

**PRIVATE FOREST ACCORD**

**HISTORIC AGREEMENT EXPANDS AQUATIC HABITAT PROTECTIONS**



**Oregon Forest  
Resources Institute**

A photograph of several salmon swimming in a river over a rocky riverbed. The fish are in various stages of spawning, with some showing reddish-brown hues. The water is clear and greenish, and the rocks are grey and brown.

# **FINDING COMMON GROUND**

# AGREEMENT LEADS TO NEW LAWS

## Historic adversaries collaborate on updating forestry rules



Photo: Office of Gov. Kate Brown

**A COLLABORATIVE PROCESS** Representatives from Oregon's forest products industry and conservation groups came to a collaborative agreement to change the state's forest laws, called the Private Forest Accord.

In early 2020, Oregon's timber wars seemed to be heating up again.

Unlike the disagreements between the timber industry and environmental groups that came to a head in the 90s – over the listing of the northern spotted owl and the subsequent impacts to federal forest management – this debate centered on privately owned forests, and how the state regulates logging and other forestry practices on those lands.

Both sides were embroiled in a costly and unpredictable battle over competing ballot initiatives regarding Oregon's forest practice regulations that seemed poised to appear on the November 2020 ballot. These initiatives came on the heels of fierce debate between

## GOALS

The overall goals pursued during the Private Forest Accord process were:

- ✓ **Provide greater business certainty.** Provide a greater level of certainty for forest landowners and industries that depend on Oregon's privately managed forests.
- ✓ **Provide greater environmental certainty.** Provide a greater level of certainty for the survival and recovery of threatened and endangered species, and the protection of aquatic resources.
- ✓ **Provide greater regulatory certainty.** Submit a supportable application to the appropriate federal agencies to achieve a Habitat Conservation Plan for private and non-federal forests, which will yield the issuance of an incidental take permit and enhance habitat for the species covered by the plan.
- ✓ **Provide a science-driven adaptive management process.** Establish an adaptive management program with diverse stakeholder input that will examine the efficacy of newly established water-related state forest practice regulations going forward.
- ✓ **Provide alternatives for small forest landowners.** Address the disproportionate impacts that regulatory changes might have on small forest landowners and provide alternative compliance plans and/or financial impact mitigation for those potential impacts.

the timber and forest products industry and the conservation and fisheries community about how to adequately manage private forests to achieve a range of environmental and economic outcomes.

Despite the deeply entrenched political camps that formed, the ballot box battle never came. In February 2020, both sides agreed to drop their initiative petitions. Instead, they planned to start a series of conversations in hopes of finding common ground.

The prospect of expensive ballot initiative campaigns helped convince representatives from the industry and conservation groups to come to the negotiating table, says Jason Miner, who served as former Oregon Gov. Kate Brown's natural resources policy director.

"This is a generation of people who have spent their careers fighting the same battles," he says. "They recognized that they didn't have to burden the next generation. Folks were getting together to talk about a better way forward."

As these conversations were happening, Brown saw an opportunity to broker an agreement between the two sides, Miner says. It would come to be known as the Private Forest Accord.

In June 2020, the Oregon Legislature passed Senate Bill 1602, which included a requirement for mediated talks between conservation groups and the forest products industry. The hard work began in January 2021, as representatives from each side began to meet in hopes of hashing out an agreement with the help of a professional mediator. The talks required "a tremendous amount of relationship and trust-building," Miner says.

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## THOUGHTS ON THE PRIVATE FOREST ACCORD

“Both sides recognized that the old way of doing things wasn't working; and in fact, there were common sense updates to the Forest Practices Act that would benefit the continued health of our forests, streams, fish and wildlife, as well as opportunities for the continued vibrance and growth of our forest products industry.”

**Kate Brown**, former Oregon governor

“While this agreement is predominantly about cold, clean water for fish, what's good for fish is good for Oregonians. We are ensuring a future of clean water and healthy forests, while maintaining tens of thousands of jobs that make Oregon the national leader in carbon-friendly building materials.”

**Chris Edwards**, president of the Oregon Forest Industries Council

“We are thrilled to join the governor and timber industry counterparts on a new path for Oregon's forests and for our organizations. The measures announced (on October 30, 2021) provide significant new protections for our fisheries, for cold, clean water, and for the people who rely on these resources.”

**Bob Van Dyk**, former Wild Salmon Center Oregon policy director



Sources for quotes: Oregon Governor's Office remarks and news releases on May 18, 2022 and October 30, 2021.

## PAST EVENTS

**February 10, 2020** – Eleven forest products companies, the Oregon Small Woodlands Association, and 13 conservation and fisheries organizations sign a memorandum of understanding agreeing to drop their competing initiative petitions and lay the foundation for the Private Forest Accord process. The memorandum serves as a good-faith effort by the timber, conservation and fishing communities to find collaborative approaches to resolving numerous conflicts regarding Oregon's forest practice laws and regulations.

**June 2020** – The Oregon Legislature holds a special session and passes Senate Bill 1602. The law includes a requirement for mediated talks between the conservation groups and forest products companies that signed the memorandum of understanding. It also creates new regulations for the helicopter application of pesticides in forests, adds electronic notifications for neighbors of helicopter pesticide spray operations, and expands an existing requirement to leave a buffer of unharvested trees standing along streams containing salmon, steelhead and bull trout to southern Oregon's Siskiyou region.

**January 12, 2021** – A subset of the memorandum of understanding signatories representing the forest products industry and small woodland owners, and conservation and fisheries organizations, begin a series of mediated discussions led by then Gov. Kate Brown.

**October 25-29, 2021** – To meet the deadlines for the 2022 Oregon legislative session as outlined in Senate Bill 1602, representatives from each side meet in Portland to finalize the Private Forest Accord agreement. Gov. Kate Brown and several members of her staff attend many of the negotiations.

**October 30, 2021** – The parties involved in the Private Forest Accord reach an agreement on a series of proposed changes to the Oregon Forest Practices Act (which regulates logging and other forestry activities on private land) for the Oregon Legislature to consider during the 2022 session. The parties jointly agree that the changes will form the basis for the state to develop and submit for federal approval a private forests Habitat Conservation Plan covering five fish species, four salamanders and one type of frog.

**February 2022** – Private Forest Accord representatives from Oregon's forest products sector and the conservation community encourage the Legislature to approve three bills: Senate Bill 1501, directing the Oregon Board of Forestry to adopt updates to the Oregon Forest Practices Act; Senate Bill 1502, creating a new tax credit program for small forest landowners; and House Bill 4055, establishing future funding through the state's forest products harvest tax.

**March 2022** – The Legislature passes all three bills with bipartisan support. The Oregon Board of Forestry is tasked with establishing new forest practice rules for private forest landowners based on changes to the Oregon Forest Practices Act outlined in the new laws, as well as leading the development of a private forests Habitat Conservation Plan.

**May 18, 2022** – Gov. Kate Brown signs the Private Forest Accord legislative package into law in a ceremony at the World Forestry Center in Portland. The event is attended by representatives from 25 private forestry, small forestland, conservation and fishing organizations who negotiated the historic agreement.

