

# NEW FOREST PRACTICES RULES

PREPARE NOW - RULES CHANGE JANUARY 1, 2024

## TOP THINGS TO KNOW ✓

- » **There are no continuations of operations into 2024.** All 2023 notifications must be completed by Dec. 31, 2023. All forest operations on or after Jan. 1, 2024 will require a new E-Notification (FERNS) and must meet new Forest Practices Act rules requirements.
- » Submission of 2024 notifications can begin in FERNS on Dec. 1, 2023.
- » Road Condition Assessments are required starting Jan. 1, 2024 for small forestland owners, and must be submitted along with harvest notifications.
- » Starting in 2024 all landowners must report completion of notified activities by the end of the calendar year or within 90 days for small forestland owners if certain conditions are met.

## FOR MORE INFORMATION ✓

- » See the ODF Forest Practice Act webpage for training opportunities, rules changes, technical guidance and more.
- » Contact the department's stewardship foresters if you have questions or need help. The department has stewardship foresters all around Oregon in our more than 30 local offices, and yours is listed below. You can also visit the Find a Forester webpage.

## SPECIAL HELP FOR SMALL FORESTLAND OWNERS ✓

The department has a new Small Forestland Owner (SFO) Office and dedicated SFO foresters to help small forest landowners with their forest management goals. New programs help with fish passage projects on forest roads, tax credits and more. Visit the SFO Office webpage for more info.

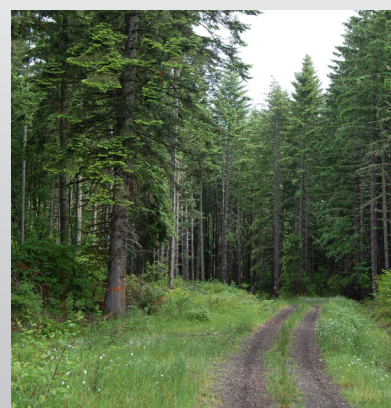


## FIND YOUR LOCAL ODF OFFICE ✓

[oregon.gov/odf/working/pages/findaforester.aspx](https://oregon.gov/odf/working/pages/findaforester.aspx)



FISH PASSAGE PROJECT



ROAD CONDITION ASSESSMENTS



STAY NOTIFIED OF RULE CHANGES



## SUMMARY OF RULE CHANGES

### GEOGRAPHIC REGIONS

Regions will be separated into the western Oregon and eastern Oregon regions at the crest of the Cascade Mountains.

### FOREST ROADS

There will be new design standards and requirements to inventory, maintain, and manage roads.

### STEEP SLOPES

Increased tree retention to reduce harvest-related landslides and ensure fish habitats have enough woody material from naturally occurring landslides.

### STREAM BUFFER INCREASE

Wider stream Riparian Management Areas (RMA) will give more habitat to stream-dependent species. This will help improve water quality and stream health. There will also be changes to Oregon Department of Fish and Wildlife (ODFW) regulations for managing beavers.

### FOREST PRACTICES TECHNICAL GUIDANCE

Will assist landowners and resource professionals to implement the Oregon Forest Practices Act and forest practices rules.

## LARGE FORESTLAND OWNERS

- » Steep Slopes Western Region: Landowner representatives must complete Steep Slopes certification training to identify slope retention areas.

## SMALL FORESTLAND OWNERS

- » Small Forestland Investment in Stream Habitat Program (SFISH) funds will be available to replace culverts on fish bearing streams and improve roads for small forestland owners.
- » Forest Conservation Tax Credit (FCTC)
- » Road Condition Assessment (RCA)
- » Modified Riparian Management Area requirements
- » Stream adjacent failures have expanded buffers on fish bearing streams.

## ALL LANDOWNERS

### NEW ROAD RULES

- » Forest road inventory assessment (large landowners)
- » Abandoned roads
- » Hydrologic disconnection
- » Critical road locations
- » 100-year peak flow
- » Stream simulation
- » Increased culvert sizing requirements
- » Wetland construction guidelines

### WATER PROTECTION

- » New fish use stream classification map
- » Perennial stream flow field determination
- » New perennial stream RMA requirements
- » Increased requirements for all stream types
- » Active management in RMA for eastern Oregon

### FISH STREAM BUFFERS (TYPE F AND TYPE SSBT)

- » Western Region: Increasing RMA width to 100 feet for small streams and 110 feet for medium and large streams.
- » Eastern Region: Increasing RMA width to 75 feet for small streams and 100 feet for medium and large streams with basal area and tree count retention.

### STREAM ADJACENT FAILURES

Added additional protection requirements for field identified areas next to fish use streams that are actively failing or unstable slopes. Leave tree areas are now required upslope of the riparian management area.

### HARVESTING RULES

- » All Regions: Equipment limitation Zones (ELZ) & R-ELZ to protect N Type streams.
- » Western Region: Tree RMA on Type N streams modeled as Debris Flow Traversal Areas.

### COMPLIANCE MONITORING

- » Forestland owners must accommodate property access for compliance monitoring.

