BEFORE THE OREGON HOUSE OF REPRESENTATIVES
COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

Statement of Mary Scurlock
30 March 2017

My name is Mary Scurlock and I have been asked to testify today because of my professional experience seeking policy change in Oregon to protect freshwater ecosystems from harmful forest practices on nonfederal lands. I am a former land use attorney, and longtime Policy Director at Pacific Rivers Council where I evaluated forest practices rules across the west and the nation and coordinated expert science input on numerous multi-species aquatic habitat conservation plans under the Endangered Species Act in Oregon, Washington, California, Idaho and Montana. I am currently an independent freshwater policy consultant for conservation coalitions in Oregon and Washington, both of which deal exclusively with forest practices as they affect aquatic ecosystems on private lands.[i] I hold degrees from Duke University and the Boston University School of Law.

I am here today representing myself.

The key points I want to make are:

- Freshwater ecosystems are being degraded by nonfederal logging practices;
- Existing administrative mechanisms for adaptive policy change are incapable of addressing the problem effectively;
- Legislative attention to solving these problems is needed.

Forest Practices Impacts on Freshwater Ecosystems

Logging-related adverse impacts to streams and the species they support include but are not limited to:

- Reduction of near-stream (riparian) forest canopies, decreasing shade and allowing solar penetration that warms surface waters and disrupts thermal regimes;
- Ground disturbance too close to streams, allowing sediment delivery and stream habitat impairment;
- Increased risk of mass wasting (landslides) from forest removal and road-related slope destabilization;
- Perpetuation of predominantly young forests or clearcuts in riparian areas, depriving streams of the downed wood necessary to regulate instream sediments and form the types of instream habitats with which our wild native fishes evolved.[ii]

Numerous authoritative sources are available supporting the need to increase stream protection from logging on private lands in Oregon in order to protect and restore aquatic habitats for native fish. These include but are not by any means limited to a 1995 report to the Oregon legislature[iii], a 1999 report by the state's own independent science team,[iv] and a series of findings between then and now by a host of federal agencies in connection with

Endangered Species Act salmon listings,[v] water quality standards compliance under the Clean Water Act,[vi] and coastal water pollution control under the Coastal Zone Management Act.[vii]

Nonetheless, since 1994 no changes have been made to the size of the riparian (streamside) buffer that must be protected from logging, or to the protection required within these buffers. As a result, Oregon's logging rules governing timber harvest on private lands provide significantly less stream protection than those in Washington and California. (*See* Attachment 1, comparison graphs prepared by the Oregon Stream Protection Coalition).[viii]

This has caused legal problems for Oregon. To cite just one recent example, the National Marine Fisheries Service (NMFS, the agency responsible for threatened and endangered salmon and steelhead) and the Environmental Protection Agency (EPA, administrator of the Clean Water Act) have "disapproved" Oregon's coastal water quality program largely due to inadequate stream protection on private lands. The two agencies have called for less logging and more protection of stream temperatures on small and medium streams regardless if whether they bear fish, as well as more protection from road- and landslide-related sediment. Failure to correct these problems has resulted in loss of over $2 million in federal funds annually to DEQ and the Department of Land Conservation and Development.[ix]

Federal recovery plans for ESA listed coho salmon have consistently called for review and improvement of forest practices rules on nonfederal forestlands in Oregon.[x] Much of the 10.6 million acres of private forestland in Oregon encompasses streams that provide direct habitat for fish and the remainder of which feed into downstream fish-bearing waters. The connection between recovery of native salmon and adequate riparian protection on these lands has been repeatedly made in federal ESA listing and status review decisions, particularly for the two coho salmon populations listed on the Oregon Coast and in relation to stream temperature, large wood recruitment, road construction, unstable slope management and cumulative effects.[xi]

Under current management on federal, state and to a lesser extent, private lands, degradation has slowed in the past two decades. But we are not at the point where the status quo can support the recovery state and federal policy seeks, especially when ocean conditions are poor. Although ODFW habitat monitoring data show some mild recovery of riparian forests from the intense logging and poor practices of the 1950s-90s, and some localized benefits from active restoration projects, this improvement is offset by declining conditions in other streams. Oregon's coastal coho have a significant portion of their habitat on private timberlands, but it is a serious problem that "[h]abitat complexity is generally decreasing in the [Oregon Coast coho] ESU; given the large amount of impaired habitat and pace of continued disturbance, *degradation still outpaces restoration*." (Stout et. al. 2010) (emphasis added).

