

## PROPOSED REVISIONS TO LIHI DEFINITIONS – PUBLIC

*This document presents in “track changes” the differences between the existing and proposed LIHI definitions.*

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Defined terms are capitalized throughout and italicized when they are first used in the questionnaire.

“Applicant:” The party applying for Low Impact Hydropower Certification. This will usually be, but need not be, the Facility owner or operator.

“Compliance:” A Facility is in Compliance with a requirement or recommendation if it complies at the time the questionnaire is filled out and has not had any material violations or formal notices of violation issued by a state or federal agency within the last year. If the Facility has been in violation of a requirement or recommendation but the Applicant does not believe the violation is material, the violation must be disclosed and its materiality explained in the application.

“Conventional Hydropower:” Conventional hydropower Facilities use one-way water flow to generate electricity. There are two categories of conventional plants, run-of-river and store and release. Not included in the definition of Conventional Hydropower are pump storage, tidal, or damless technologies.

“Cultural Resource:” Material remains of past human life or activities that are of significant cultural or archaeological interest. Of cultural or archaeological interest means capable of providing scientific or humanistic understandings of past human behaviors, cultural adaptation, and related topics through the application of scientific or scholarly techniques such as controlled observation, contextual measurement controlled collection, analysis, interpretation and explanation. This term includes, but is not limited to, objects made or used by humans, such as pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, or any portion or piece of the foregoing items, and the physical site, location or context in which they are found, or human skeletal materials or graves.

“Cumulative Impacts:” The total positive and negative impacts of a Facility on all relevant resources within appropriate spatial and temporal boundaries.

“Facility:” A hydropower dam and associated Facility works, with one power generation source (*i.e.*, powerhouse). If a licensed hydropower Facility contains multiple dams and power sources, each power source shall be considered a separate Facility and shall complete this form separately. For instance if a Federal Energy Regulatory Commission (“FERC”) license has four dams and four powerhouses, there are four Facilities. If the FERC license has two dams but only one powerhouse there is one Facility. If a single dam has multiple powerhouses, there is one Facility if the powerhouses are operated together as a unit. Resources jointly held by multiple Facilities may be allocated among Facilities within the same watershed, and consolidated applications may be submitted for multiple Facilities within a watershed. However, the owner/operator must document that the jointly held resources have not been allocated for the certification of another Facility.

~~“Mandatory Fish Passage Prescription:” Upstream and downstream fish passage requirements issued by Resource Agencies that must be included in a FERC license or exemption or otherwise must be complied with by the Facility owner/operator, usually pursuant to Section 18 of the Federal Power Act, or, if applicable, Section 4(e) of the Federal Power Act, Section 401 of the Clean Water Act, the Endangered Species Act, or other relevant state or federal provisions.~~

“Fish Passage:” Safe, timely, and effective upstream and downstream passage for fish at the dam(s) and through the Facility area. Includes but is not limited to construction, operation, and maintenance

of a fish lift, attraction flows, tailrace barrier, and downstream migrant facilities. For the purposes of these criteria, Resource Agency Recommendations recommendations included in may include an Endangered Species Act Biological Opinion or Recovery Plan are considered Mandatory Fish Plan.

“Hydrologically and Operationally Connected:” LIHI deems Facilities to be Hydrologically or Operationally Connected if the Applicant has direct or indirect ownership of upstream storage or is a party to headwater storage agreements and shares associated costs with another entity, or other contractual arrangement.

“Incremental Hydropower:” Generating capacity authorized (e.g. licensed by the Federal Energy Regulatory Commission) to be added to an existing non-hydropower development such as a dam, diversion, or impoundment, or additional hydropower added to an existing powerhouse (e.g., via additional or upgraded turbines) on or after January 1, 1990.

Passage Prescriptions. If a single Resource Agency has made differing prescriptions, the most recent prescription shall apply. If different Resource Agencies have made differing prescriptions, the most environmentally stringent prescription shall apply. For example, if the National Marine Fisheries Service issues a prescription requiring fish ladders with 99% fish passage survival, the US Fish and Wildlife Service issues a fish ladder prescription with 90% survival, and then the National Marine Fisheries Service revises its prescription to require 94% survival, to qualify as Low Impact Hydropower, the fish ladder at the Facility must have 94% survival.

“Migratory Fish:” Migratory Fish may include but are not limited to anadromous, catadromous, potadromous, or riverine fish species that currently move through the Facility Area or an affected reach, or for which there is evidence of historical movement through the Facility Area or an affected reach.

“Native American Tribe:” Federally-recognized Native American tribes which are affected by the Facility and with governing authority over natural resources reserved by or protected in treaties, executive orders or federal statutes.

“Reservoir:” A reservoir is the entire waterbody whose natural water levels have been altered due to impoundment behind a man-made alteration or structure to a river, lake or pond.

