



OREGON ADMINISTRATIVE RULES
OREGON DEPARTMENT OF FISH AND WILDLIFE

DIVISION 100

WILDLIFE DIVERSITY PLAN

635-100-0001

Definition of Terms

As used in the *Wildlife Diversity Plan*:¹

(1) "Self-sustaining" means wildlife species that are naturally reproducing throughout their ranges with no dependency on artificial propagation to sustain natural production over time.

(2) "Endangered" means an animal threatened with extinction within all or a significant portion of its range.

(3) "Threatened" means an animal that could become endangered within the foreseeable future within all or a portion of its range.

(4) "Sensitive" refers to wildlife species, subspecies, or populations that are facing one or more threats to their populations, habitat quantity or habitat quality or that are subject to a decline in number of sufficient magnitude such that they may become eligible for listing on the state Threatened and Endangered Species List

(5) "Wildlife" means fish, shellfish, amphibians, reptiles, feral swine, wild mammals, wild birds, and animals living intertidally on the bottom as defined by ORS 506.011.

¹The *Nongame Wildlife Management Plan* was reviewed and updated as the *Wildlife Diversity Plan* and adopted by the commission on November 17, 1993. The *Wildlife Diversity Plan* was reviewed, updated, and adopted by the commission on January 22, 1999. As noted below in OAR 635-100-0005, only the policy portions of the *Wildlife Diversity Plan* are incorporated here as an administrative rule. Copies of the *Wildlife Diversity Plan* are available through the agency.

Statutory Authority: 496.004, 496.012, 496.171, 496.172, 496.182, 496.192, 496.380, 496.385, 497.298, 497.308, 497.318, 498.026

Stats Implemented: 496.004, 496.012, 496.171, 496.172, 496.182, 496.192, 496.380, 496.385, 497.298, 497.308, 497.318, 498.026

635-100-0005

Wildlife Diversity Plan Content and Purpose

(1) The *Wildlife Diversity Plan* provides the program goal, objectives and strategies to identify and coordinate nongame wildlife management, research and status survey needs, and education and recreation needs related to Oregon's wildlife. The document provides direction to the Oregon Department of Fish and Wildlife in carrying out its mandated responsibilities. The plan is also intended as an informational document to be used in wildlife programs by public agencies and others concerned with the conservation of nongame and other fish and wildlife species. Only the policy portions of the *Wildlife Diversity Plan* are incorporated here by administrative rule, namely the Goal and Objectives.

(2) The remaining portions of the Plan--(Introduction, Strategies, Sub-strategies, Technical Information, Operational Schedule, and Priorities) are technical or related to agency management decisions. Accordingly, those parts may be updated by the commission outside the administrative rule process as new information is developed.

Statutory Authority: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

Stats Implemented: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026



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635-100-0010

Wildlife Diversity Program Goal

It is the goal of the *Wildlife Diversity Program* to maintain Oregon's wildlife diversity by protecting and enhancing populations and habitats of native wildlife at self-sustaining levels throughout natural geographic ranges.

Statutory Authority: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

Stats Implemented: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

635-100-0015

Wildlife Diversity Program Objectives

The objectives of the Wildlife Diversity Program are to:

- (1) Assess, conserve, and enhance wildlife habitats.
- (2) Assess, conserve, and enhance populations of native species at self-sustaining levels throughout their natural geographic ranges.
- (3) Provide recreational, educational, aesthetic, scientific, economic and cultural benefits derived from Oregon's diversity of wildlife.
- (4) Minimize adverse biological, social and economic impacts resulting from interactions between people and wildlife.
- (5) Provide financial and human resources for program planning, administration, implementation, and evaluation.

Statutory Authority: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

Stats Implemented: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

635-100-0030

Five-year Review

The policy portions of the *Wildlife Diversity Plan*, namely the Goal and Objectives, will be updated and reviewed by the Oregon Fish and Wildlife Commission every five years beginning in 1993.

Statutory Authority: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

Stats Implemented: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

635-100-0040

Sensitive Species List

(1) For the purpose of prioritizing conservation actions to prevent species from becoming eligible for listing as threatened or endangered species, the category of sensitive species is established. "Sensitive" refers to wildlife species, subspecies, or populations that are facing one or more threats to their populations, habitat quantity or habitat quality or that are subject to a decline in number of sufficient magnitude such that they may become eligible for listing on the state Threatened and Endangered Species List. The sensitive species list shall be updated by the department every 5 years, distributed to state and federal resource agencies, and made available to any member of the public upon request.

(2) A wildlife species shall qualify for inclusion on the sensitive species list if:

- (a) Its numbers are declining at a rate such that it may become eligible for listing as a threatened species; or
- (b) Its habitat is threatened or declining in quantity or quality such that it may become eligible for listing as a threatened species.

(3) A wildlife species shall qualify for removal from the sensitive species list if:

- (a) Its numbers are not or are no longer declining at a rate such that it may become eligible for listing as a threatened species; and



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(b) Its habitat is not or is no longer threatened or declining in quantity or quality such that it may become eligible for listing as a threatened species.

(4) In making a determination under subsections (2) and (3) of this rule, the Department will consider the factors described in 635-100-0105 subsections (5) and (6).

(5) In addition to the 5-year review, the Department may add a species to or remove a species from the sensitive species list at any time based on new or additional information on species population status, habitat or threats.

(6) Any person may request that a species be included on or removed from the sensitive species list. Any request must be in writing, stating the reasons for the requested action and briefly outlining the status of the species and how its condition meets the criteria enumerated in this rule for inclusion or removal. The department shall review any such request, determine if the species qualifies for the requested action, and shall notify the person making the request of its decision within 90 days of receipt of the request.

