



Protecting clean water and native fish in the waters of the Rogue.

Thomas Imeson, Chair
Oregon Board of Forestry
2600 State Street
Salem, OR 97310

July 22, 2019

RE: Agenda Item 6 Forest Practices Act Rule Enforcement Policy Review

Dear Chair Imeson and Members of the Board:

Thank you for the opportunity to provide public comment on Agenda Item 6 Forest Practices Act Rule Enforcement Policy Review. Rogue Riverkeeper works to protect and restore clean water and fish populations in the waters of the Rogue through advocacy, accountability, and community engagement. On behalf of our hundreds of members and supporters who are concerned about clean water and the health of threatened salmon in the waters of the Rogue, we joined the “Petition for Rulemaking to Identify and Develop Protection Requirements for Coho Salmon Resource Sites” submitted to the Board of Forestry on April 24, 2019.

In the petition, the 22 petitioner conservation and fishing industry organizations requested that the Board develop a rule designating resources sites on state and private forestlands for Oregon’s coho salmon. As required by the Oregon Forest Practices Act (“OFPA”), the Board must “collect and analyze the best available information and establish inventories of resource sites of federally listed...wildlife species,”¹ designate resource sites for coho salmon, “determine whether forest practices would conflict with [these] resource sites,”² and, if so, must adopt rules to protect sites from these conflicts.³

1. The Board should accept the petition and proceed to rulemaking related to resource site protection rules for coho salmon described in ORS 527.710.

We respectfully request that the Board adopt recommendation (1) in the staff report for Agenda Item 6 to: “Accept the petition and proceed to rulemaking related to resource site protection rules for coho salmon described in ORS 527.710.”⁴ The comprehensive information in the petition identifies threats to Oregon’s coho salmon from historical and ongoing forest practices that impact stream complexity, water quality, and stream flow. The Board has never identified

¹ ORS 527.710(3)(a)(A)

² ORS 527.710(3)(b)

³ ORS 527.710(b), (c).

⁴ Agenda Item No. 6. Forest Practices Act (FPA) Rule Policy Review. Staff Report. P. 2.

resources sites for any fish species and is more than 20 years past its statutory obligations to designate protections for coho listed under the Endangered Species Act. A large-scale review of the existing policy, as would occur through the resource site inventory and rulemaking process, is consistent with improving protections for threatened coho salmon and with the requirements of the Oregon Forest Practices Act.

2. Impacts to Threatened SONCC Coho

Specifically, Rogue Riverkeeper is concerned about the impacts of forest practices to threatened Southern Oregon/Northern California Coast (SONCC) Evolutionarily Significant Unit (ESU) of coho, first listed as threatened under the Endangered Species Act in 1997.⁵ In the Rogue Basin, independent populations of SONCC coho in the Middle Rogue, Applegate River, and Illinois River are identified as at high risk for extinction.⁶ The 2014 Final SONCC Coho Recovery Plan from NOAA Fisheries states that the Oregon Forest Practices Act and related regulations are the least protective within the SONCC coho ESU.⁷ NOAA Fisheries identifies improving timber harvest practices under the Oregon Forest Practices Act as one of the highest priority recovery actions for the Illinois River, Middle Rogue/Applegate, and Upper Rogue coho populations.⁸ NOAA Fisheries further states that:

“Because of the preponderance of private timberland and timber harvest activity in the range of this ESU, and potential adverse effects, careful consideration of state forest practices rules and regulations is prudent. At the time of listing, most reviews of the forest practice rules indicated that implementation and enforcement of these rules did not adequately protect coho salmon or their habitats (CDFG 1994, Murphy 1995, Ligon et al. 1999, IMST 1999).”⁹

As just one example, NOAA Fisheries found that for the Illinois River population, private forestlands had both the most potential to support coho salmon and at the same time had the least watershed protection. Specifically, the report states that “although much of the habitat in the Illinois River is federally owned, the future threat of timber harvest in the next ten years is high because much of the habitat with the best potential to support coho salmon will be harvested using less protective management actions than those used on Federal lands.”¹⁰ In other words, the inadequate protections under the Oregon Forest Practices Act remains a significant threat to the recovery of native salmonids in the Rogue watershed.

3. Ongoing Siskiyou Exemption

Further, we remain concerned that the Siskiyou region’s salmon and steelhead streams are currently left with weaker protections than those in the rest of western Oregon, following the Board of Forestry’s November 2015 decision to exclude our region from its new stream buffer rule finalized in 2017. The 2017 stream buffer rule strengthened protections for small and

⁵ 2014 SONCC plan http://www.nmfs.noaa.gov/pr/recovery/plans/cohosalmon_soncc.pdf p. ES3-ES4

⁶ 2014 SONCC plan http://www.nmfs.noaa.gov/pr/recovery/plans/cohosalmon_soncc.pdf p. ES 5

⁷ Final Recovery Plan for the Southern Oregon/ Northern California Coast Evolutionarily Significant Unit of Coho Salmon (*Oncorhynchus kisutch*). NOAA Fisheries. 2014. P. 3-57.

