

ODFW Draft Proposals for Definitions OAR 635-412-0005

9-28-2021 **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 cumulative stream width(s) between the ordinary high water lines, or at the channel bankfull elevation if the ordinary high water lines are indeterminate.*

Definition for tidal areas. (address in guidance & not rule from 7-13-2021 mtg.)

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 that accessible fish habitat in the reach upstream **or downstream** of the artificial obstruction does not currently provide and, with best professional judgement, will not foreseeably provide within the seven year duration of a fish passage exemption, habitat of the type, duration, frequency, quality, and quantity needed to support one or more self-sustaining, healthy populations of one or more life history stages of those native migratory fish that are present **upstream or** downstream of the artificial obstruction at the time of the exemption request.*

Revision to Existing:

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

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.

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 (from DSL Definition)

(7) "Channel" means that portion of a natural (perennial or intermittent stream) or human made (e.g., drainage ditch) waterway that periodically or continuously contains moving water and has a defined bed and bank that serve to confine the water.

(Start 8-10-2021 Meeting)

Revisions to Existing:

Construction: Lines 19-56

Dams:

Lines 22 (A) for dams and diversions, *cumulatively through time* excavates~~ion~~ or replaces~~ment of~~ 30 percent by structural volume of the dam, including periodic or seasonal replacements, unless:

How and who would track cumulative activities? Who decides (task force) might task force have a role in project specific information?

(iii) or are changes required by Federal or State dam safety jurisdiction and do not increase operating, diversion or storage capacity.

Consider Pump-back Storage Actions as an additional exemption (iv) (Albertelli provided draft language) to promote clean energy alternatives.

Tide and Flood Gates:

Lines 27 (i) *Cumulatively through time replacement of over 50 percent of the structural volume of the gate material, including hinges and the gate itself if detached; or*

Proposed New Definition: Tide or Flood Gates After Lines 29

(iii) Makes replacements, repairs, patches, or modifications to an existing tide or flood gate 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, ~~to the tide or flood gate.~~

(iv) 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.

Proposed Definition Revisions for Culverts: (Lines 30 – 54)

Culverts:

Lines 30 (C) For dikes, berms, levees, roads, *bridges* or other artificial obstructions that segment estuaries, floodplains, or wetlands:

Lines 39 (d) For purposes of culverts *and bridges*, installation or replacement of a roadbed, culvert *or bridge* is further defined as:

Line 40 (A) Roadbed installation or replacement at culverts *or bridges* includes any activity that:

Line 41 (i) Creates a road *or bridge* which crosses a channel;

(ii) Widens a roadfill footprint within a channel; or

Line 45 (B) Culvert *or bridge* installation or replacement includes any activity that:

Line 46 (i) Installs or constructs a new *road, culvert, bridge, overflow pipe, apron, or wingwall* within or under a channel;

Line 49 (iii) Cumulatively through time makes repairs or patches to over 50 percent of the linear length of a culvert *or over 50 percent of the structural volume of a bridge or its elements except when this volume is exclusively composed of the traveling surface of the bridge deck*;

Line 51 (iv) Replaces any part of a culvert, except ends which become misaligned, *detached* or eroded and which are replaced to their original configuration;

Line 54 (vi) Makes replacements, repairs, patches, or modifications to an existing culvert, *or bridge* 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, to the culvert *or bridge*.

(Start Meeting 8-24-2021)

Fishway triggers & additional discussion

Proposed New Definitions specific to fishways and passage triggers. Fishway trigger definitions presently do not exist.

Consider revisions to be inserted after line 56 (after culvert triggers)

(e) For purposes of fishways, the installation, modification or replacement of a fishway is further defined as:

(A) Creates a new or replacement fishway at an artificial obstruction;

(B) Cumulatively through time makes repairs or patches to over 50 percent of the structural volume of the fishway or its elements.

May consider not including these proposed fishway rule changes, as they may conflict with statutes. Need to discuss with rules sub-committee. (Remove from proposed changes 8-24-2021).

Lines 61-62 Revision of Definition of Design Streamflow Range

(13) "Design streamflow range" means the range of flows within a stream, **bracketed between by** the Low Fish Passage Design Flow and the High Fish Passage Design Flow, for which a fishway *or other structure* shall provide fish passage.

Lines 80-83 Revision of Definition of Fishway

(20) "Fishway" means the set of human-built and/or operated facilities, structures, devices, and measures that together constitute, are critical to the success of, and were created for the sole purpose of providing upstream *or downstream* fish passage at artificial or natural obstructions which create a discontinuity between upstream and downstream water or bed surface elevations.

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 *permitting*, 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. and do not increase operating, diversion or storage capacity.*

Revision to Existing Definition: (32) Native Migratory Fish - (lines 109-144)

(32) "Native migratory fish" means native fish (as defined under OAR 635-007-0501) *indigenous to Oregon that are naturally or hatchery produced* that migrate for their life cycle needs. These fish include all sub-species and life history patterns of the following species listed by scientific name in use as of 2005~~22~~. Common names are provided for reference but are not intended to be a complete listing of common names, sub-species, or life history patterns for each species.