Adaptive Management through Administrative Mechanisms has failed

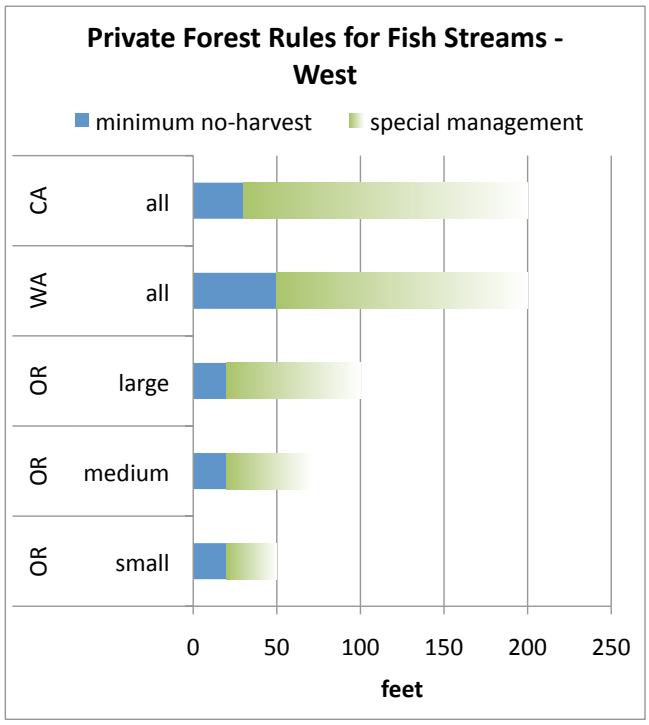
The still-unfolding saga of Oregon Department of Forestry's stream protection rule for salmon, steelhead and bull trout streams is a recent example of the persistent institutional dysfunction that indicates the need for comprehensive reform.

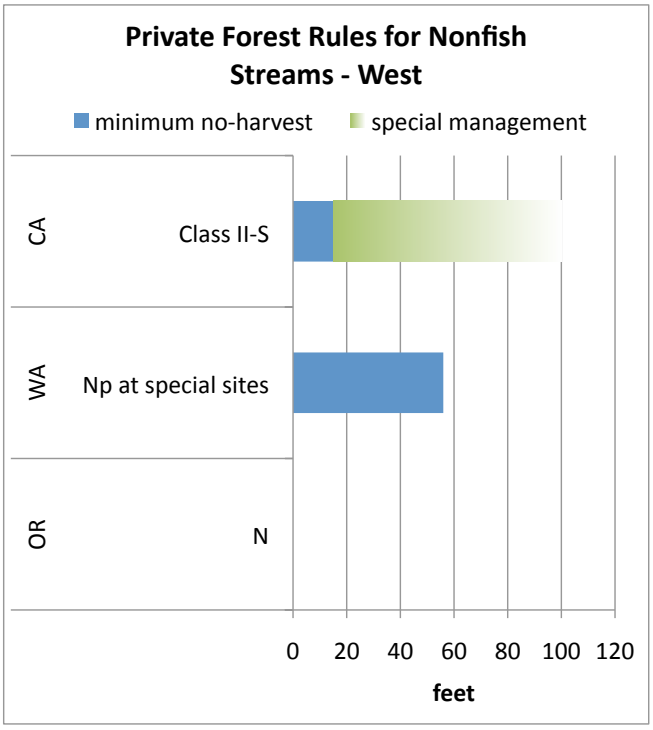
Although the insufficiency of the Board's logging practices to prevent logging-related stream warming in violation of DEQ temperature standards has been in question since the late 1990s, the Board is only now – almost twenty years later -- completing a rule change to address this single issue. Worse than the glacial pace and narrow focus of change efforts, the final rule does not –according to the Department's own analysis – require stream buffers that are large enough to meet the Protecting Coldwater Criterion -- the sole objective of the rule. Worse still, the new rule applies only to stream reaches that are not Salmon, Steelhead and Bull trout reaches and does not apply to any streams in southwest or Eastern Oregon. At the end of the day, the rule will increase stream protection on only about a quarter of all fish-bearing streams in the regions where it applies, and an even smaller fraction of all perennial streams (circa 10%), despite the well-accepted need for increased protection to limit stream warming on the omitted streams and to retain more streamside forest for other equally important ecological reasons.

Thank you for your willingness to seek solutions to these important natural resource protection issues.

