

Superseded 7/1/2023

73-29-102 Definitions.

As used in this chapter:

- (1) "Division" means the Division of Wildlife Resources.
- (2) "Floating access" means the right to access public water flowing over private property for floating and fishing while floating upon the water.
- (3) "Impounded wetlands" means a wetland or wetland pond that is formed or the level of which is controlled by a dike, berm, or headgate that retains or manages the flow or depth of water, including connecting channels.
- (4) "Navigable water" means a water course that in its natural state without the aid of artificial means is useful for commerce and has a useful capacity as a public highway of transportation.
- (5) "Private property to which access is restricted" means privately owned real property:
 - (a) that is cultivated land, as defined in Section 23-20-14;
 - (b) that is:
 - (i) properly posted, as defined in Section 23-20-14;
 - (ii) posted as described in Subsection 76-6-206(2)(b)(iii); or
 - (iii) posted as described in Subsection 76-6-206.3(2)(c);
 - (c) that is fenced or enclosed as described in:
 - (i) Subsection 76-6-206(2)(b)(ii); or
 - (ii) Subsection 76-6-206.3(2)(b); or
 - (d) that the owner or a person authorized to act on the owner's behalf has requested a person to leave as provided by:
 - (i) Section 23-20-14;
 - (ii) Subsection 76-6-206(2)(b)(i); or
 - (iii) Subsection 76-6-206.3(2)(a).
- (6) "Public access area" means the limited part of privately owned property that:
 - (a) lies beneath or within three feet of a public water or that is the most direct, least invasive, and closest means of portage around an obstruction in a public water; and
 - (b) is open to public recreational access under Section 73-29-203; and
 - (c) can be accessed from an adjoining public access area or public right-of-way.
- (7) "Public recreational access" means the right to engage in recreational access established in accordance with Section 73-29-203.
- (8)
 - (a) "Public water" means water:
 - (i) described in Section 73-1-1; and
 - (ii) flowing or collecting on the surface:
 - (A) within a natural or realigned channel; or
 - (B) in a natural lake, pond, or reservoir on a natural or realigned channel.
 - (b) "Public water" does not include water flowing or collecting:
 - (i) on impounded wetland;
 - (ii) on a migratory bird production area, as defined in Section 23-28-102;
 - (iii) on private property in a manmade:
 - (A) irrigation canal;
 - (B) irrigation ditch; or
 - (C) impoundment or reservoir constructed outside of a natural or realigned channel; or
 - (iv) on a jurisdictional wetland described in 33 C.F.R. 328.3.
- (9)

- (a) "Recreational access" means to use a public water and to touch a public access area incidental to the use of the public water for:
 - (i) floating;
 - (ii) fishing; or
 - (iii) waterfowl hunting conducted:
 - (A) in compliance with applicable law or rule, including Sections 23-20-8, 73-29-203, and 76-10-508; and
 - (B) so that the individual who engages in the waterfowl hunting shoots a firearm only while within a public access area and no closer than 600 feet of any dwelling.
- (b) "Recreational access" does not include:
 - (i) hunting, except as provided in Subsection (9)(a)(iii);
 - (ii) wading without engaging in activity described in Subsection (9)(a); or
 - (iii) any other activity.