⁸ 2014 SONCC plan http://www.nmfs.noaa.gov/pr/recovery/plans/cohosalmon_soncc.pdf p. ES 5

⁹ Final Recovery Plan for the Southern Oregon/ Northern California Coast Evolutionarily Significant Unit of Coho Salmon (*Oncorhynchus kisutch*). NOAA Fisheries. 2014. P. 3-54.

¹⁰ 2014 SONCC 30-22

medium “salmon, steelhead, and bull trout” (“SSBT”) streams in parts of western Oregon, but did not come close to fully addressing existing forest practices conflicts with coho habitat.

New information indicates that current OFPA standards for riparian buffers are inadequate to provide for shade, large wood recruitment and nutrient/sediment filtering. The Bureau of Land Management (“BLM”) and Environmental Protection Agency (“EPA”) modeled shade loss with 60-foot no-cut buffers and found several instances where there would be 3% or greater shade loss to the stream.¹¹ These results are consistent with Lienenbach 2013.¹² Subsequently, within the Siskiyou region and using best available science, the Bureau of Land Management (BLM) adopted 120-foot no-cut buffers for perennial and fish-bearing streams to ensure water quality and large wood in compliance with the Endangered Species Act and the Clean Water Act.¹³ Although we understand that BLM Resources Management Plans (“RMPs”) are not binding on lands administered by ODF, the BLM RMP effort represents the best available science applied to SONCC coho streams.

4. The OFPA notification process does not specifically require the identification of haul roads used during a timber operation that would be sources of sediment pollution.

EPA and NOAA Fisheries specifically identify sediment pollution from forest roads in the agencies’ determination that Oregon has not submitted a fully approvable Coastal Nonpoint Pollution Control Program (CNPCP) as required under the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA). Specifically, EPA and NOAA Fisheries state:

“In addition to water quality impacts, sedimentation and erosion from forestry roads have adverse impacts on salmon. Salmonid spawning is one of Oregon’s designated uses. Logging roads are a source of fine sediments that enter spawning gravel and can lower the success of spawning and recruitment for coho salmon.³⁷ NMFS’s scientific analysis for their Endangered Species Act (ESA) section 7 listing for Oregon coast coho salmon also continues to recognize forestry roads, including legacy roads, as a source of sediment and a threat to Oregon coastal coho salmon. NMFS explained that ‘existing and legacy [forestry] roads can contribute to continued stream degradation over time through restriction of debris flows, sedimentation, restriction of fish passage, and loss of riparian function.’”¹⁴

The notification process under the OFPA identifies streams and requires a plan to log within riparian areas. However, the notification process does not require the identification of haul roads and how sediment created from log haul would be prevented from entering the stream system at each stream crossing and from haul roads located within riparian areas (e.g. site-specific best management practices to disconnect the road system from the stream system). Specific best

¹¹ USDI BLM 2016a. Proposed Resource Management Plan/FEIS for Western Oregon. <https://www.blm.gov/or/plans/rmpswesternoregon/feis/>. P. 373-384.

¹² Leinenbach, P., G.McFadden, and C. Torgersen. 2013. Effects of Riparian Management Strategies on Stream Temperature. Science Review Team Temperature Subgroup.

¹³ USDI BLM 2016b. Southwestern Oregon Record of Decision and Resource Management Plan. https://www.blm.gov/or/plans/rmpswesternoregon/files/rod/SWO_ROD_RMP.pdf. P. 82.

¹⁴ NOAA/EPA Finding that Oregon has not submitted a fully approvable Coastal Nonpoint Program. 30 January 2015. P. 9.

management practices (“BMPs”) are not currently identified with site specificity through the notification process. The effectiveness of BMPs, if implemented, are greatly reduced with commonly implemented wet season haul. Intermittent streams during the wet season become conduits for sediment during wet season log haul. Haul roads which impede or block adult coho migration are not identified for modifications (e.g., bottomless culverts).

5. Conclusions

In conclusion, protective rules for coho resource sites are needed on state and private lands managed under the Oregon Forest Practices Act to protect clean water and ensure the persistence of threatened coho salmon. By identifying resource sites for Oregon’s coho salmon and promulgating rules to protect these species from the impacts of historical and ongoing forest practices, the Board has an opportunity to fulfill its unmet responsibilities. We respectfully request that the Board adopt recommendation (1) in the staff report for Agenda Item 6 to: “Accept the petition and proceed to rulemaking related to resource site protection rules for coho salmon described in ORS 527.710.”¹⁵

Sincerely,

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¹⁵ Agenda Item No. 6. Forest Practices Act (FPA) Rule Policy Review. Staff Report. P. 2.