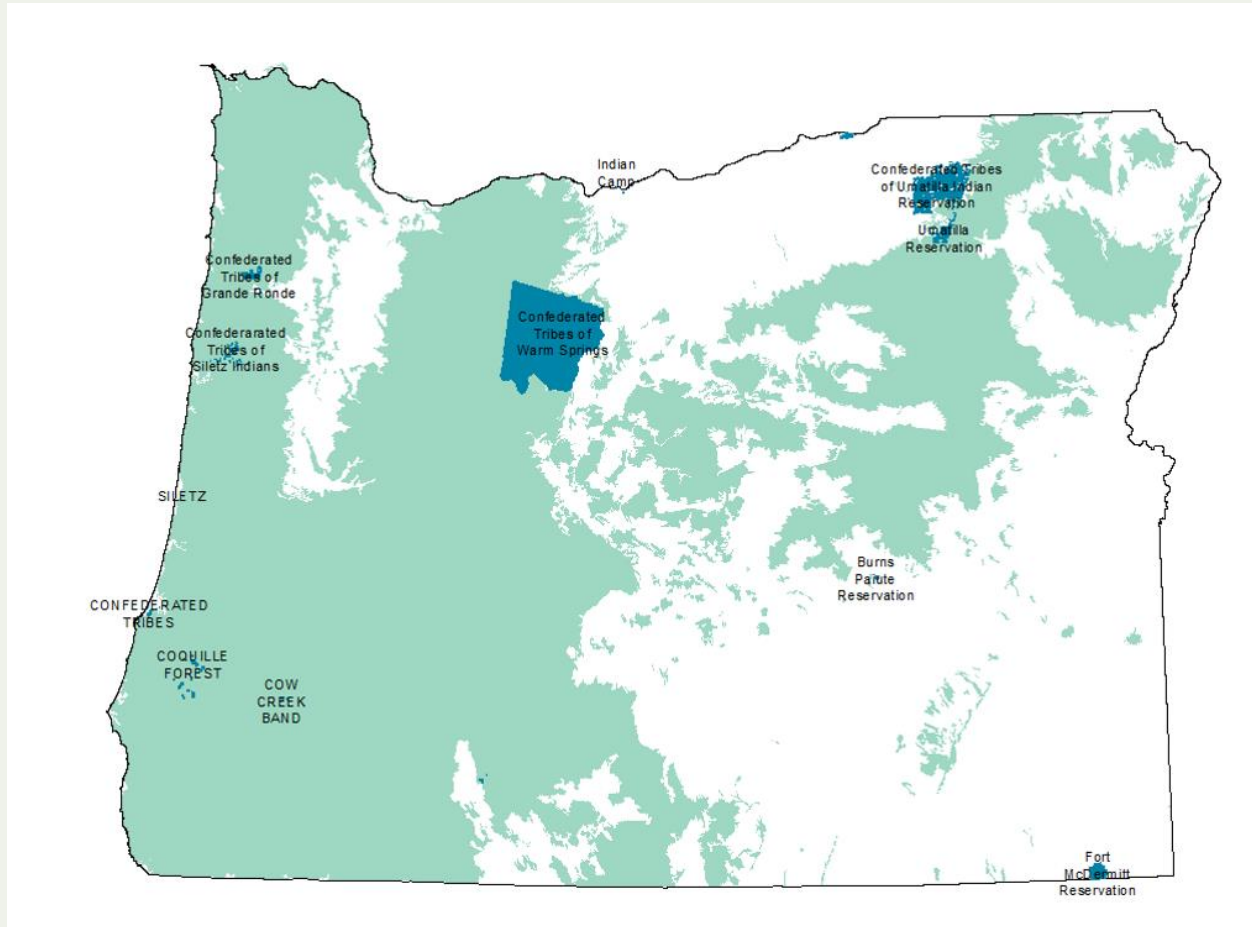


# Nine federally recognized tribes in Oregon

1. Confederated Tribes of the **Umatilla** Indian Reservation
2. Confederated Tribes of **Warm Springs**
3. Confederated Tribes of the **Grand Ronde** Community of Oregon
4. Confederated Tribes of **Siletz** Indians
5. Confederated Tribes of **Coos, Lower Umpqua and Siuslaw** Indians
6. **Coquille** Indian Tribe
7. **Cow Creek** Band of Umpqua Tribe of Indians
8. **Klamath** Tribes
9. The **Burns Paiute** Tribe



# Tribal lands



# Engagement to date

- Legislative Commission on Indian Affairs
- Natural Resources and Cultural Resources Clusters
- ODF State Forests Habitat Conservation Plan tribal forum
- Natural resource specialists
- Governor's office tribal liaison





# **Private Forest Accord HCP**



# Habitat Conservation Plan

Habitat Conservation Plan = HCP

- Purpose of HCP
- To obtain an incidental take permit
- To provide regulatory assurances under ESA



# HCP what is it?

- Translate new rules and conservation actions into the HCP document
- Describe and quantify benefits and impacts to the covered species
- Must meet regulatory requirements of the federal agencies --"The Services"
  - National Marine Fisheries Service
  - US Fish and Wildlife Service



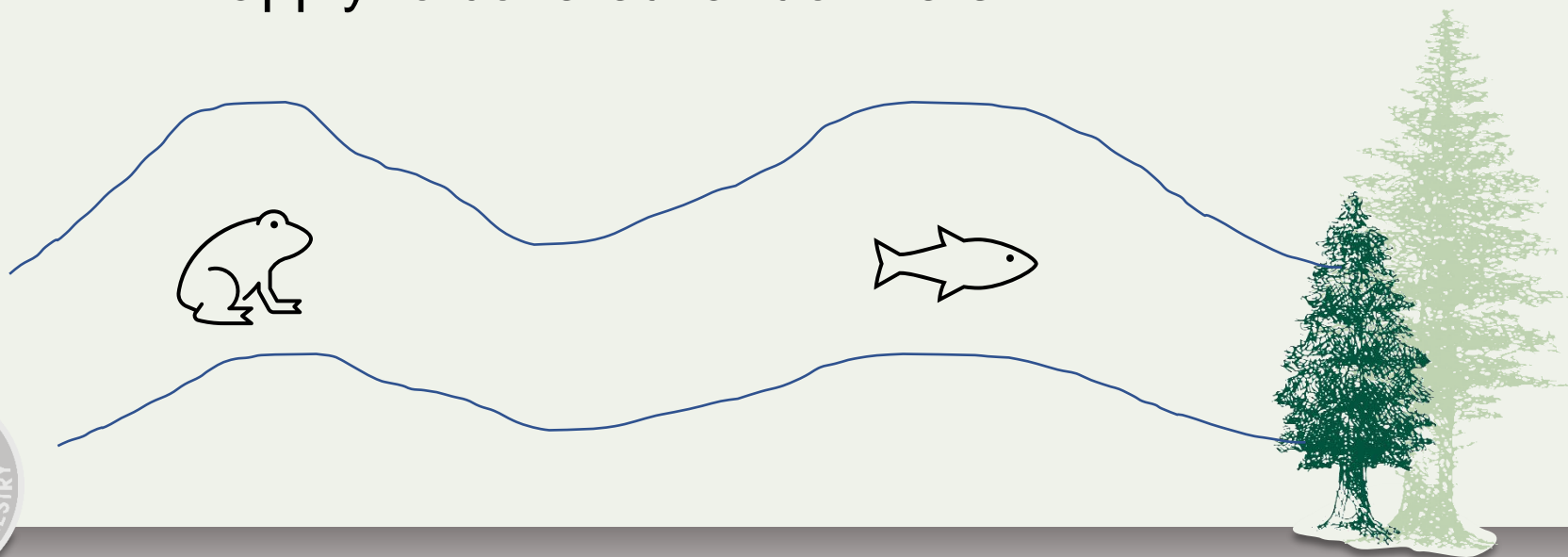
# Covered Species

Fish	Amphibians
All native trout and salmon	Columbia torrent salamander
Bull trout	Southern torrent salamander
Mountain whitefish	Coastal giant salamander
Pacific Eulachon/smelt	Cope's giant salamander
Green Sturgeon	Coastal tailed frog



# Purpose of PFA-HCP

- Incidental Take Permit
  - For the covered aquatic species
  - Will cover most forestry activities
  - Will legally authorize incidental take of the covered aquatic species
  - Will apply to covered landowners



# Programmatic HCP

What does this mean?

- ODF has agreement with federal agencies
- ODF holds the incidental take permit
- ODF administers the revised Rules and implements requirements of HCP
- Covered landowners obtain regulatory assurances under ESA under ODF's permit



# PFA-HCP Development

- Contractor (ICF) is developing HCP for ODF
- Steering committee providing input on HCP development
  - PFA Authors
  - ODF Forest Resources Staff
  - State Agencies (ODFW, DEQ)
  - Federal Agencies (NMFS, USFWS)



# Timeline: Phase 1

- ICF is developing first draft of Proposed HCP
  - With input from steering committee
- November BOF Meeting
  - Seek BOF approval to move forward and submit draft proposed HCP to Services
- By December 31, 2022
  - Submit draft Proposed HCP to the Services



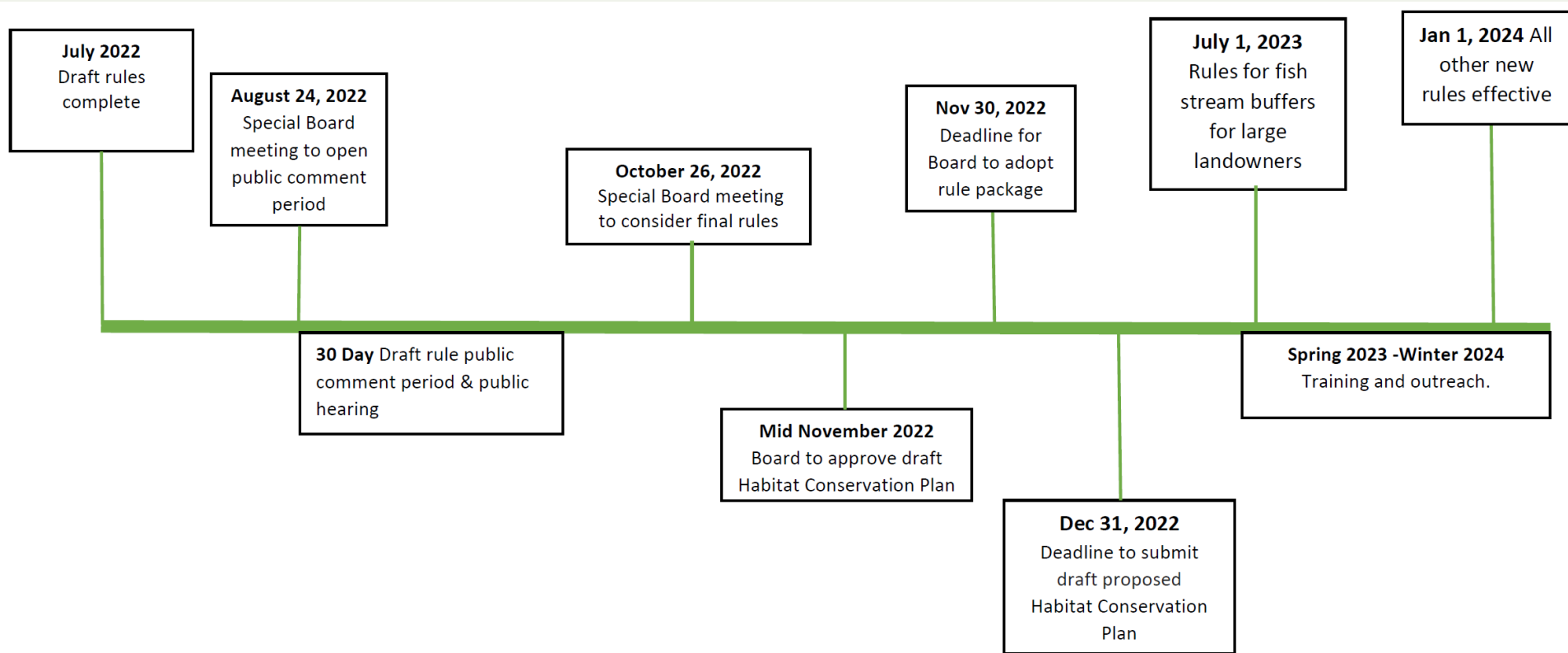
# Timeline: Phases 2 - 3

- January 2023 – December 2027
  - Develop public draft HCP for review by the Services
  - Initiate NEPA Process; NMFS to develop draft environmental impact statement (EIS)
  - Finalize HCP, submit to Services
- By December 2027 – Obtain Incidental Take Permit