**October 27, 2022** – Following a public comment period and months of work by the parties involved in the Private Forest Accord to develop a package of new Forest Practices Act rules to present to the Oregon Board of Forestry, the board adopts the new rules, which will impact more than 10 million acres of private and non-federal forests in Oregon.

**December 31, 2022** – The Oregon Department of Forestry submits a preliminary application to the federal government for the private forests Habitat Conservation Plan.

**July 1, 2023** – Expanded no-cut buffers prohibiting logging along streams go into effect for large private forest landowners.



Photo: Oregon Dept. of Fish and Wildlife

*(continued from page 3)*

In October 2021, representatives from 11 forest product companies, the Oregon Small Woodlands Association and 13 conservation groups reached an agreement. Brown herself stepped in to aid in the final days of talks that led to the agreement. It proposed that the Oregon Legislature make some of the most significant changes to Oregon's forest practice laws and regulations – known as the Oregon Forest Practices Act – in 50 years. The changes expanded forest habitat protections for fish and amphibians.

Two years after first agreeing to collaborate, the Legislature passed a legislative package modifying Oregon's forestry laws that both sides supported.

The new laws brought certainty to both the industry and the conservation community, Miner says. The industry gained regulatory certainty, while the conservation side gained a greater level of certainty for the protection of threatened fish and wildlife, he says.

For Brown, the Private Forest Accord will go down as a major achievement during her time as governor, Miner says.



Photo: Office of Gov. Kate Brown

“Collaboration has been a mainstay of her time in public office,” he says. “This was an issue where she was able to bring together an agreement that brings stability.”

The Private Forest Accord also demonstrates that timber and conservation camps can work together instead of battling it out in court, at the ballot box, or in front of the Oregon Board of Forestry, Miner says.

“Hopefully we now have a platform where these two caucuses can talk to each other and find a better way to make agreements in the future. There’s now a place where people can talk through and resolve these differences.”

## FUTURE EVENTS

- **January 1, 2024** – Remaining new rules go into effect for all private forest landowners.
- **December 31, 2027** – The federal government either approves the Oregon private forests Habitat Conservation Plan, or the new rules sunset.



## PARTIES INVOLVED IN THE PRIVATE FOREST ACCORD

Following months of mediated negotiations, representatives from forest product companies, Oregon’s largest small-woodland owner organization, and conservation and fisheries groups authored the Private Forest Accord Report. It outlines an agreement the parties reached in October 2021 on a series of proposed changes to the Oregon Forest Practices Act, which regulates logging and other forestry-related activities on private land. The authors of the report were:

### Conservation authors

Audubon Society of Portland  
Beyond Toxics  
Cascadia Wildlands  
Klamath-Siskiyou Wildlands Center  
Northwest Guides and Anglers Association  
Oregon League of Conservation Voters  
Oregon Stream Protection Coalition  
Oregon Wild  
Pacific Coast Federation of Fishermen’s Associations  
Rogue Riverkeeper  
Trout Unlimited  
Umpqua Watersheds, Inc.  
Wild Salmon Center

### Forestry authors

Campbell Global  
Hampton Lumber  
Lone Rock Resources  
Manulife Investment Management, Timberland and Agriculture (formerly Hancock Natural Resource Group)  
Nuveen Natural Capital (formerly GreenWood Resources)  
Oregon Small Woodlands Association  
Port Blakely  
Rayonier  
Roseburg Forest Products  
Sierra Pacific Industries (formerly Seneca Sawmill)  
Starker Forests, Inc.  
Weyerhaeuser

Throughout the Private Forest Accord process, the report authors sought guidance from the following state and federal agencies:

Oregon Department of Environmental Quality  
Oregon Department of Fish and Wildlife  
Oregon Department of Forestry  
National Marine Fisheries Service  
U.S. Fish and Wildlife Service

**READ THE FULL REPORT HERE:**  
[bit.ly/PFAreport](https://bit.ly/PFAreport)

# THE FUTURE OF FORESTRY IN OREGON



## State adopts major changes to forestry regulations

When the Oregon Legislature passed the Oregon Forest Practices Act regulating forest management practices on state and private land in 1971, the law was the first of its kind in the nation.

### RECENT FOREST PRACTICES ACT CHANGES INCLUDED:



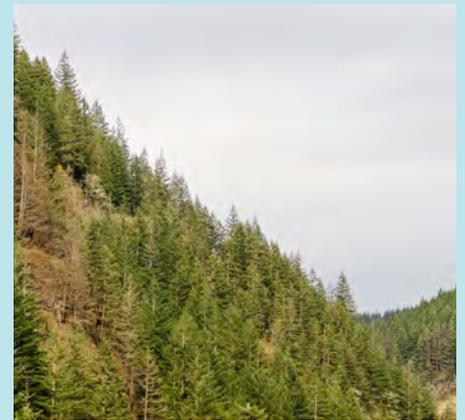
#### Expanded stream protections

Oregon law requires preserving buffers of trees and vegetation along fish-bearing streams to shade the water and keep it cool for fish. These no-cut stream buffers were expanded to be 10% to 100% wider, depending on the stream size, its location and whether it contains certain species of fish. The updated forest practices rules also include new protections for non-fish-bearing streams. (See pages 8-11 for more information.)



#### New forest road standards

New standards were adopted for the sizes of fish-bearing-stream culverts, which carry streams under roads, and culvert installation procedures. Some existing forest road-building rules were modified to focus on minimizing sediment in streams. Large forest landowners are now required to complete a forest road inventory within five years and update all roads to new standards within 20 years. Small forest landowners need to complete a road condition assessment when filing notice with the state of plans to harvest timber. (See pages 12-13.)



#### New rules for logging on slopes

A new set of forest practice rules for large forest landowners applies to logging on steep slopes. This includes requirements to retain trees in certain areas so that if a natural landslide occurs, some of the trees will end up in streams and provide high-quality fish habitat. Computer modeling will be used to identify the locations of these potentially unstable slopes. (See pages 14-15.)

Outlining a set of forest practice rules aimed to protect water sources and other vital natural resources, as well as fish and wildlife habitat, the act has been amended and updated more than 30 times since it was first adopted – but never as significantly as in 2022, following the Private Forest Accord agreement between the forest products industry and conservation and fishing groups.

On October 27, 2022, the Oregon Board of Forestry approved more than 100 changes to the Forest Practices Act stemming from the agreement to increase protections for fish and amphibian habitat on privately owned forests.

## FOREST LAW COMPLIANCE AND ENFORCEMENT

The Private Forest Accord also led to changes in how the Oregon Department of Forestry monitors compliance with the Oregon Forest Practices Act and determines the fines enforced on those who violate the act's rules.

A new compliance monitoring program will assess rule compliance and report findings to the Oregon Board of Forestry, Oregon Legislature and federal agencies. The new program will prioritize monitoring private landowner compliance with forest practice rules for protecting water, logging on steep slopes, and forest road construction and maintenance.

New requirements for private forest landowners related to the compliance monitoring program include reporting completed forestry activities to the Oregon state forester after submitting an initial notification of planned forestry operations.

While the formula used by the state to calculate fines for forest landowners or forestry companies that break the forest practice rules remains the same, the new rules increased the maximum civil penalty from \$5,000 to \$10,000 per violation.

