

State Department of Fish and Wildlife; Commission; Director; Duties and Powers Generally

496.080 State Department of Fish and Wildlife. There is hereby established in the executive branch of the government of this state under the State Fish and Wildlife Commission a department to be known as the State Department of Fish and Wildlife. The department shall consist of the director of the department and all personnel employed in the department. [1975 c.253 §7; 1993 c.659 §3]

496.085 Fish Screening Task Force; qualifications of members; duties. (1) There is established within the State Department of Fish and Wildlife the Fish Screening Task Force consisting of seven members appointed by the State Fish and Wildlife Commission.

496.090 State Fish and Wildlife Commission; members; terms; qualifications; compensation and expenses. (1) There is established a State Fish and Wildlife Commission that shall consist of seven members appointed by the Governor.

(2) The term of office of each member is four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(3) All appointments of members of the commission by the Governor are subject to confirmation by the Senate pursuant to section 4, Article III, Oregon Constitution.

(4) One member of the commission shall be appointed from each of the congressional districts referred to in ORS 188.135, one member from that portion of the state lying west of the Cascade Mountains and one member from that portion of the state lying east of the Cascade Mountains.

(5) Members appointed to the commission shall be residents of this state, as defined in ORS 497.002.

(6) All members of the commission shall represent the public interest of the state and make decisions affecting the wildlife resources of the state for the benefit of those resources. Consistent with the requirements of this subsection, the commission shall provide for the productive and sustainable utilization of wildlife resources for all groups of users.

(7) All members of the commission shall have a general knowledge of fish and wildlife issues and an understanding of the operation and functions of public policy boards and commissions. In making appointments to the commission, the Governor shall consider appointing members who possess natural resource backgrounds such as backgrounds in commercial fishing, recreational fishing, hunting, agriculture, forestry and conservation.

(8) Failure of a member to maintain compliance with the eligibility requirements of subsections (4) and (5) of this section shall vacate membership. Members of the commission may otherwise be removed only by the Governor.

(9) A member of the commission is entitled to compensation and expenses as provided in ORS 292.495. [1975 c.253 §8; 1981 c.545 §11; 1997 c.249 §177; 1999 c.697 §1; 2001 c.762 §1]

496.100 [1973 c.723 §8; 1973 c.792 §20a; repealed by 1975 c.253 §40]

496.105 [Repealed by 1973 c.723 §130]

496.108 Commission officers; quorum; meetings. (1)(a) The Governor shall designate one member of the State Fish and Wildlife Commission as chairperson. The member shall serve as chairperson until the member's term expires or until relieved by the Governor. The chairperson shall have the powers and duties as are provided by the rules of the commission.

(b) The commission shall select one of its members as vice chairperson, for a term and with the duties and powers necessary for the performance of the functions of the office as the commission determines appropriate.

(2) A majority of the members of the commission constitutes a quorum for the transaction of business.

(3) The commission shall meet at least once every two months at a time and place determined by the commission. The commission shall also meet at other times and places as are specified by the call of the chairperson or of a majority of the members of the commission.

(4) The commission may also meet jointly with authorities of other states or of the United States to consider problems of mutual interest.

(5) The commission shall hold at least one meeting per year in each of the congressional districts in this state. [1973 c.723 §9; 2001 c.762 §2]

496.110 [Repealed by 1973 c.723 §130]

496.112 State Fish and Wildlife Director; term; compensation and expenses; delegation of commission powers to director. (1) The State Fish and Wildlife Commission shall appoint a State Fish and Wildlife Director to serve for a term not to exceed four years unless sooner removed by the commission.

(2) The director shall receive such salary as may be fixed by the commission. In addition to salary, subject to applicable law regulating travel and other expenses of state officers, the director shall be reimbursed for actual and necessary travel and other expenses incurred in the performance of official duties.

(3) The commission may delegate to the director any of the powers and duties granted to or imposed upon it by law, except to revoke or refuse to issue licenses issued pursuant to the commercial fishing laws.

