



Private Forest Accord Rulemaking

August 10, 2022



Adaptive Management Program Rules

Adaptive Management Program key to HCP

Program Purpose:

1. Apply best available science in Board decisions
 - Rules effective in meeting Biological Goals and Objectives (BGOs)?
 - Validity of BGOs, methods for designing rules



Adaptive Management Program key to HCP

Program purpose continued:

2. Timely, effective change to meet BGOs
3. Predictability, stability of rule change process
4. Meet BGOs with less expensive Rx when feasible



Adaptive Management Program

Biological Goals and Objectives (BGOs)

- Key to Adaptive Management Program
- Goals: desired future conditions of HCP
- Objectives: measurables to achieve Goals



The Adaptive Management Program Committee (AMPC) Participants

1. Oregon Forest and Industries Council
 2. Coalition of Oregon Land Trusts
 3. Associated Oregon Loggers
 4. A conservation organization
 5. Oregon Small Woodlands Association
 6. Commission on Indian Services
 7. Recreational or commercial angling organization
 8. Association of Oregon Counties
 9. ODFW
 10. DEQ
 11. ODF*
 12. USFWS*
 13. NOAA/NMFS*
- * Non-voting members



AMP Participants

Independent Research and Science Team (IRST)

Odd # of members, at least 5 including 1 each:

1. A public institution
2. Timber industry
3. Freshwater aquatic conservation NGO



AMP Participants

AMPC and IRST:

- Self-developed charters
- May receive participation grants
- Super-majority votes



AMP Participants

- IRST supported by contracted public body (OSU/INR = first)
- ODF supporting Program via Coordinator
- Accountability via performance audits, annual reporting





Notification of Completion & Compliance Monitoring Program

Notification of Completion

Goal:

- Improve Compliance Monitoring Program implementation by requiring landowners to notify of completed operations.



Notification of Completion

Objective:

- Create process for landowners to report on the completion of activities.
- Improve sample set available for Compliance Monitoring assessments.



Rule Division 629

This will be an addition to existing rules in
Division 629-605-0150

Notification to the State Forester - When,
Where and How.



Rule Division 629-605-0150

Landowners will need to...

- Notify by the end of the calendar year of the notification.
- If original notification is extended, report by the end of the calendar year of the continued notification.
- Report out on each notified activity



Compliance Monitoring Program



New Division 6xx

- A new rule division will be created for the Compliance Monitoring Program.
- This will replace ODF's existing compliance and effectiveness monitoring programs.
 - New Compliance Monitoring Program framework outlined in rule.
 - Adaptive Management Program will take over effectiveness monitoring.



Purpose & Goals

1. Assess rule compliance and report findings (Board of Forestry, legislature, and federal services).
2. Identify areas needing improvement for training purposes
3. Effort will increase the public's trust in the implementation of the Forest Practice Act and Rules.



Administration

Department staff, contractors or both.

Stakeholder group (Not limited to department, landowners, tribes, public)

Board of Forestry may direct analysis



Administration continued

New: Study design and assessment will have greater statistical rigor.

Statistician involved in study design and analysis



Administration continued

Knowing what operations have been completed will strengthen compliance assessments.

New: Forest landowners will accommodate access.



Administration continued

New: State Forester may petition the circuit court with jurisdiction for warrant authorizing access.

Landowners will be notified before assessment to provide opportunity to be present.



Priorities

Compliance Monitoring Program will prioritize the following rules:

- New Water Protection Rules – Division 643
- New Harvesting Rules – Division 630
- New Forest Road Construction and Maintenance Rules – Division 625
- Other rules as directed by Board



Reports

Program shall provide the Board of Forestry with information to support

- Any required reporting to the federal services in support of a habitat conservation plan
- Annual report to the public on the overall habitat conservation plan performance



Reports continued

Program shall provide the Board of Forestry with information to support

- Two-year report summarizing the results and progress on efforts
- Eight years an aggregate cumulative report that includes compliance trends
- As directed by the board





HARVESTING ON STEEP SLOPES

Goal

Provide high-quality habitat that supports the recovery, protection, and long-term conservation of covered species on private forestlands



Objectives

Leave trees:

- In designated areas to deliver materials for fish stream habitat and provide non-fish stream habitat for covered species.
- In identified areas to reduce timber-harvest-related mass wasting events to fish streams and to contribute large wood to fish streams.
- On unstable steep slopes next to fish streams to provide slope stability and large wood for habitat.



