Private Lands, Public Waters

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North Coast Communities for Watershed Protection
North Coast Recreation District, Nehalem, OR
Outline

• Key weaknesses in current protections for public waters on private forestlands in Oregon

• Who is responsible and why is policy change so hard?

• What can be done?
10.19 million acres private forestland

Rivers, streams, wetlands and lakes on these lands belong to the public

There is a legal right of use of these waters of the state for present and future generations

Source: OFRI (2019)
Oregon Loses Federal Funding Due to Coastal Forest Practices Pollution

EPA & NOAA find Oregon lacks specific “best management practices” backed by enforceable authority to:

- Protect medium and small fish-bearing streams
- Protect non fish-bearing streams
- Protect high-risk landslide areas
- Address the impacts of forestland roads, especially legacy roads
- Ensure the adequacy of stream buffers for the application of chemicals

Photo: Rob Davis, The Oregonian
Logging too close to smaller fish streams

20 foot buffers don’t provide enough shade, wood, sediment regulation

*Oxbow Creek, Douglas County, Roseburg Forest Products subsidiary (2015)*
Small fishless streams typically drain 70-80% of watershed area, but are unprotected.

Issues: wood depletion in stream systems, increased sedimentation, stream warming, flow depletion.
Other states do better for small fishless streams

<table>
<thead>
<tr>
<th>State</th>
<th>Rule Type</th>
<th>Minimum No-Harvest</th>
<th>Special Management</th>
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<tbody>
<tr>
<td>CA</td>
<td>Class II-S</td>
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**Private Forest Rules for Nonfish Streams - West**

- **CA**: Class II-S
- **WA**: Np at special sites
- **OR**: N

**Diagram Note**: 
- Minimum no-harvest
- Special management

**Image Note**: 
- Headwater Streams and Wetlands are Critical for Sustaining Fish, Fisheries, and Ecosystem Services
- JAWRA: Journal of the American Water Resources Association

**Text in Image**: 
- The contribution of headwater streams to biodiversity in river networks
- Judy L. Meyer, David L. Strayer, J. Bruce Wallace, Sue L. Eggert, Gene S. Helfman, and Norman E. Leonard
2017 Protecting Coldwater Rule for “SSBT Streams” Insufficient

![Graph showing temperature responses](image)

**Figure 1.** Mean temperature responses of 33 sites subject to different harvest prescriptions (see above for definitions). The 50, 70, 80, 90, and 100 foot NC prescriptions were subsets of the No-Cut prescription. The VR-170/275 values are specifically from the VR-170 prescription at a basal area retention value of 275 ft²/1,000 feet of stream. The responses for two-entry prescriptions RFPC-B, OFIC-C, and AOL-A are not presented as predicted temperature increases could only be determined for a single side being harvest, not the effect of the entire harvest regime.
Siskiyou excluded from new stream rule despite known logging-related water quality problems

Approximately, 80% of streams within the Rogue/Siskiyou assessment area that travel over privately managed forested lands are impaired for temperature/sedimentation/turbidity (EPA, 2016).
Risky Aerial Spray Buffers for Herbicides

Small headwater ("fishless) streams

OR = 0 feet
WA = 50 feet minimum

Fish and domestic use

OR = 60 feet
WA = 60-150 feet

Buffers for dwellings and schools

OR = 60 feet
WA = 200 feet
CA = 1320 feet (1/4 mile)

Photo by OPB, 2/1/2015, near Philomath, Starker Forest Products
Thanks a lot, Grandma: Negative effects of Roundup chemical doesn’t surface for generations, WSU researcher says

WSU STUDY: CHEMICALS IN COMMON. WEED KILLER COULD AFFECT YOUR FAMILY TREE
These are headwall swales that experienced shallow rapid landslides and debris flows near Jump Creek, North Fork Smith River, and Umpqua River. The center of the photo shows extensive sedimentation in the tributary canyon.
Inner Gorges and Hollows aren’t harvested in Washington

Leave areas on hollows and inner gorges
Headwalls in Washington are bounded out of harvest units

Post Harvest Convergent headwalls
Forest Roads - largest & most persistent harm to public waters

Road-related landslide

Direct delivery of road-generated sediment into Clean Water Act-protected streams

Roads permanently affect runoff, revegetation, erosion and sedimentation, routing of leached nutrients, pesticides and other contaminants to streams
Watershed-level hydrologic effects of large-scale clearcut logging

- Study suggests streamflows are dramatically across the region due to extensive logging and vegetative regrowth in plantations after logging.

- Logged watersheds show no sign of recovery from prolonged depletion (of streamflows (circa 50%) in watersheds logged 40-50 years ago, compared to unlogged watersheds.

