

Agenda Item No.:	14
Work Plan:	Forest Resources Division
Topic:	Implementing Legislative Direction
Presentation Title:	Adoption of Post-disturbance Harvest Rules
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Contact Information:	Josh Barnard, Division Chief, Forest Resources Division, ODF, josh.w.barnard@odf.oregon.gov , Nicole Stapp, Policy Advisor, Forest Resources Division, ODF, nicole.l.stapp@odf.oregon.gov

SUMMARY

In January 2023, the Board initiated post-disturbance harvest rulemaking as directed by Senate Bill 1501 (2022) and in February 2024 directed the Oregon Department of Forestry (Department) to file a Notice of Proposed Rulemaking. This agenda item requests the Board adopt proposed post-disturbance harvest rules.

CONTEXT

In 2020, conservation and forest industry groups offered to revise the Forest Practices Act (FPA) and forest practice rules through a memorandum of understanding to include mediated discussions, known as the Private Forest Accord (PFA). Later that year, the Legislature passed [SB 1602](#) which set helicopter pesticide application requirements and required the Governor to facilitate mediated sessions between conservation and forest industry groups. As a product of this collaborative process, the [2022 PFA Report](#) was drafted and released by an author group comprised of representatives from those discussions. During the 2022 Legislative Session, [SB 1501](#) and [SB 1502](#) passed making substantial changes to the FPA and requiring the Board to incorporate the recommendations of the PFA Report into the forest practice rules through the adoption of a single rule package to support the development of the PFA habitat conservation plan (HCP). In addition, SB 1501 (2022) prescribed two additional rulemaking efforts regarding tethered logging and post-disturbance harvest.

BACKGROUND

SB 1501 (2022) requires the Board to complete post-disturbance harvest rulemaking no later than November 30, 2025. Oregon Revised Statute ([ORS](#)) [527.710](#) grants the Board authority to adopt forest practice rules and [ORS 527.714](#) establishes the procedures the Board must follow when adopting such rules. At the January 4, 2023, board meeting, the Board directed the Department to initiate rulemaking on post-disturbance harvest activities and to complete an analysis of the factors in ORS 527.714. As a result, and consistent with the PFA Report, the Department began a literature review and the drafting of Oregon Administrative Rules (OARs) to provide the Board with the information needed to satisfy the FPA rulemaking procedure.

At the February 23, 2024, special board meeting, the Department presented the “[Literature Review: Post-Disturbance Harvest](#)” and the “[Post-Disturbance Harvest Draft Rules](#)” to the Board for consideration as well as an overview of the rulemaking procedure. At this meeting, the Board made the following determinations:

- Proposed OAR 629-643-0000 is an ORS 527.714 Type 1(c) rule, and the proposed changes only make minor adjustments to rules already adopted.
- Proposed OAR 629-643-0300 is an ORS 527.714 Type 1(c) rule that would change the standards for forest practices.

- Relative to OAR 629-643-0300;
 - There is monitoring or research evidence that documents that degradation of resources maintained under ORS 527.710(2) or (3) is likely if forest practices continue under existing rule.
 - The proposed rule reflects available scientific information and, as appropriate, the results of relevant monitoring and adequate field evaluation at representative locations in Oregon.
 - The objectives of the proposed rule are clearly defined, and the restrictions placed on forest practices are to prevent harm or provide benefit to the protected resource and are directly related to the objective of the proposed rule and materially advance its purpose.
 - The availability, effectiveness and feasibility of alternatives to the proposed rule, including non-regulatory alternatives were considered, and the alternative chosen is the least burdensome to landowners and timber owners in the aggregate while still achieving the desired level of protection.

The Board also directed the Department to complete and make available an economic analysis that satisfies the requirements of ORS 527.714(8) and file a Notice of Proposed Rulemaking.

ANALYSIS

In the time since the Board's February 2024 direction, the Department has been actively engaged in rulemaking efforts with key activities captured below.

- Prepared and posted the [Analysis of the Estimated Economic Impact of Proposed OAR 629-643-0300](#).
- Filed a [Notice of Proposed Rulemaking](#), completed notifications and conducted a rules hearing.
- Engaged in intentional communication efforts with a variety of stakeholders including but not limited to other government entities impacted by forest operations, Regional Forest Practice Committees, the Committee for Family Forestlands, department field staff, and the public.
- Reviewed and considered twenty-two (22) written and eleven (11) oral public comments received in response to the Notice of Proposed Rulemaking which are summarized in Attachment 2.

Additionally, the proposed rules were included in the July 2024 draft PFA HCP and will be evaluated by the federal services as a package alongside the other forest practice rules throughout the HCP development process.

