



Oregon  
Stream  
Protection  
Coalition

**BEFORE THE OREGON BOARD OF FORESTRY**

7 September 2016

*Statement of Mary Scurlock, Coordinator, Oregon Stream Protection Coalition*

*Re: Agenda Item 7*

*Equity Relief for Riparian Rule on Salmon, Steelhead and Bull Trout Streams*

Association of  
Northwest  
Steelheaders

Audubon Society of  
Portland

Cascadia Wildlands

Center for Biological  
Diversity

Coast Range  
Association

Defenders of Wildlife

Hells Canyon  
Preservation Council

Institute for Fisheries  
Resources

KS Wild

McKenzie Flyfishers

Native Fish Society

Northwest  
Environmental  
Advocates

Northwest Guides and  
Anglers

Northwest Sportfishing  
Industry Association

Oregon Wild

Pacific Coast  
Federation of  
Fishermen's  
Associations

Pacific Rivers Council

Rogue Riverkeeper

Sierra Club

Trout Unlimited

Umpqua Watersheds

The Wetlands  
Conservancy

Wild Earth Guardians

Wild Salmon Center

Thank you for the opportunity to testify today. Oregon Stream Protection Coalition (OSPC) appreciates the many opportunities for public input in this process. The Riparian Rule Advisory committee that the Board assembled to work on the rule was a constructive and well-administered process.

The one outstanding issue centers on the issue of equity and relief for some woodland owners.

The ODF staff proposal would allow alternate prescriptions on 147 miles of salmon, steelhead and bull trout stream (6% of SSBT) and the OSWA proposal to 361 miles (15% of SSBT). The Board's original proposal would apply to only 102 miles, or 4% of SSBT.

Because we believe that equity relief should be designed to target only those landowners subject to truly "excessive encumbrance and economic impacts" such that the default prescriptions are effectively impracticable for those landowners, we think the Board should be looking for ways to further target and limit the application of alternative weaker stream protections, not to expand their application.

Therefore, given the Board's duty to seek management practices that fully comply with the Protecting Coldwater Criterion (and other water quality standards) OSPC does not support sending a rule to public comment that weakens the proposed stream protection on parcels subject to less than a 10% additional encumbrance by virtue of this rule change, or which proposes relief other than a 50 and 70 foot no-harvest buffer.

➤ **The modest change represented by the default rule prescriptions already reflects a tradeoff in favor of minimizing impacts to landowners.**

The default prescriptions, according to the Department's own analysis in the record of this proceeding, already accept a high degree of risk that the Protecting Coldwater Criterion (PCW) will not be met, favoring protection of landowner economic interests over the environmental protection objective of the rule. The selection of the 60 and 80 foot buffers is implicitly being justified on the basis that it is "impracticable" for landowners to implement the 90-120 foot buffers ODF's predictive modeling analysis shows are actually necessary to meet the PCW with a high degree of certainty. A further concession to landowner interests is the

inclusion of a variable retention option that is even less effective to meet the primary objective of this rule.<sup>1</sup>

Therefore, we believe the selected approach already tests the limits of the Board's discretion to choose "best management practices" that do not fully comply with state water quality standards on their face. Under these circumstances we cannot support the exemption of certain landowners from the PCW via the application of even weaker riparian prescriptions without a showing of truly excessive economic hardship.<sup>2</sup>

➤ **10% additional encumbrance is a significant precedent to set for relief**

We urge the Board to consider that your decision in this rulemaking on "excessive encumbrance and economic impact" sets a *de facto* policy precedent and expectation for future changes to forest practices rules, essentially limiting the effectiveness of this and future rules to meet their ecological objectives.

From our perspective, this precedent is particularly important because it seems clear that this rule change is just the tip of the adaptive management iceberg: meeting the PCW on Salmon, Steelhead and Bull Trout streams is not the only question on the table about the current rules' adequacy to protect aquatic resources. The NOAA and EPA findings under CZARA, widespread water quality impairments, unattained and unenforced TMDLs and continued attention to forest practices in Oregon Coast coho status reviews and recovery plans all indicate that increased riparian protection is needed on that majority of small and medium streams excluded from this rulemaking.

In our view, total encumbrance of individual parcels would be a more logical trigger – or a least a co-consideration -- for the availability of regulatory relief in any form, not the 10% additional encumbrance from a single rule change decision. This would require the Board to think carefully about what constitutes excessive total regulatory encumbrance of a forest parcel.

We note that the statistical analysis provided by the Department does not answer the question as to what threshold this Board should set to define a regulatory encumbrance to be "unfair." The ODF analysis rationalizes the 8% threshold because this is the point at which the relationship between "% of the parcel encumbered" and "% of SSBT stream miles affected" diverges to affect a larger proportion of SSBT streams. This is an interesting point, but is not a compelling argument for exempting

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<sup>1</sup> EPA Analysis of the variable retention option based on the 2015 ODF modeling estimates that the variable retention option will increase stream temperatures by 1.2 degrees C on small streams and .6 degrees C on medium streams. (P. Leinenbach Memo to A. Henning, January 27, 2016, 11 pages). The PCW prohibits any land use activity from warming streams by more than .3 degrees C.

<sup>2</sup> It has not been demonstrated that either the 8% or the 10% thresholds limit relief only to these circumstances, but in the interests moving a package forward to refrain from further comment here.

more stream miles from the management practices deemed minimally necessary to meet the Protecting Coldwater Criterion.

**This is already an extremely modest rule proposal, with very limited impacts on the vast majority of landowners.**

Because very few landowners have a large amount of their land subject to riparian restrictions, we urge the Board to consider more tailored ownership-specific relief -- not blanket prescriptions. As the ODF analysis indicates:

- About 90% of parcels will not be impacted by the proposed rule at all -- only 11%, or 7885 parcels are even affected (recall that 75% of fishbearing stream miles in the covered area receive no additional protection).
- The average encumbrance per acre is .5% (6.1% for very small (2-10 acres) parcels and .5% for parcels over 5000 acres.
- 55% of those affected parcels have less than 2.1% greater encumbrance as a result of this rule.
- Less than 1% of affected parcels have an increased encumbrance of 10% or more, and truly "excessive encumbrance" in terms of total encumbrance occurs on even fewer parcels.

➤ **Appropriate Relief for covered parcels: a smaller no-cut is adequate**

The proposed new regulation itself is such a small incremental increase over the status quo, it requires little relief: the size of the RMA increases by only 10 feet, and the availability of a variable retention option further reduces the impact because significant logging will be allowed within those buffers. Therefore, we do not support the addition of a variable retention option to the 50 and 70 foot no cut proposal originally forwarded by the Board. This small degree of relief reduces the footprint of the new rule to increased retention within the existing RMA, so no new acres are encumbered on ownerships that qualify for relief.