### ENFORCEMENT

- » Base fines will increase from \$5,000 to \$10,000
- » Added a definition of repeat violator
- » Added a definition of significant violation
- » Added the rule for financial assurances



For more information contact [smallforestlandowneroffice@odf.oregon.gov](mailto:smallforestlandowneroffice@odf.oregon.gov)

# Forest Practices Act Rules FAQs



## General, Division 605

### **When do the rules go into effect, specifically for landowners that will qualify as small forestland owners.**

The new rules for fish stream buffers start July 1, 2023, based on two conditions:

- Forestland owners with 5,000 acres or more of forestland, and
- Forestland owners submit a notification of operation to the State Forester on or after July 1, 2023.
- All landowners will be required to follow the new rules starting Jan. 1, 2024.

### **How will the notification requirements be applied with the new rules? Can a current notification continue into 2024?**

- On or after July 1, 2023, forestland owners who submit a notification of operation and own more than 5,000 acres of Oregon forestland must follow the fish stream buffer rules adopted in October 2022.
- All landowners will be required to follow the new rules starting Jan. 1, 2024.
- Since there are changes to information required on notifications, operations cannot be continued from 2023 into 2024.

### **How will the new rules impact small landowners financially?**

The new rules allow for potential unequal economic impact for small forestland owners.

For example, there are some different rules, such as:

- Alternative vegetation retention prescriptions
- A forest conservation tax credit for streamside areas
- Financial assistance for eligible road repair projects

### **When will training for the new rules take place?**

Training will begin in Spring 2023.

## Adaptive Management, Division 603

### **What is Adaptive Management?**

Adaptive management is flexible decision making. It can be adjusted in the face of uncertainties as outcomes from management actions and other events become better understood. The purpose of the adaptive management framework in the FPA is to provide science-based recommendations and technical information. This is to assist the Board in determining if and when it is necessary or advisable to adjust rules, guidance, and training programs to achieve resource goals and objectives identified in the Habitat Conservation Plan (HCP).

### **What is the Adaptive Management Program (AMP)?**

The AMP is comprised of the AMP Committee (AMPC), Independent Research and Science Team (IRST), and the Program Coordinator. The AMPC includes stakeholders from a wide range of interest areas. They set the research agenda to assess if rules need adjustment, if training is required, etc.





This is based on IRST study results and they make recommendations to the Board. The IRST applies science to answer the policy questions put forth by the AMPC. This team will include one member each from a public institution, the timber industry, and a conservation group. The members are subject matter experts with graduate degrees in natural resources disciplines such as forestry, fisheries, and ecology.

### **How does the public participate in decisions made by the Board of Forestry?**

The public may make public comments at Board of Forestry's public meetings. In addition to existing committees, two new committees will advise the Board. These are the Adaptive Management Program Committee (AMPC) and the Independent Research and Science Team (IRST).

## **Road Construction and Inventory, Division 625**

### **What does minimizing hydrologic connectivity mean?**

Minimizing hydrologic connectivity means using best management practices to reduce potential sediment delivery to waters of the state. Hydrologic connectivity varies by factors such as road and drainage locations, slopes, soil types, vegetation, and other potential site-specific factors.

### **What are the Forest Road Inventory and Assessment (FRIA) requirements?**

FRIA is a 20-year process required for large forestland owners to identify and correct road related issues. The first five-years are the inventory phase of the landowner's road network inventory. Years five through 20 are the implementation phase the landowner takes actions to complete the necessary improvements.

### **What is the Road Condition Assessment requirement for Small Forestland Owners?**

Small forestland owners will be required to submit a Road Condition Assessment when notifying ODF for any timber harvest operations.

## **Harvesting, Division 630**

### **Will harvesting on steep slopes require a written plan?**

Harvesting on many steep slopes will require a written plan.

### **Will trees required to be left on steep slopes count as wildlife trees?**

Wildlife leave trees may count in these areas.

## **Compliance Monitoring, Division 678**

### **What are the new requirements for reporting the completion of an operation?**

To aid in compliance monitoring, landowners are required to report completed activities under their current notification of operation to the State Forester. Reporting will use the E-notification system or other methods.

## **Streams, Division 635 and 643**

### **What are the new stream buffer widths?**

The stream buffer widths are described in Division 643 of the rules. The stream buffer widths vary by stream size and the stream type.



## **What is the process to identify perennial streams?**

The department will determine perennial (year-round) stream flow in two phases:

- Phase One – Perennial streams will be field identified during harvest planning, regardless of whether the map information depicts end of perennial flow. Operators will use an ‘operational field survey.’
- Phase Two – The Oregon Department of Fish & Wildlife will develop a comprehensive model to determine end of perennial stream flow. The model will rely on high-resolution LiDAR and field observations on stream flow. It will be done on or before July 1, 2025. Landowners may request a field review by the department of the modeled outputs.

## **How are the rules applied if a landowner’s harvest operation includes the riparian management area of a stream located on the adjacent property?**

The landowner harvesting the timber will have to apply the RMA stream rules for the portion of the RMA on their property. Measurements can include all trees within the RMA, regardless of ownership.

## **Small Forestland Owners, Division 607**

### **Will a Small Forestland Owner be required to replace stream crossings that don’t meet the new standards?**

A small forestland owner will be required to replace stream crossings that are approved for state funding through the Small Forestland Investment in Stream Habitat Program and culverts with imminent risk of failure.

