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**SUMMARY OF LEGISLATION RELATED TO THE
STATE DEPARTMENT OF FISH AND WILDLIFE
78TH OREGON LEGISLATIVE ASSEMBLY**

Senate Bills Enacted – 2015 Regular Session

Measure	2015 Oregon Laws Chapter	ORS	Page
SB 175 Wildlife Penalties Modifies certain penalties for wildlife violations.	378	496.992	65
SB 202 Establishes Task Force on Independent Scientific Review for Natural Resources Establishes Task Force on Independent Scientific Review for Natural Resources to evaluate and assess need for independent scientific review in Oregon and make recommendations.	771	352.808 (and notes following) 541.890 541.898	284 341 342
SB 209 Invasive Species Council Makes Invasive Species Council appointment of State Invasive Species Coordinator mandatory.	486	570.770 570.780	359 359

SUMMARY OF LEGISLATION

Senate Bills Enacted – 2015 Regular Session (cont.)

Measure	2015 Oregon Laws Chapter	ORS	Page
SB 247 State Department of Fish and Wildlife fees Incrementally increases or establishes certain fees related to hunting, angling and commercial fishing over six-year period, applicable January 1, 2016, January 1, 2018, and January 1, 2020.	779	496.146	32
		496.232	43
		496.283	46
		496.289	47
		496.303	48
		496.550	56
		496.555	56
		496.562	56
		496.566	57
		497.022	70
		497.032	71
		497.061 (and notes following)	71
		497.075	77
		497.102	77
		497.112	78
		497.121	79
		497.124	81
		497.127 (and note following)	81
		497.132	81
		497.138	83
		497.142	83
		497.151	84
		497.153	84
		497.156	84
		497.158	85
		497.258	87
		497.325	88
		498.166	102
		498.418	110
		508.116	146
508.285	148		
508.505	151		
508.550	153		
508.760	157		
508.790	158		
508.816	161		
508.901	164		
508.941	167		
508.949	169		
SB 248 Sales of Timber from State Lands Authorizes State Forester to enter into and administer contracts for activities necessary or convenient for sales of timber from lands owned or managed by State Board of Forestry or State Forestry Department.	447	279A.025	272
		279A.050	273
		530.050	316
		530.500	317

SUMMARY OF LEGISLATION

Senate Bills Enacted – 2015 Regular Session (cont.)

Measure	2015 Oregon Laws Chapter	ORS	Page
SB 319 Ocean Renewable Energy Requires proprietary authorization from Department of State Lands to construct or operate ocean renewable energy facility in Oregon’s territorial sea.	386	Note following	
		196.515	233
		196.810	237
		196.815	239
		196.825	241
		274.040	269
		274.870	n/a
		274.873	n/a
		274.876	n/a
		274.879	270
274.992	271		
274.994	271		
543.013	n/a		
SB 779 Uniformed Service Residents Requires State Department of Fish and Wildlife to study expanding application of laws that consider members of uniformed services residents for licensing purposes and present report to interim committees of Legislative Assembly related to environment and natural resources on or before September 15, 2016.	459	n/a	n/a
SB 958 Fishing Derbies Creates free licenses for organizers of certain fishing derbies to take and sell certain fish during derby.	590	508.124	146

SUMMARY OF LEGISLATION

Senate Bills Enacted – 2016 Regular Session

Measure	2016 Oregon Laws Chapter	ORS	Page
SB 1515 Angling and Shellfish Licenses–Mandatory Licenses Establishes standards and criteria for mandatory licensing, certification or authorization of child-caring agencies by Department of Human Services.	106	In relevant part: 497.162	21
SB 1517 Land Improvement Projects Authorizes governing body of Tillamook County to, by ordinance or regulation, adopt pilot program for establishing, subject to provisions related to conditional uses of areas zoned for exclusive farm use, creation, restoration or enhancement of wetlands.	84	196.820	21
SB 1596 Preparation of Governor’s Budget Revises procedures for preparation of Governor's budget.	117	In relevant part: 496.138	22

SUMMARY OF LEGISLATION

House Bills Enacted – 2015 Regular Session

Measure	2015 Oregon Laws Chapter	ORS	Page
HB 2182 Predator Management Requires State Department of Fish and Wildlife to study developing predator management plan for State of Oregon and to report to interim committees of Legislative Assembly on or before September 15, 2016.	363	n/a	n/a
HB 2209 Cultivating Shellfish Requires persons cultivating shellfish on public or private land to file annual report. Establishes Oregon Shellfish Task Force.	814	622.015 (and notes following) 622.270 622.310 622.330	n/a 367 367 367
HB 2277 Drainage Districts Modifies authority of drainage districts to perform flood control activity.	544	198.510 547.057 547.060 547.063 (and note following) 547.065 547.067 547.069 547.071 547.073 547.075 547.077 547.079 547.081 547.083 547.105 547.110 554.275	n/a n/a 357 n/a n/a n/a n/a n/a n/a n/a n/a n/a n/a n/a n/a 358 358 n/a
HB 2354 Unmanned Aerial Systems Changes defined term “drone” to “unmanned aircraft system” for consistency with federal language.	315	837.300 837.310 837.320 837.330 837.335 837.340 837.345 837.360 837.365 837.375 837.380 837.385 837.995	370 n/a 370 n/a 371 371 371 371 372 372 372 372 372 372

SUMMARY OF LEGISLATION

House Bills Enacted – 2015 Regular Session (cont.)

Measure	2015 Oregon Laws Chapter	ORS	Page
HB 2400 Water Policies Provides that submission of certain task force reports prior to specified dates in 2015 satisfies requirement to submit reports by July 1, 2014.	156	541.689	339
HB 2402 Task Force on Funding for Fish, Wildlife and Related Outdoor Recreation and Education Establishes Task Force on Funding for Fish, Wildlife and Related Outdoor Recreation and Education to identify and recommend potential alternative, sustainable funding sources for State Department of Fish and Wildlife.	712	Notes following 496.340	50
HB 2432 Fireworks Used for Animal Control Expands list of lands on which fireworks may be used to repel birds and other animals.	57	480.123	n/a
HB 2452 Fish and Wildlife Deferred Maintenance Subaccount Abolishes Fish and Wildlife Deferred Maintenance Subaccount.	546	496.303	48
HB 2534 Regulation of Drones Directs State Fish and Wildlife Commission to adopt rules prohibiting use of drones for certain purposes related to pursuit of wildlife.	61	498.128	99
HB 3012 Fish Hatchery Funding Establishes Oregon Hatchery Research Center Fund and Hatchery Construction Fund.	734	Note following 497.121	79
		Notes following 498.833	114
		Notes following 508.505	151
HB 3013 Wildlife Food Plots Allows establishment of wildlife food plots on small tract forestland subject to reforestation requirements.	64	527.678	303
HB 3315 Financial Support for Services Rendered Requires State Department of Fish and Wildlife to recoup costs incurred in providing services to executive department agencies for advancing administration of fee-funded programs.	566	496.167 496.168 (and note following)	37 38

SUMMARY OF LEGISLATION

House Bills Enacted – 2015 Regular Session (cont.)

Measure	2015 Oregon Laws Chapter	ORS	Page
HB 3333 Salmon Registration Plate Surcharges Requires that portion of surcharge moneys from salmon registration plate program directed to fund controlled by Oregon Watershed Enhancement Board be used only for projects to protect or restore native salmon habitat or to remove artificial obstructions to native salmon migration.	742	805.256	367
HB 3459 Outdoor Recreation Increases frequency of days for which State Fish and Wildlife Commission may authorize persons to angle for fish or take shellfish without licenses or tags.	764	497.079	77

SUMMARY OF LEGISLATION

House Bills Enacted – 2016 Regular Session

Measure	2016 Oregon Laws Chapter	ORS	Page
HB 4040 Canis lupus Ratifies decision of State Fish and Wildlife Commission to remove Canis lupus from state list of threatened or endangered species.	36	n/a	9
HB 4046 Violation of Wildlife Laws Increases penalties for unlawful taking or killing of certain wildlife.	37	496.705 496.992 498.042	9 10 11
HB 4066 Unmanned Aircraft Systems Modifies provisions relating to unmanned aircraft systems, commonly known as drones.	72	163.700 164.885 498.128 837.300 837.360 837.365 837.380	16 14 17 14 15 14 16
HB 4106 Adoption of Temporary Rules Requires certain state agencies to report annually to Legislative Assembly information related to use of temporary rulemaking procedures.	44	n/a	11
HB 4113 Task Force on Drought Emergency Response Establishes Task Force on Drought Emergency Response as nonlegislative task force.	80	n/a	18
HB 5203 State Financial Administration – Capital Construction Limits, for six-year period beginning July 1, 2015, payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by certain state agencies for capital construction.	67	n/a	12

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

OREGON LAWS 2016 REGULAR SESSION
February 1, 2016 - March 3, 2016

CHAPTER 36

AN ACT

HB 4040

Relating to *Canis lupus*; and declaring an emergency.

Whereas *Canis lupus*, commonly known as the gray wolf, was extirpated from Oregon by 1950; and

Whereas *Canis lupus* has been listed as a state-designated endangered species since the enactment of ORS 496.171 to 496.182 by the Legislative Assembly in 1987; and

Whereas a *Canis lupus* population has been re-established in Oregon and has been increasing in both distribution and abundance since 2008; and

Whereas *Canis lupus* is not now and is not likely in the foreseeable future to be in danger of extinction in Oregon; and

Whereas *Canis lupus* has natural reproductive potential that is not in danger of failure due to limited population numbers, disease, predation or other natural or human actions affecting continued existence of the species; and

Whereas *Canis lupus* is not undergoing imminent or active deterioration of range or primary habitat; and

Whereas *Canis lupus* is not subject to overutilization of the species or its habitat for commercial, recreational, scientific or educational purposes; and

Whereas *Canis lupus* has adequate protection under existing state programs, laws and regulations, including the Oregon Wolf Conservation and Management Plan and associated rules adopted by the State Fish and Wildlife Commission; and

Whereas the commission took administrative action on November 9, 2015, to remove *Canis lupus* from the Oregon lists of threatened species or endangered species; and

Whereas the commission developed extensive analyses and assessments that were made publicly available for review and comment through a series of public hearings; and

Whereas the commission provided their analyses and assessments for review by experts in the field of wildlife management; and

Whereas the commission has received and reviewed thousands of public comments on this matter, including many hours of public testimony; now, therefore,

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

SECTION 1. The administrative rule amendment adopted by the State Fish and Wildlife Commission on November 9, 2015, to remove *Canis lupus*, commonly known as the gray wolf, from the state lists of threatened species or endangered species established pursuant to ORS 496.172 (2), is ratified as satisfying the elements of ORS 496.176 and approved.

SECTION 2. This 2016 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect on its passage.

Approved by the Governor March 14, 2016
Filed in the office of Secretary of State March 14, 2016
Effective date March 14, 2016

CHAPTER 37

AN ACT

HB 4046

Relating to violations of wildlife laws; amending ORS 496.705, 496.992 and 498.042.

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

SECTION 1. ORS 496.705 is amended to read:

496.705. (1) The State Fish and Wildlife Commission may institute suit for the recovery of damages for the unlawful taking or killing of any of the wildlife referred to in subsection (2) of this section that are the property of the state.

(2)(a) The damages referred to in subsection (1) of this section are as follows:

(A) Each game mammal other than moose, mountain sheep, mountain goat, elk, **gray wolf**,

black bear, cougar or silver gray squirrel, or deer or antelope described in subparagraphs (D) and (E) of this paragraph, \$1,000.

(B) Each moose, mountain sheep or mountain goat, other than those described in subparagraphs (F), (G) and (H) of this paragraph, \$10,000.

(C) Each elk, other than those described in subparagraph (I) of this paragraph, [~~\$1,500~~] **\$5,000**.

(D) Each deer with at least four points on one antler, **gray wolf, black bear or cougar**, \$7,500.

(E) Each antelope with at least one horn equal to or greater than 14 inches, \$7,500.

(F) Each moose with antlers, [~~\$25,000~~] **\$50,000**.

(G) Each mountain sheep that has at least one horn equal to or greater than one half curl, [~~\$25,000~~] **\$50,000**.

(H) Each mountain goat that has at least one horn equal to or greater than six inches, [~~\$25,000~~] **\$50,000**.

(I) Each elk with at least six points on one antler, \$15,000.

(J) Each silver gray squirrel, [~~\$20~~] **\$100**.

(K) Each game bird other than wild turkey or **sage grouse**, \$20.

(L) Each wild turkey, [~~\$100~~] **or sage grouse, \$1,000**.

(M) Each game fish other than salmon, steelhead trout, halibut or sturgeon, [~~\$10~~] **\$25**.

(N) Each sturgeon other than those specified in subparagraph (O) of this paragraph, salmon, steelhead trout or halibut, [~~\$250~~] **\$750**.

(O) Each oversized sturgeon, as specified by the commission by rule, [~~\$1,000~~] **\$5,000**.

(P) Each fur-bearing mammal other than bobcat or fisher, \$100.

(Q) Each bobcat or fisher, \$700.

(R) Each specimen of any wildlife species whose survival is specified by the wildlife laws or the laws of the United States as threatened or endangered, [~~\$1,000~~] **\$2,500**.

(S) Each specimen of any wildlife species otherwise protected by the wildlife laws or the laws of the United States, but not otherwise referred to in this subsection, \$50.

(T) Each bald eagle, golden eagle, goshawk, osprey, peregrine falcon or any other raptor listed as a threatened species or an endangered species by the commission by rule, \$5,000.

(U) Each raptor except those specified in subparagraph (T) of this paragraph, \$2,000.

(b) For purposes of this subsection:

(A) A point must be at least one inch, measured from the main beam of the antler to the tip of the point.

(B) Horn length must be measured from the base of the hairline to the tip of the horn.

(3) In any such action, the court shall award to the prevailing party, in addition to costs and disbursements, reasonable attorney fees.

(4) Such civil damages shall be in addition to other penalties prescribed by the wildlife laws for the unlawful taking or killing of wildlife.

(5) Any circuit or justice court has jurisdiction to try any case for the recovery of damages for the unlawful taking or killing of any of the wildlife as provided by this section.

(6) Each taking or killing of a single animal referred to in subsection (2) of this section constitutes a separate unlawful taking or killing for purposes of this section.

(7) Subject to ORS 496.690, this section does not apply to the unintentional taking or killing of wildlife incident to an otherwise lawful activity.

SECTION 2. ORS 496.992 is amended to read:

496.992. (1) Except as otherwise provided by this section or other law, a violation of any provision of the wildlife laws, or any rule adopted pursuant to the wildlife laws, is a Class A misdemeanor if the offense is committed with a culpable mental state.

(2) Except as otherwise provided by this section or other law, a violation of a provision of the wildlife laws, or a rule adopted pursuant to the wildlife laws, that does not involve the taking of wildlife is a Class D violation if the offense is committed without a culpable mental state.

(3) A violation of a provision of the wildlife laws, or a rule adopted pursuant to the wildlife laws, that involves the taking of wildlife, other than nongame mammals and game birds, is a Class A violation if the offense is committed without a culpable mental state.

(4) A violation of a provision of the wildlife laws, or a rule adopted pursuant to the wildlife laws, that involves the taking of nongame mammals or game birds is a Class C violation if the offense is committed without a culpable mental state.

(5) A violation of a provision of the wildlife laws, or a rule adopted pursuant to the wildlife laws, that involves the size or quantity limits for salmon, steelhead trout and sturgeon is a Class A violation if the offense is committed without a culpable mental state.

(6) A violation of a provision of the wildlife laws, or a rule adopted pursuant to the wildlife laws, relating to the size or quantity limits for fish or shellfish, other than size and quantity limits for salmon, steelhead trout and sturgeon, is a Class C violation if the offense is committed without a culpable mental state.

(7) A violation of the nonresident licensing provisions of ORS 497.102 or 497.121 is a Class A violation if the offense is committed without a culpable mental state.

(8) A violation of ORS 496.994 is a Class A violation if the offense is committed without a culpable mental state.

(9) The second and each subsequent conviction within a 10-year period for the taking of a raptor or the taking of game fish with a total value of \$200 or more or the taking of antelope, black bear, cougar, deer, elk, moose, mountain goat or mountain sheep in violation of any provision of the wildlife laws, or any rule adopted pursuant thereto, [*which*] **that** oc-

curs more than one hour prior to, or more than one hour subsequent to, a season established for the lawful taking of such game mammals or game fish is a Class C felony if the offense is committed with a culpable mental state.

(10) If a person is convicted of a Class A misdemeanor under subsection (1) of this section, in addition to any other penalty authorized by law, the court shall impose a fine that is:

(a) Equal to the maximum fine described in ORS 161.635 (1)(a), if the person has two or more previous convictions for a Class A misdemeanor under subsection (1) of this section or if the offense involves taking three or more times the daily bag limit of any wildlife.

(b) Not less than one-half of the maximum fine described in ORS 161.635 (1)(a), if the offense involves:

(A) Failing to release a sturgeon more than six feet in length;

(B) Unlawfully taking wildlife with the intent to sell, barter, trade, import or export the wildlife, or parts thereof, or selling, bartering, trading, importing or exporting unlawfully taken wildlife, or parts thereof; or

(C) Taking a raptor and the person has a previous conviction for taking a raptor.

(c) Not less than one-fourth of the maximum fine described in ORS 161.635 (1)(a), if the offense involves taking a raptor and the person does not have a previous conviction for taking a raptor.

(11) If more than one minimum fine described in subsection (10) of this section applies, the court shall impose a fine in an amount that is not less than the highest of the applicable minimum fines.

(12)(a) In addition to any other penalty authorized by law, the court shall order the State Fish and Wildlife Commission to revoke all licenses, tags and permits issued to a person in the manner provided for in ORS 497.415 (3), (5) and (6) if the person is convicted of:

(A) A Class A misdemeanor under subsection (1) of this section if the offense involves:

(i) A violation of ORS 498.042; or

(ii) The unlawful taking of wildlife with the intent to sell, barter, trade, import or export the wildlife, or parts thereof, or selling, bartering, trading, importing or exporting unlawfully taken wildlife, or parts thereof; or

(B) A Class C felony under subsection (9) of this section.

(b) Notwithstanding ORS 497.415 (5), upon having a license, tag or permit revoked under subsection (a)(A)(i) of this section for the second time in a 10-year period, a person is prohibited from applying for or obtaining another such license, tag or permit.

(13) Upon the third conviction within a 10-year period for violation of a provision of the wildlife laws, or a rule adopted pursuant to the wildlife laws, the court shall order all guns, boats, vehicles, traps, fishing apparatus, elec-

tronic devices and other implements used in committing the third or subsequent offense to be seized and forfeited to the State of Oregon, to be turned over to the State Fish and Wildlife Commission for disposal in the manner provided for in ORS 496.680.

[(12)] (14) As used in this section:

(a) "Culpable mental state" has the meaning given that term in ORS 161.085.

(b) "Previous conviction" includes a conviction entered in the same sentencing proceeding if the conviction is for a separate criminal episode as defined in ORS 131.505.

(c) "Raptor" means a member of the order Falconiformes or Strigiformes and includes owls, hawks, falcons, eagles, osprey and harriers.

SECTION 3. ORS 498.042 is amended to read:

498.042. [(1) No person shall remove from the carcass of any game mammal or game bird, the head, antlers, horns, hide or plumage, and utilize only those parts so removed, except:]

(1) Except as provided in subsection (2) of this section, a person may not remove the following parts from the carcass of any wildlife and utilize only those parts so removed:

(a) From the carcass of any game mammal or game bird, the head, antlers, horns, hide or plumage.

(b) From the carcass of a black bear or cougar, the paws, gallbladder, sex organs or bones.

(c) From the carcass of a sturgeon, salmon or steelhead, the eggs.

(2) Subsection (1) of this section does not apply to the removal of wildlife parts by a person:

(a) When engaged in lawful trapping activities.

(b) When utilizing those game mammals or game birds that the State Fish and Wildlife Commission by rule declares to be inedible.

[(2)] (3) No person shall waste any edible portion of any game mammal, game bird or game fish or the pelt of any fur-bearing mammal.

Approved by the Governor March 14, 2016

Filed in the office of Secretary of State March 14, 2016

Effective date January 1, 2017

CHAPTER 44

AN ACT

HB 4106

Relating to state agency adoption of temporary rules.

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

SECTION 1. (1) As used in this section:

(a) "Agency" has the meaning given that term in ORS 183.310.

(b) "Rule" has the meaning given that term in ORS 183.310.

(c) “Statement of need” means the statement described in ORS 183.335 (5)(c).

(2) No later than February 1 of each year, an agency that is subject to ORS 183.335 shall provide a report to the Legislative Assembly, in the manner provided in ORS 192.245, regarding all rules that the agency adopted, amended, repealed or suspended during the preceding 12-month period. The report must include:

(a) The number of rules adopted, amended or repealed in accordance with ORS 183.335 (2) and (3); and

(b) With respect to rules adopted, amended or suspended using the procedure described in ORS 183.335 (5):

(A) The number of rules;

(B) A list of the rules;

(C) A statement of need for each rule and all of the agency’s findings that a failure to act promptly would result in serious prejudice to the public interest or the interest of parties concerned; and

(D) For each rule, an explanation of why proceeding under ORS 183.335 (5) was the most appropriate method for adopting, amending or suspending the rule and why it was not appropriate to proceed in accordance with ORS 183.335 (2) and (3).

Approved by the Governor March 14, 2016
 Filed in the office of Secretary of State March 14, 2016
 Effective date January 1, 2017

CHAPTER 67

AN ACT

HB 5203

Relating to state financial administration; creating new provisions; amending sections 1, 2, 3, 5 and 7, chapter 808, Oregon Laws 2015; and declaring an emergency.

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

SECTION 1. Section 1, chapter 808, Oregon Laws 2015, is amended to read:

Sec. 1. Notwithstanding any other law limiting expenditures, the following amounts are established for a six-year period beginning July 1, 2015, as the maximum limits for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by the state agencies listed, for the acquisition of land and the acquisition, planning, constructing, altering, repairing, furnishing and equipping of buildings and facilities:

- (1) Oregon Department of Administrative Services:
 - (a) North Campus Demolition and Site Improvement \$ 8,300,000
 - (b) Department of Environmental Quality Public Health Lab Emergency Generator Upgrade \$ 2,926,140
 - (c) Employment Building Upgrades \$ 2,217,398

- (d) Electrical Upgrades/ Replacements..... \$ 2,089,795
- (e) Department of Human Services Building, Cooling Tower Replacement \$ 1,701,702
- (f) Executive Building Elevator Upgrades \$ 875,461
- (g) Executive Building Fire Sprinkler..... \$ 89,322
- (h) Planning \$ 350,000
- (i) Capital Investments/ Acquisitions \$ 17,000,000
- (j) Executive Building Central Stairway Upgrade \$ 377,443
- (k) **Oregon State Fair Capital Repairs and Deferred Maintenance..... \$ 2,500,000**
- (2) Oregon Military Department:
 - (a) New Headquarters Facilities..... \$ 6,700,000
 - (b) Youth Challenge Armory \$ 4,977,000
 - (c) Planning and Predesign \$ 136,281
 - (d) **Oregon Military Museum \$ 725,963**
 - (e) **Regional Training Institute \$ 11,500,000**
 - (3) Oregon Youth Authority:
 - (a) Rogue Valley Facility Improvements \$ 9,880,000
 - (b) MacLaren Facility Improvements \$ 30,934,000
 - (c) CCTV Cameras \$ 1,147,435
 - (d) Deferred Maintenance and Capital Improvements \$ 7,058,000
 - (4) Department of Corrections, Deferred Maintenance \$ 14,220,432
 - (5) Housing and Community Services Department, Family Affordable Housing \$ 40,000,000
 - (6) Department of Transportation:
 - (a) South Coast Maintenance Station \$ 4,500,000
 - (b) Meacham Maintenance Station \$ 7,500,000
 - (c) Maintenance Facilities Colocation \$ 1
 - (d) Highway Improvement Projects..... \$ 35,000,000
 - (7) Oregon Department of Aviation:
 - (a) Condon State Airport, Renovations \$ 226,111
 - (b) McDermitt State Airport, Rehabilitation..... \$ 201,667
 - (c) Aurora State Airport, Apron/ Taxiway and Taxilane Project..... \$ 130,000
 - (8) Department of Veterans’ Affairs, The Dalles Veterans’ Home Renovation \$ 1,510,547
 - (9) **State Department of Fish and Wildlife:**
 - (a) **Cedar Creek Hatchery and Fish Passage Improvements \$ 2,000,000**
 - (b) **Lower Deschutes River Ranch Acquisition \$ 227,269**
 - (10) **Legislative Administration Committee, State Capitol Capital Repairs and Improvements \$ 30,000,000**

SECTION 2. Section 2, chapter 808, Oregon Laws 2015, is amended to read:

Sec. 2. Notwithstanding any other law limiting expenditures, the following amounts are established for a six-year period beginning July 1, 2015, as the maximum limits for the expenditure of federal funds collected or received by the state agencies listed, for the acquisition of land and the acquisition, planning, constructing, altering, repairing, furnishing and equipping of buildings and facilities:

(1) Oregon Military Department:	
(a) Planning and Pre-design	\$ 140,770
(b) New Headquarters Facilities	\$ 18,463,000
[(c) Medford Armory	\$ 1,943,648]
(c) Medford Armory	\$ 2,884,448
(d) Baker City Readiness Center	\$ 750,000
(e) Sharff Hall/Maison Armory	\$ 2,051,033
(2) State Department of Fish and Wildlife:	
(a) Willamette Falls Fishway Repair	\$ 1,000,000
(b) Lower Deschutes River Ranch Acquisition	\$ 1,323,750
(c) Clackamas Hatchery Intake System	\$ 450,000
(3) Oregon Department of Aviation:	
(a) Condon State Airport, Renovations	\$ 2,035,000
(b) McDermitt State Airport, Rehabilitation	\$ 1,815,000
(c) Aurora State Airport, Apron/Taxiway and Taxilane Project	\$ 1,170,000
(4) Department of Veterans' Affairs, The Dalles Veterans' Home Renovation	\$ 2,805,303

SECTION 3. Section 3, chapter 808, Oregon Laws 2015, is amended to read:

Sec. 3. Notwithstanding any other law limiting expenditures, the amount of ~~[\$311,267,945]~~ **\$321,417,945** is established for a six-year period beginning July 1, 2015, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts and reimbursements from federal service agreements, but excluding lottery funds and federal funds not described in this section, collected or received by the Higher Education Coordinating Commission, for expenditures of proceeds from state bonds issued for the benefit of a public university, pursuant to agreements between the commission and a public university.

SECTION 4. Section 5, chapter 808, Oregon Laws 2015, is amended to read:

Sec. 5. The expiration dates of the project approvals and expenditure limitations authorized by the Legislative Assembly for the following projects are extended to the following dates:

(1) Oregon Department of Aviation Aurora State Airport Air Traffic Control Tower (other funds) (section 2, chapter 5, Oregon Laws 2011)	January 31, 2016
(2) Department of Corrections[:]	

[(a)] Well Replacement on Mill Creek Property (other funds) (section 10, chapter 99, Oregon Laws 2010)	December 31, 2017
[(b) <i>Junction City Prison (other funds) (section 1 (3), chapter 904, Oregon Laws 2009)</i>	<i>June 30, 2018]</i>
(3) Higher Education Coordinating Commission:	
(a) Central Oregon Community College Technology Education Center (other funds) (section 7 (1), chapter 904, Oregon Laws 2009)	June 30, 2016
(b) Portland Community College Cascade Campus Education Center (other funds) (section 7 (7), chapter 904, Oregon Laws 2009)	June 30, 2016
(c) Clackamas Community College Harmony Campus Phase II (other funds) (section 7 (3), chapter 904, Oregon Laws 2009)	June 30, 2019
(4) State Forestry Department Land Acquisition (other funds) (section 1 (6), chapter 904, Oregon Laws 2009)	December 31, 2015
(5) Department of Transportation:	
(a) Transportation Building Renovations (other funds) (sections 1 (1)(b) and 3, chapter 742, Oregon Laws 2007, and section 5 (2)(a), chapter 727, Oregon Laws 2013)	June 30, 2017
(b) Oregon Wireless Interoperability Network, Phase 2 (other funds) (section 1 (5), chapter 904, Oregon Laws 2009)	June 30, 2017
(c) Salem Baggage Depot Renovations (other funds) (May 30, 2014, Emergency Board, Item No. 41)	June 30, 2017
(d) Salem Baggage Depot Renovations (federal funds) (May 30, 2014, Emergency Board, Item No. 41)	June 30, 2017
(6) Oregon Military Department, Roseburg Armory Service Life Extension Project (federal funds) (December 10, 2014, Emergency Board, Item No. 22)	June 30, 2016

SECTION 5. Section 7, chapter 808, Oregon Laws 2015, is amended to read:

Sec. 7. Notwithstanding any other law limiting expenditures, the amount of ~~[\$2,082,893]~~ **\$2,705,641** is established for a six-year period beginning July 1, 2013, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts and federal funds, but excluding lottery funds, collected or received by the Oregon Military Department, for the acquisition of land and the acquisition, planning, constructing, altering, repairing, furnishing and equipping of the Oregon Military Museum.

SECTION 6. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 1 (6), chapter 727, Oregon Laws 2013, for a six-year period beginning July 1, 2013, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by the State Department of Fish and Wildlife for the Clackamas Hatchery intake system, is increased by \$1,845,000.

SECTION 7. Notwithstanding any other law limiting expenditures, the amount of \$1 is established for a six-year period beginning July 1, 2015, as the maximum limit for payments of expenses from bond proceeds and other revenues, including federal funds collected or received from the Higher Education Coordinating Commission, for the acquisition of and improvements to land and the acquisition, planning, constructing, altering, repairing, furnishing and equipping of the American Manufacturing Innovation District building at Portland Community College.

SECTION 8. This 2016 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect on its passage.

Approved by the Governor March 29, 2016
Filed in the office of Secretary of State March 29, 2016
Effective date March 29, 2016

CHAPTER 72

AN ACT

HB 4066

Relating to unmanned aircraft systems; creating new provisions; amending ORS 163.700, 164.885, 498.128, 837.300, 837.360, 837.365 and 837.380; and declaring an emergency.

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

DEFINITION OF “UNMANNED AIRCRAFT SYSTEM”

SECTION 1. ORS 837.300 is amended to read:
837.300. As used in ORS 837.300 to 837.390 and 837.995:

(1) “Unmanned aircraft system” means an unmanned flying machine, commonly known as a drone. “Unmanned aircraft system” does not include a model aircraft as defined in section 336 of the FAA Modernization and Reform Act of 2012 (P.L. 112-95) as in effect on July 29, 2013.]

(1) “Aircraft” has the meaning given that term in ORS 836.005.

(2) “Law enforcement agency” means an agency that employs [police] peace officers, as defined in [ORS 133.525] ORS 133.005, or that prosecutes offenses.

(3) “Public body” has the meaning given that term in ORS 174.109.

(4) “Unmanned aircraft system” means an unmanned flying machine, commonly known as a drone, and its associated elements, including communication links and the components that control the machine.

[(4)] (5) “Warrant” means a warrant issued under ORS 133.525 to 133.703.

WEAPONIZED UNMANNED AIRCRAFT SYSTEMS

SECTION 2. ORS 837.365 is amended to read:

837.365. [A public body may not operate an unmanned aircraft system that is capable of firing a bullet or other projectile, directing a laser or otherwise being used as a weapon.] A person commits a Class A misdemeanor if the person intentionally, knowingly or recklessly operates an unmanned aircraft system that is capable of firing a bullet or projectile or otherwise operates an unmanned aircraft system in a manner that causes the system to function as a dangerous weapon as defined in ORS 161.015.

UNMANNED AIRCRAFT SYSTEMS AND AIRCRAFT

SECTION 3. ORS 164.885 is amended to read:

164.885. (1) A person commits the crime of endangering aircraft in the first degree if the person knowingly:

(a) Throws an object at, or drops an object upon, an aircraft;

(b) Discharges a bow and arrow, gun, airgun or firearm at or toward an aircraft;

(c) Tampers with an aircraft or a part, system, machine or substance used to operate an aircraft in such a manner as to impair the safety, efficiency or operation of an aircraft without the consent of the owner, operator or possessor of the aircraft; or

(d) Places, sets, arms or causes to be discharged a spring gun, trap, explosive device or explosive material with the intent of damaging, destroying or discouraging the operation of an aircraft.

(2)(a) Except as provided in paragraph (b) of this subsection, a person commits the crime of endangering aircraft in the second degree if the person knowingly possesses a firearm or deadly weapon in a restricted access area of a commercial service airport that has at least 2 million passenger boardings per calendar year.

(b) Paragraph (a) of this subsection does not apply to a person authorized under federal law or an airport security program to possess a firearm or deadly weapon in a restricted access area.

(3)(a) Endangering aircraft in the first degree is a Class C felony.

(b) Endangering aircraft in the second degree is a Class A misdemeanor.

(4) As used in this section[.]:

(a) **“Aircraft” does not include an unmanned aircraft system as defined in ORS 837.300.**

(b) **“Restricted access area” means an area of a commercial service airport that is:**

[*(a)*] **(A)** Designated as restricted in the airport security program approved by the federal Transportation Security Administration; and

[*(b)*] **(B)** Marked at points of entry with signs giving notice that access to the area is restricted.

SECTION 4. Section 5 of this 2016 Act is added to and made a part of ORS 837.300 to 837.390.

SECTION 5. Reckless interference with aircraft; penalty. A person commits a Class A violation if the person possesses or controls an unmanned aircraft system and recklessly causes the unmanned aircraft system to:

(1) Direct a laser at an aircraft while the aircraft is in the air;

(2) Crash into an aircraft while the aircraft is in the air; or

(3) Prevent the takeoff or landing of an aircraft.

USE OF UNMANNED AIRCRAFT SYSTEMS BY PUBLIC BODIES

SECTION 6. Section 7 of this 2016 Act is added to and made a part of ORS 837.300 to 837.390.

SECTION 7. Policies and procedures for use of data. (1) A public body that operates an unmanned aircraft system shall establish policies and procedures for the use, storage, accessing, sharing and retention of data, including but not limited to video and audio recordings, resulting from the operation of the unmanned aircraft system.

(2) The public body shall post the following information on the public body’s website or otherwise make the following information available to the public:

(a) The policies and procedures established under this section.

(b) The text of ORS 192.501.

(3) The policies and procedures established under this section must include:

(a) The length of time data will be retained by the public body.

(b) Specifications for third party storage of data, including handling, security and access to the data by the third party.

(c) A policy on disclosure of data through intergovernmental agreements.

SECTION 8. ORS 837.360 is amended to read:

837.360. (1) A public body may not operate an unmanned aircraft system in the airspace over this state without registering the unmanned aircraft system with the Oregon Department of Aviation.

(2) The Oregon Department of Aviation may impose a civil penalty of up to \$10,000 against a public body that violates subsection (1) of this section.

(3) Evidence obtained by a public body through the use of an unmanned aircraft system in violation of subsection (1) of this section is not admissible in any judicial or administrative proceeding and may not be used to establish reasonable suspicion or probable cause to believe that an offense has been committed.

(4) The Oregon Department of Aviation shall establish a registry of unmanned aircraft systems operated by public bodies and may charge a fee sufficient to reimburse the department for the maintenance of the registry.

(5) The Oregon Department of Aviation shall require the following information for registration of an unmanned aircraft system:

(a) The name of the public body that owns or operates the unmanned aircraft system.

(b) The name and contact information of the individuals who operate the unmanned aircraft system.

(c) Identifying information for the unmanned aircraft system as required by the department by rule.

(6) A public body that registers one or more unmanned aircraft systems under this section shall provide an annual report to the Oregon Department of Aviation that [*summarizes*]:

(a) **Summarizes** the frequency of use of the unmanned aircraft systems by the public body during the preceding calendar year; [*and*]

(b) **Summarizes** the purposes for which the unmanned aircraft systems have been used by the public body during the preceding calendar year[.]; **and**

(c) **Indicates how the public can access the policies and procedures established under section 7 of this 2016 Act.**

(7) The State Aviation Board may adopt all rules necessary for the registration of unmanned aircraft systems in Oregon that are consistent with federal laws and regulations.

SECTION 9. (1) Section 7 of this 2016 Act and the amendments to ORS 837.360 by section 8 of this 2016 Act become operative on January 1, 2017.

(2) A public body may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the public body to exercise, on and after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred on the public body by section 7 of this 2016 Act and the amendments to ORS 837.360 by section 8 of this 2016 Act.

USE OF UNMANNED AIRCRAFT SYSTEM FOR COMMERCIAL PURPOSES

SECTION 10. ORS 837.380 is amended to read:

837.380. (1) Except as provided in [subsection (2)] **subsections (2) and (3)** of this section, a person who owns or lawfully occupies real property in this state may bring an action against any person or public body that operates an unmanned aircraft system that is flown over the property if:

(a) The operator of the unmanned aircraft system has flown the unmanned aircraft system over the property on at least one previous occasion; and

(b) The person notified the owner or operator of the unmanned aircraft system that the person did not want the unmanned aircraft system flown over the property.

(2) A person may not bring an action under this section if:

(a) The unmanned aircraft system is lawfully in the flight path for landing at an airport, airfield or runway; and

(b) The unmanned aircraft system is in the process of taking off or landing.

(3) A person may not bring an action under this section if the unmanned aircraft system is operated for commercial purposes in compliance with authorization granted by the Federal Aviation Administration. This subsection does not preclude a person from bringing another civil action, including but not limited to an action for invasion of privacy or an action for invasion of personal privacy under ORS 30.865.

[3] (4) A prevailing plaintiff may recover treble damages for any injury to the person or the property by reason of a trespass by an unmanned aircraft system as described in this section, and may be awarded injunctive relief in the action.

[4] (5) A prevailing plaintiff may recover attorney fees under ORS 20.080 if the amount pleaded in an action under this section is \$10,000 or less.

[5] (6) The Attorney General, on behalf of the State of Oregon, may bring an action or claim for relief alleging nuisance or trespass arising from the operation of an unmanned aircraft system in the airspace over this state. A court shall award reasonable attorney fees to the Attorney General if the Attorney General prevails in an action under this section.

SECTION 11. ORS 163.700 is amended to read:

163.700. (1) Except as provided in ORS 163.702, a person commits the crime of invasion of personal privacy in the second degree if:

(a)(A) For the purpose of arousing or gratifying the sexual desire of the person, the person is in a location to observe another person in a state of nudity without the consent of the other person; and

(B) The other person is in a place and circumstances where the person has a reasonable expectation of personal privacy; or

(b)(A) The person knowingly makes or records a photograph, motion picture, videotape or other visual recording of another person's intimate area without the consent of the other person; and

(B) The person being recorded has a reasonable expectation of privacy concerning the intimate area.

(2) As used in this section and ORS 163.701:

(a) "Intimate area" means nudity, or undergarments that are being worn by a person and are covered by clothing.

(b) "Makes or records a photograph, motion picture, videotape or other visual recording" includes, but is not limited to[,]:

(A) Making or recording or employing, authorizing, permitting, compelling or inducing another person to make or record a photograph, motion picture, videotape or other visual recording.

(B) Making or recording a photograph, motion picture, videotape or other visual recording through the use of an unmanned aircraft system as defined in ORS 837.300, even if the unmanned aircraft system is operated for commercial purposes in compliance with authorization granted by the Federal Aviation Administration.

(c) "Nudity" means any part of the uncovered or less than opaquely covered:

(A) Genitals;

(B) Pubic area; or

(C) Female breast below a point immediately above the top of the areola.

(d) "Places and circumstances where the person has a reasonable expectation of personal privacy" includes, but is not limited to, a bathroom, dressing room, locker room that includes an enclosed area for dressing or showering, tanning booth and any area where a person undresses in an enclosed space that is not open to public view.

(e) "Public view" means that an area can be readily seen and that a person within the area can be distinguished by normal unaided vision when viewed from a public place as defined in ORS 161.015.

(f) "Reasonable expectation of privacy concerning the intimate area" means that the person intended to protect the intimate area from being seen and has not exposed the intimate area to public view.

(3) Invasion of personal privacy in the second degree is a Class A misdemeanor.

CRITICAL INFRASTRUCTURE FACILITIES

SECTION 12. Section 13 of this 2016 Act is added to and made a part of ORS 837.300 to 837.390.

SECTION 13. (1) As used in this section, "critical infrastructure facility" means any of the following facilities, if completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders, or if

marked with a sign conspicuously posted on the property that indicates that entry is forbidden:

- (a) A petroleum or alumina refinery;
 - (b) An electrical power generating facility, substation, switching station or electrical control center;
 - (c) A chemical, polymer or rubber manufacturing facility;
 - (d) A water intake structure, water treatment facility, wastewater treatment plant or pump station;
 - (e) A natural gas compressor station;
 - (f) A liquid natural gas terminal or storage facility;
 - (g) A telecommunications central switching office;
 - (h) A port, railroad switching yard, trucking terminal or other freight transportation facility;
 - (i) A gas processing plant, including a plant used in the processing, treatment or fractionation of natural gas;
 - (j) A transmission facility used by a federally licensed radio or television station;
 - (k) A steelmaking facility that uses an electric arc furnace to make steel;
 - (L) A dam that is classified as a high hazard by the Water Resources Department;
 - (m) Any portion of an aboveground oil, gas or chemical pipeline that is enclosed by a fence or other physical barrier that is obviously designed to exclude intruders; or
 - (n) A correctional facility or law enforcement facility.
- (2) Except as provided in subsection (3) of this section, a person commits a Class A violation if the person intentionally or knowingly:
- (a) Operates an unmanned aircraft system over a critical infrastructure facility at an altitude not higher than 400 feet above ground level; or
 - (b) Allows an unmanned aircraft system to make contact with a critical infrastructure facility, including any person or object on the premises of or within the facility.
- (3) This section does not apply to:
- (a) The federal government.
 - (b) A public body.
 - (c) A law enforcement agency.
 - (d) A person under contract with or otherwise acting under the direction or on behalf of the federal government, a public body or a law enforcement agency.
 - (e) An owner or operator of the critical infrastructure facility.
 - (f) A person who has the prior written consent of the owner or operator of the critical infrastructure facility.
 - (g) The owner or occupant of the property on which the critical infrastructure facility is located.
 - (h) A person who has the prior written consent of the owner or occupant of the property

on which the critical infrastructure facility is located.

- (i) A person operating an unmanned aircraft system for commercial purposes in compliance with authorization granted by the Federal Aviation Administration.

CONFORMING AMENDMENTS

SECTION 14. ORS 498.128 is amended to read: 498.128. (1) The State Fish and Wildlife Commission shall adopt rules prohibiting the use of drones for the following purposes related to the pursuit of wildlife:

- (a) Angling;
 - (b) Hunting;
 - (c) Trapping;
 - (d) Aiding angling, hunting or trapping through the use of drones to harass, track, locate or scout wildlife; and
 - (e) Interfering in the acts of a person who is lawfully angling, hunting or trapping.
- (2) Rules adopted to carry out the prohibitions provided for in this section may include exemptions for:
- (a) Subject to ORS 837.360 [and 837.365], the State Department of Fish and Wildlife and the department's agents and contractors for the use of drones in carrying out the duties of the department; or
 - (b) The use of drones in a manner otherwise prohibited under this section if the purpose of the use is to benefit wildlife management or habitat or for the protection of property.
- (3) Nothing in this section is meant to limit the use of drones by a person who is lawfully engaging in activities authorized under the commercial fishing laws.
- (4) As used in this section, "drone" means:
- (a) An unmanned flying machine;
 - (b) An unmanned water-based vehicle; or
 - (c) Any other vehicle that is able to operate in the air, in or under the water or on land, either remotely or autonomously, and without a human occupant.

CAPTIONS

SECTION 15. The unit and section captions used in this 2016 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2016 Act.

EMERGENCY CLAUSE

SECTION 16. This 2016 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is de-

clared to exist, and this 2016 Act takes effect on its passage.

Approved by the Governor March 29, 2016
 Filed in the office of Secretary of State March 29, 2016
 Effective date March 29, 2016

CHAPTER 80

AN ACT

HB 4113

Relating to the Task Force on Drought Emergency Response; and declaring an emergency.
Be It Enacted by the People of the State of Oregon:

SECTION 1. (1)(a) The Task Force on Drought Emergency Response is established. The task force shall consist of no fewer than 11 and no more than 15 members.

(b) The President of the Senate shall appoint one member who has the qualifications described in subsection (2) of this section.

(c) The Senate Minority Leader shall appoint one member who has the qualifications described in subsection (2) of this section.

(d) The Speaker of the House of Representatives shall appoint one member who has the qualifications described in subsection (2) of this section.

(e) The House Minority Leader shall appoint one member who has the qualifications described in subsection (2) of this section.

(f) The Governor shall appoint no fewer than seven members and no more than 11 members who have the qualifications described in subsections (2) and (3) of this section.

(2) The members appointed to the task force must be individuals who have expertise in matters related to drought emergencies or drought emergency response or who represent private or public sectors having an interest in matters related to drought emergencies or drought emergency response.

(3) The members appointed by the Governor:

(a) Must include, but need not be limited to, representatives of the conservation community, counties, Indian tribes, industrial water users, agriculture, irrigation districts and municipal water suppliers; and

(b) Must be from geographically diverse areas of this state including, at a minimum, the western, central and eastern areas of Oregon.

(4) The task force shall research and evaluate potential tools to prepare for or deal with drought emergencies. The activities of the task force may include, but need not be limited to:

(a) Evaluating the sufficiency of existing tools to address short-term drought response needs and recommending additional tools to address short-term drought response needs;

(b) Identifying options to minimize the impact of drought on agricultural, municipal and other interests;

(c) Identifying options to minimize the impact of drought on fish and wildlife;

(d) Identifying tools to assist small water providers in developing water management, conservation or efficiency plans and in anticipating drought risks and responses;

(e) Identifying the data and resources necessary for anticipating drought and drought impacts on the economy, communities and the environment; or

(f) Recommending improvements in information sharing necessary for enabling the public, water users and recreational in-stream users to understand drought conditions and to assist in efforts to mitigate or adapt to drought.

(5) A majority of the task force constitutes a quorum for the transaction of business.

(6) Official action by the task force requires the approval of a majority of the task force.

(7) The task force shall elect one of its members to serve as chairperson.

(8) If there is a vacancy for any cause, the Governor may make an appointment to become immediately effective.

(9) The task force shall meet at times and places specified by the call of the chairperson or of a majority of the task force.

(10) The task force may adopt rules necessary for the operation of the task force.

(11) The task force shall submit a report in the manner provided in ORS 192.245, and may include recommendations for legislation, to an interim committee of the Legislative Assembly related to natural resources no later than November 1, 2016. The task force shall provide a copy of the report to the Water Resources Commission.

(12) The Water Resources Department shall provide staff support to the task force.

(13) Members of the task force are not entitled to compensation, but may be reimbursed for actual and necessary travel and other expenses incurred by them in the performance of their official duties in the manner and amounts provided for in ORS 292.495. Claims for expenses shall be paid out of funds appropriated to the department for purposes of the task force.

(14) All agencies of state government, as defined in ORS 174.111, are directed to assist the task force in the performance of duties of the task force and, to the extent permitted by laws relating to confidentiality, to furnish information and advice the members of the task force consider necessary to perform their duties.

SECTION 2. Section 1 of this 2016 Act is repealed on December 31, 2016.

SECTION 3. In addition to and not in lieu of any other appropriation, there is appropriated

to the Water Resources Department, for the biennium beginning July 1, 2015, out of the General Fund, the amount of \$25,000, which may be expended for Task Force on Drought Emergency Response purposes.

SECTION 4. This 2016 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect on its passage.

Approved by the Governor March 29, 2016
 Filed in the office of Secretary of State March 29, 2016
 Effective date March 29, 2016

CHAPTER 84

AN ACT

SB 1517

Relating to land improvement projects; creating new provisions; and amending ORS 196.820.

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

SECTION 1. Sections 2 to 6 of this 2016 Act are added to and made a part of ORS chapter 215.

SECTION 2. The Legislative Assembly finds and declares that Tillamook County experiences unique challenges related to the creation, restoration or enhancement of wetlands on lands zoned for exclusive farm use, including regularly occurring and devastating flood events and landowner conflicts. It is therefore in the public interest to establish a pilot program in Tillamook County that applies conditional use review for the creation, restoration or enhancement of wetlands on lands zoned for exclusive farm use, and that incorporates a means for stakeholders to engage in a collaborative process for ensuring the protection and enhancement of agricultural land uses and wetlands.

SECTION 3. As used in sections 2 to 6 of this 2016 Act:

- (1) "Mitigation bank" has the meaning given that term in ORS 196.600.
- (2) "Permit" has the meaning given that term in ORS 215.402.
- (3) "Reclamation" has the meaning given that term in ORS 517.750.
- (4) "Riparian area" means a zone of transition from an aquatic ecosystem to a terrestrial ecosystem, dependent upon surface or subsurface water, in which existing or potential elements of the soil-vegetation complex are influenced by the surface or subsurface water that the zone is dependent upon.
- (5) "Surface mining" has the meaning given that term in ORS 517.750.
- (6) "Wetlands" has the meaning given that term in ORS 196.800.

SECTION 4. (1) Notwithstanding ORS 215.283 (1)(m), the governing body of Tillamook County may, by ordinance or regulation, adopt a pilot program for reviewing, subject to ORS 215.296, the creation, restoration or enhancement of wetlands in any area zoned for exclusive farm use.

(2) Notwithstanding ORS 215.296 (10), ordinances or regulations adopted by the governing body under the pilot program may not establish standards in addition to the standards described in ORS 215.296 (1) for approving the creation, restoration or enhancement of wetlands in areas zoned for exclusive farm use.

(3) Notwithstanding any contrary provision of ORS 215.416, the ordinances or regulations adopted as part of the pilot program shall provide for a mechanism by which, upon request by the applicant and prior to the approval or denial of a permit under the procedures required by ORS 215.402 to 215.438, the following parties may enter into a project-specific collaborative process for settling disputes concerning the application:

- (a) The applicant;
- (b) Any person whose use of the person's property may be adversely affected by the proposed use;
- (c) Any person who is entitled to notice under ORS 215.416 (11)(c);
- (d) Representatives of any state or federal agency that is involved in the project for which the application for the use was submitted or that has expertise related to issues raised by the application or by comments received by the governing body; and
- (e) For the purpose of assisting in the project-specific collaborative process, any person with technical expertise in:
 - (A) Creating, restoring or enhancing wetlands in Tillamook County;
 - (B) Creating, restoring or enhancing wetlands in areas with site characteristics similar to those identified in the application for the use; or
 - (C) The impacts of wetlands on agricultural operations.
- (4) If an applicant requests to enter into a project-specific collaborative process adopted under subsection (3) of this section, the periods set forth in ORS 215.427 (1) and (5) for the governing body of a county or its designee to take final action on the application shall be extended in the manner provided for in ORS 215.427 (10).
- (5) If the parties to a project-specific collaborative process requested under subsection (3) of this section agree to conditions that, if imposed on the proposed use, would satisfy the standards for approval set forth in ORS 215.296 (1) in a manner that is acceptable to all parties, an approval of the application for the permit

shall include the conditions agreed to by the parties.

(6) The governing body shall discontinue a project-specific collaborative process requested under subsection (3) of this section if, at any time during the process, the applicant requests that the governing body resume processing the permit application under the procedures required by ORS 215.402 to 215.438.

SECTION 5. (1) As part of a pilot program authorized by section 4 of this 2016 Act, the governing body of Tillamook County shall, subject to subsection (4) of this section, initiate a planning process to:

(a) Identify areas zoned for exclusive farm use that are suitable for future wetland creation, restoration or enhancement projects; and

(b) Designate areas zoned for exclusive farm use as priority areas for maintenance of agricultural use.

(2) The governing body shall engage stakeholders in the planning process, including, but not limited to, representatives of conservation interests and agricultural interests, state and federal agencies and Indian tribes.

(3) A planning process initiated under this section shall include consideration of:

(a) The historic location and quantity of wetlands within the county;

(b) The location and quantity of wetlands within the county at the time the planning process is initiated;

(c) Agricultural interests within the county, and the land use patterns necessary for the stability of agricultural and associated farming practices;

(d) The amount and location of potential wetland projects that would provide the greatest benefits to fish recovery, fish and wildlife habitat, flood mitigation and other values;

(e) Locations where future wetland projects would be most likely to provide the greatest benefits to fish recovery, fish and wildlife habitat, flood mitigation and other values while remaining compatible with the land use patterns necessary for the stability of agricultural and associated farming practices;

(f) Locations where the creation, restoration or enhancement of wetlands is likely to materially alter the stability of the agricultural land use patterns or cause a significant change to farming practice, alone or in combination with other wetlands in the area; and

(g) Locations or land-use arrangements, opportunities, conditions or approaches that could best enable benefits to fish recovery, fish and wildlife habitat, flood mitigation and other values in a manner that complements the land use patterns necessary for the stability of agricultural and associated farming practices.

(4) The governing body is not required to initiate the planning process provided for in this

section if the governing body determines that adequate funding, which may include funding from any combination of local, state, federal or other sources, is not reasonably available.

(5) If a plan developed under this section is acknowledged pursuant to ORS 197.625, the governing body may, by ordinance, adopt a process for denying permits or streamlining the permitting process for permit applications subject to the pilot program under section 4 of this 2016 Act. Ordinances adopted under this section must provide for a process that is consistent with the priorities identified in the plan.

SECTION 6. Sections 4 and 5 of this 2016 Act and ordinances and regulations adopted pursuant to sections 4 and 5 of this 2016 Act do not apply to the creation, restoration or enhancement of wetlands:

(1) For purposes related to a mitigation bank;

(2) For reclamation of lands affected by surface mining;

(3) If the wetlands are created, restored or enhanced for the purpose of meeting conditions necessary to comply with a National Pollutant Discharge Elimination System permit or water pollution control facility permit issued by the Department of Environmental Quality pursuant to ORS 468B.050;

(4) For which construction had commenced, or required permits had been issued, prior to the adoption of ordinances or regulations by the governing body of Tillamook County under section 4 of this 2016 Act; and

(5) If the creation, restoration or enhancement of the wetlands only involves planting vegetation in a wetland or riparian area.

SECTION 7. (1) The governing body of Tillamook County shall provide for the production and filing of a report on the progress of a pilot program adopted under section 4 of this 2016 Act in the manner provided in ORS 192.245, to the interim committees of the Legislative Assembly related to environment and natural resources no later than September 15 of each odd-numbered year following the effective date of this 2016 Act, until and including September 15, 2025.

(2) In developing a report required by this section, the governing body must consult with stakeholders including, but not limited to, representatives of conservation interests and agricultural interests, state and federal agencies and Indian tribes.

(3) A report required by this section must include, but need not be limited to:

(a) Information on whether and to what extent the governing body has taken action as provided for in sections 4 and 5 of this 2016 Act and the form of the action taken;

(b) The number of permit applications received under the pilot program adopted under section 4 of this 2016 Act, the number of applicants that have requested entering into a project-specific collaborative process to settle disputes concerning their applications and the disposition of applications received under the pilot program; and

(c) Any significant successes, challenges or recommendations for legislation related to the pilot program.

(4) The report that is required to be filed under this section no later than September 15, 2025, shall include information detailing the success of the pilot program and recommendations on whether the pilot program should be made permanent.

SECTION 8. Sections 2 to 7 of this 2016 Act are repealed on January 2, 2027.

SECTION 9. ORS 196.820 is amended to read:

196.820. (1) Notwithstanding any provision of ORS 196.600 to 196.905 to the contrary, except as provided in subsection (2) of this section, the Director of the Department of State Lands shall not issue any permit to fill Smith Lake or Bybee Lake, located in Multnomah County, below the contour line which lies 11 feet above mean sea level as determined by the 1947 adjusted United States Coastal Geodetic Survey Datum.

(2) [Notwithstanding the provision of subsection (1) of this section,] The Director of the Department of State Lands may issue a permit to fill Smith Lake or Bybee Lake, located in Multnomah County, if such fill is to enhance or maintain fish and wildlife habitat **or support recreational use or public access** at or near Smith Lake or Bybee Lake. A fill shall be considered to be for the purpose of enhancing or maintaining fish and wildlife habitat if the proposed fill is approved by the State Department of Fish and Wildlife.

Approved by the Governor March 29, 2016
 Filed in the office of Secretary of State March 29, 2016
 Effective date January 1, 2017

CHAPTER 106
 (Partial)

AN ACT SB 1515

Relating to child welfare; creating new provisions; amending ORS 30.260, 109.070, 109.319, 128.640, 278.322, 418.205, 418.210, 418.215, 418.240, 418.246, 418.250, 418.255, 418.260, 418.263, 418.265, 418.270, 418.275, 418.280, 418.285, 418.290, 418.295, 418.305, 418.306, 418.312, 418.325, 418.327, 418.475, 418.485, 418.495, 418.625, 418.647, 418.950, 418.990, 418.992, 418.993, 418.995, 418.998, 419A.004, 419B.005, 419B.371, 441.277, 443.830, 479.210, 479.217, 497.162, 609.652 and 657.060; and declaring an emergency.

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

* * *

SECTION 53. ORS 497.162 is amended to read:

497.162. (1) Upon application of the Oregon Youth Authority, the Oregon Health Authority or the Department of Human Services, the State Fish and Wildlife Commission shall issue, without fee, a license to angle for the temporary use of any person in a state institution as described in ORS 179.610, any student in a youth correction facility or related camps or programs operated by the Oregon Youth Authority, any child placed by the department and under the care of a foster home or a [private non-profit child-caring agency certified] **child-caring agency licensed, certified or otherwise authorized** by the department **under ORS 418.205 to 418.327**, any person in an alternative to state hospitalization program as described in ORS 430.630 (2)(b) or (c), or any person receiving services under ORS 430.664. The licenses issued under this subsection shall be in bearer form and, subject to applicable laws and regulations relating to angling, shall be used as the agency applying for the license directs.

(2) Upon application of the Department of Human Services, the commission shall issue, without fee, a license to take shellfish for the temporary use of any child placed by the department and under the care of a foster home or a [private nonprofit child-caring agency certified] **child-caring agency licensed, certified or otherwise authorized** by the department **under ORS 418.205 to 418.327**. The licenses issued under this subsection shall be in bearer form and, subject to applicable laws and regulations relating to taking shellfish, shall be used as the department directs.

(3) Upon application of the director of any veteran's administration hospital or domiciliary within this state, the commission shall issue, without fee, to each hospital or domiciliary 30 licenses to angle or to take shellfish for the temporary use of any person who is a patient or resident in the hospital or domiciliary. The licenses issued under this subsection shall be in bearer form and, subject to applicable laws and regulations relating to angling and to taking shellfish, shall be used as the director of the hospital or domiciliary provides.

* * *

Approved by the Governor April 4, 2016
 Filed in the office of Secretary of State April 4, 2016
 Effective date April 4, 2016

CHAPTER 117
 (Partial)

AN ACT SB 1596

Relating to state financial administration; creating new provisions; amending ORS 171.130, 171.557, 173.025, 173.029, 173.035, 173.420, 176.110, 181A.265, 181A.270, 181A.410, 184.345, 184.656,

276.429, 276.625, 283.091, 286A.035, 286A.720, 286A.772, 286A.792, 286A.826, 291.002, 291.060, 291.100, 291.110, 291.200, 291.202, 291.203, 291.204, 291.206, 291.208, 291.210, 291.214, 291.216, 291.217, 291.218, 291.220, 291.222, 291.223, 291.224, 291.258, 291.260, 291.272, 291.276, 291.328, 291.332, 291.334, 291.348, 291.371, 291.373, 291.405, 293.462, 297.110, 341.937, 350.075, 350.090, 350.160, 352.089, 353.140, 403.455, 409.160, 409.161, 410.072, 410.555, 410.625, 423.525, 461.140, 462.265, 463.195, 469.421, 477.777 and 496.138 and section 23, chapter 121, Oregon Laws 2014; repealing ORS 171.559, 184.354, 291.212, 291.226, 291.228, 291.305 and 291.336; and declaring an emergency.

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

* * *

SECTION 73. ORS 496.138 is amended to read:

496.138. (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 en-

hance 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*] **an agency request budget** 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.

* * *

Approved by the Governor April 4, 2016
 Filed in the office of Secretary of State April 4, 2016
 Effective date April 4, 2016

TITLE 41

WILDLIFE

- Chapter 496. Application, Administration and Enforcement of Wildlife Laws
497. Licenses and Permits
498. Hunting, Angling and Trapping Regulations; Miscellaneous Wildlife Protective Measures
501. Refuges and Closures

Chapter 496

2015 EDITION

Application, Administration and Enforcement of Wildlife Laws

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WILDLIFE

<p>496.192 Effect of law on commercial forestland or other private land; effect on other laws</p> <p style="text-align: center;">SALMON FOR INDIAN CEREMONIES</p> <p>496.201 Department to furnish salmon for ceremonies; amount; source</p> <p>496.206 Written request for salmon; contents; time for providing salmon</p> <p>496.211 Limitation on amount and use</p> <p>496.216 Disposition of salmon remaining after ceremony</p> <p>496.221 ORS 496.201 to 496.221 not intended to extend Indian legal or political rights</p> <p style="text-align: center;">ACCESS AND HABITAT BOARD</p> <p>496.228 Access and Habitat Board; qualification of members; expenses; term; meetings</p> <p>496.232 Board to make program recommendations; commission approval; report; fund expenditure qualifications; gifts and grants</p> <p>496.236 Advisory councils to board; duties; no compensation or expenses for members</p> <p>496.242 Access and habitat program funds</p> <p style="text-align: center;">HUNTING ON PUBLIC LANDS</p> <p>496.246 Use of public lands for hunting; requirements regarding closure of access to public lands; exceptions</p> <p style="text-align: center;">FISH AND WILDLIFE HABITAT IMPROVEMENT</p> <p>496.270 Immunity from liability for damages resulting from habitat or water quality improvement project; exceptions</p> <p style="text-align: center;">FISH RESOURCE PROTECTION, RESTORATION AND ENHANCEMENT (Salmon)</p> <p>496.275 Salmon resource protection and restoration; review of public and private production facilities; approval of production facilities by department (All Fisheries)</p> <p>496.280 Findings</p> <p>496.283 Use of certain moneys; limitations on expenditures</p> <p>496.286 Restoration and Enhancement Board</p> <p>496.289 Duties of board; report to legislature; recommendations for programs</p> <p>496.291 Advisory councils; recommendations to board; consultation with councils</p> <p style="text-align: center;">STATE WILDLIFE FUND; RECEIPTS AND EXPENDITURES</p> <p>496.300 State Wildlife Fund; sources; uses</p> <p>496.303 Fish and Wildlife Account; sources; sub-accounts; uses</p> <p>496.306 Compensation for damage done by bear and cougar not to be paid from State Wildlife Fund</p>	<p>496.311 Limitation on size of revolving fund</p> <p>496.340 Payments to counties in lieu of taxes (Temporary provisions related to the Task Force on Funding for Fish, Wildlife and Related Outdoor Recreation and Education are compiled as notes following ORS 496.340)</p> <p style="text-align: center;">WILLAMETTE RIVER BASIN BONNEVILLE POWER ADMINISTRATION STEWARDSHIP FUND</p> <p>496.350 Willamette River Basin Bonneville Power Administration Stewardship Fund; sources; uses</p> <p style="text-align: center;">NONGAME WILDLIFE</p> <p>496.375 "Nongame wildlife" defined</p> <p>496.380 Designation of tax refunds to finance program</p> <p>496.385 Nongame Wildlife Fund</p> <p>496.390 Control over fund by department; use of moneys</p> <p style="text-align: center;">SALMON AND TROUT ENHANCEMENT</p> <p>496.430 Definitions for ORS 496.430 and 496.435 to 496.455</p> <p>496.435 Policy to recover and sustain native stocks</p> <p>496.440 Enhancement program to be conducted by commission; objective</p> <p>496.445 Duties of commission</p> <p>496.450 Application for project; subjects for projects; conditions for approval</p> <p>496.455 Use of native stocks for projects; conditions</p> <p>496.458 Remote hatchbox program; rules</p> <p>496.460 Salmon and Trout Enhancement Program Advisory Committee; members; duties and powers; travel and expenses</p> <p>496.465 Interference with project prohibited</p> <p style="text-align: center;">ADOPTION OF PLANS FOR NATURAL PRODUCTION OF ANADROMOUS FISH RUNS</p> <p>496.470 Natural production of anadromous fish; rules; priorities</p> <p>496.475 Adoption of basin plans</p> <p>496.480 Reports on basin plans</p> <p style="text-align: center;">FISHING TACKLE COLLECTION, DISPOSAL AND RECYCLING</p> <p>496.490 Fishing tackle program</p> <p style="text-align: center;">WILDLIFE COOPERATION; FEDERAL WILDLIFE AID</p> <p>496.510 Assent to federal wildlife-restoration statute; duty of commission with regard thereto</p> <p>496.525 Federal fish restoration and management aid; powers of commission with regard thereto</p>
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WILDLIFE

GENERAL PROVISIONS

496.002 Short title. ORS chapters 496, 497, 498 and 501 may be cited as the wildlife laws. [1973 c.723 §2]

496.004 Definitions. As used in the wildlife laws, unless the context requires otherwise:

(1) "Angle" means to take or attempt to take a fish for personal use by means involving hook and line.

(2) "Commission" means the State Fish and Wildlife Commission created by ORS 496.090.

(3) "Compatible" means capable of existing in harmony so as to minimize conflict.

(4) "Department" means the State Department of Fish and Wildlife created by ORS 496.080.

(5) "Director" means the State Fish and Wildlife Director appointed pursuant to ORS 496.112.

(6) "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 this state.

(b) Any native wildlife species listed as an endangered species pursuant to the federal Endangered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531), as amended.

(7) "Fund" means the State Wildlife Fund created by ORS 496.300.

(8) "Fur-bearing mammal" means beaver, bobcat, fisher, marten, mink, muskrat, otter, raccoon, red fox and gray fox.

(9) "Game mammal" means antelope, black bear, cougar, deer, elk, moose, mountain goat, mountain sheep, silver gray squirrel and gray wolf as a special status mammal defined by commission rule.

(10) "Hunt" means to take or attempt to take any wildlife by means involving the use of a weapon or with the assistance of any mammal or bird.

(11) "Manage" means to protect, preserve, propagate, promote, utilize and control wildlife.

(12) "Optimum level" means wildlife population levels that provide self-sustaining species as well as taking, nonconsumptive and recreational opportunities.

(13) "Person with a disability" means a person who complies with the requirement of ORS 496.018.

(14) "Shellfish" has the meaning given that term in ORS 506.011.

(15) "Species" means any species or subspecies of wildlife.

(16) "Take" means to kill or obtain possession or control of any wildlife.

(17) "Threatened species" means:

(a) 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.

(b) Any native wildlife species listed as a threatened species pursuant to the federal Endangered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531), as amended.

(18) "Trap" means to take or attempt to take any wildlife by means involving the use of a trap, net, snare or other device used for the purpose of capture.

(19) "Wildlife" means fish, shellfish, amphibians and reptiles, feral swine as defined by State Department of Agriculture rule, wild birds as defined by commission rule and other wild mammals as defined by commission rule. [1973 c.723 §3; 1975 c.253 §5; 1977 c.136 §1; 1979 c.399 §1; 1979 c.615 §1a; 1985 c.60 §7; 1987 c.686 §1; 1991 c.67 §148; 1993 c.659 §1; 1999 c.25 §3; 2001 c.125 §1; 2003 c.656 §1; 2007 c.523 §1; 2009 c.778 §1]

496.005 [Repealed by 1973 c.723 §130]

496.006 [Formerly 497.505; 1961 c.343 §1; 1967 c.594 §1; 1971 c.658 §1; repealed by 1973 c.723 §130]

496.007 "Game bird" defined. As used in the wildlife laws, unless the context requires otherwise, "game bird" means:

(1) Those members of the family Anatidae, commonly known as swans, geese, brant and river and sea ducks.

(2) Those members of the family Columbidae, commonly known as mourning doves and bandtailed pigeons.

(3) Those members of the family Tetranidae, commonly known as grouse, ptarmigan and prairie chickens.

(4) Those members of the family Phasianidae, commonly known as pheasants, quail and partridge.

(5) Those members of the family Meleagrididae, commonly known as wild turkey.

(6) Those members of the family Scolopacidae, commonly known as snipe and woodcock.

(7) Those members of the family Gruidae, commonly known as cranes.

(8) Those members of the family Rallidae, commonly known as rails, gallinules and coots. [1973 c.723 §4]

496.008 [1957 c.268 §1; repealed by 1973 c.723 §130]

496.009 "Game fish" defined. As used in the wildlife laws, unless the context requires otherwise, "game fish" means:

(1) Those members of the family Salmonidae, commonly known as trout,

steelhead, char, grayling, Atlantic salmon and whitefish.

(2) Those members of the family Salmonidae, commonly known as salmon, when under 15 inches in length or when taken by angling.

(3) Those members of the family Ictaluridae, commonly known as freshwater catfish.

(4) Those members of the family Centrarchidae, commonly known as freshwater bass, sunfish and crappie.

(5) Those members of the family Acipenseridae, commonly known as green sturgeon and white sturgeon, when taken by angling.

(6) *Perca flavescens*, commonly known as yellow perch.

(7) *Stizostedion vitreum*, commonly known as walleye.

(8) *Catostomus luxatus*, commonly known as mullet.

(9) *Morone saxatilis*, commonly known as striped bass.

(10) *Alosa sapidissima*, commonly known as American shad, when taken by angling. [1973 c.723 §§5,131; 1999 c.1026 §18]

496.010 [Amended by 1953 c.379 §2; 1957 c.250 §1; 1959 c.364 §1; 1963 c.30 §1; repealed by 1973 c.723 §130]

496.012 Wildlife policy. It is the policy of the State of Oregon that wildlife shall be managed to prevent serious depletion of any indigenous species and to provide the optimum recreational and aesthetic benefits for present and future generations of the citizens of this state. In furtherance of this policy, the State Fish and Wildlife Commission shall represent the public interest of the State of Oregon and implement the following coequal goals of wildlife management:

(1) To maintain all species of wildlife at optimum levels.

(2) To develop and manage the lands and waters of this state in a manner that will enhance the production and public enjoyment of wildlife.

(3) To permit an orderly and equitable utilization of available wildlife.

(4) To develop and maintain public access to the lands and waters of the state and the wildlife resources thereon.

(5) To regulate wildlife populations and the public enjoyment of wildlife in a manner that is compatible with primary uses of the lands and waters of the state.

(6) To provide optimum recreational benefits.

(7) To make decisions that affect wildlife resources of the state for the benefit of the

wildlife resources and to make decisions that allow for the best social, economic and recreational utilization of wildlife resources by all user groups. [1973 c.723 §6; 1993 c.659 §2; 2001 c.762 §6]

496.015 [Amended by 1959 c.578 §1; repealed by 1973 c.723 §130]

496.016 Applicability of wildlife laws to commercial fishing laws. Nothing in the wildlife laws is intended to affect any of the provisions of the commercial fishing laws. However, nothing in the commercial fishing laws is intended to authorize the taking of game fish in any manner prohibited by the wildlife laws. [1973 c.723 §7]

496.018 Person with disability under wildlife laws. In order to be considered a person with a disability under the wildlife laws, a person shall provide to the State Fish and Wildlife Commission either:

(1) Written certification from a licensed physician, certified nurse practitioner or licensed physician assistant that states that the person:

(a) Is permanently unable to walk without the use of, or assistance from, a brace, cane, crutch, prosthetic device, wheelchair, scooter or walker;

(b) Is restricted by lung disease to the extent that the person's forced expiratory volume for one second, when measured by a spirometer, is less than 35 percent predicted, or arterial oxygen tension is less than 55 mm/Hg on room air at rest;

(c) Has a cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV, according to standards established by the American Heart Association;

(d) Has a permanent, physical impairment that prevents the person from holding or shooting a firearm or bow or from holding a fishing rod in hand; or

(e) Has central visual acuity that permanently does not exceed 20/200 in the better eye with corrective lenses, or the widest diameter of the visual field is no greater than 20 degrees; or

(2) Written proof that the last official certification of record by the United States Department of Veterans Affairs or any branch of the Armed Forces of the United States shows the person to be at least 65 percent disabled. [1999 c.25 §2; 2001 c.571 §1; 2005 c.471 §12; 2007 c.587 §1]

496.020 [Amended by 1957 c.55 §1; 1957 c.471 §1; 1967 c.431 §1; repealed by 1973 c.723 §130]

496.025 [Amended by 1965 c.149 §1; repealed by 1973 c.723 §130]

496.030 [Repealed by 1973 c.723 §130]

496.032 [1971 c.658 §31; repealed by 1973 c.723 §130]

496.035 [Repealed by 1973 c.723 §130]

496.040 [1953 c.184 §1; repealed by 1973 c.723 §130]

496.045 [1953 c.184 §2; repealed by 1973 c.723 §130]

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.

(2) Three members shall be appointed to represent agricultural interests, three shall be appointed to represent fishing or fish conservation interests and one member shall be appointed to represent the public. Members of the task force shall serve for two-year terms. No member of the task force shall serve for more than three consecutive two-year terms.

(3) A member of the task force shall receive no compensation for services as a member. However, subject to any applicable law regulating travel and other expenses of state officers and employees, a member shall be reimbursed for actual and necessary travel and other expenses incurred in the performance of official duties from such moneys as may be available therefor in the State Wildlife Fund.

(4) The task force shall meet at such times and places as may be determined by the chair or by a majority of the members of the task force.

(5) The duties of the task force are:

(a) To advise the department in the development of a comprehensive cost-sharing program for the installation of fish screening or by-pass devices in water diversions.

(b) To advise the department in establishing a stable and equitable funding system for the installation and maintenance of fish screening and by-pass devices.

(c) To advise the department in identifying sources and applying for grants from local, state and federal governmental agencies for funding the installation and maintenance of fish screening and by-pass devices.

(d) To advise the department in monitoring fish screening programs.

(e) To advise the department in a survey and study of fish screening technology to determine the most cost-effective alternatives for screening in the various situations that may be encountered in the implementation of fish screening in this state.

(f) To advise the department in preparing a report on the capital costs and effectiveness of the program provided in ORS 498.306.

(g) To advise the department on the creation of the priority criteria and the priority listing referred to in ORS 498.306 (14)(a) or (d). [1991 c.858 §6; 1995 c.426 §3; 2005 c.22 §368; 2007 c.625 §5a]

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 of this state, 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; 2013 c.1 §75]

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]

496.121 Authority of department to require fingerprints. For the purpose of requesting a state or nationwide criminal records check under ORS 181A.195, the State Department of Fish and Wildlife may require the fingerprints of a person who:

- (1)(a) Is employed or applying for employment by the department; or
- (b) Provides services or seeks to provide services to the department as a contractor, vendor or volunteer; and
- (2) Is, or will be, working or providing services in a position:
 - (a) In which the person has direct access to persons under 18 years of age, elderly persons or persons with disabilities;

(b) That has personnel or human resources functions as one of the position's primary responsibilities;

(c) In which the person is providing information technology services and has control over, or access to, information technology systems that would allow the person to harm the information technology systems or the information contained in the systems;

(d) That involves the use, possession, issuance, transport, purchase, sale or forfeiture of firearms or munitions, access to firearms or munitions or the training of others in the use or handling of firearms;

(e) In which the person resides on property managed by the department;

(f) In which the person has access to information, the disclosure of which is prohibited by state or federal laws, rules or regulations or information that is defined as confidential under state or federal laws, rules or regulations;

(g) That has payroll functions or in which the person has responsibility for receiving, receipting or depositing money or negotiable instruments, for billing, collections or other financial transactions or for purchasing or selling property or has access to property held in trust or to private property in the temporary custody of the state;

(h) That has mailroom duties as a primary duty or job function;

(i) In which the person has responsibility for auditing the department;

(j) In which the person has access to Social Security numbers, dates of birth or criminal background information of employees or members of the public; or

(k) In which the person has access to tax or financial information about individuals or business entities. [2005 c.730 §60; 2009 c.208 §1]

Note: 496.121 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 496 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

496.122 [1973 c.723 §10; repealed by 1975 c.253 §40]

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]

496.140 [Repealed by 1973 c.723 §130]

496.141 Fish screening program report. On or before February 1 of each odd-numbered year, the State Department of Fish and Wildlife shall provide to the Joint Committee on Ways and Means a complete annual report regarding activities initiated by the department in regard to the fish screening program. The report shall include a complete budget analysis of all costs, including in-kind costs associated with the program, the number of screening or by-pass devices installed and the size of the diversions on which such devices were installed. The budget analysis shall identify all costs associated with the construction and installation of screening or by-pass devices, administrative costs and research and development costs associated with the program. [1995 c.426 §14]

496.145 [Repealed by 1973 c.723 §130]

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 spouses in a marriage, parents, brothers, brothers-in-law, sisters, sisters-in-law, sons, sons-in-law, daughters, daughters-in-law, 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. No fee or user charge prescribed by the commission pursuant to this subsection shall exceed \$250.

(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 imple-

mentation 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 \$1,000 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 annual pioneer combination license pursuant to ORS 497.132.

(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.

(23) May by rule establish annual and daily Columbia Basin salmon, steelhead and sturgeon recreational fishing endorsements with a fee not to exceed \$9.75 per annual license and \$1 per day per daily license. An endorsement is required to fish for salmon, steelhead or sturgeon in portions of the Columbia Basin as designated by rule and is in addition to and not in lieu of angling licenses and tags required under the wildlife laws. Amounts collected as fees under this subsection must be deposited in the Columbia River Fisheries Enhancement Fund established under section 7, chapter 672, Oregon Laws 2013.

(24) May by rule establish multiyear licenses and may prescribe fees for such licenses. Fees prescribed by the commission for multiyear licenses may provide for a discount from the annual license fees that would otherwise be payable for the period of time covered by the multiyear license.

(25) May by rule establish a program to offer unique fishing opportunities through drawings, raffles or auctions and charge application and participation fees for the program. [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; 2013 c.236 §1; 2013 c.363 §7; 2013 c.672 §9; 2015 c.629 §51; 2015 c.779 §7]

Note: The amendments to 496.146 by section 10, chapter 672, Oregon Laws 2013, become operative January 2, 2022. See section 11, chapter 672, Oregon Laws 2013. The text that is operative on and after January 2, 2022, including amendments by section 52, chapter 629, Oregon Laws 2015, and section 8, chapter 779, Oregon Laws 2015, is set forth for the user's convenience.

496.146. 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 spouses in a marriage, parents, brothers, brothers-in-law, sisters, sisters-in-law, sons, sons-in-law, daughters, daughters-in-law, 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. No fee or user charge prescribed by the commission pursuant to this subsection shall exceed \$250.

(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 \$1,000 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 annual pioneer combination license pursuant to ORS 497.132.

(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.

(23) May by rule establish multiyear licenses and may prescribe fees for such licenses. Fees prescribed by the commission for multiyear licenses may provide for a discount from the annual license fees that would otherwise be payable for the period of time covered by the multiyear license.

(24) May by rule establish a program to offer unique fishing opportunities through drawings, raffles or auctions and charge application and participation fees for the program.

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

Sec. 2. Landowner preference tags. Notwithstanding any other provision of the wildlife laws, during the period beginning January 1, 1996, and ending January 2, 2022, 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) Subject to subsection (6) of this section, 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.

(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 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 may be transferred to a person of the landowner's choosing as follows:

(a) A landowner who is issued only one tag may not transfer that tag.

(b) A landowner who is issued two or more tags may transfer not more than 50 percent of the tags to a person who is not an immediate family member, as defined in ORS 496.146 (4). If the calculation of the number of tags eligible for transfer under the provisions of this paragraph results in a fraction, the commission shall round up the number of tags to the next whole number.

(7)(a) As specified pursuant to a formula determined by the commission by rule, the number of landowner preference tags issued for mule deer must be based upon the management, research and habitat needs set forth in the wildlife management plan for mule deer.

(b) If the population of mule deer in a wildlife management unit is greater than the goal specified in the wildlife management plan for mule deer, a landowner who is issued a landowner preference tag is eligible, pursuant to criteria established by rule of the commission, for the number of tags that corresponds to the number of acres that landowner has registered with the State Department of Fish and Wildlife for participation in the program.

(c) The commission may specify by rule a formula for determining the number of landowner preference tags that are available for controlled hunts for mule deer in a wildlife management unit in which the population of mule deer is less than the goal specified for that wildlife management unit in the wildlife management plan for mule deer.

(8) Landowners shall pay the applicable fee under the fee schedule in section 2 of this 2015 Act [497.061] to register for participation in the program.

(9) A landowner shall pay the applicable fee under the fee schedule in section 2 of this 2015 Act to modify the landowner's tag distribution. [1995 c.460 §2; 2001 c.227 §1; 2009 c.349 §1; 2009 c.832 §2a; 2013 c.363 §1; 2015 c.779 §10]

Note: Sections 3 and 5, chapter 363, Oregon Laws 2013, provide:

Sec. 3. Oregon Landowner Damage Program. Notwithstanding any other provision of the wildlife laws, the State Department of Fish and Wildlife shall create and implement an Oregon Landowner Damage Program that:

- (1) Addresses damage caused by elk on privately owned lands in Oregon.
- (2) Provides landowner damage tags only for areas where elk are currently causing damage, where there has been a history of elk damage coupled with actions to alleviate elk damage or where the department has designated the area as an elk deemphasis area.
- (3) Limits the use of damage tags to taking antlerless elk.
- (4) Limits the use of damage tags to taking elk on property owned, leased or rented by the landowner complaining of elk damage or on property owned, leased or rented by a business entity that includes the landowner as a principal partner or shareholder.

(5) Allows exchange of unused general season elk tags or controlled hunt elk tags for landowner damage tags.

(6) Does not impose a limit on the number of total damage tags available for each landowner, except that no more than five damage tags may be valid at any one time.

(7) Does not impose a minimum acreage requirement for landowner participation.

(8) Allows landowners to register for participation in the program at any time prior to the issuance of damage tags.

(9) Establishes a \$30 fee for landowners to register for participation in the program.

(10) Establishes a \$15 fee for landowners to modify the landowner's damage tag distribution.

(11) Authorizes department biologists to sell and exchange damage tags.

(12) Authorizes department biologists to establish the period of validity for damage tags through negotiation with landowners.

(13) Requires landowners to record the number of elk taken and, within 10 days after the end of a designated hunt period, to report to the local department biologist the number of elk taken. [2013 c.363 §3]

Sec. 5. Sections 3 and 4 of this 2013 Act are repealed on January 2, 2020. [2013 c.363 §5]

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 [1993 c.659 §13; renumbered 496.169 in 2015]

496.167 Department recompensable assistance to agencies; tracking and statements. (1) Subject to rules prescribed by the State Fish and Wildlife Commission, in rendering recompensable assistance to an agency, the State Department of Fish and Wildlife shall:

(a) For fiscal years beginning on or after July 1, 2015, and before July 1, 2019, track and prepare statements reporting the number of hours spent by department personnel performing recompensable assistance for any executive department agency, including an hourly rate that would be charged, based on the class of department personnel performing the services. The department shall send statements to the agency receiving services, but may not charge for services. This paragraph does not prohibit the department from charging another state agency for services pursuant to an interagency agreement that is in effect between the department and the other agency at any time during the period beginning July 1, 2015, and ending July 1, 2021.

(b) For fiscal years beginning on or after July 1, 2019, track and prepare statements reporting the number of hours spent by department personnel performing recompensable assistance for any executive department agency, including an hourly rate that would be charged, based on the class of department personnel performing the services.

(2)(a) The charges for which statements are prepared and, after July 1, 2019, billed include, but are not limited to, costs of providing professional, investigatory, administrative and clerical services and capital outlay.

(b) An executive department agency may not submit an invoice to a private entity, a member of the public or an applicant for a state-issued permit for services performed by the department, unless the invoice is authorized by a statute, rule or interagency agreement executed:

- (A) Prior to June 25, 2015; or

(B) Following consultation with persons representative of those private entities, members of the public or permit applicants that are subject to invoicing under this paragraph.

(3) As used in this section:

(a) "Agency" means any department, board, commission, agency or officer of the executive department.

(b) "Executive department" has the meaning given that term in ORS 174.112.

(c) "Recompensable assistance" means assistance rendered by the department as part of advancing fee-funded programs administered by an agency. [2015 c.566 §1]

Note: 496.167 and 496.168 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 496 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

496.168 Estimated expenses for recompensable assistance; invoices. The State Department of Fish and Wildlife shall estimate in advance the expenses that the department will incur during a biennium under ORS 496.167, and shall render to executive department agencies and other entities described in ORS 496.167 an invoice for their share of such expenses for periods within the biennium and in sufficient amounts to provide reasonable cash operating requirements for the department within the biennial period. Each agency or other entity described in ORS 496.167 shall pay to the credit of the department such invoice as an administrative expense from funds or appropriations available to the invoiced agency or entity in the same manner as other claims against the state are paid. If the estimated expenses for the agency or other entity described in ORS 496.167 are more or less than actual expenses for the period covered by the invoice, the difference shall be reflected in the next following estimate of expenses. [2015 c.566 §2]

Note: 496.168 becomes operative July 1, 2019. See section 3, chapter 566, Oregon Laws 2015.

Note: Section 5, chapter 566, Oregon Laws 2015, provides:

Sec. 5. On or before January 1, 2017, and after July 1, 2018, but on or before January 1, 2019, the State Department of Fish and Wildlife shall report to the Legislative Assembly in the manner prescribed in ORS 192.245. The report shall include all of the following:

(1) A list of the types of permits and state agencies that utilize the department's services and for which invoicing will be allowed under section 2 of this 2015 Act [496.168].

(2) A list of all statutes and rules in effect on the date of the report that are applicable to the permit review process engaged in by the department.

(3) A list of all statutes in effect on the date of the report that require or justify participation by the department in permitting processes and an explanation of how those statutes contribute to the protection of the fish and wildlife of this state.

(4) A discussion of any additional options for cost recovery available to the department, including but not limited to interagency agreements that allow other agency personnel to apply department standards, modification of statutes applicable to the department or interagency agreements that could reduce the department's involvement in permit review and application of standards and requirements, without negatively impacting protections for fish and wildlife.

(5) An explanation of the costs associated with permitting, including identifying the costs associated with technical review separately from costs associated with public benefits of the permitting process and the public involvement in the permitting process. [2015 c.566 §5]

Note: See note under 496.167.

496.169 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. [Formerly 496.166]

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 threat-

ened 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, private landowners, affected cities, affected counties, affected local service districts as defined in ORS 174.116, other states having a common interest in the species and interested persons and organizations.

(5)(a) Any person may petition the commission to, by rule, add, remove or change the status of a species on the list.

(b) A petition shall clearly indicate the action sought and shall include documented scientific information about the species' biological status to justify the requested action.

(c) 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.

(d) If the petition is found to present such information, the commission shall commence rulemaking.

(e) 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 informa-

tion or other appropriate considerations require the extension.

(f) 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)(a) 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.

(b) 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.

(c) 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; 2012 c.40 §1]

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

496.182 Protection and conservation programs; mitigation of adverse impact on local economies; 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)(a) 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.

(b) The commission shall work with private landowners, affected cities, affected counties and affected local service districts, as defined in ORS 174.116, to mitigate the adverse impact on local economies when the commission adds a species to the list of threatened species or endangered species pursuant to ORS 496.172.

(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 re-

commend 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; 2012 c.40 §2]

496.185 [Repealed by 1973 c.723 §130]

496.190 [Amended by 1963 c.154 §2; 1965 c.74 §2; repealed by 1973 c.723 §130]

496.192 Effect of law on commercial forestland or other private land; effect on other laws. (1) Nothing in ORS 496.004, 496.171 to 496.182 or 498.026 is intended, by itself, to require an owner of any commercial forestland or other private land to take action to protect a threatened species or endangered species, or to impose additional requirements or restrictions on the use of private land.

(2) Notwithstanding subsection (1) of this section, other statutes may authorize administrative rules or programs to protect wildlife species, including threatened species or endangered species, and nothing in ORS 496.004, 496.171 to 496.182 or 498.026 shall diminish the force or effect of such rules or programs. [1987 c.686 §6a]

496.195 [Amended by 1959 c.371 §2; 1961 c.343 §2; 1965 c.74 §3; 1967 c.594 §3; repealed by 1973 c.723 §130]

496.200 [Repealed by 1973 c.723 §130]

SALMON FOR INDIAN CEREMONIES

496.201 Department to furnish salmon for ceremonies; amount; source. (1) The State of Oregon shall, through the State Department of Fish and Wildlife, provide surplus salmon:

(a) To the Confederated Coos, Lower Umpqua and Siuslaw Indian tribes for their historical, traditional and cultural salmon ceremonies that take place each year.

(b) To the Cow Creek Band of the Umpqua Indians for their historical, traditional and cultural salmon ceremonies that take place each year.

(c) To the Coquille Tribe for their historical, traditional and cultural salmon ceremonies that take place each year.

(d) To the Burns Paiute Tribe for their historical, traditional and cultural salmon ceremonies that take place each year.

(2) The salmon provided by the state shall meet the expressed needs of the Confederated Coos, Lower Umpqua and Siuslaw tribes, up to 1,000 pounds total, the Coquille Tribe, up to 1,000 pounds total, the Cow Creek Band of the Umpqua Indians, up to 1,000 pounds total, and the Burns Paiute Tribe, up to 500 pounds total.

(3) The salmon provided by the state may be either surplus whole fish or carcasses.

(4) Salmon may be taken from hatcheries under either the complete or joint control of the state. [1981 c.575 §2; 1987 c.99 §1; 1993 c.460 §1; 1995 c.137 §1; 2001 c.611 §2; 2001 c.651 §1]

496.205 [Amended by 1961 c.343 §3; repealed by 1973 c.723 §130]

496.206 Written request for salmon; contents; time for providing salmon. (1) The Indian tribes referred to in ORS 496.201 (1) are required to set forth, in writing, their request for salmon. This request shall be submitted by the duly elected tribal governing body no later than 40 days prior to the ceremony and shall include:

(a) The poundage of salmon required;

(b) The date of the ceremony; and

(c) A contact person that the state may refer questions to.

(2) Prior to any state action, the written request must be received by:

(a) The State Department of Fish and Wildlife;

(b) The Attorney General; and

(c) The United States Department of Interior.

(3) The salmon shall be provided to the Indian tribes referred to in ORS 496.201 (1) no later than 30 days after receiving a proper written request therefor. [1981 c.575 §3; 1987 c.99 §2]

496.210 [Repealed by 1973 c.723 §130]

496.211 Limitation on amount and use. (1) The State of Oregon shall be limited to a once a year provision of salmon pursuant to ORS 496.201.

(2) If the Indian tribes referred to in ORS 496.201 (1) use salmon provided by the state for this purpose in any manner other than that described in ORS 496.201, they shall pay to the State Department of Fish and Wildlife the prevailing wholesale rate per pound of the entire amount of salmon supplied to that tribe or tribes for that year. [1981 c.575 §4; 1987 c.99 §3]

496.215 [Repealed by 1973 c.723 §130]

496.216 Disposition of salmon remaining after ceremony. Any salmon remaining after the ceremony may be distributed to tribal members without charge for their subsistence consumption only and not for sale, barter or gift to others, or may be donated to a nonprofit institution or agency. [1981 c.575 §5]

496.220 [Repealed by 1973 c.723 §130]

496.221 ORS 496.201 to 496.221 not intended to extend Indian legal or political rights. Nothing in ORS 496.201 to 496.221 is intended to extend legal or political recognition to any Indians described in ORS 496.201 (1) for any purpose other than provided in ORS 496.201 to 496.216. [1981 c.575 §6; 1987 c.99 §4]

496.225 [Repealed by 1973 c.723 §130]

ACCESS AND HABITAT BOARD

496.228 Access and Habitat Board; qualification of members; expenses; term; meetings. (1) There is established within the State Department of Fish and Wildlife the Access and Habitat Board, consisting of seven members appointed by the State Fish and Wildlife Commission.

(2) Three members shall be appointed to represent the broad spectrum of hunters. In making appointments pursuant to this subsection, the commission shall consider recommendations from the State Fish and Wildlife Director.

(3) Three members of the board shall be appointed to represent the broad spectrum of agriculture and timber landowners. In making appointments pursuant to this subsection, the commission shall consider recommendations from the State Fish and Wildlife Director from a list of at least five persons submitted by the State Forester and the Director of Agriculture.

(4) One member of the board shall be appointed to represent the public and shall serve as the board chairperson.

(5) A member of the board shall receive no compensation for services as a member. However, subject to any applicable law regulating travel and other expenses of state officers and employees, a member shall be reimbursed for actual and necessary travel and other expenses incurred in the performance of official duties from such moneys as are made available by section 19, chapter 659, Oregon Laws 1993.

(6) The term of office of a member of the board is four years. A member of the board is eligible for reappointment.

(7) An official action of the board may be taken only upon the affirmative vote of at least four members.

(8) The board shall select such officers for such terms and with such duties and powers as the board considers necessary for the performance of those offices.

(9) The board shall meet at such times and at such places as may be determined by the chair or by the majority of the members of the board. [1993 c.659 §15; 2009 c.291 §3]

496.230 [1957 c.119 §2; repealed by 1973 c.723 §130]

496.232 Board to make program recommendations; commission approval; report; fund expenditure qualifications; gifts and grants. (1) The Access and Habitat Board shall meet, adopt and recommend to the State Fish and Wildlife Commission, within 120 days after November 4, 1993, and at not more than 120-day intervals thereafter, access and habitat programs.

(2) The commission shall review such programs and may approve or disapprove the program recommendation by the board. Funds may be expended from the subaccount referred to in ORS 496.242 for projects that have been approved by the commission.

(3) The State Department of Fish and Wildlife and the board jointly shall submit to each odd-numbered year regular session of the Legislative Assembly a report on expenditure of funds for the access and habitat programs and on the status of various projects.

(4) In recommending access and habitat programs, the board shall:

(a) Recommend a mix of projects that provides a balance between access and habitat benefits.

(b) Recommend projects that are to be implemented by volunteers under volunteer coordinators and nonprofit organizations engaged in approved access and habitat activities.

(c) Recommend programs that recognize and encourage the contributions of landowners to wildlife and programs that minimize the economic loss to those landowners.

(d) Encourage agreements with landowners who request damage control hunts to ensure public access to those hunts.

(e) Encourage projects that result in obtaining matching funds from other sources.

(5) All moneys made available for the access and habitat programs under section 19, chapter 659, Oregon Laws 1993, and from gifts and grants made to carry out the access and habitat programs may be expended only if the board so recommends and the commission so approves. Such amounts may be expended:

(a) On programs that benefit wildlife by improving habitat. These programs shall be in coordination with the Wildlife Division and shall be in addition to programs provided by federal funds. These programs may:

(A) Be on private lands.

(B) Provide seed and fertilizer to offset forage consumed by wildlife and for other programs that enhance forage.

(C) Be adjacent to agricultural and forest land to attract animals from those crops.

(b) On programs that promote access to public and private lands:

(A) Through contracting for various levels of management of these lands. These management programs may include:

(i) Creating hunting lease programs that provide access at present levels or stimulate new access.

- (ii) Controlling access.
- (iii) Opening vehicle access.
- (iv) Promoting land exchanges.
- (v) Promoting proper hunting behavior.
- (B) Through the acquisition of easements.

(c) On programs that would provide for wildlife feeding to alleviate damage, to intercept wildlife before wildlife becomes involved in a damage situation and for practical food replacement in severe winters.

(d) On programs to coordinate volunteers to improve habitat, repair damage to fences or roads by wildlife or recreationists, monitor orderly hunter utilization of public and private lands and assist the Oregon State Police in law enforcement activities.

(e) On programs that provide for auction or raffle of tags to provide incentives for habitat or access.

(6) The board may accept, from whatever source, gifts or grants for the purposes of access and habitat. All moneys so accepted shall be deposited in the subaccount referred to in ORS 496.242. Unless otherwise required by the terms of a gift or grant, gifts or grants shall be expended as provided in subsection (5) of this section. [1993 c.659 §16; 2005 c.22 §369; 2009 c.778 §1a; 2011 c.545 §59; 2015 c.779 §18]

496.235 [Repealed by 1973 c.723 §130]

496.236 Advisory councils to board; duties; no compensation or expenses for members. (1) Individuals who reside in the various regions established for administration of the wildlife resources may form advisory councils, with membership in the same proportion as described for the board, to discuss and consider access and habitat programs and projects and to make recommendations thereon to the Access and Habitat Board. When the board considers proposals affecting a region, the board shall consult with the advisory council for that region if one exists.

(2) Employees of the State Department of Fish and Wildlife or other professional biologists who are residents of the various regions may act in an advisory capacity to the various councils.

(3) An individual who serves as a member of an advisory council shall receive no compensation or expenses for service as a member. [1993 c.659 §17]

496.240 [Amended by 1959 c.371 §3; 1963 c.154 §3; 1965 c.74 §4; repealed by 1973 c.723 §130]

496.242 Access and habitat program funds. (1) Notwithstanding ORS 496.300, all moneys received by the State Fish and Wildlife Commission pursuant to section 19, chapter 659, Oregon Laws 1993, shall be deposited in the Access and Habitat Board Subaccount established in the Fish and

Wildlife Account. Moneys in the subaccount may be expended only for the access and habitat programs recommended by the Access and Habitat Board for the benefit of the wildlife resources of this state.

(2) The State Department of Fish and Wildlife shall credit the subaccount with a sum equal to 15 percent of the other fund budget for the green forage and Deer Enhancement and Restoration programs in each biennium.

(3) The department shall not assess its personnel costs in the administration of ORS 496.169 and 496.228 to 496.242 against the subaccount referred to in this section without the prior approval of the Access and Habitat Board. [1993 c.659 §14; 2001 c.822 §1]

496.245 [Repealed by 1973 c.723 §130]

HUNTING ON PUBLIC LANDS

496.246 Use of public lands for hunting; requirements regarding closure of access to public lands; exceptions. (1)(a) As used in this section, "public lands" means any land, or improvements thereon, owned by the State of Oregon.

(b) Public lands open to access and use for hunting shall remain open to access and use for hunting, except as limited by a state agency for reasons of public safety or wildlife management or for any other reason determined by a state agency to be in the public interest. However, a state agency is not required to give preference to hunting over other uses of public lands.

(2) In implementing subsection (1) of this section, state agencies shall, to the greatest extent practicable, avoid making determinations that result in a net loss of access to hunting on public lands.

(3)(a) Before a state agency restricts or closes access to public lands open to access and use for hunting, the state agency shall notify the State Department of Fish and Wildlife in a sufficient amount of time of the plans to restrict or close access to the public lands in order to allow the department to post notice pursuant to paragraph (b) of this subsection.

(b) In order to give hunters notice that a state agency plans to restrict or close access to public lands open to access and use for hunting and before a state agency may restrict or close access to the public lands, the department shall post notice on the department's website for 30 days after it receives notification under paragraph (a) of this subsection.

(c) Paragraphs (a) and (b) of this subsection do not apply to restrictions or closures for:

(A) Emergencies.

(B) Fire prevention pursuant to the provisions of ORS 401.165 to 401.236 or 477.535 to 477.550.

(C) Critical wildlife management activities.

(4) On or before January 1 of each year, the State Fish and Wildlife Director shall submit a report to the Legislative Assembly that describes:

(a) The amount, in acres, of public lands open to access and use for hunting that has been closed to hunting by state agencies in the previous calendar year and the reasons for each closure; and

(b) The amount, in acres, of public lands that has been opened to access and use for hunting by state agencies in the previous calendar year. [2011 c.454 §2]

496.250 [Repealed by 1971 c.418 §23]

496.260 [1981 c.720 §22; repealed by 2011 c.83 §24]

496.265 [1981 c.720 §23; 1989 c.924 §8; repealed by 2011 c.83 §24]

FISH AND WILDLIFE HABITAT IMPROVEMENT

496.270 Immunity from liability for damages resulting from habitat or water quality improvement project; exceptions.

(1) The Legislative Assembly declares that it is the policy of the State of Oregon to encourage operators, timber owners and landowners to voluntarily improve fish and wildlife habitat. In order to carry out this policy, the Legislative Assembly encourages cooperation among operators, timber owners and landowners and other volunteers.

(2) Consistent with the limitations of ORS 105.672 to 105.696, a landowner is not liable in contract or tort for any personal injury, death or property damage that arises out of the use of the land by:

(a) A volunteer conducting a fish and wildlife habitat improvement project; or

(b) A participant of a state-funded or federally funded watershed or stream restoration or enhancement program.

(3) An operator, timber owner or landowner shall not be held liable for any damages resulting from:

(a) A fish and wildlife habitat improvement project done in cooperation and consultation with the State Department of Fish and Wildlife or the Oregon Watershed Enhancement Board, or conducted as part of a forest management practice in accordance with ORS 527.610 to 527.770, 527.990 and 527.992; or

(b) Leaving large woody debris within the waters of this state to protect, retain and

recruit large woody debris for the purposes of fish habitat and water quality improvement.

(4) The limitations to liability provided by subsections (2) and (3) of this section do not apply if the damages, injury or death was caused by willful, wanton or intentional conduct on the part of the operator, timber owner or landowner or by the gross negligence of the operator, timber owner or landowner. As used in this subsection "gross negligence" means negligence which is materially greater than the mere absence of reasonable care under the circumstances, and which is characterized by indifference to or reckless disregard of the rights of others.

(5) The limitation on liability provided by subsection (3) of this section does not apply to claims for death or personal injuries. [1993 c.701 §2; 1997 c.207 §1; 1999 c.863 §3]

Note: 496.270 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 496 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

FISH RESOURCE PROTECTION, RESTORATION AND ENHANCEMENT

(Salmon)

496.275 Salmon resource protection and restoration; review of public and private production facilities; approval of production facilities by department. (1)

The Legislative Assembly hereby declares the necessity to review all options and means for the protection and restoration of Oregon's salmon resource that promote local economic development and enjoyment by all the citizens of Oregon. Options and means shall include operation of salmon production facilities, in cooperation with the State Department of Fish and Wildlife, by both public and private nonprofit agencies as well as by public local partnerships, to meet local production and harvest needs as well as to help restore and maintain natural salmon spawning populations. Such cooperative production projects shall be operated using scientifically sound hatchery practices and shall be consistent with objectives to protect and restore natural fish production.

(2) The State Department of Fish and Wildlife shall:

(a) Review and revise existing state administrative rules so that the different forms of hatchery production are recognized as a necessary and critical element in the state's salmon production system in order to provide harvest opportunities for Oregon's citizens. In so doing, the department shall identify low natural production areas and, using genetically compatible stocks approved by the department, encourage volunteer efforts such

as the salmon and trout enhancement program to maintain and to enhance production.

(b) Identify existing private and public salmon production facilities that are currently either underutilized or subject to decommissioning and that may be appropriate for other forms of operation.

(c) Inventory other appropriate local sites, identify possible types of production facilities, recommend stock selection and release size, and assist in securing the acquisition of brood stock approved by the department that maximizes local production.

(d) Investigate and implement ways to improve hatchery smolt survival and reduce predation by such means as night releases, net pen acclimation, alternate release sites, volitional and other release strategies, transport and other means that may be effective and consistent with the conservation of native salmon and genetic resources.

(e) Make recommendations on methods by which operations of facilities referred to in this subsection and subsection (3) of this section can generate revenue for sustainable production, including but not limited to state bonding, license surcharges, ad valorem taxes, local economic development funds, service districts, sale of excess eggs and salmon, and gifts, grants and donations.

(f) Identify needed monitoring and evaluation activities to ensure protection of natural spawning fish populations and to assess the contribution of such cooperative projects to public fisheries.

(g) Assist in developing, for department approval, plans of operation for such cooperative hatchery projects consistent with applicable rules and standards of sound, scientific fish management practice.

(3) The department shall encourage and assist in planning hatchery facilities that seek to implement innovative plans or programs designed to meet production for harvest needs consistent with conservation objectives.

(4) The State Fish and Wildlife Commission shall approve, prior to implementation, operational plans for any fish propagation facilities operated by contractor agreement with other state or federal agencies, local governments, special districts and nonprofit organizations. [1995 c.469 §§2,3,4; 2007 c.71 §169]

(All Fisheries)

496.280 Findings. The Legislative Assembly finds, in the interest of all Oregonians, a necessity to improve Oregon's fishery resource through the further involvement of its citizens and through support by additional financial revenues. [1989 c.512 §2]

Note: 496.280 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 496 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

496.283 Use of certain moneys; limitations on expenditures. (1) Notwithstanding ORS 506.306, all moneys received by the State Fish and Wildlife Commission pursuant to sections 4, 6 and 8, chapter 512, Oregon Laws 1989, shall be deposited in a separate subaccount in the State Wildlife Fund. Except as provided in subsection (2) of this section, moneys in the subaccount may be expended only for the department's fish restoration and enhancement programs for the benefit of the fish resources of this state.

(2) Fees collected from salmon ranching permits authorized under ORS 508.700 to 508.745 will not be commingled with public fishery funds collected and deposited in the subaccount referred to in this section. Notwithstanding any other provision of law, these funds will be used to monitor the effect and impact of private salmon ranching on the fishery resources of Oregon.

(3) The department shall not divert present budgeted funds to other projects as funds pursuant to sections 4, 6 and 8, chapter 512, Oregon Laws 1989, become available and shall not embark on new programs not vital to the restoration of Oregon fisheries as required by Oregon Revised Statutes and administrative rules. The department shall not assess its personnel costs in the administration of chapter 512, Oregon Laws 1989, against the subaccount referred to in this section without the prior approval of the Restoration and Enhancement Board. [1989 c.512 §10; 1991 c.184 §4; 2015 c.779 §42]

496.286 Restoration and Enhancement Board. (1) There is established within the State Department of Fish and Wildlife the Restoration and Enhancement Board, consisting of seven members appointed by the State Fish and Wildlife Commission.

(2) Three members shall be appointed to represent the ocean and inland recreational fisheries. In making appointments pursuant to this subsection, the commission shall consider recommendations from the State Fish and Wildlife Director.

(3) Three members of the board shall be appointed to represent the commercial troll and gillnet fisheries and the fish processing industry. In making appointments pursuant to this subsection, the commission shall consider recommendations from the State Fish and Wildlife Director.

(4) One member of the board shall be appointed to represent the public.

(5) A member of the board shall receive no compensation for services as a member.

However, subject to any applicable law regulating travel and other expenses of state officers and employees, a member shall be reimbursed for actual and necessary travel and other expenses incurred in the performance of official duties from such moneys made available by sections 4, 6 and 8, chapter 512, Oregon Laws 1989.

(6) The term of office of a member of the board is four years. A member of the board is eligible for reappointment.

(7) An official action of the board may be taken only upon the affirmative vote of four members.

(8) The board shall select such officers for such terms and with such duties and powers as the board considers necessary for the performance of those offices.

(9) The board shall meet at such times and at such places as may be determined by the chair or by the majority of the members of the board. [1989 c.512 §11]

496.289 Duties of board; report to legislature; recommendations for programs.

(1) The Restoration and Enhancement Board shall meet, adopt and recommend to the State Fish and Wildlife Commission, within 120 days after July 1, 1989, and at not more than 120-day intervals thereafter, fish restoration and enhancement programs.

(2) The commission shall review such programs and may approve or disapprove any or all program recommendations by the board. Funds may be expended from the subaccount referred to in ORS 496.283 for projects that have been approved by the commission.

(3) The State Department of Fish and Wildlife and the board jointly shall submit to each odd-numbered year regular session of the Legislative Assembly a report on expenditure of funds for the fish restoration and enhancement program and on the status of various projects.

(4) In recommending fish restoration and enhancement programs, the board shall:

(a) Recommend a mix of projects that provide a balance between restoration and enhancement benefits.

(b) Recommend projects that are to be implemented by the salmon and trout enhancement program and nonprofit organizations engaged in approved restoration and enhancement activities.

(c) Encourage projects that result in obtaining matching funds from other sources.

(5) All moneys made available for the fish restoration and enhancement program from funds received under sections 4, 6 and 8, chapter 512, Oregon Laws 1989, and from gifts and grants made to carry out the fish

restoration and enhancement program may be expended only if recommended by the board and approved by the commission. Such amounts may be expended:

(a) On programs benefiting the commercial fishing industry in the same proportion as revenues received from surcharges under sections 6 and 8, chapter 512, Oregon Laws 1989, bear to the total amount of surcharge revenues.

(b) On programs benefiting recreational angling in the same proportion as revenues received from the dedication under section 4, chapter 512, Oregon Laws 1989, bear to the total amount of dedicated revenues.

(6) The board may accept, from whatever source, gifts or grants for the purposes of fish restoration and enhancement. All moneys so accepted shall be deposited in the subaccount referred to in ORS 496.283. Unless otherwise required by the terms of a gift or grant, gifts or grants shall be expended as provided in subsection (5) of this section.

(7) As used in this section:

(a) "Enhancement" includes, but is not limited to, the following activities:

- (A) Angler access.
- (B) New fishways and screens.
- (C) Habitat.
- (D) New hatchery equipment and technology.
- (E) Public education.
- (F) Aquatic inventories.

(b) "Restoration" includes, but is not limited to, the following activities:

- (A) Modification of existing fishways and existing screens.
- (B) Hatchery restoration.
- (C) Liberation equipment. [1989 c.512 §12; 1997 c.8 §12; 2011 c.545 §60; 2015 c.779 §43]

496.291 Advisory councils; recommendations to board; consultation with councils.

(1) Individuals who reside in the various regions established for administration of the salmon and trout enhancement program may form advisory councils to discuss and consider fish restoration and enhancement programs and projects and shall make recommendations thereon to the Restoration and Enhancement Board. When the board considers proposals affecting a region, the board shall consult with the advisory council for that region if one exists.

(2) Employees of the State Department of Fish and Wildlife who are residents of the various regions may act in an advisory capacity to the various councils.

(3) Individuals who serve as members of an advisory council shall receive no compen-

sation or expenses for service as a member.
[1989 c.512 §13]

**STATE WILDLIFE FUND;
RECEIPTS AND EXPENDITURES**

496.300 State Wildlife Fund; sources; uses. (1) The State Wildlife Fund is established in the State Treasury separate and distinct from the General Fund. Except as otherwise provided by law, all moneys received by the State Fish and Wildlife Commission pursuant to the wildlife laws, except such as may be required as a revolving fund for payroll and emergency expenses, shall be paid into the State Treasury and credited to the fund. All moneys in the fund are appropriated continuously to the commission to carry out the wildlife laws. Interest earnings on all moneys in the fund shall be retained in the fund.

(2)(a) The commission shall keep a record of all moneys deposited in the State Wildlife Fund. The record shall indicate by separate cumulative accounts the source from which the moneys are derived and the individual activity or program against which each withdrawal is charged.

(b) Using the record created pursuant to paragraph (a) of this subsection, the commission shall report, in the budget documents submitted to the Legislative Assembly, on the application of investment and interest earnings to the maintenance of fish hatcheries and other State Department of Fish and Wildlife facilities. [1973 c.723 §15; 1975 c.118 §1; 1975 c.253 §12; 1983 c.8 §1; 1983 c.801 §6; 1989 c.618 §10; 1989 c.749 §6; 1991 c.435 §2; 1991 c.858 §7; 1995 c.426 §7; 1999 c.1006 §1; 2001 c.822 §2]

496.303 Fish and Wildlife Account; sources; subaccounts; uses. (1) The Fish and Wildlife Account is established in the State Treasury, separate and distinct from the General Fund. All moneys in the account are continuously appropriated to the State Fish and Wildlife Commission. The Fish and Wildlife Account shall consist of the moneys in its various subaccounts and any moneys transferred to the account by the Legislative Assembly. Unless otherwise specified by law, interest earnings on moneys in the account shall be paid into the State Treasury and credited to the State Wildlife Fund.

(2)(a) The Fish Screening Subaccount is established in the Fish and Wildlife Account. The subaccount shall consist of:

(A) All penalties recovered under ORS 536.900 to 536.920.

(B) All moneys received pursuant to ORS 498.306.

(C) All gifts, grants and other moneys from whatever source that may be used to carry out the provisions of ORS 498.306.

(D) All moneys received from the sale of angling licenses dedicated by ORS 497.124.

(b) All moneys in the subaccount shall be used to carry out the provisions of ORS 315.138, 498.306 and 509.620. However, moneys received from the sale of angling licenses dedicated by ORS 497.124 shall be expended only to carry out the provisions of law relating to the screening of water diversions.

(3) The Fish Endowment Subaccount is established in the Fish and Wildlife Account. The subaccount shall consist of transfers of moneys authorized by the Legislative Assembly from the State Wildlife Fund and gifts and grants of moneys from whatever source for the purpose of paying the expense of maintaining fish hatcheries operated by the department.

(4) The Migratory Waterfowl Subaccount is established in the Fish and Wildlife Account. All moneys received by the commission from the sale of art works and prints related to the migratory waterfowl stamps shall be deposited in the subaccount. Moneys in the subaccount may be expended only for activities that promote the propagation, conservation and recreational uses of migratory waterfowl and for activities related to the design, production, issuance and arrangements for sale of the migratory waterfowl stamps and related art works and prints. Expenditures of moneys in the subaccount may be made within this state, in other states or in foreign countries, in such amounts as the commission determines appropriate. Expenditures in other states and foreign countries shall be on such terms and conditions as the commission determines will benefit most directly the migratory waterfowl resources of this state.

(5) The Halibut Research Subaccount is established in the Fish and Wildlife Account. Based on the annual number of recreational halibut anglers, a portion of the moneys derived from the sale of the salmon, steelhead trout, sturgeon and halibut tag pursuant to ORS 497.121 shall be credited to the subaccount. Moneys in the subaccount may be expended only for halibut population studies and other research.

(6) The Upland Bird Subaccount is established in the Fish and Wildlife Account. All moneys received by the State Fish and Wildlife Commission from the sale of upland bird stamps, from the sale of any art works and prints related to the upland bird stamps and from private hunting preserve permit fees shall be deposited in the subaccount. Moneys in the subaccount may be expended only for promoting the propagation and conservation

of upland birds and the acquisition, development, management, enhancement, sale or exchange of upland bird habitat, and for activities related to the design, production, issuance and arrangements for sale of the upland bird stamps and related art works and prints. Expenditures of moneys in the subaccount shall be made for the benefit of programs within this state in such amounts and at such times as the commission determines appropriate to most directly benefit the upland bird resources of the state.

(7) The Access and Habitat Board Subaccount is established in the Fish and Wildlife Account. The subaccount shall consist of moneys transferred to the subaccount pursuant to ORS 496.242. Moneys in the subaccount may be used for the purposes specified in ORS 496.242.

(8) The Marine Shellfish Subaccount is established in the Fish and Wildlife Account. Interest earnings on moneys in the subaccount shall be credited to the subaccount. All moneys received by the commission from the sale of resident and nonresident shellfish licenses pursuant to ORS 497.121 shall be deposited in the subaccount. Moneys in the subaccount shall be used for the protection and enhancement of shellfish for recreational purposes, including shellfish sanitation costs and the cost of enforcement of wildlife laws pertaining to the taking of shellfish. The State Fish and Wildlife Director, or a designee, the Director of Agriculture, or a designee, and the Superintendent of State Police, or a designee, shall jointly make a recommendation to the Governor for inclusion in the Governor's budget beginning July 1 of each odd-numbered year.

(9)(a) The Mountain Sheep Subaccount is established in the Fish and Wildlife Account, consisting of moneys collected under ORS 497.112 (2)(a) to (c).

(b) All moneys in the subaccount shall be used for the propagation and conservation of mountain sheep, for research, development, management, enhancement and sale or exchange of mountain sheep habitat and for programs within the state that in the discretion of the commission most directly benefit mountain sheep resources of this state.

(10)(a) The Antelope Subaccount is established in the Fish and Wildlife Account, consisting of moneys collected under ORS 497.112 (2)(a) to (c).

(b) All moneys in the subaccount shall be used for the propagation and conservation of antelope, for research, development, management, enhancement and sale or exchange of antelope habitat and for programs within the state that in the discretion of the commission most directly benefit antelope resources of this state.

(11)(a) The Mountain Goat Subaccount is established in the Fish and Wildlife Account, consisting of moneys collected under ORS 497.112 (2)(a) to (c).

