



BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

16 April 2015

*Statement of Mary Scurlock, Oregon Stream Protection Coalition
Regarding Board of Forestry's Riparian Rulemaking*

My name is Mary Scurlock, and I represent the Oregon Stream Protection Coalition's 21 groups united in support of stronger stream protection on Oregon's over 10.6 million acres of private forestland.

As you know, the Board of Forestry is slated to make a decision about which policy alternatives for riparian protection on private forest streams it will send to formal rulemaking on June 3, with a focus on small and medium streams. We urge the Commission to be an active and demanding partner in this effort, and to do everything in its power to ensure an outcome at the Board that results in forest practices rules that are truly capable of meeting applicable water quality standards for stream temperature on as many of the streams in need of such measures as possible.

- **The Department should be advocating for increased protection on all small and medium streams where stream warming limits apply under currently applicable water quality criteria**

The ODF rule process has been so focused on the Protecting Coldwater Criterion as it is currently written that it does not adequately acknowledge the clear implications of the RipStream study for streams subject to warming limitations as part of watershed-wide temperature Total Maximum Daily Loads (TMDLs). We have three points :

1. In addition to the Protecting Coldwater Criterion, there is an existing legal duty to prevent stream warming on most if not all other fish streams by virtue of valid existing TMDLs. We hope that this Commission agrees that under Oregon's water quality standards, once a TMDL is completed, its provisions override the PCW criterion. The Board's failure to acknowledge its duty to ensure that the forest practices rules meet TMDLs as well as the PCW ignores the plain language of the water quality standards, and is not an acceptable basis for restricting the scope of new rules. We think it is important that the Commission and the Board both recognize that:
 - the same temperature standards apply to all perennial streams, at a minimum, and do not distinguish between Salmon, Steelhead and Bull Trout (SSBT), fish-bearing, and non-fish bearing streams;
 - the same temperature standards apply to all streams, regardless of whether they are impaired or not impaired; and
 - the allowable warming under TMDLs is no longer just the PCW's 0.3° C, but becomes between zero and 0.1° which reflects the applicable human use allowance.



2. RipStream clearly demonstrates we are not meeting our obligations under these TMDLs (and any that are likely to be developed in the future for that matter). Compelling, peer-reviewed study results demonstrate significant stream warming under current rules on small and medium streams -- not just to salmon, steelhead and bull trout-bearing streams. These results create a presumption that current rule are inadequate to meet the stream warming limitations set forth in the following 12 TMDLs within the potential boundary of the ODF's new rules. – and which include all perennial streams unless indicated to the contrary: North Coast (all perennial or fish bearing); South Coast; Upper South Fork Coquille watershed; Umpqua (all perennial and fish bearing); Rogue except Bear Creek watershed; Bear Creek watershed (all perennial and intermittent fish bearing); Applegate, Lobster Creek and Lower Sucker Creek watersheds; Willamette (perennial and/or fish bearing); Sandy; Mid Columbia Miles Creek watershed (all perennial and intermittent).

3. The Board is considering applying increased buffers only to “Salmon Steelhead and Bull Trout” bearing reaches, but this option would protect very few of the stream miles where warming limitations equivalent to or less than the PCW actually apply. We estimate based on the incomplete information provided by ODF thus far that *well under a third* of fish streams on forestlands in western Oregon would receive protection from the new rules if only SSBT reaches are included, and urge the Commission to ensure that the information necessary to determine the actual scope of the new rules relative to streams in need of protection is considered as part of this process.

It is important and appropriate that the state's lead water quality agency should work to ensure that the Board makes an informed decision in June. This includes a full understanding of the stream warming limitations set by temperature TMDLs as well as the Protecting Coldwater Criterion.

- **Just because Oregon Coast Coho Salmon populations are up doesn't prove that freshwater habitat is doing fine and changes in land use practices aren't needed**

In the public discourse over the last few months, we have run across several misconceptions about the need for new forest practices rules in Western Oregon. One of them, pushed by members of the landowner community, is that recent trends in spawner abundance demonstrate that all is well with Oregon Coastal coho salmon habitat and forest land use practices.

This conclusion is not supported by the science.

- First, I am advised by NOAA fisheries that the initial ESA listing was primarily driven by trends in production of salmon, i.e. by declines in recruits (the number of juveniles



that survive to maturity), not spawners. (See e.g. Lawson, 1993). So a more relevant graph to consult would be the ODFW spawner & harvest numbers. (See below).

- Second, while both spawners and recruits have increased since the 1990s when Coho were originally listed, this is still too short of a time period to reflect the result of changes in forest practices. It will take decades for streams and the fish inhabiting them to respond to these types of changes.
- Third, the prevailing opinion of experts on this fishery is that the most likely causes for the upward trend are reduced harvest, short-term variation in marine and freshwater climate, changes in hatchery practices, and — in local some areas — directed habitat restoration efforts.

