

Board of Forestry Riparian Rule Subcommittee Meeting Minutes
Friday, September 25, 2015

Subcommittee Members Present:

Tom Imeson
Gary Springer
Nils Christoffersen

Subcommittee Members Absent:

Sybil Ackerman-Munson

Other Board Members Present:

Cindy Deacon-Williams

Chair Imeson called the public meeting to order at 9:00 a.m.

State Forester Decker opened with a few comments that included:

- a reminder that today is not a decision meeting but rather a work session;
- an overview of the events leading up to the subcommittee meeting;
- a reminder that there is no single right answer and that the Board is committed to building consensus, expressing the desire at the July Board meeting to further explore the situation before coming to a decision; and
- the set of principles that came out of the July deliberation, which are as follows:
 - the temperature has to be the lens that is used for evaluation,
 - there is an important role for monitoring and evaluation,
 - there needs to be both voluntary and regulatory measures considered, as well as an attention to equity, and
 - the development of one or two prescription packages to bring back to the full Board.

Chair Imeson reinstated State Forester Decker's message that the Board members are all appointed by the Governor and all purposely represent diverse perspectives, each coming with the best intentions to solve difficult problems such as the one before them now. He then stated the overall goal of the subcommittee: to create one or two prescription packages and/or common themes to bring back to the full Board at the November meeting for a vote. He outlined the format for the subcommittee meeting with a reminder that today's meeting is a work session and that no public comment would be taken and that no voting would take place. Chair Imeson then provided an overview of how the subcommittee was formed and the events leading up to the meeting.

Brett Brownscombe, Natural Resource Policy Advisor for the Governor's office, spoke on behalf of Richard Whitman and the Governor, beginning by thanking the subcommittee members for the time that they are taking to be careful and give the issue a thorough review. Mr. Brownscombe conveyed the message to keep working to find a solution to a complex problem that is not going to get any easier, reminding the subcommittee that there is a standard working to be met to the maximum extent practicable and if the prescription package selected does not

meet that standard then the Board needs to demonstrate why that is not practicable. He then finished with a thank you for the work being done by the Board with the Environmental Quality Commission (EQC), encouraging the Board to continue to work with their colleagues at the EQC as they move forward.

Chair Imeson explained how the meeting would be conducted in the absence of Sybil Ackerman-Munson and welcomed Board member Cindy Deacon Williams, who is not a member of the subcommittee but will be welcome to join the discussion.

Peter Daugherty, Private Forests Division Chief, introduced Terry Frueh, Monitoring Specialist, and Marganne Allen, Field Support Manager. Peter Daugherty provided a brief overview of the process that Department staff and subcommittee members utilized to prepare for the subcommittee meeting, including one-on-one meetings with subcommittee members to review and refine prescription packages, discussion guides, and support materials. The result was the development of two packages with discussion guides and a discussion guide for alternate prescriptions. He then briefly summarized the two packages and the materials provided to subcommittee members prior to the meeting.

Subcommittee Member Gary Springer noted that this was a very useful process with the Department.

Chair Imeson then spoke about the definition of maximum extent practicable (MEP) and the criteria used to select the best prescription package for this rule making process, including

- temperature concerns;
- desired future condition;
- proper functioning condition of riparian areas;
- economic impact on forest operations and land use decisions; and
- social and economic equity impacts.

He then stated that the Subcommittee does not need to define MEP as a group and that under standard definition, practicable essentially means feasible and there is more than one set of rules that can achieve MEP. He then provided a reminder of the five factors to be considered under ORS 527.675 and indicated that the determination of MEP may vary between Board members as they each weigh trade-offs between doing what is feasible to meet the standards and other factors.

Subcommittee discussion then ensued regarding the importance of striving to listen to each other to work as a team to try to reach the best decision and the value of having a framework to guide them as they have the difficult discussions, as well as the focus on temperature concerns with the understanding that temperature cannot be segmented from the rest of riparian function nor from the desire to keep forests as forests, and that larger scale external impacts need to be kept in mind.

Chair Imeson asked Peter Daugherty to present the first prescription package on behalf of Sybil Ackerman-Munson. Discussion ensued regarding the conversation around Package #1 in the absence of Board Member Ackerman-Munson.

