DEPARTMENT OF FORESTRY

DIVISION 635

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

Rule Text Showing Proposed Revisions
Example: ~~Deleted Language~~ **Added Language**

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~~**642**-~~0400~~**0000**, (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~~**642**-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~~**642**-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~~ **State Forester** 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~~ **State Forester** and its cooperators place a high priority on assessing the monitoring needs and securing adequate resources to conduct the necessary monitoring. The ~~department~~ **State Forester** shall work with its cooperators and the Legislature to secure the necessary resources, funding and coordination for effective monitoring.

(4) The ~~department~~ **State Forester** 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
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.~~ **The State Forester shall classify waters of the state as streams, wetlands, or lakes.**

(3)~~Streams shall be classified further according to their beneficial uses and size.~~ **The State Forester shall further classify streams according to their beneficial uses and size.**

(4)~~Streams shall be classified into one of the following three beneficial use categories:~~ **The State Forester shall classify streams into one of the following 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;

(b**) Type SSBT**

(b~~c~~) ~~Streams that have domestic water use, but not fish use, shall be classified as~~ Type D;

(c~~d~~) ~~All other streams shall be classified as~~ Type N.

(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~~ **State Forester** 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~~ **State Forester** 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~~ **State Forester** 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~~ **State Forester** 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) For the purposes of stream classification, the ~~department~~ **State Forester** 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~~ **State Forester** 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~~ **State Forester** 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~~ **State Forester** 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~~ **State Forester** 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~~ **State Forester** 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.

(C) If neither the landowner nor the ~~department~~ **State Forester** 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~~ **State Forester** 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~~ **State Forester** 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~~ **State Forester** 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."

(12) For the purposes of stream classification the State Forester will use the procedures in this section to determine if a stream has fish use or both fish use and SSBT use.

(a) Streams where the upstream extent of fish use is determined using field methods that also observe SSBT use where those stream segments have not previously been identified as having SSBT use, will be added to the Type SSBT classification in accordance with the Data Standard and Update Protocol referenced in OAR 629-635-0200 (13).

(b) For streams where SSBT use is based on observations or habitat, and where that use exists farther upstream than the upstream extent of fish use identified by field methods, the State Forester will use the farthest upstream segment with SSBT use to reclassify the end of fish use.

(c) For streams where SSBT use is based on observations or habitat, and where that use exists farther upstream than where upstream extent of fish use identified by non-field methods, the State Forester will use the farthest upstream segment with SSBT use to reclassify the end of fish use.

(d) For streams where SSBT use is based on concurrence of professional opinion, and where that use exists farther upstream than the upstream extent of fish use identified by field methods, the State Forester will use the farthest upstream segment with fish use to reclassify the end of SSBT use.

(e) For streams where SSBT use is based on concurrence of professional opinion, and where that use exists farther upstream than the upstream extent of fish use identified by non-field methods, the State Forester will use the farthest upstream segment with SSBT use to reclassify the end of fish use. The State Forester will re-survey, using field methods, for the upstream extent of fish use upon written request from a landowner whose land immediately adjoins a Type SSBT stream segment described in this subsection.

(f) A landowner may provide evidence to the State Forester that clearly identifies a waterfall or chute type of natural barrier to SSBT use based on field methods under OAR 629-625-0200(11). The State Forester will evaluate that evidence and make a determination on whether or not to adjust the extent of SSBT use within 30 days of presentation of evidence.

(13) The State Forester will use the standards and procedures in this section to determine if a stream is Type SSBT.

(a) The State Forester will initially classify SSBT use stream segments based on the Fish Habitat Distribution Database on July 1, 2017, excluding historical use stream segments and stream segments identified using habitat evaluation based on modeling according to the *Oregon Fish Habitat Distribution Data Standard, Version 3.0, February, 2015. (Data Standard) and Oregon Department of Fish and Wildlife Fish Habitat Distribution Data Update Protocol, September, 2005. (Update Protocol).*

(b) When advised by the Oregon Department of Fish and Wildlife (ODFW) that new or higher quality data are available on the distribution of SSBT use, the State Forester will evaluate the need to reclassify SSBT use stream segments. Otherwise, evaluation of new or higher quality data and subsequent reclassification of SSBT use stream segments will occur at least every 4 years.

(c) As needed, the State Forester will reclassify SSBT use stream segments, except for stream segments added based on concurrence of professional opinion as defined in the Data Standard.

(d) The State Forester will apply SSBT use stream segments to operations described in notifications submitted after the date the stream segments are classified as Type SSBT.

(e) If the Data Standard or Update Protocol is revised substantively in any way, the State Forester and the Board of Forestry will evaluate if changes to this rule are required.

