

***DIVISION 635***  
***WATER PROTECTION RULES: PURPOSE, GOALS, CLASSIFICATION AND***  
***RIPARIAN MANAGEMENT AREAS***

***RIPARIAN MANAGEMENT GOALS***

***OAR 629-635-0000***

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

**APPLICATION:**

This rule is not used for enforcement action; it applies the definitions in OAR 629-600-0100 to the Water Protection Rules.

**WATER PROTECTION RULES; PURPOSE AND GOALS****OAR 629-635-0100**

- (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.*

**APPLICATION:**

These rule sections are not used for enforcement action.

**ADMINISTRATION:**

Sections 1, 2, and 3 of this rule provide the policy framework for the Water Protection Rules. These three sections first establish riparian areas as places emphasizing water quality and fish and wildlife habitat. To the extent that the goals for these values are met, the rules encourage the management of timber. In 2006, the Board of Forestry added the last line of section (1) to emphasize the purpose of riparian management areas. In addition, the board added the second sentence in section (3) to highlight the role of active management in maintaining and improving riparian function.

**WATER PROTECTION RULES; PURPOSE AND GOALS****OAR 629-635-0100**

- (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, 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."*

**APPLICATION:**

These rule sections are not used for enforcement action.

**ADMINISTRATION:**

These rule sections identify the three different objective-based management prescriptions available for riparian management areas, as follows: (1) plans for alternate practices, including site-specific prescriptions, (2) general prescriptions, and (3) alternative prescriptions (see Figure 1 on the next page). This three-pronged approach is intended to allow management flexibility for achieving the goals of the Water Protection Rules (mature forest in a timely manner).

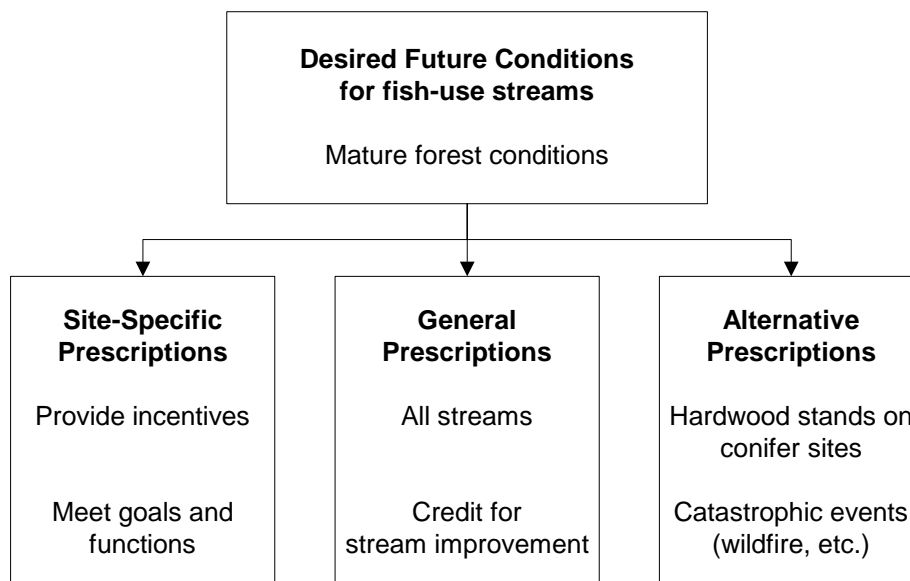
**Site-Specific Prescriptions**

Plans for alternate practices, including site-specific prescriptions, allow analysis of on-site conditions to form the basis for prescriptions unique to particular sites but still consistent with the desired future condition (mature forest condition). Site-specific plans may be used under any circumstance, especially to develop incentives for doing restoration and enhancement work.

Site-specific prescriptions should be encouraged to provide innovative and flexible means of achieving the desired results.

In developing the Water Protection Rules (development took place from 1992 through 1994), the Board of Forestry intended that the first choice of a landowner would be to develop a site-specific prescription matched to local site conditions and designed to provide and improve riparian functions. The general prescription would be a more prescriptive fallback where site-specific prescriptions were not used. However, some landowners have been reluctant to manage within riparian management areas, and have instead routinely applied the general prescription or avoided management within riparian management areas. To address this situation, in 2006 the board revised sections (4), (5), and (6) of this rule, placing the option for plans for alternate practices, including site-specific prescriptions, first in the list to indicate first priority.

**Figure 1: Optional approaches for achieving the desired future condition.**



General Prescriptions

General prescriptions provide a baseline and “cookbook” approach for riparian stands already on the trajectory for "mature forest conditions." If this trajectory will achieve mature conifer forest conditions (basal area similar to a 120-year-old stand) in a period of 50 to 100 years, it is within the definition of "timely manner." If the area is a hardwood site, "timely manner" is a somewhat shorter period depending upon which hardwood species are present. The vegetation retention goals, including achieving mature conifer forest conditions in a timely manner, are further described in the guidance for OAR 629-640-0000.

Mature forests were selected as the vegetative target because they provide levels of protection and input (shade, nutrients, etc.) characteristic of productive fish habitat. The minimum age that describes mature forest is also the age at which the natural input cycle (in the absence of storm

events) begins to provide large wood of adequate size and volume to begin to produce desired instream conditions.

#### Alternative Prescriptions

Alternative prescriptions apply to the following two conditions:

1. Where hardwood-dominated riparian stands are occupying sites capable of growing conifer stands; and
2. Where catastrophic events such as fire or insect epidemics have occurred in streamside areas.

In either case, the prescription is designed to allow disturbance so that the streamside stand can be restored in a more timely manner.

#### **REFERENCES:**

- OAR 629-640-0100 General vegetation retention prescription for Type F streams
- OAR 629-640-0200 General vegetation retention prescription for Type D and Type N streams
- OAR 629-640-0300 Alternative vegetation retention prescriptions
- OAR 629-640-0400 Site specific vegetation retention prescriptions for streams and riparian management areas
- Andrus, C. and T. Lorensen. 1992. Water Classification and Protection Project Draft Report. Oregon Department of Forestry. Salem, Oregon.
- Oregon Department of Forestry. 1994. The Oregon Forest Practices Act Water Protection Rules: Scientific and Policy Considerations. Oregon Department of Forestry. Salem, Oregon.

**WATER PROTECTION RULES; PURPOSE AND GOALS****OAR 629-635-0100**

- (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.*

**APPLICATION:**

This section is not used for enforcement action.

**ADMINISTRATION:**

This section provides the goals for the Water Protection Rules, including specific protection goals for water quality, fish, and wildlife.

SB 1125 (1991) established a new and clear target in the Forest Practices Act for water quality standard achievement. This explicit target for the protection of water quality is a significant change and represents a higher standard of protection than previous standards. Water quality standards considered in developing these rules included standards for temperature, turbidity, and (habitat) anti-degradation.

The forest practice rules are required by statute to meet the requirements of the federal Clean Water Act. This is to be done by developing best management practices that meet state water

quality standards to the "maximum extent practicable." The rules are also required to provide for the "overall maintenance" of fish and wildlife. While the protection requirement for water quality standards is discrete, the objectives for fish and wildlife include a range of possible levels of protection from "minimum viable" to "maximum possible."

The department worked collaboratively with the landowner community, advocates for fish and wildlife, domestic water purveyors, and other agencies to draft the Water Protection Rules. Collaboration was done with the understanding that water quality standards were to be achieved to the maximum extent practicable and "good habitat" was to be maintained for fish and riparian-dependent wildlife. "Good habitat" was negotiated based upon available science, with the recognition of the requirements in the Act to provide for the overall maintenance of fish and wildlife while also encouraging economically efficient forest practices. This process included policy direction from the Board of Forestry to provide habitat to maintain fish populations at levels well above what would place populations at risk and that should recover fish populations if other factors are not limiting. For additional information about the scientific and policy basis behind the rules, see the documents referenced below.

#### **REFERENCES:**

- Andrus, C. and T. Lorensen. 1992. Water Classification and Protection Project Draft Report. Oregon Department of Forestry. Salem, Oregon.
- Oregon Department of Forestry. 1994. The Oregon Forest Practices Act Water Protection Rules: Scientific and Policy Considerations. Oregon Department of Forestry. Salem, Oregon.

**WATER PROTECTION RULES; MONITORING****OAR 629-635-0110**

- (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 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.*

**APPLICATION:**

This rule is not used for enforcement action.

**ADMINISTRATION:**

This rule provides board guidance to the department for monitoring. The department is required to make an annual report about the monitoring efforts and results. This report will be prepared by the Private Forests Program Forest Health and Monitoring Unit Manager. This rule deals primarily with monitoring related to the Water Protection Rules. OAR 629-620-0700 requires the department to conduct monitoring to evaluate the effectiveness of the Chemical and Other Petroleum Product Rules. More information on Private Forests Program monitoring activities is available in the program's monitoring strategic plan.

**REFERENCES:**

- Oregon Department of Forestry. 2002. Forest Practices Monitoring Program Strategic Plan. Oregon Department of Forestry. Salem, Oregon.



**WATERSHED SPECIFIC PRACTICES FOR WATER QUALITY LIMITED  
WATERSHEDS AND THREATENED OR ENDANGERED AQUATIC SPECIES**  
**OAR 629-635-0120**

- (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.*

**APPLICATION:**

These rule sections are not used for enforcement action.

**ADMINISTRATION:**

OAR 629-635-0120 provides a process for the development and approval of additional protection measures for specific watersheds where need is demonstrated based upon circumstances unique to that watershed. This process can be requested by any party including any public, interest groups, other agencies, or the department.

In developing this process, it was understood by the board that this rule was not intended to limit the board's ability to study and address concerns for other species on a watershed basis. Nor was it the intent of the board to limit its ability to evaluate the rules for their overall effectiveness and make appropriate changes.

The process in this rule is only to be applied to watersheds that are designated as "water quality limited" or that contain threatened or endangered aquatic species. Water quality limited watersheds are designated by the Environmental Quality Commission. The specific stream reaches with limited water quality are listed every two years by DEQ on what is known as the 303d<sup>1</sup> list. These streams may also be referred to in the DEQ report that lists them for EPA, the "305b" report. DEQ addresses these stream segments by prioritizing them for the setting of total maximum daily loads (TMDLs) for offending pollutants. TMDLs have been completed for some basins, but are in process or still planned for others. Unless monitoring or other specific information indicates a need for watershed-specific rules, the forest practice rules are the department's management measures for restoring water quality in such stream segments. Information about the 303d list and about TMDLs can be obtained from Private Forests Program staff or from DEQ's Water Quality Division website. For the purposes of this rule, threatened or endangered aquatic species include **only** aquatic species designated under either the state or federal Endangered Species Act. Aquatic species are species that are dependent upon water for a portion of their life cycle, including fish and amphibians.

The process is also limited to watersheds where forest practices in a watershed are measurably limiting to water quality achievement or species maintenance **as determined by the board based on evidence presented to it**. This means that the parties requesting implementation of the process must provide evidence that forest practices are a measurable factor in the water quality problem or with species maintenance in the specific basin. The burden of proof is on the requesting party to demonstrate a definite link among forest practices and the water quality or species problems.

The trigger for the process will normally be evidence presented through a technical paper submitted by the requesting party to the board that forest practices in a watershed are measurably limiting to water quality achievement or species maintenance. The technical paper will be reviewed by independent experts (selected by the State Forester) in coordination with ODF staff. Staff will prepare a report summarizing the technical evaluations and recommend to the board if the process should be implemented or not.

The key role of stewardship foresters with regard to this rule is to ensure that parties expressing an interest in this process have a full understanding of the conditions that must exist for initiation. Parties that plan to request this process should be directed to the Private Forests Program Director.

#### **REFERENCES:**

- Oregon Department of Environmental Quality, Water Quality Division.  
<http://www.oregon.gov/DEQ/WQ/index.shtml>

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<sup>1</sup> "303d" and "303b" are references to sections of the federal Clean Water Act.

**WRITTEN PLANS FOR STREAMS, LAKES, WETLANDS AND RIPARIAN  
MANAGEMENT AREAS**

***OAR 629-635-0130***

- (1) ***Operators shall submit to the State Forester a written plan before conducting any operation requiring notification under OAR 629-605-0140(1) within:***
- (a) ***100 feet of fish use or domestic water use streams (classified as Type F or Type D under OAR 629-635-0200), except as described in section (3) of this rule;***
  - (b) ***300 feet of significant wetlands;***
  - (c) ***100 feet of large lakes.***

**APPLICATION:**

This section can be used for enforcement action. Subsections (1)(a) and (b) merely restate the requirement for statutory written plans for operations near Type F streams, Type D streams, or significant wetlands; use OAR 629-605-0170(1)(a) or (c) for enforcement action if an operator fails to submit a written plan before conducting operations near these resources.

OAR 629-635-0130(1)(c) adds a requirement for an operator to submit a ***non-statutory written plan*** before conducting an operation within 100 feet of a large lake. Use this subsection for enforcement action if an operator fails to submit a written plan before conducting an operation within 100 feet of a large lake.

**COMPLIANCE:**

An operator complies with this rule by submitting the required written plan prior to commencing an operation within the specified distances of the corresponding waters of the state.

