

DIVISION 635

WATER PROTECTION RULES: PURPOSE, GOALS, CLASSIFICATION AND RIPARIAN MANAGEMENT AREAS

629-635-0000

Purpose, Goals, Classification and Riparian Management Goals

The definitions in OAR 629-600-0100 apply to the Water Protection Rules, unless otherwise defined in the specific rules.

629-635-0100

Purpose and Goals

(1) The leading use on private forestland is the growing and harvesting of trees, consistent with sound management of soil, air, water, fish and wildlife resources. There is a unique concentration of public resource values in and near waters of the state because these areas are critical for the overall maintenance of fish and wildlife and for maintaining water quality. Consequently, the policies of the Forest Practices Act, including encouraging economically efficient forest practices, are best achieved by focusing protection measures in riparian management areas, where the emphasis is on providing water quality and fish and wildlife habitat.

(2) OAR 629-635-0000 through 629-660-0060 are known as the "water protection rules."

(3) The purpose of the water protection rules is to protect, maintain and, where appropriate, improve the functions and values of streams, lakes, wetlands, and riparian management areas. Active management is encouraged where appropriate to meet this purpose. These functions and values include water quality, hydrologic functions, the growing and harvesting of trees, and fish and wildlife resources.

(4) Plans for alternate practices may be used to alter vegetation retention requirements in the water protection rules based on local site conditions. The plans may include but are not limited to site specific vegetation retention prescriptions as described in OAR 629-640-0400 (for streams) and 629-645-0020 (for wetlands). Operators are encouraged to:

(a) Evaluate site specific conditions in waters and riparian management areas; and

(b) Develop plans for alternate practices that will:

(A) Maintain, enhance, or restore riparian functions in streams, wetlands, and lakes; or

(B) Meet the purposes and goals of the water protection rules while better meeting operational or other objectives.

(5) General vegetation retention prescriptions for streams, lakes and wetlands apply where current vegetation conditions within the riparian management area have achieved or are likely to achieve the desired future condition in a "timely manner." Landowners are encouraged to manage stands within riparian management areas in order to grow trees in excess of what must be retained so that the opportunity is available to harvest the excess.

(6) Alternative vegetation retention prescriptions for streams allow incentives for operators to actively manage vegetation where existing vegetation conditions are not likely to achieve the desired future condition in a "timely manner."

(7) The overall goal of the water protection rules is to provide resource protection during operations adjacent to and within streams, lakes, wetlands and riparian management areas so that, while continuing to grow and harvest trees, the protection goals for fish, wildlife, and water quality are met.

(a) The protection goal for water quality (as prescribed in ORS 527.765) is to ensure through the described forest practices that, to the maximum extent practicable, non-point source discharges of pollutants resulting from forest operations do not impair the achievement and maintenance of the water quality standards.

(b) The protection goal for fish is to establish and retain vegetation consistent with the vegetation retention objectives described in OAR 629-640-0000 (streams), 629-645-0000 (significant wetlands), and 629-650-0000 (lakes) that will maintain water quality and provide aquatic habitat components and functions such as shade, large wood, and nutrients.

(c) The protection goal for wildlife is to establish and retain vegetation consistent with the vegetation retention objectives described in OAR 629-640-0000 (streams), 629-645-0000 (significant wetlands), and 629-650-0000 (lakes) that will maintain water quality and habitat components such as live trees of various species and size classes, shade, snags, downed wood, and food within riparian management areas. For wildlife species not necessarily reliant upon riparian areas, habitat in riparian management areas is also emphasized in order to capitalize on the multiple benefits of vegetation retained along waters for a variety of purposes.

629-635-0110

Monitoring

(1) Monitoring and evaluation of the water protection rules are necessary because of the innovative approach taken in the rules. Monitoring and evaluation are needed to increase the level of confidence of all concerned that the rules will maintain and improve the condition of the riparian vegetation and waters of the state over time.

(2) In cooperation with state and federal agencies, landowners and other interested parties, the department shall conduct monitoring on a continuing basis to evaluate the effectiveness of the water protection rules. The monitoring shall determine the effectiveness of the rules to meet the goals of the Forest Practices Act and the purposes stated in the rules, as well as their workability and operability.

(3) It is the Board of Forestry's intent that the department and its cooperators place a high priority on assessing the monitoring needs and securing adequate resources to conduct the necessary monitoring. The department shall work with its cooperators and the Legislature to secure the necessary resources, funding and coordination for effective monitoring.

(4) The department shall report to the Board of Forestry annually about current monitoring efforts and, in a timely manner, present findings and recommendations for changes to practices. The Board of Forestry shall consider the findings and recommendations and take appropriate action.