(f) Until the State Forester and the Board of Forestry have reviewed and approved revisions to the Data Standard or Update Protocol per subsection (e) the State Forester will not reclassify SSBT use stream segments based on information from the new portions of the ODFW Data Standard or Update Protocol.

(~~12~~**14**) For each of the ~~three~~ **four** beneficial use categories (Type F, **Type 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.

(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.

(~~13~~**15**) The assignment of size categories to streams on forestland will be done by the ~~department~~ **State Forester** as follows:

(a) The ~~department~~ **State Forester** 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 (13)(a).

(~~14~~**16**)Wetlands shall be classified further as indicated below:

(a) Significant wetlands, which are:

(A) Wetlands 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) “Large lakes” greater than 8 acres.

(b) All other lakes 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, **extent of SSBT 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~~ **State Forester**. 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~~ **State Forester** 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.

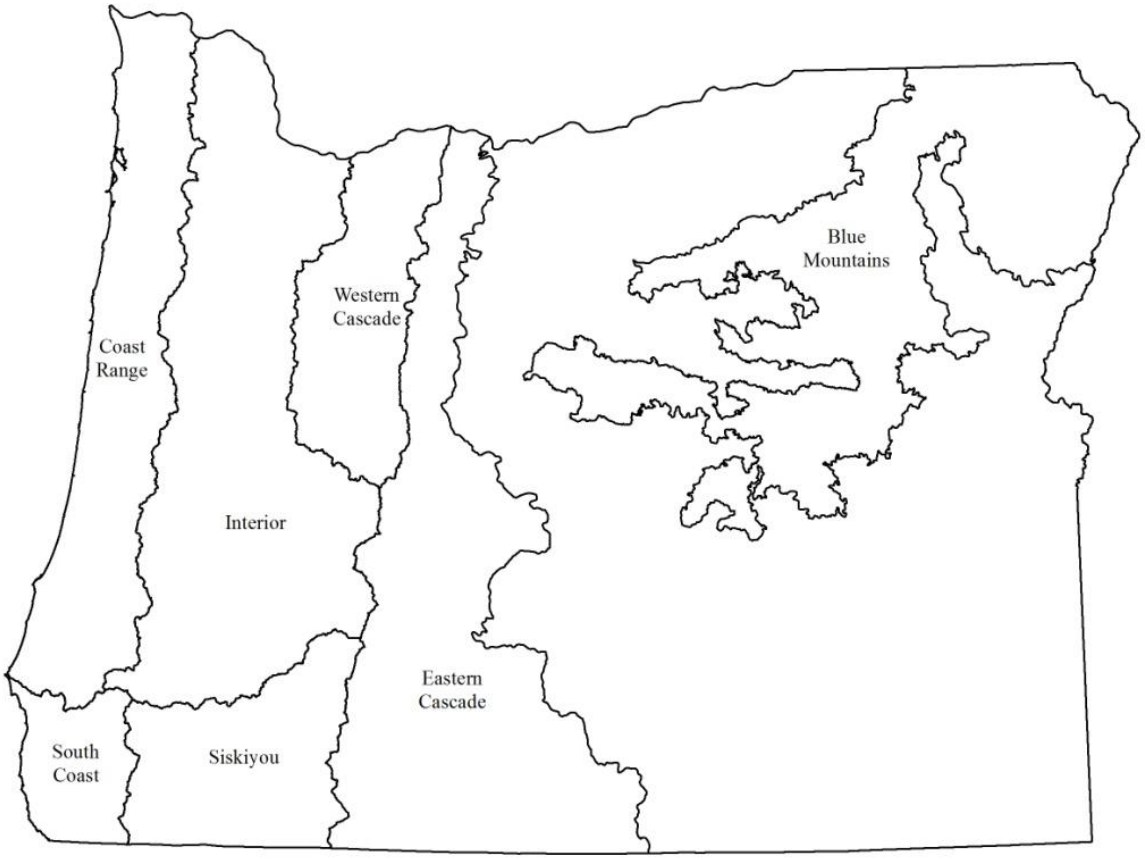

Figure 1, OAR 629-635-0220(1)

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.

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.

(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.

Table 1. **Riparian Management Area Widths for Streams of Various Sizes and Beneficial Uses (OAR 629-635-0310)**

	Type F	Type SSBT	Type D	Type N
LARGE	100 feet	N/A	70 feet	70 feet
MEDIUM	70 feet	80 feet	50 feet	50 feet
SMALL	50 feet	60 feet	20 feet	Apply specified water quality protection measures, and see OAR 629-~~640~~642-0~~2~~400.