**Unsatisfactory Condition:** An unsatisfactory condition exists when an operator fails to submit a complete written plan before starting an operation within 100 feet of a large lake.

**Damage:** Resource damage is not a prerequisite for taking enforcement action. By not submitting a written plan, the operator denies the stewardship forester the opportunity for review and comment.

**Written Statement of Unsatisfactory Condition:** Under specific conditions listed in OAR 629-670-0125, a written statement of unsatisfactory condition may be issued instead of a citation for certain administrative violations such as failure to submit a written plan.

**ADMINISTRATION:**

Note that written plans are required under this rule **only** for operations for which notification is required under OAR 629-605-0140(1). For example, under OAR 629-605-0140(2)(b), notification is not required for replacement of cross drain culverts that are not in streams. A

written plan for conducting this activity within 100 feet of a large lake would not be required, but the operator would still be required to comply with other forest practice rules.

The requirement for an operator to submit a written plan before conducting an operation within 100 feet of a large lake is echoed in OAR 629-605-0170(4). That section serves as an informative list guiding the reader to the specific rules under which enforcement action should be taken when needed. Administrative procedures for non-statutory written plans are described in OAR 629-605-0170(4) and (5).

“Large lakes” are defined in OAR 629-600-0100 as lakes larger than eight acres. Measure the 100-foot distance from large lakes in slope distance, except that horizontal distance is to be used for vertical or nearly vertical slopes.

Note that the exception referred to in subsection (1)(a) of this rule no longer applies. See the guidance for OAR 629-635-0130(3) for more information.

**REFERENCES:**

- OAR 629-600-0100
- OAR 629-605-0170 Written plans

**WRITTEN PLANS FOR STREAMS, LAKES, WETLANDS AND RIPARIAN  
MANAGEMENT AREAS*****OAR 629-635-0130***

- (2) *In addition to the written plan requirements in OAR 629-605-0170, operators shall specifically describe in the written plan for operations within 100 feet of domestic water use portions of Type F or D streams the practices and methods that will be used to prevent sediment from entering waters of the state.*

**APPLICATION:**

This section is not used for enforcement action.

**ADMINISTRATION:**

In a written plan for operations within 100 feet of the domestic use portion of a stream, the operator must provide information about the practices and methods that will be used to prevent sediment from entering waters of the state. If the written plan does not meet the criteria of this section, it must be returned as incomplete. If the operation is conducted without the required information in the written plan, it means the operator has failed to submit a complete written plan; take enforcement action under OAR 629-605-0170(1)(a).

**WRITTEN PLANS FOR STREAMS, LAKES, WETLANDS AND RIPARIAN  
MANAGEMENT AREAS**

***OAR 629-635-0130***

- (3) *The State Forester may waive, in writing, the requirement for a written plan within 100 feet of a Type F or Type D stream, if the State Forester determines the intended forest practice will not directly affect the physical components of the riparian management area. "Physical components" means materials such as, but not limited to, vegetation, snags, rocks, and soil. "Directly affect" means that physical components will be moved, disturbed, or otherwise altered by the operation activity, even if only temporarily.*

**APPLICATION:**

This rule is no longer operative; the State Forester may not waive the requirement for a written plan within 100 feet of a Type F or Type D stream.

**ADMINISTRATION:**

When this rule was adopted (September 1994), ORS 527.670(3) authorized the State Forester to waive the statutory written plan requirement as described in this rule. Since that time, alterations in the statute have removed that authorization. Regardless of the text in this rule, the State Forester is **not** authorized to waive the statutory written plan requirement for operations within 100 feet of Type F or Type D streams based on the expectation that the operation will not directly affect RMA physical components.

The text in ORS 527.670(3)(a) now states that the board must require a written plan for operations within 100 feet of Type F or Type D streams unless the board has determined by rule that such written plans are not required when a general vegetation retention prescription will be used. Because the board has not adopted such a rule, the State Forester is **not** authorized to waive the statutory written plan requirement for operations within 100 feet of Type F or Type D streams based on the expectation that a general vegetation retention prescription will be used.

**REFERENCES:**

- ORS 527.670 Commencement of operations; when notice and written plan required; notice of chemical application; appeal of plan.

**WRITTEN PLANS FOR STREAMS, LAKES, WETLANDS AND RIPARIAN  
MANAGEMENT AREAS**

***OAR 629-635-0130***

- (4) Written plans required under section (1)(a) and (1)(b) of this rule are subject to the process required for a written plan pursuant to ORS 527.670(8) through (12), and appeal pursuant to ORS 527.700.***

**APPLICATION:**

This section is not used for enforcement action.

**ADMINISTRATION:**

This section echoes the statement in OAR 629-605-0170(3) that written plans for operations within 100 feet of Type F or Type D streams, or for operations within 300 feet of significant wetlands are **statutory written plans** subject to administrative processes described in the statutes cited below. Use OAR 629-605-0170(1)(a) and (c) for enforcement action related to written plans for operations near Type F streams, Type D streams, or significant wetlands.

The requirement in OAR 629-635-0130(1)(c) is for **non-statutory written plans** for operations within 100 feet of large lakes. Administrative procedures for non-statutory written plans are described in OAR 629-605-0170(4) and (5).

**REFERENCES:**

- OAR 629-605-0170 Written plans
- ORS 527.670 Commencement of operations; when notice and written plan required; notice of chemical application; appeal of plan
- ORS 527.700 Appeals from orders of the State Forester; hearings procedure; stay of operations

**WATER CLASSIFICATION*****OAR 629-635-0200***

- (1) The purpose of this 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 beneficial uses and size.***
- (4) Streams shall be classified into one of the following three 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) Streams that have domestic water use, but not fish use, shall be classified as Type D.***
  - (c) All other streams shall be classified Type N.***

**APPLICATION:**

These rule sections are not used for enforcement action.

**ADMINISTRATION:****Streams, Wetlands, and Lakes**

Waters of the state include an array of water types—estuaries, lakes, ponds, springs, rivers, marshes, etc. However, FPA classification is based upon determining the best fit into three major classifications—lakes, streams, or wetlands. Of these three, determine the one single classification for a water body that best fits. This should be done based upon the dominant feature. For example, if a water body includes seven acres of year-round open water and two acres of seasonally flooded wetlands, the whole water body should be considered a "lake." All water bodies below the head of tide are by definition estuaries and thus must be classified as significant wetlands. Lakes, streams, and wetlands do not include "water developments as described in OAR 629-600-0100.

**Domestic Use only for Surface Water in Streams**

Based on the language in OAR 629-635-0200(3) through (8) and in the vegetation retention rules of the Water Protection Rules, only streams may be designated as having domestic use.

Wetlands and lakes do not receive the domestic use designation. Streams that are tributary to lakes receive domestic use status only if the domestic use point of diversion or intake is actually in the stream channel, at or upstream of the point where the stream enters the lake. A domestic use permit for diverting water from the lake itself does not confer domestic use status on any streams tributary to the lake.



The language in OAR 629-635-0200(3) through (8), as well as the description of vegetation retention requirements in OAR 629-640-0200, makes it clear that the domestic use designation applies only to surface waters. A domestic use intake accessing only ground water such as a spring or well (no surface water in a channel is collected) would not qualify an upstream reach of a channel as having domestic use. However, some pesticide product labels require specific measures to protect ground water; pesticide applicators must comply with all pesticide product label requirements. As a courtesy, stewardship foresters may inform operators of groundwater systems in or near operation areas when they (stewardship foresters) are aware of such systems.

**REFERENCES:**

- OAR 629-605-0100 Definitions - Lake, Stream, Water Development, Wetland

**WATER CLASSIFICATION****OAR 629-635-0200**

- (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 Water Resources Department.*

**APPLICATION:**

This section is not used for enforcement action.

**ADMINISTRATION:****Domestic Use Designation**

The intent of section (5) is that the domestic water use designation, and the associated Type D classification, apply only on streams for which the Oregon Water Resources Department has issued a water use permit for domestic use. Based on the language in OAR 629-635-0200(3) through (8) and in the vegetation retention rules of the Water Protection Rules, only streams may be designated as having domestic use. Wetlands and lakes do not receive the domestic use designation.

**Water Use Permits and Water Rights**

Water rights are obtained in a three-step process. The applicant must first apply to the Oregon Water Resources Department (WRD) for a permit to use water. Once a permit is granted, the applicant must construct a water system and begin using water within five years, unless an extension is granted. When water is used under the permit, the permit holder must submit a survey of water use to WRD, including a map and a report detailing how and where water is being used. If water has been used according to the provisions of the permit, a water right certificate is issued. (Oregon Water Resources Department, 2006).

A water right certificate is attached to the land where it was established. If the land is sold, the water right goes with the land to the new owner. (This does not apply to water rights still in permit status.) A water right is valid as long as it is used at least once every five years, for its intended purpose. If the right is unused for five consecutive years, it is legally forfeited and subject to cancellation, with few exceptions. (Oregon Water Resources Department, 1996)

A water use permit includes a point of diversion, which is a specific point along a stream indicated on the survey map for the permit. A permit holder may change the official point of diversion by filing and amendment with WRD. Water right data and maps are available from WRD's water rights database (see the link under REFERENCES in this guidance). Domestic use may show up in the water rights data base as "domestic," "group domestic," "quasi-municipal," or "municipal."

**Validity of Water Use Permits and Water Rights**

As noted above, water rights not used for five consecutive years are subject to cancellation. However, ODF does not make the administrative determination of whether a water right has

been cancelled. WRD is the authority in this instance; as long as the water right is shown as active (not cancelled) in the WRD database, ODF will consider it a legal permit conferring domestic use status on the subject stream, even if the water is not being used for domestic purposes at present. The local Watermaster is a good source of information on specific water rights.

Some domestic water use diversions do not have legal water use permits. When the department is aware that a proposed operation may affect such a diversion, the operator should be informed of the presence of the diversion as a matter of courtesy. The purpose of this communication is to allow operators to address the issue in a manner consistent with their objectives, not to imply that additional protection measures are required or recommended. If there are disagreements relating to water use diversions that do not have legal water use permits, ODF personnel should limit their involvement to providing any ODF-held information that the parties might request.

If there is contention over the validity of a water right, ODF personnel should not take on any advocacy role and should only provide factual information as requested. Persons concerned about the status of a particular water right should contact WRD directly.

#### Domestic Use Stream Designation

The intent of section (5) of this rule is that a stream will be considered to have domestic use if WRD has issued a *water use permit* to withdraw water from a stream for domestic use. This means that the domestic use designation for a stream begins at the second step in the water right process—a completed *water right* is not a prerequisite. For domestic water use classification, a domestic water use permit must be issued for withdrawing water from a stream for human consumption or other household use. Water use permits for irrigation or animal watering are not domestic use permits.

#### Measuring Points for Type D Classification

In practice, ODF will assume that the domestic use stream designation begins at the physical, on-the-ground water intake. This is consistent with the fact that the permit holder may move the mapped point of diversion, and with the language in OAR 629-635-0200(6) declaring domestic use to occur upstream of an “intake.” If the physical intake for a domestic water use permit has not yet been constructed, use the point of diversion shown on the water use permit map. If there is an existing intake (even if it is currently inactive), or evidence of where an intake used to be, start the domestic use designation from that point. If there is no remaining evidence of an intake, use the point of diversion shown on the water use permit map.

#### Maintaining Records of Domestic Water Use Permits

ODF maintains records of domestic water use permits for surface water in GIS layers. As of 2007, the layers are in ODF’s Forest Information and Reporting System (FIRS) and its subsidiary program Forest Activity Notification System (FANS). On or after 2009, the department expects to have a new GIS in which the data will reside. For now, ODF’s GIS unit annually updates a water right point file obtained from WRD. The layer is accessible to FIRS users. Experience has shown that field verification of points in the layer is often necessary. Additional sources for information include the WRD water rights database, the local Watermaster, field visits, and information from operators or the water user; districts may use this information to periodically update local GIS layers.

**REFERENCES:**

- Oregon Water Resources Department. 1996. Surface Water Permits: Obtaining Water Rights to Use Surface Water. Oregon Water Resources Department. Salem, Oregon.  
<http://www1.wrd.state.or.us/pdfs/surfacebook96.pdf>
- Oregon Water Resources Department. 2006. Water Rights in Oregon: An Introduction to Oregon's Water Laws. Oregon Water Resources Department. Salem, Oregon.
- Oregon Water Resources Website  
<http://www.wrd.state.or.us/OWRD/index.shtml> (click on "Water Rights" for access to water right database and maps).

**WATER CLASSIFICATION****OAR 629-635-0200**

- (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.*

**APPLICATION:**

This section is not used for enforcement action.

**ADMINISTRATION:****Community Water Systems**

Subsection (6)(a) applies only to community water systems. OAR 333-061-0020 defines a community water system as “a public water system that has 15 or more service connections used by year-round residents, or that regularly serves 25 or more year-round residents.” For these systems, the Type D classification applies only to specific stream segments that were shown as Class I under the classification system used prior to September 1994. This initial classification based on the presence of community water systems does not extend to any tributaries that were not previously shown as Class I. The avenue to extend Type D classification for a community water system up the main stem or into tributaries is through OAR 629-635-0200(7) rather than subsection (6)(b).