### **Who owns the trees within the streamside Forest Conservation Area when the department issues a Forest Conservation Tax Credit?**

The current landowner owns the trees within the conservation area for the 50-year conservation period required with the tax credit. Landowners should consult with the department prior to removing trees from the Forest Conservation Area.

### **What assistance can a landowner receive from ODF to identify tree retention areas on steep slopes?**

ODF will assist landowners in identifying designated debris flow traversal areas.

Forestland that is managed under the small forestland owner minimum option would not be required to follow the rules for designated sediment source areas or rules for slope retention areas.

## **References:**

Private Forest Accord Report, February 2022, ODF webpage

Forest Practices Rules, December 2022, ODF webpage





# Private Forest Accord Updates: Small Forestland Owners

## Summary

The Private Forest Accord recognizes that small forestland owners (SFOs) are inherently different from industrial landowners in their capabilities, property locations, and size. SFOs value and manage their properties for a variety of benefits, including but not limited to timber production.

The defining criteria of an SFO are provided in statute and in the new FPA rules as follows:

- Owns wholly or in part less than 5,000 acres of forestland in Oregon;
- Has harvested no more than an average of 2 million board feet of timber per year for the past 3 years; and
- Does not expect to harvest more than an average of 2 million board feet per year over the next 10 years.

When submitting a Notification of Operation, landowners may self-certify that they meet the above criteria.

## Assistance for SFOs

Senate Bill 1501 directed ODF to establish a Small Forestland Owner Assistance Office to aid small forestland owners in understanding and following forest practices regulations. The SFO Office provides technical assistance, supporting services, and administration of incentive programs, including two new incentives: the Small Forestland Investment in Stream Habitat (SFISH) Program and the Forest Conservation Tax Credit.

## Small Forestland Investment in Stream Habitat

This program is managed by the SFO Office in consultation with Oregon Department of Fish and Wildlife. The program prioritizes high value conservation sites, including areas of chronic

sedimentation, fish passage blockages, stream diversions, and perched fill.

The program provides the financial means via grants for road improvement projects for the greatest species and natural resource benefit. An SFO applies for state funds to complete voluntary projects through the SFISH program for road repairs to meet the new forest road standards in Forest Practices Act rules.

## Forest Conservation Tax Credit

This is a tax credit program to financially incentivize SFOs to adopt the standard practice harvest boundary over the SFO minimum option when conducting a timber harvest. The tax credit amount is for the stumpage value of the forest conservation area—the strip of forestland between the standard practice and minimum option harvest boundaries.

The forest conservation area is filed as a deed restriction at the county office by the SFO. Once filed and a tax credit has been issued, the current SFO and any future owners are restricted from harvesting in the forest conservation area for a 50-year period.

The tax credit can be used to manage your personal or corporate income or corporate excise tax liability. The tax credit may be used as one lump sum, spread out over many consecutive or non-consecutive tax years, or held for use in any future tax year.

The tax credit may be passed to others in the event of an SFO's death. If the forestland is sold, the tax credit remains with the original landowner and cannot be transferred. The new owner must follow the harvest restriction or work with the Department of Revenue to address repayment.



# Small Forestland Investment in Stream Habitat Program



## What is the Small Forestland Investment in Stream Habitat Program?

The Small Forestland Investment in Stream Habitat Program (SFISH) is a grant program established by the Legislature in 2022 to help small forestland owners implement projects that improve fish habitat and mitigate risks to natural resources arising from forest roads. The program provides up to 100 percent of the cost for eligible projects. The program is administered by the Oregon Department of Forestry (ODF), in consultation with the Oregon Department of Fish and Wildlife (ODFW). The program helps small forestland owners from project start to finish.

- ODF determines project eligibility and ranking, provides project funding, and helps develop project details.
- ODFW assists with identifying high conservation value sites, ranking projects, and developing project details.

## What are the program eligibility requirements?

- Landowners must own less than 5,000 acres of forestland in Oregon.
- Landowners must harvest no more than an average of 2 million board feet of timber each year.
- Landowners must inspect their roads by completing a Road Condition Assessment.

## What are considered high conservation value sites?

- Sites located in areas of known chronic sedimentation.
- Fish passage barriers.
- Stream crossings that have diverted the stream channel or have a high diversion potential.
- Areas where the road drainage system is not adequately disconnected from waters of the state.
- Roads with a perched fill presenting a significant hazard to a fish-bearing stream.







### What types of projects are eligible?

- Projects must benefit fish species covered under the Private Forest Accord Aquatic Habitat Conservation Plan.
- Replacement of culverts or fords that are no longer functioning or do not meet the Oregon Forest Practices Administrative Rules design standards.
- Abandoned road repairs that prevent sediment delivery to waters of the state or improve fish passage.
- Remediation of roads with a perched fill that present a significant hazard to fish-bearing streams.

