

NMFS Comments on Forestry Papers-Log of comments and ODF response

Part 4(D) ODF Chapter B2: Fish Passage, Roads, and Landslides

Comments that have been addressed:

NMFS: "Please clearly state in the introduction whether discussions of road-related landslides will occur under roads or landslides, and be consistent throughout the chapter.

✓ ODF: Done.

NMFS: "Section 2 (page 29) should clearly state what the objectives and timelines are and when the 10-year periodic review will take place.

✓ ODF: The objectives and timelines have been added. A description of adaptive management planned to assess the Road Erosion & Risk Project is provided in Section 3.

NMFS: "On page 6 there is a statement that high quality habitat is formed by landslides depositing at tributary junctions. However, we don't think either citation actually documented this (one citation is not in the reference list). If this statement is to be accepted as true, there needs to be a reference that shows increased habitat quality and a positive biological response.

✓ ODF: We have double checked our references and found an error. The reference was corrected to read Benda and Cundy 1990. We disagree that the reference has to show positive biological response. The statement deals with habitat quality, a commonly accepted measure of benefit to fish.

NMFS: "Section 3. A brief summary of the steps is needed here. A table or list of bullets would suffice, but it needs to be clear what the individual steps are so that the monitoring and feedback loops are clear. Without these clarified, there is little confidence that the adaptive management will work."

✓ ODF: The steps and timeline have been identified.

NMFS: "Section 6 is generally well done, add an intro paragraph.

✓ ODF: An introductory paragraph was added.

NMFS: "Section 4. This is much closer to what is needed in other sections. The table is a nice summary, although it needs more detail on the standards (i.e., just list the ODF standard in each case rather than leaving it unknown)."

✓ ODF: A note has been added to the Table 12 to direct the reader to the references and /or ODF web site for additional details. The standards details are too voluminous to include in the coho assessment.

NMFS: "A concluding assessment of the certainty seems in order.

✓ ODF: The PECE criteria do not provide a format for this type of summary. We provide a bulleted list at the end of each section on reducing the threat. Also the Roads Technical Report (reference) provides a summary, as does the overall synthesis document. Furthermore both papers did provide monitoring and research results on the effectiveness of BMPs. No changes were made to these papers. However, we did work with the authors of the synthesis papers to improve the representation of road information.

NMFS: "P. 11, Fish Passage: Please clarify to what roads the regulatory approach applies, as well as to what roads Oregon Plan (voluntary?) figures presented in Table 3 apply."

- ✓ ODF: Done. The regulations apply to newly constructed or reconstructed forest roads. The Oregon Plan projects are those that improve passage on existing roads across all ownerships.

NMFS: There were a number of comments for improving organization.

- ✓ ODF: This is a good and valid comment. While more is needed, we did attempt to improve organization by clarifying headings and in some cases combining discussions to improve the understanding and flow of the paper.

NMFS: "P. 12, Reducing the Threat: Could the chapter present total (high & low intrinsic potential or IP) percent for coho streams in Table 4, and split out high and low IP as subset?"

- ✓ ODF: Not sure exactly what is missing in NMFS view, but we did add the following sentence: "We estimate that of all the stream miles with limited access approximately 18% are High IP streams."

NMFS: "P. 15, Road Location: The paragraph in this section of the report discusses "certain cases where roads will not be approved based on length in critical locations, proximity to streams, wetlands, or inability to effectively mitigate risk to resources." Please explain how ODF's authorities are described if not through a written plan.

- ✓ ODF: The reference to approval was erroneous. We have deleted it. The following information is provided to NMFS to communicate ODF authorities and was also inserted into Chapter B2.