Rules Changes

- Division 600 Definitions
 - 17 new definitions
- Division 630 Harvesting
 - Purpose
 - Steep slope areas
 - Small Forestland Owner Minimum Option
 - Written plan
 - Some existing rule edits for Accord alignment



Designated Debris Flow Traversal Areas

- Western Oregon
- E-Notification displays the **Slopes Model** designations
- Slopes Model persists with stream changes



Designated Sediment Source Areas

- Western Oregon
- E-Notification displays the **Slopes Model** designations
- Slopes Model persists with stream changes
- *Not required for forestland under the Small Forestland Owner Minimum Option*



Slope Retention Areas

- Western Oregon
- 50% of Designate Sediment Source Areas
- **Field identified** and prioritized areas
- *Not required for forestland under the Small Forestland Owner Minimum Option*



Stream Adjacent Failures

- Statewide
- **Field identified** areas next to fish streams:
 - Actively failing or
 - Unstable slopes
- Areas are located upslope of the riparian management area of the fish stream



Common Elements - Designated and Identified Areas

- Written plan required
- Wildlife leave trees may count



Next Steps

- Create the Forest Practices Technical Guidance to identify Slope Retention Areas
- Create certified training for **field determination** of the Slope Retention Areas





Stream Classification & Vegetation Retention

Objectives

- Develop and publish a high resolution lidar based stream network
- Attribute the hydrography for fish use and perenniality to apply appropriate protections
- Ensure riparian management system is implemented equitably and consistently



Objectives continued

- New streamside vegetation requirements for Western and Eastern Oregon
- Options for Small Forestland Owners



Rule Changes

- Water Protection Rules: Division 635
 - Revised stream classification methods
- Water Protection Rules: Division 643
 - Replaced existing rule with new vegetation retention requirements along streams
- Retained/revised existing rule intent for desired future condition, counting wildlife leave trees, and alternative prescriptions.



Division 635

- Revisions to existing rules to implement a comprehensive riparian management system to classify streams for fish use and perennity
- Added fish distribution model and protocols for identifying perennial streams
- Increased coordination and consultation with ODFW to affirm fish distribution, new fish survey certification and protocols



Division 643

- Revised DFC to reflect new vegetation requirements while providing long term vision for riparian management areas
- Allows for alternative prescriptions when appropriate
- The standard practice applies to large landowners and available to SFO's



Division 643 continued

- Revised DFC to reflect new vegetation requirements while providing long term vision for riparian management areas
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- The standard practice applies to large landowners and available to SFO's



Western Oregon

Standard Practice Riparian Management Areas

Stream Type	Large	Medium	Small
Type F or SSBT	110 feet	110 feet	100 feet
Type N	75 feet	75 feet	See Type Np
Type Np, into Type SSBT	N/A	N/A	75 & 50
Type Np, into Type F	N/A	N/A	75 feet

The width of retention areas for Type F and Type N streams increased significantly.



Western Oregon continued

- Small streams include tree retention for portions of perennial small type N streams that flow into fish use streams.
- Depending on the identification of perennial flow, a combination of tree retention and an ELZ upstream apply to the entire small stream.



Eastern Oregon

Standard Practice Riparian Management Areas

	Large		Medium		Small	
	Inner	Outer	Inner	Outer	Inner	Outer
Type F or SSBT	30	70	30	70	30	45
Type N	30	45	30	45	-	-
Type Np, Terminal					30	30
Type Np, Lateral					30	N/A

- No touch inner zone & managed outer zone
- Tree retention areas for portions of Type N streams that flow into fish use streams



Small Forestland Owner

- Minimum option retention requirements reflect inherent differences
- The minimum option allows for reduced riparian management area size
- Capped at 5% of available streams miles in a defined watershed
- Ability to use standard option prescription and apply for tax credit for the trees retained outside the minimum option RMA.