Stat. Auth.: ORS 496.004, 496.171, 496.172, 496.182, 496.192 & 498.026

Stats. Implemented: ORS 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

**Threatened and Endangered Species List;
Criteria and Procedures for Listing, Reclassifying and Delisting
Threatened and Endangered Species;
State Agency Cooperation**

635-100-0080

Policy Statement

The commission's long-term goal for species listed as threatened or endangered under the state Endangered Species Act is to manage the species and their habitats so that the status of the species improves to a point where listing is no longer necessary. The commission intends to accomplish this goal through voluntary incentives, encouraging appropriate species management, coordinated planning, habitat protection and restoration, and other means as appropriate, in a manner consistent with the provisions of ORS 496.182(1).

Statutory Authority: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

Stats Implemented: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

635-100-0100

Definition of Terms

As used in OAR 635-100-0100 to 635-100-0130:

(1) "Commission" means the State Fish and Wildlife Commission.

(2) "Conservation" means the use of methods and procedures necessary to bring a species to the point at which the measures provided under ORS 496.171 to 496.182 are no longer necessary. Such methods and procedures include, but are not limited to, activities associated with scientific resource management such as research, census taking, law enforcement, habitat acquisition and maintenance, habitat protection and restoration, propagation and transplantation.

(3) "Department" means the Oregon Department of Fish and Wildlife.

(4) "Director" means the Director of the Oregon Department of Fish and Wildlife.

(5) "Endangered Species" means:

(a) Any native wildlife species determined by the commission to be in danger of extinction throughout any significant portion of its range within the state; or

(b) Any native wildlife species listed as an endangered species pursuant to the federal ESA.

(6) "Federal ESA" means the federal **Endangered Species Act of 1973** (Public Law 93-205, 16 U.S.C. § 1531), as amended.



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- (7) "Federal list" means the list of native wildlife species that have been designated as endangered or threatened under the federal ESA.
- (8) "Native" means a species indigenous to Oregon, not introduced. Indigenous species include species that occur naturally or were extirpated from the state.
- (9) "Person" means natural person, individual, corporation, company, society, association, firm, partnership, cooperative, governmental or political subdivision or agency thereof.
- (10) "Species" means any group or population of wildlife that interbreeds and is substantially reproductively isolated.
- (11) "State List" means the official state list of wildlife species that have been designated as endangered or threatened under the procedures set forth in ORS 496.172 to 496.192 and OAR Chapter 635, Division 100.
- (12) "Substantial scientific evidence" means that quantum of the best available documented information or evidence that a reasonable person would accept as adequate to support a conclusion. This includes information or evidence that may not have been reviewed by a scientific review panel, but that the department considers scientifically reliable.
- (13) "Survival guidelines" means the quantifiable and measurable guidelines that the commission considers necessary to ensure the survival of individual members of the species.
- (14) "Take" means to kill or obtain possession or control of any species on the state list.
- (15) "Threatened species" means:
- Any native wildlife species the commission determines is likely to become an endangered species within the foreseeable future throughout any significant portion of its range within this state; or
 - Any native wildlife species listed as a threatened species pursuant to the federal ESA.
- (16) "Verifiable" means scientific information reviewed by a scientific peer review panel of outside experts who do not otherwise have a vested interest in the process. For purposes of this definition, "vested interest in the process" means that the person reviewing the scientific information does not have a personal economic interest in the commission's decision to list a species. Information that would be considered "verifiable" includes, but is not limited to:
- Articles and information published in peer-reviewed scientific journals, such as the *Journal of Wildlife Management* and *Transactions of the American Fisheries Society*;
 - Information developed by the department, which has been peer reviewed by outside experts (e.g., agency management plans, *Nongame Wildlife Program Technical Reports*);
 - Information developed by federal agencies, which has been peer reviewed (e.g., peer-reviewed agency management plans, final environmental impact statements, adopted recovery plans, interagency technical reports);
 - Peer-reviewed data gathered by the department or others using standard methodologies or protocols.
 - Information developed by the Pacific Northwest Electric Power and Conservation Planning Council or other organizations, which has been peer reviewed.
- (17) "Wildlife" means fish, wild birds, amphibians, reptiles and wild mammals.

Statutory Authority: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

Stats Implemented: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

635-100-0105

Criteria for Listing

(1) The Commission by rule shall list a wildlife species as endangered or threatened on the state list upon a review of documented and verifiable scientific information, if the species meets the criteria in sections (3), (4) and (6) of this rule. The documented and verifiable scientific information shall be related to the species' biological status.

(2) The state list shall include:

(a) All native wildlife species listed as of May 15, 1987, on the federal list of endangered or threatened species. Any native wildlife species appearing on the federal list as a threatened species may be considered for inclusion on the state list as an endangered species or as a threatened species; and



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(b) Any native species determined by the commission to be threatened or endangered, in accordance with these rules.

(3) To list a species as endangered, the commission shall determine that:

(a) The species is native; and

(b) Is in danger of extinction throughout any significant portion of its range within this state.

(4) To list a species as a threatened species, the commission shall determine that:

(a) The species is native; and

(b) Is likely to become an endangered species within the foreseeable future throughout any significant portion of its range within this state.

(5) In making a determination under subsection (3)(b) or (4)(b) of this rule, and OAR 635-100-0111 (Reclassifying Species) and OAR 635-100-0112 (Removing Species from the State List), regarding the range of the species, the commission shall consider:

(a) The total geographic area in this state used by the species for breeding, resting or foraging and the portion thereof in which the species is or is likely within the foreseeable future to become in danger of extinction;

(b) The nature of the species' habitat, including any unique or distinctive characteristics of the habitat the species uses for breeding, resting or foraging; and

(c) The extent to which the species habitually uses the geographic area.

(6) In addition to the criteria set forth in sections (3) and (4) of this rule, in listing a wildlife species as endangered or threatened, the commission shall determine that the natural reproductive potential of the species is in danger of failure due to limited population numbers, disease, predation or other natural or human actions affecting its continued existence and, to the extent possible, assess the relative impact of human actions. In addition, the commission shall determine that one or more of the following factors exist:

(a) That most populations of the species are undergoing imminent or active deterioration of their range or primary habitat;

(b) That overutilization of the species or its habitat for commercial, recreational, scientific or educational purposes is occurring or is likely to occur; or

(c) That existing state or federal programs or regulations are inadequate to protect the species and its habitat.