(b) All moneys in the subaccount shall be used for the propagation and conservation of mountain goats for research, development, management, enhancement and sale or exchange of mountain goat habitat and for programs within the state that in the discretion of the commission most directly benefit mountain goat resources of this state.

(12) The commission shall keep a record of all moneys deposited in the Fish and Wildlife Account. The record shall indicate by separate cumulative accounts the sources from which the moneys are derived and the individual activity or programs against which each withdrawal is charged.

(13) The Oregon Conservation Strategy Subaccount is established in the Fish and Wildlife Account. All moneys received by the commission from the sale of habitat conservation stamps and from the sale of any art works and prints related to the habitat conservation stamp shall be deposited in the subaccount. Moneys in the subaccount may be expended only to promote and implement habitat and species restoration, enhancement and viewing activities identified in the "Oregon Conservation Strategy," 2006, by the State Department of Fish and Wildlife, and for activities related to the design, production, issuance and arrangements for sale of the habitat conservation stamps and related art works and prints. [2001 c.822 §3; 2003 c.612 §2; 2003 c.656 §12; 2007 c.625 §§3,14; 2011 c.50 §§3,4; 2011 c.730 §18b; 2015 c.546 §2; 2015 c.779 §44]

Note: 496.303 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 496 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

496.305 [Amended by 1959 c.692 §6; 1971 c.446 §1; repealed by 1973 c.723 §130]

496.306 Compensation for damage done by bear and cougar not to be paid from State Wildlife Fund. If the State Department of Fish and Wildlife is required to pay compensation for damage activities of bear and cougar to people, real property, livestock, or agricultural or forest products, the compensation, and any attorney fees, shall not be paid from the State Wildlife Fund, but shall be paid from such other moneys as shall be available therefor. [1995 c.136 §2]

496.310 [Amended by 1959 c.692 §7; repealed by 1967 c.451 §32]

496.311 Limitation on size of revolving fund. Notwithstanding any other provision of law, the revolving fund referred to in ORS 496.300 shall not exceed \$40,000. [1975 c.545 §9; 1979 c.461 §7]

496.315 [Amended by 1959 c.692 §8; 1967 c.451 §23; 1971 c.446 §2; repealed by 1973 c.723 §130]

496.320 [Amended by 1959 c.692 §9; 1971 c.446 §3; 1971 c.658 §6; repealed by 1973 c.723 §130]

496.325 [Amended by 1971 c.446 §4; 1971 c.658 §6a; repealed by 1973 c.723 §130]

496.330 [Amended by 1971 c.658 §7; repealed by 1973 c.723 §130]

496.335 [Repealed by 1973 c.723 §130]

496.340 Payments to counties in lieu of taxes. (1) Except as provided in subsection (3) of this section, whenever real property owned by the State Fish and Wildlife Commission is exempt from taxation on January 1 of any year by reason of its ownership by the state, the commission shall pay to the county in which the property is situated an amount equal to the ad valorem taxes that would have been charged against the property if it had been assessed to a taxable owner as of January 1 of such year as provided in subsection (2) of this section. The county assessor shall determine the value of such property and shall notify the commission of the determination of the county assessor. Upon request of the commission, the Department of Revenue shall review the determination of value and shall redetermine the value if it concludes the value initially determined was substantially incorrect.

(2)(a) Except as provided in paragraph (b) or (c) of this subsection, the value of the property shall be computed at its assessed value under ORS 308A.107 or for forestland use, whichever is applicable.

(b) Paragraph (a) of this subsection shall not apply to any property upon which open field burning takes place. If open field burning takes place on any property described in this section, the property shall be valued at its highest and best use rather than the values authorized in paragraph (a) of this subsection on the January 1 following the date of the open field burning. If in the next year, the open field burning is discontinued, paragraph (a) of this subsection shall apply the next January 1 and each year thereafter as long as no open field burning occurs.

(c) Paragraph (a) of this subsection shall not apply to any property acquired by the commission after September 9, 1971, if such property was valued under farm use or forestland use special assessment provisions, at the time the property was acquired by the commission. However, no payments in lieu of taxes made to a county pursuant to this section prior to January 1, 1974, shall be refunded to the commission.

(3) This section does not apply to real property used for bird farms, fish hatcheries, office quarters, fishing access sites or impoundments, capital improvements or real property acquired pursuant to the Act of

May 19, 1948 (62 Stat. 240), Public Law 80-537.

(4) The amount prescribed in subsection (1) of this section shall be determined annually by the assessor of the county in which the property is situated and certified by the assessor to the county court or the board of county commissioners. A notice of the determination, signed by the county judge or the chairperson of the board of county commissioners, shall be mailed to the principal office of the commission not later than October 15. The notice shall contain a statement of the value of the property and a complete explanation of the method used in computing the amount claimed pursuant to subsection (1) of this section. Not later than November 15, the commission shall pay each amount, less a discount equivalent to that which is provided in ORS 311.505. Payment shall be made to the county treasurer, who shall distribute the payment to the taxing districts of the county in accordance with the schedule of percentages computed under ORS 311.390.

(5) Notwithstanding any other provision of the wildlife laws, the commission shall make the payments to counties required by this section annually from the moneys in the State Wildlife Fund established by ORS 496.300. [Amended by 1955 c.729 §1; 1971 c.356 §1; 1971 c.474 §1; 1973 c.723 §16; 1991 c.459 §420; 1997 c.541 §441; 1999 c.314 §73; 2005 c.755 §46]

(Task Force on Funding for Fish, Wildlife and Related Outdoor Recreation and Education)

Note: Sections 1 to 4, chapter 712, Oregon Laws 2015, provide:

Sec. 1. Legislative intent. It is the intent of the Legislative Assembly that the task force established under section 2 of this 2015 Act develop recommendations for legislation that will carry out the following purposes:

(1) Strengthen the State Department of Fish and Wildlife's ability to carry out conservation and related outdoor recreation and education programs that benefit the nonhunting and nonangling members of the public whose values and pursuits are connected to healthy native fish and wildlife and healthy fish and wildlife habitat;

(2) Maintain and enhance hunting and angling opportunities, improve public access and habitat conservation programs related to hunting and angling, and improve public education about the recreational, economic and conservation benefits of hunting and angling, including within urban and underserved communities, through employing hunting and angling license fee funds and associated federal funds in a manner that is fair and equitable to the fee payers;

(3) Ensure, to the greatest extent possible, that future fee increases, new fees or other new revenue streams for the funding of the department are developed and implemented in a manner that ensures that individual beneficiaries of the department's services equitably contribute to the revenues of the department based on the services they receive; and

(4) Prioritize actions and allocation of resources that provide for the long-term sustainability of the department and its ability to achieve its mission. [2015 c.712 §1]

Sec. 2. Task Force on Funding for Fish, Wildlife and Related Outdoor Recreation and Education.

(1)(a) The Task Force on Funding for Fish, Wildlife and Related Outdoor Recreation and Education is established, consisting of not fewer than 16 or more than 22 members appointed as follows:

(A) The President of the Senate shall appoint two nonvoting members from among members of the Senate.

(B) The Speaker of the House of Representatives shall appoint two nonvoting members from among members of the House of Representatives.

(C) The State Fish and Wildlife Commission shall appoint one nonvoting member from among the members of the commission.

(D) The Governor shall appoint not fewer than 11 or more than 17 members. All members of the task force appointed by the Governor shall have a general knowledge, understanding and interest in fish, wildlife and fish and wildlife habitat-related natural resource issues. In making appointments, the Governor shall endeavor, to the extent the Governor deems practicable, to ensure that each of the following are represented on the task force:

- (i) The outdoor recreation business community;
- (ii) Conservation interests;
- (iii) Hunting interests;
- (iv) Angling interests;
- (v) Outdoor recreation interests other than hunting and fishing;
- (vi) Members of the general public interested in the health of Oregon's fish, wildlife and fish and wildlife habitat and outdoor recreation and who represent members of Oregon's diverse communities that may be underserved or underrepresented by the State Department of Fish and Wildlife's current operations;
- (vii) The travel and tourism industry;
- (viii) Counties and tribal governments;
- (ix) The outdoor education community;
- (x) The sport fishing industry; and
- (xi) The commercial fishing industry.

(b) The State Fish and Wildlife Director, or the director's designee, shall serve ex officio as a nonvoting member of the task force.

(2) The task force shall:

(a) Identify and recommend potential alternative, sustainable funding sources for the State Department of Fish and Wildlife that are consistent with the intent and purposes set forth in section 1 of this 2015 Act and that may include:

(A) The taxation of the sale of recreational outdoor equipment, clothing or related goods;

(B) Contributions from businesses, organizations and individuals to support the protection and conservation of native nongame wildlife and nongame wildlife habitat;

(C) Fees for services provided by the department to other agencies, organizations or interests;

(D) Fees levied on activities and uses of natural resources that provide commercial benefits and impact fish, wildlife or fish or wildlife habitat;

(E) Endowments, trust funds or other instruments capable of providing stable funding in perpetuity; or

(F) Other funding models, mechanisms or partnerships.

(b) Develop recommendations on whether adjustments are necessary to ensure that relevant department program areas are funded in accordance with the intent and purposes set forth in section 1 of this 2015 Act, while taking into consideration for each relevant program:

(A) The public services provided through the program;

(B) The funding necessary for the program to provide optimal benefits; and

(C) The sources of funding for the program.

(c) Identify and recommend opportunities for the department to better achieve its mission and conservation program objectives through leveraging, coordinating and budgeting funds from alternative sources and existing sources including, but not limited to, federal funds, licenses and permits, lottery funds and mitigation funds.

(3) In carrying out its duties under subsection (2) of this section, the task force shall:

(a) Solicit, collect and consider testimony and recommendations from a wide variety of stakeholders;

(b) Ensure that any recommendations made by the task force comply with the department's mission, the Oregon Constitution and federal law;

(c) Identify, procure and consider any research, surveys and other information that the task force deems necessary for developing informed recommendations;

(d) Consider the practicality of proposed options, including, but not limited to, the logistics of implementation and administration; and

(e) Identify and develop strategies for informing and educating the public about:

(A) The long-term funding needs of the department;

(B) The benefits of providing stable, alternative funding for the management and conservation of fish, wildlife and fish and wildlife habitat; and

(C) The net economic benefits to Oregon's economy of fishing, hunting and other wildlife-related recreation and habitat improvement and protection efforts.

(4) The task force may:

(a) Accept comments and exhibits from public and private sources, examine department records and take other actions reasonable for carrying out the work of the task force; and

(b) Make recommendations on other issues that may impact the department's funding or ability to achieve its mission, including but not limited to the recruitment and retention of hunters and anglers, promotion of the department's programs, predation, and habitat improvement.

(5) A majority of the voting members of the task force constitutes a quorum for the transaction of business.

(6) Official action by the task force, including adoption of the report and recommendations described in subsection (11) of this section, requires the approval of a majority of the voting members of the task force.

(7) The task force shall elect one of its members to serve as chairperson.

(8) If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective.

(9) The task force shall meet at times and places specified by the call of the chairperson or of a majority of the voting members of the task force.

(10) The task force may adopt procedures necessary for the operation of the task force.

(11) The task force shall submit a report in the manner provided by ORS 192.245, and may include rec-

ommendations for legislation, to the interim committees of the Legislative Assembly related to the environment and natural resources no later than September 15, 2016.

(12) The Legislative Administration Committee shall provide staff support to the task force.

(13) The Legislative Administration Committee may accept, on behalf of the task force, contributions of moneys and assistance from the United States Government or its agencies or from any other source, public or private, and agree to conditions placed on the moneys not inconsistent with the duties of the task force. All moneys received by the Legislative Administration Committee under this subsection shall be deposited into the Fish, Wildlife and Related Outdoor Recreation and Education Fund established under section 3 of this 2015 Act to be used for the purposes of carrying out the duties of the task force.

(14) Members of the task force who are not members of the Legislative Assembly are not entitled to compensation, but may be reimbursed for actual and necessary travel and other expenses incurred by them in the performance of their official duties in the manner and amounts provided for in ORS 292.495. Claims for expenses incurred in performing functions of the task force shall be paid out of funds appropriated to the Legislative Administration Committee for purposes of the task force under this section.

(15) All agencies of state government, as defined in ORS 174.111, are directed to assist the task force in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish such information and advice as the members of the task force consider necessary to perform their duties. [2015 c.712 §2]

Sec. 3. Fish, Wildlife and Related Outdoor Recreation and Education Fund. The Fish, Wildlife and Related Outdoor Recreation and Education Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Fish, Wildlife and Related Outdoor Recreation and Education Fund shall be credited to the fund. All moneys in the Fish, Wildlife and Related Outdoor Recreation and Education Fund are continuously appropriated to the Legislative Administration Committee for the purposes of carrying out the duties of the task force established under section 2 of this 2015 Act. [2015 c.712 §3]

Sec. 4. Repeal. (1) Sections 1 to 3 of this 2015 Act are repealed on December 31, 2016.

(2) Any moneys remaining in the Fish, Wildlife and Related Outdoor Recreation and Education Fund on December 31, 2016, that are unexpended, unobligated and not subject to any conditions shall revert to the General Fund. [2015 c.712 §4]

496.345 [1959 c.692 §5; 1963 c.481 §1; part renumbered 506.345; repealed by 1971 c.446 §11]

WILLAMETTE RIVER BASIN BONNEVILLE POWER ADMINISTRATION STEWARDSHIP FUND

496.350 Willamette River Basin Bonneville Power Administration Stewardship Fund; sources; uses. (1) The Willamette River Basin Bonneville Power Administration Stewardship Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Willamette River Basin Bonneville Power Administration Stewardship Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to

the State Department of Fish and Wildlife for long-term operation, maintenance and protection activities that preserve or advance the conservation values of properties purchased under the Willamette River Basin Memorandum of Agreement Regarding Wildlife Habitat Protection and Enhancement between the State of Oregon and the Bonneville Power Administration, dated October 22, 2010. Moneys in the fund may not be used to purchase property or easements.

(2) The Willamette River Basin Bonneville Power Administration Stewardship Fund shall consist of moneys accepted by this state pursuant to the Willamette River Basin Memorandum of Agreement Regarding Wildlife Habitat Protection and Enhancement between the State of Oregon and the Bonneville Power Administration, dated October 22, 2010.

(3) Moneys in the Willamette River Basin Bonneville Power Administration Stewardship Fund may, with the approval of the State Treasurer, be invested as provided by ORS 293.701 to 293.857, and the earnings from such investment shall be credited to the Willamette River Basin Bonneville Power Administration Stewardship Fund. [2013 c.121 §1]

Note: 496.350 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 496 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

NONGAME WILDLIFE

496.375 "Nongame wildlife" defined. As used in ORS 496.380 to 496.390 "nongame wildlife" means all wildlife species over which the State Fish and Wildlife Commission has jurisdiction, except game mammals, as defined in ORS 496.004, fur-bearing mammals as defined in ORS 496.004, game birds as defined in ORS 496.007 and game fish as defined in ORS 496.009. [1979 c.566 §1]

496.380 Designation of tax refunds to finance program. Individual taxpayers who file an Oregon income tax return and who will receive a tax refund from the Department of Revenue may designate that a contribution be made to the Nongame Wildlife Fund by marking the appropriate box printed on the return as provided in ORS 305.690 to 305.753. [1979 c.566 §2; 1981 c.411 §5; 1989 c.987 §21; 2007 c.822 §20]

496.385 Nongame Wildlife Fund. (1) There is established as a separate and distinct fund in the State Treasury a Nongame Wildlife Fund. The Nongame Wildlife Fund shall consist of:

(a) An amount credited to the fund under ORS 305.690 to 305.753, which shall be

transferred by the Department of Revenue to the fund.

(b) Gifts, grants and donations, in money or otherwise, for use as described in subsection (2) of this section, which the State Treasurer may solicit and accept from private and public sources and shall cause to be deposited and credited to the Nongame Wildlife Fund.

(c) Interest or other earnings on the amounts described in paragraphs (a) and (b) of this subsection which shall inure to the benefit of the Nongame Wildlife Fund.

(2) Moneys contained in the Nongame Wildlife Fund are continuously appropriated for the purposes specified in ORS 496.390. [1979 c.566 §3; 1987 c.758 §4; 1989 c.987 §22; 2007 c.822 §21]

496.390 Control over fund by department; use of moneys. The State Department of Fish and Wildlife shall have access to and control of the moneys held in the Nongame Wildlife Fund, but shall use such moneys only to protect and preserve nongame wildlife and their habitat. [1979 c.566 §4]

496.405 [Amended by 1971 c.658 §7a; repealed by 1973 c.723 §130]

496.410 [Repealed by 1973 c.723 §130]

496.415 [Amended by 1971 c.658 §8; repealed by 1973 c.723 §130]

496.420 [1959 c.146 §1; repealed by 1973 c.723 §130]

SALMON AND TROUT ENHANCEMENT

496.430 Definitions for ORS 496.430 and 496.435 to 496.455. As used in this section and ORS 496.435 to 496.455:

(1) "Enhancement" means resource conservation, utilization and educational activities that contribute to the recovery and sustainability of native fish.

(2) "Listed unit" means one population or a group of populations of a species, such as an evolutionarily significant unit, that has been listed as threatened or endangered under the federal Endangered Species Act of 1973 (P.L. 93-205), as amended, or under ORS 496.171 to 496.192.

(3) "Native fish" means indigenous to Oregon and not introduced. Naturally produced fish and hatchery produced fish are both native fish if the fish are indigenous to Oregon and not introduced.

(4) "Native stocks" means those fish indigenous to Oregon that naturally propagate in a given watershed.

(5) "Naturally produced" means a fish that reproduces and completes its full life cycle in its natural habitat. The naturally produced progeny of hatchery fish are naturally produced.

(6) "Population" means a group of fish that:

(a) Originates and reproduces in a particular area at a particular time;

(b) Does not interbreed to any substantial degree with any other group reproducing in a different area or in the same area at a different time; and

(c) Is composed of naturally produced fish, hatchery produced fish or a combination of both.

(7) "Recovery" means that a proportion of the constituent populations of naturally produced native fish belonging to a listed unit are sufficiently abundant, productive and diverse in life histories and distribution such that the listed unit as a whole will be self-sustaining into the foreseeable future.

(8) "Self-sustaining" means having a sufficient proportion and distribution of constituent populations that:

(a) Are likely to survive prolonged periods of habitat, oceanic, climatic and environmental conditions that are detrimental to a population; and

(b) Have habitat of sufficient quality and quantity that is likely to provide survival rates adequate to maintain associated ecological, cultural and economic benefits. [1981 c.317 §2; 2003 c.463 §1]

496.435 Policy to recover and sustain native stocks. Consistent with other provisions of law, it is declared to be a goal of the people of the State of Oregon to achieve recovery and sustainability of native stocks of salmon and trout. In order to achieve this goal in a cost-effective manner, the State of Oregon shall engage in a program to rehabilitate and improve natural habitat and native stocks and ensure that the level of harvest does not exceed the capacity of stocks to reproduce themselves. The State of Oregon shall promote rehabilitation of salmon and trout populations by reintroducing the fish to habitats by using the salmon and trout enhancement program and remote hatchboxes. [1981 c.317 §3; 1999 c.189 §1; 2003 c.463 §2]

496.440 Enhancement program to be conducted by commission; objective. A salmon and trout enhancement program shall be conducted by the State Fish and Wildlife Commission to benefit all users of the salmon and trout resources in this state. The program shall be conducted in such manner as to provide the greatest possible opportunity for citizen volunteer participation to achieve the goals of the program. [1981 c.317 §4]

496.445 Duties of commission. In carrying out the salmon and trout enhancement program, the State Fish and Wildlife Commission shall:

(1) Provide appropriate State Department of Fish and Wildlife personnel to act as community advisors to cooperatively develop enhancement projects with citizen volunteers and to cooperatively evaluate enhancement projects with the citizens responsible for project implementation.

(2) Provide technical assistance to citizens responsible for implementation of enhancement projects.

(3) Coordinate the implementation of enhancement projects with the activities of department staff and other agencies.

(4) Provide educational and informational materials to promote public awareness and involvement in the salmon and trout enhancement program.

(5) Supervise the activities of citizens developing local brood stock for enhancement projects.

(6) Grant funds to citizens for the implementation of approved enhancement projects from such moneys as may be available to the commission therefor.

(7) Develop and implement a remote hatchbox program as described in ORS 496.458.

(8) Report annually to the Legislative Assembly on the progress of the salmon and trout enhancement program. [1981 c.317 §5; 1999 c.189 §2]

496.450 Application for project; subjects for projects; conditions for approval. (1) Any citizen or group of citizens may submit to the State Fish and Wildlife Commission a proposal for a project consistent with the recovery or sustainability of native stocks to be implemented under the salmon and trout enhancement program or may submit a request for advice and assistance in developing such a project.

(2) An enhancement project may include, but is not limited to, habitat improvement, installation and operation of streamside incubators, brood stock development, fish stocking and spawning ground surveys and data collection.

(3) The commission shall approve for implementation only those enhancement projects based on sound biological principles and shall use fish stocks most adapted to the project locale. To the greatest extent practicable, a project must be designed to maximize survival, adult returns and genetic diversity while minimizing disease.

(4) Conditions for approval by the commission for implementation of a project include but are not limited to:

(a) Provisions satisfactory to the commission for inspection and evaluation of the implementation of a project; and

(b) Provisions satisfactory to the commission for controlling the expenditure of and accounting for any funds granted by the commission for implementation of the project. [1981 c.317 §6; 2003 c.463 §3]

496.455 Use of native stocks for projects; conditions. In carrying out any duties, functions or power under the wildlife laws or the commercial fishing laws, the State Fish and Wildlife Commission may authorize the taking of native stocks and their sexual products, but may not provide any such native stocks or the sexual products therefrom to any person granted a permit by the commission pursuant to ORS 508.700 to 508.745 unless, at a minimum, sufficient fish are returned to the donor stream to compensate fully for native smolts which might have resulted from eggs removed from the donor stock. When entering into a contract for the taking of native stock with a person granted a permit pursuant to ORS 508.700 to 508.745, the commission shall consider the use of the facilities for the taking of additional native stock for public management activities, including the salmon and trout enhancement program. [1981 c.317 §7]

496.458 Remote hatchbox program; rules. (1) The State Fish and Wildlife Commission shall develop and implement a remote hatchbox program.

(2) To implement the remote hatchbox program required under subsection (1) of this section, the commission shall:

(a) Identify sites in tributaries that are suitable for remote hatchboxes;

(b) Adopt rules necessary to implement the remote hatchbox program;

(c) Investigate the potential of producing remote hatchboxes through an inmate work program of the Department of Corrections; and

(d) Report annually to the Legislative Assembly on the progress of the remote hatchbox program. The report shall include but need not be limited to the sites the commission has chosen, a copy of rules the commission has adopted and findings on the extent to which the commission is utilizing labor, supplies or services provided by an inmate work program.

(3) Rules adopted by the commission under subsection (2) of this section shall:

(a) Ensure that the program is scientifically sound;

(b) Be consistent with the goals of the Oregon Plan, as described in ORS 541.898; and

(c) Identify protocols for determining when the use of remote hatchboxes is an appropriate activity under the Oregon Plan. [1999 c.189 §4]

496.460 Salmon and Trout Enhancement Program Advisory Committee; members; duties and powers; travel and expenses. (1) The Salmon and Trout Enhancement Program Advisory Committee is established as an advisory committee to the State Fish and Wildlife Commission. The committee shall be of such size and have such geographical representation as the commission determines appropriate. Members of the committee shall be appointed by the Governor.

(2) The committee shall review the policies of the State Department of Fish and Wildlife and make recommendations to the State Fish and Wildlife Commission and to the department concerning the implementation of salmon and trout enhancement projects.

(3) A member of the committee shall receive no compensation for services as a member. However, subject to any applicable law regulating travel and other expenses of state officers and employees, a member shall be reimbursed for actual and necessary travel and other expenses incurred in the performance of official duties from such moneys as may be available to the department therefor. [1981 c.317 §8]

496.465 Interference with project prohibited. Except for activities or projects authorized by a unit of municipal, state or federal government, no person shall disturb, damage, destroy or interfere with the operation of a salmon and trout enhancement project referred to in ORS 496.450. [1989 c.940 §2]

**ADOPTION OF PLANS
FOR NATURAL PRODUCTION
OF ANADROMOUS FISH RUNS**

496.470 Natural production of anadromous fish; rules; priorities. (1) The State Fish and Wildlife Commission shall adopt by rule plans for the natural production of anadromous fish runs in the basins set forth in subsection (2) of this section. The commission shall adopt the plans after government-to-government consultation in the forum established pursuant to *United States v. Oregon*, United States District Court Case No. 68-513 MA, among the State Department of Fish and Wildlife and the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the

Warm Springs Reservation of Oregon and the Nez Perce Tribe.

(2) The basins for which plans may be adopted under subsection (1) of this section are:

- (a) Hood;
- (b) Deschutes;
- (c) Fifteenmile Creek;
- (d) John Day;
- (e) Umatilla;
- (f) Walla Walla;
- (g) Grande Ronde; and
- (h) Imnaha.

(3) Of the basins set forth in subsection (2) of this section, the commission shall give priority to adopting plans for the Grande Ronde, Imnaha, Umatilla, Walla Walla and Hood basins. [1999 c. 671 §1; 2001 c.97 §1]

Note: 496.470 to 496.480 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 496 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

496.475 Adoption of basin plans. The plans adopted pursuant to ORS 496.470 shall:

- (1) Incorporate sound science;
- (2) Be based upon adaptive management, incorporating monitoring and evaluation and clearly defined objectives and outcomes;
- (3) Benefit fish and wildlife;
- (4) Be consistent with efforts of the State of Oregon to recover salmonid populations listed under the federal Endangered Species Act, 16 U.S.C. 1531 to 1544; and
- (5) Include a risk versus benefit analysis to wild fish. [1999 c.671 §2; 2001 c.97 §2]

Note: See note under 496.470.

496.480 Reports on basin plans. The State Department of Fish and Wildlife shall report at least once every six months to the appropriate legislative committee and the Governor on the progress of the department and the State Fish and Wildlife Commission in implementing ORS 496.470 and 496.475. [1999 c.671 §3; 2001 c.97 §3]

Note: See note under 496.470.

**FISHING TACKLE COLLECTION,
DISPOSAL AND RECYCLING**

496.490 Fishing tackle program. (1) The State Department of Fish and Wildlife shall establish a Keep Oregon's Rivers Clean program for the collection, recycling and proper disposal of fishing tackle, including monofilament line, fluorocarbon leaders, lines, lead weights and lures.

(2) The program shall consist of collection points located at or near established fishing areas and boat ramps. At each col-

lection point, the department shall work with conservation and outdoor sports groups to provide a container for collection of tackle and post permanent signs or other notices that explain the program, the benefits of proper tackle recycling and disposal and the Oregon conservation ethic.

(3) The State Department of Fish and Wildlife may work cooperatively with the State Parks and Recreation Department to establish a method by which deposited tackle may be collected for recycling and disposal.

(4) The State Department of Fish and Wildlife shall include in any statewide sportfishing regulations publication produced by the department a statement explaining the collection and recycling program and encouraging nongovernmental organization participation in the program. [2003 c.188 §1; 2005 c.108 §1]

Note: 496.490 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 496 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

496.505 [Formerly 497.505; 1961 c.343 §1; repealed by 1973 c.723 §130]

WILDLIFE COOPERATION; FEDERAL WILDLIFE AID

496.510 Assent to federal wildlife-restoration statute; duty of commission with regard thereto. The State of Oregon assents to the Act of Congress entitled, "An Act to provide that the United States shall aid the states in wildlife-restoration projects, and for other purposes," approved September 2, 1937, Public Law No. 415, 75th Congress (50 Stat. 917, 16 U.S.C.A. 669). The State Fish and Wildlife Commission shall perform such acts as may be necessary to the conduct and establishment of cooperative wildlife-restoration projects, as defined in said Act of Congress, in compliance with said Act and with rules and regulations promulgated by the Secretary of the Interior thereunder.

496.515 [Amended by 1971 c.658 §9; repealed by 1973 c.723 §130]

496.520 [Repealed by 1973 c.723 §130]

496.525 Federal fish restoration and management aid; powers of commission with regard thereto. (1) The State of Oregon assents to the provisions of the Act of Congress entitled, "An Act to provide that the United States shall aid the states in fish restoration and management projects, and for other purposes," approved August 9, 1950, Public Law No. 681, 81st Congress (64 Stat. 430, 16 U.S.C.A. 777).

(2) The State Fish and Wildlife Commission shall perform such acts as may be necessary to the conduct and establishment of cooperative fish restoration projects, as de-

finied in said Act of Congress, in compliance with said Act and rules and regulations promulgated thereunder by the Secretary of the Interior.

MIGRATORY WATERFOWL STAMPS

496.550 Migratory waterfowl stamps; design selection; production of stamps and art works. (1) The State Fish and Wildlife Commission shall arrange, by contest or other appropriate means, for the selection of the design of the annual migratory waterfowl stamps required by ORS 497.151 and for the production and sale of the stamps.

(2) The commission may produce stamps in such number as the commission considers appropriate and may make stamps available for the creation of migratory waterfowl art prints and other related art works and may arrange for the sale of stamps, prints and art works to persons desiring to purchase those items. [1983 c.801 §5; 2015 c.779 §45]

496.555 Contract on migratory waterfowl stamp matters. In carrying out its duties, functions and powers with regard to the migratory waterfowl stamps, the State Fish and Wildlife Commission may contract for the performance of those duties, functions and powers. The contract may include, among other matters, provisions for advance payment or reimbursement for services performed pursuant to any such contract. All costs and expenses incurred pursuant to this section shall be paid from the Migratory Waterfowl Subaccount established under ORS 496.303. [1983 c.801 §4; 2001 c.822 §6; 2015 c.779 §46]

UPLAND BIRD STAMPS

496.558 "Upland bird" defined. As used in this section and ORS 496.562, 496.566 and 497.153, "upland bird" means those bird family members commonly known as pheasant, quail, grouse and partridge, including chukars. [1989 c.406 §2]

Note: 496.558 and 496.562 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 496 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

496.562 Policy. The purposes of this section and ORS 496.558, 496.566 and 497.153 are to:

(1) Authorize the State Fish and Wildlife Commission to issue to hunters an upland bird stamp for a specified fee;

(2) Establish a fund to be financed by the sale of upland bird stamps and any art works and prints related to the upland bird stamps for the purposes of promoting the propagation and conservation of upland birds and

acquiring, developing, managing, enhancing, purchasing or acquiring through lands exchange upland bird habitat; and

(3) Provide the State Fish and Wildlife Commission with improved data on the location and number of upland bird hunters. [1989 c.406 §1; 2015 c.779 §47]

Note: See note under 496.558.

496.566 Contest for stamp design; sale of art works; contracts for stamp matters. (1) The State Fish and Wildlife Commission shall arrange, by contest or other appropriate means, for the selection of the design of the annual upland bird stamps authorized by ORS 497.153 and for the production and sale of the stamps.

(2) The commission may produce stamps in such number as the commission considers appropriate and may make stamps available for the creation of upland bird art prints and other related art works and may arrange for the sale of stamps, prints and art works to persons desiring to purchase those items.

(3) In carrying out its duties, functions and powers with regard to the upland bird stamp, the State Fish and Wildlife Commission may contract for the performance of those duties, functions and powers. The contract may include, among other matters, provisions for advance payment or reimbursement for services performed pursuant to any such contract. All costs and expenses incurred pursuant to this section shall be paid from the Upland Bird Subaccount established under ORS 496.303. [1989 c.406 §6; 2001 c.822 §7; 2015 c.779 §48]

496.570 [1989 c.406 §7; 1999 c.667 §1; repealed by 2001 c.822 §11]

HABITAT CONSERVATION STAMP

496.571 Habitat conservation stamp; fees; design selection; production of stamps and art works. (1) The State Fish and Wildlife Commission may issue an annual habitat conservation stamp. The fee for the stamp may not exceed \$50.

(2) The commission shall arrange, by contest or other appropriate means, for the selection of the design of the annual habitat conservation stamp authorized by subsection (1) of this section and for the production and sale of the stamps.

(3) The commission may produce the number of stamps the commission considers appropriate and may make stamps available for the creation of art prints and other related art works and may arrange for the sale of stamps, prints and art works to persons desiring to purchase those items.

(4) In carrying out its duties, functions and powers with regard to the habitat conservation stamp, the commission may con-

tract for the performance of those duties, functions and powers. The contract may include, among other matters, provisions for advance payment or reimbursement for services performed pursuant to the contract. All costs and expenses incurred pursuant to this section shall be paid from the Oregon Conservation Strategy Subaccount established under ORS 496.303. [2011 c.50 §2]

WILDLIFE LAW ENFORCEMENT AND ENFORCEMENT OFFICERS

496.605 Enforcement of wildlife laws by State Fish and Wildlife Director, deputies and peace officers. The State Fish and Wildlife Director and any deputies of the director and all other peace officers of this state or any political subdivision thereof have jurisdiction of and may enforce any of the provisions of the wildlife laws. [Amended by 1973 c.723 §17]

496.610 State police to enforce wildlife laws; payment of expenses from wildlife fund; appointment of federal agents. (1) The Department of State Police shall employ a sufficient number of state police to enforce the wildlife laws.

(2) The services and expenses of the Department of State Police incurred in the enforcement of the wildlife laws shall be paid from the State Wildlife Fund.

(3) The Superintendent of State Police may appoint special enforcement officers authorized to enforce the wildlife laws. Individuals so appointed must be special agents of the United States Fish and Wildlife Service or the National Marine Fisheries Service, and shall serve at the pleasure of the superintendent without additional compensation. Each such special enforcement officer shall have all powers and authority of a peace officer of this state in serving warrants, subpoenas and other legal process in enforcement of the wildlife laws. [Amended by 1971 c.658 §10; 1973 c.723 §18; 1983 c.364 §4; 2003 c.14 §336]

496.615 Commission employees to supplement state police. The State Fish and Wildlife Commission, with the approval of the Governor and Superintendent of State Police, may employ such persons as they deem necessary or expedient for the enforcement of the wildlife laws. The services and expenses of these persons are payable out of the State Wildlife Fund. It is the intention of this section and ORS 496.610 that the commission employ only such persons as agreed upon between the commission, the Governor and the Superintendent of State Police, and that the duties of wildlife law enforcement, so far as is economical and practicable, be performed by the Department of State Police. [Amended by 1973 c.723 §19]

496.620 Nonliability of law enforcement officers. No person authorized to enforce the wildlife laws shall suffer any civil liability for the enforcement or attempted enforcement of any provisions of the wildlife laws or for the exercise or attempted exercise of any of the duties or privileges granted to or imposed by law upon the State Fish and Wildlife Commission or such persons. [Amended by 1971 c.658 §11; 1973 c.723 §20]

496.625 [Amended by 1971 c.658 §12; repealed by 1973 c.723 §130]

496.630 District attorneys to prosecute criminal cases; jurisdiction of courts. (1) Upon information or complaint of the State Fish and Wildlife Commission or any person authorized to enforce the wildlife laws, district attorneys shall prosecute every criminal case in which it appears that there has been a violation of the wildlife laws or any rule promulgated pursuant thereto.

(2) Unless otherwise specifically provided, justice courts have concurrent jurisdiction in the first instance with the circuit court of all wildlife law offenses. [Amended by 1959 c.352 §1; 1959 c.692 §10; 1967 c.523 §6; 1973 c.723 §21; 1999 c.1051 §104]

496.635 [Amended by 1971 c.658 §13; repealed by 1973 c.723 §130]

496.640 Service of process by law enforcement personnel. The persons mentioned in ORS 496.645 have all powers and rights of a peace officer in serving warrants, subpoenas or other legal process in the enforcement of the wildlife laws. [Amended by 1971 c.658 §14; 1973 c.723 §22]

496.645 Arrest without warrant of violators; trial. Any person authorized to enforce the wildlife laws may, without warrant, arrest any person violating any of the wildlife laws, and take the person before any court having jurisdiction of the offense. The court shall proceed without delay to hear, try and determine the matter and enter judgment according to allegations and proofs. [Amended by 1971 c.658 §15; 1973 c.723 §23]

496.650 Issuance of citation to violator. Should any person making an arrest mentioned in ORS 496.645 for the violation of the wildlife laws desire not to forthwith take the person arrested before the justice of the peace or judge having jurisdiction or desire not to immediately take the arrested person into custody, the person making the arrest may issue a citation to the person arrested. [Amended by 1973 c.723 §24]

496.655 [Repealed by 1973 c.723 §130]

496.660 [Amended by 1971 c.658 §16; 1973 c.723 §26; repealed by 1991 c.267 §1]

496.665 Issuance of search warrants; places searched; use and disposition of seized property. (1) Any court having jurisdiction of the offense, upon receiving proof

or probable cause for believing in the concealment of any wildlife taken, killed or had in possession, under control, or shipped contrary to the wildlife laws, shall issue a search warrant and cause a search to be made in any place, and to that end cause any building, enclosure, car, automobile, boat, apartment, chest, box, parcel, crate or basket to be opened and the contents examined by any person authorized to enforce the wildlife laws.

(2) All wildlife, or parts thereof, thus discovered shall be held by the State Fish and Wildlife Commission as evidence against any party accused of the crime in connection therewith.

(3) Upon conviction of the parties accused, such wildlife, or parts thereof, shall be disposed of by the commission. Any funds arising from the disposal shall become a part of the State Wildlife Fund. [Amended by 1971 c.658 §17; 1973 c.723 §27]

496.670 Arrests made on Sunday. The arrests mentioned in ORS 496.645 may be made on Sunday. In this event the persons arrested shall be taken before any justice of the peace or judge having jurisdiction, who shall bind over the persons arrested to appear and be proceeded against as soon as may be on week day following the arrest. [Amended by 1991 c.267 §2]

496.675 Seizure without warrant by law enforcement personnel. The persons mentioned in ORS 496.645 may at any time, without warrant, seize and take possession of:

(1) Any wildlife which has been caught, taken or killed, or had in possession or under control, which have been killed, had in possession or shipped, at any time, in any manner or for any purpose contrary to the wildlife laws.

(2) Any guns, boats, fishing or other apparatus used for the purpose of hunting or fishing, at any time, in any manner or for any purpose contrary to the wildlife laws. [Amended by 1971 c.658 §18; 1973 c.723 §28]

496.680 Seizure of unlawful devices and unlawfully taken wildlife; forfeiture; disposition; repayment of administrative costs. (1) All wildlife taken by, or in the possession of any person in violation of the wildlife laws, and all guns, boats, traps, fishing apparatus and implements used in angling, hunting or trapping or taking any wildlife in violation of the wildlife laws may be seized by any person authorized to enforce the wildlife laws, and may be forfeited.

(2) All wildlife shot by any person while violating any provision of ORS 164.245 to 164.270 or 498.120 shall be seized by any

person authorized to enforce the wildlife laws and shall be forfeited.

(3) If forfeited, such property shall be turned over to the State Fish and Wildlife Commission by order of the court at the time of passing sentence for the violation.

(4) The commission may dispose of such property in any manner it considers proper, but the clear proceeds derived from the sale of any seized guns, boats, traps, fishing apparatus or implements shall be deposited in the Common School Fund. Any wildlife taken in violation of the wildlife laws may be disposed of forthwith or used for food purposes, under rules of the commission, to prevent spoilage.

(5) Upon conviction of a person for taking wildlife while violating any provision of ORS 164.245 to 164.270 or 498.120, the court shall include in the sentence a requirement that the convicted person pay to the seizing agency an amount equal to the cost incurred in seizing, storing and disposing of the seized and forfeited wildlife. [Amended by 1971 c.658 §19; 1973 c.723 §29; 1987 c.858 §6; 1993 c.440 §2; 1999 c.1051 §272]

496.685 [Repealed by 1971 c.743 §432]

496.690 Possession of wildlife as evidence of illegal taking. The fact that any person has any wildlife, or any part thereof, in possession when it is illegal to take or have same is prima facie evidence that such person killed such wildlife illegally. [Amended by 1971 c.658 §20]

496.695 Counseling, aiding or sharing in violation. Any person who counsels, aids or assists in any violation of the wildlife laws, or shares in any of the proceeds of such violation by receiving or possessing any wildlife, shall incur the penalties provided for the person guilty of such violation. [Amended by 1971 c.658 §21; 1973 c.723 §30]

496.700 Investigating violations; summoning witnesses. (1) Where the State Fish and Wildlife Commission has been furnished information of the violation of any of the wildlife laws, the commission, or one especially authorized by it, may proceed to the place where the offense is said to have been committed and summon and examine under oath witnesses to ascertain the facts and to avoid useless and frivolous indictments or prosecutions.

(2) Witnesses shall be paid by the commission from the State Wildlife Fund at the rate of \$5 per day and mileage from their places of residence at the rate of eight cents per mile.

(3) No witness so summoned shall refuse to attend or testify under this section. [Amended by 1971 c.658 §22; 1973 c.723 §31]

496.705 Damage suits for unlawful killing of wildlife; jurisdiction of courts.

(1) The State Fish and Wildlife Commission may institute suit for the recovery of damages for the unlawful taking or killing of any of the wildlife referred to in subsection (2) of this section that are the property of the state.

(2)(a) The damages referred to in subsection (1) of this section are as follows:

(A) Each game mammal other than moose, mountain sheep, mountain goat, elk or silver gray squirrel, or deer or antelope described in subparagraphs (D) and (E) of this paragraph, \$1,000.

(B) Each moose, mountain sheep or mountain goat, other than those described in subparagraphs (F), (G) and (H) of this paragraph, \$10,000.

(C) Each elk, other than those described in subparagraph (I) of this paragraph, \$1,500.

(D) Each deer with at least four points on one antler, \$7,500.

(E) Each antelope with at least one horn equal to or greater than 14 inches, \$7,500.

(F) Each moose with antlers, \$25,000.

(G) Each mountain sheep that has at least one horn equal to or greater than one half curl, \$25,000.

(H) Each mountain goat that has at least one horn equal to or greater than six inches, \$25,000.

(I) Each elk with at least six points on one antler, \$15,000.

(J) Each silver gray squirrel, \$20.

(K) Each game bird other than wild turkey, \$20.

(L) Each wild turkey, \$100.

(M) Each game fish other than salmon, steelhead trout, halibut or sturgeon, \$10.

(N) Each sturgeon other than those specified in subparagraph (O) of this paragraph, salmon, steelhead trout or halibut, \$250.

(O) Each oversized sturgeon, as specified by the commission by rule, \$1,000.

(P) Each fur-bearing mammal other than bobcat or fisher, \$100.

(Q) Each bobcat or fisher, \$700.

(R) Each specimen of any wildlife species whose survival is specified by the wildlife laws or the laws of the United States as threatened or endangered, \$1,000.

(S) Each specimen of any wildlife species otherwise protected by the wildlife laws or the laws of the United States, but not otherwise referred to in this subsection, \$50.

(T) Each bald eagle, golden eagle, goshawk, osprey, peregrine falcon or any other raptor listed as a threatened species or an endangered species by the commission by rule, \$5,000.

(U) Each raptor except those specified in subparagraph (T) of this paragraph, \$2,000.

(b) For purposes of this subsection:

(A) A point must be at least one inch, measured from the main beam of the antler to the tip of the point.

(B) Horn length must be measured from the base of the hairline to the tip of the horn.

(3) In any such action, the court shall award to the prevailing party, in addition to costs and disbursements, reasonable attorney fees.

(4) Such civil damages shall be in addition to other penalties prescribed by the wildlife laws for the unlawful taking or killing of wildlife.

(5) Any circuit or justice court has jurisdiction to try any case for the recovery of damages for the unlawful taking or killing of any of the wildlife as provided by this section. [Amended by 1961 c.343 §4; 1969 c.302 §1; 1973 c.723 §32; 1981 c.108 §1; 1995 c.658 §106; 2003 c.98 §1; 2009 c.778 §3; 2011 c.363 §1]

496.710 Compelling testimony in enforcement proceedings. In any action or proceeding for the enforcement of any of the provisions of the wildlife laws, or in any investigation before a grand jury, district attorney or other officer, or any criminal proceeding, no person shall be excused from testifying concerning any offense committed by another or by the person on the ground that the testimony of the person may incriminate the person. However, such testimony shall not be used against the person in any prosecution for any crime or misdemeanor under the laws of the state, nor shall the person be subject to any criminal prosecution or any penalty or forfeiture for or on account of any transaction, matter or thing concerning which the person has been compelled to testify or to produce evidence, documentary or otherwise. [Amended by 1971 c.658 §23; 1973 c.723 §33]

496.715 [Amended by 1959 c.530 §8; 1961 c.391 §1; 1971 c.186 §5; 1973 c.723 §34; 1981 s.s. c.3 §115; 1983 c.763 §50; 1987 c.905 §25; 1995 c.658 §107; repealed by 2011 c.597 §67]

POTENTIALLY HABITUATED WILDLIFE

496.730 Legislative intent. It is the intent of the Legislative Assembly to protect wildlife from becoming habituated to humans and to protect the public against the serious

health and safety risk posed by wildlife that are drawn into contact with humans and infrastructure by individuals who knowingly feed wildlife. [2011 c.284 §2]

496.731 Written notification requiring removal of attractant for potentially habituated wildlife; exceptions. (1) As used in this section:

(a) "Officer" means any person authorized to enforce the wildlife laws pursuant to ORS 496.605, 496.610 or 496.615.

(b) "Potentially habituated wildlife" means bear, cougar, coyote and wolf.

(2) A person who places, deposits, distributes, stores or scatters food, garbage or any other attractant so as to knowingly constitute a lure, attraction or enticement for potentially habituated wildlife may be issued a written notification by an officer requiring the person to remove the food, garbage or other attractant within two days of notification.

(3) A person who receives a written notification under subsection (2) of this section shall remove the food, garbage or other attractant as directed.

(4) This section does not apply to:

(a) Activities related to an agricultural, forestry or ranching operation.

(b) Feeding potentially habituated wildlife with the State Fish and Wildlife Director's authorization. The director may authorize the feeding:

(A) In order to prevent damage to private property;

(B) In order to mitigate the population loss anticipated by a predicted winter mortality; or

(C) As a part of a research or management program.

(c) Waste disposal facilities operating in accordance with applicable federal, state and local laws.

(d) Zoos, wildlife refuges and persons that have a permit to keep wildlife in captivity for rehabilitation or other purposes pursuant to ORS 497.228, 497.298 or 497.308.

(5) Nothing in this section affects any provision of ORS 498.164. [2011 c.284 §3]

WILDLIFE LAW VIOLATOR COMPACT

496.750 Wildlife Law Violator Compact. The Wildlife Violator Compact is hereby enacted into law and entered into on behalf of this state with all other states legally joining therein in a form substantially as follows:

ARTICLE I
FINDINGS, DECLARATION OF POLICY
AND PURPOSE

(a) The party states find that:

(1) Wildlife resources are managed in trust by the respective states for the benefit of all residents and visitors.

(2) The protection of their respective wildlife resources can be materially affected by the degree of compliance with state statute, law, regulation, ordinance or administrative rule relating to the management of those resources.

(3) The preservation, protection, management and restoration of wildlife contributes immeasurably to the aesthetic, recreational and economic aspects of these natural resources.

(4) Wildlife resources are valuable without regard to political boundaries, therefore, all persons should be required to comply with wildlife preservation, protection, management and restoration laws, ordinances and administrative rules and regulations of all party states as a condition precedent to the continuance or issuance of any license to hunt, fish, trap or possess wildlife.

(5) Violation of wildlife laws interferes with the management of wildlife resources and may endanger the safety of persons and property.

(6) The mobility of many wildlife law violators necessitates the maintenance of channels of communications among the various states.

(7) In most instances, a person who is cited for a wildlife violation in a state other than the person's home state:

(i) Must post collateral or bond to secure appearance for a trial at a later date; or

(ii) If unable to post collateral or bond, is taken into custody until the collateral or bond is posted; or

(iii) Is taken directly to court for an immediate appearance.

(8) The purpose of the enforcement practices described in paragraph (7) of this subdivision is to insure compliance with the terms of a wildlife citation by the person who, if permitted to continue on the person's way after receiving the citation, could return to the person's home state and disregard the person's duty under the terms of the citation.

(9) In most instances, a person receiving a wildlife citation in the person's home state is permitted to accept the citation from the officer at the scene of the violation and to

immediately continue on the person's way after agreeing or being instructed to comply with the terms of the citation.

(10) The practice described in paragraph (7) of this subdivision causes unnecessary inconvenience and, at times, a hardship for the person who is unable at the time to post collateral, furnish a bond, stand trial or pay the fine, and thus is compelled to remain in custody until some alternative arrangement can be made.

(11) The enforcement practices described in paragraph (7) of this subdivision consume an undue amount of law enforcement time.

(b) It is the policy of the party states to:

(1) Promote compliance with the statutes, laws, ordinances, regulations and administrative rules relating to management of wildlife resources in their respective states.

(2) Recognize the suspension of wildlife license privileges of any person whose license privileges have been suspended by a party state and treat this suspension as if it had occurred in their state.

(3) Allow violators to accept a wildlife citation, except as provided in subdivision (b) of Article III, and proceed on the violator's way without delay whether or not the person is a resident in the state in which the citation was issued, provided that the violator's home state is party to this compact.

(4) Report to the appropriate party state, as provided in the compact manual, any conviction recorded against any person whose home state was not the issuing state.

(5) Allow the home state to recognize and treat convictions recorded for their residents which occurred in another party state as if they had occurred in the home state.

(6) Extend cooperation to its fullest extent among the party states for obtaining compliance with the terms of a wildlife citation issued in one party state to a resident of another party state.

(7) Maximize effective use of law enforcement personnel and information.

(8) Assist court systems in the efficient disposition of wildlife violations.

(c) The purpose of this compact is to:

(1) Provide a means through which the party states may participate in a reciprocal program to effectuate policies enumerated in subdivision (b) of this Article in a uniform and orderly manner.

(2) Provide for the fair and impartial treatment of wildlife violators operating within party states in recognition of the person's right of due process and the sovereign status of a party state.

ARTICLE II DEFINITIONS

As used in this compact, unless the context requires otherwise:

(a) "Citation" means any summons, complaint, ticket, penalty assessment or other official document issued by a wildlife officer or other peace officer for a wildlife violation containing an order which requires the person to respond.

(b) "Collateral" means any cash or other security deposited to secure an appearance for trial, in connection with the issuance by a wildlife officer or other peace officer of a citation for a wildlife violation.

(c) "Compliance" with respect to a citation means the act of answering the citation through appearance at a court, a tribunal or payment of fines, costs and surcharges, if any, or both such appearance and payment.

(d) "Conviction" means a conviction, including any court conviction, of any offense related to the preservation, protection, management or restoration of wildlife which is prohibited by state statute, law, regulation, ordinance or administrative rule, or a forfeiture of bail, bond or other security deposited to secure appearance by a person charged with having committed any such offense, or payment of a penalty assessment, or a plea of nolo contendere, or the imposition of a deferred or suspended sentence by the court.

(e) "Court" means a court of law, including Magistrate's Court and Justice Court.

(f) "Home state" means the state of primary residence of a person.

(g) "Issuing state" means the party state which issues a wildlife citation to the violator.

(h) "License" means any license, permit or other public document which conveys to the person to whom it was issued the privilege of pursuing, possessing or taking any wildlife regulated by statute, law, regulation, ordinance or administrative rule of a party state.

(i) "Licensing authority" means the department or division within each party state which is authorized by law to issue or approve licenses or permits to hunt, fish, trap, or possess wildlife.

(j) "Party state" means any state which enacts legislation to become a member of this Wildlife Compact.

(k) "Personal recognizance" means an agreement by a person made at the time of issuance of the wildlife citation that the person will comply with the terms of that citation.

(L) "State" means any state, territory or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Provinces of Canada or other countries.

(m) "Suspension" means any revocation, denial or withdrawal of any or all license privileges, including the privilege to apply for, purchase or exercise the benefits conferred by any license.

(n) "Terms of the citation" means those conditions and options expressly stated upon the citation.

(o) "Wildlife" means all species of animals, including but not necessarily limited to mammals, birds, fish, reptiles, amphibians, mollusks and crustaceans, which are defined as "wildlife" and are protected or otherwise regulated by statute, law, regulation, ordinance or administrative rule in a party state. Species included in the definition of "wildlife" vary from state to state and determination of whether a species is "wildlife" for the purposes of this compact shall be based on local law.

(p) "Wildlife law" means any statute, law, regulation, ordinance or administrative rule developed and enacted to manage wildlife resources and the use thereof.

(q) "Wildlife officer" means any individual authorized by a party state to issue a citation for a wildlife violation.

(r) "Wildlife violation" means any cited violation of a statute, law, regulation, ordinance or administrative rule developed and enacted to manage wildlife resources and the use thereof.

ARTICLE III

PROCEDURES FOR ISSUING STATE

(a) When issuing a citation for a wildlife violation, a wildlife officer shall issue a citation to any person whose primary residence is in a party state in the same manner as if the person were a resident of the home state and shall not require the person to post collateral to secure appearance, subject to the exceptions contained in subdivision (b) of this Article, if the officer receives the person's personal recognizance that the person will comply with the terms of the citation.

(b) Personal recognizance is acceptable:

(1) If not prohibited by local law or the compact manual; and

(2) If the violator provides adequate proof of the violator's identification to the wildlife officer.

(c) Upon conviction or failure of a person to comply with the terms of a wildlife citation, the appropriate official shall report the

conviction or failure to comply to the licensing authority of the party state in which the wildlife citation was issued. The report shall be made in accordance with procedures specified by the issuing state and shall contain the information specified in the compact manual as minimum requirements for effective processing by the home state.

(d) Upon receipt of the report of conviction or noncompliance required by subdivision (c) of this Article, the licensing authority of the issuing state shall transmit to the licensing authority in the home state of the violator the information in a form and content as contained in the compact manual.

ARTICLE IV

PROCEDURES FOR HOME STATE

(a) Upon receipt of a report of failure to comply with the terms of a citation from the licensing authority of the issuing state, the licensing authority of the home state shall notify the violator, shall initiate a suspension action in accordance with the home state's suspension procedures and shall suspend the violator's license privileges until satisfactory evidence of compliance with the terms of the wildlife citation has been furnished by the issuing state to the home state licensing authority. Due process safeguards will be accorded.

(b) Upon receipt of a report of conviction from the licensing authority of the issuing state, the licensing authority of the home state shall enter such conviction in its records and shall treat such conviction as if it occurred in the home state for the purposes of the suspension of license privileges.

(c) The licensing authority of the home state shall maintain a record of actions taken and make reports to issuing states as provided in the compact manual.

ARTICLE V

RECIPROCAL RECOGNITION OF SUSPENSION

All party states shall recognize the suspension of license privileges of any person by any state as if the violation on which the suspension is based had in fact occurred in their state and could have been the basis for suspension of license privileges in their state.

ARTICLE VI

APPLICABILITY OF OTHER LAWS

Except as expressly required by provisions of this compact, nothing herein shall be construed to affect the right of any party state to apply any of its laws relating to li-

cense privileges to any person or circumstance, or to invalidate or prevent any agreement or other cooperative arrangements between a party state and a nonparty state concerning wildlife law enforcement.

ARTICLE VII

COMPACT ADMINISTRATOR PROCEDURES

(a) For the purpose of administering the provisions of this compact and to serve as a governing body for the resolution of all matters relating to the operation of this compact, a board of compact administrators is established. The board shall be composed of one representative from each of the party states to be known as the compact administrator. The compact administrator shall be appointed by the head of the licensing authority of each party state and will serve and be subject to removal in accordance with the laws of the state the administrator represents. A compact administrator may provide for the discharge of the administrator's duties and the performance of the administrator's functions as a board member by an alternate. An alternate may not be entitled to serve unless written notification of the alternate's identity has been given to the board.

(b) Each member of the board of compact administrators shall be entitled to one vote. No action of the board shall be binding unless taken at a meeting at which a majority of the total number of votes on the board are cast in favor thereof. Action by the board shall be only at a meeting at which a majority of the party states are represented.

(c) The board shall elect annually, from its membership, a chairperson and vice-chairperson.

(d) The board shall adopt bylaws, not inconsistent with the provisions of this compact or the laws of a party state, for the conduct of its business and shall have the power to amend and rescind its bylaws.

(e) The board may accept for any of its purposes and functions under this compact all donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States or any governmental agency, and may receive, utilize and dispose of the same.

(f) The board may contract with or accept services or personnel from any governmental or intergovernmental agency, individual, firm, corporation or any private nonprofit organization or institution.

(g) The board shall formulate all necessary procedures and develop uniform forms

and documents for administering the provisions of this compact. All procedures and forms adopted pursuant to board action shall be contained in the compact manual.

ARTICLE VIII
ENTRY INTO COMPACT
AND WITHDRAWAL

(a) This compact shall become effective when it has been adopted by at least two states.

(b) (1) Entry into the compact shall be made by resolution of ratification executed by the authorized officials of the applying state and submitted to the chairperson of the board.

(2) The resolution shall be in a form and content as provided in the compact manual and shall include statements that in substance are as follows:

(i) A citation of the authority by which the state is empowered to become a party to this compact;

(ii) Agreement to comply with the terms and provisions of the compact; and

(iii) That compact entry is with all states then party to the compact and with any state that legally becomes a party to the compact.

(3) The effective date of entry shall be specified by the applying state, but shall not be less than 60 days after notice has been given by the chairperson of the board of the compact administrators or by the secretariat of the board to each party state that the resolution from the applying state has been received.

(c) A party state may withdraw from this compact by official written notice to the other party states, but a withdrawal shall not take effect until 90 days after notice of withdrawal is given. The notice shall be directed to the compact administrator of each member state. No withdrawal shall affect the validity of this compact as to the remaining party states.

ARTICLE IX
AMENDMENTS TO THE COMPACT

(a) This compact may be amended from time to time. Amendments shall be presented in resolution form to the chairperson of the board of compact administrators and may be initiated by one or more party states.

(b) Adoption of an amendment shall require endorsement by all party states and shall become effective 30 days after the date of the last endorsement.

(c) Failure of a party state to respond to the compact chairman within 120 days after

receipt of the proposed amendment shall constitute endorsement.

ARTICLE X
CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes stated herein. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, individual, or circumstance is held invalid, the compact shall not be affected thereby. If this compact shall be held contrary to the constitution of any party state thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

ARTICLE XI
TITLE

This compact shall be known as the Wildlife Violator Compact.

[1989 c.1056 §2]

**PERMIT FOR WATER FOR
HYDROELECTRIC PURPOSES**

496.815 Definitions for ORS 496.815 to 496.825. As used in ORS 496.815 to 496.825:

(1) "Department" means the State Department of Fish and Wildlife.

(2) "Director" means the State Fish and Wildlife Director.

(3) "Person" means an individual, corporation, association, firm, partnership, joint stock company, municipal corporations and all other political subdivisions of the State of Oregon. The federal government or any of its agencies are specifically excluded. [1985 c.674 §1]

496.820 Permit or license fee. (1) Any person applying for a permit to appropriate water for hydroelectric purposes under ORS 537.150 to 537.252 or any person applying for a preliminary permit or license under ORS 543.010 to 543.610 shall pay an administration fee of \$350 to the State Department of Fish and Wildlife.

(2) If a person pays the administration fee under subsection (1) of this section at the time the person applies for a preliminary permit under ORS 543.210, the person shall not also be required to pay the fee when applying for a license for the same project under ORS 543.010 to 543.610. [1985 c.674 §2]

496.825 Application fee; exception. (1) In addition to any other fee required by law, at the time the person applies to the Water Resources Department for a license to operate a hydroelectric project under ORS 543.010 to 543.610 or for a permit to appropriate water for hydroelectric purposes under ORS 537.150 to 537.230, the person shall pay to the State Fish and Wildlife Director an application fee the amount of which shall be the greater of:

(a) \$1,000; or

(b) Thirty-five cents for each kilowatt of proposed capacity of the project.

(2) The director shall postpone the payment of the fee under subsection (1) of this section for a permit to appropriate water under ORS 537.150 to 537.230 until the person submits final plans and specifications for the project to the Water Resources Department under ORS 537.150.

(3) Subsection (1) of this section shall not apply to any applicant for a permit or license for a project producing 100 theoretical horsepower or less. [1985 c.674 §3]

496.830 Penalty fee. A person who fails to pay the fee required under section 4, chapter 674, Oregon Laws 1985, or the assessment under section 5, chapter 674, Oregon Laws 1985, or ORS 543.265 on the due date shall pay in addition to the assessed amount due, a penalty in the amount of one percent of the fee per month for the period that the fee is past due. The State Fish and Wildlife Director may bring an action to collect an unpaid fee or assessment in the name of the State of Oregon in the Circuit Court of Marion County or the circuit court of the county in which the project is located. The director shall be entitled to recover all costs and attorney fees incurred in the legal action. [1985 c.674 §7]

496.835 Oregon Fish and Wildlife Hydroelectric Fund. (1) There is created within the State Treasury a revolving fund known as the Oregon Fish and Wildlife Hydroelectric Fund, separate and distinct from the General Fund. The moneys in this fund are continuously appropriated for use by the State Department of Fish and Wildlife in its activities related to hydroelectric projects including payment of necessary administrative expenses.

(2) The fund created by subsection (1) of this section shall consist of all moneys received under sections 4 and 5, chapter 674, Oregon Laws 1985, ORS 496.820 and 496.825 and moneys transferred from the Water Resources Department Hydroelectric Fund as provided in ORS 536.015.

(3) Moneys in the fund may be invested as provided in ORS 293.701 to 293.857. Inter-

est from any source derived from the investment of the moneys of the fund shall be credited to the fund. [1985 c.674 §8; 1991 c.869 §3]

496.905 [1967 c.604 §1; 1969 c.59 §1; 1971 c.388 §3; 1973 c.723 §35; 1979 c.477 §11; renumbered 153.710]

496.910 [1967 c.604 §2; 1973 c.723 §36; 1979 c.477 §12; renumbered 153.705]

496.915 [1967 c.604 §3; 1973 c.723 §37; renumbered 153.715]

496.920 [1967 c.604 §4; 1973 c.723 §38; 1979 c.477 §13; renumbered 153.720]

496.925 [1967 c.604 §5; renumbered 153.725]

496.927 [1977 c.350 §2; 1979 c.477 §14; renumbered 153.730]

496.930 [1967 c.604 §6; renumbered 153.745]

496.935 [1967 c.604 §7; renumbered 153.750]

496.940 [1967 c.604 §8; renumbered 153.755]

496.945 [1967 c.604 §9; renumbered 153.760]

496.950 [1967 c.604 §10; renumbered 153.765]

496.951 [1995 c.545 §4; 1997 c.19 §1; 1999 c.1051 §105; 2010 c.107 §§21,23; repealed by 2011 c.597 §67]

496.990 [Amended by 1967 c.523 §1; repealed by 1973 c.723 §130]

PENALTIES

496.992 Penalties. (1) Except as otherwise provided by this section or other law, a violation of any provision of the wildlife laws, or any rule adopted pursuant to the wildlife laws, is a Class A misdemeanor if the offense is committed with a culpable mental state.

(2) Except as otherwise provided by this section or other law, a violation of a provision of the wildlife laws, or a rule adopted pursuant to the wildlife laws, that does not involve the taking of wildlife is a Class D violation if the offense is committed without a culpable mental state.

(3) A violation of a provision of the wildlife laws, or a rule adopted pursuant to the wildlife laws, that involves the taking of wildlife, other than nongame mammals and game birds, is a Class A violation if the offense is committed without a culpable mental state.

(4) A violation of a provision of the wildlife laws, or a rule adopted pursuant to the wildlife laws, that involves the taking of nongame mammals or game birds is a Class C violation if the offense is committed without a culpable mental state.

(5) A violation of a provision of the wildlife laws, or a rule adopted pursuant to the wildlife laws, that involves the size or quantity limits for salmon, steelhead trout and sturgeon is a Class A violation if the offense is committed without a culpable mental state.

(6) A violation of a provision of the wildlife laws, or a rule adopted pursuant to the wildlife laws, relating to the size or quantity

limits for fish or shellfish, other than size and quantity limits for salmon, steelhead trout and sturgeon, is a Class C violation if the offense is committed without a culpable mental state.

(7) A violation of the nonresident licensing provisions of ORS 497.102 or 497.121 is a Class A violation if the offense is committed without a culpable mental state.

(8) A violation of ORS 496.994 is a Class A violation if the offense is committed without a culpable mental state.

(9) The second and each subsequent conviction within a 10-year period for the taking of a raptor or the taking of game fish with a total value of \$200 or more or the taking of antelope, black bear, cougar, deer, elk, moose, mountain goat or mountain sheep in violation of any provision of the wildlife laws, or any rule adopted pursuant thereto, which occurs more than one hour prior to or more than one hour subsequent to a season established for the lawful taking of such game mammals or game fish is a Class C felony if the offense is committed with a culpable mental state.

(10) If a person is convicted of a Class A misdemeanor under subsection (1) of this section, in addition to any other penalty authorized by law, the court shall impose a fine that is:

(a) Equal to the maximum fine described in ORS 161.635 (1)(a), if the person has two or more previous convictions for a Class A misdemeanor under subsection (1) of this section or if the offense involves taking three or more times the daily bag limit of any wildlife.

(b) Not less than one-half of the maximum fine described in ORS 161.635 (1)(a), if the offense involves:

(A) Failing to release a sturgeon more than six feet in length;

(B) Unlawfully taking wildlife with the intent to sell, barter, trade, import or export the wildlife, or parts thereof, or selling, bartering, trading, importing or exporting unlawfully taken wildlife, or parts thereof; or

(C) Taking a raptor and the person has a previous conviction for taking a raptor.

(c) Not less than one-fourth of the maximum fine described in ORS 161.635 (1)(a), if the offense involves taking a raptor and the person does not have a previous conviction for taking a raptor.

(11) If more than one minimum fine described in subsection (10) of this section applies, the court shall impose a fine in an amount that is not less than the highest of the applicable minimum fines.

(12) As used in this section:

(a) "Culpable mental state" has the meaning given that term in ORS 161.085.

(b) "Previous conviction" includes a conviction entered in the same sentencing proceeding if the conviction is for a separate criminal episode as defined in ORS 131.505.

(c) "Raptor" means a member of the order Falconiformes or Strigiformes and includes owls, hawks, falcons, eagles, osprey and harriers. [1973 c.723 §39; 1975 c.578 §3; 1977 c.350 §3; 1977 c.353 §1; 1983 c.364 §1; 1985 c.372 §1; 1995 c.545 §5; 1999 c.1051 §106; 2009 c.778 §4; 2011 c.517 §§1,3; 2011 c.597 §§315,316; 2015 c.378 §1]

496.994 Obstructing the taking of wildlife prohibited. (1) A person commits the offense of obstructing the taking of wildlife if the person, having no right to do so, interferes with the lawful taking, or the process of taking, of wildlife by another with the intent to prevent the taking.

(2) Obstructing the taking of wildlife is a Class A misdemeanor. [1987 c.473 §2; 1989 c.171 §67; 1995 c.468 §1]

496.996 Attempts to take wildlife decoy as unlawful wildlife taking. (1) A person commits the crime of unlawful taking of wildlife if:

(a) The person discharges a firearm or other hunting device, traps, or acts toward a wildlife decoy in any manner consistent with an unlawful taking of wildlife; and

(b) The wildlife decoy is under the control of law enforcement officials.

(2) As used in this section, "wildlife decoy" means any simulation or replication of wildlife, in whole or in part, used by law enforcement officials for purposes of enforcing state wildlife laws. [1995 c.125 §2]

Chapter 497

2015 EDITION

Licenses and Permits

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GENERAL PROVISIONS

497.002 “Resident” and “nonresident” defined. Except as provided in ORS 497.006, as used in this chapter:

(1) “Resident” means a person who has resided in this state at least six consecutive months immediately prior to the date of making application for a license, tag or permit issued by the State Fish and Wildlife Commission. Temporary absence from the state for a purpose other than establishing residency outside the state shall not be considered in determining whether a person meets the residency requirements of this subsection.

(2) “Nonresident” means any person other than a resident. [1973 c.723 §41]

497.006 Certain persons as residents for licensing purposes. (1) As used in this section:

(a) “Dependent children” includes any children of an active member of the Armed Forces of the United States who:

(A) Are under 18 years of age and not married, otherwise emancipated or self-supporting; or

(B) Are under 23 years of age, unmarried, enrolled in a full-time course of study in an institution of higher learning and dependent on the resident member of the uniformed services for over one-half of their support.

(b) “Resident member of the uniformed services” means a member of the uniformed services who:

(A) Resides in this state while assigned to duty at any base, station, shore establishment or other facility in this state;

(B) Resides in this state while serving as a member of the crew of a ship that has an Oregon port or shore establishment as its home port or permanent station; or

(C) Resides in another state or a foreign country and establishes Oregon residency by filing Oregon state income taxes no later than 12 months before leaving active duty.

(c) “Uniformed services” means:

(A) The Army, Navy, Air Force, Marine Corps and Coast Guard of the United States;

(B) The reserves of the Army, Navy, Air Force, Marine Corps and Coast Guard of the United States;

(C) The Oregon National Guard and the National Guard of any other state or territory;

(D) The commissioned corps of the National Oceanic and Atmospheric Administration; and

(E) The Public Health Service of the United States Department of Health and

Human Services while detailed by proper authority for duty with the Army or Navy of the United States.

(2) The following persons are resident persons for the purpose of purchasing licenses, tags and permits issued by the State Fish and Wildlife Commission:

(a) A resident member of the uniformed services and the member’s spouse and dependent children.

(b) A member of the uniformed services who is not a resident member of the uniformed services, except for the purpose of purchasing controlled hunt tags issued by the commission.

(c) An alien who furnishes to the commission evidence satisfactory to the commission that the alien is attending a school in this state pursuant to a foreign student exchange program. [1973 c.723 §42; 1987 c.158 §112; 1987 c.162 §8; 1989 c.264 §4; 2003 c.242 §5; 2005 c.831 §10; 2012 c.106 §10; 2013 c.236 §3]

497.010 [Repealed by 1973 c.723 §130]

497.012 Validity of licenses on Snake River. (1) Angling, hunting or trapping in the waters of the Snake River or on the islands of the Snake River, where the river forms the boundary line between the State of Oregon and the State of Idaho, by a holder of either a valid Oregon or Idaho license therefor in accordance with the laws and rules of the respective states is lawful.

(2) Nothing in this section is intended to authorize:

(a) The holder of an Oregon license to angle, hunt or trap on the shoreline, sloughs or tributaries on the Idaho side of the Snake River.

(b) The holder of an Idaho license to angle, hunt or trap on the shoreline, sloughs or tributaries on the Oregon side of the Snake River. [1973 c.723 §43]

497.014 Validity of licenses in Pacific Ocean or Columbia River; rules. (1) A person may take fish or shellfish in the waters of the Pacific Ocean within three miles of the coast of the State of Oregon or the State of Washington, between the Oregon-Washington boundary and Cape Falcon, or in the waters of the Columbia River where it forms the Oregon-Washington boundary, if the person holds either a valid Oregon or Washington license therefor in accordance with the laws and rules of the respective state. However, a person other than a Washington resident landing fish or taking shellfish by boat in Oregon must hold a valid Oregon angling or shellfish license. All persons landing fish by boat in Oregon are subject to all Oregon laws, rules and regulations relating to taking fish or shellfish, including bag and length requirements.

(2) Subsection (1) of this section applies only if the State Fish and Wildlife Commission by rule determines that laws, rules or regulations of the State of Washington, in substance or effect, contain provisions that make a valid Oregon license lawful in the waters of the Pacific Ocean within three miles of the coast of the State of Oregon or the State of Washington, between the Oregon-Washington boundary and Leadbetter Point, or in the waters of the Columbia River where it forms the Oregon-Washington boundary. [1983 c.173 §§2, 3; 1985 c.373 §1; 2003 c.656 §4; 2005 c.260 §1]

497.015 [1971 c.530 §2; repealed by 1973 c.723 §130]

497.016 Term of licenses, tags and permits. Unless otherwise provided by law, all licenses, tags and permits issued by the State Fish and Wildlife Commission shall be valid for such period of time as the commission prescribes. [1973 c.723 §44; 1981 c.445 §1]

497.020 [Repealed by 1973 c.723 §130]

497.022 Issuance of licenses, tags or permits by commission agents; fees. (1) The State Fish and Wildlife Commission may appoint agents to issue any of the licenses, tags or permits the commission is authorized by law to issue. The commission shall prescribe the procedure for the issuance of such licenses, tags and permits. Agents of the commission shall issue licenses, tags and permits in accordance with the prescribed procedure and shall charge and collect the fees prescribed by law therefor.

(2)(a) As part of the fees prescribed in the fee schedule under ORS 497.061 and in addition to fees otherwise prescribed by law for the issuance of a license, tag or permit, the issuing agent shall charge and collect:

(A) For each resident annual sportspac license issued pursuant to ORS 497.132 (3)(a) and (4)(a), \$5.

(B) For each nonresident annual hunting license issued pursuant to ORS 497.102, \$10.

(C) For each nonresident annual deer tag, nonresident annual elk tag, nonresident annual black bear tag, nonresident annual mountain goat tag, nonresident annual mountain sheep tag and nonresident annual antelope tag issued pursuant to ORS 497.112 (1), \$10.

(D) For any other license, tag or permit, \$2 each.

(b) If the agent is a county clerk, the agent shall deposit the agent fees provided for in this section in the general fund of the county for which the agent is the clerk. If

the agent is an employee of the State Department of Fish and Wildlife, the agent fees shall be deposited in the State Wildlife Fund. Agents other than county clerks or department employees who issue licenses without the use of a state computerized licensing system may retain the agent fees for their license tag or permit issuance services. Agents other than county clerks or department employees who issue licenses, tags or permits using a state computerized licensing system may retain a portion of the agent fees not less than:

(A) For each resident annual sportspac license issued pursuant to ORS 497.132 (3)(a) and (4)(a), \$2.50.

(B) For each nonresident annual hunting license issued pursuant to ORS 497.102, \$7.50.

(C) For each nonresident annual deer tag, nonresident annual elk tag, nonresident annual black bear tag, nonresident annual mountain goat tag, nonresident annual mountain sheep tag and nonresident annual antelope tag issued pursuant to ORS 497.112 (1), \$7.50.

(D) For any other license, tag or permit, as may be specified by contract between the department and the agent for license, tag or permit issuance service performed by the agent, \$1 each.

(3) If the commission finds that an agent appointed pursuant to this section has violated any of the provisions of law or the procedures prescribed by the commission for the issuance of licenses, tags or permits or the collection and disposition of fees therefrom, the commission may revoke the authority of the agent to issue licenses, tags and permits, or may suspend such authority for such time as the commission considers appropriate. [1973 c.723 §45; 1975 c.183 §1; 1981 c.445 §2; 1987 c.345 §1; 1989 c.573 §1; 1993 c.103 §1; 1999 c.1006 §2; amendments by 1999 c.1006 §13 repealed by 2001 c.949 §1; 2001 c.104 §223; 2009 c.832 §3; 2013 c.236 §2; 2015 c.779 §9]

497.026 Duty of license agents to remit funds; rules. (1) No agent appointed by the State Fish and Wildlife Commission to issue licenses, tags or permits shall fail to remit to the commission moneys received from the issuance of licenses, tags and permits in the manner required by this section.

(2) The commission shall, by rule, prescribe the method in which license agents shall remit all moneys belonging to the state accruing from the issuance of licenses, tags and permits.

(3) Notwithstanding subsection (2) of this section, the commission shall not require a license agent to remit moneys from the issuance of licenses, tags and permits more often than once each month if:

(a) The license agent issues licenses, tags and permits in the amount of \$12,500 or less each year; and

(b) The license agent does not use a state computerized licensing system to issue licenses, tags and permits. [1973 c.723 §46; 1975 c.85 §1; 1987 c.345 §2; 1989 c.573 §2]

497.030 [Repealed by 1973 c.723 §130]

497.032 Duplicate licenses, tags and permits. If one or more licenses, tags or permits issued by the State Fish and Wildlife Commission are lost, destroyed or stolen, the holder thereof may submit to the commission a certificate stating that the licenses, tags or permits have been lost, destroyed or stolen, together with the applicable fee under the fee schedule in ORS 497.061 for filing a duplicate certificate. All licenses, tags and permits, issued to the same person, that are identified as being lost, destroyed or stolen may be listed on the same certificate for a single filing fee. If the total of the fees that were paid for all licenses, tags and permits identified in the certificate as lost, destroyed or stolen is less than the applicable fee for filing the certificate, the total fee amount under this section shall be equal to the amount charged for the original licenses, tags and permits. Upon receipt of the certificate and appropriate fee, the commission shall issue to the person the appropriate duplicate licenses, tags and permits that may be used in lieu of the lost, destroyed or stolen licenses, tags and permits. [1973 c.723 §47; 1981 c.445 §3; 1985 c.60 §6; 2009 c.832 §4; 2015 c.779 §11]

497.036 Inspection of licenses, tags, permits and wildlife. The holder of any license, tag or permit to angle, take, hunt or trap must consent to the inspection of any such license, tag or permit and any wildlife taken pursuant to such license, tag or permit:

(1) By any employee of the State Fish and Wildlife Commission or any person authorized to enforce the wildlife laws.

(2) By the owner, or the agent of the owner, of any land upon which the license, tag or permit holder is angling for, taking, hunting or trapping any wildlife. [1973 c.723 §48; 1981 c.445 §4; 1991 c.67 §149; 2003 c.656 §5]

497.040 [Amended by 1959 c.272 §1; repealed by 1973 c.723 §130]

497.041 Applications for licenses, tags and permits to include certain statement for applicant attestation. (1) As used in

this section, “hunt” and “wildlife” have the meanings given those terms in ORS 496.004.

(2) Each application for the issuance of a license, tag or permit to hunt wildlife with firearms under the wildlife laws shall include the following statement to which the applicant shall attest prior to the issuance of any license, tag or permit to the applicant:

I am not a convicted felon who is prohibited from possessing a firearm under the laws of Oregon or the United States; and

I am not a person who has been found guilty except for insanity of a felony and who is prohibited from possessing a firearm under the laws of Oregon or the United States.

[2011 c.383 §1]

Note: 497.041 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 497 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

497.050 [Amended by 1967 c.523 §7; repealed by 1973 c.723 §130]

497.060 [Repealed by 1973 c.723 §130]

LICENSE, TAG AND PERMIT FEE SCHEDULE

Note: Sections 1 and 1a, chapter 779, Oregon Laws 2015, provide:

Sec. 1. Legislative purpose. It is the intent of the Legislative Assembly to repeal sections 5 and 6 of this 2015 Act, which provide for increases beginning on January 1, 2020, to the fees listed in the fee schedule under section 2 of this 2015 Act [497.061], if prior to January 1, 2020, the Legislative Assembly adopts by law an alternative mechanism for funding the State Department of Fish and Wildlife that will result in a revenue increase to the department that is equal to or greater than the revenue increase to the department that is anticipated to be realized under the fee increases in section 5 of this 2015 Act. [2015 c.779 §1]

Sec. 1a. Section 1 of this 2015 Act is repealed on January 2, 2020. [2015 c.779 §1a]

Note: Sections 5 and 6, chapter 779, Oregon Laws 2015, were repealed by section 54, chapter 779, Oregon Laws 2015. Sections 59 and 60, chapter 779, Oregon Laws 2015, were enacted to replace sections 5 and 6, chapter 779, Oregon Laws 2015. The text of section 1, chapter 779, Oregon Laws 2015, was not amended by enactment of the Legislative Assembly to reflect the repeal of sections 5 and 6, chapter 779, Oregon Laws 2015, or the enactment of sections 59 and 60, chapter 779, Oregon Laws 2015.

497.061 License, tag and permit fee schedule. (1) Except as otherwise provided for by law, the State Fish and Wildlife Commission shall charge the fees listed in the fee schedule under this section for the issuance of the specified licenses, tags and permits.

(2) Fee Schedule:

Prices shown include agent fees
under ORS 497.022 and dedications
of funds collected as otherwise
prescribed by law.

	Resident Fee	Nonresident Fee	Statutory Reference
HUNTING LICENSES			
ANNUAL HUNTING LICENSE	\$32.00	\$160.50	497.102
RESIDENT SENIOR HUNTING LICENSE	\$20.50	-	497.102
RESIDENT DISABLED VET HUNTER LICENSE	FREE	-	497.102
RESIDENT UNIFORMED SERVICES HUNTER LICENSE	\$16.00	-	497.102
NONRESIDENT THREE-DAY BIRD LICENSE	-	\$30.50	497.102
HUNTING TAGS/VALIDATIONS			
DEER TAG	\$26.50	\$414.00	497.112
ELK TAG	\$46.00	\$549.00	497.112
SPECIAL ELK TAG (DV/PIONEER)	\$24.00	-	497.112
BLACK BEAR TAG	\$15.50	\$15.50	497.112
TURKEY TAG	\$24.50	\$84.00	497.112
ANTELOPE TAG	\$48.00	\$369.00	497.112
MOUNTAIN SHEEP TAG	\$132.50	\$1,413.00	497.112
COUGAR TAG	\$15.50	\$15.50	497.112
MOUNTAIN GOAT TAG	\$132.50	\$1,413.00	497.112
RESIDENT UPLAND BIRD STAMP	\$9.00	-	497.153
RESIDENT WATERFOWL STAMP	\$12.50	-	497.151
NONRESIDENT BIRD-WATERFOWL STAMP	-	\$41.50	497.156
FISHING LICENSES/VALIDATIONS			
ANNUAL ANGLING LICENSE	\$38.00	\$97.50	497.121
RESIDENT SENIOR ANGLING LICENSE	\$25.00	-	497.121
RESIDENT DISABLED VET ANGLER LICENSE	FREE	-	497.121
ONE-DAY ANGLING LICENSE	\$19.00	\$19.00	497.121
ONE-DAY ANGLING AND SHELLFISH LICENSE	\$27.50	\$27.50	497.121
TWO-DAY ANGLING LICENSE	\$34.50	\$34.50	497.121
THREE-DAY ANGLING LICENSE	\$50.50	\$50.50	497.121
NONRESIDENT SEVEN-DAY ANGLING LICENSE	-	\$76.50	497.121
ANNUAL COMBINED ANGLING TAG	\$35.00	\$55.00	497.121
HATCHERY HARVEST TAG	\$25.00	\$25.00	497.121
TWO-ROD ANGLING LICENSE	\$21.50	\$21.50	497.121
SHELLFISH LICENSES			
ANNUAL SHELLFISH LICENSE	\$9.00	\$26.00	497.121
NONRESIDENT THREE-DAY SHELLFISH LICENSE	-	\$17.00	497.121
RESIDENT DISABLED VET SHELLFISH LICENSE	FREE	-	497.121
COMBINATION LICENSES			
RESIDENT COMBINATION LICENSE	\$65.00	-	497.132
RESIDENT SPORTSPAC LICENSE	\$180.00	-	497.132
RESIDENT SENIOR COMBINATION LICENSE	\$41.50	-	497.132
RESIDENT PIONEER COMBINATION LICENSE	\$6.00	-	497.132
YOUTH LICENSES/VALIDATIONS (ages 12-17)			
YOUTH LICENSE	\$10.00	\$10.00	497.127
RESIDENT YOUTH SPORTSPAC LICENSE	\$55.00	-	497.132
YOUTH ANNUAL COMBINED ANGLING TAG	\$5.00	\$5.00	497.121
YOUTH UPLAND BIRD STAMP	\$4.00	\$4.00	497.153
YOUTH WATERFOWL STAMP	\$4.00	\$4.00	497.151
YOUTH TURKEY TAG	\$10.50	\$10.50	497.112
YOUTH HUNT/TRAP FUR-BEARERS LICENSE	\$17.00	\$17.00	497.142
MISCELLANEOUS			
DUPLICATE CERTIFICATE FILING	\$25.50	\$25.50	497.032
GUIDE TAG — DEER	-	\$537.00	497.112
GUIDE TAG — ELK	-	\$792.00	497.112
RESIDENT HUNT/TRAP FUR-BEARERS LICENSE	\$51.00	-	497.142
NONRESIDENT FUR-TAKERS HUNT/TRAP LICENSE	-	\$380.00	497.142
RESIDENT HUNT FUR-BEARERS LICENSE	\$24.00	-	497.142
PRIVATE HUNTING PRESERVE PERMIT	\$6.00	\$13.00	497.102

LICENSES AND PERMITS

497.061

OUTDOOR CLUB LICENSE	\$100.00	\$100.00	498.418
LOP REGISTRATION	\$32.00	\$32.00	496.146
LOP TAG REDISTRIBUTION	\$16.00	\$16.00	496.146
OCCUPATIONAL LICENSES/PERMITS			
FUR DEALER LICENSE	\$104.00	-	497.258
TAXIDERMIST LICENSE	\$104.00	-	497.258
WILDLIFE PROPAGATION LICENSE	\$54.00	-	497.258
FISH PROPAGATION LICENSE	\$135.00	-	497.258
PRIVATE HUNTING PRESERVE LICENSE	\$216.00	-	497.258
STURGEON PROPAGATION PERMIT	\$3,180.00	\$3,180.00	497.325

[2015 c.779 §2; 2015 c.779 §55]

Note 1: The amendments to 497.061 by section 57, chapter 779, Oregon Laws 2015, become operative January 1, 2018. See section 58, chapter 779, Oregon Laws 2015. The text that is operative from January 1, 2018, until January 1, 2020, is set forth for the user's convenience.

497.061. (1) Except as otherwise provided for by law, the State Fish and Wildlife Commission shall charge the fees listed in the fee schedule under this section for the issuance of the specified licenses, tags and permits.

(2) Fee Schedule:

Prices shown include agent fees under ORS 497.022 and dedications of funds collected as otherwise prescribed by law.

	Resident Fee	Nonresident Fee	Statutory Reference
HUNTING LICENSES			
ANNUAL HUNTING LICENSE	\$33.50	\$167.00	497.102
RESIDENT SENIOR HUNTING LICENSE	\$21.50	-	497.102
RESIDENT DISABLED VET HUNTER LICENSE	FREE	-	497.102
RESIDENT UNIFORMED SERVICES HUNTER LICENSE	\$17.00	-	497.102
NONRESIDENT THREE-DAY BIRD LICENSE	-	\$31.50	497.102
HUNTING TAGS/VALIDATIONS			
DEER TAG	\$27.50	\$430.50	497.112
ELK TAG	\$48.00	\$571.00	497.112
SPECIAL ELK TAG (DV/PIONEER)	\$25.00	-	497.112
BLACK BEAR TAG	\$16.00	\$16.00	497.112
TURKEY TAG	\$25.50	\$87.50	497.112
ANTELOPE TAG	\$50.00	\$384.00	497.112
MOUNTAIN SHEEP TAG	\$138.00	\$1,469.50	497.112
COUGAR TAG	\$16.00	\$16.00	497.112
MOUNTAIN GOAT TAG	\$138.00	\$1,469.50	497.112
RESIDENT UPLAND BIRD STAMP	\$9.50	-	497.153
RESIDENT WATERFOWL STAMP	\$13.00	-	497.151
NONRESIDENT BIRD-WATERFOWL STAMP	-	\$43.00	497.156
FISHING LICENSES/VALIDATIONS			
ANNUAL ANGLING LICENSE	\$41.00	\$103.50	497.121
RESIDENT SENIOR ANGLING LICENSE	\$27.00	-	497.121
RESIDENT DISABLED VET ANGLER LICENSE	FREE	-	497.121
ONE-DAY ANGLING LICENSE	\$21.00	\$21.00	497.121
ONE-DAY ANGLING AND SHELLFISH LICENSE	\$30.50	\$30.50	497.121
TWO-DAY ANGLING LICENSE	\$38.00	\$38.00	497.121
THREE-DAY ANGLING LICENSE	\$54.50	\$54.50	497.121
NONRESIDENT SEVEN-DAY ANGLING LICENSE	-	\$84.50	497.121
ANNUAL COMBINED ANGLING TAG	\$40.50	\$60.50	497.121
HATCHERY HARVEST TAG	\$28.50	\$28.50	497.121
TWO-ROD ANGLING LICENSE	\$24.50	\$24.50	497.121
SHELLFISH LICENSES			
ANNUAL SHELLFISH LICENSE	\$10.00	\$28.00	497.121
NONRESIDENT THREE-DAY SHELLFISH LICENSE	-	\$19.00	497.121
RESIDENT DISABLED VET SHELLFISH LICENSE	FREE	-	497.121
COMBINATION LICENSES			
RESIDENT COMBINATION LICENSE	\$69.00	-	497.132
RESIDENT SPORTSPAC LICENSE	\$188.50	-	497.132
RESIDENT SENIOR COMBINATION LICENSE	\$44.50	-	497.132
RESIDENT PIONEER COMBINATION LICENSE	\$6.00	-	497.132
YOUTH LICENSES/VALIDATIONS (ages 12-17)			
YOUTH LICENSE	\$10.00	\$10.00	497.127
RESIDENT YOUTH SPORTSPAC LICENSE	\$55.00	-	497.132

YOUTH ANNUAL COMBINED ANGLING TAG	\$5.00	\$5.00	497.121
YOUTH UPLAND BIRD STAMP	\$4.00	\$4.00	497.153
YOUTH WATERFOWL STAMP	\$4.00	\$4.00	497.151
YOUTH TURKEY TAG	\$10.50	\$10.50	497.112
YOUTH HUNT/TRAP FUR-BEARERS LICENSE	\$17.00	\$17.00	497.142
MISCELLANEOUS			
DUPLICATE CERTIFICATE FILING	\$25.50	\$25.50	497.032
GUIDE TAG — DEER	-	\$558.00	497.112
GUIDE TAG — ELK	-	\$824.00	497.112
RESIDENT HUNT/TRAP FUR-BEARERS LICENSE	\$53.00	-	497.142
NONRESIDENT FUR-TAKERS HUNT/TRAP LICENSE	-	\$395.00	497.142
RESIDENT HUNT FUR-BEARERS LICENSE	\$25.00	-	497.142
PRIVATE HUNTING PRESERVE PERMIT	\$6.50	\$13.50	497.102
OUTDOOR CLUB LICENSE	\$100.00	\$100.00	498.418
LOP REGISTRATION	\$33.50	\$33.50	496.146
LOP TAG REDISTRIBUTION	\$16.50	\$16.50	496.146
OCCUPATIONAL LICENSES/PERMITS			
FUR DEALER LICENSE	\$108.00	-	497.258
TAXIDERMIST LICENSE	\$108.00	-	497.258
WILDLIFE PROPAGATION LICENSE	\$56.00	-	497.258
FISH PROPAGATION LICENSE	\$143.00	-	497.258
PRIVATE HUNTING PRESERVE LICENSE	\$225.00	-	497.258
STURGEON PROPAGATION PERMIT	\$3,371.00	\$3,371.00	497.325

Note 2: The amendments to 497.061 by section 59, chapter 779, Oregon Laws 2015, become operative January 1, 2020. See section 60, chapter 779, Oregon Laws 2015. The text that is operative from January 1, 2020, until January 1, 2027, is set forth for the user's convenience.

497.061. (1) Except as otherwise provided for by law, the State Fish and Wildlife Commission shall charge the fees listed in the fee schedule under this section for the issuance of the specified licenses, tags and permits.

(2) Fee Schedule:

Prices shown include agent fees under ORS 497.022 and dedications of funds collected as otherwise prescribed by law.

	Resident Fee	Nonresident Fee	Statutory Reference
HUNTING LICENSES			
ANNUAL HUNTING LICENSE	\$34.50	\$172.00	497.102
RESIDENT SENIOR HUNTING LICENSE	\$22.00	-	497.102
RESIDENT DISABLED VET HUNTER LICENSE	FREE	-	497.102
RESIDENT UNIFORMED SERVICES HUNTER LICENSE	\$17.00	-	497.102
NONRESIDENT THREE-DAY BIRD LICENSE	-	\$32.50	497.102
HUNTING TAGS/VALIDATIONS			
DEER TAG	\$28.50	\$443.50	497.112
ELK TAG	\$49.50	\$588.00	497.112
SPECIAL ELK TAG (DV/PIONEER)	\$26.00	-	497.112
BLACK BEAR TAG	\$16.50	\$16.50	497.112
TURKEY TAG	\$26.50	\$90.00	497.112
ANTELOPE TAG	\$51.50	\$395.50	497.112
MOUNTAIN SHEEP TAG	\$142.00	\$1,513.50	497.112
COUGAR TAG	\$16.50	\$16.50	497.112
MOUNTAIN GOAT TAG	\$142.00	\$1,513.50	497.112
RESIDENT UPLAND BIRD STAMP	\$10.00	-	497.153
RESIDENT WATERFOWL STAMP	\$13.50	-	497.151
NONRESIDENT BIRD-WATERFOWL STAMP	-	\$44.50	497.156
FISHING LICENSES/VALIDATIONS			
ANNUAL ANGLING LICENSE	\$44.00	\$110.50	497.121
RESIDENT SENIOR ANGLING LICENSE	\$29.00	-	497.121
RESIDENT DISABLED VET ANGLER LICENSE	FREE	-	497.121
ONE-DAY ANGLING LICENSE	\$23.00	\$23.00	497.121
ONE-DAY ANGLING AND SHELLFISH LICENSE	\$32.50	\$32.50	497.121
TWO-DAY ANGLING LICENSE	\$42.00	\$42.00	497.121
THREE-DAY ANGLING LICENSE	\$59.50	\$59.50	497.121
NONRESIDENT SEVEN-DAY ANGLING LICENSE	-	\$93.50	497.121
ANNUAL COMBINED ANGLING TAG	\$46.00	\$66.00	497.121
HATCHERY HARVEST TAG	\$33.00	\$33.00	497.121
TWO-ROD ANGLING LICENSE	\$28.00	\$28.00	497.121

LICENSES AND PERMITS

497.061

SHELLFISH LICENSES			
ANNUAL SHELLFISH LICENSE	\$10.00	\$28.00	497.121
NONRESIDENT THREE-DAY SHELLFISH LICENSE	-	\$19.00	497.121
RESIDENT DISABLED VET SHELLFISH LICENSE	FREE	-	197.121
COMBINATION LICENSES			
RESIDENT COMBINATION LICENSE	\$73.00	-	497.132
RESIDENT SPORTSPAC LICENSE	\$196.50	-	497.132
RESIDENT SENIOR COMBINATION LICENSE	\$47.50	-	497.132
RESIDENT PIONEER COMBINATION LICENSE	\$6.00	-	497.132
YOUTH LICENSES/VALIDATIONS (ages 12-17)			
YOUTH LICENSE	\$10.00	\$10.00	497.127
RESIDENT YOUTH SPORTSPAC LICENSE	\$55.00	-	497.132
YOUTH ANNUAL COMBINED ANGLING TAG	\$5.00	\$5.00	497.121
YOUTH UPLAND BIRD STAMP	\$4.00	\$4.00	497.153
YOUTH WATERFOWL STAMP	\$4.00	\$4.00	497.151
YOUTH TURKEY TAG	\$10.50	\$10.50	497.112
YOUTH HUNT/TRAP FUR-BEARERS LICENSE	\$17.00	\$17.00	497.142
MISCELLANEOUS			
DUPLICATE CERTIFICATE FILING	\$25.50	\$25.50	497.032
GUIDE TAG — DEER	-	\$575.00	497.112
GUIDE TAG — ELK	-	\$848.00	497.112
RESIDENT HUNT/TRAP FUR-BEARERS LICENSE	\$54.50	-	497.142
NONRESIDENT FUR-TAKERS HUNT/TRAP LICENSE	-	\$407.00	497.142
RESIDENT HUNT FUR-BEARERS LICENSE	\$26.00	-	497.142
PRIVATE HUNTING PRESERVE PERMIT	\$6.50	\$14.00	497.102
OUTDOOR CLUB LICENSE	\$100.00	\$100.00	498.418
LOP REGISTRATION	\$35.00	\$35.00	496.146
LOP TAG REDISTRIBUTION	\$17.00	\$17.00	496.146
OCCUPATIONAL LICENSES/PERMITS			
FUR DEALER LICENSE	\$111.00	-	497.258
TAXIDERMIST LICENSE	\$111.00	-	497.258
WILDLIFE PROPAGATION LICENSE	\$58.00	-	497.258
FISH PROPAGATION LICENSE	\$151.50	-	497.258
PRIVATE HUNTING PRESERVE LICENSE	\$232.00	-	497.258
STURGEON PROPAGATION PERMIT	\$3,573.00	\$3,573.00	497.325

Note 3: The amendments to 497.061 by section 61, chapter 779, Oregon Laws 2015, become operative January 1, 2027. See section 62, chapter 779, Oregon Laws 2015. The text that is operative on and after January 1, 2027, is set forth for the user's convenience.

497.061. (1) Except as otherwise provided for by law, the State Fish and Wildlife Commission shall charge the fees listed in the fee schedule under this section for the issuance of the specified licenses, tags and permits.

(2) Fee Schedule:

Prices shown include agent fees under ORS 497.022 and dedications of funds collected as otherwise prescribed by law.

	Resident Fee	Nonresident Fee	Statutory Reference
HUNTING LICENSES			
ANNUAL HUNTING LICENSE	\$34.50	\$172.00	497.102
RESIDENT SENIOR HUNTING LICENSE	\$22.00	-	497.102
RESIDENT DISABLED VET HUNTER LICENSE	FREE	-	497.102
RESIDENT UNIFORMED SERVICES HUNTER LICENSE	\$17.00	-	497.102
NONRESIDENT THREE-DAY BIRD LICENSE	-	\$32.50	497.102
HUNTING TAGS/VALIDATIONS			
DEER TAG	\$28.50	\$443.50	497.112
ELK TAG	\$49.50	\$588.00	497.112
SPECIAL ELK TAG (DV/PIONEER)	\$26.00	-	497.112
BLACK BEAR TAG	\$16.50	\$16.50	497.112
TURKEY TAG	\$26.50	\$90.00	497.112
ANTELOPE TAG	\$51.50	\$395.50	497.112
MOUNTAIN SHEEP TAG	\$142.00	\$1,513.50	497.112
COUGAR TAG	\$16.50	\$16.50	497.112
MOUNTAIN GOAT TAG	\$142.00	\$1,513.50	497.112
RESIDENT UPLAND BIRD STAMP	\$10.00	-	497.153
RESIDENT WATERFOWL STAMP	\$13.50	-	497.151
NONRESIDENT BIRD-WATERFOWL STAMP	-	\$44.50	497.156

FISHING LICENSES/VALIDATIONS			
ANNUAL ANGLING LICENSE	\$43.00	\$109.00	497.121
RESIDENT SENIOR ANGLING LICENSE	\$29.00	-	497.121
RESIDENT DISABLED VET ANGLER LICENSE	FREE	-	497.121
ONE-DAY ANGLING LICENSE	\$22.50	\$22.50	497.121
ONE-DAY ANGLING AND SHELLFISH LICENSE	\$32.50	\$32.50	497.121
TWO-DAY ANGLING LICENSE	\$42.00	\$42.00	497.121
THREE-DAY ANGLING LICENSE	\$59.50	\$59.50	497.121
NONRESIDENT SEVEN-DAY ANGLING LICENSE	-	\$92.00	497.121
ANNUAL COMBINED ANGLING TAG	\$46.00	\$66.00	497.121
HATCHERY HARVEST TAG	\$33.00	\$33.00	497.121
TWO-ROD ANGLING LICENSE	\$28.00	\$28.00	497.121
SHELLFISH LICENSES			
ANNUAL SHELLFISH LICENSE	\$10.00	\$28.00	497.121
NONRESIDENT THREE-DAY SHELLFISH LICENSE	-	\$19.00	497.121
RESIDENT DISABLED VET SHELLFISH LICENSE	FREE	-	197.121
COMBINATION LICENSES			
RESIDENT COMBINATION LICENSE	\$72.00	-	497.132
RESIDENT SPORTSPAC LICENSE	\$196.50	-	497.132
RESIDENT SENIOR COMBINATION LICENSE	\$47.50	-	497.132
RESIDENT PIONEER COMBINATION LICENSE	\$6.00	-	497.132
YOUTH LICENSES/VALIDATIONS (ages 12-17)			
YOUTH LICENSE	\$10.00	\$10.00	497.127
RESIDENT YOUTH SPORTSPAC LICENSE	\$55.00	-	497.132
YOUTH ANNUAL COMBINED ANGLING TAG	\$5.00	\$5.00	497.121
YOUTH UPLAND BIRD STAMP	\$4.00	\$4.00	497.153
YOUTH WATERFOWL STAMP	\$4.00	\$4.00	497.151
YOUTH TURKEY TAG	\$10.50	\$10.50	497.112
YOUTH HUNT/TRAP FUR-BEARERS LICENSE	\$17.00	\$17.00	497.142
MISCELLANEOUS			
DUPLICATE CERTIFICATE FILING	\$25.50	\$25.50	497.032
GUIDE TAG — DEER	-	\$575.00	497.112
GUIDE TAG — ELK	-	\$848.00	497.112
RESIDENT HUNT/TRAP FUR-BEARERS LICENSE	\$54.50	-	497.142
NONRESIDENT FUR-TAKERS HUNT/TRAP LICENSE	-	\$407.00	497.142
RESIDENT HUNT FUR-BEARERS LICENSE	\$26.00	-	497.142
PRIVATE HUNTING PRESERVE PERMIT	\$6.50	\$14.00	497.102
OUTDOOR CLUB LICENSE	\$100.00	\$100.00	498.418
LOP REGISTRATION	\$35.00	\$35.00	496.146
LOP TAG REDISTRIBUTION	\$17.00	\$17.00	496.146
OCCUPATIONAL LICENSES/PERMITS			
FUR DEALER LICENSE	\$111.00	-	497.258
TAXIDERMIST LICENSE	\$111.00	-	497.258
WILDLIFE PROPAGATION LICENSE	\$58.00	-	497.258
FISH PROPAGATION LICENSE	\$151.50	-	497.258
PRIVATE HUNTING PRESERVE LICENSE	\$232.00	-	497.258
STURGEON PROPAGATION PERMIT	\$3,573.00	\$3,573.00	497.325

497.070 [Repealed by 1959 c.341 §2]

LICENSE, TAG AND PERMIT REQUIREMENTS

497.071 Dedication of certain license, tag and permit fee increases. The Legislative Assembly finds it imperative that the wildlife resources of the State of Oregon be augmented to a level sufficient to provide Oregonians the recreational benefits of hunting and angling, an abundance of wildlife, and the reasonable expectation that their efforts will result in the taking of game or fish. The intent of this legislation is to provide adequate revenue to the State Fish and Wildlife Commission whereby game mammal herds and game fish populations may be increased for the benefit of Oregon

hunters and anglers. Concomitant with the purposes for which the Legislative Assembly approves this legislation, the State Fish and Wildlife Commission is directed to expend the revenues created by this section and ORS 497.102 to 497.134 in achieving wildlife management objectives including, but not limited to the following:

- (1) Habitat management.
- (2) Predator control.
- (3) Replenishment of fish and game populations.
- (4) Reduction of the anadromous bag limit.
- (5) Adjustment of seasons and deadlines to protect returning anadromous adults.
- (6) Supplemental wildlife feeding.

(7) Protection of game mammals and game birds with characteristics of high reproductive potential.

(8) Enforcement of closings necessitated by herd or population depletion.

(9) Expansion of the road and access closure program when necessary to reduce hunting pressure in specific areas. [1975 c.454 §1]

497.072 [1955 c.216 §1; repealed by 1959 c.341 §2]

497.075 General license, tag and permit requirements; exemptions. (1) Except as provided in subsections (2), (3) and (4) of this section, no person shall angle for, take, hunt or trap, or assist another in angling for, taking, hunting or trapping, any wildlife unless the person has in possession such valid licenses, tags and permits therefor as the State Fish and Wildlife Commission issues.

(2) An angling or shellfish license is not required:

(a) Of a person younger than 12 years of age. However, each such person who angles for salmon, steelhead trout, sturgeon or halibut must have in possession a valid annual youth combined angling tag to angle for salmon, steelhead trout, sturgeon and halibut while so angling.

(b) Of a resident person to angle or take shellfish on land owned by that person. However, each such person who angles for salmon, steelhead trout, sturgeon or halibut must have in possession a valid annual combined angling tag to angle for salmon, steelhead trout, sturgeon and halibut while so angling.

(c) Of a resident person to angle or take shellfish on land owned by a member of the person's immediate family and upon which the person resides. However, each such person who angles for salmon, steelhead trout, sturgeon or halibut must have in possession a valid annual combined angling tag to angle for salmon, steelhead trout, sturgeon and halibut while so angling.

(d) Of a person to take crayfish or freshwater clams.

(3) A hunting license is not required:

(a) Of a person younger than 12 years of age to hunt wildlife, except those species for which a tag or permit is required by the wildlife laws or by any rule promulgated pursuant thereto.

(b) Of a resident person to hunt wildlife, except those species of wildlife for which a tag or permit is required by the wildlife laws or by any rule promulgated pursuant thereto, on land upon which the person resides and is owned by the person or a member of the person's immediate family.

(c) Of a person who holds a valid trapping license to take, by any means involving the use of a weapon, fur-bearing mammals during authorized trapping seasons or predators.

(d) Of a person to take wildlife pursuant to ORS 498.012, notwithstanding any other provision of this subsection.

(4) A trapping license is not required:

(a) Of a resident person to trap fur-bearing mammals or predators, except those species for which a tag or permit is required by the wildlife laws or any rule promulgated pursuant thereto, on land upon which the person resides and is owned by the person or a member of the person's immediate family.

(b) Of a person younger than 12 years of age to trap fur-bearing mammals or predators, except those species for which a tag or permit is required by the wildlife laws or by any rule promulgated pursuant thereto.

(c) Of a person to trap wildlife that is not protected by the wildlife laws or the laws of the United States. [1973 c.723 §49; 1975 c.214 §1; 1985 c.60 §3; 1999 c.1006 §3; 2003 c.656 §6; 2015 c.779 §12]

497.079 Open fishing and shellfish taking days. Notwithstanding ORS 497.075, 497.121 and 497.132, the State Fish and Wildlife Commission may issue, up to four times each year, an order that authorizes individuals to angle for fish or take shellfish in the waters of this state without the licenses or tags, or without the licenses and tags otherwise required by law, on any two consecutive days. [1989 c.344 §2; 1995 c.177 §1; 2003 c.656 §7; 2015 c.764 §1]

497.080 [Repealed by 1973 c.723 §130]

497.090 [Repealed by 1965 c.295 §3]

497.100 [1959 c.692 §§2, 3(1), (3); 1961 c.536 §2; 1971 c.446 §5; repealed by 1973 c.723 §130]

497.102 Hunting licenses and permits.

(1) The State Fish and Wildlife Commission is authorized to issue, upon application, to persons desiring to hunt wildlife the following licenses and permits and shall charge the applicable fees under the fee schedule in ORS 497.061:

(a) Resident annual hunting license to hunt wildlife.

(b) Nonresident annual hunting license to hunt wildlife.

(c) Resident annual senior citizen hunting license to hunt wildlife for persons 70 years of age or older who have resided in the state for not less than five years prior to the date of application.

(d) Resident disabled veteran hunting license to hunt wildlife for a person who files with the commission written proof that the last official certification of record by the United States Department of Veterans Af-

fairs or any branch of the Armed Forces of the United States shows the person to be at least 25 percent disabled.

(e) Resident uniformed services hunting license to hunt wildlife for a person who is a resident member of the uniformed services as defined in ORS 497.006.

(f) Resident annual private hunting preserve permit to hunt privately owned hunting preserve game birds.

(g) Nonresident annual private hunting preserve permit to hunt privately owned hunting preserve game birds.

(h) Nonresident hunting license to hunt migratory waterfowl and upland birds for three consecutive days.

(2) The hunting preserve permits referred to in subsection (1)(f) and (g) of this section are in lieu of the hunting licenses required by the wildlife laws. [1973 c.723 §50; 1975 c.454 §2; 1979 c.218 §1; 1979 c.377 §1a; 1979 c.774 §2c; 1981 c.445 §5; 1987 c.255 §1; 1991 c.67 §150; 1991 c.661 §1; 1993 c.659 §20; 1999 c.667 §2; 1999 c.1006 §4; amendments by 1999 c.1006 §14 repealed by 2001 c.949 §1; 2001 c.571 §§2,3; 2003 c.644 §1; 2009 c.41 §22; 2009 c.832 §5; 2015 c.779 §13]

Note: See second note under 497.121.

497.110 [Amended by 1955 c.358 §1; 1967 c.278 §1; 1971 c.446 §6; repealed by 1973 c.723 §130]

497.112 Hunting tags; restrictions; rules. (1) The State Fish and Wildlife Commission is authorized to issue, upon application, to persons desiring to hunt wildlife the following general tags and shall charge the applicable fees under the fee schedule in ORS 497.061:

- (a) Resident annual elk tag to hunt elk.
- (b) Nonresident annual elk tag to hunt elk.
- (c) Special annual elk tag for holders of pioneer combination licenses or disabled veteran hunting licenses to hunt elk.
- (d) Resident annual deer tag to hunt deer.
- (e) Nonresident annual deer tag to hunt deer.
- (f) Resident annual black bear tag to hunt black bear.
- (g) Nonresident annual black bear tag to hunt black bear.
- (h) Resident annual mountain sheep tag to hunt mountain sheep.
- (i) Nonresident annual mountain sheep tag to hunt mountain sheep.
- (j) Resident annual mountain goat tag to hunt mountain goat.
- (k) Nonresident annual mountain goat tag to hunt mountain goat.
- (L) Resident annual cougar tag to hunt cougar.

(m) Nonresident annual cougar tag to hunt cougar.

(n) Resident annual antelope tag to hunt antelope.

(o) Nonresident annual antelope tag to hunt antelope.

(p) Resident annual turkey tag to hunt turkey.

(q) Resident annual youth turkey tag to hunt turkey.

(r) Nonresident annual youth turkey tag to hunt turkey.

(s) Nonresident annual turkey tag to hunt turkey.

(t) Outfitter and guide annual deer tag for a nonresident to hunt deer.

(u) Outfitter and guide annual elk tag for a nonresident to hunt elk.

(2)(a) Notwithstanding ORS 496.146 (10), the commission is authorized to issue each year one special tag that is auctioned to the highest bidder in a manner prescribed by the commission for each of the following:

- (A) Mountain sheep;
- (B) Antelope; and
- (C) Mountain goat.

(b) In addition to the tags referred to in paragraph (a) of this subsection, the commission is authorized to issue each year one special tag that is raffled in a manner prescribed by the commission for each of the following:

- (A) Mountain sheep;
- (B) Antelope; and
- (C) Mountain goat.

(c) Moneys received under this subsection for:

(A) Mountain sheep tags shall be placed in the Mountain Sheep Subaccount established in ORS 496.303;

(B) Antelope tags shall be placed in the Antelope Subaccount established in ORS 496.303; and

(C) Mountain goat tags shall be placed in the Mountain Goat Subaccount established in ORS 496.303.

(d) Notwithstanding ORS 496.146 (10), the commission, upon the recommendation of the Access and Habitat Board to fulfill the board's charge of providing incentives to increase public access and habitat improvements to private land, is authorized to issue each year up to 10 elk and 10 deer tags to hunt deer or elk. The tags shall be auctioned or raffled to the highest bidder in a manner prescribed by the commission. The Access and Habitat Board, in recommending any tags, shall include a proposal as to the land

on which each tag can be used and a percentage of funds received from the tags that may revert to the landowner if the tag is limited to private land. However, the percentage cannot be more than 50 percent and the programs must, by written agreement, provide for public access and habitat improvements.

(3) The tags referred to in subsection (1) of this section are in addition to and not in lieu of the hunting licenses required by law.

(4) The commission may, at the time of issue only, indorse upon the tags referred to in subsection (1) of this section an appropriate designation indicating whether it is for a game animal to be taken with bow and arrow or with firearms, at the choice of the applicant. The commission may prescribe by rule that the holder of such a tag is not authorized to take the game animal by any other means than the tag so indorsed.

(5) Except as provided in subsection (6) of this section, a person is not eligible to obtain, in a lifetime, more than one controlled hunt tag issued by the commission to hunt mountain sheep and one controlled hunt tag issued by the commission to hunt mountain goat.

(6) A person is eligible to obtain mountain sheep tags, antelope tags or mountain goat tags described in subsection (2)(a) and (b) of this section, regardless of whether the person has previously taken a mountain sheep, antelope or mountain goat or previously obtained a mountain sheep tag, antelope tag or mountain goat tag issued pursuant to subsection (1) or (2)(a) or (b) of this section.

(7) The number of nonresident mountain goat tags and nonresident mountain sheep tags shall be decided by the commission, but:

(a) The number of nonresident mountain goat tags may not be less than five percent nor more than 10 percent of all mountain goat tags issued.

(b) The number of nonresident mountain sheep tags may not be less than five percent nor more than 10 percent of all mountain sheep tags issued.

(8) The number of tags issued by drawing under subsection (1)(g), (m) and (o) of this section shall be decided by the commission, but for each class of tag so issued, the number may not be more than three percent of all tags of that class issued for hunting in a particular area except one nonresident tag may be issued for each hunt when the number of authorized tags is less than 35. The number of tags issued under subsection (1)(g) of this section for the general hunting season may be decided by the commission, but the number may not be more than three percent

of all tags issued the previous year for hunting in a particular area.

(9) The number of tags issued by drawing under subsection (1)(b) and (e) of this section shall be decided by the commission, but for each class of tag so issued, the number may not be more than five percent of all tags of that class issued for hunting in a particular area except one nonresident tag may be issued for each hunt when the number of authorized tags is fewer than 35. The commission shall set the percentage by rule each year after holding a public hearing.

(10) If a controlled hunt for game mammals is undersubscribed during the primary controlled hunt drawing, the commission may issue the unallocated tags to licensed hunters at up to four times the standard tag fee on a first-come, first-served basis. This controlled hunt tag program shall be in addition to and not replace any existing controlled hunt tag program.

(11) The commission by rule may authorize the issuance of free tags to hunt antelope, deer and elk to provide an incentive to increase compliance with hunting reporting requirements. [1973 c.723 §53; 1975 c.454 §3; 1975 c.487 §1a; 1979 c.715 §1; 1981 c.445 §6; 1985 c.60 §1; 1987 c.255 §2; 1991 c.364 §1; 1991 c.661 §2; 1993 c.336 §1; 1993 c.659 §21; 1997 c.225 §1; 1997 c.341 §1; 1999 c.624 §1; 1999 c.685 §1; 1999 c.1006 §5; amendments by 1999 c.1006 §15 repealed by 2001 c.949 §1; 2003 c.612 §1; 2003 c.644 §2; 2009 c.832 §6; 2011 c.523 §1; 2015 c.779 §14]

497.115 [1971 c.530 §3; repealed by 1973 c.723 §130]

497.120 [Amended by 1955 c.358 §2; 1957 c.148 §1; 1959 c.221 §1; 1961 c.536 §1; 1967 c.278 §2; 1971 c.446 §7; repealed by 1973 c.723 §130]

497.121 Angling and shellfish licenses and tags. (1) The State Fish and Wildlife Commission is authorized to issue, upon application, to persons desiring to angle for fish or take shellfish the following licenses and tags and shall charge the applicable fees under the fee schedule in ORS 497.061:

- (a) Resident annual angling license.
- (b) Nonresident annual angling license.
- (c) Nonresident angling license to angle for seven consecutive days.
- (d) Angling license to angle for one day.
- (e) Angling and shellfish license to angle and take shellfish for one day.
- (f) Angling license to angle for two days.
- (g) Angling license to angle for three days.
- (h) Resident annual shellfish license.
- (i) Nonresident annual shellfish license.
- (j) Nonresident three-day shellfish license.
- (k) Two rod angling license for anglers who also hold a valid annual angling license.

(L) Resident annual senior citizen angling license for persons 70 years of age or older who have resided in the state for not less than five years prior to the date of application.

(m) Resident disabled veteran angling license for a person who files with the commission written proof that the last official certification of record by the United States Department of Veterans Affairs or by any branch of the Armed Forces of the United States shows the person to be at least 25 percent disabled.

(n) Resident disabled veteran shellfish license for a person who files with the commission written proof that the last official certification of record by the United States Department of Veterans Affairs or by any branch of the Armed Forces of the United States shows the person to be at least 25 percent disabled.

(o) Resident annual combined angling tag to angle for salmon, steelhead trout, sturgeon and halibut.