### What fish species are covered under the Habitat Conservation Plan?

- All native salmon and trout (*Oncorhynchus spp.*)
- Bull trout (*Salvelinus confluentus*)
- Mountain whitefish (*Prosopium williamsoni*)
- Pacific eulachon/smelt (*Thaleichthys pacificus*)
- Green sturgeon (*Acipenser medirostris*)



### How does the program work?

- A small forestland owner completes a Road Condition Assessment and applies for project evaluation.
- A site visit is conducted to determine if the project meets program eligibility.
- An eligible project is evaluated and ranked in consultation with ODFW based on its benefits to fish and the amount of time the project has been waiting for SFISH funding.
- The project is funded when it becomes a high priority.
- The program helps the landowner find a project sponsor and develop project details.
- The project sponsor can help manage the project, including design, permits, and contractors.





# Forest Conservation Tax Credit Program



## Summary

- The Forest Conservation Tax Credit (FCTC) was created by the legislature in 2022 to provide a financial benefit to small forestland owners (SFOs) who support conservation and habitat protection by retaining a larger unharvested area next to streams for protection of wildlife habitat and aquatic species.
- SFOs who agree to limit timber harvests in their conservation area for 50 years by following the standard practice for harvests rather than the small forestland owner minimum option can receive a tax credit based on the value of the unharvested timber inside the conservation area and related costs.

## Process

- Landowner confirms that they qualify as a small forestland owner who:
  - ✓ Owns less than 5,000 acres of forestland in Oregon;
  - ✓ Harvested no more than an average of 2 million board feet of timber each year during the past 3 years; and
  - ✓ Does not expect to harvest more than an average of 2 million board feet of Oregon timber during the next 10 years.
- The SFO must submit notification of operation for a timber harvest type 1, type 2, or type 3 next to an eligible stream that has specific vegetation retention requirements and a harvest area that is at least the same size as the area that will not be harvested. Type 4 harvests are not eligible for the tax credit.
- The SFO must agree to follow the standard practice harvest rules and indicate their intent to apply for the tax credit.
- Within 3 months of completion of the harvest, the SFO must provide required information and documentation to SFO Office for determination of tax credit amount.



## Determination of Tax Credit Amount

The amount of the tax credit is based on the stumpage value of the timber left unharvested in the forest conservation area, which is the strip of riparian area between the standard practice and minimum option buffer zones, plus appraisal costs and the cost of filing a deed restriction with the county.

Given the different requirements for vegetation retention based on stream size and classification as well as location in the state, either Western Oregon or Eastern Oregon, those boundaries will be different and will create different sizes of forest conservation areas for different SFOs.



## Certification

Once the SFO has provided the information necessary to determine the amount of the tax credit, the SFO Office provides a tax credit certificate to the SFO and the Department of Revenue.

The SFO then needs to file a deed restriction in the county where the forest conservation area is located. This deed restriction prohibits timber harvest in the conservation area for 50 years.

## Use of Tax Credit

- Offset Oregon income or estate tax liability.
- Lump sum or over multiple consecutive or non-consecutive tax years.
- Transferable to heirs.
- Not transferable to new landowner if land is sold.

## Termination of Tax Credit and Removal of Deed Restriction

If the landowner who originally applied for and received the tax credit wishes to use the minimum option or remove the deed restriction, that landowner must notify the SFO Office and repay any credit that has been used, with interest.

If a subsequent landowner who is not an heir of the original landowner wishes to use the minimum option or remove the deed restriction, the new owner must repay the original amount of the credit received by the previous owner, with interest from the date of acquisition of the property.

Should a landowner intentionally harvest in a riparian area where a credit has been issued and a deed restriction prohibits that harvest, the landowner will be in violation of the Forest Practices Act and subject to penalties for the violation. The tax credit certification will be revoked, and the amount of any credit used must be repaid with interest.





# Private Forest Accord Updates: Stream Classification & Vegetation Retention

## Summary

The revisions to the water protection rules are one of the keystone pieces of the Private Forest Accord agreement. Larger vegetation retention areas near streams are required, depending on the stream type and location. Options include the standard practice for stream buffer widths designed for large forestland owners and a minimum option as an alternative for qualified small forestland owners (SFO).

The Oregon Department of Forestry will use light detection and ranging (LiDAR) technology to develop and publish a high-resolution stream network that will include fish use and perennial stream flow. This will allow ODF to apply appropriate protections and ensure that the water protection rules are implemented equitably and consistently. The new rules reflect the need to balance ecological and economic needs for landowners, while recognizing the important ecological benefits and functions that the riparian areas provide. The vegetation retention requirements for harvesting near a stream vary based on the size and designated beneficial use.

## Rule Changes

The new rules reflect the changes to riparian management objectives and the stream classification process outlined in the Private Forest Accord Report. Major changes to the stream classification and hydrography network include:

- Using an approved fish distribution model and information from existing field surveys to ensure all streams on forestland are classified regarding fish use.
- Hiring a contractor to develop a high-resolution LiDAR-based stream network that incorporates the fish model and perennial flow status to provide a robust and a comprehensive stream classification system.
- Increasing efforts coordinating and sharing information with the Oregon Department of Fish and Wildlife (ODFW), including the adoption of

robust perennial stream model for regulatory purposes, protocols for the field identification of the end of perennial stream flow, and field surveys for fish use.