Road Construction & Inventory

Objectives

- Removal of barriers to fish passage.
- Removal or stabilization of unstable road fills of on forest roads.
- Revise rules designed to avoid or minimize delivery of sediment to waters of the state.
- Assessment of and select treatment of abandoned roads.



Rule Changes Hydrologic Connectivity

- Hydrologic connectivity – Direct routes of drainage of road runoff to waters of the state.
- Identify and correct existing connectivity
- Limit the amount of connectivity in all new construction and reconstruction.



Rule Changes Fish Passage

- Removal of barriers to fish passage within 20 years.
- Rules establish stream simulation as the required strategy when feasible.
- Increases stream crossing capacity to coincide with a 100-year peak flow for all streams.



Rule Changes Critical Locations

- Road construction in critical locations is limited to instances where alternate locations are not feasible.
- Critical locations:
 - High Landslide Hazard Areas
 - Within 50 feet of all streams
 - Within all wetlands over .25 acres
 - Within an RMA for more than 500 feet
 - Through toe of deep-seated landslide deposits
 - Highly dissected steep slopes



Forest Road Inventory & Assessment

- 20-year process to identify and correct:
 - Fish passage barriers
 - Hydrologic connectivity
 - Other issues of non-compliance with road rules
- Includes annual reporting of accomplishments and plans for upcoming year.



Abandoned Road Inventory

- ODF lead inventory of abandoned roads.
- Process is LIDAR based with field verification.
- Identified abandoned road segments that are verified as high priority are added to the FRIA list for improvement through that process.



Small Forestland Owners

- Are not required to complete the FRIA.
- Must complete a Road Condition Assessment when notifying to harvest.
- Some road improvements may be eligible for funding through Small Forestland Investment in Stream Habitat program .





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Enforcement & Civil Penalties

Division 670

Enforcement and Civil Penalties

- Updates to rule sets to include:
 - Pesticide Applications by Helicopter Statutes
 - Began under SB 1602
 - Updates give clear civil penalty policy
 - ORS 527.680 additions
 - ORS 527.685 modifications and additions



Standard Civil Penalties

- Maximum civil penalty increased
 - From \$5,000 to \$10,000
- Base fines doubled
- Civil penalty formula remains the same
- Civil penalties able to consider company name changes and previous violations



Significant Violations

An Operator is considered a Landowner, Timber Owner, or Operator who has:

- Failed to file notification of operation
- Non-compliance with an order of the State Forester
- Violation with resource damage with estimated 10+ years to restore.



Repeat Violators

An Operator who:

- Has a history of significant violations
- A pattern of willful disregard of the FPA rules or orders

State Forester will maintain a list of Repeat Violators:

- 3 significant violations within 3 years
- List will be utilized to inform civil penalty calculations process
- Removal from the list 3 years after last citation



Repeat Violator Civil Penalty Calculations

- Criteria:
 - Must be a Significant Violation
 - Must be a Repeat Violator
- Considerations for imposing civil penalty:
 - Total operations related to significant violations compared to total number of operations conducted while evaluating the organizational structure
 - Derived economic benefits from the significant violation



Repeat Violator Civil Penalty Calculations continued

- Use of the standard Civil Penalty Formula with additions:
 - Base penalty is \$2,000
 - Incorporates average number of notifications and organizational structure
 - Max fine is \$50,000 or value derived by the CP formula, whichever is less



Repeat Violator Financial Assurances

- Required when the Operator meets the criteria for Repeat Violator
 - History of significant violations that show willful disregard to the FPA or orders within the previous 3 years
- State Forester may require Violator to acquire, post, and maintain a bond or other form of financial assurance



Repeat Violator Financial Assurances

- Amount is determined either by the acreage of the operation or protected resources at risk, whichever value is greater
 - Maximum amount up to \$250,000
 - State Forester may submit claims for damage repairs completed by State Forester or Civil Penalty fines