The state forester will also now maintain a list of repeat violators that will be used in the civil penalty calculations process.

A new formula will be used to calculate fines for significant violations of the Oregon Forest Practices Act. The base penalty for those violations is set at \$2,000, with a maximum penalty of \$50,000 or the value determined by the formula, whichever is less.



Photo: Oregon Dept. of Fish and Wildlife



Photo: Christopher Cousins

### A new adaptive management program

All future changes to Oregon's forest practice rules regarding stream and riparian habitat protections will be coordinated through the Oregon Department of Forestry's new adaptive management program. The program uses diverse stakeholder input and a science-driven process to analyze the need for any additional changes to water-related forestry regulations to better protect fish and amphibians. (See pages 21-23)

These changes should allow Oregon to receive federal approval of a **Habitat Conservation Plan** for private, county and municipal forestlands, as well as an accompanying incidental take permit for federally listed threatened and endangered species of fish and amphibians. A Habitat Conservation Plan is a planning document intended to provide long-term conservation benefits to designated wildlife species, while also providing regulatory assurance and minimizing legal risks to landowners for the unintentional harm of federally listed species when it occurs incidental to otherwise lawful activity. (See pages 24-26.)

# PROTECTING AQUATIC HABITAT

## Expanded stream protections for fish, amphibians and other wildlife

Wherever there is water in the forest, there is an abundance of life.

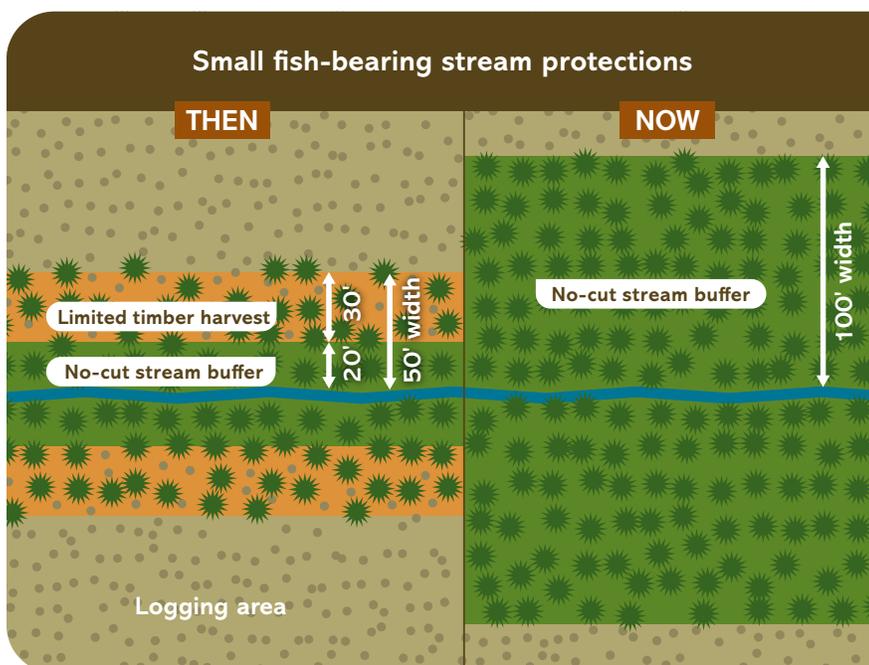
Riparian areas, whose soil and vegetation are shaped by the presence of water from streams, rivers and wetlands, support some of the highest density of plants and animals of any type of habitat found in the forest.

“You’re seeing a hugely diverse community of vertebrates and invertebrates. These moist, cool ecosystems support lots of plant life, which, in turn, supports insects, amphibians, aquatic macroinvertebrates, birds and fish species,” says Tiffany Garcia, a professor of wildlife ecology at Oregon State University. “As you move up the headwaters towards the source of these streams, fish species will drop out, and we see lots of amphibians take over as top predators in these systems.”

When the Private Forest Accord agreement was being hammered out, representatives from the conservation community and the forest products industry agreed upon the importance of expanding protections for forested aquatic and streamside habitat for fish, amphibians and other wildlife.

Through a collaborative process, both sides worked on creating new forest practice rules for logging along forest stream banks. This includes widening the required buffer of trees and vegetation that must be kept standing along forest streams, rivers, lakes and wetlands, a rule that’s most stringent for waterways where fish are present.

The overarching goal of the new rules, according to the Private Forest Accord report authors, is to maintain and enhance



## What's changed?

New forest practice rules for logging along forest stream banks aim to protect fish, amphibians and other wildlife. The rules include:

- widening the buffer of trees that must be kept standing along forest streams in western Oregon to range from 75 to 110 feet in width, depending on the stream size and whether it contains certain species of fish
- requiring no-cut buffers along non-fish-bearing streams
- requiring an equipment limitation zone along non-fish-bearing streams



## STREAM PROTECTIONS

New laws expand habitat protections along forested streams.

habitat that supports fish and amphibians. Streamside trees shade the water and help keep it cool for fish. When these trees fall into the water, the logs, branches and roots provide anchor points that slow down stream flow, provide cover for fish and increase the complexity of aquatic habitats, which is especially beneficial for juvenile and spawning fish.

No-cut buffer requirements were also created for non-fish-bearing streams, since these streams could affect the temperature of the fish-bearing streams they feed into. Another new rule requires an equipment limitation zone along non-fish-bearing streams.

This piece is crucial, says Garcia, whose research includes a focus on forest amphibians and freshwater habitats. Fish tend to get a lot of attention, but many forested waterways don't contain them, she says. Non-fish-bearing streams provide important habitat to amphibians and other wildlife species that, like fish, benefit from requirements to preserve streamside vegetation, she adds.

“These protections are going to bolster biodiversity up and down these streams. In addition to protecting species that reside in the streams and waterways, a lot of animals use riparian corridors as highways. Having an intact habitat up and down that entire ‘road system’ allows for a lot of movement, and that just makes your community stronger. That connectivity is really important for the entire watershed.”

## EXPANDED PROTECTIONS FOR BEAVERS

The Private Forest Accord recommended additional protections for beavers because of the important role they play in helping to enhance fish habitat.

Beaver dams benefit cold water-loving fish species such as salmon and trout, because they create ponds that store cool water in the summer. Beaver ponds also store groundwater, which sustains riverside vegetation, that in turn shades rivers and streams, further cooling the water for fish.

The Private Forest Accord recommended that the Oregon Legislature approve more reporting requirements to the Oregon Department of Fish and Wildlife for managing beaver activity and resolving the issues beavers cause to forest landowners. These requirements were part of Senate Bill 1501, which the Legislature passed in 2022.



Photo: Jimmy Taylor

## Protective stream buffer widths vary

Under the Oregon Forest Practices Act, loggers and forest landowners are required to leave buffers of uncut trees and vegetation along the borders of streams, rivers, lakes and wetlands. This rule is the most stringent for waterways where fish are present. These areas are called “riparian management areas,” “RMAs,” or simply “stream buffers.”