**Measuring Points for Type D Classification**

In practice, ODF will assume that the domestic use stream designation begins at the physical, on-the-ground water intake. This is consistent with the fact that the permit holder may move the mapped point of diversion, and with the language in OAR 629-635-0200(6) declaring domestic use to occur upstream of an “intake.” If the physical intake for a domestic water use permit has not yet been constructed, use the point of diversion shown on the water use permit map. If there is an existing intake (even if it is currently inactive), or evidence of where an intake used to be, start the domestic use designation from that point. If there is no remaining evidence of an intake, use the point of diversion shown on the water use permit map.

See the guidance under section (5) of this rule for more information on domestic use stream designations.

### Stream Classification Records

OAR 629-635-0210(1) directs department field offices to maintain water classification maps with the specified information. Private Forests Program policy is that the official department stream classification map is the Streams FP GIS layer in ODF's Forest Information and Reporting System (FIRS) and its subsidiary program Forest Activity Notification System (FANS). A replacement is planned for FIRS, but it will likely not be available until 2009 or later.

The Streams FP layer is managed at the district level. Stewardship foresters and district data stewards are responsible for ensuring that stream classification changes are entered into the Streams FP layer in compliance with ODF data standards. If data is properly entered into the Streams FP layer, districts are not required to notify the Private Forest Program staff of the changes. The plan is that on an annual basis, staff will query the district layers to develop a "snapshot" of stream classification status. Data management procedures for the Streams FP layer are described further in the two GIS-related documents cited below under REFERENCES.

### REFERENCES:

- GIS-Related Documents
  - Oregon Department of Forestry. GIS Database Dictionary. Oregon Department of Forestry. Salem, Oregon.  
[\\sailemgis\gislib\ODFData\Hydrography\Streams\streams\\_fp\\_20060322.pdf](\\sailemgis\gislib\ODFData\Hydrography\Streams\streams_fp_20060322.pdf)
  - Oregon Department of Forestry. Stream Classification GIS Data Maintenance Procedure. Oregon Department of Forestry. Salem, Oregon.  
<http://www.odf.state.or.us/GIS/privateforests/streammaint.asp>
- Oregon Department of Forestry. 1994. Water Classification and Protection Rules Reference Guide. Oregon Department of Forestry. Salem, Oregon. (1994 training guide for the Water Protection Rules)
- Oregon Water Resources Website  
<http://www.wrd.state.or.us/OWRD/index.shtml> (click on "Water Rights" for access to water right database and maps)

**WATER CLASSIFICATION****OAR 629-635-0200**

- (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.*

**APPLICATION:**

This section is not used for enforcement action.

**ADMINISTRATION:**

This rule describes the process a community water system representative may use to request Type D classification for stream segments that did not receive the initial, automatic Class I-to-Type D conversion in 1994 (see OAR 629-635-0200(6)(a)). Evidence that a stream segment ought to be Type D should include monitoring data collected by the system manager (or other credible party) that shows a correlation between forest operation activity and water quality changes. This evidence should be reviewed by the district in consultation with Private Forests Program staff. Changes to length of channel classified Type D should be made if the evidence supports a change.

For new community water systems, the length of stream that will receive Type D classification above the intake should be determined through an analysis of the watershed by the district in consultation with Private Forests Program staff. The distance determined shall be at least that distance afforded to a non-community system described in subsection (6)(b) of this rule.

**WATER CLASSIFICATION*****OAR 629-635-0200***

- (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.*

**APPLICATION:**

This section is not used for enforcement action.

**ADMINISTRATION:**

The department has the authority to grant this waiver **only** if the requesting person is (1) the sole holder of the domestic water use permit **and** (2) the owner of all the land along upstream channels affected by the classification related to the intake. The owner of a rental property may request the waiver if those two conditions are met. However, the renter occupying the home has no standing to request or contest the waiver, even though the renter may be the actual user of the domestic water source. Similarly, the department has no authority to waive the Type D classification based on an agreement between the owner of the land on which the intake is located and another party who holds the water use permit.

In those circumstances where the department may grant the waiver, downstream water users must be afforded the Type D classification that their intake would merit, even if it extends above the point of the intake of the party requesting the waiver.



**WATER CLASSIFICATION****OAR 629-635-0200**

- (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.*

**APPLICATION:**

This section is not used for enforcement action.

**ADMINISTRATION:****Purpose of this Rule Section**

This section provides the definition of “fish” to be used when field surveys for fish use are conducted. Before October 1, 2007, ODF was directed by rule to conduct field surveys for fish use on all streams with unknown fish use. Based on sections (11) and (13) of this rule, after that date, ODF is no longer required to do the surveys across the landscape; instead, unknown fish use streams are classified across the landscape based on designating fish use up to the first natural barrier to fish use. Section (13) allows ODF or others to do field surveys for fish use on a spot basis. In addition, department personnel may visit stream sites and conduct visual surveys for fish presence. The purpose of section (9) is to provide the definition of “fish use” when field surveys for fish or visual surveys are conducted. With one exception (see OAR 629-635-0200(13)(b)), validated results of field surveys for fish use supersede the determination of fish use based on assuming fish presence up to the first natural barrier to fish use.

**Definition of Fish Use**

Based on OAR 629-635-0200(4)(a), streams with fish use are classified as Type F. The forest practice rules do not give lakes a specific classification based on fish use, but riparian management area designations for lakes are based in part on whether a particular lake has fish use (see OAR 629-650-0000(2)).

Where a validated field survey for fish use has been conducted, any stream or lake that has anadromous, game, threatened, or endangered fish species present at any time of the year, regardless of how short a period, is considered to have fish use, except where fish populations have been introduced, as described in OAR 629-635-0200(10). Neither the size of individual fish nor the size of a fish population is a consideration in the classification.

Fish presence may be confirmed in a stream through a visual survey (fish are sighted) but a field survey for fish is needed to establish the upstream end of fish use. Field surveys for fish use must meet the following standards:

- The survey is conducted in accordance with the document “*Surveying Forest Streams for Fish Use*”; and
- The survey is conducted when fish would reasonably be expected to be in the stream.

Where disturbance events (for example, drought or debris flow) may have temporarily eliminated populations from a stream segment, up to three to five years after disturbance may be needed for re-occupation. Surveys on streams that have experienced disturbance may need to be delayed until reoccupation would be expected.

#### Game Fish, Anadromous Fish, and Threatened or Endangered Fish

For clarity, the following lists are recorded here in their entirety, recognizing that some fish species are present on more than one of the lists. Sources of the lists are shown under REFERENCES.

#### Game Fish (as listed in Oregon Department of Fish and Wildlife sport fishing regulations)

- Trout
- Salmon
- Steelhead
- Bass: largemouth, smallmouth, striped, and hybrid (white x striped cross)
- Bluegill
- Crappie and other sunfish
- Catfish
- Walleye
- Yellow perch
- Whitefish
- Sturgeon
- Shad
- Mullet
- Grayling

#### Oregon Threatened and Endangered Fish Species List

- Hutton Spring Tui Chub
- Borax Lake Chub
- Foskett Speckled Dace
- Warner Sucker
- Snake River Chinook Salmon (Spring/Summer)
- Snake River Chinook Salmon (Fall)
- Lower Columbia River Coho Salmon
- Lahontan Cutthroat Trout
- Lost River Sucker
- Shortnose Sucker

#### Oregon Fish Species Listed under the Federal Endangered Species Act but not State Listed

- Oregon Chub
- Columbia River Chum Salmon
- Oregon Coast Coho Salmon
- Southern Oregon Coho Salmon
- Upper Willamette River Steelhead
- Lower Columbia River Steelhead
- Middle Columbia River Steelhead

- Snake River Steelhead
- Snake River Sockeye Salmon
- Upper Columbia River Spring Chinook Salmon
- Lower Columbia River Chinook Salmon
- Upper Willamette River Chinook Salmon
- Bull Trout

Anadromous Fish, but not Game, Threatened or Endangered fish:

- Pacific lamprey

#### Other Fish Species

The presence of fish species not listed as game fish, anadromous fish, or threatened or endangered fish does not confer the fish use designation on a water body. Sculpin and dace are examples of this type of fish species sometimes encountered during field surveys for fish use.

#### **REFERENCES:**

- ORS 496.009 “Game fish” defined
- Oregon Department of Fish and Wildlife. (Updated annually). Oregon Sport Fishing Regulations (lists game fish species). Oregon Department of Fish and Wildlife. Salem, Oregon  
<http://www.dfw.state.or.us/resources/fishing/>
- Federal and state threatened and endangered fish species listings (June 2007)  
[http://www.dfw.state.or.us/wildlife/diversity/threatened\\_endangered.asp](http://www.dfw.state.or.us/wildlife/diversity/threatened_endangered.asp)
- Oregon Department of Forestry and Oregon Department of Fish and Wildlife. Surveying Forest Streams for Fish Use. Oregon Department of Forestry. Salem, Oregon

**WATER CLASSIFICATION*****OAR 629-635-0200***

***(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.***

**APPLICATION:**

This section is not used for enforcement action.

**ADMINISTRATION:**

This section was adopted to avoid a disincentive for landowners who have allowed or will allow the legal stocking of game fish, where such fish have not been historically present. The exception to fish use status applies when evidence is made available to the department that:

1. All the fish species present in the lake or stream were introduced;
2. The introduction was based upon a legal stocking permit; and
3. There were no other anadromous, game, threatened or endangered fish in the water before the stocking.

One example of how section (10) works may occur in a portion of a stream above a falls that has historically blocked fish use; if ODFW and the landowner agree to allow ODFW to stock game fish above the falls for recreational purposes, the landowner should not be penalized for this effort. Similarly, if a landowner voluntarily removes a natural barrier that has been documented as the end of all fish use in cooperation with ODFW, this should be considered the equivalent of an "introduction based upon a legal stocking permit." The landowner would need to obtain all necessary permits and approvals from the appropriate agencies before altering natural barriers or other channel features. Note that starting on October 1, 2007, if a barrier to fish passage is *artificial*, the upstream reach would already be classified as Type F up to the first natural barrier, regardless of any past evidence that there was no fish use in the upstream reach (see OAR 629-635-0200(13)).

Another example of the type of water this section is intended to exempt is a fish pond created on a small stream (that otherwise does not have fish) if the landowner is able to provide the indicated documentation. Documentation should be in writing and include copies of the indicated permits. The landowner should be made aware that such impoundments of water may require a permit from Water Resources Department.

Another possible exception that may need to be considered is if fish are "illegally" stocked in a water and there is evidence that it never had fish before the illegal stocking. It is not the intent of the classification system to penalize landowners for the illegal actions of others or to create an incentive for illegal fish stocking; such situations should be considered jointly by ODFW and ODF.

**WATER CLASSIFICATION****OAR 629-635-0200**

*(11) Through September 30, 2007, the department will use section (12) of this rule to determine if a water body has fish use. On and after October 1, 2007, the department will use section (13) of this rule to determine if a water body has fish use, and section (12) will be inoperative.*

**APPLICATION:**

This section is not used for enforcement action.

**ADMINISTRATION:**

In September 2006, the Board of Forestry adopted changes to OAR 629-635-0200, directing that the changes would become effective starting on October 1, 2007. This section facilitates that transition. Based on the 2006 changes, the original section (11), which described procedures for designating fish presence, has been renumbered to section (12), but has not otherwise been altered. Starting October 1, 2007, the new section (12) is invalidated, and the new section (13) directs how fish presence is determined.

See the guidance under OAR 629-635-0200(13) for more information on the 2006 rule changes.

**WATER CLASSIFICATION****OAR 629-635-0200**

- (12) *The department, with assistance from the Oregon Department of Fish and Wildlife, will conduct a comprehensive field survey to identify fish use on non-federal forestland in Oregon. However, this survey will take a number of years to complete. In the interim, the following procedures apply to determining which unsurveyed waters are designated Type F:*
- (a) *The department will assume that waters have fish use if they were Class I under the previous classification system. Waters that were Class I solely because of domestic water use are excluded.*
  - (b) *If waters within the boundaries of a proposed operation were not Class I (under the previous classification system) and fish use is unknown, then:*
    - (A) *The department will conduct a field survey for fish after a notification of operation is received; or*
    - (B) *The department will approximate the upstream extent of fish use in a watershed by considering the connection of the water with downstream waters where fish use is known. Fish use will be assumed to occur upstream of the known fish use until the first natural barrier to fish use is encountered.*
  - (c) *Where fish use is unknown, an operator may request that the department conduct a field survey for fish use for reaches of a stream that will be included within an operation that is scheduled to start at least 12 months following the request. The operator shall limit such requests to operations that are part of a landowner's planned harvest schedule and will be conducted during the following year. The department, with assistance from the Oregon Department of Fish and Wildlife when needed, shall attempt to complete such surveys within 12 months following the request. If the survey cannot be conducted in the time indicated, the stream will be considered to have no fish use. However, if the operation has not commenced within six months of the time the operation was scheduled to begin, the stream will again be considered to have unknown fish use.*
  - (d) *The department may use other reliable fish survey information when determining whether or not a stream has fish use. This information could include surveys done by landowners, federal or state agencies, universities, or other persons or entities. The department will determine whether such information is reliable.*

**APPLICATION:**

Section (12) of this rule applied **only** through September 30, 2007. Starting on October 1, 2007, section (12) became invalid; in its place, section (13) now directs how fish presence is determined. Portions of the pre-October 2007 guidance for section (12) have been incorporated into the guidance for section (13).