(p) Nonresident annual combined angling tag to angle for salmon, steelhead trout, sturgeon and halibut.

(q) Annual youth combined angling tag for persons under 18 years of age to angle for salmon, steelhead trout, sturgeon and halibut.

(r) Renewable tag to angle for hatchery salmon and steelhead.

(2) Any person who holds a valid permanent angling license for persons who are blind or a permanent angling license for persons in a wheelchair issued by the commission before January 1, 2000, need not obtain a resident annual angling license under this section.

(3) The annual combined angling tags to angle for salmon, steelhead trout, sturgeon and halibut referred to in subsection (1)(o), (p), (q) and (r) of this section are in addition to and not in lieu of the angling licenses required by the wildlife laws. However, an annual combined angling tag to angle for salmon, steelhead trout, sturgeon and halibut is not required of a person who holds a valid angling license referred to in subsection (1)(c) to (g) of this section. [1973 c.723 §51; 1975 c.34 §1; 1975 c.454 §4; 1979 c.377 §2; 1981 c.445 §7; 1983 c.740 §202; 1985 c.60 §2; 1985 c.390 §1; 1991 c.67 §151; 1991 c.435 §1; 1993 c.619 §1; 1999 c.25 §5; 1999 c.1006 §6; amendments by 1999 c.1006 §16 repealed by 2001 c.949 §1; 2001 c.94 §§2,3; 2001 c.571 §§4,5; 2003 c.644 §3; 2003 c.656 §8; 2007 c.70 §277; 2009 c.41 §23; 2009 c.425 §2; 2009 c.832 §7; 2015 c.779 §15]

Note: Section 4, chapter 512, Oregon Laws 1989, provides:

Sec. 4. Special dedication of fees through 2019. Notwithstanding any other provision of the wildlife laws and during the period beginning January 1, 1998, and ending December 31, 2019, of the moneys re-

ceived from the sale of the following licenses, the following amounts shall be deposited as provided for in ORS 496.283:

(1) Resident annual combination license issued under ORS 497.132, \$4.

(2) Resident annual angling license issued under ORS 497.121 (1)(a), \$4.

(3) Angling license to angle for one day issued under ORS 497.121 (1)(d), \$2.

(4) Angling and shellfish license to angle and take shellfish for one day issued under ORS 497.121 (1)(e), \$2.

(5) Angling license to angle for two days issued under ORS 497.121 (1)(f), \$2.

(6) Angling license to angle for three days issued under ORS 497.121 (1)(g), \$2.

(7) Nonresident annual angling license issued under ORS 497.121 (1)(b), \$10.

(8) Nonresident angling license to angle for seven consecutive days issued under ORS 497.121 (1)(c), \$5. [1989 c.512 §4; 1991 c.184 §1; 1993 c.619 §3; 1997 c.8 §9; 1999 c.1006 §11; 2003 c.643 §1; 2009 c.765 §1; 2015 c.779 §16]

Note: Section 19, chapter 659, Oregon Laws 1993, provides:

Sec. 19. Special dedication of fees through 2019. Notwithstanding any other provision of the wildlife laws and during the period beginning January 1, 1994, and ending December 31, 2019, of the moneys received from the sale of the following licenses, the following amounts shall be deposited as provided for in ORS 496.242:

(1) Resident annual combination license issued under ORS 497.132, \$4.

(2) Resident annual hunting license issued under ORS 497.102 (1)(a), \$4.

(3) Nonresident annual hunting license issued under ORS 497.102 (1)(b), \$4. [1993 c.659 §19; 1997 c.246 §1; 1999 c.1006 §12; 2003 c.203 §1; 2009 c.291 §1; 2015 c.779 §17]

Note: Section 3, chapter 734, Oregon Laws 2015, provides:

Sec. 3. Special dedication of fees through 2026. Notwithstanding any other provision of the wildlife laws and during the period beginning January 1, 2016, and ending December 31, 2026, of the moneys received from the sale of the following licenses, the following amounts shall be deposited in the Oregon Hatchery Research Center Fund:

(1) Resident annual combination license issued under ORS 497.132, \$1.

(2) Resident annual angling license issued under ORS 497.121 (1)(a), \$1.

(3) Angling license to angle for one day issued under ORS 497.121 (1)(d), \$0.50.

(4) Nonresident annual angling license issued under ORS 497.121 (1)(b), \$1.50.

(5) Nonresident angling license to angle for seven consecutive days issued under ORS 497.121 (1)(c), \$1.50. [2015 c.734 §3; 2015 c.779 §52]

497.122 [1955 c.474 §1; repealed by 1957 c.148 §2]

497.123 Hatchery harvest tag rules. The State Fish and Wildlife Commission shall adopt rules for the issuance of hatchery harvest tags to persons holding an annual angling license and an annual tag to angle for salmon and steelhead. The rules shall allow persons holding a hatchery harvest tag to angle for 10 fin clipped or otherwise

marked returning hatchery salmon and steelhead. [2001 c.94 §1]

Note: 497.123 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 497 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

497.124 Special dedication of fees to Fish Screening Subaccount. Notwithstanding any other provision of the wildlife laws, of the moneys received from the sale of the following licenses, 75 cents from the sale of each license shall be credited to the Fish Screening Subaccount under ORS 496.303:

- (1) Resident annual combination license issued under ORS 497.132.
- (2) Resident annual angling license issued under ORS 497.121 (1)(a).
- (3) Angling license to angle for one day issued under ORS 497.121 (1)(d).
- (4) Angling and shellfish license to angle and take shellfish for one day issued under ORS 497.121 (1)(e).
- (5) Angling license to angle for two days issued under ORS 497.121 (1)(f).
- (6) Angling license to angle for three days issued under ORS 497.121 (1)(g).
- (7) Nonresident annual angling license issued under ORS 497.121 (1)(b).
- (8) Nonresident angling license to angle for seven consecutive days issued under ORS 497.121 (1)(c). [1991 c.858 §15; 1993 c.619 §4; 1995 c.426 §4; 1999 c.25 §6; 2009 c.832 §8; 2015 c.779 §19]

Note: 497.124 was added to and made a part of ORS chapter 497 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

497.125 [1959 c.692 §3(2); repealed by 1973 c.723 §130]

497.127 Youth licenses. The State Fish and Wildlife Commission is authorized to issue, upon application, youth licenses for resident and nonresident persons at least 12 years of age and under 18 years of age and shall charge the applicable fee under the fee schedule in ORS 497.061. The youth license shall be equivalent to, and authorize the purchaser to engage in the activities authorized by, the following adult licenses:

- (1) Resident annual hunting license;
- (2) Resident annual angling license; and
- (3) Resident annual shellfish license. [2015 c.779 §21]

Note: 497.127 was added to and made a part of ORS chapter 497 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

Note: Section 22, chapter 779, Oregon Laws 2015, provides:

Sec. 22. For the period beginning January 1, 2016, and ending December 31, 2021, the youth license under section 21 of this 2015 Act [497.127] and the pioneer combination license under ORS 497.132 shall include authorization for the purchaser to engage in angling

activities for which an endorsement to fish for salmon, steelhead or sturgeon in the Columbia Basin under ORS 496.146 is required. [2015 c.779 §22]

497.130 [Amended by 1967 c.278 §3; repealed by 1973 c.723 §130]

497.132 Combined licenses for residents. (1)(a) In lieu of issuing to resident persons separate licenses for hunting and angling, the State Fish and Wildlife Commission is authorized to issue resident annual combination hunting and angling licenses, and charge the applicable fee under the fee schedule in ORS 497.061.

(b) In lieu of issuing to resident senior citizens separate licenses for hunting and angling, the commission is authorized to issue resident annual senior citizen combination hunting and angling licenses for persons 70 years of age or older who have resided in the state for not less than five years prior to the date of application.

(2) The commission is authorized to issue, upon application, resident annual pioneer combination hunting and angling licenses for persons who will be 65 years of age or older in the license year and who have resided in the state for not less than 50 years prior to the date of application, and to charge the applicable fee under the fee schedule in ORS 497.061. The resident annual pioneer combination license shall be equivalent to, and authorize the purchaser to engage in the activities authorized by, a resident annual combination license.

(3)(a) In lieu of issuing to resident persons separate licenses and tags for various hunting and angling activities, the commission is authorized to issue resident annual sportspac licenses and shall charge the applicable fee under the fee schedule in ORS 497.061. The purchaser of each sportspac license is authorized to engage in those hunting and angling activities for which the following licenses and tags are required:

- (A) Combination license;
- (B) Black bear tag;
- (C) Cougar tag;
- (D) General season elk tag;
- (E) General season deer tag;
- (F) Upland bird stamp;
- (G) Oregon migratory waterfowl stamp;
- (H) Turkey tag;
- (I) Annual combined angling tag to angle for salmon, steelhead trout, sturgeon and halibut; and
- (J) Resident annual shellfish license.

(b) The holder of each sportspac license who wishes to engage in hunting or angling activities for which permits are required that are limited by quota must participate in the

process for allocation of the permits in the same manner as all other permit applicants. However, if the holder of a sportspac license is unsuccessful in obtaining a permit limited by quota for a particular activity, the holder will be issued a tag valid for any general season for that species.

(c) Notwithstanding any other provision of the wildlife laws, of the moneys received from the sale of sportspac licenses:

(A) Four dollars from each license shall be credited to the subaccount referred to in ORS 496.242.

(B) Four dollars from each license shall be credited to the subaccount referred to in ORS 496.283.

(C) Seventy-five cents from each license shall be credited to the Fish Screening Sub-account established under ORS 496.303.

(D) Twenty-five cents from each license shall be credited to the Fish Passage Fund established under ORS 497.139.

(4)(a) In lieu of issuing to resident persons at least 12 years of age and under 18 years of age separate licenses and tags for hunting and angling, the commission is authorized to issue resident annual youth sportspac licenses for persons at least 12 years of age and under 18 years of age and shall charge the applicable fee under the fee schedule in ORS 497.061. The purchaser of each youth sportspac license is authorized to engage in those hunting and angling activities for which the following licenses and tags are required:

(A) Youth license;

(B) Black bear tag;

(C) Cougar tag;

(D) General season elk tag;

(E) General season deer tag;

(F) Youth upland bird stamp;

(G) Youth Oregon migratory waterfowl stamp;

(H) Youth turkey tag; and

(I) Annual youth combined angling tag for persons under 18 years of age to angle for salmon, steelhead trout, sturgeon and halibut.

(b) The holder of each resident annual youth sportspac license who wishes to engage in hunting or angling activities for which permits are required that are limited by quota must participate in the process for allocation of the permits in the same manner as all other permit applicants. However, if the holder of a resident annual youth sportspac license is unsuccessful in obtaining

a permit limited by quota for a particular activity, the holder will be issued a tag valid for any general season for that species.

(c) Notwithstanding any other provision of the wildlife laws, of the moneys received from the sale of resident annual youth sportspac licenses:

(A) One dollar from each license shall be credited to the subaccount referred to in ORS 496.242.

(B) One dollar from each license shall be credited to the subaccount referred to in ORS 496.283.

(C) Seventy-five cents from each license shall be credited to the Fish Screening Sub-account established under ORS 496.303.

(D) Twenty-five cents from each license shall be credited to the Fish Passage Fund established under ORS 497.139. [1973 c.723 §52; 1975 c.454 §5; 1981 c.445 §8; 1987 c.255 §3; 1991 c.661 §3; 1993 c.619 §2; 1997 c.341 §2; 1999 c.59 §161; 1999 c.1006 §7; amendments by 1999 c.1006 §17 repealed by 2001 c.949 §1; 2001 c.822 §§8,8a; 2003 c.644 §4; 2009 c.291 §2; 2009 c.765 §2; 2009 c.832 §9; 2015 c.779 §23]

Note: See notes under 497.121.

497.134 Voluntary contributions. (1)

The State Fish and Wildlife Commission may provide a means for persons to make voluntary contributions to be used for special fish and wildlife management programs, including programs to improve access for recreational angling. The commission may seek voluntary contributions in conjunction with the sale of hunting and angling licenses and tags or by such other means as the commission considers appropriate.

(2) If the commission implements an electronic licensing system, the commission shall provide a means for persons to make voluntary contributions in conjunction with the sale of licenses and tags referred to in ORS 497.121 (1). All such voluntary contributions received by the commission may be expended only for projects for which applications are made pursuant to ORS 496.450. [1985 c.391 §2; 1989 c.204 §1; 1999 c.25 §7; 1999 c.1006 §8]

497.136 Uses of certain fee increases.

The moneys received from the fee increases prescribed in the amendments to ORS 497.121 and 497.132 and section 4, chapter 512, Oregon Laws 1989, and section 15, chapter 858, Oregon Laws 1991, by sections 1 to 4, chapter 619, Oregon Laws 1993, shall be used by the State Department of Fish and Wildlife for recreational fishing activities, including fish hatchery production, freshwater fish programs, groundfish sampling, fish research projects, Oregon State Police Game Bureau enforcement, a name and address database, and the Hatchery Maintenance Information System. [1993 c.619 §6]

497.138 Special dedication of fees to Fish Passage Fund. Notwithstanding any other provision of the wildlife laws, of the moneys received from the sale of the following licenses, 25 cents from the sale of each license shall be credited to the Fish Passage Fund established under ORS 497.139:

(1) Resident annual combination hunting and angling license issued under ORS 497.132.

(2) Resident annual angling license issued under ORS 497.121 (1)(a).

(3) Angling license to angle for one day issued under ORS 497.121 (1)(d).

(4) Angling and shellfish license to angle and take shellfish for one day issued under ORS 497.121 (1)(e).

(5) Angling license to angle for two days issued under ORS 497.121 (1)(f).

(6) Angling license to angle for three days issued under ORS 497.121 (1)(g).

(7) Nonresident annual angling license issued under ORS 497.121 (1)(b).

(8) Nonresident angling license to angle for seven consecutive days issued under ORS 497.121 (1)(c). [2009 c.832 §17; 2015 c.779 §24]

497.139 Fish Passage Fund. The Fish Passage Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Fish Passage Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the State Department of Fish and Wildlife for purposes related to fish passage. [2009 c.832 §14]

Note: 497.139 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 497 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

497.140 [Amended by 1963 c.263 §1; repealed by 1973 c.723 §130]

497.141 Fish Passage Restoration Subaccount; sources; uses. (1) There is created a Fish Passage Restoration Subaccount within the Fish Passage Fund established under ORS 497.139. Fees described in ORS 543.765 (14) shall be paid into the subaccount. The State Department of Fish and Wildlife may solicit and accept additional moneys for crediting to the subaccount, including but not limited to federal funds, appropriations, donations, grants from nongovernmental entities and moneys from other public or private sources. Any interest earned by moneys within the subaccount shall be credited to the subaccount.

(2) The department shall use the subaccount moneys to fund priority fish passage restoration projects. The department shall give priority to the funding of projects on the statewide inventory of artificial obstructions

priority list described in ORS 509.585, with an emphasis on those statewide priority list projects that also pay fees under ORS 543.765 (14), and give priority to projects that have the ability to leverage matching dollars. The department may not use subaccount moneys to fund culvert projects or projects that are state-owned structures. The department may not expend more than six percent of the annual contributions to the subaccount to pay staffing costs associated with the advancement of capital projects funded by the subaccount. [2013 c.674 §1]

Note: 497.141 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 497 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

497.142 Fur-bearer trapping or hunting license and tag. (1) The State Fish and Wildlife Commission is authorized to issue, upon application, to persons desiring to take fur-bearing mammals the following licenses and shall charge the applicable fee under the fee schedule in ORS 497.061:

(a) Resident annual license to trap or hunt fur-bearing mammals.

(b) Annual youth license to trap or hunt fur-bearing mammals.

(c) Resident annual license to hunt fur-bearing mammals.

(d) Nonresident annual fur-takers license to trap or hunt fur-bearing mammals.

(2) The commission is authorized to issue, upon application, fur-bearer annual tags to take fur-bearing mammals.

(3) The tags referred to in subsection (2) of this section are in addition to and not in lieu of the licenses referred to in subsection (1)(c) and (d) of this section. [1973 c.723 §55; 1979 c.774 §1; 1987 c.255 §4; 2009 c.832 §10; 2015 c.779 §25]

497.145 [1965 c.295 §2; repealed by 1973 c.723 §130]

497.146 Trapper education program; when certificate required; exceptions. (1) The State Fish and Wildlife Commission, by rule, shall prescribe and administer a trapper education program to provide instruction in the proper use of trapping equipment. The program may also include instruction on wildlife and natural resource conservation, firearms safety, first aid and survival and such other subjects as the commission considers desirable to promote good outdoor conduct and respect for the rights and property of others. The commission may cooperate and enter into agreements with other public or private agencies and individuals in carrying out the provisions of this section.

(2) Except as provided in subsection (3) of this section, no person shall trap mammals with commercial fur value unless the person has in possession a certificate issued by the

commission indicating that the person has satisfactorily completed a course in trapper education prescribed or approved by the commission. However, the commission shall issue the certificate automatically, without the necessity of completing the course, to any person who has previously held a valid trapping license issued by the commission and who is 18 years of age or older on July 1, 1986.

(3) The certificate referred to in subsection (2) of this section is not required of a person to trap mammals with commercial fur value on land owned or leased by that person or a member of that person's immediate family.

(4) Nothing in this section is intended to prevent any person or the persons' agent from taking mammals with commercial fur value that are damaging livestock or agricultural crops on lands the person owns or leases.

(5) As used in this section, "mammals with commercial fur value" means badger, beaver, bobcat, coyote, red fox, gray fox, marten, mink, muskrat, nutria, opossums, raccoon, river otter, striped skunk, spotted skunk and weasel. [1979 c.774 §4; 1985 c.467 §1]

497.147 [1967 c.251 §2; repealed by 1973 c.723 §130]

497.150 [Amended by 1955 c.153 §1; 1957 c.54 §1; 1969 c.382 §1; repealed by 1973 c.723 §130]

497.151 Annual migratory waterfowl stamp; effect of purchase by nonresident. (1)(a) The State Fish and Wildlife Commission is authorized to issue, upon application, to resident persons desiring to hunt migratory waterfowl an annual migratory waterfowl stamp and shall charge the applicable fee under the fee schedule in ORS 497.061.

(b) The commission is authorized to issue, upon application, to resident and nonresident persons at least 12 years of age and under 18 years of age desiring to hunt migratory waterfowl an annual youth migratory waterfowl stamp and shall charge the applicable fee under the fee schedule in ORS 497.061.

(2) The stamps referred to in subsection (1) of this section are in addition to and not in lieu of the hunting licenses required by ORS 497.102 and 497.127.

(3) A migratory waterfowl stamp is not required of a person younger than 12 years of age.

(4) ORS 497.016 to 497.026 and 497.036 apply to the stamps referred to in subsection (1) of this section.

(5) Nothing in this section is intended to prevent nonresident persons 18 years of age or older from purchasing resident migratory

waterfowl stamps for stamp collecting or other purposes. However, possession of a resident migratory waterfowl stamp does not authorize a nonresident 18 years of age or older to hunt migratory waterfowl. [1983 c.801 §2; 1993 c.659 §22; 1999 c.1006 §9; amendments by 1999 c.1006 §18 repealed by 2001 c.949 §1; 2009 c.832 §11; 2015 c.779 §26]

497.153 Annual upland bird stamp; effect of purchase by nonresident. (1)(a) The State Fish and Wildlife Commission is authorized to issue, upon application, to resident persons desiring to hunt upland birds an annual upland bird stamp and shall charge the applicable fee under the fee schedule in ORS 497.061.

(b) The commission is authorized to issue, upon application, to resident and nonresident persons at least 12 years of age and under 18 years of age desiring to hunt upland birds an annual youth upland bird stamp and shall charge the applicable fee under the fee schedule in ORS 497.061.

(2) The stamps referred to in subsection (1) of this section are in addition to and not in lieu of the hunting licenses required by ORS 497.102 and 497.127.

(3) An upland bird stamp is not required of a person younger than 12 years of age.

(4) ORS 497.016 to 497.026 and 497.036 apply to the stamps referred to in subsection (1) of this section.

(5) Nothing in this section is intended to prevent nonresident persons 18 years of age or older from purchasing resident upland bird stamps for stamp collecting or other purposes. However, possession of a resident upland bird stamp does not authorize a nonresident 18 years of age or older to hunt upland birds. [1989 c.406 §4; 1993 c.659 §23; 2009 c.832 §12; 2015 c.779 §27]

497.156 Annual nonresident bird-waterfowl stamp. (1) The State Fish and Wildlife Commission is authorized to issue, upon application, to nonresident persons 18 years of age or older desiring to hunt either migratory waterfowl or upland birds an annual bird-waterfowl stamp and shall charge the applicable fee under the fee schedule in ORS 497.061.

(2) The stamp referred to in subsection (1) of this section is in addition to and not in lieu of the hunting licenses required by ORS 497.102.

(3) Notwithstanding subsection (1) of this section, a bird-waterfowl stamp is not required of:

(a) A person younger than 12 years of age;

(b) A nonresident person at least 12 years of age and under 18 years of age who holds

an annual youth migratory waterfowl stamp and an annual youth upland bird stamp; or

(c) A nonresident hunter on a private hunting preserve who holds an annual private hunting preserve permit issued under ORS 497.102.

(4) ORS 497.016 to 497.026 and 497.036 apply to the stamp referred to in subsection (1) of this section. [1993 c.659 §25; 1999 c.667 §3; 1999 c.1006 §10; amendments by 1999 c.1006 §19 repealed by 2001 c.949 §1; 2009 c.832 §13; 2015 c.779 §28]

497.158 Mail and Internet license renewal. The State Fish and Wildlife Commission shall adopt a system for renewing licenses issued under ORS 497.102, 497.121, 497.127 and 497.132 through the mail and the World Wide Web. [2001 c.559 §2; 2015 c.779 §49]

Note: 497.158 was added to and made a part of the wildlife laws by legislative action but was not added to ORS chapter 497 or any series therein. See Preface to Oregon Revised Statutes for further explanation.

497.160 [Amended by 1953 c.79 §2; 1955 c.295 §1; 1969 c.506 §1; repealed by 1973 c.723 §130]

SPECIAL LICENSES

497.162 Angling and shellfish licenses for persons in state care or persons receiving certain services. (1) Upon application of the Oregon Youth Authority, the Oregon Health Authority or the Department of Human Services, the State Fish and Wildlife Commission shall issue, without fee, a license to angle for the temporary use of any person in a state institution as described in ORS 179.610, any student in a youth correction facility or related camps or programs operated by the Oregon Youth Authority, any child placed by the department and under the care of a foster home or a private nonprofit child-caring agency certified by the department, any person in an alternative to state hospitalization program as described in ORS 430.630 (2)(b) or (c), or any person receiving services under ORS 430.664. The licenses issued under this subsection shall be in bearer form and, subject to applicable laws and regulations relating to angling, shall be used as the agency applying for the license directs.

(2) Upon application of the Department of Human Services, the commission shall issue, without fee, a license to take shellfish for the temporary use of any child placed by the department and under the care of a foster home or a private nonprofit child-caring agency certified by the department. The licenses issued under this subsection shall be in bearer form and, subject to applicable laws and regulations relating to taking shellfish, shall be used as the department directs.

(3) Upon application of the director of any veteran's administration hospital or

domiciliary within this state, the commission shall issue, without fee, to each hospital or domiciliary 30 licenses to angle or to take shellfish for the temporary use of any person who is a patient or resident in the hospital or domiciliary. The licenses issued under this subsection shall be in bearer form and, subject to applicable laws and regulations relating to angling and to taking shellfish, shall be used as the director of the hospital or domiciliary provides. [Formerly 497.840; 1977 c.492 §1; 1979 c.70 §1; 1997 c.249 §178; 1999 c.59 §162; 2001 c.900 §207; 2003 c.656 §16; 2009 c.595 §982; 2011 c.720 §207]

497.170 Columbia River Indians; free hunting and fishing licenses. The State Fish and Wildlife Commission shall furnish a permanent hunting and angling license, without payment of fee, to all Columbia River Indians who are eligible to hunt and angle under the terms of the Treaty of 1855 between the Columbia River Indians and the United States of America. The chief authority of the Columbia River Indians shall furnish from time to time to the commission a list of all Indians who have become eligible, and shall certify under oath that the Indians named in the list are included in the terms of the treaty. [Amended by 1973 c.723 §56]

497.175 [1969 c.506 §3; repealed by 1973 c.723 §130]

497.200 [1973 c.723 §58; 1979 c.615 §2; repealed by 1979 c.615 §4]

497.208 [Formerly 497.760; repealed by 1979 c.615 §4]

497.210 [Amended by 1955 c.109 §2; repealed by 1973 c.723 §130]

OCCUPATIONAL LICENSES; REQUIREMENTS

497.218 Fur dealer license; records. (1) No person shall engage in the business of buying the skins or pelts of any fur-bearing mammal unless the person has first obtained from the State Fish and Wildlife Commission a fur dealer license.

(2) Every fur dealer shall maintain a record of transactions involving the skins or pelts of fur-bearing mammals. The record shall be in such form and contain such information as the commission, by rule, prescribes to accurately indicate the date, type and number of skins or pelts received and the name and address of the person with whom such transaction was made. [1973 c.723 §60]

497.220 [Repealed by 1955 c.109 §1]

497.228 Wildlife propagation license; grounds for license denial; records; rules. (1) No person shall engage in the business of propagating game birds or game mammals for sale unless a wildlife propagation license is first obtained from the State Department of Fish and Wildlife.

(2) The State Fish and Wildlife Commission may refuse to issue a license to an applicant if the commission finds that the conduct of the wildlife propagation business would tend to be harmful to existing wildlife populations.

(3) The commission, by rule, may prescribe requirements for the care, inspection, transportation and the sale, taking or other disposition of the game birds or game mammals and for such record keeping and reporting procedures as will insure that the propagation activities are conducted in such manner as will not be harmful to existing wildlife populations. [1973 c.723 §61; 1987 c.139 §1]

497.230 [Amended by 1967 c.431 §2; repealed by 1973 c.723 §130]

497.238 Taxidermy license; records. (1) No person shall engage in the business of taxidermy unless the person first obtains from the State Fish and Wildlife Commission a taxidermist license.

(2) Every licensed taxidermist shall maintain a record of the taxidermy work the person performs. The record shall be in such form and contain such information as the commission, by rule, prescribes to accurately indicate the date, type and number of wildlife species received for taxidermy work and the name and address of the persons from whom the wildlife species were received. [1973 c.723 §62]

497.240 [Repealed by 1973 c.723 §130]

497.248 Private hunting preserve license; requirements for preserve; rules; records. (1) No person shall engage in the business of operating a private hunting preserve for the hunting of privately owned or propagated game birds unless the person first obtains from the State Fish and Wildlife Commission a private hunting preserve license.

(2) The commission shall issue a private hunting preserve license to an applicant therefor if the commission finds that the operation of the preserve will meet the following requirements:

(a) The preserve is on one continuous tract of land owned by the applicant or leased by the applicant and contains:

(A) Not more than 640 acres, if the preserve is located in the area west of the summit of the Cascade Mountains; or

(B) Not more than 1,280 acres, if the preserve is located in the area east of the summit of the Cascade Mountains.

(b) The preserve is located at least one-half mile from any other licensed private hunting preserve.

(c) No portion of the preserve is located closer than one-half mile to any park,

wilderness area, refuge or wildlife management area operated by any agency of the state or federal government.

(d) The exterior boundaries of the preserve are clearly defined and posted with signs erected around the extremity at intervals of 1,320 feet or less. The signs shall comply with requirements prescribed by the State Department of Fish and Wildlife.

(e) The applicant has facilities to propagate or hold not less than 500 of each wildlife species to be released for hunting.

(f) The applicant will not prevent or attempt to prevent public hunting on lands adjacent to the preserve.

(3)(a) The commission, by rule, shall prescribe the time, manner and place of hunting on private preserves, the wildlife species to be hunted, requirements for the care and marking of wildlife raised on the preserve, the release of wildlife received from another state, the procedures for marking indigenous wildlife incidentally taken on the preserve and the fees therefor, and record keeping and reporting procedures.

(b) Pursuant to paragraph (a) of this subsection, the commission shall:

(A) Allow private hunting preserve operators to use plastic poultry leg bands for marking wildlife species to be released for hunting.

(B) Allow the transportation of game birds killed on a private hunting preserve if the birds are cleaned, wrapped, packaged and accompanied by a transportation form from the preserve that states the number and sex of the birds being transported.

(C) Require private hunting preserve operators to have at least 10 resident private hunting preserve permits, 10 nonresident private hunting preserve permits and 10 wild bird seals. This requirement shall apply to each operator, regardless of the number of preserves operated by that person.

(4) No person shall hunt on a private hunting preserve unless the person first obtains from the commission a hunting license or a private hunting preserve permit. [1973 c.723 §63; 1999 c.667 §4; 2001 c.151 §1; 2001 c.161 §1; 2003 c.616 §1]

497.249 Revocation or refusal to renew private hunting preserve license. (1) In addition to the penalties provided in ORS 496.992, the State Department of Fish and Wildlife may revoke or refuse to renew a license issued under ORS 497.248 if the operator fails to comply with any provision of ORS 497.248 or any rule adopted by the State Fish and Wildlife Commission in relation to the operation of private hunting preserves.

(2) A new license may not be issued to a person whose license has been revoked unless it appears to the satisfaction of the department that the person will comply with the provisions of ORS 497.248 and the rules adopted by the commission in relation to the operation of private hunting preserves.

(3) Notwithstanding subsection (1) of this section, the department may not revoke a license for a first violation.

(4) Prior to revoking or refusing to renew a license, the department shall serve written notice, in the manner prescribed for contested case proceedings pursuant to ORS 183.415, on the operator of the private hunting preserve, ordering the operator to:

(a) Notify the department within 30 days of the service of the notice if the operator seeks a review of the proposed revocation or refusal to renew the license in the manner provided for contested case proceedings in ORS 183.413 to 183.470; and

(b) Set forth in any notification under paragraph (a) of this subsection the operator's reasons why the license should be renewed or not be revoked.

(5) At the conclusion of a contested case proceeding conducted by the department pursuant to subsection (4) of this section, an operator may petition the commission for a review of the determination by the department. [2001 c.151 §3]

Note: 497.249 was added to and made a part of the wildlife laws by legislative action but was not added to ORS chapter 497 or any series therein. See Preface to Oregon Revised Statutes for further explanation.

497.250 [Amended by 1959 c.692 §11; repealed by 1973 c.723 §130]

497.252 Fish propagation license; terms and conditions; rules; applicability of other licensing laws. (1) Except as provided in ORS 508.700 to 508.745 and 622.220, no person shall engage in the business of propagating game fish or food fish for sale unless a fish propagation license is first obtained from the State Department of Fish and Wildlife.

(2) The State Fish and Wildlife Commission may refuse to issue a license to an applicant if the commission finds that the conduct of the fish propagation business would tend to be harmful to existing game fish or food fish populations.

(3) The commission, by rule, may prescribe requirements for the care, inspection, transportation and the sale, taking or other disposition of the game fish or food fish, and for such record keeping and reporting procedures as will insure that the propagation activities are conducted in such manner as will not be harmful to existing game fish or food fish populations.

(4) Persons propagating the following food fish under the license prescribed in subsection (1) of this section are exempt from the licensing provisions of ORS 508.025 and 508.035:

(a) Food fish raised entirely in, then harvested from facilities which are enclosed or designed to prevent escape and from which the fish are not released for natural rearing.

(b) Food fish harvested from the wild under licenses prescribed in ORS 508.025 and 508.035 and on which the appropriate fee has been paid at the time holding or rearing commences in the licensed fish propagation facility.

(5) As used in this section, food fish has the meaning as defined in ORS 506.011. [1987 c.139 §3; 1991 c.701 §16]

497.258 Licensing authority. The State Department of Fish and Wildlife is authorized to issue, upon application, to persons desiring to engage in the following occupations the following licenses and shall charge the applicable fees under the fee schedule in ORS 497.061:

(1) Resident annual fur dealer license.

(2) Resident annual taxidermist license.

(3) Resident annual wildlife propagation license.

(4) Resident annual fish propagation license.

(5) Resident annual private hunting preserve license. [1973 c.723 §54; 1979 c.615 §3; 1985 c.565 §79; 1987 c.139 §4; 2009 c.832 §15; 2015 c.779 §29]

497.260 [Amended by 1969 c.61 §1; repealed by 1973 c.723 §130]

497.268 Inspection of occupational licenses. The holder of any license issued pursuant to ORS 497.218 to 497.248 shall consent to the inspection by any person authorized to enforce the wildlife laws of any such license and any records the holder is required to keep by the wildlife laws or any rule promulgated pursuant thereto. [1973 c.723 §64]

497.270 [Amended by 1971 c.55 §1; repealed by 1973 c.723 §130]

497.275 [1971 c.55 §2; repealed by 1973 c.723 §130]

497.280 [Amended by 1971 c.658 §24; repealed by 1973 c.723 §130]

497.285 [1961 c.335 §§2, 3, 4; 1969 c.501 §1; 1971 c.743 §397; repealed by 1973 c.723 §130]

497.290 [Amended by 1971 c.658 §25; repealed by 1973 c.723 §130]

SPECIAL PERMITS

497.298 Scientific taking permit; rules.

(1) Any person desiring to take wildlife for scientific purposes shall first obtain from the State Fish and Wildlife Commission a scientific taking permit. The commission, by rule,

shall prescribe a procedure for applying for permits and the form thereof, and shall prescribe the terms and conditions of taking wildlife under the permit to insure that wildlife taken pursuant to the permit will be used only for scientific purposes.

(2) No person who holds a scientific taking permit shall violate any of the terms or conditions of the permit.

(3) As used in this section, "scientific purposes" means the study or examination of wildlife for the acquisition of knowledge thereof. [1973 c.723 §65]

497.308 Wildlife holding and habitat removal permits; rules. (1) No person shall remove from its natural habitat or acquire and hold in captivity any live wildlife in violation of the wildlife laws or of any rule promulgated pursuant thereto.

(2) The State Fish and Wildlife Commission may promulgate rules to carry out the provisions of subsection (1) of this section that include but are not limited to:

(a) Providing for the issuance and form of permits for the holding or removal from habitat of wildlife.

(b) Prescribing the wildlife species for which holding or habitat removal permits are required.

(c) Prescribing the terms and conditions of holding wildlife and removing wildlife from habitat to insure the humane care and treatment of the wildlife.

(3) No person to whom a wildlife holding or removal from habitat permit has been issued shall violate any of the terms or conditions thereof. [1973 c.723 §66]

497.312 Special restrictions on holding coyotes. (1) Any rules promulgated by the State Fish and Wildlife Commission pursuant to ORS 497.308 that authorize the acquisition and holding in captivity of a coyote must require, among other matters:

(a) That the holder of the permit obtain for the animal rabies inoculations;

(b) That the animal must at all times wear an identification tag issued by the commission;

(c) That the holder of the permit notify the commission upon the death or the sale, transfer, removal from the state or other disposition of the animal;

(d) That the holder of the permit not abandon the animal; and

(e) That the holder of the permit cause the animal to be neutered.

(2) The holder of a permit referred to in subsection (1) of this section is subject to the same liability and other requirements of ORS 609.135 to 609.190 as provided for dogs.

(3) The holder of any permit referred to in subsection (1) of this section shall at all times be able to demonstrate to the satisfaction of the commission that the holder has physical custody of the animal or evidence of the death or other disposition of the animal in compliance with the provisions of this section and ORS 497.308.

(4) Nothing in this section or in ORS 497.308 authorizes the acquisition and holding in captivity of any coyote not held in captivity at the State Fish and Wildlife Facility at Pendleton before September 10, 1976, or held pursuant to a scientific taking permit issued pursuant to ORS 497.298. [1977 c.247 §2]

497.318 Revocation of scientific taking or wildlife holding and habitat removal permits. In accordance with any applicable provision of ORS chapter 183, the State Fish and Wildlife Commission may revoke a permit issued pursuant to ORS 497.298 or 497.308 if the commission determines that the holder of the permit has violated any of the terms or conditions thereof. Revocation of a permit is in addition to and not in lieu of any other penalty provided by law for violation of the terms or conditions of the permit. [1973 c.723 §67]

497.325 Sturgeon hatchery operation permits; conditions; permit restrictions; rules. (1) A person may not operate a fish hatchery for those members of the family Acipenseridae, commonly known as green sturgeon or white sturgeon, without holding a permit therefor from the State Fish and Wildlife Commission.

(2) Any permit issued pursuant to this section shall be subject to such terms and conditions as the commission considers appropriate to protect, perpetuate and enhance the sturgeon population of the Columbia River and other waters of this state.

(3) The commission by rule shall specify:

(a) The number of permits under this section that may be issued each calendar year;

(b) The method for allocating the permits; and

(c) The standards and criteria under which a permit must be exercised.

(4) When issuing a permit under this section, the commission may impose any additional conditions that the commission deems necessary to ensure compliance with this section.

(5)(a) A permit issued under this section for a fish hatchery operated for commercial purposes may not authorize the use of green sturgeon or white sturgeon broodstock taken from the wild.

(b) The commission shall annually collect the applicable fee under the fee schedule in ORS 497.061 for any permit issued under this section that allows the artificial propagation of green sturgeon or white sturgeon for commercial purposes. Payment of a fee under this subsection satisfies the payment of the fee required for a fish propagation license under ORS 497.252. [1989 c.1038 §2; 2007 c.342 §1; 2015 c.779 §30]

497.327 Priority for certain applications for permit for sturgeon hatchery operation. When considering an application for a permit under ORS 497.325, the State Fish and Wildlife Commission shall, to the greatest extent practicable, give priority to any person who holds a permit on December 31, 2007, unless the commission finds good cause not to give such priority. [2007 c.342 §2]

Note: 497.327 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 497 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

497.330 [1989 c.1038 §3; repealed by 2007 c.342 §5]

JUVENILE RESTRICTIONS

497.350 Hunting restriction; generally.

(1) No person younger than 12 years of age shall hunt antelope, black bear, cougar, deer, elk, mountain goat, mountain sheep or moose.

(2) No person younger than 14 years of age shall hunt with a firearm or bow and arrow unless the person is accompanied by an adult, or is hunting on land owned by the parent or legal guardian of the person. [1973 c.723 §68]

497.360 Hunter safety certificate; training program; youth hunter mentoring program; rules. (1) No person younger than 18 years of age shall hunt wildlife, except on the person's own land or land owned by the parent or legal guardian of the person, unless the person:

(a) Has in possession a certificate, issued by the State Fish and Wildlife Commission or by an agency of another state, stating that the person has satisfactorily completed a course prescribed or approved by the commission in the safe handling of lawful hunting weapons; or

(b) Is participating in a supervised hunt as provided in subsection (3) of this section.

(2) The commission, by rule, shall prescribe and administer a hunter safety training program to provide instruction in the safe handling of lawful hunting weapons. The program may also include instruction on wildlife and natural resource conservation, first aid and survival and such other subjects as the commission considers desirable to promote good outdoor conduct and respect

for the rights and property of others. The commission may cooperate and enter into agreements with other public or private agencies and individuals in carrying out the provisions of this subsection. The Department of State Police and the Department of Education are directed to cooperate with the commission in carrying out the provisions of this section.

(3)(a) The commission, by rule, shall prescribe and administer a youth hunter mentoring program that allows a person who is between nine and 14 years of age to hunt while in the presence of a supervisory hunter who is 21 years of age or older and who holds the appropriate licenses, tags and permits issued pursuant to the wildlife laws. Only one lawful hunting weapon may be carried during a supervised hunt under this subsection. A person participating in a supervised hunt under this subsection may hunt wildlife under the same conditions applicable to the supervisory hunter's licenses, tags and permits.

(b) The commission, by rule, may prescribe any relevant safety and ethical standards for participation in a supervised hunt under this subsection. [1973 c.723 §69; 2007 c.352 §1]

LICENSE VIOLATIONS AND PENALTIES

497.400 Prohibited conduct. No person shall:

(1) Apply for, obtain or possess for personal use or for the use of any other person more licenses, tags or permits issued by the State Fish and Wildlife Commission than are authorized for personal use during the current year by the wildlife laws and rules promulgated pursuant thereto.

(2) Alter, borrow, loan or transfer to another person any license, tag or permit issued by the commission.

(3) In applying for a license, tag or permit issued by the commission, knowingly make any false statement of any information required by the application regarding the person in whose name the license, tag or permit is to be issued.

(4) Possess any license, tag or permit that has been altered, borrowed, loaned or transferred or for which any false statements were knowingly made in applying therefor.

(5) Apply for or obtain any license, tag or permit issued by the commission when civil damages due pursuant to ORS 496.705 or when moneys due the State Department of Fish and Wildlife from court-ordered restitutions for violations of the wildlife laws have not been paid. [1973 c.723 §70; 1981 c.108 §2; 1987 c.213 §3]

497.410 [Amended by 1959 c.692 §12; 1971 c.446 §8; repealed by 1973 c.723 §130]

497.415 Revocation or denial of licenses, tags or permits for wildlife law violations or failure to comply with citation. (1) When any person is convicted of a violation of law or any rule adopted pursuant thereto or otherwise fails to comply with the requirements of a citation in connection with such violation as provided in subsection (2) of this section, the court may order the State Fish and Wildlife Commission to revoke all licenses, tags and permits issued to that person pursuant to the wildlife laws. Revocation of licenses, tags and permits is in addition to and not in lieu of other penalties provided by law.

(2) The license, tag and permit revocation provisions of subsection (1) of this section apply to the following persons:

(a) Any person who is convicted of a violation of the wildlife laws, or any rule adopted pursuant thereto, or who otherwise fails to comply with the requirements of a citation in connection with any such offense.

(b) Any person who is convicted of a violation of ORS 164.245, 164.255, 164.265, 164.345, 164.354 or 164.365 committed while the person was angling, taking shellfish, hunting or trapping or who otherwise fails to comply with the requirements of a citation in connection with any such offense.

(c) Any person who is convicted of a violation of ORS 166.630 or 166.638 committed while hunting or who otherwise fails to comply with the requirements of a citation in connection with any such offense.

(3) When a court orders the revocation of a license, tag or permit pursuant to this section, the court shall take up any such licenses, tags and permits and forward them, together with a copy of the revocation order, to the commission. Upon receipt thereof, the commission shall cause revocation of the appropriate licenses, tags and permits in accordance with the court order.

(4) For purposes of the Wildlife Violator Compact:

(a) The commission shall suspend a violator's license as defined in ORS 496.750 for failure to comply with the terms of a citation from a party state. A copy of a report of failure to comply from the licensing authority of the issuing state shall be conclusive evidence. Suspension under this paragraph commences on the date the commission issues a final order pursuant to the provisions of ORS chapter 183 to suspend the license in this state. The period of suspension under this paragraph is the period provided by Oregon law or such longer period as provided by commission rule based on the

period of suspension imposed by the party state.

(b) The commission shall revoke a violator's license as defined in ORS 496.750 for a conviction in a party state. A report of conviction from the licensing authority of the issuing state shall be conclusive evidence. Revocation under this paragraph commences on the date the commission issues a final order pursuant to the provisions of ORS chapter 183 to revoke the license in this state. The period of revocation under this paragraph is the period provided by Oregon law or such longer period as provided by commission rule based on the period of revocation imposed by the party state.

(5)(a) No person who has had a license, tag or permit revoked pursuant to this section for the first time shall apply for or obtain another such license, tag or permit for the period of 36 months from the date the court or commission ordered the revocation.

(b) Upon having a license, tag or permit revoked for a second time pursuant to this section, no person shall apply for or obtain another such license, tag or permit for the period of five years.

(c) Upon having a license, tag or permit revoked for a third or subsequent time pursuant to this section, a person is prohibited from applying for or obtaining another such license, tag or permit.

(6)(a) If a person convicted of conduct described in subsection (2) of this section does not possess at the time of conviction those licenses, tags and permits issued pursuant to the wildlife laws that the court would have revoked pursuant to this section, the court shall specify by order those licenses, tags and permits that would have been revoked and shall forward a copy of the order to the commission. No person who is the subject of such a court order shall apply for, possess or obtain another such license, tag or permit for the period of 36 months from the date of the order.

(b) Upon being the subject of a court order under this subsection for a second time, no person shall apply for or obtain another such license, tag or permit for the period of five years.

(c) Upon being the subject of a court order under this subsection for a third time, a person is prohibited from applying for or obtaining another such license, tag or permit. [1973 c.723 §71; 1975 c.578 §4; 1977 c.350 §4; 1979 c.603 §3; 1981 c.900 §2; 1981 c.901 §3; 1983 c.740 §203; 1989 c.1056 §3; 1999 c.1051 §273; 2003 c.656 §9; 2007 c.257 §1; 2009 c.778 §5; 2010 c.58 §1; 2011 c.597 §64]

497.420 [Repealed by 1973 c.723 §130]

497.425 [1973 c.723 §71a; repealed by 1979 c.615 §4]

497.430 [Amended by 1959 c.692 §13; repealed by 1973 c.723 §130]

497.435 [1975 c.578 §2; 1977 c.350 §5; 1989 c.1056 §4; repealed by 2009 c.778 §7]

497.440 [Repealed by 1973 c.723 §130]

497.441 Prohibited activities by those whose license, tag or permit has been revoked. No person who has had a license, tag or permit revoked pursuant to ORS 497.415 shall engage in the activity for which the license, tag or permit is required:

(1) During the remainder of the period for which the license, tag or permit was issued; or

(2) During the period for which the person is prohibited by law from applying for or obtaining another such license, tag or permit. [1981 c.86 §2; 2009 c.778 §6]

497.450 [Amended by 1959 c.692 §14; repealed by 1973 c.723 §130]

497.460 [Amended by 1959 c.692 §15; repealed by 1973 c.723 §130]

497.470 [Repealed by 1973 c.723 §130]

497.505 [Amended by 1957 c.259 §1; renumbered 496.006]

497.510 [Amended by 1955 c.172 §1; 1959 c.329 §1; 1965 c.72 §1; repealed by 1973 c.723 §130]

497.520 [Amended by 1955 c.171 §1; 1957 c.50 §1; 1959 c.329 §2; repealed by 1973 c.723 §130]

497.530 [Amended by 1955 c.170 §1; 1959 c.329 §3; 1965 c.72 §2; repealed by 1973 c.723 §130]

497.540 [Amended by 1955 c.173 §1; 1965 c.72 §3; repealed by 1973 c.723 §130]

497.550 [Repealed by 1955 c.280 §2]

497.555 [1963 c.275 §1; repealed by 1973 c.723 §130]

497.560 [Amended by 1967 c.278 §4; repealed by 1973 c.723 §130]

497.570 [Repealed by 1973 c.723 §130]

497.580 [Repealed by 1955 c.280 §2]

497.590 [Repealed by 1973 c.723 §130]

497.600 [Repealed by 1973 c.723 §130]

497.610 [Amended by 1967 c.278 §5; repealed by 1973 c.723 §130]

497.620 [Repealed by 1973 c.723 §130]

497.625 [1963 c.275 §2; repealed by 1973 c.723 §130]

497.630 [Repealed by 1955 c.280 §2]

497.640 [Repealed by 1973 c.723 §130]

497.650 [1955 c.280 §1; 1973 c.95 §4; repealed by 1973 c.723 §130]

PREDATORY ANIMAL CONTROL

497.655 Voluntary contributions; county predatory animal control program; State Department of Fish and Wildlife duties. (1) As used in this section:

(a) “Fur-bearing mammal,” “hunt” and “wildlife” have the meanings given those terms in ORS 496.004.

(b) “Predatory animals” means those animals listed in ORS 610.002, black bears, cougars, fur-bearing mammals and gray wolves.

(2)(a) Each application for the purchase and issuance of a license, tag or permit to hunt wildlife pursuant to ORS 497.102 or 497.112 must include a separate section under which the applicant may make a voluntary contribution to be used for predatory animal control, to the extent allowable under federal and state law, in the county or counties in which the license, tag or permit allows the person to hunt.

(b) A voluntary contribution made under this section does not convey a privilege to hunt wildlife, and is considered separate from any moneys paid by the applicant for the issuance of a license, tag or permit.

(c) Before developing a predatory animal control program, a county shall consult with the State Department of Fish and Wildlife or the State Department of Agriculture, depending on the predatory animals that are part of the program.

(d) Voluntary contributions received under this section shall be deposited in the Wildlife Conservation Fund established under ORS 497.660.

(3)(a) The State Department of Fish and Wildlife shall keep track of voluntary contributions made under this section. Each quarter the department shall pay to each county in which hunting took place under a license, tag or permit issued under the wildlife laws an amount equal to the total of the voluntary contributions made in association with applications for licenses, tags or permits allowing persons to hunt in the county.

(b) If a license, tag or permit allows the holder to hunt in an area that includes land within more than one county, the department shall designate a proportionate share of any voluntary contribution under this section to each county based on the percentage of the area that is in each county. [2011 c.728 §1]

Note: 497.655 and 497.660 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 497 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

497.660 Wildlife Conservation Fund;

sources; uses. (1) The Wildlife Conservation Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Wildlife Conservation Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the State Department of Fish and Wildlife to be paid to counties as provided in ORS 497.655.

(2) The Wildlife Conservation Fund shall consist of voluntary contributions received by the State Department of Fish and Wildlife pursuant to ORS 497.655. [2011 c.728 §2]

Note: See note under 497.655.

497.710 [Repealed by 1973 c.723 §130]

497.720 [Repealed by 1973 c.723 §130]

497.730 [Amended by 1967 c.166 §1; 1971 c.517 §1; repealed by 1973 c.723 §130]

497.740 [Amended by 1967 c.523 §8; repealed by 1973 c.723 §130]

497.750 [Amended by 1959 c.204 §1; 1963 c.129 §1; 1967 c.523 §9; repealed by 1973 c.723 §130]

497.760 [Amended by 1959 c.217 §1; 1967 c.501 §1; 1973 c.723 §59; renumbered 497.208]

497.770 [Repealed by 1973 c.723 §130]

497.780 [Amended by 1967 c.523 §10; repealed by 1973 c.723 §130]

497.790 [Amended by 1967 c.523 §11; repealed by 1973 c.723 §130]

497.800 [Repealed by 1973 c.723 §130]

497.810 [Amended by 1953 c.365 §3; repealed by 1973 c.723 §130]

497.820 [Amended by 1953 c.365 §3; repealed by 1973 c.723 §130]

497.830 [Repealed by 1973 c.723 §130]

497.840 [1965 c.224 §1; 1971 c.62 §1; 1973 c.723 §57; renumbered 497.162]

497.990 [Subsection (7) of 1965 Replacement Part enacted as 1955 c.295 §2; 1959 c.352 §2; subsection (8) of 1965 Replacement Part enacted as 1961 c.335 §5; 1967 c.523 §2; repealed by 1973 c.723 §130]

Chapter 498

2015 EDITION

Hunting, Angling and Trapping Regulations; Miscellaneous Wildlife Protective Measures

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GENERAL PROTECTIVE PROVISIONS**498.002 Wildlife as state property; taking, angling, hunting or trapping in violation of wildlife law or rules prohibited.**

(1) Wildlife is the property of the state. No person shall angle for, take, hunt, trap or possess, or assist another in angling for, taking, hunting, trapping or possessing any wildlife in violation of the wildlife laws or of any rule promulgated pursuant thereto.

(2) No person shall angle for, take, hunt or trap, or assist another in angling for, taking, hunting or trapping any wildlife while intentionally violating ORS 164.245 to 164.270 or 498.120. [1973 c.723 §73; 1993 c.440 §1; 2003 c.656 §10]

498.005 [Amended by 1971 c.658 §26; repealed by 1973 c.723 §130]

498.006 Chasing or harassing wildlife prohibited. Except as the State Fish and Wildlife Commission by rule may provide otherwise, no person shall chase, harass, molest, worry or disturb any wildlife except while engaged in lawfully angling for, taking, hunting or trapping such wildlife. [1973 c.723 §74; 2003 c.656 §11]

498.010 [Repealed by 1957 c.249 §1]

498.012 Taking wildlife causing damage, posing public health risk or that is public nuisance.

(1) Nothing in the wildlife laws is intended to prevent any person from taking any wildlife that is causing damage, is a public nuisance or poses a public health risk on land that the person owns or lawfully occupies. However, no person shall take, pursuant to this subsection, at a time or under circumstances when such taking is prohibited by the State Fish and Wildlife Commission, any game mammal or game bird, fur-bearing mammal or nongame wildlife species, unless the person first obtains a permit for such taking from the commission.

(2)(a) Nothing in subsection (1) of this section requires a permit for the taking of cougar, bobcat, red fox or bear pursuant to that subsection. However, any person who takes a cougar, bobcat, red fox or bear must have in possession written authority therefor from the landowner or lawful occupant of the land that complies with subsection (4) of this section.

(b) Nothing in subsection (1) of this section requires the commission to issue a permit for the taking of any wildlife species for which a U. S. Fish and Wildlife Service permit is required pursuant to the Migratory Bird Treaty Act (16 U.S.C. 703 to 711), as amended.

(3) Any person who takes, pursuant to subsection (1) of this section, any cougar, bobcat, red fox, bear, game mammal, game bird, fur-bearing mammal or wildlife species

whose survival the commission determines is endangered shall immediately report the taking to a person authorized to enforce the wildlife laws, and shall dispose of the wildlife in such manner as the commission directs. In determining procedures for disposal of bear and cougar, the commission shall direct the State Department of Fish and Wildlife to first offer the animal to the landowner incurring the damage.

(4) The written authority from the landowner or lawful occupant of the land required by subsection (2) of this section for the taking of cougar, bobcat, red fox or bear must set forth all of the following:

(a) The date of issuance of the authorization;

(b) The name, address, telephone number and signature of the person granting the authorization;

(c) The name, address and telephone number of the person to whom the authorization is granted;

(d) The wildlife damage control activities to be conducted, whether for bear, cougar, red fox or bobcat; and

(e) The expiration date of the authorization, which shall be not later than one year from the date of issuance of the authorization.

(5) Any regional office of the State Department of Fish and Wildlife ordering the disposal of an animal under subsection (3) of this section shall file a report with the State Fish and Wildlife Director within 30 days after the disposal. The report shall include but need not be limited to the loss incurred, the financial impact and the disposition of the animal. The director shall compile all reports received under this subsection on a bi-monthly basis. The reports compiled by the director shall be available to the public upon request.

(6) ORS 498.014 governs the taking of wolves that are causing damage.

(7) As used in this section:

(a) "Damage" means loss of or harm inflicted on land, livestock or agricultural or forest crops.

(b) "Nongame wildlife" has the meaning given that term in ORS 496.375.

(c) "Public nuisance" means loss of or harm inflicted on gardens, ornamental plants, ornamental trees, pets, vehicles, boats, structures or other personal property. [1973 c.723 §75; 1977 c.136 §2; 1979 c.399 §3; 1985 c.332 §1; 1985 c.489 §1a; 1999 c.531 §1; 2003 c.248 §1; 2013 c.626 §4]

498.014 Taking of wolves by State Department of Fish and Wildlife to address chronic depredation; taking by landowners; rules. (1) As used in this section:

(a) "Chronic depredation":

(A) Means at least four confirmed qualifying incidents of depredation by wolves upon livestock or working dogs within a consecutive six-month period during phase 1 of the Oregon Wolf Conservation and Management Plan adopted by the State Fish and Wildlife Commission; or

(B) Has the meaning given that term by the commission for periods of time after the expiration of phase 1 of the Oregon Wolf Conservation and Management Plan adopted by the State Fish and Wildlife Commission.

(b) "Livestock" has the meaning given that term in ORS 610.150.

(c) "Working dog" has the meaning given that term in ORS 610.150.

(2) Nothing in the wildlife laws prevents the State Fish and Wildlife Commission or the State Department of Fish and Wildlife from lethally taking wolves to address chronic depredation pursuant to rules adopted by the commission, regardless of the management status of wolves under the Oregon Wolf Conservation and Management Plan adopted by the commission.

(3) Pursuant to rules adopted by the State Fish and Wildlife Commission, a person who owns or lawfully occupies land may take wolves on land that is owned or occupied by the person, without a permit issued by the commission, if:

(a) The person has not used bait to attract wolves or taken any other intentional action to attract wolves other than engaging in regular and ordinary livestock management practices;

(b) The taking is allowed under the federal Endangered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531 et seq.); and

(c) The wolves are:

(A) Caught in the act of biting, wounding or killing livestock or working dogs; or

(B) Caught in the act of chasing livestock or working dogs. If the taking in response to chasing occurs during phase 1 of the Oregon Wolf Conservation and Management Plan adopted by the commission:

(i) A person must have first undertaken nonlethal actions as specified by the State Department of Fish and Wildlife to minimize conflict between the wolves and livestock or working dogs; and

(ii) The taking must occur during a time period in which the department has determined a situation of chronic depredation exists.

(4) A person who is a landowner or a lawful occupant of land may authorize another person to enter the land for the pur-

pose of taking wolves under subsection (3) of this section on behalf of the landowner or occupant. The authorization must be in writing and must include:

(a) The date of issuance of the authorization;

(b) The name, address, telephone number and signature of the person granting the authorization;

(c) The name, address and telephone number of the person to whom the authorization is granted; and

(d) The expiration date of the authorization, which may not be later than one year from the date of issuance of the authorization.

(5) The person taking wolves on behalf of a landowner or lawful occupant under subsection (4) of this section must be carrying the written authorization when wolves are taken.

(6) If a person takes wolves under the provisions of this section, the person shall report the taking to the State Department of Fish and Wildlife within 24 hours and make all reasonable efforts to preserve, and to keep undisturbed, the scene of the taking. The department and the Oregon State Police shall immediately investigate the report of the taking to determine compliance with the provisions of this section. [2013 c.626 §2]

498.015 [Amended by 1959 c.529 §1; repealed by 1973 c.723 §130]

498.016 Taking crippled or helpless wildlife. Nothing in the wildlife laws is intended to prohibit any person from killing any crippled or helpless wildlife when the killing is done for a humane purpose. Any person so killing any wildlife shall immediately report such killing to a person authorized to enforce the wildlife laws, and shall dispose of the wildlife in such manner as the State Fish and Wildlife Commission directs. [1973 c.723 §76]

498.019 Purchase, sale or exchange of hides, antlers and other parts of deer, elk and antelope; records required. (1) If the State Fish and Wildlife Commission, pursuant to its authority under ORS 498.022, establishes a license for the purchase of deer, elk and antelope hides and antlers, any person holding such license shall also be authorized to purchase, sell or exchange, or offer to purchase, sell or exchange, the hooves, dewclaws and sinews of deer, elk and antelope.

(2) A licensee under subsection (1) of this section shall maintain a record of transactions involving specimens of deer, elk or antelope. The record shall be in such form and contain such information as the com-

mission, by rule, prescribes to accurately indicate the date, type and number of specimens received and the name and address of the person with whom such transaction was made. [1995 c.711 §2]

498.020 [Amended by 1959 c.529 §2; repealed by 1973 c.723 §130]

498.022 Purchase, sale or exchange of wildlife prohibited. Except as the State Fish and Wildlife Commission by rule may provide otherwise, no person shall purchase, sell or exchange, or offer to purchase, sell or exchange any wildlife, or any part thereof. [1973 c.723 §77]

498.025 [Amended by 1961 c.276 §1; renumbered 498.820]

498.026 Transaction in threatened or endangered wildlife species prohibited. (1) Except as provided in subsection (2) of this section, no person shall take, import, export, transport, purchase or sell, or attempt to take, import, export, transport, purchase or sell, any threatened species or endangered species, or the skin, hides or other parts thereof, or any article made in whole or in part from the skin, hide or other parts of any threatened species or endangered species.

(2) Nothing in subsection (1) of this section is intended to prevent the taking, importation, transportation or sale of any threatened species or endangered species in such manner as may be authorized in ORS 496.172, 497.218 to 497.238, 497.298 or 497.308.

(3) Nothing in this section applies to the resale of used skins, hides or other parts of a threatened species or endangered species or an article made in whole or part thereof if the seller acquired the item sold prior to October 5, 1973. [1973 c.425 §2; 1977 c.242 §1; 1987 c.686 §6]

498.027 [Repealed by 1973 c.723 §130]

498.028 [1955 c.506 §1; 1961 c.143 §1; repealed by 1973 c.723 §130]

498.029 Purchase, sale or exchange of fox, skunk or raccoon prohibited; exceptions. (1) No person shall offer for sale, trade, barter or exchange as a household pet any fox, skunk or raccoon.

(2) An animal specified in subsection (1) of this section may be offered for sale, trade, barter or exchange to a public park, zoo, museum or educational institution for educational, medical, scientific or exhibition purposes if the organization possesses a permit from the State Fish and Wildlife Commission. The commission may refuse to issue a permit if the commission finds that the organization requesting the permit does not have physical facilities adequate to maintain the animal in health and safety and to prevent the escape of the animal from confinement. [1979 c.560 §2]

498.030 [Amended by 1971 c.658 §27; repealed by 1973 c.723 §130]

498.032 Angling or hunting for compensation in violation of wildlife laws or rules prohibited. No person shall angle for or hunt, or offer to angle for or hunt, for compensation, any wildlife in violation of any provision of the wildlife laws or any rule promulgated pursuant thereto. [1973 c.723 §78]

498.035 [Repealed by 1959 c.352 §5]

498.036 Possession in field of skinned or plucked wildlife prohibited. Except as the State Fish and Wildlife Commission by rule may provide otherwise, no person shall possess in the field or forest, or in transit from the field or forest, the carcass of any wildlife that has been skinned, plucked or mutilated in any manner so that the sex, size or species of the wildlife cannot be determined. [1973 c.723 §79]

498.040 [Repealed by 1959 c.352 §5]

498.041 [1965 c.507 §§2,3,4; repealed by 1973 c.723 §130]

498.042 Removal of parts of wildlife and waste of wildlife prohibited. (1) No person shall remove from the carcass of any game mammal or game bird, the head, antlers, horns, hide or plumage, and utilize only those parts so removed, except:

(a) When engaged in lawful trapping activities.

(b) When utilizing those game mammals or game birds that the State Fish and Wildlife Commission by rule declares to be inedible.

(2) No person shall waste any edible portion of any game mammal, game bird or game fish or the pelt of any fur-bearing mammal. [1973 c.723 §80]

498.045 [Repealed by 1973 c.723 §130]

498.046 Making toxic substances accessible to wildlife prohibited. No person shall place any toxic substance where it is accessible to wildlife unless the substance used and the method of application is approved by the state governmental agencies having authority to prescribe or implement environmental control programs. [1973 c.723 §81]

498.050 [Amended by 1965 c.507 §5; repealed by 1973 c.723 §130]

498.052 Releasing domestically raised or imported wildlife without permit prohibited. No person shall release within this state any domestically raised wildlife or wildlife brought to this state from any place outside this state unless the person first obtains a permit therefor from the State Fish and Wildlife Commission. [1973 c.723 §82]

498.055 [Repealed by 1973 c.723 §130]

498.056 Aiming rifle from moving motor vehicle prohibited. No person who is the occupant of a motor vehicle that is mov-

ing on a road open to the public shall aim a rifle or other firearm from the motor vehicle at a time when the hunting of wildlife is lawful. [1993 c.440 §4]

498.060 [Amended by 1961 c.269 §1; repealed by 1969 c.60 §1]

498.065 [Amended by 1953 c.196 §2; 1961 c.269 §2; repealed by 1969 c.60 §1]

498.070 [Repealed by 1969 c.60 §1]

498.075 [Repealed by 1969 c.60 §1]

498.080 [Repealed by 1969 c.60 §1]

498.085 [Repealed by 1973 c.723 §130]

498.090 [Repealed by 1955 c.162 §1]

498.095 [Amended by 1967 c.166 §2; 1971 c.517 §2; repealed by 1973 c.723 §130]

498.100 [Amended by 1967 c.523 §12; 1967 c.594 §4; repealed by 1973 c.723 §130]

HUNTING AND TRAPPING RESTRICTIONS

498.102 Use of dogs to hunt or track game mammals or birds. (1) Any dog that is not wearing a collar with a license number thereon in compliance with ORS 609.100 that is found unlawfully hunting, running or tracking any game mammal or game bird may be killed at such time by any person authorized to enforce the wildlife laws.

(2) If a dog that is found unlawfully hunting, running or tracking any game mammal or game bird is wearing a collar with a license number thereon in compliance with ORS 609.100, the owner of the dog shall be notified by any person authorized to enforce the wildlife laws. If the owner or reputed owner of the dog disclaims ownership of the dog, the dog may be killed at such time by a person authorized to enforce the wildlife laws.

(3) If the owner of a dog has been notified that the dog has been found unlawfully hunting, running or tracking game mammals or game birds and thereafter fails to prevent the dog from unlawfully hunting, running or tracking game mammals or game birds, such dog may be killed by any person authorized to enforce the wildlife laws.

(4) No person shall permit any dog the person owns to unlawfully hunt, run or track any game mammal or game bird. [1973 c.723 §84]

498.105 [Repealed by 1973 c.723 §130]

498.106 Competitive field trials for hunting dogs. Competitive field trials for hunting dogs may be held at such times and places and under such conditions as the State Fish and Wildlife Commission may prescribe by rule. [1973 c.723 §85]

498.110 [Amended by 1953 c.157 §2; repealed by 1973 c.723 §130]

498.112 Use of live birds for competitive shooting prohibited. No person shall use any live bird as a target for the purpose of competitive shooting. [1973 c.723 §86]

498.115 [Amended by 1953 c.178 §2; repealed by 1973 c.723 §130]

498.120 Hunting on another's cultivated or enclosed land. (1) No person shall hunt upon the cultivated or enclosed land of another without first obtaining permission from the owner or lawful occupant thereof, or the agent of such owner or occupant. No prosecution shall be commenced under this section except upon written complaint filed with a magistrate. The complaint shall be verified by the oath of the owner or lawful occupant of the cultivated or enclosed land, or the agent of such owner or occupant.

(2) For the purpose of subsection (1) of this section, the boundaries of "enclosed" land may be indicated by wire, ditch, hedge, fence, water or by any visible or distinctive lines that indicate a separation from the surrounding or contiguous territory, and includes the established and posted boundaries of Indian reservations established by treaties of the United States and the various Indian tribes. [Amended by 1959 c.318 §1; 1971 c.580 §1; 1973 c.723 §83]

498.125 [Repealed by 1973 c.723 §130]

498.126 Hunting or assisting others to hunt or locate game animals or birds by aircraft prohibited; exemption; rules. (1) A person may not:

(a) Hunt game mammals or game birds from or with the aid of an aircraft.

(b) Transmit from an aircraft to a person not in the aircraft information regarding the location of any game mammals or game birds.

(c) Otherwise use an aircraft to assist another person in hunting or locating game mammals or game birds for the purpose of hunting.

(2) A person may not hunt any game mammal within eight hours after having been transported by aircraft to or from any place other than a recognized airport that the Oregon Department of Aviation has licensed as a public use airport, registered as a personal use airport or specifically exempted from licensing or registration.

(3) Every pilot shall maintain a log book that shows the names and addresses of record of the persons transported, point of departure, point of destination, time and date of each flight that the pilot makes in an aircraft within this state to transport a person to or from any place to hunt. The log book is subject to inspection by any person authorized to enforce the wildlife laws.

(4)(a) Notwithstanding subsections (1) to (3) of this section, and except as provided in subsection (5) of this section, the State Department of Fish and Wildlife, or its agents, may conduct wildlife management activities necessary for scientific research or, in emergency situations, to protect human safety, wildlife species or property by:

(A) Hunting game mammals or game birds from or with the aid of an aircraft; or

(B) Transmitting from an aircraft information regarding the location of any game mammal or game bird.

(b) The State Fish and Wildlife Commission shall define by rule the terms “emergency situations” and “necessary” for purposes of implementation of this section.

(5) If the definition of “game mammal” in ORS 496.004 is modified to include wolves, then the department may conduct wolf management activities under this section only under a statewide wolf management plan adopted by the commission. [1973 c.723 §87; 1987 c.277 §1; 1989 c.448 §1; 1999 c.935 §30; 2003 c.566 §1; 2003 c.762 §1]

498.128 Use of drones for pursuit of wildlife prohibited; rules. (1) The State Fish and Wildlife Commission shall adopt rules prohibiting the use of drones for the following purposes related to the pursuit of wildlife:

(a) Angling;

(b) Hunting;

(c) Trapping;

(d) Aiding angling, hunting or trapping through the use of drones to harass, track, locate or scout wildlife; and

(e) Interfering in the acts of a person who is lawfully angling, hunting or trapping.

(2) Rules adopted to carry out the prohibitions provided for in this section may include exemptions for:

(a) Subject to ORS 837.360 and 837.365, the State Department of Fish and Wildlife and the department’s agents and contractors for the use of drones in carrying out the duties of the department; or

(b) The use of drones in a manner otherwise prohibited under this section if the purpose of the use is to benefit wildlife management or habitat or for the protection of property.

(3) Nothing in this section is meant to limit the use of drones by a person who is lawfully engaging in activities authorized under the commercial fishing laws.

(4) As used in this section, “drone” means:

(a) An unmanned flying machine;

(b) An unmanned water-based vehicle; or

(c) Any other vehicle that is able to operate in the air, in or under the water or on land, either remotely or autonomously, and without a human occupant. [2015 c.61 §1]

Note: 498.128 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 498 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

498.130 [Repealed by 1973 c.723 §130]

498.132 [1953 c.184 §3; repealed by 1973 c.723 §130]

498.135 [Repealed by 1973 c.723 §130]

498.136 Hunting from motor-propelled vehicle restricted; rules. (1) Except as provided in subsection (2) of this section, a person may not hunt wildlife from a motor-propelled vehicle.

(2) The State Fish and Wildlife Commission, by rule, may authorize hunting from a motor-propelled vehicle by a person with a disability or for the purpose of alleviating damage by wildlife to other resources.

(3)(a) Nothing in the wildlife laws, or rules adopted pursuant thereto, is intended to prohibit the companion of a person with a disability who is lawfully hunting from a motor-propelled vehicle from killing an animal wounded by the person and applying to the animal the tag issued to the person for the taking of the animal, even if the companion has already validated any tag required for the taking of such an animal.

(b) For purposes of this subsection, “companion” means a person who does not have a disability. [1973 c.723 §88; 1987 c.292 §1; 1999 c.25 §8; 2007 c.70 §278]

498.140 [Amended by 1955 c.64 §1; 1961 c.122 §1; repealed by 1973 c.723 §130]

498.142 Hunting with artificial light restricted; rules. (1) Except as provided in subsection (2) of this section, no person shall hunt wildlife with the aid of any artificial light.

(2) The State Fish and Wildlife Commission, by rule, may authorize hunting with the aid of an artificial light for the purpose of taking raccoon, opossum or bobcat or to alleviate damage by wildlife to other resources. [1973 c.723 §88a; 1977 c.136 §3]

498.145 [Renumbered 498.272]

498.146 Shining artificial light on game mammal, predatory animal or livestock while in or near motor vehicle and while in possession of weapon restricted.

(1) No person shall cast from a motor vehicle or from within 500 feet of a motor vehicle an artificial light upon any game mammal, predatory animal or livestock while there is in the possession or in the immediate physical presence of the person a weapon with

which the game mammal, predatory animal or livestock could be killed.

(2) Subsection (1) of this section does not apply to a person who casts artificial light upon a game mammal, predatory animal or livestock:

(a) From the headlights of a motor vehicle that is being operated on a road in the usual manner, if that person makes no attempt to kill the game mammal or livestock; or

(b) When the weapon that person has in the possession or immediate physical presence of the person is disassembled or stored, or in the trunk or storage compartment of a motor vehicle; or

(c) On land owned or lawfully occupied by that person; or

(d) On publicly owned land when that person has an agreement with the public body to use that property.

(3) As used in this section, "predatory animal" has the meaning for that term provided in ORS 610.002. [1973 c.542 §2; 1975 c.791 §2]

498.150 [1971 c.223 §2; repealed by 1973 c.723 §130]

498.152 Agreements restricting parking or use of motor vehicles on certain lands. (1) The State Fish and Wildlife Commission may enter into agreements with the owners or lawful possessors of land to restrict the operation or parking of motor-propelled vehicles on the land when the commission determines that such operation or parking is damaging wildlife or wildlife habitat.

(2) An agreement shall restrict the types and uses of motor-propelled vehicles on the land and shall specify the times and places that such restrictions apply.

(3) The commission shall cause notice of the restrictions, including the effective date thereof, to be posted on the main traveled roads entering the area to which the restrictions apply.

(4) Nothing in this section authorizes the establishment of any restrictions that impede normal forest or range management operations. [1973 c.723 §89; 1987 c.798 §1]

498.153 Parking vehicle in violation of restrictions; vehicle owner subject to penalty. A person who operates or parks a motor-propelled vehicle in violation of restrictions established and posted under ORS 498.152, and any owner of the vehicle who authorizes the operation or parking of the vehicle, commits a Class A violation. [1987 c.798 §3; 1999 c.1051 §194; 2011 c.597 §65]

498.154 Notice adequate to charge defendant; delivery or posting. (1) In all prosecutions against the owner of a motor-propelled vehicle under ORS 498.153, it shall be sufficient for a police officer to charge the defendant by an unsworn written notice if the notice clearly states:

(a) The date, place and nature of the charge.

(b) The time and place for defendant's appearance in court.

(c) The name of the issuing officer.

(d) The license number of the vehicle.

(2) The notice provided for in subsection (1) of this section shall either be delivered to the defendant or placed in a conspicuous place upon the vehicle involved in the violation. A duplicate original of the notice shall serve as the complaint in the case when it is filed with the court. The issuing officer need not have observed the act of parking, but need only have observed that the vehicle appeared to be parked in violation of restrictions established and posted under ORS 498.152. [1987 c.798 §4; 1995 c.658 §108; 2011 c.597 §65a]

498.155 Failure to appear; issuance of warrant. If a vehicle owner cited under ORS 498.154 to appear in a circuit or justice court upon an alleged parking offense fails to appear on or before the date and time stated on the citation, the court and the Department of Transportation may take such actions as are otherwise authorized by law under the Oregon Vehicle Code in the case of a failure to appear, except that in no case may a warrant of arrest be issued nor a criminal prosecution for failure to appear be commenced unless the citing or prosecuting authority, more than 10 days prior thereto, has sent a letter to the registered owner at the address shown upon the vehicle registration records of the department advising such owner of the charge pending and informing the owner that the owner may be subject to arrest if the owner does not appear in the court within 10 days to answer the charge. The letter must be sent by certified mail, restricted delivery, return receipt requested. A warrant of arrest may not be issued, nor a criminal prosecution for failure to appear be commenced if such a letter has not been sent or if the owner appears in court to answer the charge within 10 days after receiving the letter. [1987 c.798 §5; 1993 c.741 §69; 1995 c.658 §109; 1999 c.1051 §274]

498.158 Hunting or trapping wildlife in certain governmental districts restricted. (1) Except as provided in ORS 448.305 and in subsection (2) of this section, no person shall hunt or trap any wildlife within the bound-

aries of any city, public park, cemetery or on any school lands.

(2) No hunting or trapping shall be allowed on any lands within the boundaries of any city, public park or on any school lands unless:

(a) The governing body or other agency that administers the affairs of the city, public park or school, after notice and hearing, authorizes such hunting or trapping by ordinance or resolution; and

(b) The State Fish and Wildlife Commission, after notice and hearing, determines that such hunting or trapping would not adversely affect public safety or unreasonably interfere with other authorized uses of such lands. [1973 c.723 §90]

498.160 [1971 c.223 §3; repealed by 1973 c.723 §130]

498.164 Use of dogs or bait to hunt black bears or cougars; prohibitions; exemptions; penalties; rules. (1) Except as provided in subsections (2) to (4) of this section, a person may not use bait to attract or take black bears or use one or more dogs to hunt or pursue black bears or cougars.

(2) Nothing in subsection (1) of this section prohibits the use of bait or one or more dogs by employees or agents of county, state or federal agencies while acting in their official capacities.

(3)(a) As allowed by subsection (2) of this section, the State Department of Fish and Wildlife is authorized to appoint persons to act as agents for the department for the purpose of using one or more dogs to hunt or pursue black bears or cougars. The hunt or pursuit must be in compliance with any black bear management plan and any cougar management plan adopted by rule by the State Fish and Wildlife Commission. An agent acts on the department's behalf and, subject to the department's direction and control, implements specific management programs of the department. An agent may not engage in any other hunting or pursuit while acting on the department's behalf.

(b) The department shall:

(A) Make the appointment in written form; and

(B) Ensure that the written appointment is available to the public for review at the main office of the department in Salem.

(c) Upon appointment of an agent by the department, the department shall fix the compensation of the agent and prescribe the duties of the agent. The authority of the agent to act is limited to the terms set forth in the written appointment under paragraph (b) of this subsection.

(d) The commission shall adopt by rule a process and criteria for selecting and train-

ing persons to act as agents pursuant to paragraph (a) of this subsection. The process and criteria must include, but are not limited to, the qualifications and training for agents and are to cover any guidelines, policies or codes of conduct of the department regarding firearms, first aid, all-terrain vehicles and snowmobiles and the use of alcohol or drugs. The department may also require fingerprints as specified in ORS 496.121 for the purpose of requesting state or nationwide criminal records checks.

(4) Nothing in subsection (1) of this section prohibits the use of bait or dogs by persons for the taking of black bears or cougars in accordance with the provisions of ORS 498.012 relating to taking wildlife that is causing damage.

(5) Any person who violates subsection (1) of this section commits a Class A misdemeanor and, upon conviction, shall in addition to appropriate criminal penalties have his or her privilege to apply for any hunting license suspended for a period of five years for a first offense and permanently suspended for any subsequent offense.

(6) The commission shall report biennially pursuant to ORS 496.128 regarding the department's appointment and use of agents under this section. The report must include information on the use of agents in implementing any black bear management program and any cougar management program of the department and a summary of public input taken by the department regarding use of the agents.

(7) For the purposes of this section, "bait" means any material placed for the purpose of attracting or attempting to attract bears. [1995 c.4 §1; 2003 c.248 §2; 2007 c.675 §§1,2; 2013 c.376 §2]

Note: The amendments to 498.164 by section 3, chapter 376, Oregon Laws 2013, become operative January 2, 2019. See section 4, chapter 376, Oregon Laws 2013. The text that is operative on and after January 2, 2019, is set forth for the user's convenience.

498.164. (1) Except as provided in subsections (2) and (3) of this section, a person may not use bait to attract or take black bears or use one or more dogs to hunt or pursue black bears or cougars.

(2) Nothing in subsection (1) of this section prohibits the use of bait or one or more dogs by employees or agents of county, state or federal agencies while acting in their official capacities.

(3) Nothing in subsection (1) of this section prohibits the use of bait or dogs by persons for the taking of black bears or cougars in accordance with the provisions of ORS 498.012 relating to taking wildlife that is causing damage.

(4) Any person who violates subsection (1) of this section commits a Class A misdemeanor and, upon conviction, shall in addition to appropriate criminal penalties have his or her privilege to apply for any hunting license suspended for a period of five years for a first offense and permanently suspended for any subsequent offense.

(5) For the purposes of this section, "bait" means any material placed for the purpose of attracting or attempting to attract bears.

Note: 498.164 was enacted into law but was not added to or made a part of ORS chapter 498 or any series therein by law. See Preface to Oregon Revised Statutes for further explanation.

498.166 Bears or cougars posing threat to human safety. (1) Notwithstanding the licensing and tag requirements of ORS 497.102, 497.112, 497.127 and 497.132, a person may take a cougar or bear that poses a threat to human safety.

(2) Any person who takes a cougar or bear pursuant to subsection (1) of this section shall immediately report the taking to a person authorized to enforce the wildlife laws and shall dispose of the animal in such manner as the State Fish and Wildlife Commission directs.

(3) Any regional office of the State Department of Fish and Wildlife ordering the disposal of an animal under subsection (2) of this section shall file a report with the State Fish and Wildlife Director within 30 days after the disposal. The report shall include but need not be limited to the disposition of the animal, the events leading to the taking of the animal and any injury caused by the animal to humans or domesticated animals. The director shall compile all reports received under this subsection on a bimonthly basis. The reports compiled by the director shall be available to the public upon request.

(4) As used in this section:

(a) "Structure" includes a building being used as a residence, a building located on land actively used for agricultural, timber management, ranching or construction purposes or a building used as part of a business.

(b) "Threat to human safety" means the exhibition by a cougar or bear of one or more of the following behaviors:

(A) Aggressive actions directed toward a person or persons, including but not limited to charging, false charging, growling, teeth popping and snarling.

(B) Breaking into, or attempting to break into, a residence.

(C) Attacking a pet or domestic animal as defined in ORS 167.310.

(D) Loss of wariness of humans, displayed through repeated sightings of the animal during the day near a permanent structure, permanent corral or mobile dwelling used by humans at an agricultural, timber management, ranching or construction site. [2001 c.431 §2; 2015 c.779 §50]

Note: 498.166 was added to and made a part of the wildlife laws by legislative action but was not added to ORS chapter 498 or any series therein. See Preface to Oregon Revised Statutes for further explanation.

498.170 Hunters who have a visual impairment. (1) A person who does not have a visual impairment and who accompanies a hunter who possesses a visually impaired hunter license may:

(a) Assist the hunter in selecting a game animal or bird;

(b) Assist the aiming or sighting of a firearm;

(c) Advise the hunter when to fire a firearm;

(d) Shoot a game animal or bird on behalf of the hunter while in the immediate presence of the hunter; and

(e) Tag and retrieve game animals and birds on behalf of the hunter.

(2) The person accompanying a hunter who has a visual impairment shall be required to possess a valid hunting license. The person accompanying a hunter who has a visual impairment may also hunt game animals or birds if the person possesses the appropriate tags, permits and stamps for the area and time period.

(3) A hunter who possesses a visually impaired hunter license must comply with all other tag, permit and stamp requirements of the State Fish and Wildlife Commission and applicable hunting laws.

(4) As used in this section, "hunter who has a visual impairment" means a person who files proof with the commission that the person's central visual acuity does not exceed 20/200 in the better eye with best correction or that the person's visual acuity, if better than 20/200, is accompanied by a limit to the field of vision to such a degree that its widest diameter subtends an angle of no greater than 20 degrees. [1997 c.407 §1; 2007 c.70 §279]

Note: 498.170 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 498 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

498.172 Trap check requirements. (1) A person holding a license issued under ORS 497.142 may not set a trap for fur-bearing mammals without checking the trap at least once during each 48-hour period.

(2) A person may not set a trap for a predatory animal, as defined in ORS 610.002, without checking the trap on a regular basis. [2001 c.562 §2]

Note: 498.172 was added to and made a part of the wildlife laws by legislative action but was not added to ORS chapter 498 or any series therein. See Preface to Oregon Revised Statutes for further explanation.

498.180 Sale of hunts for feral swine prohibited; penalties; revocation of hunting licenses, tags and permits. (1) A person may not offer for sale or sell a hunt for feral swine on public or private lands.

(2) Violation of subsection (1) of this section is a Class A misdemeanor. A person may not be convicted under this subsection if a civil penalty has been imposed against the person under subsection (3) of this section.

(3)(a) The State Fish and Wildlife Commission may impose a civil penalty of \$1,000 for a violation of subsection (1) of this section.

(b) Civil penalties described in this subsection shall be imposed in the manner provided in ORS 183.745. A civil penalty may not be imposed against a person under this subsection if the person has been convicted under subsection (2) of this section.

(4) Notwithstanding ORS 497.415 (1), (2), (3) and (5) and in addition to any criminal penalty or civil penalty imposed under this section, when a person is convicted under subsection (2) of this section or a civil penalty is imposed under subsection (3) of this section, the commission shall revoke all hunting licenses, tags and permits issued to the person under the wildlife laws, and the person may not apply for or obtain any hunting license, tag or permit for a period of 24 months after the conviction or imposition of the civil penalty. [2009 c.605 §2]

498.182 Knowingly allowing feral swine to roam on certain lands prohibited; rules. (1) A person, or an employee of that person who acts as a land manager, may not knowingly, as defined in ORS 161.085, allow feral swine to roam on land owned or controlled by that person.

(2) A person, or an employee of that person who acts as a land manager, shall take action in a manner consistent with rules adopted by the State Fish and Wildlife Commission to remove any feral swine that roams on land owned or controlled by that person if the person or employee knows that feral swine roam on land owned or controlled by that person. ORS 497.075 does not apply to this subsection.

(3) A person, or an employee of that person who acts as a land manager, shall, within 10 days after discovering feral swine on land owned or controlled by that person, inform the State Department of Fish and Wildlife about the feral swine. [2009 c.605 §3]

498.202 [1973 c.723 §91; 1981 c.510 §1; repealed by 1997 c.12 §2]

498.205 [Amended by 1973 c.723 §109; renumbered 501.400]

ANGLING RESTRICTIONS; FISH PROTECTIVE PROVISIONS

498.208 Use of electricity or foreign substances to take game fish prohibited; rules. (1) Except as the State Fish and Wildlife Commission by rule may provide otherwise, no person shall:

(a) Use in any body of water any electric current that may attract, frighten, retard, stun, kill or obstruct the movement of any game fish.

(b) Place in any body of water any foreign substance such as blood or fish offal or any gas, chemical, drug or powder that may attract, frighten, retard, stun, kill or obstruct the movement of any game fish.

(c) Use in any body of water any explosive device for the purpose of taking game fish.

(2) No person shall possess any game fish that the person knows or has reason to know was taken in violation of subsection (1) of this section. [1973 c.723 §92]

498.210 [Amended by 1973 c.723 §110; renumbered 501.405]

498.215 [Amended by 1973 c.723 §111; renumbered 501.425]

498.216 Angling from fishways restricted; rules. Except as the State Fish and Wildlife Commission by rule may provide otherwise, no person shall trespass upon or angle from any fishway or angle within an area of a body of water bounded by a line extending across the body of water 200 feet above the upper end of a fishway and a line across the body of water 200 feet below the lower end of a fishway. [1973 c.723 §93]

498.220 [Repealed by 1973 c.723 §130]

498.222 Transportation or release of fish without permit prohibited; penalties; revocation of angling licenses and tags; suit for recovery of damages. (1) No person shall:

(a) Transport any live fish unless the person has first obtained a permit therefor from the State Fish and Wildlife Commission.

(b) Release or attempt to release into any body of water any live fish that was not taken from that body of water, unless the person has first obtained a permit therefor from the commission.

(2) The commission may refuse to issue the permit referred to in subsection (1)(b) of this section if the commission finds that release of the fish into a body of water would adversely affect existing fish populations.

(3) Subsection (1)(a) of this section does not apply to live fish that are for aquaria use.

(4) Violation of subsection (1)(b) of this section is:

(a) A Class C felony if the violation is committed intentionally or knowingly.

(b) A Class A misdemeanor if the violation is committed recklessly or with criminal negligence.

(5)(a) Notwithstanding ORS 497.415 (1), (2), (3) and (5), when a person is convicted of violating subsection (1)(b) of this section, the court in which the conviction occurs shall notify the commission, which shall revoke all angling licenses and tags issued to that person pursuant to the wildlife laws. Revocation of licenses and tags is in addition to and not in lieu of other penalties provided by law.

(b) No person who has been convicted of violating subsection (1)(b) of this section shall apply for, obtain or possess any angling license or tag issued pursuant to the wildlife laws within five years after the conviction.

(6)(a) The commission may institute suit for the recovery of damages for the control or eradication of live fish released into a body of water in violation of subsection (1)(b) of this section. The damages awarded under this subsection shall be the amount necessary to return the body of water to its condition prior to the violation.

(b) In any action under this subsection, the court shall award to the prevailing party, in addition to costs and disbursements, reasonable attorney fees.

(c) Damages awarded under this subsection shall be in addition to other penalties prescribed by the wildlife laws for releasing or attempting to release live fish without a permit.

(d) Any circuit or justice court has jurisdiction to try any case for the recovery of damages as provided by this subsection. [1973 c.723 §94; 2009 c.243 §1; 2011 c.597 §66]

498.225 [Amended by 1965 c.20 §1; repealed by 1973 c.723 §130]

498.228 Possession of fish taken outside state restricted. (1) Except as provided in subsection (2) of this section:

(a) No person shall possess or import into this state from the waters of the Pacific Ocean beyond the boundaries of this state any game fish unless the person has in possession those valid angling licenses, tags and permits required therefor by the wildlife laws or rules promulgated pursuant thereto.

(b) No person shall possess or import into this state from any waters beyond the boundaries of this state any game fish in excess of the amount prescribed by the wildlife laws or rules promulgated pursuant thereto.

(2) Subsection (1) of this section does not apply to:

(a) The possession or importation of fish taken pursuant to the commercial fishing laws; or

(b) The possession or importation of fish taken in the waters of another state, a territory of the United States or a foreign country pursuant to the laws of such state, territory or foreign country. [1973 c.723 §95]

498.230 [Repealed by 1973 c.723 §130]

498.234 Protection of finfish and shellfish from introduction of disease; exceptions; rules. (1) The State Fish and Wildlife Commission shall, by rule, establish a program to protect all finfish and shellfish in waters of this state, both public and private, from infection by the introduction of detrimental fish diseases.

(2) Rules adopted under subsection (1) of this section shall not apply to live aquaria species imported or transported for aquaria use unless those species are reared in facilities from which effluent directly enters waters of this state.

(3) The requirements of subsection (1) of this section are in addition to any other requirement of law, or rule promulgated pursuant thereto, regarding the importation into this state of live game fish or game fish eggs. [1973 c.723 §96; 1987 c.294 §1]

498.235 [Repealed by 1973 c.723 §130]

498.240 [Amended by 1967 c.523 §13; repealed by 1973 c.723 §130]

498.242 Possession of walking catfish and piranha restricted. (1) Except as provided in subsections (2) and (3) of this section, no person shall possess any live fish of the various species:

(a) Of the family Clariidae, commonly known as walking catfish; or

(b) Of the subfamily Serrasalminae of the family Characidae, commonly known as caribe or piranha.

(2) A public park, zoo, museum or educational institution may possess any of the fish referred to in subsection (1) of this section for educational, medical, scientific or exhibition purposes if the organization first obtains a permit from the State Fish and Wildlife Commission. The commission may refuse to issue the permit if the commission finds that the organization requesting the permit has physical facilities for holding the fish that are inadequate to prevent their escape from confinement.

(3) Subsections (1) and (2) of this section do not prohibit the possession or require a permit for the possession of live fish that are of the genera *Pygocentrus*, *Serrasalmus* or *Pristobrycon* that are carnivorous fish in the

subfamily Serrasalminae, from the family Characidae, commonly known as piranha or caribe. [1973 c.723 §97; 1995 c.352 §1]

498.245 [Repealed by 1959 c.352 §5]

498.246 [1995 s.s. c.3 §41a; repealed by 1996 c.7 §2 (498.247 enacted in lieu of 498.246)]

498.247 Protection of juvenile salmonids from cormorants. (1) The State Fish and Wildlife Commission shall issue not more than three permits annually for activities involving the protection of juvenile salmonids from cormorants (Phalacrocoracidae) on Oregon coastal river systems between Cape Falcon and Cascade Head.

(2) Activities authorized under the permits shall not include the killing, trapping or other taking of cormorants.

(3) Persons to whom permits are issued may subcontract with others for the performance of protection activities. [1996 c.7 §3 (enacted in lieu of 498.246)]

498.248 [1973 c.723 §98; 1987 c.488 §1; 1995 c.426 §5; renumbered 498.311 in 1995]

498.250 [Repealed by 1973 c.723 §130]

498.252 [1989 c.933 §5; 1991 c.858 §3; repealed by 1995 c.426 §11]

498.254 [1973 c.723 §99; repealed by 1987 c.488 §5]

498.255 [Amended by 1957 c.253 §1; repealed by 1959 c.352 §5]

498.256 [1989 c.933 §§6,7; 1995 c.426 §10; renumbered 498.326 in 1995]

498.257 Prohibition on possession, sale, trade or distribution of shark fins; exceptions. (1) As used in this section:

(a) "Shark fin" means the raw or dried fin or tail of a shark.

(b) "Spiny dogfish" means a shark belonging to the family Squalidae in the order Squaliformes that has two spines, one anterior to each dorsal fin, and that does not have an anal fin.

(2) A person may not possess, sell or offer for sale, trade or distribute a shark fin in this state.

(3) This section does not apply to:

(a) A person who possesses, sells or offers for sale, trades or distributes a shark fin from a spiny dogfish that was legally taken or landed under rules adopted by the State Department of Fish and Wildlife and in accordance with federal regulations; and

(b) A person who holds a license or permit issued by the State Department of Fish and Wildlife under the wildlife laws to take a shark and who possesses, sells or offers for sale, trades or distributes a shark fin consistent with the terms of that license or permit. [2011 c.371 §4]

498.260 [Repealed by 1959 c.352 §5]

498.262 [1973 c.723 §100; 1987 c.488 §3; 1995 c.426 §8; renumbered 498.316 in 1995]

498.265 [Repealed by 1955 c.160 §1]

498.268 [1973 c.723 §101; renumbered 498.351 in 1995]

498.270 [Repealed by 1959 c.352 §5]

498.272 [Formerly 498.145; repealed by 1973 c.723 §130]

498.274 [1973 c.723 §102; 1987 c.488 §4; 1995 c.426 §9; renumbered 498.346 in 1995]

498.275 [Repealed by 1959 c.352 §5]

498.276 [1991 c.858 §9; renumbered 498.336 in 1995]

ANGLING CONTESTS

498.279 Black bass and walleye angling contests; rules. (1) A person, or group of persons, may conduct, sponsor and participate in any competition or contest in which prizes are offered for the amount, quality, size, weight or other physical characteristics of black bass or walleye, provided that the rules of a competition or contest are prepared and distributed by the sponsors to the contestants and are administered and enforced by the sponsors. Such rules shall include, but are not limited to:

(a) A requirement that the contestants use aerated live wells or other equipment so that all reasonable efforts are made to maintain the fish taken in a live and healthy condition.

(b) A requirement that all fish caught that are in a healthy condition are immediately returned to the water where they were caught, after weighing. Black bass may be turned over to the State Department of Fish and Wildlife for restocking.

(c) A requirement that bass tournament contestants use only artificial or other such prepared baits.

(2) As used in this section, "black bass" means largemouth bass, smallmouth bass, redeye bass, spotted bass and all other basses of the genus *Micropterus*.

(3) The State Fish and Wildlife Commission may adopt rules to limit the number of contests and participants, determine the location of contests and prescribe other terms and conditions regarding the conduct of contests under this section. [1981 c.510 §3; 1985 c.562 §1; 1987 c.299 §1; 2001 c.186 §1]

498.280 [Repealed by 1973 c.723 §130]

498.284 [1989 c.373 §2; repealed by 2001 c.186 §3]

498.285 [Repealed by 1973 c.723 §130]

498.286 Prize limitation. (1) Except as provided in subsection (2) of this section and ORS 498.279, no person shall conduct, sponsor or participate in any competition or contest in which any prize of a retail value of more than \$1,000 is offered for the amount, quality, size, weight or other physical characteristic of game fish taken.

(2) When a prize is offered that exceeds \$1,000 for the amount, quality, size, weight

or other physical characteristic of a game fish taken, the State Fish and Wildlife Commission, by rule, may limit the number of contests and participants, determine the location of contests and prescribe other terms and conditions regarding the conduct of contests. [1989 c.373 §4; 1997 c.12 §1; 2001 c.186 §2]

498.290 [1961 c.129 §1; repealed by 1973 c.723 §130]

498.295 [Repealed by 1957 c.235 §1]

498.300 [Repealed by 1959 c.352 §5]

SCREENING AND BY-PASS DEVICES FOR WATER DIVERSIONS OR OBSTRUCTIONS

498.301 Policy. It is the policy of the State of Oregon to prevent appreciable damage to game fish populations or populations of nongame fish that are classified as sensitive species, threatened species or endangered species by the State Fish and Wildlife Commission as the result of the diversion of water for nonhydroelectric purposes from any body of water in this state. [1993 c.478 §2]

498.305 [Repealed by 1959 c.352 §5]

498.306 Screening or by-pass devices for water diversions; fees; costs. (1) Any person who diverts water from any body of water in this state in which any fish, subject to the State Fish and Wildlife Commission's regulatory jurisdiction, exist may be required to install, operate and maintain screening or by-pass devices to provide adequate protection for fish populations present at the water diversion in accordance with the provisions of this section.

(2)(a) The State Department of Fish and Wildlife shall establish a cost-sharing program to implement the installation of screening or by-pass devices on not less than 150 water diversions or 150 cubic feet per second of diverted water per biennium. The department shall select the water diversions to be screened from the priority listing of diversions established by the department and reviewed by the Fish Screening Task Force. The installation of a screening or by-pass device may be required only if:

(A) The water diversion is 30 cubic feet per second or more;

(B) A new water right is issued for the water diversion;

(C) The point of water diversion is transferred as described in ORS 540.525;

(D) Fewer than 150 persons per biennium volunteer to request such installation on the diversions for which they are responsible; or

(E) The Fish Screening Task Force has reviewed and approved the department's request to require installation of screening or by-pass devices in order to complete the

screening of a stream system or stream reach.

(b) The limitations on the number of diversions or cubic feet per second of diverted water to be screened as provided in this section do not prevent the installation of screening and by-pass devices for diversions by persons responsible for diversions who are willing to pay the full cost of installing screening and by-pass devices.

(c) Cost-sharing program funds may not be provided under this subsection for screening or by-pass devices on a water diversion involving water rights issued on or after January 1, 1996, unless the Fish Screening Task Force finds there is good cause to allow an exception. The department shall give preference to diversions of 30 cubic feet per second or less when making cost-sharing program funds available.

(3) When selecting diversions to be equipped with screening or by-pass devices, the department shall attempt to solicit persons who may volunteer to request the installation of such devices on the diversions for which they are responsible. When selecting diversions to be equipped with screening or by-pass devices, the department shall select those diversions that will provide protection to the greatest number of indigenous naturally spawning fish possible.

(4) If the department constructs and installs the screening or by-pass device, a fee shall be assessed against the person responsible for the diversion in an amount that does not exceed 40 percent of the construction and installation costs of the device. The fee shall be paid into the Fish Screening Subaccount. If the person responsible for the diversion constructs and installs the by-pass or screening device, the person shall be reimbursed from the Fish Screening Subaccount or other state funds in an amount that does not exceed 60 percent of the actual construction and installation costs of the device.

(5) The department's cost of major maintenance and repair of screening or by-pass devices shall be paid from the Fish Screening Subaccount.

(6) The department is responsible for major maintenance and repair of screening or by-pass devices at water diversions of less than 30 cubic feet per second, and if failure by the department to perform major maintenance on or repair such devices results in damage or blockage to the water diversion on which a device has been installed, the person responsible for the water diversion shall give written notice of such damage or blockage to the department. If within seven days of the notice, the department fails to take appropriate action to perform major

maintenance on or repair the device, and to repair any damage that has occurred, the person responsible for the water diversion may remove the device. If an emergency exists that will result in immediate damage to livestock or crops, the person responsible for the water diversion may remove the screening or by-pass device. A person required to comply with this section is responsible for minor maintenance and shall, in a timely manner, notify the department of the need for activities associated with major maintenance.

(7) A person who diverts water at a rate of 30 cubic feet per second or more is responsible for all maintenance of an installed screening or by-pass device.

(8) A person required to comply with this section may design, construct and install screening or by-pass devices adequate to prevent fish from leaving the body of water and entering the diversion or may request the department to design, construct and install such devices. However, if a person required to comply with this section fails to comply within 180 days after notice to comply by the department, the department shall design, install, operate and maintain on that person's water diversion appropriate screening or by-pass devices and shall charge and collect from the person the actual costs thereof in an amount not to exceed the average cost for diversions of that size.

(9) If the diversion requiring screening or by-pass devices is located on public property, the department shall obtain from the property owner approval or permits necessary for such devices. Activities of the department pursuant to this section may not interfere with existing rights of way or easements of the person responsible for the diversion.

(10)(a) The department or its agent has the right of ingress and egress to and from those places where screening or by-pass devices are required, doing no unnecessary injury to the property of the landowner, for the purpose of designing, installing, inspecting, performing major maintenance on or repairing such devices.

(b) If a screening or by-pass device installed by the department must be removed or replaced due to inadequate design or faulty construction, the person responsible for the diversion shall bear no financial responsibility for its replacement or reconstruction.

(c) If a screening or by-pass device installed by the person responsible for the diversion must be removed or replaced due to faulty construction, the person shall bear full financial responsibility for its replacement or reconstruction.

(d) If the person responsible for a diversion on which a screening or by-pass device is installed fails to conduct appropriate inspection and minor maintenance, the department may perform such activities and charge and collect from the person responsible a fee not to exceed \$150 for each required visit to the location of the screening or by-pass device.

(e) If the department determines that a person must install, operate, maintain, repair or replace a screening or by-pass device under this section, the department shall notify the person, by registered mail, of the specific action the person is required to take. The person may request a contested case hearing before the State Fish and Wildlife Commission, to be conducted as provided in ORS chapter 183.

(11) A person may not interfere with, tamper with, damage, destroy or remove in any manner not associated with regular and necessary maintenance procedures any screening or by-pass devices installed pursuant to this section.

(12) The department may maintain an action to cover any costs incurred by the department when a person who is required to comply with this section fails to comply. Such action shall be brought in the circuit court for the county in which the screening or by-pass device is located.

(13) Upon receiving notice from the department to comply with this section, a person responsible for a water diversion may be excused from compliance if the person demonstrates to the Fish Screening Task Force that:

(a) The installation and operation of screening or by-pass devices would not prevent appreciable damage to the fish populations in the body of water from which water is being diverted.

(b) Installation and operation of screening or by-pass devices would not be technically feasible.

(c) Installation of screening or by-pass devices would result in undue financial hardship.

(14)(a) Not later than January 1, 1996, the department, with the assistance of the Fish Screening Task Force and the Water Resources Department, shall establish and publish an updated priority listing of 3,500 water diversions in the state that should be equipped with screening or by-pass devices. Changes may be made to the list whenever deletions are made for any reason. The priority listing shall include the name and address of the person currently responsible for the water diversion, the location of the diversion, size of the diversion, type of screen-

ing or by-pass device required, estimated costs for construction and installation of screening or by-pass devices for the individual diversion and species of fish present in the water body. When developing the priority listing, the department shall base priorities for the installation of screening or by-pass devices on unscreened diversions on the following criteria:

- (A) Fish species status.
- (B) Fish numbers.
- (C) Fish migration.
- (D) Diversion size.
- (E) Diversion amount.

(F) Any other criteria that the department, in consultation with the Fish Screening Task Force, considers appropriate.

(b) Criteria identified in this subsection shall be given appropriate consideration by the department when updating its priority listing. The priority listing will be updated to give the highest priority to those diversions that save the greatest number of fish and simultaneously protect the greatest number of threatened or endangered fish species.

(c) After the priority listing has been updated, the persons responsible for the diversions on the list shall be notified that their diversions appear on the list. Such persons also shall be furnished a description of the fish screening cost-sharing program.

(d)(A) The department shall notify, by means of registered mail, each person responsible for the first 250 diversions on the priority listing on or before January 1, 1996. The department shall furnish information regarding the fish screening cost-sharing program to each person responsible for a diversion included in the first 250 diversions on the priority listing on or before January 1, 1996. A person may not be required to install a screening or by-pass device unless previously notified by the department of the requirement to install such devices.

(B) On January 1 of each even-numbered year, the department shall notify each person responsible for a diversion included in the first 250 diversions on the priority listing. However, the department is not required to notify in a subsequent year any person previously notified. The department shall include with such notification information regarding the fish screening cost-sharing program.

(C) Before any person is required to install a screening or by-pass device, the department shall confirm the need for the device through a visual, on-site inspection by appropriate staff of the fish screening divi-

sion of the department, or a district biologist of the department.

(15) As used in this section:

(a) "Behavioral barrier" means a system that utilizes a stimulus to take advantage of natural fish behavior to attract or repel fish. A behavioral barrier does not offer a physical impediment to fish movement, but uses such means as electricity, light, sound or hydraulic disturbance to move or guide fish.

(b) "Body of water" includes but is not limited to irrigation ditches, reservoirs, stock ponds and other artificially created structures or impoundments.

(c) "By-pass device" means any pipe, flume, open channel or other means of conveyance that transports fish back to the body of water from which the fish were diverted but does not include fishways or other passages around a dam.

(d) "Fish screen" means a screen, bar, rack or other barrier, including related improvements necessary to ensure its effective operation, to provide adequate protection for fish populations present at a water diversion.

(e) "Major maintenance" means all maintenance work done on a screening or by-pass device other than minor maintenance.

(f) "Minor maintenance" means periodic inspection, cleaning and servicing of screening or by-pass devices at such times and in such manner as to ensure proper operation of the screening or by-pass device.

(g) "Person" means any person, partnership, corporation, association, municipal corporation, political subdivision or governmental agency.

(h) "Screening device" means a fish screen or behavioral barrier. [1991 c.858 §2; 1993 c.478 §4; 1995 c.426 §1; 2005 c.22 §370; 2007 c.625 §1]

498.310 [Repealed by 1973 c.723 §130]

498.311 [Formerly 498.248; repealed by 2007 c.625 §16]

498.315 [Repealed by 1973 c.723 §130]

498.316 Exemption from screening or by-pass devices. ORS 498.306 does not require the installation of screening or by-pass devices in those water diversions for which the State Fish and Wildlife Commission, by contract or other form of agreement with the person diverting the water, has made such other provision as the commission determines is adequate for the protection of the game fish in the body of water from which water is being diverted. [Formerly 498.262; 2007 c.625 §6]

498.321 Screening or by-pass standards. (1) In order to carry out the provisions of ORS 498.301 and 498.306, the following minimum standards and criteria

apply to actions of the State Fish and Wildlife Commission and the State Department of Fish and Wildlife with regard to fish screening or by-pass devices:

(a) Standards and criteria shall address the overall level of protection necessary at a given water diversion and may not favor one technology or technique over another.

(b) Standards and criteria shall take into account at least the following factors relating to the fish populations present at a water diversion:

(A) The source of the population, whether native or introduced and whether hatchery or wild.

(B) The status of the population, whether endangered, threatened or sensitive.

(c) Standards and criteria may take into account the cumulative effects of other water diversions on the fish populations being protected.

(d) Design and engineering recommendations shall consider cost-effectiveness.

(e) Alternative design and installation proposals must be approved if they can be demonstrated to provide an equal level of protection to fish populations as those recommended by the department.

(2) In order to maximize effectiveness and promote consistency relating to the protection of fish at nonhydroelectric water diversions, the department shall establish a single organizational entity to administer all agency activities related to fish screening and by-pass devices.

(3) The department shall emphasize cooperative effort and mutual understanding with those responsible for water diversions that need fish screening or by-pass devices.

(4) The department shall aggressively investigate and encourage the development of new technologies and techniques to provide protection for fish populations at water diversions in order to reduce initial costs, reduce operating costs and improve cost-effectiveness. [1993 c.478 §3; 2005 c.22 §371]

498.326 Department guidelines for screening and by-pass projects; expenditure of funds. (1) The State Department of Fish and Wildlife shall establish guidelines to determine the need for and location of potential fish screening and by-pass projects. The guidelines shall include a plan to be used for determining priorities for and expected costs of installing and maintaining the fish screening and by-pass devices.

(2) Nothing in subsection (1) of this section is intended to prevent the State Department of Fish and Wildlife from expending federal or other funds if such funds become available for the installation and maintenance

of fish screening and by-pass projects. [Formerly 498.256]

Note: 498.326 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 498 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

498.331 [1993 c.478 §11; 1995 c.426 §18; 2001 c.822 §9; repealed by 2007 c.625 §16]

498.336 Statutes not construed to limit ability to acquire funding for screening or by-pass devices. Nothing in ORS 498.306 or 509.585 shall be construed:

(1) To limit the eligibility of a person required to install and operate screening or by-pass devices to obtain funding from the Water Development Fund pursuant to ORS 541.700 to 541.855.

(2) To limit the acquisition or acceptance of any federal funds available for the installation, operation, maintenance, improvement or repair of screening or by-pass devices on water diversions in this state. [Formerly 498.276; 2001 c.923 §6; 2007 c.625 §9]

498.341 Additional funding. Notwithstanding the limitations imposed by ORS 498.306, if sufficient funds are made available in the Fish Screening Subaccount of the Fish and Wildlife Account, by allocation from the Administrative Services Economic Development Fund or from other sources, the State Department of Fish and Wildlife may provide financial assistance for construction and installation of screening or by-pass devices on additional water diversions. [1993 c.478 §8; 2001 c.822 §10; 2005 c.22 §372; 2007 c.625 §7]

498.346 Injunction to require compliance with screening or by-pass requirements. The State Fish and Wildlife Commission may maintain a suit to enjoin any person, including governmental agencies of this state and political subdivisions of this state, from violating the provisions of ORS 498.306. The circuit court for any county in which are situated any waters in which any such violations are threatened has jurisdiction of the suit authorized by this section. [Formerly 498.274; 2001 c.923 §7; 2007 c.625 §8]

498.351 [Formerly 498.268; repealed by 2001 c.923 §21]

OUTDOOR CLUB REGULATION

498.400 Definitions for ORS 498.400 to 498.464. As used in ORS 498.400 to 498.464, unless the context requires otherwise:

(1) "Advertise" means to make public distribution by any means of communication any material relating to the sale of membership in an outdoor club.

(2) "Outdoor club" means a business entity organized for profit that:

(a) Conducts, or under whose authority is conducted, hunting or angling or both

hunting and angling activities exclusively for its members and their guests; and

(b) Engages in promotional plan activities for the sale of membership in such club.

(3) "Promotional plan" includes, but is not limited to advertising. [1973 c.749 §2]

498.405 [Repealed by 1973 c.723 §130]

498.406 License to operate certain outdoor clubs required; promotional activities for sale of membership without license prohibited. (1) Except as provided in ORS 498.412, no person shall operate an outdoor club unless the person has a valid license for such operation issued by the State Fish and Wildlife Commission, if the outdoor club activities are to be conducted on land that is leased from the owners thereof and if:

(a) The members of the club are not parties to the lease; and

(b) The members of the club do not have any financial or proprietary interest in the club.

(2) No person required by subsection (1) of this section to obtain a license to operate an outdoor club shall engage in promotional plan activities for the sale of membership in the outdoor club unless the person first obtains the license. [1973 c.749 §3]

498.410 [Repealed by 1961 c.113 §2]

498.412 Application of ORS 498.406. ORS 498.406 does not apply to any landowner offering to sell recreational access to property the landowner owns. [1973 c.749 §4]

498.415 [Repealed by 1973 c.723 §130]

498.418 License application; form; fee.

(1) A person who is required to obtain a license from the State Fish and Wildlife Commission to operate an outdoor club shall submit to the commission an application for such license, on a form approved by the commission, that contains such information as the commission may require regarding the ownership, financial condition and operation of the club and promotional plans for sale of membership therein.

(2) The application shall be accompanied by the applicable fee under the fee schedule in ORS 497.061. [1973 c.749 §5; 2015 c.779 §31]

498.420 [Repealed by 1973 c.723 §130]

498.424 Report to commission required; suspension of license pending investigation of reported information. (1) A person who is licensed to operate an outdoor club shall report immediately to the State Fish and Wildlife Commission any material changes in the information required to be contained in the application.

(2) Upon receipt of any such report, the commission may suspend a license that has

been issued for such time as the commission considers necessary to adequately investigate and approve the information submitted. [1973 c.749 §6]

498.425 [Repealed by 1961 c.113 §2]

498.430 [Amended by 1959 c.372 §1; repealed by 1973 c.723 §130]

498.432 Notice to applicant upon receipt of license application; order granting or denying license; procedure. (1) Upon receipt in proper form of an application for a license to operate an outdoor club, the State Fish and Wildlife Commission shall issue a notice of filing to the applicant. Within 30 days from the date of the notice of filing, the commission shall enter an order granting or denying the license. If the license is denied, the commission shall give the applicant notice of the reasons therefor.

(2) If an order denying a license is not entered within 60 days from the date of notice of filing of an application, a license shall be considered granted unless the applicant has consented in writing to a delay.

(3) Orders of the commission regarding the issuance, renewal, suspension or revocation of a license shall be issued and reviewed in accordance with ORS chapter 183. [1973 c.749 §7]

498.435 [Repealed by 1973 c.723 §130]

498.438 Investigatory power of commission over outdoor clubs required to be licensed. The State Fish and Wildlife Commission may cause to be investigated, to such extent as the commission considers appropriate, the activities and operations of an outdoor club for which a license to operate has been received, previously granted or previously denied. The commission's power to investigate includes, but is not limited to:

(1) Contracting for investigative services with, and receiving information and recommendations from, any other agency or political subdivision of this state, another state or of the United States.

(2) Making on-site inspections of all lands upon which outdoor club activities are to be conducted. [1973 c.749 §8]

498.440 [Repealed by 1961 c.113 §2]

498.444 Information developed in licensing process as public record. Each application to the State Fish and Wildlife Commission for a license to operate an outdoor club, all information submitted with the application, and all information obtained by the commission through investigation of applications, is a public record. [1973 c.749 §9]

498.445 [Amended by 1961 c.113 §1; repealed by 1973 c.723 §130]

498.450 [Repealed by 1973 c.723 §130]

498.452 Grounds for denial or revocation of license. The State Fish and Wildlife Commission may refuse to issue or renew a license to operate an outdoor club, or may revoke a license that has been previously issued if the commission finds:

(1) Failure by the outdoor club or person advertising the sale of membership in the outdoor club to comply with the provisions of ORS 498.400 to 498.464 and 498.993 or any rule promulgated pursuant thereto;

(2) That the promotional plan for the sale of outdoor club membership is false, deceptive or misleading, or that the promotional plan for the sale of membership is not in conformity with the plan submitted with the license application and approved by the commission;

(3) That any land upon which it has been represented that outdoor club activities are to be conducted is unsuitable for the purposes for which represented;

(4) That any obligation, guaranty or warranty to members of the club by the outdoor club that was included in the promotional plan for the sale of membership or in the contract or other documents relating to membership is not being fulfilled or that adequate financial arrangements to secure performance of such obligations, guaranties or warranties has not been made; or

(5) That the proposed outdoor club activities would have adverse effect upon existing wildlife populations or habitat or upon wildlife-oriented recreation. [1973 c.749 §10]

498.455 [Repealed by 1961 c.113 §2]

498.458 Term of license; renewal fee.

A license to operate an outdoor club expires one year from the date of its issuance. A person who desire to renew a license shall submit an application therefor to the State Fish and Wildlife Commission, together with a fee of \$100. The application shall be in such form, contain such information and be submitted at such time as the commission prescribes. [1973 c.749 §11]

498.460 [Repealed by 1973 c.723 §130]

498.464 Commission authority to restrain violations of outdoor club laws. (1) Whenever the State Fish and Wildlife Commission has cause to believe that any person is engaged in or is about to engage in any acts or practices that constitute a violation of ORS 498.400 to 498.464 and 498.993, or any rule promulgated pursuant thereto, that requires immediate action to protect the wildlife resources of this state, the commission shall institute actions or proceedings for legal or equitable remedies to restrain the violation or threatened action.

(2) The actions or proceedings authorized by subsection (1) of this section may be instituted without necessity of a prior administrative proceeding, or at any time during an administrative proceeding if a proceeding has been commenced. [1973 c.749 §12; 1979 c.284 §160]

498.465 [1957 c.251 §1; repealed by 1973 c.723 §130]

SAGE GROUSE

498.500 Mitigation of adverse effects on core area habitat; policy. (1) To assist persons with meeting the requirements of this state and local and federal governments concerning the mitigation of the adverse effects that a proposed action may have on core area habitat of sage grouse, the State Department of Fish and Wildlife, after consultation with interested local and tribal governments, state and federal agencies and private organizations, may develop and administer a uniform policy for mitigating the adverse effects that the proposed actions may have on core area habitat of sage grouse.

(2) If the department develops a mitigation policy under this section, the policy may include:

(a) Provisions for the recognition or establishment of mitigation banks; and

(b) Any other framework, criteria or goals developed to facilitate the mitigation of the adverse effects that a proposed action may have on core area habitat of sage grouse in a manner that ensures a landscape approach to the conservation of sage grouse.