Orders to Prohibit

- Failure to obtain financial assurance added to the criteria for prohibiting new operations for the violator



Division 672

Forest Practices Administration

- Addition to Orders of the State Forester that can be contested
 - Determination of Repeat Violator
 - Financial assurance requirement





Small Forestland Owner

SFO Program

- Recognize unique role of SFOs
- SB 1501 establishes the SFO Assistance Office
- Housing for SFO Program
 - Provide landowner assistance
 - Small Forestland Investment in Stream Habitat
 - Forest Conservation Credit
 - Leveraging of other programs



SFO Defined

- Owns less than 5,000 acres of *forestland*
- Has harvested no more than 2MMBF averaged annually over the last 3 years
- Not intending to remove more than 2MMBF annually over the next 10 years
- Self-certification



SFO Rule Structure

- SFO (Div 607) as a directory
 - Greater detail provided in divisions by topic
- Focused on:
 - SFO specific requirements
 - Core functions of the SFO Assistance Office
 - Programs available to SFOs



SFISH

- Small Forestland Investment in Stream Habitat Program
- Funding mechanism provided by agency Policy Option Package



SFISH continued

- Program managed by SFO Assistance Office in consultation with ODFW
- To provide 100% grant funding on high value conservation sites, including:
 - Chronic sedimentation
 - Fish passage
 - Stream Diversions
 - Perched fill



SFISH continued

- Eligibility
 - Verification of SFO criteria
 - Road Condition Assessment
- Voluntary and proactive program
 - Road repairs may otherwise be required by Forest Practices Rules



Forest Conservation Credit

- Forest Conservation Area
 - Width: Standard Practice - SFO minimum option
 - Length: RMA distance adjacent to harvest area
 - No harvesting allowed for 50 years
 - Recorded as a deed restriction at county office
- Area can be removed
 - Original LO must repay if credit was used
 - New LO would need to repay full amount



Forest Conservation Credit continued

- Credit Value
 - 100% of the stumpage value in FC Area
 - 50% of stumpage value in dry channel areas
 - 125% of stumpage value if minimum option isn't available
 - Credit is transferrable to heirs
 - Can be applied year after year until depleted



Forest Conservation Credit continued

- Eligibility
 - Landowner must meet the definition of an SFO
 - Submit a NOAP for Type 1, 2, or 3 harvest
 - Follow the Standard Practice
 - Submit stumpage value documentation