(7) Notwithstanding any other provision of OAR 635-100-0100 to 635-100-0130, the commission may decide not to list a wildlife species as threatened or endangered that would otherwise qualify for listing if the commission determines that:

(a) The future of the species is secure outside this state;

(b) The wildlife species is not of cultural, scientific or commercial significance to the people of this state;

(c) The species has been listed as threatened or endangered pursuant to the federal ESA;

(d) The species is a candidate species under the federal ESA;

(e) The species has been petitioned for listing under the federal ESA;

(f) The responsible federal agency has determined that the species does not warrant listing as a threatened or endangered species under the federal ESA; or

(g) The species is currently on the department's sensitive species list.

(8) Before making a determination not to list a species pursuant to section (7) of this rule, the commission shall analyze the status of the species under the criteria set forth in sections (3), (4) and (6) of this rule. In addition, before making a determination not to list pursuant to subsections (7)(c) through (7)(f), the commission shall evaluate whether the federal listing, categorization or other action regarding the species adequately protects that species in Oregon. Before making a determination not to list pursuant to subsection (7)(g), the commission shall evaluate whether classification on the state sensitive list adequately protects that species in Oregon.

(9) If the commission determines that a species should be listed as threatened or endangered, the commission shall establish by rule survival guidelines at the time of listing. In establishing the guidelines, the commission shall consider its determinations made pursuant to OAR 635-100-0105, the species' life history requirements (e.g., food, shelter, water, breeding, movement and dispersal), and, to the extent possible, the necessary location, quality and quantity of each of those life history requirements.



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(10) In making the determinations required under subsections (3), (4), (6), (7) and OAR 635-100-0112 (Removing Species from the State List), the commission shall consult with:

- (a) Affected state and federal agencies;
- (b) Affected cities and counties;
- (c) Affected federally-recognized Indian tribes;
- (d) The Natural Heritage Advisory Council;
- (e) Other states having a common interest in the species; and
- (f) Interested persons who have asked to be consulted and whose names are included on the commission's mailing list for such purposes.

Statutory Authority: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026
Stats Implemented: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

635-100-0110

Procedure for Listing Species

(1) Any person may petition the commission to list, reclassify or remove wildlife species on the state list. The petition shall be in writing and shall include the following information:

- (a) The action sought; and
 - (b) Documented scientific evidence about the species' biological status to support the requested action.
- (2) The documented scientific evidence under subsection (1)(b) of this rule shall include the following:
- (a) Common and scientific names of the species and any taxonomic problems or questions;
 - (b) A discussion of the existence, or lack thereof, of past, present or threatened destruction, modification or curtailment of the species' habitat or geographical distribution, describing and documenting:
 - (A) Threats, or lack thereof, to the species' habitat and distribution;
 - (B) The species' historical and presently known distribution;
 - (C) Any changes in habitat and reasons for such changes, such as overutilization for commercial, recreational, scientific or educational purposes, if known;
 - (D) Any land use practices adversely or positively affecting the species' habitat; and
 - (E) Measures that have been or could be taken to alleviate a reduction in habitat of the species;
 - (c) A discussion of the existence, or lack thereof, of present or threatened danger or failure of the natural reproductive potential of the species including:
 - (A) The species' present population status;
 - (B) Any changes in population, and the reasons for such changes, such as disease, predation, or overutilization of the species or its habitat, if any, for commercial, recreational, scientific or educational purposes, if known;
 - (C) Any land use practices adversely or positively impacting or having impacted the species;
 - (D) Measures that have been or could be taken to alleviate a reduction in population of the species;
 - (E) A discussion of other natural or human-related factors affecting the continued existence of the species, including:
 - (i) Climatic, successional, reproductive, genetic or other factors such as competition with an introduced species affecting the species existence;
 - (ii) The effects of environmental pollution and other human-related factors on the continued existence of the species; and
 - (iii) The relative impact of human actions on the continued existence of the species, as compared to nonhuman impacts.
- (3) Any petition submitted under subsection (1) of this rule shall be acknowledged by the department in writing within ten (10) working days of receipt.
- (4) Within 90 days of receipt of the petition, the commission shall advise the petitioner, in writing, whether the petition presents substantial scientific evidence to justify proceeding with the requested action.
- (5) In determining whether the petition presents substantial scientific information to justify proceeding with the requested action, the commission may consult with the following:



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- (a) Affected state and federal agencies;
- (b) Affected cities or counties;
- (c) Affected federally-recognized Indian tribes;
- (d) Other interested state agencies;
- (e) The Natural Heritage Advisory Council;
- (f) Other states having a common interest in the species; or
- (g) Interested person with expertise on the wildlife species involved in the petition.

(6) If the petition is found to present substantial scientific information to justify proceeding with the requested action, the commission shall commence the process of rulemaking using the criteria set forth in OAR 635-100-0105 (Criteria for Listing), 635-100-0111 (Reclassifying Species), or 635-100-0112 (Removing Species from the State List), whichever is appropriate.

(7) If, during the rulemaking process, the commission subsequently determines that the proposed action does not meet the criteria set forth in the appropriate rule provision, the commission shall so advise the petitioner in writing within ten (10) working days of that denial, and shall provide the basis for the commission's decision.

(8) Unless the commission extends the time period as provided in this section, a final determination on the action requested in the petition shall be made by the commission within a period not to exceed one (1) year from the date of receipt of the petition. The commission may extend the time period within which to make a decision on a petition for up to 12 additional months, if the commission determines that the information available to the department and the commission is limited or other appropriate circumstances require the extension of time. If it extends the time period for decision making, the commission shall notify the petitioner in writing.

(9) If the petition is found not to present substantial scientific information to justify proceeding with the requested action, or if the commission, during the rulemaking process, denies the petition, the petitioner may seek judicial review of the commission's written decision as provided in ORS 183.484.