**WATER CLASSIFICATION****OAR 629-635-0200**

- (13) *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, the department will designate fish use based on the survey.*

**APPLICATION:**

This subsection is not used for enforcement action.

**ADMINISTRATION:****Summary of Rule Changes**

In September 2006, the Board of Forestry adopted changes to OAR 629-635-0200, directing that the changes would become effective starting on October 1, 2007. Based on the 2006 changes, the original section (11), which described procedures for designating fish presence, has been renumbered to section (12), but has not otherwise been altered. Starting October 1, 2007, the new section (12) is invalidated, and the new section (13) directs how fish presence is determined.

In summary, the changes that took effect October 1, 2007 are as follows:

1. In place of the previous requirement for the department to conduct field surveys for fish use on all streams with unknown fish use, the department will classify those streams based on physical habitat criteria that determine the first natural barrier to fish use (see OAR 629-635-0200(13)(c)).
2. Stream reaches previously classified as Type N above artificial obstructions because field surveys for fish use found fish below the obstruction but not above will now be classified as having fish use past the obstruction up to the first natural barrier to fish use. Some exceptions are allowed. See OAR 629-635-0200(13)(b), (f), and (g).
3. The rule change modifies the process in which a landowner requests a field survey for fish use for a stream that has been classified based on the physical habitat criteria (see OAR 629-635-0200(13)(c)).

**Effects of Subsection (13)(a)**

Subsection (13)(a) of this rule establishes that fish use designations based on field surveys for fish use conducted prior to October 1, 2007 remain unchanged, as long as the end of fish use for a survey is not an artificial obstruction to fish passage. The 2006 rule revision also does not change any Type F stream classification based on the superseded "Class I" designation (as described in OAR 629-635-0200(11)(a) as of September 1, 1994). The previous requirement for the department to survey all streams with unknown fish use was removed as of October 1, 2007. However, the department or others may conduct field surveys for fish use on a spot basis. The results of such surveys take precedence over the designation of the first natural barrier to fish use

based on physical habitat criteria unless the survey shows that fish use ends at an artificial obstruction to fish passage.

**Definition: Field Survey for Fish Use**

In the context of section (13) of this rule, conducting a “field survey for fish use” means either of the following:

- To designate the end of fish use or to determine that there are no fish in a particular stream reach, an electroshocking survey is needed. Note: Other methods may be used on a site-specific basis if the local Oregon Department of Fish and Wildlife fish biologist agrees that the methods would be effective in making the “no fish” determination; or
- To make a positive designation of fish use, any electroshocking, seining (netting), visual surveys, or other reliable methods are acceptable.

To be acceptable to the department, a field survey for fish use must comply with the standards in “Surveying Forest Streams for Fish Use.” In addition, results of surveys involving actual sampling, (e.g., electroshocking or seining) are subject to review by the local Oregon Department of Fish and Wildlife fish biologist. Sampling surveys conducted by ODF are also subject to the terms of the scientific sampling permit the Private Forests Program staff obtains each year from the federal and state fish management agencies.

**REFERENCES:**

- Oregon Department of Forestry and Oregon Department of Fish and Wildlife. Surveying Forest Streams for Fish Use. Oregon Department of Forestry. Salem, Oregon.



**WATER CLASSIFICATION****OAR 629-635-0200**

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

**APPLICATION:**

This subsection is not used for enforcement action.

**ADMINISTRATION:****Summary of Rule Changes**

In September 2006, the Board of Forestry adopted changes to OAR 629-635-0200. See the guidance under OAR 629-635-0200(13)(a) for a summary of the changes.

Prior to October 1, 2007, if a field survey for fish use showed that fish use ended at an artificial obstruction to fish passage, the stream segment upstream of the obstruction was considered to have no fish use. Subsection (13)(b) of this rule establishes that, beginning October 1, 2007, these stream segments will be considered to have fish use. The designation of fish use will continue up to the first natural barrier to fish use, to be determined as described under the guidance for subsection (13)(c) of this rule. Subsections (13)(f) and (g) outline a process through which landowners can request an exception to the Type F classification conferred by subsection (13)(b).

**Timing for Rule Implementation**

Subsection (13)(b) takes effect starting October 1, 2007. Department policy is that **the preexisting Type N classification upstream of the artificial obstruction will apply to any operations listed in a notification of operations officially received by the department before October 1, 2007.** The Type N classification applies to all operations listed on the notification, and continues through the life of the notification, including continuations as allowed in OAR 629-605-0150(3) and (4). This determination applies to operations that start before, on, or after October 1, 2007, as long as ODF has received the notification before that date.

For activities listed on a notification received before October 1, 2007, an operator may treat the stream segment above the artificial obstruction as Type N for harvesting, chemical application, and most other types of operations. However, even though this would allow placement of crossings without fish passage under the forest practice rules, it is likely that statutes and rules administered by the Oregon Department of Fish and Wildlife would still require fish passage (see ORS 509.580, ORS 509.585, and OAR 635-412). If an operator indicates an intention to install

a stream crossing on a stream segment above an artificial obstruction and the notification was received prior to October 1, 2007, inform the operator of the potential that fish passage would still be required under regulations administered by the Oregon Department of Fish and Wildlife of the situation. Inform the local Oregon Department of Fish and Wildlife fish biologist of the situation as well.

**If an operation is not listed on a current notification of operations received by ODF prior to October 1, 2007, the operation is subject to the Type F classification upstream of the artificial obstruction to fish passage up to the first natural barrier to fish use.** Landowners may face the circumstance where trees along the upstream segment were legally harvested under a Type N classification, but the stream is now considered Type F. In this instance, stewardship foresters should be open to accepting plans for alternate practices allowing aerial chemical application within 60 feet of the stream, if that practice will help meet the desired future condition in the riparian management area in a more timely manner.

#### Resurveying Stream Segments upstream of Artificial Obstructions

Subsection (13)(b) of this rule sets up a Type F classification upstream of artificial obstructions to fish passage. Until fish passage is provided at the obstruction, results of field surveys for fish use in the upstream segment conducted on or after October 1, 2007 have no bearing on that classification. However, results of a field survey for fish use conducted **after** fish passage has been provided at an artificial obstruction may be used to verify or modify the Type F classification. As a rule of thumb, survey results may be used for this purpose **only** if the survey has been conducted at least three years after fish passage has been provided. This precaution allows time for fish to reoccupy the upstream segment. The stewardship forester may modify the three-year figure up or down based on recommendations from the local Oregon Department of Fish and Wildlife fish biologist. Factors to consider in making this judgment include the life history of the fish species expected to be present, the length of stream that might be colonized, and the condition of the stream, e.g., uncharacteristically low flows from drought. In most instances, ODF personnel would not initiate the survey; it would be up to the landowner, operator, or others to raise the issue.

#### Updating Stream Classification Layers

Private Forests Program policy is that the official department stream classification map is the “Streams FP” GIS layer in ODF’s Forest Information and Reporting System (FIRS) and its subsidiary program Forest Activity Notification System (FANS). A replacement is planned for FIRS, but it will likely not be available until 2009 or later. The Streams FP layer is managed at the district level. Stewardship foresters and district data stewards are responsible for ensuring that stream classification changes are entered into the Streams FP layer in compliance with ODF data standards.

With available time and resources, Private Forests Program staff was not able to develop an automated method for updating the Streams FP GIS layer with the new Type F classifications upstream of artificial obstructions to fish passage. Stewardship foresters and district data stewards will need to work together to manually update local GIS layers. Because OAR 629-635-0200(13)(b) applies only where a field survey for fish use shows fish presence up to but not above the obstruction, the location of these stream segments should already be documented. Attributes of these features allow them to be identified in the Streams FP layer. District data stewards need to identify the affected stream segments, work with stewardship foresters to

identify the first natural barrier to fish use (see the guidance under subsection (13)(c)), and make the appropriate updates to the Streams FP layer. Additional information on maintaining water classification maps is available in the guidance for OAR 629-635-0210. Detailed information on Private Forests data management procedures is available in the three GIS-related documents shown under REFERENCES.

Some of the stream reaches affected by this rule may not have been recorded on maps or GIS layers. A stewardship forester suspecting that an operation may affect such a stream should investigate fish survey records or other available information to determine the stream's status.

#### Notice to Landowners

The change from Type N to Type F under subsection (13)(b) of this rule constitutes a stream classification change for which formal notification to affected landowners is required under OAR 629-635-0210. Field offices will need to identify the affected stream reaches and send written notice of the reclassifications to affected landowners as soon as is practical. The goal is to give affected landowners advance notice of the change, minimizing disruptions in landowner planning. Use the ODF form letter titled "Notice of Water Reclassification" to notify landowners.

#### **REFERENCES:**

- GIS-Related References
  - Cathcart, Jim. 2007. GIS Data Editing Guidance to Streams FP: Implementation of OAR 629-635-0200(13). Oregon Department of Forestry. Salem, Oregon.
  - Oregon Department of Forestry. GIS Database Dictionary. Oregon Department of Forestry. Salem Oregon.  
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  - Oregon Department of Forestry. Stream Classification GIS Data Maintenance Procedure. Oregon Department of Forestry. Salem, Oregon.  
<http://www.odf.state.or.us/GIS/privateforests/streammaint.asp>
- Oregon Department of Forestry and Oregon Department of Fish and Wildlife. Surveying Forest Streams for Fish Use. Oregon Department of Forestry. Salem, Oregon.

**WATER CLASSIFICATION****OAR 629-635-0200**

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

**APPLICATION:**

This subsection is not used for enforcement action.

**ADMINISTRATION:**

In September 2006, the Board of Forestry adopted changes to OAR 629-635-0200. See the guidance under OAR 629-635-0200(13)(a) for a summary of the changes.

**Introduction**

Subsection (13)(c) of this rule directs the department to determine the extent of fish use for all streams with unknown fish use as of October 1, 2007 by designating that fish use occurs from a point of known fish use up to the first natural barrier to fish use. The department will determine the location of the first natural barrier to fish use based on the physical habitat criteria discussed in the guidance for this subsection.

The Board of Forestry and the department recognize that there are uncertainties inherent in a physical habitat approach to designating fish use. At any given time, the upstream extent of where fish actually are present may be upstream or downstream of the designated end of fish use.

However, field surveys for fish use involve uncertainties as well. Fish presence may vary over time and with physical conditions such as precipitation, stream flow, and temperature. The current state of information does not allow precise prediction of the behavior and movement of fish species that usually define the upper end of fish use, e.g., cutthroat trout in western Oregon. Field surveys for fish use are time consuming and expensive, and the department has not been able to complete the surveys as directed by the board in 1994. The Board of Forestry's intent in adopting section (13) of this rule was to set up a reasonable, cost-effective method of completing fish use determinations across the forest landscape.

#### Determining the Extent of Fish Use

Prior to October 1, 2007, OAR 629-635-0200 directed the department to conduct field surveys for fish use on all streams with unknown fish use. Until the surveys were completed, the department was to use physical habitat criteria, known informally as the "interim criteria" to make operation-specific determinations of fish use for stream segments with unknown fish use. Under subsection (13)(c) of this rule, the department is no longer required to survey all unknown fish use streams across the landscape. The rule text instead directs the department to determine fish use on the remaining unknown fish use streams across the landscape, with the determinations being based on designating fish use up to the first natural barrier to fish use, using the same criteria previously used for the interim designations. Whether there are any *artificial* obstructions to fish use on a stream reach is irrelevant in this classification step. Based on subsection (13)(e), the department or other parties may conduct field surveys for fish use on a spot basis. Where these surveys are conducted properly, the survey results take precedence over the fish use designation based on assuming fish use up to the first natural barrier to fish use, unless the survey shows fish use ending at an artificial obstruction to fish passage.

#### Natural Barriers to Fish Use; Physical Habitat Criteria.

A natural barrier is defined as follows:

"Natural barrier to fish use" is a natural feature such as a waterfall, increase in stream gradient, channel constriction, or other natural channel blockage that prevents upstream fish passage." (OAR 629-600-0100 Definitions)

Natural barriers to fish use include **natural channel features** such as falls, chutes, channel gradient changes, or lack of livable space. Natural barriers do **not** include beaver dams, logjams, or wood accumulations. Such organic obstructions are temporary and in most cases do not block fish passage. Natural barriers do not include artificial structures, although structure location may coincide with a channel feature considered a natural barrier.

The following guidance allows the location of the first natural barrier to fish use to be estimated using gradient or lack of livable space criteria (map survey approach) or to be located by physically walking the stream reach in question to observe and locate natural channel features that obstruct fish passage (physical survey approach). In applying the criteria, if there are no known waterfalls or chutes, then channel gradient and physical habitat (lack of livable space due to no pools or inadequate water volume) should be considered in determining barriers.

