



BEFORE THE OREGON BOARD OF FORESTRY
Statement of Mary Scurlock, Oregon Stream Protection Coalition
Agenda Item 7: Informational Update on Riparian Rule Analysis
5 November 2014

My name is Mary Scurlock and I represent 21 fishing and conservation groups comprising the Oregon Stream Protection Coalition. The intent of my remarks today is to add some further detail to the staff update about the issues under discussion with stakeholders from our perspective.

New rule timeline. The new rule timeline has pushed further Board decisions out until March and April, with July slated for final rule adoption. In our view it is imperative that this timeline be adhered to and that rule completion be a Board priority. As you are well aware, a federal disapproval of Oregon's coastal program is pending and there is currently no policy change that the state can hold up to demonstrate that it is addressing any of the problems identified by the NOAA and EPA. There is also increased public scrutiny on Oregon's logging rules as a result of the recent Oregonian expose describing weak regulation of forest chemicals and indicting current rules on public health, environmental protection and public process.

Ongoing public outreach. We appreciate the Department's efforts to set aside adequate time and resources for stakeholder input. I and other members of my coalition will continue to be actively engaged as staff recommendations are developed on new rule prescriptions as well as where the new rule prescriptions should apply.

Georegions Decision Set for March 4: The conservation groups I represent continue to oppose the geographic limitation of this rulemaking. The basis for this view is that in every georegion studied by RipStream the current rules were found lacking; therefore, the only reasonable assumption the Board can make is that the current retention requirements in the other georegions are also insufficient to meet the PCW – an assumption that can be validated using available information if the Department is instructed to gather it.

In particular, there is a strong sense in the conservation community that the Siskiyou Region must be included in a policy change due to the high aquatic resource values at stake and because this region is part of Oregon's Coastal Zone, within which policy changes have been specifically identified as needed to meet the requirements of federal coastal water pollution control statutes. Likewise, the recently finalized federal recovery plan for Southern Oregon/Northern California Coastal Coho is quite clear about the need for improvements to small and medium stream protections on private forestlands.¹

We reiterate earlier comments that the exclusion of any region from this rulemaking must be accompanied by a clear plan for how the rules in those regions will be evaluated and amended with respect to the PCW on a reasonable timeline.

Stream Reach Extent Decision Set for April. The Board's decision on stream reach-scale designation for additional prescriptions is not now slated to occur until April. This decision involves drilling down on a number of technical issues that bear on stream classification rules and guidance, and how the rules

will be implemented on the ground. Our overall recommendation to the Board at this time is that ODFW's expertise should be heavily relied upon. Our specific concerns include:

1. Regulatory use of maps. ODFW fish distribution maps are the best available information and we support its use as a starting point for making reach level decisions. It will be important to clarify how these maps will be used and the process by which they will be updated.

2. All fish not some fish. The current rules are largely tiered to fish versus nonfish streams. We strongly support application of the new rule to all streams that meet the current criteria for a fishbearing stream. At present the Department is contemplating a policy change that would tier prescriptions to stream reaches that are or could be used by specific fish species, i.e. salmon, steelhead and bull trout only, because of how the PCW is written, but the same level of protection is needed on all fishbearing reaches. We will be interested in the specifics of the implementation mechanisms – presumably habitat criteria -- that will be used to determine the end of SSBT use. It seems likely that a full discourse around this issue will require scrutiny of the current rule guidance pertaining to physical habitat characteristics that may be considered incompatible with salmon, steelhead or bull trout use, and consideration of whether aspects of this guidance will need to be elevated to rule. If management prescriptions are going to vary markedly between types of fish bearing reaches, the ecological basis for the criteria used to distinguish these reaches will come into play. Likewise, the conditions under which fish presence surveys can be used to override a fishbearing designation will also require vetting because this process will assume greater regulatory significance.

3. If SSBT only, include upstream reaches as default. The coalition is concerned that this rule should deal appropriately with uncertainty by giving the benefit of the doubt to the resource. For example, the increased stream protections should be presumed to apply to all fish streams upstream of Salmon, Steelhead and Bull Trout segments unless a physical barrier has been field verified and it can be demonstrated that warming of upstream reaches will not lead to downstream warming in violation of the PCW.

Prescription Elements: It also appears that there are stakeholder differences of opinion on several items pertaining to prescription elements, including:

1. Buffer delineation methods. In our view, stream buffers should be measured based on horizontal, not slope distance — which is particularly important on steeper slopes where it makes the most difference. We note that this method is currently used on Oregon's state forestlands.

2. Whether to change which trees can contribute to basal area targets. We expect that there will be a need for further discussion about the implications of changing the “countability” of trees to meet new targets to include smaller trees (e.g. 6 inches from 11 inches) and whether to include hardwoods as well as conifers.

We expect these and other issues will be the subject of lively stakeholder discussion in the coming months.

¹http://www.westcoast.fisheries.noaa.gov/protected_species/salmon_steelhead/recovery_planning_and_implementation/southern_oregon_northern_california_coast/SONCC_recovery_plan.html