

Enrolled
House Bill 3185

Sponsored by Representatives MCLAIN, SMITH DB; Representative HOLVEY

CHAPTER

AN ACT

Relating to the protection of undisturbed wetlands during agricultural channel maintenance; amending ORS 196.909 and 196.913.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 196.909 is amended to read:

196.909. As used in ORS 196.906 to 196.919:

(1) "Adaptive management" has the meaning given that term in ORS 541.890.

(2) "Channel" means the defined bed and bank that serve to confine where a stream of water runs.

(3) "Dry" means:

(a) Channel conditions where no flowing or standing water is present, other than small quantities of water that may occur in low areas of the channel as a direct result of active maintenance activities; and

(b) For the channel of a waterway that is subject to tidal influence, the existence of channel conditions described in paragraph (a) of this subsection during all tidal conditions.

(4) "Maintenance" means channel upkeep and removal from the channel of sediment, vegetation or debris, in the minimum amount necessary to restore the serviceability of the channel for facilitating drainage.

(5) "Traditionally maintained channel" means the channel of a segment, set of segments or the entirety of a drainage ditch, intermittent stream or perennial stream that:

(a) Has been routinely subject to maintenance to facilitate drainage related to farming or ranching operations; and

(b) Has been serviceable for facilitating drainage within the past five years.

(6) "Undisturbed wetland" means a wetland that has not been materially affected by human activity and as further defined by the Department of State Lands by rule.

SECTION 2. ORS 196.913 is amended to read:

196.913. (1) Activities for conducting maintenance of a traditionally maintained channel pursuant to a notice submitted under ORS 196.911 may not result in:

(a) The removal of more than 3,000 cubic yards per linear mile of traditionally maintained channel over the course of the five-year period for which the notice is valid;

(b) The spreading of material in:

(A) A wetland or converted wetland pursuant to subsection (2)(k) of this section in a volume greater than 3,000 cubic yards per linear mile of traditionally maintained channel over the course of the five-year period for which the notice is valid; **or**

(B) An undisturbed wetland;

(c) The removal or fill of material, or any other maintenance, occurring in a channel that has been designated by rule and mapped by the Department of State Lands as essential indigenous anadromous salmonid habitat as defined in ORS 196.810; or

(d) The enlargement of a water right or in otherwise causing injury to another existing water right.

(2) In addition to complying with all applicable laws related to fish passage as described in ORS 509.585 and all applicable laws related to water quality, maintenance activities conducted pursuant to a notice submitted under ORS 196.911 must comply with the following conditions:

(a) A traditionally maintained channel must be dry before the commencement of any removal activities in the channel. If there is standing water in the channel that is due to a rain event and not indicative of a perennial stream, a person must request a variance under ORS 196.915 (5) prior to initiation of maintenance activities.

(b) A person must complete removal activities during the applicable regional dry maintenance time period established by the State Department of Fish and Wildlife for the region where the traditionally maintained channel is located.

(c) The body of motorized equipment used to conduct removal or fill activities must be operated from the bank of the channel, with only the bucket or portion of the motorized equipment that actively removes material operating within the channel.

(d) The bottom of the channel bed must be excavated on a smooth grade, in a manner that avoids creating depressions or grade changes within the channel.

(e) Maintenance activities must be conducted in a manner that minimizes new erosion into the channel.

(f) Removal of woody vegetation must be limited to the minimum amount needed to complete the maintenance activity.

(g) Revegetation must occur for any riparian areas that serve as a buffer adjacent to the channel and that experience vegetation loss as a result of the maintenance activity. This condition is satisfied whether revegetation occurs naturally or after seeding.

(h) Work related to the maintenance activity must be conducted only from one bank of the channel, on either the north or east side, when practicable, to minimize the ecological impacts of the maintenance activity.

(i) Motorized equipment used for maintenance activities must utilize existing crossings, if crossing the channel is necessary to complete maintenance activities.

(j) Maintenance activities must begin at the most upstream location of the traditionally maintained channel and progress downstream.

(k) Material that is removed from the channel may be temporarily placed in a wetland or converted wetland to dry, provided that the material must, no later than one year after the date that the maintenance activity was completed, be moved to uplands or be spread in a thin layer outside the riparian area that serves as a buffer adjacent to the channel. Fill activities related to the maintenance of a traditionally maintained channel must be limited to fill pursuant to this paragraph.

(L) Maintenance activities may not result in converting wetlands to uplands and may not materially change the depth or functionality of a wetland.

(m) Impacts to wetlands by the maintenance activities must be temporary and must be limited to impacts related to accessing the site to conduct removal activities in the channel, the removal of material and the disposal of removed material.

(n) Maintenance activities may not result in a change in location of a channel through the digging of a new channel and the diversion of the flow from the old channel into the new channel or in increasing the width or depth of the channel beyond the width or depth to which the channel has routinely been maintained to facilitate drainage.

(o) The maintenance activities must not alter any existing inlet or outlet connections with other waterways.

Passed by House April 27, 2021

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 28, 2021

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

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Shemia Fagan, Secretary of State