

Agenda Item No.	2
Work Plan Title & #:	Private Forests Work Plan #6
IBI # & Title:	IBI 3 Support for the Forest Practices Act, Land Use Planning and the Oregon Plan
Presentation Title:	FPAC Rule Concepts 8 and 12
Date of Presentation:	April 24, 2009
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SUMMARY

This paper is intended to formally complete the process initiated by the Forest Practices Advisory Committee (FPAC) in 1999, as a result of Governor Kitzhaber’s Executive order 01-99. The Department recommends that the Board approve closure of the final two Rule Concepts (8 & 12) with their inclusion in and endorsement of the Oregon Plan for Salmon and Watersheds voluntary measures (Agenda Item C). While the endorsement of voluntary measures to address these two rule concepts will bring closure to the FPAC process, ongoing policy, regulatory, research, and monitoring frameworks and efforts will continue to ensure ongoing review and improvement related to forest practices resources protection issues.

CONTEXT

The Private Forests Work Plan 6, Intermediate Board Issue 3, supports an effective, science-based, and adaptive Oregon Forest Practices Act, a strong but flexible land use planning program, and contributions toward continuing statewide efforts under the Oregon Plan for Salmon and Watersheds to protect and enhance Oregon’s native fish populations and water quality, while sustaining a healthy economy (*Forestry Program for Oregon* key actions A.1 and D.1).

In 2003, the Department developed 18 Water Protection Rule Concepts based on recommendations in both the 2000 FPAC Report, as well as the 2002 ODF/DEQ Sufficiency Analysis (Attachment 1). Sixteen of these concepts, regarding protection of fish, landslides, riparian areas, roads, and landscape management and processes have already come to closure under previous Board decisions and rule revision processes. The final two Rule Concepts (8 & 12) are proposed to be implemented as Oregon Plan for Salmon and Watersheds (Oregon Plan) Voluntary Measures.

BACKGROUND AND ANALYSIS

The FPAC was convened in 1999 as a result of then Governor Kitzhaber’s Executive Order #01-99, which directed the Bard of Forestry to “determine, with the assistance of an advisory

committee, to what extent changes to forest practices are needed to meet state water quality standards and to protect and restore salmonids.” The 2000 FPAC Report made 24 recommendations where consensus or strong agreement was achieved regarding practices for fish, landslides, riparian areas, roads, and landscape management and processes. Other landmark efforts to assess the Forest Practices Act occurred between 1999 and 2003: The 1999 Interdisciplinary Science Team (IMST) Forestry Report¹, the 2002 ODF/DEQ Sufficiency Analysis Report² and the 2003 Report of Eastside Riparian Functions Advisory Committee³ (ERFAC). Between 2003 and 2004, the Department developed 18 Water Protection Rule Concepts incorporating recommendations from the IMST, FPAC and ERFAC reports as well as the ODF/DEQ Sufficiency Analysis. Attachment 1 provides a summary of the Rule Concepts and how they were implemented or otherwise concluded. All but two have already come to closure under previous Board of Forestry decisions and rule revision processes. The remaining Rule Concepts (8 & 12) are discussed below.

Rule Concept 8

Recommendation S in the FPAC report focused on active placement of large wood in streams considered deficient in wood for short-term aquatic habitat gains but consistent with longer-term goals for achieving mature riparian forest conditions and passive large wood recruitment. This issue emerged largely in response to Department monitoring data indicating there was some risk that wood recruitment on small and medium fish-bearing streams was not meeting the goals of the Water Protection Rules as described in the Forest Practices Act.⁴ This recommendation evolved into Rule Concept 8 (RC 8) and proposed draft rules for OAR 629-640-0100. These draft rules proposed increases in basal area retention requirements for small and medium fish-bearing streams in western Oregon.

In November 2005, a draft report on required findings for the proposed rule (ORS 527.714) was presented to the Board. The Board’s review and response to this work centered on perceived deficiencies with the draft rules in the following areas: addressing existing in-stream large wood deficiencies, consideration of dynamic ecosystem processes, consideration of alternatives to minimize barriers to/incentivize management of riparian areas, and the relative benefits of passive versus active approaches.

¹ Independent Multidisciplinary Science Team, 1999. *Recovery of Wild Salmonids in Western Oregon Forests: Oregon Forest Practices Act Rules and the Measures in the Oregon Plan for Salmon and Watersheds*. Technical Report 1999-1. 85pp. <http://www.fsl.orst.edu/imst/reports/1999-1.pdf>

² Oregon Department of Forestry and Oregon Department of Environmental Quality. *Sufficiency Analysis: A Statewide Evaluation of Forest Practices Act Effectiveness in Protecting Water Quality*, Oregon Department of Forestry Technical Report #11, October 2002, http://egov.oregon.gov/ODF/PRIVATE_FORESTS/docs/fp/AllSAv1031.pdf.