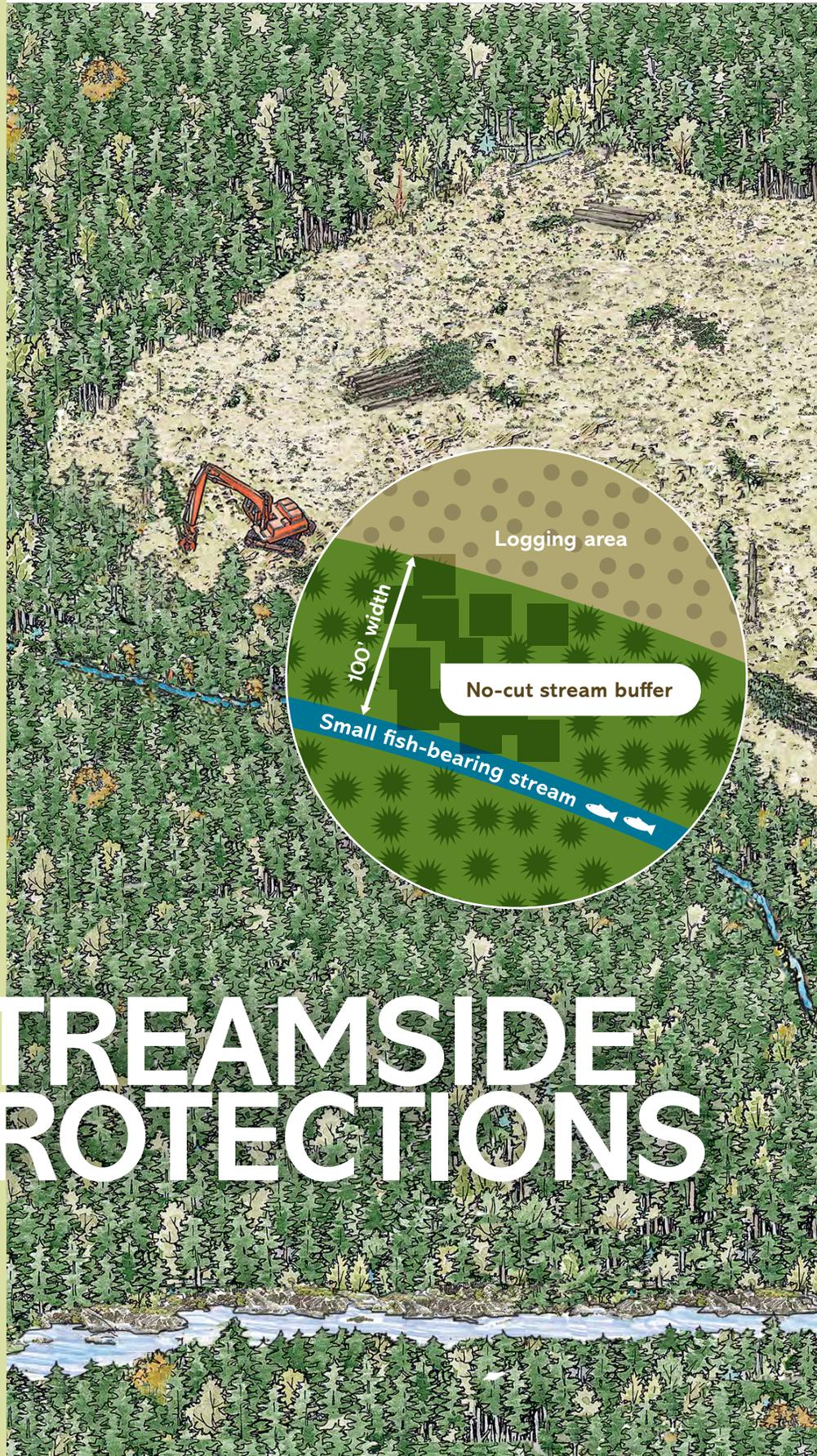
Within these buffers, logging is either prohibited or severely restricted, because leaving trees along streams shades the water and keeps it cool for fish. Although originally intended to protect fish and water, a large number of amphibians and invertebrates also benefit from these protected streamside habitats.

The required width of these buffers was expanded in 2022 as a result of approved legislation following the Private Forest Accord agreement. Protective buffers along streams were increased overall, and range from 75 to 110 feet in width, depending on the size of the stream and whether it contains certain species of fish.

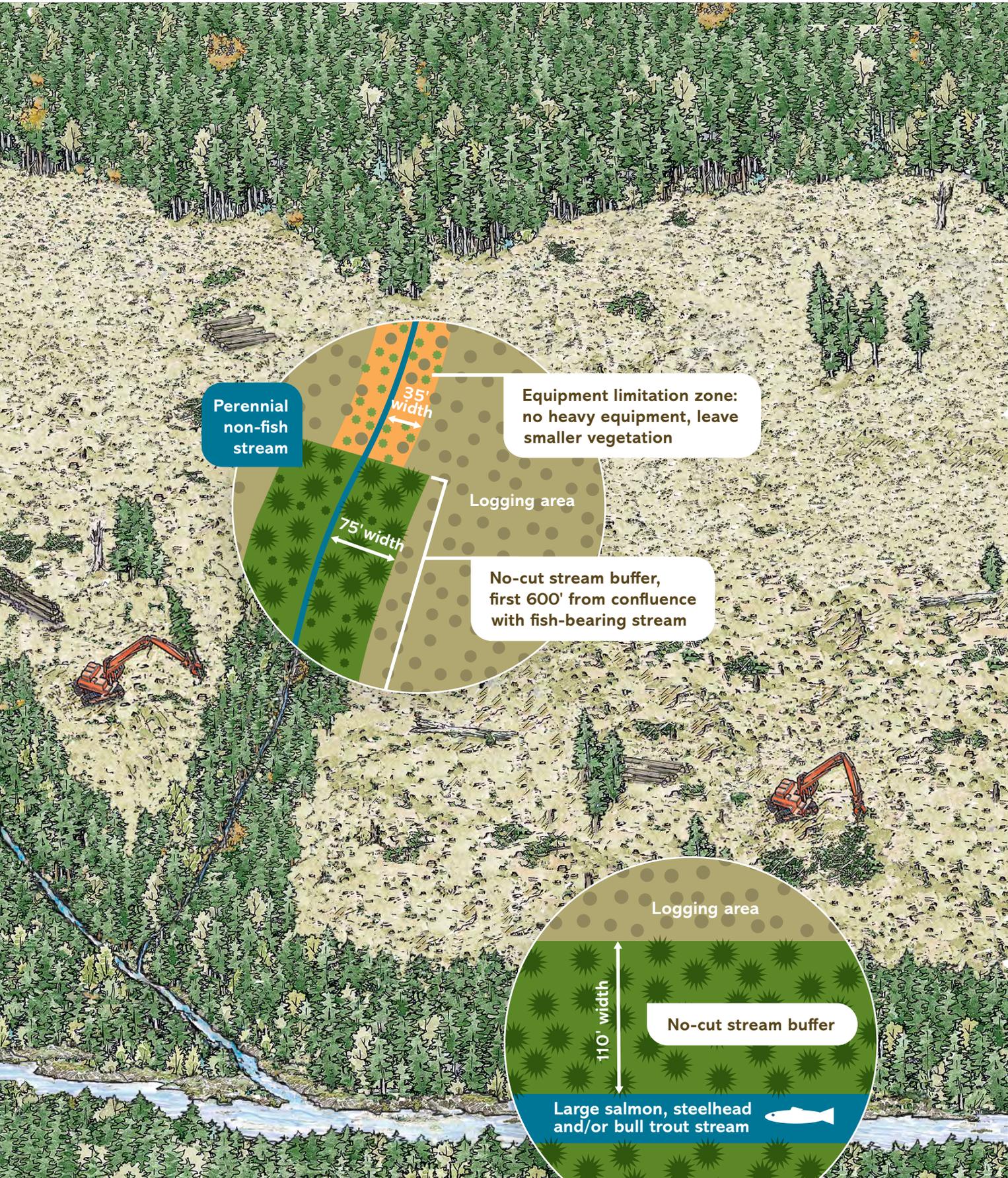
The Oregon Legislature also passed a law in 2022 that requires stream buffers for some ephemeral headwater streams. These are streams that are seasonal, or sometimes present during significant rainfall, but are dry at other times of the year. Oregon law did not previously require forest landowners to leave buffers of uncut trees around these types of streams, but protections were added – either in the form of no-cut buffers or equipment limitation zones – because they feed into fish-bearing streams and aquatic habitats.