When evaluating a potential barrier in a field visit, the expected flows during high spring or winter flows should be considered. Conditions for fish passage at a site during low summer flow can be very different from what occurs during high flows. For example, a falls that appears five

feet high during low summer flows may be less than three feet high during higher flows. Stream levels based upon bankfull width should be used as points of reference in measuring channel drops.

Natural barriers to fish use (summarized in Table 1 of this guidance):

1. Falls - physical survey
  - For salmon and steelhead streams, any falls or steep bedrock chute with eight feet or greater vertical drop is a barrier.
  - For resident trout streams, any falls or steep bedrock chute with four feet or greater vertical drop is a barrier.
  - Any falls or steep bedrock chute with less than a two-foot vertical drop is not a barrier.
  - For falls or steep chutes with vertical drops between those described above, if the falls or chute is without a jump pool or the jump pool depth (estimated to be there during high flow periods) is less than 1.25 times the height of the falls or chute, a barrier exists. For example, a fish *can* jump a two-foot vertical falls if there is a pool 2.5 feet deep at the bottom of the falls, and the falls would not be considered a barrier in this case.
2. Falls - map survey
  - Any waterfall marked on a map should be considered a barrier.
3. Channel Steepness - physical survey
  - Any channel segment (30 feet or longer on salmon/steelhead streams and 20 feet or longer for resident trout streams) with a gradient that exceeds 20 percent is a barrier.
  - Any channel segment (using same length segments as above) with a gradient that exceeds 12 percent should be considered a barrier if the channel is bedrock without pools or low velocity areas, or otherwise does not have pools. This can vary between 12 and 20 percent depending upon channel form (frequency of step pools versus bedrock channel without pools). One advantage of the physical channel survey is that judgment and local experience can be applied in determining whether channel steepness is reasonably likely to prevent fish passage. In the map approach, decisions will be based solely upon gradient and not channel form.
4. Channel steepness - map survey
  - Any channel segment with a gradient that exceeds 20 percent is a barrier to fish use.
  - Not all steep channel segments will be apparent on a map. Local knowledge should be applied in appropriate situations. For example, if side streams to a main stream with fish characteristically drop steeply to the main stream and these drops have been found to be barriers to fish use even though they may not show on a map, this information should be used to establish a barrier. However, in this situation it is recommended that the expected drop be confirmed by a field visit.
5. Lack of livable space - physical survey
  - A channel has inadequate livable space to pass fish if it does not contain pools that are approximately a foot or more in depth during spring spawning season or other periods of high flow when fish would normally be expected. During low water periods, the channel can be observed for indications that such pools exist during higher spring flows.

6. Lack of livable space - map survey

- Coast Range Geographic Region: Basins with a drainage area of 60 acres or less are barriers to fish.
- South Coast Geographic Region: Basins with a drainage area of 80 acres or less are barriers to fish.
- Interior and West Cascade Geographic Regions: Basins with a drainage area of 100 acres or less are barriers to fish.
- Siskiyou Geographic Region: Basins with a drainage area of 300 acres or less are barriers to fish.
- Blue Mountain and East Cascade Geographic Regions: Basins with a drainage area of 350 acres or less are barriers to fish.

As data are developed locally, districts in coordination with local Oregon Department of Fish and Wildlife (ODFW) biologists may adjust the livable space criteria for map surveys. Such adjustments must be supported by local data and be consistent with the policies in this guidance related to fish presence. For example, if the Southwest Oregon District and the ODFW district fish biologist agree that actual fish presence data indicates that basins of 400 acres are more likely to prevent fish passage than allow fish passage in areas of the district with less than 20 inches of rainfall, then that criteria may be used in place of the criteria in this guidance. Districts should communicate revised local criteria to Private Forests Program staff.

Type of Barrier		Physical Survey		Map Survey
Falls & Chutes		Salmon & Steelhead	Resident Trout	Any waterfall marked on a map.
		8'+	4'+	
		2'+ require a jump pool 1.25 times the fall or chute height.		
Channel Steepness	With Pools	30' or more @ 20%+	20' or more @ 20%+	20%+
	W/O Pools	30' or more @ 12%+	20' or more @ 12%+	
Lack of Livable Space		No pools approximately 12" or more in depth during spring spawning.		60 Acres or Less (Coast) 80 Acres or Less (South Coast) 100 Acres or Less (Interior) 300 Acres or Less (Siskiyou) 350 Acres or Less (Blue Mountain and East Cascade)

Updating Stream Classification Layers

Application of subsection (13)(c) of this rule will result in the initial designation of fish use for a large number of streams previously given an interim designation of “unknown fish use.” The Streams FP GIS layer is the Private Forest Program’s official record for stream classifications.

This layer is maintained locally by stewardship foresters and district data stewards, who will need to work together to locate the needed data and enter it into the layer. Districts may use the following three data sources, singly or in combination, to classify streams previously considered to have unknown fish use. The sources are listed here in order of highest to lowest confidence in matching the classification to conditions in the field.

1. **Physical Survey.** Department field personnel may walk the subject stream segment and apply the physical habitat criteria to determine the first natural barrier to fish use. Physical surveys provide the most information to identify natural barriers to fish use.
2. **Map Survey.** Districts may also apply the physical habitat criteria through map analysis. An example of this method is applying the drainage sizes listed in Table 1 of this guidance to determine the extent of livable space.
3. **Digital Elevation Model.** To facilitate the development of maps showing the location of stream reaches subject to OAR 629-640-0210 (Leaving Green Trees and Snags along Small Type N Streams Subject to Rapidly Moving Landslides), the department created a computer-generated stream layer that modeled the estimated end of fish use based on the map survey criteria for channel steepness and lack of livable space (minimum basin size). This modeled layer is not the official department record of water classification, but can be used to update the Streams FP layer, which is the official record.

The modeled results were only applied to streams that prior to October 1, 2007 were designated as having “unknown” fish use. Districts have the option of using the end of fish use as modeled by the computer-generated stream layer for designating end of fish consistent with the channel steepness – map survey and lack of livable space – map survey criteria discussed above since the modeled results applied the map survey criteria for gradient and basin size using GIS. Districts, however, need not be bound by the computer-generated stream layer results, and can instead perform the map or physical survey approaches directly.

Districts may apply method 1, 2, or 3 above on an operation-specific basis, across the entire district, or for selected areas within the district. In some cases, a combination of methods will be appropriate. The board’s intent is that for the most part, the initial stream classification for “unknowns” will be the same as the interim designations that would have been given prior to October 1, 2007. Therefore, it is important that districts transfer any data they were using to make interim designations into the Streams FP layer to make the initial classifications. For example, in 1994-1995 some districts applied the basin sizes on all unknown fish use streams across the district to facilitate interim designations of fish use. This data should be transferred to the Streams FP layer.

The GIS data dictionary for the Streams FP layer has been revised to include attributes so that the updated stream classification layer documents whether the physical survey, map survey, or computer-generated stream layer was used as the source for determining the designation of fish use up to the first natural barrier. Technical guidance for updating ODF’s’ GIS layers is found in the three GIS-related documents shown under REFERENCES. Additional information on maintaining water classification layers is available in the guidance for OAR 629-635-0210(1).

Once an unknown stream is classified under subsection (13)(c), the department may still use any reliable information to change a stream classification, recognizing that notice to landowners must



be provided as specified in OAR 629-635-0210. See the guidance under subsection (13)(e) of this rule for more information on using reliable information to change stream classifications.

#### Formal Notice to Landowners not Required for Initial Classification

The designation of fish use under subsection (13)(c) of this rule constitutes the initial classification of stream segments previously considered to have unknown fish use, and is not a change in stream classification. Therefore, formal notice to landowners as outlined in OAR 629-635-0210 is **not** required for this step. However, field and staff should provide landowners and operators with general information on the effect of the rule change. Note that any classification changes made after this initial classification of an unknown to Type F, Type N, or Type D do require formal notice to affected landowners as outlined in OAR 629-635-0210.

In some field offices, streams that technically have unknown fish use have been marked on maps as Type F or Type N after interim determination have been made. If, based on the changes to the water classification rule, the classification for these streams will change from what is marked on maps that have been available for public viewing, written notice to the landowner under OAR 629-635-0210 will be required. For most of these streams, however, the initial classification is likely to be the same as what was determined on an interim basis, since the criteria are the same before and after October 1, 2007; where this is the case, ODF is not required to provide written notice under OAR 629-635-0210.

#### Landowner Requests for Field Surveys for Fish Use

Prior to October 1, 2007, landowners had the option of requesting that the department conduct field surveys for fish use on streams with unknown fish use for operations planned in the near future. If the department did not complete the requested survey in the specified period, the stream defaulted to a non-fish use designation. Starting on October 1, 2007, there will be no “unknown fish use” designations, and the landowner’s option becomes to request that the department conduct a field survey for fish use to verify the determination of fish use based on designating fish presence up to the first natural barrier to fish use. The landowner may make the request for operations planned to begin between 12 and 24 months after the request.

The stewardship forester may request that the Oregon Department of Fish and Wildlife conduct the survey, or may request assistance from Private Forests Program staff. The landowner has the option of conducting the survey. If the survey is done and is properly conducted, the survey results take precedence over the determination that fish use occurs up to the first natural barrier. If neither the department, the landowner, nor another party conducts the survey, the designation of fish use up to the first natural barrier will stand. In this instance, “good faith effort” means the department will consider that the survey is a high priority task. Subsection (13)(c) directs the department to give priority to requests from landowners who do not have the technical and financial resources needed to conduct surveys.

The Private Forests Program form titled “Landowner Request for Fish Presence Survey” outlines the information a landowner needs to include in a request for survey under subsection (13)(c); the landowner may use that form or any other document that contains the needed information.

#### Definition: Field Surveys for Fish Use

In the context of section (13) of this rule, conducting a “field survey for fish use” means either of the following:

- To designate the end of fish use or to determine that there are no fish in a particular stream reach, an electroshocking survey is needed. Note: Other methods may be used on a site-specific basis if the local Oregon Department of Fish and Wildlife fish biologist agrees that the methods would be effective in making the “no fish” determination; or
- To make a positive designation of fish use, any electroshocking, seining (netting), visual surveys, or other reliable methods are acceptable.

To be acceptable to the department, a field survey for fish use must comply with the standards in “Surveying Forest Streams for Fish Use.” In addition, results of surveys involving actual sampling, (e.g., electroshocking or seining) are subject to review by the local Oregon Department of Fish and Wildlife fish biologist. Sampling surveys conducted by ODF are also subject to the terms of the scientific sampling permit the Private Forests Program staff obtains each year from the federal and state fish management agencies.

### **REFERENCES:**

- GIS-Related References
  - Cathcart, Jim. 2007. GIS Data Editing Guidance to Streams FP: Implementation of OAR 629-635-0200(13). Oregon Department of Forestry. Salem, Oregon.
  - Oregon Department of Forestry. GIS Database Dictionary. Oregon Department of Forestry. Salem, Oregon.  
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  - Oregon Department of Forestry. Stream Classification GIS Data Maintenance Procedure. Oregon Department of Forestry. Salem, Oregon.  
<http://www.odf.state.or.us/GIS/privateforests/streammaint.asp>
- Oregon Department of Forestry. 1994. Oregon Forest Practices Water Classification and Protection Rules. Oregon Department of Forestry. Salem, Oregon.
- Oregon Department of Forestry and Oregon Department of Fish and Wildlife. Surveying Forest Streams for Fish Use. Oregon Department of Forestry. Salem, Oregon.

**WATER CLASSIFICATION*****OAR 629-635-0200***

- (13) (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.*

**APPLICATION:**

This subsection is not used for enforcement action.

**ADMINISTRATION:****Reliable Information**

Subsection (13)(e) provides the department broad authority to utilize any information it considers reliable to determine the upper extent of fish use. Stewardship foresters should be alert for situations where adjustments to the standard procedures are needed. For example, a map or field survey may show a waterfall that is impassable to fish, but there may be extended reaches of suitable fish habitat upstream of the waterfall. Fish are often present upstream of the waterfall in this situation; visual observation of fish upstream of the waterfall would be sufficient to extend the designation of fish use up to the next natural barrier. Another option would be to conduct a field survey for fish use in the upstream reach.

In another situation, if department personnel observed fish upstream of the first natural barrier as determined by basin size in a GIS layer, the department would consider that the stream had fish use up to the next natural barrier observed in the field. Subsection (13)(e) also allows the department to make the fish use determination based on the results of qualified field surveys for fish use conducted by the department or others. The department may also use any other information it deems reliable to make fish use determinations. Information from outside parties should be carefully evaluated. Field surveys for fish use must be submitted to the Oregon Department of Fish and Wildlife for review. Consultation with the Oregon Department of Fish and Wildlife on other information sources is advised, but ODF has the final authority in determining whether the information is considered reliable. The Private Forests Program Fish and Wildlife Specialist is available for assistance.