RECOMMENDATION

After review and consideration of public comment and in consideration of legislative direction and PFA Author intent, the Department recommends the Board adopt the "Post-Disturbance Harvest Rules" as they are presented in Attachment 1.

NEXT STEPS

If the Board adopts the recommendation, the Department will file the rule action with the Secretary of State's Office.

ATTACHMENTS

- 1) Post-Disturbance Harvest Rules
- 2) Public Comment on Draft Post-Disturbance Harvest Rules

Post-Disturbance Harvest Oregon Administrative Rules (OARS) for Adoption *(Clean copy)*



OAR 629-643-0000: Vegetation Retention Goals for Streams; Desired Future Conditions

- (1) The purpose of this rule is to describe the vegetation retention measures for streams, the measures' purposes, and how the measures shall be implemented. The vegetation retention requirements for streams, as described in OAR 629-643-0100 through 629-643-0500, are designed to produce desired future conditions for the wide range of stand types, channel conditions, and disturbance regimes that exist in Oregon's forestlands.
- (2) The desired future condition for streamside areas that require forested buffers is to grow and retain vegetation so that, over time, average conditions across the landscape become similar to the conditions of mature streamside stands. Oregon has a tremendous diversity of forest tree species and stand density along waters of the state. The age of mature streamside stands varies by tree species. Mature stands generally occur between 80 and 200 years of stand age. Hardwood stands and some conifer stands may become mature at an earlier age. Mature forests provide ample shade over the channel, an abundance of large wood in the channel, channel-influencing root masses along the edge of the high-water level, and regular inputs of nutrients through litter fall. Mature forests are generally composed of multi-aged trees of appropriate and varied density, native tree species well suited to the site, a mature understory, snags, and downed wood.
- (3) For the forests specified in (2) above, the rule standards for desired future conditions and located in Western Oregon or the inner zone in Eastern Oregon can be developed by using normal conifer yield tables for the average upland stand consistent with the geographic region to estimate the conifer basal area for average unmanaged mature streamside stands (at age 120). For site specific vegetation retention prescriptions basal area targets, see the table in OAR 629-643-0400. These rule standards provide guidance for operators to implement site specific alternate plans to develop site specific vegetation prescriptions, described in OAR 629-643-0400.
- (4) The desired future condition for streamside areas that do not require tree retention areas, as defined in OAR 629-643-0130, is to have sufficient streamside vegetation to support the functions and processes important to downstream fish use waters and domestic water use, and to provide habitat for amphibians and other wildlife across the landscape. Such functions and processes include but are not limited to:
 - (a) Maintaining downstream cool water temperature and other water quality parameters;
 - (b) Influencing sediment production;
 - (c) Stabilizing banks; and
 - (d) Contributing nutrients and organic matter.
- (5) In many cases, the operator may achieve the desired future condition for streams by applying the standard vegetation retention and small forestland owner minimum option prescriptions as described in OAR 629-643-0100, 629-643-0105, 629-643-0120, 629-643-0125, 629-643-0130, 629-643-0135, 629-643-0141, 629-643-0142, 629-643-0143, and 629-643-0145. In other cases, the existing streamside vegetation may not be able to develop into the desired future condition in a timely manner. In these cases, the operator may apply an alternative vegetation retention prescription as described in OAR 629-643-0300 or develop a site-specific vegetation retention prescription as described in OAR 629-643-0400. For the purposes of these water protection rules, "in a timely manner" means that the trees within the riparian management area will substantially move towards the desired future condition more quickly than if the trees are left untreated.

OAR 629-643-0300: Alternative Vegetation Retention Prescriptions

- (1) The purpose of this rule is to prescribe an alternative vegetation retention prescription for harvest units experiencing stand level mortality. This alternative prescription is intended to contribute to desired future conditions, provide tree retention, woody debris, bank stability and result in the re-establishment of live trees.

