

## Changes to Part 4(D) ODF Chapter A1 Forest Practices Act

NMFS provided both general and specific comments on ODF PECE Papers. Their comments are documented in: *Northwest Fisheries Science Center Review of The Oregon Plan and Coastal Coho Assessment—Habitat*. Primary reviewers were Michael Pollock, Tim Beechie, Peter Kiffney, Ashley Steel, Blake Feist, and Phil Roni.

ODF appreciates the time and effort NMFS and other stakeholders made to comment on ODF's numerous coho assessment papers. NMFS comments have helped strengthen our assertions and better describe how our program supports the Oregon Plan.

The NMFS comments in general seem to fall into one of three categories:

- Comments stated as opinions, e.g. do not reference quantitative research or monitoring to back them up. These types of comments are difficult to respond to because they are expressions of perceptions and beliefs that may or may not be consistent with the facts. (Statement of Opinion, SOI)
- Comments relating to the format of the report, style, organization, etc. These are noted and will be addressed in the finalization of the report. (Format, Style, Organization, FSO)
- Comments reflect fundamental disagreements between the State of Oregon and NMFS on the interpretation of existing information. Oregon believes it generally has well-defended representations of the facts and stands behind the summary of our understanding of the science that is laid out in the reports. (Difference of Interpretation, DOI)

There are some comments that touched on 'critical' issues that we felt a need to specifically respond to. Comments not specifically responded to fall into one of the three categories above.

### Part 4(D) ODF Chapter A1: Forest Practices Act

NMFS: "In general, the discussion would benefit from a focused conclusion that presents ODF's logic path and ultimate finding."

- ✓ ODF: A synthesis providing ODF's logic and conclusions is provided.

NMFS: "The discussion under the individual PECE elements could benefit from a more focused and relevant presentation of information.

- ✓ ODF: Repetition of information was purposely done to ensure that each PECE question was thoroughly addressed. While this approach does not lend itself to readability of the report, the text has been retained. An explanation of how the response addresses each PECE question has been woven throughout the report to better connect the dots between the question asked and the information provided.

NMFS: "Past compliance information should be included and interpretations provided in the chapter. To that end, regulatory compliance findings should be provided, as well as an interpretation of any trends in compliance."

- ✓ ODF: ODF's compliance study deals with the complexity of FPA rules, landowner diversity, and water quality issues with a statistically reliable study design. The study was not designed to answer questions at the ESU scale--only at the State scale. Providing results at the ESU scale would not only take a lot of additional analyses of the data, but it would not be technically sound to do so. So we present our results in those terms (state scale). Note that the report compares enforcement data (inspections and citations) to results of random surveys.

Interpretation of trends in compliance is already provided in the B chapters and technical reports. A reference to the B chapter interpretations has been provided in Chapter A.

The full report can be read at [www.odf.state.or.us/pcf/Pub/fp/bmpfinal\(TR15\).pdf](http://www.odf.state.or.us/pcf/Pub/fp/bmpfinal(TR15).pdf) and the executive summary has been included in Part 4(D) ODF Chapter A1 Forest Practices Act as Appendix D.

NMFS: "Also, since significant aspects of FPA rely on voluntary measures, the role and rate of voluntary implementation is critical."

- ✓ ODF: Good comment. Additional information has been provided to better describe the role and rate of voluntary implementation.

NMFS: "The discussion indicates that conservation measures that landowners understand and believe in are more likely to be implemented and therefore entered into voluntarily. This appears to be logical, although it may conflict with economic principles that suggest entities will consider cost and market environment in order to maximize economic gain. Regardless the discussion largely relies on the presentation of tables (Tables 2 and 3) and a figure (Figure 1) without any interpretation of the information provided."

- ✓ ODF: An interpretation is included to provide a deeper understanding of the purpose of the FPA, and the ODF's ideas about integrating environmental, economic and social values.

**Key points include:**

- Forests make a vital contribution to Oregon by providing jobs, products, tax base and other social and economic benefits.
- The FPA establishes that benefits derived are in the context of protecting soil, air, water resources and providing for habitat for wildlife and aquatic life.
- True: some forest lands are managed for a high return on investment. The FPA establishes the environmental bar that must be met regardless of the economic goals of the land manager.
- We believe that an effective regulatory program must recognize the role of economics and social values and find ways to ensure that the least burdensome pathways are sought to achieve environmental and social values.
- The Oregon Plan has evolved to integrate concepts of sustainability into the plan. A central concept of sustainability is a belief that we can do even better at protecting the environment when we find ways to integrate environmental, economic and social values. This concept has become a central theme in many state agency strategies to create a sustainable future.
- Regulation is for when we know an action must be taken to meet environmental goals; voluntary is for when we don't know, but want to try a practice out to see if it works.
- While ODF believes the above points clearly establish that an economic gain cannot override an environmental requirement...a next step would be to conduct a social science study of the Oregon Plan to provide greater insight into the role that economics and social values play in motivating landowner actions.

