



BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

Statement of Mary Scurlock during General Public Forum

3 November 2017

My name is Mary Scurlock. I represent the Oregon Stream Protection Coalition's 25 conservation and fishing industry member groups¹ united in support of stronger, science-based riparian protection for streams on Oregon's 10.6 million acres of private forestland. We share the common goal of a stronger regulatory baseline to ensure the long-term health of freshwater ecosystems and the multitude of economic benefits they support, including but not limited to sport and commercial fisheries and a sustainable timber industry.

My testimony today revisits issues I raised with you in December of 2015.

My primary request is that the EQC conduct a full and independent evaluation of the sufficiency of the current forest practices rules to meet water quality standards, starting with stream temperature and the Protecting Coldwater Criterion (PCW), and extending to load allocations under temperature TMDLs. The Commission should further consider petitioning the Oregon Board of Forestry for stream protection rules under the Oregon Forest Practices Act that are truly adequate to meet water quality goals.

1. The EQC has a duty to independently evaluate the adequacy of the Board of Forestry's rules to meet water quality standards

It is the EQC's duty to independently assess the adequacy of the Board of Forestry's stream protection rules to meet water quality standards. Although EQC shares authority with the Board of Forestry for water quality attainment on state and private forestlands, the EQC is *the primary enforcer of water quality standards under ORS 527.724*. As you know, good faith compliance by landowners with the Board of Forestry's rules is generally considered adequate to meet water quality standards under ORS 527.770. But the EQC need not blindly accept the Board's rules as adequate, and has reserved the right to petition the Board for better rules under ORS 527.765 and to enforce directly for violations of Total Maximum Daily Loads where water quality standards are not attained.

2. There is more than adequate evidence in the record for the EQC to question the efficacy of the SSBT rule

¹ Coalition members are: Association of Northwest Steelheaders, Audubon Society of Portland, Cascadia Wildlands, Coast Range Association, Defenders of Wildlife, Institute for Fisheries Resources, Native Fish Society, Sierra Club, Oregon Wild, Pacific Rivers, Wild Salmon Center, Center for Biological Diversity, Northwest Sportfishing Industry Association, Pacific Coast Federation of Fishermen's Associations, McKenzie Flyfishers, Trout Unlimited, Umpqua Watersheds, Northwest Guides and Anglers, Association of Northwest Steelheaders, KS Wild, Rogue Riverkeeper, Washington Forest Law Center, WaterWatch of Oregon, The Wetlands Conservancy, and Wild Earth Guardians.

The OSPC was extremely disappointed in the rule that has become known as the “SSBT rule” and we think you should be, too. (Primarily contained in OAR Division 640). The new stream protection rules do modestly increase restrictions on logging near some streams bearing salmon, steelhead and bull trout (“SSBT” streams) on some of Oregon’s private forest land in Western Oregon. Although the proposed rule change is an improvement over the status quo, and will likely lead to less stream warming than is currently taking place, it still is not adequate to meet the Board’s duty to protect cold water.

The new rule provides for two main buffer prescriptions: “no harvest” and “partial cut.” Both options apply within 60 feet of small and 80 feet of medium “salmon, steelhead and bull trout” streams. A third prescription is allowed on some streams reaches of 200 feet or more that run east-west, and some landowners who are impacted the most by the new rule will be allowed to use a fourth less restrictive “equity exemption” option

According to ODF’s own analysis, the selected buffers will not be effective to prevent the prohibited stream warming with a reasonable likelihood. ODF analysis found that even buffers of 90 feet would limit warming to .3 degrees or less (the PCW) on only about 50% of the sites to which it is applied -- yet Board has selected only 60 and 80 foot buffers on small and medium streams, respectively. These buffers, even if not harvested at all, have a low chance of actually meeting the standard. But the Board has also deemed these buffers adequate even when harvested down to retention standards. (The “partial cut” option provides only a 20-foot no cut area, the same as current rules).

In addition to requiring ineffectual buffers, the SSBT rule fails to extend its new increment of protection to many streams where the Protecting Coldwater Criterion applies by excluding reaches upstream of SSBT reaches and streams in the Siskiyou, Blue Mountain and Eastern Cascade Regions.

On top of the ecological insufficiencies, we see no justification on the basis of practicability at the sector level for choosing the ineffective 60 and 80 foot buffers. For example, ODF analysis showed that the footprint of a 90- foot buffer on both small and medium streams is only 15,200 acres or .4% of private industrial land in western Oregon. On an annual basis this translates into 300 acres per year with 50 year rotations. For smaller private non-industrial owners this would be 15,800 acres and .6% of Private Nonindustrial Land, or about 230 acres/year using a 70 year rotation. Yet, the Board chose smaller buffers.