(4) The commission may reappoint the director to additional terms. [1975 c.253 §9; 1985 c.529 §3; 1993 c.659 §4; 1999 c.697 §2; 2001 c.762 §§3,4]

496.115 [Repealed by 1975 c.253 §40]

496.116 Delegation of rulemaking authority to director; requirements. (1) In exercising any authority to adopt administrative rules delegated by the State Fish and Wildlife Commission under ORS 496.112, the State Fish and Wildlife Director shall comply with the requirements of ORS 496.138.

(2) Notwithstanding ORS 183.400, for any rule adopted by the director pursuant to subsection (1) of this section, before a person may petition the Court of Appeals to determine the validity of the rule, the person shall first request that the State Fish and Wildlife Commission determine the validity of the rule. The determination of the commission may be reviewed in accordance with ORS 183.400. [1999 c.697 §5]

496.118 Duties and powers of director. (1) Subject to policy direction by the State Fish and Wildlife Commission, the State Fish and Wildlife Director shall:

(a) Be the administrative head of the State Department of Fish and Wildlife;

(b) Have power, within applicable budgetary limitations, and in accordance with ORS chapter 240, to hire, assign, reassign and coordinate personnel of the department;

(c) Administer and enforce the wildlife laws of the state;

(d) Be authorized to participate in any proceeding before any public officer, commission or body of the United States or any state for the purpose of representing the citizens of Oregon concerning the wildlife resources of this state;

(e) Establish such sections and divisions as are necessary to properly carry out the work of the commission;

(f) Be responsible for the collection, application and dissemination of information pertinent to the management of the wildlife resources, and to the regulation of the uses of such resources; and

(g) Coordinate any activities of the department related to a watershed enhancement project approved by the Oregon Watershed Enhancement Board under ORS 541.932 with activities of other cooperating state and federal agencies participating in the project.

(2) In addition to duties otherwise required by law, the director shall prescribe internal policies and procedures for the government of the department, the conduct of its employees, the assignment and performance of its business and the custody, use and preservation of its records, papers and property in a manner consistent with applicable law.

(3) In addition to any other duties assigned to the director, the director shall report quarterly on the activities of the department to the appropriate legislative committee.

(4) The director may delegate to any employee of the department the exercise or discharge in the director's name of any power, duty or function of whatever character, vested in or imposed by law upon the director. The official act of a person so acting in the director's name and by the director's authority shall be considered to be an official act of the director.

(5) The director may restrict or otherwise limit the participation of an employee of the department in any program administered by the department to ensure that the programs of the department are administered in a fair and equitable manner and that no employee of the department gains an advantage over the public.

(6) Notwithstanding the provisions of ORS 496.112 (3), in times of emergency or with respect to regulating wildlife taking, the director may exercise the full powers of the commission until such times as the emergency ends or the commission meets in formal session. [1975 c.253 §10; 1987 c.734 §12; 1993 c.659 §5; 1999 c.697 §3; 2007 c.354 §16]

496.120 [Amended by 1967 c.290 §3; 1969 c.314 §59; repealed by 1973 c.723 §130]

496.124 Fish Division; Wildlife Division; authority. In addition to such divisions as may be established by the State Fish and Wildlife Director pursuant to ORS 496.118, there are established within the State Department of Fish and Wildlife a Fish Division and a Wildlife Division. The Wildlife Division shall be responsible for the management of all wildlife, except fish and other marine life, over which the State Fish and Wildlife Commission has regulatory jurisdiction. [1975 c.253 §11]

496.125 [Repealed by 1973 c.723 §130]

496.128 Reports by commission. (1) The State Fish and Wildlife Commission shall report biennially to the Governor and to the Legislative Assembly on the activities of the commission during the preceding biennium. The commission shall make such additional reports as the Governor or the Legislative Assembly may direct.

(2) The reports required by subsection (1) of this section shall be in such form and contain such information as the commission considers appropriate, and shall contain such other information as the Governor and the Legislative Assembly may require. Such reports shall include all new or amended rules, policies or procedures adopted by the commission and shall include a summary of significant consultation activity under ORS 496.164. [1973 c.723 §11; 1993 c.659 §6]

496.130 [Amended by 1959 c.371 §1; 1963 c.154 §1; 1965 c.74 §1; repealed by 1973 c.723 §130]

496.132 [1985 c.60 §5; repealed by 1993 c.659 §9]

496.135 [Repealed by 1973 c.723 §130]

496.138 General duties and powers; rulemaking authority; hearing prior to budget request to Governor. (1) Consistent with the policy of ORS 496.012, the State Fish and Wildlife Commission shall implement the policies and programs of this state for the management of wildlife. These policies and programs shall consider the uses of public and private lands and utilize voluntary partnerships with private and public landowners to protect and enhance wildlife habitat and effectively manage wildlife. In addition, the commission shall perform any other duty vested in it by law.