The critical road location policy was originally built on the ODF's prior approval authority embodied in OAR 629-625-0100 and on the actual standards for practices described in OAR 629-625-0200. Oregon HB 3264 (2003) removed the requirement for operators to obtain prior approval, including approval of written plans. However, ODF holds that it has the authority to still require written plans for roads to be located in critical locations, based on its previous authority to require written plans whenever prior approval was required. In addition, OAR 629-605-170 requires written plans for operations near fish use streams, domestic use streams, significant wetlands, large lakes, and certain wildlife sites. The standards for actual road location practices as described in OAR 629-625-0200 were not affected by the 2003 legislation. The written plan is now used as a communication tool to help ensure that ODF, the landowner, and the operator all are familiar with rule requirements, site conditions, and landowner objectives (that was always one of the primary purposes of the written plan). The actual standards for the operator's road location practices are contained in OAR 626-625-0200. Based primarily on sections (2) and (3) of that rule, ODF has the authority to implement the critical road location policy described in Forest Practices Technical Note Number 7. That note is outdated where it refers to the now-inactive prior approval requirement.

ODF may take enforcement action for failure to file a required written plan, and/or for failure to follow a specific practice described in rule (e.g., in OAR 629-625-0200). Enforcement action may include (1) a written statement of unsatisfactory condition (essentially a warning of citations to come if the operator does not take specific remedial

action) where damage is very minimal or has not yet occurred, or (2) a citation, order to cease further violation, and order to repair damage, along with the potential for civil penalties, where significant damage has occurred. ODF also has the authority to seek criminal prosecution when operators blatantly disregard forest practice regulations, or where the monetary gain from noncompliance exceeds the allowable civil penalty amount; ODF finds that this enforcement option is needed only rarely, but it is available. ODF finds that most landowners and operators are cooperative, and that the up-front communication process leads compliance in most instances; the written plan can help with this process. Regardless of whether a written plan is required, ODF field foresters screen notifications of operations for the effects operations might have on protected resources, and work with landowners and operators before and during the operation to help ensure compliance.

NMFS: How is "essential access" defined?

- ✓ ODF: Essential Access. ODF believes that in most situations, viable alternatives for access exists, perhaps through a different road location or harvesting system, or through existing roads on other ownerships. The critical road location policy encourages operators and landowners to think through the various options and to consult with ODF. Department foresters and specialists (hydrologist, geotechnical specialists, and wildlife biologist) are available to landowners for on-site consultations. In a small minority of operations, there may simply be no other viable access to a property; road construction in a critical location may be necessary. Local conditions and situations are so widely variable that blanket determinations cannot be issued; the decision must always be made on a site-specific basis. Even if the road must be constructed on a critical location, alternatives are available, including building only temporary roads and/or working only in the dry season.

NMFS: There were numerous comments about the process for identifying high landslide hazard locations and landslide prone locations. What is the process?

- ✓ ODF: We have added some text and references. The process is described in detail in two technical reports that have been referenced.

NMFS: "P. 16, How is ODF's policy to not locate roads in "critical locations" implemented, and is it enforceable?

- ✓ ODF: As explained in the paper the policy is authorized by OAR 629-625-0100 and 0200 and is enforceable. See explanation regarding the prior approval issue above. The written plan is still required and is used as a communication tool. If the written plan is not followed the action may be the subject of an enforcement action.

NMFS: Recommendation #13 of the IMST is addressed only where public safety and coho concerns overlap."

- ✓ ODF: True. We clarified the material to reflect this point.

NMFS: "P. 21: Leave Trees around Landslide-Prone Areas: What non-regulatory measures are in place to achieve the goal of "beneficial" landslides and to what extent are they being implemented?

- ✓ ODF: The only mechanism is to leave trees around small type n streams. We discussed this briefly. These streams are considered one source of upslope wood to fish bearing streams. We did add information on implementation of leave trees around small type N streams, but mostly this topic is covered under the riparian paper.

NMFS: "P. 22, The bullet mentions reducing threats associated with landslides, but not that this apparently applies only to new roads, roads being reconstructed and failing roads, not abandoned roads. Sixth bullet – the potential rule revision was not discussed in the chapter, so it may not be appropriate to include it in the summary. Seventh bullet – change to "some debris flow paths"

- ✓ ODF: We thought "road construction" was self explanatory as being a new road and as it is a summary trust that the reader has absorbed the detail in the preceding pages. Other recommended changes were incorporated.

