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BEFORE THE OREGON BOARD OF FORESTRY
Statement of Mary Scurlock, Oregon Stream Protection Coalition
Re: Riparian Rule Analysis
4 March 2015

My name is Mary Scurlock and I speak today on behalf of the twenty-one fishing and conservation groups comprising the Oregon Stream Protection Coalition. My intent is to bring your attention to three issues related to the decisions you will be making in April and June:

- The relevance of valuing a wide range of ecological benefits in your decision-making.
- The importance of technically sound stream classification methods and fish habitat distribution maps to achievement of your intended conservation outcomes.
- The need for clarity about the relationship between the Board's duty to limit harvest-related stream warming on stream segments to which the Protecting Coldwater Criterion applies and the Board's duty to limit stream warming to meet load allocations on "TMDL streams."

1. We urge the Board to consider the broad range of ecological and economic benefits that will accrue to the public from more robust riparian conservation

This rule change is spurred by the legal need to protect public natural resources, a need that is based on the societal decision not to subsidize private timber harvest with water quality degradation and species extinctions that harm the public at large. In this respect, the public benefit of meeting water quality and species protection is already self-evident to you and to the interested public. However, we still are concerned that in weighing options for policy change later this spring, the Board will focus primarily on quantifying the costs that can be attributed to the regulated community. While it is necessary and proper that these costs should be quantified, in evaluating the costs and benefits of increasing the size of protected riparian areas we urge you ensure that the wide range of ecological and economic benefits flowing from the new policies also are recognized and valued in your determinations. This is particularly important to the recreational and commercial fishing industry organizations participating in the Oregon Stream Protection Coalition.

We believe that there are practicable ways for the Department and the Board to ensure a balanced portrayal of the economic impacts of regulatory change. A fair accounting must begin by acknowledging that ecosystem services[1] have significant economic value, even if functioning markets don't exist for these services and precise valuation in dollars is not possible or practicable. These services include, but go beyond, the ways in which stronger riparian protection measures to prevent stream heating also will meet the need for greater inputs of mature trees both to stream channels and the riparian forest floor.

[1] Ecosystem services could be broadly defined as the ways in which ecosystems are used to produce human well-being. See also http://esvaluation.org/ecosystem-services.

[2] *See e.g.* Daily, G. C. 1997. Nature's services: societal dependence on natural ecosystems. (Washington, DC, Island

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Drawing from cases where the valuation of ecological services and benefits has been accomplished in relation to restorative actions for water quality, aquatic habitats, and fish we have several observations we would like to share:

- Frameworks and methodologies exist for identifying and valuing ecosystem services.[2] EPA, the World Bank, The Nature Conservancy, and European countries and others routinely assess these values.
- The list of ecosystem services associated with improved aquatic habitat conditions is long, and it includes among many others: flood protection and stormwater regulation, drinking water production and filtration for sediment and pathogens, nutrient retention, erosion control/soil retention, sediment reduction, biodiversity conservation, increased fish production, increased sport and recreational fishing, prevention of future ESA listings and associated regulatory costs, and others.
- The estimated value of these ecosystems services is generally very large, even when underestimated.[3] Values vastly increase if the benefits to future as well as current generations are considered.
- The value of maintaining and restoring ecosystem health increases over time with human population.

We are not demanding an exhaustive quantitative study of ecosystem services that will be enhanced by increased riparian protection. We are simply asking you to ensure that they are given meaningful consideration in your deliberations. At a minimum this means identifying the most significant of the known ecological benefits of increased riparian protection and attributing some economic value to these very real benefits.

2. Ensure Implementation Methods and Tools are Technically Sound and Reasonable Presumptions are made to account for information gaps

The Department is on a course to present the Board with rule alternatives that could apply, in some or all basins, only to streams where Salmon Steelhead and Bull Trout habitat (SSBT) is deemed to exist. As I will discuss in my next point, OSPC does not believe that this is an adequate approach. We recommend that PCW protections be applied to all streams, including "TMDL streams," all Fish habitat streams and nonfish perennial streams. Nonetheless, I wish to point out some concerns we have with the SSBT approach, as we understand it.

ODFW fish distribution maps are currently the best available statewide information, and we have

[2] *See e.g.* Daily, G. C. 1997. Nature's services: societal dependence on natural ecosystems. (Washington, DC, Island Press); Batker, D., E. Barclay, R. Boumans, and T. Hathaway. 2005. Ecosystem Services Enhanced by Salmon Habitat Conservation in the Green/Duwamish and Central Puget Sound Watershed (Prepared for WRIA 9 Watershed Forum of Local Governments through the King Conservation District); Green/Duwamish and Central Puget Sound Watershed Water Resource Inventory Area 9 (WRIA 9) Steering Committee. 2005. Salmon Habitat Plan – Making Our Watershed Fit for a King.