(3) If the department develops a mitigation policy under this section, the policy must:

(a) Provide that the department review, at least once every five years, the mapping by the department of core area habitat of sage grouse and revise the mapping, if necessary, to account for any new and substantial biological information; and

(b) Ensure that any use of a mitigation bank or other mitigation framework provided for under the policy does not result in a net loss of either the quality or quantity of sage grouse habitat and provides a net benefit to the quality or quantity of sage grouse habitat.

(4) If the department develops a mitigation policy under this section for the purpose of benefiting sage grouse as a result of a listing as a sensitive, threatened or endangered species under ORS 496.171 to 496.182, or a listing as a candidate, threatened or endangered species pursuant to the federal Endangered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531 et seq.), the policy shall ensure, to the greatest extent practicable, that any use of land, water or other natural resources

occurring in a habitat identified as part of a mitigation bank or other mitigation framework developed under the policy may continue after the department identifies the habitat as part of a mitigation bank or other mitigation framework.

(5)(a) Subsections (1) to (4) of this section do not affect the ability of a person to develop a proposal under ORS 498.502 for off-site mitigation or a mitigation bank in order to meet the requirements of this state and local and federal governments concerning the mitigation of the adverse effects that a proposed action by the person may have on core area habitat of sage grouse.

(b) Any proposal for off-site mitigation or a mitigation bank developed under this section and ORS 498.502 must not result in a net loss of either the quality or quantity of sage grouse habitat and must provide a net benefit to the quality or quantity of sage grouse habitat. [2013 c.710 §1]

Note: 498.500 and 498.502 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 498 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

498.502 Actions that affect core area habitat; reports; orders; rules. (1) Subject to and consistent with the federal Endangered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531 et seq.) and notwithstanding any provision of ORS 496.171 to 496.182:

(a) If a person applies for a permit, license, authorization or other form of permission required by law from a state agency for a proposed action that may affect core area habitat of sage grouse, the person may file with the State Department of Fish and Wildlife, at any time before or after the commencement of the relevant permitting, licensing, authorization or other form of permission process, a report that uses the best scientific and commercial data available to provide a description of the proposed action and its possible effects on the habitat.

(b) The report described in this section must describe the core area habitat of sage grouse affected by the proposed action, specify whether the habitat is essential and irreplaceable and provide proposals for off-site mitigation or a mitigation bank.

(c)(A) Within 60 days after the filing of the report described in this section, the department shall evaluate whether the proposals specified in the report result in a net loss of either the quality or quantity of sage grouse habitat and provide a net benefit to the quality or quantity of sage grouse habitat.

(B)(i) If the department concludes that the proposals specified in the report do not

result in a net loss of either the quality or quantity of sage grouse habitat and do provide a net benefit to the quality or quantity of sage grouse habitat, the department shall issue an order finding that the core area habitat of sage grouse affected by the proposed action is not irreplaceable. The department may not thereafter reverse or modify the order except pursuant to a judgment of a court.

(ii) If the department concludes that the proposals specified in the report result in a net loss of either the quality or quantity of sage grouse habitat and do not provide a net benefit to the quality or quantity of sage grouse habitat, a person affected by the action may request a contested case hearing before the State Fish and Wildlife Commission, to be conducted as provided in ORS chapter 183.

(2) The provisions of this section apply to a site certificate for an energy facility described in ORS 469.300 (11)(a)(F), but do not apply to a site certificate for any other facility under the provisions of ORS 469.300 to 469.563.

(3) The commission may adopt rules to carry out the provisions of this section. [2013 c.710 §2]

Note: See note under 498.500.

498.505 [Repealed by 1973 c.723 §130]

498.510 [Amended by 1965 c.73 §1; repealed by 1973 c.723 §130]

498.515 [Repealed by 1973 c.723 §130]

498.520 [Repealed by 1973 c.723 §130]

498.525 [Repealed by 1973 c.723 §130]

498.530 [Repealed by 1973 c.723 §130]

498.535 [Repealed by 1973 c.723 §130]

498.540 [Repealed by 1973 c.723 §130]

498.545 [Repealed by 1973 c.723 §130]

498.550 [Repealed by 1973 c.723 §130]

498.555 [Repealed by 1973 c.723 §130]

498.560 [Repealed by 1973 c.723 §130]

498.565 [Repealed by 1973 c.723 §130]

498.570 [Repealed by 1973 c.723 §130]

498.575 [Amended by 1967 c.594 §5; 1971 c.359 §1; repealed by 1973 c.723 §130]

498.577 [1959 c.341 §1; 1963 c.295 §1; repealed by 1973 c.723 §130]

498.580 [Repealed by 1973 c.723 §130]

498.585 [Repealed by 1973 c.723 §130]

498.590 [Repealed by 1973 c.723 §130]

498.605 [Repealed by 1973 c.723 §130]

498.610 [Repealed by 1973 c.723 §130]

498.615 [Repealed by 1973 c.723 §130]

498.620 [Repealed by 1973 c.723 §130]

498.625 [Amended by 1959 c.529 §3; repealed by 1973 c.723 §130]

498.630 [Repealed by 1969 c.15 §1]

498.635 [Amended by 1955 c.78 §1; repealed by 1973 c.723 §130]

- 498.640** [Amended by 1955 c.62 §1; repealed by 1973 c.723 §130]
498.641 [1955 c.507 §1; 1959 c.235 §1; repealed by 1973 c.723 §130]
498.645 [Repealed by 1955 c.65 §2]
498.646 [1955 c.65 §1; repealed by 1973 c.723 §130]
498.650 [Repealed by 1973 c.723 §130]
498.655 [1965 c.201 §1; repealed by 1973 c.723 §130]
498.660 [1965 c.201 §§2,3; repealed by 1973 c.723 §130]
498.665 [1965 c.201 §4; repealed by 1973 c.723 §130]
498.705 [Repealed by 1973 c.723 §130]
498.710 [Repealed by 1973 c.723 §130]
498.715 [Repealed by 1973 c.723 §130]
498.720 [Repealed by 1973 c.723 §130]
498.725 [Repealed by 1973 c.723 §130]
498.730 [Amended by 1955 c.707 §44; 1965 c.167 §1; repealed by 1973 c.723 §130]
498.732 [1955 c.707 §46; repealed by 1973 c.723 §130]
498.735 [Amended by 1955 c.707 §47; repealed by 1973 c.723 §130]
498.740 [Amended by 1955 c.707 §48; repealed by 1973 c.723 §130]
498.745 [Repealed by 1973 c.723 §130]
498.750 [Repealed by 1973 c.723 §130]
498.805 [1961 c.663 §1; repealed by 1973 c.723 §130]
498.810 [1961 c.663 §§2,3; repealed by 1973 c.723 §130]
498.815 [1961 c.663 §§4,5,6; repealed by 1973 c.723 §130]
498.820 [Formerly 498.025; repealed by 1973 c.723 §130]

OREGON HATCHERY RESEARCH CENTER

498.825 Establishment of Oregon Hatchery Research Center Board. (1) There is established the Oregon Hatchery Research Center Board within the State Department of Fish and Wildlife. The board shall consist of 15 members, including 12 voting members appointed by the State Fish and Wildlife Director under subsection (2) of this section and three nonvoting members specified in subsection (3) of this section. Members of the board must be residents of this state who are well informed on matters related to fish management policy and scientific research and who demonstrate an interest in research related to the propagation of fish in hatcheries.

(2) The 12 voting members appointed by the director shall be representative of each of the following interests:

(a) One member shall represent the Oregon Salmon Commission established under ORS 576.062.

(b) One member shall represent the Columbia River gillnet salmon fishery established under ORS 508.775 to 508.796.

(c) Two members shall represent wild fish advocacy organizations.

(d) Two members shall represent statewide sport angling organizations.

(e) One member shall represent the agricultural industry.

(f) One member shall represent coastal ports.

(g) One member shall represent the forest products industry.

(h) One member shall represent the independent scientific community and have scientific background related to fish management and the propagation of fish in hatcheries.

(i) One member shall represent fish habitat restoration interests and have experience in the management or implementation of habitat restoration projects.

(j) One member shall represent Oregon Indian tribes, to be appointed by the director after consultation with the Commission on Indian Services.

(3) In addition to the members appointed under subsection (2) of this section, the director shall:

(a) Appoint the following two nonvoting members of the board who have a background in fish management and the propagation of fish in hatcheries:

(A) One member to represent the State Department of Fish and Wildlife.

(B) One member to represent Oregon State University.

(b) Invite a representative of agencies of the federal government related to fish management to serve as a nonvoting member of the board.

(4) The term of office of each member is four years, but a member serves at the pleasure of the director. Before the expiration of the term of a member, the director shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the director shall make an appointment to become immediately effective for the unexpired term.

(5) A member of the board is not entitled to compensation under ORS 292.495. At the discretion of the board, board members may be reimbursed from funds available to the board for actual and necessary travel and other expenses incurred by members of the board in the performance of their official duties, subject to the limits described in ORS 292.495. [2013 c.664 §1]

Note: 498.825 to 498.833 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 498 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

498.827 Duties of Oregon Hatchery Research Center Board. The Oregon Hatchery Research Center Board shall report to the Director of the Oregon Hatchery Research Center and shall:

(1) Establish strategic directions and operational objectives for the Oregon Hatchery Research Center located on Fall Creek, near Alesia, consistent with ORS 496.275.

(2) Develop, after consultation with the Director of the Oregon Hatchery Research Center, Oregon State University and the State Department of Fish and Wildlife, the proposed operating budget for the center.

(3) Recommend research projects for the Oregon Hatchery Research Center and issue requests for research proposals as needed to carry out the activities of the Oregon Hatchery Research Center specified in ORS 498.831.

(4) Review and prioritize all research proposals submitted to the Oregon Hatchery Research Center before research takes place and prioritize the research according to whether the research is consistent with the strategic directions and operational objectives specified in subsection (1) of this section and with the activities of the Oregon Hatchery Research Center specified in ORS 498.831.

(5) Make recommendations, as needed, regarding how the research projects at the Oregon Hatchery Research Center may be enhanced to meet the strategic directions and operational objectives specified in subsection (1) of this section and the activities specified in ORS 498.831.

(6) On or before February 1 of each calendar year, report to the Legislative Assembly in the manner required by ORS 192.245, and to the State Fish and Wildlife Director and the State Fish and Wildlife Commission, regarding the findings of research projects carried out by the Oregon Hatchery Research Center and any recommendations regarding current hatchery management practices based on the research projects. The Director of the Oregon Hatchery Research Center shall post the report on the center's website for public access. [2013 c.664 §3]

Note: See note under 498.825.

498.829 Officers; quorum; meetings. (1) The Oregon Hatchery Research Center Board shall select one of its members as chairperson and another as vice chairperson, for such terms and with duties and powers necessary for the performance of the functions of such offices as the board determines.

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

(3) The board shall meet at least once every three months at a place, day and hour determined by the board. The board may also meet at other times and places specified by the call of the chairperson or of a majority of the members of the board. [2013 c.664 §4]

Note: See note under 498.825.

498.831 Oregon Hatchery Research Center; activities. (1) The hatchery research center located on Fall Creek, near Alesia, is named the Oregon Hatchery Research Center.

(2) Pursuant to the strategic directions and operation objectives established by the Oregon Hatchery Research Center Board under ORS 498.827, the center shall carry out the following activities:

(a) Conduct research that assists in the implementation and advancement of native fish population recovery as well as viable fisheries.

(b) Conduct research on methods to minimize the genetic and ecological risks to naturally produced native fish when hatchery produced fish are released in the waters of this state for population recovery or consumptive fishery objectives.

(c) Conduct research to determine the genetic and ecological risk to naturally produced native fish when wild native broodstock hatchery produced native fish are released into the waters of this state.

(d) Conduct research to determine the effect of hatchery operations on naturally produced native fish and the habitat of naturally produced native fish.

(e) Provide educational and research opportunities for undergraduate students, graduate students and post-graduate students.

(f) Provide educational opportunities for the public and for students in grades 1 through 12.

(g) Consider any recommendations made by the Oregon Hatchery Research Center Board pursuant to ORS 498.827.

(3) The Director of the Oregon Hatchery Research Center shall post information about the research specified in subsection (2) of this section on the center's website for public access.

(4) As used in this section, "waters of this state" has the meaning given that term in ORS 196.800. [2013 c.664 §5]

Note: See note under 498.825.

498.833 Oregon Hatchery Research Center; director. The State Fish and Wildlife Director, after consultation with the chairperson of a department related to fish and wildlife at Oregon State University and the Oregon Hatchery Research Center Board

established under ORS 498.825, shall appoint a Director of the Oregon Hatchery Research Center. [2013 c.664 §6]

Note: See note under 498.825.

(Temporary provisions relating to hatchery funding)

Note: Sections 1, 2, 7 and 8, chapter 734, Oregon Laws 2015, provide:

Sec. 1. (1) The Oregon Hatchery Research Center Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Oregon Hatchery Research Center Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the State Department of Fish and Wildlife. The fund shall consist of:

(a) All moneys received from the surcharge on angling licenses imposed by section 3 of this 2015 Act; and

(b) All moneys received from the ad valorem fee imposed by section 4 of this 2015 Act.

(2) Except as provided in subsection (3) of this section, moneys in the fund may be expended only on research projects recommended by the Oregon Hatchery Research Center Board.

(3) Any unexpended and unobligated balance in the Oregon Hatchery Research Center Fund as calculated on July 1 of each year shall be transferred to the Hatchery Construction Fund. [2015 c.734 §1]

Sec. 2. The Hatchery Construction Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Hatchery Construction Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the State Department of Fish and Wildlife. The fund shall consist of moneys transferred to the fund under section 1 of this 2015 Act and any moneys transferred to the fund by the Legislative Assembly. Moneys in the fund may be expended only to improve, upgrade or replace current coastal hatchery facilities in order to incorporate new technologies or to make physical improvements to the hatchery facilities. [2015 c.734 §2]

Sec. 7. (1) The State Department of Fish and Wildlife shall provide a financial report quarterly to the Oregon Hatchery Research Center Board showing all revenues and deposits to and transfers and expenditures from the Oregon Hatchery Research Center Fund.

(2) The department shall provide a financial report annually to the interim committees of the Legislative Assembly related to the environment and natural resources showing all revenues and deposits to and transfers and expenditures from the Oregon Hatchery Research Center Fund. [2015 c.734 §7]

Sec. 8. (1)(a) Sections 1, 2, 4 and 7, chapter 734, Oregon Laws 2015, are repealed on January 2, 2027.

(b) Section 3, chapter 734, Oregon Laws 2015, as amended by section 52 of this 2015 Act, is repealed on January 2, 2027.

(2) Any balance in the Oregon Hatchery Research Center Fund that is unexpended and unobligated on the

date of the repeal of section 1, chapter 734, Oregon Laws 2015, and all moneys that would have been deposited in the Oregon Hatchery Research Center Fund had section 1, chapter 734, Oregon Laws 2015, remained in effect, shall be transferred to and deposited in the Fish Endowment Subaccount in the Fish and Wildlife Account, and are appropriated for expenditure as in the case of other moneys in the Fish Endowment Subaccount.

(3) Any balance in the Hatchery Construction Fund that is unexpended and unobligated on the date of the repeal of section 2, chapter 734, Oregon Laws 2015, and all moneys that would have been deposited in the Hatchery Construction Fund had section 2, chapter 734, Oregon Laws 2015, remained in effect, shall be transferred to and deposited in the Fish Endowment Subaccount in the Fish and Wildlife Account, and are appropriated for expenditure as in the case of other moneys in the Fish Endowment Subaccount. [2015 c.734 §8; 2015 c.779 §53]

498.990 [Subsection (5) of 1965 Replacement Part enacted as 1953 c.184 §4; subsection (1) of 1965 Replacement Part enacted as 1955 c.506 §2; 1959 c.352 §3; 1967 c.523 §3; subsection (2) enacted as 1971 c.223 §4; repealed by 1973 c.723 §130]

498.992 [Amended by 1959 c.352 §4; repealed by 1967 c.523 §14]

PENALTIES

498.993 Penalty for violation of outdoor club laws; penalty for violation of law related to sale of certain animals as household pets. Violation of any provision of ORS 498.029 or 498.400 to 498.464 is a Class A violation, if committed by an individual. If the violation is committed by any person other than an individual, violation of any provision of ORS 498.029 or 498.400 to 498.464 is a specific fine violation punishable by a fine not to exceed \$10,000. [1973 c.749 §13; 1979 c.560 §3; 1999 c.1051 §195; 2011 c.597 §90]

498.994 [Repealed by 1967 c.523 §14]

498.996 [Repealed by 1967 c.523 §14]

498.997 [1955 c.507 §2; 1959 c.235 §2; subsection (2) of 1965 Replacement Part enacted as 1965 c.201 §5; repealed by 1967 c.523 §14]

498.998 [Repealed by 1967 c.523 §14]

498.999 [1961 c.663 §7; repealed by 1967 c.523 §14]

CHAPTERS 499 AND 500

[Reserved for expansion]

Chapter 501

2015 EDITION

Refuges and Closures

501.005	Closure of hunting season for fire danger	501.405	Deschutes River Wildlife Refuge
501.015	Hunting or trapping on refuge prohibited	501.410	Brown's Island and Minto Island Wildlife Refuge
501.025	Authority to manage supply or condition of wildlife on refuge	501.425	John Day River Wildlife Refuge
501.035	Posting signs around refuge; defacing or alteration of signs prohibited	501.440	Carlton Lake Wildlife Refuge
501.045	Contracts to establish refuges on private lands	501.490	Lake Lytle Wildlife Refuge
501.400	Columbia River Wildlife Refuge	501.505	Sturgeon Lake Wildlife Refuge; rules
		501.540	Multnomah-Clackamas Wildlife Refuge

501.005 Closure of hunting season for fire danger. (1) The Governor by proclamation may suspend any season established by the State Fish and Wildlife Commission for hunting when the Governor determines that hunting may result in extreme fire danger in any part of the state.

(2) The suspension referred to in subsection (1) of this section may be applicable in all or any portion of this state, and shall be effective for a specified or indeterminate period until it appears to the Governor that the possible excessive fire danger no longer exists. A suspension for an indeterminate period shall be terminated by proclamation of the Governor.

(3) No person shall hunt during a period when or in an area where the appropriate season has been suspended pursuant to this section. [1973 c.723 §104]

501.010 [Repealed by 1973 c.723 §130]

501.015 Hunting or trapping on refuge prohibited. Except as the State Fish and Wildlife Commission by rule may provide otherwise, no person shall hunt or trap any wildlife on any wildlife refuge created by any law of this state or any rule promulgated pursuant thereto. [1973 c.723 §105]

501.020 [Amended by 1955 c.63 §1; repealed by 1973 c.723 §130]

501.025 Authority to manage supply or condition of wildlife on refuge. Notwithstanding any restrictions to the contrary regarding the uses of any wildlife refuge created by any law of this state or any rule promulgated pursuant thereto, the State Fish and Wildlife Commission may authorize the hunting or trapping of wildlife on any such wildlife refuge when the commission determines that such action is necessary to properly manage the supply or condition of the wildlife on such refuge. [1973 c.723 §106]

501.030 [Repealed by 1973 c.723 §130]

501.035 Posting signs around refuge; defacing or alteration of signs prohibited. (1) When any wildlife refuge is created by the laws of this state or any rule promulgated thereto, the State Fish and Wildlife Commission shall post signs around the boundary of the refuge giving notice of restrictions on hunting or trapping of wildlife on the refuge and on such other uses of the refuge as are specified by law or rule.

(2) No person shall remove, deface, alter or destroy any sign referred to in subsection (1) of this section. [1973 c.723 §107]

501.040 [Repealed by 1973 c.723 §130]

501.045 Contracts to establish refuges on private lands. The State Fish and Wildlife Commission may enter into contracts with the owners of land for the purpose of establishing a wildlife refuge on the land.

The contract shall be for such period and shall contain such terms, conditions and restrictions regarding the hunting and trapping of wildlife and other uses of the land as the commission considers appropriate to properly manage the supply and condition of the wildlife on the land. [1973 c.723 §108]

501.050 [Repealed by 1973 c.723 §130]

501.060 [Repealed by 1973 c.723 §130]

501.070 [Repealed by 1973 c.723 §130]

501.080 [Repealed by 1973 c.723 §130]

501.090 [Repealed by 1973 c.723 §130]

501.100 [Repealed by 1973 c.723 §130]

501.110 [Repealed by 1973 c.723 §130]

501.120 [Repealed by 1973 c.723 §130]

501.130 [Repealed by 1973 c.723 §130]

501.140 [Repealed by 1973 c.723 §130]

501.150 [Repealed by 1973 c.723 §130]

501.210 [Repealed by 1973 c.723 §130]

501.220 [Repealed by 1973 c.723 §130]

501.230 [Repealed by 1973 c.723 §130]

501.240 [Repealed by 1973 c.723 §130]

501.250 [Repealed by 1973 c.723 §130]

501.260 [Repealed by 1973 c.723 §130]

501.270 [Repealed by 1973 c.723 §130]

501.280 [Repealed by 1973 c.723 §130]

501.290 [Repealed by 1973 c.723 §130]

501.300 [Repealed by 1973 c.723 §130]

501.400 Columbia River Wildlife Refuge. There is created a wildlife refuge within the following described area: Beginning at the railroad bridge at Celilo in Wasco County; thence easterly along the railroad right of way to Boardman; thence due north to the center of the Columbia River (Washington State Line); thence westerly down the center of the Columbia River to a point due north of the point of beginning; thence south to the point of beginning. [Formerly 498.205]

501.405 Deschutes River Wildlife Refuge. There is created a wildlife refuge within the area that includes any island or sandbar along or in the Deschutes River from the Columbia River to a point one-half mile south of the Oregon Trail highway bridge where it crosses the Deschutes River. [Formerly 498.210]

501.410 Brown's Island and Minto Island Wildlife Refuge. There is created a wildlife refuge which shall be known as the Brown's Island and Minto Island Wildlife Refuge and shall be bounded and described as follows: Beginning at the point of intersection of the center line of State Street in Salem, Oregon, with the center line of the Oregon Electric Railway tracks on Front Street in Salem; thence southwesterly along the center line of the Oregon Electric Railway tracks to the north boundary of the east ell of the donation land claim of R. E. Ekin and wife in township 8 south, range 3 west

of the Willamette Meridian in Marion County; thence west to the re-entrant corner in the west boundary of such donation land claim; thence north to the most northerly northeast corner of such donation land claim; thence west to the middle of the Willamette River; thence down the meanderings of such river to the westerly projection of the center line of State Street in Salem; thence easterly to the place of beginning. [Amended by 1973 c.723 §112]

501.420 [Repealed by 1955 c.77 §1]

501.425 John Day River Wildlife Refuge. There is created a wildlife refuge within the area that is one-fourth mile from the high-water flowline along the John Day River from the Columbia River south to its junction with Thirty Mile Creek. [Formerly 498.215]

501.430 [Repealed by 1955 c.77 §1]

501.440 Carlton Lake Wildlife Refuge. The following described lands, including Carlton Lake, situated in Yamhill County, shall be known as the Carlton Lake Wildlife Refuge: Beginning at the northwest corner of the W. C. Hembree D.L.C. (claim) No. 59, in section 17, township 3 south, range 4 west, Willamette Meridian; running thence east along the north line of Hembree D.L.C. and along this north line produced, or extended 4,500 feet to the west line of the state highway, known as the Tualatin Valley Highway; thence southerly along the west line of such highway 6,600 feet to north line of Main Street in the City of Carlton; thence westerly along the north line of Main Street and the county road, which is an extension of Main Street, 6,300 feet to the northeast corner of the intersection of the county road, leading west from Carlton and the county road running north and south through the James Fulton D. L. C. just west of Carlton Lake; thence northerly along the east line of such county road 6,700 feet to the intersection of the east line of the county road with the north line of the James Fulton D. L. C.; thence east along the north line of Fulton D. L. C. 1,950 feet to the northeast corner of the claim; thence north about 60 feet to the northwest corner of the W. C. Hembree D. L. C., the place of beginning, situated in parts of sections 16, 17, 20 and 21, township 3 south, range 4 west. [Amended by 1973 c.723 §113]

501.450 [Repealed by 1955 c.77 §1]

501.460 [Repealed by 1955 c.77 §1]

501.470 [Repealed by 1955 c.77 §1]

501.480 [Repealed by 1955 c.77 §1]

501.490 Lake Lytle Wildlife Refuge. There is created a wildlife refuge in Tillamook County, to be known as Lake Lytle Wildlife Refuge of the land and waters within the following described boundaries:

Beginning at the northeast corner of section 29, township 2 north, range 10 west of Willamette Meridian; running thence west to the mean low water line of Pacific Ocean; thence southerly along the mean low water line of Pacific Ocean to the middle east and west line of section 32, in such township and range; thence east to the east line of section 32; thence north to the place of beginning. [Amended by 1973 c.723 §114]

501.500 [Repealed by 1973 c.723 §130]

501.505 Sturgeon Lake Wildlife Refuge; rules. (1) The following described lakes, the islands therein and the lands adjacent thereto shall be known as the Sturgeon Lake Wildlife Refuge:

(a) Big Sturgeon Lake, situated in sections 9, 10, 15, 16, 21, 22, 23, 26, 27, 28, 33 and 34, township 3 north, range 1 west, Willamette Meridian.

(b) West Sturgeon Lake, situated in sections 20, 28, 29, 30, 32 and 33, township 3 north, range 1 west, Willamette Meridian.

(c) Little Sturgeon Lake, situated in sections 32 and 33, township 3 north, range 1 west, Willamette Meridian, and sections 4 and 5, township 2 north, range 1 west, Willamette Meridian.

(d) Marquam Lake, situated in sections 34 and 35, township 3 north, range 1 west, Willamette Meridian, and sections 2 and 3, township 2 north, range 1 west, Willamette Meridian.

(2) The State Fish and Wildlife Commission by rule shall establish the exact boundaries of the wildlife refuge referred to in subsection (1) of this section in such manner as the commission determines will provide adequate protection for the wildlife within the area. However, the boundaries so established shall not include land adjacent to any lake referred to in subsection (1) of this section that is further than 100 yards from the line of ordinary high water of such lake. [1973 c.723 §116]

501.510 [Repealed by 1967 c.320 §1]

501.520 [Repealed by 1955 c.77 §1]

501.530 [Repealed by 1955 c.77 §1]

501.540 Multnomah-Clackamas Wildlife Refuge. The following described land situated in Multnomah and Clackamas Counties shall be known as the Multnomah-Clackamas Wildlife Refuge: Beginning at intersection of center line of the channels of the Willamette River and Willamette slough; thence westerly along center line of channel of Willamette slough to its intersection with the south line of section 27, township 2 north, range 1 west, Willamette Meridian; thence west along south line of sections 27 and 28 to intersection with the Columbia River Highway; thence in southerly direction

along Columbia River Highway to intersection with Harborton Road; thence southwesterly along Harborton Road to its intersection with Skyline Boulevard; thence southeasterly along Skyline Boulevard to its intersection with Cornell Road; thence west along Cornell Road to its intersection with the Washington-Multnomah County line; thence south and east along the Washington-Multnomah County line to the Willamette Meridian; thence south along the Willamette Meridian to section 19, township 2 south, range 1 east, Willamette Meridian; thence east along the north lines of sections 19, 20 and 21 to Stafford Road; thence east and north on Stafford Road to the west bank of the Willamette River; thence southerly along the west bank of said Willamette River to a point opposite the intersection of the east bank of the Willamette River and the north bank of the Clackamas River; thence easterly across the Willamette River to said intersection; thence easterly along the north bank of Clackamas River to a point where the east line of Ninety-second Street in the City of Portland extended southerly intersects the north bank of the Clackamas River; thence north along the southerly extension of Ninety-second Street to the point of the Multnomah and Clackamas County line, such point being at the quarter-section corner of south side of section 21, township 1 south, range 2 east, Willamette Meridian; thence east along the Multnomah County line to its intersection with Foster Road; thence northwesterly along Foster Road to the intersection of Foster Road with Jenne Road; thence northeasterly and northerly along Jenne Road to its intersection with Section Line Road; thence east along Section Line Road to its intersection with Rockwood Road; thence north along Rockwood Road to the north side of Sandy Boulevard; thence west along the north side of Sandy Boulevard to the Government Island Road; thence north along the Government Island Road to the high-water flowline of the south bank of the south channel of the Columbia River; thence westerly along high-water flowline of the waters of the Columbia River to the easterly line of the Spokane, Portland and Seattle

railroad; thence south along the Spokane, Portland and Seattle railroad to the junction of the Oregon-Washington Railroad and Navigation Company right of way; thence south along the Oregon-Washington Railroad and Navigation Company right of way to the city boundaries of the City of Portland; thence westerly along the north line of the boundary of the City of Portland to the center of the channel of the Willamette River; thence in a northerly direction along the center line of the channel of the Willamette River to the point of beginning. [Amended by 1953 c.255 §2; 1973 c.723 §115]

501.550 [Repealed by 1955 c.77 §1]

501.560 [Repealed by 1955 c.77 §1]

501.570 [Repealed by 1955 c.77 §1]

501.580 [Repealed by 1955 c.77 §1]

501.590 [Repealed by 1955 c.77 §1]

501.600 [Repealed by 1955 c.77 §1]

501.610 [Repealed by 1955 c.77 §1]

501.620 [Repealed by 1973 c.723 §130]

501.630 [Repealed by 1973 c.723 §130]

501.640 [Repealed by 1955 c.77 §1]

501.650 [Repealed by 1955 c.77 §1]

501.660 [Repealed by 1955 c.77 §1]

501.670 [Repealed by 1955 c.77 §1]

501.680 [Repealed by 1955 c.77 §1]

501.690 [Repealed by 1953 c.81 §2]

501.810 [1959 c.275 §2; repealed by 1973 c.723 §130]

501.820 [1959 c.275 §3; repealed by 1973 c.723 §130]

501.830 [1959 c.275 §9; repealed by 1973 c.723 §130]

501.840 [1959 c.275 §4; repealed by 1973 c.723 §130]

501.850 [1959 c.275 §6; repealed by 1973 c.723 §130]

501.860 [1959 c.275 §5; repealed by 1973 c.723 §130]

501.870 [1959 c.275 §8; repealed by 1973 c.723 §130]

501.880 [1959 c.275 §7; repealed by 1973 c.723 §130]

501.890 [1959 c.275 §10; repealed by 1973 c.723 §130]

501.990 [Amended by 1967 c.523 §4; repealed by 1973 c.723 §130]

CHAPTERS 502 TO 505

[Reserved for expansion]

TITLE 42

COMMERCIAL FISHING AND FISHERIES

- Chapter 506. Application, Administration and Enforcement of Commercial Fishing Laws
507. Compacts with Other States
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Chapter 506

2015 EDITION

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GENERAL PROVISIONS

506.001 Contents of commercial fishing laws. All laws enacted for the protection, propagation and preservation of food fish or for the protection and development of commercial fisheries in this state, including but not limited to ORS chapters 506, 507, 508, 509, 511 and 513, may be cited as the commercial fishing laws. [1965 c.570 §2]

506.005 [Repealed by 1965 c.570 §152]

506.006 General definitions. As used in the commercial fishing laws, unless the context requires otherwise:

(1) "Angling" means fishing for personal use with one line attached to a pole held in hand while landing the fish, or with a hand-operated line without rod or reel, to which may be attached not to exceed three hooks, except on floating bass plugs.

(2) "Boat" means any vessel, any floating craft, powered, towed, rowed or otherwise propelled which is used for landing or taking food fish.

(3) "Buy" includes offer to buy, barter, exchange or trade.

(4) "Commercial purposes" means taking food fish with any gear unlawful for angling, or taking or possessing food fish in excess of the limits permitted for personal use, or taking, fishing for, handling, processing, or otherwise disposing of or dealing in food fish with the intent of disposing of such food fish or parts thereof for profit, or by sale, barter or trade, in commercial channels.

(5) "Commission" means the State Fish and Wildlife Commission created by ORS 496.090.

(6) "Department" means the State Department of Fish and Wildlife.

(7) "Director" means the State Fish and Wildlife Director appointed pursuant to ORS 496.112.

(8) "Fishing gear" means any appliance or device intended for or capable of being used to take food fish except by angling.

(9) "Fixed fishing gear" includes but is not limited to stationary gear operated at a fixed location.

(10) "Personal use" means taking or fishing for food fish by angling or by such other means and with such gear as the commission may authorize for fishing for personal use, or possessing the same for the use of the person fishing for, taking or possessing the same and not for sale or barter.

(11) "Sell" includes offer or possess for sale, barter, exchange or trade.

(12) "Take" means fish for, hunt, pursue, catch, capture or kill or attempt to fish for, hunt, pursue, catch, capture or kill.

(13) "Transport" means transport by any means, and includes offer or receive for transportation.

(14) "Waters of this state" means all waters over which the State of Oregon has jurisdiction, or joint or other jurisdiction with any other state or government, including waters of the Pacific Ocean and all bays, inlets, lakes, rivers and streams within or forming the boundaries of this state. [1965 c.570 §3; 1975 c.253 §13; 1995 c.602 §1; 2003 c.14 §337]

506.010 [Repealed by 1965 c.570 §152]

506.011 Types of marine life defined. As used in the commercial fishing laws, unless the context requires otherwise:

(1) "Anadromous fish" includes but is not limited to salmon, as defined in ORS 506.016; roccus saxatilis, commonly known as striped bass; alosa sapidissima, commonly known as shad; acipenser medirostris and acipenser transmontanus, commonly known as sturgeon; and thaleichthys pacificus, commonly known as smelt.

(2) "Animals living intertidally on the bottom" includes but is not limited to starfish, sea urchins, sea cucumbers, snails, bivalves, worms, coelenterates and shore, hermit and other small crabs not included within subsection (1) or (7) of this section.

(3) "Black rockfish" means sebastes melanops, commonly known as black rockfish.

(4) "Blue rockfish" means sebastes mystinus, commonly known as blue rockfish.

(5) "Food fish" means any animal over which the State Fish and Wildlife Commission has jurisdiction pursuant to ORS 506.036.

(6) "Nearshore fish" means:

(a) Enophrys bison, commonly known as buffalo sculpin;

(b) Hemilepidotus hemilepidotus, commonly known as red Irish lord;

(c) Hemilepidotus spinosus, commonly known as brown Irish lord;

(d) Scorpaenichthys marmoratus, commonly known as cabezon;

(e) Hexagrammos decagrammus, commonly known as kelp greenling;

(f) Hexagrammos lagocephalus, commonly known as rock greenling;

(g) Hexagrammos stelleri, commonly known as whitespotted greenling;

(h) Oxylebius pictus, commonly known as painted greenling;

(i) Sebastes atrovirens, commonly known as kelp rockfish;

(j) Sebastes auriculatus, commonly known as brown rockfish;

(k) *Sebastes carnatus*, commonly known as gopher rockfish;

(l) *Sebastes caurinus*, commonly known as copper rockfish;

(m) *Sebastes chrysomelas*, commonly known as black and yellow rockfish;

(n) *Sebastes dalli*, commonly known as calico rockfish;

(o) *Sebastes maliger*, commonly known as quillback rockfish;

(p) *Sebastes miniatus*, commonly known as vermilion rockfish;

(q) *Sebastes nebulosus*, commonly known as china rockfish;

(r) *Sebastes nigrocinctus*, commonly known as tiger rockfish;

(s) *Sebastes rastrelliger*, commonly known as grass rockfish;

(t) *Sebastes serranoides*, commonly known as olive rockfish; or

(u) *Sebastes serriceps*, commonly known as treefish.

(7) "Shellfish" includes but is not limited to abalone, clams, crabs, crayfish or crawfish, mussels, oysters, piddocks, scallops and shrimp. [1965 c.570 §4; 2003 c.809 §11]

506.015 [Repealed by 1965 c.570 §152]

506.016 "Salmon" defined. As used in the commercial fishing laws, "salmon" means all anadromous species of salmon, including but not limited to:

(1) *Oncorhynchus gorbuscha*, commonly known as humpback, humpies or pink salmon.

(2) *Oncorhynchus keta*, commonly known as chum or dog salmon.

(3) *Oncorhynchus kisutch*, commonly known as coho or silver salmon.

(4) *Oncorhynchus nerka*, commonly known as sockeye, red or blueback salmon.

(5) *Oncorhynchus tshawytscha*, commonly known as chinook salmon. [1965 c.570 §5; 1969 c.411 §1]

506.020 [Repealed by 1965 c.570 §152]

506.025 "Unlawful to buy" defined. Whenever the commercial fishing laws state that it is unlawful to buy any food fish, illegally taken, this prohibition means that it is unlawful to buy, knowing or having reasonable cause to believe that the fish have been illegally taken or transported within this state, or unlawfully imported or otherwise unlawfully brought into this state. [Amended by 1965 c.570 §6]

506.028 "Conservation" defined. As used in the commercial fishing laws, unless the context requires otherwise, "conservation" means providing for the utili-

zation and management of the food fish of Oregon to protect the ultimate supply for present and future generations, preventing waste and implementing a sound management program for sustained economic, recreational and aesthetic benefits. [1971 c.187 §5; 1973 c.271 §1]

506.030 [Repealed by 1965 c.570 §152]

506.031 Effect of wildlife laws on commercial fishing laws. (1) Nothing in the wildlife laws of this state affects the lawful operation of any fishing gear or the lawful taking of any food fish under the commercial fishing laws.

(2) The commercial fishing laws apply to food fish except as otherwise provided in ORS 506.045 and 506.050, and shall be enforced regardless of any conflicting provisions in the wildlife laws of this state. No act lawfully done under the commercial fishing laws is unlawful in the event that such act conflicts with any provision of the wildlife laws of this state. [1965 c.570 §7; 1975 c.545 §10; 1977 c.242 §2]

506.035 [Repealed by 1965 c.570 §152]

506.036 Jurisdiction of commission; duty to protect and propagate fish. (1) Except as otherwise provided in subsection (4) of this section and in ORS 506.045 and 506.050, the State Fish and Wildlife Commission has exclusive jurisdiction over all fish, shellfish, and all other animals living intertidally on the bottom, within the waters of this state. The commission has joint or other jurisdiction with any other state or government over all such fishes within the waters of the Columbia River and its tributaries where such waters form the boundaries of this state.

(2) The commission has jurisdiction over those species of fish, shellfish and all other animals living intertidally on the bottom referred to in subsection (1) of this section transported into or landed in this state which have been taken in waters outside this state.

(3) The duty of protection, preservation, propagation, cultivation, development and promotion of all fishes under its jurisdiction is delegated to and imposed upon the commission.

(4) The commission has no regulatory authority or jurisdiction over the commercial cultivation of oysters in the waters of this state. However, nothing in this subsection is intended to affect the authority of the commission under ORS 509.140. [1965 c.570 §8; 1975 c.253 §20; 1981 c.638 §13; 1983 c.364 §3]

506.040 [1965 c.570 §9; 1969 c.411 §2; 1973 c.723 §120; repealed by 1975 c.253 §40]

506.045 Fishing rights of treaty Indians not affected. There are excluded from the operation of ORS 506.129, 506.136, 507.030, 508.025, 508.285 and 509.025 (1), any Warm Springs, Umatilla, Yakima, Wasco, Tenino, Wyum and other Columbia River Indians affiliated with these tribes and entitled to enjoy fishing rights, who have not severed their tribal relations, in so far as it would conflict with any rights or privileges granted to such Indians under the terms of the treaties made by the United States with the Warm Springs Indians on June 25, 1855, and with the Umatilla and Yakima Indians on June 9, 1855. [Formerly 506.195; 1975 c.545 §11; 1977 c.242 §3; 2013 c.672 §2]

506.050 Federal and state fish cultural operations and scientific investigations; commission to propagate fish and to stock waters. (1) The United States Fish and Wildlife Service, the State Fish and Wildlife Commission and their duly authorized agents may conduct fish cultural operations and scientific investigations in the waters of this state in such manner and at such times as may be considered necessary and proper by the service, the commission or their agents.

(2) The commission shall propagate and stock the waters of this state with such fish as it considers proper. [1965 c.570 §11]

506.105 [Amended by 1973 c.271 §2; repealed by 1975 c.253 §40]

506.109 Food fish management policy. It is the policy of the State of Oregon that food fish shall be managed to provide the optimum economic, commercial, recreational and aesthetic benefits for present and future generations of the citizens of this state. In furtherance of this policy, the goals of food fish management are:

(1) To maintain all species of food fish at optimum levels in all suitable waters of the state and prevent the extinction of any indigenous species.

(2) To develop and manage the lands and waters of this state in a manner that will optimize the production, utilization and public enjoyment of food fish.

(3) To permit an optimum and equitable utilization of available food fish.

(4) To develop and maintain access to the lands and waters of the state and the food fish resources thereon.

(5) To regulate food fish populations and the utilization and public enjoyment of food fish in a manner that is compatible with other uses of the lands and waters of the state and provides optimum commercial and public recreational benefits.

(6) To preserve the economic contribution of the sports and commercial fishing

industries in a manner consistent with sound food fish management practices.

(7) To develop and implement a program for optimizing the return of Oregon food fish for Oregon's recreational and commercial fisheries. [1975 c.253 §15; 1985 c.529 §2]

506.110 [Repealed by 1965 c.570 §152]

506.111 [1965 c.570 §12; 1967 c.402 §5; 1969 c.314 §60; repealed by 1975 c.253 §40]

506.115 [Repealed by 1965 c.570 §152]

506.116 [1965 c.570 §13; repealed by 1975 c.253 §40]

506.119 General duties and powers of commission; rulemaking authority. (1) The State Fish and Wildlife Commission has the authority to formulate and implement the policies and programs of this state for the management of food fish, and may perform all acts necessary to administer and carry out the provisions of the commercial fishing laws.

(2) In accordance with any applicable provision of ORS chapter 183, the commission may promulgate rules to carry out the provisions of the commercial fishing laws. [1975 c.253 §17]

506.120 [Repealed by 1965 c.570 §152]

506.121 [1965 c.570 §14a; repealed by 1975 c.253 §40]

506.124 Hatchery practice rules; reports. The State Fish and Wildlife Commission shall adopt rules governing public and private salmon hatchery practices by July 1, 1984. The commission shall also submit quarterly reports to the Emergency Board on matters related to the adoption of rules and the impact of hatchery practices on the salmon resource. [1983 c.797 §8]

506.125 [Repealed by 1965 c.570 §152]

506.126 [1965 c.570 §15; repealed by 1975 c.253 §40]

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

(a) Prescribe the times, places and manner in which food fish may be taken or sold, except when canned or otherwise processed, and the amount of those food fish species that may be taken or sold.

(b) Prescribe such other restrictions or procedures regarding the taking, selling or possessing of food fish as the commission determines will carry out the provisions of the commercial fishing 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 food fish 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 taking and selling of any food fish species when the commission determines such action is necessary to protect the supply of such food fish.

(c) Prescribing regular and special time periods and areas open to the taking and selling of any food fish species, and prescribing means by which the taking of food fish is permitted. [1975 c.253 §16]

506.130 [Repealed by 1965 c.570 §152]

506.131 [1965 c.570 §14; repealed by 1975 c.253 §40]

506.135 [Repealed by 1965 c.570 §152]

506.136 Commission to study and classify food fish and fishing gear. The State Fish and Wildlife Commission shall:

(1) Investigate the habits, supply and economic uses of, and classify all food fish.

(2) Classify all fishing gear and such classification shall be final. [1965 c.570 §21]

506.140 [Repealed by 1965 c.570 §152]

506.141 [1965 c.570 §22; repealed by 1975 c.253 §40]

506.142 Authority of Fish Division. The Fish Division established pursuant to ORS 496.124 shall be responsible for the management of all fish and other marine life over which the State Fish and Wildlife Commission has regulatory jurisdiction. [1975 c.253 §18]

506.145 [Repealed by 1965 c.570 §152]

506.146 [1965 c.570 §23; repealed by 1975 c.253 §40]

506.150 [Repealed by 1965 c.570 §152]

506.151 [1965 c.570 §24; 1971 c.187 §1; repealed by 1975 c.253 §40]

506.153 [1963 c.259 §1; repealed by 1965 c.570 §152]

506.154 Duties of director. The State Fish and Wildlife Director shall:

(1) Be responsible to the State Fish and Wildlife Commission for the administration and enforcement of the commercial fishing laws.

(2) Be responsible for the collection, application and dissemination of information pertinent to the management of food fish resources and to the regulation of the uses of such resources. [1975 c.253 §19]

506.155 [Amended by 1961 c.275 §1; repealed by 1965 c.570 §152]

506.156 [1965 c.570 §25; repealed by 1971 c.187 §3]

506.160 [Repealed by 1965 c.570 §152]

506.161 [1965 c.570 §26; repealed by 1971 c.187 §3]

506.165 [Repealed by 1965 c.570 §152]

506.170 [Repealed by 1965 c.570 §152]

506.173 [1961 c.463 §1; repealed by 1965 c.570 §152]

506.175 [Repealed by 1965 c.570 §152]

506.180 [Repealed by 1965 c.570 §152]

506.185 [Repealed by 1965 c.570 §152]

506.190 [Repealed by 1965 c.570 §152]

506.192 [1957 c.461 §1; 1959 c.60 §1; repealed by 1965 c.570 §152]

506.195 [Amended by 1965 c.570 §10; renumbered 506.045]

506.200 [Repealed by 1965 c.570 §152]

506.201 Powers of commission in regard to real property. The State Fish and Wildlife Commission may:

(1) Acquire by purchase, lease, gift, agreement or donation, real property, or any right or interest therein, including any easement or right of access, necessary:

(a) To construct or maintain fish hatcheries, fishways or research facilities;

(b) To remove logjams; or

(c) Otherwise to carry out the duties imposed on the commission by law.

(2) Acquire by exercise of the power of eminent domain any easement or right of access necessary to construct or maintain fishways or remove logjams. Proceedings instituted by the commission under this subsection shall be conducted in accordance with ORS chapter 35.

(3) Lease, dispose of or grant easements upon any property owned by the state and used for the protection, propagation or preservation of food fish, which is found to be of no further use or value to the state. The commission shall turn over the proceeds arising from such disposition to the State Treasurer to be credited to the General Fund. [1965 c.570 §16; 1971 c.741 §34]

506.205 [Repealed by 1965 c.570 §152]

506.210 [Repealed by 1965 c.570 §152]

506.211 Acquisition of fish, eggs and larvae for certain purposes; returning salmon to Rogue River. (1) Subject to subsection (2) of this section, the State Fish and Wildlife Commission may acquire by gift or purchase, and may acquire by capture or otherwise in this state, any fish, eggs or larvae thereof for propagation, experimental or scientific purposes.

(2) The commission or any other person authorized by it who takes salmon eggs from the waters of the Rogue River for the purpose of supplying the various hatcheries of this state, shall return at least 40 percent of the fish hatched from the eggs to the Rogue River. [1965 c.570 §28]

506.213 Coho and chinook salmon hatchery on Oregon coast. (1) The State Fish and Wildlife Commission shall cause to be commenced and shall supervise the construction of a fish hatchery on the Oregon coast for the purpose of rearing coho and chinook salmon. The location for the site of the hatchery shall be at the discretion of the commission. Selection of the site shall be based upon the most recent research data available to the commission.

(2) The hatchery constructed pursuant to subsection (1) of this section shall be maintained and operated by the commission. [1967 c.360 §§1,4]

506.215 Maintaining hatcheries in adjoining states. The State Fish and Wildlife Commission may construct, maintain or operate hatcheries in an adjoining state, but no hatchery shall be constructed or operated on any stream in an adjoining state that is not a tributary of the Columbia River, or whose waters do not flow into the Columbia River.

506.220 Erecting markers of closed waters; interference with markers. Whenever deadlines are established on any of the waters of this state, either by legislative enactment or by order of the State Fish and Wildlife Commission, the commission shall, within a reasonable time, erect suitable monuments or markers in the water or on the banks of the water designating the closed portion of the water. It is unlawful to remove, destroy, alter or mutilate any of these monuments or markers. [Amended by 1965 c.570 §27]

506.225 [Repealed by 1965 c.570 §152]

506.226 Use of electric shock to take adult salmonids for private hatchery permittees prohibited. Notwithstanding any other provision of law the State Department of Fish and Wildlife shall not use in any body of water any electric current or electric shock device for the purpose of capturing any adult salmonids for a person granted a permit pursuant to ORS 508.700 to 508.745. [1981 c.646 §2]

506.230 [Repealed by 1965 c.570 §152]

506.231 Public report of fish hatchery activities. The State Department of Fish and Wildlife shall prepare and make available to the public upon request monthly reports of fish hatchery operations. Information in the report shall include, but is not limited to:

(1) The location of each state facility at which salmon eggs were taken and the number of eggs taken.

(2) The number and destination of salmon eggs transferred from one state facility to another.

(3) The number of salmon eggs to be reared at each state facility.

(4) The number of salmon eggs sold from each state facility to any person granted a permit pursuant to ORS 508.700 to 508.745.

(5) The number of salmon eggs from state facilities allocated for volunteer salmonid improvement program activities.

(6) The location and circumstances of each mortality incident involving 10,000 or more salmon eggs at a state facility. [1981 c.646 §3]

506.235 [1957 c.141 §1; renumbered 506.321]

506.236 [1981 c.646 §4; repealed by 1987 c.323 §6]

506.241 Commercial fishing vessel fleet reduction program; rules. The State Fish and Wildlife Commission, by rule, may prescribe a commercial fishing vessel fleet reduction program that complies with the federal Salmon and Steelhead Conservation and Enhancement Act of 1980. [1981 c.365 §38]

506.255 [1965 c.570 §17; repealed by 1975 c.253 §40]

506.260 [1965 c.570 §18; 1969 c.234 §1; 1973 c.271 §3; repealed by 1975 c.253 §40]

506.265 [1965 c.570 §19; repealed by 1975 c.253 §40]

506.270 [1965 c.570 §20; repealed by 1975 c.253 §40]

506.305 [Repealed by 1965 c.570 §152]

COMMERCIAL FISH MONEYS; RECEIPTS AND EXPENDITURES

506.306 Collecting moneys under commercial fishing laws; deposit into Commercial Fisheries Fund. The State Fish and Wildlife Commission shall collect all moneys to be paid to this state for the protection, preservation, propagation and development of the commercial fishing industry and arising under the commercial fishing laws and deposit such moneys in the Commercial Fisheries Fund. [1965 c.570 §29; 1987 c.905 §26; 1991 c.701 §23; 1997 c.545 §1; 2011 c.597 §139]

506.310 [Repealed by 1965 c.570 §152]

506.315 [Repealed by 1965 c.570 §152]

506.316 Payment of commission expenditures. Except as otherwise provided in ORS 506.321, all expenditures of the State Fish and Wildlife Commission pursuant to the commercial fishing laws shall be made from moneys appropriated for the purposes for which such moneys are used, upon claims presented and warrants drawn pursuant to law. [1965 c.570 §30; 1967 c.454 §108]

506.320 [Repealed by 1965 c.570 §152]

506.321 Acceptance and use of gifts of money and property to commission. The State Fish and Wildlife Commission may accept gifts of money, lands or other property and use the same for the protection, preservation, propagation and development of the fishery resource, subject to the terms of the gift. Subject to such terms the gifts may be used or exchanged for the acquisition of other lands, waters, rights, easements or other property. Any moneys received under this section not otherwise appropriated hereby are appropriated for such purposes. [Formerly 506.235]

506.325 [Repealed by 1965 c.570 §152]

506.330 [Repealed by 1965 c.570 §152]

506.331 [1965 c.570 §32; repealed by 1979 c.461 §8]

506.335 [Repealed by 1965 c.570 §152]

506.340 [Amended by 1953 c.83 §2; repealed by 1965 c.570 §152]

506.341 [1965 c.570 §31; 1967 c.322 §1; repealed by 1975 c.130 §2 and 1975 c.253 §40]

506.345 [Formerly part of 496.345; 1971 c.446 §9; repealed by 1973 c.723 §130]

FEDERAL AID AND PROJECTS

506.405 Powers of commission regarding federal aid for fish and fisheries. The State Fish and Wildlife Commission may:

(1) Enter into such contracts, appoint such officers and do any other act or thing necessary fully to meet the requirements of the United States and the officers acting under federal statute in aid of the conservation and preservation of fish and fisheries in this state or concerning any federal project wherein the conservation and preservation of such fish and fisheries are involved.

(2) Accept contributions of funds from the federal government for such purposes.

506.410 [Amended by 1975 c.545 §12; repealed by 1979 c.461 §8]

506.415 [Amended by 1959 c.347 §1; 1967 c.322 §3; 1975 c.545 §13; repealed by 1979 c.461 §8]

506.420 [Repealed by 1965 c.570 §152]

506.430 [1963 c.635 §5; repealed by 1967 c.322 §4]

DEVELOPMENTAL FISHERY

506.450 Definitions for ORS 506.450 to 506.465; rules. As used in ORS 506.450 to 506.465, "developmental fishery" means activity for the development of commercial taking of an underutilized food fish species. The State Fish and Wildlife Commission by rule shall determine those species of food fish that are underutilized. [1993 c.765 §115]

506.455 Policy. It is the policy of the State of Oregon to institute a management system for developmental fishery resources that addresses both long term commercial and biological values and that protects the long term sustainability of those resources through planned commercial development when appropriate. [1993 c.765 §116]

506.460 Developmental fishery species harvest programs; biological surveys; permits; fees. In consultation with the Developmental Fisheries Board, the State Fish and Wildlife Commission shall:

(1) Establish an annual list of food fish species that are considered to be developmental fishery species.

(2) Establish and review commercial harvest programs for developmental fishery species.

(3) Establish methods to obtain biological information necessary to determine the long term sustainability of the resource.

(4) Establish limited entry harvest systems for developmental fisheries. An annual fee of not more than \$100 to participate in a

developmental fishery may be charged by the commission.

(5) Issue permits for developmental fisheries within 14 days of receiving a written request for a permit. [1993 c.765 §118]

506.462 Review of denial of applications; removal of fishery from developmental fisheries list; fees; rules. (1) A person whose application for a developmental fisheries permit or a restricted permit established under subsection (6) of this section, or for the renewal or transfer of a developmental fisheries permit or restricted permit, is denied may make written request to the Commercial Fishery Permit Board for review of the denial. The review provided in this subsection is in lieu of any review by the State Department of Fish and Wildlife or the State Fish and Wildlife Commission. The request shall be in such form and shall contain such information as the board considers appropriate. The request shall be accompanied by a nonrefundable fee of \$125. The fee shall apply toward any applicable permit fees resulting from an order of the board in favor of the requesting applicant.

(2) The board shall review a denial as a contested case under ORS chapter 183. Orders issued by the board are not subject to review by the commission, but may be appealed as provided in ORS 183.482.

(3) The board may waive requirements for renewal of a developmental fisheries permit or a restricted permit established under subsection (6) of this section if the board finds that an individual applicant fails to meet the requirements as the result of illness, accident or other circumstances beyond the individual's control.

(4) The board may delegate to the department the board's authority to waive requirements for renewal of developmental fisheries permits or restricted permits established under subsection (6) of this section.

(5) The board may adopt such rules as it determines necessary to carry out its duties, functions and powers under this section.

(6) Once the commission determines that a commercial harvest of a developmental fishery can be sustained, it may remove that fishery from the developmental fisheries list, and may, by rule, establish a restricted participation system or a restricted vessel permit system for that fishery. These restricted permit systems may include, but are not limited to, provisions relating to the following matters:

(a) Establishment of criteria for initial entry into the restricted permit system and criteria for annual qualification for continued participation in the system; and

(b) Establishment of terms and conditions for transferring participation rights. [2007 c.95 §2; 2009 c.832 §18]

506.465 Developmental Fisheries Board; members; qualifications; expenses.

(1) The Developmental Fisheries Board is established in the State Department of Fish and Wildlife. The board shall consist of members appointed by the State Fish and Wildlife Commission after consultation with commercial fishing industry representatives to insure representation on the board of a broad range of fishing interests.

(2) The commission shall appoint:

(a) Two members who are commercial fishermen licensed in this state and who are the operators of commercial fishing vessels that are less than 60 feet in length.

(b) Two members who are commercial fishermen licensed in this state and who are the operators of commercial fishing vessels that are 60 feet or more in length.

(c) One member who represents commercial fishing interests in general.

(d) One member who is employed by a fish processor having fewer than 50 employees.

(e) One member who is employed by a fish processor having 50 or more employees.

(f) One member who is an employee of the State Department of Fish and Wildlife.

(g) One member who is an employee of the State Department of Agriculture.

(3) A member of the board shall receive no compensation for services as a member. However, subject to any applicable law regulating travel and other expenses of state officers and employees, a member shall be reimbursed for actual and necessary travel and other expenses incurred in the performance of duties as a board member. The board shall meet at least once each year. [1993 c.765 §117]

**COMMERCIAL FISHING LAW
ENFORCEMENT**

(General Provisions)

506.501 Jurisdiction and authority to enforce commercial fishing laws. The State Fish and Wildlife Commission has jurisdiction and authority to enforce the commercial fishing laws, except as provided in ORS 506.506 to 506.516. [1965 c.570 §34]

506.505 [Repealed by 1965 c.570 §152]

506.506 Intent of ORS 506.511 and 506.516. It is the intent of ORS 506.511 and 506.516 to permit the State Fish and Wildlife Commission to employ only such deputy fish wardens as are agreed necessary or expedient among the commission, the Governor and

the Superintendent of State Police, and that the duties of enforcing criminal provisions of the commercial fishing laws, so far as is economical and practicable, be performed by the Department of State Police. [1965 c.570 §35]

506.510 [Repealed by 1965 c.570 §152]

506.511 State police to enforce commercial fishing laws; appointment of federal agents. (1) The Department of State Police shall employ a sufficient number of state police to perform the duties required in the enforcement of criminal provisions of the commercial fishing laws.

(2) The Superintendent of State Police may appoint special enforcement officers authorized to enforce the commercial fishing laws. Individuals so appointed must be special agents of the United States Fish and Wildlife Service or the National Marine Fisheries Service, and shall serve at the pleasure of the superintendent without additional compensation. Each such special enforcement officer shall have all powers and authority of a peace officer of this state in serving warrants, subpoenas and other legal process in enforcement of the commercial fishing laws. [1965 c.570 §36; 1983 c.364 §5; 2003 c.14 §338]

506.515 [Repealed by 1965 c.570 §152]

506.516 Employment of deputy fish wardens by commission. The State Fish and Wildlife Commission, with the approval of the Governor and the Superintendent of State Police, may employ deputy fish wardens to the extent necessary or expedient. [1965 c.570 §37]

506.518 Appointment of special deputy fish wardens. The State Fish and Wildlife Commission may appoint special deputy fish wardens who shall serve without compensation except for what the commission may allow for special services. [Amended by 1965 c.570 §38]

506.520 [Repealed by 1965 c.570 §152]

506.521 Enforcement of commercial fishing laws; officers subject to direction and control of commission or director. Each member of the State Fish and Wildlife Commission, the State Fish and Wildlife Director and every inspector, deputy fish warden, special deputy fish warden, and all peace officers of this state or any political subdivision therein, including police officers commissioned by a university under ORS 352.121 or 353.125, shall enforce the commercial fishing laws within their respective jurisdictions. In the performance of these duties such officers are subject to the direction and control of the commission or director. [1965 c.570 §39; 2001 c.104 §224; 2011 c.506 §43; 2013 c.180 §47]

506.525 [Repealed by 1965 c.570 §152]

506.526 Peace officer powers of director, inspectors and deputies; reporting arrests. (1) The State Fish and Wildlife Director or any inspector, deputy fish warden or special deputy fish warden may arrest any person the officer has probable cause to believe is in the act of committing a violation of the commercial fishing laws. Such officers are peace officers of the state for this purpose and may execute all criminal process issued for the arrest or detention of any person complained against for violation of the commercial fishing laws. It is unlawful knowingly or willfully to resist or oppose such officers in the discharge of their duties.

(2) Any officer described in subsection (1) of this section who makes an arrest must report it, together with the disposition of the case, to the director within 30 days after the date of the arrest. Failure so to report subjects the officer to removal from office by the authority that appointed the officer.

(3) The officers described in subsection (1) of this section have all the powers and authority of a peace officer in serving warrants, subpoenas and other legal process in the enforcement of the commercial fishing laws. [1965 c.570 §40; 1973 c.836 §356]

506.530 [Repealed by 1965 c.570 §152]

506.531 Arrests, searches and seizures made on Sunday. The arrests, searches and seizures provided for in the commercial fishing laws may be made on Sunday. In this event the persons arrested shall be taken before any justice of the peace or judge having jurisdiction, who shall bind over the persons arrested to appear and be proceeded against as soon as may be on a week day following the arrest. [1965 c.570 §41]

506.535 Jurisdiction of courts over commercial fishing law violations; commencement of prosecutions. (1) Unless otherwise specifically provided, justice courts have concurrent jurisdiction in the first instance with circuit courts of all offenses under the commercial fishing laws.

(2) Any action or proceedings under the commercial fishing laws shall be commenced on order of the State Fish and Wildlife Commission or a person duly authorized to enforce such laws, or by any district attorney, in the county in which the offense is alleged to have been committed. [Amended by 1965 c.570 §43]

506.540 Payment of rewards. The State Fish and Wildlife Commission may offer and authorize payment of rewards for the arrest and conviction of any person who has violated any of the commercial fishing laws, but no reward of more than \$100 shall be offered

or paid for any one arrest or conviction. [Amended by 1965 c.570 §48]

506.545 [Repealed by 1965 c.570 §152]

506.550 Search by peace officers to enforce commercial fishing laws. The officers mentioned in ORS 506.521 may search and examine all places where food fish may be kept, sold or secreted and examine all packages, boxes and bundles held either for storage or shipment which they have reason to believe contain evidence of violation of the commercial fishing laws. [Amended by 1965 c.570 §50]

506.555 Issuance of search warrants. Any court having jurisdiction of any offense against the commercial fishing laws, upon receiving proof or probable cause for believing in the concealment of any food fish taken or possessed contrary to law, shall issue a search warrant and cause a search to be made in any place, and to that end cause any place where concealment may be effected, to be opened and the contents examined by any officer charged with the enforcement of the commercial fishing laws. [Amended by 1965 c.570 §51]

506.560 Nonliability of peace officers enforcing commercial fishing laws. The officers described in ORS 506.521 shall not suffer civil or criminal liability for any arrest, seizure or search as provided under the commercial fishing laws. [Amended by 1965 c.570 §52]

506.565 [Repealed by 1965 c.570 §152]

506.570 [Repealed by 1965 c.570 §152]

506.575 [Amended by 1965 c.570 §54a; renumbered 506.655]

506.580 [Amended by 1965 c.570 §54b; renumbered 506.660]

506.585 [Amended by 1953 c.636 §2; 1965 c.570 §54c; renumbered 506.665]

506.590 [Amended by 1965 c.570 §54d; renumbered 506.670]

506.595 [Renumbered 506.675]

506.600 [Renumbered 506.680]

506.602 [1957 c.298 §1; 1965 c.570 §53; renumbered 506.690]

506.603 [1957 c.298 §2; 1965 c.570 §54; renumbered 506.695]

506.605 Naming place of offense in complaint, information or indictment. In any criminal prosecution under the commercial fishing laws, it is not necessary in the complaint, information or indictment to name the particular waters of the state if they are unknown to the person signing or filing the complaint or information or to the grand jury returning the indictment. It is sufficient if it is stated in such cases in the complaint, information or indictment that the particular waters of the state are to such person, or to the grand jury, unknown. [Amended by 1965 c.570 §44]

506.610 When possession prima facie evidence of taking fish unlawfully. (1) The possession or custody of food fish on, near, adjacent to or in the vicinity of any waters of this state, during the closed season on such waters, is prima facie evidence that such fish were unlawfully taken during the closed season on such waters.

(2) In all cases where such possession or custody by accused persons on, near, adjacent to or in the vicinity of any of such closed waters is proven, the burden of proof is shifted to the persons found having such possession or custody, to establish that the fish were lawfully taken during an open season and from waters from which it was at such time lawful to take such fish. [Amended by 1965 c.570 §45]

506.615 [Repealed by 1965 c.570 §152]

506.620 Inspections by director or agent. The State Fish and Wildlife Director or authorized agent may enter and inspect all canneries, cold storage houses, packing establishments, business places, boats, fishing gear, and all property used in the taking, processing and packing of food fish, for the purpose of enforcing the commercial fishing laws. [Amended by 1965 c.570 §49]

506.625 Compelling testimony in commercial fishing law enforcement proceedings. In any action or proceeding for the enforcement of any of the provisions of the commercial fishing laws, or in any investigation before a grand jury, district attorney or other officer, or any criminal proceeding, no person shall be excused from testifying concerning any offense committed by another or by the person on the ground that the testimony of the person may incriminate the person. However, such testimony shall not be used against the person in any prosecution for any crime or misdemeanor under the laws of the state, nor shall the person be subjected to any criminal prosecution or any penalty or forfeiture for or on account of any transaction, matter or thing concerning which the person has been compelled to testify or to produce evidence, documentary or otherwise. [Amended by 1965 c.570 §46]

506.630 [Amended by 1961 c.346 §1; 1965 c.570 §47; 1971 c.186 §6; 1981 s.s. c.116 §3; 1983 c.763 §51; 1987 c.905 §27; repealed by 2011 c.597 §118]

506.635 Execution for payment of fines and costs. Any fishing gear used in violation of the commercial fishing laws, including boats or vehicles of any kind and other appliances, is subject to execution for the payment of fines and costs provided for in the commercial fishing laws. [1965 c.570 §55]

506.655 [Formerly 506.575; repealed by 1993 c.699 §30]

506.660 [Formerly 506.580; repealed by 1993 c.699 §30]

506.665 [Formerly 506.585; 1977 c.272 §1; repealed by 1993 c.699 §30]

506.670 [Formerly 506.590; 1977 c.340 §1; 1977 c.652 §1; repealed by 1993 c.699 §30]

506.675 [Formerly 506.595; 1977 c.652 §2; repealed by 1993 c.699 §30]

506.680 [Formerly 506.600; 1977 c.652 §3; repealed by 1993 c.699 §30]

(Seizure and Disposition of Unlawful Equipment and Fish Unlawfully Taken)

506.690 Seizure, forfeiture and disposition of fish unlawfully taken. (1) All fish taken by or in the possession of any person in violation of the commercial fishing laws or the rules of the State Fish and Wildlife Commission shall be seized by any member of the commission or any officer described in ORS 506.521.

(2) Any fish seized under the provisions of subsection (1) of this section may be disposed of, sold, preserved or used for food purposes, under the rules of the commission, to prevent loss or spoilage. At the time the court passes sentence in the criminal prosecution for violation of the commercial fishing laws, the court may order that any fish seized under subsection (1) of this section or the proceeds from the sale of such fish shall be forfeited. Any moneys derived from the sale of any forfeited fish shall be deposited in the Commercial Fisheries Fund.

(3) If the fish seized under subsection (1) of this section are not subsequently forfeited, the commission shall pay to the person from whom the fish were seized an amount equal to the market value of the fish at the time of seizure.

(4) The commission shall approve the amount to be paid under subsection (3) of this section, and the claim shall be paid from the Commercial Fisheries Fund in the manner provided by law for the payment of claims against the state. There is appropriated continuously from the Commercial Fisheries Fund an amount equal to the amounts approved by the commission under this subsection. [Formerly 506.602; 1975 c.253 §27; 1977 c.652 §4; 1999 c.1013 §1; 1999 c.1051 §275]

506.695 Seizure, forfeiture and disposition of fishing gear and vehicles used unlawfully; removal of unlawful piling. (1) All boats, fishing gear and vehicles used in violation of the commercial fishing laws or the rules of the State Fish and Wildlife Commission may be seized, and piling driven for the sole or primary purposes of violation of such laws may be removed, by any member of the commission or any officer described in ORS 506.521. The agency that seizes property under this subsection shall

retain custody of the seized property until it is ordered returned to the owner or confiscation is adjudged pursuant to this section.

(2) Upon the order of the court at the time of passing sentence for a crime, the property seized under subsection (1) of this section may be forfeited. If forfeited, such property shall be turned over to the commission.

(3) The commission may dispose of such forfeited property in any manner it deems proper, but the clear proceeds derived from the sale of any forfeited property shall be deposited with the State Treasury to be placed in the Common School Fund. [Formerly 506.603; 1977 c.652 §5; 1987 c.858 §7; 1993 c.699 §26; 2009 c.835 §10]

506.700 Return of seized property; undertaking; effect of judgment ordering forfeiture or confiscation. (1) At any time after the seizure mentioned in ORS 506.695, but before the entry of judgment pursuant to ORS 506.695, the owner of the seized property may require the return thereof upon giving to the agency that seized the property a written undertaking, executed by sufficient surety, to be approved by the court described in ORS 506.695, to the effect that such surety is bound in double the value of the property as determined by the court, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to the plaintiff of such sum as may, for any cause, be recovered against the owner. The owner shall file such written undertaking with the clerk of the court for the county in which the seizure occurred and shall serve a true copy thereof upon the district attorney for the same county.

(2) If confiscation or forfeiture of such property is required by a judgment of the court under ORS 506.695, the owner shall return the property to the plaintiff. If the owner fails to return the property, any officer described under ORS 506.521 may maintain an action upon such undertaking, and the clear proceeds shall be deposited with the State Treasury in the Common School Fund. [1977 c.652 §7; 1987 c.858 §8; 1993 c.699 §27; 2009 c.835 §11]

(Damages for Unlawful Taking)

506.720 Suit for damages; amount; rules; application for or obtaining license when money due prohibited. (1) The State Fish and Wildlife Commission may institute suit for the recovery of damages for the unlawful taking, possession or killing of food fish referred to in this section that are the property of the state.

(2) The damages referred to in subsection (1) of this section shall be as follows:

(a) For food fish other than pink shrimp, salmon or steelhead, twice the average market value of the food fish.

(b) For salmon or steelhead taken in waters other than the waters of the Pacific Ocean, \$125 per fish.

(c) For salmon or steelhead taken in the waters of the Pacific Ocean:

(A) For the first violation, twice the average market value of the food fish.

(B) For the second and each subsequent violation within a five-year period, \$125 per fish.

(d) For pink shrimp:

(A) For the first violation, five percent of the average market value of the food fish.

(B) For the second violation within a five-year period, 10 percent of the average market value of the food fish.

(C) For the third and each subsequent violation within a five-year period, 20 percent of the average market value of the food fish.

(3) The commission shall by rule in January of each year establish the average market value for each species of food fish for the year.

(4) No person shall apply for or obtain any license, tag or permit issued by the commission when civil damages due pursuant to this section, or when moneys due the State Department of Fish and Wildlife from court-ordered restitutions for violations of the commercial fishing laws have not been paid. [1987 c.213 §2]

FISHERIES CONSERVATION ZONE

506.750 Policy for ORS 506.755. The Legislative Assembly finds and declares that:

(1) The preservation of complex interrelationships of marine environment within the continental shelf of the Pacific Ocean off the coast of the State of Oregon is necessary to conserve coastal species of fish and to guarantee the well-being of the economy and welfare of the state and its people.

(2) The uncontrolled use of the marine commercial fisheries to harvest coastal species of fish and other marine fisheries resources by foreign nationals is of public concern and constitutes an immediate threat to the marine environment and its ultimate survival.

(3) The State of Oregon has a special interest in the maintenance of the productivity of the living resources in the area of the high seas adjacent to its territorial sea. [1974 c.3 §1]

Note: 506.750 and 506.755 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 506 or any series therein by leg-

islative action. See Preface to Oregon Revised Statutes for further explanation.

506.755 Fisheries Conservation Zone; rules; jurisdiction over zone; penalty; construction. (1) The State of Oregon adopts a Fisheries Conservation Zone for the maintenance, preservation and protection of all coastal species of fish and other marine fisheries resources between the mean high water mark of the state and a straight line extension of the lateral boundaries of the state drawn seaward to a distance of 50 statute miles.

(2) Activities of marine commercial fishing within the limits and boundaries of the Fisheries Conservation Zone shall be under the jurisdiction and regulation of the commission.

(3) The commission shall study the fishery within the zone and when appropriate adopt, amend or repeal all rules, according to the provisions of ORS 506.119 and 506.129 necessary for the maintenance, preservation and protection of all coastal species of fish and other marine fisheries resources.

(4) The jurisdiction within the Fisheries Conservation Zone shall include, but not be limited to, provisions for inspection of catch, particularly regarding anadromous fish; rules relating to methods of fishing, size and kind of gear and nets; rules designating seasons, closures and restricted areas.

(5) ORS 506.501 to 506.695 shall provide the authority for enforcing rules adopted by the commission as specified in this section.

(6) Subject to ORS 153.022, any person convicted of violating any rule authorized under the provisions of this section shall be punished by a fine not to exceed \$10,000.

(7) Nothing contained within this section is intended to abrogate a nation's right of free passage or navigation of the high seas.

(8) Nothing contained within this section is intended to abrogate international fish compacts, agreements or treaties providing for the management of anadromous or pelagic fish species. [1974 c.3 §2; 1983 c.740 §204; 1999 c.1051 §313]

Note: See note under 506.750.

FISH MARKETING

506.800 Names for marketing certain fish and shellfish. In order to obtain uniform names to be used for the marketing of fish:

(1) The common names Pacific red snapper, Pacific snapper, Oregon red snapper, Oregon snapper, red snapper and snapper may be used as alternate names for the purpose of marketing the following fish:

(a) Widow rockfish (*Sebastes entomelas*).

(b) Yellowtail rockfish (*Sebastes flavidus*).

(c) Chilipepper (*Sebastes goodei*).

(d) Cowcod (*Sebastes levis*).

(e) Black rockfish (*Sebastes melanops*).

(f) Vermillion rockfish (*Sebastes miniatus*).

(g) Speckled rockfish (*Sebastes ovalis*).

(h) Bocaccio (*Sebastes paucispinnis*).

(i) Canary rockfish (*Sebastes pinniger*).

(j) Yelloweye rockfish (*Sebastes ruberrimus*).

(k) Bank rockfish (*Sebastes rufus*).

(L) Olive rockfish (*Sebastes serranoides*).

(2) The common names butterflyfish and black cod may be used as alternate names for purposes of marketing sablefish (*Anoplopoma fimbria*).

(3) The common names Pacific ocean shrimp, Pacific shrimp, pink shrimp and Oregon shrimp may be used as alternate names for the purpose of marketing *Pandalus jordani* (shrimp). [1979 c.457 §2]

MISCELLANEOUS

506.895 Person aiding in commercial fishing law violation punishable as principal. Any person who counsels, aids or assists in any violation of the commercial fishing laws shall incur the penalties provided for the person guilty of such violation. [1981 c.365 §18]

506.990 [Repealed by 1965 c.570 §152]

PENALTIES

506.991 Criminal penalties. (1) Except as otherwise provided by this section or other law, violation of any provision of the commercial fishing laws, or of any rule adopted by the State Fish and Wildlife Commission in carrying out the commercial fishing laws, is a Class A misdemeanor if the offense is committed with a culpable mental state.

(2) Except as otherwise provided by this section or other law, violation of any provision of the commercial fishing laws, or of any rule adopted by the State Fish and Wildlife Commission in carrying out the commercial fishing laws, is a Class A violation if the offense is committed without a culpable mental state.

(3) In lieu of the fine provided in ORS 161.635, and in addition to the imprisonment provided in ORS 161.615, any violation of subsection (1) of this section is punishable as follows:

(a) For the first conviction, a fine not to exceed \$2,500.

(b) For the second conviction within a 10-year period, a fine not to exceed \$4,000.

(c) For the third conviction within a 10-year period, a fine not to exceed \$10,000.

(d) For the fourth and subsequent convictions within a 10-year period, a fine not to exceed \$25,000.

(4) Violation of any provision of ORS 509.011 that occurs more than 12 hours prior to or more than 12 hours subsequent to a season established under ORS 506.129 by the commission for the lawful taking of food fish when the total value of the food fish is \$200 or more is a Class C felony.

(5) In addition to the penalties of this section and notwithstanding the provisions of ORS 506.690, all fish or sexual products therefrom taken by or in the possession of any person sentenced under this section shall be seized and confiscated, condemned, and sold.

(6) As used in this section, "culpable mental state" has the meaning given that

term in ORS 161.085. [1965 c.570 §56; 1975 c.517 §1; 1977 c.242 §4; 1977 c.353 §2; 1983 c.364 §2; 1993 c.699 §28; 1999 c.1051 §314; 2013 c.164 §7]

506.995 Civil penalties. (1) As used in this section, "gain" means the amount of money and the value of any property derived from the violation.

(2) In addition to any other sanction imposed by law, if a person derives a gain of at least \$5,000 from violating any commercial fishing law or rule promulgated pursuant to such laws, the person shall be subject to a civil penalty that is equal to twice the amount of the gain.

(3) Civil penalties under this section shall be imposed pursuant to ORS 183.745.

(4) Any civil penalty received by the State Department of Fish and Wildlife under this section shall be deposited in the Commercial Fisheries Fund. [1999 c.672 §2]

Chapter 507

2015 EDITION

Compacts with Other States

507.010	Oregon-Washington Columbia River fish compact	507.030	Modification of Oregon-Washington Columbia River fish compact; hearing
507.020	Oregon-Washington concurrent jurisdiction waters	507.040	Pacific States Marine Fisheries Compact
		507.050	Representation on Pacific States Marine Fisheries Commission

COMMERCIAL FISHING AND FISHERIES

507.010 Oregon-Washington Columbia River fish compact. Congress, by virtue of the authority vested in it under section 10, Article I, United States Constitution, providing for compacts and agreements between states, having ratified the recommendations of the conference committees of the States of Oregon and Washington, appointed to agree on legislation necessary for the regulation, preservation and protection of fish in the waters of the Columbia River, over which said states have concurrent jurisdiction, and other waters within either state which would be affected by such concurrent interest, recommendations being as follows: "We further recommend that a resolution be passed by the legislatures of Washington and Oregon, whereby the ratification by Congress of the laws of the States of Oregon and Washington shall act as a treaty between said states, subject to modification only by joint agreement by said states;" and the recommendation having been approved by resolution adopting the report of the conference committee, there exists between the States of Oregon and Washington a definite compact and agreement, the purport of which is substantially as follows: All laws and regulations now existing, or which may be necessary for regulating, protecting or preserving fish in the waters of the Columbia River, over which the States of Oregon and Washington have concurrent jurisdiction, or any other waters within either of said states, which would affect the concurrent jurisdiction, shall be made, changed, altered and amended in whole or in part, only with the mutual consent and approbation of both states.

507.020 Oregon-Washington concurrent jurisdiction waters. The waters over which the States of Oregon and Washington are deemed to have concurrent jurisdiction comprise the waters of the Columbia River and its tributaries, within the confines of the States of Oregon and Washington, where such waters are state boundaries.

507.030 Modification of Oregon-Washington Columbia River fish compact; hearing. (1) The State Fish and Wildlife Commission, on behalf of the State of Oregon, may enter into an agreement with the constituted authority of the State of Washington, to modify the existing agreement with respect to fishing in the waters of the Columbia River and its tributaries, within the confines of the States of Oregon and Washington, where such waters are state boundaries between the States of Oregon and Washington, as approved by the United States Congress on April 8, 1918.

(2) The commission, in entering into any agreement with the constituted authority of

the State of Washington, as provided in subsection (1) of this section, may hold a hearing jointly with such constituted authority of the State of Washington within the State of Washington. However, any such joint meeting scheduled in either state shall be held not more than 25 miles from an area of the Columbia River where commercial fishing is permitted. [Amended by 1959 c.321 §1; 1965 c.570 §150; 1971 c.187 §2; 1975 c.545 §14; 1987 c.244 §1]

507.040 Pacific States Marine Fisheries Compact. A compact, in form as in this section fully set forth, shall be in effect when one or both of the States of California and Washington become parties thereto, and the consent of Congress has been granted as required by section 10, Article I, of the Constitution of the United States.

The contracting states do hereby agree as follows:

ARTICLE I

The purposes of this compact are and shall be to promote the better utilization of fisheries, marine, shell and anadromous, which are of mutual concern, and to develop a joint program of protection and prevention of physical waste of such fisheries in all of those areas of the Pacific Ocean and adjacent waters over which the compacting states jointly or separately now have or may hereafter acquire jurisdiction.

Nothing herein contained shall be construed so as to authorize the compacting states or any of them to limit the production of fish or fish products for the purpose of establishing or fixing the prices thereof or creating and perpetuating a monopoly.

ARTICLE II

This agreement shall become operative immediately as to those states executing it in the form that is in accordance with the laws of the executing states and the Congress has given its consent.

ARTICLE III

Each state joining herein shall appoint, as determined by state statutes, one or more representatives to a commission hereby constituted and designated as the Pacific States Marine Fisheries Commission, of whom one shall be the administrative or other officer of the agency of such state charged with the conservation of the fisheries resources to which this compact pertains. This commission shall be invested with the powers and duties set forth herein.

The term of each commissioner of the Pacific States Marine Fisheries Commission shall be four years. A commissioner shall hold office until a successor shall be ap-

pointed and qualified but such successor's term shall expire four years from legal date of expiration of the term of the predecessor. Vacancies occurring in the office of such commissioner from any reason or cause shall be filled for the unexpired term, or a commissioner may be removed from office, as provided by the statutes of the state concerned. Each commissioner may delegate in writing from time to time, to a deputy, the power to be present and participate, including voting as the representative or substitute, at any meeting of or hearing by or other proceeding of the commission.

Voting powers under this compact shall be limited to one vote for each state regardless of the number of representatives.

ARTICLE IV

The duty of the said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about the conservation and the prevention of the depletion and physical waste of the fisheries, marine, shell, and anadromous, in all of those areas of the Pacific Ocean over which the states signatory to this compact jointly or separately now have or may hereafter acquire jurisdiction. The commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their respective jurisdictions and said conservation zones to promote the preservation of those fisheries and their protection against over-fishing, waste, depletion or any abuse whatsoever and to assure a continuing yield from the fisheries resources of the signatory parties hereto.

To that end the commission shall draft and, after consultation with the advisory committee hereinafter authorized, recommend to the Governors and legislative branches of the various signatory states hereto legislation dealing with the conservation of the marine, shell, and anadromous fisheries in all of those areas of the Pacific Ocean over which the signatory states jointly or separately now have or may hereafter acquire jurisdiction. The commission shall, more than one month prior to any regular meeting of the legislative branch in any state signatory hereto, present to the Governor of such state its recommendations relating to enactments by the legislative branch of that state in furthering the intents and purposes of this compact.

The commission shall consult with and advise the pertinent administrative agencies in the signatory states with regard to prob-

lems connected with the fisheries and recommend the adoption of such regulations as it deems advisable and which lie within the jurisdiction of such agencies.

The commission shall have power to recommend to the states signatory hereto the stocking of the waters of such states with marine, shell or anadromous fish and fish eggs or joint stocking by some or all of such states and when two or more of the said states shall jointly stock waters the commission shall act as the coordinating agency for such stocking.

ARTICLE V

The commission shall elect from its number a chairman and a vice chairman and shall appoint and at its pleasure remove or discharge such officers and employees as may be required to carry the provisions of this compact into effect and shall fix and determine their duties, qualifications and compensation. Said commission shall adopt rules and regulations for the conduct of its business. It may establish and maintain one or more offices for the transaction of its business and may meet at any time or place within the territorial limits of the signatory states but must meet at least once a year.

ARTICLE VI

No action shall be taken by the commission except by the affirmative vote of a majority of the whole number of compacting states represented at any meeting. No recommendation shall be made by the commission in regard to any species of fish except by the vote of a majority of the compacting states which have an interest in such species.

ARTICLE VII

The fisheries research agencies of the signatory states shall act in collaboration as the official research agency of the Pacific States Marine Fisheries Commission.

An advisory committee to be representative of the commercial fishermen, commercial fishing industry and such other interests of each state as the commission deems advisable shall be established by the commission as soon as practicable for the purpose of advising the commission upon such recommendations as it may desire to make.

ARTICLE VIII

Nothing in this compact shall be construed to limit the powers of any state or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by any state imposing additional conditions and restrictions to conserve its fisheries.

ARTICLE IX

Continued absence of representation or of any representative on the commission from any state party hereto, shall be brought to the attention of the Governor thereof.

ARTICLE X

The States agree to make available annual funds for the support of the Commission on the following basis:

Eighty percent (80%) of the annual budget shall be shared equally by those member States having as a boundary the Pacific Ocean; and five percent (5%) of the annual budget shall be contributed by each other member State; the balance of the annual budget shall be shared by those member States, having as a boundary the Pacific Ocean, in proportion to the primary market value of the products of their commercial fisheries on the basis of the latest five-year catch records.

The annual contribution of each member State shall be figured to the nearest one hundred dollars.

This amended article shall become effective upon its enactment by the States of Alaska, California, Idaho, Oregon and Washington and upon ratification by Congress by virtue of the authority vested in it under Article I, section 10, of the Constitution of the United States.

ARTICLE XI

This compact shall continue in force and remain binding upon each state until renounced by it. Renunciation of this compact must be preceded by sending six months' notice in writing of intention to withdraw from the compact to the other parties hereto.

ARTICLE XII

The States of Alaska or Hawaii, or any state having rivers or streams tributary to the Pacific Ocean may become a contracting state by enactment of the Pacific Marine Fisheries Compact. Upon admission of any new state to the compact, the purposes of the compact and the duties of the commission shall extend to the development of joint programs for the conservation, protection and prevention of physical waste of fisheries in which the contracting states are mutually concerned and to all waters of the newly ad-

mitted state necessary to develop such programs.

This article shall become effective upon its enactment by the States of California, Oregon and Washington and upon ratification by Congress by virtue of the authority vested in it under Article I, section 10, of the Constitution of the United States.

[Amended by 1961 c.481 §1; 1969 c.129 §1; 2009 c.11 §71]

Note: The Pacific Marine Fisheries Compact was enacted into law by the Legislative Assembly of Oregon by chapter 131, Oregon Laws 1947 (approved by Governor on March 11, 1947). The compact was enacted into law by the Washington State Legislature by chapter 29, Washington Laws 1947 (approved by Governor on February 20, 1947). The Congress of the United States consented to the compact by Public Law 232, 80th Congress (signed by President on July 24, 1947). In 1990, Congress redesignated the "Pacific Marine Fisheries Commission" as the "Pacific States Marine Fisheries Commission" by Public Law 101-627, 101st Congress (signed by President on November 28, 1990).

507.050 Representation on Pacific States Marine Fisheries Commission. (1)

The State Fish and Wildlife Director, one legislator appointed as provided in this section and one public member appointed by the Governor shall act as representatives of the State of Oregon on the Pacific States Marine Fisheries Commission in accordance with the provisions of and with the powers and duties in the compact set forth in ORS 507.040.

(2) The legislative member shall be appointed by the President of the Senate or the Speaker of the House of Representatives.

(3) The legislative member shall serve for a term of four years. The Speaker of the House of Representatives and the President of the Senate shall alternate in making the appointment of the legislative member.

(4) Notwithstanding ORS 171.072, the legislative member is not entitled to mileage expenses or a per diem and serves as a volunteer on the commission.

(5) Members of the commission who are not members of the Legislative Assembly are not entitled to compensation or reimbursement of expenses and serve as volunteers on the commission. [Amended by 1961 c.192 §1; 1975 c.253 §29; 1987 c.436 §1; 2007 c.71 §170; 2009 c.11 §72; 2011 c.272 §16; 2015 c.27 §53]

COMMERCIAL FISHING AND FISHERIES

Chapter 508

2015 EDITION

Licenses and Permits

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COMMERCIAL FISHING AND FISHERIES

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508.005 [Repealed by 1965 c.570 §152]

GENERAL PROVISIONS

508.006 Definitions. The definitions prescribed by ORS 506.001 to 506.025 apply to this chapter. [1965 c.570 §58]

508.010 [Repealed by 1965 c.570 §152]

508.011 Activities relating to oysters exempted. This chapter does not apply to oysters or to any activity of any person relating to oysters. [1965 c.570 §59b]

508.015 [Amended by 1963 c.246 §3; repealed by 1965 c.570 §152]

508.020 [Amended by 1953 c.656 §6; 1961 c.374 §1; repealed by 1963 c.246 §4 (508.021 enacted in lieu of 508.020)]

508.021 [1963 c.246 §5 (enacted in lieu of 508.020); repealed by 1965 c.570 §152]

WHEN LICENSE REQUIRED

508.025 License required to take, process or deal in fish. (1) It is unlawful for any person, without first procuring a license from the State Fish and Wildlife Commission, to:

(a) Take food fish in any of the waters of this state for commercial purposes or land food fish in this state for commercial purposes.

(b) Buy, sell or otherwise deal in food fish for commercial purposes.

(c) Process or can food fish for commercial purposes.

(2) In a prosecution under this section, it is no defense that a person did take the person's own food fish for commercial purposes. [1965 c.570 §60]

508.030 License required for fishing gear. It is unlawful for any individual to operate, or leave in a condition to take food fish in any of the waters of this state, any fishing gear used in taking food fish, without first obtaining from the State Fish and Wildlife Director or the authorized agent of the director such license as may be prescribed by this chapter. The license must be in the possession of such individual at the time the fishing gear is being used. [1965 c.570 §61]

508.035 Separate licenses required for certain fishing gear and activities. (1) Separate licenses are required for each:

(a) Person other than an employee operating as a canner of food fish.

(b) Person other than an employee operating as a wholesale fish dealer, for each separate place of business.

(c) Individual acting or engaged as a fish buyer by a person licensed under paragraph (a) or (b) of this subsection.

(d) Person licensed under paragraph (a) or (b) of this subsection, for each permanent site or location operated by such person as a fish-buying station.

(e) Individual taking or assisting in the taking of food fish for commercial purposes as described in ORS 508.235.

(f) Boat, used in taking food fish for commercial purposes, as described in ORS 508.260.

(g) Single delivery of food fish from the Pacific Ocean for commercial purposes in the absence of licenses under paragraphs (e) and (f) of this subsection.

(h) Person other than an employee operating as a fish bait dealer, for each separate place of business.

(i) Individual taking or assisting in the taking of food fish for sale to a fish bait dealer.

(2) The State Fish and Wildlife Commission shall classify and define the various licenses provided for in this section and shall direct the State Fish and Wildlife Director to issue licenses accordingly and the classification shall be final. [1965 c.570 §62; 1969 c.172 §1; 1971 c.540 §4; 1973 c.768 §19]

508.040 Unlawful to knowingly buy or receive fish from unlicensed person. It is unlawful for a wholesaler, canner or buyer to buy or receive food fish from a person who the wholesaler, canner or buyer does not have reasonable cause to believe is licensed as required under ORS 508.035, unless such person is exempt from the requirements of ORS 508.035. [1965 c.570 §62a]

508.045 Exemption of retail fish dealers. Notwithstanding ORS 508.025 and 508.035, no license is required to handle or deal in food fish and shellfish for human consumption as a retail fish dealer. [1965 c.570 §63; 1969 c.172 §2; 1971 c.540 §5]

508.105 [Amended by 1955 c.176 §1; 1963 c.246 §6; repealed by 1965 c.570 §152]

PERMITS AND SPECIAL LICENSES

508.106 Permit to take carp or other nongame fish; fee. (1) Upon receiving a written application therefor, accompanied by a fee of \$30, the State Fish and Wildlife Commission may issue to any person a permit to take carp or other nongame fish.

(2) The kind or kinds of fish, the method to be used and the name and location of the body of water from which the fish are to be taken, shall be specified in the permit.

(3) After having obtained a permit as provided for in subsection (1) of this section, and subject to any rules of the commission, any person may take carp or nongame fish

from any of the waters of this state described in the permit.

(4) It is unlawful to:

(a) Retain any fish other than described in the permit in connection with the use of any permit issued under subsection (1) of this section, and any other fish taken shall at once be set free; or

(b) Take any fish for commercial purposes by a permit issued under subsection (1) of this section without first having obtained a license under ORS 508.035. [1965 c.570 §64; 1973 c.768 §12; 1975 c.253 §30; 2009 c.832 §19]

508.110 [Amended by 1963 c.246 §7; repealed by 1965 c.570 §152]

508.111 Permit to take food fish for educational and scientific purposes. The State Fish and Wildlife Director may issue to any person a permit to take food fish solely for educational and scientific purposes. [1965 c.570 §64a]

508.115 [Repealed by 1961 c.156 §1]

508.116 Permit to take animals living intertidally on bottom; fees. (1)(a) The State Fish and Wildlife Director may issue to any person a permit to take animals living intertidally on the bottom.

(b) The annual fee for a resident permit issued under this section is \$125.

(c) The annual fee for a nonresident permit issued under this section is \$175.

(2) It is unlawful to take animals living intertidally on the bottom for commercial purposes by a permit issued under subsection (1) of this section without first having obtained a license under ORS 508.035. [1965 c.570 §64b; 2009 c.832 §20; 2015 c.779 §32]

508.120 [Amended by 1963 c.246 §8; repealed by 1965 c.570 §152]

508.121 Juvenile jig line license. (1) Any juvenile may secure from the State Fish and Wildlife Commission free of charge a juvenile jig line license to take herring, pilchard, perch, anchovies and candlefish by a hand or jig line and to sell such fish so taken by the juvenile to a wholesale fish dealer or a fish bait dealer.

(2) As used in this section, "juvenile" means any individual 17 years of age or younger as of January 1 of the year for which the license is issued.

(3) The license, for the purposes authorized in this section, is in lieu of the commercial fisherman and boat licenses required under ORS 508.235 and 508.260. [1965 c.103 §2; 1971 c.540 §8]

508.124 Northern pikeminnow fishing derby license; rules. (1) An organizer of a fishing derby may apply for and obtain from the State Fish and Wildlife Commission a fishing derby license to take northern

pikeminnow and to sell, for charitable fund-raising purposes, northern pikeminnow taken during the duration of the derby. A fee may not be charged for the license.

(2) Upon receipt of an application for a fishing derby license, the commission shall review the application and issue a fishing derby license if the commission determines that the fishing derby will comply with the rules of the commission related to the protection of native fish species, including northern pikeminnow, and will be conducted in a manner that minimizes impacts on sensitive populations or habitats, except that the commission may issue no more than two fishing derby licenses per year for a given body of water.

(3) A fishing derby for which a fishing derby license has been obtained under this section may have a duration of no longer than three days.

(4) An organizer of a fishing derby is required to obtain a separate fishing derby license for each fishing derby.

(5) The commission may adopt rules necessary to implement the provisions of this section. Notwithstanding ORS 508.025, 508.030, 508.035, 508.235, 508.260, 508.505 and 508.535, rules adopted by the commission may provide that separate licenses under the commercial fishing laws are not required for an organizer or a person to participate in a fishing derby for which the organizer holds a fishing derby license issued under this section.

(6) This section is not intended to and may not be interpreted to exempt an organizer or a person participating in a fishing derby from any applicable licensing requirements under the wildlife laws. [2015 c.590 §1]

Note: 508.124 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 508 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

508.125 [Amended by 1963 c.246 §9; repealed by 1965 c.570 §152]

508.130 [Amended by 1959 c.128 §1; repealed by 1963 c.246 §12]

508.135 [Amended by 1963 c.246 §10; repealed by 1965 c.570 §152]

508.140 [Repealed by 1963 c.246 §12]

508.145 [Repealed by 1963 c.246 §12]

508.147 [1955 c.238 §2; repealed by 1963 c.246 §12]

508.150 [Repealed by 1963 c.246 §12]

508.152 [1955 c.238 §3; repealed by 1963 c.246 §12]

508.155 [Amended by 1953 c.656 §6; repealed by 1963 c.246 §12]

508.160 [Amended by 1955 c.167 §1; repealed by 1963 c.246 §12]

508.165 [Repealed by 1963 c.246 §12]

508.170 [Repealed by 1963 c.246 §12]

- 508.175 [Repealed by 1963 c.224 §7]
- 508.180 [Amended by 1953 c.656 §6; 1959 c.401 §1; 1961 c.374 §2; 1963 c.224 §1; repealed by 1965 c.570 §152]
- 508.185 [Repealed by 1963 c.224 §7]
- 508.190 [Amended by 1963 c.224 §2; repealed by 1965 c.570 §152]
- 508.195 [Amended by 1953 c.656 §6; repealed by 1961 c.374 §4]
- 508.200 [Amended by 1963 c.224 §3; repealed by 1965 c.570 §152]
- 508.205 [Repealed by 1963 c.224 §7]
- 508.210 [Repealed by 1963 c.224 §7]
- 508.215 [Amended by 1963 c.224 §4; repealed by 1965 c.570 §152]
- 508.220 [Amended by 1955 c.177 §1; repealed by 1963 c.224 §7]
- 508.223 [1963 c.246 §2; repealed by 1965 c.570 §152]
- 508.225 [Amended by 1955 c.279 §1; 1957 c.134 §1; repealed by 1965 c.570 §152]
- 508.230 [Amended by 1963 c.224 §5; 1965 c.570 §83; renumbered 508.290]

LICENSES AND REGULATION OF LICENSEES

508.235 Commercial fishing license; fees. (1) A commercial fishing license must be obtained by each individual who, for commercial purposes:

- (a) Takes or assists in the taking of any food fish from the waters or land of this state;
- (b) Operates or assists in the operation of any boat or fishing gear for the taking of food fish in the waters of this state; or
- (c) Lands food fish from the waters of the Pacific Ocean at any point in this state.

(2) A commercial fishing license must be in the possession of the licensee, when engaged in the taking or landing of commercial fish, and is required in addition to any other license under this chapter.

(3) Notwithstanding any other provision of this section or ORS 508.035, upon application of the holder of a boat license, the State Fish and Wildlife Commission shall issue to the applicant in the name of the boat, one commercial fishing license for each individual who assists the holder of the boat license in the taking of fish for commercial purposes. Notwithstanding ORS 508.465, licenses issued pursuant to this subsection are transferable to all individuals who assist in the taking of fish for commercial purposes on the boat for which the licenses are issued. Notwithstanding ORS 508.285, the fee for the license issued pursuant to this subsection in the name of a boat:

- (a) With a resident boat license is \$125 for each individual.
- (b) With a nonresident boat license is \$175 for each individual. [1965 c.570 §77; 1993 c.501 §1; 2009 c.832 §21; 2011 c.613 §1]

508.240 Acts by commercial fishing licensee prohibited. It is unlawful for any person licensed to take food fish for commercial purposes, as required under ORS 508.035, to:

- (1) Keep any food fish the person takes under such license for personal use; or
- (2) Sell any food fish the person takes under such license to other than a wholesaler, canner, fish bait dealer or buyer licensed as required under ORS 508.035. [1965 c.570 §77a; 1971 c.540 §6]

508.245 [1965 c.570 §78; repealed by 1973 c.768 §20]

508.246 [1977 c.245 §2; repealed by 1979 c.679 §13]

508.250 [1965 c.570 §79; repealed by 1973 c.768 §20]

508.255 [1965 c.570 §80; repealed by 1973 c.768 §20]

508.257 [1969 c.172 §7; repealed by 1973 c.768 §20]

508.260 Boat license; plates; decals; rules. (1) A boat license must be obtained by the owner or operator of any boat used in taking food fish or shellfish for commercial purposes except for the taking of clams or crayfish.

(2) A pair of decals bearing the last two numbers of the year for which the license is issued shall be included with the license for placement on the licensed boat.

(3) In accordance with rules promulgated by it, the State Fish and Wildlife Commission shall assign a number to each licensed boat and shall designate the size, location and manner of placement of the number and license year decal on the boat. [1965 c.570 §81; 1973 c.768 §13; 1975 c.756 §1]

508.265 Boat licensing constitutes registration for purposes of federal laws. The licensing of any boat pursuant to this chapter to take food fish for commercial purposes from the waters of this state or land food fish from the waters of the Pacific Ocean at any point in this state shall constitute registration of such vessel under the laws of this state for the purposes of section 306(a) of the Fishery Conservation and Management Act of 1976 (Act of April 13, 1976, 90 Stat. 331). [1977 c.202 §2]

508.270 Fishing, boat license fees in lieu of other taxes and licenses on crab pots; reports to county assessor. (1) Either the commercial fishing license required by ORS 508.235 or the boat license required by ORS 508.260 is in lieu of all taxes and licenses on crab pots used by a person so licensed or used in connection with a boat so licensed.

(2) Crab pots shall be reported to the county assessor by each owner and listed for ad valorem taxation, but if the owner of such crab pots furnishes documentary proof to the assessor, not later than August 1 of each year, that the owner possesses a current commercial fishing license under ORS

508.235 or that the boat of the owner is currently licensed under ORS 508.260, the assessor shall cancel any assessment made by the assessor of crab pots used by such person or used in connection with such person's licensed boat. [1969 c.649 §2; 1993 c.270 §69]

508.285 License fees. (1) The fee for each license required by this chapter is as follows:

(a) Resident albacore tuna landing license for boats that do not hold a valid commercial fishing license from Oregon or another state, \$250.

(b) Nonresident albacore tuna landing license for boats that do not hold a valid commercial fishing license from Oregon or another state, \$300.

(c) Albacore tuna landing license for boats that hold a valid commercial fishing license from another state and do not hold a valid commercial fishing license from Oregon, \$25.

(d) Resident boat license for a vessel less than 50 feet in length, \$350.

(e) Nonresident boat license for a vessel less than 50 feet in length, \$400.

(f) Resident boat license for a vessel 50 feet in length or more, \$400.

(g) Nonresident boat license for a vessel 50 feet in length or more, \$450.

(h) Resident commercial fishing license, \$100.

(i) Nonresident commercial fishing license, \$150.

(j) Commercial fishing license for resident persons 18 years of age or younger, \$30.

(k) Resident commercial bait fishing license, \$125.

(L) Nonresident commercial bait fishing license, \$175.

(m) Fish buyer license, \$275.

(n) Fish bait dealer license, \$125.

(o) Food fish canner license, \$500.

(p) Shellfish canner license, \$500.

(q) Resident single delivery license, \$125.

(r) Nonresident single delivery license, \$175.

(s) Wholesale fish dealer license, \$500.

(2) As used in this section, "resident" means a person who has resided in this state at least 12 consecutive months immediately prior to the date of making application for a license. [1965 c.570 §82; 1969 c.172 §3; 1971 c.540 §7; 1973 c.768 §14; 1975 c.756 §2; 1977 c.245 §3; 1979 c.679 §11; 1991 c.701 §1; 1999 c.59 §163; 2005 c.629 §1; 2009 c.832 §22; 2011 c.613 §2; 2015 c.779 §33]

Note: Section 6, chapter 512, Oregon Laws 1989, provides:

Sec. 6. Surcharge through 2019. In addition to the fees otherwise prescribed by law, the issuer of each of the following permits shall charge and collect each time the permit is issued, during the period beginning January 1, 1998, and ending December 31, 2019, the following surcharges:

(1) Ocean Troll Salmon Fishery permit issued under ORS 508.816, \$65.

(2) Columbia River Gillnet Fishery permit issued under ORS 508.790, \$74. [1989 c.512 §6; 1991 c.184 §2; 1997 c.8 §10; 2003 c.643 §2; 2009 c.765 §3]

508.290 [Formerly 508.230; 1967 c.322 §2; repealed by 1975 c.130 §2 and 1975 c.253 §40]

508.300 Albacore tuna landing license in lieu of other licenses. Notwithstanding any other provision of this chapter, the only license required for landing albacore tuna from the waters of the Pacific Ocean at any point in this state is an albacore tuna landing license. [1973 c.768 §17]

508.305 [Amended by 1957 s.s. c.9 §1; 1963 c.197 §1; 1965 c.310 §1; renumbered 508.505]

508.306 Fish bait dealer license; authority of commission to designate fish or shellfish bait. (1) Any person may obtain a fish bait dealer license to purchase food fish directly from a commercial fisherman licensed under ORS 508.235 or commercial bait fisherman licensed under ORS 508.312, for retail sale as fish or shellfish bait.

(2) The State Fish and Wildlife Commission by regulation may designate those species of food fish or parts thereof which may not be used for fish or shellfish bait. [1971 c.540 §2]

508.310 [Amended by 1965 c.570 §86; renumbered 508.515]

508.312 Commercial bait fishing license; license in lieu of commercial fishing and boat licenses. (1) Any individual may obtain a commercial bait fishing license to take food fish for sale to a fish bait dealer licensed under ORS 508.306.

(2) The license for the purpose authorized in this section is in lieu of the commercial fishing and boat licenses required under ORS 508.235 and 508.260. [1971 c.540 §3]

508.315 [Repealed by 1965 c.570 §152]

508.316 Disqualification from receiving more than one single delivery license. Except as provided in ORS 508.843 and 508.883, the State Fish and Wildlife Director shall not issue a boat more than one single delivery license under ORS 508.285 during a 12-month period as established by rule of the director. For purposes of this section, the disqualification from receiving additional single delivery licenses shall apply to a boat without regard to ownership or changes in ownership. [1999 c.164 §2]

508.320 [Amended by 1963 c.197 §2; 1965 c.310 §2; renumbered 508.510]

508.325 [Renumbered 508.520]

508.326 Commercial Fisheries Fund; uses. (1) The Commercial Fisheries Fund is created in the State Treasury, separate and distinct from the General Fund. Except as provided in ORS 506.690, all moneys in the Commercial Fisheries Fund are appropriated continuously to the State Fish and Wildlife Commission for the administration and enforcement of the commercial fishing laws and for the management, propagation, research, habitat improvement and other activities that protect, maintain or enhance the food fish resource of this state. Interest earned on moneys in the fund shall be credited to the fund.

(2) Except as provided in ORS 508.949, all moneys collected pursuant to ORS 508.505 to 508.550 for fish species taken pursuant to developmental fishery activities referred to in ORS 506.460 shall be credited to a separate account in the Commercial Fisheries Fund. Notwithstanding subsection (1) of this section or ORS 506.306, 25 percent of such moneys shall be expended for general fish management purposes and 75 percent of such moneys shall be expended to pay the expenses of developmental fishery activities pursuant to ORS 506.460. [1991 c.701 §21; 1993 c.765 §119; 1999 c.1013 §2; 2003 c.809 §14]

508.330 [Renumbered 508.525]

508.335 [Amended by 1965 c.570 §87; renumbered 508.530]

508.340 [Amended by 1961 c.373 §1; 1963 c.197 §3; 1965 c.570 §88; renumbered 508.535]

508.345 [Amended by 1961 c.373 §2; 1965 c.570 §89; renumbered 508.540]

508.350 [Renumbered 508.545]

508.355 [Repealed by 1963 c.197 §4]

508.360 [Repealed by 1963 c.197 §4]

508.405 [Amended by 1963 c.196 §1; repealed by 1965 c.570 §65 (508.406 enacted in lieu of 508.405)]

ISSUANCE, APPLICATION, CONTENTS, WHERE VALID, TRANSFERRING, TERM, LOCATION ABANDONMENT

508.406 Director or agent to issue and renew licenses. The State Fish and Wildlife Director or the authorized agent of the director shall issue or renew any license required by the commercial fishing laws to a qualified person upon proper application and payment of the license fee required by ORS 508.285. [1965 c.570 §66 (enacted in lieu of 508.405)]

508.407 [Repealed by 1965 c.570 §152]

508.410 Contents of license applications. All applications for licenses under ORS 508.406 shall be made on blanks furnished by the State Fish and Wildlife Director and shall contain such information as the State Fish and Wildlife Commission determines to be necessary for proper administration and enforcement of the commercial

fishing laws. [Amended by 1957 c.208 §1; 1963 c.196 §2; 1965 c.570 §67]

508.413 [1963 c.246 §1; repealed by 1965 c.67 §4]

508.415 Security for fees. (1) In case of license applications by canners or wholesalers, the State Fish and Wildlife Director, in addition to license fees provided by law, may exact from the applicant a bond from a corporate surety, authorized to do business in this state, guaranteeing the payment of fees, if the director considers such action is necessary to insure compliance with ORS 508.505 to 508.540.

(2) In lieu of any bond that may be required under subsection (1) of this section, any applicant may deposit with the State Fish and Wildlife Commission, under such terms and conditions as the director may prescribe, a like amount of lawful money of the United States or an irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008. The commission shall turn over to the State Treasurer for safekeeping all such deposits so received. [Amended by 1963 c.196 §3; 1965 c.570 §68; 1969 c.52 §1; 1991 c.331 §73; 1991 c.701 §17; 1997 c.631 §484]

508.420 [Amended by 1955 c.168 §1; 1963 c.196 §4; repealed by 1965 c.570 §152]

508.425 [Amended by 1961 c.168 §1; repealed by 1965 c.570 §152]

508.430 [Amended by 1963 c.196 §5; repealed by 1965 c.570 §152]

508.435 [Amended by 1961 c.181 §1; repealed by 1965 c.570 §152]

508.440 [Repealed by 1961 c.233 §1]

508.445 Certificate evidence as to license issuance. In all prosecutions requiring proof as to the issuance or nonissuance of a license by the State Fish and Wildlife Director under any of the laws of this state, the certificate of the director as to the issuance or nonissuance of the license by the director shall be sufficient proof on that question to establish the fact. This certificate shall be admitted in evidence as to the issuance or nonissuance of the license in any such prosecution.

508.450 Contents of license. Each license issued under ORS 508.406 shall be numbered and dated by the State Fish and Wildlife Director or an authorized agent and contain the site or address where the appliance or business is located and the name of the person to whom the license is granted. [Amended by 1957 c.132 §1; 1963 c.196 §6]

508.455 [Amended by 1955 c.122 §1; repealed by 1965 c.570 §152]

508.460 Oregon-Washington reciprocity on gillnet licenses. All gillnet licenses issued by the States of Oregon and Washington are valid as to the waters of the Columbia River in Oregon and Washington, as though issued by the department of fisheries

of either state. The department of fisheries of each state or the officials who have charge of issuing licenses shall furnish to each other the names of licensees and the number of the licenses, without cost or expense to either state.

508.465 Licenses nontransferable. Licenses may not be transferred from one licensee to another.

508.470 When licenses expire; renewal. All licenses for which fees are provided for under ORS 508.285 unless otherwise specified in law expire as of midnight, December 31, following the dates of their issuance or on such date as may be specified by rule of the State Department of Fish and Wildlife. The licenses may be renewed annually thereafter upon application and payment of fees required therefor. [Amended by 1959 c.123 §1; 1961 c.374 §3; 1963 c.196 §7; 1965 c.570 §71; 1977 c.245 §4; 1979 c.679 §12; 2007 c.768 §6]

508.475 Failure to renew license for fixed fishing gear constitutes abandonment; exception for Armed Forces. The failure to renew the license, or make application therefor, for any location for a fixed fishing gear in any of the waters of this state, on January 1 of any year, constitutes abandonment of the location. However, any licensee entering the Armed Forces of the United States during any period which would qualify the licensee as a veteran, as defined in ORS 408.225, is not deemed to have abandoned such location or gear so licensed, either by reason of absence from the location during such service or by failure to renew the license as required. Such licensee may file application for renewal of the license at any time following the date of release from the Armed Forces of the United States, until January 1 of the following year, and shall have preference over other persons therefor. [Amended by 1965 c.570 §72; 2009 c.41 §21]

508.480 Failure to construct or install fishing gear held to be abandonment. Should the holder of any license neglect to construct or install at the site the fishing gear called for by the license during two consecutive years covered by the license, the location shall be deemed abandoned. [Amended by 1965 c.570 §73]

508.485 Revocation of license or permit for violation of commercial fishing laws or rules or theft of crab fishing gear. (1) Except for vessel licenses described in ORS 508.285 and 508.470 and vessel permits described in ORS 508.775 to 508.796, 508.801 to 508.825, 508.880, 508.883, 508.889 to 508.910 and 508.926, the State Fish and Wildlife Commission may, in its discretion, revoke for the remainder of the license or permit year any license or permit issued to a person under the authority of the commis-

sion, or the State Fish and Wildlife Director, pursuant to the commercial fishing laws, and in its discretion may refuse the issuance of any license or permit issued under the authority of the commission, or director, pursuant to the commercial fishing laws, during any period not to exceed one year from the date of the license or permit revocation order:

(a) Upon conviction within this state of any person of violation of any of the commercial fishing laws or rules;

(b) Upon receiving notice from the agency that regulates commercial fishing in the State of Washington of the conviction of any person in that state of an offense that was a violation of Columbia River commercial fishing rules adopted pursuant to the Columbia River Compact and that if committed in this state would be grounds for license revocation pursuant to paragraph (a) of this subsection;

(c) Upon conviction within this state of any person for violation of ORS 498.022, or any rule adopted pursuant thereto, involving game fish, through the use of a license issued pursuant to the commercial fishing laws; or

(d) Upon conviction within this state of a person for violation of ORS 164.043 to 164.065 when the subject of the theft is commercial fishing crab rings or crab pots, or the crabs taken therefrom.

(2)(a) Except for vessel licenses described in ORS 508.285 and 508.470 and vessel permits described in ORS 508.775 to 508.796, 508.801 to 508.825, 508.880, 508.883, 508.889 to 508.910 and 508.926, a court may order the commission to revoke any licenses or permits issued to a person under the authority of the commission, or the director, pursuant to the commercial fishing laws. Such revocations may not exceed a period of two years from the date of the license or permit revocation order. Revocation of licenses and permits is in addition to and not in lieu of other penalties provided by law.

(b) The license and permit revocation provisions of paragraph (a) of this subsection apply to the following persons:

(A) Any person who is convicted of a violation of the commercial fishing laws, or any rule adopted pursuant thereto, or who otherwise fails to comply with the requirements of a citation in connection with any such offense;

(B) Any person who is convicted of a violation of ORS 498.022, or any rule adopted pursuant thereto, involving game fish, through the use of a license issued pursuant to the commercial fishing laws; or

(C) Any person who is convicted of a violation of ORS 164.043 to 164.065 when the

subject of the theft is commercial fishing crab rings or crab pots, or the crabs taken therefrom.

(c) When a court orders the revocation of a license or permit under the provisions of this subsection, the court shall take up any such licenses and permits and forward them, together with a copy of the revocation order, to the commission. Upon receipt thereof, the commission shall cause revocation of the appropriate licenses and permits in accordance with the court order.

(d) Nothing in this subsection requires a court to take additional action, after the conclusion of the sentencing hearing, to secure the licenses or permits if the defendant does not have the license or permit in the defendant's possession at the time of sentencing.

(3) Any person whose license revocation involves the buying, selling or dealing of food fish is prohibited from engaging in such activity under any license issued by the commission during the period the court orders the revocation. [Amended by 1965 c.570 §74; 1971 c.569 §1; 1977 c.350 §6; 1987 c.213 §4; 1997 c.252 §1; 1999 c.1051 §276; 2009 c.11 §73; 2013 c.164 §1; 2014 c.1 §1]

508.490 Refusal to issue license or permit pursuant to commercial fishing laws within two years after revocation. Except for vessel licenses described in ORS 508.260, 508.285 and 508.470 and vessel permits described in ORS 508.775 to 508.796, 508.801 to 508.825, 508.880, 508.883, 508.889 to 508.910 and 508.926, the State Fish and Wildlife Commission may, in its discretion, refuse the issuance of any license or permit issued under the authority of the commission, or the State Fish and Wildlife Director, pursuant to the commercial fishing laws, during any period not to exceed two years from the date of the license or permit revocation order:

(1) Upon conviction within this state of any person of violation of any of the commercial fishing laws or rules after the person has once been convicted and penalized under ORS 508.485; or

(2) Upon receiving notice from the agency that regulates commercial fishing in the State of Washington of the conviction of any person in that state of an offense that was a violation of Columbia River commercial fishing rules adopted pursuant to the Columbia River Compact and that if committed in this state would be grounds for refusal to issue a license or permit pursuant to subsection (1) of this section. [Amended by 1965 c.570 §75; 1977 c.350 §7; 1987 c.213 §5; 2009 c.11 §74; 2013 c.164 §6; 2014 c.1 §3]

508.495 Certificate in lieu of lost or destroyed license; fee. Upon the receipt of a fee of \$16.50 and the filing of an affidavit

that a license issued under authority of ORS 508.406 has been lost or destroyed, the State Fish and Wildlife Director or the authorized agent of the director shall issue a certificate that such license has been issued and has been lost or destroyed. Except as provided in ORS 508.260, the certificate may be used in lieu of the lost or destroyed license. [1957 c.140 §1; 1965 c.570 §76; 1973 c.768 §18; 2009 c.832 §23]

508.500 Alteration, false application and multiple possession of licenses prohibited. No person shall:

(1) Alter, borrow or loan to any other person any license or permit issued by the department.