Tribal Engagement

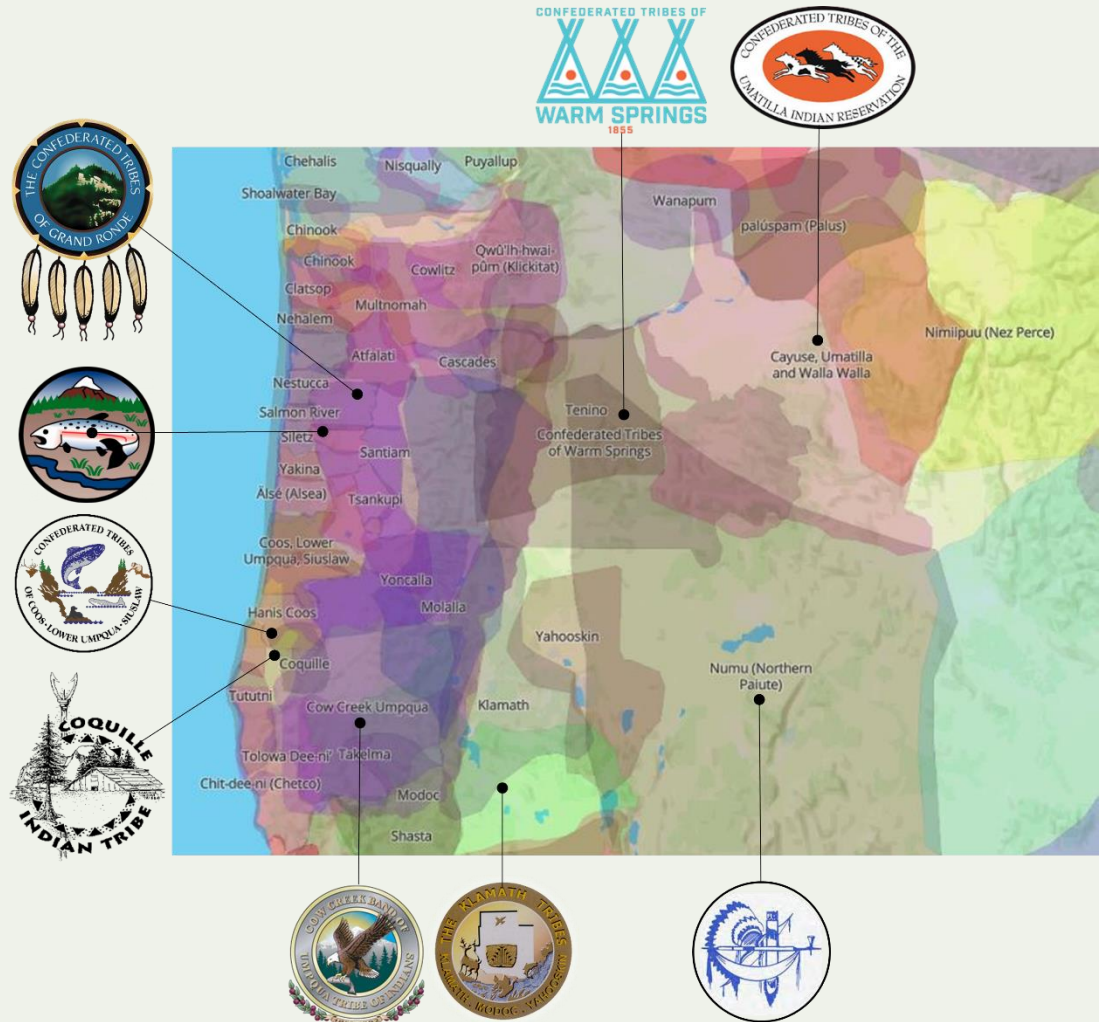
Objective

- Provide tribes with background on the Private Forests Accord (PFA) and Habitat Conservation Plan (HCP)
- Invite tribes to individually opt-in to the HCP
- Engage tribes in developing a process to opt-in