- (2) For the purposes of this rule only, “stand level mortality” means a riparian management area or harvest unit with 50% or more dying or recently dead trees due to a catastrophic event such as wildfire, wind, ice, insect or disease damage.
- (3) For the purposes of this rule only, “soil disturbance” means soil has been moved in a manner that alters water drainage patterns so that a new channel is formed within which water flows or is confined and has potential to move loosened or exposed soil or debris toward the stream.
- (4) For harvest units in Western Oregon the operator may:
 - (a) For Type F and Type SSBT stream riparian management areas experiencing stand level mortality, harvest dying or recently dead trees outside 75 feet slope distance from the edge of the active channel or the channel migration zone (CMZ).
 - (A) The operator shall apply an ELZ at a distance of 75 feet from the edge of the active channel or the channel migration zone (CMZ) to the outer edge of the riparian management area.
 - i. Soil disturbance from cabled logs shall not exceed 20 percent of the total area of the ELZ.
 - ii. Soil disturbance from ground-based equipment shall not exceed 10 percent of the total area of the ELZ. Operators shall take corrective action(s) for soil disturbance from ground-based equipment. Corrective action(s) shall be designed to replace the equivalent of lost functions and be consistent with Forest Practices Technical Guidance.
 - (B) To encourage hardwood sprouting, the operator shall not apply chemicals within 75 feet slope distance from the edge of the active channel or the channel migration zone (CMZ) unless needed to address invasive species or noxious weed infestations and shall apply chemicals using targeted ground-based application. Chemical application in the remainder of the riparian management area is to be minimized to the greatest extent possible.
 - (C) To encourage less dense spacing, the operator may apply the minimum stocking standard described below rather than the productivity-based stocking standards described in OAR 629-610-0020(4) within the riparian management area.
 - i. 130 free to grow seedlings per acre; or
 - ii. 75 free to grow saplings and poles per acre; or
 - iii. 50 square feet of basal area per acre of free to grow trees 11-inches DBH and larger; or
 - iv. An equivalent combination of seedlings, saplings and poles, and larger trees as calculated in OAR 629-610-0020(7).
 - (b) For small Type Np stream riparian management areas experiencing stand level mortality, harvest dying or recently dead trees within the riparian management area. The operator shall apply an R-ELZ from the edge of the active channel in any area where tree removal occurs consistent with OAR 629-630-0700(6) and OAR 629-630-0800(8).
 - (c) For units experiencing stand level mortality that contain slope retention areas identified under OAR 629-630-0910(3), harvest dying or recently dead trees in the slope retention areas, if the slope retention area is not directly adjacent to designated debris flow traversal areas or Type F stream, Type SSBT stream, large or medium type Np stream riparian management areas. If the harvest unit contains one or more designated sediment source areas adjacent to a riparian management area or designated debris flow traversal area, the operator shall retain all trees in at least one of the slope retention areas.
- (5) For harvest units containing Terminal Type Np stream riparian management areas experiencing stand level mortality in Eastern Oregon, the operator may harvest dying or recently dead trees within the outer zone of the riparian management area.
- (6) The State Forester shall exempt small forestland owner harvest units experiencing stand level mortality from the watershed cap described in OAR 629-643-0140.
- (7) Except as explicitly stated in this rule, all other forest practice rules apply.

Public Comment Related to the Post-Disturbance Harvest Rulemaking Directed by SB 1501 (2022)



Response to Public Comment

The Department of Forestry (ODF) would like to clarify the following items for the Board of Forestry and the public in response to public comments received in response to the [Notice of Rulemaking](#) filed on March 27th, 2024:

Legislative Direction & Private Forest Accord (PFA) Intent

Legislative direction regarding this rulemaking is in section 6 of [Senate Bill 1501 \(2022\)](#) which directs the Board to complete the rulemaking under specific procedures and sets the scope as "...the post-disturbance harvest of trees that, but for the disturbance, would not be harvested under rules adopted, amended or repealed as part of the rule package described in section 2...". In other words, rules adopted as part of this rulemaking must be about the harvest of trees that cannot be harvested under the forest practice rules that were adopted consistent with the [PFA Report](#). This means these rules would inherently conflict with the provisions of the PFA Report, but not the PFA Report itself as section 1.4.5 of the report states the board should complete post-disturbance harvest rulemaking and outlines what the authors anticipated as part of the process. This rulemaking effort has been conducted consistent with legislative direction, section 1.4.5 of the PFA Report, ORS 527.714, and the Administrative Procedures Act.

Purpose of the Rule & Applicability

The purpose of proposed Oregon Administrative Rule (OAR) 629-643-0300, as stated in the proposed rule, is "to prescribe an alternative vegetation retention prescription for harvest units experiencing stand level mortality. This alternative prescription is intended to contribute to desired future conditions, provide tree retention, woody debris, bank stability and result in the re-establishment of live trees.". Operators can apply the alternative vegetation retention prescription if the designated riparian management area (RMA) or harvest unit is experiencing stand level mortality as defined by the rule. While it's intended to contribute to desired future conditions, it is not intended to be a path to achieving desired future conditions more quickly and this is not the threshold an operator must meet to apply the prescription. Similarly to the standard practice and small forestland owner minimum option, proposed OAR 629-643-0300 applies to operations as defined in the forest practice rules which involve commercial activities, meaning restoration activities that are not an operation are not impacted by this proposed rule.