(2) In applying for a license or permit issued by the State Department of Fish and Wildlife knowingly make any false statement of any information required by the application regarding the person in whose name the license or permit is to be issued.

(3) Possess any license or permit that has been altered, borrowed or loaned or for which any false statements were knowingly made in applying therefor. [1981 c.365 §20]

CATCH FEES

508.505 Additional fees based on value of fish at time of landing; exceptions. (1) Additional fees shall be collected by the State Fish and Wildlife Director in the amount prescribed by this section, except as provided in ORS 508.510. Every person operating within the state as a canner, buyer, bait dealer or wholesaler of any food fish or shellfish shall pay, in addition to all other licenses or fees provided by law, a fee equal to the value of the food fish at the point of landing multiplied by the following rates:

- (a) All salmon and steelhead, 3.15 percent.
- (b) All black rockfish, blue rockfish and nearshore fish, 5.00 percent.
- (c) All tuna, 1.09 percent.
- (d) All crab, 2.35 percent.
- (e) All shrimp, 2.40 percent.
- (f) All sardines, 2.25 percent.
- (g) All sablefish, 2.40 percent.
- (h) All whiting, 2.30 percent.
- (i) All other groundfish, 2.25 percent.
- (j) All other food fish and shellfish, 2.30 percent.

(2) Only live, fresh or frozen in the round or dressed food fish or shellfish are subject to the fees provided in this section. "Dressed" includes but is not limited to beheaded, gutted, filleted, loined or shucked. However, frozen food fish or frozen shellfish received in a wrapped package to which a

legible label is stamped or printed showing the name, address, brand or trade name of the original processor or wholesale distributor under which the package is marketed and the kind of frozen food fish or frozen shellfish contained therein, for distribution and ultimate sale in the original package are not subject to the fees provided in this section. [Formerly 508.305; 1969 c.172 §4; 1971 c.243 §1; 1973 c.768 §15; 1979 c.378 §1; 1989 c.166 §1; 1991 c.701 §2; 2003 c.809 §12; 2009 c.832 §24; 2015 c.779 §34]

Note: Section 8, chapter 512, Oregon Laws 1989, provides:

Sec. 8. Additional fee through 2019. In addition to the ad valorem fee prescribed by law, during the period beginning January 1, 1998, and ending December 31, 2019, there shall be paid for each fish species referred to in ORS 508.505 (1)(a), an additional fee of four cents per pound. The ad valorem fee referred to in this section is subject to ORS 508.505 to 508.540. [1989 c.512 §8; 1991 c.184 §3; 1997 c.8 §11; 2003 c.643 §3; 2009 c.765 §4; 2015 c.734 §5]

Note: Section 4, chapter 734, Oregon Laws 2015, provides:

Sec. 4. Additional fee through 2026. (1) In addition to the ad valorem fee prescribed by law, during the period beginning January 1, 2016, and ending December 31, 2026, there shall be paid for each fish species referred to in ORS 508.505 (1)(a), an additional fee of four cents per pound. The ad valorem fee referred to in this section is subject to ORS 508.505 to 508.540.

(2) Notwithstanding ORS 506.306, all moneys received by the State Fish and Wildlife Commission pursuant to subsection (1) of this section shall be deposited in the Oregon Hatchery Research Center Fund. [2015 c.734 §4]

508.507 [1971 c.540 §10; repealed by 1991 c.701 §3]

508.510 Place where fish caught is immaterial; exceptions; special fee. (1) The fee provided for in ORS 508.505 shall be paid irrespective of where the fish were caught. However, the fees shall not be paid on any food fish or shellfish brought into this state after having been landed:

(a) In another state, territory or possession of the United States, and upon or in regard to which a tax or fee has been levied and collected in the other state, territory or possession; or

(b) In another country.

(2) Notwithstanding ORS 508.505, there shall be paid a fee of one percent of the value of all food fish or shellfish brought into this state after having been landed in another state, territory or possession of the United States, and upon or in regard to which a tax or fee has not been levied and collected in the other state, territory or possession. [Formerly 508.320; 1991 c.701 §4]

508.515 Time of paying fees; report; interest on overdue fees; waiver or extension of payment. (1) The fee required by ORS 508.505 shall be paid to the State Fish and Wildlife Director on or before the 20th day of each calendar month for the preceding calendar month.

(2) The fee shall be accompanied by a report showing the total number of pounds of all varieties of food fish, stated separately upon blanks furnished by the director, and the value at the point of landing.

(3) In the event that such fee is not paid within the time for payment provided in subsection (1) of this section, there shall be added as a late payment charge a sum equal to five percent of the unpaid fees or \$5, whichever is greater, and there shall be charged an interest rate of one percent per month until the principal and interest is paid.

(4) Notwithstanding subsection (1), (2) or (3) of this section, the State Fish and Wildlife Commission may waive or extend payment of any fees required by ORS 508.505 amounting to less than \$10 during any calendar year. [Formerly 508.310; 1971 c.243 §2; 1981 c.646 §5; 1991 c.701 §5]

508.520 Determination of disputes. It is the intention that only one fee based on the value of the fish at the point of landing shall be collected for each fish purchased or received, and in order that this end may be accomplished the State Fish and Wildlife Commission and the State Fish and Wildlife Director may determine finally any dispute arising out of the operation and enforcement of ORS 508.505. [Formerly 508.325; 1991 c.701 §6]

508.525 Lien for unpaid fee; foreclosure; jurisdiction of courts. The fee required by ORS 508.505 constitutes a first lien upon the cannery, packing plant, scow, boat and its equipment used in the canning, receiving or transporting of the fish. This lien may be foreclosed by the State Fish and Wildlife Commission in the name of the state by a suit in equity in the circuit court of the county in which the property upon which a lien is given by this section is situated. If situated in two or more counties the court first acquiring jurisdiction of a part of the property shall have jurisdiction of all the property described in such foreclosure suit. [Formerly 508.330; 1991 c.701 §7]

508.530 Rules; reports; violation or falsification. (1) The State Fish and Wildlife Commission may make such rules and require such reports to be made as, in its judgment, are necessary to insure the collection and payment of the fee required by ORS 508.505.

(2) It is unlawful for any person to falsify any of the reports or to violate any of the rules made or required by the commission. [Formerly 508.335; 1991 c.701 §8]

508.535 Keeping record of food fish received and bought; inspection. (1) Every fish canner, fish buyer, retail fish dealer, fish bait dealer or wholesale fish dealer shall

keep a record, of all food fish received and bought, in accordance with rules promulgated by the State Fish and Wildlife Commission. Such information may be required as is necessary to enable the commission to carry out its duties of conservation, protection, administration or enforcement under the commercial fishing laws without imposing undue hardship on the licensees.

(2) At least one copy of this record shall be kept:

(a) On each boat, vessel, scow, pickup boat or other craft, truck, automobile, motor vehicle or other vehicle of any kind whatsoever used in buying, receiving or transporting the fish.

(b) By the canner, buyer, retailer, fish bait dealer or wholesaler.

(3) This record is subject to inspection by the commissioners, the State Fish and Wildlife Director, the authorized agent of the director, or any duly authorized police officer. This record shall be transmitted to the office of the director at such times and in such manner as the commission directs.

(4) Every person shall always keep open to inspection by the commission or its agent any books, records, papers or memoranda which are pertinent to the administration of ORS 508.505 to 508.540. For the purpose of ascertaining the correctness of any fee record or report or the number of pounds or value of fish upon which the additional fee is based or such other information as may be necessary to the administration of ORS 508.505 to 508.540, the commission or its agent may inspect such books, records, papers or memoranda.

(5) Restaurants licensed under ORS 624.020 shall keep a record of all fresh or frozen fish received or bought while such fish are in the restaurant's possession. This record shall be subject to inspection by the commissioners, the director, the authorized agent of the director, or any duly authorized police officer. An invoice or receipt shall be adequate for the purposes of this subsection. [Formerly 508.340; 1969 c.172 §5; 1971 c.540 §11; 1973 c.437 §1; 1977 c.242 §5; 1991 c.701 §9]

508.540 Failure to keep or submit records or to pay fee. (1) In addition to the penalty prescribed by ORS 506.991, the State Fish and Wildlife Director, under the authority of the State Fish and Wildlife Commission, may suspend or revoke any license for which a fee is required under ORS 508.285 if the person holding the license fails to keep the record required by ORS 508.535 or fails to submit the books, records, papers or memoranda of the person for inspection, pursuant to ORS 508.535 (4), to any member of the commission or any of its represen-

tatives presenting written authority from the commission.

(2) The State Fish and Wildlife Director may suspend, deny the renewal of or refuse to issue any license for which a fee is required under ORS 508.285 if the person holding or applying for the license is more than 60 days past due in an amount of more than \$400 owed:

(a) From fees pursuant to ORS 508.505;

(b) From overage, incidental catch or bycatch charges; or

(c) To any food fish commodity commission established under ORS chapter 576.

(3) The State Fish and Wildlife Commission may contact any food fish commodity commission at any time to obtain lists of persons who owe past due fees to the commodity commission.

(4) For purposes of this section:

(a) "Bycatch" means the unintended taking of a species of food fish that:

(A) Occurs while targeting another species of food fish; and

(B) Is prohibited due to time, place, manner, regulations or quota restrictions.

(b) "Incidental catch" means the unintended legal taking of a species of food fish that occurs while targeting another species of food fish.

(c) "Overage" means the amount of food fish taken for commercial purposes that exceeds the amount allowed by federal and state law. [Formerly 508.345; 1991 c.701 §10; 2003 c.39 §1]

508.545 [Formerly 508.350; repealed by 1973 c.794 §34]

508.550 Sale of fish from license holder's boat; permit; fee; reports; payment of fees. Notwithstanding any other provision of this chapter, a person who holds a valid Oregon commercial fishing license may sell any species of food fish taken in lawful commercial fishing activity directly from the license holder's boat, subject to the following conditions:

(1) The person must first obtain from the State Fish and Wildlife Commission an annual limited fish seller permit for such sales, the annual fee for which is:

(a) \$100 for resident applicants.

(b) \$150 for nonresident applicants.

(2) The commission by rule may limit the number of permits available for any species of food fish.

(3) Prior to making any sale pursuant to this section, the person must notify the commission, in such manner as the commission prescribes, of the estimated number of food

fish on board the boat and of the location where the sale is to take place.

(4) Within seven days of making any sale pursuant to this section, the person shall submit to the commission a report thereof, in such form as the commission may prescribe. The person must pay the fees required as prescribed in ORS 508.505 to 508.540, or in such other manner as the commission by rule may prescribe.

(5) The person may sell food fish from any port and dock location in this state.

(6) If a person fails to comply with subsection (3) of this section, the commission may revoke and thereafter refuse to issue another limited fish seller permit. [1985 c.533 §2; 1987 c.802 §1; 1991 c.701 §11; 1999 c.585 §1; 2009 c.832 §25; 2015 c.779 §35]

508.605 [Repealed by 1961 c.232 §1]

508.610 [Repealed by 1961 c.232 §1]

508.615 [Repealed by 1961 c.232 §1]

508.620 [Repealed by 1961 c.232 §1]

508.625 [Repealed by 1961 c.232 §1]

508.630 [Repealed by 1961 c.232 §1]

508.635 [Amended by 1957 c.462 §1; repealed by 1961 c.232 §1]

508.640 [Repealed by 1961 c.232 §1]

508.645 [Amended by 1957 c.462 §2; repealed by 1961 c.232 §1]

508.650 [Repealed by 1961 c.232 §1]

508.655 [Repealed by 1961 c.232 §1]

SALMON HATCHERY PERMITS

508.700 Permits for salmon hatcheries; fees. (1) The State Fish and Wildlife Commission may issue a permit, subject to such restrictions and regulations as the commission deems desirable, to any person to construct and operate a hatchery for:

(a) Chinook salmon, also known as *Oncorhynchus tshawytscha*; or

(b) Chum salmon, also known as *Oncorhynchus keta* or dog salmon; or

(c) Silver salmon, also known as *Oncorhynchus kisutch* or coho salmon; or

(d) Pink salmon, also known as *Oncorhynchus gorbuscha* or humpback salmon.

(2) The application for a permit to construct and operate a chum salmon, chinook salmon, silver salmon, or pink salmon hatchery shall include an application fee of \$3,000. [1971 c.203 §1; 1973 c.356 §1; 1979 c.556 §1; 2009 c.832 §26]

508.705 Hearing for permits. (1) Prior to issuance of any permit by the State Fish and Wildlife Commission, a public hearing shall be held. Notice of the hearing shall be published at least once and at least 10 days prior to the hearing in a newspaper of general circulation in each of the counties in

which the hearing is to be held, or if no such newspaper is published in that county or counties, then such a newspaper in an adjoining county.

(2) The hearing shall be conducted by either the commission or a representative designated by the commission. [1971 c.203 §2; 1975 c.253 §31]

508.710 Grounds for denial of permit. No permit shall be issued:

(1) Which may tend to deplete any natural run of anadromous fish or any population of resident game fish.

(2) Which may result in waste or deterioration of fish.

(3) If the proposed operation is to be located on the same stream or river or tributary thereof on which a state or federal fish culture facility is established or is planned to be established.

(4) If the proposed operation is not consistent with sound resource management and is not in close proximity to the ocean.

(5) If the State Fish and Wildlife Commission determines the applicant does not have the financial capability to successfully construct and operate the hatchery or may not properly conduct the operation authorized under the permit. [1971 c.203 §3]

508.715 Conditions of permits. Any permit granted by the State Fish and Wildlife Commission pursuant to ORS 508.700 to 508.745 shall contain at least the following conditions:

(1) All propagated fish released into state waters shall be marked annually at no less than the level of marking of the same species of fish by hatcheries operated by the commission for the purpose of determining contributions to ocean fisheries.

(2) All propagated coho and chinook salmon released into state waters shall be marked annually, consistent with subsection (8) of this section, at a minimum level necessary to determine the proportion of straying of hatchery coho and chinook salmon into the spawning beds of natural and hatchery produced native stocks of salmon. However, the commission shall not require private hatcheries to meet marking standards that the commission would not apply to its own operations in similar circumstances.

(3) Prior to release into state waters, the fish must be subject to examination by a qualified fish pathologist approved by the commission to determine that they are not diseased or infected with any disease which in the opinion of the commission may be detrimental to the state fishery resources. Cost of such examination shall be paid by the permittee. No fish shall be released without

written approval from the commission. The commission may require diseased fish to be destroyed. The commission shall not suffer civil or criminal liability for any fish destroyed under this section.

(4) The permittee may be authorized by the commission to divert all fish returning to the stream to an inspection area, the location of such area to be approved by the commission, to examine all fish for the purpose of identifying propagated fish.

(5) Notwithstanding the provisions of ORS chapters 509 and 511, the permittee shall have the right to take for commercial purposes, only those fish the commission determines were propagated by the permittee, and the commission's decision is final.

(6) It shall be unlawful for the permittee to select stocks of fish or to genetically alter the life history or habits of propagated fish in a way the State Department of Fish and Wildlife determines is inconsistent with the provisions of ORS 496.012 or 506.109.

(7) It shall be unlawful for the permittee to conduct any activity not authorized by the permit or fail to conduct activities required by the permit without approval of the commission after public hearings.

(8) The permittee shall pay all reasonable costs incurred by the commission as a result of the operation of the private hatchery. [1971 c.203 §5; 1979 c.556 §5; 1985 c.529 §1; 1989 c.817 §1]

508.718 Program for protecting natural runs and genetic diversity of anadromous fish stocks; rules; findings.

(1) The Legislative Assembly finds that protecting the natural runs and genetic diversity of anadromous fish is essential to the long-term health of Oregon's natural resources and sport and commercial fisheries.

(2) Not later than January 1, 1990, the State Department of Fish and Wildlife shall:

(a) Develop and implement monitoring programs, consistent with ORS 508.715 (8) at a minimum level necessary to determine the proportion of straying of hatchery fish into the spawning beds of natural and hatchery produced native stocks of salmon.

(b) Utilizing the best available scientific evidence, adopt rules, after public hearing, that determine the proportion of straying that by indicator stock is likely to cause deterioration of the genetic diversity and habitat necessary to maintain long-term species viability or that causes a deterioration of natural or native stocks of salmon.

(3) The Legislative Assembly further finds that private hatcheries are a significant part of Oregon's salmon resource and that the Legislative Assembly relies on the State Fish and Wildlife Commission to monitor and

regulate private hatcheries in a way that will optimize their long-term contribution to Oregon's salmon resource in conformity with the findings under subsection (1) of this section. [1989 c.817 §5; 1995 c.79 §295]

508.720 Altering terms of permits; findings; hearing; restoration of fish population.

(1) If the State Fish and Wildlife Commission finds that the operation described in the permit is not in the best public interest, it shall alter the conditions of the permit to mitigate such adverse effects or may cause an orderly termination of the operation under the permit. Proceedings to cause such alteration or termination shall be conducted in accordance with ORS chapter 183. An orderly termination shall not exceed a four-year period and shall culminate in the revocation of the permit in its entirety. During this period the permittee may continue to examine and take specified propagated chum salmon, chinook salmon, silver salmon or pink salmon according to the provisions of the permit but may not release additional fish.

(2) If the commission finds the operation has caused deterioration of the natural run of anadromous fish or any population of resident game fish in the waters covered by the permit, it may require the permittee to return the fish populations to the same condition that existed prior to issuance of the permit. If the permittee fails to take appropriate action, the commission shall take such action and the permittee shall bear any cost incurred by the commission. [1971 c.203 §6; 1973 c.356 §2; 1975 c.253 §32; 1979 c.556 §2; 1989 c.817 §2]

508.725 Released fish as state property; consideration by commission of adverse economic impact on hatcheries.

(1) All fish released under ORS 508.700 to 508.745 during the time they are in the wild will be the property of the state and may be taken under angling or commercial fishing laws of this state until they return to the private hatchery.

(2) In carrying out the provisions of ORS 496.162 or 506.129, the State Fish and Wildlife Commission shall not consider evidence of or argument regarding the prospect of adverse economic impact on the activities of hatcheries for which permits have been issued unless the commission determines that it is necessary in order to comply with the policies set forth in ORS 496.012 or 506.109. [1971 c.203 §4; 1979 c.335 §1]

508.730 Disposal of salmon products.

After first ensuring that all natural and artificial fish production needs of the State Department of Fish and Wildlife have been met, the State Fish and Wildlife Commission may provide at a reasonable fee chum salmon, chinook salmon, silver salmon or

pink salmon, or the sexual products therefrom, for the needs of any person granted a permit by the commission pursuant to ORS 508.700 to 508.745 in the following order of priority:

(1) The needs of the salmon and trout enhancement program.

(2) The needs of fish propagation facilities operated under contract or agreement with other state or federal agencies, local governments, special districts and nonprofit organizations.

(3) The needs of all federal and other fish propagation facilities located on the Columbia River and its tributaries. [1971 c.203 §7; 1973 c.356 §3; 1979 c.556 §3; 1981 c.317 §9; 1995 c.469 §5]

508.735 Application of chapter to taking and sale of salmon. The provisions of this chapter shall apply to the taking and sale of chum salmon, chinook salmon, silver salmon or pink salmon artificially reared under any permit granted by the State Fish and Wildlife Commission pursuant to ORS 508.700 to 508.745. [1971 c.203 §8; 1973 c.356 §4; 1979 c.556 §4]

508.737 Policy for marketing of salmon products. It is the policy of the State of Oregon that all holders of permits issued pursuant to ORS 508.700 to 508.745 are encouraged to market salmon products obtained pursuant to permit activities in such manner as to promote the development and growth of locally based industries and to provide the maximum benefit to the economy of this state. [1979 c.556 §7]

508.740 Authority under ORS 508.700 to 508.745. (1) Nothing in ORS 508.700 to 508.745 is intended to give the permittee any equity in any of the waters or fish of the state.

(2) Nothing in ORS 508.700 to 508.745 shall imply an intent to permit commercial fishing in any rivers south of the mouth of the Columbia River except as provided in ORS 508.715 (5). [1971 c.203 §§9,10; 1989 c.817 §3]

508.745 Disposition of moneys received under ORS 508.700 to 508.745. All moneys received by the State Fish and Wildlife Commission under ORS 508.700 to 508.745 except those under ORS 508.735 shall be paid over to the State Treasurer to be held in a suspense account established under ORS 293.445. After the payment of costs of administration incurred by the commission in carrying out the provisions of ORS 508.700 to 508.745, that portion of the balance of the moneys in this suspense account as of the end of each fiscal year shall be deposited to the General Fund for general governmental purposes. [1971 c.203 §11]

COMMERCIAL FISHERY PERMIT BOARD

508.755 Membership; duties; meetings; expenses. (1) There is established within the State Department of Fish and Wildlife the Commercial Fishery Permit Board. The board shall consist of members appointed by the State Fish and Wildlife Commission as follows:

(a) Three members shall be chosen to represent the Columbia River gillnet salmon fishing industry.

(b) Three members shall be chosen to represent the ocean troll salmon fishing industry.

(c) Three members shall be chosen to represent the ocean pink shrimp fishing industry.

(d) Three members shall be chosen to represent the Yaquina Bay roe-herring fishing industry.

(e) Three members shall be chosen to represent the sea urchin commercial fishery.

(f) Three members shall be chosen to represent the ocean Dungeness crab fishing industry.

(g) Three members shall be chosen to represent the black rockfish and blue rockfish fishing industry and the nearshore fish fishing industry.

(h) Three members shall be chosen to represent developmental fisheries as described in ORS 506.450 to 506.465.

(i) Three members shall be chosen to represent each restricted participation system or restricted vessel permit system established by rule of the commission under ORS 506.462.

(j) Two members shall be chosen to represent the public.

(2) A member of the board shall receive no compensation for services as a member. However, subject to any applicable law regulating travel and other expenses of state officers and employees, a member shall be reimbursed for travel and other expenses incurred in the performance of official duties.

(3) The board shall select such officers, for such terms and with such duties and powers, as the board considers necessary for the performance of those offices.

(4) A majority of the members of the board constitutes a quorum for the transaction of business.

(5) The board shall meet at such times and places as may be determined by the chairperson or by a majority of the members of the board.

(6) Notwithstanding any other provision of law:

(a) Members of the board representing the Columbia River gillnet salmon fishing industry shall participate in actions of the board only on matters arising under ORS 508.285, 508.470 and 508.775 to 508.796.

(b) Members of the board representing the ocean troll salmon fishing industry shall participate in actions of the board only on matters arising under ORS 508.801 to 508.825.

(c) Members of the board representing the ocean pink shrimp fishing industry shall participate in actions of the board only on matters arising under ORS 508.880, 508.883 and 508.889 to 508.910.

(d) Members of the board representing the Yaquina Bay roe-herring fishing industry shall participate in actions of the board only on matters arising under ORS 508.765.

(e) Members of the board representing the sea urchin commercial fishery shall participate in actions of the board only on matters arising under ORS 508.760.

(f) Members of the board representing the ocean Dungeness crab fishing industry shall participate in actions of the board only on matters arising under ORS 508.921 and 508.934.

(g) Members of the board representing the black rockfish and blue rockfish fishing industry and the nearshore fish fishing industry shall participate in actions of the board only on matters arising under ORS 508.947, 508.957 or 508.960.

(h) Members of the board representing developmental fisheries shall participate in actions of the board only on matters arising under ORS 506.450 to 506.465.

(i) Members of the board representing a restricted participation system or a restricted vessel permit system established by rule of the commission under ORS 506.462 shall participate in actions of the board only on matters related to that system. [Formerly 508.920; 2003 c.809 §13; 2007 c.95 §3; 2014 c.1 §4]

RESTRICTED PARTICIPATION SYSTEMS

508.760 Sea urchin limited participation; terms; conditions; fees; rules. (1) Notwithstanding any other provision of the commercial fishing laws, in order to provide a sea urchin (*Strongylocentrotus franciscanus*, *S. purpuratus* and *S. droebachiensis*) commercial fishery with optimum profits to those engaged in the fishery and to prevent a concentration of fishing effort that would deplete the resource, the State Fish and Wildlife Commission, by rule,

shall establish a system for limiting participation in the sea urchin commercial fishery. Any such system may include, but is not limited to, provisions on the following matters:

(a) Establishment of criteria for initial entry into fishery participation and for annual qualification for participation thereafter.

(b) Establishment of terms and conditions for transferring participation rights.

(2)(a) The annual fee to participate in the sea urchin fishery is:

(A) \$125 for resident applicants.

(B) \$175 for nonresident applicants.

(b) A fee of \$100 shall be charged for each transfer of participation rights under this section. [1987 c.374 §2; 1991 c.701 §12; 1995 c.602 §2; 2009 c.832 §27; 2011 c.613 §3; 2015 c.779 §36]

508.762 Review of denial of sea urchin permit renewal or transfer; fee; rules. (1)

A person whose application for renewal or transfer of a permit established pursuant to ORS 508.760 is denied may make written request to the Commercial Fishery Permit Board for review of the denial. The review provided in this subsection is in lieu of any such review by the State Department of Fish and Wildlife or the State Fish and Wildlife Commission. The request shall be in such form and shall contain such information as the board considers appropriate. The request shall be accompanied by a nonrefundable fee of \$125. Such fee shall apply toward the permit fee of an applicant seeking review who is successful in obtaining a permit.

(2) The board shall review a denial of an application for renewal or request to transfer a permit according to the applicable provisions of ORS chapter 183. Orders issued by the board are not subject to review by the commission, but may be appealed as provided in ORS 183.480 to 183.500.

(3) According to the applicable provisions of ORS chapter 183, the board may promulgate such rules as it considers necessary to carry out its duties, functions and powers.

(4) The board may delegate to the department its authority to waive requirements for renewal of permits. [1995 c.602 §3; 2009 c.832 §28]

Note: 508.762 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 508 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

508.765 Roe-herring limited participation; terms; conditions; fees; rules. (1)

Notwithstanding any other provision of the commercial fishing laws, in order to provide a roe-herring commercial fishery with optimum profits to those engaged in the fishery

and to prevent a concentration of fishing effort that would deplete the resource, the State Fish and Wildlife Commission, by rule, shall establish a system for limiting participation in the roe-herring commercial fishing. Any such system may include, but is not limited to, provisions on the following matters:

(a) Establishment of criteria for initial entry into fishery participation and for annual qualification for participation thereafter.

(b) Establishment of terms and conditions for transferring participation rights.

(2)(a) The annual fee to participate in the roe-herring fishery is:

(A) \$125 for resident applicants.

(B) \$175 for nonresident applicants.

(b) A fee of \$100 shall be charged for each transfer of participation rights under this section.

(3)(a) A denial by the commission of an application for renewal of any permit or transfer of any permit established under this section shall be subject to review by the Commercial Fishery Permit Board upon written request of the applicant. The review provided under this subsection shall be in lieu of any such review by the commission or the State Department of Fish and Wildlife.

(b) Request for review under this subsection shall be on such forms and contain such information as the board shall determine. Requests for review shall be accompanied by a \$125 fee, which fee shall apply toward any applicable permit fees resulting from an order of the board in favor of the requesting applicant.

(4) Orders issued by the board are not subject to review by the commission but may be appealed as provided in ORS chapter 183.

(5) According to the provisions of ORS chapter 183, the board shall adopt such rules as it determines necessary to carry out its duties, functions and powers. [Formerly 508.800; 1991 c.701 §13; 1995 c.602 §4; 2009 c.832 §29; 2011 c.613 §4]

RESTRICTED VESSEL PERMIT SYSTEMS

(Columbia River Gillnet Fishery)

508.775 Vessel permit required to engage in fishery; purchase of fish by dealer from individual without permit prohibited. (1) Notwithstanding any other provision of the commercial fishing laws, it is unlawful for an individual to operate a vessel in the Columbia River gillnet salmon fishery without first obtaining a vessel permit issued pursuant to ORS 508.775 to 508.796. However, an individual who holds valid commer-

cial fishing licenses and vessel permits required by and issued pursuant to the laws of the State of Washington for commercial salmon fishing in the Columbia River may land salmon in this state that were taken in the Columbia River gillnet salmon fishery without the permit otherwise required by this subsection.

(2) Notwithstanding any other provision of the commercial fishing laws, it is unlawful for a wholesaler, canner or buyer to buy or receive salmon taken in the Columbia River gillnet fishery from an individual who does not have the permit required by subsection (1) of this section.

(3) The permit required by subsection (1) of this section is in addition to and not in lieu of the boat license required by ORS 508.260. [1979 c.679 §2; 1981 c.365 §1]

508.778 Limitation on issuance of permits. Except as provided in ORS 508.792, no new vessel permits shall be issued. [1979 c.679 §3; 1981 c.365 §40; 1989 c.940 §3; 1995 c.602 §5]

508.781 Renewal of permit; rules. An individual who obtained the permit required by ORS 508.775 for a particular calendar year is eligible to obtain renewal of the permit in a subsequent calendar year, upon application and payment of the fees therefor by December 31 of the permit year or by such date as may be specified by rule of the State Department of Fish and Wildlife. [1979 c.679 §4; 1981 c.365 §12; 1995 c.602 §6; 2007 c.768 §7]

508.784 Considerations in determining eligibility for permit. In making determinations regarding renewal of the permits required by ORS 508.775, the State Department of Fish and Wildlife and the Commercial Fishery Permit Board may consider as evidence of permit qualifications or requirements department records and such receipts, accounts, contracts and other business records of private parties as the department or the board consider reliable evidence of the qualifications or requirements in question. [1979 c.679 §5; 1989 c.940 §4]

508.787 Permit revocation procedure. The Commercial Fishery Permit Board may revoke and refuse subsequent issuance of a permit required by ORS 508.775 in the manner provided in ORS 508.485 (1) and 508.490. [1979 c.679 §6; 2013 c.164 §2]

508.790 Fee; application form. (1) The annual fee for the vessel permit required by ORS 508.775 is:

(a) \$51 for resident applicants.

(b) \$101 for nonresident applicants.

(2) Applications shall be in such form and contain such information as the State Department of Fish and Wildlife, by rule, may prescribe. [1979 c.679 §7; 1981 c.43 §3; 2009 c.832 §30; 2011 c.613 §5; 2015 c.779 §37]

Note: See note under 508.285.

508.792 Lottery system for permit issuance. (1) Except as provided in subsection (2) of this section, if the number of permits renewed under ORS 508.781 falls below 200, the State Department of Fish and Wildlife shall issue permits by a lottery system for vessels that do not meet the requirements of ORS 508.781. However, the number of permits issued pursuant to any such lottery system shall not increase the number of permits issued to a total number greater than 200.

(2) The State Fish and Wildlife Commission may, in its discretion, suspend the lottery for up to two years. Suspension shall be based on the commission's assessment of the condition of the resource and shall account for the recommendations of the Gillnet Salmon Review Board. [1989 c.940 §5b; 1995 c.602 §7]

508.793 Permit transfer restrictions; fee. (1) The vessel permit required by ORS 508.775 is transferable:

(a) To a replacement vessel of the permit holder.

(b) To the purchaser of the vessel when the vessel is sold.

(2) Notwithstanding subsection (1) of this section, upon request of a permit holder, the State Department of Fish and Wildlife may authorize transfer of a permit to a replacement vessel owned by an individual other than the permit holder. However, any transfer of a permit away from a vessel without the written consent of each person holding a security interest in such vessel is void.

(3) A fee of \$100 shall be charged for each transfer of a vessel permit under this section. [1979 c.679 §9; 1981 c.365 §14; 2009 c.832 §31]

508.796 Review of permit denial; fee; rules; limitation on transfer of certain permits. (1) An individual whose application for renewal of the permit required by ORS 508.775 is denied by the State Department of Fish and Wildlife may make written request to the Commercial Fishery Permit Board for review of the denial. The review provided in this subsection is in lieu of any such review by the department or the State Fish and Wildlife Commission. The request shall be in such form and shall contain such information as the board considers appropriate. The request shall be accompanied by a nonrefundable fee of \$125. Such fees shall apply toward the permit fee of successful applicants.

(2) In accordance with any applicable provision of ORS chapter 183, the board shall review denials of applications for renewal of permits. Orders issued by the board are not

subject to review by the commission, but may be appealed as provided in ORS 183.480 to 183.500. The board may waive requirements for renewal of permits if the board finds:

(a) That the individual for personal or economic reasons chose to actively commercially fish in some other fishery during the Columbia River gillnet salmon seasons; or

(b) That the individual failed to meet the requirements as the result of illness, accident or other circumstances beyond the individual's control.

(3) In accordance with any applicable provision of ORS chapter 183, the board may promulgate such rules as it considers necessary to carry out its duties, functions and powers.

(4) The board may delegate to the department its authority to waive requirements for renewal of permits.

(5) Notwithstanding any other provision of law, without the prior approval of the Commercial Fishery Permit Board, a Columbia River gillnet salmon vessel permit acquired as a result of a waiver pursuant to subsection (2) of this section may not be transferred to another vessel until the vessel for which the permit was issued has been used in the Columbia River gillnet salmon fishery for two or more calendar years. [1979 c.679 §10; 1981 c.365 §15; 1989 c.940 §5; 1995 c.602 §8; 2009 c.832 §32]

Note: Sections 4 to 6, chapter 672, Oregon Laws 2013, provide:

Sec. 4. Columbia River fisheries transition support. (1) The State Department of Fish and Wildlife shall establish and implement a Columbia River fisheries transition program, using moneys in the Columbia River Fisheries Transition Fund established under section 5 of this 2013 Act, to provide grants to assist counties to implement county programs under which:

(a) Compensation is provided to individuals who hold vessel permits issued pursuant to ORS 508.775 to 508.796 and who provide documentation of economic harm resulting from restrictions related to Columbia River fish management and reform adopted by rule of the State Fish and Wildlife Commission; and

(b) Financial assistance is provided to individuals who hold vessel permits issued pursuant to ORS 508.775 to 508.796 and who demonstrate a history of recent landings under a permit issued pursuant to ORS 508.775 to 508.796, to help offset the cost to those individuals of fishing equipment required as a result of fishing gear changes caused by restrictions related to Columbia River fish management and reform adopted by rule of the commission.

(2) Subject to available funding in the Columbia River Fisheries Transition Fund, a county qualifies for a grant under the Columbia River fisheries transition program if the county:

(a) Establishes a county program to:

(A) Compensate individuals who hold vessel permits issued pursuant to ORS 508.775 to 508.796 and who provide documentation of economic harm resulting from restrictions related to Columbia River fish management and reform adopted by rule of the commission.

(B) Provide financial assistance to individuals who hold vessel permits issued pursuant to ORS 508.775 to 508.796 and who demonstrate a history of recent landings under a permit issued pursuant to ORS 508.775 to 508.796, to help offset the cost to those individuals of fishing equipment required as a result of fishing gear changes caused by restrictions related to Columbia River fish management and reform adopted by rule of the commission.

(b) Establishes a county advisory committee to oversee the county program, consisting of at least one member who is a county commissioners, two members who hold vessel permits issued pursuant to ORS 508.775 to 508.796 or who have expertise related to commercial fisheries and two members who are not employed in the commercial fishing industry and who represent the public interest in the equitable administration of public funds.

(c) Allows all individuals who hold vessel permits issued pursuant to ORS 508.775 to 508.796 to participate in the county program.

(3) As used in this section, "economic harm" means the reduction, unrelated to environmental and market variability or personal circumstances, in the annual income of an individual who holds a vessel permit issued pursuant to ORS 508.775 to 508.796 from fishing under the permit that is due to Columbia River fish management and reform adopted by rule of the commission. [2013 c.672 §4]

Sec. 5. (1) The Columbia River Fisheries Transition Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Columbia River Fisheries Transition Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the State Fish and Wildlife Commission to carry out the provisions of section 4 of this 2013 Act.

(2) The commission may accept grants, donations, contributions or gifts from any source for deposit in the Columbia River Fisheries Transition Fund.

(3) The Columbia River Fisheries Transition Fund shall consist of:

(a) Moneys accepted by the commission pursuant to subsection (2) of this section.

(b) General Fund moneys appropriated to the Columbia River Fisheries Transition Fund by the Legislative Assembly. [2013 c.672 §5]

Sec. 6. (1) Sections 4 and 5 of this 2013 Act are repealed on January 2, 2019.

(2) The Columbia River Fisheries Transition Fund established under section 5 of this 2013 Act is abolished January 2, 2019.

(3) Any unexpended moneys remaining in the Columbia River Fisheries Transition Fund on January 2, 2019, shall be transferred to the Columbia River Fisheries Enhancement Fund established under section 7 of this 2013 Act. [2013 c.672 §6]

508.800 [1983 c.419 §2; renumbered 508.765 in 1987]

(Ocean Troll Salmon Fishery)

508.801 Vessel permit required to engage in fishery; purchase of fish by dealer from individual without permit prohibited. (1) Notwithstanding any other provision of the commercial fishing laws, it is unlawful for an individual to operate a vessel in the ocean troll salmon fishery without first obtaining a vessel permit issued pursuant to ORS 508.801 to 508.825.

(2) Notwithstanding any other provision of the commercial fishing laws, it is unlawful for a wholesaler, canner or buyer to buy or receive salmon taken in the ocean troll fishery from a vessel for which the permit required by subsection (1) of this section has not been issued.

(3) The permit required by subsection (1) of this section is in addition to and not in lieu of the boat license required by ORS 508.260. [1979 c.613 §2; 1981 c.365 §1; 2009 c.11 §75]

508.804 Prohibition on issuance of permits. No new vessel permits shall be issued in the ocean troll salmon fishery after March 5, 2012. [1979 c.613 §3; 1989 c.940 §6; 1995 c.602 §9; 2012 c.17 §1]

508.807 Renewal of permit; replacement vessel; rules. (1) An individual who obtained the permit required by ORS 508.801 for a particular calendar year is eligible to obtain renewal of the permit in a subsequent calendar year upon obtaining the annual boat license referred to in ORS 508.285. The permit must be renewed, and the boat license obtained, not later than December 31 of each year or such date as may be established by rule of the State Department of Fish and Wildlife.

(2) Notwithstanding any other provision of law, an individual who permanently loses the services of a vessel through capsizing, sinking, fire, collision or other catastrophic accident has a period of two years from the date of loss to replace the vessel without losing eligibility to renew the vessel permit. [1979 c.613 §4; 1981 c.43 §5; 1987 c.912 §1; 1995 c.602 §10; 2007 c.768 §8]

508.808 Special renewal and fee provisions. (1) In order to be able to renew the vessel permit in any subsequent year, an individual is not required to renew the boat license as provided in ORS 508.807 if:

(a) In the year prior to renewal there was not an ocean troll salmon season of more than 20 consecutive days between May 1 and July 31 in the Pacific Fisheries Management Council management area adjacent to the port where the vessel lands fish; and

(b) The vessel landed salmon in only one single Oregon port and no other during the preceding three years in which there was a salmon season of more than 20 consecutive days between May 1 and July 31 in the Pacific Fisheries Management Council management area adjacent to the port.

(2) The State Department of Fish and Wildlife may, upon written request by the purchaser, refund any amount paid for a boat license for a boat that qualifies under the provisions of subsection (1) of this section. [1993 c.227 §§2,3; 1995 c.540 §1]

508.810 Considerations in determining eligibility for permit. In making determinations regarding renewal of the permits required by ORS 508.801, the State Department of Fish and Wildlife and the Commercial Fishery Permit Board may consider as evidence of permit qualifications or requirements department records and such receipts, accounts, contracts and other business records of private parties as the department or the board considers reliable evidence of the qualifications or requirements in question. [1979 c.613 §5; 1989 c.940 §7]

508.813 Permit revocation procedure. The Commercial Fishery Permit Board may revoke and refuse subsequent issuance of a permit required by ORS 508.801 in the manner provided in ORS 508.485 (1) and 508.490. [1979 c.613 §6; 2013 c.164 §3]

508.816 Fee; application form; rules. (1) The annual fee for the vessel permit required by ORS 508.801 is:

- (a) \$60 for resident applicants.
- (b) \$110 for nonresident applicants.

(2) Applications shall be in such form and contain such information as the State Department of Fish and Wildlife, by rule, may prescribe. [1979 c.613 §7; 1981 c.43 §1; 1987 c.912 §2; 2009 c.832 §33; 2011 c.613 §6; 2015 c.779 §38]

Note: See note under 508.285.

508.819 Permits transferred to federal government. The State Department of Fish and Wildlife shall consider a permit transferred to, purchased by or otherwise held by the federal government as a permit renewed under ORS 508.807. [1979 c.613 §8; 1981 c.365 §2; 1987 c.912 §3; subsection (2) of 1987 Replacement Part enacted as 1983 c.797 §4; 1993 c.555 §1; 1995 c.602 §13; 2001 c.235 §1; 2007 c.461 §1; 2012 c.17 §2]

508.822 Permit transfer restrictions; fee. (1) The vessel permit required by ORS 508.801 is transferable:

- (a) To a replacement vessel of the permit holder.
- (b) To the purchaser of the vessel when the vessel is sold.
- (c) Upon request of a permit holder, to a replacement vessel owned by an individual other than the permit holder if authorized by the State Department of Fish and Wildlife. However, any transfer of a permit away from a vessel without the written consent of each person holding a security interest in such vessel is void.

(2) Permits may be transferred between vessels where both vessels fall within any one of the following categories:

- (a) Vessels less than or equal to 30 feet;
- (b) Vessels greater than 30 feet and less than or equal to 42 feet; or
- (c) Vessels greater than 42 feet.

(3) A permit may be transferred from a vessel that is in one of the categories defined in subsection (2) of this section to a vessel that is in a different category provided that no vessel permit may be transferred to a vessel more than five feet longer than the vessel from which the permit is being transferred.

(4) A vessel permit may not be transferred more than once in any 12-month period. However, the Commercial Fishery Permit Board may waive the waiting period for additional transfer if the board finds that strict adherence to the waiting period would create undue hardship for the individual seeking transfer of the permit.

(5) Persons requesting the transfer of a permit pursuant to subsection (1)(c) of this section shall provide to the department copies of documents or state registration for each vessel as proof of the length and ownership.

(6) A fee of \$100 shall be charged for each transfer of a vessel permit under this section. [1979 c.613 §9; 1981 c.365 §3; 1983 c.797 §5; 1985 c.159 §1; 1987 c.912 §4; 1989 c.441 §1; 1995 c.602 §14; 2007 c.461 §2; 2009 c.832 §34; 2012 c.17 §3]

508.825 Review of permit denial; rules; fee. (1) An individual whose application for renewal or transfer of the permit required by ORS 508.801 is denied by the State Department of Fish and Wildlife may make written request to the Commercial Fishery Permit Board for review of the denial. The review provided in this subsection is in lieu of any such review by the department or the State Fish and Wildlife Commission. The request shall be in such form and shall contain such information as the board considers appropriate. The request shall be accompanied by a nonrefundable fee of \$125. Such fee shall apply toward the permit fee of successful applicants.

(2) In accordance with any applicable provision of ORS chapter 183, the board shall review denials of applications for renewal or transfer of permits. Orders issued by the board are not subject to review by the commission, but may be appealed as provided in ORS 183.480 to 183.540. The board may waive requirements for renewal or transfer of permits if the board finds that the individual fails to meet the requirements as the result of illness, accident or other circumstances beyond the individual's control.

(3) In accordance with any applicable provision of ORS chapter 183, the board may promulgate such rules as it considers necessary to carry out its duties, functions and powers.

(4) The board may delegate to the department its authority to waive requirements

for renewal or transfer of permits. [1979 c.613 §11; 1981 c.365 §4; 1983 c.797 §6; 1987 c.912 §5; 1989 c.940 §8; 1995 c.602 §15; 2009 c.832 §35]

508.828 Single delivery license in lieu of vessel permit. Notwithstanding ORS 508.801 to 508.825, 508.880, 508.883 and 508.889 to 508.910, subject to ORS 508.316, a vessel not having a permit may in an emergency and with the approval of the State Department of Fish and Wildlife land salmon by purchase of a single delivery license. [1981 c.365 §21; 1999 c.164 §3; 2009 c.11 §76]

(Ocean Scallop Fishery)

508.840 Vessel permit required to engage in fishery; purchase of scallops by dealer from individual without permit prohibited. (1) Notwithstanding any other provision of the commercial fishing laws, it is unlawful for an individual to operate a vessel in the ocean scallop fishery without first obtaining a vessel permit issued pursuant to ORS 508.840 to 508.867.

(2) Notwithstanding any other provision of the commercial fishing laws, it is unlawful for a wholesaler, canner or buyer to buy or receive scallops taken in the ocean fishery from a vessel for which the permit required by subsection (1) of this section has not been issued.

(3) The permit required by subsection (1) of this section is in addition to and not in lieu of the boat license required by ORS 508.260. [1981 c.365 §25]

508.843 Use of single delivery license in lieu of permit; reciprocity of law. (1) Notwithstanding ORS 508.840, an individual who holds a valid scallop fishing permit required by or issued pursuant to the laws of the states of Washington or California may land scallops in this state that were taken in the ocean fishery without the permit required by ORS 508.840 if the vessel possesses a single delivery license referred to in ORS 508.285.

(2) This section remains operative only while laws or administrative rules in California and Washington are operative that contain, in substance or effect, provisions similar to the provisions of ORS 508.840 (1). [1981 c.365 §26; 1995 c.602 §16; 1999 c.164 §4]

508.846 Issuance of permits restricted. Except as provided in ORS 508.861, no new vessel permits shall be issued. [1981 c.365 §27; 1989 c.940 §9; 1995 c.602 §17]

508.849 Renewal of permit. An individual who obtained the permit required by ORS 508.840 for calendar year 1981 is eligible to obtain renewal of the permit in a subsequent calendar year, upon application by December 31 of the permit year and payment of the fees

therefor, if during the preceding calendar year the vessel for which permit renewal application is made was used in the ocean fishery to take at least 5,000 pounds of food fish which were lawfully landed in this state. [1981 c.365 §28; 1995 c.602 §18]

508.852 Considerations in determining eligibility for permit. In making determinations regarding renewal of the permits required by ORS 508.840, the State Department of Fish and Wildlife and the Commercial Fishery Permit Board may consider as evidence of permit qualifications or requirements department records and such receipts, accounts, contracts and other business records of private parties as the department or the board considers reliable evidence of the qualifications or requirements in question. [1981 c.365 §29; 1989 c.940 §10]

508.855 Permit revocation procedure. The Commercial Fishery Permit Board may revoke and refuse subsequent issuance of a permit required by ORS 508.840 in the manner provided in ORS 508.485 (1) and 508.490. [1981 c.365 §30; 2013 c.164 §4]

508.858 Fee. The annual fee for the vessel permit required by ORS 508.840 is:

(1) \$125 for resident applicants.

(2) \$175 for nonresident applicants. [1981 c.365 §31; 1991 c.701 §14; 2009 c.832 §36; 2011 c.613 §7]

508.861 Lottery system for permit issuance; rules. The State Department of Fish and Wildlife may establish by rule a lottery system for issuing permits to vessels that do not meet the requirements of ORS 508.849. The department, by rule, shall determine the number of permits and the criteria for issuance. [1981 c.365 §32; 1989 c.940 §11a; 1995 c.602 §19]

508.864 Permit transfer restrictions; fee. (1) Notwithstanding any other provision of law, an ocean scallop vessel permit issued pursuant to ORS 508.840 to 508.867 may not be transferred to another vessel:

(a) Until the vessel for which the permit was issued has been used in the ocean scallop fishery for three or more calendar years to land at least 5,000 pounds of food fish annually.

(b) More than once in any 12-month period. However, the Commercial Fishery Permit Board may waive the waiting period if the board finds that strict adherence to the waiting period would create undue hardship for the individual seeking transfer of the permit.

(c) That is more than five feet longer than the vessel from which the permit is transferred.

(2) A fee of \$100 shall be charged for each transfer of a vessel permit under this section. [1981 c.365 §33; 1995 c.602 §20; 2009 c.832 §37]

508.867 Review of permit denial; fee; rules. (1) Notwithstanding ORS 508.755 (6)(b) and (c), an individual whose application for renewal of the permit required by ORS 508.840 is denied by the State Department of Fish and Wildlife may make written request to the Commercial Fishery Permit Board for review of the denial. The review provided in this subsection is in lieu of any such review by the department or the State Fish and Wildlife Commission. The request shall be in such form and shall contain such information as the board considers appropriate. The request shall be accompanied by a nonrefundable fee of \$125. Such fee shall apply toward the permit fee of successful applicants.

(2) In accordance with any applicable provision of ORS chapter 183, the board shall review denials of applications for renewal of permits. Orders issued by the board are not subject to review by the commission, but may be appealed as provided in ORS 183.480 to 183.540. The board may waive requirements for renewal of permits if the board finds that the individual for personal or economic reasons chooses to actively fish the permit vessel in some other ocean fishery or if the board finds that the individual fails to meet the requirements as the result of illness, accident or other circumstances beyond the individual's control.

(3) In accordance with any applicable provision of ORS chapter 183, the board may promulgate such rules as it considers necessary to carry out its duties, functions and powers.

(4) The board may delegate to the department the authority to waive eligibility requirements for renewal of permits. [1981 c.365 §34; 1989 c.940 §11; 1995 c.602 §21; 2009 c.832 §38]

(Ocean Pink Shrimp Fishery)

508.880 Vessel permit required to engage in fishery; purchase of shrimp by dealers from individual without permit prohibited. (1) Notwithstanding any other provision of the commercial fishing laws, it is unlawful for an individual to operate a vessel in the ocean pink shrimp fishery without first obtaining a vessel permit issued pursuant to ORS 508.880, 508.883 and 508.889 to 508.910.

(2) Notwithstanding any other provision of the commercial fishing laws, it is unlawful for a wholesaler, canner or buyer to buy or receive pink shrimp (*Pandalus jordani*) taken in the ocean pink shrimp fishery from a vessel for which the permit required by subsection (1) of this section or the license required by ORS 508.883 has not been issued.

(3) The permit required by subsection (1) of this section is in addition to and not in

lieu of the boat license required by ORS 508.260. [1979 c.613 §13; 1981 c.365 §5]

508.883 Use of single delivery license in lieu of vessel permit; reciprocity of law. (1) Notwithstanding ORS 508.880, an individual who holds valid commercial fishing permits required by or issued pursuant to the laws of the states of Washington or California to take pink shrimp may land pink shrimp in this state that were taken in the ocean pink shrimp fishery without the permit required by ORS 508.880 if the vessel possesses a single delivery license referred to in ORS 508.285. However, a single delivery license may be used to land pink shrimp only once in a 12-month period as established by rule of the State Fish and Wildlife Director.

(2) Subsection (1) of this section shall apply to a vessel registered under the laws of another state only while laws or administrative rules are operative in that state that contain, in substance or effect, provisions similar to the provisions of subsection (1) of this section. [1979 c.613 §14; 1987 c.912 §9; 1995 c.602 §22; 1999 c.164 §5]

508.886 Limitation on number of permits; eligibility. Notwithstanding any other provision of law, until the number of vessel permits required by ORS 508.880 reaches 235:

(1) For calendar year 1987, those persons who delivered pink shrimp by use of a single delivery license referred to in ORS 508.285 during calendar year 1986 are eligible to obtain a permit.

(2) For calendar year 1988, those persons who deliver pink shrimp from their own boats by use of a single delivery license referred to in ORS 508.285 during calendar year 1987 are eligible to obtain a permit, giving priority in the order of the date of delivery. [1987 c.912 §11]

508.889 Issuance of permits limited. Except as provided in ORS 508.904, no new vessel permits shall be issued. [1979 c.613 §15; 1989 c.940 §12; 1995 c.602 §23]

508.892 Renewal of permit; rules. (1) An individual who obtained the permit required by ORS 508.880 for a particular calendar year is eligible to obtain renewal of the permit in a subsequent calendar year upon application and payment of the fees therefor and upon obtaining the annual boat license referred to in ORS 508.285. The permit must be applied for, and the boat license obtained, not later than December 31 of each year or such date as may be established by rule of the State Department of Fish and Wildlife.

(2) An individual who permanently loses the services of a vessel through capsizing, sinking, fire, collision or other catastrophic accident shall remain eligible to obtain a

vessel permit for a replacement vessel for two years from the date of loss. [1979 c.613 §16; 1981 c.365 §6; 1985 c.453 §1; 1987 c.912 §8; 1995 c.602 §24; 1999 c.165 §1; 2007 c.768 §9]

508.895 Considerations in determining eligibility for permit. In making determinations regarding renewal of the permits required by ORS 508.880, the State Department of Fish and Wildlife and the Commercial Fishery Permit Board may consider as evidence of permit qualifications or requirements department records and such receipts, accounts, contracts and other business records of private parties as the department or the board considers reliable evidence of the qualifications or requirements in question. [1979 c.613 §17; 1989 c.940 §13]

508.898 Permit revocation procedure. The Commercial Fishery Permit Board may revoke and refuse subsequent issuance of a permit required by ORS 508.880 in the manner provided in ORS 508.485 (1) and 508.490. [1979 c.613 §18; 2013 c.164 §5]

508.901 Fee; application form; rules.

(1) The annual fee for the vessel permit required by ORS 508.880 is:

- (a) \$200 for resident applicants.
- (b) \$250 for nonresident applicants.

(2) Applications shall be in such form and contain such information as the State Department of Fish and Wildlife, by rule, may prescribe. [1979 c.613 §19; 1981 c.43 §2; 1987 c.912 §7; 1991 c.701 §15; 2009 c.832 §39; 2011 c.613 §8; 2015 c.779 §39]

508.904 Lottery system for permit issuance. (1) Except as provided in subsection (2) of this section, if the number of permits renewed under ORS 508.892 falls below 150, the State Department of Fish and Wildlife shall issue permits by lottery systems for vessels that do not meet such requirements, first among those individuals who landed pink shrimp pursuant to a single delivery license referred to in ORS 508.285, and then among all other individuals making application therefor. However, the number of permits issued pursuant to any such lottery system may not increase the total number of permits issued beyond 150.

(2) The department shall consider a permit transferred to, purchased by or otherwise held by the federal government as a permit renewed under ORS 508.892. A permit transferred to, purchased by or otherwise held by the federal government is a permit under the limit of 150 permits established by this section. [1979 c.613 §20; 1981 c.365 §7; 1987 c.912 §6; 1989 c.940 §15; 1995 c.602 §25; 2001 c.235 §2]

508.907 Permit transfer restrictions; fee. (1) The vessel permit required by ORS 508.880 is transferable:

(a) To a replacement vessel of the permit holder. A replacement is any vessel that is purchased for any reason to replace a vessel previously owned by and licensed to the permit holder;

(b) To the purchaser of the vessel when the vessel is sold; or

(c) To a replacement vessel owned by an individual other than the permit holder. However, any transfer of a permit away from a vessel without the written consent of each person holding a security interest in such vessel is void.

(2) A permit may be transferred to a vessel of greater length only if that vessel is within 5 feet in overall length of the vessel from which the permit is being transferred. This provision does not apply if the permit is being transferred from one vessel owned by an individual to another vessel not exceeding 80 feet in length that is owned by the same individual.

(3) A permit may not be transferred to another vessel more than once in a 12-month period. However, the Commercial Fishery Permit Board may waive the waiting period if the board finds that strict adherence to the waiting period would create undue hardship for the individual seeking transfer of the permit.

(4) A fee of \$100 shall be charged for each transfer of a vessel permit under this section. [1979 c.613 §21; 1981 c.365 §8; 1995 c.602 §26; 1999 c.165 §2; 2009 c.832 §40]

508.908 Limits on authority of Commercial Fishery Permit Board to prohibit transfer of valid pink shrimp vessel permits. The Commercial Fishery Permit Board may not prohibit the transfer under ORS 508.907 of a valid ocean pink shrimp vessel permit on the basis that:

(1) The vessel for which the permit was issued did not participate in the ocean pink shrimp fishery for three or more preceding consecutive years to annually land at least 5,000 pounds of shrimp in Oregon, California or Washington; or

(2) The holder of the permit did not obtain an exemption from the catch requirement. [1999 c.165 §4]

Note: 508.908 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 508 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

508.910 Review of permit denial; fee; rules; limitation on transfer of certain permits. (1) An individual whose application for renewal of the permit required by ORS 508.880 is denied by the State Department of Fish and Wildlife may make written request to the Commercial Fishery Permit Board for

review of the denial. The review provided in this subsection is in lieu of any such review by the department or the State Fish and Wildlife Commission. The request shall be in such form and shall contain such information as the board considers appropriate. The request shall be accompanied by a nonrefundable fee of \$125. Such fee shall apply toward the permit fee of successful applicants.

(2) In accordance with any applicable provision of ORS chapter 183, the board shall review denials of applications for renewal of permits. Orders issued by the board are not subject to review by the commission, but may be appealed as provided in ORS 183.480 to 183.540. The board may waive requirements for renewal of permits if the board finds that the individual fails to meet the requirements as the result of illness, accident or other circumstances beyond the individual's control.

(3) In accordance with any applicable provision of ORS chapter 183, the board may promulgate such rules as it considers necessary to carry out its duties, functions and powers.

(4) The board may delegate to the department its authority to waive requirements for renewal of permits. [1979 c.613 §22; 1981 c.365 §9; 1989 c.940 §14; 1995 c.602 §27; 1999 c.165 §3; 2009 c.832 §41]

508.913 Issuance of permits for vessels engaged in groundfish fishery; permit transfer restriction. (1) The Commercial Fishery Permit Board is authorized to receive applications and issue ocean pink shrimp vessel permits for 1982 to trawl vessel owners for those vessels that did not qualify for or receive an ocean pink shrimp permit in 1980, if the board finds that the vessel has been actively engaged in Oregon's groundfish fishing since January 1, 1974, or entered that fishery subsequent to January 1, 1974, but prior to July 1, 1979, and has continued to be actively engaged in that Oregon fishery.

(2) Notwithstanding any other provision of law, without the prior approval of the Commercial Fishery Permit Board, an ocean pink shrimp vessel permit acquired pursuant to subsection (1) of this section may not be transferred to another vessel until the vessel for which the permit was issued has been used in the ocean pink shrimp fishery for two or more calendar years. [1981 c.365 §22]

508.915 Negotiations to establish reciprocal agreements pertaining to pink shrimp. The State Fish and Wildlife Director shall work with the appropriate authorities in the states of California and Washington to negotiate reciprocal agreements that would allow vessels registered under the laws of those states to land pink shrimp in Oregon to the same extent that

vessels registered in Oregon may land pink shrimp in California or Washington. [1999 c.164 §6]

Note: 508.915 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 508 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

508.920 [1979 c.613 §10; 1983 c.419 §3; 1987 c.374 §3; 1995 c.484 §8; renumbered 508.755 in 1995]

(Ocean Dungeness Crab Fishery)

508.921 Findings; rules. The Legislative Assembly finds that the Oregon ocean Dungeness crab fishery is overcapitalized. This overcapitalization has led to economic destabilization of the ocean Dungeness crab industry and the coastal communities relying on the crab harvest and can cause excessive harvesting pressure on Oregon's ocean Dungeness crab resources. Since the state legislatures of Washington and California have enacted programs restricting participation in the ocean Dungeness crab fishery, the possibility of increased effort in Oregon coastal waters by displaced vessels is increased. Notwithstanding any other provision of the commercial fishing laws, in order to promote the economic well-being of the Oregon ocean Dungeness crab industry and the coastal communities relying on the harvest, to protect the livelihood of participants in the Oregon ocean Dungeness crab fishery who have historically and continuously participated in the ocean Dungeness crab fishery and to prevent a concentration of fishing effort, the State Fish and Wildlife Commission by rule shall establish a system for restricting participation in the Oregon ocean Dungeness crab fishery. [1995 c.484 §2]

508.926 Vessel permit required to engage in fishery; purchase of crab by dealer from individual without permit prohibited. (1) Notwithstanding any other provision of the commercial fishing laws, it is unlawful for an individual to operate a vessel in the ocean Dungeness crab fishery without first obtaining a vessel permit issued pursuant to ORS 508.931 or 508.941.

(2) Notwithstanding any other provision of the commercial fishing laws, it is unlawful for a wholesaler, canner or buyer to buy or receive ocean Dungeness crab taken in the ocean fishery from a vessel for which the permit required by subsection (1) of this section has not been issued.

(3) The permit required by subsection (1) of this section is in addition to and not in lieu of the boat license required by ORS 508.260. [1995 c.484 §3]

508.931 Eligibility for permit. (1) The system established under ORS 508.921 shall provide initial eligibility for vessels to par-

ticipate in the ocean Dungeness crab fishery seasons established by the State Fish and Wildlife Commission, beginning on December 1, 1995, with a transferable ocean Dungeness crab permit only if:

(a) The vessel for which application is made was continuously licensed pursuant to ORS 508.260 for the calendar years 1991 through 1994, and was used in the ocean Dungeness crab fishery to lawfully land into Oregon ports at least 500 pounds of ocean Dungeness crab in each of two crab fishing seasons between December 1, 1988, and December 31, 1994;

(b) The vessel for which application is made was under construction between December 1, 1988, and August 14, 1991, for the purpose of ocean Dungeness crab fishing in waters of this state, and the vessel lawfully landed into Oregon ports at least 500 pounds of ocean Dungeness crab in each of two crab fishing seasons between December 1, 1988, and December 31, 1994, and was licensed as an Oregon vessel from the date of completion;

(c) The vessel for which application is made was used in the ocean Dungeness crab fishery to lawfully land into Oregon ports at least 500 pounds of ocean Dungeness crab in each of two crab fishing seasons between December 1, 1991, and December 31, 1994, and is owned by a person who, prior to December 31, 1994, sold a vessel that was used prior to sale in the ocean Dungeness crab fishery to lawfully land into Oregon ports at least 500 pounds of ocean Dungeness crab in each of two crab fishing seasons between December 1, 1988, and December 31, 1994, and who, as a condition of the sale, retained the sold vessel's commercial fishing rights to fish for ocean Dungeness crab in the ocean waters of Oregon;

(d) The vessel for which application is made was continuously licensed pursuant to ORS 508.260 for the calendar years 1991 through 1994, was used in the ocean Dungeness crab fishery to lawfully land into Oregon ports at least 10,000 pounds of ocean Dungeness crab in one crab fishing season between December 1, 1988, and December 31, 1994, and the owner of the vessel on December 31, 1994, demonstrates possession of one or more vessel licenses described in ORS 508.260 in each of 10 separate years during the period December 1, 1980, to December 31, 1994; or

(e) The vessel for which application is made was licensed pursuant to ORS 508.260 during 1994, is 26 feet or less in length and was used in the ocean Dungeness crab fishery to lawfully land into Oregon ports at least 100 pounds of ocean Dungeness crab in

at least one crab fishing season between December 1, 1988, and December 31, 1994.

(2) As used in this section:

(a) "Crab fishing season" is the time period from December 1 of one year through August 14 of the next year.

(b) "Owner" includes any ownership interest in a vessel, including interests arising from partnership or corporation. [1995 c.484 §4]

508.934 Permit revocation procedure.

The Commercial Fishery Permit Board may revoke and refuse subsequent issuance of a vessel permit required by ORS 508.926 in the manner provided in ORS 508.485 (1) and 508.490. [2014 c.1 §2]

Note: 508.934 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 508 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

508.936 Permit transfer restrictions; rules; fee. (1) The system established under ORS 508.921 shall include provisions to make the vessel ocean Dungeness crab permit required by ORS 508.926 transferable:

(a) To another vessel; or

(b) To the purchaser of the vessel when the vessel is sold.

(2) Except as provided in subsection (3) of this section, the vessel to which a permit is transferred may not be:

(a) More than 10 feet longer than the vessel from which the permit is transferred; or

(b) More than 99 feet in length.

(3) A permit that is transferred to a vessel that is more than 10 feet shorter than the vessel for which the permit was held on January 1, 2013, may subsequently be transferred to a vessel of a length equal to or less than the length of the vessel for which the permit was held on January 1, 2013.

(4) Notwithstanding subsections (2) and (3) of this section, a permit issued to a vessel:

(a) Under ORS 508.931 (1)(e) shall be transferred only to a vessel that is 26 feet or less in length.

(b) May not be transferred to a vessel that is more than 10 feet longer than the vessel for which the permit was held on January 1, 2006. However, the Commercial Fishery Permit Board may waive the length restriction in this paragraph if the board finds that strict adherence to the length restriction would create undue hardship, as that term is defined by rule by the State Fish and Wildlife Commission, for the individual seeking transfer of the permit.

(5) Transfer of a permit under this section is subject to the approval of the State Department of Fish and Wildlife according to such rules as the State Fish and Wildlife Commission may adopt. Any transfer of a permit from a vessel without the written consent of each person holding a security interest in the vessel is void.

(6) For purposes of this section, the length of a vessel shall be determined by the manufacturer's specification of overall length, United States Coast Guard documentation stating overall length or a survey of overall length by a certified marine surveyor, as the State Fish and Wildlife Commission by rule shall establish.

(7) A fee of \$100 shall be charged for each transfer of a vessel permit under this section. [1995 c.484 §5; 2005 c.629 §3; 2009 c.832 §42; 2014 c.1 §5]

508.941 Review of eligibility determinations; reciprocity with other states; fee. (1) The system established under ORS 508.921 shall include any other provisions for participation that the State Fish and Wildlife Commission considers appropriate.

(2) Any determination by the commission regarding the eligibility of a vessel to participate in the ocean Dungeness crab commercial fishery or to transfer participation rights is subject to review by the Commercial Fishery Permit Board, in accordance with ORS chapter 183. The board may waive the eligibility requirements contained in ORS 508.931 if the board finds that the individual fails to meet the requirements as the result of illness, fire, sinking, accident or other circumstances beyond the individual's control. In making a determination of eligibility under this section, the board shall consider the applicant's history of participation in the Oregon ocean Dungeness crab fishery. If a vessel for which application is made is owned by a person who has served in the Armed Forces of the United States and the person establishes that a service-related disability prevented the person from lawfully landing crab in two seasons during the prescribed time period, there is a rebuttable presumption in favor of issuing an illness waiver for one of the two seasons of lawfully landing crab in Oregon required under ORS 508.931 so as to require the landing of crab in only one season during the prescribed time period. The rebuttable presumption created by this subsection may be overcome only by clear and convincing evidence that the service-related disability of the person did not prevent the person from lawfully landing crab in two seasons during the prescribed time period. Orders issued by the board are not subject to review by the commission, but

may be appealed as provided in ORS 183.480 to 183.540.

(3) A commercial fishing vessel that holds a valid Washington or California permit to fish for ocean Dungeness crab shall be eligible to participate in the Oregon ocean Dungeness crab fishery provided there is reciprocal statutory authority in Washington or California that provides for equal access for vessels holding Oregon ocean Dungeness crab permits to Washington or California coastal waters and Washington waters of the Columbia River. If such reciprocal statutory authority exists, a vessel licensed by Washington or California is eligible to participate in accordance with rules that establish reciprocal border agreements that recognize traditional fishing patterns.

(4) The annual fee to participate in the ocean Dungeness crab fishery is:

(a) \$200 for resident applicants.

(b) \$250 for nonresident applicants. [1995 c.484 §6; 1997 c.837 §9; 2009 c.832 §43; 2011 c.613 §9; 2015 c.779 §40]

508.943 Requirements related to removal of crab pots; exemptions; permits for removal; rules. (1) As used in this section, "crab fishing season" has the meaning given that term in ORS 508.931.

(2) A person may not leave a crab pot used as part of the ocean Dungeness crab fishery in the waters of this state more than 15 days after the closure of the crab fishing season.

(3) The State Fish and Wildlife Commission may issue permits to persons for the removal of crab pots left in violation of subsection (2) of this section:

(a) Regardless of whether the person who removes the crab pot originally set the crab pot; and

(b) If the permit holder also holds a boat license issued pursuant to ORS 508.260.

(4) By rule the commission:

(a) Shall establish provisions related to the disposition of the crab pots by the permit holder who removes the crab pots.

(b) May restrict the removal of crab pots to specific geographic areas.

(5) The State Department of Fish and Wildlife may exempt certain owners of crab pots from the requirements of subsection (2) of this section. If the department exempts certain owners under this subsection, the department must notify the holders of permits issued under subsection (3) of this section.

(6) The provisions of ORS 98.005, 98.015, 98.025 and 98.302 to 98.436 do not apply to

crab pots removed under the provisions of this section. [2013 c.142 §2]

(Black and Blue Rockfish and Nearshore Fishery)

508.945 Vessel permit required; rules; purchase of black or blue rockfish or nearshore fish from individual without permit prohibited; exemptions. (1) Notwithstanding any other provision of the commercial fishing laws and except as provided in subsection (4) of this section, a person may not operate a vessel for:

(a) Landing black rockfish or blue rockfish in a fishery without a black rockfish and blue rockfish vessel permit issued under ORS 508.947; or

(b) Landing nearshore fish in a fishery without a black rockfish and blue rockfish vessel permit with a nearshore fish endorsement issued under ORS 508.947.

(2)(a) The State Fish and Wildlife Commission may prescribe by rule the type of fishing gear that a vessel required to have a permit under this section shall use to land black rockfish, blue rockfish or nearshore fish.

(b) The commission may not prescribe a rule under this subsection that allows a vessel to use:

(A) Diving gear.

(B) Pots, unless a vessel was issued a pot endorsement in the Interim Nearshore Fisheries Plan through the Developmental Fisheries Program enacted by the commission.

(3) Notwithstanding any other provision of the commercial fishing laws, a wholesaler, canner or buyer may not buy or receive black rockfish, blue rockfish or nearshore fish taken in a fishery from a vessel for which the permit required by this section has not been issued, unless the black rockfish, blue rockfish or nearshore fish were taken pursuant to subsection (4)(a), (b) or (c) of this section.

(4) A person may operate a vessel without a permit required by this section if the person:

(a) For only one landing per day, lands no more than 15 pounds of black rockfish, blue rockfish, nearshore fish or a combination of black rockfish, blue rockfish or nearshore fish and if the black rockfish, blue rockfish and nearshore fish:

(A) Make up 25 percent or less of the total poundage of the landing; and

(B) Are landed with fishing gear that is legal to use in the fishery in which the black

rockfish, blue rockfish or nearshore fish are landed;

(b) Operates a vessel in the ocean troll salmon fishery pursuant to ORS 508.801 to 508.825 and the person lands black rockfish, blue rockfish or a combination of black rockfish and blue rockfish in the same landing in which the person lands a salmon under the permit required by ORS 508.801 to 508.825. The black rockfish or blue rockfish landed under this paragraph must be landed dead. A person who lands black rockfish and blue rockfish under this paragraph may land up to the greater of:

(A) 30 black rockfish or 30 blue rockfish per landing or a combination of 30 black rockfish and blue rockfish per landing; or

(B) 100 pounds of black rockfish, blue rockfish or a combination of black rockfish and blue rockfish per landing;

(c) Operates a vessel in the west coast groundfish trawl fishery pursuant to federal regulations and lands no more than 1,000 pounds of black rockfish, blue rockfish or a combination of black rockfish and blue rockfish per calendar year and if the black rockfish and blue rockfish:

(A) Make up 25 percent or less of the total poundage of each landing; and

(B) Are landed dead; or

(d) Is a nonprofit aquarium or has contracted with a nonprofit aquarium to land black rockfish, blue rockfish or nearshore fish for the purpose of displaying or conducting research on the black rockfish, blue rockfish or nearshore fish.

(5) Notwithstanding the amounts set forth in subsection (4)(b) of this section, the State Fish and Wildlife Commission may change the amounts of black rockfish, blue rockfish or the combination of black rockfish and blue rockfish allowed to be landed under subsection (4)(b) of this section by rule based on an assessment of the resource. [2003 c.809 §2]

508.947 Eligibility for permit; renewal; rules. (1) The State Department of Fish and Wildlife may issue a black rockfish and blue rockfish vessel permit to an owner of a vessel that landed a minimum of 750 pounds of nontrawl caught black rockfish, blue rockfish or nearshore fish in any one calendar year between January 1, 1995, and January 1, 2001, or in the six-month period between January 1, 2001, and July 1, 2001, for delivery to a fish processor licensed pursuant to ORS 508.025.

(2) The department may issue a black rockfish and blue rockfish vessel permit with a nearshore fish endorsement to an owner of a vessel that was issued a permit under the

Interim Nearshore Fisheries Plan through the Developmental Fisheries Program.

(3) The department may renew a black rockfish and blue rockfish vessel permit or a black rockfish and blue rockfish vessel permit with a nearshore fish endorsement if the vessel made a minimum of five commercial fish landings during the calendar year prior to the request for renewal for delivery to a fish processor licensed pursuant to ORS 508.025.

(4) Permits issued under this section expire on December 31 of each year or on such date as may be specified by department rule. An owner of a vessel with a permit must submit a renewal application to the department by January 1 of each year or by such date as may be specified by department rule. If the owner of a vessel with a permit does not timely submit a renewal application, the department shall, not more than 30 days after the application was due, send to the owner by certified letter a notice of the failure to submit the renewal application. An owner may submit a late application to renew a permit not more than 90 days after the application was due if the owner pays a \$150 late fee in addition to the fee required in ORS 508.949.

(5) In making determinations regarding initial eligibility for and renewal of a permit issued under this section, the department may consider department records and receipts and accounts, contracts and other business records of private parties that the department considers reliable.

(6) Except as provided in ORS 508.955, new vessel permits may not be issued under this section after December 30, 2005. [2003 c.809 §3; 2005 c.629 §2; 2007 c.768 §10]

508.949 Fees; application form; rules.

(1) The annual fee for a black rockfish and blue rockfish vessel permit or a black rockfish and blue rockfish vessel permit with a nearshore fish endorsement issued under ORS 508.947 is:

- (a) \$125 for resident applicants.
- (b) \$175 for nonresident applicants.

(2) Applications for a permit shall be in such form and contain such information as the State Department of Fish and Wildlife, by rule, may prescribe.

(3) All fees collected under this section and ORS 508.505 (1)(b) and 508.947 shall be placed into the Black Rockfish, Blue Rockfish and Nearshore Species Research Account established in ORS 508.951. [2003 c.809 §4; 2009 c.832 §44; 2015 c.779 §41]

508.951 Black Rockfish, Blue Rockfish and Nearshore Species Research Account; sources; uses.

(1) There is estab-

lished a Black Rockfish, Blue Rockfish and Nearshore Species Research Account in the State Treasury, separate and distinct from the General Fund. Interest on moneys in the account shall be credited to the account.

(2) The account shall consist of moneys deposited into the account by the State Department of Fish and Wildlife from fees collected for the value of black rockfish, blue rockfish or nearshore fish at the point of landing pursuant to ORS 508.505 (1)(b) and black rockfish and blue rockfish vessel permit fees and late fees collected under ORS 508.947 and 508.949. The moneys in the account are continuously appropriated to the State Department of Fish and Wildlife for gathering and analyzing data and conducting research on the black rockfish and blue rockfish fishery and the nearshore species fishery. [2003 c.809 §5]

508.953 Log book required; collection and report of data.

(1) An owner of a vessel that has a black rockfish and blue rockfish vessel permit or a black rockfish and blue rockfish vessel permit with a nearshore fish endorsement shall keep a log book that includes:

- (a) The amount of food fish that are caught;
- (b) The date on which the food fish are caught;
- (c) The species of food fish that are caught by the vessel; and
- (d) Any other information that the State Department of Fish and Wildlife may prescribe.

(2) The State Department of Fish and Wildlife shall:

(a) Annually collect and summarize the information required by subsection (1) of this section; and

(b) Present a report on the black rockfish and blue rockfish fishery and the nearshore species fishery, including the summary prepared in paragraph (a) of this subsection, to the State Fish and Wildlife Commission during a public meeting held by July 1. [2003 c.809 §6]

508.955 Lottery system for permit issuance; rules.

(1) The State Fish and Wildlife Commission may establish by rule a lottery for issuing permits to vessels under ORS 508.947.

(2) A vessel may qualify for the lottery if the vessel:

- (a) Has a boat license issued pursuant to ORS 508.260 for the current year; and
- (b) Had a boat license issued pursuant to ORS 508.260 for the previous year.

(3) Based on an assessment of the resource, the commission may:

(a) Suspend the lottery for up to two years; and

(b) Renew a suspension of the lottery every two years.

(4) The commission shall establish by rule a threshold number of permits below which the department shall issue permits through the lottery. [2003 c.809 §7]

508.957 Permit transfer restrictions; fee. (1) A black rockfish and blue rockfish vessel permit with a nearshore fish endorsement issued under ORS 508.947 may be transferred to another vessel if:

(a) The permit has been renewed a minimum of five times; and

(b) The vessel operating under the permit has made, in the previous calendar year, a minimum of five landings that contained at least 15 pounds of black rockfish, blue rockfish or nearshore fish.

(2) Notwithstanding subsection (1) of this section, a black rockfish and blue rockfish vessel permit with a nearshore fish endorsement:

(a) May be transferred one time per calendar year to a replacement vessel that is owned by the same person that owns the vessel to which the permit was originally issued.

(b) That is issued to a vessel owned by a sole proprietor may be transferred upon the death of the sole proprietor.

(3) A black rockfish and blue rockfish vessel permit with a nearshore fish endorsement may not be transferred to a vessel that is more than five feet longer than the vessel to which the permit was originally issued.

(4) A black rockfish and blue rockfish vessel permit issued under ORS 508.947:

(a) May be transferred to another vessel except as provided in paragraph (b) of this subsection.

(b) May not be transferred to a vessel that is more than five feet longer than the vessel to which the permit was originally issued.

(5) A fee of \$100 shall be charged for each transfer of a vessel permit under this section. [2003 c.809 §8; 2009 c.832 §45]

508.960 Review of permit denial; fee; rules. (1) A person whose application for issuance, renewal or transfer of a permit under ORS 508.947 is denied by the State Department of Fish and Wildlife may make written request to the Commercial Fishery Permit Board for review of the denial. The review provided in this subsection is in lieu of any

such review by the department or the State Fish and Wildlife Commission. The request shall be in such form and shall contain such information as the board considers appropriate. The request shall be accompanied by a nonrefundable fee of \$125, which shall apply toward the permit fee if the application is approved.

(2) In accordance with the applicable provisions of ORS chapter 183, the board shall review denials of applications for issuance, transfer or renewal of permits. Orders issued by the board are not subject to review by the commission, but may be appealed as provided in ORS 183.480 to 183.540. The board may waive requirements for renewal or transfer of permits if the board finds that the person fails to meet the requirements as the result of illness, accident or other circumstances beyond the person's control.

(3) In accordance with the applicable provisions of ORS chapter 183, the board may promulgate such rules as it considers necessary to carry out its duties, functions and powers under this section. [2003 c.809 §9; 2009 c.832 §46]

COLUMBIA RIVER FISH MANAGEMENT AND REFORM

508.980 Legislative findings and policy; Columbia River fish management and reform; adaptive management actions; rules. (1) The Legislative Assembly finds that it is the policy of the State of Oregon that rules as a whole related to Columbia River fish management and reform that are adopted by the State Fish and Wildlife Commission:

(a) Optimize overall economic benefits to this state;

(b) Enhance the economic viability of Oregon's recreational and commercial fisheries and the communities that rely on these fisheries;

(c) Contribute to native fish conservation and recovery;

(d) Promote orderly fishery management with the State of Washington; and

(e) Provide consistency with agreements made with Indian tribes pursuant to state or federal court orders.

(2) If economic, including commercial harvest, or conservation objectives related to Columbia River fish management and reform adopted by rule of the commission are not met, then by rule the commission must provide for adaptive management actions that are designed to efficiently achieve the respective economic, including commercial harvest, or conservation objectives, including but not limited to:

(a) Modifying or halting the schedule and degree of shifts in harvest and impact allocations specified in rules of the commission as necessary to attain harvest objectives through improved harvest levels in either off-channel or mainstem fisheries, within the context of naturally varying run sizes;

(b) Advancing additional fishery opportunities, seasons or selective fishing gear; or

(c) Improving hatchery fish production or the timing, size or location of hatchery fish releases.

(3) As part of the rules related to Columbia River fish management and reform, the commission shall establish a zone at the mouth of Youngs Bay in which recreational fishing, including recreational fishing taking place with guide boats, is prohibited in order to reduce the interception of hatchery fish returning to the off-channel commercial fishery in Youngs Bay. At least once every three years, the commission shall evaluate the impacts and effectiveness of this zone and make adjustments, including the removal of the prohibition described in this subsection, as necessary to meet the objectives described in subsection (1) of this section. [2013 c.672 §3a]

Note: 508.980 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 508 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: Sections 7 and 8, chapter 672, Oregon Laws 2013, provide:

Sec. 7. Fishery enhancement on Columbia River. (1) The Columbia River Fisheries Enhancement Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Columbia River Fisheries Enhancement Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the State Fish and Wildlife Commission to implement measures that enhance fisheries, optimize the economic benefits of fisheries and advance native fish conservation related to Columbia River fish management and reform adopted by rule of the commission.

(2) The commission may accept grants, donations, contributions or gifts from any source for deposit in the Columbia River Fisheries Enhancement Fund.

(3) The Columbia River Fisheries Enhancement Fund shall consist of:

(a) Moneys accepted by the commission pursuant to subsection (2) of this section.

(b) Fees collected by the commission under ORS 496.146 (23). [2013 c.672 §7]

Sec. 8. (1) Section 7 of this 2013 Act is repealed on January 2, 2022.

(2) The Columbia River Fisheries Enhancement Fund established under section 7 of this 2013 Act is abolished January 2, 2022.

(3) Any unexpended moneys remaining in the Columbia River Fisheries Enhancement Fund on January 2, 2022, shall be transferred to the State Wildlife Fund. [2013 c.672 §8]

508.990 [Amended by 1961 c.231 §1; repealed by 1965 c.570 §152]

COMMERCIAL FISHING AND FISHERIES

Chapter 509

2015 EDITION

General Protective Regulations

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509.125	Placing substances in water to drive fish from closed areas	509.590	Fish Passage Task Force; reports to legislature
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509.150	Use by commission of explosives or substances to destroy predatory fish	509.600	Destroying, injuring or taking fish near fishway; permits to take fish
509.155	Possession of fish taken by explosives or harmful substance justifies arrest; burden of proof	509.610	Maintenance of fish passage required
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	FISHING GEAR	509.625	Power of department to inspect artificial obstructions and have fish passage constructed or remove obstruction
509.230	Possession of fish taken by lawful gear from Pacific Ocean outside Oregon jurisdiction; taking salmon only by troll within Oregon jurisdiction	509.630	Power of department to establish fish passage in natural stream obstructions
509.235	Certain sturgeon lines prohibited	509.635	Oregon City fishway under control of commission; removal of obstructions
509.240	Snagging nets during closed season allowed		

COMMERCIAL FISHING AND FISHERIES

509.645 Filing protest with commission; review
and determination by commission; alter-
native dispute resolution

ENFORCEMENT

509.910 Injunction to prevent certain violations;
jurisdiction; service on corporation

GENERAL PROVISIONS

509.001 Definitions. The definitions prescribed by ORS 506.001 to 506.025 apply to this chapter. [1965 c.570 §91]

509.005 [Repealed by 1965 c.570 §152]

TAKING, POSSESSING, BUYING, SELLING AND TRANSPORTING FOOD FISH

509.006 General prohibition regarding taking, possessing, buying, selling or handling food fish. It is unlawful to take, possess, buy, sell or otherwise handle any food fish in or from any waters of this state, during times, in a manner or by means of the fishing gear prohibited by law. [1965 c.570 §92]

509.010 [Repealed by 1965 c.570 §152]

509.011 Prohibited activities during closed season. (1) It is unlawful, during a closed season on any of the waters of this state, to:

(a) Take or transport food fish taken in or upon such waters.

(b) Make use of a boat or any fishing gear to take or transport food fish taken in such waters.

(c) Have, leave or cause to be left in such waters any fishing gear in a condition to take food fish.

(2) It is unlawful to:

(a) Buy, receive, possess or sell food fish unlawfully caught during a closed season.

(b) Make use of a vehicle of any kind whatsoever for transporting, or intended to be used for transporting, in any place, food fish unlawfully taken during a closed season, or unlawfully brought into this state. [1965 c.570 §93]

509.015 Forfeiture of boat, vessel or fishing gear unlawfully used; seizure and disposition of food fish unlawfully taken.

(1) In addition to the penalty prescribed by ORS 506.991, upon conviction of a violation of ORS 509.011, the court may order the forfeiture of the boat, vessel, vehicle and fishing gear unlawfully used, in the manner provided by ORS 506.695 and 506.700, and the clear proceeds of the property forfeited shall be deposited with the State Treasury in the Common School Fund.

(2) All food fish taken, transported or possessed in violation of ORS 509.011 are subject to seizure by the State Fish and Wildlife Director, a deputy fish or game warden or a member of the state police, either with or without arrest. Upon such seizure, the fish are subject to forfeiture and disposition pursuant to ORS 506.690. [Amended by 1957 c.133 §1; 1965 c.570 §95; 1977 c.652 §8; 1987 c.858 §9; 1993 c.699 §29]

509.019 Consumption of catch at sea lawful without payment of fee. Notwithstanding any other provision of law, an individual lawfully engaged in commercial fishing, while at sea, may consume a portion of the lawful commercial catch, without payment of the fees required under ORS 508.505. [1987 c.178 §2; 1991 c.701 §18]

509.020 [Repealed by 1965 c.570 §152]

509.025 Selling or transporting food fish taken by angling. It is unlawful to sell within this state, or transport out of this state for the purpose of sale, food fish taken from any waters of this state by means of angling. [Amended by 1965 c.570 §94; subsection (2) enacted as 1965 c.570 §107; 1977 c.242 §6]

509.030 [Amended by 1965 c.570 §99; 1969 c.411 §3; repealed by 1975 c.1 §1 (509.031 enacted in lieu of 509.030)]

509.031 Rainbow trout as game fish; return to water of incidental commercial catch. (1) It shall be the policy of the State of Oregon that rainbow trout, *Oncorhynchus mykiss*, including steelhead trout are game fish, and shall be managed to provide recreational angling for the people and to protect wild native stocks. Recognizing that rainbow trout are sometimes intermingled with food fish, the State Fish and Wildlife Commission shall regulate to minimize the incidental catch of rainbow trout that may be taken under subsection (2) of this section by commercial fishing gear, including but not limited to regulations as to season, gear and area.

(2) Any rainbow trout, *Oncorhynchus mykiss*, including steelhead trout taken as an incidental catch, by any person fishing commercially shall be returned immediately to the water and shall not be bought or sold within the state.

(3) Nothing in this section is intended to affect Indian fishing rights as granted by federal treaties. [1975 c.1 §2 (enacted in lieu of 509.030); 1987 c.199 §1; 1991 c.47 §1]

509.035 [Repealed by 1965 c.570 §152]

509.036 [1973 c.500 §§6,7; repealed by 1975 c.416 §2]

509.040 Small or immature salmon protected; exceptions; rules. (1) Any person who takes any immature salmon of any variety less than 20 inches in length, or any mature salmon of any variety less than 15 inches in length, by any means other than angling, shall immediately return such salmon alive to the water.

(2) It is unlawful to:

(a) Take, buy, sell or possess immature salmon less than 20 inches or mature salmon less than 15 inches in length, taken in any waters of this state, at any time or in any manner except by angling.

(b) Take, molest, kill or injure, in any manner at any time, or expose for sale or have in possession, except for the purpose of propagation when authorized by law, any spawning salmon.

(3) Notwithstanding subsections (1) and (2) of this section it is lawful to take precious salmon commonly called jack salmon less than 15 inches in length from the waters of this state, except the Pacific Ocean and to buy, sell or possess such salmon.

(4) To further protect immature salmon the State Fish and Wildlife Commission may establish by rule a minimum size for any species of salmon which is greater than 20 inches. [Amended by 1965 c.570 §97]

509.045 [Amended by 1965 c.570 §98; repealed by 1981 c.365 §23]

509.050 [Repealed by 1965 c.570 §152]

509.055 [Repealed by 1965 c.570 §152]

509.060 [Amended by 1965 c.570 §96; renumbered 509.185]

509.065 [Amended by 1959 c.254 §1; 1965 c.570 §101; renumbered 509.112]

509.070 Selling, canning, processing or preserving food fish out of water longer than 60 hours. It is unlawful to sell, can, process or preserve for food any food fish that have been removed from the water for a longer period than 60 hours, unless such fish have been artificially chilled. [Amended by 1965 c.570 §102]

509.075 Packing or selling food fish unfit for human consumption. If the State Fish and Wildlife Commission or its authorized representatives finds that food fish about to be processed, packed, canned, preserved in ice or sold in the open market are unfit for human consumption, it or they shall notify the packer or possessor of such fish of the fact. If, in spite of any warning given to such packer or possessor, such fish are packed, demand shall be made upon the packer to keep such fish separate and apart from the balance of the output or pack of the packer, and a full report shall be made of the matter to both the state and the federal health authorities. [Amended by 1965 c.570 §103]

509.080 [Repealed by 1965 c.570 §152]

509.090 [Repealed by 1965 c.570 §152]

509.095 [Repealed by 1953 c.364 §3]

509.100 [Repealed by 1953 c.364 §3]

509.105 Possession, importation or transportation of food fish unlawfully taken in other state. It is unlawful to possess, import into this state or transport within this state any food fish which have been unlawfully taken or transported under the laws of another state. [Amended by 1957 c.291 §1; 1965 c.570 §108]

509.110 Fish transporters to require statement from shipper; examination by commission. (1) All transportation companies, common carriers or other persons or agencies transporting food fish, fresh, frozen, salted, smoked, kippered or preserved in ice, shall require of the shipper, before accepting such shipments, a signed statement in writing showing:

(a) The name of the consignor or shipper.

(b) The name of the consignee.

(c) The net weight in pounds of each species of fish in the shipment, in the whole or round, or dressed.

(d) The date of the shipment.

(2) The State Fish and Wildlife Commission may require such statement to be forwarded to its office.

(3) The State Fish and Wildlife Director or the authorized representative of the director may at any time examine the records of any such transportation companies, common carriers or other persons or agencies, for the purpose of enforcing this section. [Amended by 1965 c.570 §109]

WASTING, INJURING AND DESTROYING FISH

509.112 Wasting food fish. It is unlawful for any person wantonly to waste or destroy any food fish. [Formerly 509.065]

509.115 Placing in waters fish harmful to food fish. It is unlawful, without written authority from the State Fish and Wildlife Commission, to place in any of the waters of this state any species or variety of fish whatsoever which are inimical to or destructive of food fish. [Amended by 1965 c.570 §105]

509.120 Using electricity to disturb food fish. It is unlawful to use or permit to be used in any of the waters of this state any electrical device, appliance or current which in any manner has a tendency to retard, scare, frighten or obstruct any food fish in their migrations or movements in such waters without first having obtained the consent of and a permit from the State Fish and Wildlife Director. [Amended by 1965 c.570 §106]

509.122 Definitions for ORS 509.125 to 509.155. As used in ORS 509.125 to 509.155, unless the context requires otherwise:

(1) "Explosives" means any explosive substances whatever, including but not limited to powder, dynamite and nitroglycerine.

(2) "Substance deleterious to fish" includes but is not limited to any drug, powder, chemical, medicated bait, gas, cocculus indicus or extract therefrom, inimical to fish. [1965 c.570 §110]

509.125 Placing substances in water to drive fish from closed areas. It is unlawful to place or cause to be placed in any stream of this state where anadromous or food fish run or exist, within the distance from any dam, fishway or object in which the taking of any anadromous or food fish by means other than angling is prohibited by law, any blood or offal of fish, or any other substance, matter or contrivance that will frighten or drive anadromous or food fish, or with intent to drive or frighten, out of that part of the waters of any stream in which it is unlawful to take such fish. [Amended by 1965 c.570 §111]

509.130 Placing substances in water or using explosives to take or destroy food fish. It is unlawful, for the purpose of taking or destroying any food fish, to:

(1) Throw, cast or pass, or cause or permit to be thrown, cast or passed, in any waters of this state in which food fishes are wont to be, any substance deleterious to fish; or

(2) Explode or cause to be exploded in any waters of this state, any explosives. [Amended by 1963 c.112 §1; 1965 c.570 §112]

509.135 [Repealed by 1965 c.570 §152]

509.140 Placing explosives or harmful substances in waters in course of lawful work; permit. (1) Whenever in the course of removing any obstruction in any waters of this state, or in constructing any foundations for dams, bridges or other structures, or in carrying on any trade or business, any person, municipal corporation, political subdivision or governmental agency desires to use explosives or any substances deleterious to fish, such person, municipal corporation, political subdivision or governmental agency shall make application to the State Fish and Wildlife Commission for a permit to use the explosives or substances in such waters.

(2) If the commission finds it necessary that the explosives or substances be used, it may make an order granting such person, municipal corporation, political subdivision or governmental agency the right to use the explosives or substances and shall:

(a) Designate the places and period within which the explosives or substances may be used; and

(b) Prescribe such precautions as will save fish from injury.

(3) It is unlawful to disregard such order or fail to obtain such order or permit before using explosives or substances deleterious to fish. [Amended by 1963 c.112 §2; 1965 c.570 §113]

509.145 [Repealed by 1965 c.570 §152]

509.150 Use by commission of explosives or substances to destroy predatory fish. Nothing in ORS 509.125 to 509.155 prevents the State Fish and Wildlife Commission from using any explosives or substances deleterious to fish for the purpose of destroying German carp or any other predatory fish inimical to food fish, or from carrying out any of the commercial fishing laws. [Amended by 1965 c.570 §114]

509.155 Possession of fish taken by explosives or harmful substance justifies arrest; burden of proof. Having in possession any food fish under circumstances which make it reasonable to believe that they were taken by means of explosives or substances deleterious to fish justifies the arrest of the person having the fish in possession. It is then incumbent upon such person to prove and show that the fish were taken by lawful means. [Amended by 1965 c.570 §115]

509.160 Prohibition on possession, sale, trade or distribution of shark fins; exceptions. (1) As used in this section:

(a) "Shark fin" means the raw or dried fin or tail of a shark.

(b) "Spiny dogfish" means a shark belonging to the family Squalidae in the order Squaliformes that has two spines, one anterior to each dorsal fin, and that does not have an anal fin.

(2) A person may not possess, sell or offer for sale, trade or distribute a shark fin in this state.

(3) This section does not apply to:

(a) A person who possesses, sells or offers for sale, trades or distributes a shark fin from a spiny dogfish that was legally taken or landed under rules adopted by the State Department of Fish and Wildlife and in accordance with federal regulations;

(b) A person who holds a license or permit issued by the State Department of Fish and Wildlife under the commercial fishing laws to take a shark and who possesses, sells or offers for sale, trades or distributes a shark fin consistent with the terms of that license or permit; and

(c) A fish processor who holds a license under the commercial fishing laws, who possesses and processes a shark obtained from a person described in paragraph (a) of this subsection and who sells or offers for sale, trades or distributes the shark fin consistent with the terms of the license of that fish processor. [2011 c.371 §2]

509.185 [Formerly 509.060; repealed by 1971 c.658 §32]

509.205 [Repealed by 1965 c.570 §152]

509.206 [1965 c.570 §116; repealed by 1969 c.357 §2]

509.210 [Repealed by 1965 c.570 §152]

509.215 [Repealed by 1965 c.570 §152]

509.216 [1965 c.570 §117; 1969 c.357 §1; repealed by 2013 c.672 §1]

509.220 [Repealed by 1965 c.570 §152]

509.225 [Repealed by 1965 c.570 §152]

FISHING GEAR

509.230 Possession of fish taken by lawful gear from Pacific Ocean outside Oregon jurisdiction; taking salmon only by troll within Oregon jurisdiction. (1) Subject to the conditions provided in this section and ORS chapter 513, it is unlawful to have in possession any food fish taken in the waters of the Pacific Ocean outside the territorial jurisdiction of this state by means of any fishing gear except as provided by law or rule of the State Fish and Wildlife Commission, for:

(a) The purpose of commercially packing, canning or preserving the fish.

(b) The manufacture of fish meal, fish oil or other fish products or by-products.

(c) Sale as fresh fish for general consumption.

(d) Bait.

(2) It is also unlawful to take any salmon for commercial purposes in any of the waters of the Pacific Ocean within the jurisdiction of this state or over which this state has concurrent jurisdiction by means of any fishing gear other than by "troll." [Amended by 1955 c.178 §1; 1961 c.680 §1; 1965 c.570 §122; 2013 c.672 §3]

509.235 Certain sturgeon lines prohibited. It is unlawful to use or assist in using any Chinese sturgeon line, or lines of a similar character, in the waters of this state. [Amended by 1965 c.570 §119]

509.240 Snagging nets during closed season allowed. It is lawful to operate or use a net consisting of a single nylon or cotton web of a mesh not less than 14 inches, taut measure, hung or attached to not to exceed two lead lines combined and used as a single line and a single cork line, in any of the waters of this state, during any season or period closed to commercial fishing by law or by rule of the State Fish and Wildlife Commission, for the purpose of clearing away or removing snags or similar obstructions from gillnet drifts and other suitable or desirable fishing areas. [Amended by 1961 c.370 §1; 1965 c.570 §120]

509.245 Notice to director of use of snagging net. Any person desiring to operate a snagging net as provided in ORS 509.240 shall, before operating or attempting to so operate such net, obtain from the State Fish and Wildlife Director a snagging permit by forwarding a written request to the office

of the State Fish and Wildlife Commission specifically providing:

(1) The particular gillnet drift, fishing ground or other area to be cleared;

(2) The waters in which located;

(3) The mesh size of the snagging net to be used; and

(4) The dates on which or within which the proposed snagging operations will be carried on. In specifying any such dates, no one notice is valid for a period of more than 30 days from the date thereof. [Amended by 1965 c.570 §121]

509.250 [Repealed by 1965 c.570 §152]

509.252 [1955 c.477 §1; 1957 c.130 §1; repealed by 1963 c.246 §12]

509.255 [Repealed by 1961 c.183 §1]

509.260 [Repealed by 1961 c.155 §1]

509.265 [Repealed by 1965 c.570 §152]

509.270 [Repealed by 1965 c.570 §152]

509.275 [Repealed by 1965 c.570 §152]

509.280 [Repealed by 1965 c.570 §152]

509.285 [Repealed by 1965 c.570 §152]

509.290 [Repealed by 1965 c.570 §152]

509.295 [Repealed by 1965 c.570 §152]

509.300 [Repealed by 1965 c.570 §152]

NET FISHING FOR SALMON IN PACIFIC OCEAN

509.355 Definitions for ORS 509.355 to 509.385. As used in ORS 509.355 to 509.385:

(1) "Citizen of this state" means a person who maintains the usual place of abode of the person within this state or who otherwise qualifies as a citizen of this state under the laws of this state.

(2) "International waters" means waters outside the territorial boundaries of any state, territory or country. [1957 c.152 §1]

509.360 When ORS 509.355 to 509.385 operative; proof. (1) ORS 509.355 to 509.385 shall not be operative at any time unless laws or rules or regulations of California, Washington and Canada are effective which, in substance or effect, contain provisions:

(a) Similar to and which accomplish the purposes of ORS 509.355 to 509.385; or

(b) Which prohibit the possession or transportation within their respective territorial waters of the Pacific Ocean of salmon taken by any type of net within the international waters of the Pacific Ocean or within their respective territorial waters of the Pacific Ocean and not accompanied by a certificate issued under the authority of this state or of another state, territory or country showing that such salmon were lawfully taken.

(2) Such laws or rules or regulations of California, Washington and Canada shall be

considered effective upon receipt by the Secretary of State of this state of certified written statements from the respective secretaries of state of California and Washington and from the Department of State of the United States on behalf of Canada setting forth such laws or rules or regulations and the date on which they are effective. Such certified written statements, together with a written statement of the Attorney General of this state that the provisions of subsection (1) of this section are satisfied by such laws or rules or regulations, are conclusive proof that the provisions of subsection (1) of this section are so satisfied. In any prosecution for violation of any provision of ORS 509.365, 509.370 or 509.375, proof of the existence of such certified written statements and written statement of the Attorney General of this state need not be made unless demanded by the defendant prior to the commencement of trial. [1957 c.152 §§9,10; 1965 c.570 §123]

Note: 509.355 to 509.385 are operative and in full force and effect. A written statement of the Attorney General of the State of Oregon, dated October 16, 1957, states that the provisions of 509.360 are satisfied.

509.365 Taking salmon by net in waters of Pacific Ocean over which Oregon has jurisdiction prohibited. No person shall fish for or take, by the use of any type of net, any salmon within the waters of the Pacific Ocean, over which this state has jurisdiction, lying westerly of the following described line: Commencing at the point of intersection of the California-Oregon state boundary with the Pacific Ocean high water mark shoreline; thence northerly along such high water mark shoreline, including extensions thereof across the waters of the bays or tidal areas of streams emptying into the Pacific Ocean, to the mouth of the Columbia River; thence northerly across the waters of the Columbia River along the line designating and defining the mouth of such river under ORS 511.130 (1961 Replacement Part) to the point of intersection of such line with the Oregon-Washington state boundary. [1957 c.152 §2]

509.370 Taking of salmon by net in international waters of Pacific Ocean by Oregon citizen prohibited. No citizen of this state shall fish for or take, by the use of any type of net, any salmon within the international waters of the Pacific Ocean. [1957 c.152 §3]

509.375 Transporting or possessing salmon unlawfully taken by net in certain waters prohibited. No person shall transport through the waters of this state wherein net fishing for salmon is prohibited or have in possession anywhere within this state any salmon which were taken by any type of net within the international waters

of the Pacific Ocean or within the territorial waters of this state or of another state, territory or country wherein such fishing is prohibited and which are not accompanied by a certificate issued under the authority of this state or of another state, territory or country showing that such salmon were lawfully taken. [1957 c.152 §4]

509.380 [1957 c.152 §5; repealed by 1965 c.570 §152]

509.385 Exceptions. ORS 509.355 to 509.385 do not apply to:

(1) Those species of salmon in those areas within the international waters of the Pacific Ocean that are regulated by the Pacific Salmon Commission or by United States laws or rules or regulations promulgated pursuant to such laws.

(2) The use of nets for fishing for or taking salmon for purposes of scientific investigation authorized by the laws of this state. [1957 c.152 §6; 2011 c.9 §70]

509.390 [1957 c.152 §7; repealed by 1965 c.570 §152]

509.405 [Repealed by 1955 c.274 §1]

509.410 [Repealed by 1955 c.274 §1]

CRABS AND OTHER SHELLFISH (Crabs)

509.415 Gear used in taking crab; selling crabs unlawfully taken. (1) No person shall take a crab from any of the waters of the state for commercial purposes, with or by the use of any other gear than that specifically known as crab ring or crab pot, or sell or offer for sale crabs unlawfully caught.

(2) The taking of Dungeness crab (Cancer magister) for commercial purposes from any of the waters of this state, by the use of any gear except that commonly known as crab ring or crab pot, is prohibited.

(3) Each crab ring or crab pot used for the taking of crabs for commercial purposes must have attached to it a tag identifying the owner or the vessel from which the rings or pots are operated. [Amended by 1997 c.252 §2]

509.420 [Repealed by 1965 c.570 §152]

509.425 [Amended by 1965 c.570 §128; 1969 c.675 §1; 1981 c.638 §3; renumbered 622.220]

509.427 [1969 c.675 §10; 1981 c.638 §4; renumbered 622.230]

509.429 [1969 c.675 §11a; 1981 c.638 §5; renumbered 622.240]

509.430 [Repealed by 1965 c.570 §152]

509.431 [1969 c.675 §11; 1981 c.638 §6; renumbered 622.250]

509.433 [1969 c.675 §12; 1981 c.638 §7; renumbered 622.260]

509.435 [Repealed by 1965 c.570 §152]

509.436 [1965 c.570 §59d; 1969 c.675 §2; 1981 c.638 §8; renumbered 622.270]

509.439 [1969 c.675 §13; 1981 c.638 §9; renumbered 622.280]

509.440 [Repealed by 1965 c.570 §152]

509.441 [1969 c.675 §8; 1981 c.638 §10; renumbered 622.290]

509.445 [Repealed by 1965 c.570 §152]

509.450 [Repealed by 1965 c.570 §152]

509.451 [1969 c.675 §9; 1981 c.638 §11; renumbered 622.300]

509.455 [Amended by 1969 c.675 §3; renumbered 622.320]

509.460 [Amended by 1963 c.113 §1; 1965 c.570 §124; renumbered 509.505]

509.465 [Repealed by 1969 c.675 §21]

509.470 [Renumbered 622.330]

509.475 [Amended by 1965 c.570 §125; renumbered 509.510]

509.480 [Repealed by 1969 c.675 §21]

509.485 [Repealed by 1969 c.675 §21]

509.490 [Repealed by 1969 c.675 §21]

509.495 [Amended by 1969 c.675 §4; renumbered 622.340]

509.500 [Amended by 1977 c.242 §7; renumbered 622.350]

(Shellfish)

509.505 Placing in water matter injurious to shellfish. It is unlawful for any person, municipal corporation, political subdivision or governmental agency to deposit or allow to escape into, or cause or permit to be deposited or escape into any public waters of this state, any substance of any kind which will or shall in any manner injuriously affect the life, growth or flavor of shellfish in or under such waters. [Formerly 509.460]

509.510 Taking shellfish from marked beds without permission; disturbing beds. It is unlawful, without the permission of the legal occupants, to take up shellfish from natural or artificially planted beds, which beds have been lawfully and plainly marked. It is unlawful willfully to disturb the shellfish in such beds, the surfaces of such beds, or the markers. [Formerly 509.475]

(Krill)

509.515 Landing or possession of krill prohibited. A person who holds a license or permit issued under the commercial fishing laws may not possess or land any species of euphausiids, commonly known as krill, or take euphausiids from any waters of the Pacific Ocean over which this state has jurisdiction, including the area outside the territorial jurisdiction of this state but within the part of the exclusive economic zone of the United States represented by a straight line extension of the boundaries of the state drawn seaward a distance of 200 nautical miles. [2003 c.809 §18]

FISH PASSAGE; FISHWAYS; SCREENING DEVICES; HATCHERIES NEAR DAMS

509.580 Definitions for ORS 509.580 to 509.590, 509.600 to 509.645 and 509.910; rules. As used in ORS 509.580 to 509.590, 509.600 to 509.645 and 509.910:

(1) "Artificial obstruction" means any dam, diversion, culvert or other human-made device placed in the waters of this state that precludes or prevents the migration of native migratory fish.

(2) "Construction" means:

(a) Original construction;

(b) Major replacement;

(c) Structural modifications that increase storage or diversion capacity; or

(d) For purposes of culverts, installation or replacement of a roadbed or culvert.

(3) "Emergency" means unforeseen circumstances materially related to or affected by an artificial obstruction that, because of adverse impacts to a population of native migratory fish, requires immediate action. The State Fish and Wildlife Director may further define the term "emergency" by rule.

(4) "Fundamental change in permit status" means a change in regulatory approval for the operation of an artificial obstruction where the regulatory agency has discretion to impose additional conditions on the applicant, including but not limited to licensing, relicensing, reauthorization or the granting of new water rights, but not including water right transfers or routine maintenance permits.

(5) "In-proximity" means within the same watershed or water basin and having the highest likelihood of benefiting the native migratory fish populations directly affected by an artificial obstruction.

(6) "Native migratory fish" means those native fish that migrate for their life cycle needs and that are listed in the rules of the State Fish and Wildlife Director.

(7) "Net benefit" means an increase in the overall, in-proximity habitat quality or quantity that is biologically likely to lead to an increased number of native migratory fish after a development action and any subsequent mitigation measures have been completed.

(8) "Oregon Plan" means the guidance statement and framework described in ORS 541.898. [2001 c.923 §1]

Note: 509.580 to 509.595 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 509 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

509.585 Fish passage required for artificial obstructions; statewide inventory; waiver of requirement by commission; rules; exemptions.

(1) It is the policy of the State of Oregon to provide for upstream and downstream passage for native migratory fish and the Legislative Assembly finds that cooperation and collaboration between public and private entities is necessary to accomplish the policy goal of providing passage for native migratory fish and to achieve the enhancement and restoration of Oregon's native salmonid populations, as envisioned by the Oregon Plan. Therefore, except as provided in ORS chapter 509, fish passage is required in all waters of this state in which native migratory fish are currently or have historically been present.

(2) Except as otherwise provided by this section or ORS 509.645, a person owning or operating an artificial obstruction may not construct or maintain any artificial obstruction across any waters of this state that are inhabited, or historically inhabited, by native migratory fish without providing passage for native migratory fish.

(3) The State Department of Fish and Wildlife shall complete and maintain a statewide inventory of artificial obstructions in order to prioritize enforcement actions based on the needs of native migratory fish. This prioritization shall include, but need not be limited to, the degree of impact of the artificial obstruction on the native migratory fish, the biological status of the native migratory fish stocks in question and any other factor established by the department by rule. The department shall establish a list of priority projects for enforcement purposes. Priority artificial obstructions are subject to the State Fish and Wildlife Commission's authority as provided in ORS 509.625. Unless requested by persons owning or operating an artificial obstruction, the department shall primarily direct its enforcement authority toward priority projects, emergencies and projects described in subsection (4) of this section. The priority project list shall be subject to periodic review and amendment by the department and to formal review and amendment by the commission no less frequently than once every five years.

(4) A person owning or operating an artificial obstruction shall, prior to construction, fundamental change in permit status or abandonment of the artificial obstruction in any waters of this state, obtain a determination from the department as to whether native migratory fish are or historically have been present in the waters. If the department determines that native migratory fish are or historically have been present in the waters, the person owning or operating the artificial

obstruction shall either submit a proposal for fish passage to the department or apply for a waiver pursuant to subsection (7) of this section. Approval of the proposed fish passage facility or of the alternatives to fish passage must be obtained from the department prior to construction, permit modification or abandonment of the artificial obstruction.

(5) Consistent with the purpose and goals of the Oregon Plan, the department shall seek cooperative partnerships to remedy fish passage problems and to ensure that problems are corrected as soon as possible. The department and the person owning or operating the artificial obstruction are encouraged to negotiate the terms and conditions of fish passage or alternatives to fish passage, including appropriate cost sharing. The negotiations may include, but are not limited to, consideration of equitable factors.

(6) The department shall submit a proposed determination of the required fish passage or alternatives to fish passage to the commission for approval. The determination may be the result of the negotiations described in subsection (5) of this section or, if no agreement was reached in the negotiations, a determination proposed by the department. If a protest is not filed within the time period specified in ORS 509.645, the proposed determination shall become a final order.

(7)(a) The commission shall waive the requirement for fish passage if the commission determines that the alternatives to fish passage proposed by the person owning or operating the artificial obstruction provide a net benefit to native migratory fish.

(b) Net benefit to native migratory fish is determined under this subsection by comparing the benefit to native migratory fish that would occur if the artificial obstruction had fish passage to the benefit to native migratory fish that would occur using the proposed alternatives to fish passage. Alternatives to fish passage must result in a benefit to fish greater than that provided by the artificial obstruction with fish passage. The net benefit to fish shall be determined based upon conditions that exist at the time of comparison.

(c) The State Fish and Wildlife Director shall develop rules establishing general criteria for determining the adequacy of fish passage and of alternatives to fish passage. The general criteria shall include, but not be limited to:

- (A) The geographic scope in which alternatives must be conducted;
- (B) The type and quality of habitat;
- (C) The species affected;

(D) The status of the native migratory fish stocks;

(E) Standards for monitoring, evaluating and adaptive management;

(F) The feasibility of fish passage and alternatives to fish passage;

(G) Quantified baseline conditions;

(H) Historic conditions;

(I) Existing native migratory fish management plans;

(J) Financial or other incentives and the application of incentives;

(K) Data collection and evaluation; and

(L) Consistency with the purpose and goals of the Oregon Plan.

(d) To the extent feasible, the department shall coordinate its requirements for adequate fish passage or alternatives to fish passage with any federal requirements.

(8) A person owning or operating an artificial obstruction may at any time petition the commission to waive the requirement for fish passage in exchange for agreed-upon alternatives to fish passage that provide a net benefit to native migratory fish as determined in subsection (7) of this section.

(9)(a) Artificial obstructions without fish passage are exempt from the requirement to provide fish passage if the commission:

(A) Finds that a lack of fish passage has been effectively mitigated;

(B) Has granted a legal waiver for the artificial obstruction; or

(C) Finds there is no appreciable benefit to providing fish passage.

(b) The commission shall review, at least once every seven years, the artificial obstructions exempted under this subsection that do not have an exemption expiration date to determine whether the exemption should be renewed. The commission may revoke or amend an exemption if it finds that circumstances have changed such that the relevant requirements for the exemption no longer apply. The person owning or operating the artificial obstruction may protest the decision by the commission pursuant to ORS 509.645.

(10) If the fundamental change in permit status is an expiration of a license of a federally licensed hydroelectric project, the commission's determination shall be submitted to the Federal Energy Regulatory Commission as required by ORS 543A.060 to 543A.410.

(11) To the extent that the requirements of this section are preempted by the Federal Power Act or by the laws governing hydroelectric projects located in waters governed

jointly by Oregon and another state, federally licensed hydroelectric projects are exempt from the requirements of this section.

(12) A person subject to a decision of the commission under this section shall have the right to a contested case hearing according to the applicable provisions of ORS chapter 183. [2001 c.923 §2]

Note: See note under 509.580.

509.590 Fish Passage Task Force; reports to legislature. (1) The State Fish and Wildlife Director shall establish a Fish Passage Task Force to advise the director and the State Department of Fish and Wildlife on matters related to fish passage in Oregon, including but not limited to funding, cost sharing and prioritization of efforts. The director shall determine the members and the specific duties of the task force by rule.

(2) The department shall provide staff necessary for the performance of the functions of the task force.

(3) A member of the task force may not receive compensation for services as a member of the task force. In accordance with ORS 292.495, a member of the task force may receive reimbursement for actual and necessary travel or other expenses incurred in the performance of official duties.

(4) The task force shall report semiannually to the appropriate legislative committee with responsibility for salmon restoration or species recovery, to advise the committee on matters related to fish passage. [2001 c.923 §3; 2007 c.354 §17]

Note: See note under 509.580.

509.592 Task force advice to department regarding project funding; department report on deposits and expenditures. (1) The Fish Passage Task Force established pursuant to ORS 509.590 shall provide advice to the State Department of Fish and Wildlife regarding the projects to be funded and the expenditures to be made from the Fish Passage Restoration Subaccount created under ORS 497.141.

(2) The department shall maintain a record of all moneys deposited to or expended from the subaccount. The department shall make an annual report of the deposits and expenditures available to the public on the department's website. [2013 c.674 §2]

Note: 509.592 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 509 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

509.595 Director to report on fish passage rules, adequacy and implementation. The State Fish and Wildlife Director shall report to the Governor, the Speaker of the House of Representatives, the President of

the Senate and the appropriate legislative committee with responsibility for salmon restoration or species recovery:

(1) Prior to the adoption of rules relating to fish passage;

(2) Prior to the establishment of the general criteria for determining the adequacy of fish passage and of alternatives to fish passage required to be established under ORS 509.585 (7)(c); and

(3) Semiannually on the progress that the director has made in implementing ORS 509.580 to 509.590. [2001 c.923 §20; 2007 c.354 §18]

Note: See note under 509.580.

509.600 Destroying, injuring or taking fish near fishway; permits to take fish. (1)

A person may not willfully or knowingly destroy, injure or take fish within 600 feet of any fishway, except as permitted by subsection (2) of this section. Actions that violate this section include, but are not limited to:

(a) Hindering, annoying or disturbing fish entering, passing through, resting in or leaving such fishway, or obstructing the passage of fish through the fishway at any time or in any manner.

(b) Placing anything in the fishway.

(c) Using any fishing gear within 600 feet of the fishway.

(d) Taking fish at any time anywhere within 600 feet of the fishway.

(e) Doing any injury to the fishway.

(2) The State Fish and Wildlife Commission may by rule or by issuance of permits authorize the taking of fish within 600 feet of any fishway. [1965 c.570 §104; 1973 c.723 §122; 1981 c.646 §6; 2001 c.923 §8]

509.605 [Amended by 1955 c.707 §49; 1963 c.178 §1; 1965 c.570 §131; 1973 c.723 §123; repealed by 2001 c.923 §21]

509.610 Maintenance of fish passage required. (1)

Subject to ORS 509.645, when the State Department of Fish and Wildlife requires fish passage to be provided pursuant to ORS 509.585, the person owning or operating an artificial obstruction shall keep the fish passage in such repair as to provide adequate fish passage of native migratory fish at all times.