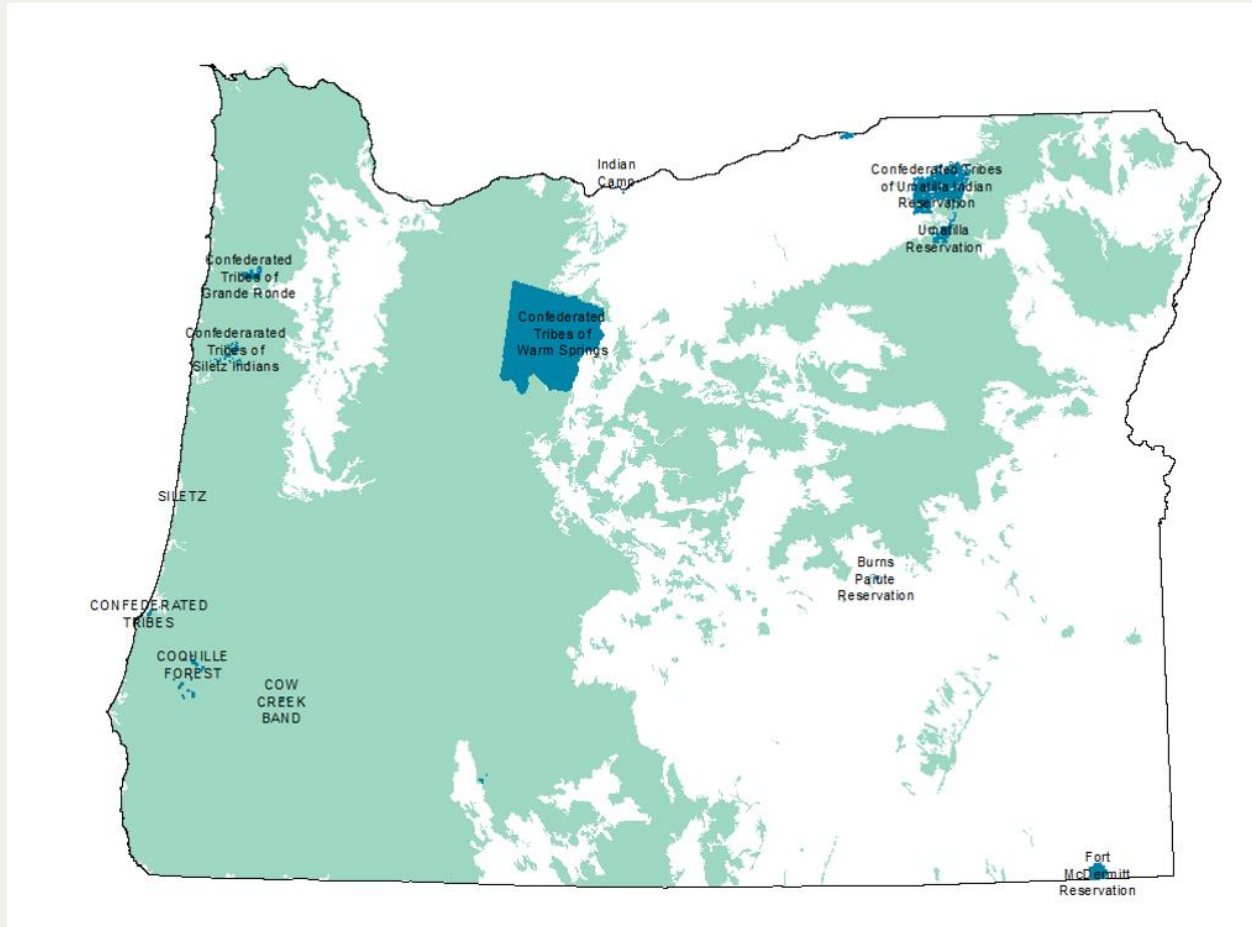


Nine federally recognized tribes in Oregon

1. Confederated Tribes of the **Umatilla** Indian Reservation
2. Confederated Tribes of **Warm Springs**
3. Confederated Tribes of the **Grand Ronde** Community of Oregon
4. Confederated Tribes of **Siletz** Indians
5. Confederated Tribes of **Coos, Lower Umpqua and Siuslaw** Indians
6. **Coquille** Indian Tribe
7. **Cow Creek** Band of Umpqua Tribe of Indians
8. **Klamath** Tribes
9. The **Burns Paiute** Tribe



Tribal lands



Engagement to date

- Legislative Commission on Indian Affairs (LCIS)
- Natural Resources and Cultural Resources Clusters (NRWG, CRC)
- State Forests HCP tribal forum
- Natural resource specialists
- Governor's office tribal liaison





Private Forest Accord HCP

Habitat Conservation Plan

Habitat Conservation Plan = HCP

- Purpose of HCP
- To obtain an incidental take permit
- To provide regulatory assurances under ESA



HCP what is it?

- Translate new rules and conservation actions into the HCP document
- Describe and quantify benefits and impacts to the covered species
- Must meet regulatory requirements of the federal agencies --"The Services"
 - National Marine Fisheries Service
 - US Fish and Wildlife Service