³ Oregon Department of Forestry. *Report of the Ad Hoc Eastside Riparian Functions Advisory Committee*, February 2003, 218 pages. http://egov.oregon.gov/ODF/PRIVATE_FORESTS/docs/fp/ERFACReport2003.pdf

⁴ Dent, L., *Harvest Effects on Riparian Function and Structure Under Current Oregon Forest Practice Rules*, Oregon Department of Forestry Technical Report 12, July 2001.

Based on this feedback, Department staff re-worked RC 8 into the High Aquatic Potential (HAP) concept for the March 2006 Board meeting. This alternative to RC 8 would utilize a more site-specific approach to determining the riparian area management approach to more efficiently and effectively provide for large wood to small and medium fish-bearing streams. These HAP streams would receive a protection approach combining additional basal area retention and in-stream placement of key large wood. While the technical feasibility of identifying HAP streams by a Geographic Information System (GIS) and verifiable by simple field tools was confirmed by a 2007 Department monitoring white paper⁵, questions related to rule complexity and consideration of non-regulatory approaches remained. Due to the complexity and cost of utilizing a regulatory approach towards implementing the HAP rule concept, the Department believes attempting to implement this concept as a rule is likely to be ineffective in achieving the overall goals of the Water Protection Rules.

For these reasons, the principles of RC 8 (prioritization of restoration measures in HAP reaches, encouraging active placement of large wood, active management of riparian areas, and retention of additional trees in riparian areas) are proposed to be implemented through a voluntary approach and Oregon Plan voluntary measures.

Rule Concept 12

Rule Concept 12 was drafted to address concerns about the potential for stream temperature increases due to reduced shade levels after harvest of small Type N streams. A draft rule articulating vegetative buffers along small Type N streams was presented to the Board in April 2004. At the meeting concerns were raised regarding the need for such a rule concept, in the context of whether or not current practices were meeting water quality standards “to the maximum extent practicable,” per ORS 527.765. Questions also were raised about whether or not information on the current rules was sufficient to meet the ORS 527.714 standards necessary to trigger rule revisions. The Board opted to defer action on RC 12 and directed staff to develop a revised recommendation for consideration at a later date. Scientific information developed since that time has not shed sufficient light on this topic to support the ORS 527.714 standards. For example, preliminary results from the Hinkle Creek paired watershed study yielded inconsistent temperature responses to harvest of small streams under the current FPA rules⁶.

The principle of Rule Concept 12 is proposed to be implemented as an Oregon Plan voluntary measure, namely retention of trees along streams above and beyond rule requirements in accordance with stand conditions.

Continuous Improvement: Policy, Regulations, Research, and Monitoring

While the endorsement of voluntary measures to address these two rule concepts will bring closure to the FPAC process, ongoing policy, regulatory, research, and monitoring frameworks

⁵ Weikel, J. 2007. *HAP MAP Validation Results*. 17pp. Available upon request.

⁶ Watersheds Research Cooperative Newsletter 2009. Assessing the Response of Streams to Contemporary Forest Practices: A Conference on Paired Watershed Studies. <http://www.watershedsresearch.org/>

and efforts will continue to ensure ongoing review and improvement related to forest practices resources protection issues:

- The Forest Practices Act specifically identifies three priority rule divisions for ongoing monitoring: water protection (OAR 629-635-0110), landslides and public safety (OAR 629-623-0000), and chemicals (OAR 629-620-0700)
- The 2002 Forest Practices Monitoring Program Strategic Plan and priorities
- The statutory requirement for a five-year agency review of rules adopted after January 1, 2006 (ORS 183.405)
- Forestry Program for Oregon commitments to the Oregon Plan, voluntary measures, and compliance with water quality standards (Strategy D)
- Ongoing Watershed Research Cooperative work: Hinkle Creek Paired Watershed Study, Trask River Watershed Study, Alsea Watershed Study⁷
- Ongoing Oregon Department of Forestry Riparian Function and Stream Temperature Study⁸

RECOMMENDATION

The Department recommends the Board approve closure of the final two Rule Concepts eight and 12, with their inclusion as Oregon Plan for Salmon and Watersheds voluntary measures (see Agenda Item C).

ATTACHMENT

- (1) Summary of 18 Water Protection Rule Concepts

⁷Watershed Research Cooperative: <http://www.watershedsresearch.org/>

⁸ Oregon Department of Forestry Riparian Function and Stream Temperature Study: http://egov.oregon.gov/ODF/PRIVATE_FORESTS/fmpProjects.shtml#RipStream
Summary of 18 Water Protection Rule Concepts