629-635-0120

Watershed Specific Practices for Water Quality Limited Watersheds and Threatened or Endangered Aquatic Species

- (1) The objective of this rule is to describe a process for determining whether additional watershed specific protection rules are needed for watersheds that have been designated as water quality limited or for watersheds containing threatened or endangered aquatic species.
- (2) The Board of Forestry shall appoint an interdisciplinary task force, including representatives of forest landowners within the watershed and appropriate state agencies, to evaluate a watershed, if the board has determined based on evidence presented to it that forest practices in a watershed are measurably limiting to water quality achievement or species maintenance, and either:
 - (a) The watershed is designated by the Environmental Quality Commission as water quality limited; or
 - (b) The watershed contains threatened or endangered aquatic species identified on lists that are adopted by rule by the State Fish and Wildlife Commission, or are federally listed under the Endangered Species Act of 1973 as amended.
- (3) The board shall direct the task force to analyze conditions within the watershed and recommend watershed-specific practices to ensure water quality achievement or species maintenance.
- (4) The board shall consider the report of the task force and take appropriate action.
- (5) Nothing in this rule shall be interpreted to limit the Board's ability to study and address concerns for other species on a watershed basis.

629-635-0200 ACTIVE LANGUAGE – look for places where we should do this

Water Classification

- (1) The purpose of this water classification system is to match the physical characteristics and beneficial uses of a water body to a set of appropriate protection measures.
- (2) For the purposes of applying appropriate protection measures, waters of the state shall be classified as either streams, wetlands, or lakes.
- (3) Streams shall be classified further according to their beneficial uses and size.
- (4) Streams shall be classified into one of the following ~~three~~ four beneficial use categories:
 - (a) Streams that have fish use, including fish use streams that have domestic water use, shall be classified as Type F. A Type F stream is not necessarily an SSBT stream.
 - (b) Streams identified [using FHD or something] as Salmon, Steelhead, and/or Bull Trout (SSBT). SSBT is a Type F stream.
 - (c) Streams that have domestic water use, but not fish use, shall be classified as Type D.
 - (d) All other streams shall be classified as Type N.

Commented [LA1]: ACTIVE LANGUAGE – look for places where we need it.

Commented [LA2]: Kyle – Do we need to say something about Type F being beneficial for a wide-range of game fish?

Commented [LA3]: For Kyle: A snapshot in time of FHD and then updating based on some sort of protocol. Should we just call it the SSBT layer?

(5) For purposes of classification, a stream is considered to have domestic water use only if a water use permit has been issued by the Oregon Water Resources Department.

(6) A channel is considered to have domestic water use upstream of an intake for the distances indicated below:

(a) For domestic water use that is a community water system (as defined under OAR 333-061-0020), Type D classification shall initially apply to the length of stream that was designated as Class I under the classification system that was in effect on April 22, 1994, which is that shown on district water classification maps at the time of adoption of this rule.

(b) For domestic water use that is not a community water system, Type D classification shall be initially applied for the shortest of the following distances:

(A) The distance upstream of the intake to the farthest upstream point of summer surface flow;

(B) Half the distance from the intake to the drainage boundary; or

(C) 3000 feet upstream of the intake.

(c) Type D classification shall apply to tributaries off the main channel as long as the conditions of subsections (6)(a) and (b) of this rule apply.

(7)(a) A representative of a community water system or other domestic use water permit holder may request that the department designate additional lengths of channels upstream of a domestic water intake or reservoir as Type D. The representative or permit holder must present evidence that the additional stream protection is needed. The department will decide whether or not to extend Type D classification to these other channels based on evidence presented by the requesting party showing that protection measures associated with Type N classification would be insufficient to prevent adverse detrimental temperature increases, turbidity increases, or other adverse water quality changes at the domestic water use intake or reservoir.

(b) The process and criteria described in subsection (7)(a), and the criteria under section (6) of this rule will be used to evaluate the extent of Type D classification for new community water systems.

(c) The department will decide whether or not to extend the length of Type D classification within 30 days of the presentation of evidence.

(8) The domestic water use classification may be waived by the department at the request of a landowner who is the sole domestic water use permit holder for an intake and who owns all the land along upstream channels that would be affected by the classification related to that intake. This waiver shall not affect the classification related to downstream domestic water use intakes.

(9) A stream or lake will be considered to have fish use if inhabited at any time of the year by anadromous or game fish species or fish that are listed as threatened or endangered species under the federal or state endangered species acts.

(10) The fish use classification does not apply to waters where fish were introduced through a fish stocking permit that includes documentation that the stream had no fish prior to stocking.