Opportunities for Site-Specific Prescriptions

The proposed rule contains region specific provisions and section 7 of the rule states all other forest practice rules apply. If the stand level mortality definition is met the operator may apply the prescription as written or apply another prescription such as the standard practice, a small forestland owner minimum option, or pursue a Plan for Alternate Practice (PFAP) under OAR 629-643-0400 (Site Specific



Vegetation Retention Prescriptions for Streams and RMAs) or 629-605-0500 (Modifications of Requirements for Forest Health and Public Safety).

Chemical Application Provisions

The proposed restriction on chemical application is only in Western Oregon and would only apply when an operator chooses to use the alternative vegetation retention prescription to harvest dying or recently dead trees in a Type F or Type SSBT stream RMA. It does not prohibit the use of chemicals to address invasive species or noxious weeds through targeted ground-based application which could include the use of a backpack sprayer.

Version of Rules in the Notice of Proposed Rulemaking

The [Post-Disturbance Harvest Draft Rules](#) document presented to the Board in February shows proposed OAR 629-643-0300 as a "(Clean copy-replaces existing rule entirely)". ODF filed the [Notice of Proposed Rulemaking](#) consistent with the draft rules document received by the Board.

Summary of Public Comments

Summaries are based solely on information submitted and are intended to accurately represent written and verbal comments; however, they may not contain the full submission. Text outside of quotes was prepared by staff while information inside quotation marks is directly from written comment. Comments are in alphabetical order with comments by governmental entities last.

Allen Hallmark

"I am quite concerned that the compromises made to write the new PFA rules for PDL have rendered them ineffective in protecting the forest, stream, and fishery values the rules are supposed to protect. Please add my comments to the list of those who are urging that post-fire or other severe disturbance logging should adhere to the same setbacks from streams and other bodies of water as required for normal logging operations. It makes no sense to waive those rules for post-disturbance logging. So, I am asking that you revisit these rules and amend them to provide much more protection for soil and streams by increasing the size of protected riparian zones."

Associated Oregon Loggers

"Associated Oregon Loggers appreciates the draft post-disturbance harvest rules' recognition of the unique knowledge and judgment that our members bring to their work as the "competent persons" required by OR-OSHA. The continued support ODF has showed in these rules acknowledging the discretion of these skilled professionals to manage such dangers appropriately is encouraging. We also wanted to stress the importance in updating any technical guidance and definitions of dying or recently dead trees with professional foresters and those competent persons making up the operating community."

Collins

Collins agrees with most of the rulemaking but did share considerations regarding herbicides. "We do want to share that in our extensive reforestation efforts the most critical component to the success of post-disturbance reforestation is the use of herbicide to suspend competing vegetation during conifer establishment. Seed supply is at critically low levels, particularly in Eastern Oregon. As we adapt to drier conditions each seedling planted needs to be given every opportunity to thrive, which means eliminating competition for water upon planting. The current recommendation of non-spraying within such a large buffer will translate into landowners excluding these areas from conifer establishment following catastrophic events, and therefore reducing landscape forest restoration efforts. We ask that you will reconsider the large buffer zone for herbicide use."



Dan Newton

States that the Oregon Small Woodlands Association (OSWA) does not oppose the Oregon Forest Industries Council (OFIC) position on post-disturbance rules related to industrial forestlands but that they do support an alternate plan that allows salvage and restoration of devastated riparian areas. He questions why the ODF literature review did not include studies related to food for fish. "Regarding the current proposal, I support the increased flexibility to remove dead trees from non-fish streams and large fish streams, but I have the following concerns: The current proposal limits the harvest of any dead trees less than 75' from fish streams, thus prohibiting salvage from small fish or medium fish streams for landowners using the SFO option. These two classifications represent most of the network of fish-bearing streams. Even without future economic incentive to restore conifers in RMAs, some of our landowners would like to restore native conifers next to streams to provide a source of large wood in the future. In summary, I support the idea of removing dead trees and restoring riparian areas damaged by catastrophic disturbance, but this proposal should also allow removal of dead trees from small and medium fish streams for small landowners (along with potential wood placement), as well as to stay with current rules for backpack applications to control competing vegetation."