(2) Each day of neglect or refusal to comply with subsection (1) of this section, after notification in writing by the department, constitutes a separate offense.

(3) A person owning or operating an artificial obstruction is responsible for maintaining, monitoring and evaluating the effectiveness of fish passage or alternatives to fish passage. [Amended by 1955 c.707 §52; 1965 c.570 §132; 2001 c.923 §9]

509.615 [Amended by 1957 c.135 §1; 1963 c.111 §1; 1965 c.570 §135; 1987 c.488 §2; 1993 c.478 §9; 1995 c.426 §6; repealed by 2007 c.625 §16]

509.620 Condemning inadequate or nonfunctioning fish passage; requiring new fish passage.

If, in the judgment of the State Department of Fish and Wildlife, fish passage is not functioning as intended or is inadequate, as constructed under ORS 509.585, the State Fish and Wildlife Commission may condemn the fish passage and order new fish passage installed in accordance with plans and specifications determined by the department. [Amended by 2001 c.923 §10]

509.625 Power of department to inspect artificial obstructions and have fish passage constructed or remove obstruction. (1)

The State Department of Fish and Wildlife may determine or ascertain by inspection of any artificial obstruction whether it would be advisable to construct fish passage, or order the construction pursuant to ORS 509.585 of fish passage, at the artificial obstruction. Without affecting other remedies to enforce the requirement to install fish passage, if the State Fish and Wildlife Commission determines that an emergency exists, the commission may order the construction, pursuant to ORS 509.585, of fish passage in the waters of this state inhabited by native migratory fish as deemed adequate to provide passage for native migratory fish.

(2) Where fish passage has previously been constructed with or without the approval of the commission and has proved useless or inadequate for the purposes for which it is intended, the commission may improve or rebuild such fish passage. However, such construction or reconstruction shall not interfere with the prime purpose of the artificial obstruction. This subsection may not be construed to require the improvement or rebuilding of fish passage by the commission.

(3)(a) The commission may order a person owning or operating an artificial obstruction on the priority list created pursuant to ORS 509.585 who has been issued a water right, owners of lawfully installed culverts or owners of other lawfully installed obstructions to install fish passage or to provide alternatives to fish passage if the commission can arrange for nonowner or nonoperator funding of at least 60 percent of the cost.

(b) Notwithstanding paragraph (a) of this subsection, the commission may order installation of fish passage or alternatives to fish passage without regard to funding sources:

(A) If the person owning or operating the artificial obstruction is already subject to an obligation to install fish passage or to pro-

vide alternatives to fish passage under ORS 509.585;

(B) If the commission declares an emergency under this section; or

(C) If the person owning or operating the artificial obstruction has not been issued a water right or if the artificial obstruction has been otherwise unlawfully installed.

(4) If a person who owns or operates an artificial obstruction and who is required to provide fish passage under ORS 509.585 fails to provide fish passage in the manner and time required by the State Department of Fish and Wildlife, the commission may remove, replace or repair the artificial obstruction or any parts of the obstruction at the expense of the owner or operator. [Amended by 1955 c.707 §53; 1963 c.232 §1; 1965 c.570 §133; 2001 c.923 §11]

509.630 Power of department to establish fish passage in natural stream obstructions. The State Department of Fish and Wildlife may determine or ascertain by inspection of any natural obstruction whether it would be advisable to construct fish passage over or around such natural obstruction. If it is deemed advisable the State Fish and Wildlife Commission may construct fish passage that provides adequate passage for native migratory fish in the waters of this state inhabited by native migratory fish. [Amended by 1965 c.570 §134; 2001 c.923 §12]

509.635 Oregon City fishway under control of commission; removal of obstructions. (1) The fishways over the falls in the Willamette River, near Oregon City, are under the care and control of the State Fish and Wildlife Commission, which may make any extensions, additions, alterations or repairs to the same that become necessary.

(2) The commission, or its duly authorized representatives, may remove any artificial obstructions placed in the Willamette River above the falls which would prevent the free passage of fish up the river. [Amended by 1965 c.570 §136]

509.640 [Amended by 1955 c.707 §54; repealed by 2001 c.923 §21]

509.645 Filing protest with commission; review and determination by commission; alternative dispute resolution. (1) A person owning or operating an artificial obstruction may request alternative dispute resolution at any point in the process of determining fish passage requirements.

(2) A person owning or operating an artificial obstruction may file a protest with the State Fish and Wildlife Commission within 30 days from the receipt of the State Department of Fish and Wildlife determinations under ORS 509.585. The person shall identify the grounds for protesting the department's determinations.

(3) The commission may, after sufficient opportunity for public review and comment, approve, deny or modify the proposed determinations. [1955 c.707 §51; 1973 c.723 §124; 2001 c.923 §13]

ENFORCEMENT

509.910 Injunction to prevent certain violations; jurisdiction; service on corporation. (1) The State Fish and Wildlife Commission may maintain an action for an injunction to enjoin and restrain any person, municipal corporation, political subdivision or governmental agency of this state from violating any of the provisions of ORS 509.130, 509.140, 509.505, 509.585, 509.610 and 509.625.

(2) Any action authorized by this section shall be tried in the circuit court of the county in which the violation occurs or in Marion or Multnomah County.

(3) If the defendant is a corporation with its principal office and place of business in a county other than in which the waters flow or are situated, such action shall be deemed an action of local nature and service of summons made on a corporation in any county where the corporation has its principal office and place of business. If it is a foreign corporation, service may be made on the statutory agent but if there is no such statutory agent then upon the Secretary of State as in other cases provided by law. [1963 c.303 §1; 1977 c.242 §8; 1979 c.284 §16; 2001 c.923 §14; 2007 c.625 §10]

509.990 [Subsection (8) of 1963 Replacement Part enacted as 1955 c.477 §2; subsection (10) of 1963 Replacement Part enacted as 1957 c.152 §8; repealed by 1965 c.570 §152]

509.991 [1965 c.570 §59e; repealed by 1969 c.675 §21]

509.992 [1969 c.675 §15; repealed by 1977 c.242 §10]

CHAPTER 510

[Reserved for expansion]

Chapter 511

2015 EDITION

Local and Special Regulations

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511.070	Open season for chum salmon and incidental take of salmon in Tillamook Bay; rules	511.606	Taking food fish for commercial purposes in Nestucca Bay prohibited
	COLUMBIA RIVER AREA	511.611	Taking shad and sturgeon for commercial purposes in Netarts Bay prohibited
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COMMERCIAL FISHING AND FISHERIES

511.005 [Repealed by 1965 c.570 §152]

GENERAL PROVISIONS

511.006 Definitions. The definitions prescribed by ORS 506.001 to 506.025 apply to this chapter. [1965 c.570 §138]

511.010 [Repealed by 1965 c.570 §152]

511.011 “Mouth” of river defined. The “mouth” of any river emptying into the Pacific Ocean including the bay or tidal area formed by each such river is the seaward end of the jetty or jetties of each such river. If no jetties exist, the extension of the Pacific Ocean, shoreline high watermark across the river, bay or tidal area, is the “mouth” of such river. [1965 c.570 §139]

511.016 Taking striped bass prohibited. It is unlawful to take striped bass for commercial purposes from any of the waters of this state. [1973 c.500 §2; 1975 c.416 §1]

511.055 [1957 c.1 §§1,2,3 (an Act proposed by an initiative petition approved at the general election on November 6, 1956); 1959 c.125 §1; repealed by 1965 c.570 §152]

COASTAL STREAMS AREAS

511.060 Taking salmon for commercial purposes in coastal streams prohibited. It is unlawful to take salmon for commercial purposes from all waters inland from the mouth of all streams or tributaries thereof that empty into the Pacific Ocean south of the mouth of the Columbia River, except as provided in ORS 511.070. [1965 c.570 §143]

511.070 Open season for chum salmon and incidental take of salmon in Tillamook Bay; rules. It shall be lawful for the State Fish and Wildlife Commission by rule to establish a season for commercial fishing for chum salmon and the incidental take of salmon in Tillamook Bay. Such season may not exceed 30 calendar days total length each year and may only be between October 25 and December 5. Fishing areas under this section shall be limited to:

(1) Tillamook Bay except that portion of Hathaway Slough above a line extended due south from a point on the northerly bank or shoreline of the slough 1,000 feet downstream from the Southern Pacific railroad trestle.

(2) The Miami River below a line drawn across the Miami River due north and south through a point 1,000 feet west from the northwest corner of the Southern Pacific railroad bridge crossing the Miami River.

(3) The Kilchis River below a point at the intersection of the Kilchis River by the section line between sections 11 and 12, township 1 south, range 10 west of the Willamette Meridian.

(4) The Wilson River below a point 500 feet below the bridge crossing the Wilson River in section 13, township 1 south, range 10 west of the Willamette Meridian.

(5) The Tillamook River below a point 100 feet below the mouth of Frasier Slough. [1965 c.570 §144]

511.105 [Repealed by 1965 c.570 §152]

COLUMBIA RIVER AREA

511.106 Commercial fishing in Columbia River and tributaries restricted. It is unlawful in the Columbia River and its tributaries to:

(1) Take salmon for commercial purposes east of its confluence with the Deschutes River.

(2) Take food fish for commercial purposes in a closed area at and adjacent to the mouth of the Sandy River, Hood River and Deschutes River. The closed area shall be one-fourth of a mile in width, extending out into the Columbia River at right angles to the thread of the stream, and one mile in length below the upper or right-hand bank or shoreline of such tributary where the tributary intersects the left-hand bank or shoreline of the Columbia River. [1965 c.570 §140; 1969 c.358 §1; 1989 c.126 §1]

511.110 [Repealed by 1965 c.570 §152]

511.115 [Repealed by 1965 c.570 §152]

511.120 [Repealed by 1965 c.570 §152]

511.125 [Repealed by 1965 c.570 §152]

511.130 [Repealed by 1965 c.570 §152]

511.135 [Repealed by 1965 c.570 §152]

511.140 [Repealed by 1965 c.570 §152]

511.145 [Repealed by 1965 c.570 §152]

511.150 [Repealed by 1965 c.570 §152]

511.155 [Repealed by 1965 c.570 §152]

511.160 [Repealed by 1965 c.570 §152]

511.165 [Repealed by 1965 c.570 §152]

511.170 [Repealed by 1965 c.570 §152]

511.205 [Repealed by 1965 c.570 §152]

ROGUE RIVER AREA

511.206 Taking food fish for commercial purposes in or near Rogue River prohibited. It is unlawful to take any food fish except shellfish for commercial purposes from the Rogue River and its tributaries and within a radius of one mile from the center of the mouth of the Rogue River. [1965 c.570 §148; 1995 c.269 §1]

511.210 [Repealed by 1965 c.570 §152]

511.215 [Repealed by 1965 c.570 §152]

511.220 [Repealed by 1965 c.570 §152]

511.225 [Repealed by 1965 c.570 §152]

511.305 [Repealed by 1965 c.570 §152]

CURRY COUNTY AREA

511.306 Taking food fish for commercial purposes in certain Curry County waters prohibited. It is unlawful to take any food fish for commercial purposes from the following waters in Curry County:

- (1) Floras Creek.
- (2) Sixes River.
- (3) Elk River.
- (4) Euchre Creek.
- (5) Hunters Creek.
- (6) Pistol River.
- (7) Chetco River.
- (8) Winchuk River. [1965 c.570 §142]

511.310 [Repealed by 1965 c.570 §152]

511.315 [Repealed by 1965 c.570 §152]

511.320 [Repealed by 1965 c.570 §152]

511.325 [Repealed by 1965 c.570 §152]

511.330 [Repealed by 1953 c.24 §2]

511.405 [Repealed by 1965 c.570 §152]

511.410 [Repealed by 1965 c.570 §152]

511.415 [Repealed by 1965 c.570 §152]

511.505 [Repealed by 1965 c.570 §152]

COOS, DOUGLAS AND LANE COUNTY AREAS

511.506 Taking shad for commercial purposes in Coos Bay or in Siuslaw, Umpqua or Smith Rivers restricted. It is unlawful to take shad for commercial purposes in the following waters of this state:

(1) That portion of Coos Bay and all of Isthmus Inlet, a tributary thereof, southerly of the bridge connecting Coos Bay and Eastside in Coos County; the area designated as Coos Bay Sports Area and consisting of Isthmus Inlet, Catching Inlet and Cold Bank Slough in Coos County; the north fork of Coos River above a line drawn across the north fork at right angles to the thread of the stream at the lower end of the old John Hendrickson ranch and the south fork of Coos River above a line drawn across the south fork at right angles to the thread of the stream at the lower end of the H. H. Roger's ranch.

(2) The Siuslaw River above a line across the river drawn at right angles to the thread of the stream at the lower end of the mouth or confluence of Morgan Creek with the Siuslaw River; the north fork of the Siuslaw River above the state highway bridge crossing the north fork between Cushman and Florence in Lane County; and Duncan Inlet or South Inlet or tributaries.

(3) The Umpqua River above the confluence of Mill Creek, outlet of Loon Lake with the Umpqua River in Douglas County; and the Smith River above the confluence of the

North Fork of the Smith River with the Smith River. [1965 c.570 §145; 1973 c.500 §3; 1989 c.127 §1]

511.510 [Repealed by 1965 c.570 §152]

511.511 Taking sturgeon for commercial purposes in Umpqua River prohibited. It is unlawful to take sturgeon for commercial purposes from the waters of the Umpqua River or any of its bays or tributaries. [1965 c.570 §147]

511.515 [Repealed by 1965 c.570 §152]

511.516 Taking shad for commercial purposes from Coos River prohibited. It is unlawful to take shad from the waters of the Coos River or any of its tributaries for commercial purposes. [1983 c.34 §2]

511.521 Taking shad or sturgeon for commercial purposes in Coquille River waters prohibited. It is unlawful to take shad or sturgeon for commercial purposes from the waters of the Coquille River or any of its bays or tributaries. [1989 c.127 §3]

511.605 [Repealed by 1965 c.570 §152]

NESTUCCA, NETARTS AND TILLAMOOK BAY AREAS

511.606 Taking food fish for commercial purposes in Nestucca Bay prohibited. It is unlawful to take any food fish except shellfish for commercial purposes from Nestucca Bay or any of its tributaries. [1965 c.570 §149]

511.610 [Repealed by 1965 c.570 §152]

511.611 Taking shad and sturgeon for commercial purposes in Netarts Bay prohibited. It is unlawful to take shad and sturgeon in Netarts Bay for commercial purposes. [1965 c.570 §146]

511.612 [Repealed by 1965 c.570 §152]

511.615 [Repealed by 1965 c.570 §152]

511.620 [Repealed by 1965 c.570 §152]

511.625 Natural and artificial oyster beds in Netarts Bay. That portion of Netarts Bay, in Tillamook County, lying south of the quarter section line running east and west through the center of section 19, in township 2 south, range 10 west of the Willamette Meridian, is designated as natural oyster beds. That portion of Netarts Bay lying north of such quarter section line is designated and set apart for artificial plantations of oysters. [Amended by 1969 c.675 §5]

511.630 [Repealed by 1965 c.570 §152]

511.635 [Repealed by 1965 c.570 §152]

511.640 Sale of oyster lands in Tillamook Bay prohibited. All the tidelands and lands under the waters of Tillamook Bay in Tillamook County which are located as oyster claims as provided by law, are withdrawn from the lands of this state which may be sold, are designated as oyster lands, and

are set aside for the location of artificial oyster claims. However, all such lands are subject to the provisions of ORS 622.210 to 622.300 and 622.320. [Amended by 1969 c.675 §6]

- 511.645 [Repealed by 1969 c.675 §21]
- 511.650 [Repealed by 1969 c.675 §21]
- 511.655 [Repealed by 1969 c.675 §21]
- 511.660 [Repealed by 1969 c.675 §21]
- 511.705 [Repealed by 1965 c.570 §152]
- 511.710 [Repealed by 1965 c.570 §152]
- 511.715 [Amended by 1961 c.215 §1; repealed by 1965 c.570 §152]
- 511.720 [Repealed by 1965 c.570 §152]
- 511.725 [Repealed by 1965 c.570 §152]
- 511.730 [Repealed by 1965 c.570 §152]
- 511.735 [Repealed by 1965 c.570 §152]
- 511.740 [Repealed by 1965 c.570 §152]
- 511.805 [Repealed by 1965 c.570 §152]

WILLAMETTE RIVER AREA

511.806 Taking salmon, shad, striped bass or sturgeon for commercial purposes in Willamette River prohibited; taking shad for commercial purposes in Willamette Slough restricted. (1) It is unlawful in the waters of the Willamette River

or any of its tributaries or sloughs to take salmon, shad, striped bass or sturgeon for commercial purposes.

(2) Notwithstanding subsection (1) of this section, it shall be lawful to take shad for commercial purposes in the Willamette Slough from the Gilbert Lake farm dock to the mouth of the Willamette Slough. [1965 c.570 §141]

- 511.810 [Repealed by 1965 c.570 §152]
- 511.815 [Repealed by 1965 c.570 §152]
- 511.820 [Repealed by 1957 c.131 §1]
- 511.825 [Repealed by 1965 c.570 §152]
- 511.830 [Repealed by 1957 c.131 §1]
- 511.990 [Repealed by 1965 c.570 §152]
- 511.992 [1957 c.1 §4 (an Act proposed by an initiative petition approved at the general election on November 6, 1956); repealed by 1965 c.570 §152]
- 511.995 [Repealed by 1965 c.570 §152]

CHAPTER 512

[Reserved for expansion]

COMMERCIAL FISHING AND FISHERIES

Chapter 513

2015 EDITION

Packing Fish and Manufacture of Fish Products

513.010	“Reduction plant” defined	513.030	Inspection of means of handling fish and fish products
513.020	Control and regulation of means of handling fish and fish products	513.040	Control and regulation of amount and kind of fish commercially handled; sardine processing

COMMERCIAL FISHING AND FISHERIES

513.010 “Reduction plant” defined. As used in this chapter, “reduction plant” applies to any plant engaged in the reduction of fish into fish flour, fish meal, fish scrap, fertilizer, fish oil or other fish products or by-products.

513.020 Control and regulation of means of handling fish and fish products. In order that all fish or parts thereof suitable for human consumption may be conserved and used for that purpose, and to provide sanitary methods and prevent waste in the use, sale, packing, preserving, manufacturing, processing or other handling of fish or fish products, other than salmon, the State Fish and Wildlife Commission may control and regulate fishing boats, barges, lighters or tenders, receptacles or vehicles containing fish or fishing gear, fish reduction plants or plants where fish products are manufactured, in so far as may be necessary to insure the taking, catching, delivery of fish, canning, packing, preserving, reduction of and manufacture of fish products or by-products in a wholesome and sanitary manner, and to prevent deterioration or waste of any fish.

513.030 Inspection of means of handling fish and fish products. Any member, assistant or employee of the State Fish and Wildlife Commission, or duly authorized officer of the state, may enter any canning, packing, preserving or reduction plant or place of business where fish or other fish products are packed, preserved, manufactured, bought or sold, or board and inspect any fishing boat, barge, lighter or tender, receptacle or vehicle, containing fish, for the purpose of examining any fish or fish products and to ascertain the amount of fish received, or kind and amount of fish products

packed or manufactured and the number and size of containers or cans for fish products purchased, received, used or on hand.

513.040 Control and regulation of amount and kind of fish commercially handled; sardine processing. The State Fish and Wildlife Commission may:

(1) Control, regulate and establish, by order, the proportion or percentage of sardines, pilchards, herring or other species of fish other than salmon, to be used for reduction purposes or the manufacture of fish flour, fish meal, fish scrap, fertilizer or oil, and may further, through such order, specifically name or prescribe the particular species of fish which may be used for reduction purposes, food for animals or other purposes.

(2) Exercise full jurisdiction and control over the processing, packing or preserving of sardines, and prescribe and specify the process to be used in the canning of such fishes in order to assure a quality product and prevent the use of certain substitute oils resulting in inferior grades.

513.050 [Repealed by 1963 c.197 §4]

513.060 [Repealed by 1965 c.570 §152]

513.070 [Repealed by 1965 c.570 §152]

513.080 [Repealed by 1965 c.570 §152]

513.090 [Repealed by 1965 c.570 §152]

513.100 [Repealed by 1965 c.570 §152]

513.990 [Repealed by 1965 c.570 §152]

CHAPTERS 514 AND 515

[Reserved for expansion]

COMMERCIAL FISHING AND FISHERIES

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MISCELLANEOUS RELATED STATUTES

**SUSPENSION OF LICENSES
FOR CHILD SUPPORT ENFORCEMENT**

25.750 Suspension of licenses, certificates, permits and registrations; when authorized; rules. (1) All licenses, certificates, permits or registrations that a person is required by state law to possess in order to engage in an occupation or profession or to use a particular occupational or professional title, all annual licenses issued to individuals by the Oregon Liquor Control Commission, all driver licenses or permits issued by the Department of Transportation and recreational hunting and fishing licenses, as defined by rule of the Department of Justice, are subject to suspension by the respective issuing entities upon certification to the issuing entity by the administrator that a child support case record is being maintained by the Department of Justice, that the case is being enforced by the administrator under the provisions of ORS 25.080 and that one or both of the following conditions apply:

(a) That the party holding the license, certificate, permit or registration is in arrears under any child support judgment or order, in an amount equal to the greater of three months of support or \$2,500, and:

(A) Has not entered into an agreement with the administrator with respect to the child support obligation; or

(B) Is not in compliance with an agreement entered into with the administrator; or

(b) That the party holding the license, certificate, permit or registration has failed, after receiving appropriate notice, to comply with a subpoena or other procedural order relating to a paternity or child support proceeding and:

(A) Has not entered into an agreement with the administrator with respect to compliance; or

(B) Is not in compliance with such an agreement.

(2) The Department of Justice by rule shall specify the conditions and terms of agreements, compliance with which precludes the suspension of the license, certificate, permit or registration. [1993 c.365 §2; 1995 c.620 §1; 1995 c.750 §7; 1997 c.704 §37; 1999 c.80 §11; 2001 c.323 §1; 2001 c.455 §14; 2003 c.73 §43; 2009 c.209 §1]

25.752 Memberships in professional organizations that are required by state law. As used in ORS 25.750 to 25.783, "licenses, certificates, permits or registrations" includes, but is not limited to, memberships in professional organizations that are required by state law in order to engage in a profession. [1995 c.620 §12]

25.756 Identifying persons holding licenses, certificates, permits and registrations. The Department of Justice shall enter into agreements regarding the identification of persons who are subject to the provisions of ORS 25.750 to 25.783 and who hold licenses, certificates, permits or registrations with:

(1) The Oregon Liquor Control Commission;

(2) All entities that issue licenses, certificates, permits or registrations that a person is required by state law to possess to engage in an occupation, profession or recreational hunting or fishing or to use a particular occupational or professional title; and

(3) The Department of Transportation. [1993 c.365 §4; 1995 c.620 §2; 1995 c.750 §8; 1997 c.704 §38; 1999 c.80 §12]

25.759 Notice to persons subject to suspension; contents. Upon identification of a person subject to suspension under ORS 25.750 to 25.783, the administrator may issue a notice, sent by regular mail to both the address of record as shown in the records of the issuing entity and the address of record as shown on the administrator's child support file. Such notice shall contain the following information:

(1) That certain licenses, certificates, permits and registrations, which shall be specified in the notice, are subject to suspension as provided for by ORS 25.750 to 25.783.

(2) The name, final four digits of the Social Security number, if available, year of birth, if known, and child support case number or numbers of the person subject to the action.

(3) The amount of arrears and the amount of the monthly child support obligation, if any, or, if suspension is based on ORS 25.750 (1)(b), a description of the subpoena or other procedural order with which the person subject to the action has failed to comply.

(4) The procedures available for contesting the suspension of a license, certificate, permit or registration.

(5) That the only bases for contesting the suspension are:

(a) That the arrears are not greater than three months of support or \$2,500;

(b) That there is a mistake in the identity of the obligor;

(c) That the person subject to the suspension has complied with the subpoena or other procedural order identified in subsection (3) of this section; or

(d) That the person subject to the suspension is in compliance with a previous

agreement as provided for by ORS 25.750 to 25.783.

(6) That the obligor may enter into an agreement, prescribed by rule by the Department of Justice, compliance with which shall preclude the suspension under ORS 25.750 to 25.783.

(7) That the obligor has 30 days from the date of the notice to contact the administrator in order to:

(a) Contest the action in writing on a form prescribed by the administrator;

(b) Comply with the subpoena or procedural order identified in subsection (3) of this section; or

(c) Enter into an agreement authorized by ORS 25.750 and 25.762. The notice shall state that any agreement must be in writing and must be entered into within 30 days of making contact with the administrator.

(8) That failure to contact the administrator within 30 days of the date of the notice shall result in notification to the issuing entity to suspend the license, certificate, permit or registration. [1993 c.365 §5; 1995 c.620 §3; 1997 c.704 §39; 1999 c.80 §13; 2001 c.323 §2; 2001 c.455 §15; 2003 c.73 §44; 2011 c.318 §14; 2013 c.184 §3]

25.762 Agreement between obligor and administrator; effect of failure to contest suspension or to enter into agreement. (1) If the administrator is contacted within 30 days of the date of the notice specified in ORS 25.759, the administrator and the obligor may enter into an agreement as provided for by rule of the Department of Justice. If no contest is filed or if no agreement is entered into within the time prescribed by ORS 25.750 to 25.783, or if the obligor fails to comply with the terms of an agreement previously entered into, the administrator shall advise the issuing entity to suspend the license, certificate, permit or registration forthwith.

(2) After receipt of notice to suspend from the administrator, no further administrative review or contested case proceeding within or by the issuing entity is required. [1993 c.365 §6; 1995 c.620 §4; 1999 c.80 §14; 2001 c.323 §3; 2003 c.73 §45]

25.765 Procedure if obligor contacts administrator within time limits; hearing. (1) If the obligor makes the contact within 30 days of the date of the notice as provided for in ORS 25.759, the administrator shall provide the obligor with the opportunity to contest the suspension on the bases set forth in ORS 25.759 (5). The administrator shall determine whether suspension should occur. If the administrator determines that suspension should occur, the adminis-

trator shall make a written determination of such finding.

(2) The obligor may object to the determination described in subsection (1) of this section within 30 days after the date of the determination. Any hearing on the objection shall be conducted by an administrative law judge assigned from the Office of Administrative Hearings. Any suspension is stayed pending the decision of the administrative law judge. Any order of the administrative law judge that supports a suspension shall result in the notification to the issuing entity by the administrator to suspend the license, certificate, permit or registration forthwith.

(3) After receipt of notice to suspend from the administrator, no further administrative review or contested case proceeding within or by the issuing entity is required. [1993 c.365 §7; 1995 c.620 §5; 1999 c.80 §15; 1999 c.849 §§43,44; 2001 c.323 §§4,5; 2003 c.75 §26; 2005 c.560 §7]

25.768 Judicial review of order. The order of the administrative law judge is final and is subject to judicial review as provided in ORS 183.482. Any suspension under ORS 25.750 to 25.783 is not stayed pending judicial review. [1993 c.365 §8; 2003 c.75 §76]

25.771 Obligor holding more than one license, certificate, permit or registration. In the event that an obligor holds more than one license, certificate, permit or registration described in ORS 25.750, any determination regarding suspension of one license, certificate, permit or registration is sufficient to suspend any other license, certificate, permit or registration described in ORS 25.750. [1993 c.365 §9; 1995 c.620 §6]

25.774 Reinstatement. When, at any time after suspension under ORS 25.750 to 25.783, the conditions resulting in the suspension no longer exist, the administrator shall so notify the issuing entity and shall confirm that the license, certificate, permit or registration may be reinstated contingent upon the requirements of the issuing entity. Until the issuing entity receives notice under this section, the issuing entity may not reinstate, reissue, renew or otherwise make the license, certificate, permit or registration available to the holder of the suspended license, certificate, permit or registration. [1993 c.365 §10; 1995 c.620 §7; 1999 c.80 §16; 2001 c.323 §6]

25.777 Reimbursing issuing entities for costs incurred. The Department of Justice shall enter into agreements to reimburse issuing entities for their costs of compliance with ORS 25.750 to 25.783 to the extent that those costs are eligible for Federal Financial Participation under Title IV-D of the Social Security Act. [1993 c.365 §11; 1995 c.620 §8; 2001 c.323 §7]

25.780 Other licenses, certificates, permits and registrations subject to suspension. In addition to any other grounds for suspension provided by law:

(1) The Oregon Liquor Control Commission and any entity that issues licenses, certificates, permits or registrations that a person is required by state law to possess to engage in an occupation, profession or recreational hunting or fishing or to use a particular occupational or professional title shall suspend without further hearing the licenses, certificates, permits or registrations of a person upon certification by the administrator that the person is subject to an order suspending the license, certificate, permit or registration. The certification must include the information specified in ORS 25.750 (1).

(2) The Department of Transportation shall suspend without further hearing the driver license or driver permit of a person upon certification by the administrator that the person is subject to an order suspending the license or permit. The certification must include the information specified in ORS 25.750 (1). [1993 c.365 §13; 1995 c.620 §9; 1995 c.750 §5; 1999 c.80 §17; 2001 c.323 §8]

25.783 Confidentiality of information.

Any entity described in ORS 25.756 that receives an inquiry as to the status of a person who has had a license, certificate, permit or registration suspended under ORS 25.750 to 25.783 shall respond only that the license, certificate, permit or registration was suspended pursuant to ORS 25.750 to 25.783. The entity shall not release or make other use of information that it receives pursuant to ORS 25.750 to 25.783. [1993 c.365 §14; 1995 c.620 §10]

25.785 Issuing entities to require Social Security number. (1) Any state agency, board or commission that is authorized to issue an occupational, professional, recreational or driver license, certificate, permit or registration subject to suspension under ORS 25.750 to 25.783 shall require that an individual's Social Security number be recorded on an application for, or form for renewal of, a license, certificate, permit or registration and to the maximum extent feasible shall include the Social Security number in automated databases containing information about the individual.

(2) A state agency, board or commission described in subsection (1) of this section may accept a written statement from an individual who has not been issued a Social Security number by the United States Social Security Administration to fulfill the requirement in subsection (1) of this section.

(3) An individual may not submit to a state agency, board or commission a written statement described in subsection (2) of this

section knowing the statement to be false. [1997 c.746 §117; 1999 c.80 §93; 2003 c.610 §1; 2005 c.22 §17]

PUBLIC USE OF LANDS

105.668 Immunity from liability for injury or property damage arising from use of trail or structures in public easement or right of way. (1) As used in this section:

(a) "Structures" means improvements in a trail, including, but not limited to, stairs and bridges, that are accessible by a user on foot, on a horse or on a bicycle or other nonmotorized vehicle or conveyance.

(b) "Unimproved right of way" means a platted or dedicated public right of way over which a street, road or highway has not been constructed to the standards and specifications of the city with jurisdiction over the public right of way and for which the city has not expressly accepted responsibility for maintenance.

(2) A personal injury or property damage resulting from use of a trail that is in a public easement or in an unimproved right of way, or from use of structures in the public easement or unimproved right of way, by a user on foot, on a horse or on a bicycle or other nonmotorized vehicle or conveyance does not give rise to a private claim or right of action based on negligence against:

(a) A city with a population of 500,000 or more;

(b) The officers, employees or agents of a city with a population of 500,000 or more to the extent the officers, employees or agents are entitled to defense and indemnification under ORS 30.285;

(c) The owner of land abutting the public easement, or unimproved right of way, in a city with a population of 500,000 or more; or

(d) A nonprofit corporation and its volunteers for the construction and maintenance of the trail or the structures in a public easement or unimproved right of way in a city with a population of 500,000 or more.

(3) Notwithstanding the limit in subsection (2) of this section to a city with a population of 500,000 or more, by adoption of an ordinance or resolution, a city or county to which subsection (2) of this section does not apply may opt to limit liability in the manner established by subsection (2) of this section for:

(a) The city or county that opts in by ordinance or resolution;

(b) The officers, employees or agents of the city or county that opts in to the extent the officers, employees or agents are entitled

to defense and indemnification under ORS 30.285;

(c) The owner of land abutting the public easement, or unimproved right of way, in the city or county that opts in by ordinance or resolution; and

(d) A nonprofit corporation and its volunteers for the construction and maintenance of the trail or the structures in a public easement or unimproved right of way in the city or county that opts in.

(4) The immunity granted by this section from a private claim or right of action based on negligence does not grant immunity from liability:

(a) Except as provided in subsection (2)(b) or (3)(b) of this section, to a person that receives compensation for providing assistance, services or advice in relation to conduct that leads to a personal injury or property damage.

(b) For personal injury or property damage resulting from gross negligence or from reckless, wanton or intentional misconduct.

(c) For an activity for which a person is strictly liable without regard to fault. [2011 c.528 §1]

105.672 Definitions for ORS 105.672 to 105.696. As used in ORS 105.672 to 105.696:

(1) “Charge”:

(a) Means the admission price or fee requested or expected by an owner in return for granting permission for a person to enter or go upon the owner’s land.

(b) Does not mean any amount received from a public body in return for granting permission for the public to enter or go upon the owner’s land.

(c) Does not include the fee for a winter recreation parking permit or any other parking fee of \$15 or less per day.

(2) “Harvest” has that meaning given in ORS 164.813.

(3) “Land” includes all real property, whether publicly or privately owned.

(4) “Owner” means the possessor of any interest in any land, such as the holder of a fee title, a tenant, a lessee, an occupant, the holder of an easement, the holder of a right of way or a person in possession of the land.

(5) “Recreational purposes” includes, but is not limited to, outdoor activities such as hunting, fishing, swimming, boating, camping, picnicking, hiking, nature study, outdoor educational activities, waterskiing, winter sports, viewing or enjoying historical, archaeological, scenic or scientific sites or volunteering for any public purpose project.

(6) “Special forest products” has that meaning given in ORS 164.813.

(7) “Woodcutting” means the cutting or removal of wood from land by an individual who has obtained permission from the owner of the land to cut or remove wood. [1995 c.456 §1; 2007 c.372 §1; 2009 c.532 §1; 2010 c.52 §1]

105.676 Public policy. The Legislative Assembly hereby declares it is the public policy of the State of Oregon to encourage owners of land to make their land available to the public for recreational purposes, for gardening, for woodcutting and for the harvest of special forest products by limiting their liability toward persons entering thereon for such purposes and by protecting their interests in their land from the extinguishment of any such interest or the acquisition by the public of any right to use or continue the use of such land for recreational purposes, gardening, woodcutting or the harvest of special forest products. [1995 c.456 §2; 2009 c.532 §3]

105.682 Liabilities of owner of land used by public for recreational purposes, gardening, woodcutting or harvest of special forest products. (1) Except as provided by subsection (2) of this section, and subject to the provisions of ORS 105.688, an owner of land is not liable in contract or tort for any personal injury, death or property damage that arises out of the use of the land for recreational purposes, gardening, woodcutting or the harvest of special forest products when the owner of land either directly or indirectly permits any person to use the land for recreational purposes, gardening, woodcutting or the harvest of special forest products. The limitation on liability provided by this section applies if the principal purpose for entry upon the land is for recreational purposes, gardening, woodcutting or the harvest of special forest products, and is not affected if the injury, death or damage occurs while the person entering land is engaging in activities other than the use of the land for recreational purposes, gardening, woodcutting or the harvest of special forest products.

(2) This section does not limit the liability of an owner of land for intentional injury or damage to a person coming onto land for recreational purposes, gardening, woodcutting or the harvest of special forest products. [1995 c.456 §3; 2009 c.532 §4]

105.688 Applicability of immunities from liability for owner of land; restrictions. (1) Except as specifically provided in ORS 105.672 to 105.696, the immunities provided by ORS 105.682 apply to:

(a) All land, including but not limited to land adjacent or contiguous to any bodies of water, watercourses or the ocean shore as defined by ORS 390.605;

(a) All land, including but not limited to land adjacent or contiguous to any bodies of water, watercourses or the ocean shore as defined by ORS 390.605;

(b) All roads, bodies of water, watercourses, rights of way, buildings, fixtures and structures on the land described in paragraph (a) of this subsection;

(c) All paths, trails, roads, watercourses and other rights of way while being used by a person to reach land for recreational purposes, gardening, woodcutting or the harvest of special forest products, that are on land adjacent to the land that the person intends to use for recreational purposes, gardening, woodcutting or the harvest of special forest products, and that have not been improved, designed or maintained for the specific purpose of providing access for recreational purposes, gardening, woodcutting or the harvest of special forest products; and

(d) All machinery or equipment on the land described in paragraph (a) of this subsection.

(2) The immunities provided by ORS 105.682 apply to land if the owner transfers an easement to a public body to use the land.

(3) Except as provided in subsections (4) to (7) of this section, the immunities provided by ORS 105.682 do not apply if the owner makes any charge for permission to use the land for recreational purposes, gardening, woodcutting or the harvest of special forest products.

(4) If the owner charges for permission to use the owner's land for one or more specific recreational purposes and the owner provides notice in the manner provided by subsection (8) of this section, the immunities provided by ORS 105.682 apply to any use of the land other than the activities for which the charge is imposed. If the owner charges for permission to use a specified part of the owner's land for recreational purposes and the owner provides notice in the manner provided by subsection (8) of this section, the immunities provided by ORS 105.682 apply to the remainder of the owner's land.

(5) The immunities provided by ORS 105.682 for gardening do not apply if the owner charges more than \$25 per year for the use of the land for gardening. If the owner charges more than \$25 per year for the use of the land for gardening, the immunities provided by ORS 105.682 apply to any use of the land other than gardening. If the owner charges more than \$25 per year for permission to use a specific part of the owner's land for gardening and the owner provides notice in the manner provided by subsection (8) of this section, the immunities provided by ORS 105.682 apply to the remainder of the owner's land.

(6) The immunities provided by ORS 105.682 for woodcutting do not apply if the owner charges more than \$75 per cord for

permission to use the land for woodcutting. If the owner charges more than \$75 per cord for the use of the land for woodcutting, the immunities provided by ORS 105.682 apply to any use of the land other than woodcutting. If the owner charges more than \$75 per cord for permission to use a specific part of the owner's land for woodcutting and the owner provides notice in the manner provided by subsection (8) of this section, the immunities provided by ORS 105.682 apply to the remainder of the owner's land.

(7) The immunities provided by ORS 105.682 for the harvest of special forest products do not apply if the owner makes any charge for permission to use the land for the harvest of special forest products. If the owner charges for permission to use the owner's land for the harvest of special forest products, the immunities provided by ORS 105.682 apply to any use of the land other than the harvest of special forest products. If the owner charges for permission to use a specific part of the owner's land for harvesting special forest products and the owner provides notice in the manner provided by subsection (8) of this section, the immunities provided by ORS 105.682 apply to the remainder of the owner's land.

(8) Notices under subsections (4) to (7) of this section may be given by posting, as part of a receipt, or by such other means as may be reasonably calculated to apprise a person of:

(a) The limited uses of the land for which the charge is made, and the immunities provided under ORS 105.682 for other uses of the land; or

(b) The portion of the land the use of which is subject to the charge, and the immunities provided under ORS 105.682 for the remainder of the land. [1995 c.456 §4; 1999 c.872 §7; 2001 c.206 §1; 2009 c.532 §2; 2010 c.52 §2]

105.692 Right to continued use of land following permitted use; presumption of dedication or other rights. (1) An owner of land who either directly or indirectly permits any person to use the land for recreational purposes, gardening, woodcutting or the harvest of special forest products does not give that person or any other person a right to continued use of the land for those purposes without the consent of the owner.

(2) The fact that an owner of land allows the public to use the land for recreational purposes, gardening, woodcutting or the harvest of special forest products without posting, fencing or otherwise restricting use of the land does not raise a presumption that the landowner intended to dedicate or otherwise give over to the public the right to continued use of the land.

(3) Nothing in this section shall be construed to diminish or divert any public right to use land for recreational purposes acquired by dedication, prescription, grant, custom or otherwise existing before October 5, 1973.

(4) Nothing in this section shall be construed to diminish or divert any public right to use land for woodcutting acquired by dedication, prescription, grant, custom or otherwise existing before October 3, 1979. [1995 c.456 §5; 2009 c.532 §5]

105.696 Duty of care or liability not created; exercise of care required of person using land. ORS 105.672 to 105.696 do not:

(1) Create a duty of care or basis for liability for personal injury, death or property damage resulting from the use of land for recreational purposes, for gardening, for woodcutting or for the harvest of special forest products.

(2) Relieve a person using the land of another for recreational purposes, gardening, woodcutting or the harvest of special forest products from any obligation that the person has to exercise care in use of the land in the activities of the person or from the legal consequences of failure of the person to exercise that care. [1995 c.456 §6; 2009 c.532 §6]

105.699 Rules applicable to state lands. The State Forester, under the general supervision of the State Board of Forestry, may adopt any rules considered necessary for the administration of the provisions of ORS 105.672 to 105.696 on state land. [1979 c.434 §8; 1995 c.456 §7]

105.700 Prohibiting public access to private land; notice requirements; damages. (1) In addition to and not in lieu of any other damages that may be claimed, a plaintiff who is a landowner shall receive liquidated damages in an amount not to exceed \$1,000 in any action in which the plaintiff establishes that:

(a) The plaintiff closed the land of the plaintiff as provided in subsection (2) of this section; and

(b) The defendant entered and remained upon the land of the plaintiff without the permission of the plaintiff.

(2) A landowner or an agent of the landowner may close the privately owned land of the landowner by posting notice as follows:

(a) For land through which the public has no right of way, the landowner or agent must place a notice at each outer gate and normal point of access to the land, including both sides of a body of water that crosses the land wherever the body of water intersects an outer boundary line. The notice must be

placed on a post, structure or natural object in the form of a sign or a blaze of paint. If a blaze of paint is used, it must consist of at least 50 square inches of fluorescent orange paint, except that when metal fence posts are used, approximately the top six inches of the fence post must be painted. If a sign is used, the sign:

(A) Must be no smaller than eight inches in height and 11 inches in width;

(B) Must contain the words "Closed to Entry" or words to that effect in letters no less than one inch in height; and

(C) Must display the name, business address and phone number, if any, of the landowner or agent of the landowner.

(b) For land through which or along which the public has an unfenced right of way by means of a public road, the landowner or agent must place:

(A) A conspicuous sign no closer than 30 feet from the center line of the roadway where it enters the land, containing words substantially similar to "PRIVATE PROPERTY, NO TRESPASSING OFF ROAD NEXT _____ MILES"; or

(B) A sign or blaze of paint, as described in paragraph (a) of this subsection, no closer than 30 feet from the center line of the roadway at regular intervals of not less than one-fourth mile along the roadway where it borders the land, except that a blaze of paint may not be placed on posts where the public road enters the land.

(3) Nothing contained in this section prevents emergency or law enforcement vehicles from entering upon the posted land.

(4) An award of liquidated damages under this section is not subject to ORS 31.725, 31.730 or 31.735.

(5) Nothing in this section affects any other remedy, civil or criminal, that may be available for a trespass described in this section. [1999 c.933 §1]

CRIMES AND PUNISHMENTS

(Classes of Offenses)

161.505 "Offense" described. An offense is conduct for which a sentence to a term of imprisonment or to a fine is provided by any law of this state or by any law or ordinance of a political subdivision of this state. An offense is either a crime, as described in ORS 161.515, or a violation, as described in ORS 153.008. [1971 c.743 §65; 1975 c.451 §173; 1981 c.626 §2; 1981 c.692 §7; 1999 c.1051 §43]

161.515 "Crime" described. (1) A crime is an offense for which a sentence of imprisonment is authorized.

(2) A crime is either a felony or a misdemeanor. [1971 c.743 §66]

161.525 “Felony” described. Except as provided in ORS 161.585 and 161.705, a crime is a felony if it is so designated in any statute of this state or if a person convicted under a statute of this state may be sentenced to a maximum term of imprisonment of more than one year. [1971 c.743 §67]

161.535 Classification of felonies. (1) Felonies are classified for the purpose of sentence into the following categories:

- (a) Class A felonies;
- (b) Class B felonies;
- (c) Class C felonies; and
- (d) Unclassified felonies.

(2) The particular classification of each felony defined in the Oregon Criminal Code, except murder under ORS 163.115 and treason under ORS 166.005, is expressly designated in the section defining the crime. An offense defined outside this code which, because of the express sentence provided is within the definition of ORS 161.525, shall be considered an unclassified felony. [1971 c.743 §68]

161.545 “Misdemeanor” described. A crime is a misdemeanor if it is so designated in any statute of this state or if a person convicted thereof may be sentenced to a maximum term of imprisonment of not more than one year. [1971 c.743 §69]

161.555 Classification of misdemeanors. (1) Misdemeanors are classified for the purpose of sentence into the following categories:

- (a) Class A misdemeanors;
- (b) Class B misdemeanors;
- (c) Class C misdemeanors; and
- (d) Unclassified misdemeanors.

(2) The particular classification of each misdemeanor defined in the Oregon Criminal Code is expressly designated in the section defining the crime. An offense defined outside this code which, because of the express sentence provided is within the definition of ORS 161.545, shall be considered an unclassified misdemeanor.

(3) An offense defined by a statute of this state, but without specification as to its classification or as to the penalty authorized upon conviction, shall be considered a Class A misdemeanor. [1971 c.743 §70]

161.566 Misdemeanor treated as violation; prosecuting attorney’s election. (1) Except as provided in subsection (4) of this section, a prosecuting attorney may elect to treat any misdemeanor as a Class A vio-

lation. The election must be made by the prosecuting attorney orally at the time of the first appearance of the defendant or in writing filed on or before the time scheduled for the first appearance of the defendant. If no election is made within the time allowed, the case shall proceed as a misdemeanor.

(2) If a prosecuting attorney elects to treat a misdemeanor as a Class A violation under this section, the court shall amend the accusatory instrument to reflect the charged offense as a Class A violation and clearly denominate the offense as a Class A violation in any judgment entered in the matter. Notwithstanding ORS 153.021, the fine that a court may impose upon conviction of a violation under this section may not:

(a) Be less than the presumptive fine established by ORS 153.019 for a Class A violation; or

(b) Exceed the maximum fine established by ORS 153.018 for a Class A violation.

(3) If a prosecuting attorney elects to treat a misdemeanor as a Class A violation under this section, and the defendant fails to make any required appearance in the matter, the court may enter a default judgment against the defendant in the manner provided by ORS 153.102. Notwithstanding ORS 153.021, the fine that the court may impose under a default judgment entered pursuant to ORS 153.102 may not:

(a) Be less than the presumptive fine established by ORS 153.019 for a Class A violation; or

(b) Exceed the maximum fine established by ORS 153.018 for a Class A violation.

(4) A prosecuting attorney may not elect to treat misdemeanors created under ORS 811.540 or 813.010 as violations under the provisions of this section.

(5) The election provided for in this section may be made by a city attorney acting as prosecuting attorney in the case of municipal ordinance offenses, a county counsel acting as prosecuting attorney under a county charter in the case of county ordinance offenses, and the Attorney General acting as prosecuting attorney in those criminal actions or proceedings within the jurisdiction of the Attorney General. [1999 c.1051 §47; 2003 c.737 §89; 2011 c.597 §16; 2012 c.82 §2]

161.568 Misdemeanor treated as violation; court’s election. (1) Except as provided in subsection (4) of this section, a court may elect to treat any misdemeanor as a Class A violation for the purpose of entering a default judgment under ORS 153.102 if:

(a) A complaint or information has been filed with the court for the misdemeanor;

(b) The defendant has failed to make an appearance in the proceedings required by the court or by law; and

(c) The court has given notice to the district attorney for the county and the district attorney has informed the court that the district attorney does not object to treating the misdemeanor as a Class A violation.

(2) If the court treats a misdemeanor as a Class A violation under this section, the court shall amend the accusatory instrument to reflect the charged offense as a Class A violation and clearly denominate the offense as a Class A violation in the judgment entered in the matter.

(3) Notwithstanding ORS 153.021, if the court treats a misdemeanor as a Class A violation under this section, the fine that the court may impose under a default judgment entered pursuant to ORS 153.102 may not:

(a) Be less than the presumptive fine established by ORS 153.019 for a Class A violation; or

(b) Exceed the maximum fine established by ORS 153.018 for a Class A violation.

(4) A court may not treat misdemeanors created under ORS 811.540 or 813.010 as violations under the provisions of this section. [1999 c.1051 §48; 2003 c.737 §90; 2011 c.597 §17; 2012 c.82 §3]

161.570 Felony treated as misdemeanor. (1) As used in this section, “non-person felony” has the meaning given that term in the rules of the Oregon Criminal Justice Commission.

(2) A district attorney may elect to treat a Class C nonperson felony or a violation of ORS 475.752 (3)(a), 475.854 or 475.874 as a Class A misdemeanor. The election must be made by the district attorney orally or in writing at the time of the first appearance of the defendant. If a district attorney elects to treat a Class C felony or a violation of ORS 475.752 (3)(a), 475.854 or 475.874 as a Class A misdemeanor under this subsection, the court shall amend the accusatory instrument to reflect the charged offense as a Class A misdemeanor.

(3) If, at some time after the first appearance of a defendant charged with a Class C nonperson felony or a violation of ORS 475.752 (3)(a), 475.854 or 475.874, the district attorney and the defendant agree to treat the charged offense as a Class A misdemeanor, the court may allow the offense to be treated as a Class A misdemeanor by stipulation of the parties.

(4) If a Class C felony or a violation of ORS 475.752 (3)(a), 475.854 or 475.874 is treated as a Class A misdemeanor under this section, the court shall clearly denominate

the offense as a Class A misdemeanor in any judgment entered in the matter.

(5) If no election or stipulation is made under this section, the case proceeds as a felony.

(6) Before a district attorney may make an election under subsection (2) of this section, the district attorney shall adopt written guidelines for determining when and under what circumstances the election may be made. The district attorney shall apply the guidelines uniformly.

(7) Notwithstanding ORS 161.635, the fine that a court may impose upon conviction of a misdemeanor under this section may not:

(a) Be less than the minimum fine established by ORS 137.286 for a felony; or

(b) Exceed the amount provided in ORS 161.625 for the class of felony receiving Class A misdemeanor treatment. [2003 c.645 §2; 2005 c.708 §47; 2007 c.286 §1; 2011 c.597 §18; 2013 c.591 §4]

161.585 Classification of certain crimes determined by punishment. (1) When a crime punishable as a felony is also punishable by imprisonment for a maximum term of one year or by a fine, the crime shall be classed as a misdemeanor if the court imposes a punishment other than imprisonment under ORS 137.124 (1).

(2) Notwithstanding the provisions of ORS 161.525, upon conviction of a crime punishable as described in subsection (1) of this section, the crime is a felony for all purposes until one of the following events occurs, after which occurrence the crime is a misdemeanor for all purposes:

(a) Without imposing a sentence of probation, the court imposes a sentence of imprisonment other than to the legal and physical custody of the Department of Corrections.

(b) Without imposing a sentence of probation, the court imposes a fine.

(c) Upon revocation of probation, the court imposes a sentence of imprisonment other than to the legal and physical custody of the Department of Corrections.

(d) Upon revocation of probation, the court imposes a fine.

(e) The court declares the offense to be a misdemeanor, either at the time of imposing a sentence of probation, upon suspension of imposition of a part of a sentence, or on application of defendant or the parole and probation officer of the defendant thereafter.

(f) The court imposes a sentence of probation on the defendant without imposition of any other sentence upon conviction and defendant is thereafter discharged without any other sentence.

(g) Without imposing a sentence of probation and without imposing any other sentence, the court declares the offense to be a misdemeanor and discharges the defendant.

(3) The provisions of this section shall apply only to persons convicted of a felony committed prior to November 1, 1989. [1971 c.743 §73; 1987 c.320 §85; 1989 c.790 §52; 1993 c.14 §18; 2005 c.264 §15]

(Disposition of Offenders)

161.605 Maximum prison terms for felonies. The maximum term of an indeterminate sentence of imprisonment for a felony is as follows:

(1) For a Class A felony, 20 years.

(2) For a Class B felony, 10 years.

(3) For a Class C felony, 5 years.

(4) For an unclassified felony as provided in the statute defining the crime. [1971 c.743 §74]

161.610 Enhanced penalty for use of firearm during commission of felony; pleading; minimum penalties; suspension or reduction of penalty. (1) As used in this section, "firearm" has the meaning given that term in ORS 166.210.

(2) The use or threatened use of a firearm, whether operable or inoperable, by a defendant during the commission of a felony may be pleaded in the accusatory instrument and proved at trial as an element in aggravation of the crime as provided in this section. When a crime is so pleaded, the aggravated nature of the crime may be indicated by adding the words "with a firearm" to the title of the offense. The unaggravated crime shall be considered a lesser included offense.

(3) Notwithstanding the provisions of ORS 161.605 or 137.010 (3) and except as otherwise provided in subsection (6) of this section, if a defendant is convicted of a felony having as an element the defendant's use or threatened use of a firearm during the commission of the crime, the court shall impose at least the minimum term of imprisonment as provided in subsection (4) of this section. Except as provided in ORS 144.122 and 144.126 and subsection (5) of this section, in no case shall any person punishable under this section become eligible for work release, parole, temporary leave or terminal leave until the minimum term of imprisonment is served, less a period of time equivalent to any reduction of imprisonment granted for good time served or time credits earned under ORS 421.121, nor shall the execution of the sentence imposed upon such person be suspended by the court.

(4) The minimum terms of imprisonment for felonies having as an element the

defendant's use or threatened use of a firearm in the commission of the crime shall be as follows:

(a) Except as provided in subsection (5) of this section, upon the first conviction for such felony, five years, except that if the firearm is a machine gun, short-barreled rifle, short-barreled shotgun or is equipped with a firearms silencer, the term of imprisonment shall be 10 years.

(b) Upon conviction for such felony committed after punishment pursuant to paragraph (a) of this subsection or subsection (5) of this section, 10 years, except that if the firearm is a machine gun, short-barreled rifle, short-barreled shotgun or is equipped with a firearms silencer, the term of imprisonment shall be 20 years.

(c) Upon conviction for such felony committed after imprisonment pursuant to paragraph (b) of this subsection, 30 years.

(5) If it is the first time that the defendant is subject to punishment under this section, rather than impose the sentence otherwise required by subsection (4)(a) of this section, the court may:

(a) For felonies committed prior to November 1, 1989, suspend the execution of the sentence or impose a lesser term of imprisonment, when the court expressly finds mitigating circumstances justifying such lesser sentence and sets forth those circumstances in its statement on sentencing; or

(b) For felonies committed on or after November 1, 1989, impose a lesser sentence in accordance with the rules of the Oregon Criminal Justice Commission.

(6) When a defendant who is convicted of a felony having as an element the defendant's use or threatened use of a firearm during the commission of the crime is a person who was waived from juvenile court under ORS 137.707 (5)(b)(A), 419C.349, 419C.352, 419C.364 or 419C.370, the court is not required to impose a minimum term of imprisonment under this section. [1979 c.779 §2; 1985 c.552 §1; 1989 c.790 §72; 1989 c.839 §18; 1991 c.133 §3; 1993 c.692 §9; 1999 c.951 §3; 2005 c.407 §1; 2009 c.610 §5]

161.615 Prison terms for misdemeanors. Sentences for misdemeanors shall be for a definite term. The court shall fix the term of imprisonment within the following maximum limitations:

(1) For a Class A misdemeanor, 1 year.

(2) For a Class B misdemeanor, 6 months.

(3) For a Class C misdemeanor, 30 days.

(4) For an unclassified misdemeanor, as provided in the statute defining the crime. [1971 c.743 §75]

161.620 Sentences imposed upon waiver from juvenile court. Notwithstanding any other provision of law, a sentence imposed upon any person waived from the juvenile court under ORS 419C.349, 419C.352, 419C.364 or 419C.370 shall not include any sentence of death or life imprisonment without the possibility of release or parole nor imposition of any mandatory minimum sentence except that a mandatory minimum sentence under:

(1) ORS 163.105 (1)(c) shall be imposed; and

(2) ORS 161.610 may be imposed. [1985 c.631 §9; 1989 c.720 §3; 1993 c.33 §306; 1993 c.546 §119; 1995 c.422 §131y; 1999 c.951 §2]

161.625 Fines for felonies. (1) A sentence to pay a fine for a felony shall be a sentence to pay an amount, fixed by the court, not exceeding:

(a) \$500,000 for murder or aggravated murder.

(b) \$375,000 for a Class A felony.

(c) \$250,000 for a Class B felony.

(d) \$125,000 for a Class C felony.

(2) A sentence to pay a fine for an unclassified felony shall be a sentence to pay an amount, fixed by the court, as provided in the statute defining the crime.

(3)(a) If a person has gained money or property through the commission of a felony, then upon conviction thereof the court, in lieu of imposing the fine authorized for the crime under subsection (1) or (2) of this section, may sentence the defendant to pay an amount, fixed by the court, not exceeding double the amount of the defendant's gain from the commission of the crime.

(b) The provisions of paragraph (a) of this subsection do not apply to the felony theft of a companion animal, as defined in ORS 164.055, or a captive wild animal.

(4) As used in this section, "gain" means the amount of money or the value of property derived from the commission of the felony, less the amount of money or the value of property returned to the victim of the crime or seized by or surrendered to lawful authority before the time sentence is imposed. "Value" shall be determined by the standards established in ORS 164.115.

(5) When the court imposes a fine for a felony the court shall make a finding as to the amount of the defendant's gain from the crime. If the record does not contain sufficient evidence to support a finding the court may conduct a hearing upon the issue.

(6) Except as provided in ORS 161.655, this section does not apply to a corporation. [1971 c.743 §76; 1981 c.390 §1; 1991 c.837 §11; 1993 c.680 §36; 2003 c.615 §1; 2003 c.737 §86]

161.635 Fines for misdemeanors. (1) A sentence to pay a fine for a misdemeanor shall be a sentence to pay an amount, fixed by the court, not exceeding:

(a) \$6,250 for a Class A misdemeanor.

(b) \$2,500 for a Class B misdemeanor.

(c) \$1,250 for a Class C misdemeanor.

(2) A sentence to pay a fine for an unclassified misdemeanor shall be a sentence to pay an amount, fixed by the court, as provided in the statute defining the crime.

(3) If a person has gained money or property through the commission of a misdemeanor, then upon conviction thereof the court, instead of imposing the fine authorized for the offense under this section, may sentence the defendant to pay an amount fixed by the court, not exceeding double the amount of the defendant's gain from the commission of the offense. In that event, ORS 161.625 (4) and (5) apply.

(4) This section does not apply to corporations. [1971 c.743 §77; 1981 c.390 §2; 1993 c.680 §30; 1995 c.545 §2; 1999 c.1051 §44; 2003 c.737 §87]

161.645 Standards for imposing fines. In determining whether to impose a fine and its amount, the court shall consider:

(1) The financial resources of the defendant and the burden that payment of a fine will impose, with due regard to the other obligations of the defendant; and

(2) The ability of the defendant to pay a fine on an installment basis or on other conditions to be fixed by the court. [1971 c.743 §78]

161.655 Fines for corporations. (1) A sentence to pay a fine when imposed on a corporation for an offense defined in the Oregon Criminal Code or for an offense defined outside this code for which no special corporate fine is specified, shall be a sentence to pay an amount, fixed by the court, not exceeding:

(a) \$50,000 when the conviction is of a felony.

(b) \$5,000 when the conviction is of a Class A misdemeanor or of an unclassified misdemeanor for which a term of imprisonment of more than six months is authorized.

(c) \$2,500 when the conviction is of a Class B misdemeanor or of an unclassified misdemeanor for which the authorized term of imprisonment is not more than six months.

(d) \$1,000 when the conviction is of a Class C misdemeanor or an unclassified misdemeanor for which the authorized term of imprisonment is not more than 30 days.

(2) A sentence to pay a fine, when imposed on a corporation for an offense defined outside the Oregon Criminal Code, if a special fine for a corporation is provided in the

statute defining the offense, shall be a sentence to pay an amount, fixed by the court, as provided in the statute defining the offense.

(3) If a corporation has gained money or property through the commission of an offense, then upon conviction thereof the court, in lieu of imposing the fine authorized for the offense under subsection (1) or (2) of this section, may sentence the corporation to pay an amount, fixed by the court, not exceeding double the amount of the corporation's gain from the commission of the offense. In that event, ORS 161.625 (4) and (5) apply. [1971 c.743 §79; 1999 c.1051 §45]

161.665 Costs. (1) Except as provided in ORS 151.505, the court, only in the case of a defendant for whom it enters a judgment of conviction, may include in its sentence thereunder a money award for all costs specially incurred by the state in prosecuting the defendant. Costs include a reasonable attorney fee for counsel appointed pursuant to ORS 135.045 or 135.050 and a reasonable amount for fees and expenses incurred pursuant to preauthorization under ORS 135.055. A reasonable attorney fee is presumed to be a reasonable number of hours at the hourly rate authorized by the Public Defense Services Commission under ORS 151.216. Costs do not include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law.

(2) Except as provided in ORS 151.505, the court, after the conclusion of an appeal of its initial judgment of conviction, may include in its general judgment, or enter a supplemental judgment that includes, a money award that requires a convicted defendant to pay a reasonable attorney fee for counsel appointed pursuant to ORS 138.500, including counsel who is appointed under ORS 151.216 or counsel who is under contract to provide services for the proceeding under ORS 151.219, and other costs and expenses allowed by the public defense services executive director under ORS 138.500 (4). A reasonable attorney fee is presumed to be a reasonable number of hours at the hourly rate authorized by the commission under ORS 151.216.

(3) For purposes of subsections (1) and (2) of this section, compensation of counsel is determined by reference to a schedule of compensation established by the commission under ORS 151.216.

(4) The court may not sentence a defendant to pay costs under this section unless the defendant is or may be able to pay them. In determining the amount and method of pay-

ment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(5) A defendant who has been sentenced to pay costs under this section and who is not in contumacious default in the payment of costs may at any time petition the court that sentenced the defendant for remission of the payment of costs or of any unpaid portion of costs. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the immediate family of the defendant, the court may enter a supplemental judgment that remits all or part of the amount due in costs, or modifies the method of payment under ORS 161.675.

(6) Except as provided in subsection (7) of this section, all moneys collected or paid under this section shall be paid into the Criminal Fine Account.

(7) The court may, in the judgment of conviction, include a money award requiring the defendant to pay the costs of extraditing the defendant to this state. Any amounts awarded to the state under this subsection must be listed separately in the money award portion of the judgment. All moneys collected or paid under this subsection shall be deposited into the Arrest and Return Account established by ORS 133.865. [1971 c.743 §80; 1981 s.s. c.3 §120; 1983 c.763 §12; 1985 c.710 §3; 1987 c.803 §26; 1989 c.1053 §11; 1991 c.460 §12; 1991 c.840 §1; 1997 c.761 §1; 2001 c.962 §§41,113; 2003 c.449 §29; 2003 c.576 §§247,248; 2003 c.615 §2; 2011 c.597 §44; 2015 c.198 §2]

161.675 Time and method of payment of fines, restitution and costs. (1) When a defendant, as a part of a sentence or as condition of probation or suspension of sentence, is required to pay a sum of money for any purpose, the court may order payment to be made immediately or within a specified period of time or in specified installments. If a defendant is sentenced to a term of imprisonment, any part of the sentence that requires the payment of a sum of money for any purpose is enforceable during the period of imprisonment if the court expressly finds that the defendant has assets to pay all or part of the amounts ordered.

(2) When a defendant whose sentence requires the payment of a sum of money for any purpose is also sentenced to probation or imposition or execution of sentence is suspended, the court may make payment of the sum of money a condition of probation or suspension of sentence.

(3) When a defendant is sentenced to probation or imposition or execution of sentence is suspended and the court requires as a part of the sentence or as a condition of

the probation or suspension of sentence that the defendant pay a sum of money in installments, the court, or the court clerk or parole and probation officer if so ordered by the court, shall establish a schedule of payments to satisfy the obligation. A schedule of payments shall be reviewed by the court upon motion of the defendant at any time, so long as the obligation remains unsatisfied. [1971 c.743 §81; 1977 c.371 §4; 1985 c.46 §1; 1993 c.14 §19; 1995 c.512 §3; 2005 c.264 §16]

161.685 Effect of nonpayment of fines, restitution or costs; report to consumer reporting agency; rules. (1) When a defendant who has been sentenced or ordered to pay a fine, or to make restitution, defaults on a payment or installment ordered by the court, the court on motion of the district attorney or upon its own motion may require the defendant to show cause why the default should not be treated as contempt of court, and may issue a show cause citation or a warrant of arrest for the appearance of the defendant.

(2) If the court finds that the default constitutes contempt, the court may impose one or more of the sanctions authorized by ORS 33.105.

(3) When a fine or an order of restitution is imposed on a corporation or unincorporated association, it is the duty of the person authorized to make disbursement from the assets of the corporation or association to pay the fine or make the restitution from those assets, and if that person fails to do so, the court may hold that person in contempt.

(4) Notwithstanding ORS 33.105, the term of confinement for contempt for nonpayment of fines or failure to make restitution shall be set forth in the commitment order, and shall not exceed one day for each \$25 of the fine or restitution, 30 days if the fine or order of restitution was imposed upon conviction of a violation or misdemeanor, or one year in any other case, whichever is the shorter period.

(5) If it appears to the satisfaction of the court that the default in the payment of a fine or restitution is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of the payment or installments due on the payment, or revoking the fine or order of restitution in whole or in part.

(6) A default in the payment of a fine or costs or failure to make restitution or a default on an installment on a fine, costs or restitution may be collected by any means authorized by law for the enforcement of a judgment. The levy of execution or garnishment for the collection of a fine or restitution shall not discharge a defendant confined

for contempt until the amount of the fine or restitution has actually been collected.

(7) The court, or the court clerk if ordered by the court, may report a default on a court-ordered payment to a consumer reporting agency.

(8) The Chief Justice of the Supreme Court shall adopt rules under ORS 1.002 establishing policies and procedures for reporting a default under subsection (7) of this section to a consumer reporting agency that may include, but are not limited to, limitations on reporting a default to a consumer reporting agency.

(9) Except as otherwise provided in this section, proceedings under this section shall be conducted:

(a) As provided in ORS 33.055, if the court seeks to impose remedial sanctions as described in ORS 33.015 to 33.155; and

(b) As provided in ORS 33.065, if the court seeks to impose punitive sanctions as described in ORS 33.015 to 33.155.

(10) Confinement under this section may be custody or incarceration, whether actual or constructive.

(11) As used in this section:

(a) "Consumer reporting agency" means any person that regularly engages for fees, dues, or on a nonprofit basis, in whole or in part, in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(b) "Restitution" has the meaning given that term in ORS 137.103. [1971 c.743 §82; 1977 c.371 §5; 1987 c.709 §3; 1987 c.873 §28; 1991 c.724 §27a; 1995 c.79 §50; 1995 c.512 §4; 2015 c.9 §3]

(Manslaughter)

163.118 Manslaughter in the first degree. (1) Criminal homicide constitutes manslaughter in the first degree when:

(a) It is committed recklessly under circumstances manifesting extreme indifference to the value of human life;

(b) It is committed intentionally by a defendant under the influence of extreme emotional disturbance as provided in ORS 163.135, which constitutes a mitigating circumstance reducing the homicide that would otherwise be murder to manslaughter in the first degree and need not be proved in any prosecution;

(c) A person recklessly causes the death of a child under 14 years of age or a dependent person, as defined in ORS 163.205, and:

(A) The person has previously engaged in a pattern or practice of assault or torture of

the victim or another child under 14 years of age or a dependent person; or

(B) The person causes the death by neglect or maltreatment, as defined in ORS 163.115; or

(d) It is committed recklessly or with criminal negligence by a person operating a motor vehicle while under the influence of intoxicants in violation of ORS 813.010 and:

(A) The person has at least three previous convictions for driving while under the influence of intoxicants under ORS 813.010, or its statutory counterpart in any jurisdiction, in the 10 years prior to the date of the current offense; or

(B)(i) The person has a previous conviction for any of the crimes described in subsection (2) of this section, or their statutory counterparts in any jurisdiction; and

(ii) The victim's serious physical injury in the previous conviction was caused by the person driving a motor vehicle.

(2) The previous convictions to which subsection (1)(d)(B) of this section applies are:

(a) Assault in the first degree under ORS 163.185;

(b) Assault in the second degree under ORS 163.175; or

(c) Assault in the third degree under ORS 163.165.

(3) Manslaughter in the first degree is a Class A felony.

(4) It is an affirmative defense to a charge of violating:

(a) Subsection (1)(c)(B) of this section that the victim was a dependent person who was at least 18 years of age and was under care or treatment solely by spiritual means pursuant to the religious beliefs or practices of the dependent person or the guardian of the dependent person.

(b) Subsection (1)(d)(B) of this section that the defendant was not under the influence of intoxicants at the time of the conduct that resulted in the previous conviction. [1975 c.577 §2; 1981 c.873 §6; 1997 c.850 §3; 2007 c.867 §2; 2011 c.291 §2]

(Criminal Trespass)

164.265 Criminal trespass while in possession of a firearm. (1) A person commits the crime of criminal trespass while in possession of a firearm who, while in possession of a firearm, enters or remains unlawfully in or upon premises.

(2) Criminal trespass while in possession of a firearm is a Class A misdemeanor. [1979 c.603 §2]

164.270 Closure of premises to motor-propelled vehicles. (1) For purposes of ORS 164.245, a landowner or an agent of the landowner may close the privately owned premises of the landowner to motor-propelled vehicles by posting signs on or near the boundaries of the closed premises at the normal points of entry as follows:

(a) Signs must be no smaller than eight inches in height and 11 inches in width;

(b) Signs must contain the words "Closed to Motor-propelled Vehicles" or words to that effect in letters no less than one inch in height;

(c) Signs must display the name, business address and phone number, if any, of the landowner or agent of the landowner; and

(d) Signs must be posted at normal points of entry and be no further apart than 350 yards.

(2) A person violates ORS 164.245 if the person operates or rides upon or within a motor-propelled vehicle upon privately owned premises when the premises are posted as provided in this section and the person does not have written authorization to operate a motor-propelled vehicle upon the premises.

(3) Nothing contained in this section prevents emergency or law enforcement vehicles from entering upon land closed to motor-propelled vehicles. [1981 c.394 §2]

(Littering)

164.775 Deposit of trash within 100 yards of waters or in waters; license suspensions; civil penalties; credit for work in lieu of fine. (1) It is unlawful for any person to discard any glass, cans or other trash, rubbish, debris or litter on land within 100 yards of any of the waters of the state, as defined in ORS 468B.005, other than in receptacles provided for the purpose of holding such trash, rubbish, debris or litter.

(2) It is unlawful for any person to discard any glass, cans or other similar refuse in any waters of the state, as defined in ORS 468B.005.

(3) In addition to or in lieu of the penalties provided for violation of any provision of this section, the court in which any individual is convicted of a violation of this section may order suspension of certain permits or licenses for a period not to exceed 90 days if the court finds that the violation occurred during or in connection with the exercise of the privilege granted by the permit or license. The permits and licenses to which this section applies are motor vehicle operator's permits or licenses, hunting licenses, fishing licenses or boat registrations.

(4)(a) Any person sentenced under subsection (6) of this section to pay a fine for violation of this section shall be permitted, in default of the payment of the fine, to work at clearing rubbish, trash and debris from the lands and waters described by subsections (1) and (2) of this section. Credit in compensation for such work shall be allowed at the rate of \$25 for each day of work.

(b) In any case, upon conviction, if punishment by imprisonment is imposed upon the defendant, the form of the sentence shall include that the defendant shall be punished by confinement at labor clearing rubbish, trash and debris from the lands and waters described by subsections (1) and (2) of this section, for not less than one day nor more than five days.

(5) A citation conforming to the requirements of ORS 133.066 shall be used for all violations of subsection (1) or (2) of this section in the state.

(6) Violation of this section is a Class B misdemeanor.

(7) In addition to and not in lieu of the criminal penalty authorized by subsection (6) of this section, the civil penalty authorized by ORS 468.140 may be imposed for violation of this section.

(8) Nothing in this section or ORS 164.785 prohibits the operation of a disposal site, as defined in ORS 459.005, for which a permit is required by the Department of Environmental Quality, for which such a permit has been issued and which is being operated and maintained in accordance with the terms and conditions of such permit. [Formerly 449.107; 1999 c.1051 §132]

164.785 Placing offensive substances in waters, on highways or other property.

(1)(a) It is unlawful for any person, including a person in the possession or control of any land, to discard any dead animal carcass or part thereof, excrement, putrid, nauseous, noisome, decaying, deleterious or offensive substance into or in any other manner befoul, pollute or impair the quality of any spring, river, brook, creek, branch, well, irrigation drainage ditch, irrigation ditch, cistern or pond of water.

(b)(A) In a prosecution under this subsection, it is a defense that:

(i) The dead animal carcass that is discarded is a fish carcass;

(ii) The person returned the fish carcass to the water from which the person caught the fish; and

(iii) The person retained proof of compliance with any provisions regarding angling prescribed by the State Fish and Wildlife Commission pursuant to ORS 496.162.

(B) As used in this paragraph, "fish carcass" means entrails, gills, head, skin, fins and backbone.

(2) It is unlawful for any person to place or cause to be placed any polluting substance listed in subsection (1) of this section into any road, street, alley, lane, railroad right of way, lot, field, meadow or common. It is unlawful for an owner thereof to knowingly permit any polluting substances to remain in any of the places described in this subsection to the injury of the health or to the annoyance of any citizen of this state. Every 24 hours after conviction for violation of this subsection during which the violator permits the polluting substances to remain is an additional offense against this subsection.

(3) Nothing in this section shall apply to the storage or spreading of manure or like substance for agricultural, silvicultural or horticultural purposes, except that no sewage sludge, septic tank or cesspool pumpings shall be used for these purposes unless treated and applied in a manner approved by the Department of Environmental Quality.

(4) Violation of this section is a Class A misdemeanor.

(5) The Department of Environmental Quality may impose the civil penalty authorized by ORS 468.140 for violation of this section. [Formerly 449.105; 1983 c.257 §1; 1987 c.325 §1; 2013 c.132 §1]

164.805 Offensive littering. (1) A person commits the crime of offensive littering if the person creates an objectionable stench or degrades the beauty or appearance of property or detracts from the natural cleanliness or safety of property by intentionally:

(a) Discarding or depositing any rubbish, trash, garbage, debris or other refuse upon the land of another without permission of the owner, or upon any public way or in or upon any public transportation facility;

(b) Draining, or causing or permitting to be drained, sewage or the drainage from a cesspool, septic tank, recreational or camping vehicle waste holding tank or other contaminated source, upon the land of another without permission of the owner, or upon any public way; or

(c) Permitting any rubbish, trash, garbage, debris or other refuse to be thrown from a vehicle that the person is operating. This subsection does not apply to a person operating a vehicle transporting passengers for hire subject to regulation by the Department of Transportation or a person operating a school bus described under ORS 801.460.

(2) As used in this section:

(a) "Public transportation facility" has the meaning given that term in ORS 164.365.

(b) "Public way" includes, but is not limited to, roads, streets, alleys, lanes, trails, beaches, parks and all recreational facilities operated by the state, a county or a local municipality for use by the general public.

(3) Offensive littering is a Class C misdemeanor. [1971 c.743 §283; 1975 c.344 §2; 1983 c.338 §897; 1985 c.420 §20; 2007 c.71 §52; 2015 c.138 §2]

(Unlawful Transport)

164.815 Unlawfully transporting hay.

(1) A person commits the crime of unlawfully transporting hay if the person knowingly transports more than 20 bales of hay on a public highway without having in possession a transportation certificate signed by the producer or the agent of the producer showing:

(a) The amount of hay in possession and the date of acquisition of it;

(b) The price paid or agreed to be paid for the hay or other terms of the transportation or sale contract;

(c) The location where the hay was loaded and its destination;

(d) The total number of bales or other units and the method of bailing or packaging; and

(e) The type of hay.

(2) Subsection (1) of this section does not apply to transportation of hay:

(a) By the producer thereof or the agent of the producer who has in possession written evidence of authority to transport the hay for the producer; or

(b) By a person or the agent of the person under contract to transport the hay for the producer.

(3) As used in this section:

(a) "Hay" means grasses, legumes or other forage plants grown in Oregon and intended for use as a feed.

(b) "Producer" means a person who raises and harvests hay on land the person owns or leases and who is delivering that hay from the field to a place of storage or sale or to a feedlot for livestock.

(4) Unlawfully transporting hay is a Class C misdemeanor. [1971 c.743 §288a; 1973 c.445 §1]

164.863 Unlawful transport of meat animal carcasses. (1) Except as provided in subsection (2) of this section, it shall be unlawful for any person to transport the carcass or a primal cut thereof of any meat animal on a public highway without having in possession a transportation certificate signed by the owner or the agent of the owner showing:

(a) The location where the carcass or primal cut was loaded and its destination;

(b) The quantity in possession and the date of acquisition of it; and

(c) Transportation or bill of sale.

(2) Subsection (1) of this section does not apply to the carcass or meat of a meat animal:

(a) That is transported by common carrier;

(b) That is marked, tagged or otherwise identified as required by ORS chapter 619;

(c) That is marked, tagged or identified as required by ORS 603.045 (2), or that is the subject of the certificate and tags described in ORS 603.045 (4); or

(d) That is marked, tagged or otherwise identified as having been previously inspected under the Federal Meat Inspection Act.

(3) As used in this section:

(a) "Common carrier" means:

(A) Any person who transports for hire or who purports to be to the public as willing to transport for hire, compensation or consideration by motor vehicle, persons or property, or both, for those who may choose to employ the person; or

(B) Any person who leases, rents or otherwise provides a motor vehicle for the use of others and who in connection therewith in the regular course of business provides, procures or arranges for, directly, indirectly or by course of dealing, a driver or operator therefor.

(b) "Federal Meat Inspection Act" means the Act so entitled approved March 4, 1907, (34 Stat. 1260), as amended by the Wholesale Meat Act (81 Stat. 584).

(c) "Meat animal" means any live cattle, equines, sheep, goats or swine.

(d) "Meat" or "meat product" means any edible muscle, except any muscle found in the lips, snout or ears of meat animals, which is skeletal or found in the tongue, diaphragm, heart or esophagus, with or without any accompanying and overlying fat, and any portion of bone, skin, sinew, nerve or blood vessels normally accompanying the muscle tissue and not separated from it in the process of dressing or as otherwise prescribed by the Department of Agriculture.

(4) Unlawfully transporting the carcass or primal cut of a meat animal is a Class C misdemeanor.

(5) For the purpose of this section "primal cut" of cattle and equines means round, loin, flank, rib, chuck, brisket, plate or shank; of pork means ham, loin, side,

spareribs, shoulder or jowl; of sheep and goats means rib or rack, loin, leg or shoulder. [1975 c.201 §2]

(Authority to Regulate Firearms)

166.170 State preemption. (1) Except as expressly authorized by state statute, the authority to regulate in any matter whatsoever the sale, acquisition, transfer, ownership, possession, storage, transportation or use of firearms or any element relating to firearms and components thereof, including ammunition, is vested solely in the Legislative Assembly.

(2) Except as expressly authorized by state statute, no county, city or other municipal corporation or district may enact civil or criminal ordinances, including but not limited to zoning ordinances, to regulate, restrict or prohibit the sale, acquisition, transfer, ownership, possession, storage, transportation or use of firearms or any element relating to firearms and components thereof, including ammunition. Ordinances that are contrary to this subsection are void. [1995 s.s. c.1 §1]

166.176 Exception to preemption for certain county ordinances. (1) Nothing in ORS 166.170 or 166.171 is intended to preempt, invalidate or in any way affect the operation of any provision of a county ordinance that was in effect on November 2, 1995, to the extent that the provision:

(a) Established a procedure for regulating, restricting or prohibiting the discharge of firearms; or

(b) Regulated, restricted or prohibited the discharge of firearms.

(2) Subsection (1) of this section does not apply to:

(a) Ordinances regulating, restricting or prohibiting the discharge of firearms on a shooting range or in a shooting gallery or other area designed and built for the purpose of target shooting.

(b) An employee of the United States Department of Agriculture, acting within the scope of employment, discharging a firearm in the course of the lawful taking of wildlife. [1997 c.403 §1; 2009 c.556 §4]

(Possession and Use of Weapons)

166.180 Negligently wounding another. Any person who, as a result of failure to use ordinary care under the circumstances, wounds any other person with a bullet or shot from any firearm, or with an arrow from any bow, commits a Class B misdemeanor. In addition, any person so convicted shall forfeit any license to hunt, obtained under the laws of this state, and shall be ineligible to obtain

a license to hunt for a period of 10 years following the date of conviction. [Formerly 163.310; 2011 c.597 §162]

166.190 Pointing firearm at another; courts having jurisdiction over offense.

Any person over the age of 12 years who, with or without malice, purposely points or aims any loaded or empty pistol, gun, revolver or other firearm, at or toward any other person within range of the firearm, except in self-defense, shall be fined upon conviction in any sum not less than \$10 nor more than \$500, or be imprisoned in the county jail not less than 10 days nor more than six months, or both. Justice courts have jurisdiction concurrent with the circuit court of the trial of violations of this section. When any person is charged before a justice court with violation of this section, the court shall, upon motion of the district attorney, at any time before trial, act as a committing magistrate, and if probable cause be established, hold such person to the grand jury. [Formerly 163.320]

166.210 Definitions. As used in ORS 166.250 to 166.270, 166.291 to 166.295 and 166.410 to 166.470:

(1) "Antique firearm" means:

(a) Any firearm, including any firearm with a matchlock, flintlock, percussion cap or similar type of ignition system, manufactured in or before 1898; and

(b) Any replica of any firearm described in paragraph (a) of this subsection if the replica:

(A) Is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition; or

(B) Uses rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and that is not readily available in the ordinary channels of commercial trade.

(2) "Corrections officer" has the meaning given that term in ORS 181A.355.

(3) "Firearm" means a weapon, by whatever name known, which is designed to expel a projectile by the action of powder.

(4) "Firearms silencer" means any device for silencing, muffling or diminishing the report of a firearm.

(5) "Handgun" means any pistol or revolver using a fixed cartridge containing a propellant charge, primer and projectile, and designed to be aimed or fired otherwise than from the shoulder.

(6) "Machine gun" means a weapon of any description by whatever name known, loaded or unloaded, which is designed or modified to allow two or more shots to be

fired by a single pressure on the trigger device.

(7) "Minor" means a person under 18 years of age.

(8) "Offense" has the meaning given that term in ORS 161.505.

(9) "Parole and probation officer" has the meaning given that term in ORS 181A.355.

(10) "Peace officer" has the meaning given that term in ORS 133.005.

(11) "Short-barreled rifle" means a rifle having one or more barrels less than 16 inches in length and any weapon made from a rifle if the weapon has an overall length of less than 26 inches.

(12) "Short-barreled shotgun" means a shotgun having one or more barrels less than 18 inches in length and any weapon made from a shotgun if the weapon has an overall length of less than 26 inches. [Amended by 1977 c.769 §1; 1979 c.779 §3; 1989 c.839 §1; 1993 c.735 §14; 1995 c.670 §3; 1999 c.1040 §2; 2001 c.666 §§32,44; 2003 c.614 §7; 2007 c.368 §1; 2009 c.610 §4]

166.220 Unlawful use of weapon. (1) A person commits the crime of unlawful use of a weapon if the person:

(a) Attempts to use unlawfully against another, or carries or possesses with intent to use unlawfully against another, any dangerous or deadly weapon as defined in ORS 161.015; or

(b) Intentionally discharges a firearm, blowgun, bow and arrow, crossbow or explosive device within the city limits of any city or within residential areas within urban growth boundaries at or in the direction of any person, building, structure or vehicle within the range of the weapon without having legal authority for such discharge.

(2) This section does not apply to:

(a) Police officers or military personnel in the lawful performance of their official duties;

(b) Persons lawfully defending life or property as provided in ORS 161.219;

(c) Persons discharging firearms, blowguns, bows and arrows, crossbows or explosive devices upon public or private shooting ranges, shooting galleries or other areas designated and built for the purpose of target shooting;

(d) Persons lawfully engaged in hunting in compliance with rules and regulations adopted by the State Department of Fish and Wildlife; or

(e) An employee of the United States Department of Agriculture, acting within the scope of employment, discharging a firearm in the course of the lawful taking of wildlife.

(3) Unlawful use of a weapon is a Class C felony. [Amended by 1975 c.700 §1; 1985 c.543 §1; 1991 c.797 §1; 2009 c.556 §5]

166.240 Carrying of concealed weapons. (1) Except as provided in subsection (2) of this section, any person who carries concealed upon the person any knife having a blade that projects or swings into position by force of a spring or by centrifugal force, any dirk, dagger, ice pick, slungshot, metal knuckles, or any similar instrument by the use of which injury could be inflicted upon the person or property of any other person, commits a Class B misdemeanor.

(2) Nothing in subsection (1) of this section applies to any peace officer as defined in ORS 133.005, whose duty it is to serve process or make arrests. Justice courts have concurrent jurisdiction to try any person charged with violating any of the provisions of subsection (1) of this section. [Amended by 1977 c.454 §1; 1985 c.543 §2; 1989 c.839 §21; 1999 c.1040 §15]

166.250 Unlawful possession of firearms. (1) Except as otherwise provided in this section or ORS 166.260, 166.270, 166.273, 166.274, 166.291, 166.292 or 166.410 to 166.470, a person commits the crime of unlawful possession of a firearm if the person knowingly:

(a) Carries any firearm concealed upon the person;

(b) Possesses a handgun that is concealed and readily accessible to the person within any vehicle; or

(c) Possesses a firearm and:

(A) Is under 18 years of age;

(B)(i) While a minor, was found to be within the jurisdiction of the juvenile court for having committed an act which, if committed by an adult, would constitute a felony or a misdemeanor involving violence, as defined in ORS 166.470; and

(ii) Was discharged from the jurisdiction of the juvenile court within four years prior to being charged under this section;

(C) Has been convicted of a felony;

(D) Was committed to the Oregon Health Authority under ORS 426.130;

(E) Was found to be a person with mental illness and subject to an order under ORS 426.130 that the person be prohibited from purchasing or possessing a firearm as a result of that mental illness;

(F) Is presently subject to an order under ORS 426.133 prohibiting the person from purchasing or possessing a firearm;

(G) Has been found guilty except for insanity under ORS 161.295 of a felony; or

(H) The possession of the firearm by the person is prohibited under ORS 166.255.

(2) This section does not prohibit:

(a) A minor, who is not otherwise prohibited under subsection (1)(c) of this section, from possessing a firearm:

(A) Other than a handgun, if the firearm was transferred to the minor by the minor's parent or guardian or by another person with the consent of the minor's parent or guardian; or

(B) Temporarily for hunting, target practice or any other lawful purpose; or

(b) Any citizen of the United States over the age of 18 years who resides in or is temporarily sojourning within this state, and who is not within the excepted classes prescribed by ORS 166.270 and subsection (1) of this section, from owning, possessing or keeping within the person's place of residence or place of business any handgun, and no permit or license to purchase, own, possess or keep any such firearm at the person's place of residence or place of business is required of any such citizen. As used in this subsection, "residence" includes a recreational vessel or recreational vehicle while used, for whatever period of time, as residential quarters.

(3) Firearms carried openly in belt holsters are not concealed within the meaning of this section.

(4)(a) Except as provided in paragraphs (b) and (c) of this subsection, a handgun is readily accessible within the meaning of this section if the handgun is within the passenger compartment of the vehicle.

(b) If a vehicle, other than a vehicle described in paragraph (c) of this subsection, has no storage location that is outside the passenger compartment of the vehicle, a handgun is not readily accessible within the meaning of this section if:

(A) The handgun is stored in a closed and locked glove compartment, center console or other container; and

(B) The key is not inserted into the lock, if the glove compartment, center console or other container unlocks with a key.

(c) If the vehicle is a motorcycle, an all-terrain vehicle or a snowmobile, a handgun is not readily accessible within the meaning of this section if:

(A) The handgun is in a locked container within or affixed to the vehicle; or

(B) The handgun is equipped with a trigger lock or other locking mechanism that prevents the discharge of the firearm.

(5) Unlawful possession of a firearm is a Class A misdemeanor. [Amended by 1979 c.779 §4; 1985 c.543 §3; 1989 c.839 §13; 1993 c.732 §1; 1993 c.735 §12; 1999 c.1040 §1; 2001 c.666 §§33,45; 2003 c.614 §8; 2009 c.499 §1; 2009 c.595 §112; 2009 c.826 §§8a,11a; 2011 c.662 §12;

2013 c.360 §§6,7; 2015 c.50 §§12,13; 2015 c.201 §3; 2015 c.497 §§3,4]

166.255 Possession of firearm or ammunition by certain persons prohibited.

(1) It is unlawful for a person to knowingly possess a firearm or ammunition if:

(a) The person is the subject of a court order that:

(A) Was issued or continued after a hearing for which the person had actual notice and during the course of which the person had an opportunity to be heard;

(B) Restrains the person from stalking, intimidating, molesting or menacing an intimate partner, a child of an intimate partner or a child of the person; and

(C) Includes a finding that the person represents a credible threat to the physical safety of an intimate partner, a child of an intimate partner or a child of the person; or

(b) The person has been convicted of a qualifying misdemeanor and, at the time of the offense, the person was a family member of the victim of the offense.

(2) The prohibition described in subsection (1)(a) of this section does not apply with respect to the transportation, shipment, receipt, possession or importation of any firearm or ammunition imported for, sold or shipped to or issued for the use of the United States Government or any federal department or agency, or any state or department, agency or political subdivision of a state.

(3) As used in this section:

(a) "Convicted" means:

(A) The person was represented by counsel or knowingly and intelligently waived the right to counsel;

(B) The case was tried to a jury, if the crime was one for which the person was entitled to a jury trial, or the person knowingly and intelligently waived the person's right to a jury trial; and

(C) The conviction has not been set aside or expunged, and the person has not been pardoned.

(b) "Deadly weapon" has the meaning given that term in ORS 161.015.

(c) "Family member" means, with respect to the victim, the victim's spouse, the victim's former spouse, a person with whom the victim shares a child in common, the victim's parent or guardian, a person cohabiting with or who has cohabited with the victim as a spouse, parent or guardian or a person similarly situated to a spouse, parent or guardian of the victim.

(d) "Intimate partner" means, with respect to a person, the person's spouse, the person's former spouse, a parent of the

person's child or another person who has cohabited or is cohabiting with the person in a relationship akin to a spouse.

(e) "Possess" has the meaning given that term in ORS 161.015.

(f) "Qualifying misdemeanor" means a misdemeanor that has, as an element of the offense, the use or attempted use of physical force or the threatened use of a deadly weapon. [2015 c.497 §2]

166.260 Persons not affected by ORS 166.250. (1) ORS 166.250 does not apply to or affect:

(a) A parole and probation officer, police officer or reserve officer, as those terms are defined in ORS 181A.355.

(b) A federal officer, as defined in ORS 133.005, or a certified reserve officer or corrections officer, as those terms are defined in ORS 181A.355, while the federal officer, certified reserve officer or corrections officer is acting within the scope of employment.

(c) An honorably retired law enforcement officer, unless the person who is a retired law enforcement officer has been convicted of an offense that would make the person ineligible to obtain a concealed handgun license under ORS 166.291 and 166.292.

(d) Any person summoned by an officer described in paragraph (a) or (b) of this subsection to assist in making arrests or preserving the peace, while the summoned person is engaged in assisting the officer.

(e) The possession or transportation by any merchant of unloaded firearms as merchandise.

(f) Active or reserve members of:

(A) The Army, Navy, Air Force, Coast Guard or Marine Corps of the United States, or of the National Guard, when on duty;

(B) The commissioned corps of the National Oceanic and Atmospheric Administration; or

(C) The Public Health Service of the United States Department of Health and Human Services, when detailed by proper authority for duty with the Army or Navy of the United States.

(g) Organizations which are by law authorized to purchase or receive weapons described in ORS 166.250 from the United States, or from this state.

(h) Duly authorized military or civil organizations while parading, or the members thereof when going to and from the places of meeting of their organization.

(i) A person who is licensed under ORS 166.291 and 166.292 to carry a concealed handgun.

(2) It is an affirmative defense to a charge of violating ORS 166.250 (1)(c)(C) that the person has been granted relief from the disability under ORS 166.274.

(3) Except for persons who are otherwise prohibited from possessing a firearm under ORS 166.250 (1)(c) or 166.270, ORS 166.250 does not apply to or affect:

(a) Members of any club or organization, for the purpose of practicing shooting at targets upon the established target ranges, whether public or private, while such members are using any of the firearms referred to in ORS 166.250 upon such target ranges, or while going to and from such ranges.

(b) Licensed hunters or fishermen while engaged in hunting or fishing, or while going to or returning from a hunting or fishing expedition.

(4) The exceptions listed in subsection (1)(d) to (i) of this section constitute affirmative defenses to a charge of violating ORS 166.250. [Amended by 1977 c.207 §1; 1991 c.67 §36; 1993 c.735 §1; 1995 c.670 §2; 1999 c.1040 §3; 2009 c.316 §2; 2009 c.499 §4; 2012 c.106 §3; 2015 c.709 §2]

166.262 Limitation on peace officer's authority to arrest for violating ORS 166.250 or 166.370. A peace officer may not arrest or charge a person for violating ORS 166.250 (1)(a) or (b) or 166.370 (1) if the person has in the person's immediate possession:

(1) A valid license to carry a firearm as provided in ORS 166.291 and 166.292;

(2) Proof that the person is a law enforcement officer; or

(3) Proof that the person is an honorably retired law enforcement officer, unless the person has been convicted of an offense that would make the person ineligible to obtain a concealed handgun license under ORS 166.291 and 166.292. [1999 c.1040 §5; 2015 c.709 §3]

166.263 Authority of parole and probation officer to carry firearm. When authorized by the officer's employer, a parole and probation officer, as defined in ORS 181A.355, may carry a firearm while engaged in official duties if the officer has completed:

(1) A firearms training program recognized by the Board on Public Safety Standards and Training; and

(2) A psychological screening. [1995 c.670 §1]

166.270 Possession of weapons by certain felons. (1) Any person who has been convicted of a felony under the law of this state or any other state, or who has been convicted of a felony under the laws of the Government of the United States, who owns or has in the person's possession or under the person's custody or control any firearm

commits the crime of felon in possession of a firearm.

(2) Any person who has been convicted of a felony under the law of this state or any other state, or who has been convicted of a felony under the laws of the Government of the United States, who owns or has in the person's possession or under the person's custody or control any instrument or weapon having a blade that projects or swings into position by force of a spring or by centrifugal force or any blackjack, slungshot, sandclub, sandbag, sap glove, metal knuckles or an Electro-Muscular Disruption Technology device as defined in ORS 165.540, or who carries a dirk, dagger or stiletto, commits the crime of felon in possession of a restricted weapon.

(3) For the purposes of this section, a person "has been convicted of a felony" if, at the time of conviction for an offense, that offense was a felony under the law of the jurisdiction in which it was committed. Such conviction shall not be deemed a conviction of a felony if:

(a) The court declared the conviction to be a misdemeanor at the time of judgment; or

(b) The offense was possession of marijuana and the conviction was prior to January 1, 1972.

(4) Subsection (1) of this section does not apply to any person who has been:

(a) Convicted of only one felony under the law of this state or any other state, or who has been convicted of only one felony under the laws of the United States, which felony did not involve criminal homicide, as defined in ORS 163.005, or the possession or use of a firearm or a weapon having a blade that projects or swings into position by force of a spring or by centrifugal force, and who has been discharged from imprisonment, parole or probation for said offense for a period of 15 years prior to the date of alleged violation of subsection (1) of this section; or

(b) Granted relief from the disability under 18 U.S.C. 925(c) or ORS 166.274 or has had the person's record expunged under the laws of this state or equivalent laws of another jurisdiction.

(5) Felon in possession of a firearm is a Class C felony. Felon in possession of a restricted weapon is a Class A misdemeanor. [Amended by 1975 c.702 §1; 1985 c.543 §4; 1985 c.709 §2; 1987 c.853 §1; 1989 c.839 §4; 1993 c.735 §2; 1995 c.518 §1; 1999 c.1040 §16; 2003 c.14 §64; 2009 c.189 §1; 2009 c.499 §3]

166.272 Unlawful possession of machine guns, certain short-barreled firearms and firearms silencers. (1) A person commits the crime of unlawful possession of

a machine gun, short-barreled rifle, short-barreled shotgun or firearms silencer if the person knowingly possesses any machine gun, short-barreled rifle, short-barreled shotgun or firearms silencer.

(2) Unlawful possession of a machine gun, short-barreled rifle, short-barreled shotgun or firearms silencer is a Class B felony.

(3) A peace officer may not arrest or charge a person for violating subsection (1) of this section if the person has in the person's immediate possession documentation showing that the machine gun, short-barreled rifle, short-barreled shotgun or firearms silencer is registered as required under federal law.

(4) It is an affirmative defense to a charge of violating subsection (1) of this section that the machine gun, short-barreled rifle, short-barreled shotgun or firearms silencer was registered as required under federal law. [1989 c.839 §13a; 1997 c.749 §8; 1997 c.798 §1]

166.320 Setting springgun or setgun.

(1) Any person who places or sets any loaded springgun, setgun, or any gun, firearm or other device of any kind designed for containing or firing explosives, in any place where it may be fired, exploded or discharged by the contact of any person or animal with any string, wire, rod, stick, spring or other contrivance affixed to or connected with it, or with its trigger, commits a Class B misdemeanor.

(2) Subsection (1) of this section does not apply to any loaded springgun, setgun, firearm or other device placed for the purpose of destroying gophers, moles or other burrowing rodents, and does not prevent the use of a coyote getter by employees of county, state or federal governments engaged in cooperative predatory animal control work. [Amended by 2011 c.597 §164]

166.330 Use of firearms with other than incombustible gun wadding. Any person who uses in any firearms discharged on lands within this state, not owned by the person, anything other than incombustible gun wadding, commits a Class C misdemeanor. [Amended by 2011 c.597 §165]

166.350 Unlawful possession of armor piercing ammunition. (1) A person commits the crime of unlawful possession of armor piercing ammunition if the person:

(a) Makes, sells, buys or possesses any handgun ammunition the bullet or projectile of which is coated with Teflon or any chemical compound with properties similar to Teflon and which is intended to penetrate soft body armor, such person having the intent that the ammunition be used in the commission of a felony; or

(b) Carries any ammunition described in paragraph (a) of this subsection while committing any felony during which the person or any accomplice of the person is armed with a firearm.

(2) As used in this section, “handgun ammunition” means ammunition principally for use in pistols or revolvers notwithstanding that the ammunition can be used in some rifles.

(3) Unlawful possession of armor piercing ammunition is a Class A misdemeanor. [1985 c.755 §2; 1987 c.158 §29]

(Discharging Weapons)

166.630 Discharging weapon on or across highway, ocean shore recreation area or public utility facility. (1) Except as provided in ORS 166.220, any person is guilty of a violation who discharges or attempts to discharge any blowgun, bow and arrow, crossbow, air rifle or firearm:

(a) Upon or across any highway, railroad right of way or other public road in this state, or upon or across the ocean shore within the state recreation area as defined in ORS 390.605.

(b) At any public or railroad sign or signal or an electric power, communication, petroleum or natural gas transmission or distribution facility of a public utility, telecommunications utility or railroad within range of the weapon.

(2) Any blowgun, bow and arrow, crossbow, air rifle or firearm in the possession of the person that was used in committing a violation of this section may be confiscated and forfeited to the State of Oregon. This section does not prevent:

(a) The discharge of firearms by peace officers in the performance of their duty or by military personnel within the confines of a military reservation.

(b) The discharge of firearms by an employee of the United States Department of Agriculture acting within the scope of employment in the course of the lawful taking of wildlife.

(3) The hunting license revocation provided in ORS 497.415 is in addition to and not in lieu of the penalty and forfeiture provided in subsections (1) and (2) of this section.

(4) As used in this section:

(a) “Public sign” includes all signs, signals and markings placed or erected by authority of a public body.

(b) “Public utility” has the meaning given that term in ORS 164.365 (2).

(c) “Railroad” has the meaning given that term in ORS 824.020. [Amended by 1963 c.94 §1; 1969 c.501 §2; 1969 c.511 §4; 1973 c.196 §1; 1973 c.723 §118; 1981 c.900 §1; 1987 c.447 §113; 1991 c.797 §2; 2009 c.556 §7]

166.635 Discharging weapon or throwing objects at trains. (1) A person shall not knowingly throw an object at, drop an object on, or discharge a bow and arrow, air rifle, rifle, gun, revolver or other firearm at a railroad train, a person on a railroad train or a commodity being transported on a railroad train. This subsection does not prevent a peace officer or a railroad employee from performing the duty of a peace officer or railroad employee.

(2) Violation of subsection (1) of this section is a misdemeanor. [1973 c.139 §4]

166.638 Discharging weapon across airport operational surfaces. (1) Any person who knowingly or recklessly discharges any bow and arrow, gun, air gun or other firearm upon or across any airport operational surface commits a Class A misdemeanor. Any bow and arrow, gun, air gun or other firearm in the possession of the person that was used in committing a violation of this subsection may be confiscated and forfeited to the State of Oregon, and the clear proceeds shall be deposited with the State Treasury in the Common School Fund.

(2) As used in subsection (1) of this section, “airport operational surface” means any surface of land or water developed, posted or marked so as to give an observer reasonable notice that the surface is developed for the purpose of storing, parking, taxiing or operating aircraft, or any surface of land or water when actually being used for such purpose.

(3) Subsection (1) of this section does not prohibit the discharge of firearms by peace officers in the performance of their duty or by military personnel within the confines of a military reservation, or otherwise lawful hunting, wildlife control or other discharging of firearms done with the consent of the proprietor, manager or custodian of the airport operational surface.

(4) The hunting license revocation provided in ORS 497.415 is in addition to and not in lieu of the penalty provided in subsection (1) of this section. [1981 c.901 §2; 1987 c.858 §2]

(Miscellaneous)

166.645 Hunting in cemeteries prohibited. (1) Hunting in cemeteries is prohibited.

(2) As used in subsection (1) of this section “hunting” has the meaning for that term provided in ORS 496.004.

(3) Violation of subsection (1) of this section is a misdemeanor. [1973 c.468 §2; 1987 c.158 §30]

166.660 Unlawful paramilitary activity.

(1) A person commits the crime of unlawful paramilitary activity if the person:

(a) Exhibits, displays or demonstrates to another person the use, application or making of any firearm, explosive or incendiary device or any technique capable of causing injury or death to persons and intends or knows that such firearm, explosive or incendiary device or technique will be unlawfully employed for use in a civil disorder; or

(b) Assembles with one or more other persons for the purpose of training with, practicing with or being instructed in the use of any firearm, explosive or incendiary device or technique capable of causing injury or death to persons with the intent to unlawfully employ such firearm, explosive or incendiary device or technique in a civil disorder.

(2)(a) Nothing in this section makes unlawful any act of any law enforcement officer performed in the otherwise lawful performance of the officer's official duties.

(b) Nothing in this section makes unlawful any activity of the State Department of Fish and Wildlife, or any activity intended to teach or practice self-defense or self-defense techniques, such as karate clubs or self-defense clinics, and similar lawful activity, or any facility, program or lawful activity related to firearms instruction and training intended to teach the safe handling and use of firearms, or any other lawful sports or activities related to the individual recreational use or possession of firearms, including but not limited to hunting activities, target shooting, self-defense, firearms collection or any organized activity including, but not limited to any hunting club, rifle club, rifle range or shooting range which does not include a conspiracy as defined in ORS 161.450 or the knowledge of or the intent to cause or further a civil disorder.

(3) Unlawful paramilitary activity is a Class C felony.

(4) As used in this section:

(a) "Civil disorder" means acts of physical violence by assemblages of three or more persons which cause damage or injury, or immediate danger thereof, to the person or property of any other individual.

(b) "Firearm" has the meaning given that term in ORS 166.210.

(c) "Explosive" means a chemical compound, mixture or device that is commonly used or intended for the purpose of producing

a chemical reaction resulting in a substantially instantaneous release of gas and heat, including but not limited to dynamite, blasting powder, nitroglycerin, blasting caps and nitrojelly, but excluding fireworks as defined in ORS 480.111, black powder, smokeless powder, small arms ammunition and small arms ammunition primers.

(d) "Law enforcement officer" means any duly constituted police officer of the United States, any state, any political subdivision of a state or the District of Columbia, and also includes members of the military reserve forces or National Guard as defined in 10 U.S.C. 101 (9), members of the organized militia of any state or territory of the United States, the Commonwealth of Puerto Rico or the District of Columbia not included within the definition of National Guard as defined by 10 U.S.C. 101 (9), members of the Armed Forces of the United States and such persons as are defined in ORS 161.015 (4) when in the performance of official duties. [1983 c.792 §2; 1987 c.858 §3; 2001 c.666 §§26,38; 2005 c.830 §27; 2009 c.610 §7; 2013 c.24 §12]

166.663 Casting artificial light from vehicle while possessing certain weapons prohibited.

(1) A person may not cast from a motor vehicle an artificial light while there is in the possession or in the immediate physical presence of the person a bow and arrow or a firearm.

(2) Subsection (1) of this section does not apply to a person casting an artificial light:

(a) From the headlights of a motor vehicle that is being operated on a road in the usual manner.

(b) When the bow and arrow or firearm that the person has in the possession or immediate physical presence of the person is disassembled or stored, or in the trunk or storage compartment of the motor vehicle.

(c) When the ammunition or arrows are stored separate from the weapon.

(d) On land owned or lawfully occupied by that person.

(e) On publicly owned land when that person has an agreement with the public body to use that property.

(f) When the person is a peace officer, or is a government employee engaged in the performance of official duties.

(g) When the person has been issued a license under ORS 166.291 and 166.292 to carry a concealed handgun.

(h) When the person is an honorably retired law enforcement officer, unless the person has been convicted of an offense that would make the person ineligible to obtain a concealed handgun license under ORS 166.291 and 166.292.

(3) A peace officer may issue a citation to a person for a violation of subsection (1) of this section when the violation is committed in the presence of the peace officer or when the peace officer has probable cause to believe that a violation has occurred based on a description of the vehicle or other information received from a peace officer who observed the violation.

(4) Violation of subsection (1) of this section is punishable as a Class B violation.

(5) As used in this section, "peace officer" has the meaning given that term in ORS 161.015. [1989 c.848 §2; 1999 c.1051 §159; 2005 c.22 §116; 2009 c.610 §3; 2015 c.709 §5]

CONSTRUCTION OF STATUTES: PUBLIC BODIES

174.111 "State government" defined. Subject to ORS 174.108, as used in the statutes of this state "state government" means the executive department, the judicial department and the legislative department. [2001 c.74 §3]

RELATIONSHIP OF STATE AGENCIES WITH INDIAN TRIBES

182.162 Definitions for ORS 182.162 to 182.168. As used in ORS 182.162 to 182.168:

(1) "State agency" has the meaning given that term in ORS 358.635.

(2) "Tribe" means a federally recognized Indian tribe in Oregon. [2001 c.177 §1]

182.164 State agencies to develop and implement policy on relationship with tribes; cooperation with tribes. (1) A state agency shall develop and implement a policy that:

(a) Identifies individuals in the state agency who are responsible for developing and implementing programs of the state agency that affect tribes.

(b) Establishes a process to identify the programs of the state agency that affect tribes.

(c) Promotes communication between the state agency and tribes.

(d) Promotes positive government-to-government relations between the state and tribes.

(e) Establishes a method for notifying employees of the state agency of the provisions of ORS 182.162 to 182.168 and the policy the state agency adopts under this section.

(2) In the process of identifying and developing the programs of the state agency

that affect tribes, a state agency shall include representatives designated by the tribes.

(3) A state agency shall make a reasonable effort to cooperate with tribes in the development and implementation of programs of the state agency that affect tribes, including the use of agreements authorized by ORS 190.110. [2001 c.177 §2]

182.166 Training of state agency managers and employees who communicate with tribes; annual meetings of representatives of agencies and tribes; annual reports by state agencies. (1) At least once a year, the Oregon Department of Administrative Services, in consultation with the Commission on Indian Services, shall provide training to state agency managers and employees who have regular communication with tribes on the legal status of tribes, the legal rights of members of tribes and issues of concern to tribes.

(2) Once a year, the Governor shall convene a meeting at which representatives of state agencies and tribes may work together to achieve mutual goals.

(3) No later than December 15 of every year, a state agency shall submit a report to the Governor and to the Commission on Indian Services on the activities of the state agency under ORS 182.162 to 182.168. The report shall include:

(a) The policy the state agency adopted under ORS 182.164.

(b) The names of the individuals in the state agency who are responsible for developing and implementing programs of the state agency that affect tribes.

(c) The process the state agency established to identify the programs of the state agency that affect tribes.

(d) The efforts of the state agency to promote communication between the state agency and tribes and government-to-government relations between the state and tribes.

(e) A description of the training required by subsection (1) of this section.

(f) The method the state agency established for notifying employees of the state agency of the provisions of ORS 182.162 to 182.168 and the policy the state agency adopts under ORS 182.164. [2001 c.177 §3]

182.168 No right of action created by ORS 182.162 to 182.168. Nothing in ORS 182.162 to 182.168 creates a right of action against a state agency or a right of review of an action of a state agency. [2001 c.177 §4]

**ENVIRONMENTAL JUSTICE
TASK FORCE**

182.535 “Natural resource agency” defined for ORS 182.535 to 182.550. For purposes of ORS 182.535 to 182.550, “natural resource agency” means the Department of Environmental Quality, the State Department of Agriculture, the Water Resources Department, the State Department of Fish and Wildlife, the State Forestry Department, the Department of State Lands, the Department of Education, the State Department of Geology and Mineral Industries, the Department of Land Conservation and Development, the State Marine Board, the Public Utility Commission, the Department of Transportation, the State Fire Marshal and the Oregon Health Authority. [2007 c.909 §1; 2009 c.595 §163]

182.538 Environmental Justice Task Force. (1) There is established the Environmental Justice Task Force consisting of 12 members appointed by the Governor. The members shall be persons who are well-informed on the principles of environmental justice and who, to the greatest extent practicable, represent minority communities, low-income communities, environmental interests, industry groups and geographically diverse areas of the state. Of the 12 members, the Governor shall appoint one member of the task force from each of the following commissions:

- (a) The Commission on Asian and Pacific Islander Affairs;
- (b) The Commission on Black Affairs;
- (c) The Commission on Hispanic Affairs; and
- (d) The Commission on Indian Services.

(2) The task force shall submit an annual report to the Governor setting forth its view of the progress of natural resource agencies toward achieving the goals established pursuant to ORS 182.542 and identifying any other environmental issues that the task force determines need attention.

(3) 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 whose term begins on January 1 of the following year. A member may be reappointed. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(4) A member of the task force who is not a member of the Legislative Assembly is entitled to compensation and expenses in the manner and amounts provided for in ORS 292.495. Claims for compensation and expenses incurred in performing functions of

the task force shall be paid out of funds appropriated to the Governor for that purpose.

(5) The task force shall elect one of its members as a chairperson and another as vice chairperson, for the terms and with the duties and powers necessary for the performance of the functions of such offices as the task force determines.

(6) A majority of the members of the task force constitutes a quorum for the transaction of business.

(7) The task force shall meet at least once every three months at times and places specified by the chairperson. The task force also shall meet at other times and places specified by the call of the chairperson or of a majority of the members of the task force.

(8) The Governor shall provide the task force with the necessary clerical and administrative staff support.

(9) Natural resource agencies are directed to assist the task force in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish such information and advice as the members of the task force consider necessary to perform their duties.

(10) A member of the task force who is a member of the Legislative Assembly may serve in an advisory capacity only. [2007 c.909 §2; 2011 c.273 §5]

182.542 Duties of task force. The Environmental Justice Task Force shall:

- (1) Advise the Governor on environmental justice issues;
- (2) Advise natural resource agencies on environmental justice issues, including community concerns and public participation processes;
- (3) Identify, in cooperation with natural resource agencies, minority and low-income communities that may be affected by environmental decisions made by the agencies;
- (4) Meet with environmental justice communities and make recommendations to the Governor regarding concerns raised by these communities; and
- (5) Define environmental justice issues in the state. [2007 c.909 §3]

182.545 Duties of natural resource agencies. In order to provide greater public participation and to ensure that all persons affected by decisions of the natural resource agencies have a voice in those decisions, each natural resource agency shall:

- (1) In making a determination whether and how to act, consider the effects of the action on environmental justice issues.
- (2) Hold hearings at times and in locations that are convenient for people in the

communities that will be affected by the decisions stemming from the hearings.

(3) Engage in public outreach activities in the communities that will be affected by decisions of the agency.

(4) Create a citizen advocate position that is responsible for:

(a) Encouraging public participation;

(b) Ensuring that the agency considers environmental justice issues; and

(c) Informing the agency of the effect of its decisions on communities traditionally underrepresented in public processes. [2007 c.909 §4]

182.550 Reports by natural resource agencies. All directors of natural resource agencies, and other agency directors as the Governor may designate, shall report annually to the Environmental Justice Task Force and to the Governor on the results of the agencies' efforts to:

(1) Address environmental justice issues;

(2) Increase public participation of individuals and communities affected by agencies' decisions;

(3) Determine the effect of the agencies' decisions on traditionally underrepresented communities; and

(4) Improve plans to further the progress of environmental justice in Oregon. [2007 c.909 §5]

ADOPTION OF RULES

183.332 Policy statement; conformity of state rules with equivalent federal laws and rules. It is the policy of this state that agencies shall seek to retain and promote the unique identity of Oregon by considering local conditions when an agency adopts policies and rules. However, since there are many federal laws and regulations that apply to activities that are also regulated by the state, it is also the policy of this state that agencies attempt to adopt rules that correspond with equivalent federal laws and rules unless:

(1) There is specific statutory direction to the agency that authorizes the adoption of the rule;

(2) A federal waiver has been granted that authorizes the adoption of the rule;

(3) Local or special conditions exist in this state that warrant a different rule;

(4) The state rule has the effect of clarifying the federal rules, standards, procedures or requirements;

(5) The state rule achieves the goals of the federal and state law with the least impact on public and private resources; or

(6) There is no corresponding federal regulation. [1997 c.602 §2]

PERMITS AND LICENSES

183.700 Permits subject to ORS 183.702. (1) As used in this section and ORS 183.702, "permit" means an individual and particularized license, permit, certificate, approval, registration or similar form of permission required by law to pursue any activity specified in this section, for which an agency must weigh information, make specific findings and make determinations on a case-by-case basis for each applicant.

(2) The requirements of this section and ORS 183.702 apply to the following permits granted by:

(a) The Department of Environmental Quality under ORS 448.415, 454.655, 454.695, 454.790, 454.800, 459.205, 465.315, 465.325, 466.140, 466.145, 466.706 to 466.882, 468A.040, 468A.310, 468B.035, 468B.040, 468B.045, 468B.050 and 468B.095.

(b) The Department of State Lands under ORS 196.800 to 196.900 and 390.805 to 390.925.

(c) The Water Resources Department under ORS chapters 537 and 540, except those permits issued under ORS 537.747 to 537.765.

(d) The State Department of Agriculture pursuant to ORS 468B.200 to 468B.230 and 622.250.

(e) The State Department of Fish and Wildlife pursuant to ORS 497.142, 497.218, 497.228, 497.238, 497.248, 497.252, 497.298, 497.308, 498.019, 498.279, 508.106, 508.300, 508.760, 508.775, 508.801, 508.840, 508.880, 508.926 and 509.140.

(f) The Department of Transportation pursuant to ORS 374.312. [Formerly 183.560]

183.702 Statement of criteria and procedures for evaluating permit application; documentation of decision on application; required signature. (1) At the time a person applies for a permit specified in ORS 183.700, the issuing agency shall offer a document to that applicant that specifies the criteria and procedures for evaluating a permit application.

(2) The agencies specified in ORS 183.700 must document in writing the basis for all decisions to deny a permit specified in ORS 183.700, including citation to the criteria applied by the agency and the manner in which agency standards were utilized in applying the criteria. The documentation required under this section shall be made part of the record for the decision on the permit application.