The width of the required no-cut buffers varies by stream size and location. The buffer requirements also vary between western and eastern Oregon.

This illustration is an example of a fish-bearing stream in western Oregon that contains salmon, steelhead and/or bull trout, with a small fish stream and perennial non-fish stream as its tributaries.



# STREAMSIDE PROTECTIONS



Perennial non-fish stream

Equipment limitation zone: no heavy equipment, leave smaller vegetation

Logging area

No-cut stream buffer, first 600' from confluence with fish-bearing stream

Logging area

No-cut stream buffer

Large salmon, steelhead and/or bull trout stream





# FOREST ROADS

## New road-building standards aim to protect fish habitat

Designing and constructing roads that weave through the forest – especially those that cross over streams – takes extensive planning.

It's a careful process that changes when the new forest road-building standards within the Private Forest Accord agreement go into effect, says Anna Vesper, vice president with Corvallis-based McGee Engineering Inc. The firm specializes in private forest road and bridge engineering.

The new forest practice rules expand existing state regulations that aim to minimize the impact logging roads could

have on fish and other aquatic wildlife, like blocking access to habitat or depositing sediment runoff into streams.

Although many of Vesper's clients in the forest products industry are already exceeding the existing regulatory requirements when it comes to their road-building projects, she predicts that there will still be some adjustments to the engineering and construction process for all forest landowners due to the new regulations. This includes using stream modeling to predict how a bridge or culvert design will respond to a 100-year flood event, and to specifically consider potential flood debris to reduce

the potential for the structure to plug and fail in such an event, Vesper says. Current regulations only require structures to withstand a 50-year flood event.

The new rules also require more precautions and documentation during bridge and culvert construction, especially when temporarily diverting stream water around the crossing while the structure is being built, she says. “That’s going to have the potential to be impactful for a lot of crossings.”

The updated road standards will result in wider culverts that allow streams to move more slowly through them, making it easier for fish traveling upstream. Larger culverts also provide enough space for streams to “function a lot more like a natural channel with winding bends and potential pools,” Vesper says.

New forest practice rules will require private forest landowners of 5,000 or more acres of forestland to complete a road inventory to help identify the need to upgrade older

structures that are more likely to block fish or serve as a source of sediment to streams.

“It’s a lot of the older legacy-type crossings where you see more of these issues,” she says. “While they may not be creating a road failure issue, these older structures may not necessarily provide the resource protection that is valued.”

## What’s changed?

New forest practice rules related to the construction and maintenance of forest roads, bridges and culverts aim to protect aquatic habitats and improve fish passage in areas where forest roads cross over streams. They include:

- new standards for fish-bearing stream culvert sizes and culvert installation procedures
- new standards for constructing bridges over forest streams
- additional road-building rules focused on minimizing sediment in streams during construction
- new requirements for the owners of 5,000+ acres of forestland to complete a forest road inventory within five years and update all roads to new standards within 20 years
- requirements for small forest landowners (defined as owning fewer than 5,000 acres of forestland and harvesting fewer than 2 million board feet of timber over three years) to complete a road condition assessment when filing notice with the state of timber harvest plans



**LEAVING TREES** Forest practice rules will require landowners to leave trees standing on hillsides where they could be carried into streams by a landslide.



# LOGGING ON STEEP SLOPES

## New rules intended to support stream habitats

It might seem counterintuitive, but sometimes a landslide in the forest can be a good thing – especially for fish.

New forest practice rules for logging on steep slopes, proposed by the Private Forest Accord agreement and later adopted by the Oregon Board of Forestry, recognize that landslides carrying downed trees and gravel can benefit downslope stream habitats.

“Landslides are naturally occurring, and over a span of time they can contribute large wood debris and other natural materials into the stream network, which creates complex habitats of pools and spawning gravels for fish and aquatic species,” says Keith Baldwin, a forest practices field coordinator with the Oregon Department of Forestry (ODF). Baldwin provided technical expertise

during the drafting of the new forest practice rules related to logging on steep slopes.

The new rules will require large private forest landowners to keep trees standing on hillsides and along stream channels in designated areas where slope failures are likely to initiate channelized debris flows into fish-bearing streams. All of these areas are located in western Oregon.

Restricting logging on landslide-prone slopes will have an effect similar to stream enhancement projects that mechanically place logs in streams to improve fish habitat, Baldwin says. This is because the trees left standing will be a potential source of large wood for fish-bearing streams during naturally occurring landslides.

To identify the areas on steep hillsides where landowners must retain trees, ODF worked

with TerrainWorks, a firm that specializes in geospatial modeling, to create a computer model of slopes in western Oregon. The model shows the places where landslide debris flows are most likely to travel to fish-bearing streams.

The model enables landowners who have received training and certification through ODF to determine whether they need to retain trees on certain landslide-prone slopes and debris flow channels in the areas they plan to log.

The new forest practice rules will add complexity to planning and executing logging operations on steep slopes, Baldwin says – but “we anticipate improvements to fish habitat over time, because some of the trees left on steep slopes and in stream channels will eventually make it down to fish-bearing streams.”



## What's changed?

New forest practice rules, specifically targeting large forest landowners, aim to enhance stream habitats by regulating logging activities on steep slopes in western Oregon. These include:

- requirements to retain trees in certain areas, with the intention that some of those trees will enter downslope streams, providing high-quality habitat for fish and other aquatic wildlife, if a landslide occurs
- using computer modeling to identify the location of potentially unstable slopes and streams that channelize debris flows to fish streams

## GAINING CERTAINTY

Changes to Oregon's forest practice rules will have major financial impacts on forest-related businesses, but should also provide regulatory certainty for the industry.



# LARGE FOREST LANDOWNERS

## New laws will affect how forest products companies operate

The forest products companies that participated in the Private Forest Accord engaged in a negotiation process that focused on establishing common ground with conservation groups. The objective was to attain a mutually agreed level of regulatory certainty and stability, deemed necessary for those companies, and the industry at large, to continue to operate forest-related businesses in the state.