David & Mary Ann Bugni

"In summary, the socioeconomic differences between industrial forestland owners and SFOs, the varying degrees and types of natural disturbances that may arise, their relative infrequency (as compared to normal business as usual harvesting), and the varying conditions under which they may occur dictate that SFOs require a more performance-based alternate plan procedure that recognizes such realities and that can be implemented on a case-by-case basis. Allow SFOs greater flexibility to remove some dead trees from within the RMA for all sizes of fish streams, which could provide some funds to the SFO for establishing (or reestablishing) conifers along streams, post-planting maintenance of these seedlings (e.g. mechanical and/or chemical control of competing vegetation) until they are free to grow, and placing of some of the dead, large wood into streams with large equipment. Such smart policies will be a win-win for the SFO, for the state's implementation of related policy regarding the PFA, and the environment."

David Wells

"Current rule language allows for Alternative Vegetation Management prescriptions along streams that incur catastrophic events resulting in substantial tree mortality. The proposed change and I quote "For harvest units in Western Oregon the operator may, for Type F and Type SSBT stream riparian management areas, experiencing stand level mortality harvest dying or recently dead trees outside 75 feet slope distance from the edge of the active channel or the channel migration zone." This rote distance disregards the importance of bringing forest management opportunities closer to the stream as is currently the case. It is also interesting that the use of herbicides is also prohibited within 75 feet of the stream. The given reason for this is to encourage hardwood sprouting. My understanding of one of the goals of the PFA is to encourage large conifers adjacent to streams for the benefits that they provide. The re-sprouting of hardwoods could delay the establishment of the longer-lived conifer trees, as part of the desired future condition along streams. The sooner that the DFC could be established seems like the better. The current rules are adaptive and allow a variety of solutions to be worked on between the Oregon Department of Forestry Stewardship Forester and landowner. A word that I hear more and more often is the word curiosity. Setting rote distances along streams in these exceptional catastrophic events takes some of that curiosity away about what can be done to restore a functioning riparian management area. I ask that the current rules are continued and that the proposed rules not adopted."

Giustina Land & Timber Co.

"We recognize this rule-making package as a settled negotiation between environmental and forest sector "authors". While the Board of Forestry has elected to proceed with public rule-making and accept public comment, we remain supportive of the rule package as negotiated and do not suggest any



change. Further, we encourage the Board to adopt the rule package as initially presented, with no changes. We believe this rule-package supports the development of a robust HCP, necessary to provide regulatory protections for both listed species and forest landowners."

Gordon Culbertson on behalf of the Oregon Small Woodlands Association (OSWA)

States that OSWA does not oppose the OFIC position on post-disturbance rules related to industrial forestlands and supports elements of the proposed rules that allow for harvesting of dead, down and dying trees in non-fish buffers and supports the use of herbicides to control noxious weeds or invasive plant species using ground application methods. "Ken Nygren testified on behalf of OSWA during the February comment period. Mr. Nygren referenced and noted OSWA support for the inclusion of "alternative vegetation retention 1 (catastrophic events)" as a restoration option for small forest owners (SFO) in situations such as the January 2024 ice storm that severely impacted the Southern Willamette Valley. This alternative prescription is noted under 629-643-0300 in the publication of Forest Practice Administrative Rules and the Oregon Forest Practices Act dated January 2024. Unbeknownst to and without consultation of OSWA members this language has been stripped from the post-disturbance rules dated March 27, 2024. This is unacceptable to our members as it eliminates options for critical practices supporting forest health and post catastrophe restoration on small woodland parcels. SFO (non-industrial) issues of concern differ in some cases than those of industrial forests. SFO families have unique goals for their property and the post-disturbance rules as proposed do not adequately protect SFO interests and values. Post disturbance rules as proposed discourage SFO stewardship of multiple resources. Following a catastrophic event such as wildfire, ice storm or windstorm the proposed rules inhibit the SFO from post disaster restoration efforts near fish streams. The rules as proposed will prohibit the landowner from treating large swaths of dead, dying or down trees on their property. This will exacerbate wildfire hazard and encourage insect infestation in adjacent forests and place nearby homes in jeopardy. Adaptive management practices are in order that will encourage collaborative solutions for post-disturbance situations. SFO families need an alternate plan procedure approved in the spirit of existing alternative vegetation retention prescriptions. We suggest rules adopted include options for alternate plans that recognizing stand condition, basal area, desired future stand conditions and historic land use considerations."