NMFS: "It is unclear if all the activities presented in the tables and figures were solely implemented on a voluntary basis. Some activities have regulatory as well as voluntary applications. For example, current cross drain installation standards are required on new and reopened roads, but cross drain installation on existing roads appears voluntary. Do the figures provided reflect solely voluntarily installed cross drains, or both voluntarily and required installations?"

- ✓ ODF: Clarification has been provided to indicate what is voluntary vs. what is required.

Road work which is necessary for a harvest operation must comply with the FPA. Roads which were constructed prior to the FPA requirements are described as 'legacy roads.' Reconstruction work conducted on these older roads is voluntary.

Emphasis has been added to make explicitly clear that forest landowner road work reported to OWEB is **entirely voluntary**. All tables which report OWEB data are providing the numbers of voluntary projects. The OWEB Report form clearly specifies that work required by the Forest Practices Act is not eligible for reporting. As new rules, such as the wet weather hauling rule, replace actions that were once voluntary, the cutoff point will be identified to indicate that actions are no longer included in the voluntary data.

Knowing this makes the numbers of road actions presented in the report even more impressive. Oregon's industrial forest managers fund the majority of voluntary road work on industrial forests, which leaves OWEB dollars for many other landowners to do work on their lands who may not otherwise have the resources to do this work.

NMFS: "Also, the question remains whether general decreases in the implementation of these activities is due to completion of the tasks, reduced data pool because a subset became regulated over the reporting period, or reduced effort due to the questionable listing status of coho salmon in recent years. No interpretation of the information is provided that would allow the reader to understand either the rate of implementation or the factors that may influence or limit their implementation."

- ✓ ODF: Additional information has been provided to explain ODF's beliefs and observations about trends in the numbers and types of Oregon Plan activities. Uncertainties about trends will be discussed with landowners in the near future when the current set of Oregon Plan measures are evaluated pending outcome of the Board of Forestry's deliberations on riparian rules. We hope to find better ways to demonstrate the types and numbers of what is being accomplished and what these actions mean for fish and water quality.

**Key Points Include:**

- Further study is needed to better understand the trends in the types and numbers of actions reported. For instance:
- We know what is being reported, but not how much work is being done without being reported. We don't know if lack of reporting is due to a need for assistance, humble attitudes, or other reasons.
- We know that landowners tell us their enthusiasm to actively place large wood has declined because they perceive federal permit processes and conditions as disincentives. The conditions seem geared to prevent or minimize 'human' disturbance even though the very actions are intended to emulate 'natural' disturbance. One example: NMFS's SLOPES III Biological Opinion does not allow the use of trees within 20 feet of the bankfull edge of the stream, yet this is one very likely source of natural large wood inputs.
- We know that fewer road improvement projects are being reported, but we don't know if this is because the first round of projects is nearing completion or if other reasons exist. Neither do we know how much is left to complete, nor have we figured out a way to do that.
- Some road work which was previously voluntary, is now required under recent road rules. The ODF needs to find a way to track changes in reporting that result from changes in rules. An evaluation and updating of ODF's Oregon Plan measures is planned to address needed updates and improvements. Road work which is reported to OWEB is voluntary. The Watershed Restoration Inventory Report Form clearly instructs that only voluntary road work is reported.

NMFS: “Also, some analysis is needed about the likelihood that conservation efforts would continue if coho are not protected under the ESA. If the decision to not list coho were based in part on the implementation of voluntary measures, what assurance exists that these would continue?”

- ✓ ODF: Supporting ideas have been incorporated into the report.

**Key Points Include:**

- Forest landowner commitment to conduct voluntary projects has continued despite past listing decisions.
- Informing the listing decision is only one of several reasons why the coho assessment is being conducted. The Oregon Plan aims for a higher bar than the ESA listing status and is moving toward defining what conservation looks like.

NMFS: P. 6, Board of Forestry rulemaking: What methodologies, if any, are available to the Board of Forestry to help them determine, with the quantitative precision demanded by this statute, how much current forest practices are contributing to the decline of Oregon Coast coho? How will the Board of Forestry [determine] whether any proposed revisions in forest practices rules are “in proportion” to the contribution of forest practices to the degradation of coho habitat?”