NMFS: "P. 25-27, Tables 7-9: Do all of these actions pertain to non-regulatory implementation, with none were required by regulation?"

- ✓ ODF: Correct. This was mentioned towards the end of the first paragraph leading into this discussion. We did add this to the table headings as well.

NMFS: "P. 30, Table 11: To which ODF guidelines is the table referring?"

- ✓ ODF: References to the guidelines were included at the end of the paper. The guidelines exist in the Forest Practices Act, Forest Practice Rule & Statute Guidance Manual, and various Technical Notes and Forest Practice Notes, all of which can be found on ODF's web site.

NMFS: Discuss the meaning of more new roads being built on steep slopes (Table 6)

- ✓ ODF: We added a discussion in both the technical report and the PECE chapter B2.

Comments that have not been incorporated:

NMFS: "This report contains most of the text from OP TR1 (see review below), and it's word for word. Are both necessary?"

- ODF: This is a fair question. The PECE criteria, established by NMFS and USF&W service, do not provide a classis scientific format nor framework for summary and conclusions. The technical report uses the scientific format which we think provides a valuable approach to the questions. However, we wanted to make sure that the PECE criteria were clearly addressed so we also created the PECE chapter. We have not been convinced that only one of these papers adequately meets the needs of the services so we will keep both on the public record.

NMFS: "On page 8 it says that the IMST is supportive of the BMPs. A quick glance at the IMST report did not seem to confirm this statement. It would be more accurate to simply illustrate that ODF rules already incorporate some of the recommendations."

- ODF: NMFS needs to do more than take a quick glance at the IMST reports. No changes were made.

NMFS: "Tide gates and bank erosion from livestock are mentioned but are not discussed in any detail. If they are addressed elsewhere in the assessment, that discussion could potentially be referenced."

- ODF: These topics represent a knowledge gap. No changes were made.

NMFS: "P. 4-6, Roads and Landslides, Background: The comprehensiveness of section would be increased by discussing the work of Jones *et al.* (2000).

- ODF: Good suggestion. No changes made at this time, but authors will get the paper and incorporate into future syntheses.

NMFS: "It is not clear if any barriers exist on abandoned roads, or what percentage of habitat would remain inaccessible following completion of voluntary efforts in 2012."

- ODF: No changes were made. We did not separate analyses by abandoned versus active roads. The goal by 2012 is to correct all known fish barriers on private and state forest land.

NMFS: "P. 12, Reducing the Threat: Are these figures for all land ownerships or just non-Federal lands?"

- ODF: Findings represent all land ownership as is stated on old page 11. No changes were made.

NMFS: "P. 13, Tide Gate Paragraph: Although NMFS agrees there are few studies of tide gate effectiveness, there are some generally agreed-upon basic principles that could be presented for completeness of this section pertaining to tide gate effectiveness (*e.g.*, side-hinged gates provide better fish passage than top-hinged gates).

- ODF: We introduce the issue of tide gates but we are not in a position to discuss the generally agreed upon principles as we are not familiar with them. No changes were made.

NMFS: "P. 15, Road Maintenance and Repair: Is the requirement to not only to cease use but also stabilize sediment delivery covered under a separate water protection rule than (692-625-0700)?" Clarify if roads constructed prior to 1972 are required to meet the rules.

- ODF: Yes it is (692-625-0600). The intent of this section was to provide a summary of the rules. A reference to the rules is provided in the reference section. No changes were made.

NMFS: "P. 16, How long does it commonly take for old culverts to fail, *i.e.*, what is the period that passage commonly is impaired? Is it a matter of decades?"

- ODF: A culvert can fail with a large flow or debris flow event in any given winter, or it can last another 25-50 years depending on the culvert material and characteristics of the crossing. There really is no meaningful way to answer this with any certainty. No changes were made.

NMFS: "P. 24, Leave Trees on Small Type N Streams: Is this now proposed as a rule? Should state effective date."

- ODF: No changes were made in this section. The status of proposed rules is discussed in Chapter A1.