ATTACHMENT 1

Oregon's logging rules governing timber harvest on private lands provide significantly less stream protection than those in Washington and California[xii]





[i] In Oregon, I coordinate the Oregon Stream Protection Coalition, a 25-member ad hoc group of conservation and fishing industry groups united in support of stronger baseline stream protection rules under the Oregon Forest Practices Act. I have appeared consistently before the Board of Forestry for the last five years advocating for stream protection rules that meet water quality standards for stream temperature. This work relates directly back to issues raised during my two years of service on the Oregon Board of Forestry's Forest Practices Advisory Committee, concluding in 2000. In Washington state, since 2012 I have served as the Forests and Fish Conservation Caucus representative to the Timber, Fish and Wildlife Policy Committee, a standing multi-

and fishing industry groups united in support of stronger baseline stream protection rules under the Oregon Forest Practices Act. I have appeared consistently before the Board of Forestry for the last five years advocating for stream protection rules that meet water quality standards for stream temperature. This work relates directly back to issues raised during my two years of service on the Oregon Board of Forestry's Forest Practices Advisory Committee, concluding in 2000. In Washington state, since 2012 I have served as the Forests and Fish Conservation Caucus representative to the Timber, Fish and Wildlife Policy Committee, a standing multi-stakeholder committee of the Washington Forest Practices Board and an integral part of the state's landmark statewide forest practices aquatic habitat conservation plan (WA DNR, 2005) and its science-based adaptive management program.

[ii] As described by ODFW biologists, there are four key habitat factors influencing fish productivity: Stream Complexity; Large Wood; Spawning habitat quality; Water quality. ODFW described the key aspects of these factors that are affected by forest management as: large wood delivery; riparian stand condition; beaver dams; fine sediment; cold water. June 23, 2014 presentation to the Oregon Board of Forestry by Kim Jones, ODFW available on Board of Forestry website.

[iii] Sobel, M. J., Nisbet, R. A., Botkin, D. B., Center for the Study of the Environment. (1994). *Status and future of salmon of Western Oregon and Northern California.* Santa Barbara, Calif.: Center for the Study of the Environment (know as "the Botkin Report" to the Oregon Legislature, finding Oregon forest practices rules inadequate for recovery of aquatic ecosystems in western Oregon, particularly with respect to large wood supplies).

[iv] 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 to the Oregon Plan for Salmon and Watersheds, Governor's Natural Resources Office, Salem, Oregon. http://www.fsl.orst.edu/imst/reports/1999-1.pdf (including recommendations to increase tree retention in riparian buffers, and to apply buffers to medium and small non-fishbearing streams). "Current rules for riparian protection, large wood management, sedimentation, and fish passage are not adequate to reserve depressed stocks of wild salmonids," a common goal of Oregon state policy and the federal Endangered Species Act."

[v] *See for example* the most recent (NOAA-NMFS, 2016) Oregon Coho Recovery plan calling for a blend of improved regulatory and voluntary measures, declining to find that the current arrangement is adequate. At 3-24: "In November 2015, the Oregon Board of Forestry voted to change the Forest Practices Rules to increase streamside protections for small and medium-sized streams where coho and other salmon and steelhead are present. The change counters the effect of increasing stream temperatures following certain types of forest harvest. It will also result in increased natural recruitment of large wood to streams. The change increases RMA width by 10 feet and increases basal area retention requirements on these stream types. . . . . If the proposal is not significantly strengthened, NMFS will still be concerned that it doesn't provide adequate protections especially for shade and wood recruitment parameters." At 3-29: "Are Existing Regulatory Mechanisms Adequate? **. . . .** "Regarding spawning and rearing habitat (including estuaries), however, the state of Oregon and numerous stakeholders prefer reliance on voluntary actions, not regulatory mechanisms, to protect the environment and achieve coho salmon recovery goals. These volunteer efforts are vital to habitat restoration efforts, but may not be enough to achieve long-term coho salmon recovery without additional regulatory protection. The question NMFS must consider, therefore, is if the combination of voluntary measures and regulatory mechanisms is adequate to ensure the long-term health of Oregon Coast coho salmon habitat. While NMFS is encouraged by the multiple voluntary and regulatory revisions by state, federal, and non-governmental organizations, as our 2016 5-Year Review (NMFS 2016c) states "at this time we do not have information that would reveal improvements in (ESU-wide) habitat quality, quantity, and function." Consequently, we remain concerned about the adequacy of existing voluntary and regulatory mechanisms to stop habitat conditions from