- ✓ ODF: Additional information has been provided that describes the methodologies in greater detail.

**Methodologies:**

- The Department has maintained an active monitoring program that has provided information to the Board in making the findings. The monitoring program also synthesizes related external research and monitoring findings for the Department and the Board.

**How will the BOF determine whether forest practices protect coho?**

- The coho assessment will inform the Board’s deliberations about rules, voluntary measures, and monitoring necessary to evaluate the FPA.
- The Board has also been reviewing recent reports completed by the Forest Practices Advisory Committee, ODF/DEQ Sufficiency Analysis, and the IMST recommendations regarding the adequacy of current forest practices. The Board and Department would welcome any quantitative research and/or monitoring findings from NMFS, or any other parties, that is relevant to the review of the adequacy of current forest practices.

NMFS: “P. 8, Sufficiency Analysis: “The report concludes that achieving the goals and objectives of the FPA will ensure that water quality standards are met.” This is somewhat misleading as it implies that all the goals and objectives of the FPA are being met, which is not supported by the conclusions of the sufficiency analysis.”

- ✓ ODF: Clarification about Sufficiency Analysis conclusions has been provided. It is a misrepresentation of the Sufficiency Analysis findings to say that it states “BMPs were not meeting all of the water quality standards.” The following is quoted directly from the report: *“The sufficiency analysis is based on the premise that achieving the goals and objectives of the Forest Practices Act will ensure the achievement and maintenance of water quality goals. Conclusions include the finding that there is some risk current protections may not be sufficient at a site-specific scale for some small and medium streams, however, the significance and scope of this risk is uncertain...The [Sufficiency Analysis] recommendations are offered to highlight general areas where current practices are either sufficient or could be improved in order to better meet the FPA goals and objectives and in turn provide added assurance of meeting water quality standards.”*

NMFS: "Please see our comments regarding p. 35 of report B1. P. 11, Table 4: Overall this is a useful table and we appreciate its inclusion. Were the number of notices of operation presented for threatened and endangered species in Table 4 influenced by the changing legal status of coho, were operators reducing their actions in proximity to the species, or some other factor? An interpretation of the information provided would be beneficial."

- ✓ ODF: Additional information has been provided in the report to explain the notice of operation and how ODF uses the information to communicate with landowners and operators.

The notice of operation serves to alert the stewardship forester of opportunities to communicate with the landowner or operator about ways to protect resources as well as identify opportunities for Oregon Plan projects.

Your question about the T&E identifier is a good one. If the fish were not listed, would opportunities to communicate with and assist landowners in meeting requirements and voluntary opportunities be missed? We think not, because the primary 'red flag' for moving a particular site to the top of the list is whether a fish bearing stream is involved. Therefore, if coho were not listed, inspections and communications would not be less.

NMFS: "P. 11, Table 5: It is unclear how Table 5 equates with Table 1. Table 5 suggests that the annual average personnel time for stewardship foresters is only 0.07 FTE  $[(1,009 \text{ hrs}/7 \text{ yrs})/(40 \text{ hrs} \times 52 \text{ wks}/\text{yr}) = 0.069]$ . However, Table 1 indicates 28 stewardship foresters are employed in the ESU and 61% of their geographic area is within the ESU, or ~17 FTEs for the ESU.

Repeatedly throughout the discussion the role of stewardship foresters in assisting landowners in implementing conservation measures is presented, yet the SFAARS data appears to minimize that effort. The chapter should include an interpretation of this information."

- ✓ ODF: Conclusions should not be drawn by comparing Tables 1 & 5. The report has been modified to better explain these tables as well as the benefits and shortcomings of the data and ODF plans for improvements which are underway.

#### **Key Points:**

- ODF agrees. SFAAR data does minimize the stewardship forester effort. It is difficult, if not impossible, to equate numbers of personnel, numbers of actions reported, and in terms of rule changes over time! Nonetheless, we recognize the value of having sufficient numbers of staff and an efficient and effective reporting system. Following are some observations:
- **First**, roles have changed over time. The Forestry Assistance and Forest Practices programs were recently merged to create the Private and Community Forest Program. Service Foresters reported to SFAAR under the Forestry Assistance Program and Forest Practices Foresters reported to FACTS under the Forest Practices Program. In the new program, the field forester is called a Stewardship Forester. These foresters assist the land manager to achieve their objectives through technical and funding assistance, as well as to educate and advise on how to comply with rules.
- **Second**, the numbers of staff have changed over time. Between 1997 and 2003 there were only five Service Foresters in the coast range.
- SFAAR data have been under reported. It is tough to get field foresters to report everything that is being done.
- The ODF has begun a process to identify needs for reporting using a Geographic Information System which will improve our efficiency and effectiveness in reporting information about our program.

