



BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

Statement of Mary Scurlock during General Public Forum

10 December 2015

I represent the Oregon Stream Protection Coalition's 24 fishing industry and conservation 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 many economic benefits they support, including but not limited to sport and commercial fisheries and a sustainable timber industry.

My purpose in testifying today is to summarize our perspective on the recent decision by the Board of Forestry to increase stream buffers on some western Oregon streams. We do not believe the Board took sufficient steps to meet their legal obligations, and are asking the Commission to closely examine the proposed protection and to consider petitioning the Board to ensure that best management practices for water pollution from private forest practices are truly adequate to meet water quality standards.

As you know, the anti-degradation component of the stream temperature standard limits warming from individual land use activities to .3 degrees C or less. This is known as the Protecting Coldwater Criterion, or the "PCW." Four years ago, in January of 2012, the Board of Forestry initiated a rule-making process in on the basis of the "Rip Stream" study (Groom et al. 2011) that found logging compliant with current stream protection rules does not reliably meet the prevent stream-warming of .3 degrees or more due to excessive removal of riparian shade small and medium fish-bearing streams. On November 5, 2015 the Board made a 4:3 decision initiating formal rulemaking on a specific proposal that is expected to result in a final rule within a year.

There are three points I'd like to make today.

- 1. The EQC has a duty to independently evaluate the adequacy of the Board's rules, including the Board's recent proposal.**

The OSPC is deeply concerned by the Board's decision, and we think you should be too. We think the science is clear that the proposed stream rules are inadequate to meet the PCW. I'm

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



asking you to take a hard look the proposal in light of the law and the best available science and make your own determination about the adequacy of the Board's rule directive.

Although EQC shares authority with the Board of Forestry regarding water quality attainment on state and private forestlands, the EQC is still 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 are generally considered adequate to meet water quality standards under ORS 527.770. But the EQC need not accept the Board's proposed 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.

If the EQC does not find the Board's proposal adequate, we urge you to avail yourselves of the remedies available to you, including but not limited to petitioning to the Board for rules that are adequate to meet the Protecting Coldwater Criterion.

2. The proposed buffers will not be effective to meet the PCW, yet buffers that would attain full compliance are clearly practicable

We understand that the Board of Forestry has some discretion about the level of certainty of compliance that it deems acceptable for the management practices it selects to meet water quality standards. However, it is our understanding that the Board is legally obligated to implement management practices that are actually effective to meet these standards *to the maximum or highest degree attainable* unless it can be demonstrated that meeting the standards is not practicable for the regulated community as a whole.²

The first problem is that the Board has selected practices that, according to the Department's own analysis, will not be effective to prevent the prohibited stream warming with any reasonable likelihood. As illustrated by the attached graphs generated by ODF's Jeremy Groom, even buffers of 90 feet are predicted to limit warming to .3 degrees or less 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 very low chance of actually meeting the standard and would simply perform somewhat better than the status quo. Further, the Board's proposal apparently deems these buffers adequate even when harvested down to retention standards for which there is virtually no analytical basis.

² See e.g. Adams, J.J. (Oregon Assistant AG). 2005. Legal Relationship Between ORS 527.765 and ORS 527.714 in Deciding Whether to Adopt BMPs under the Oregon Forest Practices Act ; Daugherty, P., 2012.

http://www.oregon.gov/odf/BOARD/docs/2012_November/BOF_ATTCH_20121107_03_06.pptx).



The second problem is that there is no justification on the basis of practicability at the sector level for choosing the inadequate 60 and 80 foot buffers. 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.

3. The Board’s decision does not extend additional adequate protection to all streams to which the Protecting Coldwater Criterion applies, i.e. those upstream of salmon, steelhead and bull trout (SSBT) reaches and streams in the Siskiyou, Blue Mountain and Eastern Cascade Regions

a. Upstream Extent. The PCW expressly requires some reaches upstream of SSBT reaches to be protected from warming, yet the Board’s action does not effectively apply the new buffers upstream of these reaches. The Protecting Coldwater Criterion applies to reaches upstream of salmon, steelhead and bull trout reaches that are “necessary to ensure that downstream temperatures achieve and maintain compliance with the applicable temperature criteria.” The Board ignored ODF staff analysis showing high variability in heat dissipation downstream, and finding that available evidence shows only half the upstream temperature increase dissipates after 300 meters downstream, which in many cases would result in PCW violations at that distance. On the basis of available information, NMFS scientists called for the new buffers to apply at least 1600 feet upstream of SSBT reaches. What we got was “to the end of the uni,t” whatever that distance may be.

b. The PCW applies on all Oregon streams. The Board proposes no action to extend new protections to all regions of the state. There is no timeline for addressing the Siskiyou and the two ODF regions in Eastern Orego also excluded despite a large body of evidence (including but not limited to RipStream) indicating that the current rules are not adequate to meet the Protecting Coldwater Criterion in any region of the state.

