

**OAR Revision Initiative Meeting – Draft Work Product**

(April 5, 2022)

Proposed Concepts for Maintenance Triggers at AO's (Dams and Diversions):

**ORS 509.585(2)**

(2) Except as otherwise provided by this section or ORS 509.645, a person owning or operating an artificial obstruction **may not construct or maintain any artificial obstruction** across any waters of this state that are inhabited, or historically inhabited, by native migratory fish without providing passage for native migratory fish.

**"Maintain" is presently undefined in fish passage statutes and rules.**

"Construction" is defined in **ORS 509.580 (2)**

(2) "Construction" means:

- (a) Original construction;
- (b) Major replacement;
- (c) Structural modifications that increase storage or diversion capacity; or
- (d) For purposes of culverts, installation or replacement of a roadbed or culvert.

**Definition of "Maintain":**

Maintain (from Oxford Online Dictionary)

*verb*

1. cause or enable (a condition or state of affairs) to continue.  
"the need to maintain close links between industry and schools"
2. provide with necessities for life or existence.  
"the allowance covers the basic costs of maintaining a child"

**Definition of maintain (Merriam Webster Online Dictionary)**

**transitive verb**

**1:** to keep in an existing state (as of repair, efficiency, or validity) : preserve from failure or decline *maintain* machinery

**2:** to sustain against opposition or danger : uphold and defend *maintain* a position

**3:** to continue or persevere in : CARRY ON, KEEP UP couldn't *maintain* his composure

**4a:** to support or provide for has a family to *maintain*

**b:** SUSTAIN enough food to *maintain* life

**5:** to affirm in or as if in argument : ASSERT *maintained* that the earth is flat

**New Proposed Definition for “Maintain” OAR 635-412-0005**

**(32) “Maintain” means to keep, repair or restore an artificial obstruction in or to a more functional state or to preserve an artificial obstruction from failure or decline.**

**(a) For dams and diversions:**

- a. Cumulatively through time makes significant repairs, patches, or modifications to over 30% of the linear length (measured perpendicular to stream flow) of an existing dam or diversion as measured within the channel; or**
- b. Cumulatively through time makes replacements, repairs, patches, or modifications to an existing dam or diversion that are different than the original configuration and which reduce any level of fish passage for native migratory fish with current access, as determined by the Department.**

These proposed definitions are synonymous with culvert triggers that presently exist in OAR (635-412-0035(9)(d)(B)(iii) and (vi).