Statutory Authority: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026
Stats Implemented: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

635-100-0111

Reclassifying Species

(1) The commission shall reclassify a wildlife species from a threatened status to an endangered status if it determines that the species meets any of the factors set out in OAR 635-100-0105(6). In addition, the commission shall also determine that the likelihood of survival of the species has diminished such that the species is in danger of extinction throughout any significant portion of its range within the state.

(2) The commission shall reclassify a wildlife species from an endangered status to a threatened status if it determines that the likelihood of survival of the species has increased such that the species is not in danger of extinction at the present time throughout any significant portion of its range within the state.

Statutory Authority: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026
Stats Implemented: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

635-100-0112

Removing Species from the State List

The commission by rule may remove a wildlife species from the state list upon a review of the best available scientific and other data which meets the criteria set forth below. The scientific information shall be documented and verifiable information related to the species' biological status. Before removing a wildlife species from the state list, the commission shall determine:



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(1) The species is not, or is not likely to become within the foreseeable future, in danger of extinction throughout any significant portion of its range in this state, or is not at risk of becoming endangered throughout any significant portion of its range in this state.

(2) That the natural reproductive potential of the species is not in danger of failure due to limited population numbers, disease, predation or other natural or human-related factors affecting its continue existence; and

(3) The species no longer qualifies for listing under OAR 635-100-0105(6).

Statutory Authority: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

Stats Implemented: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

635-100-0113

Technical Committees

The director may appoint a technical committee to evaluate the information contained in a petition or staff report to either list, reclassify or remove a species from the state list.

Statutory Authority: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

Stats Implemented: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

635-100-0115

Temporary Listing

(1) Notwithstanding any other provisions of OAR Chapter 635, Division 100, the commission shall adopt a temporary rule to add a wildlife species to the list of threatened or endangered species if it determines that there is a significant threat to the continued existence of the species within the state.

(2) Upon the determination required under section (1) of this rule, the commission shall publish notice of the addition to the list in the Secretary of State's bulletin and shall mail notice to affected or interested persons whose names are included on the commission's mailing list for such purposes.

(3) The temporary rule shall take effect immediately upon filing in the Secretary of State's bulletin and shall remain in effect not more than 180 days during which time the commission may undertake the rulemaking procedures provided for in OAR Chapter 635, Division 100.

Statutory Authority: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

Stats Implemented: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

635-100-0120

Periodic Review of List

(1) The commission shall review each listed species at least once every five years to determine if verifiable scientific information exists to justify reclassification or removal from the list.

(2) The review under section (1) of this rule shall be conducted according to the criteria and procedures set forth in OAR 635-100-0105, 635-100-0110, 635-100-0111 (Reclassifying Species) and 635-100-0112 (Removing Species from the State List).

(3) If the commission makes the required determination under subsection (1) of this rule, the commission shall, within 90 days of the determination, commence the process of rulemaking to change the status of the species.

(4) The department shall notify affected state agencies of the commission's review determinations and may recommend management alternatives to the agencies.

Statutory Authority: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

Stats Implemented: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

635-100-0125

State List of Threatened and Endangered Species

8 - Div. 100



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The state list of threatened and endangered species is as follows:

COMMON NAME	SCIENTIFIC NAME	Endangered (E)	Threatened (T)
Fish			
Hutton Spring Tui Chub	<i>Gila bicolor ssp</i>		X
Borax Lake Chub	<i>Gila boraxobius</i>		X
Warner Sucker	<i>Catostomus warnerensis</i>		X
Lahontan Cutthroat Trout	<i>Oncorhynchus clarkii henshawi</i>		X
Snake River Spring/Summer Chinook Salmon	<i>Oncorhynchus tshawytscha</i>		X
Snake River Fall Chinook Salmon	<i>Oncorhynchus tshawytscha</i>		X
Columbia River Coho Salmon	<i>Oncorhynchus kisutch</i>	X	
Lost River Sucker	<i>Deltistes luxatus</i>	X	
Shortnose Sucker	<i>Chasmistes brevirostris</i>	X	
Amphibians and Reptiles			
Green Sea Turtle	<i>Chelonia mydas</i>	X	
Leatherback Sea Turtle	<i>Dermochelys coriacea</i>	X	
Loggerhead Sea Turtle	<i>Caretta caretta</i>		X
Pacific Ridley Sea Turtle	<i>Lepidochelys olivacea</i>		X
Birds			
Short-tailed Albatross	<i>Diomedea albatrus</i>	X	
Brown Pelican	<i>Pelecanus occidentalis</i>	X	
Western Snowy Plover	<i>Charadrius alexandrinus nivosus</i>		X
California Least Tern	<i>Sterna antillarum browni</i>	X	
Marbled Murrelet	<i>Brachyramphus marmoratus</i>		X
Northern Spotted Owl	<i>Strix occidentalis caurina</i>		X
Mammals			
Gray Whale	<i>Eschrichtius robustus</i>	X	
Sei Whale	<i>Balaenoptera borealis</i>	X	
Sperm Whale	<i>Physeter macrocephalus</i>	X	
Blue Whale	<i>Balaenoptera musculus</i>	X	
Humpback Whale	<i>Megaptera novaeangliae</i>	X	
Black Right Whale	<i>Balaena glacialis japonica</i>	X	
Fin Whale	<i>Balaenoptera physalus</i>	X	
Kit Fox	<i>Vulpes macrotis</i>		X



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COMMON NAME	SCIENTIFIC NAME	Endangered (E)	Threatened (T)
Wolverine	<i>Gulo gulo</i>		X
Sea Otter	<i>Enhydra lutris</i>		X
Washington Ground Squirrel	<i>Spermophilus washingtoni</i>	X	

Statutory Authority: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

Other Authority:

Stats Implemented: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

635-100-0130

Survival Guidelines

For threatened species listed in OAR 635-100-0125 after 1995 (enactment of ORS 496.182(2) and, in the absence of an approved endangered species management plan as provided in OAR 635-100-0140, the following requirements apply:

(1) Before a state agency takes, authorizes, or provides direct financial assistance for any action on land owned or leased by the state, or for which the state holds a recorded easement, the state agency shall consult with the department to determine whether the action is consistent with the survival guidelines established by the commission pursuant to ORS 496.182(2) and OAR 635-100-0105(9) and listed in OAR 635-100-0135;

(2) The agency shall notify the department in the event it is determined the proposed action has the potential to violate the survival guidelines. Within 90 days of such notice, the department shall recommend reasonable and prudent alternatives, if any, to the proposed action which are consistent with the guidelines.