further decline in the future. We recognize the challenges associated with monitoring habitat conditions and will continue to work with partners to obtain the best information available and assess it in the context of the other listing factors." *See also* NOAA-NMFS, 2010. 75 Federal Register 29489-29506 Listing Endangered and Threatened Species: Completion of a Review of the Status of the Oregon Coast Evolutionarily Significant Unit of Coho Salmon; Proposal to Promulgate Rule Classifying Species as Threatened *(*May 26, 2010). http://www.gpo.gov/fdsys/pkg/FR-2010-05-26/html/2010-12635.htm (based on science team's review of the status of Oregon Coast coho salmon, NOAA made findings in this proposed rule (final as of June 20, 2011) regarding the adequacy of the Oregon Forest Practices Act's administrative framework to protect coho salmon, specifically identifying uncertainty over (1) whether the widths of riparian management areas are sufficient to fully protect riparian functions and stream habitats; (2) whether operations allowed within riparian management areas degrade stream habitats; (3) what operations are appropriate on high-risk landslide sites; and (4) whether watershed-scale effects, including those from roads, are adequately controlled. NMFS concluded that: "Based on the available information, we are unable to conclude that the Oregon Forest Practices Act adequately protects OC coho habitat in all circumstances. On some streams, forestry operations conducted in compliance with this act are likely to reduce stream shade, slow the recruitment of large woody debris, and add fine sediments. Since there are no limitations on cumulative watershed effects, road density on private forest lands, which is high throughout the range of this ESU, is unlikely to decrease." (FR at 29499-500). *See also* Stout *et al*. 2011. Scientific conclusions of the status review for Oregon Coast coho salmon (*Oncorhynchus kisutch*) (Draft revised report of the Oregon Coast Coho Salmon Biological Review Team. NOAA/NMFS/NWFSC, Seattle, WA).

[vi] EPA and NOAA-NMFS. June 12, 2008. *NOAA and EPA Preliminary Decisions on Information Submitted by Oregon to Meet Coastal Nonpoint Program Conditions of Approval* (12 pp)("Oregon lacks adequate management measures under the Oregon Forest Practices Act (FPA) rules for protecting water quality;" "Oregon still lacks adequate measures for protecting riparian areas of medium, small and non-fish bearing streams, high risk landslide areas, and for addressing the impacts of legacy roads. A broad body of science continues to demonstrate that the FPA rules do not adequately protect water quality[.];" "While we acknowledge Oregon's extensive voluntary efforts, and its incremental progress on the regulatory front, NOAA and EPA do not believe the progress made is adequate . . . . . additional revisions to Oregon's FPA rules are needed to fully protect water quality and beneficial uses." (pp. 10-12).

[vii] *See e.g.* Preusch, M. Oregon held to account for failing to protect coastal waterways, The Oregonian, January 17, 2010; https://northwestenvironmentaladvocates.org/blog/wp-content/uploads/2014/03/Declaration-of-Christopher-Frissell-3-14-14.pdf.

[viii] Washington's rules are two to three times more protective of streams than Oregon's rules. *See for example* http://www.deq.state.or.us/wq/dwp/docs/TurbidityReports/Effect of logging incident Falls City.pdf (quoting EPA senior staff David Powers comparing the two states' logging rules). *See also* Olsen *et al.* 2007 at page 92 for a comparison of forest practices policies in the Pacific Northwest (article entitled *Biodiversity management approaches for stream–riparian areas: Perspectives for Pacific Northwest headwater forests, microclimates, and amphibians)*, and analysis done by Pacific Rivers Council and Washington Forest Law Center available on their websites.

[ix] Preusch, M. Oregon held to account for failing to protect coastal waterways, The Oregonian, January 17, 2010.

[x] *See e.g.* NOAA-NMFS, 2914, Final SONCC Recovery Plan, 3-54.

[xi] *See e.g.* 62 FR 24588, May 6, 1997 (listing of Southern Oregon/Northern California Coastal coho) and NMFS, 2009 (status review of Oregon Coast salmon).

[xii] Washington's rules are two to three times more protective of streams than Oregon's rules. *See for example* http://www.deq.state.or.us/wq/dwp/docs/TurbidityReports/Effect of logging incident Falls City.pdf (quoting EPA senior staff comparing the two states' logging rules). *See also* Olsen *et al.* 2007 at page 92 for a comparison of forest practices policies in the Pacific Northwest (article entitled *Biodiversity management approaches for stream–riparian areas: Perspectives for Pacific Northwest headwater forests, microclimates, and amphibians).*