These revisions reflect new streamside vegetation requirements while providing long-term vision for riparian areas. The rules reflect major changes emphasized in the Private Forest Accord agreement regarding streamside vegetation retention and associated protections. ODF consulted with the Private Forest Accord authors to develop a revised desired future condition vision and goals statement for streamside stands to reflect the new riparian area protections. Major changes include:

- A standard practice which applies to large landowners and is also available to small forestland owners
- A minimum option practice is available for small forestland owners
- Revised desired future condition for streamside areas definition to reflect new vegetation requirements while providing long term vision for riparian areas
- Allowance for alternative prescriptions when appropriate

## Identifying Stream Flow Duration

Stream flow duration will be identified in two phases:

- **Phase One** - Stream flow duration will be field identified during harvest planning, regardless of whether the new map identifies the end perennial flow.
- **Phase Two** - On or before July 1, 2025, a comprehensive ODFW model to identify the end of perennial flow will be developed, that relies on high-resolution LiDAR and field observations of the end of perennial flow. The identified end of perennial flow based on the model, will be known as the 'modeled end.' Landowners may request a field review of the modeled end determination.

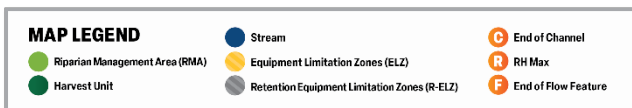




## Western Small Type Np Stream & Equipment Limitation Zones



These diagrams are examples only and are not to scale. Conditions and requirements may differ.



## Geographic Regions

The rules for stream vegetation retention will be based on two distinct geographic regions in Oregon (Eastern and Western Oregon). Both geographic regions include provisions for equipment limitation zones (ELZ) to protect soil function and habitats for species near stream areas during harvest activities with cable or ground equipment.

The **Western Oregon** standard practice actions mostly provide for no-touch tree retention areas that range from 75-to-110 feet on streams with fish use and large and medium non-fish streams.

- Small streams have tree retention for portions of perennial small non-fish streams that flow into fish use streams.
- Depending on the identification of perennial flow, a combination of tree retention and an ELZ upstream apply to the entire small stream.
- On small non-fish streams in which no tree retention requirements are in place, the ELZ protections apply to a 35-foot area beginning at the edge of the stream and extending out.

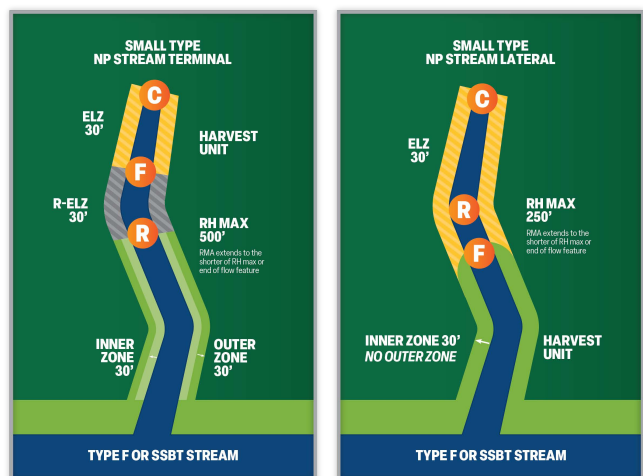
The **Eastern Oregon** standard practice includes two distinct riparian areas, known as “inner zone” and “outer zone.” The inner zone is the area immediately near the stream channel extending 30 feet out, and the outer zone is the area extending from the outside

edge of the inner zone that extends to variable widths based on the stream’s size and classification. The 30-foot inner zone requires retention of all trees, while the outer zone may be managed by partial harvest/thinning to provide benefits such as fire resiliency and the retention of key tree species to enhance forest health in the riparian areas. The ELZ is defined as 30 feet for Eastern Oregon and applies to areas outside the inner zone and near the channel where no tree retention is required, such as a small seasonal stream.

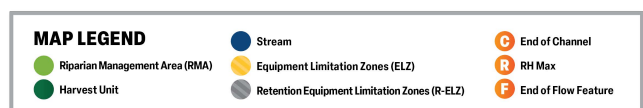
## Alternate Vegetation Standards for SFO Minimum Option

These rules reflect the inherent differences in the needs and requirements of these owners while meeting the overall objectives of the Private Forest Accord agreement. The new rules provide for several options regarding riparian area management, including a minimum option prescription, the standard practice prescription, or a combination of the standard practice with the ability to apply for the Forest Conservation Tax Credit. The minimum option prescription allows for the harvesting in the riparian area which has a narrower width than the standard practice. The availability of the minimum option is limited by a five percent cap based on the total stream miles owned by all small forestland owners inside the watershed within which their property is located.

## Eastern Small Type Np Stream & Equipment Limitation Zones



These diagrams are examples only and are not to scale. Conditions and requirements may differ.



# Road Condition Assessment (RCA)



## What is a Road Condition Assessment?

The purpose of the RCA is to ensure that roads used for forest practices activities and owned by Small Forestland Owners (SFOs) comply with the standards of the Forest Practices Act. Objectives of the assessment are to describe road conditions that contribute to active or potential delivery of sediment to waters of the state; document water crossing locations and determine their status of compliance; identify potential fish passage barriers, abandoned roads, and roads with a perched fill that present a significant hazard to fish-bearing streams.