“Oregon is the leading national producer of carbon-friendly building materials, and this industry provides tens of thousands of family-wage jobs for Oregonians,” says Sara Duncan, director of communications for the Oregon Forest Industries Council (OFIC). “Our members involved in the Private Forest Accord were acutely aware of finding

a solution that would balance environmental values while still maintaining those important contributions to both the state’s economy and the global demand for wood products for the future of forestry in Oregon.”

The Salem-based trade association represents private forest landowners and forest products manufacturers, including 10 of the 11 companies involved in the Private Forest Accord. Since the agreement was reached, OFIC has advocated for the accord and lobbied for subsequent changes to the Oregon Forest Practices Act on behalf of its member companies. In addition to the regulatory certainty it will provide to its members, OFIC supports the Private Forest Accord because it aims to promote collaboration over conflict, Duncan says.

“There’s no denying that forest policy in Oregon has historically been very controversial and divisive, and Oregonians, including those who work in the forest products sector, are ready to move on,” she says. “This agreement was an effective way to turn down the heat, and we hope the spirit of it remains durable for decades to come.”

But gaining that regulatory certainty will come at a cost, many in the industry acknowledge. More than three-quarters of Oregon’s annual timber harvest comes from private timberlands, which will be subject to the state’s new forest practice regulations. Since large private forest landowners – those who own more than 5,000 acres of forestland – will be required to leave more trees standing along streams and on steep slopes, they will be harvesting less of the timber the forest products industry relies on to supply its sawmills.

“The Private Forest Accord will take a considerable amount of timberland out of production in the state. That has serious implications for Oregon’s forest sector workers and our ability to produce locally grown and manufactured building materials,” says Steve Zika, CEO of Portland-based Hampton Lumber. The company, which has been in business in Oregon since 1942, operates sawmills and owns timberland throughout the Pacific Northwest, and was involved in negotiating the Private Forest Accord.

Then come the logistical tasks associated with getting employees up to speed on the new regulations, which in many cases add complexity to planning a timber harvest or forest road construction and maintenance, says Seth Barnes, OFIC’s director of forest policy.

“The other way our members are impacted is the cost of doing business,” Barnes says. “It

## What’s changed?

The recent changes to the Oregon Forest Practices Act resulting from the Private Forest Accord apply to large private forest landowners, defined as owning 5,000 or more acres of forestland. Changes include new stream buffer width requirements, new rules for logging on steep slopes and new standards for forest road and culvert construction and maintenance.



will cost more to lay out a timber harvest.”

Still, according to Zika, giving up the ability to log in certain areas and modifying long-term timber harvest plans is better than being constantly at odds with the environmental community over how private forestry is regulated in the state.

“Not everybody agreed that we should go through this process,” Zika says. “Not everybody agreed on the final outcome. I’m sure that’s true on the environmental side as well. But I believe most Oregonians understand that there needs to be compromise in the world and in our industry.”

Zika is optimistic about what the agreement and the coming changes to the Oregon Forest Practices Act will mean for Hampton and the forest products industry.

“We feel better knowing that there is an operating environment here in Oregon where we can continue to make lumber,” he says.

# SMALL FOREST LANDOWNERS



## DEFINITION OF SMALL FOREST LANDOWNER

Under the new forest practice laws, a small forest landowner is defined as someone who:

- owns wholly or in part fewer than 5,000 acres of forestland in Oregon
- has harvested, on average, no more than 2 million board feet of timber per year in the last three years
- does not expect to harvest more than 2 million board feet of timber per year over the next 10 years

## DIFFERENT OWNERS, DIFFERENT IMPACTS

Adapting to changes in Oregon's forest practice regulations could be a challenge for the state's more than 70,000 small forest landowners. Many are families or individuals who don't have the same resources as large forest landowners.

## New laws include special provisions for small forest landowners

Because they own less land and harvest less timber, small forest landowners will be affected differently than large forest landowners by changes to Oregon's forest practice regulations.

"The new rules will clearly have a significant impact on small forest landowners in the state," says Rick Zenn, executive director of the Oregon Small Woodlands Association (OSWA), which represents small private forest landowners.

Oregon's small forest landowners simply

don't have the same resources as large forest landowners, Zenn says. Many will require technical assistance to ensure they're in compliance with the new regulations, he says. "We'll need help with this required work."

The small scale and wide variety of ways these forestlands are managed also means that small forest landowners could face a significant financial burden from the new restrictions on certain areas of their properties, Zenn says. This could be the case on private parcels that contain streams now requiring wider no-cut buffers, he adds.

From the beginning, the Private Forest Accord negotiators had to address how the agreement would impact small forest landowners differently from large forest landowners, and OSWA had a seat at the table, Zenn says.

“In the Private Forest Accord and subsequent legislative process, we were able to make provisions for Oregon’s small forest landowners to access a suite of options different from those available to large forest landowners,” he says.

Under the new forest practice laws, small forest landowners are permitted to leave narrower no-cut buffers along streams on

their property than those required for large forest landowners. They’re also exempt from the forest road inventory; instead, small forest landowners are required to complete a road condition assessment when filing notice with the state of plans to harvest timber.

In addition, the state will offer a new tax credit for small forest landowners to compensate them for the value of the additional timber left standing along streams if they choose to follow the wider no-cut buffer requirements for large forest landowners.

The Oregon Department of Forestry has

*(continued)*

## What’s changed?

One of the goals of the Private Forest Accord was to address the potential disproportionate impacts that regulatory changes might have on small forest landowners and to provide alternative compliance paths and financial impact mitigation for these potentially disproportionate impacts.

To meet this goal, the changes to the Oregon Forest Practices Act resulting from the Private Forest Accord include special considerations for small forest landowners. These include:

- A “small forest landowner minimum option” for qualified small forest landowners that allows them to leave narrower no-cut buffers along streams on their property than the “standard practice” widths that will be required for large forest landowners.
- Instead of the forest road inventory process required for large forest landowners, small forest landowners will be required to complete a road condition assessment when filing notice with the state of plans to harvest timber.
- Small forest landowners are exempt from the new steep slope logging regulations that large forest landowners must follow.
- A new tax credit program will compensate small forest landowners for the value of additional timber left standing, if they agree to follow the wider no-cut stream buffer width required for large forest landowners instead of the small forest landowner option for the next 50 years.
- A special program called Small Forestland Investment in Stream Habitat will be offered through ODF, allowing small forest landowners to receive state funding to replace fish-bearing culverts and to make other necessary road repairs on their property in accordance with new forest road standards.

In addition, while the expanded stream-buffer requirements went into effect for large private forest landowners on July 1, 2023, small private forest landowners will not be required to follow the new forest practice rules until January 1, 2024.



Photo: David Bugni

## ASSISTANCE FOR SMALL FOREST LANDOWNERS

One of the outcomes of the Private Forest Accord specifically benefitting small forest landowners is the establishment of a Small Forestland Owner Assistance Office within Oregon Department of Forestry, which will provide technical assistance to small forest landowners in understanding and following the state's new forest practice regulations.

The office will also administer two new financial incentives for small forest landowners to undertake conservation measures aimed to enhance and protect aquatic habitats on their properties: the Forest Conservation Tax Credit and the Small Forestland Investment in Stream Habitat program.