In conclusion, I urge you to examine the compelling reasons why the Commission should petition the Board of Forestry for rules that will effectively meet the PCW. In parallel, we further urge you to independently assess the adequacy of current and proposed rules to meet temperature restoration targets (TMDLs) on impaired stream reaches statewide.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "Mary Scurlock". The signature is fluid and cursive, with a large loop at the end.

Mary Scurlock, Coordinator, Oregon Stream Protection Coalition

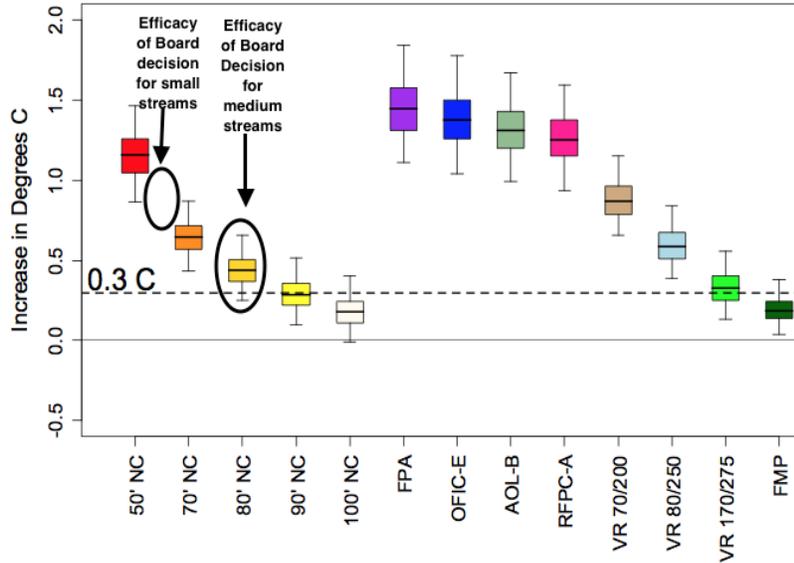


Figure 1. Mean temperature responses of 33 sites subject to different harvest prescriptions (see above for definitions). The 50, 70, 80, 90, and 100 foot NC prescriptions were subsets of the No-Cut prescription. The VR-170/275 values are specifically from the VR-170 prescription at a basal area retention 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.

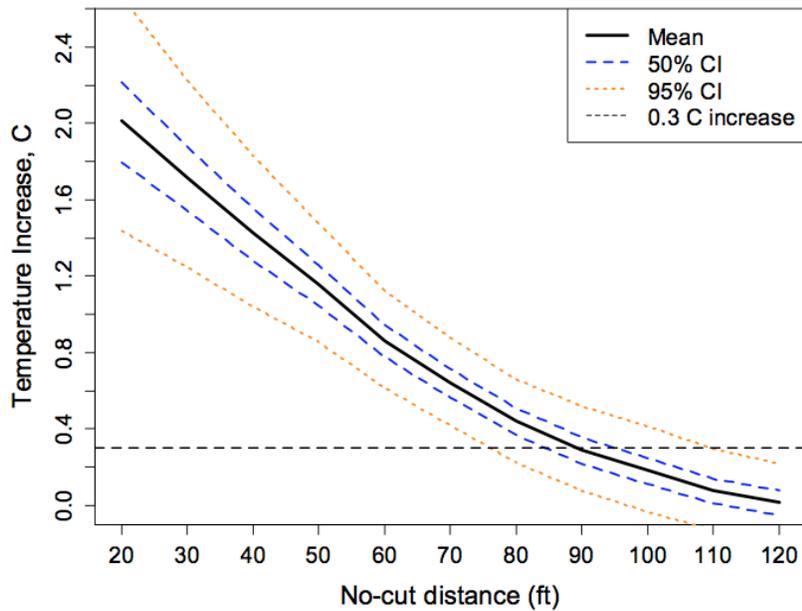


Figure 1. Mean temperature responses among all sites to simulated harvests at set slope distances from the stream. The black line indicates the mean response of the 33 sites, the dashed blue line represents a 50% Credibility Interval (CI) and the dashed orange line a 95% CI. The horizontal dashed black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