(3) If a state agency fails to adopt the recommendations made by the department under section (2) of this rule, it shall consult with the department and demonstrate in writing that:

(a) The potential public benefits of the proposed action outweigh the potential harm from failure to adopt the recommendations; and

(b) Reasonable mitigation and enhancement measures shall be taken, to the extent practicable, to minimize the adverse impact of the action on the affected species.

Statutory Authority: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

Stats Implemented: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

635-100-0135

Survival Guidelines for Species Listed as Threatened or Endangered

(1) As required by ORS 496.182 and OAR 635-100-0130, this rule describes survival guidelines for those species that were listed as threatened or endangered in OAR 635-100-0125 after enactment of ORS 496.182(2). Survival guidelines described in this rule apply to state agencies that own or manage land where threatened or endangered species are present (OAR 635-100-0130).

(2) Coho salmon with historic distribution in Columbia River tributaries downstream from Hood River qualify, by commission action, as an endangered species (OAR 635-100-0125) effective July 1999. These fish, known as lower Columbia River coho salmon, occur only in the Clackamas River and Sandy River watersheds at the time of listing. The survival guidelines are as follows:

(a) To prevent further degradation of water quality and water quantity, actions shall be avoided that:

(A) Cause a violation of water quality standards established by the Oregon Department of Environmental Quality; or

(B) Reduce stream flows below levels established in in-stream water rights by the Oregon Water Resources Department.



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- (b) To conserve stream gravel, actions shall be avoided that remove gravel from areas used by naturally spawning coho salmon;
- (c) To protect riparian areas along those streams used by coho salmon for either spawning or juvenile rearing, actions shall be avoided that:
- (A) Eliminate mature forests within 100 feet of streams;
 - (B) Prevent the natural re-establishment of mature forests within 100 feet of streams in areas where a mature forest previously existed; or
 - (C) Degrade vegetative cover within 100 feet of streams in areas where no forest has previously existed.
- (d) To ensure survival of migrating coho juveniles and returning adults, activities shall be avoided that are inconsistent with:
- (A) Fish passage statutes ORS 498.351 and ORS 509.605. These statutes require adequate upstream and downstream fish passage at dams or artificial obstructions; or
 - (B) Fish screening statutes ORS 409.301 through ORS 498.346 and ORS 509.615. These statutes regulate water diversions and the prevention of fish from entering water diversions.
- (e) The total mortality impacts on ocean and in-river fisheries shall not exceed 15% of the total adult abundance of wild Lower Columbia coho salmon;
- (f) The impacts of hatchery programs for coho salmon in the lower Columbia River on wild coho populations shall be consistent with the limits imposed by the Wild Fish Management Policy (OAR 635-007-0527).

Statutory Authority: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026
Stats. Implemented: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

635-100-0136

Survival Guidelines for Washington Ground Squirrel

(1) ORS 496.182(2) states that the Commission shall, at the time of listing, adopt by rule quantifiable and measurable guidelines that the Commission considers necessary to ensure the survival of individual members of the species. These survival guidelines shall apply only to actions proposed on lands owned or leased by a state agency, or where a state agency holds an easement.

(2) For areas of occupied habitat on the Space Age Industrial Park (“Boardman Boeing tract”): Activities detrimental to the survival of Washington ground squirrels shall not be permitted in areas of occupied habitat. Occupied habitat areas are those undisturbed and formerly cultivated but abandoned areas which are underlain with Warden soils (or other soils with similar characteristics, or those soil types which lie contiguous to occupied Warden soils (e.g. Sagehill Fine Sandy Loam)). Soils classifications as shown on 1:24,000, USDA, Natural Resource Conservation Service (NRCS) Soil Survey Geographic (SSURGO) database, for the Morrow County Soil Survey, and incorporated here by reference. Certified soil survey information is available to the public at the Department’s headquarters office in Salem, the Department’s field office in Heppner or through NRCS offices. “Activities detrimental to the survival of Washington ground squirrels” are:

- (a) Soil disturbance (including, but not limited to, grading, leveling, plowing, disking, digging and tilling);
- (b) Livestock grazing at a level that results in more than 50% of leaf volume removed from the current year’s vegetative growth.
- (c) Agricultural tree planting (e.g., hybrid poplar plantations);
- (d) Agricultural and/or industrial activities that would alter existing vegetative communities (including, but not limited to, pesticide applications i.e. herbicides, fungicides, insecticides, rodenticides), irrigation, and mowing.
- (e) Direct taking of Washington ground squirrels through poisoning, shooting, capture, or other means.

(3) For other areas within the Space Age Industrial Park: Outside the soil type areas identified in (2) above, but within the Boeing Lease property (as shown on 1:24,000, USDA, Natural Resource Conservation Service Soil Survey Geographic (SSURGO) database, for the Morrow County Soil Survey, and incorporated here by reference).

(a) The area shall be surveyed for the presence of Washington ground squirrels, using survey methods developed by the Department and incorporated here by reference (“Status and habitat use of the Washington Ground Squirrel *Spermophilus washingtoni* on State of Oregon Lands, South Boeing, Oregon in 1999.” November



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1999. This document is available to the public at the Department's headquarters office in Salem and field office in Heppner). Surveys shall be undertaken during the appropriate season immediately prior to any authorization being granted by an agency for activities detrimental to the survival of Washington ground squirrels (as defined in (2)(a)-(e)).