Greg Peterson

Details firsthand experience managing his property through multiple disturbances and states that small forestland owners are at a significant disadvantage compared to large landowners. "In the proposed alternative plan, shade was listed as the primary reason for not managing competing vegetation and that fast-growing hardwood would provide shade. While hardwoods will come in, brush and invasive species/noxious weed will also gain a foothold and soon become a seedbed, with very few conifers able to grow without suppressing competing vegetation. Post-disturbance mitigation is very expensive. SFOs have significantly higher unit costs and different priorities than large landowners, and thus need adaptive alternative practices that allow the harvest of marketable down and dead trees within RMAs, to offset other restoration costs. SFO landowners also need to be able to backpack spray to control noxious weeds and invasive species. Without herbicides, disturbed areas will eventual become a mix of brush, invasive species, and noxious weeds. There should not be additional restrictions on backpack spraying, which is an essential reforestation tool. SFOs need procedures that encourage alternate vegetation retention prescriptions that recognizes stand condition, basal area, desired future conditions, and historic land use. P.S. There was a SFO restoration option noted under 629-643-0300 in the Jan 2024 publication of the Forest Practices Administrative Rules and the Oregon Forest Practices Act. Oregon Small Woodlands Association (OSWA) was not consulted on why such credible procedures for SFO alternative practices were unexpectedly stripped from the 3-27-24 Post-disturbance rules. This is an unacceptable shortcut of PFA procedures."



Kate McMichael

Details firsthand experience of managing through multiple disturbance events and ongoing fears related wildfire risks. States she does not speak for OSWA, but as an OSWA member is unopposed to the post-disturbance salvage provisions regarding industrial forests, however she is concerned for family forests with greater proportions of riparian areas. "The current post-disturbance rules for alternative practice seem to take the realities of SFOs into consideration far more than the proposed changes. Stripping away reasonable provisions for crafting an alternative practice solution to restore disturbance-devastated riparian areas—with a stewardship forester, on a place-based, case-by-case basis—and replacing it with a one-size-fits-all prescription seems utterly counterproductive. These rules seem to actually undermine the work of riparian restoration rather than support it."

Mark Vroman

"Rulemaking package as presented should be adopted. The package as presented represents a solid collaborative effort in rule making from all parties concerned."

Nancy Hathaway

Details firsthand experience managing lands after a disturbance and the related challenges and an observation from Italy. "An alternative vegetation retention prescription for small landowners would be a step in the right direction in terms of fairness and equity in the market. Prior rules allowed thinning which would help alleviate the cost of clean-up and replanting. We need an alternative plan that will be less burdensome to SFOs and provide an incentive to restore the damaged riparian forest. We own the land but the state is now controlling the trees on our land. So where is our incentive to replant trees for the state? Without spraying, planting seedlings in RMAs is just providing deer and elk nourishment. I ask you to consider this in your rule-making. "Letting Nature take its course" is akin to mismanagement and speaks to ignorance of real life situations, a position often taken by folks who have never worked in a real forest."

Oregon Forest Industries Council (OFIC)

OFIC stated rules regarding salvage harvest are critical for the protection and recovery of important resources following devastating natural disasters. They support the rules as drafted and request the Board adopt them and urged ODF and the Board to finalize the rulemaking process prior to the conclusion of the 2024 wildfire season. Verbal comments state PFAPs are an option and the concerns expressed by small woodland owners who testified are heard however PFAPs are the avenue and folks are just not understanding. OFIC urges adoption and encourages ODF to have a conversation with small woodland owners.

Oregon Small Woodlands Association (OSWA)

"Our organization is deeply concerned about the proposed limitations and negative impacts on forest restoration activities in the new Post Disturbance Harvest rules. The Oregon Small Woodlands Association is not opposed to the position on the Post Disturbance Harvest rules offered by the state's large timberland owners applied to industrial timberlands. As proposed, near streams, the new Post Disturbance Harvest rules will clearly and significantly reduce Oregon's Small Forestland Owners ability to respond with restoration efforts to improve forest health. Recovering family picnic sites, camping spots, and recreational access is also important to us. This may require removal of hazard trees for safety, salvage of timber, removing invasives, and reduction of fire hazards. Before adopting the new Post Disturbance Harvest rules, the Oregon Small Woodlands Association urges ODF to consider the plight of our members and Small Forestland Owners all over the state who are facing the negative impacts - right now - with recent wildfires and ice storms. The Oregon Small Woodlands Association also requests that ODF consider the families who will face the next post disturbance scenario on their own properties, and what outcomes we want to see in the long run. ODF must reduce the negative impacts of the proposed Post Disturbance Harvest rules on Small Forestland Owners."



Oregon Wild

Intended to attend the rules hearing as an observer, however shared Oregon Wild was a signatory to the PFA and supports the draft rules as presented.

