

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

Testimony of Mary Scurlock, Oregon Stream Protection Coalition
Public Forum, 1:15 p.m. May 16, 2019
Portland, Oregon

Chair George, Director Whitman and Members of the Commission, I am Mary Scurlock, Coordinator of the Oregon Stream Protection Coalition.

My purpose in testifying today is to call your attention to two matters pending before the Board of Forestry:

1. A June 5 decision on whether sufficient information exists to find that existing stream protection rules in the Siskiyou Region are inadequate to prevent stream warming prohibited by the DEQ's Protecting Coldwater Criterion.
2. A citizen petition delivered to the Board of Forestry on April 24 to designate resource sites for listed coho salmon under the Oregon Forest Practices Act. A decision to accept for review or deny this petition will be rendered at the July 24 meeting;

Siskiyou Rules: Resource Degradation Finding Warranted

I have copied the Commission and Director Whitman on a May 14 letter to the Board recommending a finding of insufficiency based on the record of the Salmon, Steelhead and Bull Trout rule effective in the rest of western Oregon in July of 2017 and on ODF monitoring staff's more recent "evidence review" which was restricted to studies actually conducted in the Siskiyou or Klamath regions.

We have just learned that ODF staff will be recommending further study before making a degradation finding for small and medium fishbearing streams despite the lack of any scientific basis to find that the same size stream buffers that were found lacking in 2015 are now possibly effective to protect streams in the Siskiyou. We don't dispute that available information is imperfect, but we are extremely concerned that the Board must consider all available relevant information – including the Groom et. al. 2011 study ("RipStream") and the predictive modeling it enabled. RipStream demonstrated that logging practices under current stream protection rules did not reliably meet the Protecting Cold Water Criterion, which is the anti-degradation component of the state water quality standard for temperature under the Clean Water Act. We are further concerned that the Board should be considering DEQ's modeling developed to provide the basis for stream temperature load allocations in the Siskiyou Region. We do not currently have assurance that the Board will duly consider this information.

The research reported in the Department's Siskiyou "evidence review" (final draft forthcoming) – although limited -- is nonetheless fully consistent with and validates extrapolation of the RipStream findings to the Siskiyou. In other words, logging practices under the existing rules resulted in warmer streams that violated a state water quality standard for temperature.

I remind the Commission that you have the authority to petition the Board of Forestry for watershed specific rules in impaired watersheds and in watersheds providing habitat for federal or state ESA-listed aquatic species – both of which characterize the majority of the watersheds in the Siskiyou region. ORS 527.765(3)(d).

Failure to meet water quality standards for temperature has led to the widespread “303(d)” listing of rivers and streams in 21 watersheds in the Siskiyou and to the development of water quality restoration targets that effectively establish no measurable stream warming as the legal standard on a majority of stream miles. There are 40 populations of ESA listed Southern Oregon Coastal Coho salmon, 27 of which have been identified by the National Marine Fisheries Service as suffering from impaired water quality, including but not limited to temperature. (NMFS SONCC Recovery Plan 2016).

Petition to Protect Resource Sites for Oregon’s Coho Salmon Populations:

Twenty conservation and fishing industry organizations requested the Board of Forestry (Board) to develop a rule designating resource sites on state and private forestlands for Oregon’s coho salmon. The Oregon Forest Practices Act requires the Board to “collect and analyze the best available information and establish inventories of resource sites of federally listed...wildlife species.” ORS 527.710(3)(a)(A). Oregon’s three coho salmon evolutionarily significant units – Southern Oregon, Oregon Coast and Lower Columbia -- are all federally listed as threatened. 62 FR 24588; 63 FR 42587; 70 FR 37160. The Board must therefore designate resource sites for coho salmon, “determine whether forest practices would conflict with [these] resource sites.” ORS 527.710(3)(b), and, if so, adopt rules to protect sites from these conflicts. ORS 527.710(b), (c).

The petition summarizes the biology and population status of, and past and current threats to, coho salmon in Oregon; the legal basis for petitioners’ request; and the kinds of harm to coho allowed under current regulation. Petitioners rely heavily on sources used by state and federal expert agencies in listing decisions, status reviews and recovery plans.

Like the range of coho salmon, the actions requested are regional in scale and implicate a significant portion of state and private forestlands in Oregon. A large-scale policy review is consistent both with salmon ecology and with the public’s interest in comprehensively addressing weaknesses in current water protection rules, rather than relying on more piecemeal policy change approaches such as those taken by the Board in recent years.

The information in the letter and citizen petition indicates that a petition from this Commission to the Board of Forestry to compel a review of best management practices at the watershed level on the basis of 303(d) and salmon listings is more than justified. A petition from the EQC would also serve to elevate the Department’s leverage in rule analysis and development from “consultation” to “concurrence” in some important respects. We hope you will consider taking this action.

Thank you for your consideration.