(11) In addition, the department will use the Fish Habitat Distribution layer provided by Oregon Department of Fish and Wildlife (ODFW) to determine if a stream has SSBT.

Commented [LA4]: Kyle – This needs fleshed out. Doesn't seem like this statement is true.

(4412) For the purposes of stream classification, the department will use the procedures in this section to determine if a stream has fish use.

(a) For stream segments where field surveys for fish use show that fish use ends at a natural barrier to fish use or other point that is not an artificial obstruction to fish passage, the department will designate fish use based on the survey.

(b) For stream segments where field surveys for fish use show that fish use ends at an artificial obstruction to fish passage, the department will designate fish use as continuing upstream from the artificial obstruction to the first natural barrier to fish use.

(c) For stream segments where field surveys for fish use have not been conducted, the department will designate fish use as continuing upstream from a point of known fish use and ending at the first natural barrier to fish use, without respect to any artificial obstructions to fish passage. An operator may request that the department conduct a fish presence survey to verify this designation of fish use in stream segments associated with an operation scheduled to start between 12 and 24 months after the request.

(A) The department will make a good faith effort to conduct the requested surveys and will prioritize its survey work taking into account landowners without the financial or technical resources to conduct the surveys themselves.

(B) As an option, the landowner may conduct the fish presence survey. However, any survey related to SSBT will need to follow protocol established by ODFW. Any updates to SSBT in the FHD layer will not be available for use until the next scheduled update.

(C) If neither the landowner nor the department is able to conduct the survey before the operation begins, the Type F classification applies up to the first natural barrier to fish use.

(d) To be used for stream classification under this section, field surveys for fish use must be conducted according to the protocol in "Surveying Forest Streams for Fish Use," published by the Oregon Department of Forestry and the Oregon Department of Fish and Wildlife.

(e) The department may use other information to determine the upstream extent of fish use including but not limited to field surveys for fish use by landowners or other entities, and local knowledge of stream conditions, natural barriers to fish use, or fish presence.

(f) An operator may request an exception to Type F stream classification above an artificial obstruction to fish passage that is documented by field survey as the end of fish use. The department will grant the request upon determining that the artificial obstruction is likely to continue to prevent fish passage for a period of time exceeding that needed to regrow trees to a size that would provide key pieces of large wood.

(g) When an exception to Type F stream classification is made above an artificial obstruction to fish passage, the department will classify the stream as either Type D or Type N as appropriate and operators must apply the corresponding vegetation retention requirements.

(h) For the purposes of ORS 215.730(1)(b)(C), Type N streams are equivalent to "Class II streams."

(1213) For each of the ~~three~~ four beneficial use categories (Type F, SSBT, Type D, and Type N), streams shall be categorized further according to three size categories: large, medium, and small. The size categories are based on average annual flow.

Commented [LA5]: Kyle – We need to flesh this out. I think updates may happen more frequently if we are starting with a snapshot of FHD. Also, who can conduct SSBT surveys?

- (a) Small streams have an average annual flow of two cubic feet per second or less.
- (b) Medium streams have an average annual flow greater than 2 and less than 10 cubic feet per second.
- (c) Large streams have an average annual flow of 10 cubic feet per second or greater. SSBT does not apply to large streams.

~~(13)~~ (14) The assignment of size categories to streams on forestland will be done by the department as follows:

- (a) The department will index average annual flow to the upstream drainage area and average annual precipitation. The methodology is described in Technical Note FP1 dated April 21, 1994.
- (b) Actual measurements of average annual flow may substitute for the calculated flows described in the technical note.
- (c) Any stream with a drainage area less than 200 acres shall be assigned to the small stream category regardless of the flow index calculated in subsection (13)(a).

(15) The assignment of main stem of streams for small and medium SSBT on forestland will be done by the department as follows:

- (a) The department will index average annual flow to the upstream drainage area and average annual precipitation. The methodology is described in Technical Note FP1 dated April 21, 1994.
- (b) Actual measurements of average annual flow may substitute for the calculated flows described in the technical note.

~~(14)~~ (16) ~~The Department will further classify W~~ wetlands shall be classified further as indicated below:

- (a) The following types of wetlands are classified as "significant wetlands":
 - (A) Wetlands that are larger than 8 acres;
 - (B) Estuaries;
 - (C) Bogs; and
 - (D) Important springs in eastern Oregon.
- (b) Stream-associated wetlands that are less than 8 acres are classified according to the stream with which they are connected.
- (c) All other wetlands, including seeps and springs are classified according to their size as either "other wetlands greater than one-quarter acre" or "other wetlands less than one-quarter acre."