## Who must use the assessment?

Small forestland owners who certify as meeting the following criteria:

- Owns less than 5,000 acres of forestland in Oregon.
- Has harvested no more than an average of 2 million board feet of timber each year for the past 3 years.
- Does not expect to harvest more than an average of 2 million board feet of timber each year for the next 10 years.

## When must you use the assessment?

- When submitting a notification of operation that includes the harvest of timber.
- When applying for a grant through the Small Forestland Investment in Stream Habitat (SFISH) program.

Notifications that do not include the harvest of timber do not require the completion of an RCA.



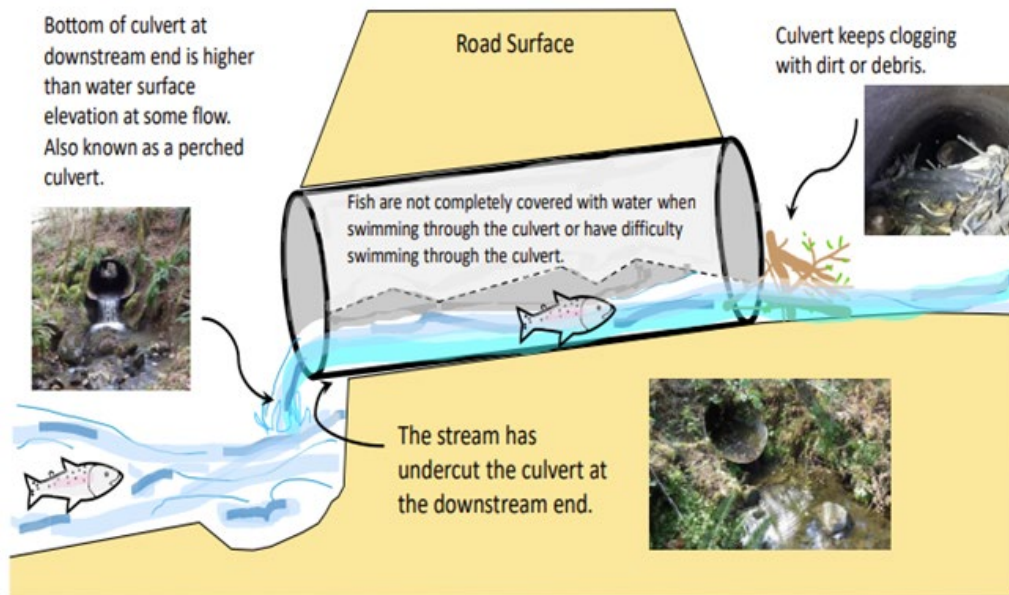
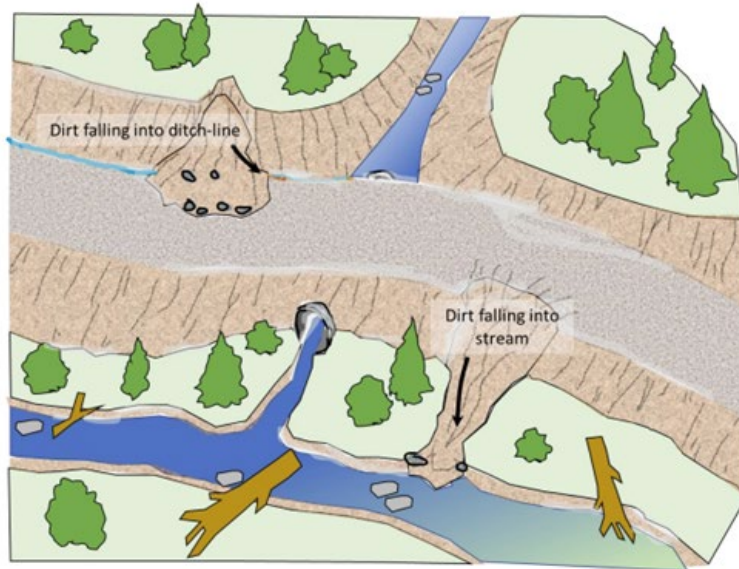
## Which roads must I assess?

Existing roads on the parcel where the harvest activity will take place; however, assessment of all your forest roads is encouraged.

Roads on neighboring landowners' property and skid trails should not be included.

## Common Road and Stream Crossing Problems:

Dirt from the uphill side of the road keeps falling into the ditch-line before regularly scheduled maintenance or dirt from downhill side of the road keeps falling into a stream.



Bottom of culvert at downstream end is higher than water surface elevation at some flow. Also known as a perched culvert.

Road Surface

Culvert keeps clogging with dirt or debris.

Fish are not completely covered with water when swimming through the culvert or have difficulty swimming through the culvert.

The stream has undercut the culvert at the downstream end.







# Private Forest Accord Updates: Road Construction & Inventory

## Summary

The rule changes have two key areas of focus: minimizing opportunities for sediment to enter waters of the state and ensuring unimpeded fish passage. The proposed rules aim to reach these goals by using road construction and design methods that locate roads away from streams as well as minimize sediment and direct sediment away from streams. The stream crossing designs will closely match the natural stream conditions to allow for better fish passage. Additionally, the new rules include a process to identify and correct existing road-related issues.