(b) If the survey locates Washington ground squirrel sites, or squirrel occurrence has been previously recorded, activities detrimental to the survival of Washington ground squirrels shall not be permitted within 150 meters of the squirrel use-area associated with any such site (squirrel use-areas are described in the "Status and habitat use of the Washington Ground Squirrel *Spermophilus washingtoni* on State of Oregon Lands, South Boeig, Oregon in 1999.", referenced in (3)(a) above). If more than one squirrel site is detected, any authorized activities near detected sites shall not result in loss of habitat or physical connectivity between those sites. In addition, authorized activities around squirrel sites shall not physically isolate the site(s) from other colonies or occupied habitat areas. Agencies shall consult with the Department in such situations to determine specific site-based connectivity requirements.

(4) Notwithstanding (3) above, phase II of the Inland Land Company Farm Plan as described in IRZ Consulting map of 4-7-99 is exempt from these survival guidelines between January 21, 2000 and February 18, 2000, provided, all activities detrimental to the survival of Washington ground squirrels are conducted under the supervision of a biologist and in consultation with ODFW to avoid take of Washington ground squirrels.

(5) For any other state owned or leased land or easements elsewhere within the Columbia Basin Physiographic Province where suitable Washington ground squirrel habitat and soil types occur: State agencies shall consult with the Department before authorizing activities detrimental to Washington ground squirrels (as defined in (2)(a)-(e)).

(6) For other areas of state owned or leased land or easements which have been surveyed by methods acceptable to the Department: Where Washington ground squirrel surveys have been conducted according to the methods referred to in section (3)(a) above, areas with Washington ground squirrel sites shall be protected as indicated in (3)(b) above.

Statutory Authority: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

Stats. Implemented: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

635-100-0140

Endangered Species Management Plans for State Land Owning or Managing Agencies

(1) Within four months of its decision to list a species as endangered, the commission shall determine if state land can play a role in the conservation of the species. In making this determination, the commission shall consult and coordinate with the appropriate state land owning or managing agencies.

(2) The commission shall consider the species' biology and the geography of the land base (i.e., location, quality and quantity of the species' habitats) to determine if the species or its habitat is found on state land.

(a) If neither the species nor its habitat is found on state land, the commission shall determine that state land has no role to play in the conservation of the species. If the commission makes such a determination, then state land owning and managing agencies shall not be required to prepare an endangered species management plan.

(b) If the species or its habitat is found on state land, the commission shall consider the impact state agency actions may have on the species and its habitat in determining whether the state land can play a role in the conservation of the species. If the commission determines that state land can play a role, it shall notify the affected state land owning or managing agencies in writing.

(3) Once notified that state land can play a role in conservation of the species, each agency shall, in consultation with the department, determine the role the state land it owns or manages shall serve in the conservation of the species. This role may include, but is not limited to, conservation, contribution toward conservation or take avoidance. In making this determination, each agency shall balance the following:

- (a) The statutory or constitutional requirements, rules and policies applicable to the agency's programs;
- (b) The social and economic impacts that conservation would have on the state;
- (c) The conservation needs of the species;
- (d) The purpose of the state land; and



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(e) The roles that land other than state land will play in the conservation of the species.

(4) The agencies shall balance the factors listed in section (3) of this rule consistent with the biological aspects of species management identified by the department and the statutory or constitutional obligations of the agencies (including the land's statutory purpose).

(5) To carry out its consultation role under this rule, the department shall provide the agencies with an assessment of the conservation needs of the species, as well as a list of the existing management rules, plans and other management guidelines and biological information related to management of the listed species. The assessment of the conservation needs of the species should be based on the information and factors the commission considered in listing the species. In order to expedite the development of endangered species management plans, the department shall provide this information in as timely a manner as possible.

(6) After determining the role its land shall play, each agency shall develop, and approve according to the agency's procedures, an endangered species management plan within 18 months of the commission's decision to list a species as endangered. The agency shall develop the plan in consultation with the department and consistent with this rule. The plan shall address, at a minimum.:

(a) What state land is covered by the plan;

(b) What role that state land is to play in conservation of the species and how the agency defined that role (i.e., how the agency balanced the factors listed in sections (3) and (4) of this rule);

(c) How the agency will manage the state land to achieve its defined role;

(d) Whether the agency will monitor implementation of the plan, and if so, how and when;

(e) Whether the agency will reassess and review the plan and its implementation, and if so, how and when. For example, the agency may determine that new biological information, catastrophic events, changes in the species' listing status, changes in land use practices, or other factors will trigger the agency's reassessment and review of the plan;

(f) How the agency's plan relates to other state agency endangered species management plans, federal recovery plans and state and other recover efforts;

(g) What process the agency used in developing the plan, including the review and approval process, if any.

(7) The agency shall submit the plan to the commission for review and approval. The commission shall review the plan to determine whether it achieves the role defined for the affected land is consistent with the commission's rules for endangered species management plans. If the commission determines that, based on the biology of the endangered species, the plan does not achieve the define role, in consultation with the agency, it may modify the plan as necessary to be consistent with the role as defined under section (3) of this rule. The commission shall approve the plan as submitted or modified within 24 months from the date the species listed as endangered.

(8) Once the commission approves an agency's endangered species management plan, the agency's plan shall supersede the survival guidelines for the species for purposes of implementing ORS 496.182(3).

Statutory Authority: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

Stats Implemented: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

635-100-0150

Endangered Species Requirements for Agencies Other Than State Land Owning Or Managing Agencies

(1) In consultation and cooperation with agencies other than state land owning or managing agencies, the commission shall determine whether those agencies can serve a role in the conservation of the endangered species. If the commission determines that an agency has a role, it shall notify the agency in writing. Once notified, the agency shall determine what role it shall serve. This role may include, but is not limited to, conservation of the species, contribution toward conservation or take avoidance. In making this determination, the agency shall:

(a) Consult with the department concerning the biological aspects of managing the species;

(b) Consider the impact its actions and programs may have on the conservation of the species and its habitat;

(c) Consider the commission's survival guidelines for the listed species; and

(d) Consider its statutory obligations.



