

BEFORE THE OREGON BOARD OF FORESTRY
July 26, 2012

***Written Testimony Associated with Oral Remarks of Mary Scurlock
Pertaining to Agenda Item 5:
Initial Range of Alternatives for Riparian Protection Rule Analysis to achieve the
Protecting Cold Water Criterion***

RECOMMENDATION: To accept the staff recommendation with amendments to: 1) require staff to demonstrate consistency with TMDL targets and underlying analysis when generating and evaluating alternatives; 2) clarify that the range of alternatives is tentative pending development of the methodology for effective variable retention buffers; 3) establish that Type N stream impacts should be considered in evaluating alternatives.

SUMMARY POINTS

1. ***Continued progress toward a rule change is warranted.*** The Board's continued progress toward riparian protection rule analysis is well-supported by evidence that the Protecting Coldwater Criterion is not adequately met under existing minimum stream protection rules. The Board has a duty to act.
2. ***The PCW is sound, and this is not the forum to challenge it.*** The Protecting Coldwater Criterion is science-based, attainable and biologically meaningful. Human-caused temperature increases due to shade reduction are a demonstrated factor for the decline of anadromous salmonids in Oregon¹, and prevention of further increases is necessary to meet the letter and spirit of state and federal water quality laws and to recover salmonids under state and federal species protection laws and policies. A re-examination of the technical basis of the standard is beyond the scope of this rule process.
3. ***Continued transparency with stakeholders is needed.*** The step-wise process to rule development the Board has adopted pursuant to staff recommendation is a logical and effective means of engaging both stakeholders and the Board in developing policy change options. By seeking stakeholder and Board input at each stage, the process is more transparent, less unwieldy and more likely to be successful than if the rule process were formally initiated only when rule language is proposed. It is critical that stakeholder involvement be continued as the details emerge about how alternatives will be generated and evaluated
4. ***The range of initial alternatives is a good start, but should be considered tentative.*** The initial range of alternatives presented by staff is a useful bare-bones outline for how various riparian protection scenarios will be developed and

¹ See e.g. NOAA-NMFS, Proposed Rule to List as Threatened Oregon Coast Coho ESU, 5-26-2010 (ongoing timber harvest and roadbuilding cited as cause of reduced stream shade)

described for future Board consideration. Incorporation of relevant information beyond RipStream is both necessary and appropriate.

5. ***The methodology for how Variable Retention Buffers will be derived is very important; continued transparency and a rigorous science review is critical.*** The meat of this rule development will hinge on the technical credibility of how the variable retention buffers are “derived.” We believe that it is critical for information other than RipStream to be incorporated at this stage, that the technical development process is transparent to stakeholders, and that there be adequate opportunity for review by independent experts.
6. ***It is too soon to set State FMP standards as Upper Limit of Alternatives Range.*** It is premature for the Board to set a specific “upper limit” on management changes to be considered (i.e. State lands standards) given that the process for deriving variable retention standards is not yet detailed and has not been given a chance to generate effective management scenarios.
7. ***Board should strive for TMDL Consistency.*** Rule analysis should be consistent with the same assumptions about the relationship between riparian conditions and stream temperatures that underlie DEQ’s watershed-level analyses of shade levels needed to attain all aspects of Oregon’s stream temperature standards, including the PCW. Staff has recommended that the use of DEQ temperature modeling (HeatSource) to evaluate proposed alternatives be explored -- a recommendation we support. *We urge the Board to go further and call for proposed alternatives to be demonstrably consistent with the riparian effective shade expectations already established on water quality-impaired water bodies, i.e. proposed stand conditions should be adequate to attain the effective shade associated with system potential vegetative conditions.*
8. ***Nonfish streams can't be ignored.*** Although RipStream did not assess it, and the rule objective will not address it, nonfish streams have an impact on the stream temperatures of the fishbearing streams covered by this rule analysis. This fact conceded in the PCW criterion itself, which explicitly applies to nonfish stream providing coldwater necessary to maintain stream temperatures in fishbearing reaches. The rule analysis must take into consideration the likely temperature impacts on small and medium fish streams from logging-related changes to the temperature regime of upstream contributing reaches to which the PCW applies.

DETAILED COMMENTS

Because the process for deriving the variable retention buffers requires clarification, it is too soon to say if State Forests should be the “upper limit” of the alternatives

The Department has provided little detail on the process that will be used to derive the variable retention buffers that will be proposed, except to say that collected data and literature including but not limited to RipStream will be used. Given that the outcome of the process to “derive” variable retention buffers is not yet available, it seems too soon to say whether those existing on state forests will constitute the “upper limit” of the action alternatives, for at least two reasons.

First, the main reason ODF proposes State Lands rules as the upper limit of alternatives is that these sites demonstrated compliance with the PCW in RipStream, so that is a set of rules we know will work to meet the rule objective. However, it is our understanding that some RipStream postharvest state lands sites that demonstrated compliance with the PCW criterion exhibited larger no-cut buffers and overall basal area retention within the RMA than is strictly required under the state plans. For example, the average no cut buffer on “treated” State sites was 188’ but State Forest Plan rules require only a 25’ no cut and various basal area/tree retention requirements from 25’ out to 170’. We suggest then, that looking just at RipStream the upper limit of compliant sites is somewhat higher than the FMP minimums themselves.