Our concerns are aligned with those of the Environmental Protection Agency. *See* EPA Region 10 Comments on Oregon Board of Forestry’s proposed riparian rule changes, February 22, 2017, and attachments.

The need for your leadership is highlighted by the policy context for this request, including the state’s longstanding CZARA disapproval, the widespread impairment of Oregon’s surface waters for temperature, and the state’s continuing public investment in the recovery of species listed under the ESA.

It is our sincere hope that EQC will consider our request for focused attention to this important matter.

Respectfully submitted,

A handwritten signature in dark ink, consisting of a series of fluid, connected strokes. The signature is positioned below the text "Respectfully submitted,".

Mary Scurlock
Coordinator
Oregon Stream Protection Coalition

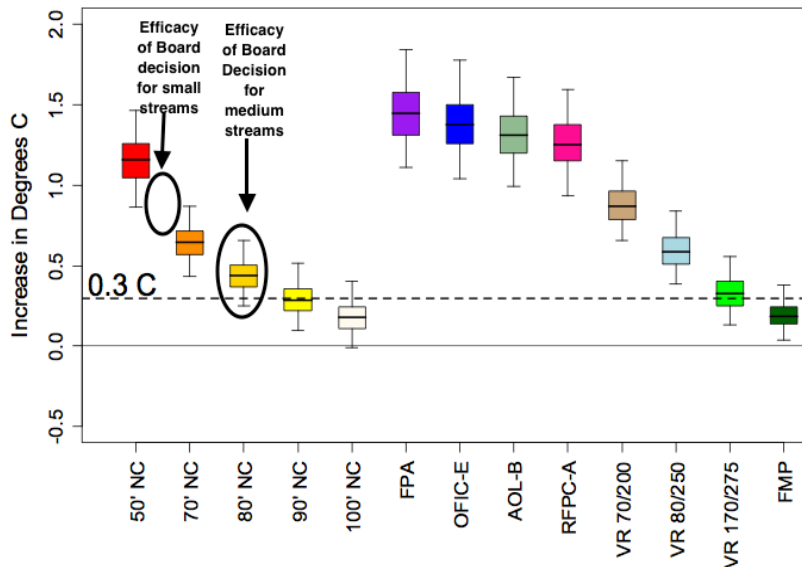


Figure 1. Mean temperature responses of 33 sites subject to different harvest prescriptions (see above for definitions). The 50, 70, 80, 90, and 100 foot NC prescriptions were subsets of the No-Cut prescription. The VR-170/275 values are specifically from the VR-170 prescription at a basal area retention value of 275 ft²/1,000 feet of stream. The responses for two-entry prescriptions RFPC-B, OFIC-C, and AOL-A are not presented as predicted temperature increases could only be determined for a single side being harvest, not the effect of the entire harvest regime.

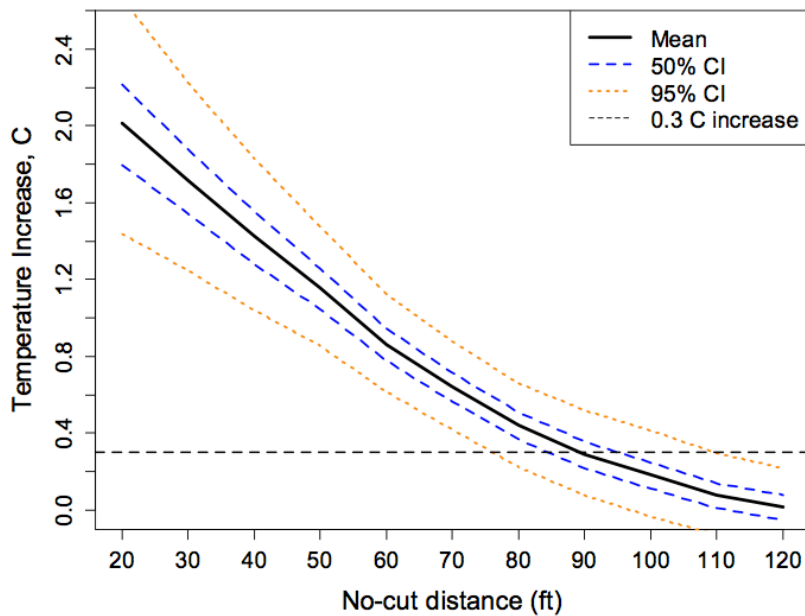


Figure 1. Mean temperature responses among all sites to simulated harvests at set slope distances from the stream. The black line indicates the mean response of the 33 sites, the dashed blue line represents a 50% Credibility Interval (CI) and the dashed orange line a 95% CI. The horizontal dashed black line indicates the PCW threshold of 0.3 °C.