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(2) To carry out its consultation role under this rule, the department shall provide agencies with an assessment of the conservation need of the species, as well as a list of the existing management rules, plans and other management guidelines and biological information related to the management of the listed species.

(3) Once the agency determines what role it shall serve in the conservation of the species, the agency shall provide the commission a written description of its role, with an explanation of how it developed the role and how it intends to achieve the role. This explanatory statement shall address the following:

- (a) What programs are covered by the statement;
- (b) What role the agency will play in conservation of the species and how the agency defined the role;
- (c) What actions the agency will take to achieve the defined role;
- (d) Whether the agency will reassess and review its actions to achieve the role, and if so, how and when;
- (e) Whether the agency will monitor its actions, and if so, how and when;
- (f) How the agency's role and actions relate to state, federal and other recovery efforts.

Statutory Authority: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

Stats Implemented: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

635-100-0160

Classification of Agencies

(1) For purposes of OAR 635-100-0140 (Endangered Species Management Plans for State Land Owning or Managing Agencies), the following agencies (or programs within identified agencies) shall be considered a "state land owning or managing agency":

- (a) Oregon Department of Fish and Wildlife;
- (b) Oregon Department of Forestry;
- (c) Oregon Parks and Recreation Department;
- (d) Oregon Department of Administrative Services;
- (e) Oregon Division of State Lands (all proprietary programs);
- (f) State Land Board;
- (g) Oregon Department of Education;
- (h) Oregon Department of Transportation;
- (i) Oregon Military Department
- (j) Oregon State Hospital
- (k) Department of Veteran's Affairs (except as provided in ORS 496.182(6));
- (l) Department of Corrections;
- (m) Oregon State Board of Higher Education; and
- (n) Any other state agency that owns, leases or holds a recorded easement for land.

(2) For purposes of OAR 635-100-0150 (Endangered Species Requirements of Agencies Other Than State Land Owning Or Managing Agencies), any other state agency whose actions or programs may impact state-listed endangered species or their habitats shall be considered an "agency other than a land owning or managing agency," including but not limited to:

- (a) Oregon Department of Environmental Quality;
- (b) Oregon Department of Agriculture;
- (c) Oregon Department of Geology and Mineral Industries;
- (d) Department of Land Conservation and Development;
- (e) Oregon State Marine Board;

- (f) Oregon Department of Energy and Energy Facility Siting Council;
- (g) Columbia River Gorge Commission;
- (h) Oregon Division of State Lands (fill and removal program, wetland planning program);



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Statutory Authority: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026
Stats Implemented: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

635-100-0170

Incidental Take Permits

(1) Except as provided in this rule, the department may issue a permit to any person for the incidental take of a state-listed threatened or endangered species if it determines that such take will not adversely impact the long-term conservation of the species or its habitat. The department may issue the permit under such terms, conditions and time periods necessary to minimize the impact on the species or its habitat. An incidental take permit may be issued for individuals of more than one state-listed species.

(2) To request an incidental take permit, the person shall submit an application and provide the information required on the form provided by the department. If the department is seeking an incidental take permit, it shall make application to the commission on the same form and under the same standards as provided in section (2) of this rule.

(3) An incidental take permit shall not be issued for any species listed under the federal ESA. An incidental take permit or statement issued by a federal agency shall be considered a waiver of any state protection measures or requirements otherwise applicable to the actions allowed by the federal agency.

(4) Notwithstanding subsection (1) of this rule, an incidental take permit may be granted for activities which affect listed coho that do not significantly decrease the likelihood that the fish will recover.

Statutory Authority: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026
Stats Implemented: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

635-100-0180

Western Snowy Plover

The Western Snowy Plover Conservation Program, adopted under OAR 635-105-0000 to 635-105-0040, and the site specific management plans developed pursuant to that plan, shall serve as the survival guidelines for the Western Snowy Plover, *Charadrius alexandrinus nivosus*.

Statutory Authority: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026
Stats Implemented: 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

Lower Columbia River Coho

635-100 -0190

Fishery Management

(1) The mortality rate limit for wild coho salmon caught in Columbia River fisheries shall be set annually prior to the time these fisheries open. This limit shall not exceed the level specified in Table 1 of this rule corresponding with the observed parental escapement, expressed as a fraction of full seeding, and the index of marine survival for the upcoming adult coho return.

(2) For the purposes of implementing the management strategy described in paragraph (1) of this rule the following definitions apply:

(a) Parental escapement means the number of wild fish in the spawning population, expressed as a fraction of full seeding, that were the parents of the upcoming wild coho return;

(b) Marine survival index means a forecast of ocean survival for 3-year old coho returning in the upcoming year based upon the number of 2-year old hatchery coho (jacks) observed the previous year divided by the number of hatchery smolts released in the spring of the same year the jacks returned;



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(c) Full seeding means the number of wild coho in a natural spawning population that is sufficient to produce maximum production of subsequent juvenile smolt offspring;

(A) Pending further revision, full seeding for the Clackamas population means 3,800 wild adult coho as counted passing North Fork Dam;

(B) Pending further revision, full seeding for the Sandy population means 1,340 wild adult coho as counted passing Marmot Dam.

(3) Wild coho populations in the Clackamas and Sandy basins shall serve as the index stocks for the purposes of setting annual fishery mortality rate limits.

(4) In those circumstances when ODFW deems the expected mortality of lower Columbia River wild coho in upcoming ocean fisheries is too high for conservation purposes, ODFW shall actively negotiate through the Pacific Fishery Management Council (PFMC) for regulations that yield a lower fishery mortality rate.