- (a) *Acipenser medirostris* -- Green ~~S~~sturgeon;
- (b) *Acipenser transmontanus* -- White ~~S~~sturgeon;
- (c) *Amphistichus rhodoterus* -- Redtail surfperch;
- (X) *Catostomus bondi* -- *Cascadia sucker*
- (d) *Catostomus columbianus* -- Bridgelip sucker;
- (e) ~~*Catostomus luxatus*~~ *Deltistes luxatus* -- Lost River sucker;
- (f) *Catostomus macrocheilus* -- Largescale sucker;
- (g) *Catostomus microps* -- Modoc sucker;
- (h) *Catostomus occidentalis* -- Goose Lake sucker;
- (i) *Catostomus platyrhynchus* -- Mountain sucker;
- (j) *Catostomus rimiculus* -- Klamath smallscale sucker;
- (k) *Catostomus snyderi* -- Klamath largescale sucker;
- (l) *Catostomus tahoensis* -- Tahoe sucker;
- (X) *Catostomus tsiltcoosensis* -- *Tyee sucker*;
- (m) *Catostomus warnerensis* -- Warner sucker;
- (n) *Chasmistes brevirostris* -- Shortnose sucker;
- (o) *Entosphenus folletti* -- *Northern California brook lamprey*;
- (p) *Entosphenus lethophagus* -- *Pit-Klamath brook lamprey*;
- (q) *Entosphenus minimus* -- *Miller Lake lamprey*;
- (r) *Entosphenus similis* -- *Klamath River lamprey*;
- (s) *Entosphenus tridentatus* -- *Pacific lamprey*;
- (t) *Hypomesus pretiosus* -- Surf smelt;

- (u) *Lampetra ayresii* -- western River lamprey;
- (v) *Lampetra pacifica* -- Pacific brook lamprey;
- (w) *Lampetra richardsoni* -- western brook lamprey;
- ~~(x) (q) *Lampetra lethophaga* -- Pit-Klamath lamprey;~~
- ~~(r) *Lampetra minima* -- Miller Lake lamprey;~~
- ~~(s) *Lampetra similes* -- Klamath River lamprey;~~
- ~~(t) *Lampetra tridentate* -- Pacific lamprey;~~
- (x) *Oncorhynchus clarkii* -- Alvord, Coastal, Lahontan and West Slope cutthroat trout;
- (y) *Oncorhynchus gorbuscha* -- Pink salmon;
- (z) *Oncorhynchus keta* -- Chum salmon;
- (aa) *Oncorhynchus kisutch* -- Coho salmon;
- (bb) *Oncorhynchus mykiss* -- Steelhead, Rainbow and Redband trout;
- (cc) *Oncorhynchus nerka* -- Sockeye/Kokanee salmon;
- (dd) *Oncorhynchus tshawytscha* -- Chinook salmon;
- (ee) *Prosopium williamsoni* -- Mountain whitefish;
- (ff) *Ptychocheilus oregonensis* -- Northern pikeminnow;
- (gg) *Ptychocheilus umpquae* -- Umpqua pikeminnow;
- (X) *Ptychocheilus sp.* -- Siuslaw pikeminnow;
- (hh) *Salvelinus confluentus* -- Bull trout;
- (ii) *Spirinchus thaleichthys* -- Longfin smelt;
- (jj) *Thaleichthys pacificus* -- Eulachon

Still working on these species from ODFW sub-committee:

- Oregon Chub
- Umpqua Chub
- Alvord Chub
- Peamouth Chub

Start 9-28-2021 Meeting:

Net Benefit Definition (lines 145-147)

Defined in Statute (ORS 509.580(7)).

Revision to Existing Definition: (38) "Roadfill Footprint" lines 157 - 159)

(38) "Roadfill footprint" means the area occupied by soil, aggregate, and/or other materials or structures necessary to support a road, including, but not limited to, appurtenant features such as wing walls, retaining walls, headwalls, or *scour protection countermeasures*.

Proposed New Definition: ("Roughened Channel" to be inserted after line 159 of existing rules)

(X) "Roughened channel" means a fishway which encompasses the entire stream channel and is over-steepened relative to the long-channel streambed profile, including but not limited to nature-like, rock, rock ramp, or engineered-streambed fishways, and provides volitional access to all native migratory fish.

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

"Structural Volume" means volumetric calculation of an existing dam or other AO or its components measured within beds and banks of waters of the state.

Horizontal and vertical prism with beds and banks.

Is structural volume the appropriate metric?

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

(X) "Trash Rack" means a human built or placed structure, device, or measure used to prevent unwanted materials from entering a fishway, culvert, bridge, water diversion or other structure.

Proposed New Definition: ("Trigger Event" 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.