March 23, 2009

MEMORANDUM

TO: Forest Practices Board

FROM: Tom Robinson, Forests and Fish Policy Co-Chair
Stephen Bernath, Forests and Fish Policy Co-Chair

SUBJECT: Policy/CMER Workshop on Fixed Width Riparian Management Zone Proposal

At the February 11, 2009 Forest Practices Board meeting the Board initiated a 30-day review/comment on a fixed width riparian management zone (RMZ) proposal for small harvest units. The Board also directed Policy and CMER to review and comment on the proposal during the 30-day period. Since it was not feasible to develop a consensus opinion from Policy and CMER within the 30-day period, we held a workshop on March 12, 2009 in order to review the proposal. A total of 34 people attended the workshop for at least part of the day, which included six CMER members and seven Policy representatives. Not every caucus had both a CMER member and Policy representative in attendance, but each caucus was represented by at least one person.

The State caucus presented the background/context for the proposal and answered clarifying questions. Each caucus was provided time to meet individually and draft substantive and/or procedural comments and suggestions regarding the proposal. Each caucus then presented those comments and suggestions to the group. Following the caucus reports, comments and suggestions were displayed to the group to ensure they were recorded accurately (attached). While this may not be what the Board was expecting by way of a response, it's the best we could do within the time allowed. Below is a summary of the comments.

Procedural Comments/Suggestions
There were no areas of complete consensus with regard to process.

Four of six caucuses supports moving the proposal forward, but at least two of those four are concerned about procedural risk. They are unsure of what process will be used should the proposal move forward, and one of those two would like a clear articulation of the process steps so procedural risk can be evaluated. One of the four thought the proposal was within the Board's decision space given the broad and vague rule making petition forwarded to the Board from Policy (regarding DFC), and the Board's subsequent request for a simple RMZ alternative. One of the four noted the legislative direction to provide "*alternate harvest restrictions*" that meet resource protection goals and lower costs for small forest landowners (SFLOs), and that directive was not contingent upon CMER oversight. This caucus also thought development of this proposal was consistent with Forests and Fish process. Two of the four were not interested in proceeding if the proposal would require an amendment to the Forest Practices Habitat Conservation Plan (FP HCP).

Two of six caucuses did not make clear statements of support for the proposal, and expressed concerns about inconsistency with the Adaptive Management process. One supports efforts to assist SFLOs to stay in forestry, but expressed concerns about the process whereby this proposal was developed. Both thought that any proposal, should it be advanced, needs to be aimed only at SFLOs and be consistent with the Adaptive Management process since ad-hoc solutions set bad precedent. One of the two caucus expressed concerns about being excluded from discussion regarding development of the proposal regardless of what process is being used.

Substantive Comments/Suggestions
There were also no areas of complete consensus with regard to substance.

Again, four of six caucuses support moving the proposal forward. Two of those four noted potential reductions in LWD recruitment and shade, but thought the reductions were likely small enough that they weren't significant concerns and/or could be addressed through other constraints. One of the four thought there should be a fixed width RMZ option for all landowners, and riparian function concerns could be addressed by having different options for large and small landowners. One of the four thought there may still be some harvest unit adjacency issues that need to be addressed prior to advancing the proposal.

Two of six caucuses noted that effectiveness of the current RMZ prescription is unknown; one of those two did not think there was scientific rationale to narrow the RMZ. The other caucus noted that any alternative RMZ should be couched in terms of the DFC validation data, those (and potentially other) data are available and could be used to develop a fixed with RMZ. In any case, if the Board wants CMER review they need to provide very specific direction; there are several possible approaches to assess equivalency with the current rule but they would all take time under the CMER process. One of the two expressed concern about ownership pattern and cumulative effects of the proposal, particularly if large landowners were eligible to use it, and would like to see a limit by stream length. The other caucus mentioned the "low impact" assumption of the proposal could be acknowledged and evaluated within the review.

Three of six caucuses supported implementation monitoring as an important element to the proposal should it advance. One of the three questioned DNR's ability to fund and effectively carry out implementation monitoring, and another noted that the details of implementation monitoring need to addressed before the proposal advances.

