

ODFW Draft Proposals for Definitions OAR 635-412-0005

6-29-2021 DRAFT

Italicized text indicates new propose language.

Strikethrough red text indicates text to be removed.

Proposed New Definition:

“Abandonment” means to surrender, decommission, no longer use for an authorized purpose or give up control or maintenance of an artificial obstruction.

Define Maintenance?

Revision to Existing:

(Lines 4-5) Active Channel Width (stream settings)

(2) "Active channel width" means the *naturally occurring* stream width between the ordinary high water lines, or at the channel bankfull elevation if the ordinary high water lines are indeterminate. *In bays and estuaries, active channel width means the summation of the active channel widths of all freshwater streams entering the bay or estuary upstream of the artificial obstruction or the stream width measured between the mean high tide elevation.*

Proposed New Definition: (for purposes of fish passage exemptions)

“No Appreciable Benefit” means habitat conditions associated with an AO where no usable or biologically meaningful habitat exists that supports the life-cycle requirements (rearing, foraging, or spawning) of native migratory fish species and based on present or foreseeable future conditions.

Revision to Existing:

(Lines 6-8) (3) "Artificial obstruction"

Option 1

(Lines 6-8) (3) "Artificial obstruction" means any *permanent or non-permanent* dam, diversion, dike, berm, levee, tide or flood gate, road, culvert or other human-made device placed in the waters of this state that has the potential to ~~precludes~~ delay or prevents the migration of native migratory fish.

Option 2

"Artificial obstruction" means any artificial structure that crosses a stream, bay, or estuary and has some element within or below the channel including but not limiting to the following: dam, water diversion, dike, berm, levee, tide or flood gate, road, culvert or other human-made device placed in the waters of this state that has the potential to delay or prevent the migration of native migratory fish.

Revision to Existing:

Lines 9-11 (4) "Attraction flow"

(4) "Attraction flow" means the flow of water that emanates from or near a fishway entrance in sufficient quantity, velocity, and location to attract upstream migrants into the fishway, which can consist of gravity flow from the fish ladder and auxiliary water system flow added in or near the ~~lower ladder~~ fishway entrance.

Revision to Existing:

Channel

Lines 16-17 (7) "Channel" means a *perennial or intermittent* waterway that periodically or continuously contains moving waters of this state and has a definite bed and banks that serve to confine the water.

Revision to Existing:

Construction: Lines 19-56

Dams:

Lines 22 (A) for dams and diversions, *cumulative* excavation or replacement of 30 percent by structure volume of the dam *or diversion*, including periodic or seasonal replacements, unless:

Tide and Flood Gates:

Lines 27 (i) Cumulative replacement of over 50 percent of the gate material, *including hinges and the gate itself if detached*; or

(iii) *For tide or flood gate structures physically attached or connected to a culvert, bridge or other hydraulic conveyance structure, major replacement of either structure requires passage also be addressed at the adjoining structure.*

Revision to Existing: (to be added to Fundamental Change in Permit Status to address Dam Safety lines 92-96)

Lines 92-96 (25) "Fundamental change in permit status" means a change in regulatory approval for the operation of an artificial obstruction where the regulatory agency has discretion to impose additional conditions on the applicant, including but not limited to licensing, relicensing, reauthorization or the granting of new water rights, but not including water right transfers or routine maintenance permits unless they involve construction or abandonment of an artificial obstruction, *or are changes required by Federal or State dam safety jurisdiction to address public safety.*

Proposed New Definition: (to be inserted after line 167 of existing rules)

"Structural Volume" means volumetric calculation of an existing dam measured within a channel.

Proposed New Definition: (to be inserted after line 167 of existing rules)

"Trigger Event" means activities (construction, abandonment, or a fundamental change in permit status) associated with or at any artificial obstruction that invoke the state's fish passage authority. Trigger events are determined independent of ownership if multiple owners own or operate an artificial obstruction that are structurally or physically connected.