NMFS: "P. 24, Implementation of Non-regulatory Actions: In first paragraph, percent of ESU presented indicates ownership percentage, not the degree of non-regulatory implementation.

- ODF. No changes were made, because this percent ownership is used as a foundation for understanding implementation.

NMFS: "P. 27, Table 10: Are these Federal lands projects entirely non-regulatory?"

- ODF: We don't know and this is reflected in the discussion. No changes made.

NMFS: "P. 29, Privately Managed Forest Land: Information in Chapter A1, question 8 doesn't describe scheduled dates of objective achievement; rather, it provides decision dates for acceptance of new conservation measures. Need to provide conservation effort objectives and estimate of when they might they be achieved. Regarding reference to attachment 3: It is unclear to what is being referenced. Is it Appendix C of Chapter A1 (sufficiency analysis), an attachment to the subject chapter, or something? The NMFS suggests inclusion of the salient points in this section rather than only referring to another section or document."

- ODF: True. Table 8 identifies dates relative to riparian rule progress. Table 9 provides the target dates for the non-regulatory actions. Many actions do not have a specific target date because the actions are applied on a site specific basis. For example, it would be inappropriate for every landowner to conduct a voluntary no-harvest practice when some stands are in need of thinning to maximize riparian functions. The Road Erosion & Risk Project is the only action that has a specific target date of 2012. No Changes were made.

NMFS: "P. 31, Landslides: No standards for landslides are proposed in the chapter. Without these standards, how will success or failure of the conservation effort be determined?"

- ODF: ODF agrees with NMFS as the paper states, that any sediment, including landslides, from roads represents an increase over background. We also agree that an important monitoring parameter for evaluating effectiveness of our strategies is to minimize sediment inputs from roads including road -related landslides (as listed in Table 12). The PECE criteria ask what the current standards are. There are not standards for landslides (road-related or otherwise) so we have not listed any. No changes were made.

**ODF Log of NMFS Comments on:
Reducing Effects of Roads On Salmonids under the Oregon Plan
Oregon Plan Technical Report 1**

Comments Incorporated

NMFS: "P. 11, last para.: This sentence seems to be missing something at the end: "Emphasis is given to road systems constructed prior to current forest practice standards and road systems in areas." What areas?"

- ✓ ODF: Areas near coho streams.

NMFS: "P. 17: The logic behind the following statement is hard to follow: "Except for sidecast pullback, most work tapered off by 2003. This may be because the steeper lands tend to be further (*sic*) from the most important Coho habitat." Is the point that sidecast pullback is needed in steep lands and that it was put off until other work farther downstream in coho habitat was completed?"

- ✓ ODF: This may be because the steeper lands, where side cast pull back is important, tend to be further from the most important Coho habitat which was a priority in the early days of the plan.

NMFS: "P. 21: According to Table 4, the percentage of total road length on slopes >65% has increased from 1.2% for existing roads to 3.1% for "new" roads, even though the percentage of total road length on high-risk sites has remained constant. The report should discuss this increase in road miles on slopes >65% and any possible implications."

- ✓ ODF: Good point. We added a discussion.

NMFS: "P. 22, first para. under "Discussion and Summary": Please note in this paragraph that the 70% figure is an estimate

- ✓ ODF: Done.

Comments Not Incorporated

NMFS: "P. 3, first full para.: In making the point that sediment from landslides sometimes is beneficial, the report should mention that landslides from roads often lack large wood that helps form pools and trap sediment."

- ODF: ODF disagrees with this unqualified statement. There is no reference to support this statement and field experience would indicate otherwise. A more correct statement would read: Road-related landslides tend to be larger than in-unit landslides and tend to travel further (Robison et al., 1999). Therefore, road-related landslides typically deliver greater quantities of sediment to streams. These findings are presented in the paper.

NMFS: "P. 15, Road Hazard and Risk Reduction Project Implementation: The timeline states that the assessment work is planned to be completed by 2002. Please update this entry."

- ODF: The date is correct, no changes were made.