“Resource Agency:” A state, federal or tribal agency whose mission includes protecting fish and wildlife, water quality and/or administering reservations held in the public trust. This includes the US Fish and Wildlife Service, the National Park Service, the US Bureau of Indian Affairs, the US Bureau of Land Management, the National Marine Fisheries Service, the US Forest Service, the US Environmental Protection Agency, the Northwest Power Planning Council, Native American Tribes, the state department of environmental protection, the state departments of natural resources and fish and game, and any other similar agency. “Resource Agency” does not include the Federal Energy Regulatory Commission, nor does it include the Tennessee Valley Authority, the Bonneville Power Administration, the US Army Corps of Engineers, or the Bureau of Reclamation in their capacity as owner or operator of a Facility.

“Resource Agency Letter:” In order to document compliance with several of the criteria, the Applicant is required to seek a letter from the Resource Agency official authorized to make recommendations for the Resource Agency in other comparable circumstances, such as in FERC proceedings. This requirement to seek a letter from the Resource Agency provides an opportunity for the Applicant to expedite the application review process and ensures that all relevant Resource Agency officials are notified of the impending application.

“Resource Agency Recommendation” (or “Recommendation”): Recommendation or conditions for operation, maintenance, construction of structures of the Facility submitted by Resource Agencies for the Facility. Resource Agency Recommendations considered in Low Impact Hydropower certifications shall be:

- a) *Issued pursuant to a proceeding.* Valid Resource Agency Recommendations are those issued pursuant to a legal or administrative proceeding or other legally enforceable agreements between a Resource Agency and the dam owner/operator. The proceeding anticipated to apply for most privately-owned Facilities is a FERC licensing or exemption proceeding. For a FERC-regulated Facility, these recommendations would include ~~proposed or mandated license conditions~~ prescriptions, conditions, recommendations, or reservations of authority submitted through the FERC licensing or other processes pursuant to Federal Power Act Sections 4(e), 18, 10(a) or 10(j), Clean Water Act Section 401, the Endangered Species Act or other applicable state or federal provisions and included in a license issued by FERC that has been accepted by the applicant. For non FERC-regulated Facilities, the proceedings anticipated to apply include consultation pursuant to the Endangered Species Act, federal or state Clean Water Act proceedings, Northwest Power Act proceedings and other proceedings resulting in a legally enforceable agreement between the Facility owner/operator and a Resource Agency. Resource Agency Recommendations that are subsequently overturned by a legal proceeding cease to be valid for the purposes of certification.
- b) *Recent.* If a single Resource Agency has made multiple recommendations, the most recent recommendation shall apply. This principal also applies when there is a settlement. If a Resource Agency is party to a settlement, or otherwise formally concurs in a settlement, the settlement terms are considered to be the most recent Resource Agency Recommendation for these purposes. If, however, a Resource Agency is not party to a settlement and does not formally concur in the settlement, the most recent recommendation of that Resource Agency, and not the settlement terms, apply for purposes of certification.
- c) *Environmentally Stringent.* The most environmentally stringent recent Resource Agency Recommendation shall apply where different Resource Agencies have made differing recommendations. If a condition in the Facility’s FERC license or exemption (or other operating requirement, if not FERC-licensed) is less environmentally stringent than a Resource Agency Recommendation, the Facility must meet the Resource Agency Recommendation to be certified as Low Impact Hydropower. For example, if the US Fish and Wildlife Service originally recommended a 100 cfs minimum flow, and the State Department of Fish and Game recommended 50 cfs, then the US Fish and Wildlife Service revised its recommendation to 80 cfs, and FERC issued a license with a 40 cfs minimum flow, to qualify as Low Impact Hydropower the Facility must release 80 cfs.
- d) *Resolution of Conflicting Resource Agency Recommendations.* Where there are conflicting Resource Agency Recommendations and the conflict is not resolved by applying the most Recent and most Environmentally Stringent Recommendations, the conflict shall be resolved by applying the Recommendations based upon the health of threatened or endangered biological organisms first, the health of other biological organisms second, Cultural Resources third and recreation fourth, unless there is a statutory mandate to resolve the conflict otherwise. For example, Recommendations designed to protect threatened or endangered species (a Biological Opinion, for instance) would prevail over recommendations regarding recreation. If a conflict still exists among Resource Agency Recommendations, the Governing Board will make a determination which Recommendation shall apply. For guidance regarding conflicts among Resource Agency Recommendations, consult ~~the Administrator~~ LIHI Staff.

-“Riverine Fish:” A fish that spends its entire life cycle in the river, and does not migrate to the ocean. Riverine Fish are often called resident fish.

“Settlement Agreement:” A Settlement Agreement is a legal document binding between signatories to settle disputed legal and factual issues. Settlement Agreements in FERC or other proceedings, where a Resource Agency is party to, or concurs in, the Settlement Agreement, have the effect of becoming the latest Resource Agency Recommendation for that Resource Agency on the topics covered by the settlement, if it can be shown that the Settlement Agreement meets LIHI’s Settlement Agreement criterion.

“Take:” For purposes of impacts to threatened or endangered species, Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct.