

Statement of Mary Scurlock Before the Oregon Board of Forestry
Agenda Item 6: Rule Analysis Process & Objective
for Small & Medium Fish Streams

April 26, 2012
Newport, Oregon

Oregon's salmon streams deserve decisive action. We support the overall process and timeline proposed by staff because it constitutes necessary, expedient action to develop a new rule adjusting riparian protection measures on small and medium fish streams to meet the Protecting Cold Water criterion of Oregon's stream temperature standard. This action is welcomed and broadly supported by the conservation community as long overdue, and I look forward to continuing to engage in this process through Board meetings and regular communication with Department staff as a conservation stakeholder. It is my goal to advocate state rules for which there is a strong scientific basis to find aquatic resources will be protected, with a high degree of certainty, to the full extent required by state water quality standards, the Clean Water Act and the Oregon Forest Practices Act. I intend to continue serving as a point of contact for conservation interests on this issue for at least the next year.

Support approval of staff recommendation with clarification that PCW criterion will not be fully addressed by this rulemaking as currently proposed.

I urge approval of the staff recommendation with the clarification that the scope of the action currently proposed -- a rule change on small and medium fish streams only -- cannot possibly render the Forest Practices rules sufficient to meet the Protecting Cold Water criterion (PCW). This is for the simple reason that the Protecting Cold Water criterion also applies to a large number of stream miles that the proposed rule change objective and process does not encompass. According to the criterion, the .3 degree warming standard applies not only to salmonid streams but to their designated critical habitat and to "streams that are necessary to provide cold water to" salmonid-bearing streams and streams which are designated critical habitat. This means addressing the adequacy of riparian protection on non-fishbearing streams, which is currently minimal.

Because it is apparent that addressing non-fish streams to which the PCW criterion applies would likely delay Board action on small and medium fish streams because additional data analysis and modeling may be required, we support moving ahead on small and medium fish streams only at this time. However, we request that the Board memorialize its intent to address other streams to which the PCW applies in a second phase of rulemaking to begin as soon as the Type F rule package is ready for translation into formal rule language.

We believe a scientific basis could be mustered without analysis paralysis for identifying those headwater streams most important for temperature. For example, some aquatic Habitat Conservation Plans have used contributing stream flow as estimated by basin size to identify non-fish "temperature" streams. For example: 1)

the 2000 Plum Creek Aquatic Habitat Conservation Plan (western Montana and E. WA) supplied special protection to streams contributing more than 20% of in-stream flow (about 21% of all stream miles on that HCP) to streams that may support fish, using drainage area criteria. (FWS-NMFS, 2000); 2) the Forest Practices Advisory Committee recommended designating a subset of perennial Small Type N streams for additional riparian protection where 30% of flow is contributed to small and medium F streams, which for the coastal georegion was estimated to be equate to a contributing basin size of 40 acres or more. (To clarify, I am not endorsing these numbers, only suggesting that this methodology for identifying small streams important to downstream temperatures should be considered).

All Viable Alternatives Must Ensure Compliance with the Protecting Cold Water Criterion. We urge the Board to consider only alternatives which credible analysis demonstrates actually are adequate to meet the criterion – this must be the driving performance standard for any proposed policy change and is not subject to negotiation in this process. Neither the required evaluation that the alternative ultimately chosen that is “least burdensome” to landowners [ORS 527.714(5)(e)] nor the interpretation of what constitutes the “insure to the maximum extent practicable” [ORS 527.765] can compromise the requirement that the chosen alternative must actually be adequate to meet the standard. While we will wait for alternatives to be proposed to take any firm positions, it is safe to say that we would be unlikely to support rule alternatives that “cap” landowner requirements [see page 5 of the Staff Report] if such a cap had the effect of creating an unauthorized exemption from the standard we are trying to meet here. The same is true of a rule with an automatic “sunset” clause, if the effect is to revert to a status quo we know to be inadequate.

It is appropriate to defer final action on the question of geographic scope until the scientific review process is complete. We support moving forward with this process as though a statewide rule change is anticipated, leaving open the question of geographic scope until after all the relevant science has been gathered and synthesized. Although RipStream data, which focused on the coast, is the immediate impetus for this rule, all available information and expert scientific judgment should be brought to bear on the extent to which this data can be extrapolated. For example, we believe it can easily be extrapolated to all of western Oregon, including the Cascades. We also believe that there is other information external to RipStream that is relevant to the adequacy of current rules in Eastern Oregon. Again, we remind the Board that the protecting coldwater criterion is a statewide standard and that the Board has a duty to craft policies to meet it. In short, RipStream may have called the question, but RipStream need not define the limits of how the question is answered.

>Recently completed Eastern Washington study is relevant to Eastern Oregon. Seven years of research has resulted in a study of bull trout streams in eastern Washington that is relevant to the adequacy of current Oregon forest practices rules

to protect against stream temperature increases in eastern Oregon streams. This study indicates that management restrictions within 75 feet of streams, as measured from the channel migration zone where one exists, are generally adequate to prevent stream shade reductions. We urge the Department to take cognizance of this study and to analyze its data and implications for the adequacy of current rules applicable to eastern Oregon. (CMER, 2012)

We know that stream temperature is affected by shade provided outside the minimum requirements for RMZs under the current rules. Under the current rules for small and medium streams, the maximum area within which basal area retention requirements apply 50 feet and 70 feet from bankfull width, respectively, and it in some ecoregions – such as the Coastal Zone -- is often possible to meet basal area retention requirements within the 20-foot no harvest zone. The literature indicates that stream shade can be affected by logging up to a distance of about $\frac{3}{4}$ of a site-potential tree. NMFS 2005 citing FEMAT 1993 and Spence et. al. 1996.

It may be informative to examine the management practices recommended or being implemented to address shade and stream temperature in the following plans and policies. For example:

1. Washington's rules use a 75-foot search zone from a stream's bankfull width or channel migration zone where one exists and an "all available shade" requirement. (Note: All available shade is not the same as all trees, and does not equate to no management if the shade requirement is met). No cut "core zones" are 50 feet westside; 30 feet eastside.
2. To fully protect salmonids, a beneficial use of coastal streams, NMFS has recommended: a 30-50 foot no harvest zone and a total riparian management zone of $\frac{2}{3}$ to $\frac{3}{4}$ of a site potential tree, within which 100% of available shade should be retained on fish-bearing streams and groundwater source areas, including seeps and springs. (NMFS, 2005 at 18).

The rule must be adequate to meet the standard despite variation in site conditions. We know that there is wide variation in site conditions, and we appreciate the desire of some landowners to tailor regulatory requirements to reflect this variation, such as through the use of alternative practices. This is similar to the approach taken by Green Diamond on the Olympic Peninsula in its Habitat Conservation Plan (2000), which varies prescriptions according to a landscape categorization of stream types. However, in order to be scientifically credible, this kind of approach must be based on a spatially explicit landscape assessment to identify temperature sensitive streams – an investigation that requires a significant up front investment of time and resources. Therefore, this is probably note a model for a rule that applies to entire ecoregions – though it may be an option for individual landowners to pursue in alternative plans.

CONCLUSIONS

Concern: Science process will be important; timeline is ambitious. We are concerned that Science Review process slated to take place between November and January, is on a short timeline. We encourage the initiation of the Science Review process in July.

Concern: There is an inherent problem with focusing only on temperature and shade rather than designing rules to attain some desired overall level of riparian or watershed function. Temperature regulation is only one of many riparian functions, and stream temperature is affected by more than shade: it is a function of complex interactions between stream canopy (shade), the width of stream channels (which is a function of sediment transport), and alterations of groundwater hydrology and hyporheic zones

We recognize that policymaking has to be accomplished in pieces, but it needs to be recognized that stream temperature problems related to shade depletion, sediment problems and large woody debris deficiencies go hand-in-hand. Because in-channel storage volume is a function of available primary pools, and pools in turn are largely a function of LWD availability, sediment storage and delivery, channels that are vulnerable to temperature increases often also have excessive fine sediment and low large wood. At the end of the day, any effective solution to elevated stream temperatures cannot focus exclusively on stream shading.

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Others?