**Resurveying Stream Segments upstream of Artificial Obstructions**

Subsection (13)(b) of this rule sets up a Type F classification upstream of artificial obstructions to fish passage. Until fish passage is provided at the obstruction, results of field surveys for fish use in the upstream segment conducted on or after October 1, 2007 have no bearing on that

classification. However, results of a field survey for fish use conducted **after** fish passage has been provided at an artificial obstruction may be used to verify or modify the Type F classification. As a rule of thumb, survey results may be used for this purpose **only** if the survey has been conducted at least three years after fish passage has been provided. This precaution allows time for fish to reoccupy the upstream segment. The stewardship forester may modify the three-year figure up or down based on recommendations from the local Oregon Department of Fish and Wildlife fish biologist. Factors to consider in making this judgment include the life history of the fish species expected to be present, the length of stream that might be colonized, and the condition of the stream, e.g., uncharacteristically low flows from drought. In most instances, ODF personnel would not initiate the survey; it would be up to the landowner, operator, or others to raise the issue.

#### Definition: Field Surveys for Fish Use

In the context of section (13) of this rule, conducting a “field survey for fish use” means either of the following:

- To designate the end of fish use or to determine that there are no fish in a particular stream reach, an electroshocking survey is needed. Note: Other methods may be used on a site-specific basis if the local Oregon Department of Fish and Wildlife fish biologist agrees that the methods would be effective in making the “no fish” determination; or
- To make a positive designation of fish use, any electroshocking, seining (netting), visual surveys, or other reliable methods are acceptable.

To be acceptable to the department, a field survey for fish use must comply with the standards in “Surveying Forest Streams for Fish Use.” In addition, results of surveys involving actual sampling, (e.g., electroshocking or seining) are subject to review by the local Oregon Department of Fish and Wildlife fish biologist. Sampling surveys conducted by ODF are also subject to the terms of the scientific sampling permit the Private Forests Program staff obtains each year from the federal and state fish management agencies.

#### REFERENCES:

- Oregon Department of Forestry and Oregon Department of Fish and Wildlife. Surveying Forest Streams for Fish Use. Oregon Department of Forestry. Salem, Oregon.

**WATER CLASSIFICATION****OAR 629-635-0200**

- (13) (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, the department will classify the stream as either Type D or Type N as appropriate and operators must apply the corresponding vegetation retention requirements.*

**APPLICATION:**

These subsections are not used for enforcement action.

**ADMINISTRATION:**

Under OAR 629-635-0200(13)(c), stream reaches previously classified as Type N above artificial obstructions because field surveys for fish use found fish below the obstruction but not above it will now be classified as having fish use past the obstruction up to the first natural barrier to fish use. Recognizing that most stream crossing structures will eventually be replaced by landowner voluntary action, will reach the end of their useful life, or will be damaged to the extent requiring replacement, the Board of Forestry intended that when crossing replacement allowed reoccupation of a stream reach, the habitat elements of a Type F stream would be available.

The board also recognized that it might be many years before some crossing structures that are artificial obstructions to fish passage would be replaced. In these instances, the board determined that it would be an unfair burden for landowners to be required to treat the stream reaches as Type F during the long period before fish reoccupation. One example of this situation would be where a small stream runs through a concrete box culvert obstructing fish passage under a very deep fill on State Highway 101. The Oregon Department of Transportation has plans to replace nearly all highway stream crossings, but there are many to attend to, and this particular one might be low on the priority list. Under subsections (13)(f) and (g) of this rule, landowners may treat the stream reach above the artificial obstruction as Type N upon ODF's ruling 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 needed to provide key pieces of large wood. The logic for specifying this time period is that if a landowner harvests trees under a Type N stream designation, there will be an opportunity to regrow important riparian management area

components, with large wood key piece size as a surrogate, before fish occupy the stream reach when fish passage is eventually provided.

Note that the exception is not allowed where a field survey for fish use has shown that fish are actually present in the upstream reach—such reaches are automatically determined to have fish use and the exception does not apply.

### Exception Review Process

Use the following in determining whether to grant an exception based on subsections (13)(f) and (g) of this rule.

1. The exception review process begins upon request by an operator, landowner, or representative. The department is not responsible for initiating the process. However, the department should include information on the potential for the exception in group training and individual contacts, as appropriate. To make a request, an operator may use the department form titled “Landowner/Operator Request for an Exception to Type F Classification Upstream of an Artificial Obstruction to Fish Passage” or any other document format that includes the specified information.

The intent of subsections (13)(f) and (g) is that a landowner may receive the exception only for artificial obstructions outside his or her control. The intent is not to reward a landowner who has retained an artificial barrier to fish passage. However, if the Oregon Department of Fish and Wildlife has approved a waiver for fish passage on the artificial obstruction to fish passage, ODF will consider that the waiver is in place indefinitely, and will approve the exception to Type F treatment on an operation-specific basis, even if the requesting party has control of the obstruction. See items 2 and 3 following for more information.

2. Exceptions may be granted only on an operation-specific basis. ODF will not issue a blanket, open-ended exception for all of a landowner’s property that would be affected by the Type F designation upstream of the obstruction. The operation-specific approach allows the department to evaluate each request based on a specific starting point (the operation date) and ending point (the year replacement of the structure is expected) in time. ODF may approve a combined exception request for a harvest unit and subsequent early stand management activities associated with the unit, e.g., site preparation and release. As a rule of thumb, consider that exception requests for such activities occurring within five years of the harvest may be combined. On a case-by-case basis, ODF may also approve combined requests for operations that are in different locations but have comparable site productivity and characteristics, if the operations will take place within a period of five consecutive years. Under subsection (13)(g), if the exception is granted, the operation or group of operations will be subject to the small, medium, or large Type N stream classification.
3. The requesting landowner or representative must provide ODF documentation of the period the specific structure (culvert, dam, etc.) is expected to remain an obstruction. Documentation may include a letter from the owner or manager of the structure. Department field offices should carefully evaluate any documentation received. If there is an active waiver from the Oregon Department of Fish and Wildlife for fish passage at the obstruction, the requesting party may present that waiver to ODF, who will consider it documentation that the obstruction will be in place indefinitely and will approve the exception on an operation-specific basis. Note, however, that if a trigger event occurs, e.g., the structure is damaged and must be reconstructed, the Oregon Department of Fish and Wildlife may review the

status of the structure and require fish passage. If that were to occur, there would no longer be a fish passage waiver, and future operations would be subject to the Type F classification. Therefore, the requesting party must provide documentation from the Oregon Department of Fish and Wildlife during the current year that the waiver remains active.

Stewardship foresters may use expected design life of in-stream structures to help evaluate documentation of the expected time to structure replacement. For example, if the documentation indicates a culvert will be in place for forty years, but the remaining expected design life of the culvert is fifteen years, further evaluation of the request is necessary. Evaluating structure design life can be complex, based on information such as date of installation, materials and construction methods used, and stream conditions. Assistance in determining the expected remaining lifespan of a structure is available from the Private Forests Program engineering and geotechnical specialist or the ODF field geotechnical specialists.

4. ODF determines the time needed to grow key pieces of large wood on the site, using the figures in the following two tables. The figures in the tables are general values, based on general piece sizes and assumptions, used to establish a regulatory standard. Landowners and operators may provide ODF with revised figures based on more detailed growth modeling matched to the specific site and planned practices. The detailed analysis should use the specific key piece diameters shown in the table on page 8 of "A Guide to Placing Large Wood in Streams." Upon determining that the revised time figures are reasonable, ODF may accept the figures and use them in evaluating the exception request.
5. Based on subsection (13)(f), the department will approve an exception request if the time to replacement of the artificial obstruction to fish passage is greater than the time to grow key pieces of large wood, as shown in the following tables. The exception allows the operator to treat the stream reach in the operation as having no fish use for the duration of that specific operation. Typically, the stream segment would be considered Type N, but if there were domestic use, the Type D classification would apply.

Time Needed to Grow Key Pieces of Large Wood

<b>Table 1: Estimated Time to Key Piece Size in <i>Western Oregon</i></b>			
	<b>Cubic foot site class I, II, an III</b> (120+ ft <sup>3</sup> /acre/yr) (50-year site index = 90-210+)	<b>Cubic foot site class IV and V</b> (50-119 ft <sup>3</sup> /acre/yr) (50-year site index = 70-89)	<b>Cubic foot site class VI</b> (20-49 ft <sup>3</sup> /acre/yr) (50-year site index= NA)
<b>Time to grow key piece size (years)</b>	40	60	Expected to be rare. Use 60 years (from adjacent column).

<b>Table 2: Estimated Time to Key Piece Size in <i>Eastern Oregon and Pine Sites in Southwestern Oregon</i></b>			
	<b>Cubic foot site class 1, II, an III</b> (120+ ft <sup>3</sup> /acre/yr) (100-year site index = 110-149+)	<b>Cubic foot site class IV and V</b> (50-119 ft <sup>3</sup> /acre/yr) (100-year site index = 64-109)	<b>Cubic foot site class VI</b> (20-49 ft <sup>3</sup> /acre/yr) (100-year site index= 63 or less)
<b>Time to grow key piece size (years)</b>	50	60	75

<b>Notes for Tables 1 and 2</b>
<ol style="list-style-type: none"> <li>1. Time-to-size figures are from Forest Vegetation Simulator (FVS) modeling.</li> <li>2. The modeling assumed key piece size would be reached when the quadratic mean diameter of stems 8 inches or greater reached 16 inches DBH outside bark. The 16-inch figure was selected as a representative key piece size, based on the figure on page 8 of A Guide to Placing Large Wood in Streams for streams 10 to 20 feet in width.</li> <li>3. Douglas-fir was used as a representative species for most western Oregon sites. Ponderosa pine was used as a representative species for eastern Oregon and for sites in southwestern Oregon where ponderosa pine dominates.</li> <li>4. Source for correlation between cubic foot site class and site index: USDA Soil Conservation Service. 1986. Culmination of Mean Annual Increment for Commercial Forest Trees of Oregon, Forestry Note No. 2 Revised. U.S. Department of Agriculture Soil Conservation Service.</li> </ol>

**REFERENCES:**

- Oregon Department of Forestry and Oregon Department of Fish and Wildlife. 1995. A Guide to Placing Large Wood in Streams. Oregon Department of Forestry. Salem, Oregon.
- ORS 509.580 through 509.645 Fish Passage
- OAR 635-412 Fish Passage



**WATER CLASSIFICATION*****OAR 629-635-0200***

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

**APPLICATION:**

This subsection is not used for enforcement action.

**ADMINISTRATION:**

ORS 215.730(1)(b)(C) establishes that an applicant for a new dwelling on forestland may not obtain a permit to use water from a "Class II stream." The purpose of that statute, as administered by the Department of Land Conservation and Development (DLCD), is to prevent new residential development, through increased water use, from further impacting the commercial growing and harvesting of forest tree species on land zoned under Goal 4, the Forest Land Goal.

"Class II stream" was defined in the forest practice rules up to September of 2004, after which time the term was no longer used in the stream classification system of the Water Protection Rules. To provide the Department of Land Conservation and Development a continuing definition of "Class II stream," the Board of Forestry adopted OAR 629-635-0110(2)(b) in 1994. In 2006, the board deleted that subsection and reinserted the text into OAR 629-635-0200(13)(h).

**STREAM SIZE****OAR 629-635-0200**

- (14) *For each of the three beneficial use categories (Type F, Type D, Type N), streams shall be categorized further according to three categories: large, medium and small. The size categories are based on the average annual flow.*
- (a) *Small streams have an average flow of two cubic feet per second or less.*
  - (b) *Medium streams have an average annual flow greater than two and less than ten cubic feet per second.*
  - (c) *Large streams have an average annual flow of ten cubic feet per second or greater.*
- (15) *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 (15)(a).*

**APPLICATION:**

These rule sections are not used for enforcement action.

**ADMINISTRATION:**

Stream sizes are based on average annual flow. Flows of most streams are seasonally highly variable. In applying the size class categories, size of the flows at high or low flow periods should not be confused with average annual flow.

There are two ways to determine stream size classes based upon average annual flow: calculated and measured. Generally the calculated method will be used to determine stream size. However, if the stream morphology (bankfull width) that is observed in the field is obviously inconsistent with the calculated size class, then actual measurements should be used.

As a rule of thumb in judging consistency with the calculated values, consider the following: the bankfull width of small non-spring fed streams should average eight feet or less; the bankfull width of medium streams should average between eight and 20 feet; and the bankfull width of large streams should average greater than 20 feet. For spring fed or heavily spring influenced streams, the forest practices staff hydrologist should be consulted for stream sizing.

The method of determining stream size is described in Technical Note FP1, dated April 21, 1994. This method was followed to initially prepare the stream size information on the stream

classification maps provided to each field office. Not all streams were mapped and in some cases errors may have occurred. In either case, the methodology described can be used to determine stream size. Help in applying the methodology is available from Private Forests Program staff.

In using the calculated method, any basin with a drainage area less than 200 acres is a small stream. Thus, the first step in sizing streams is to determine if the basin is less than 200 acres. Many streams in western Oregon will have drainages less than 200 acres.

In those cases where actual stream sizing measurements will be used, Private Forests Program staff should be consulted. Average annual flow information can be obtained from other agencies, such as the Oregon Department of Fish and Wildlife, Oregon Department of Water Resources, U.S. Forest Service, or U.S. Geological Survey. These other sources may have information that will save time and energy in making these determinations. The Department of Forestry has the final authority in determining the size classification, under the Forest Practices Act.