(5) Achievement of fishery management strategies described in this rule is contingent on continuation of fishing regulations and fish marking programs that minimize the impact on wild fish through selective fishing methods and the manipulation of fishing season time and location. In addition, ODFW shall continue to explore new methods to further reduce the mortality of wild fish in all fisheries.

Stat. Auth.: ORS 496.004, 496.171, 496.172, 496.182, 496.192 and 498.026

Stats Implemented: ORS 496.004, 496.171, 496.172, 496.182, 496.192 and 498.026

635-100 -0191

Hatchery Programs

(1) CONSERVATION HATCHERY PROGRAMS: ODFW shall take advantage of existing and new hatchery facilities to supply hatchery fish for selected projects to help restore natural production of wild coho. These projects will be treated as interim and experimental until their conservation value is demonstrated.

(a) In 2002 ODFW shall initiate at least 3 projects using hatchery fish to re-establish wild populations in stream sections upstream of artificial barriers at ODFW hatcheries.

(b) In 2003 ODFW shall initiate projects to restore natural production using hatchery fish in selected locations within the portion of coho habitat in the lower Columbia basin that in 2000, 2001, and 2003 had a density of wild spawners less than 2 wild fish per stream mile. Implementation of these projects is conditional on adequate funding for appropriate conservation hatchery approaches and monitoring and evaluation programs to assess project success and to manage the risk to wild populations while the projects are being conducted.

(2) MITIGATION AND HARVEST AUGMENTATION HATCHERY PROGRAMS: ODFW shall operate hatcheries in such a manner that adverse genetic and ecological interactions between hatchery and naturally produced fish are minimized through management of hatchery broodstocks, hatchery rearing environments and fish releases.

Stat. Auth.: ORS 496.004, 496.171, 496.172, 496.182, 496.192 and 498.026

Stats Implemented: ORS 496.004, 496.171, 496.172, 496.182, 496.192 and 498.026

635-100 -0192

Land Management

(1) All ODFW operated hatcheries and wildlife management areas shall comply with the survival guidelines for lower Columbia River coho as described in OAR 635-100-0135, including the fish passage and fish screening provisions. ODFW shall complete a report by March, 2002 that sets priorities for the passage and screening modifications necessary at each hatchery from an evaluation of potential gains for natural coho production, the disease consequences to existing hatchery production, and the likely availability of necessary funds.

(2) The design of adult fish passage facilities shall incorporate the capacity for ODFW to restrict the number of hatchery fish that are allowed to migrate upstream as necessary once naturally self-sustaining populations have become re-established in these upstream areas.



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Stat. Auth.: ORS 496.004, 496.171, 496.172, 496.182, 496.192 and 498.026

Stats Implemented: ORS 496.004, 496.171, 496.172, 496.182, 496.192 and 498.026

635-100 -0193

Monitoring

(1) De-listing decisions and the operation of fishery and hatchery programs requires monitoring and evaluation sufficient to measure risks and describe outcomes. ODFW shall implement such a monitoring program as sufficient funds become available.

(2) As funding becomes available, ODFW shall intensify its monitoring of juvenile and adult coho such that the data generated are directly comparable with coho information collected by ODFW from populations on the coast of Oregon.

Stat. Auth.: ORS 496.004, 496.171, 496.172, 496.182, 496.192 and 498.026

Stats Implemented: ORS 496.004, 496.171, 496.172, 496.182, 496.192 and 498.026

635-100 -0194

De-listing Criteria

(1) This rule describes the measurable criteria that define the minimum conservation goal for wild lower Columbia River coho. Upon meeting these criteria ODFW shall be biologically justified to propose that species be removed from Oregon's endangered species list.

(2) For the purposes of evaluating the biological status of lower Columbia River wild coho with respect to the criteria described in this rule, the following geographic areas where wild coho presently exist or are believed likely to exist in the future are defined as the recovery population boundaries.

(a) The Astoria population occurs in Youngs Bay tributaries and all Columbia tributaries upstream to and including Gnat Creek.

(b) The Clatskanie population occurs in Columbia River tributaries upstream of Gnat Creek to and including the Clatskanie River basin.

(c) The Scappoose population occurs in Columbia River tributaries upstream of the Clatskanie River to the mouth of the Willamette River.

(d) The Clackamas population occurs in the Clackamas River basin plus Columbia River tributaries to the Willamette River downstream of Willamette Falls.

(e) The Sandy population occurs in the Sandy basin plus Columbia River tributaries downstream to the mouth of the Willamette River

(f) The Bonneville population occurs in Columbia River tributaries upstream of the Sandy River to and including the Hood River basin.

(3) To meet the minimum conservation goal, lower Columbia River coho must be found to meet all of the following biological criteria:

(a) *Population Distribution and Structure* – Self-sustaining wild populations are present in the Sandy and Clackamas basins. In addition, at least two of the following populations (Astoria, Clatskanie, Scappoose, or Bonneville) are self-sustaining.

(b) *Diversity* – Naturally reproducing wild coho are distributed into 65% of the named streams that historically contained coho. Human activities impose only minor artificial selection pressures on the phenotypic character of the wild populations. The ongoing impact of hatchery fish on the genetic character, evolutionary processes, and innate productivity of naturally reproducing populations is minor.

(c) *Abundance* – For three consecutive years, the number of wild spawners is at least 50% of the level necessary to produce maximum smolt recruits (full seeding) for the Sandy, Clackamas, and in at least two of the following populations: Astoria, Clatskanie, Scappoose, and Bonneville

(d) *Connectivity* – No artificial barriers exist that prevent the dispersing of wild coho between naturally reproducing populations.



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(e) *Persistence and Resilience* – The probability of extinction in 36 years is less than 5% for the Sandy and Clackamas populations plus two of the following populations: Astoria, Clatskanie, Scappoose, and Bonneville.

Stat. Auth.: ORS 496.004, 496.171, 496.172, 496.182, 496.192 and 498.026

Stats Implemented: ORS 496.004, 496.171, 496.172, 496.182, 496.192 and 498.026

Amended November 2015