NMFS: "P. 14, PECE 6: The first paragraph is a repeat of the same paragraph on p. 13."

- ✓ ODF: Again, repetition was necessary in order to fully answer each PECE question. In some cases, we have spelled out in the report how the information provided relates to the question being asked.

NMFS: “Regarding “When forest landowners properly implement BMPs, they are actually implementing a WQMP designed to maintain water quality.” As stated above, NMFS, EPA, and U.S. Fish and Wildlife Service (USFWS) have stated that current BMPs do not fully protect water quality or provide riparian functions important to water quality and fish. The report should acknowledge this uncertainty. Furthermore, EQC adopted revised water quality standard for temperature in 2003, and EPA subsequently approved that revision following ESA consultation with NMFS and USFWS. If the BMPs were not meeting all of the water quality standards before (as stated in the sufficiency analysis), it is unclear how they could they be meeting the new standards, which in some areas are more stringent.”

- ✓ ODF: The report has been modified to reflect the difference in opinions of the ODF and NMFS, EPA, and USFWS. Actually, the report does acknowledge the uncertainty in several places (Appendices A, B, C, and D and the sections where this information is discussed reflect that:
  - The Board of Forestry is currently reviewing the FPA.
  - The federal agencies have provided some input to the Board's deliberations.
  - The Board has asked EPA and others to bring forward quantitative research and monitoring information to support the Board's review of the adequacy of the FPA and the ORS 527.714 findings requirements. To date, this information has not been provided.
  - It is a misrepresentation of the Sufficiency Analysis findings to say that it states “BMPs were not meeting all of the water quality standards.” The following is quoted directly from the report: *“The sufficiency analysis is based on the premise that achieving the goals and objectives of the Forest Practices Act will ensure the achievement and maintenance of water quality goals. Conclusions include the finding that there is some risk current protections may not be sufficient at a site-specific scale for some small and medium streams, however, the significance and scope of this risk is uncertain...The [Sufficiency Analysis] recommendations are offered to highlight general areas where current practices are either sufficient or could be improved in order to better meet the FPA goals and objectives and in turn provide added assurance of meeting water quality standards.”*
  - There is a well defined process that the DEQ & ODF are working through for those areas the sufficiency analysis identifies as not meeting water quality standards. The process is defined in statute, and described in the sufficiency analysis and in this report.
  - The new water quality temperature standard is a part of the Board's deliberations on FPA BMPs. The Board and the Environmental Quality Commission have identified where their processes and mandates do not seamlessly mesh and are in the process of working through the issues.

NMFS: “P. 14, PECE 7: This section should mention that a shortfall in legislative funding of ODF programs in 2004 was partially provided through Federal Pacific Coastal Salmon Restoration Funds that are unlikely to be available for that purpose on a repeated basis.”

- ✓ ODF: The report now includes a discussion that addresses funding issues.

NMFS: “P. 15, Table 8: This is a helpful table that could be better organized. Footnotes are missing and it is unclear what shaded rows indicate. Furthermore, where rule or Oregon Plan measure revisions are proposed and decision dates provided, it would be beneficial to also provide an anticipated rule or measure implementation date.”

- ✓ ODF: The table has been modified to explain what shaded rows mean and to include the indicated footnotes. Additional information has been provided to reflect the timeline for rule deliberations and when we anticipate rule adoption or other actions to take place.

NMFS: "Regarding concept 8 under Western Oregon, this table says draft rule language was approved in October, 2003. Is this the same draft rule that is referenced as being approved in July, 2004, on p. 20, IMST recommendation no. 6? How much will this rule increase the percentage of natural wood recruitment provided by the rules?"

- ✓ ODF: Concept 8 and IMST recommendation #6 are not the same, but related. The IMST recommendation is for a study, which was completed in July 2001. However, the Board is now deliberating whether basal area targets should be increased for medium and small fish bearing streams in western Oregon in light of the study.

The Board *approved* the concept for a rule change in October, 2003. Ultimately the Board will determine whether the rule will be *adopted* based on information from the study the IMST recommended, ORS 527.714, the ODF/DEW Sufficiency Analysis and other available information.

NMFS: "P. 19, Appendix A: This is a helpful table."