#### **REFERENCES:**

- Oregon Department of Forestry. Technical Note FP1 Water Classification. 1994. Oregon Department of Forestry. Salem, Oregon.
- Memorandum, Stream Classification Refinements In Eastern Oregon, George Robison, June 15, 1995

*[Editor's note, October 2007: Private Forests Program staff is searching for the Robison memorandum, but has not yet located it.]*

**WETLANDS****OAR 629-635-0200****(16) 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 eight (8) acres;**
  - (B) Estuaries**
  - (C) Bogs; and**
  - (D) Important springs in eastern Oregon.**

**APPLICATION:**

This section is not used for enforcement action.

**ADMINISTRATION:**

Subsection (a) lists the wetland types that are identified by the Board of Forestry as "significant." The board highlighted significant wetlands for special review and protection. The special review comes in the form of the written plan, which provides the stewardship forester and operator an opportunity to discuss special protection measures. The special protection includes specific measures outlined in the rules or, in some cases, plans for alternate practices. OAR 629-645-0000(1) provides more detail on definitions of the various types of significant wetlands.

Wetlands not meeting the definition of "significant" fall into the category of "stream associated wetlands" (refer to subsection (16)(b) of this rule) or "other wetlands" (subsection (16)(c)). Though not receiving the "significant" classification, these wetland types are still considered important resources and are protected.

Wetlands, regardless of vegetation type, functional value, or land use, are classified as "**significant**" if they are eight acres or larger in size. This is based on the total size of the delineated wetland regardless of property lines or operational boundaries. For example, if a wetland is delineated as being 13 acres and only three of the wetland acres are in the proposed operation area, the wetland is still designated as significant. Please keep in mind that many significant wetlands may also be used for grazing, haying, or other agricultural purposes. These types of significant wetlands are especially common near the coast and in the Klamath Basin.

Wetlands that are estuaries or bogs are significant wetlands regardless of size. By definition, an estuary is any water body below the head of tide. A bog is an acidic, saturated, hydrologically closed wetland without flowing water. Bogs usually support specialized plant communities, and are usually dominated by ground mosses and peat soils.

Important springs in eastern Oregon are areas designated as having unique habitats for wildlife. Under this portion of the rule, not all springs in eastern Oregon receive the "important" designation. Areas will be designated as important springs through consultation with biologists from Oregon Department of Fish & Wildlife.

**REFERENCES:**

- OAR 629-600-0100 Definitions – Bog, Estuary, Significant Wetland, Wetland
- OAR 629-605-0170 Written plans
- OAR 629-645 Water Protection Rules: Riparian Management Areas and Protection Measures for Significant Wetlands
- Environmental Laboratory. 1987. Corps of Engineers Wetlands Delineation Manual. Technical Report Y-87-1. U.S. Army Engineer Waterways Experiment Station. Vicksburg, Mississippi. 100 pp + appendices. (online version available at <http://www.usace.army.mil/cw/cecwo/reg/techbio.htm>)

**WETLANDS*****OAR 629-635-0200***

***(16) (b) Stream-associated wetlands that are less than eight acres are classified according to the stream with which they are connected.***

**APPLICATION:**

This section is not used for enforcement action.

**ADMINISTRATION:**

As an example, if a stream is classified as a medium Type F stream, any connected wetland areas smaller than eight acres would also be considered part of the medium Type F stream. In these situations, riparian management area boundaries are extended as described in OAR 629-635-0310(1)(c) to include all such wetlands within the RMA.

**REFERENCES:**

- OAR 629-635-0310(1)(c) Riparian management area widths for streams

**WETLANDS*****OAR 629-635-0200***

**(16) (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."*

**APPLICATION:**

This section is not used for enforcement action.

**ADMINISTRATION:**

The use of size in classifying other wetlands is in recognition that it is difficult to delineate wetlands less than one-quarter acre before beginning an operation. Operators should be expected to recognize and delineate other wetlands greater than one-quarter acre during planning and operational phases sufficiently to comply with the required protection measures. For wetlands less than one-quarter acre, operators are expected to recognize these wetlands during operational activities such as felling and yarding in a manner sufficient to comply with the protection measures.

**REFERENCES:**

- OAR 629-655-0000 Water protection rules: protection measures for "other wetlands", seeps and springs

**LAKES*****OAR 629-635-0200***

***(17) "Lakes" shall be classified further below:***

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

**APPLICATION:**

This section is not used for enforcement action.

**ADMINISTRATION:**

Classification of lakes is based solely on size (not function, depth or beneficial use). Lakes are further classified for protection purposes in OAR 629-650-0000. Although lakes do not receive an official designation of fish use, riparian management area widths for lakes are based in part on whether fish are present.

Based on the language in OAR 629-635-0200 (3) through (8) and in the vegetation retention rules of the Water Protection Rules, only streams may be designated as having domestic use. Wetlands and lakes do not receive the domestic use designation.

**REFERENCES:**

- OAR 629-650-0000 Riparian management areas and protection measures for lakes



***DESIGNATION OF WATERS; NOTICE TO LANDOWNERS; RECONSIDERATION***  
***OAR 629-635-0210***

- (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.*

**APPLICATION:**

This section is not used for enforcement action.

**ADMINISTRATION:**

**Maintaining Stream Classification Information**

Section (1) of this rule directs department field offices to maintain water classification maps with the specified information. Private Forests Program policy is that the official department stream classification map is the Streams FP GIS layer, which is currently accessed through ODF's Forest Information and Reporting System (FIRS) and its subsidiary program Forest Activity Notification System (FANS). The Streams FP layer is managed at the district level. Stewardship foresters and district data stewards are responsible for ensuring that stream classification changes are entered into the ODF GIS layers in compliance with ODF data standards. If data is properly entered into FP Streams, districts are not required to notify the Private Forest Program staff of the changes. The plan is that on an annual basis, staff will query the district layers to develop a "snapshot" of stream classification status. Data management procedures for the Streams FP layer are described further in the three GIS-related documents cited in the REFERENCES section of this guidance. Use the Stream Classification Legend shown in the following pages of this guidance to interpret designations on legacy paper fish presence maps.

Note: Department plans are to replace FIRS with a new GIS on or after 2009. Data in the Streams FP layer will be carried over to the new system.

The information in water classification maps, including GIS layers, is public record. The department may provide public access to the data layers through a variety of methods, as follows:

- Print a map for the requesting party, at that party's expense;
- Allow the requesting party to review the data layer at the local department office; or
- Provide the requesting party with the data layers.

For any of these options, the department needs to inform the requesting party that the information is accurate as of the date provided, but that it could change at any time as new information becomes available. Changes in 2007 to OAR 629-635-0200(13) will result in the initial classification of streams previously considered to have unknown fish use, and the

reclassification of Type N streams upstream of artificial obstructions to fish passage. For the most part, documentation of these changes in the Streams FP layer must be done manually, so the layer will be in a state of flux for some time. Advising requesting parties of this situation is particularly important; the department form titled “Water Classification Maps” is available for districts to use as a disclaimer. In any event, operators should consult directly with stewardship foresters when planning operations to find out what which waters or other protected resources might be affected.

When sharing water classification information, the department must not divulge confidential information such as specified resource site locations. Based on confidentiality agreements with providers of site location data, the department may share the information only with landowners who have a need to know, e.g., a proposed operation is near the site. Private Forests Program staff is revising guidance for the OAR 629-665 Specified Resource Site Protection Rules to provide more direction on this issue.

#### Lake and Wetland Classification Information

As of the date of this writing, the department does not have an official GIS layer showing the classification of lakes and wetlands. Districts will need to maintain existing paper maps or other systems to track classification of these waters until the department develops the needed GIS layers. Data from the National Wetland Inventory (NWI) maps are available in ODF’s Forest Activity Notification System (FANS), which accesses ODF GIS layers. The NWI maps are valuable as a first, coarse screen of notifications for the presence of wetlands in planned operation areas. However, the maps do not serve as a record of wetland classifications under the Forest Practices Act. The NWI national website cited under REFERENCES is another source of NWI information.

#### **REFERENCES:**

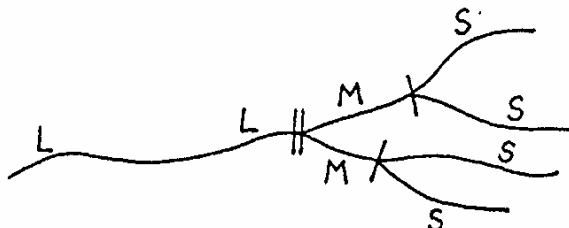
- GIS-Related References
  - Cathcart, Jim. 2007. GIS Data Editing Guidance to Streams FP: Implementation of OAR 629-635-0200(13). Oregon Department of Forestry. Salem, Oregon.
  - Oregon Department of Forestry. GIS Database Dictionary. Oregon Department of Forestry. Salem, Oregon.  
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  - Oregon Department of Forestry. Stream Classification GIS Data Maintenance Procedure. Oregon Department of Forestry. Salem, Oregon.  
<http://www.odf.state.or.us/GIS/privateforests/streammaint.asp>
- U.S. Fish and Wildlife Service. National Wetland Inventory. <http://www.fws.gov/nwi/>
- Oregon Department of Forestry. 1994. Oregon Forest Practices Water Classification and Protection Rules. Oregon Department of Forestry. Salem, Oregon.













Forest Practice Rule Guidance

Purpose, Goals, Classification and Riparian Management Areas

STREAM CLASSIFICATION LEGEND

- S Small Stream
- M Medium Stream
- L Large Stream



-  Field verified that fish use occurs no further upstream than indicated.
-  Fish use is assumed to occur this far upstream, based on the former "Class 1" stream classification. Follow interim procedure (see OAR 629-635-200(11)) to estimate fish use upstream to the first natural barrier, until a field survey is conducted to verify fish use endpoint.
-  Field verified that the tributary stream has no fish use throughout its length.
-  Field verified that there are no fish upstream of this point, and unknown fish use downstream.
- A Assumed fish use based on interim procedure.
-  Domestic water use and no fish use.
-  Community water supply intake.
-  Other domestic water supply intake.
- P Issuance of water use permit verified.
-  96 Torrented stream reach:  
The circled T shows the stream reach to have been surveyed has been torrented and should not be used for determination of fish presence, or absence, for at least five years from the torrent event.  
The number to the right of the  symbol identifies the year the torrent event occurred.
-  Impassable Culvert; confirmed end of fish use.
-  Impassable Culvert; not determined to be at end of fish use.
-  Manmade Barrier (other)

*REVISED 12-98—symbols for impassable culverts and other manmade barriers were added.*

Note: Streams without a designation of F, N, A or D have unknown use and interim procedures in OAR 629-635-200(11) should be applied.

Note: Type F streams which continue across two or more map sheets with no termination are labeled F at the edge of each map.

**DESIGNATION OF WATERS; NOTICE TO LANDOWNERS; RECONSIDERATION**  
**OAR 629-635-0210**

- (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.*

**APPLICATION:**

This section is not used for enforcement action.

**ADMINISTRATION:**

Background

Section (2) has the following two-fold purpose:

- To allow the department to complete initial water classification without the requirement to notify every individual landowner immediately adjoining the water body to that has been classified.
- Once the initial, formal classification is complete, to ensure that landowners are informed of any subsequent classification changes.

The initial classification of a water body takes place when the department has applied the appropriate classification procedures described in OAR 629-635-0200, and has entered the classification on official department water classification maps. This may occur when the department classifies streams that previously had the “unknown” fish use designation (see Rule Changes in 2007 below), streams that were not previously shown on ODF maps, or wetlands or lakes that previously had no classification. Once that initial classification is accomplished, for any subsequent changes to the classification, the department must notify affected landowners in writing of the changes, the reasons for the changes, and the applicable rules. ODF’s “Notice of Water Reclassification” form letter includes this information, and may be used to notify landowners of classification changes.

Rule Changes in 2007

Prior to October 1, 2007, streams without field surveys for fish use had “unknown” fish use status, though the department made interim designations regarding fish use on an operation-specific basis. At that point, the streams had not received an initial classification. When unknowns were formally classified based on field surveys for fish use, the department was not required to provide written notice to the affected landowners under OAR 629-635-0210.

Starting October 1, 2007, OAR 629-635-0200(13)(c) directs that all streams that previously had unknown fish use status are to be classified based on assuming fish use up to the first natural barrier, using the same criteria previously applied to make the interim designations. This change marks the initial classification for these stream segments and does **not** constitute a formal classification change. Formal notice to landowners under OAR 629-635-0210(2) is **not** required.

OAR 629-635-0200(13)(b) directs that streams previously classified as Type N upstream of an artificial obstruction to fish use because a survey showed fish use up to but not above the obstruction will be reclassified to Type F, again up to the first natural barrier to fish use. This change **does** constitute a change in classification, and notice to landowners under OAR 629-635-0210(2) **is** required.

See the guidance under OAR 629-635-0200(13) for more information on the 2007 rule changes.