(2) In accordance with the applicable provisions of ORS chapter 183, the commission shall adopt such rules and standards as it considers necessary and proper to implement the policy and objectives of ORS 496.012 and perform the functions vested by law in the commission.

(3) Except as provided in ORS 183.335 (5), the commission shall cause a public hearing to be held on any proposed rule or standard prior to its adoption. The hearing may be before the commission, any designated member thereof or any person designated by and acting for the commission.

(4) Before submitting budget requests or information to the Governor pursuant to ORS 291.201 to 291.222, the commission shall hold a public hearing on proposals for planned expenditures and enhancement packages that the commission intends to recommend to the Governor for inclusion in the Governor's budget. [1973 c.723 §12; 1993 c.659 §7]

496.146 Additional powers of commission; rules; fees; penalties. In addition to any other duties or powers provided by law, the State Fish and Wildlife Commission:

(1) May accept, from whatever source, appropriations, gifts or grants of money or other property for the purposes of wildlife management, and use such money or property for wildlife management purposes.

(2) May sell or exchange property owned by the state and used for wildlife management purposes when the commission determines that such sale or exchange would be advantageous to the state wildlife policy and management programs.

(3) May acquire, introduce, propagate and stock wildlife species in such manner as the commission determines will carry out the state wildlife policy and management programs.

(4) May by rule authorize the issuance of such licenses, tags and permits for angling, taking, hunting and trapping and may prescribe such tagging and sealing procedures as the commission determines necessary to carry out the provisions of the wildlife laws or to obtain information for use in wildlife management. Permits issued pursuant to this subsection may include special hunting permits for a person and immediate family members of the person to hunt on land owned by that person in areas where permits for deer or elk are limited by quota. As used in this subsection, "immediate family members" means husband, wife, father, mother, brothers, sisters, sons, daughters, stepchildren and grandchildren. A landowner who is qualified to receive landowner preference tags from the commission may request two additional tags for providing public access and two additional tags for wildlife habitat programs. This request shall be made to the Access and Habitat Board with supporting evidence that the access is significant and the habitat programs benefit wildlife. The board may recommend that the commission grant the request. When a landowner is qualified under landowner preference rules adopted by the commission and receives a controlled hunt tag for that unit or a landowner preference tag for the landowner's property and does not use the tag during the regular season, the landowner may use that tag to take an antlerless animal, when approved by the State Department of Fish and Wildlife, to alleviate damage that is presently occurring to the landowner's property.

(5) May by rule prescribe procedures requiring the holder of any license, tag or permit issued pursuant to the wildlife laws to keep records and make reports concerning the time, manner and place of taking wildlife, the quantities taken and such other information as the commission determines necessary for proper enforcement of the wildlife laws or to obtain information for use in wildlife management.

(6) May establish special hunting and angling areas or seasons in which only persons less than 18 years of age or over 65 years of age are permitted to hunt or angle.

(7) May acquire by purchase, lease, agreement or gift real property and all appropriate interests therein for wildlife management and wildlife-oriented recreation purposes.

(8) May acquire by purchase, lease, agreement, gift, exercise of eminent domain or otherwise real property and all interests therein and establish, operate and maintain thereon public hunting areas.

(9) May establish and develop wildlife refuge and management areas and prescribe rules governing the use of such areas and the use of wildlife refuge and management areas established and developed pursuant to any other provision of law.

(10) May by rule prescribe fees for licenses, tags, permits and applications issued or required pursuant to the wildlife laws, and user charges for angling, hunting or other recreational uses of lands owned or managed by the commission, unless such fees or user charges are otherwise prescribed by law. Except for licenses issued pursuant to subsection (14) of this section, no fee or user charge prescribed by the commission pursuant to this subsection shall exceed \$100.