Conclusion
The lack of consensus illustrated by this Policy/CMER review limits any attempt at providing recommendations. There is majority support for providing a fixed width RMZ option to the SFLO community. There is no consensus on the adequacy of the current Board process. Attempting to achieve consensus on any proposal will likely require considerable time and effort with no guarantee of success.

dc/
Attachment

March 12, 2009 Fixed Width RMZ Workshop - Caucus Comments/Suggestions

Caucus	Substantive Comments/Suggestion/Support	Procedural Comments/Suggestion/Support
Large Landowners	• LWD: approximately 1.6% recruitment reduction if changed from 100 ft to 90 ft - relatively small change. • Sediment: less concern • Shade: approximately 2.6% reduction if changed from 100 ft to 90 ft - relatively small change. • Litter fall: less concern • Bank Stability: less concern • Implementation Monitoring: Support	• Support proposal moving forward; however, it's unclear as to what process is and will be used to advance proposal. Would like the state to clearly articulate the path forward so process risk can be evaluated - show the pathway through the Forest Practices Act. Want to make sure it's not subject to litigation as a result of process foul. • Don't want this proposal to put the HCP at risk; don't support if requires amendment to HCP.
Small Landowners	• Current rules to complex for SFLO and they are disproportionately impacted. Efforts to date to address these two issues have not been unsatisfactory to SFLO's. The fixed width proposal addresses the complexity issue and would help make F&F work for SFLO's. Disproportionate impact needs to be addressed as a second step by developing a statewide strategic plan of tax and legislative options to offset those impacts. • This proposal increases RMZ protection by increasing the no harvest area.	• SFLO's see this as being within the F&F process and want to see it move forward. If this process derails they will consider other options.
Tribal	• LWD: How much is enough? We don't know what we're getting now. Concerned about wind throw. Don't know if buffers we have are effective or not because they are a moving target. No science to support narrowing exiting buffer. What sort of analysis has been done to support this proposal? • Implementation Monitoring: Concerned about ability to monitor abuse (adequate budget). Would support it being only for SFLO, much less	• Tribes support AM process and want to see it work; however, process is already broken and dysfunctional, this proposal didn't break it. • Tribes were excluded. • Feel separation between AM process and the state. Tribes weren't involved as another government/co-manager.

	chance of abuse. Keep in mind cumulative effect of large amount of small harvests in RMZs. • Other: Limit to SFLO (as defined in rule) and limit stream length. Concerned about ownership pattern effects (large land owners). Tribes, CMER and others have data relevant to this issue that wasn't used. Do we want to bring this back into the AM process?	
Conservation Caucus	• Effectiveness of the current rule is unknown. Use data from DFC validation study - follow-up work could still be done and used to inform a different RMZ approach. Final proposal needs to be couched in terms of the DFC validation study. Would like a clear directive from FPB to CMER. There are a lot of different ways to determine equivalency but it takes time under CMER's process. • Uncertainty about the frequency of SFLO harvest and size of harvest (low impact) could be acknowledged in the review.	• Willing to work to keep SFLOs in forestry, but also want to stick to the science process. Support this only for SFLOs. Concerns with stepping away from F&F process. • Don't make exceptions to AM process; ad-hoc solutions set bad precedent. Anything that comes out of this proposal needs to be consistent with prescribed AM process.
Counties	• Support fixed width buffer for all landowners. Fixed width proposal could be different for large and small.	• Policy dumped this on the Board and therefore we are responsible. FPB is operating with in their decision space.
State	• LWD: provides a little bit less than the current rules. (For site class III large streams provides less protection) • Implementation Monitoring: details need to be worked out. • Concern about adjacency issues; however the proposal wouldn't have gotten to this place if we didn't feel it was good enough to move to rule making process. Goal is less cost for SFLOs in terms of rule implementation while still protecting the resources.	• Don't want to trigger an amendment to HCP - Is it consistent with existing processes? • Need to figure out how we are going to work better together in the future.
Federal	Nothing to add	Nothing to add