Paul Harlan on behalf of the NE Oregon OSWA Chapter

States OSWA does not oppose the OFIC position on post-disturbance rules related to industrial forestlands and supports elements of the proposed rules that allow for harvesting of dead, down and dying trees in non-fish buffers and supports the use of herbicides to control noxious weeds or invasive plant species using ground application methods. "Ken Nygren testified on behalf of OSWA and its members during the February comment period. Mr. Nygren referenced and noted OSWA support for the inclusion of "alternative vegetation retention 1 (catastrophic events)" as a restoration option for small forest owners (SFO). This alternative prescription is noted under 629-643-0300 in the publication of Forest Practice Administrative Rules and the Oregon Forest Practices Act dated January 2024. This language has been dropped from the post-disturbance rules dated March 27, 2024. This is unacceptable to our NE OSWA members as it eliminates options for critical practices supporting forest health and post catastrophe restoration on small woodland parcels. Having the flexibility to operate with the 'alternative vegetation retention 1' option allows these owners on a site by site application have a higher degree of success in reestablishing conifer trees plus also providing a running start at getting shade started on these non-fish bearing stretches of water. Removing the language that was in the alternative prescription as noted under 629-643-0300 in the publication of Forest Practice Administrative Rules and the Oregon Forest Practices Act dated January 2024 takes away our members abilities to creatively help restore the catastrophic disturbances that our east side members are at risk for. We ask that the January, 2024 language for the inclusion of "alternative vegetation retention 1 (catastrophic events)" as a restoration option for small forest owners be restored in the regulations."

Requested not to be identified.

"We need to be retaining more snags and other standing and downed wood in riparian areas. This will help with erosion control and improve water quality by lowering turbidity. We also need to cease herbicide use, allowing for deciduous and other hardwood trees to grow in riparian areas to provide shade quickly post disturbance and cool water temperatures to protect salmon and drinking water. Standing and downed dead wood provides great habitat and good carbon storage even post disturbance."

Southern Oregon Climate Action Now

"We understand that the Private Forest Accord (PFA) was developed as a compromise between the conservation organizations focused on promoting healthy forests that can serve Oregonians in a multi-faceted manner, and an industry which, time and again, argues that the only value in our forests is measured in terms of the profits to be made from harvesting the timber. The compromise that is the PFA should not be circumvented under the stealth guise that post-disturbance logging is different from regular logging. We know that our streams and rivers need to be protected from encroachment by logging and by the imposition of logging on steep slopes. We also know that the recovery of disturbed forests requires a light and sensitive hand, not the bludgeoning of logging equipment that compacts soils and promotes soil erosion. For these reasons, we urge that the Post-disturbance Logging Rules parallel exactly the logging rules developed in association with the Private Forest Accord and be no less stringent."

Wild Salmon Center

Wild Salmon Center highlighted excerpts from the ODF literature review and stated that they support the Boards' degradation finding, concluding that the post-disturbance harvest rules are a compromise and effort to retain core protections. Additional verbal comments suggest draft rules reflect the PFA commitments and Senate Bill 1501 requirements, and the accelerated timeline is for inclusion in the habitat conservation plan. Asked that ODF move forward with adoption of the rules as written. Stated



understanding that PFAPs would be allowed under these rules allowing flexibility particularly for restoration as it relates to concerns expressed by others at the rules hearing and encouraged ODF to clarify.

Comment by Governmental Entities

Baker County (submitted by Commissioner Christina Witham)

Baker County disagrees with the determination that degradation of resources is likely to occur if forest practices continue under the existing rule "but realizes the current lack of proper management must improve and that counties must have more coordination, collaboration and cooperation in current practices at the state level. To leave excess fuels along streams after a catastrophic event increases the possibility of fire along streams that are heavy in fuels resulting in contaminated water, unprotected streams and costly filtration systems for watersheds. Because these rules will apply to forestlands "owned by state, county, city or private individuals or entities", this ruling will have an economic impact although your statement is that the "impact is uncertain". The current rule and any future rules should be determined based on specific locations, climates, terrain, etc., because we know that the forests of the west are not the same and never should be compared to the forests of Eastern Oregon, a broad brushstroke ruling across Oregon will not work, it is not sustainable, it will be costly and detrimental to healthy streams and the health of our communities. Baker County objects to this rule change and encourages a wider consensus for feedback from the public, industry and landowners, not from "344 individuals" who responded to the ODF solicitation."