(11) May enter into contracts with any person or governmental agency for the development and encouragement of wildlife research and management programs and projects.

(12) May perform such acts as may be necessary for the establishment and implementation of cooperative wildlife management programs with agencies of the federal government.

(13) May offer and pay rewards for the arrest and conviction of any person who has violated any of the wildlife laws. No such reward shall exceed \$100 for any one arrest and conviction.

- (14) May by rule prescribe fees for falconry licenses issued pursuant to the wildlife laws, unless such fees are otherwise prescribed by law. Fees prescribed by the commission pursuant to this subsection shall be based on actual or projected costs of administering falconry regulations and shall not exceed \$250.
- (15) May establish special fishing and hunting seasons and bag limits applicable only to persons with disabilities.
- (16) May adopt optimum populations for deer and elk consistent with ORS 496.012. These population levels shall be reviewed at least once every five years.
- (17) Shall establish a preference system so that individuals who are unsuccessful in controlled hunt permit drawings for deer and elk hunting have reasonable assurance of success in those drawings in subsequent years. In establishing the preference system, the commission shall consider giving additional preference points to persons who have been issued a resident pioneer hunting license pursuant to ORS 497.102.
- (18) May sell advertising in State Department of Fish and Wildlife publications, including annual hunting and angling regulation publications.
- (19) May, notwithstanding the fees required by ORS 497.112, provide free hunting tags to an organization that sponsors hunting trips for terminally ill children.
- (20) Shall, after consultation with the State Department of Agriculture, adopt rules prohibiting the use of the World Wide Web, other Internet protocols or broadcast or closed circuit media to remotely control a weapon for the purpose of hunting any game bird, wildlife, game mammal or other mammal. The rules may exempt the State Department of Fish and Wildlife or agents of the department from the prohibition.
- (21) May adopt rules establishing a schedule of civil penalties, not to exceed \$6,500 per violation, for violations of provisions of the wildlife laws or rules adopted by the commission under the wildlife laws. Civil penalties established under this subsection must be imposed in the manner provided by ORS 183.745 and must be deposited in the State Wildlife Fund established under ORS 496.300.
- (22) May by rule impose a surcharge not to exceed \$25 for the renewal of a hunting license on any person who fails to comply with mandatory hunting reporting requirements. Amounts collected as surcharges under this subsection must be deposited in the State Wildlife Fund established under ORS 496.300. [1973 c.723 §13; 1977 c.177 §1; 1977 c.668 §1; 1981 c.445 §9; 1987 c.292 §2; 1993 c.659 §8; 1999 c.25 §4; 2001 c.253 §1; 2003 c.656 §2; 2005 c.365 §1; 2007 c.338 §1; 2009 c.778 §2; 2011 c.521 §1]

Note: Section 2, chapter 460, Oregon Laws 1995, provides:

Sec. 2. Notwithstanding any other provision of the wildlife laws, during the period beginning January 1, 1996, and ending January 2, 2014, the following provisions apply with regard to the issuance and use of landowner preference tags referred to in ORS 496.146 (4):

- (1) Landowner preference tags shall be issued for the hunting of deer, elk or antelope.
- (2) Landowner preference tags may be used only for hunting on the landowner's property.
- (3) Landowner preference tags for the hunting of deer or elk may be transferred to any person of the landowner's choosing and shall be used for the taking of antlerless animals except as authorized by subsection (6) of this section.
- (4) Landowner preference tags for the hunting of antelope are not transferable and may not be used for the taking of buck antelope.
- (5) Each landowner preference tag for the hunting of deer or elk may be used to take two antlerless animals before, during or after the hunting season for which the tags are valid for the purpose of alleviating damage that is presently occurring to the landowner's property, in accordance with such rules as the State Fish and Wildlife Commission may adopt.
- (6) Landowner preference tags for the hunting of deer or elk that are transferred to a person of the landowner's choosing who is not a member of the landowner's immediate family may be used to take an antlered animal only as follows:
 - (a) If the landowner receives one preference tag, that tag may not be so used.
 - (b) If the landowner receives two, three or four preference tags, one of those tags may be so used.
 - (c) If the landowner receives five, six or seven preference tags, two of those tags may be so used.
 - (d) If the landowner receives eight, nine or 10 preference tags, three of those tags may be so used.
- (7) Landowners must pay a \$30 fee to register for participation in the program.
- (8) Establishes a \$15 fee for landowners to modify the landowner's tag distribution. [1995 c.460 §2; 2001 c.227 §1; 2009 c.349 §1; 2009 c.832 §2a]