~~(15)~~ (17) Lakes shall be classified further as indicated below:

- (a) Lakes greater than 8 acres are classified as "large lakes."
- (b) All other lakes are classified as "other lakes."

629-635-0210

Designation of Waters; Notice to Landowners; Reconsideration

(1) The State Forester shall maintain a map showing the classification of waters of the state in each Department of Forestry unit office where notice of operations required by ORS 527.670(6) may be submitted. The map shall show streams, lakes and significant wetlands of known classification within the geographic area of responsibility for that unit office. For streams, the maps shall indicate the size class and, when known, extent of fish use and domestic water use classification.

(2) Once a water of the state has been classified according to OAR 629-635-0200, the State Forester shall not change the classification without written notice to the landowners immediately adjoining the portion(s) of water to be reclassified. Notice to landowners shall include the reason for the change of classification and applicable rules.

(3) Any landowner whose land immediately adjoins the water to be reclassified, any landowner who has received a water right or was granted an easement affecting the water classification, or any state resource agency may request reconsideration of classifications of waters of the state by the department. Such a request shall be in writing and shall identify on a map the portion of the stream or water of the state which should be reconsidered. The request shall present evidence that the current classification is not consistent with OAR 629-635-0200 "Water Classification."

(4) The department shall have up to 14 days to provide a final decision on a request for reconsideration of water classification. Until such a decision is provided, operators shall conduct any operation based upon the most protective potential water classification.

629-635-0220

Geographic Regions

(1) For the purposes of assigning protection measures to waters of the state, seven geographic regions have been delineated for forested areas within the state. The boundaries and names of the geographic regions are displayed in Figure 1. Precise boundaries are found on maps at department field offices. Geographic regions are not "forest regions" established pursuant to ORS 527.640.

[ED. NOTE: The Figure referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

(2) For the purposes of assigning protection measures to SSBT, four geographic regions have been delineated for forested areas within the state. The boundaries and names of the geographic regions are displayed in Figure 2. Precise boundaries are found on maps at department field offices. Geographic regions are not "forest regions" established pursuant to ORS 527.640. (NOTE: Figure will be similar to Figure 1, minus Siskiyou and the east side of Cascades.)

Commented [LA6]: For FERNS, this georegion layer for SSBT should be available on the notifier's side.

629-635-0300

Riparian Management Areas and Water Quality Protection Measures

(1) Riparian management area widths are designated to provide adequate areas along streams, lakes, and significant wetlands to retain the physical components and maintain the functions necessary to accomplish the purposes and to meet the protection objectives and goals for water quality, fish, and wildlife set forth in OAR 629-635-0100.

(2) Specified protection measures, such as for site preparation, yarding and stream channel changes, are required for operations near waters of the state and within riparian management areas to maintain water quality.

(3)(a) Operators shall apply the specified water quality protection measures and protect riparian management areas along each side of streams and around other waters of the state as described in OAR 629-635-0310 through 629-660-0060.

(b) Operators may vary the width of the riparian management area above or below the average specified width depending upon topography, operational requirements, vegetation, fish and wildlife resources and water quality protection as long as vegetation retention and protection standards are met. However, the average width of the entire riparian management area within an operation must equal or exceed the required width.

Commented [LA7]: This is part of the "all other rules apply" issue discussion in June. We are used to this process and we do use this for hardwood conversion blocks.

629-635-0310

Riparian Management Area Widths for Streams

(1)(a) The riparian management area widths for streams are designated for each stream type as shown in Table 1.

Table 1

Commented [LA8]: We would have a column in Table 1 for SSBT. Gray out Large stream – not applicable.

Riparian Management Area Widths for Streams of Various Sizes and Beneficial Uses

	Type F	Type SSBT	Type D	Type N
Large	100 feet	N/A	70 feet	70 feet
Medium	70 feet	80 feet 60 feet	50 feet	50 feet
Small	50 feet		20 feet	Apply specified water quality protection measures, and see OAR 629-640-0200.

(b) Except as indicated in section (2), operators shall measure the riparian management area width as a slope distance from the high water level of main channels.

(c) Notwithstanding the distances designated in subsection(1)(a), where wetlands or side channels extend beyond the designated riparian management area widths, operators shall expand the riparian management area as necessary to entirely include any stream-associated wetland or side channel plus at least 25 additional feet. This provision does not apply to small Type N streams.

(2) In situations where the slope immediately adjacent to the stream channel is steep exposed soil, a rock bluff or talus slope, operators shall measure the riparian management area as a horizontal distance until the top of the exposed bank, bluff or talus slope is reached. From that point, the remaining portion of the riparian management area shall be measured as a slope distance.