89% of all listed waterbodies are affected by private forestland management on the Mid Coast

Siletz-Yaquina:
• 62% of temperature miles on private forests
• 75% sediment Impaired miles on private forests

Alsea: 49% of temperature miles on private forests

Siuslaw: 65% of temperature miles on private forests

*DEQ, March 2002 Analysis*
Public Water System (PWS) Source Areas in Oregon’s Coast Range

- Primarily forested with some agriculture and rural residential use in lower portions
- Best water quality for drinking comes from forested lands
- Areas of concern for source water are turbidity/sediment, toxic compounds, algal blooms, nutrients.
- Finished water is regulated by the Safe Drinking Water Act
- Source water protection is regulated by the Clean Water Act
Coastal Drinking Water Source Areas Dominated by Private Forestland

**Appendix 3: Coastal Watershed Land Ownership Data Summary**

**North Coast**
- Wickiup
- Astoria
- Youngs River L&C WD
- Warrenton
- Seaside
- Cannon Beach
- Arch Cape WD
- Manzanita
- Nehalem
- Rockaway Beach
- Oceanside
- Netarts
- Tillamook
- Beaver
- Tierra Del Mar
- Neskonw
- Timber WA
- Berndt Creek Water
- Vernonia
- Fishhawk Lk Rec Club

**Mid Coast**
- Panther Creek WD
- Lincoln City
- Kernville Glendenen...
- Depoe Bay
- Johnson Creek Wtr....
- Beverly Beach
- Newport (Big Cr.)
- Siletz (Tangerman)
- Toledo (Mill)
- Newport, Siletz,...
- Bay Hills
- Waldport
- SW Lincoln Co. WD
- Yachts
- Heceta WD
- Mapleton WD
- Alderwood WDC
- South Coast WD

**South Coast**
- Reedsport
- Lakeside WD
- Coos Bay/North...
- Garden Bay/Weiss Valley WA
- Weiss Estates
- Bandon
- Coquille
- Myrtle Point
- Powers
- Langlois WD
- Port Orford
- Rainbow Rock...
- Rainbow Rock...

Land use in each source area is a key factor for evaluating potential risk to the drinking water supply. Overall, land ownership in coastal public water system source areas is 48% private industrial forest land, 28% federal ownership (USFS or BLM), 13% private ownership, 6% agricultural land use, and 5% other land uses such as state forest, local government, tribal lands, and water.
ESA Threatened Oregon Coast Coho

Federal coho recovery plan identifies need to change nonfederal forest practices

31% of the Oregon Coastal Coho ESU is on private land managed for timber harvest
Recovery Plan for Lower Columbia River Coho Salmon, Lower Columbia River Chinook Salmon, Columbia River Chum Salmon and Lower Columbia River Steelhead (NMFS, 2013):

- Primary limiting factors for Lower Columbia Coho and Chinook include “[d]egraded riparian conditions in tributaries,” “sediment conditions in the estuary” and “impaired side channel and wetland conditions in tributaries” are listed as primary limiting factors for all Coho stocks and some Cascade stratum Chinook.

Lower Columbia Salmon and Steelhead Recovery Plan (ODFW 2010): Forest practices effects:

- reduced interception and infiltration of precipitation on uplands, affecting water storage in the soil and delivery to streams. “Many stream systems now exhibit higher peak flows and lower base flows than they did historically.”

- “have particularly impacted habitat for coho winter parr in the Youngs Bay and Big Creek watersheds, [which] contain a large amount of private timber land that has been extensively harvested.”
Impediments to Change
Obstacle 1: Unequal Relationship Between EQC and BOF

- Cooperative relationship between the BOF and EQC for water quality protection on forestlands

- EQC has primary responsibility for complying with the mandates of the federal Clean Water Act

- BOF has exclusive responsibility for regulating forest practices – **but no DEQ concurrence required**

- Processes exist for each body to consider the other’s concerns – **but they are never used**
Obstacle 2

*Oregon Forest Practices Act protects the status quo from administrative rule changes*

- Not specific enough on minimum protections needed for streams, wetlands and lakes ("outcome based")
- Vague relationship between "full compliance" with clean water standards and "maximum extent practicable"
- Findings requirements, (e.g. "degradation" "proportionality" and "least burdensome" reduces discretion to use low risk approach
- "Shield law" protects landowners unless EQC acts to prove harm
Too much wiggle room?

Board’s Responsibility and Authority – Water Quality Regulation

• The FPA requires the Board to
  … establish best management practices and other rules applying to forest practices as necessary to insure that to the maximum extent practicable nonpoint source discharges of pollutants resulting from forest operations on forestlands do not impair the achievement and maintenance of water quality standards established by the Environmental Quality Commission for the waters of the state (ORS 527.765)
“Shield Law” protects industry; EQC has not acted enforce standards

EQC could petition the Board of Forestry under ORS 527.765 (3)(d). Board review required.

If EQC identifies significant damage to protected uses is occurring, new rules must be adopted "as quickly as practicable” or within 2 years.

If the Board does not act within 2 years the "BMP shield law" lapses, and enforcement against operators violating water quality standards will be allowed. ORS 527.770.