Peter Daugherty presented Package #1 ([Attachment 1](#)) with highlights including:

- stream extent to small and medium Salmon, Steelhead, and/or Bull Trout (SSBT) Streams and up fish-bearing streams for 1,000 feet above the end of the SSBT main stem;
- geographic regions to which the prescriptions apply are Coast Range, South Coast, Interior, Western Cascades, and Siskiyou;
- final harvest prescriptions include two options:
 - A) No-Cut: 90 foot no-cut riparian management areas (RMA) for both Small and Medium SSBT and up fish-bearing streams for 1,000 feet. To allow for operational flexibility the width of clear cut area can vary between 70 and 110 feet as long as the average for the harvest unit is 90 feet, and
 - B) Variable Retention: 100 foot RMAs for both Small and Medium SSBT streams and 1,000 feet upstream of end of main stream, standard target basal area of 275 square feet/1,000 feet. To allow for operational flexibility the width of the RMA can vary between 80 and 120 feet with the average for the harvest unit of 100 feet. The thinning prescription should increase average basal area and retain a subset of largest trees. Targets should be met with trees well-distributed throughout the RMA with the goal to speed the trajectory of the RMA towards desired future conditions. Hardwoods can be counted equal to conifers towards basal area;
 - both of these options are regulatory and landowners can choose to implement either option A or B;
- to allow for equity for forest landowners that may have proportionally increased amount of property encumbered by new rules, the rules would state that new prescriptions are voluntary for landowners that meet a specific condition, for example below certain ownership acreage and/or additional encumbrance above threshold percentage of ownership; and
- encourage large wood placement in places where there is a lack of large wood currently by allowing landowners to decrease the RMA width of each option by 10 feet if they place half the trees in this 10-foot-zone in the stream as well as the option to explore placing trees in the stream that are removed from within the RMA closer to the streams long as the same number of stems by species and size are retained in the 10-foot-zone.

Subcommittee discussion ensued regarding Package #1, led by Chair Imeson and following the outline laid out in [Attachment 2](#), with clarification from staff on topics including:

- the likelihood of this package meeting the Protecting Cold Water (PCW) standard
 - high likelihood of temperature improvement with discussion of the certainty of this outcome and the confidence intervals placed on this;
- the desire to maintain an active management option and the observation from private land foresters that Option B does not allow much chance for active management and thus Option A would be the default;

- the concern that a high likelihood of meeting the PCW may be overstated depending on the scale utilized for this determination;
- the feasibility of prescription package #1, including discussion on
 - similar rules being utilized in Washington and the concern that in the absence of monitoring using Washington as an example for feasibility may not be effective;
 - thinning in riparian areas, specifically in national forests, and a concern that rules not stand in the way of meeting desired future condition;
 - land use conversion rates in Oregon versus Washington and the impacts that these have on water quality and riparian health; and
 - the concern that this is an oversized solution to a modest issue;
- the importance of the role of active management in RMAs and the impact that the lack of active management has on stream temperature and health;
- clarification on hardwood versus conifers;
- the economic impacts of package #1, including;
 - the differences between return on investment for private industrial and private non-industrial lands;
 - a reference to the Big Look study and the accuracy of the results of that study;
- the active wood placement issue;
- whether primary productivity is a limiting factor and what other limiting factors may be;
- equity concerns and relief for family forest landowners, the concern of creating a double standard and the desire to keep outcomes reasonable to avoid this outcome, and the possibility of an incentive based approach rather than a different standard;
- suggestions for additional considerations for Sybil Ackerman-Munson that are consistent with her proposal; and
- clarification on the precedent that currently exists for scenic byways, which treats small landowners differently.

Subcommittee Member Gary Springer presented package #2 ([Attachment 3](#)), with highlights including:

- a reminder that this proposal is largely based on the work of the Regional Forest Practices Committees;
- Small and Medium SSBT stream extent;
- geographic regions to which the prescription applies are Coast Range, South Coast, Interior, and Western Cascades;
- final harvest prescriptions include two options:
 - A) Passive Management (voluntary): 50 foot and 70 foot no-cut RMAs for Small and Medium SSBT, respectively. Up to 50% of required in-unit wildlife trees may be left in a 20 foot wide zone adjacent to RMAs, and wildlife trees should be well-distributed along the length of this 20 foot zone or to cover canopy gaps in the RMA; and