496.150 [Repealed by 1973 c.723 §130]

496.151 Allocation of nonresident tags for outfitters and guides. Notwithstanding any other provision of the wildlife laws, the State Fish and Wildlife Commission by rule shall establish a system for allocating hunting permits that are limited by maximum number for the taking of deer and elk by nonresident hunters so that a number equal to one-half of the number of those permits issued to nonresident hunters in the previous year are made available to the holders of registrations issued pursuant to ORS chapter 704, and who are certified pursuant to ORS 704.060, for the use of the clients of those registration holders. Such a system shall include but not be limited to:

- (1) Provisions to prevent misuse of the permits by the registrant or by employees of the registrant.
- (2) Provisions for revocation and refusal to issue all or any portion of the permits based upon a commission finding of an emergency situation or biological needs. [1997 c.342 §2; 2003 c.644 §5]

496.154 Limitation on authority to condemn certain farm use property. (1) The State Fish and Wildlife Commission shall not commence any proceeding to exercise the power of eminent domain to acquire any real property, or interest therein, that was devoted to farm use on January 1, 1974, unless the commission first obtains approval therefor from the Joint Committee on Ways and Means, or from the Emergency Board if the Legislative Assembly is not then in session. Upon a change in the use of such land from farm use, the commission may acquire such property, and interests therein, by exercise of the power of eminent domain without first obtaining legislative approval therefor. As used in this section, "farm use" has the meaning for that term provided in ORS 215.203.

(2) The commission shall not commence any proceeding as provided in subsection (1) of this section unless the commission has obtained approval of its intended use of such property from the local governmental agencies having land use planning authority over such lands. [1973 c.723 §13a; 1975 c.788 §1]

496.155 [Amended by 1967 c.454 §86; repealed by 1973 c.723 §130]

496.156 Expenditure priority for anadromous fish management. (1) In carrying out duties, functions and powers regarding the propagation of anadromous fish prescribed in the wildlife laws and the commercial fishing laws, the State Fish and Wildlife Commission shall give high priority to expenditures for propagation assistance by means of transportation of upstream and downstream migrants in those areas where dams and other such obstacles present a passage problem to juvenile or adult salmon.

- (2) For the purposes of this section, "transportation" means any method of helping anadromous fish to pass dams and other obstacles so as to reduce the mortality associated with passage.
- (3) Nothing in subsection (1) of this section prevents the cooperation of the commission with the federal government in programs financed pursuant to ORS 506.405. [1977 c.653 §2]

496.160 [Amended by 1971 c.658 §2; repealed by 1973 c.723 §130]

496.162 Establishing seasons, amounts and manner of taking wildlife; rules. (1) After investigation of the supply and condition of wildlife, the State Fish and Wildlife Commission, at appropriate times each year, shall by rule:

- (a) Prescribe the times, places and manner in which wildlife may be taken by angling, hunting, trapping or other method and the amounts of each of those wildlife species that may be taken and possessed.
 - (b) Prescribe such other restrictions or procedures regarding the angling, taking, hunting, trapping or possessing of wildlife as the commission determines will carry out the provisions of wildlife laws.
- (2) In carrying out the provisions of subsection (1) of this section, the power of the commission includes, but is not limited to:
- (a) Prescribing the amount of each wildlife species that may be taken and possessed in terms of sex, size and other physical characteristics.