## Rule Changes for Hydrologic Connectivity

- The new rules emphasize minimizing hydrologic connectivity, such as a road ditch that runs directly into a stream crossing, throughout the road network this includes:
- Directing routes of drainage of road runoff to waters of the state
- Identifying and correcting existing connectivity
- Limiting the amount of connectivity in all new construction and reconstruction

## Rule Changes to Fish Passages

- Additional rules (detailing stream crossing design, construction, and written plans) are a significant element of the new rules. This includes:
- A process to identify and improve stream crossings to ensure unimpeded fish passage within a 20-year time frame
- “Stream simulation” is the required fish stream crossing strategy when feasible
- The requirement to design all stream crossings to convey a 100-year peak flow

## Rule Changes to Critical Locations

The rules add specificity to current rules. They now require avoiding placing roads in sensitive areas, known as “critical locations.” Road construction in critical locations is limited to instances where alternate locations are not feasible and require written plans when locating roads in these areas.

Critical locations include very steep slopes, areas with landslide hazard, through the toe of deep-seated landslide deposits, activities within a riparian area for more than 500 feet, locations within 50 feet of all streams, and all wetlands over a quarter acre.

## Forest Road Inventory and Assessment (FRIA)

The FRIA is a five-year process in which large forestland owners identify and correct road-related issues. The first five years are the inventory phase in which a comprehensive road network inventory must be completed. Years five through 20 are the implementation phase in which landowners must complete the necessary improvements.

## Small Forestland Owners (SFOs)

All the road rules apply to small forestland owners except for the FRIA process. Small forestland owners will be required to submit a Road Condition Assessment when notifying for any timber harvest operations. Some improvements identified by the road condition assessment, such as fish stream crossing, may qualify for state funding for repair or replacement.





# Private Forest Accord Updates: Harvesting on Steep Slopes

## Summary

The Private Forest Accord Report's goal is to provide high-quality habitats that support the recovery, protection, and long-term conservation of covered species on private forestlands. The Oregon Department of Forestry (ODF) worked with the Accord authors to develop new rules related to harvesting on steep slopes. The steep slopes rules can be found in Division 630, Harvesting Rules.

Many of the new rules for harvesting on steep slopes focus around "leave trees" to reduce timber-harvest related large landslides and provide slope stability next to fish streams. Material delivered to fish and non-fish streams from these leave tree areas contribute to habitats for the covered species.

## Western Oregon

The slopes model is being developed for Western Oregon, to be completed by mid-May 2023 and added to the E-Notification system soon after. The E-Notification system will display three types of steep slopes that have the highest probability of instability:

- Designated Debris Flow Traversal Areas (debris flow corridors)
- Designated Sediment Source Areas (hillslope areas)
- Trigger Sources (areas within designated sediment source areas)

Leave trees will be required along the non-fish streams and the length of designated debris flow traversal area. Leave trees will be

required in field identified slope retention areas, which represent at least 50 percent of the designated sediment source areas.

When there are stream classification changes, the slopes model will not immediately change. Forest practices technical guidance will be developed to field identify slope retention areas. Certified training will be developed to field identify the slope retention areas.

## Statewide

The stream adjacent failures, located on slopes greater than 70 percent, would apply statewide. These are field identified areas next to fish streams that are actively failing or unstable slopes delivering sediment.

Leave trees are required upslope of the riparian management areas of fish streams with a stream adjacent failure.

## All Landowners

Harvesting on steep slopes requires a written plan and wildlife leave trees may count in these areas.

## Small Forestland Owners

ODF will assist landowners in identifying designated debris flow traversal areas. Forestland that is managed under the small forestland owner minimum option would not be required to follow the rules for designated sediment source areas or slope retention areas.





# Private Forest Accord Updates: Habitat Conservation Plan

## Summary

In 2020, representatives of conservation groups and the forest sector met to find ways to resolve conflicts about how Oregon's forestlands should be managed. Their overarching goals in developing this agreement were to provide:

- Greater business certainty
- Greater environmental certainty
- Greater regulatory certainty
- A science-driven adaptive management process
- Alternatives for small forestland owners.

The agreements developed were recorded as the Private Forest Accord (PFA) report in 2022. The PFA resulted in Senate Bills 1501 and 1502, passed in 2022. SB 1501 revised the Forest Practices Act based on the PFA report. This law requires the Oregon Department of Forestry (ODF) to update its forest practice administrative rules, develop a Habitat Conservation Plan, and apply for Incidental Take Permits (ITP) covering aquatic species.

A Habitat Conservation Plan (HCP) is a planning document prepared to meet the rules of the federal Endangered Species Act. The HCP describes conservation measures to protect specific federally listed threatened and endangered species. In exchange for applying these measures, applicants can obtain a permit that allows incidental take when they engage in certain lawful activities. Incidental take means the unintentional harm or killing of listed species that occurs incidental to otherwise lawful activity. To receive legal protection when engaging in activities that may result in incidental take, individuals or groups may

apply to the National Marine Fisheries Services (NMFS) or the U.S. Fish and Wildlife Service (USFWS) for an Incidental Take Permit. Incidental Take Permits provide legal protections under the Endangered Species Act for landowners and operators performing covered work in the permit area.