[3] For example, ecosystem services provided by forestlands in a single Washington subbasin in one year was estimated at between $1 and $5 billion dollars annually. Green/Duwamish and Central Puget Sound Salmon Habitat Plat at 6-5.

supported using these as a starting point for making reach level implementation decisions where riparian rule prescriptions are vary based on the presence of fish habitat or habitat for particular species. However, given the maps' limitations in a number of key respects, it will be critically important to clarify how landowners and by the Department will use them, and how they will be updated.

Our concern is simple: uncritical reliance on the ODFW maps in laying out riparian prescriptions cannot be justified as they stand, a fact that should not be surprising given that they were not developed to serve this kind of regulatory purpose. If used as they stand, the maps will drastically under-represent and therefore under-protect the actual extent of salmon, steelhead and bull trout habitat. This adds to the existing problem that ODF stream maps have not "classified" as fishbearing or nonfishbearing an estimated 40-50% of streams statewide.[4]

We are currently developing several recommendations about how to address this issue, a key one being that field verification should occur as to the location of the first permanent natural barrier to SSBT use. Unless and until a permanent natural barrier is documented, SSBT habitat should be presumed to exist the full length of a classified F streams and on unclassified streams. We also favor establishment of a clear and adequately staffed process for updating the maps, and urge improvements to ODF's 2007 guidance on the physical criteria and survey protocols it uses to determine barriers to fish use.

3. The Board needs more clarity on which water quality standards apply to which streams

In order for the Board to fully understand scope of its duties in this rulemaking process, you must have a clear and full understanding of the applicable water quality standards that limit human-caused stream warming. As of now, this process lacks a common understanding by all parties of the relationship between the limit on human warming set by the Protecting Coldwater Criterion (PCW) -- which was the basis for the Board's degradation finding -- and limits set by water quality standards established under EPA-approved "Total Maximum Daily Loads."

At this point in time, we are extremely concerned that the Board is laboring under a mistaken belief that your finding of degradation under the PCW on the basis of RipStream requires the Board to limit the scope of new riparian protections to streams meeting the numeric critieria (i.e. "non-impaired streams" or "non 303(d)" streams). This is not correct, and would have the odd result of providing less protection on streams in worse condition. Likewise, the Department is reticent about extending protections to waters upstream of reaches with threatened and endangered species claiming lack of proof that these streams require protection, yet protection of these streams is essential to meeting the PCW by the terms of the standard itself. In order for the rules under consideration to meet water quality standards these two issues going to the scope of the rules must be addressed

A brief explanation. There are two general types of limits in Oregon's temperature standards: overall stream temperatures (numeric criteria) and caps on human-caused stream warming (the Protecting Coldwater criterion or "PCW"). The Department has repeatedly invoked the PCW because the

[4] Stream condition above natural fish barriers obviously has a bearing on downstream conditions but this is a subject we do not address here.

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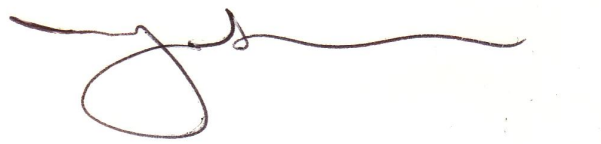
RipStream study demonstrated that logging practices in excess of the PCW limit of .3° C.[5] Under Oregon law, in the basins where temperature TMDLs have been approved by EPA[6], the TMDLs operate to change the applicable water quality standard. First, the cap on allowable warming moves from being established by the PCW to that established by any applicable TMDLs. Second, the geographic scope of that cap extends beyond the non-impaired reaches to the entire perennial network in a given basin or watershed. This includes impaired streams not covered by the PCW. And it includes streams that are not habitat for salmon, steelhead and bull trout. In a few instances, the cap even extends to intermittent stream reaches with fish use. Finally, the allowable increase in warming from all human activities cumulatively is capped at .3°C, leaving nonpoint sources with less than that total, depending on the individual TMDL. This reading of the water quality standards in Oregon law is not novel and it is not ours alone; DEQ has clearly stated this interpretation of its standards in its guidance on the PCW issued in 2011. Oregon DEQ, Internal Management Directive: Nonpoint Source Compliance with the Protecting Coldwater Criterion of the Temperature Standard (November 2011).

Two memoranda from Northwest Environmental Advocates to ODF and the Governor's office explain our concerns in more detail and are attached.

We urge the Board to seek clarity on these issues from its legal advisers and its colleagues at DEQ so that it can formulate a plan for addressing the inadequacy of current prescriptions to meet stream warming limits set by both the PCW and TMDLs.

Respectfully submitted,



Mary Scurlock

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[5] RipStream average warming was .7°C, but sample site did not always manage to the minimum allowed by rule. ODF modeling demonstrates that harvests to the minimum buffer allowed by rule would have caused warming on the order or 1.22° C on average.

[6] Basins with approved TMDLs are: North Coast, South Coast, Upper South Fork Coquille, Umpqua, Rogue Basin except Bear Creek, Bear Creek watershed, Applegate, Lobster Creek, Lower Sucker Creek (Illinois of the Rogue), Willamette, Sandy, Miles Creek watershed (Mid Columbia).