- (b) Prescribing such regular and special time periods and areas closed to the angling, taking, hunting and trapping of any wildlife species when the commission determines such action is necessary to protect the supply of such wildlife.
- (c) Prescribing regular and special time periods and areas open to the angling, taking, hunting and trapping of any wildlife species, and establishing procedures for regulating the number of persons eligible to participate in such angling, taking, hunting or trapping, when the commission determines such action is necessary to maintain properly the supply of wildlife, alleviate damage to other resources, or to provide a safe and orderly recreational opportunity.
- (3) Notwithstanding subsections (1) and (2) of this section, except as provided in ORS 498.146 or during those times and at those places prescribed by the commission for the hunting of elk, the commission shall not prescribe limitations on the times, places or amounts for the taking of predatory animals. As used in this subsection, "predatory animal" has the meaning for that term provided in ORS 610.002.
- (4) In carrying out the provisions of this section, before prescribing the numbers of deer and elk to be taken, the commission shall consider:
 - (a) The supply and condition of deer and elk herds;
 - (b) The availability of forage for deer, elk and domestic livestock on public and private range and forest lands;
 - (c) The recreational opportunities derived from deer and elk populations; and
 - (d) The effects of deer and elk herds on public and private range and forest lands. [1973 c.723 §14; 1975 c.791 §1; 1981 c.218 §1; 2003 c.656 §3]

496.164 Cooperation with public and private agencies for fish and wildlife management; technical information and policy recommendations; use of recommendations by state agencies. The State Fish and Wildlife Commission and the State Department of Fish and Wildlife may advise, consult and cooperate with other agencies of this state and political subdivisions, other states or the federal government and private landowners with respect to fish and wildlife management. The commission and the department shall provide such information, recommendations or advice in writing if requested by another state or federal agency to do so. Technical advice and information shall be based on the best available scientific information. Policy or implementation recommendations provided in administrative rulemaking proceedings shall be based on consideration of all the goals of wildlife management in ORS 496.012, in addition to applicable scientific information. State agencies, boards or commissions receiving policy or implementation recommendations shall consider such recommendations in the context of their respective statutory responsibilities, and shall take into account the extent to which such recommendations are substantiated with the best available scientific information and based on consideration of all of the goals of wildlife management in ORS 496.012. [1993 c.659 §11]

496.165 [Repealed by 1973 c.723 §130]

496.166 Citizen involvement for wildlife management on private lands. The Legislative Assembly finds, in the interest of all Oregonians, a necessity to improve Oregon's resource access and wildlife habitat through the further involvement of its citizens, through voluntary partnership between the State Department of Fish and Wildlife and landowners to manage wildlife on private lands and through support by additional financial revenues. [1993 c.659 §13]

496.170 [Amended by 1971 c.658 §3; repealed by 1973 c.723 §130]

THREATENED OR ENDANGERED WILDLIFE SPECIES

496.171 Definitions for ORS 496.171 to 496.182; applicability date. Notwithstanding ORS 496.004, with respect to state agency actions taken under ORS 496.171 to 496.182 after July 17, 1995, as used in ORS 496.171 to 496.182:

- (1) "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, propagation and transplantation.
- (2) "Native" means indigenous to Oregon, not introduced.
- (3) "Species" means any group or population of wildlife that interbreeds and is substantially reproductively isolated.
- (4) "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. [1995 c.590 §2]

496.172 Commission management authority for threatened or endangered species; rules. In carrying out the provisions of the wildlife laws with regard to the management of wildlife that is a threatened species or an endangered species, the State Fish and Wildlife Commission:

- (1) Shall conduct investigations of wildlife species native to this state and shall determine whether any such species is a threatened species or an endangered species.
- (2) By rule, shall establish and publish, and from time to time may revise, a list of wildlife species that are threatened species or endangered species. Listed threatened species or endangered species shall be protected as provided in ORS 496.182.
- (3) Shall work cooperatively with state agencies that have land management authority or regulatory authority to determine their roles within their statutory obligations in the conservation of endangered species, as described in ORS 496.182 (8).
- (4) By rule, shall establish a system of permits for scientific taking of threatened species and endangered species and shall establish a system of state permits for incidental taking of state-designated threatened species and endangered species not listed by the federal government under such terms and conditions as the commission determines will minimize the impact on the species taken. An incidental taking permit or statement issued by a federal agency for a species listed under the federal Endangered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531), as amended, shall be recognized by the state as a waiver of any state protection measures or requirements otherwise applicable to the actions allowed under the federal permit.
- (5) Shall cooperate with the State Department of Agriculture in carrying out the provisions of ORS 564.105.
- (6) Shall adopt administrative rules to carry out the provisions of ORS 496.171 to 496.182 and 498.026. [1987 c.686 §3; 1995 c.590 §3]