## SMALL FOREST LANDOWNER CREDIT

When harvesting timber, small forest landowners who choose to leave the standard stream buffer required for large forest landowners instead of the small forest landowner minimum option buffer can claim a tax credit based on the value of the timber they have left standing for habitat conservation purposes.

The Forest Conservation Tax Credit will be calculated based on the stumpage value of the additional merchantable timber left unharvested in the "forest conservation area," a strip of land between the wider buffer required for large forest landowners and the narrower buffer required for small forest landowners.

To claim the tax credit, small forest landowners must file the forest conservation area as a deed restriction on their property with the county. Once the tax credit is issued, the current owner of the property and any future owners are restricted from logging in that stream buffer for a 50-year period.

If the landowner or their heirs decide to log in the stream buffer before the 50-year logging restriction expires, they would have to pay back the state for the portion of the tax credit they've already claimed. If the property changes ownership and the new owner decides to log that area, they would have to repay the original full amount of the credit.



also established a Small Forestland Owner Assistance Office that will help small forest landowners with the latest changes to the Oregon Forest Practices Act. This office will manage several programs that support the management objectives of small forest landowners, including ODF's new Small Forestland Investment in Stream Habitat program, which will provide state funding to small forest landowners to replace fish-bearing culverts and make other necessary repairs on their properties to meet the new forest road standards aimed to benefit fish.

These considerations for small forest landowners will help level the playing field, says Ken Nygren, OSWA president.

"It was gratifying to have our unique circumstances heard during the drafting of the Private Forest Accord and final legislation," Nygren says. "We have deep and very personal connections to our properties. We pour our family wealth and sweat equity into growing a healthy forest. We live on our properties. We recreate on our properties. And we meditate and seek solitude on our properties. Because of these connections, we have deep feelings about changes that increase the burdens of forest ownership on our families."

# ADAPTIVE MANAGEMENT



Photo: Tiffany Garcia

## FOREST SCIENCE

Oregon's new adaptive management program will use the latest scientific research findings to determine the need for future water-related changes to state forest laws.

## New program will use science-driven process

A key goal of the Private Forest Accord is to provide a science-driven process to evaluate the effectiveness of the new forestry regulations proposed through the agreement, along with the need for any future water-related changes to Oregon's forest laws. Enter adaptive management: a flexible decision-making method that's responsive to new scientific information.

As a result of the accord, all future changes to state forest practice rules regarding protections for forested streams and aquatic habitats will be coordinated through the Oregon Department of Forestry's new adaptive management program. The program will rely on diverse stakeholder input and the best available science to analyze the need for changes to state forestry rules. *(continued)*



## WHAT IS ADAPTIVE MANAGEMENT?

Adaptive management is “flexible decision-making that can be adjusted in the face of uncertainties as outcomes of management actions and other events are better understood,” according to the National Research Council, the operating arm of the U.S. National Academies of Sciences, Engineering and Medicine. The process involves using the most current scientific research findings on the impacts of certain land management actions to make informed decisions about adjustments to policies and operations based on those findings.

“We want to assess in a rigorous, scientific, but also inclusive, way: Are the rules achieving their resource protection goals?” says Terry Frueh, ODF adaptive management program coordinator.

The adaptive management program is a required component of the Habitat Conservation Plan that ODF is developing for private forestlands, Frueh says. The program will achieve this by assessing the effectiveness of the new forest practice rules regarding protections for forested streams and other aquatic habitats in meeting the plan’s goals to benefit certain fish and amphibian species. For example, this could include tracking stream characteristics

that can negatively impact aquatic species, such as blocked fish passage under roads or increased sediment levels, he says.

“Under each goal, you’ve got a number of objectives that specify aspects of the larger goals that focus on the protection and survival of species in the Habitat Conservation Plan,” Frueh says. “That way, through adaptive management, we can say, ‘yes, we are achieving those objectives’ or not, and adjust our programs as needed.”

ODF has long monitored the effectiveness of the Oregon Forest Practices Act and recommended rule changes to the Oregon Board of Forestry based on the latest scientific findings, Frueh says. But “the challenge there is it was a contentious process,” he says. “The department was put in the middle, but also perceived to be on one side or another.”

Adaptive management will encourage independent scientific inquiry to better understand the relationship between certain forest practices and their impact on natural resources, Frueh says. It will also provide a predictable process for changing state forestry regulations, so that landowners, regulators and the public can understand and anticipate the changes.

“The adaptive management part is both a requirement for the Habitat Conservation

## What’s changed?

All future changes to Oregon’s forest practice rules regarding protections for forested streams and aquatic habitats will be coordinated through a new adaptive management program. The program will rely on diverse stakeholder input and use a science-driven process to analyze the need for changes to state forestry rules, policies or training.

The purpose of the program will be to apply the best available science to the decision-making process used by the Oregon Board of Forestry to approve water-related changes to the Oregon Forest Practices Act rules, as well as updates to forest practice guidance and training programs.

It will also serve as an important component in creating a private forests Habitat Conservation Plan that’s approvable by the federal government. This includes measuring the effectiveness of the new forest practice rules in meeting the plan’s “biological goals and objectives” to benefit certain fish and amphibian species.

Plan and a process so that if there are any rule changes, it would be a more inclusive process to think about what science should be done and what are the outcomes of that science for moving forward,” he says.

Two committees will advise the Board of Forestry on potential changes to Oregon’s forest practice rules: The Adaptive Management Program Committee and the Independent Research and Science Team. The Adaptive Management Program Committee, which must include representatives from the forest products industry and the conservation community, will set the scientific agenda for the Independent Research and Science Team. This team will include subject matter experts in natural resource disciplines such as forestry, fisheries and ecology. It will apply science by commissioning studies or literature reviews to answer policy questions posed by the Adaptive Management Program Committee related to the effectiveness of aquatic habitat-related forest practice rules. The team will report the scientific findings, in lay terms, to both the Adaptive Management Program Committee and the Board of Forestry.

The Adaptive Management Program Committee will then relay their findings based on the Independent Research and Science Team’s research back to the Board of Forestry and make recommendations on whether state forestry rules should be changed to better meet conservation goals for fish and amphibians.

This should allow the process for gathering relevant scientific information that the board can use in rule-change decisions to “be genuinely independent,” Frueh says.

## ADAPTIVE MANAGEMENT PROGRAM COMMITTEES

As part of the adaptive management program, two committees will advise the Board of Forestry: The Adaptive Management Program Committee and the Independent Research and Science Team. The Independent Research and Science Team will apply science, including scientific literature reviews and original research, to answer policy questions put forth by the Adaptive Management Program Committee, and there is a process to report that information back to the board.

The Adaptive Management Program Committee consists of 10 voting members and three non-voting members. Voting members must include one representative from each of the following stakeholder groups and agencies:

- large forest landowners
- timber operators
- small forest landowners
- conservation landowners (i.e., land trusts)
- tribes
- conservation groups
- commercial or recreational anglers
- county governments
- Oregon Department of Fish and Wildlife
- Oregon Department of Environmental Quality

The Independent Research and Science Team members must have demonstrated subject-matter expertise in a relevant field and a graduate-level degree in a relevant natural resource-related field such as forestry, silviculture, ecology, hydrology, wildlife, fisheries and geology. The team must include one member each from a public institution, the forest products industry and a conservation group.