### **REFERENCES**

- ODF Form Letter “Notice of Water Reclassification”

**DESIGNATION OF WATERS; NOTICE TO LANDOWNERS; RECONSIDERATION**  
**OAR 629-635-0210**

- (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."*

**APPLICATION:**

This section is not used for enforcement action.

**ADMINISTRATION:**

Requests for reconsideration of classification must be in writing. The requesting party may use the department form titled "Landowner Request for Reconsideration of Water Classification" or any other document that contains the necessary information. Requests are limited to landowners 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.

Evidence must be provided by the requesting party documenting why the classification is not consistent with OAR 629-635-0200. This rule forms the only basis for review of requests for reconsideration. The forest practice rules provide no mechanism to appeal a classification beyond the State Forester.

**REFERENCES:**

- OAR 629-635-0200 Water classification
- ODF form "Landowner Request for Reconsideration of Water Classification"

**DESIGNATION OF WATERS; NOTICE TO LANDOWNERS; RECONSIDERATION**  
**OAD 629-635-0210**

- (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.*

**APPLICATION:**

This section is not used for enforcement action.

**ADMINISTRATION:**

This section is intended to limit the period of review to 14 days and allows the operation to proceed during that period based upon the most protective potential classification.

The party making the request is required to provide evidence why the classification is in error based upon the standards in OAD 629-635-0200. Requests should include enough information to make a decision. If the information is not adequate to make a decision, the request should generally be returned to the requesting party as incomplete. It is recognized that consultation with ODFW may be required to evaluate the request.

ODF must decide to either uphold the classification or revise it based on the request within the 14-day period. Operations may commence while the decision is under review, so long as the most protective standards are applied. Use the ODF form letter titled "Notice of Decision on Requested Reconsideration of Water Reclassification" to notify the requesting party of the department's decision.

**REFERENCES:**

- ODF form letter "Notice of Decision on Requested Reconsideration of Water Reclassification"

**GEOGRAPHIC REGIONS****OAR 629-635-0220**

*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(1).*

**APPLICATION:**

This rule is not used for enforcement action.

**ADMINISTRATION:**

Geographic regions are large areas for which the climate, geomorphology, and vegetation are similar. The seven geographic regions are: **Eastern Cascades, Blue Mountains, South Coast, Interior, Siskiyou, Coast Range, and Western Cascades.**

The *geographic region boundaries* must be consulted when delineating the protection requirements for an operation. As of October 2007, these boundaries are recorded on ODF's paper stream fish presence maps, but not in standard GIS layers. ODF plans to enter the boundaries into layers in the department's GIS as soon as is practical. A generalized, statewide map is shown in Figure 1 of this guidance (also Figure 1 in OAR 629-635-0220). More detailed mapping of the geographic regions is shown on the original, paper-based stream classification maps. Private Forests staff has copies of these maps.

The criteria used for locating the actual boundaries are:

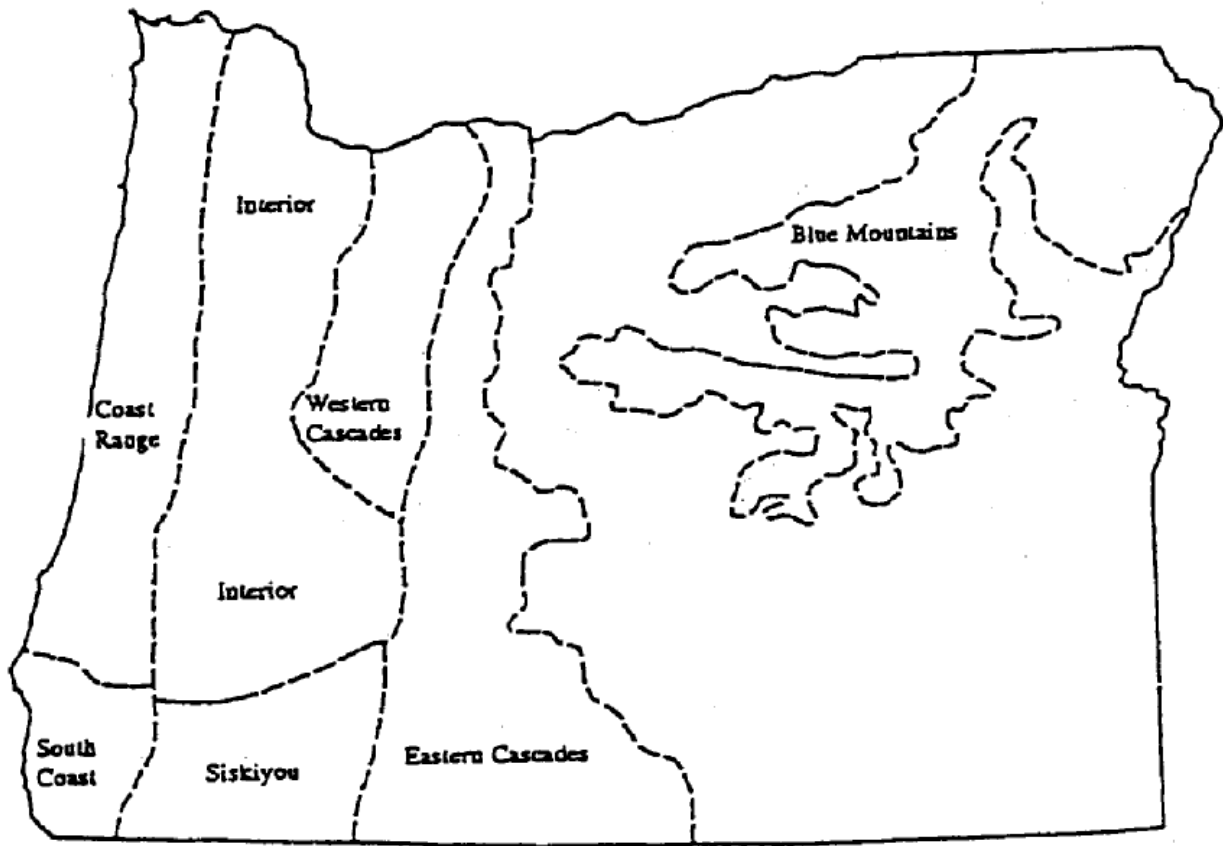
- The east boundary for the Coast Range and South Coast is roughly where the average annual precipitation is 65 inches. The boundary is varied occasionally to follow sub-watershed boundaries as much as possible. Preference was given to shifting the boundary westward to include entire sub-watersheds that drain east in the Interior or Siskiyou.
- The southern boundary for the Coast Range is the drainage divide between the Sixes River and the Elk River. The geology changes from sandstone to metamorphic at about the divide between the two watersheds.
- The northern boundary for the Siskiyou is the drainage divide between the Umpqua River and the Rogue River.
- The western boundary of the Western Cascade is roughly where the average annual precipitation is 65 inches. The boundary is varied occasionally to wrap around sub-watershed as much as possible. Preference was given to shifting the boundary eastward to include entire sub-watersheds that drain to the west in the Interior.
- The western boundary of the Eastern Cascade is the crest of the Cascade Mountains except near the Columbia River, where the boundary is Highway 35, and near the California border where the boundary follows the ridge lines connecting Grizzly Mountain, Parker Mountain, Surveyor Mountain, and Brown Mountain.



This rule’s reference to “ORS 527.640(1)” should be “ORS 527.640,” since there are no subsections in that statute.

**REFERENCES:**

- ORS 527.640 Forest regions
- **FIGURE 1.** Geographic Regions  
OAR 629-635-0220



**RIPARIAN MANAGEMENT AREAS AND WATER QUALITY PROTECTION  
MEASURES**

***OAR 629-635-0300***

- (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.***

**APPLICATION:**

These sections are not used for enforcement action

**ADMINISTRATION:**

The riparian management area (RMA) width defines an area that has two purposes, as follows:

- The first purpose of the width is to describe a search area in which riparian vegetation condition is to be evaluated, e.g., conifer basal area is measured. For this purpose, the RMA width is rigid, and may not be varied.
- The second purpose of the width is to describe an area in which vegetation must be retained. As described in subsection (3)(b) of this rule, the RMA width may be varied for this purpose.

These sections also describe two sets of obligations under which operations near waters of the state must be conducted. The first set of obligations, retention of physical components (vegetation, downed wood, snags, etc.), is applied only within the RMA. The second set of obligations, specified protection measures (skid trail location, water bars, etc.), is applied inside and outside the RMA as needed to protect water quality. This distinction is important, since the criteria for judging successful application of protection measures is based upon their success in protecting water quality regardless of distance from the channel or location in the RMA.

**RIPARIAN MANAGEMENT AREAS AND WATER QUALITY PROTECTION  
MEASURES**

***OAR 629-635-0300***

- (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 OAR 629-660-0060.*

**APPLICATION:**

This subsection may be used for enforcement action. However, enforcement action related to protection of RMAs or application of specified protection measures will normally be taken under the specific rule for which a violation has occurred.

**ADMINISTRATION:**

When working adjacent to and near waters of the state, operators are required to apply the specific protection measures outlined in OAR 629-635-0310 through OAR 629-660-0060, **and** protect riparian management areas on both sides of streams and around other waters. The specific protection measures are not tied to RMAs and often extend to distances beyond the RMA width.

The riparian management area width defines the search area within which the potential to meet the vegetation retention requirements is evaluated. The riparian management area width also defines the maximum area in which vegetation must be retained. For purposes of evaluating the potential of the RMA to meet the vegetation requirements, e.g., measuring basal area to compare to targets, the RMA width cannot be varied. For the purposes of determining where to actually retain the vegetation, the width can be varied as described in subsection (3)(b).

**REFERENCES:**

- OAR 629-635-0310 through OAR 629-660-0060

**RIPARIAN MANAGEMENT AREAS AND WATER QUALITY PROTECTION****MEASURES*****OAR 629-635-0300***

- (3) (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.*

**APPLICATION:**

This subsection is not used for enforcement action.

**ADMINISTRATION:**

For the purpose of determining where to leave the required vegetation, the width of the RMA does not need to meet the specified width requirements at all points along the stream. Due to a number of reasons, the RMA may vary in width, and the distances may be wider or narrower as measured from the high water level of the stream. Regardless of how the RMA width varies, it must still meet the vegetation retention to the maximum extent possible, and meet the water quality protection standards. The RMA width must equal the specified width averaged over the entire length of the RMA.

This subsection provides the operator the flexibility to vary the width of the RMA to meet operational needs, while still meeting the intent of the rules. Although the width may vary, the structural component requirements of the RMA must still be met. Under the general prescription (OAR 629-640-0100 and 629-640-0200), certain areas within the RMA which have specific widths identified, such as the 10-foot understory retention zone and the 20-foot tree retention zone must be maintained. The widths of these areas cannot vary and must meet the specified widths along all points within the RMA. Note also that for purposes of evaluating the potential of the RMA to meet the vegetation requirements, e.g., measuring basal area to compare to targets, the RMA width cannot be varied.

<p><b><i>RIPARIAN MANAGEMENT AREA WIDTHS FOR STREAMS</i></b>  <b><i>OAR 629-635-0310</i></b></p>	
<p><b>(1)</b></p>	<p><b>(a)</b> <i>The riparian management area widths for streams are designated for each stream type as shown in Table 1.</i></p> <p><b>(b)</b> <i>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.</i></p> <p><b>(c)</b> <i>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.</i></p>

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

	Type F	Type D	Type N
LARGE	100 feet	70 feet	70 feet
MEDIUM	70 feet	50 feet	50 feet
SMALL	50 feet	20 feet	Apply specified water quality protection measures, and see OAR 629-640-0200.

**APPLICATION:**

This rule is not used for enforcement action.

**ADMINISTRATION:**

Except for the limited circumstances discussed in the guidance for section (2) below, measure the RMA widths as slope distances. The RMA width is measured from the edge of the high water level of the outermost main channel. A main channel is any channel that has flowing water when average flows occur. There may be several main channels to a stream.

The outer RMA boundary for the stream must include any stream-associated wetlands and any side channels plus another 25 feet. If the RMA boundary shown in Table 1 and measured from the high water level of the main channel meets this standard, no expansion of the boundary is needed. If the designated RMA boundary does not meet the standard, the boundary must be expanded to provide the additional 25 feet.

RMA widths for other waters are discussed in the following locations:

- OAR 629-645-0000(3) and (6): Significant Wetlands
- OAR 629-650-0000(2): Lakes

**REFERENCES:**

- OAR 629-600-0100 Definitions – High Water Level, Main Channel

**RIPARIAN MANAGEMENT AREA WIDTHS FOR STREAMS*****OAR 629-635-0310***

- (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 or talus slope is reached. From that point, the remaining portion of the riparian management area shall be measured as a slope distance.*

**APPLICATION:**

This section is not used for enforcement action.

**ADMINISTRATION:**

Where the slope adjacent to a stream is steep exposed rock, soil, or talus slope, the RMA is measured as a horizontal distance to the top of the steep section and as a slope distance from there on.

A slope falls within this requirement if the slope is too steep to grow merchantable trees, or has a limited ability to grow trees. If such slopes are measured using slope distance, the slope may be longer than the distance required for the RMA. In such a case, there would not be enough vegetation potential to meet the desired condition. This is why a horizontal measurement is required.