(3) At least one officer or employee of the issuing agency who has authority to sign or-

ders on behalf of the agency, or the officer or employee responsible for the decision to deny a permit specified in ORS 183.700, shall sign the documentation required under subsection (2) of this section.

(4) The issuing agency shall provide to the applicant a copy of the documentation required under subsection (2) of this section. [Formerly 183.562]

183.705 Extended term for renewed licenses; fees; continuing education; rules.

(1) Notwithstanding any other provision of law, an agency that issues licenses that must be renewed on an annual basis under the laws administered by the agency also may offer those licenses with terms of two, three, four or five years. Notwithstanding any other provision of law, an agency that issues licenses that must be renewed on a biennial basis under the laws administered by the agency also may offer those licenses with terms of three, four or five years. Extended terms may be offered only for renewed licenses and may not be offered for initial applications for licenses.

(2) An agency may offer an extended term under this section for a license issued by the agency only after adopting a rule authorizing the extended term. An agency may adopt a rule authorizing an extended term only if the agency finds that the extended term is consistent with public safety and with the objectives of the licensing requirement. An agency by rule may prohibit extended terms based on prior license discipline of an applicant.

(3) An applicant must meet all qualifications established by the agency to be granted an extended term.

(4) An agency may not offer an extended term under this section if:

(a) Another agency or a local government, as defined by ORS 174.116, is authorized by statute to make a recommendation on the issuance of the license;

(b) The agency or the local government, as defined by ORS 174.116, that has authority to make a recommendation on the issuance of the license has recommended against the issuance of the license; and

(c) The recommendation of the agency or the local government, as defined by ORS 174.116, is based on licensing criteria established by statute or by rule.

(5) An extended term granted under this section may be revoked by an agency if the agency determines that the licensee is subject to discipline under the licensing criteria applicable to the licensee. An agency offering extended terms under this section by rule may establish other grounds for revoking an extended term under this section.

(6) Notwithstanding any other provision of law, an agency that offers an extended term under this section for a license issued by the agency shall increase the annual or biennial license fee established by statute by a percentage no greater than necessary to ensure that there is no revenue loss by reason of the extended term.

(7) Notwithstanding any other provision of law, an agency that offers an extended term under this section for a license issued by the agency shall increase any annual or biennial continuing education requirement established by statute as necessary to ensure that there is no reduction in the continuing education requirement for licensees by reason of the extended term. [2005 c.76 §2; 2007 c.768 §1]

PUBLIC RECORDS POLICY

192.245 Form of report to legislature.

(1) Whenever a law of this state requires a written report be submitted to the Legislative Assembly, the requirement shall be met by distribution of an executive summary of no more than two pages sent to every member of the Legislative Assembly by electronic mail and one copy of the report to the Legislative Administrator. This requirement does not preclude providing a copy of any report to a specific legislative committee if required by law. The requirements of this subsection are not met if the executive summary is distributed to members of the Legislative Assembly in paper format.

(2) The executive summary described in subsection (1) of this section shall include an explanation of how a member of the Legislative Assembly may obtain a copy of the report. If the report is also available on the Internet, the executive summary shall include the online location of the report.

(3) Notwithstanding subsection (1) of this section, if a member of the Legislative Assembly requests a paper copy of a report or executive summary, the agency or other entity responsible for submitting the report or executive summary to the Legislative Assembly shall supply a paper copy of the report or executive summary to the member. [1991 c.842 §4; 2009 c.416 §1; 2011 c.380 §1]

OREGON OCEAN RESOURCES MANAGEMENT

196.405 Definitions for ORS 196.405 to 196.515. As used in ORS 196.405 to 196.515, unless the context requires otherwise:

(1) "Council" means the council established in ORS 196.438.

(2) "Exclusive Economic Zone" has the meaning set forth in Proc. 5030 whereby the United States proclaimed jurisdiction over

the resources of the ocean within 200 miles of the coastline.

(3) "Panel" means a project review panel established under ORS 196.453.

(4) "Plan" means the Oregon Ocean Resources Management Plan.

(5) "Territorial sea" means the waters and seabed extending three geographical miles seaward from the coastline in conformance with federal law.

(6) "Territorial Sea Plan" means the plan for Oregon's territorial sea. [1987 c.576 §6; 1991 c.501 §2; 2003 c.744 §1]

196.407 Policy. It is the policy of this state to:

(1) Work with the States of Washington and California to explore the possibility of development of communication information systems including a computerized system of coastal and marine resource information.

(2) Work with the States of Washington and California to develop compatible programs of ocean oil spill response, damage assessment and compensation.

(3) Cooperate and coordinate with adjacent states to develop a regional approach to obtaining fisheries information. [1989 c.895 §2; 2003 c.744 §2]

196.408 Duties of state agencies. (1) State agencies shall, to the maximum extent practicable, coordinate development of coastal and ocean information systems with those in adjacent states.

(2) State agencies with responsibility for oil spill and hazardous material response, damage assessment and compensation in the marine environment shall, to the maximum extent practicable, coordinate Oregon's plans, programs, policies and techniques with those of adjacent states.

(3) State agencies which have jurisdiction over water areas, the seabed and resources adjacent to offshore rocks and islands may coordinate with adjacent states and federal agencies to develop programs and regulations to manage uses and activities of ocean areas adjacent to coastal cliffs and offshore rocks and islands managed within the National Wildlife Refuge System.

(4) The State Department of Fish and Wildlife may coordinate with fishery managers in adjacent states to develop a uniform fish catch and monitoring system. [1989 c.895 §3; 2003 c.744 §3]

196.410 Legislative findings for offshore oil and gas leasing. The Legislative Assembly finds:

(1) Oregon's territorial sea encompasses all the rocks and islands of the Oregon National Wildlife Refuge, borders all beaches,

headlands and rocky intertidal areas and includes areas heavily used for commercial and recreational fishing. Navigation lanes for barges and vessels pass through the area.

(2) Oregon's territorial sea is rich in marine life. Its renewable resources support significant portions of the coastal economy. It is a dynamic, hazardous marine environment within which oil spills cannot be contained.

(3) Oregon's nearshore zone is extremely high in biological productivity, reflected by the variety and value of commercial and sport ocean fisheries catch. The Oregon coast provides a significant habitat for migrating seabirds and mammals. Oregon is unwilling to risk damaging sensitive marine environments or to sacrifice environmental quality to develop offshore oil and gas resources. [1989 c.895 §4]

196.415 Legislative findings for ocean resources management. The Legislative Assembly finds that:

(1) The Pacific Ocean and its many resources are of environmental, economic, aesthetic, recreational, social and historic importance to the people of this state.

(2) Exploration, development and production of ocean resources likely to result from both federal agency programs in federal waters of the outer continental shelf and initiatives of private companies within state waters will increase the chance of conflicting demands on ocean resources for food, energy and minerals, as well as waste disposal and assimilation, and may jeopardize ocean resources and values of importance to this state.

(3) The fluid, dynamic nature of the ocean and the migration of many of its living resources beyond state boundaries extend the ocean management interests of this state beyond the three geographic mile territorial sea currently managed by the state pursuant to the federal Submerged Lands Act.

(4) Existing federal laws, the Coastal Zone Management Act of 1972, the Coastal Zone Act Reauthorization Amendments of 1990, the Magnuson Fisheries Management and Conservation Act of 1976, as amended, and the Outer Continental Shelf Lands Act of 1978, recognize the interests of coastal states in management of ocean resources in federal waters and provide for state participation in ocean resources management decisions. The Coastal Zone Act Reauthorization Amendments of 1990 require that all federal coastal activities affecting natural resources, land uses and water uses in the coastal zone must be consistent with the federally approved Oregon Coastal Management Program.

(5) The 1983 Proclamation of the 200-mile United States Exclusive Economic Zone has created an opportunity for all coastal states to more fully exercise and assert their responsibilities pertaining to the protection, conservation and development of ocean resources under United States jurisdiction.

(6) It is important that the State of Oregon develop and maintain a program of ocean resources management to promote management of living and nonliving marine resources within state jurisdiction, to insure effective participation in federal agency planning and management of ocean resources and uses which may affect this state, and to coordinate state agency management of ocean resources with local government management of coastal shorelands and resources.

(7) While much is known about the ocean, its composition, characteristics and resources, additional study and research is required to gain information and understanding necessary for sound ocean planning and management. [1987 c.576 §3; 1991 c.501 §3; 2003 c.744 §4]

196.420 Policy. It is the policy of the State of Oregon to:

(1) Conserve the long-term values, benefits and natural resources of the ocean both within the state and beyond by giving clear priority to the proper management and protection of renewable resources over nonrenewable resources;

(2) Encourage ocean resources development which is environmentally sound and economically beneficial to adjacent local governments and to the state;

(3) Assert the interests of this state as a partner with federal agencies in the sound management of the ocean resources within the United States Exclusive Economic Zone and on the continental shelf;

(4) Encourage research, study and understanding of ocean processes, marine life and other ocean resources;

(5) Encourage research and development of new, innovative marine technologies to study and utilize ocean resources; and

(6) Ensure that the Ocean Policy Advisory Council will work closely with coastal local governments to incorporate in its activities coastal local government and resident concerns, coastal economic sustainability and expertise of coastal residents. [1987 c.576 §4; 1991 c.501 §4; 2003 c.744 §5]

196.425 Oregon Ocean Resources Management Program. To ensure the conservation and development of ocean resources affecting Oregon consistent with the purposes of ORS 196.405 to 196.515, a program of ocean resource planning and man-

agement is established. This program shall be known as the Oregon Ocean Resources Management Program and is part of Oregon's coastal management program. The Oregon Ocean Resources Management Program consists of:

(1) Applicable elements of the Oregon Coastal Management Program approved by the U.S. Secretary of Commerce on July 7, 1977, and as subsequently amended pursuant to the Coastal Zone Management Act of 1972, including statutes that apply to coastal and ocean resources, those elements of local comprehensive plans of jurisdictions within Oregon's coastal zone as defined in the Oregon Coastal Management Program which may be affected by activities or use of resources within the ocean, and those statewide planning goals which relate to the conservation and development of ocean and coastal resources;

(2) The Ocean Policy Advisory Council or its successor;

(3) Those portions of the Oregon Ocean Resources Management Plan that are consistent with ORS 196.405 to 196.515; and

(4) The Territorial Sea Plan as reviewed by the council and submitted to the agencies represented on the council. [1987 c.576 §5; 1991 c.501 §5; 2003 c.744 §6]

196.435 Primary agency for certain federal purposes; restrictions. (1) The Department of Land Conservation and Development is designated the primary agency for coordination of ocean resources planning. The department is designated the State Coastal Management Agency for purposes of carrying out and responding to the Coastal Zone Management Act of 1972. The department shall assist:

(a) The Governor with the Governor's duties and opportunities to respond to federal agency programs and activities affecting coastal and ocean resources; and

(b) The Ocean Policy Advisory Council.

(2) The provisions of ORS 196.405 to 196.515 do not change statutorily and constitutionally mandated responsibilities of other state agencies.

(3) ORS 196.405 to 196.515 do not provide the Land Conservation and Development Commission with authority to adopt specific regulation of ocean resources or ocean uses. [1987 c.576 §7; 1989 c.325 §1; 1991 c.501 §21; 2003 c.744 §7]

196.438 Ocean Policy Advisory Council; members; term of office; quorum. (1) The Governor shall establish an Ocean Policy Advisory Council that is staffed by the State Department of Fish and Wildlife, the Department of Land Conservation and Development and other departments as the

Governor deems necessary. The council shall be composed of:

(a) The Governor or the Governor's designee, as a nonvoting member;

(b) The director or the director's designee of the following agencies, as nonvoting members:

(A) Department of Environmental Quality;

(B) State Department of Fish and Wildlife;

(C) State Department of Geology and Mineral Industries;

(D) Department of Land Conservation and Development;

(E) Department of State Lands;

(F) Parks and Recreation Department;

(G) State Department of Agriculture; and

(H) The director or director's designee of Oregon State University, Sea Grant College;

(c) A member of the governing body of Coos, Curry, Douglas or Lane County to be appointed by the Governor, chosen in consultation with and with the approval of a majority of the members of the governing bodies of Coos, Curry, Douglas and Lane Counties;

(d) A member of the governing body of Clatsop, Lincoln or Tillamook County to be appointed by the Governor, chosen in consultation with and with the approval of a majority of the members of the governing bodies of Clatsop, Lincoln and Tillamook Counties;

(e) An elected city official from a coastal city bordering the territorial sea to be appointed by the Governor with advice from an Oregon coastal zone management association;

(f) A representative of each of the following ocean interests, to be appointed by the Governor, and subject to confirmation by the Senate pursuant to section 4, Article III, Oregon Constitution:

(A) Commercial ocean fisheries of the North Coast from Newport north;

(B) Commercial ocean fisheries of the South Coast south of Newport;

(C) Charter, sport or recreation ocean fisheries of the North Coast from Newport north;

(D) Charter, sport or recreation ocean fisheries of the South Coast south of Newport;

(E) Ports marine navigation or transportation;

(F) Coastal nonfishing recreation interests of surfing, diving, kayaking or windsurfing;

(G) A coastal conservation or environmental organization;

(H) Oregon Indian tribes appointed after consultation with the Commission on Indian Services;

(I) A coastwide organization representing a majority of small ports and local governments, as a nonvoting member; and

(J) A statewide conservation or environmental organization; and

(g) Two representatives of the public, at least one of whom shall be a resident of a county bordering the territorial sea, to be appointed by the Governor.

(2) The term of office of each member appointed by the Governor 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 whose term begins on July 1 next following. 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) A majority of the voting members of the council constitutes a quorum for the transaction of business.

(4) The voting members of the council shall elect a person from among the membership to chair the council. [1991 c.501 §6; 2003 c.744 §8; 2015 c.767 §59]

196.443 Duties of council. (1) The purposes of the Ocean Policy Advisory Council are to:

(a) Periodically review the Territorial Sea Plan and submit recommendations for the plan to state agencies represented on the council. The council shall recommend deletions to the Territorial Sea Plan of all site designations and management prescriptions to the Land Conservation and Development Commission.

(b) Advance the policies of ORS 196.420 to the federal government and any multistate bodies.

(c) Provide a forum for discussing ocean resource policy, planning and management issues and, when appropriate, mediating disagreements.

(d) Recommend amendments to the Oregon Ocean Resources Management Plan as needed. If the recommended amendments to the plan incorporate the establishment of a system of limited marine reserves or other protected areas, the council also shall perform an economic analysis of short-term and

long-term effects that the establishment of such areas would have on coastal communities. Any recommended amendments related to marine reserves or marine protected areas shall be submitted to the State Fish and Wildlife Commission for review and approval.

(e) Offer advice to the Governor, the State Land Board, state agencies and local governments on specific ocean resources management issues.

(f) Encourage participation of federal agencies in discussion and resolution of ocean resources planning and management issues affecting Oregon.

(2) The Ocean Policy Advisory Council may not, except to the extent of fulfilling its advisory capacity under subsection (1)(e) of this section, establish fishing seasons, harvest allocations, geographic restrictions or other harvest restrictions. [1991 c.501 §8; 2003 c.744 §9]

196.448 Member compensation; meetings. (1) A member of the Ocean Policy Advisory Council is entitled to compensation and expenses as provided in ORS 292.495.

(2) The council shall meet at least once every six months at a place, day and hour determined by the council. The council also shall meet at other times and places specified by the call of the chair or of a majority of the members of the council. [1991 c.501 §§9,10,11; 2003 c.744 §10]

196.451 Technical advisory committee; duties; members; vacancies; advisory committees; rules. (1) The Ocean Policy Advisory Council shall establish a permanent scientific and technical advisory committee chaired by the director of the Sea Grant College program or other similarly qualified member of the council. The committee shall:

(a) Make recommendations to the council relating to the performance of the council's functions; and

(b) Make recommendations, subject to the availability of funds and time, to state agencies on matters related to this state's ocean or nearshore resources.

(2) The committee shall consist of:

(a) Members appointed by the council who are serving on May 16, 2013.

(b) Such other persons nominated by the committee and appointed by the council according to the procedures described in subsections (3) and (4) of this section.

(3) If there is a vacancy on the committee or if the committee determines that a new scientific or technical discipline must be represented on the committee in order for the committee to perform its research duties, the committee shall do all of the following:

(a) Solicit the names of candidates for committee membership from the public.

(b) Evaluate the expertise of the candidates. To be eligible to serve on the committee a candidate must possess a scientific and technical background in a discipline relevant to the duties specified in ORS 196.443 that is sufficient for the individual to fulfill the duties of a member of the committee as specified in subsection (1) of this section and to advise regarding marine reserves as provided for in ORS 196.545.

(c) Evaluate the candidate's availability to serve on the committee and any potential or actual conflict of interest.

(d) Nominate one or more candidates for committee membership who fulfill the requirements of this subsection.

(e) Submit a list of nominees to the council for consideration.

(4) Upon receipt of a list of nominees prepared by the committee under subsection (3) of this section, the council may appoint one or more new committee members selected from the list of nominees. If the council does not select one or more new committee members from the list of nominees, the committee shall prepare a new list in the same manner provided for in subsection (3) of this section until such time as the council appoints one or more new members to the committee.

(5) The council shall adopt rules for the administration of subsection (4) of this section.

(6) The council may establish advisory committees in addition to the committee provided for in subsections (1) to (5) of this section. Members of any advisory committee established under this section are not entitled to compensation, but in the discretion of the council may be reimbursed from funds available to council for actual and necessary travel and other expenses incurred by them in the performance of their official duties, subject to ORS 292.495. [1991 c.501 §12; 2013 c.182 §1]

Note: Section 4, chapter 27, Oregon Laws 2012, provides:

Sec. 4. Technical advisory committee report. (1) The scientific and technical advisory committee of the Ocean Policy Advisory Council established under ORS 196.451 shall submit a draft report to the interim committees on environment and natural resources of the Legislative Assembly no later than October 1, 2022, and a final report to the Legislative Assembly in the manner provided by ORS 192.245 no later than March 1, 2023, regarding the establishment, study, monitoring, evaluation and enforcement of the pilot marine reserves, marine reserves, marine protected areas and seabird protection area described in ORS 196.540.

(2) The reports described in subsection (1) of this section shall:

(a) Be researched and prepared, within existing resources and without additional appropriation, by a public university listed in ORS 352.002 chosen by the scientific and technical advisory committee; and

(b) Include:

(A) An assessment of social, economic and environmental factors related to the reserves and protected areas;

(B) Recommendations for administrative actions and legislative proposals related to the reserves and protected areas; and

(C) Any other scientifically based information related to the reserves and protected areas that the public university described in this subsection deems relevant or material. [2012 c.27 §4]

196.453 Project review panels; guidelines. (1) The Ocean Policy Advisory Council may establish project review panels to address and coordinate the interests of state, federal and local governments in specific development proposals.

(2) The council may adopt guidelines to establish criteria to create review panels and determine the scope of the activities of the panel.

(3) A panel shall not have any authority independent of the council. The authority of any panel shall be that granted to it by the council. [1991 c.501 §16; 2003 c.744 §11]

196.455 Coordination with federal programs. To insure that the Oregon Ocean Resources Management Plan and Territorial Sea Plan are coordinated with federal agency programs for coastal and ocean resources, the Ocean Policy Advisory Council may invite federal agencies with responsibility for the study and management of ocean resources or regulation of ocean activities to designate a liaison to the council to attend council meetings, respond to council requests for technical and policy information and review draft plan materials prepared by the council. [1987 c.576 §10; 1991 c.501 §13; 2003 c.744 §12]

196.465 Compatibility of acknowledged comprehensive plans. (1) The Oregon Ocean Resources Management Plan and Territorial Sea Plan, when adopted pursuant to ORS 196.471, shall be compatible with acknowledged comprehensive plans of adjacent coastal counties and cities.

(2) To insure that the plan is compatible with the comprehensive plans of adjacent coastal counties and cities, the Ocean Policy Advisory Council shall work with the Department of Land Conservation and Development and any Oregon coastal zone management association to:

(a) Meet and consult with local government officials;

(b) Distribute draft materials and working papers for review and solicit comment on council materials; and

(c) Provide technical and policy information to local governments about ocean resource issues. [1987 c.576 §11; 1991 c.501 §14; 2003 c.744 §13]

196.471 Territorial Sea Plan review requirements. (1) The Land Conservation and Development Commission shall review the Territorial Sea Plan and any subsequent amendments recommended by the Ocean Policy Advisory Council to either the Territorial Sea Plan or the Oregon Ocean Resources Management Plan and make findings that the plan or amendments recommended by the council:

(a) Carry out the policies of ORS 196.405 to 196.515; and

(b) Are consistent with applicable statewide planning goals, with emphasis on the four coastal goals.

(2) After making the findings required by subsection (1) of this section, the commission shall adopt the Territorial Sea Plan or proposed amendments as part of the Oregon Coastal Management Program.

(3)(a) If the commission does not make the findings required by subsection (1) of this section, the commission shall return the plan or amendments to the council for revision. The commission may specify any needed revisions.

(b) If the council makes subsequent recommendations for amendments, the council must:

(A) Include the commission's specified revisions in the recommendations; and

(B) Make the subsequent recommendations for amendments within 155 days after the date that the commission returns the plan or amendments to the council for revision. The commission and the council may mutually agree to extend the time that the council is allowed under this subparagraph for submitting subsequent recommendations to the commission.

(c) If the council does not make the subsequent recommendations for amendments within the time provided for in paragraph (b)(B) of this subsection, the commission may adopt the Territorial Sea Plan amendments recommended by the council under subsection (1) of this section, including any needed revisions specified by the commission.

(4) Upon adoption of the Territorial Sea Plan or subsequent amendments the commission may, after consultation with affected state agencies, identify amendments to agency ocean or coastal resource management programs necessary to conform to the provisions of the adopted plan. [1991 c.501 §20; 1993 c.18 §35; 2013 c.416 §1]

Note: Section 14, chapter 386, Oregon Laws 2015, provides:

Sec. 14. Committee to evaluate grant of permit for ocean renewable energy facilities. (1) The Department of State Lands shall convene a committee to assist the department in evaluating whether to establish by rule a general permit under ORS 196.816, or grant by rule a general authorization under ORS 196.850, for ocean renewable energy facilities that are used as components of research projects or demonstration projects that produce ocean renewable energy.

(2) The committee required under subsection (1) of this section shall include, but is not limited to:

- (a) Representatives of ocean renewable energy industries;
- (b) Representatives of marine industries; and
- (c) Representatives of interests related to ocean resources.

(3) Notwithstanding any contrary provision of ORS 196.816 or 196.850, the department shall, before establishing a general permit under ORS 196.816 or granting a general authorization under ORS 196.850 for the ocean renewable energy facilities described in subsection (1) of this section, convene an advisory committee in accordance with ORS 183.333 to assist the department in drafting rules under ORS 196.816 or 196.850 and this section.

(4) As used in this section, “ocean renewable energy” and “ocean renewable energy facility” have the meaning given those terms in section 1 of this 2015 Act [274.870]. [2015 c.386 §14]

196.540 Marine reserves; rules. The State Department of Fish and Wildlife, State Fish and Wildlife Commission, State Land Board and relevant state agencies shall, consistent with existing statutory authority, implement:

(1) The November 29, 2008, recommendations from the Ocean Policy Advisory Council on marine reserves by adopting rules to establish, study, monitor, evaluate and enforce a pilot marine reserve at Otter Rock and a pilot marine reserve and a marine protected area at Redfish Rocks.

(2) The January 25, 2011, recommendations, limited to those related to boundaries and allowances, from the State Department of Fish and Wildlife on marine reserves by adopting rules to establish, study, monitor, evaluate and enforce:

(a) A marine reserve and two marine protected areas at Cape Falcon;

(b) A marine reserve and three marine protected areas at Cascade Head; and

(c) A marine reserve, two marine protected areas and a seabird protection area at Cape Perpetua. [2009 c.847 §1; 2012 c.27 §2]

WETLANDS AND RIVERS

196.635 Director to consult and cooperate with other agencies and interested parties. (1) The provisions of ORS 196.600 to 196.655 shall be carried out by the Director of the Department of State Lands. The Department of State Lands shall solicit, but not be bound by, comments from the State Department of Fish and Wildlife, Department

of Transportation, Department of Land Conservation and Development, Department of Environmental Quality, Oregon Business Development Department, federal natural resources and regulatory agencies, affected local governments and special districts, conservation organizations and other interested parties. All comments shall be in writing and provided to the Department of State Lands and mitigation bank sponsor within 30 days of solicitation by the Department of State Lands. If comments are not received by the Department of State Lands from a state agency or from an affected local government or special district within 30 days of solicitation, the director shall assume that the state agency, local government or special district does not desire to provide comments.

(2) In cooperation with the parties in subsection (1) of this section, the director, in consultation with the State Land Board, shall:

(a) Review opportunities for inclusion of appropriate wetlands in the Statewide Comprehensive Outdoor Recreation Plan.

(b) Develop and recommend a wetlands priority plan for inclusion in the Statewide Comprehensive Outdoor Recreation Plan. The wetlands priority plan shall be complementary to the purposes and programs under ORS 196.600 to 196.655.

(3) The director shall confer with the Oregon Watershed Enhancement Board to develop criteria to certify watershed enhancement projects as mitigation banks. [Formerly 541.575; 1997 c.444 §4; 2003 c.738 §9]

196.800 Definitions for ORS 196.600 to 196.905. As used in ORS 196.600 to 196.905, unless the context requires otherwise:

(1) “Channel relocation” means a change in location of a channel in which a new channel is dug and the flow is diverted from the old channel into the new channel if more than 50 cubic yards of material is removed in constructing the new channel or if it would require more than 50 cubic yards of material to completely fill the old channel.

(2) “Estuary” means:

(a) For waters other than the Columbia River, the body of water from the ocean to the head of tidewater that is partially enclosed by land and within which salt water is usually diluted by fresh water from the land, including all associated estuarine waters, tidelands, tidal marshes and submerged lands; and

(b) For the Columbia River, all waters from the mouth of the river up to the western edge of Puget Island, including all associated estuarine waters, tidelands, tidal marshes and submerged lands.

(3) “Fill” means the total of deposits by artificial means equal to or exceeding 50 cubic yards or more of material at one location in any waters of this state.

(4) “General authorization” means an authorization granted under ORS 196.850 for a category of activities involving removal or fill, or both, without a permit.

(5) “General permit” means a permit for removal activities or fill activities that are substantially similar in nature, are recurring or ongoing, and have predictable effects and outcomes.

(6) “Intermittent stream” means any stream which flows during a portion of every year and which provides spawning, rearing or food-producing areas for food and game fish.

(7) “Large woody debris” means any naturally downed wood that captures gravel, provides stream stability or provides fish habitat, or any wood placed into waters of this state as part of a habitat improvement or conservation project.

(8) “Material” means rock, gravel, sand, silt and other inorganic substances, and large woody debris, removed from waters of this state and any materials, organic or inorganic, used to fill waters of this state.

(9) “Mitigation” means the reduction of adverse effects of a proposed project by considering, in the following order:

(a) Avoiding the effect altogether by not taking a certain action or parts of an action;

(b) Minimizing the effect by limiting the degree or magnitude of the action and its implementation;

(c) Rectifying the effect by repairing, rehabilitating or restoring the affected environment;

(d) Reducing or eliminating the effect over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate corrective measures; and

(e) Compensating for the effect by creating, restoring, enhancing or preserving substitute functions and values for the waters of this state.

(10) “Person” means a person, a public body as defined in ORS 174.109, the federal government, when operating in any capacity other than navigational servitude, or any other legal entity.

(11) “Practicable” means capable of being accomplished after taking into consideration the cost, existing technology and logistics with respect to the overall project purpose.

(12) “Public use” means a publicly owned project or a privately owned project that is available for use by the public.

(13) “Removal” means:

(a) The taking of more than 50 cubic yards or the equivalent weight in tons of material in any waters of this state in any calendar year; or

(b) The movement by artificial means of an equivalent amount of material on or within the bed of such waters, including channel relocation.

(14) “Water resources” includes not only water itself but also aquatic life and habitats therein and all other natural resources in and under the waters of this state.

(15) “Waters of this state” means all natural waterways, tidal and nontidal bays, intermittent streams, constantly flowing streams, lakes, wetlands, that portion of the Pacific Ocean that is in the boundaries of this state, all other navigable and nonnavigable bodies of water in this state and those portions of the ocean shore, as defined in ORS 390.605, where removal or fill activities are regulated under a state-assumed permit program as provided in 33 U.S.C. 1344(g) of the Federal Water Pollution Control Act, as amended.

(16) “Wetland conservation plan” means a written plan providing for wetland management containing a detailed and comprehensive statement of policies, standards and criteria to guide public and private uses and protection of wetlands, waters and related adjacent uplands and which has specific implementing measures and which apply to designated geographic areas of the State of Oregon.

(17) “Wetlands” means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. [Formerly 541.605 and then 196.670; 1999 c.373 §1; 2003 c.253 §7; 2003 c.738 §14; 2007 c.849 §2; 2009 c.343 §18; 2013 c.198 §1]

Note: Operation of the amendments to 196.800 by section 1, chapter 516, Oregon Laws 2001, is dependent upon further approval by the Legislative Assembly. See section 11, chapter 516, Oregon Laws 2001, as amended by section 19, chapter 11, Oregon Laws 2009. The text that is operative after that approval, including amendments by section 8, chapter 253, Oregon Laws 2003, section 15, chapter 738, Oregon Laws 2003, section 3, chapter 849, Oregon Laws 2007, section 19, chapter 343, Oregon Laws 2009, and section 2, chapter 198, Oregon Laws 2013, is set forth for the user’s convenience.

196.800. As used in ORS 196.600 to 196.905, unless the context requires otherwise:

(1) “Channel relocation” means a change in location of a channel in which a new channel is dug and the flow is diverted from the old channel into the new channel.

(2) "Estuary" means:

(a) For waters other than the Columbia River, the body of water from the ocean to the head of tidewater that is partially enclosed by land and within which salt water is usually diluted by fresh water from the land, including all associated estuarine waters, tidelands, tidal marshes and submerged lands; and

(b) For the Columbia River, all waters from the mouth of the river up to the western edge of Puget Island, including all associated estuarine waters, tidelands, tidal marshes and submerged lands.

(3) "Fill" means the deposit by artificial means of material at one location in any waters of this state.

(4) "General authorization" means an authorization granted under ORS 196.850 for a category of activities involving removal or fill, or both, without a permit.

(5) "General permit" means a permit for removal activities or fill activities that are substantially similar in nature, are recurring or ongoing, and have predictable effects and outcomes.

(6) "Intermittent stream" means any stream which flows during a portion of every year and which provides spawning, rearing or food-producing areas for food and game fish.

(7) "Large woody debris" means any naturally downed wood that captures gravel, provides stream stability or provides fish habitat, or any wood placed into waters of this state as part of a habitat improvement or conservation project.

(8) "Material" means rock, gravel, sand, silt and other inorganic substances, and large woody debris, removed from waters of this state and any materials, organic or inorganic, used to fill waters of this state.

(9) "Mitigation" means the reduction of adverse effects of a proposed project by considering, in the following order:

(a) Avoiding the effect altogether by not taking a certain action or parts of an action;

(b) Minimizing the effect by limiting the degree or magnitude of the action and its implementation;

(c) Rectifying the effect by repairing, rehabilitating or restoring the affected environment;

(d) Reducing or eliminating the effect over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate corrective measures; and

(e) Compensating for the effect by creating, restoring, enhancing or preserving substitute functions and values for the waters of this state.

(10) "Person" means a person, a public body, as defined in ORS 174.109, the federal government, when operating in any capacity other than navigational servitude, or any other legal entity.

(11) "Practicable" means capable of being accomplished after taking into consideration the cost, existing technology and logistics with respect to the overall project purpose.

(12) "Public use" means a publicly owned project or a privately owned project that is available for use by the public.

(13) "Removal" means:

(a) The taking of material in any waters of this state; or

(b) The movement by artificial means of material within the bed of such waters, including channel relocation.

(14) "Water resources" includes not only water itself but also aquatic life and habitats therein and all other natural resources in and under the waters of this state.

(15) "Waters of this state" means all natural waterways, tidal and nontidal bays, intermittent streams, constantly flowing streams, lakes, wetlands, that portion of the Pacific Ocean that is in the boundaries of this state, all other navigable and nonnavigable bodies of water in this state and those portions of the ocean shore, as defined in ORS 390.605, where removal or fill activities are regulated under a state-assumed permit program as provided in 33 U.S.C. 1344(g) of the Federal Water Pollution Control Act, as amended.

(16) "Wetland conservation plan" means a written plan providing for wetland management containing a detailed and comprehensive statement of policies, standards and criteria to guide public and private uses and protection of wetlands, waters and related adjacent uplands and which has specific implementing measures and which apply to designated geographic areas of the State of Oregon.

(17) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Note: Sections 11 to 14, chapter 516, Oregon Laws 2001, provide:

Sec. 11. The amendments to ORS 196.800, 196.810, 196.850, 196.895, 196.905, 196.990, 390.835, 421.628 and 459.047 by sections 1 to 10, chapter 516, Oregon Laws 2001, and the repeal of section 2, chapter 45, Oregon Laws 1989, by section 13, chapter 516, Oregon Laws 2001, become operative on January 2 of the even-numbered year following the date the United States Environmental Protection Agency grants authority by letter to the Department of State Lands to administer permits for the discharge of dredge or fill materials under section 404 of the Federal Water Pollution Control Act (P.L. 92-500, as amended) and the Legislative Assembly approves the grant of authority. [2001 c.516 §11; 2009 c.11 §19]

Sec. 12. (1) The Department of State Lands may take any action necessary to prepare to fully implement the provisions of this 2001 Act prior to the operative date of this 2001 Act.

(2) The department shall periodically report to the appropriate committee of the Legislative Assembly on the status of its effort to assume authority to administer permits for the discharge of dredge or fill materials under section 404 of the Federal Water Pollution Control Act (P.L. 92-500, as amended).

(3) After the Legislative Assembly approves the grant of authority, the department shall notify the Legislative Assembly prior to the transfer of authority from the United States Environmental Protection Agency. [2001 c.516 §12]

Sec. 13. Section 2, chapter 45, Oregon Laws 1989, is repealed. [2001 c.516 §13]

Sec. 14. If, after assuming authority to administer permits for the discharge of dredge or fill materials under section 404 of the Federal Water Pollution Control Act (P.L. 92-500, as amended), the Department of State Lands seeks to relinquish the authority granted to the department by the federal government, the department shall, in compliance with ORS 171.130 and at least two years prior to the anticipated date for relinquishing the authority, submit to the Legislative Assembly a proposed legislative measure designed to implement a state permitting program for the dredging and filling of materials in the waters of this state. [2001 c.516 §14]

196.805 Policy. (1) The protection, conservation and best use of the water resources of this state are matters of the utmost public concern. Streams, lakes, bays, estuaries and

other bodies of water in this state, including not only water and materials for domestic, agricultural and industrial use but also habitats and spawning areas for fish, avenues for transportation and sites for commerce and public recreation, are vital to the economy and well-being of this state and its people. Unregulated removal of material from the beds and banks of the waters of this state may create hazards to the health, safety and welfare of the people of this state. Unregulated filling in the waters of this state for any purpose, may result in interfering with or injuring public navigation, fishery and recreational uses of the waters. In order to provide for the best possible use of the water resources of this state, it is desirable to centralize authority in the Director of the Department of State Lands, and implement control of the removal of material from the beds and banks or filling of the waters of this state.

(2) The director shall take into consideration all beneficial uses of water including streambank protection when administering fill and removal statutes.

(3) There shall be no condemnation, inverse condemnation, other taking, or confiscating of property under ORS 196.600 to 196.905 without due process of law. [Formerly 541.610 and then 196.675; 2003 c.738 §16; 2012 c.108 §7]

196.810 Permit required to remove material from bed or banks of waters; status of permit; exceptions; rules. (1)(a) Except as otherwise specifically permitted under ORS 196.600 to 196.905, a person may not remove any material from the beds or banks of any waters of this state or fill any waters of this state without a permit issued under authority of the Director of the Department of State Lands, or in a manner contrary to the conditions set out in the permit, or in a manner contrary to the conditions set out in an order approving a wetland conservation plan.

(b) Notwithstanding the permit requirements of this section and notwithstanding the provisions of ORS 196.800 (3) and (13), if any removal or fill activity is proposed in essential indigenous anadromous salmonid habitat, except for those activities customarily associated with agriculture, a permit is required. "Essential indigenous anadromous salmonid habitat" as defined under this section shall be further defined and designated by rule by the Department of State Lands in consultation with the State Department of Fish and Wildlife and in consultation with other affected parties.

(c) A person is not required to obtain a permit under paragraph (b) of this subsection for prospecting or other nonmotorized activities resulting in the removal from or fill of

less than one cubic yard of material at any one individual site and, cumulatively, not more than five cubic yards of material within a designated essential indigenous anadromous salmonid habitat segment in a single year. Prospecting or other nonmotorized activities may be conducted only within the bed or wet perimeter of the waterway and may not occur at any site where fish eggs are present. Removal or filling activities customarily associated with mining require a permit under paragraph (b) of this subsection.

(d) A permit is not required under paragraph (b) of this subsection for construction or maintenance of fish passage and fish screening structures that are constructed, operated or maintained under ORS 498.306, 498.316, 498.326 or 509.600 to 509.645.

(e)(A) Notwithstanding the permit requirements of this section and notwithstanding the provisions of ORS 196.800 (3) and (13), if any removal or fill activity is proposed in Oregon's territorial sea that is related to an ocean renewable energy facility as defined in ORS 274.870, a permit is required.

(B) An application for a permit related to an ocean renewable energy facility in the territorial sea must include all of the information required by that part of the Territorial Sea Plan that addresses the development of ocean renewable energy facilities in the territorial sea.

(C) The Department of State Lands may not issue a removal or fill permit for an ocean renewable energy facility that does not comply with the criteria described in that part of the Territorial Sea Plan that addresses the development of ocean renewable energy facilities in the territorial sea.

(f) Nothing in this section limits or otherwise changes the exemptions under ORS 196.905.

(g) As used in paragraphs (b) and (c) of this subsection:

(A) "Bed" means the land within the wet perimeter and any adjacent nonvegetated dry gravel bar.

(B) "Essential indigenous anadromous salmonid habitat" means the habitat that is necessary to prevent the depletion of indigenous anadromous salmonid species during their life history stages of spawning and rearing.

(C) "Indigenous anadromous salmonid" means chum, sockeye, Chinook and Coho salmon, and steelhead and cutthroat trout, that are members of the family Salmonidae and are listed as sensitive, threatened or endangered by a state or federal authority.

(D) "Prospecting" means searching or exploring for samples of gold, silver or other precious minerals, using nonmotorized methods, from among small quantities of aggregate.

(E) "Wet perimeter" means the area of the stream that is under water or is exposed as a nonvegetated dry gravel bar island surrounded on all sides by actively moving water at the time the activity occurs.

(2) A public body, as defined in ORS 174.109, may not issue a lease or permit contrary or in opposition to the conditions set out in the permit issued under ORS 196.600 to 196.905.

(3) Subsection (1) of this section does not apply to removal of material under a contract, permit or lease with any public body, as defined in ORS 174.109, entered into before September 13, 1967. However, no such contract, permit or lease may be renewed or extended on or after September 13, 1967, unless the person removing the material has obtained a permit under ORS 196.600 to 196.905.

(4) Notwithstanding subsection (1) of this section, the Department of State Lands may issue, orally or in writing, an emergency authorization to a person for the removal of material from the beds or banks or filling of any waters of this state in an emergency, for the purpose of making repairs or for the purpose of preventing irreparable harm, injury or damage to persons or property. The emergency authorization issued under this subsection:

(a) Shall contain conditions of operation that the department determines are necessary to minimize impacts to water resources or adjoining properties.

(b) Shall be based, whenever practicable, on the recommendations contained in an on-site evaluation by an employee or representative of the department.

(c) If issued orally, shall be confirmed in writing by the department within five days.

(d) Does not relieve the person from payment of a fee calculated in the manner provided in ORS 196.815. [Formerly 541.615 and then 196.680; 1993 c.765 §101; 1997 c.190 §1; 1997 c.508 §1; 2001 c.65 §1; 2001 c.923 §4; 2003 c.14 §96; 2003 c.738 §20; 2007 c.71 §63; 2007 c.625 §4; 2007 c.849 §14; 2013 c.198 §3; 2015 c.386 §10]

Note: Operation of the amendments to 196.810 by section 2, chapter 516, Oregon Laws 2001, is dependent upon further approval by the Legislative Assembly. See section 11, chapter 516, Oregon Laws 2001, as amended by section 19, chapter 11, Oregon Laws 2009. The text that is operative after that approval, including amendments by section 97, chapter 14, Oregon Laws 2003, section 64, chapter 71, Oregon Laws 2007, section 5, chapter 625, Oregon Laws 2007, section 15, chapter 849, Oregon Laws 2007, and section 11, chapter 386, Oregon Laws 2015, is set forth for the user's convenience.

196.810. (1)(a) Except as otherwise specifically permitted under ORS 196.600 to 196.905, a person may not remove any material from the beds or banks of any waters of this state or fill any waters of this state without a permit issued under authority of the Director of the Department of State Lands, or in a manner contrary to the conditions set out in the permit, or in a manner contrary to the conditions set out in an order approving a wetland conservation plan.

(b) A permit is not required under paragraph (a) of this subsection for prospecting or other nonmotorized activities resulting in the removal from or fill of less than one cubic yard of material at any one individual site and, cumulatively, not more than five cubic yards of material within a particular stream segment in a single year. Prospecting or other nonmotorized activities may be conducted only within the bed or wet perimeter of the waterway and may not occur at any site where fish eggs are present. Removal or filling activities customarily associated with mining require a permit under paragraph (a) of this subsection.

(c) A permit is not required under paragraph (a) of this subsection for construction or maintenance of fish passage and fish screening structures associated with irrigation ditches or the maintenance of drainage ditches that are constructed, operated or maintained under ORS 498.306, 498.316, 498.326 or 509.600 to 509.645.

(d)(A) Notwithstanding the permit requirements of this section and notwithstanding the provisions of ORS 196.800 (3) and (13), if any removal or fill activity is proposed in Oregon's territorial sea that is related to an ocean renewable energy facility as defined in ORS 274.870, a permit is required.

(B) An application for a permit related to an ocean renewable energy facility in the territorial sea must include all of the information required by that part of the Territorial Sea Plan that addresses the development of ocean renewable energy facilities in the territorial sea.

(C) The Department of State Lands may not issue a removal or fill permit for an ocean renewable energy facility that does not comply with the criteria described in that part of the Territorial Sea Plan that addresses the development of ocean renewable energy facilities in the territorial sea.

(e) Nothing in this section limits or otherwise changes the exemptions under ORS 196.905.

(2) A public body, as defined in ORS 174.109, may not issue a lease or permit contrary or in opposition to the conditions set out in the permit issued under ORS 196.600 to 196.905.

(3) Subsection (1) of this section does not apply to removal of material under a contract, permit or lease with any public body, as defined in ORS 174.109, entered into before September 13, 1967. However, a contract, permit or lease may not be renewed or extended on or after September 13, 1967, unless the person removing the material has obtained a permit under ORS 196.600 to 196.905.

(4) Notwithstanding subsection (1) of this section, the Department of State Lands may issue, orally or in writing, an emergency authorization to a person for the removal of material from the beds or banks or filling of any waters of this state in an emergency, for the purpose of making repairs or for the purpose of preventing irreparable harm, injury or damage to persons or property. The emergency authorization issued under this subsection:

(a) Shall contain conditions of operation that the department determines are necessary to minimize impacts to water resources or adjoining properties.

(b) Shall be based, whenever practicable, on the recommendations contained in an on-site evaluation by an employee or representative of the department.

(c) If issued orally, shall be confirmed in writing by the department within five days.

(d) Does not relieve the person from payment of a fee calculated in the manner provided in ORS 196.815.

(5) As used in this section:

(a) "Bed" means the land within the wet perimeter and any adjacent nonvegetated dry gravel bar.

(b) "Prospecting" means searching or exploring for samples of gold, silver or other precious minerals, using nonmotorized methods, from among small quantities of aggregate.

(c) "Wet perimeter" means the area of the stream that is under water or is exposed as a nonvegetated dry gravel bar island surrounded on all sides by actively moving water at the time the activity occurs.

Note: See second note under 196.800.

196.815 Application for permit; rules; fees; disposition of fees. (1) A person who is required to have a permit to remove material from the bed or banks or fill any waters of this state shall file a written application with the Director of the Department of State Lands for each individual project before performing any removal or fill.

(2)(a) Except as otherwise may be provided by the rules of the Department of State Lands for removal or fill permits related to ocean renewable energy facilities as defined in ORS 274.870, each application under subsection (1) of this section must be accompanied by a base fee in accordance with the following schedule:

(A) For a removal by a private operator, or a person contracting to perform services for a private operator, \$85.

(B) For a removal by a public body, \$250.

(C) For a removal by a commercial operator, \$250.

(D) For a fill by a private operator, or a person contracting to perform services for a private operator, \$250.

(E) For a fill by a public body, \$620.

(F) For a fill by a commercial operator, \$620.

(G) For erosion-flood repair, including riprap, no fee.

(b) In addition to the base fee for removal established under paragraph (a) of this subsection, each applicant shall also pay as part of the application fee the following fee based on the volume of removal material:

(A) Less than 500 cubic yards, no volume fee.

(B) 500 to less than 5,000 cubic yards, \$125.

(C) 5,000 to less than or equal to 50,000 cubic yards, \$250.

(D) Over 50,000 cubic yards, \$375.

(c) In addition to the base fee for fill established under paragraph (a) of this subsection, each applicant shall also pay as part of

the application fee the following fee based on the volume of fill material:

(A) Less than 500 cubic yards, no volume fee.

(B) 500 to less than 3,000 cubic yards, \$125.

(C) 3,000 to less than or equal to 10,000 cubic yards, \$250.

(D) Over 10,000 cubic yards, \$375.

(d) The department may establish by rule a volume-based fee for the commercial removal of sand and gravel from the waters of this state for use in administering the provisions of the fill and removal law in this state.

(e) For the purposes of this subsection:

(A) "Private operator" means any person undertaking a project for exclusively a nonincome-producing and nonprofit purpose;

(B) "Public body" means federal, state, and local governmental bodies, unless specifically exempted by law, engaged in projects for the purpose of providing free public services;

(C) "Commercial operator" means any person undertaking a project having financial profit as a goal;

(D) "Riprap" means the facing of a streambank with rock or similar substance to control erosion in accordance with rules adopted by the department; and

(E) "Erosion-flood repair" means riprap or any other work necessary to preserve existing facilities and land from flood and high streamflows, in accordance with regulations promulgated by the department.

(3) For each application that involves both removal and filling, the application fee assessed shall be either for removal or filling, whichever is higher according to the fee schedule in subsection (2) of this section.

(4) The department may waive the fees specified in subsection (2) of this section for a permit that will be used to perform a voluntary habitat restoration project.

(5) A person who receives an emergency authorization under ORS 196.810 to remove material from the beds or banks of any waters of this state or to fill any waters of this state shall, within 45 days after receiving the authorization, submit a fee to the department calculated in the manner provided under this section for permit applications.

(6) Each holder of a material removal or fill permit shall pay a fee during the term of the permit in accordance with the schedule set forth in subsection (2) of this section, except that the applicant shall pay only the base fee. For multiyear permits valid over a period of more than one year, the department

may assess a one-time fee that covers all fees due under subsection (2) of this section for the period of the permit. The permit shall be suspended during any period of delinquency of payment as though no permit was applied for. Notwithstanding this subsection the director may, before granting a renewal of the permit, require the permittee to show that the continued exercise of the permit is consistent with the protection, conservation and best use of the water resources of this state.

(7) Fees received under this section shall be credited to the Common School Fund for use by the department in administration of ORS 196.600 to 196.905.

(8) The director shall issue an order revising the fees specified in this section on January 1 of each year, beginning in 2009, based on changes in the Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items as published by the Bureau of Labor Statistics of the United States Department of Labor. The director shall round the amount of each fee to the nearest dollar. The revised fees shall take effect January 1 and apply for that calendar year. [Formerly 541.620 and then 196.685; 2007 c.849 §1; 2009 c.342 §1; 2009 c.882 §2; 2015 c.386 §12]

196.818 Wetland delineation reports; review by Department of State Lands; fees; rules. (1) A person or governmental body requesting a permit under ORS 196.810 shall submit a wetland delineation report to the Department of State Lands for a determination of:

- (a) Whether waters of this state are present on a specific land parcel;
- (b) Where the boundaries of waters of this state are located on a land parcel; or
- (c) Whether the waters of this state or a proposed activity in the waters of this state is subject to permit requirements.

(2) A person or governmental body must pay a nonrefundable fee of \$350 to the department when submitting a wetland delineation report under subsection (1) of this section.

(3) The department shall:

(a) Review the wetland delineation report submitted under subsection (1) of this section no more than 120 days after the date on which the person or governmental body submits the report; and

(b) Give priority to the review of a wetland delineation report that is submitted with or in advance of an application for a permit required under ORS 196.810 if the permit would authorize activities on the land parcel that is the subject of the wetland delineation report.

(4) All determinations made by the department under subsection (1)(a) and (b) of this section:

(a) Must be made by a person with expertise in wetlands hydrology, soil and vegetation; and

(b) Expire five years after the date on which a final determination is made.

(5) Five years after the date on which a final determination has been made under subsection (1)(a) or (b) of this section, if the owner of the land parcel that is the subject of the determination is conducting activities that require a permit under ORS 196.810, the landowner shall conduct a review of the land parcel. If the baseline conditions leading to the final determination have sufficiently changed to require a new determination, then the landowner shall submit a new wetland delineation report under subsection (1) of this section. If the baseline conditions leading to the final determination have not sufficiently changed to require a new determination, then the final determination of the department, notwithstanding subsection (4)(b) of this section, may be extended by five years.

(6) The department may waive or suspend the requirements of this section for the purpose of issuing an emergency authorization under ORS 196.810.

(7) The fee described in subsection (2) of this section is in addition to any permit application fee required under ORS 196.815. A person or governmental body submitting a revised report to replace a previously rejected report must pay an additional nonrefundable fee of \$100.

(8) Delineations made pursuant to this section, and determinations made under this section, must comport with:

(a) The United States Army Corps of Engineers Wetlands Delineation Manual of 1987; and

(b) Any subsequent federal supplements to the manual or applicable guidance documents issued by the United States Army Corps of Engineers, including guidance documents for the area in which a delineation will take place, as adopted by rule of the Director of the Department of State Lands. Such rules must comply with those federal supplements and guidance documents.

(9) The director shall issue an order revising the fee specified in subsection (2) of this section on January 1 of each year, based on changes in the Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items as published by the Bureau of Labor Statistics of the United States Department of Labor. The director shall round the amount to the nearest dollar. The

revised fee shall take effect January 1 and apply for that calendar year.

(10) Fees received under this section shall be credited to the Common School Fund for use by the department in administration of ORS 196.600 to 196.905. [2007 c.850 §2; 2012 c.108 §5]

Note: Sections 1 to 4, chapter 108, Oregon Laws 2012, provide:

Sec. 1. Section 2 of this 2012 Act is added to and made a part of ORS 196.600 to 196.905. [2012 c.108 §1]

Sec. 2. Wetland delineation determinations.

(1)(a) A person may request an independent review of a determination made under:

(A) ORS 196.818 (1)(a), if the Department of State Lands determines that wetlands are present on a land parcel owned by the person; or

(B) ORS 196.818 (1)(b), if the department determines where the boundaries of a wetland are located on a land parcel owned by the person.

(b) Notwithstanding paragraph (a) of this subsection, a person may not request an independent review of a determination made under ORS 196.818 (1)(a) or (b) unless the person first applies to the department for reconsideration of the determination, as required by the department by rule.

(2)(a) Upon receiving a request for independent review under subsection (1) of this section, the department shall enter into an agreement with the person making the request under which a panel of independent reviewers may modify a determination made under ORS 196.818 (1)(a) or (b).

(b) Notwithstanding paragraph (a) of this subsection, the department is not required to enter into an agreement with the person making the request if the person does not agree to make the decision of the panel of independent reviewers final and binding.

(3)(a) Review under this section must be conducted by a panel of three individuals who are well informed on matters relating to waters of this state. A reviewer:

(A) Shall disclose all prior knowledge of the land parcel that is the subject of the review and any potential or actual conflicts of interest;

(B) Must have no interest in the land parcel that is the subject of the review;

(C) Must have five years of experience with wetland plant identification, hydric soil determinations, wetland hydrology monitoring, wetland boundary mapping and related data analysis; and

(D) Must have been a principal investigator for four wetland delineation reports submitted under ORS 196.818 and approved by the department within the five years preceding the date on which review is requested.

(b) As used in this subsection, "principal investigator" means an individual who has been responsible for collecting more than 33 percent of the field data for a wetland delineation report and for mapping at least 33 percent of the wetland boundary for a wetland delineation report.

(4) The panel of independent reviewers shall be selected in the following manner:

(a) The Department of State Lands shall select one reviewer;

(b) The person requesting the review under subsection (1) of this section shall select one reviewer; and

(c) The reviewers selected under paragraphs (a) and (b) of this subsection shall jointly select one reviewer.

(5) A person must request a review under this section no more than 21 days after the date on which the

department reconsiders a determination made under ORS 196.818 (1)(a) or (b).

(6) The panel of independent reviewers must be selected no more than 30 days after the date on which the person requests a review. If the reviewers selected under subsection (4)(a) and (b) of this subsection do not jointly select a third reviewer under subsection (4)(c) of this section on or before the 30th day, the department shall request the United States Army Corps of Engineers to provide a reviewer who has experience reviewing wetland delineations. A reviewer provided under this subsection is exempt from subsection (3)(a)(D) of this section.

(7) The panel of independent reviewers must reach a decision no more than 60 days after the date on which the third reviewer is selected or provided. As part of the decision reached under this subsection, the reviewers must determine the cost of the review, including the reviewers' expenses and fees. The parties to the agreement shall each pay half of the cost. [2012 c.108 §2]

Sec. 3. Section 2 of this 2012 Act applies to determinations made by the Department of State Lands under ORS 196.818 (1)(a) and (b) on or after the effective date of this 2012 Act [January 1, 2013]. [2012 c.108 §3]

Sec. 4. Sections 1 and 2 of this 2012 Act are repealed on January 2, 2022. [2012 c.108 §4]

196.820 Prohibition against issuance of permits to fill Smith Lake or Bybee Lake; exception. (1) Notwithstanding any provision of ORS 196.600 to 196.905 to the contrary, except as provided in subsection (2) of this section, the Director of the Department of State Lands shall not issue any permit to fill Smith Lake or Bybee Lake, located in Multnomah County, below the contour line which lies 11 feet above mean sea level as determined by the 1947 adjusted United States Coastal Geodetic Survey Datum.

(2) Notwithstanding the provision of subsection (1) of this section, the Director of the Department of State Lands may issue a permit to fill Smith Lake or Bybee Lake, located in Multnomah County, if such fill is to enhance or maintain fish and wildlife habitat at or near Smith Lake or Bybee Lake. A fill shall be considered to be for the purpose of enhancing or maintaining fish and wildlife habitat if the proposed fill is approved by the State Department of Fish and Wildlife. [Formerly 541.622 and then 196.690]

196.825 Criteria for issuance of permit; conditions; consultation with public bodies; hearing; appeal. (1) The Director of the Department of State Lands shall issue a permit applied for under ORS 196.815 if the director determines that the project described in the application:

(a) Is consistent with the protection, conservation and best use of the water resources of this state as specified in ORS 196.600 to 196.905; and

(b) Would not unreasonably interfere with the paramount policy of this state to preserve the use of its waters for navigation, fishing and public recreation.

(2) If the director issues a permit applied for under ORS 196.815 to a person that proposes a removal or fill activity for construction or maintenance of a linear facility, and if that person is not a landowner or a person authorized by a landowner to conduct the proposed removal or fill activity on a property, then the person may not conduct removal or fill activity on that property until the person obtains:

- (a) The landowner's consent;
- (b) A right, title or interest with respect to the property that is sufficient to undertake the removal or fill activity; or
- (c) A court order or judgment authorizing the use of the property.

(3) In determining whether to issue a permit, the director shall consider all of the following:

(a) The public need for the proposed fill or removal and the social, economic or other public benefits likely to result from the proposed fill or removal. When the applicant for a permit is a public body, the director may accept and rely upon the public body's findings as to local public need and local public benefit.

(b) The economic cost to the public if the proposed fill or removal is not accomplished.

(c) The availability of alternatives to the project for which the fill or removal is proposed.

(d) The availability of alternative sites for the proposed fill or removal.

(e) Whether the proposed fill or removal conforms to sound policies of conservation and would not interfere with public health and safety.

(f) Whether the proposed fill or removal is in conformance with existing public uses of the waters and with uses designated for adjacent land in an acknowledged comprehensive plan and land use regulations.

(g) Whether the proposed fill or removal is compatible with the acknowledged comprehensive plan and land use regulations for the area where the proposed fill or removal is to take place or can be conditioned on a future local approval to meet this criterion.

(h) Whether the proposed fill or removal is for streambank protection.

(i) Whether the applicant has provided all practicable mitigation to reduce the adverse effects of the proposed fill or removal in the manner set forth in ORS 196.800. In determining whether the applicant has provided all practicable mitigation, the director shall consider the findings regarding wetlands set forth in ORS 196.668 and whether the proposed mitigation advances the policy objec-

tives for the protection of wetlands set forth in ORS 196.672.

(4) The director may issue a permit for a project that results in a substantial fill in an estuary for a nonwater dependent use only if the project is for a public use and would satisfy a public need that outweighs harm to navigation, fishery and recreation and if the proposed fill meets all other criteria contained in ORS 196.600 to 196.905.

(5) If the director issues a permit, the director may impose such conditions as the director considers necessary to carry out the purposes of ORS 196.805 and 196.830 and subsection (1) of this section and to provide mitigation for the reasonably expected adverse effects of project development. In formulating such conditions the director may request comment from public bodies, as defined in ORS 174.109, federal agencies and tribal governments affected by the permit. Each permit is valid only for the time specified therein. The director shall impose, as conditions to any permit, general authorization or wetland conservation plan, measures to provide mitigation for the reasonably expected adverse effects of project development. Compensatory mitigation shall be limited to replacement of the functions and values of the impacted water resources of this state.

(6)(a) The director may request comment from interested parties and adjacent property owners on any application for a permit.

(b) The director shall furnish to any person, upon written request and at the expense of the person who requests the copy, a copy of any application for a permit or authorization under this section or ORS 196.850.

(c) For permit applications for a removal or fill activity for construction or maintenance of a linear facility that are deemed complete by the director, the director shall notify by first-class mail, electronic mail or electronic facsimile transmission all landowners whose land is identified in the permit application and all landowners whose land is adjacent to the property of a landowner whose land is identified in the permit application.

(7) Any applicant whose application for a permit or authorization has been deemed incomplete or has been denied, or who objects to any of the conditions imposed under this section by the director, may, within 21 days of the denial of the permit or authorization or the imposition of any condition, request a hearing from the director. Thereupon the director shall set the matter down for hearing, which shall be conducted as a contested case in accordance with ORS 183.415 to 183.430, 183.440 to 183.460 and 183.470. After such hearing, the director shall enter

an order containing findings of fact and conclusions of law. The order shall rescind, affirm or modify the director's initial order. Appeals from the director's final order may be taken to the Court of Appeals in the manner provided by ORS 183.482.

(8) Except for a permit issued under the process set forth in ORS 517.952 to 517.989, the director shall:

(a) Determine whether an application is complete within 30 days from the date the Department of State Lands receives the application. If the director determines that an application is complete, the director shall distribute the application for comment pursuant to subsection (5) of this section. If the director determines that the application is not complete, the director shall notify the applicant in writing that the application is deficient and explain, in the same notice, the deficiencies.

(b) Issue a permit decision within 90 days after the date the director determines that the application is complete unless:

(A) An extension of time is granted under subsection (10)(b) of this section;

(B) The applicant and the director agree to a longer time period; or

(C) The director determines that an extension is necessary to coordinate the issuance of a proprietary authorization decision for an ocean renewable energy facility under ORS 274.873 and a removal or fill permit decision.

(9) Permits issued under this section shall be in lieu of any permit or authorization that might be required for the same operation under ORS 164.775, 164.785, 468.020, 468.035, 468.045, 468.055, 468.060, 468.110, 468.120, 468B.005 to 468B.030 and 468B.048 to 468B.085, so long as:

(a) The operation is that for which the permit or authorization is issued; and

(b) The standards for granting the permit or authorization are substantially the same as those established pursuant to ORS 164.775, 164.785, 468.020, 468.035, 468.045, 468.055, 468.110, 468.120, 468B.005 to 468B.030 and 468B.048 to 468B.085 to the extent they affect water quality.

(10)(a) Any public body, as defined in ORS 174.109, federal agency or tribal government requested by the director to comment on an application for a permit must submit its comments to the director not more than 30 days after receiving the request for comment. If a public body, federal agency or tribal government fails to comment on the application within 30 days, the director shall

assume that the public body, federal agency or tribal government has no objection.

(b) The Department of Environmental Quality shall provide comments to the director within 75 days after receiving notice under subsection (5) of this section if the permit action requires certification under the Federal Water Pollution Control Act (P.L. 92-500), as amended.

(11) In determining whether to issue a permit, the director may consider only standards and criteria in effect on the date the director receives the completed application.

(12) As used in this section:

(a) "Applicant" means a landowner, a person authorized by a landowner to conduct a removal or fill activity or a person that proposes a removal or fill activity for construction or maintenance of a linear facility.

(b) "Completed application" means a signed permit application form that contains all necessary information for the director to determine whether to issue a permit, including:

(A) A map showing the project site with sufficient accuracy to easily locate the removal or fill site;

(B) A project plan showing the project site and proposed alterations;

(C) The fee required under ORS 196.815;

(D) Any changes that may be made to the hydraulic characteristics of waters of this state and a plan to minimize or avoid any adverse effects of those changes;

(E) If the project may cause substantial adverse effects on aquatic life or aquatic habitat within this state, documentation of existing conditions and resources and identification of the potential impact if the project is completed;

(F) An analysis of alternatives that evaluates practicable methods to minimize and avoid impacts to waters of this state;

(G) If the project is to fill or remove material from wetlands, a wetlands mitigation plan; and

(H) Any other information that the director deems pertinent and necessary to make an informed decision on whether the application complies with the policy and standards set forth in this section.

(c) "Linear facility" includes any railway, highway, road, pipeline, water or sewer line, communication line, overhead or underground electrical transmission or distribution line or similar facility. [Formerly 541.625 and then 196.695; 1991 c.735 §25; 1993 c.741 §18; 1995 c.370 §1; 1995 c.472 §1; 2001 c.460 §2; 2001 c.516 §3; 2003 c.253 §§9,10; 2003 c.738 §§17a,18a; 2007 c.849 §§4,5; 2009 c.342 §2; 2009 c.343 §20; 2011 c.370 §1; 2015 c.386 §13]

EXCLUSIVE FARM USE ZONES

215.203 Zoning ordinances establishing exclusive farm use zones; definitions. (1) Zoning ordinances may be adopted to zone designated areas of land within the county as exclusive farm use zones. Land within such zones shall be used exclusively for farm use except as otherwise provided in ORS 215.213, 215.283 or 215.284. Farm use zones shall be established only when such zoning is consistent with the comprehensive plan.

(2)(a) As used in this section, "farm use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. "Farm use" also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. "Farm use" also includes the propagation, cultivation, maintenance and harvesting of aquatic, bird and animal species that are under the jurisdiction of the State Fish and Wildlife Commission, to the extent allowed by the rules adopted by the commission. "Farm use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. "Farm use" does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees as defined in subsection (3) of this section or land described in ORS 321.267 (3) or 321.824 (3).

(b) "Current employment" of land for farm use includes:

(A) Farmland, the operation or use of which is subject to any farm-related government program;

(B) Land lying fallow for one year as a normal and regular requirement of good agricultural husbandry;

(C) Land planted in orchards or other perennials, other than land specified in subparagraph (D) of this paragraph, prior to maturity;

(D) Land not in an exclusive farm use zone which has not been eligible for assessment at special farm use value in the year prior to planting the current crop and has

been planted in orchards, cultured Christmas trees or vineyards for at least three years;

(E) Wasteland, in an exclusive farm use zone, dry or covered with water, neither economically tillable nor grazeable, lying in or adjacent to and in common ownership with a farm use land and which is not currently being used for any economic farm use;

(F) Except for land under a single family dwelling, land under buildings supporting accepted farm practices, including the processing facilities allowed by ORS 215.213 (1)(u) and 215.283 (1)(r) and the processing of farm crops into biofuel as commercial activities in conjunction with farm use under ORS 215.213 (2)(c) and 215.283 (2)(a);

(G) Water impoundments lying in or adjacent to and in common ownership with farm use land;

(H) Any land constituting a woodlot, not to exceed 20 acres, contiguous to and owned by the owner of land specially valued for farm use even if the land constituting the woodlot is not utilized in conjunction with farm use;

(I) Land lying idle for no more than one year where the absence of farming activity is due to the illness of the farmer or member of the farmer's immediate family. For purposes of this paragraph, illness includes injury or infirmity whether or not such illness results in death;

(J) Any land described under ORS 321.267 (3) or 321.824 (3); and

(K) Land used for the processing of farm crops into biofuel, as defined in ORS 315.141, if:

(i) Only the crops of the landowner are being processed;

(ii) The biofuel from all of the crops purchased for processing into biofuel is used on the farm of the landowner; or

(iii) The landowner is custom processing crops into biofuel from other landowners in the area for their use or sale.

(c) As used in this subsection, "accepted farming practice" means a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use.

(3) "Cultured Christmas trees" means trees:

(a) Grown on lands used exclusively for that purpose, capable of preparation by intensive cultivation methods such as plowing or turning over the soil;

(b) Of a marketable species;

(c) Managed to produce trees meeting U.S. No. 2 or better standards for Christmas

trees as specified by the Agriculture Marketing Services of the United States Department of Agriculture; and

(d) Evidencing periodic maintenance practices of shearing for Douglas fir and pine species, weed and brush control and one or more of the following practices: Basal pruning, fertilizing, insect and disease control, stump culture, soil cultivation, irrigation. [1963 c.577 §2; 1963 c.619 §1(2), (3); 1967 c.386 §1; 1973 c.503 §3; 1975 c.210 §1; 1977 c.766 §7; 1977 c.893 §17a; 1979 c.480 §1; 1981 c.804 §73; 1983 c.826 §18; 1985 c.604 §2; 1987 c.305 §4; 1989 c.653 §1; 1989 c.887 §7; 1991 c.459 §344; 1991 c.714 §4; 1993 c.704 §1; 1995 c.79 §75; 1995 c.211 §1; 1997 c.862 §1; 2001 c.613 §18; 2003 c.454 §117; 2003 c.621 §67a; 2005 c.354 §1; 2007 c.739 §34; 2009 c.850 §4; 2012 c.74 §1]

215.213 Uses permitted in exclusive farm use zones in counties that adopted marginal lands system prior to 1993; rules. (1) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), the following uses may be established in any area zoned for exclusive farm use:

(a) Churches and cemeteries in conjunction with churches.

(b) The propagation or harvesting of a forest product.

(c) Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A utility facility necessary for public service may be established as provided in:

(A) ORS 215.275; or

(B) If the utility facility is an associated transmission line, as defined in ORS 215.274 and 469.300.

(d) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator. Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel size requirements under ORS 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel.

(e) Nonresidential buildings customarily provided in conjunction with farm use.

(f) Subject to ORS 215.279, primary or accessory dwellings customarily provided in conjunction with farm use. For a primary dwelling, the dwelling must be on a lot or parcel that is managed as part of a farm operation and is not smaller than the minimum lot size in a farm zone with a minimum lot size acknowledged under ORS 197.251.

(g) Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (2)(a) or (b).

(h) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (2)(a) or (b).

(i) One manufactured dwelling or recreational vehicle, or the temporary residential use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. The governing body or its designee shall provide for periodic review of the hardship claimed under this paragraph. A temporary residence approved under this paragraph is not eligible for replacement under paragraph (q) of this subsection.

(j) Climbing and passing lanes within the right of way existing as of July 1, 1987.

(k) Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.

(L) Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.

(m) Minor betterment of existing public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, within right of way existing as of July

1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.

(n) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a county inventory as historic property as defined in ORS 358.480.

(o) Creation, restoration or enhancement of wetlands.

(p) A winery, as described in ORS 215.452 or 215.453.

(q) Subject to section 2, chapter 462, Oregon Laws 2013, alteration, restoration or replacement of a lawfully established dwelling.

(r) Farm stands if:

(A) The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

(B) The farm stand does not include structures designed for occupancy as a residence or for activity other than the sale of farm crops or livestock and does not include structures for banquets, public gatherings or public entertainment.

(s) An armed forces reserve center, if the center is within one-half mile of a community college. For purposes of this paragraph, "armed forces reserve center" includes an armory or National Guard support facility.

(t) A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this paragraph. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this paragraph. An owner of property used for the purpose authorized in this paragraph may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator's cost to maintain the property, buildings and facilities. As used in this paragraph, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for

flight and is controlled by radio, lines or design by a person on the ground.

(u) A facility for the processing of farm crops or for the production of biofuel, as defined in ORS 315.141, if the facility is located on a farm operation that provides at least one-quarter of the farm crops processed at the facility, or an establishment for the slaughter, processing or selling of poultry or poultry products pursuant to ORS 603.038. If a building is established or used for the processing facility or establishment, the farm operator may not devote more than 10,000 square feet of floor area to the processing facility or establishment, exclusive of the floor area designated for preparation, storage or other farm use. A processing facility or establishment must comply with all applicable siting standards but the standards may not be applied in a manner that prohibits the siting of the processing facility or establishment.

(v) Fire service facilities providing rural fire protection services.

(w) Irrigation reservoirs, canals, delivery lines and those structures and accessory operational facilities, not including parks or other recreational structures and facilities, associated with a district as defined in ORS 540.505.

(x) Utility facility service lines. Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

(A) A public right of way;

(B) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or

(C) The property to be served by the utility.

(y) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application of reclaimed water, agricultural or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter.

(z) Dog training classes or testing trials, which may be conducted outdoors or in pre-existing farm buildings, when:

(A) The number of dogs participating in training does not exceed 10 dogs per training class and the number of training classes to

be held on-site does not exceed six per day; and

(B) The number of dogs participating in a testing trial does not exceed 60 and the number of testing trials to be conducted on-site is limited to four or fewer trials per calendar year.

(2) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), the following uses may be established in any area zoned for exclusive farm use subject to ORS 215.296:

(a) A primary dwelling in conjunction with farm use or the propagation or harvesting of a forest product on a lot or parcel that is managed as part of a farm operation or woodlot if the farm operation or woodlot:

(A) Consists of 20 or more acres; and

(B) Is not smaller than the average farm or woodlot in the county producing at least \$2,500 in annual gross income from the crops, livestock or forest products to be raised on the farm operation or woodlot.

(b) A primary dwelling in conjunction with farm use or the propagation or harvesting of a forest product on a lot or parcel that is managed as part of a farm operation or woodlot smaller than required under paragraph (a) of this subsection, if the lot or parcel:

(A) Has produced at least \$20,000 in annual gross farm income in two consecutive calendar years out of the three calendar years before the year in which the application for the dwelling was made or is planted in perennials capable of producing upon harvest an average of at least \$20,000 in annual gross farm income; or

(B) Is a woodlot capable of producing an average over the growth cycle of \$20,000 in gross annual income.

(c) Commercial activities that are in conjunction with farm use, including the processing of farm crops into biofuel not permitted under ORS 215.203 (2)(b)(K) or subsection (1)(u) of this section.

(d) Operations conducted for:

(A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, not otherwise permitted under subsection (1)(g) of this section;

(B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

(C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

(D) Processing of other mineral resources and other subsurface resources.

(e) Community centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community, hunting and fishing preserves, public and private parks, playgrounds and campgrounds. Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296 (1). A public park or campground may be established as provided under ORS 195.120. As used in this paragraph, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance.

(f) Golf courses on land determined not to be high-value farmland as defined in ORS 195.300.

(g) Commercial utility facilities for the purpose of generating power for public use by sale.

(h) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

(i) A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203 (2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing

of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

(j) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.

(k)(A) Commercial dog boarding kennels;
or

(B) Dog training classes or testing trials that cannot be established under subsection (1)(z) of this section.

(L) Residential homes as defined in ORS 197.660, in existing dwellings.

(m) The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission or insect species. Insect species shall not include any species under quarantine by the State Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.

(n) Home occupations as provided in ORS 215.448.

(o) Transmission towers over 200 feet in height.

(p) Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.

(q) Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.

(r) Improvement of public road and highway related facilities such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels.

(s) A destination resort that is approved consistent with the requirements of any statewide planning goal relating to the siting of a destination resort.

(t) Room and board arrangements for a maximum of five unrelated persons in existing residences.

(u) A living history museum related to resource based activities owned and operated by a governmental agency or a local historical society, together with limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of the metropolitan urban growth boundary. As used in this paragraph:

(A) "Living history museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events; and

(B) "Local historical society" means the local historical society, recognized as such by the county governing body and organized under ORS chapter 65.

(v) Operations for the extraction and bottling of water.

(w) An aerial fireworks display business that has been in continuous operation at its current location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's permit to sell or provide fireworks.

(x) A landscape contracting business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.

(y) Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located.

(3) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), a single-family residential dwelling not provided in conjunction with farm use may be established on a lot or parcel with soils predominantly in capability classes IV through VIII as determined by the Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservation Service on October 15, 1983. A proposed dwelling is subject to approval of the governing body or its designee in any area zoned for exclusive

farm use upon written findings showing all of the following:

(a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use.

(b) The dwelling is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of the tract. A lot or parcel shall not be considered unsuitable solely because of its size or location if it can reasonably be put to farm use in conjunction with other land.

(c) Complies with such other conditions as the governing body or its designee considers necessary.

(4) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), one single-family dwelling, not provided in conjunction with farm use, may be established in any area zoned for exclusive farm use on a lot or parcel described in subsection (7) of this section that is not larger than three acres upon written findings showing:

(a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use;

(b) If the lot or parcel is located within the Willamette River Greenway, a floodplain or a geological hazard area, the dwelling complies with conditions imposed by local ordinances relating specifically to the Willamette River Greenway, floodplains or geological hazard areas, whichever is applicable; and

(c) The dwelling complies with other conditions considered necessary by the governing body or its designee.

(5) Upon receipt of an application for a permit under subsection (4) of this section, the governing body shall notify:

(a) Owners of land that is within 250 feet of the lot or parcel on which the dwelling will be established; and

(b) Persons who have requested notice of such applications and who have paid a reasonable fee imposed by the county to cover the cost of such notice.

(6) The notice required in subsection (5) of this section shall specify that persons have 15 days following the date of postmark of the notice to file a written objection on the grounds only that the dwelling or activities associated with it would force a significant change in or significantly increase the cost

of accepted farming practices on nearby lands devoted to farm use. If no objection is received, the governing body or its designee shall approve or disapprove the application. If an objection is received, the governing body shall set the matter for hearing in the manner prescribed in ORS 215.402 to 215.438. The governing body may charge the reasonable costs of the notice required by subsection (5)(a) of this section to the applicant for the permit requested under subsection (4) of this section.

(7) Subsection (4) of this section applies to a lot or parcel lawfully created between January 1, 1948, and July 1, 1983. For the purposes of this section:

(a) Only one lot or parcel exists if:

(A) A lot or parcel described in this section is contiguous to one or more lots or parcels described in this section; and

(B) On July 1, 1983, greater than possessory interests are held in those contiguous lots, parcels or lots and parcels by the same person, spouses or a single partnership or business entity, separately or in tenancy in common.

(b) "Contiguous" means lots, parcels or lots and parcels that have a common boundary, including but not limited to, lots, parcels or lots and parcels separated only by a public road.

(8) A person who sells or otherwise transfers real property in an exclusive farm use zone may retain a life estate in a dwelling on that property and in a tract of land under and around the dwelling.

(9) No final approval of a nonfarm use under this section shall be given unless any additional taxes imposed upon the change in use have been paid.

(10) Roads, highways and other transportation facilities and improvements not allowed under subsections (1) and (2) of this section may be established, subject to the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:

(a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or

(b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993.

(11) The following agri-tourism and other commercial events or activities that are related to and supportive of agriculture may be established in any area zoned for exclusive farm use:

(a) A county may authorize a single agri-tourism or other commercial event or activity on a tract in a calendar year by an authorization that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract, if the agri-tourism or other commercial event or activity meets any local standards that apply and:

(A) The agri-tourism or other commercial event or activity is incidental and subordinate to existing farm use on the tract;

(B) The duration of the agri-tourism or other commercial event or activity does not exceed 72 consecutive hours;

(C) The maximum attendance at the agri-tourism or other commercial event or activity does not exceed 500 people;

(D) The maximum number of motor vehicles parked at the site of the agri-tourism or other commercial event or activity does not exceed 250 vehicles;

(E) The agri-tourism or other commercial event or activity complies with ORS 215.296;

(F) The agri-tourism or other commercial event or activity occurs outdoors, in temporary structures, or in existing permitted structures, subject to health and fire and life safety requirements; and

(G) The agri-tourism or other commercial event or activity complies with conditions established for:

(i) Planned hours of operation;

(ii) Access, egress and parking;

(iii) A traffic management plan that identifies the projected number of vehicles and any anticipated use of public roads; and

(iv) Sanitation and solid waste.

(b) In the alternative to paragraphs (a) and (c) of this subsection, a county may authorize, through an expedited, single-event license, a single agri-tourism or other commercial event or activity on a tract in a calendar year by an expedited, single-event license that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract. A decision concerning an expedited, single-event license is not a land use decision, as defined in ORS 197.015. To approve an expedited, single-event license, the governing body of a county or its designee must determine that the proposed agri-tourism or other commercial event or activity meets any local standards that apply, and the agri-tourism or other commercial event or activity:

(A) Must be incidental and subordinate to existing farm use on the tract;

(B) May not begin before 6 a.m. or end after 10 p.m.;

(C) May not involve more than 100 attendees or 50 vehicles;

(D) May not include the artificial amplification of music or voices before 8 a.m. or after 8 p.m.;

(E) May not require or involve the construction or use of a new permanent structure in connection with the agri-tourism or other commercial event or activity;

(F) Must be located on a tract of at least 10 acres unless the owners or residents of adjoining properties consent, in writing, to the location; and

(G) Must comply with applicable health and fire and life safety requirements.

(c) In the alternative to paragraphs (a) and (b) of this subsection, a county may authorize up to six agri-tourism or other commercial events or activities on a tract in a calendar year by a limited use permit that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract. The agri-tourism or other commercial events or activities must meet any local standards that apply, and the agri-tourism or other commercial events or activities:

(A) Must be incidental and subordinate to existing farm use on the tract;

(B) May not, individually, exceed a duration of 72 consecutive hours;

(C) May not require that a new permanent structure be built, used or occupied in connection with the agri-tourism or other commercial events or activities;

(D) Must comply with ORS 215.296;

(E) May not, in combination with other agri-tourism or other commercial events or activities authorized in the area, materially alter the stability of the land use pattern in the area; and

(F) Must comply with conditions established for:

(i) The types of agri-tourism or other commercial events or activities that are authorized during each calendar year, including the number and duration of the agri-tourism or other commercial events and activities, the anticipated daily attendance and the hours of operation;

(ii) The location of existing structures and the location of proposed temporary structures to be used in connection with the agri-tourism or other commercial events or activities;

(iii) The location of access and egress and parking facilities to be used in connection with the agri-tourism or other commercial events or activities;

(iv) Traffic management, including the projected number of vehicles and any anticipated use of public roads; and

(v) Sanitation and solid waste.

(d) In addition to paragraphs (a) to (c) of this subsection, a county may authorize agri-tourism or other commercial events or activities that occur more frequently or for a longer period or that do not otherwise comply with paragraphs (a) to (c) of this subsection if the agri-tourism or other commercial events or activities comply with any local standards that apply and the agri-tourism or other commercial events or activities:

(A) Are incidental and subordinate to existing commercial farm use of the tract and are necessary to support the commercial farm uses or the commercial agricultural enterprises in the area;

(B) Comply with the requirements of paragraph (c)(C), (D), (E) and (F) of this subsection;

(C) Occur on a lot or parcel that complies with the acknowledged minimum lot or parcel size; and

(D) Do not exceed 18 events or activities in a calendar year.

(12) A holder of a permit authorized by a county under subsection (11)(d) of this section must request review of the permit at four-year intervals. Upon receipt of a request for review, the county shall:

(a) Provide public notice and an opportunity for public comment as part of the review process; and

(b) Limit its review to events and activities authorized by the permit, conformance with conditions of approval required by the permit and the standards established by subsection (11)(d) of this section.

(13) For the purposes of subsection (11) of this section:

(a) A county may authorize the use of temporary structures established in connection with the agri-tourism or other commercial events or activities authorized under subsection (11) of this section. However, the temporary structures must be removed at the end of the agri-tourism or other event or activity. The county may not approve an alteration to the land in connection with an agri-tourism or other commercial event or activity authorized under subsection (11) of this section, including, but not limited to, grading, filling or paving.

(b) The county may issue the limited use permits authorized by subsection (11)(c) of this section for two calendar years. When considering an application for renewal, the county shall ensure compliance with the

provisions of subsection (11)(c) of this section, any local standards that apply and conditions that apply to the permit or to the agri-tourism or other commercial events or activities authorized by the permit.

(c) The authorizations provided by subsection (11) of this section are in addition to other authorizations that may be provided by law, except that “outdoor mass gathering” and “other gathering,” as those terms are used in ORS 197.015 (10)(d), do not include agri-tourism or other commercial events and activities. [1963 c.577 §3; 1963 c.619 §1a; 1969 c.258 §1; 1973 c.503 §4; 1975 c.551 §1; 1975 c.552 §32; 1977 c.766 §8; 1977 c.788 §2; 1979 c.480 §6; 1979 c.773 §10; 1981 c.748 §44; 1983 c.743 §3; 1983 c.826 §6; 1983 c.827 §27b; 1985 c.544 §2; 1985 c.583 §1; 1985 c.604 §3; 1985 c.717 §5; 1985 c.811 §12; 1987 c.227 §1; 1987 c.729 §5; 1987 c.886 §9; 1989 c.224 §25; 1989 c.525 §1; 1989 c.564 §7; 1989 c.648 §59; 1989 c.739 §1; 1989 c.837 §26; 1989 c.861 §1; 1989 c.964 §10; 1991 c.459 §345; 1991 c.866 §1; 1991 c.950 §2; 1993 c.466 §1; 1993 c.469 §5; 1993 c.704 §2; 1993 c.792 §29a; 1995 c.435 §1; 1995 c.528 §1; 1997 c.249 §59; 1997 c.250 §1; 1997 c.276 §1; 1997 c.312 §1; 1997 c.318 §1; 1997 c.363 §1; 1997 c.862 §2; 1999 c.608 §1; 1999 c.640 §1; 1999 c.758 §1; 1999 c.816 §1; 1999 c.935 §20; 2001 c.149 §1; 2001 c.260 §§1,2; 2001 c.488 §1; 2001 c.613 §7; 2001 c.676 §1; 2001 c.757 §1; 2001 c.941 §1; 2003 c.247 §§1,2; 2005 c.22 §§161,162; 2005 c.150 §§1,2; 2005 c.354 §§2,3; 2005 c.609 §§24,25; 2005 c.693 §§1,2; 2007 c.71 §71; 2007 c.541 §1; 2007 c.739 §35; 2009 c.850 §1; 2011 c.459 §2; 2011 c.462 §1; 2011 c.567 §1; 2011 c.679 §7; 2012 c.74 §2; 2013 c.197 §1; 2013 c.242 §3; 2013 c.462 §4]

Note: The amendments to 215.213 by section 7, chapter 462, Oregon Laws 2013, become operative January 2, 2024. See section 10, chapter 462, Oregon Laws 2013. The text that is operative on and after January 2, 2024, is set forth for the user’s convenience.

215.213. (1) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), the following uses may be established in any area zoned for exclusive farm use:

(a) Churches and cemeteries in conjunction with churches.

(b) The propagation or harvesting of a forest product.

(c) Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A utility facility necessary for public service may be established as provided in:

(A) ORS 215.275; or

(B) If the utility facility is an associated transmission line, as defined in ORS 215.274 and 469.300.

(d) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator’s spouse, which means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator. Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel size requirements under ORS 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel.

(e) Nonresidential buildings customarily provided in conjunction with farm use.

(f) Subject to ORS 215.279, primary or accessory dwellings customarily provided in conjunction with farm use. For a primary dwelling, the dwelling must be on a lot or parcel that is managed as part of a farm operation and is not smaller than the minimum lot size in a farm zone with a minimum lot size acknowledged under ORS 197.251.

(g) Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (2)(a) or (b).

(h) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (2)(a) or (b).

(i) One manufactured dwelling or recreational vehicle, or the temporary residential use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. The governing body or its designee shall provide for periodic review of the hardship claimed under this paragraph. A temporary residence approved under this paragraph is not eligible for replacement under paragraph (q) of this subsection.

(j) Climbing and passing lanes within the right of way existing as of July 1, 1987.

(k) Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.

(L) Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.

(m) Minor betterment of existing public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.

(n) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a county inventory as historic property as defined in ORS 358.480.

(o) Creation, restoration or enhancement of wetlands.

(p) A winery, as described in ORS 215.452 or 215.453.

(q) Alteration, restoration or replacement of a lawfully established dwelling that:

(A) Has intact exterior walls and roof structure;

(B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(C) Has interior wiring for interior lights;

(D) Has a heating system; and

(E) In the case of replacement:

(i) Is removed, demolished or converted to an allowable nonresidential use within three months of the

completion of the replacement dwelling. A replacement dwelling may be sited on any part of the same lot or parcel. A dwelling established under this paragraph shall comply with all applicable siting standards. However, the standards shall not be applied in a manner that prohibits the siting of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the deed records for the county where the property is located a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this paragraph regarding replacement dwellings have changed to allow the siting of another dwelling. The county planning director or the director's designee shall maintain a record of the lots and parcels that do not qualify for the siting of a new dwelling under the provisions of this paragraph, including a copy of the deed restrictions and release statements filed under this paragraph; and

(ii) For which the applicant has requested a deferred replacement permit, is removed or demolished within three months after the deferred replacement permit is issued. A deferred replacement permit allows construction of the replacement dwelling at any time. If, however, the established dwelling is not removed or demolished within three months after the deferred replacement permit is issued, the permit becomes void. The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.

(r) Farm stands if:

(A) The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

(B) The farm stand does not include structures designed for occupancy as a residence or for activity other than the sale of farm crops or livestock and does not include structures for banquets, public gatherings or public entertainment.

(s) An armed forces reserve center, if the center is within one-half mile of a community college. For purposes of this paragraph, "armed forces reserve center" includes an armory or National Guard support facility.

(t) A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this paragraph. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this paragraph. An owner of property used for the purpose authorized in this paragraph may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator's cost to maintain the property, buildings and facilities. As used in this paragraph, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.

(u) A facility for the processing of farm crops or for the production of biofuel, as defined in ORS 315.141, if the facility is located on a farm operation that provides at least one-quarter of the farm crops processed at the facility, or an establishment for the slaughter, processing or selling of poultry or poultry products pursuant to ORS 603.038. If a building is established or used for the processing facility or establishment, the farm operator may not devote more than 10,000 square feet of floor area to the processing facility or establishment, exclusive of the floor area designated for preparation, storage or other farm use. A processing facility or establishment must comply with all applicable siting standards but the standards may not be applied in a manner that prohibits the siting of the processing facility or establishment.

(v) Fire service facilities providing rural fire protection services.

(w) Irrigation reservoirs, canals, delivery lines and those structures and accessory operational facilities, not including parks or other recreational structures and facilities, associated with a district as defined in ORS 540.505.

(x) Utility facility service lines. Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

(A) A public right of way;

(B) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or

(C) The property to be served by the utility.

(y) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application of reclaimed water, agricultural or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter.

(z) Dog training classes or testing trials, which may be conducted outdoors or in preexisting farm buildings, when:

(A) The number of dogs participating in training does not exceed 10 dogs per training class and the number of training classes to be held on-site does not exceed six per day; and

(B) The number of dogs participating in a testing trial does not exceed 60 and the number of testing trials to be conducted on-site is limited to four or fewer trials per calendar year.

(2) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), the following uses may be established in any area zoned for exclusive farm use subject to ORS 215.296:

(a) A primary dwelling in conjunction with farm use or the propagation or harvesting of a forest product on a lot or parcel that is managed as part of a farm operation or woodlot if the farm operation or woodlot:

(A) Consists of 20 or more acres; and

(B) Is not smaller than the average farm or woodlot in the county producing at least \$2,500 in annual gross income from the crops, livestock or forest products to be raised on the farm operation or woodlot.

(b) A primary dwelling in conjunction with farm use or the propagation or harvesting of a forest product on a lot or parcel that is managed as part of a farm operation or woodlot smaller than required under paragraph (a) of this subsection, if the lot or parcel:

(A) Has produced at least \$20,000 in annual gross farm income in two consecutive calendar years out of the three calendar years before the year in which the application for the dwelling was made or is planted in perennials capable of producing upon harvest an average of at least \$20,000 in annual gross farm income; or

(B) Is a woodlot capable of producing an average over the growth cycle of \$20,000 in gross annual income.

(c) Commercial activities that are in conjunction with farm use, including the processing of farm crops into biofuel not permitted under ORS 215.203 (2)(b)(K) or subsection (1)(u) of this section.

(d) Operations conducted for:

(A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, not otherwise permitted under subsection (1)(g) of this section;

(B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

(C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

(D) Processing of other mineral resources and other subsurface resources.

(e) Community centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community, hunting and fishing preserves, public and private parks, playgrounds and campgrounds. Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296 (1). A public park or campground may be established as provided under ORS 195.120. As used in this paragraph, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance.

(f) Golf courses on land determined not to be high-value farmland as defined in ORS 195.300.

(g) Commercial utility facilities for the purpose of generating power for public use by sale.

(h) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

(i) A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203 (2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section,

means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

(j) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.

(k)(A) Commercial dog boarding kennels; or

(B) Dog training classes or testing trials that cannot be established under subsection (1)(z) of this section.

(L) Residential homes as defined in ORS 197.660, in existing dwellings.

(m) The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission or insect species. Insect species shall not include any species under quarantine by the State Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.

(n) Home occupations as provided in ORS 215.448.

(o) Transmission towers over 200 feet in height.

(p) Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.

(q) Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.

(r) Improvement of public road and highway related facilities such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels.

(s) A destination resort that is approved consistent with the requirements of any statewide planning goal relating to the siting of a destination resort.

(t) Room and board arrangements for a maximum of five unrelated persons in existing residences.

(u) A living history museum related to resource based activities owned and operated by a governmental agency or a local historical society, together with limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of the metropolitan urban growth boundary. As used in this paragraph:

(A) "Living history museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events; and

(B) "Local historical society" means the local historical society, recognized as such by the county governing body and organized under ORS chapter 65.

(v) Operations for the extraction and bottling of water.

(w) An aerial fireworks display business that has been in continuous operation at its current location

within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's permit to sell or provide fireworks.

(x) A landscape contracting business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.

(y) Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located.

(3) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), a single-family residential dwelling not provided in conjunction with farm use may be established on a lot or parcel with soils predominantly in capability classes IV through VIII as determined by the Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservation Service on October 15, 1983. A proposed dwelling is subject to approval of the governing body or its designee in any area zoned for exclusive farm use upon written findings showing all of the following:

(a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use.

(b) The dwelling is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of the tract. A lot or parcel shall not be considered unsuitable solely because of its size or location if it can reasonably be put to farm use in conjunction with other land.

(c) Complies with such other conditions as the governing body or its designee considers necessary.

(4) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), one single-family dwelling, not provided in conjunction with farm use, may be established in any area zoned for exclusive farm use on a lot or parcel described in subsection (7) of this section that is not larger than three acres upon written findings showing:

(a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use;

(b) If the lot or parcel is located within the Willamette River Greenway, a floodplain or a geological hazard area, the dwelling complies with conditions imposed by local ordinances relating specifically to the Willamette River Greenway, floodplains or geological hazard areas, whichever is applicable; and

(c) The dwelling complies with other conditions considered necessary by the governing body or its designee.

(5) Upon receipt of an application for a permit under subsection (4) of this section, the governing body shall notify:

(a) Owners of land that is within 250 feet of the lot or parcel on which the dwelling will be established; and

(b) Persons who have requested notice of such applications and who have paid a reasonable fee imposed by the county to cover the cost of such notice.

(6) The notice required in subsection (5) of this section shall specify that persons have 15 days following the date of postmark of the notice to file a written objection on the grounds only that the dwelling or activities associated with it would force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use. If no

objection is received, the governing body or its designee shall approve or disapprove the application. If an objection is received, the governing body shall set the matter for hearing in the manner prescribed in ORS 215.402 to 215.438. The governing body may charge the reasonable costs of the notice required by subsection (5)(a) of this section to the applicant for the permit requested under subsection (4) of this section.

(7) Subsection (4) of this section applies to a lot or parcel lawfully created between January 1, 1948, and July 1, 1983. For the purposes of this section:

(a) Only one lot or parcel exists if:

(A) A lot or parcel described in this section is contiguous to one or more lots or parcels described in this section; and

(B) On July 1, 1983, greater than possessory interests are held in those contiguous lots, parcels or lots and parcels by the same person, spouses or a single partnership or business entity, separately or in tenancy in common.

(b) "Contiguous" means lots, parcels or lots and parcels that have a common boundary, including but not limited to, lots, parcels or lots and parcels separated only by a public road.

(8) A person who sells or otherwise transfers real property in an exclusive farm use zone may retain a life estate in a dwelling on that property and in a tract of land under and around the dwelling.

(9) No final approval of a nonfarm use under this section shall be given unless any additional taxes imposed upon the change in use have been paid.

(10) Roads, highways and other transportation facilities and improvements not allowed under subsections (1) and (2) of this section may be established, subject to the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:

(a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or

(b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993.

(11) The following agri-tourism and other commercial events or activities that are related to and supportive of agriculture may be established in any area zoned for exclusive farm use:

(a) A county may authorize a single agri-tourism or other commercial event or activity on a tract in a calendar year by an authorization that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract, if the agri-tourism or other commercial event or activity meets any local standards that apply and:

(A) The agri-tourism or other commercial event or activity is incidental and subordinate to existing farm use on the tract;

(B) The duration of the agri-tourism or other commercial event or activity does not exceed 72 consecutive hours;

(C) The maximum attendance at the agri-tourism or other commercial event or activity does not exceed 500 people;

(D) The maximum number of motor vehicles parked at the site of the agri-tourism or other commercial event or activity does not exceed 250 vehicles;

(E) The agri-tourism or other commercial event or activity complies with ORS 215.296;

(F) The agri-tourism or other commercial event or activity occurs outdoors, in temporary structures, or in existing permitted structures, subject to health and fire and life safety requirements; and

(G) The agri-tourism or other commercial event or activity complies with conditions established for:

(i) Planned hours of operation;

(ii) Access, egress and parking;

(iii) A traffic management plan that identifies the projected number of vehicles and any anticipated use of public roads; and

(iv) Sanitation and solid waste.

(b) In the alternative to paragraphs (a) and (c) of this subsection, a county may authorize, through an expedited, single-event license, a single agri-tourism or other commercial event or activity on a tract in a calendar year by an expedited, single-event license that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract. A decision concerning an expedited, single-event license is not a land use decision, as defined in ORS 197.015. To approve an expedited, single-event license, the governing body of a county or its designee must determine that the proposed agri-tourism or other commercial event or activity meets any local standards that apply, and the agri-tourism or other commercial event or activity:

(A) Must be incidental and subordinate to existing farm use on the tract;

(B) May not begin before 6 a.m. or end after 10 p.m.;

(C) May not involve more than 100 attendees or 50 vehicles;

(D) May not include the artificial amplification of music or voices before 8 a.m. or after 8 p.m.;

(E) May not require or involve the construction or use of a new permanent structure in connection with the agri-tourism or other commercial event or activity;

(F) Must be located on a tract of at least 10 acres unless the owners or residents of adjoining properties consent, in writing, to the location; and

(G) Must comply with applicable health and fire and life safety requirements.

(c) In the alternative to paragraphs (a) and (b) of this subsection, a county may authorize up to six agri-tourism or other commercial events or activities on a tract in a calendar year by a limited use permit that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract. The agri-tourism or other commercial events or activities must meet any local standards that apply, and the agri-tourism or other commercial events or activities:

(A) Must be incidental and subordinate to existing farm use on the tract;

(B) May not, individually, exceed a duration of 72 consecutive hours;

(C) May not require that a new permanent structure be built, used or occupied in connection with the agri-tourism or other commercial events or activities;

(D) Must comply with ORS 215.296;

(E) May not, in combination with other agri-tourism or other commercial events or activities authorized in the area, materially alter the stability of the land use pattern in the area; and

(F) Must comply with conditions established for:

(i) The types of agri-tourism or other commercial events or activities that are authorized during each calendar year, including the number and duration of the agri-tourism or other commercial events and activities, the anticipated daily attendance and the hours of operation;

(ii) The location of existing structures and the location of proposed temporary structures to be used in connection with the agri-tourism or other commercial events or activities;

(iii) The location of access and egress and parking facilities to be used in connection with the agri-tourism or other commercial events or activities;

(iv) Traffic management, including the projected number of vehicles and any anticipated use of public roads; and

(v) Sanitation and solid waste.

(d) In addition to paragraphs (a) to (c) of this subsection, a county may authorize agri-tourism or other commercial events or activities that occur more frequently or for a longer period or that do not otherwise comply with paragraphs (a) to (c) of this subsection if the agri-tourism or other commercial events or activities comply with any local standards that apply and the agri-tourism or other commercial events or activities:

(A) Are incidental and subordinate to existing commercial farm use of the tract and are necessary to support the commercial farm uses or the commercial agricultural enterprises in the area;

(B) Comply with the requirements of paragraph (c)(C), (D), (E) and (F) of this subsection;

(C) Occur on a lot or parcel that complies with the acknowledged minimum lot or parcel size; and

(D) Do not exceed 18 events or activities in a calendar year.

(12) A holder of a permit authorized by a county under subsection (11)(d) of this section must request review of the permit at four-year intervals. Upon receipt of a request for review, the county shall:

(a) Provide public notice and an opportunity for public comment as part of the review process; and

(b) Limit its review to events and activities authorized by the permit, conformance with conditions of approval required by the permit and the standards established by subsection (11)(d) of this section.

(13) For the purposes of subsection (11) of this section:

(a) A county may authorize the use of temporary structures established in connection with the agri-tourism or other commercial events or activities authorized under subsection (11) of this section. However, the temporary structures must be removed at the end of the agri-tourism or other event or activity. The county may not approve an alteration to the land in connection with an agri-tourism or other commercial event or activity authorized under subsection (11) of this section, including, but not limited to, grading, filling or paving.

(b) The county may issue the limited use permits authorized by subsection (11)(c) of this section for two calendar years. When considering an application for renewal, the county shall ensure compliance with the provisions of subsection (11)(c) of this section, any local standards that apply and conditions that apply to the permit or to the agri-tourism or other commercial events or activities authorized by the permit.

(c) The authorizations provided by subsection (11) of this section are in addition to other authorizations that may be provided by law, except that "outdoor mass gathering" and "other gathering," as those terms are used in ORS 197.015 (10)(d), do not include agri-tourism or other commercial events and activities.

215.218 Certain private hunting preserves not subject to land use approval; complaint procedures. (1) A person who owns a private hunting preserve that was licensed under ORS 497.248 on or before July 28, 2003, and that has not been submitted to the appropriate local governing body or its designee for land use approval may continue to operate the hunting preserve without local

land use approval. The hunting preserve may include one sport clay station that existed on July 28, 2003, is used during the hunting season only for shooting practice in conjunction with hunting and is subordinate to the use of the land as a hunting preserve.

(2) A person engaged in farm or forest practices on lands devoted to farm or forest use may file a complaint with the local governing body or its designee, alleging that the operation of the hunting preserve has:

(a)(A) Forced a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

(B) Significantly increased the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

(b) Adversely affected the complainant.

(3) The local governing body or its designee shall process a complaint filed under this section in the manner described in ORS 215.296 (4) to (7). [2003 c.616 §2]

215.283 Uses permitted in exclusive farm use zones in nonmarginal lands counties; rules. (1) The following uses may be established in any area zoned for exclusive farm use:

(a) Churches and cemeteries in conjunction with churches.

(b) The propagation or harvesting of a forest product.

(c) Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A utility facility necessary for public service may be established as provided in:

(A) ORS 215.275; or

(B) If the utility facility is an associated transmission line, as defined in ORS 215.274 and 469.300.

(d) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator. Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel size requirements under ORS 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or other financing secured by the dwelling and

the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel.

(e) Subject to ORS 215.279, primary or accessory dwellings and other buildings customarily provided in conjunction with farm use.

(f) Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (2)(a) or (b).

(g) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (2)(a) or (b).

(h) Climbing and passing lanes within the right of way existing as of July 1, 1987.

(i) Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.

(j) Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.

(k) Minor betterment of existing public road and highway related facilities such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.

(L) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a county inventory as historic property as defined in ORS 358.480.

(m) Creation, restoration or enhancement of wetlands.

(n) A winery, as described in ORS 215.452 or 215.453.

(o) Farm stands if:

(A) The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the

local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

(B) The farm stand does not include structures designed for occupancy as a residence or for activity other than the sale of farm crops or livestock and does not include structures for banquets, public gatherings or public entertainment.

(p) Subject to section 2, chapter 462, Oregon Laws 2013, alteration, restoration or replacement of a lawfully established dwelling.

(q) A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this paragraph. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this paragraph. An owner of property used for the purpose authorized in this paragraph may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator's cost to maintain the property, buildings and facilities. As used in this paragraph, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.

(r) A facility for the processing of farm crops or for the production of biofuel, as defined in ORS 315.141, if the facility is located on a farm operation that provides at least one-quarter of the farm crops processed at the facility, or an establishment for the slaughter, processing or selling of poultry or poultry products pursuant to ORS 603.038. If a building is established or used for the processing facility or establishment, the farm operator may not devote more than 10,000 square feet of floor area to the processing facility or establishment, exclusive of the floor area designated for preparation, storage or other farm use. A processing facility or establishment must comply with all applicable siting standards but the standards may not be applied in a manner that prohibits the siting of the processing facility or establishment.

(s) Fire service facilities providing rural fire protection services.

(t) Irrigation reservoirs, canals, delivery lines and those structures and accessory operational facilities, not including parks or other recreational structures and facilities, associated with a district as defined in ORS 540.505.

(u) Utility facility service lines. Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

(A) A public right of way;

(B) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or

(C) The property to be served by the utility.

(v) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application of reclaimed water, agricultural or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter.

(w) A county law enforcement facility that lawfully existed on August 20, 2002, and is used to provide rural law enforcement services primarily in rural areas, including parole and post-prison supervision, but not including a correctional facility as defined under ORS 162.135.

(x) Dog training classes or testing trials, which may be conducted outdoors or in pre-existing farm buildings, when:

(A) The number of dogs participating in training does not exceed 10 dogs per training class and the number of training classes to be held on-site does not exceed six per day; and

(B) The number of dogs participating in a testing trial does not exceed 60 and the number of testing trials to be conducted on-site is limited to four or fewer trials per calendar year.

(2) The following nonfarm uses may be established, subject to the approval of the governing body or its designee in any area zoned for exclusive farm use subject to ORS 215.296:

(a) Commercial activities that are in conjunction with farm use, including the processing of farm crops into biofuel not permitted under ORS 215.203 (2)(b)(K) or subsection (1)(r) of this section.

(b) Operations conducted for:

(A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005 not otherwise permitted under subsection (1)(f) of this section;

(B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

(C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

(D) Processing of other mineral resources and other subsurface resources.

(c) Private parks, playgrounds, hunting and fishing preserves and campgrounds. Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296 (1). As used in this paragraph, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance.

(d) Parks and playgrounds. A public park may be established consistent with the provisions of ORS 195.120.

(e) Community centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community. A community center authorized under this paragraph may provide services to veterans, including but not limited to emergency and transitional shelter, preparation and service of meals, vocational and educational counseling and referral to local, state or federal agencies providing medical, mental health, disability income replacement and substance abuse services, only in a facility that is in existence on January 1, 2006. The services may not include direct delivery of medical, mental health, disability income replacement or substance abuse services.

(f) Golf courses on land determined not to be high-value farmland, as defined in ORS 195.300.

(g) Commercial utility facilities for the purpose of generating power for public use by sale.

(h) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport, as used in this section, means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

(i) Home occupations as provided in ORS 215.448.

(j) A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203 (2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

(k) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.

(L) One manufactured dwelling or recreational vehicle, or the temporary residential use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. The governing body or its designee shall provide for periodic review of the hardship claimed under this paragraph. A temporary residence approved under this

paragraph is not eligible for replacement under subsection (1)(p) of this section.

(m) Transmission towers over 200 feet in height.

(n)(A) Commercial dog boarding kennels; or

(B) Dog training classes or testing trials that cannot be established under subsection (1)(x) of this section.

(o) Residential homes as defined in ORS 197.660, in existing dwellings.

(p) The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission or insect species. Insect species shall not include any species under quarantine by the State Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.

(q) Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.

(r) Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.

(s) Improvement of public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels.

(t) A destination resort that is approved consistent with the requirements of any statewide planning goal relating to the siting of a destination resort.

(u) Room and board arrangements for a maximum of five unrelated persons in existing residences.

(v) Operations for the extraction and bottling of water.

(w) Expansion of existing county fairgrounds and activities directly relating to county fairgrounds governed by county fair boards established pursuant to ORS 565.210.

(x) A living history museum related to resource based activities owned and operated by a governmental agency or a local historical society, together with limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings

of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of an urban growth boundary. As used in this paragraph:

(A) "Living history museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events; and

(B) "Local historical society" means the local historical society recognized by the county governing body and organized under ORS chapter 65.

(y) An aerial fireworks display business that has been in continuous operation at its current location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's permit to sell or provide fireworks.

(z) A landscape contracting business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.

(aa) Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located.

(3) Roads, highways and other transportation facilities and improvements not allowed under subsections (1) and (2) of this section may be established, subject to the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:

(a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or

(b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993.

(4) The following agri-tourism and other commercial events or activities that are related to and supportive of agriculture may be established in any area zoned for exclusive farm use:

(a) A county may authorize a single agri-tourism or other commercial event or activity on a tract in a calendar year by an authorization that is personal to the appli-

cant and is not transferred by, or transferable with, a conveyance of the tract, if the agri-tourism or other commercial event or activity meets any local standards that apply and:

(A) The agri-tourism or other commercial event or activity is incidental and subordinate to existing farm use on the tract;

(B) The duration of the agri-tourism or other commercial event or activity does not exceed 72 consecutive hours;

(C) The maximum attendance at the agri-tourism or other commercial event or activity does not exceed 500 people;

(D) The maximum number of motor vehicles parked at the site of the agri-tourism or other commercial event or activity does not exceed 250 vehicles;

(E) The agri-tourism or other commercial event or activity complies with ORS 215.296;

(F) The agri-tourism or other commercial event or activity occurs outdoors, in temporary structures, or in existing permitted structures, subject to health and fire and life safety requirements; and

(G) The agri-tourism or other commercial event or activity complies with conditions established for:

(i) Planned hours of operation;

(ii) Access, egress and parking;

(iii) A traffic management plan that identifies the projected number of vehicles and any anticipated use of public roads; and

(iv) Sanitation and solid waste.

(b) In the alternative to paragraphs (a) and (c) of this subsection, a county may authorize, through an expedited, single-event license, a single agri-tourism or other commercial event or activity on a tract in a calendar year by an expedited, single-event license that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract. A decision concerning an expedited, single-event license is not a land use decision, as defined in ORS 197.015. To approve an expedited, single-event license, the governing body of a county or its designee must determine that the proposed agri-tourism or other commercial event or activity meets any local standards that apply, and the agri-tourism or other commercial event or activity:

(A) Must be incidental and subordinate to existing farm use on the tract;

(B) May not begin before 6 a.m. or end after 10 p.m.;

(C) May not involve more than 100 attendees or 50 vehicles;

(D) May not include the artificial amplification of music or voices before 8 a.m. or after 8 p.m.;

(E) May not require or involve the construction or use of a new permanent structure in connection with the agri-tourism or other commercial event or activity;

(F) Must be located on a tract of at least 10 acres unless the owners or residents of adjoining properties consent, in writing, to the location; and

(G) Must comply with applicable health and fire and life safety requirements.

(c) In the alternative to paragraphs (a) and (b) of this subsection, a county may authorize up to six agri-tourism or other commercial events or activities on a tract in a calendar year by a limited use permit that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract. The agri-tourism or other commercial events or activities must meet any local standards that apply, and the agri-tourism or other commercial events or activities:

(A) Must be incidental and subordinate to existing farm use on the tract;

(B) May not, individually, exceed a duration of 72 consecutive hours;

(C) May not require that a new permanent structure be built, used or occupied in connection with the agri-tourism or other commercial events or activities;

(D) Must comply with ORS 215.296;

(E) May not, in combination with other agri-tourism or other commercial events or activities authorized in the area, materially alter the stability of the land use pattern in the area; and

(F) Must comply with conditions established for:

(i) The types of agri-tourism or other commercial events or activities that are authorized during each calendar year, including the number and duration of the agri-tourism or other commercial events and activities, the anticipated daily attendance and the hours of operation;

(ii) The location of existing structures and the location of proposed temporary structures to be used in connection with the agri-tourism or other commercial events or activities;

(iii) The location of access and egress and parking facilities to be used in connection with the agri-tourism or other commercial events or activities;

(iv) Traffic management, including the projected number of vehicles and any anticipated use of public roads; and

(v) Sanitation and solid waste.

(d) In addition to paragraphs (a) to (c) of this subsection, a county may authorize agri-tourism or other commercial events or activities that occur more frequently or for a longer period or that do not otherwise comply with paragraphs (a) to (c) of this subsection if the agri-tourism or other commercial events or activities comply with any local standards that apply and the agri-tourism or other commercial events or activities:

(A) Are incidental and subordinate to existing commercial farm use of the tract and are necessary to support the commercial farm uses or the commercial agricultural enterprises in the area;

(B) Comply with the requirements of paragraph (c)(C), (D), (E) and (F) of this subsection;

(C) Occur on a lot or parcel that complies with the acknowledged minimum lot or parcel size; and

(D) Do not exceed 18 events or activities in a calendar year.

(5) A holder of a permit authorized by a county under subsection (4)(d) of this section must request review of the permit at four-year intervals. Upon receipt of a request for review, the county shall:

(a) Provide public notice and an opportunity for public comment as part of the review process; and

(b) Limit its review to events and activities authorized by the permit, conformance with conditions of approval required by the permit and the standards established by subsection (4)(d) of this section.

(6) For the purposes of subsection (4) of this section:

(a) A county may authorize the use of temporary structures established in connection with the agri-tourism or other commercial events or activities authorized under subsection (4) of this section. However, the temporary structures must be removed at the end of the agri-tourism or other event or activity. The county may not approve an alteration to the land in connection with an agri-tourism or other commercial event or activity authorized under subsection (4) of this section, including, but not limited to, grading, filling or paving.

(b) The county may issue the limited use permits authorized by subsection (4)(c) of this section for two calendar years. When considering an application for renewal, the county shall ensure compliance with the provisions of subsection (4)(c) of this section, any local standards that apply and conditions that apply to the permit or to the agri-tourism or

other commercial events or activities authorized by the permit.

(c) The authorizations provided by subsection (4) of this section are in addition to other authorizations that may be provided by law, except that “outdoor mass gathering” and “other gathering,” as those terms are used in ORS 197.015 (10)(d), do not include agri-tourism or other commercial events and activities. [1983 c.826 §17; 1985 c.544 §3; 1985 c.583 §2; 1985 c.604 §4; 1985 c.717 §7; 1985 c.811 §7; 1987 c.227 §2; 1987 c.729 §5a; 1987 c.886 §10; 1989 c.224 §27; 1989 c.525 §2; 1989 c.564 §9; 1989 c.648 §61; 1989 c.739 §2; 1989 c.837 §27; 1989 c.861 §2; 1989 c.964 §11; 1991 c.459 §348; 1991 c.950 §1; 1993 c.466 §2; 1993 c.704 §3; 1993 c.792 §14; subsections (3) to (8) renumbered 215.284 in 1993; 1995 c.528 §2; 1997 c.250 §2; 1997 c.276 §2; 1997 c.312 §2; 1997 c.318 §3; 1997 c.363 §2; 1997 c.862 §3; 1999 c.320 §1; 1999 c.608 §2; 1999 c.640 §2; 1999 c.756 §§14a,14b; 1999 c.758 §2; 1999 c.816 §2; 1999 c.935 §22; 2001 c.149 §§2,3; 2001 c.488 §§2,3; 2001 c.544 §§1,2; 2001 c.613 §§8,9; 2001 c.676 §§2,3; 2001 c.757 §§2,3; 2001 c.941 §§2,3; 2003 c.247 §3; 2005 c.22 §163; 2005 c.354 §4; 2005 c.609 §26; 2005 c.625 §76; 2005 c.693 §3; 2005 c.737 §1; 2007 c.71 §72; 2007 c.541 §2; 2007 c.739 §36; 2009 c.850 §2; 2011 c.459 §3; 2011 c.462 §2; 2011 c.567 §2; 2011 c.679 §8; 2012 c.74 §3; 2013 c.197 §2; 2013 c.242 §4; 2013 c.462 §5]

Note: The amendments to 215.283 by section 8, chapter 462, Oregon Laws 2013, become operative January 2, 2024. See section 10, chapter 462, Oregon Laws 2013. The text that is operative on and after January 2, 2024, is set forth for the user's convenience.

215.283. (1) The following uses may be established in any area zoned for exclusive farm use:

(a) Churches and cemeteries in conjunction with churches.

(b) The propagation or harvesting of a forest product.

(c) Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A utility facility necessary for public service may be established as provided in:

(A) ORS 215.275; or

(B) If the utility facility is an associated transmission line, as defined in ORS 215.274 and 469.300.

(d) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator. Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel size requirements under ORS 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel.

(e) Subject to ORS 215.279, primary or accessory dwellings and other buildings customarily provided in conjunction with farm use.

(f) Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the

placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (2)(a) or (b).

(g) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (2)(a) or (b).

(h) Climbing and passing lanes within the right of way existing as of July 1, 1987.

(i) Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.

(j) Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.

(k) Minor betterment of existing public road and highway related facilities such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.

(L) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a county inventory as historic property as defined in ORS 358.480.

(m) Creation, restoration or enhancement of wetlands.

(n) A winery, as described in ORS 215.452 or 215.453.

(o) Farm stands if:

(A) The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

(B) The farm stand does not include structures designed for occupancy as a residence or for activity other than the sale of farm crops or livestock and does not include structures for banquets, public gatherings or public entertainment.

(p) Alteration, restoration or replacement of a lawfully established dwelling that:

(A) Has intact exterior walls and roof structure;

(B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(C) Has interior wiring for interior lights;

(D) Has a heating system; and

(E) In the case of replacement:

(i) Is removed, demolished or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of the same lot or parcel. A dwelling established under this paragraph shall comply with all applicable siting standards. However, the standards shall not be applied in a manner that prohibits the siting of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the deed records for the county where the

property is located a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this paragraph regarding replacement dwellings have changed to allow the siting of another dwelling. The county planning director or the director's designee shall maintain a record of the lots and parcels that do not qualify for the siting of a new dwelling under the provisions of this paragraph, including a copy of the deed restrictions and release statements filed under this paragraph; and

(ii) For which the applicant has requested a deferred replacement permit, is removed or demolished within three months after the deferred replacement permit is issued. A deferred replacement permit allows construction of the replacement dwelling at any time. If, however, the established dwelling is not removed or demolished within three months after the deferred replacement permit is issued, the permit becomes void. The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.

(q) A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this paragraph. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this paragraph. An owner of property used for the purpose authorized in this paragraph may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator's cost to maintain the property, buildings and facilities. As used in this paragraph, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.