To learn more about the Adaptive Management Program Committee, visit [oregon.gov/odf/board/Pages/ampc.aspx](http://oregon.gov/odf/board/Pages/ampc.aspx).



A photograph of a forest stream with fallen logs and moss. The water is flowing over several large, moss-covered logs that have fallen across the stream. The surrounding forest is lush with green trees and ferns. The title 'HABITAT CONSERVATION PLAN' is overlaid in large, white, sans-serif capital letters on the top left of the image.

# HABITAT CONSERVATION PLAN

## CONSERVING HABITAT

The Oregon Department of Forestry is developing a Habitat Conservation Plan outlining how the state's new forest laws will help conserve habitat for the native species of fish and amphibians covered under the plan.

## Plan outlines expanded aquatic species protections

Changes to parts of the Oregon Forest Practices Act stemming from the Private Forest Accord should allow Oregon to receive federal approval for a Habitat Conservation Plan outlining how the state's new forestry rules are likely to benefit certain species of fish and amphibians.

"It's increasing protections of the species via the Forest Practices Act regulations," says Jennifer Weikel, a wildlife biologist with the Oregon Department of Forestry. Weikel is helping draft a new Habitat Conservation Plan outlining regulatory strategies that aim to protect native aquatic wildlife habitat on Oregon's private forestlands, as well as those

owned by local governments such as counties and other municipalities.

A Habitat Conservation Plan is a planning document that explains the steps regulatory agencies, landowners and land managers are taking to ensure the conservation of habitat for specific species of fish or wildlife, and minimize potential harm, also called "incidental take," to federally listed threatened or endangered species.

If the National Marine Fisheries Service and the U.S. Fish and Wildlife Service find that a Habitat Conservation Plan meets specified criteria, the federal agencies issue an incidental take permit. This allows the permit holder to proceed with an activity that could otherwise result in the unlawful take of a threatened or endangered species.

In the case of Oregon's private forest landowners, the incidental take permit would offer assurances that if forest management is conducted in compliance with the Forest Practices Act, landowners and forestry companies will not be subject to additional Endangered Species Act (ESA) restrictions or be liable for unintentionally harming a protected wildlife species, should it occur. This is because private landowners will be automatically covered under ODF's incidental take permit. Also, the Habitat Conservation Plan will not establish additional restrictions to ongoing and planned forest management activities beyond those already in place under the Forest Practices Act.

“That means if they're going about their normal business and just by normal activity something happens that causes take on one of our protected species, they're not liable for enforcement under the federal ESA because they have the incidental take umbrella that

covers them,” Weikel says. “The Habitat Conservation Plan by itself is also not adding any new regulatory requirements for landowners.”

The crafting of a private forests Habitat Conservation Plan covering certain aquatic species is one of the goals of the Private Forest Accord. The dual aims for the plan, according to the Private Forest Accord report, are to provide a greater level of certainty for the survival of threatened and endangered aquatic species, and to provide a greater level of regulatory certainty for private forest landowners and industries that rely on Oregon's privately owned forests to generate timber revenue and make wood products.

The plan, which is in the early stages of development, will explain how the state's new forest practice regulations should benefit certain aquatic species that are federally

*(continued)*

## SPECIES COVERED BY THE PLAN

The parties involved in the Private Forest Accord agreed to support a private forests Habitat Conservation Plan for the following aquatic wildlife species:

- all native salmon and trout
- bull trout
- mountain whitefish
- Pacific eulachon/smelt
- green sturgeon
- Columbia torrent salamander
- southern torrent salamander
- coastal giant salamander
- Cope's giant salamander
- coastal tailed frog

Photo:  
Brome McCreary

If approved, the term for the Habitat Conservation Plan, which covers all privately owned forestlands in Oregon, will be 50 years for the fish species and 25 years for the amphibian species.

Photo:  
Charlotte Corkran

## What's changed?

One of the Private Forest Accord's goals is for the state to submit a supportable application to the appropriate federal agencies for a Habitat Conservation Plan outlining conservation measures on private forestlands in Oregon aimed to enhance habitat for fish and amphibians.

Because changes to the Oregon Forest Practices Act negotiated through the Private Forest Accord expand habitat protections for fish and amphibians, the revised regulations should allow the state to receive federal approval for a Habitat Conservation Plan for private forestlands that covers certain aquatic wildlife species, as well as an accompanying incidental take permit for federally listed threatened and endangered species of fish and amphibians.

listed as threatened or endangered, or could be listed in the future, including all native species of salmon and trout, four other native fish species, four species of salamander and the coastal tailed frog, Weikel says.

"It's describing from the species point of view, what are the measures that are being put in place to help protect them," she says.

As the regulatory agency overseeing compliance with forest practice laws on private forestlands, ODF will draft and seek federal approval for the private forests plan, and if it's approved, hold the incidental take permit, Weikel says.

"The incidental take assurances are passed down to the private landowners via ODF and by virtue of them being in compliance with the Forest Practices Act," she says.

ODF is at the beginning of a lengthy process to gain federal approval for a private forests Habitat Conservation Plan. In late 2022, the agency submitted a working draft of the plan to federal fish and wildlife protection services.

"That will kick off the conversations with the services, but there's still a lot of work to be done," Weikel says.

In the coming years, ODF will develop a final plan and work with the federal agencies as they review it, complete an environmental impact analysis, and decide whether to grant approval and issue an incidental take permit.

As proposed through the Private Forest Accord and later mandated in state law, the process is scheduled to be completed by December 31, 2027. By this date, the federal agencies will either approve the plan, or the new forest practice rules passed by the Oregon Legislature in 2022 may sunset.

If the plan is federally approved, its term will be 50 years for the covered fish species and 25 years for the amphibian species.

"It's providing that regulatory certainty for a long period of time," Weikel says. "Because these regulations are going to be in place for 50 years for such a broad landscape, the whole state of Oregon, there's also greater long-term environmental certainty with the added protections for the species."

## TRIBES CAN OPT INTO PLAN

Oregon's new forest practice rules negotiated through the Private Forest Accord do not apply to forestlands managed by Native American tribes, but tribes have the option to opt into the Habitat Conservation Plan and be included as applicants for the incidental take permit. Tribes that opt into the Habitat Conservation Plan will have to follow the new Oregon Forest Practices Act regulations to receive incidental take permit coverage for the fish and amphibian species covered by the plan.



Photo: Christopher Cousins

## ABOUT THE OREGON FOREST RESOURCES INSTITUTE (OFRI)

The Oregon Legislature created the Oregon Forest Resources Institute in 1991 to support the forest products industry by advancing public understanding of forests, forest management and forest products. OFRI is governed by a board made up of 11 voting members appointed by the state forester, plus two non-voting members. It is funded by a portion of the forest products harvest tax.

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**AQUATIC HABITAT PROTECTIONS** As a result of the Private Forest Accord agreement between the forest products industry and conservation groups, changes to the Oregon Forest Practices Act will expand habitat protections on private forestland for fish, amphibians and other wildlife that depend on forest streams.



Photo: Christopher Cousins



Photo: Oregon Department of Forestry



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