# Private Forest Accord Rulemaking Timeline





**Questions?**

**Submitted:** Tuesday, August 23, 2022, 2:02 PM

**Subject line:** Forest accord

**Testimony message:**

Gentlemen

I know you are in the final throws of stealing private property. The new hideous rules will become a serious taking of small woodlands property and potential income. Tax credits without income don't work. I didn't want to testify because the great government lords of Oregon have already made the decision. Thanks. In the near future, as the rules are enacted and finalized, I will hopefully be putting together a group of small woodland owners who have assets taken illegally who will file a class action suit against the state and all bodies involved in the taking.

Only the future will tell

Thanks

Dick Beers- home stead property owner of a small dot on the earth about to get the eraser

For item #2, Private Forest Accord Discussion

August 21, 2022

To Oregon Board of Forestry  
Board Support Office  
2600 State Street  
Salem, OR 97310

From: David & Mary Ann Bugni  
30265 SE Kowall Rd.  
Estacada, OR 97023

Re: **Support for the Private Forest Accord and a description of its impact on our family**

Dear Board,

We support the Private Forest Accord (PFA) and are providing some specific details about how the riparian-related sections of these proposed rules will affect our family forest. We request that this information be entered into the public record on this matter.

First, some background about our family: we own 83 acres of forestland in the unincorporated Estacada area, and we are fortunate to have been honored as the 2021 State of Oregon Tree Farmers of the Year as well as the 2019 winner of the joint Dept. of Forestry and Dept. of Fish & Wildlife “Fish and Wildlife Steward Award – Forestlands, Northwest Oregon Region.” David is currently the in-coming Board Chair of the Clackamas River Basin Council and is the Secretary/Treasurer of the Clackamas County Farm Forestry Association. David is also a member of the committee that has been tasked with assisting ODF in drafting the riparian-related rules of the PFA and is thus familiar with its intent.

About 0.8 miles of Suter Creek (a medium, type SSBT stream) flows through our property. Through our family’s fish habitat restoration work over the years, this creek is once again quite a productive coho and winter steelhead stream. This creek length, in combination with the number of perennial, type N streams that flow into it, results in a significant impact to our family’s timber revenue-related finances when one overlays the riparian requirements of the PFA. Specifically, under the Small Forestland Owner (SFO) no-cut RMA option, at least 25 acres, or 30% of our property will be off limits to logging. Should we choose to adopt the Standard Practice RMA Option (the option required for industrial forestland owners), that percentage increases to over 37%. We understand the need for these riparian management requirements to improve stream temperatures and water quality as well as improve physical habitats for aquatic life and amphibians, but we want the Board to know that it comes at a tremendous cost to small forestland owners who own land with streams that are affected by these proposed rules. We are also aware of the work to minimize the economic impact of these requirements on the SFO and we greatly appreciate such efforts. For some, like us, we are willing to bear these costs; for others, this cost may be too great to bear, and we hope those woodland owners do not convert their forestland to other uses to avoid this significantly negative revenue impact. We also hope that the public will come to realize the cost that the PFA will impose on all small woodland owners who are affected, as such sacrifices by all of us will ultimately benefit the public and the State of Oregon.

**In summary, while we support the intent of the PFA current language, it comes at a tremendous cost for those of us who own forestland with flowing waters, and we are counting on ODF to craft the final rules fairly and thoughtfully, and to thoroughly support and assist small forestland owners to understand and comply with the new rules.**

Thank you.

Sincerely,

David and Mary Ann Bugni

ATTN: BOARD OF FORESTRY  
TESTIMONY ON AUG. 24, 2022

Pls. 2

FAX# 503-945-7212

FROM: DAN KLOPPMAN  
503-556-8532

Hello, I am Dan Kloppman, 2<sup>nd</sup> generation tree farmer in Columbia County. I have a 539 Acre tree farm with over 2 miles of large fish bearing stream that runs the entire length of my property. Our income comes from the timber I remove from it. We have the 3<sup>rd</sup> generation coming up and want to ensure resources for that generation to continue forestry.