- B) Variable Retention/Active Management (regulatory): 50 foot and 70 foot RMAs for Small and Medium SSBT, respectively. The prescription has a standard target for Small streams of 80 square feet per 1,000 feet, with an active target of 50 square feet per 1,000 feet and a standard target for Medium streams of 160 square feet per 1,000 feet, with an active target of 100 square feet per 1,000 feet. Targets should be met with trees well-distributed throughout the RMA and hardwoods can be counted equal to conifers. The prescription requires minimum conifer tree count of 40 for Medium streams and 25 for Small streams per 1,000 feet. In-unit wildlife trees used as in Option A (voluntary component);
- The package also includes two alternate practice prescriptions:
 - C) RMA Thinning: encourage early/mid rotation thinning to promote wind-firm trees and understory development, use a trees per acre or per 1,000 feet standard rather than basal area targets, thinning should be done far enough in advance of final harvest (10 or more years) to grow trees past standard basal area targets, thinning should result in trees well-distributed throughout the RMA, and hardwoods treated the same as in Option B; and
 - D) Testing Prescriptions similar to Regional Forest Practices Committee (RFPCs) Options: test south-sided buffers and one-sided/staggered harvests, similar to the RFPCs south-sided buffer and staggered harvest options;
- a reminder that the goal for these prescriptions is to reduce the rate of PCW exceedances, not prevent them entirely;
- allow landowner to pick the option that best suits conditions on the ground and his/her silvicultural regime while encouraging a focus on riparian vigor and desired future condition;
- all distances are slope distances for purposes of measuring RMA widths;
- all current rules that apply to Small and Medium Type F streams continue to apply;
- a reference to the 2015 ODF Annual Performance Report, summaries for Key Performance Measures #8a-c (Forest Stream Water Quality) as support for a moderate solution;
- Board policy connections, including:
 - the inclusion of options for active management of riparian areas that are focused on the advancement of desired future conditions as stated in current Board policy and Forest Practices Act (FPA) rule;
 - RMA thinning promotes new habitat and shade sources from the development of understory vegetation, which is reflective of desired future conditions rule language;
 - active management prescriptions allow some tree harvest within the RMA, which is a current Board policy goal;
 - RMA thinning can provide opportunities for in-stream large wood placement, a Board policy goal; and

- An overview of landowner engagement with regards to prescription package #2.

Subcommittee discussion ensued regarding Package #2, led by Chair Imeson and following the outline laid out in [Attachment 4](#), with clarification from Mr. Springer and staff on topics including:

- the regulatory and voluntary nature of the options;
- the geographic regions and why this prescription package would not apply to the Siskiyou, including discussion around increased temperature concerns in this area as well as supporting studies and the option to have variation in standards based on geographic region;
- the thought process behind the Option B basal area targets for Small and Medium, both standard and active, and the adequacy of those in terms of meeting the goals before the Board;
- the desire to go towards site specific management but the concern that the PCW expectations are set too low and the suggestion to adjust the package towards the possibility to meet the PCW;
- a discussion around the RFPC approach of looking at sites with greatest temperature impacts and how far to go to meet PCW;
- the trees per acre standard for Option C;
- the suggestion that Package #1 needs a greater range of options and Package #2 needs to increase the likelihood of meeting PCW; and
- the unintended consequences, including a discussion of short-term goals versus long term goals.

Subcommittee Member Nils Christoffersen presented information for alternate prescriptions ([Attachment 5](#)), with Subcommittee discussion around topics including:

- the preference to recognize the inherent complexity and uncertainty and the desire to have flexible, feasible approaches such as adaptive management to allow for responsive rulemaking and a strong monitoring component with timeframes;
- whether package #1 could have a variation in widths between Small and Medium;
- the feasibility of having inner and outer zones to allow an opportunity to find common ground, how this applies to the packages presented, and the plan for the Department going forward to further explore this option;
- the value of finding a solution that maintains the partnership with the landowners; and the RFPCs and Committee for Family Forestland (CFF) should have the opportunity to comment;
- a discussion on monitoring with hard triggers around topics such as funding and use of the resultant data;
- the inclusion of an additional option in each package to deal with site specific planning;
- the current use of alternate prescriptions and hardwood conversions; and

- additional topics to be explored prior to the November 5, 2015 Board meeting including the impact of large wood recruitment.

Chair Imeson and State Forester Decker led a discussion to summarize the meeting as well as look forward in the process, with highlights including;

- an overview of how the rule making process will proceed after a Board decision is made, including a timeline; and
- a summary of how the packages will be brought back before the full Board at the November 5th meeting;
- a reminder that consensus cannot always be achieved but that is always the goal;
- the desire to vote in November and to move forward with the process; and
- appreciation for all that contributed to the meeting.

Chair Imeson stated that the work of the Riparian Rule Subcommittee was completed and adjourned the meeting at 12:04 p.m.