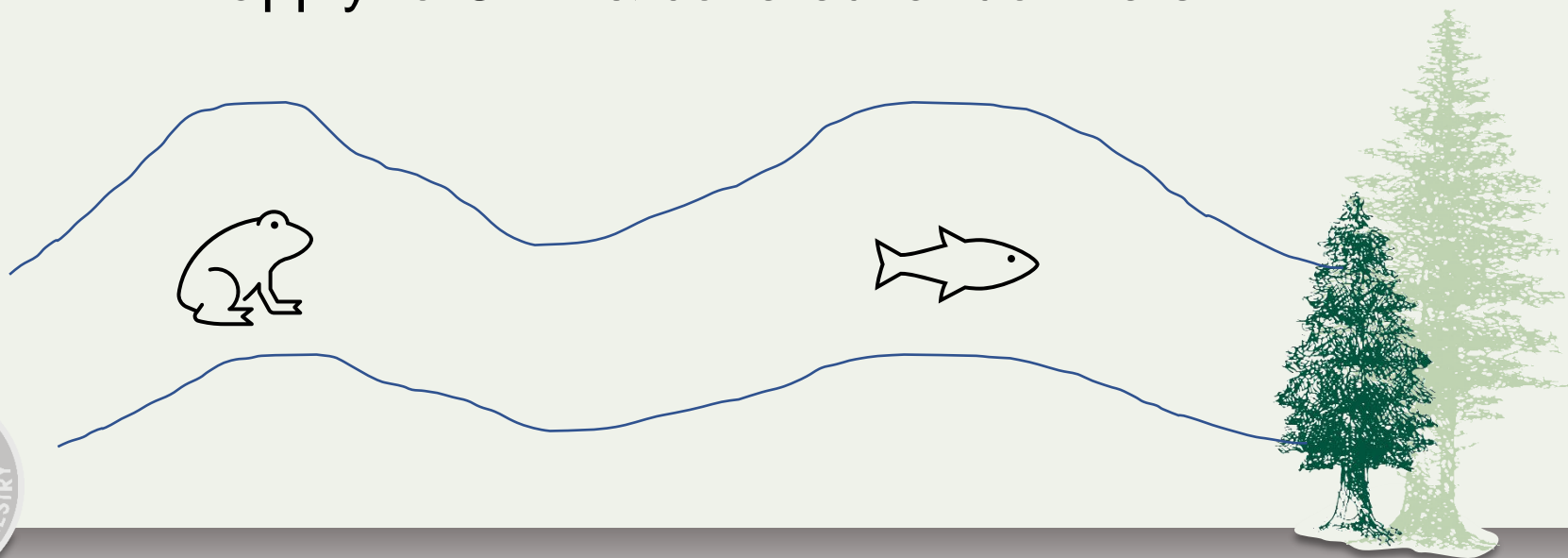
Covered Species

Fish	Amphibians
All native trout and salmon	Columbia torrent salamander
Bull trout	Southern torrent salamander
Mountain whitefish	Coastal giant salamander
Pacific Eulachon/smelt	Cope's giant salamander
Green Sturgeon	Coastal tailed frog



Purpose of PFA-HCP

- Incidental Take Permit
 - For the covered aquatic species
 - Will cover most forestry activities
 - Will legally authorize incidental take of the covered aquatic species
 - Will apply to ODF & covered landowners



Programmatic HCP

What does this mean?

- ODF has agreement with federal agencies
- ODF holds the incidental take permit
- ODF administers the revised Rules and implements requirements of HCP
- Covered landowners obtain regulatory assurances under ESA under ODF's permit



PFA-HCP Development

- Contractor (ICF) is developing HCP for ODF
- Steering committee providing input on HCP development
 - PFA Authors
 - ODF Forest Resources Staff
 - State Agencies (ODFW, DEQ)
 - Federal Agencies (NMFS, USFWS)



Timeline: Phase 1

- ICF is developing first draft of Proposed HCP
 - With input from steering committee
- November BOF Meeting
 - Seek BOF approval to move forward and submit draft proposed HCP to Services
- By December 31, 2022
 - Submit draft Proposed HCP to the Services



Timeline: Phases 2 - 3

- January 2023 – December 2027
 - Develop public draft HCP for review by the Services
 - Initiate NEPA Process; NMFS to develop draft environmental impact statement (EIS)
 - Finalize HCP, submit to Services
- By December 2027 – Obtain Incidental Take Permit





Questions?