ODF is developing a HCP as part of the application for Incidental Take Permits. ODF will hold the permits on behalf of the Oregon private and local government forest landowners, as well as any individual Oregon tribes that wish to opt-in to the permits. Covered landowners will obtain regulatory assurances under the ESA protecting them against incidental take that may occur while conducting forest operations and activities covered under the HCP. ODF's Incident Take Permits will:

- Apply to 10 covered aquatic species
- Cover most activities subject to the Forest Practices Act
- Legally authorize incidental take of the covered aquatic species
- Apply to covered landowners.

ODF is currently working with a contractor to develop the HCP, with input from a steering committee. Steering committee members include representatives from the PFA report authors, ODF Forest Resources Division staff, Oregon Department of Fish and Wildlife, Oregon Department of Environmental Quality, National Marine Fisheries Service, and U.S. Fish and Wildlife Service. ODF will prepare the final HCP and obtain the Incidental Take Permit no later than Dec. 31, 2027.





# Private Forest Accord Rulemaking: Compliance Monitoring Program



PRIVATE FOREST LAND

## Summary

Changes to the Notification of Completion rule support the new Compliance Monitoring Program.

## Notification of Completion

The Notification of Completion improves the Compliance Monitoring Program by providing information on the completion of forest operation activities. Landowners are required to report completed activities to the State Forester after submitting an initial notification. This change modifies OAR 629-605-0150: Notification to the State Forester – When, Where, and How.

Using the E-notification system or other methods, landowners will need to notify the State Forester of completed activities:

- At the end of the calendar year the notification was submitted, or
- At the end of the following calendar year for notifications that continue into the following calendar year.

When a Notification of Completion is reported, landowners will need to do so for each activity about which they originally notified.

## Compliance Monitoring Program

The purpose of the Compliance Monitoring Program is to assess rule compliance and report findings to the Board of Forestry, legislature, and federal services. It also identifies training and outreach opportunities and enhances public trust in the implementation of the Forest Practices Act (FPA) and FPA rules. Monitoring may be conducted by department staff or contractors.

The new program increases statistical rigor by contracting with a third-party statistician to help with study design and analysis. The program prioritizes monitoring rules for water protection, harvesting on steep slopes, and forest road construction and maintenance. The program is supported by a stakeholder advisory committee that provides input about program development and implementation. This committee includes representatives from the department, landowners, the public and other interested parties.

The program will also contribute compliance information to several reports: an annual public report on the Habitat Conservation Plan performance; every two years a summarized compliance audit results and progress report of ongoing compliance monitoring efforts; and every eight years an aggregate cumulative report that includes compliance trends.

## Changes to Compliance Monitoring Access

Forest landowners shall accommodate access for compliance monitoring. The State Forester may petition the circuit court with jurisdiction over the forestland for a warrant authorizing access to conduct compliance monitoring. Landowners will be notified before monitoring occurs and will be provided the opportunity to be present or have a representative present.





# Private Forest Accord Updates: Enforcement & Civil Penalties

## Summary

Updates to Division 670 include: Rules for “Pesticide Applications by Helicopter” statutes, incorporating them as part of the civil penalty process for contesting within the Forest Practices Act (FPA) process, additions to ORS 527.680, and modifications and additions to ORS 527.620 and 527.685.

## Updates to Civil Penalties

While the civil penalty formula remains the same, updates to the standard civil penalty calculations doubled base and maximum fines, with the maximum civil penalty, increasing from \$5,000 to \$10,000. The civil penalty administrator shall consider the history of a person or entity, including associated organizations or changes to avoid higher civil penalties because of previous violations.

## Establishment of Significant Violations and Repeat Violators

The new rules establish and define significant violations and repeat violators for operators, landowners, or timber owners. Repeat violators are individuals or companies with a history of significant violations that show a pattern of willful disregard of the Forest Practices Act rules. The State Forester will maintain a repeat violators list of individuals and entities with three or more significant violations within three years. The list will be used in the civil penalty calculations process. This calculation considers the organizational structure of the party incurring the penalty and any economic benefits from the activity. A repeat violator will be removed from the list three years after their last citation was issued.

The rules establish a new formula to calculate significant violations. The base penalty is set at \$2,000 for the significant violation formula, the maximum penalty is \$50,000 or the value determined by the formula, whichever is less.

## Financial Assurances for Repeat Violators

The State Forester may require a violator to acquire, post, and maintain a bond or another financial assurance instrument throughout the active periods of the operation, including stopping and restarting at a later date. The amounts are based on either the type and number of protected resources or the number of acres within the operation. The maximum value of a bond is \$250,000.

Should an operator, landowner or timber owner fail to post a required financial assurance with the State Forester, or if they stop the operation and fail to renew their bond when resuming activities, the State Forester may issue an order to prohibit any new operations until they have filed an active financial assurance. The State Forester may also submit claims against the bond if the agency must repair damage and/or for the recovery of civil penalties.

## Contesting an Order of the State Forester

Changes to Division 672 update the list of contestable orders in the Order of the State Forester list to include the finding of being a repeat violator and the requirement of financial assurances. For more information go the Compliance Program website.









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