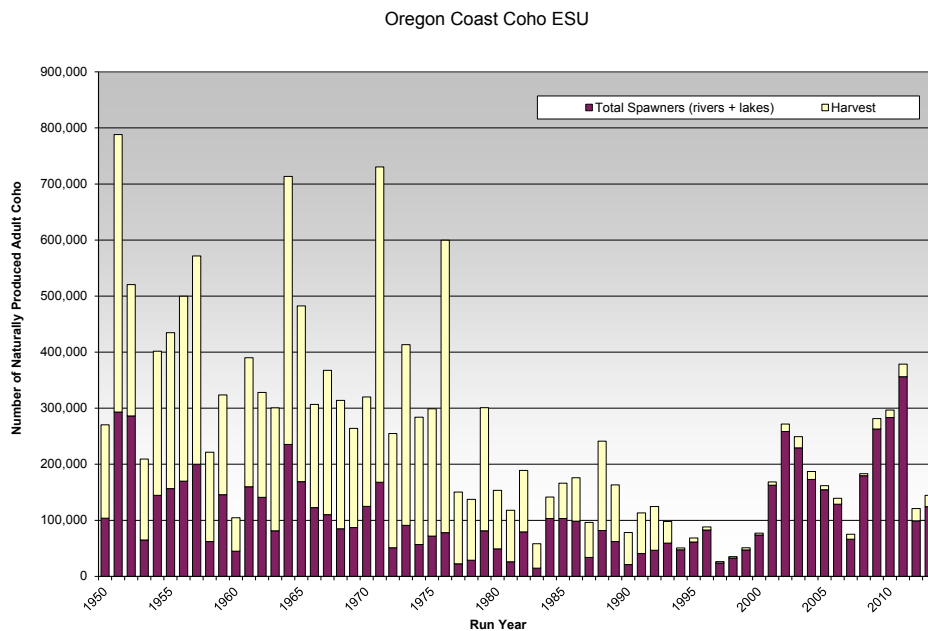


Figure 1. Estimated numbers of naturally produced adult coho in the Oregon Coast Coho ESU (run years 1950 to 2013). Number of adult coho spawning in the wild, and harvest impacts (both landed and non-landed).

Oregon Department of Fish and Wildlife, Oregon Adult Salmonid Inventory and Sampling Project

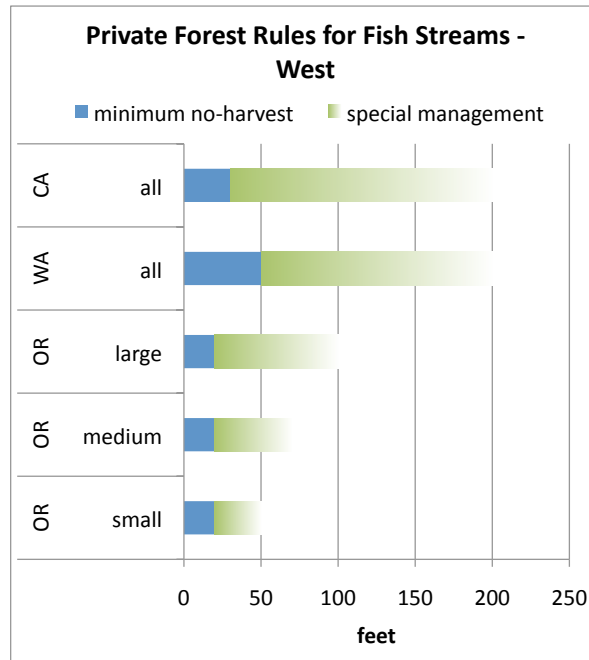
The Status Quo is not acceptable: Oregon’s Forest Practices Just Don’t Measure Up

The conservation community and the interested public it represents are understandably frustrated with Oregon’s slow rate of progress toward updating its forest practices rules to meet water quality standards. We urge this Commission to do everything in its power to



make sure that the rulemaking currently underway results in a significant change to forest practices on a significant portion of the streams in need of greater protection.

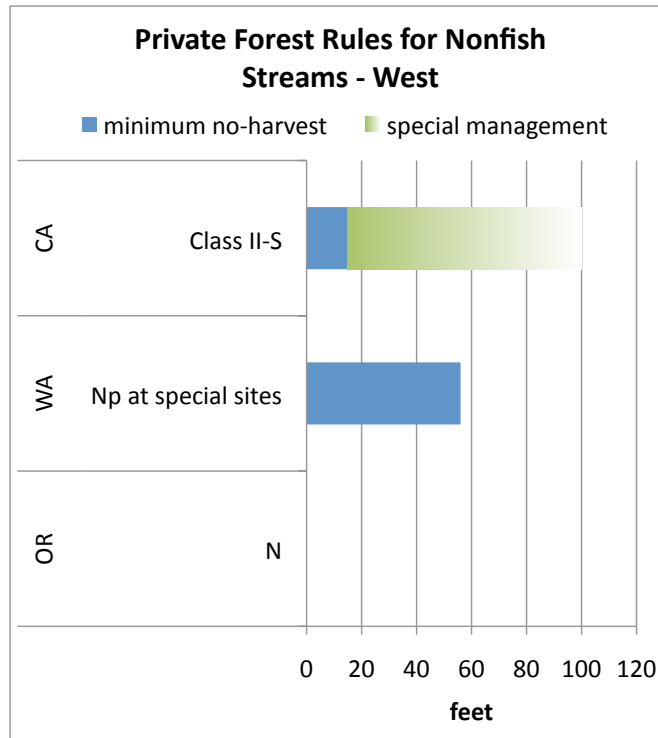
Our stream protection standards are a fraction of those provided by our neighboring states, both of which sustain viable timber industries. The two charts below illustrate the gap for both fish-bearing and nonfishbearing streams when Oregon's rules are compared to those in Washington and California.



It's important for stream buffers to be large enough to effectively protect streams from the effects of intensive clearcut logging elsewhere on the landscape. This skinny buffer is larger than those left on most of Oregon's private forest streams, but isn't big enough to do the job.



This stream isn't adequately protected from temperature increases that are harmful to fish and other species, and the few trees left along the stream won't be enough to create healthy stream habitats and help trap sediment from upland logging.



Our smallest streams receive virtually no protection under current logging rules.

Respectfully submitted,



Mary Scurlock