Secondly, it is unclear from the staff report how Oregon’s state lands policies compare to the shade alternative based on Washington DNR rules. Washington DNR may be considered to require greater management restrictions in service of shade upon closer examination.²

The Board cannot ignore DEQ's approach to stream temperature developed in TMDLs in assessing the adequacy of measures to meet the PCW criterion.

As a matter of sound public policy, the Board’s approach should explicitly strive to be consistent with ODEQ’s approach to developing restoration targets on streams not meeting water quality standards for temperature (TMDLs). We urge the Department to make a stronger link between this rulemaking and the concepts and metrics implicit in Oregon’s many approved TMDLs for temperature-impaired streams.

² We strongly support evaluation of an alternative based on Washington’s approach. However, the exact increment of riparian protection provided in service of shade objectives in Western Washington is not simple to tease out because temperature regulation is subsumed by the protection provided for large wood. It appears that from 85-90 feet of the approximately 1 site potential tree height Washington westside riparian buffer (50 feet of which is a no-cut buffer) is considered to approximate the temperature component. On the eastside, in Bull Trout overlays, all available shade within 75 feet is the operative standard.

The essential finding of these watershed-based analyses is that in order to prevent anthropogenic warming, “system potential effective shade” (which varies somewhat by subwatershed) must be maintained. In water bodies with TMDLs, system potential effective shade has been determined and compared with current conditions. *These analyses have consistently found current riparian conditions are providing effective shade substantially below “system potential effective shade,” including locations with substantial state and private forestland.*

While we realize that this rulemaking does not target only streams that violate the numeric criterion such as the TMDLs were developed to address, these rules – because they are programmatic -- will nonetheless apply in these basins. *If the alternative chosen in this process is not adequate, more will be required to meet effective shade targets – so it behooves the Board to evaluate up front how the new rules stack up in this context.*

As the statutorily designated lead regulator of forest practices intended to meet water quality standards, logical public policy dictates that ODF’s rules should be demonstrably adequate to meet the temperature load allocations for forestry in these basins – i.e. *a load allocation of zero nonpoint-source induced warming*. This means striving to provide “site potential effective shade” or ensuring no depletion of existing effective shade where effective shade goals are not currently being met.

We urge the Board to instruct the Department to evaluate alternatives in light of their consistency with TMDLs completed to date, i.e. for consistency with established effective shade targets and a forestry temperature load allocation of zero.

Forestry-associated impacts on the nonfish network cannot be ignored completely in this analysis

We do not agree with staff that any consideration of stream temperature impacts from unbuffered headwater streams is entirely “out of scope.”

We understand the Board’s decision to limit this rulemaking to management changes required to meet PCW on small and medium fish streams. This decision was based on the Board’s reliance primarily on the RipStream study, which did not collect data for nonfish streams. We accept (for now) the Board’s decision in this regard, even though measures taken only on small and medium F streams can never be fully effective to meet the PCW on the forested landscape due to both shade and non-shade related impacts emanating from the large portion of the Type N network that is subject to industrial logging.

However, we do not accept that limiting the rule objective to fishbearing streams requires the rule analysis to assume no temperature impacts from current practices on these streams. The problem is that any analysis failing to acknowledge some baseline temperature impact from current upstream management practices on downstream reaches

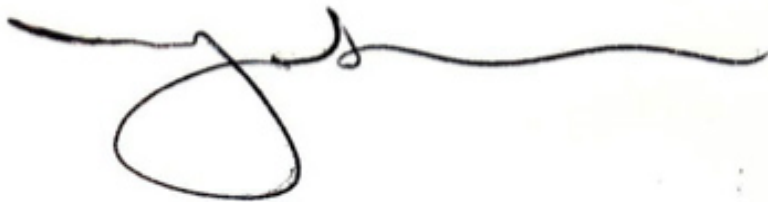
cannot accurately describe the level of protection that will be provided to downstream reaches from improved practices on small and medium streams.

Put simply, just because the Board has not yet recognized the existence of evidence showing temperature impacts in nonfish streams and/or that propagates down to fish streams, does not mean that such degradation is not happening, or that no such evidence exists, or that such evidence cannot or should not be recognized during the Department's analysis of rule alternatives.

If current rules were adequate to provide riparian and upstream sources of large wood, we wouldn't need to worry about shade and stream temperature.

Long-term large wood recruitment is arguably the one key function that ultimately determines the width of ecologically adequate buffers. Channels need large wood to form fish habitat, and help mitigate for bed-scouring flows. If that one key function can be met (which our interpretation of current literature translates into about a full site potential tree height), then all other key riparian functions will also be met by default, including shade/temperature, nutrient cycling, bank stability, erosion control, filtering sediment, etc. Large wood also is important in non-fish bearing headwater streams, particularly as a sediment retention mechanism. Without it, sediment is flushed directly downstream to fish-bearing reaches.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Mary Scurlock', with a large loop at the end.

Mary Scurlock

On behalf of

Lesley Adams, Rogue Riverkeeper
Bob Van Dyk, Wild Salmon Center
Steve Pedery, Oregon Wild
Chuck Willer, Coast Range Association
Paul Engelmeyer, Native Fish Society
Mark Riskedahl, Northwest Environmental Defense Center