I have planted 288,000 seedlings since 1993. I have also converted 70 acres of unproductive land to forest land and completed three woody debris, in stream projects.

We love our land and the forest, but this will produce a hardship on our family and our ability to maintain my forest as a forest. We live and work on our land, I have done so for 39 years.

In 1983, ODF & W, thought that wood in streams robbed water of oxygen, so they proceeded to run an excavator right down the middle of the Clatskanie River, removing all wood out of the stream. In 1993, stream rules were going to be put in place in 1994, which forced us to log where we probably never would have touched. In 1996, Salmon were listed as threatened and as a part of that, habitat restoration proceeded with the knowledge that the wood was necessary for the ecological life of fish and other marine life. Biologists put wood back in the river, at tax payers expense. That winter, we had a flood, which did the most good for fish, Creating gravel bars all up and down the river. In about 1998, a project to put a culvert under the railroad tracks in Clatskanie Oregon, where the river flows into the Columbia River Slough, to allow more fish access to the Clatskanie River. We have had the most Chinook salmon and Coho on our property than any other, in the whole Clatskanie River system, since that time over 20 years ago.

I have sent you an aerial photo of our property with a topographical map, along with an article on our in stream woody debris project. As well as, a photo of myself and my oldest son, which is now 23 years old. The topo map has calculations of 79 acres taken up by the new PFA rules. Except, no stream width was put into the calculations, which is an additional 10 acres. For a total of 89 acres lost to RMA. I understand that there is a disproportional impact agreement no acted on yet. I encourage the Board of Forestry to work out the details for this and make it a high priority, to provide relief for small landowners like me who depend on this income that is being taken, as a result of these rules.

In 1994, we lost 60 acres to the new stream rules. Retention trees alone amounted to 1.5 million board feet of timber, and prices at the time calculated to ¾ million dollars. 30 years later, I have a new crop I planted and raised in the RMA. Now, mixed with the retention trees, plus the additional 20 feet added to RMA width, adds up to a lot of money to lose and many acres out of production! The new rules will result in more logging the RMA and could also lead to other land uses in those areas, such as the building of houses. Many people would not have even touched RMA zones, but now feel they have no choice. The impact of this ruling will have a profound impact on me, my family, and many other small land owners in this state we call home. Thank you for considering my plight.

Dan Kloppman

Rainier, OR

Columbia County

To: Accord Board and Authors

Asian American Timberland Owners Association  
Minhtam Thompson  
(503) 484-4731

Bill Thompson, Translator and Spokesman  
(503) 415-1638

August 24, 2022

Re. URGENT: Three measures are necessary to Constitutionally Firewall the Accord.

The high ingenuity of the Accord has made it very high profile, drawing passionate attention nationwide — especially in Washington DC.

So, its Constitutionality will ultimately get tested by the US Supreme Court.

So, three Firewalls are urgently necessary!

ONE: The constitutional requirements for Just Compensation must be Very Specific and Very Adequate for the state takings of additional creek barrier land and the timber thereon.

So, the state tax credits must equal the appraised value of the land taken and of the timber taken at the time of the effective date of the Accord, and must be usable during the first seventy years following the takings, and must accrue interest at an updated contemporaneous bank mortgage interest rate thereon each of those seventy years until they are used up, and all the rights in these tax credits must be assignable and transferable until they are used up or until the seventy year period expires, whichever comes first.

TWO: Takings of timber on slopes (i.e.) prohibiting the cutting of half of it can be incorporated into the objective of "ONE" above.

THREE: To survive the Equal Protection clause under the U.S. Constitution, all state owned lands must also be subject to all the requirements of the Accord.

However, ODF's advice and approval is needed to determine if this requirement on state lands is feasible. If it is not, the whole Accord will get rescinded and nullified by the U.S. Supreme Court.

Without these three firewalls this high profile Accord will have a very short shelf life, and the Accord will have killed its self.

We Asian Americans prefer the long game of improving laws to make them last for centuries.

Sincerely,



Minhtam Thompson



Bill Thompson, Translator and Spokesman

P.S. The Tigard hardware case of thirty years ago required takings by zoning (by the city) to be justly compensated. — A decision of the U.S. Supreme Court