496.175 [Amended by 1971 c.658 §4; repealed by 1973 c.723 §130]

496.176 Listing species; procedure; matters to be considered; periodic review. (1) The lists of threatened species or endangered species established pursuant to ORS 496.172 (2) shall include:

- (a) Those species of wildlife listed as of May 15, 1987, as a threatened species or an endangered species pursuant to the federal Endangered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531), as amended; and
- (b) Those species determined as of May 15, 1987, by the State Fish and Wildlife Commission to be threatened species or endangered species.
- (2) The commission, by rule, may add or remove any wildlife species from either list, or change the status of any species on the lists, upon a determination that the species is or is not a threatened species or an endangered species.
- (3) A determination that a species is a threatened species or an endangered species shall be based on documented and verifiable scientific information about the species' biological status. To list a species as a threatened species or an endangered species under ORS 496.004 and 496.171 to 496.182, 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 exists:
 - (a) That most populations are undergoing imminent or active deterioration of their range or primary habitat;
 - (b) That overutilization 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 or its habitat.
- (4) Determinations required by subsection (3) of this section shall be made by the commission on the basis of verifiable scientific and other data after consultation with federal agencies, other interested state agencies, other states having a common interest in the species and interested persons and organizations.
- (5) Any person may petition the commission to, by rule, add, remove or change the status of a species on the list:

- (a) A petition shall clearly indicate the action sought and shall include documented scientific information about the species' biological status to justify the requested action.
- (b) Within 90 days of receipt of a petition, the commission shall respond in writing to the petitioner indicating whether the petition presents substantial scientific information to warrant the action requested.
- (c) If the petition is found to present such information, the commission shall commence rulemaking.
- (d) A final determination by the commission concerning the action requested in a petition shall be provided within one year from the date of receipt of the petition, with the option for an additional 12-month extension of time to complete the listing if the commission determines that limited information or other appropriate considerations require the extension.
- (e) If the petition is denied, the petitioner may seek judicial review as provided in ORS 183.484.
- (6) The commission may determine not to list a species as a threatened species or an endangered species in any of the following cases:
 - (a) If the species has been listed pursuant to the federal Endangered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531), as amended.
 - (b) If the species is currently on the list as a sensitive species, or is a candidate species or has been petitioned for listing pursuant to the federal Endangered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531), as amended.
 - (c) If the species has been determined, pursuant to the federal Endangered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531), as amended, to not qualify as a threatened species or an endangered species.
- (7) Notwithstanding subsections (1) to (5) of this section, the commission shall take emergency action to add a species to the list of threatened species or endangered species if it determines there is a significant threat to the continued existence of the species within the state:
 - (a) The commission shall publish notice of such addition 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.
 - (b) Such emergency addition shall take effect immediately upon publication in the Secretary of State's bulletin and shall remain valid for a period no longer than one year, unless during the period the commission completes rulemaking procedures as provided in subsection (5) of this section.
- (8) The commission shall periodically review the status of all threatened species and endangered species listed under ORS 496.171 to 496.192. Each species shall be reviewed at least once every five years to determine whether verifiable scientific information exists to justify its reclassification or removal from the list, according to the criteria listed under subsections (3) and (4) of this section. If a determination is made to reclassify a species or remove it from the list, the commission, within 90 days, shall commence rulemaking to change the status of the species.
- (9) Notwithstanding the provisions of this section, the commission:
 - (a) May decide not to list a species that otherwise qualifies as a threatened or endangered species within this state if the commission determines that the species is secure outside this state or the species is not of cultural, scientific or commercial significance to the people of this state.
 - (b) May not include *Branta canadensis leucopareia*, commonly known as the Aleutian Canada goose, on the lists of threatened species or endangered species. [1987 c.686 §4; 1995 c.590 §4; 2005 c.402 §1; 2011 c.319 §20]

496.180 [Amended by 1971 c.658 §5; repealed by 1973 c.723 §130]