Oregon Department of Environmental Quality (DEQ)

DEQ expressed appreciation of ODF staff's scientific efforts and inclusion of other state agencies and interested parties related to the rule. DEQ agrees that the current rule is not protective of water quality and aquatic ecosystems and is likely to result in degradation and failure to meet desired future conditions. They state the proposed rule is a substantive and important improvement in water quality protection. DEQ has concerns about the adequacy of the proposed rule and feels these interventions are unlikely to reach desired future conditions sooner. They explain their comments are based on a review and analysis and they describe their methods and findings. "We only considered the question of whether the proposed post-disturbance riparian rules are less likely to achieve water quality goals than the standard riparian prescriptions in Division 643. The concern DEQ has with the Type F/SSBT provision is not in the overall design of the rule, which we support, but in the specific no-harvest width. Proposed Type F/SSBT rule would likely cause additional anthropogenic warming in fish-bearing streams beyond the natural disturbance in excess of TMDL load allocations for at least four years, relative to default RMA requirements. With regard to the PCW criterion of +0.3°C cumulatively, exceedance is possible but less certain for single harvests, but we recommend considering this at the watershed scale. The proposal to allow planting at a lower density in the managed portions of F/SSBT RMAs and the restrictions on herbicide use are ecologically beneficial and should allow development of stands with species and structural diversity and with greater ecological resiliency when compared to stands planted at higher densities with one or two conifer tree species. Proposed Type F/SSBT rule would cause a small decrease in large wood recruitment relative to default RMA requirements. Anthropogenic riparian erosion and sediment transport in addition to that generated by the natural disturbance is unlikely to be significantly different than the default RMA requirements except in extreme cases (steep slopes and high soil burn severity). Proposed Type Np rules would likely cause additional anthropogenic warming in both the Np stream itself and downstream fish-bearing streams beyond the natural disturbance itself, in excess of the PCW criterion and TMDL load allocations relative to default RMA requirements. Proposed Type Np would eliminate post-disturbance large wood recruitment from riparian no-harvest zones that would otherwise be present with consequent negative effects for aquatic and riparian habitat and downstream water quality. Anthropogenic riparian erosion and sediment generation and transport, in addition to that generated by the natural disturbance, is likely to be significantly higher than the default RMA requirements, especially in extreme cases (steep side slopes



and high soil burn severity), with negative implications for aquatic life and drinking water provision. Elimination of wood retention on otherwise protected Sediment Source Areas (landslide-prone slopes) would likely increase failure probability, reduce habitat creation benefits of landslides and debris flows, and contribute to downstream water quality degradation with negative implications for aquatic life and drinking water provision, relative to the default landslide-prone area requirements. Alternative Rule Approaches Leave all riparian management areas (RMAs) and Sediment Source Areas (steep slopes; SSAs) protected as they are in the regular forest practice rules. Leave all RMAs and protected SSAs as no-harvest zones except those with densities greater than 300-500 trees per acre, using thinning, erosion reduction practices, and replanting as needed to aid recovery. Suggested density targets are 80-150 trees per acre with no-harvest zones on all streams (e.g. 35-50ft on Np, 75-90ft on F/SSBT). Use the proposed post-disturbance riparian rule structure, adjusting no-harvest widths to be lower risk (e.g. 90ft on F/SSBT, 50ft on small Np). Remove the provision for harvest on otherwise protected SSAs.”

Oregon Department of Fish and Wildlife (ODFW)

ODFW supports the purpose of the proposed post-disturbance harvest rule and the proposed increases in buffer and tree retention requirements in comparison to current rule, especially for live green trees. ODFW believes that the protection of Type N streams is essential given the important role they play as habitat for a variety of species, especially Type Np streams and their associated buffers (RH max) in the proposed post-disturbance harvest rules. ODFW believes that the protective RH max buffer along the Type Np streams is indispensable to achieving desired future conditions for streamside areas and is the first line of defense to ameliorate impacts further upstream and contributes habitat structure and function to fish-bearing (including SSBT) streams directly downstream. ODFW recommends that the proposed post-disturbance harvest rule include a no-harvest buffer in the RH max for small Type Np streams in western Oregon. ODFW recommends, that at a minimum, a protection standard be applied to the small Type Np RH max that is in alignment and consistent with the same thresholds established for other stream type classification RMAs. ODFW encourages leaving burned wood on the landscape as much as possible, particularly in riparian areas to ensure long term benefits are realized.

U.S. Environmental Protection Agency Region 10

EPA is concerned that existing and proposed OAR 629-643-0300 are inconsistent with the PFA Report and legislative direction, that ODF has not provided evidence the proposed rule would achieve desired future conditions more quickly than standard options and stated their understanding is that OAR 629-643-0300 can be applied when it would achieve desired future conditions more quickly than the standard option. Based on this understanding, they state ODF should take the following actions; reconsider repealing the existing alternative vegetation retention prescription rule or provide further evidence to support the proposed rule revisions, identify conditions in which the alternative vegetation retention prescription would achieve desired future conditions more quickly than the standard options and articulate how they will work with landowners to verify the alternative vegetation retention prescription is applicable.