Board’s Water Quality Regulatory Authority

- FPA provides that operations conducted in accordance with BMPs shall not be considered in violation of any water quality standards (BMP Shield ORS 527.770)
- The forestry exemption, BMP rules, and BMP shield, are narrowly drawn. Apart from these provisions, the EQC retains full enforcement authority.
Obstacle 3

Endangered Species Act does not drive logging standards

– No formal state policy to provide ESA compliance. Including avoiding “take” of listed species
– State ESA liability not conceded by the State of Oregon
– ESA sufficiency would require stronger stream protection circa Washington standards
– Lack of enforcement plays a role
Obstacle 4

Legislative Underfunding of ODF and DEQ

– Monitoring and evaluation programs are underfunded at both agencies;

– Yet, monitoring needed for a rule change – “research” & “monitoring evidence” required to support a resource degradation finding under ORS 527.765.

– DEQ nonpoint source pollution program de-prioritized over point-source permitting
Obstacle 5

Measure 37/49 compensation requirement effectively ties all rule changes to water quality standards

EXCEPTIONS TO COMPENSATION

– Land use regulations for the protection of public health and safety;
– To the extent the land use regulations are required to comply with federal law;
– Where the primary purpose of the farming or forest practice regulation is the protection of human health and safety.
– Where the public entity has no discretion under federal law to decline to enact the regulation.
Obstacle 6

Influence of the timber industry

Oregon lawmakers ranked first in average contributions from the timber industry

Actual conflicts of interest allowed on regulatory Board
   - Up to three members on Board of Forestry may have direct conflicts of interest

Tax-funded Public Relations Machine:
   - Oregon Forest Resources Institute spends millions in advertising with a Portland-based public relations firm.

Source: The Oregonian
What can be done?
Harness Key Drivers for Change

- Science – climate change
- State Law – mandatory duties
- Federal Laws & Oversight
- BOF changes
- EQC membership
Actions Needed

***Pressure the Current System to Work Better:**

- Ask the Governor to protect the public’s water by supporting new logging limits and eliminating conflicts of interest on the Board of Forestry
- Demand the Board of Forestry to make the rule changes needed to meet water quality and public welfare goals
- Demand the Environmental Quality Commission to provide stronger oversight of the Board of Forestry, including rule change petitions

***Change the System:**

- Ask legislators to revise forest practices laws to require stronger protection for streams, lakes and wetlands to meet federal law and prepare for climate change
- Adequately fund DEQ and ODF to do their jobs and increase public accountability
- Shift industry public relations money to conservation programs for small landowners
“... all members have been appointed to the board to serve the public at large. The concerns and points of view of all interested parties must be represented and considered, but ultimately, the primary responsibility of every board member is to protect the health, safety and welfare of the general public. . . you were not appointed to serve only as the representative of a specific group. When the group’s interest conflicts with that of the general public, your primary responsibility is to the public. All board members must work for the benefit of the public first, with the good of any particular profession, industry or special interest group taking a secondary position.” (emphasis added).

ORS 526.009 (4) No more than three members of the board may derive any significant portion of their income directly from persons or organizations that are subject to regulation under [the Oregon Forest Practices Act].
Environmental Quality Commission

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Oregon Stream Protection Coalition

• Audubon Society of Portland
• Audubon Society of Lincoln City
• Cascadia Wildlands
• Center for Biological Diversity
• Coast Range Association
• Defenders of Wildlife
• Hells Canyon Council
• Institute for Fisheries Resources
• KS Wild
• McKenzie Flyfishers
• Native Fish Society
• Northwest Environmental Advocates
• Northwest Guides and Anglers
• Northwest Sportfishing Industry Association
• Oregon Wild
• Pacific Coast Federation of Fishermen’s Associations
• Pacific Rivers
• Rogue Riverkeeper
• Salem Audubon
• Sierra Club
• The Conservation Angler
• The Wetlands Conservancy
• Umpqua Watersheds
• Washington Forest Law Center
• WaterWatch of Oregon
• Wild Earth Guardians
• Wild Salmon Center

MISSION:
To educate policymakers and the public about the need for stronger stream protection rules on Oregon’s private forestlands

SHARED POLICY GOAL:
Forest practices regulations and associated landowner programs that provide Oregonians with reasonable assurance that water quality standards are or will be met and that recovery of native aquatic species is not impaired by forest practices activities on private forestlands.
OSPC Projects

Citizen Petition for Rules to Protect Resource Sites for Coho Salmon under the Oregon Forest Practices Act (April 2019)

Photo Courtesy of Robin Loznak
OSPC Projects

Examples of Science and Technical Input to ODF

• Compliance monitoring statistical methods
• Evaluating approvals of Tethered Logging Equipment on High Landslide Hazard Locations near stream channels
• Are “Debris Torrent Streams” really being identified on private lands? (We know they are not being protected)