- 496.182 Protection and conservation programs; compliance by state agencies; rules.** (1) The burden of protecting and recovering threatened species or endangered species can be a significant cost to the citizens of this state and it is therefore the policy of this state to minimize duplication and overlap between state and federal laws dealing with threatened species or endangered species. To this end, nothing in this section is intended to prevent the adoption of cooperative state or federal programs when such programs provide protection for listed species without significant impact on the primary uses of state lands.
- (2) At the time the State Fish and Wildlife Commission adds a species to the list of threatened species or endangered species under ORS 496.172, the commission shall establish by rule quantifiable and measurable guidelines that it considers necessary to ensure the survival of individual members of the species. These guidelines may include take avoidance and protecting resource sites such as spawning beds, nest sites, nesting colonies or other sites critical to the survival of individual members of the species.
- (3) For threatened species listed under ORS 496.172 and in the absence of an approved endangered species management plan described in subsection (8) of this section for an endangered species, if a state agency determines that a proposed action on land it owns or leases, or for which it holds a recorded easement, has the potential to violate the guidelines established under subsection (2) of this section, it shall notify the State Department of Fish and Wildlife. 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.
- (4) If a state agency fails to adopt the recommendations made under subsection (3) of this section, it shall, after consultation with the department, demonstrate 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.
- (5) When an action under this section is initiated by a person other than a state agency, the agency shall provide final approval or denial of the proposed action within 120 days of receipt of a written request for final determination.
- (6) The provisions of this section do not apply to lands acquired through foreclosures of loans made pursuant to programs of the Department of Veterans' Affairs.
- (7) State land owning or managing agencies shall set priorities for establishing endangered species management plans required by subsection (8) of this section after consultation with the commission on the level of biological threat and, in consideration of available funds, the immediacy and seriousness of the threat to any listed species.
- (8)(a)(A) Within four months of the listing of an endangered species, the commission, in consultation and cooperation with the state land owning or managing agency, shall determine if state land can play a role in the conservation of endangered species. The commission and the land owning or managing agency shall consider species biology and geography of the land base to determine if the species or its habitat is found on state land. If the species or its habitat is not found on state land, the commission shall determine that state land has no role to play in the conservation of the species.
- (B) If the species or its habitat is found on state land, the land owning or managing agency, in consultation with the State Department of Fish and Wildlife, shall determine the role its state land shall serve in the conservation of the endangered species. This role may include, but is not limited to conservation, contribution toward conservation or take avoidance. To carry out its consulting role under this subsection, the department shall provide state agencies with an assessment of the conservation needs of the endangered species. In making this determination, the land owning or managing agency shall balance the statutory requirements, rules and policies applicable to the agency's programs, the social and economic impacts that conservation would have on the state, the conservation needs of the species, the purpose of the land and the roles of other ownership categories. The agency shall balance these factors consistent with the commission's rules related to the biological aspects of species management and the statutory obligations of the land owning or managing agency, including the statutory purpose of the land.
- (C) After determining the role its state land shall serve in conservation of the species, the land owning or managing agency, in consultation with the State Department of Fish and Wildlife and consistent with the commission's rules related to endangered species management plans, shall develop and approve an endangered species management plan within 18 months from the date the species is first listed as endangered. Endangered species management plans shall be based on the statutes, rules and policies applicable to the agency's programs and shall take into account any social or economic impacts that the plan may have on the state. The land owning or managing agency shall submit the plan to the commission for review and approval as provided in subparagraph (D) of this paragraph.
- (D) The commission shall review the endangered species management plan approved by the land owning or managing agency under subparagraph (C) of this paragraph to determine whether the plan achieves the role defined for the land under subparagraph (B) of this paragraph. Based on the biology of the endangered species the commission may modify the endangered species management plan if necessary to be consistent with the role the land owning or managing agency has defined for the land under subparagraph (B) of this paragraph and shall approve the plan as submitted or modified within 24 months from the date the species is listed as endangered.
- (b) For state agencies other than land owning or managing agencies, the commission, in consultation and cooperation with the agency, shall determine whether the agency can serve a role in the conservation of endangered species. If the commission determines that the agency has a role to play in conservation of the endangered species, the agency shall determine what role it shall serve in conservation of the endangered species. The agency shall make this determination as provided in the commission's rules related to the biological aspects of species management and in a manner consistent with the agency's statutory obligations. [1987 c.686 §5; 1995 c.590 §5]

496.185 [Repealed by 1973 c.723 §130]