(r) A facility for the processing of farm crops or for the production of biofuel, as defined in ORS 315.141, if the facility is located on a farm operation that provides at least one-quarter of the farm crops processed at the facility, or an establishment for the slaughter, processing or selling of poultry or poultry products pursuant to ORS 603.038. If a building is established or used for the processing facility or establishment, the farm operator may not devote more than 10,000 square feet of floor area to the processing facility or establishment, exclusive of the floor area designated for preparation, storage or other farm use. A processing facility or establishment must comply with all applicable siting standards but the standards may not be applied in a manner that prohibits the siting of the processing facility or establishment.

(s) Fire service facilities providing rural fire protection services.

(t) Irrigation reservoirs, canals, delivery lines and those structures and accessory operational facilities, not including parks or other recreational structures and facilities, associated with a district as defined in ORS 540.505.

(u) Utility facility service lines. Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

(A) A public right of way;

(B) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or

(C) The property to be served by the utility.

(v) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application of reclaimed water, agricultural or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter.

(w) A county law enforcement facility that lawfully existed on August 20, 2002, and is used to provide rural law enforcement services primarily in rural areas, including parole and post-prison supervision, but not including a correctional facility as defined under ORS 162.135.

(x) Dog training classes or testing trials, which may be conducted outdoors or in preexisting farm buildings, when:

(A) The number of dogs participating in training does not exceed 10 dogs per training class and the number of training classes to be held on-site does not exceed six per day; and

(B) The number of dogs participating in a testing trial does not exceed 60 and the number of testing trials to be conducted on-site is limited to four or fewer trials per calendar year.

(2) The following nonfarm uses may be established, subject to the approval of the governing body or its designee in any area zoned for exclusive farm use subject to ORS 215.296:

(a) Commercial activities that are in conjunction with farm use, including the processing of farm crops into biofuel not permitted under ORS 215.203 (2)(b)(K) or subsection (1)(r) of this section.

(b) Operations conducted for:

(A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005 not otherwise permitted under subsection (1)(f) of this section;

(B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

(C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

(D) Processing of other mineral resources and other subsurface resources.

(c) Private parks, playgrounds, hunting and fishing preserves and campgrounds. Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296 (1). As used in this paragraph, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance.

(d) Parks and playgrounds. A public park may be established consistent with the provisions of ORS 195.120.

(e) Community centers owned by a governmental agency or a nonprofit community organization and op-

erated primarily by and for residents of the local rural community. A community center authorized under this paragraph may provide services to veterans, including but not limited to emergency and transitional shelter, preparation and service of meals, vocational and educational counseling and referral to local, state or federal agencies providing medical, mental health, disability income replacement and substance abuse services, only in a facility that is in existence on January 1, 2006. The services may not include direct delivery of medical, mental health, disability income replacement or substance abuse services.

(f) Golf courses on land determined not to be high-value farmland, as defined in ORS 195.300.

(g) Commercial utility facilities for the purpose of generating power for public use by sale.

(h) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport, as used in this section, means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

(i) Home occupations as provided in ORS 215.448.

(j) A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203 (2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

(k) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.

(L) One manufactured dwelling or recreational vehicle, or the temporary residential use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. The governing body or its designee shall provide for periodic review of the hardship claimed under this paragraph. A temporary residence approved under this paragraph is not eligible for replacement under subsection (1)(p) of this section.

(m) Transmission towers over 200 feet in height.

(n)(A) Commercial dog boarding kennels; or

(B) Dog training classes or testing trials that cannot be established under subsection (1)(x) of this section.

(o) Residential homes as defined in ORS 197.660, in existing dwellings.

(p) The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission or insect species. Insect species shall not include any species under quarantine by the State Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.

(q) Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.

(r) Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.

(s) Improvement of public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels.

(t) A destination resort that is approved consistent with the requirements of any statewide planning goal relating to the siting of a destination resort.

(u) Room and board arrangements for a maximum of five unrelated persons in existing residences.

(v) Operations for the extraction and bottling of water.

(w) Expansion of existing county fairgrounds and activities directly relating to county fairgrounds governed by county fair boards established pursuant to ORS 565.210.

(x) A living history museum related to resource based activities owned and operated by a governmental agency or a local historical society, together with limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of an urban growth boundary. As used in this paragraph:

(A) "Living history museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events; and

(B) "Local historical society" means the local historical society recognized by the county governing body and organized under ORS chapter 65.

(y) An aerial fireworks display business that has been in continuous operation at its current location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's permit to sell or provide fireworks.

(z) A landscape contracting business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.

(aa) Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located.

(3) Roads, highways and other transportation facilities and improvements not allowed under subsections (1) and (2) of this section may be established, subject to

the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:

(a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or

(b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993.

(4) The following agri-tourism and other commercial events or activities that are related to and supportive of agriculture may be established in any area zoned for exclusive farm use:

(a) A county may authorize a single agri-tourism or other commercial event or activity on a tract in a calendar year by an authorization that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract, if the agri-tourism or other commercial event or activity meets any local standards that apply and:

(A) The agri-tourism or other commercial event or activity is incidental and subordinate to existing farm use on the tract;

(B) The duration of the agri-tourism or other commercial event or activity does not exceed 72 consecutive hours;

(C) The maximum attendance at the agri-tourism or other commercial event or activity does not exceed 500 people;

(D) The maximum number of motor vehicles parked at the site of the agri-tourism or other commercial event or activity does not exceed 250 vehicles;

(E) The agri-tourism or other commercial event or activity complies with ORS 215.296;

(F) The agri-tourism or other commercial event or activity occurs outdoors, in temporary structures, or in existing permitted structures, subject to health and fire and life safety requirements; and

(G) The agri-tourism or other commercial event or activity complies with conditions established for:

(i) Planned hours of operation;

(ii) Access, egress and parking;

(iii) A traffic management plan that identifies the projected number of vehicles and any anticipated use of public roads; and

(iv) Sanitation and solid waste.

(b) In the alternative to paragraphs (a) and (c) of this subsection, a county may authorize, through an expedited, single-event license, a single agri-tourism or other commercial event or activity on a tract in a calendar year by an expedited, single-event license that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract. A decision concerning an expedited, single-event license is not a land use decision, as defined in ORS 197.015. To approve an expedited, single-event license, the governing body of a county or its designee must determine that the proposed agri-tourism or other commercial event or activity meets any local standards that apply, and the agri-tourism or other commercial event or activity:

(A) Must be incidental and subordinate to existing farm use on the tract;

(B) May not begin before 6 a.m. or end after 10 p.m.;

(C) May not involve more than 100 attendees or 50 vehicles;

(D) May not include the artificial amplification of music or voices before 8 a.m. or after 8 p.m.;

(E) May not require or involve the construction or use of a new permanent structure in connection with the agri-tourism or other commercial event or activity;

(F) Must be located on a tract of at least 10 acres unless the owners or residents of adjoining properties consent, in writing, to the location; and

(G) Must comply with applicable health and fire and life safety requirements.

(c) In the alternative to paragraphs (a) and (b) of this subsection, a county may authorize up to six agri-tourism or other commercial events or activities on a tract in a calendar year by a limited use permit that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract. The agri-tourism or other commercial events or activities must meet any local standards that apply, and the agri-tourism or other commercial events or activities:

(A) Must be incidental and subordinate to existing farm use on the tract;

(B) May not, individually, exceed a duration of 72 consecutive hours;

(C) May not require that a new permanent structure be built, used or occupied in connection with the agri-tourism or other commercial events or activities;

(D) Must comply with ORS 215.296;

(E) May not, in combination with other agri-tourism or other commercial events or activities authorized in the area, materially alter the stability of the land use pattern in the area; and

(F) Must comply with conditions established for:

(i) The types of agri-tourism or other commercial events or activities that are authorized during each calendar year, including the number and duration of the agri-tourism or other commercial events and activities, the anticipated daily attendance and the hours of operation;

(ii) The location of existing structures and the location of proposed temporary structures to be used in connection with the agri-tourism or other commercial events or activities;

(iii) The location of access and egress and parking facilities to be used in connection with the agri-tourism or other commercial events or activities;

(iv) Traffic management, including the projected number of vehicles and any anticipated use of public roads; and

(v) Sanitation and solid waste.

(d) In addition to paragraphs (a) to (c) of this subsection, a county may authorize agri-tourism or other commercial events or activities that occur more frequently or for a longer period or that do not otherwise comply with paragraphs (a) to (c) of this subsection if the agri-tourism or other commercial events or activities comply with any local standards that apply and the agri-tourism or other commercial events or activities:

(A) Are incidental and subordinate to existing commercial farm use of the tract and are necessary to support the commercial farm uses or the commercial agricultural enterprises in the area;

(B) Comply with the requirements of paragraph (c)(C), (D), (E) and (F) of this subsection;

(C) Occur on a lot or parcel that complies with the acknowledged minimum lot or parcel size; and

(D) Do not exceed 18 events or activities in a calendar year.

(5) A holder of a permit authorized by a county under subsection (4)(d) of this section must request review of the permit at four-year intervals. Upon receipt of a request for review, the county shall:

(a) Provide public notice and an opportunity for public comment as part of the review process; and

(b) Limit its review to events and activities authorized by the permit, conformance with conditions of

approval required by the permit and the standards established by subsection (4)(d) of this section.

(6) For the purposes of subsection (4) of this section:

(a) A county may authorize the use of temporary structures established in connection with the agri-tourism or other commercial events or activities authorized under subsection (4) of this section. However, the temporary structures must be removed at the end of the agri-tourism or other event or activity. The county may not approve an alteration to the land in connection with an agri-tourism or other commercial event or activity authorized under subsection (4) of this section, including, but not limited to, grading, filling or paving.

(b) The county may issue the limited use permits authorized by subsection (4)(c) of this section for two calendar years. When considering an application for renewal, the county shall ensure compliance with the provisions of subsection (4)(c) of this section, any local standards that apply and conditions that apply to the permit or to the agri-tourism or other commercial events or activities authorized by the permit.

(c) The authorizations provided by subsection (4) of this section are in addition to other authorizations that may be provided by law, except that "outdoor mass gathering" and "other gathering," as those terms are used in ORS 197.015 (10)(d), do not include agri-tourism or other commercial events and activities.

215.304 Rule adoption; limitations. (1) The Land Conservation and Development Commission shall not adopt or implement any rule to identify or designate small-scale farmland or secondary land.

(2) Amendments required to conform rules to the provisions of subsection (1) of this section and ORS 215.700 to 215.780 shall be adopted by March 1, 1994.

(3) Any portion of a rule inconsistent with the provisions of ORS 197.247 (1991 Edition), 215.213, 215.214 (1991 Edition), 215.288 (1991 Edition), 215.317, 215.327 and 215.337 (1991 Edition) or 215.700 to 215.780 on March 1, 1994:

(a) Shall not be implemented or enforced; and

(b) Has no legal effect.

(4) Notwithstanding subsection (3) of this section, the uses authorized by ORS 215.283 (1)(x) or (2)(n) may be established on land in exclusive farm use zones, including high-value farmland. [1993 c.792 §28; 2001 c.672 §19; 2012 c.74 §4]

WILDLIFE HABITAT CONSERVATION PLANNING

215.799 Location of dwellings on wildlife habitat land. (1) New and existing dwellings may be allowed on a lot or parcel subject to wildlife habitat special assessment under ORS 308A.403 to 308A.430 as follows:

(a) Lawfully existing dwellings, pursuant to ORS 215.130 (5) to (11), may remain.

(b) For a lot or parcel without an existing dwelling, dwellings may be allowed if

each dwelling for which the landowner seeks approval complies with all applicable requirements under the county's acknowledged zoning ordinance.

(2) The fact that a lot or parcel is subject to wildlife habitat special assessment may not make it easier or more difficult for a landowner to obtain approval for a dwelling on the lot or parcel. [2003 c.539 §14; 2005 c.94 §1]

CONSERVATION AND HIGHWAY SCENIC PRESERVATION EASEMENTS

271.715 Definitions for ORS 271.715 to 271.795. As used in ORS 271.715 to 271.795, unless the context otherwise requires:

(1) "Conservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open space values of real property, ensuring its availability for agricultural, forest, recreational, or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.

(2) "Highway scenic preservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic or open space values of property.

(3) "Holder" means:

(a) The state, any county, metropolitan service district, soil and water conservation district, city or park and recreation district or a county service district established under ORS 451.410 to 451.610 to construct, maintain and operate service facilities in Washington or Clackamas Counties for the purposes specified in ORS 451.010 (1)(a) and (b) and in Washington County for the purpose specified in ORS 451.010 (5) acting alone or in cooperation with any federal or state agency, public corporation or political subdivision;

(b) A charitable corporation, charitable association, charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open space values of real property, assuring the availability of real property for agricultural, forest, recreational, or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property; or

(c) An Indian tribe as defined in ORS 97.740.

(4) "Third-party right of enforcement" means a right provided in a conservation easement or highway scenic preservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association or charitable trust, which, although eligible to be a holder, is not a holder. [1983 c.642 §1; 1985 c.160 §1; 1997 c.249 §78; 1999 c.208 §1; 2001 c.708 §12; 2001 c.907 §2; 2003 c.467 §1; 2005 c.368 §1]

271.725 Acquisition and creation of conservation or highway scenic preservation easement. (1) The state, any county, metropolitan service district, soil and water conservation district, city or park and recreation district or a county service district established under ORS 451.410 to 451.610 to construct, maintain and operate service facilities in Washington or Clackamas Counties for the purposes specified in ORS 451.010 (1)(a) and (b) and in Washington County for the purpose specified in ORS 451.010 (5) may acquire by purchase, agreement or donation, but not by exercise of the power of eminent domain, unless specifically authorized by law, conservation easements in any area within their respective jurisdictions wherever and to the extent that a state agency or the governing body of the county, metropolitan service district, soil and water conservation district, city, park and recreation district or county service district established under ORS 451.410 to 451.610 to construct, maintain and operate service facilities in Washington or Clackamas Counties for the purposes specified in ORS 451.010 (1)(a) and (b) and in Washington County for the purpose specified in ORS 451.010 (5) determines that the acquisition will be in the public interest.

(2) Except as otherwise provided in ORS 271.715 to 271.795, a conservation easement or highway scenic preservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements.

(3) The state, any county, metropolitan service district, soil and water conservation district, city or park and recreation district or a county service district established under ORS 451.410 to 451.610 to construct, maintain and operate service facilities in Washington or Clackamas Counties for the purposes specified in ORS 451.010 (1)(a) and (b) and in Washington County for the purpose specified in ORS 451.010 (5) may acquire by purchase, agreement or donation, but not by exercise of the power of eminent domain unless specifically authorized by law, highway scenic preservation easements in land within 100 yards of state, county or city highway rights of way. These easements may be acquired only in lands that possess signif-

icant scenic value in themselves and contribute to the overall scenic beauty of the highway.

(4) No right or duty in favor of or against a holder and no right in favor of a person having a third-party right of enforcement arises under a conservation easement or highway scenic preservation easement before its acceptance by the holder and recordation of the acceptance.

(5) Except as provided in ORS 271.755 (2) a conservation easement or highway scenic preservation easement is unlimited in duration unless the instrument creating it otherwise provides.

(6) An interest in real property in existence at the time a conservation easement or highway scenic preservation easement is created is not impaired by it unless the owner of the interest is a party to or consents to the conservation easement or highway scenic preservation easement. [1983 c.642 §2; 1985 c.160 §2; 1997 c.249 §79; 1999 c.208 §2; 2003 c.467 §2; 2005 c.368 §2]

271.729 Report on effect of conservation or highway scenic preservation easement on property value; fee. (1) An owner of real property considering whether to convey a conservation easement or a highway scenic preservation easement to a holder may apply to the county assessor for a report on the effect of the conveyance of the easement on the assessed value of the property upon which the easement is to be granted.

(2) The request for the report shall be made in writing to the assessor and shall be accompanied by:

(a) An appraisal of the property prepared by an appraiser certified or licensed under ORS chapter 674. The appraisal shall have been prepared within three months preceding the date that application is made to the assessor and shall state the appraiser's opinion of the real market value of the property both before and after the easement is conveyed;

(b) A copy of the instrument creating the easement; and

(c) A fee in an amount determined by the assessor, as reimbursement for the costs of preparing the report.

(3) Upon receipt of a completed application, the assessor shall determine what the assessed value for the property would have been had the easement been accepted and recorded by the proposed holder for the last tax year in which a property tax statement described in ORS 311.250 was sent to the property owner. The assessor shall prepare a written report stating the assessor's findings and shall send the report to the property owner. [2001 c.925 §11]

271.735 Hearing; notice. (1) Before the acquisition of a conservation easement or highway scenic preservation easement, the state agency, county, metropolitan service district, soil and water conservation district, city, park and recreation district or county service district established under ORS 451.410 to 451.610 to construct, maintain and operate service facilities in Washington or Clackamas Counties for the purposes specified in ORS 451.010 (1)(a) and (b) and in Washington County for the purpose specified in ORS 451.010 (5) considering acquisition of such an easement shall hold one or more public hearings on the proposal and the reasons therefor. The hearings shall be held in the community where the easement would be located and all interested persons, including representatives of other governmental agencies, shall have the right to appear and a reasonable opportunity to be heard.

(2) Notice of the hearing shall be published at least twice, once not less than 12 days and once not less than five days, prior to the hearing in a newspaper of general circulation in the community. The notice may also be published by broadcasting or telecasting generally in the community.

(3) At least 30 days prior to the hearing, the state agency shall mail notice of the hearing to the governing body of each county, city and other governmental agency having jurisdiction in the area of the proposed easements.

(4) This section does not apply to conservation easements or highway scenic preservation easements acquired pursuant to ORS 390.121, 390.310 to 390.338 and 390.805 to 390.925 or acquired pursuant to a metropolitan service district bond measure authorizing the acquisition of open spaces within specific areas. [1983 c.642 §9; 1985 c.160 §3; 1989 c.904 §29; 1999 c.208 §3; 2003 c.467 §3; 2005 c.368 §3]

271.745 Validity of conservation or highway scenic preservation easement. A conservation easement or highway scenic preservation easement is valid even though:

(1) It is not appurtenant to an interest in real property;

(2) It can be or has been assigned to another holder;

(3) It is not of a character that has been recognized traditionally at common law;

(4) It imposes a negative burden;

(5) It imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;

(6) The benefit does not touch or concern real property; or

(7) There is no privity of estate or of contract. [1983 c.642 §4; 1985 c.160 §4]

271.755 Action affecting conservation or highway scenic preservation easement; standing to bring action. (1) An action affecting a conservation easement or highway scenic preservation easement may be brought by:

(a) An owner of an interest in real property burdened by the easement;

(b) A holder of the easement;

(c) A person having a third-party right of enforcement; or

(d) A person authorized by other law.

(2) ORS 271.715 to 271.795 do not affect the power of a court to modify or terminate a conservation easement or highway scenic preservation easement in accordance with the principles of law and equity. [1983 c.642 §3; 1985 c.160 §5; 1997 c.249 §80]

271.765 Applicability. (1) ORS 271.715 to 271.795 apply to any interest created after October 15, 1983, that complies with ORS 271.715 to 271.795, whether designated as a conservation easement or highway scenic preservation easement, or as a covenant, equitable servitude, restriction, easement, or otherwise.

(2) ORS 271.715 to 271.795 apply to any interest created before October 15, 1983, if it would have been enforceable had it been created after October 15, 1983, unless retroactive application contravenes the Constitution or laws of this state or the United States.

(3) ORS 271.715 to 271.795 do not invalidate any interest, whether designated as a conservation or preservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise, that is enforceable under other law of this state. [1983 c.642 §5; 1985 c.160 §7; 1997 c.249 §81]

271.775 Rules governing conservation and highway scenic preservation easements. The board or officer administering a state agency or the governing body of any county, metropolitan service district, soil and water conservation district, city or park and recreation district or of a county service district established under ORS 451.410 to 451.610 to construct, maintain and operate service facilities in Washington or Clackamas Counties for the purposes specified in ORS 451.010 (1)(a) and (b) and in Washington County for the purpose specified in ORS 451.010 (5) may make and enforce reasonable rules, regulations, orders or ordinances governing the care, use and management of its conservation easements and highway scenic preservation easements. [1983 c.642 §7; 1985 c.160 §8; 1999 c.208 §4; 2003 c.467 §4; 2005 c.368 §4]

271.785 Taxation of property subject to highway scenic preservation easement.

For the purpose of taxation, real property that is subject to a highway scenic preservation easement shall be assessed on the basis of the real market value of the property less any reduction in value caused by the highway scenic preservation easement. Such an easement shall be exempt from assessment and taxation the same as any other property owned by the holder. [1983 c.642 §8; 1985 c.160 §6; 1991 c.459 §371; 2007 c.809 §18]

271.795 Construction of Act. ORS 271.715 to 271.795 shall be applied and construed to effectuate the general purpose to make uniform the laws with respect to the subject of ORS 271.715 to 271.795 among states enacting it. [1983 c.642 §6; 1997 c.249 §82]

SUBMERSIBLE AND SUBMERGED LANDS**(Sale, Lease or Use Without Charge)**

274.040 Sale or lease of submersible lands; easements; occupation of submerged and submersible lands for water works. (1) Except as provided in ORS 274.043, in ORS 274.085 for leases of submersible lands acquired as an investment for the Common School Fund, in ORS 274.530 (1) for leases of submersible lands of less than one year's duration, in ORS 274.530 (3) for licenses of less than three years' duration, in ORS 274.873 for proprietary authorizations within Oregon's territorial sea as defined in ORS 196.405 and in subsections (2) and (3) of this section, submersible lands owned by the State of Oregon may be leased only to the highest bidder, bidding at least the minimum amount designated by the Department of State Lands under subsection (6) of this section for the lease of any such lands, after being advertised not less than once each week for two successive weeks in one or more newspapers of general circulation in the county in which the lands are situated. However, any owner of lands abutting or fronting on such submersible lands shall have the preference right to lease the lands unless the submersible lands are occupied by a person claiming the right of occupancy under a conveyance recorded before January 1, 1981, from the present owner or predecessor in interest of lands abutting or fronting the submersible lands. If so, the occupant of the submersible lands shall have the preference right to lease the lands. An easement or license related to utility service on the submersible lands does not establish a preference right under this subsection. The lands shall be leased for the amount designated by

the department under subsection (6) of this section as the minimum amount for the lease of any such lands. The preferences provided in this subsection apply to any lease of submersible land for one year or more offered or issued under ORS 274.530. The preferences provided in this subsection do not apply to any lease offered or issued by the department under ORS 274.705 to 274.860. The preference for the owner of lands provided in this subsection does not apply to the renewal of an existing lease where the lessee is in compliance with all the terms and conditions of the lease.

(2) Submersible lands owned by the State of Oregon that are determined by the State Land Board to be available for sale may be sold only to the highest bidder, after being advertised not less than once each week for two successive weeks in one or more newspapers of general circulation in the county in which the lands are situated. However:

(a) No such lands shall be sold for less than for a fair appraised value as determined by an appraiser appointed by the department.

(b) All sales of such submersible lands shall be approved by the State Land Board.

(c) Any owner of lands abutting or fronting on such submersible lands shall have the preference right to purchase such lands for the fair appraised value provided that the sale of such lands be approved by the State Land Board.

(3)(a) The department may grant, to any person holding a permit from the Water Resources Director authorizing the impoundment for beneficial use of the waters of any lake or stream, easements over submerged and submersible lands for flowage and storage of waters, and for the construction, maintenance and operation of any structures or facilities necessary for the use of the water under the terms of the permit upon payment of just compensation by the grantee.

(b) In addition to the authority of the department under paragraph (a) of this subsection to grant easements over submerged and submersible lands, a person holding a water right permit, water right certificate, proposed or final order approving a water right permit or court decree evidencing a water right may occupy state-owned submerged and submersible lands for the construction, maintenance and operation of any structure or facility necessary for the use of water if the proposed use under the permit, certificate, order or decree is for irrigation

or domestic use. The department may not charge for the occupation of state-owned submerged and submersible lands pursuant to this paragraph, nor may the department require that a person obtain written documentation to substantiate the permission granted under this paragraph. Upon request by the Department of State Lands, the Water Resources Department shall provide information to the Department of State Lands regarding any change of use of the water right. A person may continue to occupy state-owned submerged and submersible lands pursuant to this paragraph until:

(A) The water right permit is canceled pursuant to ORS 537.260;

(B) The water right is canceled pursuant to ORS 540.641; or

(C) The water is no longer being applied to irrigation or domestic use.

(c) An easement or the permission granted under this subsection may not be construed to be a sale or lease of the submerged and submersible lands within the meaning of subsections (1) and (2) of this section.

(d) A person granted an easement or permission to use or occupy state-owned submerged and submersible lands under this subsection shall indemnify and hold harmless the state from all liability and claims arising from or attributable to the use or occupation.

(4) All easements or the permission granted pursuant to subsection (3) of this section shall be subject to conditions that will ensure the safety of the public and the preservation of economic, scenic and recreational values and to lawful rules promulgated by state agencies affected by the activities of the grantee.

(5) Nothing in this section affects the provisions of ORS 509.505, 509.510, 511.606 to 511.806, 622.270 or 622.320 to 622.350.

(6) The Department of State Lands shall designate the minimum acceptable amount for the lease of any submerged and submersible lands otherwise authorized by law, other than any lease offered or issued by the department under ORS 274.705 to 274.860.

(7) For the purpose of sale, the value of state-owned submerged and submersible lands shall be determined by an appraiser appointed by the department.

(8) The act of any person entering into an agreement with the department under this section or ORS 274.530 for the lease of sub-

merged and submersible lands shall not be considered a waiver by such person of any claim of ownership in the submerged and submersible lands described in the agreement. [Amended by 1961 c.37 §1; subsection (3) enacted as 1961 c.37 §2; 1967 c.421 §104; 1969 c.594 §32; subsection (4) enacted as 1969 c.675 §17; 1975 c.547 §1; 1975 c.765 §2; 1979 c.793 §3; 1981 c.158 §1; 1981 c.432 §1; 1991 c.217 §5; 1995 c.113 §2; 2003 c.350 §1; 2011 c.713 §1; 2015 c.386 §7]

(Ocean Renewable Energy Facility Siting)

274.879 Financial assurance; plan for decommissioning. (1) An owner or operator of an ocean renewable energy facility shall maintain cost estimates of the amount of financial assurance that is necessary, and demonstrate evidence of financial assurance, for:

(a) The costs of closure and post-closure maintenance of the facility, excluding the costs of removing anchors, cables or any other equipment that is not required to be removed from beneath the submerged lands in Oregon's territorial sea under subsection (8) of this section; and

(b) Any corrective action required to be taken at the site of the facility.

(2) The cost estimates required by subsection (1) of this section must be prepared by a person qualified by experience and knowledge to prepare such cost estimates.

(3) The financial assurance requirements established by subsection (1) of this section may be satisfied by any one or a combination of the following:

(a) Insurance;

(b) Establishment of a trust fund;

(c) A surety bond; or

(d) A letter of credit.

(4) In adopting rules under ORS 274.876 to implement the provisions of this section, the Director of the Department of State Lands may specify policy or other contractual terms, conditions or defenses necessary to establish evidence of financial assurance.

(5)(a) Prior to the time that operation of an ocean renewable energy facility is authorized, the owner or operator of the facility must provide the director with a plan for decommissioning the facility after the permanent cessation of use of that facility for generating ocean renewable energy. The plan for decommissioning the facility must include, but need not be limited to:

(A) Information regarding the anticipated useful life of the facility;

(B) The cost estimates required by subsection (1) of this section;

(C) The evidence of financial assurance required by subsections (1) and (3) of this section;

(D) A description of the method and schedule for updating the costs of decommissioning the facility;

(E) A description of the anticipated methods that will be used to close the facility, engage in post-closure maintenance and take any corrective action required at the site of the facility; and

(F) Any other information required by the director by rule.

(b) By January 31 of each subsequent calendar year, the owner or operator of the facility must update the information required under this subsection with the Department of State Lands.

(6) An owner or operator shall provide evidence of financial assurance before beginning corrective action at the site of an ocean renewable energy facility.

(7) An owner or operator shall establish provisions satisfactory to the director for disposing of any excess moneys received or interest earned on moneys received for financial assurance.

(8)(a) An owner or operator of an ocean renewable energy facility must initiate removal of all equipment related to that facility, excluding anchors, cables and any other equipment that lies at least one meter beneath submerged lands in Oregon's territorial sea, within 12 months after the permanent cessation of use of that facility for generating ocean renewable energy.

(b) Notwithstanding paragraph (a) of this subsection, an owner or operator of an ocean renewable energy facility may be required to remove anchors, cables or any other equipment that lies at least one meter beneath submerged lands in Oregon's territorial sea if removal is deemed necessary by the director, in consultation with the owner or operator, and is permitted by the applicable requirements of federal regulatory agencies.

(c) All equipment required to be removed under this subsection must be removed within two years after the permanent cessation of use of the facility for generating ocean renewable energy.

(d) The director may extend the deadlines under this subsection if the owner or operator of the facility can show good cause and has undertaken a good faith effort to remove the equipment as required by this subsection. [Formerly 274.867]

(Penalties)

274.992 Civil penalties. (1) Any person who violates any provision of ORS 274.040, 274.873 or 274.879, any rule, order or lease adopted or issued under ORS 274.040, 274.873 or 274.876 or any rule adopted under ORS 274.879 shall be subject to a civil penalty in an amount to be determined by the Director of the Department of State Lands of not more than \$1,000 per day of violation.

(2) Civil penalties under this section shall be imposed in the manner provided in ORS 183.745.

(3) The provisions of this section are in addition to and not in lieu of any other penalty or sanction provided by law.

(4) Any civil penalty recovered under this section for violation of ORS 274.040, 274.873 or 274.879 or any rule, order or lease adopted or issued under ORS 274.040, 274.873, 274.876 or 274.879 shall be deposited in the Common School Fund for use by the Department of State Lands in administration of ORS 274.040, 274.873 or 274.879 and as otherwise required by law. [1991 c.521 §4; 1991 c.734 §113; 2013 c.345 §2; 2015 c.386 §8]

274.994 Amount of civil penalties; rules; considerations in imposing penalty.

(1) The Director of the Department of State Lands shall adopt by rule the amount of civil penalty that may be imposed for a particular violation of ORS 274.040, 274.873 or 274.879.

(2) In imposing a penalty under the schedule adopted under subsection (1) of this section, the director shall consider the following factors:

(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.

(b) Any prior violations of statutes, rules, orders and leases pertaining to submerged and submersible lands.

(c) The impact of the violation on public interests in fishery, navigation and recreation.

(d) Any other factors determined by the director to be relevant and consistent with the policy of ORS 274.040, 274.873 or 274.879.

(3) The penalty imposed under this section may be remitted or mitigated upon such terms and conditions as the director determines to be proper and consistent with the policy of ORS 274.040, 274.873 or 274.879.

Upon the request of the person incurring the penalty, the director shall consider evidence of the economic and financial condition of the person in determining whether a penalty shall be remitted or mitigated. [1991 c.521 §5; 2013 c.345 §3; 2015 c.386 §9]

PUBLIC CONTRACTING

(General Provisions)

279A.025 Application of Public Contracting Code. (1) Except as provided in subsections (2) to (4) of this section, the Public Contracting Code applies to all public contracting.

(2) The Public Contracting Code does not apply to:

(a) Contracts between a contracting agency and:

(A) Another contracting agency;

(B) The Oregon Health and Science University;

(C) A public university listed in ORS 352.002;

(D) The Oregon State Bar;

(E) A governmental body of another state;

(F) The federal government;

(G) An American Indian tribe or an agency of an American Indian tribe;

(H) A nation, or a governmental body in a nation, other than the United States; or

(I) An intergovernmental entity formed between or among:

(i) Governmental bodies of this or another state;

(ii) The federal government;

(iii) An American Indian tribe or an agency of an American Indian tribe;

(iv) A nation other than the United States; or

(v) A governmental body in a nation other than the United States;

(b) Agreements authorized by ORS chapter 190 or by a statute, charter provision, ordinance or other authority for establishing agreements between or among governmental bodies or agencies or tribal governing bodies or agencies;

(c) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145 for purposes of source selection;

(d) Grants;

(e) Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential

litigation or legal matters in which a public body is or may become interested;

(f) Acquisitions or disposals of real property or interest in real property;

(g) Sole-source expenditures when rates are set by law or ordinance for purposes of source selection;

(h) Contracts for the procurement or distribution of textbooks;

(i) Procurements by a contracting agency from an Oregon Corrections Enterprises program;

(j) The procurement, transportation or distribution of distilled liquor, as defined in ORS 471.001, or the appointment of agents under ORS 471.750 by the Oregon Liquor Control Commission;

(k) Contracts entered into under ORS chapter 180 between the Attorney General and private counsel or special legal assistants;

(L) Contracts for the sale of timber from lands owned or managed by the State Board of Forestry and the State Forestry Department;

(m) Contracts for activities necessary or convenient for the sale of timber under paragraph (L) of this subsection, either separately from or in conjunction with contracts for the sale of timber, including but not limited to activities such as timber harvesting and sorting, transporting, gravel pit development or operation, and road construction, maintenance or improvement;

(n) Contracts for forest protection or forest related activities, as described in ORS 477.406, by the State Forester or the State Board of Forestry;

(o) Contracts entered into by the Housing and Community Services Department in exercising the department's duties prescribed in ORS chapters 456 and 458, except that the department's public contracting for goods and services is subject to ORS chapter 279B;

(p) Contracts entered into by the State Treasurer in exercising the powers of that office prescribed in ORS 178.010 to 178.100 and ORS chapters 286A, 287A, 289, 293, 294 and 295, including but not limited to investment contracts and agreements, banking services, clearing house services and collateralization agreements, bond documents, certificates of participation and other debt repayment agreements, and any associated contracts, agreements and documents, regardless of whether the obligations that the contracts, agreements or documents establish are general, special or limited, except that the State Treasurer's public contracting for goods and services is subject to ORS chapter 279B;

(q) Contracts, agreements or other documents entered into, issued or established in connection with:

(A) The issuance of obligations, as defined in ORS 286A.100 and 287A.310, of a public body;

(B) The making of program loans and similar extensions or advances of funds, aid or assistance by a public body to a public or private body for the purpose of carrying out, promoting or sustaining activities or programs authorized by law; or

(C) The investment of funds by a public body as authorized by law, and other financial transactions of a public body that by their character cannot practically be established under the competitive contractor selection procedures of ORS 279B.050 to 279B.085;

(r) Contracts for employee benefit plans as provided in ORS 243.105 (1), 243.125 (4), 243.221, 243.275, 243.291, 243.303 and 243.565;

(s) Contracts for employee benefit plans as provided in ORS 243.860 to 243.886; or

(t) Any other public contracting of a public body specifically exempted from the code by another provision of law.

(3) The Public Contracting Code does not apply to the contracting activities of:

(a) The Oregon State Lottery Commission;

(b) The legislative department;

(c) The judicial department;

(d) Semi-independent state agencies listed in ORS 182.454, except as provided in ORS 279.835 to 279.855 and 279A.250 to 279A.290;

(e) Oregon Corrections Enterprises;

(f) The Oregon Film and Video Office, except as provided in ORS 279A.100 and 279A.250 to 279A.290;

(g) The Travel Information Council, except as provided in ORS 279A.250 to 279A.290;

(h) The Oregon 529 Savings Network and the Oregon 529 Savings Board;

(i) The Oregon Innovation Council;

(j) The Oregon Utility Notification Center; or

(k) Any other public body specifically exempted from the code by another provision of law.

(4) ORS 279A.200 to 279A.225 and 279B.050 to 279B.085 do not apply to contracts made with qualified nonprofit agencies providing employment opportunities for individuals with disabilities under ORS 279.835 to 279.855. [2003 c.794 §5; 2003 c.794 §5a; 2005 c.22 §200; 2005 c.103 §3; 2005 c.109 §3; 2005 c.297 §3; 2005 c.748 §12; 2005 c.777 §15; 2007 c.7 §19; 2007 c.70 §67; 2007 c.71

§81; 2007 c.764 §2; 2007 c.783 §91; 2011 c.637 §88; 2013 c.492 §28; 2013 c.768 §123; 2015 c.447 §3; 2015 c.843 §19]

(Authority)

279A.050 Procurement authority. (1)(a) Except as otherwise provided in the Public Contracting Code, a contracting agency shall exercise all of the contracting agency's procurement authority in accordance with the provisions of the Public Contracting Code.

(b) If a contracting agency has authority under this section to carry out functions described in this section, or has authority to make procurements under a provision of law other than the Public Contracting Code, the contracting agency need not exercise the contracting agency's authority in accordance with the provisions of the code if, under ORS 279A.025, the code does not apply to the contract or contracting agency.

(2)(a) Except as otherwise provided in paragraph (b) of this subsection and the Public Contracting Code, for state agencies the Director of the Oregon Department of Administrative Services has all the authority available to carry out the provisions of the Public Contracting Code.

(b) Except as otherwise provided in the Public Contracting Code, for state agencies the director may delegate to the State Chief Information Officer the authority to procure or supervise the procurement of all goods, services and personal services related to information technology and telecommunications for state contracting agencies. This paragraph does not apply to contracts under which the contractor delivers to the state agency information technology products or services incidentally in performing a personal services contract described in ORS chapter 279C or a construction contract described in ORS chapter 279C.

(3) Except as otherwise provided in the Public Contracting Code, the Director of Transportation has all the authority available to:

(a) Procure or supervise the procurement of all services and personal services to construct, acquire, plan, design, maintain and operate passenger terminal facilities and motor vehicle parking facilities in connection with any public transportation system in accordance with ORS 184.689 (5);

(b) Procure or supervise the procurement of all goods, services, public improvements and personal services that relate to operating, maintaining or constructing highways, bridges and other transportation facilities that are subject to the authority of the Department of Transportation; and

(c) Establish standards for, prescribe forms for and conduct the prequalification of

prospective bidders on public improvement contracts that relate to operating, maintaining or constructing highways, bridges and other transportation facilities that are subject to the authority of the Department of Transportation.

(4) Except as otherwise provided in the Public Contracting Code, the Secretary of State has all the authority to procure or supervise the procurement of goods, services and personal services related to programs under the authority of the Secretary of State.

(5) Except as otherwise provided in the Public Contracting Code, the State Treasurer has all the authority to procure or supervise the procurement of goods, services and personal services related to programs under the authority of the State Treasurer.

(6) The state agencies listed in this subsection have all the authority to do the following in accordance with the Public Contracting Code:

(a) The Department of Human Services to procure or supervise the procurement of goods, services and personal services under ORS 179.040 for the department's institutions and the procurement of goods, services and personal services for constructing, demolishing, exchanging, maintaining, operating and equipping housing for the purpose of providing care to individuals with intellectual disabilities or other developmental disabilities, subject to applicable provisions of ORS 427.335;

(b) The Oregon Health Authority to procure or supervise the procurement of goods, services and personal services under ORS 179.040 and construction materials, equipment and supplies for the authority's institutions and the procurement of goods, services, personal services, construction materials, equipment and supplies for constructing, demolishing, exchanging, maintaining, operating and equipping housing for individuals with chronic mental illness, subject to applicable provisions of ORS 426.504;

(c) The State Department of Fish and Wildlife to procure or supervise the procurement of construction materials, equipment, supplies, services and personal services for public improvements, public works or ordinary construction described in ORS 279C.320 that is subject to the authority of the State Department of Fish and Wildlife;

(d) The State Parks and Recreation Department to procure or supervise the procurement of all goods, services, public improvements and personal services related to state parks;

(e) The Oregon Department of Aviation to procure or supervise the procurement of

construction materials, equipment, supplies, services and personal services for public improvements, public works or ordinary construction described in ORS 279C.320 that is subject to the authority of the Oregon Department of Aviation;

(f) The Oregon Business Development Department to procure or supervise the procurement of all goods, services, personal services and public improvements related to its foreign trade offices operating outside the state;

(g) The Housing and Community Services Department to procure or supervise the procurement of goods, services and personal services as provided in ORS 279A.025 (2)(o);

(h) The Department of Corrections to procure or supervise the procurement of construction materials, equipment, supplies, services and personal services for public improvements, public works or ordinary construction described in ORS 279C.320 that is subject to the authority of the Department of Corrections;

(i) The Department of Corrections, subject to any applicable provisions of ORS 279A.120, 279A.125, 279A.145 and 283.110 to 283.395, to procure or supervise the procurement of goods, services and personal services under ORS 179.040 for its institutions;

(j) The Department of Veterans' Affairs to procure or supervise the procurement of real estate broker and principal real estate broker services related to programs under the department's authority;

(k) The Oregon Military Department to procure or supervise the procurement of construction materials, equipment, supplies, services and personal services for public improvements, public works or ordinary construction described in ORS 279C.320 that is subject to the authority of the Oregon Military Department;

(L) The Department of Education, subject to any applicable provisions of ORS 329.075, 329.085 and 329.485 and the federal No Child Left Behind Act of 2001 (P.L. 107-110, 115 Stat. 1425), to procure or supervise the procurement of goods, services, personal services and information technology related to student assessment; and

(m) Any state agency to conduct a procurement when the agency is specifically authorized by any provision of law other than the Public Contracting Code to enter into a contract.

(7)(a) Notwithstanding this section and ORS 279A.140 (1), the Director of the Oregon Department of Administrative Services has exclusive authority, unless the director delegates the authority, to procure or supervise the procurement of all price agreements on

behalf of the state agencies identified in subsection (6) of this section under which more than one state agency may order goods, services or personal services.

(b) The director may delegate to the State Chief Information Officer the exclusive authority to procure or supervise the procurement of all price agreements related to information technology and telecommunications on behalf of the state agencies identified in subsection (6) of this section. Notwithstanding any authority that a state agency may have under subsection (3) or (6) of this section, the state agency may not establish a price agreement or enter into a contract for goods, services or personal services without the approval of the director or the State Chief Information Officer if the director or the State Chief Information Officer has established a price agreement for the goods, services or personal services.

(c) The State Chief Information Officer may review any solicitation document for procuring information technology or telecommunications that a state agency intends to issue before the state agency issues the solicitation document and may require the state agency to name the State Chief Information Officer as a third-party beneficiary with full authority to enforce the terms and conditions of any public contract for information technology or telecommunications. The State Chief Information Officer must approve a state agency's procurement for information technology or telecommunications if the procurement has an anticipated contract price of \$1 million or more. The State Chief Information Officer may require the state agency to name the State Chief Information Officer as the contracting party on behalf of the State of Oregon in a procurement for information technology or telecommunications that has an anticipated contract price of \$1 million or more. [2003 c.794 §7; 2005 c.625 §61; 2007 c.70 §68; 2007 c.197 §1; 2007 c.764 §3; 2009 c.397 §2; 2009 c.828 §13; 2011 c.658 §36; 2011 c.720 §73a; 2013 c.492 §29; 2015 c.167 §1; 2015 c. 243 §7; 2015 c.447 §4; 2015 c.807 §22]

SALARIES AND EXPENSES OF NONELECTIVE STATE OFFICIALS

292.495 Compensation and expenses of members of state boards and commissions. (1) Subject to the availability of funds therefor in the budget of the state board or commission, and except as otherwise provided by law, any member of a state board or commission, other than a member who is employed in full-time public service, who is authorized by law to receive compensation for time spent in performance of official duties, shall receive a payment of \$30 for each day or portion thereof during which the

member is actually engaged in the performance of official duties.

(2) Except as otherwise provided by law, all members of state boards and commissions, including those employed in full-time public service, may receive actual and necessary travel or other expenses actually incurred in the performance of their official duties within the limits provided by law or by the Oregon Department of Administrative Services under ORS 292.210 to 292.250.

(3) As used in subsection (2) of this section, "other expenses" includes expenses incurred by a member of a state board or commission in employing a substitute to perform duties, including personal, normally performed by the member which the member is unable to perform because of the performance of official duties and which by the nature of such duties cannot be delayed without risk to health or safety. No member shall be reimbursed for expenses incurred in employing a substitute in excess of \$25 per day. [1969 c.314 §1; 1973 c.224 §2; 1975 c.441 §1; 1979 c.616 §1]

RIPARIAN HABITAT EXEMPTION

308A.350 Definitions for ORS 308A.350 to 308A.383. As used in ORS 308A.350 to 308A.383:

(1) "Owner" means the party or parties having the fee interest in land, except that where land is subject to a real estate sales contract, "owner" means the contract vendee under a recorded contract.

(2) "Department" means the State Department of Fish and Wildlife.

(3) "Designated riparian land" means the beds of streams, the adjacent vegetation communities, and the land thereunder, which are predominantly influenced by their association with water, not to extend more than 100 feet landward of the line of nonaquatic vegetation, which are privately owned and which qualify for exemption under ORS 308A.350 to 308A.383.

(4) "Urban growth boundary" means an urban growth boundary contained in a city or county comprehensive plan that has been acknowledged by the Land Conservation and Development Commission pursuant to ORS 197.251 or an urban growth boundary that has been adopted by a metropolitan service district council under ORS 268.390 (3). [Formerly 308.792]

308A.353 Legislative intent. The Legislative Assembly declares that it is in the best interest of the state to maintain, preserve, conserve and rehabilitate riparian lands to assure the protection of the soil, water, fish and wildlife resources of the state for the economic and social well-being of the state

and its citizens. The Legislative Assembly declares that riparian habitat maintained in a healthy condition is a legitimate land use that contributes to erosion control, improved water quality and prolonged streamflow. The Legislative Assembly further declares that it is in the public interest to prevent the forced conversion of riparian environments to more intensive uses as a result of economic pressures caused by the assessment of those lands for purposes of property taxation at values incompatible with their protection as riparian lands and that tax exemption must be granted to permit the continued availability of riparian environments for these purposes, and it is the intent of ORS 308A.350 to 308A.383 to so provide. [Formerly 308.793]

308A.356 Application for exemption as riparian land; contents; notice after sale or transfer. An owner of land desiring designation and exemption of that land from ad valorem taxation as riparian land under ORS 308A.350 to 308A.383 shall make application to the county assessor upon forms prescribed by the Department of Revenue and supplied by the county assessor. The owner shall describe the land for which designation as riparian lands is requested and the current use of the land. The application shall include any other information as is reasonably necessary to properly designate an area of land as riparian land under ORS 308A.350 to 308A.383 with a verification of the truth thereof. Applications to the county assessor shall be made on or before December 31 of the calendar year preceding the first tax year for which such designation is requested. The county assessor shall notify the State Department of Fish and Wildlife if a recorded sale or transfer of the land granted exemption under ORS 308A.350 to 308A.383 occurs for the purpose of determining continued eligibility of the land for the exemption. The State Department of Fish and Wildlife shall notify the county assessor in writing of the finding within 120 days after the date the county assessor's notice is mailed or delivered. Failure of the assessor to notify the State Department of Fish and Wildlife shall not prevent the imposition of the additional tax prescribed by ORS 308A.368 (2). [Formerly 308.794]

308A.359 Standards and criteria for exemption; determination; exemption limited to certain lands; application withdrawal. (1) The State Department of Fish and Wildlife shall develop standards and criteria for the designation of land as riparian. Upon the receipt of an application referred to it by the county assessor, the department shall determine if the land described in the application is qualified for designation as riparian.

(2) The department shall review riparian management plans submitted by applicants to assure compliance with the intent of ORS 308A.353. Standards and criteria to be used to determine consistency with the intent of ORS 308A.350 to 308A.383 shall be developed by the department and shall be reviewed by the department annually. These criteria shall be in addition to the following provisions limiting participation under ORS 308A.350 to 308A.383:

(a)(A) Subject to subparagraph (B) of this paragraph, and except as provided in subparagraph (C) of this paragraph, only lands planned and zoned as forest or agricultural lands, including rangeland, in compliance with the statewide planning goals adopted under ORS 197.240 and outside adopted urban growth boundaries shall qualify.

(B) Lands that, as of July 1, 1997, are outside adopted urban growth boundaries and also as of that date are planned and zoned as forest or agricultural lands, including rangeland, in compliance with the statewide planning goals adopted under ORS 197.240 qualify, for tax years beginning on or after July 1, 1998, for riparian designation if they are managed in the manner provided for designated riparian lands and are otherwise eligible for riparian designation under ORS 308A.350 to 308A.383 even though the lands are no longer outside adopted urban growth boundaries or planned or zoned as forest or agriculture.

(C) Lands within the boundaries of a city and an urban growth boundary, if the city and county governing bodies have authorized the exemption under ORS 308A.360, may qualify if the lands are managed in the manner provided for riparian designation under ORS 308A.350 to 308A.383.

(b) Land management activities permitted within designated riparian lands shall be consistent with the intent of ORS 308A.350 to 308A.383.

(3) Land that the State Department of Fish and Wildlife determines may qualify for designation as riparian shall be approved by the department for designation and exemption under ORS 308A.350 to 308A.383 only if the owner of the land has developed and implemented, in accordance with the standards adopted under subsections (1) and (2) of this section, adequate measures for:

(a) The continued protection of the land; or

(b) Techniques for rehabilitation of the riparian land and those measures or techniques are approved by the department.

(4) The department may approve the application for designation of land as riparian with respect to only part of the land that is

the subject of the application, but if any part of the application is denied, the applicant may withdraw the entire application. [Formerly 308.795; 2001 c.925 §7]

308A.360 City and county authorization required for exemption of riparian land within city and urban growth boundary. (1) Land located within the boundaries of a city and an urban growth boundary is exempt from the ad valorem property taxes of the city and county in which the land is located if:

(a) The governing bodies of the city and the county in which the land is located have both adopted ordinances or resolutions:

(A) Permitting the designation of land as riparian land; and

(B) If possible, describing how the city or county will provide technical assistance to landowners preparing riparian management plans pursuant to ORS 308A.359 and will monitor landowner compliance with approved plans; and

(b) The land qualifies for designation and exemption as riparian land under ORS 308A.350 to 308A.383.

(2) Copies of the authorizing ordinances or resolutions must be given to the county assessor and to the State Department of Fish and Wildlife. [2001 c.925 §6]

308A.362 Approval or disapproval of application; limitation on approval; order; notice; exemption; potential additional taxes. (1) As soon as possible, but not later than April 1 of the year following the year of receipt of the application, the State Department of Fish and Wildlife shall notify the county assessor and the applicant of the department's approval or disapproval of an application. Subject to subsection (2) of this section, an application not denied by April 1 is deemed approved, and the land that is the subject of the application is considered to be land that qualifies under ORS 308A.359.

(2) An application for land described in ORS 308A.359 (2)(a)(B) may be approved only if the application is filed on or before five years after the date the land became land no longer outside adopted urban growth boundaries or planned or zoned as forest or agricultural land.

(3) An application for land described in ORS 308A.360 (1) may be approved only if ordinances or resolutions authorizing the exemption have been adopted by the city and county in which the land is located and these ordinances or resolutions are in effect on the date of application.

(4) The department may not approve more than 50 applications for land described in ORS 308A.360 (1) for any tax year. The

department shall hold an application that is not approved because of the limitation imposed by this subsection for consideration for the next tax year.

(5)(a) When the department approves land for designation as riparian under ORS 308A.359, it shall enter an order of approval and file a copy of the order with the county assessor within 10 days. Upon receipt of the order, the county assessor shall enter a notation on the assessment roll that the land described in the order is exempt from ad valorem taxation.

(b) If the land is as described in ORS 308A.360 (1), the exemption applies only to the ad valorem property taxes of the city and county that have authorized the exemption.

(6) On approval of an application filed under ORS 308A.356, for each year of designation the assessor shall indicate on the assessment and tax roll that the property is exempt from taxation as riparian land or, in the case of land described in ORS 308A.360 (1), partially exempt from taxation. The assessor shall also indicate on the tax roll that the land is subject to potential additional taxes as provided by ORS 308A.368, by adding the notation "designated riparian land (potential add'l tax)."

(7) Any owner whose application for designation has been denied may appeal to the department under the provisions of ORS chapter 183 governing contested cases. [Formerly 308.796; 2001 c.925 §8; 2015 c.480 §5]

308A.365 Duration of exemption; change in use; withdrawal at request of owner. (1) When land has once been designated as riparian under ORS 308A.350 to 308A.383, it shall remain under that designation and it shall not be applied to any use other than those specifically included in the management plan or consistent with the intent of ORS 308A.350 to 308A.383 unless withdrawn from designation as provided in subsection (2) of this section.

(2) During any year after designation, notice of request for withdrawal may be given by the owner to the county assessor or assessors of the county or counties in which the land is situated. The county assessor or assessors, as the case may be, shall withdraw such land from designation as riparian and shall immediately give written notice of the withdrawal to the State Department of Fish and Wildlife. [Formerly 308.797]

308A.368 Additional taxes upon withdrawal from riparian land designation; computation. (1) When land that has been designated as exempt from taxation under ORS 308A.350 to 308A.383 as riparian is applied to some use other than that compatible with riparian use, as defined in the manage-

ment plan, except through compliance with ORS 308A.365 (2), or except as a result of the exercise of the power of eminent domain, the owner shall within 60 days after the change in use notify the county assessor of the change in use. The assessor or assessors shall withdraw the land from designation and immediately give written notice of the withdrawal to the State Department of Fish and Wildlife. Thereafter, the land shall be assessed and taxed as other property similarly situated is assessed and taxed.

(2) The assessor, upon discovery of the change in use to a use other than that compatible with riparian or upon withdrawal by the owner of the land from designation, shall compute an additional tax equal to the difference between the taxes assessed against the land and the taxes that otherwise would have been assessed against the land had the land not received exemption for each of the last five years (or such lesser number of years, corresponding to the number of years of exemption under ORS 308A.350 to 308A.383 applicable to the property after its most recent change of ownership) preceding the tax year in which the land was withdrawn from designation. [Formerly 308.798]

308A.371 Additional taxes; payment; collection. (1) The amount determined to be due under ORS 308A.368 may be paid to the tax collector prior to the completion of the next general property tax roll, pursuant to ORS 311.370.

(2) The amounts under ORS 308A.368 shall be added to the tax extended against the entire parcel of land of which the riparian land is a part on the next general property tax roll, to be collected and distributed in the same manner as the remainder of the real property taxes. [Formerly 308.799]

308A.374 Reports on riparian land use from owners; effect of failure to make report upon demand; request by assessor for determination of continued qualification. (1) The assessor shall at all times be authorized to demand in writing, by first class mail, and to receive reports from owners of land designated as riparian under ORS 308A.350 to 308A.383 as to the use of the land. If the owner fails to comply within 90 days after receipt of the demand, the assessor shall give written notice to the State Department of Fish and Wildlife and to the landowner of the assessor's intention to withdraw the land from designation and apply the payments and penalties provided in ORS 308A.368 not less than 30 days prior to automatic withdrawal of the riparian land from designation. If, prior to the expiration

of the 30-day period, the landowner fails to file the requested report, the assessor immediately shall withdraw the land from designation and apply the payments and penalties provided in ORS 308A.368.

(2) If the assessor has reason to believe that land designated as riparian land no longer qualifies for designation and special assessment, the assessor shall request the State Department of Fish and Wildlife to determine if the land continues to qualify. The request shall be in writing. Upon receipt of the request, the State Department of Fish and Wildlife shall inspect the property and may take whatever steps are necessary to determine if the land continues to qualify for special assessment. The State Department of Fish and Wildlife shall notify the assessor of the determination made pursuant to the request of the assessor within 120 days after the request is received. A determination by the State Department of Fish and Wildlife that the property no longer qualifies shall constitute a discovery described in ORS 308A.368 (2). [Formerly 308.800; 2011 c.204 §7]

308A.377 Abatement of additional tax when farm, forest or open space land designated riparian. (1) Land may be designated as riparian upon application and approval of the application under ORS 308A.356 and 308A.359 if the land is being assessed under any of the following special assessment programs:

(a) ORS 308A.050 to 308A.128 (relating to farm use special assessment).

(b) ORS 321.257 to 321.390 (relating to special assessment as designated forestland in western Oregon).

(c) ORS 321.805 to 321.855 (relating to special assessment as designated forestland in eastern Oregon).

(d) ORS 321.700 to 321.754 (relating to special assessment as small tract forestland).

(e) ORS 308A.300 to 308A.330 (relating to classification as open space land).

(2) Notwithstanding the provisions of any of the special assessment laws listed in subsection (1) of this section, the additional taxes, penalties and interest that would be due as a result of a change of designation to riparian shall be abated and shall not be collected. [Formerly 308.801; 2003 c.454 §§100,102; 2003 c.621 §83]

308A.383 Rules. The Department of Revenue and the State Department of Fish and Wildlife shall make such rules consistent with ORS 308A.350 to 308A.383 as may be necessary or desirable to permit its effective administration. [Formerly 308.803]

**WILDLIFE HABITAT
SPECIAL ASSESSMENT**

308A.400 Findings. (1) The Legislative Assembly finds that the State of Oregon has a rich diversity of plants, animals and other natural resources on private lands. Conservation and careful management of these resources is evident in Oregon's working landscape and is essential to the economic and ecological health of Oregon.

(2) The Legislative Assembly further finds that conservation of natural resources on private lands is desirable, and nonregulatory programs that encourage and enable landowners to engage voluntarily in conservation should be available to supplement regulatory and other approaches.

(3) The Legislative Assembly further finds that to maximize voluntary landowner participation in conservation programs, conservation should be recognized as a legitimate land use and landowners should have a full range of incentive programs from which to choose.

(4) The Legislative Assembly further finds that state government should have a mechanism to coordinate, facilitate and memorialize a landowner's compliance with regulatory requirements while simultaneously providing a means to combine or coordinate multiple incentive programs among agencies and levels of government.

(5) The Legislative Assembly further finds that efforts should be made to more effectively and efficiently target conservation programs administered by federal, state and local governments.

(6) The Legislative Assembly further finds that there should be a comprehensive review to identify and assess the state's conservation needs and to coordinate the development, dissemination and implementation of a comprehensive statewide conservation strategy to define priorities and address ecological goals while enhancing economic and social conditions. [2003 c.539 §1]

308A.403 Legislative intent. (1) The Legislative Assembly declares that the protection and preservation of the wildlife resources of this state ought to be encouraged by recognizing wildlife habitat conservation and management as a legitimate land use.

(2) The Legislative Assembly further declares that ORS 308A.403 to 308A.430 are intended to allow for the conservation and management of wildlife habitat.

(3) The Legislative Assembly recognizes that the integration of wildlife habitat conservation and management plans with generally accepted agricultural and forestry

practices is an important element in exercising good land stewardship. [2003 c.539 §3]

308A.406 Definitions for ORS 308A.403 to 308A.430. As used in ORS 308A.403 to 308A.430:

(1) "Cooperating agency" means the State Department of Fish and Wildlife, the United States Fish and Wildlife Service, the Natural Resources Conservation Service of the United States Department of Agriculture, the Oregon State University Extension Service or other persons with wildlife habitat conservation and management training considered appropriate for the preparation of a wildlife habitat conservation and management plan, as established by rules adopted by the State Fish and Wildlife Commission under ORS 308A.409.

(2) "Department" means the State Department of Fish and Wildlife.

(3) "Lot" has the meaning given that term in ORS 92.010.

(4) "Parcel" has the meaning given that term in ORS 215.010.

(5) "Wildlife habitat conservation and management plan" or "plan" means a plan developed by a cooperating agency and landowner that specifies the conservation and management practices, including farm and forest uses consistent with the overall intent of the plan, that will be conducted to preserve and improve wildlife habitat on an affected lot or parcel. [2003 c.539 §4; 2005 c.94 §58]

308A.409 Wildlife habitat conservation and management plans; rules. (1)(a) The State Fish and Wildlife Commission shall adopt rules specifying the form and content of a wildlife habitat conservation and management plan that is sufficient for land that is subject to the plan to be specially assessed under ORS 308A.403 to 308A.430.

(b) The rules adopted pursuant to this section shall:

(A) Specify the conservation and management practices that are appropriate to preserve and enhance wildlife common to the diverse regions of this state; and

(B) Specify that wildlife habitat conservation and management plans may include those efforts that improve water quality, protect and restore fish and wildlife habitats, recover threatened or endangered species, enhance streamflows and maintain or restore long-term ecological health, diversity and productivity on a broad geographic scale.

(2) Under rules adopted pursuant to this section, the commission shall allow:

(a) Accepted agricultural and forestry practices as an integral part of the wildlife habitat conservation and management practices specified in an approved plan; and

(b) The lease or sale of in-stream water rights as an integral part of the wildlife habitat conservation and management practices specified in an approved plan.

(3) The rules shall be reviewed periodically by the commission and revised when considered necessary or appropriate by the commission. [2003 c.539 §5]

308A.412 Plan submission and review; limitation on approval; rules. (1) An owner of land described in ORS 308A.415 who seeks special assessment under ORS 308A.403 to 308A.430 shall first submit a proposed wildlife habitat conservation and management plan to the State Department of Fish and Wildlife for review.

(2) The department shall review each submitted plan for compliance with the standards set forth in the rules adopted under ORS 308A.409 and shall determine if the plan is being implemented.

(3) Upon completing a review of a proposed plan and determining that the plan is in compliance with the standards set forth in the rules adopted under ORS 308A.409 and is being implemented, the department shall issue to the landowner a written declaration that the land is subject to a wildlife habitat conservation and management plan approved by the department and that the landowner has begun implementing the plan.

(4) The State Fish and Wildlife Commission may establish by rule a limit on the number of plans that may be approved in each calendar year. An application that is not approved because the maximum number of plans for a year has already been approved shall be held for consideration for approval for the next year. [2003 c.539 §6]

308A.415 Designation by State Fish and Wildlife Commission of land eligible for wildlife habitat special assessment. (1) At the request of the governing body of a county, the State Fish and Wildlife Commission may designate the following land in unincorporated areas within the county as eligible for wildlife habitat special assessment:

(a) Any land that is zoned for exclusive farm use, mixed farm and forest use or forest use under a land use planning goal protecting agricultural land or forestland; or

(b) Land that is clearly identifiable as containing significant wildlife habitat.

(2) At the request of the governing body of a city, the commission may designate the following land within the city as eligible for wildlife habitat special assessment:

(a) Any land that is zoned for exclusive farm use, mixed farm and forest use or forest

use under a land use planning goal protecting agricultural land or forestland; or

(b) Land that is clearly identifiable as containing significant wildlife habitat.

(3) With the prior consent of the governing body of a city, the county in which all or a part of the city is located may apply to the commission on behalf of the city for designation of any area that is within both the city and the county as eligible for wildlife habitat special assessment.

(4) The commission may designate land described in subsection (1) or (2) of this section as eligible for wildlife habitat special assessment only if the commission finds:

(a) That designation will promote the findings in ORS 308A.400 and the policy in ORS 308A.403; and

(b) That the land described in subsection (1) or (2) of this section is of the nature and quality to allow for implementation of wildlife habitat conservation and management plans approved under rules adopted pursuant to ORS 308A.409.

(5) Land may not qualify for wildlife habitat special assessment under ORS 308A.424 unless the commission has determined that the land is eligible for wildlife habitat special assessment under this section. [2003 c.539 §7]

308A.418 Removal of designation upon request of city or county; requirements.

(1) The governing body of the city or county that requested designation under ORS 308A.415 may request that the State Fish and Wildlife Commission remove that designation.

(2) The commission shall remove the designation if:

(a) The city or county demonstrates that the designation creates an economic burden for the city or county; and

(b) The commission finds that the economic burden is significant.

(3) In making its determination under subsection (2) of this section, the commission shall give significant weight to the demonstration of economic burden made by the city or county. [2003 c.539 §7a]

308A.421 Effect of designation or removal for property tax purposes. A determination by the State Fish and Wildlife Commission to designate land as eligible for wildlife habitat special assessment under ORS 308A.415 or to remove that designation under ORS 308A.418 shall for property tax purposes be effective as of the tax year beginning the July 1 immediately following the determination. [2003 c.539 §7b]

308A.424 Application for special assessment; approval. (1) When a wildlife habitat conservation and management plan is approved by the State Department of Fish and Wildlife and is being implemented, the owner of the land subject to the plan may apply to the county assessor to receive wildlife habitat special assessment.

(2) Application shall be made to the county assessor on forms prepared by the Department of Revenue and supplied by the county assessor.

(3) Applications for wildlife habitat special assessment shall be made to the county assessor on or before April 1 of the first assessment year for which the assessment is desired. The application shall include:

(a) A copy of the wildlife habitat conservation and management plan.

(b) A certified copy of the declaration described in ORS 308A.412 (3).

(c) A description of the land that is the subject of the application that is sufficient for the county assessor to determine whether the land for which wildlife habitat special assessment is sought is within an area eligible for wildlife habitat special assessment.

(d) A statement that the applicant is aware of the potential tax liability that arises under ORS 308A.703 upon disqualification from wildlife habitat special assessment.

(e) An affirmation that the statements contained in the application are true.

(4) An application to the county assessor shall be deemed approved unless, before August 15 of the year in which the application was filed, the assessor notifies the applicant in writing that the application has been wholly or partially denied.

(5) Whether land that is subject to a wildlife habitat conservation and management plan qualifies for special assessment under this section shall be determined as of January 1 of the assessment year. If land so qualified becomes disqualified prior to July 1 of the same assessment year, the land shall be valued under ORS 308.232 at its real market value as defined by law without regard to this section and shall be assessed at its assessed value under ORS 308.146 or as otherwise provided by law. If the land becomes disqualified on or after July 1, the land shall continue to qualify for special assessment as provided in this section for the current tax year. [2003 c.539 §8]

308A.427 Valuation; potential additional tax liability. (1) The county assessor shall value land for wildlife habitat special assessment in accordance with this section.

(a) For property that was specially assessed during the previous assessment year under a program listed in ORS 308A.706 (1)(d), the property shall continue to have a specially assessed value, a maximum assessed value and an assessed value as determined under whichever of the following was an applicable method of valuation for the previous assessment year:

(A) Under ORS 308A.050 to 308A.128; or

(B) Under ORS 321.354 or 321.833.

(b) For property that was not specially assessed during the previous assessment year, the property shall have a specially assessed value, a maximum assessed value and an assessed value:

(A) Determined under ORS 321.354 or 321.833 if, at the time of application, the land has growing upon it trees of a marketable species and in numbers sufficient to meet requirements for designated forestland under ORS 321.358 or 321.839; or

(B) If the criteria set forth in subparagraph (A) of this paragraph are not satisfied, determined under ORS 308A.050 to 308A.128.

(2) For property subject to wildlife habitat special assessment, the county assessor shall enter on the assessment and tax roll the notation "potential additional tax liability" until the land is disqualified under ORS 308A.430. [2003 c.539 §9]

308A.430 Disqualification from special assessment; additional taxes. (1) Land subject to a wildlife habitat conservation and management plan shall be inspected by the State Department of Fish and Wildlife periodically to ensure that the land is managed in accordance with the plan. If the plan is not being implemented as approved, the department shall notify the landowner and require compliance measures to be taken within six months. If the plan is still not being implemented as required by the department at the end of the six-month period, the department shall notify the county assessor that the plan is not being implemented as approved.

(2) The county assessor shall disqualify the land from wildlife habitat special assessment upon:

(a) Notice from the department as described in subsection (1) of this section;

(b) Notice of request by the landowner for withdrawal of the land from wildlife habitat special assessment;

(c) Sale or transfer to an ownership making the land exempt from ad valorem property taxation;

(d) The land qualifying for another special assessment listed in ORS 308A.703 (1); or

(e) The act of recording a subdivision plat under ORS chapter 92.

(3) If, pursuant to subsection (2)(e) of this section, the county assessor disqualifies land for wildlife habitat special assessment upon the act of recording a subdivision plat, the land may requalify for wildlife habitat special assessment upon:

(a) Payment of all additional tax and interest that remains due and owing as a result of the disqualification;

(b) Compliance with ORS 308A.403 to 308A.430; and

(c) Submission of an application for wildlife habitat special assessment under ORS 308A.424 and approval of the application by the county assessor.

(4) Upon disqualification, additional taxes shall be determined as provided in ORS 308A.700 to 308A.733. [2003 c.539 §10]

TAXATION OF S CORPORATIONS

314.752 Business tax credits; allowance to shareholders. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are allowable to the shareholders of the S corporation.

(2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.734, on income of the shareholder of an S corporation, there shall be taken into account the shareholder's pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), recapture or recovery shall be passed through to shareholders in pro rata shares as determined in the manner prescribed under section 1377(a) of the Internal Revenue Code.

(3) The character of any item included in a shareholder's pro rata share under subsection (2) of this section shall be determined as if such item were realized directly from the source from which realized by the corporation, or incurred in the same manner as incurred by the corporation.

(4) If the shareholder is a nonresident and there is a requirement applicable for the business tax credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS 316.117, then that provision shall apply to the nonresident shareholder.

(5) As used in this section, "business tax credit" means a tax credit granted to personal income taxpayers to encourage certain investment, to create employment, economic opportunity or incentive or for charitable, educational, scientific, literary or public purposes that is listed under this subsection as a business tax credit or is designated as a business tax credit by law or by the Department of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309 (tribal taxes on reservation enterprise zones and reservation partnership zones), ORS 315.104 (forestation and reforestation), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.141 (biomass production for biofuel), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (agriculture workforce housing), ORS 315.204 (dependent care assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS 315.304 (pollution control facility), ORS 315.326 (renewable energy development contributions), ORS 315.331 (energy conservation projects), ORS 315.336 (transportation projects), ORS 315.341 (renewable energy resource equipment manufacturing facilities), ORS 315.354 and 469B.151 (energy conservation facilities), ORS 315.507 (electronic commerce) and ORS 315.533 (low income community jobs initiative). [1991 c.877 §36; 1993 c.730 §5; 1997 c.170 §34; 1997 c.534 §2; 1999 c.21 §36; 2001 c.674 §11; 2001 c.868 §9; 2001 c.932 §10; 2001 c.957 §18; 2005 c.80 §1; 2005 c.94 §80; 2007 c.625 §13; 2007 c.739 §7; 2007 c.883 §3; 2009 c.33 §§14,15,16; 2010 c.76 §26; 2011 c.83 §11; 2011 c.474 §32; 2011 c.730 §19; 2011 c.732 §9; 2013 c.750 §25; 2015 c.701 §35]

TAX CREDITS: FISHERIES

315.138 Screening devices, by-pass devices or fishways; rules. (1) There shall be allowed a credit against tax due under ORS chapter 316, or if the taxpayer is a corporation, under ORS chapter 317, for taxpayers that install screening devices, by-pass devices or fishways, pursuant to ORS 498.306 or 509.585, and the diversion is not part of a hydroelectric project required to be licensed under the Federal Energy Regulatory Commission. Except as allowed in subsection (4) of this section, the credit shall be taken in the tax year in which the final certification is issued under subsection (10) of this section.

(2) The credit shall be equal to 50 percent of the taxpayer's net certified costs of installing a screening device, by-pass device or fishway. The total credit allowed shall not exceed \$5,000 per device installed.

(3) The credit allowed in any one year shall not exceed the tax liability of the taxpayer.

(4) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular tax year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year. Any credit remaining unused in such second succeeding tax year may be carried forward and used in the third succeeding tax year. Any credit remaining unused in such third succeeding tax year may be carried forward and used in the fourth succeeding tax year. Any credit remaining unused in such fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be used in any tax year thereafter.

(5) The credit provided by this section shall be in addition to and not in lieu of any depreciation or amortization deduction to which the taxpayer otherwise may be entitled with respect to the installation of a screening device, by-pass device or fishway. The taxpayer's adjusted basis for determining gain or loss shall not be further decreased by any tax credits allowed under this section.

(6) In the case of a credit allowed under this section for purposes of ORS chapter 316:

(a) A nonresident shall be allowed the credit in the same manner and subject to the same limitations as a resident. However, the credit shall be prorated using the proportion provided in ORS 316.117.

(b) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

(c) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

(7) To qualify for the credit the taxpayer must be issued a certificate by the State Department of Fish and Wildlife.

(8) To obtain credit under subsection (1) of this section, any person proposing to apply for certification of a screening device, by-pass device or fishway, before installing the screening device, by-pass device or fishway, shall file a request for preliminary certification with the State Department of Fish and Wildlife. The request shall be in a form prescribed by the State Department of Fish and Wildlife. The following conditions shall apply:

(a) Within 30 days of the receipt of a request for preliminary certification, the State Department of Fish and Wildlife may require, as a condition precedent to issuance of a preliminary certificate of approval, the submission of plans and specifications. After examination thereof, the State Department of Fish and Wildlife may request corrections and revisions to the plans and specifications. The State Department of Fish and Wildlife may also require any pertinent information necessary to determine whether the proposed screening device, by-pass device or fishway is in accordance with State Department of Fish and Wildlife requirements.

(b) If the State Department of Fish and Wildlife determines that the proposed screening device, by-pass device or fishway is in accordance with State Department of Fish and Wildlife requirements, it shall issue a preliminary certificate approving the screening device, by-pass device or fishway. If the State Department of Fish and Wildlife determines that the screening device, by-pass device or fishway does not comply with State Department of Fish and Wildlife requirements, the State Department of Fish and Wildlife shall issue an order denying certification.

(c) If within 90 days of the receipt of plans, specifications or any subsequently requested revisions or corrections to the plans and specifications or any other information required pursuant to this section, the State Department of Fish and Wildlife fails to issue a preliminary certificate of approval and the State Department of Fish and Wildlife fails to issue an order denying certification, the preliminary certificate shall be considered to have been issued. The capital investment must comply with the plans, specifications and any corrections or revisions thereto, if any, previously submitted.

(d) Within 30 days from the date of mailing of the order, any person against whom an order is directed pursuant to paragraph (b) of this subsection may demand a hearing. The demand shall be in writing, shall state the grounds for hearing and shall be mailed to the State Fish and Wildlife Director. The hearing shall be conducted in accordance with the applicable provisions of ORS chapter 183.

(9) A screening device, by-pass device or fishway that is installed by the State Department of Fish and Wildlife pursuant to ORS 498.306 (8) in response to noncompliance by the person responsible for the water diversion is not eligible for the credit provided in subsection (1) of this section.

(10) Upon completion and pursuant to application for final certification, final certification shall be issued by the State Depart-

ment of Fish and Wildlife if the screening device, by-pass device or fishway was constructed and installed in accordance with State Department of Fish and Wildlife requirements. Final certification shall include a statement of the costs of installation as verified by the State Department of Fish and Wildlife. The credit allowed under this section shall be claimed first for the tax year of the taxpayer in which final certification is issued.

(11) Pursuant to the procedures for a contested case under ORS chapter 183, the State Department of Fish and Wildlife may order the revocation of the certificate issued under this section of any taxpayer, if it finds that:

(a) The certificate was obtained by fraud or misrepresentation; or

(b) The holder of the certificate fails to meet State Department of Fish and Wildlife requirements.

(12) As soon as the order of revocation under this section has become final the State Department of Fish and Wildlife shall notify the Department of Revenue of such order.

(13) If the certificate of a screening device, by-pass device or fishway is ordered revoked pursuant to subsection (11) of this section, all prior tax relief provided to the holder of the certificate by virtue of the certificate shall be forfeited and the Department of Revenue shall proceed to collect those taxes not paid by the certificate holder as a result of the tax relief provided to the holder.

(14) If the certificate of a screening device, by-pass device or fishway is ordered revoked pursuant to subsection (11) of this section, the certificate holder shall be denied any further relief provided under this section in connection with the screening device, by-pass device or fishway, as the case may be, from and after the date that the order of revocation becomes final.

(15) In the event that the screening device, by-pass device or fishway is destroyed by flood, natural disaster or act of God before all of the credit has been used, the taxpayer may nevertheless claim the credit as if no destruction had taken place.

(16) Screening devices, by-pass devices or fishways that are financed by funds obtained from the Water Development Fund, pursuant to ORS 541.700 to 541.855, shall not be eligible for the credit under any circumstances.

(17) The State Department of Fish and Wildlife shall adopt rules for carrying out the provisions of this section and report to the interim committee created under ORS 171.605 to 171.640 to make studies of and inquiries into state revenue matters. [1993 c.730

§12 (enacted in lieu of 316.139 and 317.145); 2001 c.923 §5; 2007 c.625 §2]

Note: Section 11, chapter 913, Oregon Laws 2009, provides:

Sec. 11. The State Department of Fish and Wildlife may not issue a preliminary certificate of approval under ORS 315.138 after January 1, 2018. [2009 c.913 §11; 2011 c.730 §18a]

EDUCATION AND CULTURE: OREGON STATE UNIVERSITY

352.808 Institute for Natural Resources. (1) The Institute for Natural Resources is established at Oregon State University. In administering the institute, Oregon State University may seek the cooperation of other public universities listed in ORS 352.002.

(2) The Institute for Natural Resources shall serve the following purposes:

(a) Serve as a clearinghouse for scientifically based natural resources information.

(b) Provide scientifically based natural resources information to the public in integrated and accessible formats.

(c) Coordinate efforts with other state agencies and bodies to provide natural resources information to the public in a comprehensive manner.

(d) Facilitate and conduct research.

(e) Provide information and technical tools to assist decision-making on natural resources issues.

(f) Assist the State Parks and Recreation Commission in carrying out the Natural Areas Program by maintaining a data bank that contains a classification of natural heritage resources and an inventory of the locations of the resources. At a minimum, the institute shall record in the data bank the location of state natural areas, the natural heritage resources in those areas, sites that are inhabited by rare species, and lists that rank by rarity species, plant communities and ecosystem types. The institute shall make the information included in the data bank available to private landowners, researchers and local, state and federal agencies.

(g) Assist the State Parks and Recreation Department in carrying out the Natural Areas Program by reviewing and providing recommendations on proposals for registration and dedication of natural areas.

(3) When making observations on private land, an employee of Oregon State University, or another public university listed in ORS 352.002 that is providing administrative support, who is compiling information for the Natural Areas Program pursuant to subsection (2)(f) of this section must obtain permission from the landowner before entering

private land, collecting information or entering the information into the data bank.

(4) Using existing resources, state agencies designated by the Governor shall enter into a memorandum of understanding, or other agreement deemed appropriate by the Governor, with the institute that defines and clarifies the roles and responsibilities of the agencies in order to prevent duplication of effort and to ensure that agency resources are used efficiently.

(5) State agencies may contract with the institute to fulfill agency needs regarding the collection, storage, integration, analysis, dissemination and monitoring of natural resources information and natural resources research and training. [Formerly 352.239]

(Temporary provisions relating to the Task Force on Independent Scientific Review for Natural Resources)

Note: Sections 1 to 3, chapter 771, Oregon Laws 2015, provide:

Sec. 1. The Legislative Assembly finds and declares that:

(1) Policy and program decisions made by natural resources agencies, boards and commissions can benefit from independent scientific review that:

(a) Reflects a balance of representation from various research sectors, academic and nonacademic, public and private;

(b) Is performed by distinguished scientists from a range of disciplines; and

(c) Is clearly communicated to the public and state and local officials.

(2) Oregon is home to many highly qualified scientists with recognized expertise in a variety of disciplines who are willing to contribute their time and knowledge to scientific reviews to inform the decisions made regarding state and local natural resources policies and programs. [2015 c.771 §1]

Sec. 2. (1) The Task Force on Independent Scientific Review for Natural Resources is established, consisting of up to 15 members.

(2) Members of the task force shall be appointed by the Governor in consultation with the Vice Presidents of Research, or their designees, at Oregon State University, the University of Oregon and Portland State University.

(3)(a) The task force shall consist of members from the forestry, agriculture, manufacturing, conservation, academic and research sectors, and representatives of Oregon State University, the University of Oregon and Portland State University.

(b) At least one member of the task force shall have previously served on the Independent Multidisciplinary Science Team created under ORS 541.914, as in effect prior to the operative date specified in section 9 of this 2015 Act [January 1, 2017], or on another state or federal scientific review body, such as the National Academy of Sciences.

(c) Representatives from state natural resources agencies may participate as nonvoting members.

(4) The task force shall evaluate and assess the need for independent scientific review in Oregon and make appropriate recommendations. In developing its recommendations, the task force shall:

(a) Proceed with the understanding that:

(A) Independent scientific reviews are not intended to replace internal agency reviews of natural resources policy and program decisions; and

(B) Agencies are not required to use an independent scientific review panel as recommended by the task force;

(b) Evaluate whether natural resources agencies, legislators and the public would benefit from the incorporation of independent scientific review in the making of policy decisions;

(c) Evaluate whether existing state, federal and academic resources for conducting independent scientific review are meeting the needs of natural resources agencies and other policymakers; and

(d) Evaluate the mechanisms and structures that are in place in other states and at the federal level for independent scientific review related to natural resources policy.

(5)(a) If the task force determines there is a need for independent scientific review in Oregon, the task force shall make recommendations on one or more entities, which may include existing scientific entities in Oregon or a new independent scientific review entity, that are best situated to conduct or coordinate independent scientific review and whether the entities identified would need legislative authority to act as independent scientific review bodies for Oregon.

(b) If the task force recommends use of a particular existing scientific entity, the task force shall make any recommendations regarding necessary changes to the entity based on the evaluation and assessment undertaken pursuant to subsection (4) of this section. If the task force recommends the development of a new independent scientific review entity, the task force shall make recommendations regarding how to structure a new independent scientific entity.

(6) In making recommendations under subsection (5) of this section, to ensure that an entity will provide scientific review that is independent, the task force shall consider:

(a) Whether the entity should provide reports to the Legislative Assembly or otherwise be subject to special legislative oversight;

(b) Whether organizational safeguards must be established or changed within the entity to ensure that the entity is free from bias and that a wide variety of natural resources disciplines and interests are represented;

(c) How to develop or change the structure or processes of the entity's advisory board or other governing body in order to support the independence of scientific review panels convened by the entity, which shall include consideration of the entity's advisory board or other governing body directing or participating in the scientific analysis and review conducted or coordinated by the entity;

(d) How the entity's funding structure should be created, altered or supplemented to ensure that there is no perception of bias in the funding of independent scientific review panels and to ensure that adequate funds are available to convene such panels;

(e) How to develop processes for conducting or coordinating independent scientific review in order to encourage balanced, broad and diverse participation among the scientific disciplines that may be called upon in the course of independent scientific review; and

(f) How to develop procedures for the selection and deliberation of scientific experts to participate in independent scientific reviews, taking into consideration lessons learned from the processes used by the former Independent Multidisciplinary Science Team and other processes for independent scientific reviews.

(7) The task force also shall make recommendations regarding the structure and function of the process to

be used by the recommended entities in the course of independent scientific reviews. In making recommendations under this subsection, the task force shall consider:

(a) Whether the entity should respond to inquiries from the Governor's office or the Legislative Assembly, the citizen boards of natural resources agencies or from other appropriate parties;

(b) Whether the entity should independently select science issues to review;

(c) Whether a state agency should be required to respond in writing to a report issued by an independent scientific review panel, explaining how the agency intends to implement the panel's suggestions or why the agency does not plan to implement the suggestions;

(d) How to enhance involvement of the University of Oregon, Oregon State University, Portland State University and other universities in the independent scientific review process; and

(e) How to provide a scientific review process that is open to the public and that inspires public confidence in, and understanding of, the review process without compromising the independence of the review.

(8) A majority of the voting members of the task force constitutes a quorum for the transaction of business.

(9) Official action by the task force requires the approval of a majority of the voting members of the task force.

(10) The task force shall elect one of the voting members to serve as chairperson.

(11) If there is a vacancy for any cause, the Governor shall, in consultation with the Vice Presidents of Research, or their designees, at Oregon State University, the University of Oregon and Portland State University, make an appointment to become immediately effective.

(12) The task force shall meet at times and places specified by a majority of the voting members of the task force.

(13) The task force may adopt rules necessary for the operation of the task force.

(14) The task force shall have its first meeting on or before January 1, 2016.

(15) The task force shall submit a report of its findings and recommendations to the Governor and to an appropriate committee of the Legislative Assembly in the manner provided in ORS 192.245 no later than September 15, 2016.

(16) The Institute for Natural Resources shall provide staff support to the task force.

(17) Members of the task force are not entitled to compensation, but may be reimbursed for actual and necessary travel and other expenses incurred by them in the performance of their official duties in the manner and amounts provided for in ORS 292.495. Claims for expenses shall be paid out of funds appropriated to the Institute for Natural Resources for purposes of the task force.

(18) All agencies of state government, as defined in ORS 174.111, are directed to assist the task force in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish such information and advice as the members of the task force consider necessary to perform their duties. [2015 c.771 §2]

Sec. 3. Sections 1 and 2 of this 2015 Act are repealed on January 2, 2019. [2015 c.771 §3]

OCEAN SHORES; STATE RECREATION AREAS

(General Provisions)

390.650 Improvement permit procedure; fee; waiver or reduction. (1) Any person who desires a permit to make an improvement on any property subject to ORS 390.640 shall apply in writing to the State Parks and Recreation Department on a form and in a manner prescribed by the department, stating the kind of and reason for the improvement.

(2) Upon receipt of a properly completed application, the State Parks and Recreation Department shall provide notice of the proposal by causing notice of the application to be posted at or near the location of the proposed improvement. The notice shall include the name of the applicant, a description of the proposed improvement and its location and a statement of the time within which interested persons may file a request with the department for a hearing on the application. The department shall give notice of any application, hearing or decision to any person who files a written request with the department for such notice.

(3) Within 30 days after the date of posting the notice required in subsection (2) of this section, the applicant or 10 or more other interested persons may file a written request with the State Parks and Recreation Department for a hearing on the application. If such a request is filed, the department shall set a time for a hearing to be held by the department. The department shall cause notice of the hearing to be posted in the manner provided in subsection (2) of this section. The notice shall include the time and place of the hearing. After the hearing on an application or, if a hearing is not requested, after the time for requesting a hearing has expired, the department shall grant the permit if approval would not be adverse to the public interest. ORS chapter 183 does not apply to a hearing or decision under this section.

(4) In acting on an application, the State Parks and Recreation Department shall take into consideration the matters described by ORS 390.655. The department shall act on an application within 60 days after the date of receipt or, if a hearing is held, within 45 days after the date of the hearing.

(a) The decision of the department shall include written findings setting forth the specific reasons for the approval or denial and, if the application is approved, any conditions the department considers necessary to maintain the standards established under ORS 390.655.

(b) A copy of the written findings shall be furnished to the applicant at the time of approval or denial of the application by the department as provided in this subsection.

(5) Subsections (2) and (3) of this section do not apply to an application for a permit for the repair, replacement or restoration, in the same location, of an authorized improvement or improvement existing on or before May 1, 1967, if the repair, replacement or restoration is commenced within three years after the damage to or destruction of the improvement being repaired, replaced or restored occurs.

(6) The State Parks and Recreation Department may, upon application therefor, either written or oral, grant an emergency permit for a new improvement, dike, revetment, or for the repair, replacement or restoration of an existing, or authorized improvement where property or property boundaries are in imminent peril of being destroyed or damaged by action of the Pacific Ocean or the waters of any bay or river of this state. Said permit may be granted by the department without regard to the provisions of subsections (1), (2), (3), (4) and (5) of this section. Any emergency permit granted hereunder shall be reduced to writing by the department within 10 days after granting the same with a copy thereof furnished to the applicant.

(7) Except as provided by subsection (8) of this section, each application under subsection (1) of this section shall be accompanied by a fee to cover, in part, the expenses of the department in investigating, reviewing and issuing the improvement permits. The application fee for each permit shall be:

(a) \$400 for any project for which the construction value is less than \$2,500.

(b) \$400 for any project for which the construction value is equal to or greater than \$2,500, plus an additional amount equal to three percent of the construction value over \$2,500.

(8) The department may waive or reduce the fee required by subsection (7) of this section for an application submitted by a public body, as that term is defined by ORS 174.109, or tribal government if the primary purpose of the improvement is:

(a) Restoring, conserving or protecting the natural, resource, scenic, recreational, cultural or economic values of the ocean shore;

(b) Restoring native beach or dune habitat contributing to the recovery of sensitive species, including state and federally listed threatened or endangered species; or

(c) Improving native biological values of the ocean shore.

(9) Fees received under this section shall be deposited into a subaccount of the State Parks and Recreation Department Fund. Such fees are continuously appropriated to the department for the purpose of carrying out the ocean shore program.

(10) As used in this section, "construction value" includes but is not limited to the costs of labor and equipment rental. For a project involving only the movement of sand or similar material on the ocean shore, "construction value" shall equal the costs of labor, fees and equipment rental. [1967 c.601 §6; 1969 c.601 §10; 1979 c.186 §21; 1999 c.373 §4; 2003 c.25 §1]

390.660 Regulation of use of lands adjoining ocean shores; rules. The State Parks and Recreation Department is hereby directed to protect, to maintain and to promulgate rules governing use of the public of property that is subject to ORS 390.640, property subject to public rights or easements declared by ORS 390.610 and property abutting, adjacent or contiguous to those lands described by ORS 390.615 that is available for public use, whether such public right or easement to use is obtained by dedication, prescription, grant, state-ownership, permission of a private owner or otherwise. [1967 c.601 §7; 1969 c.601 §16]

(Special Permits)

390.715 Permits for pipe, cable or conduit across ocean shore, state recreation areas and submerged lands. (1) The State Parks and Recreation Department may issue permits under ORS 390.650 to 390.659 for pipelines, cable lines and other conduits across and under the ocean shore, state recreation areas and the submerged lands adjacent to the ocean shore, upon payment of just compensation by the permittee. A permit issued under this subsection is not a sale or lease of tide and overflow lands within the scope of ORS 274.040.

(2) Whenever the issuance of a permit under subsection (1) of this section will affect lands owned privately, the State Parks and Recreation Department shall withhold the issuance of the permit until the permittee obtains from the private owner an easement, license or other written authorization that meets the approval of the State Parks and Recreation Department, except as to the compensation to be paid to the private owner.

(3) All permits issued under this section are subject to conditions that will ensure safety of the public and the preservation of economic, scenic and recreational values and to rules promulgated by state agencies having jurisdiction over the activities of the

grantee or permittee. [1969 c.601 §22; 2005 c.300 §1; 2007 c.71 §101]

390.725 Permits for removal of products along ocean shore; rules. (1) Removal of natural products such as fish or wildlife, agates or small amounts of driftwood from a state recreation area as defined in ORS 390.605 for personal, noncommercial use is not subject to the provisions of ORS 390.650.

(2) The collection of natural products for the purpose of trade, sale or resale shall be subject to the permit provisions and standards of ORS 390.650 and 390.655. Permits shall provide for the payment of just compensation by the permittee as provided by rule adopted under subsection (4) of this section.

(3) No archaeological object associated with an archaeological site, as those terms are defined in ORS 358.905, shall be removed from the ocean shore except as provided in ORS 358.920 and 390.235.

(4) Rules or permits shall be made or granted by the State Parks and Recreation Department only after consultation with the State Fish and Wildlife Commission, the State Department of Geology and Mineral Industries and the Department of State Lands. Rules and permits shall contain provisions necessary to protect the areas from any use, activity or practice inimicable to the conservation of natural resources or public recreation.

(5) The terms, royalty and duration of a permit under this section are at the discretion of the State Parks and Recreation Department. A permit is revocable at any time in the discretion of the department without liability to the permittee.

(6) Whenever the issuance of a permit under this section will affect lands owned privately, the State Parks and Recreation Department shall withhold the issuance of such permit until such time as the permittee shall have obtained an easement, license or other written authorization from the private owner, which easement, license or other written authority must meet the approval of the department, except as to the compensation to be paid to the private owner. [1969 c.601 §23; 1999 c.373 §7]

390.729 Permits for operation of all-terrain vehicles on ocean shore. (1) A person may not operate a Class I all-terrain vehicle on the ocean shore unless the person obtains a permit from the State Parks and Recreation Department as provided in this section.

(2) The department may issue a permit for the operation of a Class I all-terrain vehicle on the ocean shore if the operator of

the vehicle holds a permit issued under ORS 390.570, if the vehicle has a current operating permit issued under ORS 390.580 and if the vehicle will be used to meet the transportation needs of:

- (a) Individuals with disabilities;
- (b) Emergency response or emergency aid workers; or
- (c) Biologists, wildlife monitors or other natural resources workers.

(3) Application for a permit issued under this section shall be in a form determined by the department. The department shall specify the information to be contained in the application, the renewal period and the manner in which the permit must be displayed.

(4) The department may not charge for a permit issued under this section. [2005 c.300 §3]

SCENIC WATERWAYS

390.815 Policy; establishment of system. The people of Oregon find that many of the free-flowing rivers of Oregon and Waldo Lake and lands adjacent to such lake and rivers possess outstanding scenic, fish, wildlife, geological, botanical, historic, archaeological, and outdoor recreation values of present and future benefit to the public. The people of Oregon also find that the policy of permitting construction of dams and other impoundment facilities at appropriate sections of the rivers of Oregon and Waldo Lake needs to be complemented by a policy that would preserve Waldo Lake and selected rivers or sections thereof in a free-flowing condition and would protect and preserve the natural setting and water quality of the lake and such rivers and fulfill other conservation purposes. It is therefore the policy of Oregon to preserve for the benefit of the public Waldo Lake and selected parts of the state's free-flowing rivers. For these purposes there is established an Oregon Scenic Waterways System to be composed of areas designated in accordance with ORS 390.805 to 390.925 and any subsequent Acts. [1971 c.1 §1; 1983 c.334 §2]

390.835 Highest and best use of waters within scenic waterways; prohibitions; authority of various agencies; water rights; conditions; recreational prospecting; placer mining. (1) It is declared that the highest and best uses of the waters within scenic waterways are recreation, fish and wildlife uses. The free-flowing character of these waters shall be maintained in quantities necessary for recreation, fish and wildlife uses. No dam, or reservoir, or other water impoundment facility shall be constructed on waters within scenic waterways. No water diversion facility shall be con-

structed or used except by right previously established or as permitted by the Water Resources Commission, upon a finding that such diversion is necessary to uses designated in ORS 536.310 (12), and in a manner consistent with the policies set forth under ORS 390.805 to 390.925. The Water Resources Commission shall administer and enforce the provisions of this subsection.

(2) Filling of the beds or removal of material from or other alteration of the beds or banks of scenic waterways for purposes other than recreational prospecting not requiring a permit shall be prohibited, except as permitted by the Director of the Department of State Lands upon a finding that such activity would be consistent with the policies set forth under ORS 390.805 to 390.925 for scenic waterways and in a manner consistent with the policies set forth under ORS 196.800 to 196.825 and 196.845 to 196.870 for removal of material from the beds and banks and filling of any waters of this state. The Director of the Department of State Lands shall administer and enforce the provisions of this subsection.

(3)(a) Upon a finding of emergency circumstances, the Director of the Department of State Lands may issue a temporary permit for the removal, filling or alteration of the beds or banks within a scenic waterway. The temporary permit shall include conditions developed after consultation with the State Department of Fish and Wildlife and the State Parks and Recreation Department.

(b) As used in this subsection, "emergency circumstances" exist if prompt action is necessary to prevent irreparable harm, injury or damage to persons or property.

(4) Any person adversely affected or aggrieved by the grant or denial of a permit under subsection (2) or (3) of this section may appeal in accordance with the procedure set forth in ORS 196.835.

(5) Nothing in ORS 390.805 to 390.925 affects the authority of the State Fish and Wildlife Commission to construct facilities or make improvements to facilitate the passage or propagation of fish or to exercise other responsibilities in managing fish and wildlife resources. Nothing in ORS 390.805 to 390.925 affects the authority of the Water Resources Commission to construct and maintain stream gauge stations and other facilities related to the commission's duties in administration of the water laws.

(6) Upon a finding of necessity under subsection (1) of this section, the Water Resources Commission may issue a water right for human consumption not to exceed 0.005 cubic feet per second per household, or livestock consumption uses not to exceed one-

tenth of one cubic foot per second per 1,000 head of livestock, as designated in ORS 536.310 (12) within or above a scenic waterway if the Water Resources Commission makes the following findings:

(a) That issuing the water right does not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

(b) That issuing the water right is consistent with provisions pertaining to water appropriation and water rights under ORS chapters 536 and 537 and rules adopted thereunder.

(c) That construction, operation and maintenance of the diversion system will be carried out in a manner consistent with the purposes set forth in ORS 390.805 to 390.925.

(d) If the water right is for human consumption, an additional finding that:

(A) The applicant cannot reasonably obtain water from any other source;

(B) Denial of the water right would result in loss of reasonable expectations for use of the property; and

(C) The system installed to divert water shall include monitoring equipment to permit water use measurement and reporting.

(e) If the water right is for livestock consumption, an additional finding that:

(A) The right is necessary to prevent the livestock from watering in or along the stream bed;

(B) The applicant cannot reasonably obtain water from any other source; and

(C) The applicant has excluded livestock from the stream and its adjacent riparian zone.

(7) In making the findings required under subsection (6) of this section, the Water Resources Commission shall consider the existing or potential cumulative impacts of issuing the water right.

(8) The Water Resources Commission may not allow human consumption and livestock uses authorized under subsection (6) of this section in excess of a combined cumulative total of one percent of the average daily flow or one cubic foot per second, whichever is less, unless:

(a) The Water Resources Commission, the State Parks and Recreation Department, the State Department of Fish and Wildlife, the Department of Environmental Quality and the Department of State Lands unanimously agree to exceed that amount; and

(b) Exceeding that amount will not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

(9)(a) The provisions of this section shall not apply to a water right application for the use of ground water as defined in ORS 537.515, except upon a finding by the Water Resources Director based on a preponderance of evidence that the use of ground water will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife.

(b) The Water Resources Department shall review every application for the use of ground water to determine whether to make the finding specified in paragraph (a) of this subsection. The finding shall be based upon the application of generally accepted hydrogeologic methods using relevant and available field information concerning the proposed use.

(c) In making the determination required by paragraph (a) of this subsection, the Water Resources Department shall consider the timing of projected impacts of the proposed use in relation to other factors, including but not limited to: Changing climate, recharge, incidental precipitation, out-of-stream appropriations and return flows.

(d) If the Water Resources Director makes the finding specified in paragraph (a) of this subsection, the Water Resources Director shall issue an order denying the application unless:

(A) Mitigation is provided in accordance with subsection (10) of this section; or

(B) The applicant submits evidence to overcome the finding under paragraph (a) of this subsection.

(e) Except as provided under subsection (13) of this section, if the Water Resources Director does not make the finding specified in paragraph (a) of this subsection, the Water Resources Director shall issue an order approving the application if the application otherwise meets the requirements of ORS 537.505 to 537.795.

(f) A protest of any order issued under this subsection may be filed in the same manner as a protest on any application for a right to appropriate ground water.

(g) Each water right permit and certificate for appropriation of ground water issued after July 19, 1995, for which a source of appropriation is within or above a scenic waterway shall be conditioned to allow the regulation of the use if analysis of data available after the permit or certificate is issued discloses that the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right or

as those quantities may be subsequently reduced.

(h) Nothing in this subsection shall limit the use of ground water for a use exempted under ORS 537.545.

(10) The Water Resources Commission or Water Resources Director shall consider mitigation measures and may include mitigation measures as conditions in any water right permit or certificate to ensure the maintenance of the free-flowing character of the scenic waterway in quantities necessary for recreation, fish and wildlife.

(11) The Water Resources Commission and the Water Resources Director shall carry out their responsibilities under ORS 536.220 to 536.590 with respect to the waters within scenic waterways in conformity with the provisions of this section.

(12) As used in this section, "measurably reduce" means that the use authorized under subsection (9) of this section will individually or cumulatively reduce surface water flows within the scenic waterway in excess of a combined cumulative total of one percent of the average daily flow or one cubic foot per second, whichever is less, unless:

(a) The Water Resources Department, the State Parks and Recreation Department, the State Department of Fish and Wildlife, the Department of Environmental Quality and the Department of State Lands unanimously agree to exceed that amount; and

(b) Exceeding that amount will not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

(13) Before authorizing an appropriation that will reduce streamflows within a scenic waterway in amounts up to but not exceeding the amounts described in subsection (12) of this section, the Water Resources Director shall find:

(a) That the appropriation will not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

(b) That the appropriation is consistent with provisions pertaining to water appropriations and water rights under ORS chapters 536 and 537 and the rules adopted thereunder.

(c) That construction, operation and maintenance of the appropriation will be carried out in a manner consistent with the purposes set forth in ORS 390.805 to 390.925.

(14) No placer mining shall be permitted on waters within scenic waterways other than recreational placer mining.

(15) No person shall be required to obtain a permit for recreational prospecting result-

ing in the fill, removal or other alteration of less than one cubic yard of material at any one individual site and, cumulatively, not more than five cubic yards of material from within the bed or wet perimeter of any single scenic waterway in a single year. Recreational prospecting shall not occur at any site where fish eggs are present.

(16) No provision of this section shall be construed to exempt recreational placer mining on a scenic waterway, other than recreational prospecting not requiring a permit, from compliance with the provisions of ORS 196.800 to 196.825 and 196.845 to 196.870 or rules adopted pursuant to ORS 196.800 to 196.825 and 196.845 to 196.870.

(17) Recreational placer mining, other than recreational prospecting not requiring a permit, shall not:

(a) Dam or divert a waterway or obstruct fish passage;

(b) Include nozzling, sluicing or digging outside the wet perimeter of the stream, nor extend the wet perimeter;

(c) Include movement of boulders, logs, stumps or other woody material from the wet perimeter other than movement by hand and nonmotorized equipment;

(d) Involve the disturbance of rooted or embedded woody plants, including trees and shrubs, regardless of their location;

(e) Include excavation from the streambank;

(f) Fail to level pits, piles, furrows or potholes outside the main channel of the waterway upon leaving the site;

(g) Include operation of a suction dredge without a suction dredge waste discharge permit from the Department of Environmental Quality including, but not limited to, a prohibition against dredging during periods when fish eggs could be in the dredging site gravel;

(h) Be conducted on federal lands except as allowed by agencies of the federal government;

(i) Impede boating;

(j) Include operation of a dredge between the hours of 6 p.m. and 8 a.m. within 500 feet of a residence or within 500 feet of a campground except within a federally designated recreational mining site; or

(k) Include operation of a dredge within the marked or posted swimming area of a designated campground or day use area except within a federally designated recreational mining site.

(18) As used in this section:

(a) "Bed" means the land within the wet perimeter and any adjacent nonvegetated dry gravel bar.

(b) "Prospecting" means to search or explore for samples of gold, silver or other precious minerals, using nonmotorized methods, from among small quantities of aggregate.

(c) "Recreational placer mining" includes, but is not limited to, the use of nonmotorized equipment and motorized surface dredges having an intake nozzle with an inside diameter not exceeding four inches, a motor no larger than 16 horsepower and a muffler meeting or exceeding factory-installed noise reduction standards. "Recreational placer mining" does not include recreational prospecting that does not require a permit.

(d) "Wet perimeter" means the area of the stream that is underwater, or is exposed as a nonvegetated dry gravel bar island surrounded on all sides by actively moving water at the time the activity occurs. [1971 c.1 §4; 1973 c.756 §1; 1977 c.671 §2; 1985 c.673 §177; 1989 c.320 §1; 1993 c.99 §1; 1995 c.223 §1; 1995 c.719 §1; 1997 c.223 §1; 1997 c.478 §1; 2001 c.499 §1]

Note: Operation of the amendments to 390.835 by section 8, chapter 516, Oregon Laws 2001, is dependent upon further approval by the Legislative Assembly. See section 11, chapter 516, Oregon Laws 2001. The text that is operative after that approval is set forth for the user's convenience.

390.835. (1) It is declared that the highest and best uses of the waters within scenic waterways are recreation, fish and wildlife uses. The free-flowing character of these waters shall be maintained in quantities necessary for recreation, fish and wildlife uses. A dam, reservoir or other water impoundment facility may not be constructed on waters within scenic waterways. A water diversion facility may not be constructed or used except by right previously established or as permitted by the Water Resources Commission, upon a finding that such diversion is necessary to uses designated in ORS 536.310 (12), and in a manner consistent with the policies set forth under ORS 390.805 to 390.925. The Water Resources Commission shall administer and enforce the provisions of this subsection.

(2) Filling of the beds or removal of material from or other alteration of the beds or banks of scenic waterways for purposes other than recreational prospecting not requiring a permit shall be prohibited, except as permitted by the Director of the Department of State Lands upon a finding that such activity would be consistent with the policies set forth under ORS 390.805 to 390.925 for scenic waterways and in a manner consistent with the policies set forth under ORS 196.800 to 196.825 and 196.845 to 196.870 for removal of material from the beds and banks and filling of any waters of this state. The Director of the Department of State Lands shall administer and enforce the provisions of this subsection.

(3)(a) Upon a finding of emergency circumstances, the Director of the Department of State Lands may issue a temporary permit for the removal, filling or alteration of the beds or banks within a scenic waterway. The temporary permit shall include conditions developed after consultation with the State Department of Fish and Wildlife and the State Parks and Recreation Department.

(b) As used in this subsection, “emergency circumstances” exist if prompt action is necessary to prevent irreparable harm, injury or damage to persons or property.

(4) Any person adversely affected or aggrieved by the grant or denial of a permit under subsection (2) or (3) of this section may appeal in accordance with the procedure set forth in ORS 196.835.

(5) Nothing in ORS 390.805 to 390.925 affects the authority of the State Fish and Wildlife Commission to construct facilities or make improvements to facilitate the passage or propagation of fish or to exercise other responsibilities in managing fish and wildlife resources. Nothing in ORS 390.805 to 390.925 affects the authority of the Water Resources Commission to construct and maintain stream gauge stations and other facilities related to the commission’s duties in administration of the water laws.

(6) Upon a finding of necessity under subsection (1) of this section, the Water Resources Commission may issue a water right for human consumption not to exceed 0.005 cubic feet per second per household, or livestock consumption uses not to exceed one-tenth of one cubic foot per second per 1,000 head of livestock, as designated in ORS 536.310 (12) within or above a scenic waterway if the Water Resources Commission makes the following findings:

(a) That issuing the water right does not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

(b) That issuing the water right is consistent with provisions pertaining to water appropriation and water rights under ORS chapters 536 and 537 and rules adopted thereunder.

(c) That construction, operation and maintenance of the diversion system will be carried out in a manner consistent with the purposes set forth in ORS 390.805 to 390.925.

(d) If the water right is for human consumption, an additional finding that:

(A) The applicant cannot reasonably obtain water from any other source;

(B) Denial of the water right would result in loss of reasonable expectations for use of the property; and

(C) The system installed to divert water shall include monitoring equipment to permit water use measurement and reporting.

(e) If the water right is for livestock consumption, an additional finding that:

(A) The right is necessary to prevent the livestock from watering in or along the stream bed;

(B) The applicant cannot reasonably obtain water from any other source; and

(C) The applicant has excluded livestock from the stream and its adjacent riparian zone.

(7) In making the findings required under subsection (6) of this section, the Water Resources Commission shall consider the existing or potential cumulative impacts of issuing the water right.

(8) The Water Resources Commission may not allow human consumption and livestock uses authorized under subsection (6) of this section in excess of a combined cumulative total of one percent of the average daily flow or one cubic foot per second, whichever is less, unless:

(a) The Water Resources Commission, the State Parks and Recreation Department, the State Department of Fish and Wildlife, the Department of Environmental Quality and the Department of State Lands unanimously agree to exceed that amount; and

(b) Exceeding that amount will not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

(9)(a) The provisions of this section do not apply to a water right application for the use of ground water as defined in ORS 537.515, except upon a finding by the Water Resources Director based on a preponderance of evidence that the use of ground water will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife.

(b) The Water Resources Department shall review every application for the use of ground water to determine whether to make the finding specified in paragraph (a) of this subsection. The finding shall be based upon the application of generally accepted hydrogeologic methods using relevant and available field information concerning the proposed use.

(c) In making the determination required by paragraph (a) of this subsection, the Water Resources Department shall consider the timing of projected impacts of the proposed use in relation to other factors, including but not limited to: Changing climate, recharge, incidental precipitation, out-of-stream appropriations and return flows.

(d) If the Water Resources Director makes the finding specified in paragraph (a) of this subsection, the Water Resources Director shall issue an order denying the application unless:

(A) Mitigation is provided in accordance with subsection (10) of this section; or

(B) The applicant submits evidence to overcome the finding under paragraph (a) of this subsection.

(e) Except as provided under subsection (13) of this section, if the Water Resources Director does not make the finding specified in paragraph (a) of this subsection, the Water Resources Director shall issue an order approving the application if the application otherwise meets the requirements of ORS 537.505 to 537.795.

(f) A protest of any order issued under this subsection may be filed in the same manner as a protest on any application for a right to appropriate ground water.

(g) Each water right permit and certificate for appropriation of ground water issued after July 19, 1995, for which a source of appropriation is within or above a scenic waterway shall be conditioned to allow the regulation of the use if analysis of data available after the permit or certificate is issued discloses that the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right or as those quantities may be subsequently reduced.

(h) This subsection does not limit the use of ground water for a use exempted under ORS 537.545.

(10) The Water Resources Commission or Water Resources Director shall consider mitigation measures and may include mitigation measures as conditions in any water right permit or certificate to ensure the maintenance of the free-flowing character of the scenic waterway in quantities necessary for recreation, fish and wildlife.

(11) The Water Resources Commission and the Water Resources Director shall carry out their responsibilities under ORS 536.220 to 536.590 with respect to the waters within scenic waterways in conformity with the provisions of this section.

(12) As used in this section, “measurably reduce” means that the use authorized under subsection (9) of this section will individually or cumulatively reduce surface water flows within the scenic waterway in excess of a combined cumulative total of one percent of

the average daily flow or one cubic foot per second, whichever is less, unless:

(a) The Water Resources Department, the State Parks and Recreation Department, the State Department of Fish and Wildlife, the Department of Environmental Quality and the Department of State Lands unanimously agree to exceed that amount; and

(b) Exceeding that amount will not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

(13) Before authorizing an appropriation that will reduce streamflows within a scenic waterway in amounts up to but not exceeding the amounts described in subsection (12) of this section, the Water Resources Director shall find:

(a) That the appropriation will not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

(b) That the appropriation is consistent with provisions pertaining to water appropriations and water rights under ORS chapters 536 and 537 and the rules adopted thereunder.

(c) That construction, operation and maintenance of the appropriation will be carried out in a manner consistent with the purposes set forth in ORS 390.805 to 390.925.

(14) Placer mining is not permitted on waters within scenic waterways, other than recreational placer mining.

(15) A person may not be required to obtain a permit for recreational prospecting or other nonmotorized recreational activity resulting in the fill, removal or other alteration of less than one cubic yard of material at any one individual site and, cumulatively, not more than five cubic yards of material from within the bed or wet perimeter of any single scenic waterway in a single year. Recreational prospecting shall not occur at any site where fish eggs are present.

(16) This section does not exempt recreational placer mining on a scenic waterway, other than recreational prospecting not requiring a permit, from compliance with the provisions of ORS 196.800 to 196.825 and 196.845 to 196.870 or rules adopted pursuant to ORS 196.800 to 196.825 and 196.845 to 196.870.

(17) Recreational placer mining may not:

(a) Dam or divert a waterway or obstruct fish passage;

(b) Include nozzling, sluicing or digging outside the wet perimeter of the stream, nor extend the wet perimeter;

(c) Include movement of boulders, logs, stumps or other woody material from the wet perimeter other than movement by hand and nonmotorized equipment;

(d) Involve the disturbance of rooted or embedded woody plants, including trees and shrubs, regardless of their location;

(e) Include excavation from the streambank;

(f) Fail to level pits, piles, furrows or potholes outside the main channel of the waterway upon leaving the site;

(g) Include operation of a suction dredge without a suction dredge waste discharge permit from the Department of Environmental Quality including, but not limited to, a prohibition against dredging during periods when fish eggs could be in the dredging site gravel;

(h) Be conducted on federal lands except as allowed by agencies of the federal government;

(i) Impede boating;

(j) Include operation of a dredge between the hours of 6 p.m. and 8 a.m. within 500 feet of a residence or

within 500 feet of a campground except within a federally designated recreational mining site; or

(k) Include operation of a dredge within the marked or posted swimming area of a designated campground or day use area except within a federally designated recreational mining site.

(18) As used in this section:

(a) "Bed" means the land within the wet perimeter and any adjacent nonvegetated dry gravel bar.

(b) "Prospecting" means to search or explore for samples of gold, silver or other precious minerals, using nonmotorized methods, from among small quantities of aggregate.

(c) "Recreational placer mining" includes, but is not limited to, the use of nonmotorized equipment and motorized surface dredges having an intake nozzle with an inside diameter not exceeding four inches, a motor no larger than 16 horsepower and a muffler meeting or exceeding factory-installed noise reduction standards. "Recreational placer mining" does not include recreational prospecting that does not require a permit.

(d) "Wet perimeter" means the area of the stream that is underwater, or is exposed as a nonvegetated dry gravel bar island surrounded on all sides by actively moving water at the time the activity occurs.

Note: Sections 3 and 4, chapter 499, Oregon Laws 2001, provide:

Sec. 3. In order to make recommendations to better achieve the objectives and enhance the effectiveness of the Oregon Scenic Waterways System, the State Parks and Recreation Department shall complete a review of the system administered under ORS 390.805 to 390.925, including a review of the studies pertaining to the effects of recreational placer mining within scenic waterways. At the request of the State Parks and Recreation Department, the Department of State Lands, the Water Resources Department, the State Department of Fish and Wildlife, the State Marine Board and the Department of Environmental Quality shall assist in the review. The State Parks and Recreation Department may also request interested public parties to assist in the review. [2001 c.499 §3]

Sec. 4. Notwithstanding ORS 390.835, a permit or temporary permit for dredging issued by the Department of State Lands for the purpose of recreational placer mining within a scenic waterway is not valid after December 31, 2003, if the review described in section 3 of this 2001 Act has been completed and reported to the Seventy-second Legislative Assembly or, if the review has not been completed and reported to the Seventy-second Legislative Assembly, after December 31, 2005. [2001 c.499 §4]

DESCHUTES RIVER SCENIC WATERWAY RECREATION AREA

390.930 Definitions for ORS 390.930 to 390.940. As used in ORS 390.930 to 390.940:

(1) "Managing agencies" includes:

(a) State Parks and Recreation Department;

(b) State Department of Fish and Wildlife;

(c) Confederated Tribes of the Warm Springs Indian Reservation;

(d) State Marine Board;

(e) Sherman, Wasco and Jefferson Counties;

(f) Oregon State Police;

(g) United States Bureau of Land Management;

(h) United States Bureau of Indian Affairs; and

(i) The City of Maupin.

(2) "Recreation area" means the Deschutes River Scenic Waterway Recreation Area created under ORS 390.932. [1987 c.624 §§1,18; 1989 c.904 §26; 2001 c.104 §133]

390.932 Creation of Deschutes River Scenic Waterway Recreation Area. There is created the Deschutes River Scenic Waterway Recreation Area consisting of the segment of the Deschutes River scenic waterway under ORS 390.825 that is designated as the segment from immediately below the existing Pelton reregulating dam downstream approximately 100 miles to its confluence with the Columbia River, excluding the City of Maupin as its boundaries are constituted on October 4, 1977. [1987 c.624 §17]

390.934 Management of Deschutes River Scenic Waterway Recreation Area; plan; rules; budget. (1) The State Parks and Recreation Department shall have primary management responsibility for the State of Oregon to manage the Deschutes River Scenic Waterway Recreation Area. In managing the recreation area, the department shall cooperate with other managing agencies having jurisdiction to manage all or part of the recreational area.

(2) The department shall adopt a management plan by rule. The department shall implement the plan and shall prepare a budget for implementation taking into consideration the provisions of the management plan. [1987 c.624 §§3,19]

390.936 Rules. In accordance with applicable provisions of ORS chapter 183, the State Parks and Recreation Department shall adopt rules necessary to carry out those provisions of ORS 390.930 to 390.940 that the department is charged with administering. [1987 c.624 §§12,22]

390.938 Guidelines for management and development. The Deschutes River Scenic Waterway Recreation Area shall be managed and developed in accordance with the following guidelines:

(1) To the extent allowed under ORS 390.805 to 390.925, the recreational area shall be administered to allow continuance of compatible existing uses, while allowing a wide range of compatible river-oriented public outdoor recreation opportunities, to the extent that these do not impair substantially the natural beauty of the scenic waterway or diminish its aesthetic, fish and wildlife, scientific and recreational values.

(2) The management plan shall stress a segment by segment design and shall include provisions for the development of appropriate facilities and services in the recreation area to meet resource needs for protection and preservation and user needs. This development may include but need not be limited to:

(a) River and car camp development;

(b) Sanitation stations for human waste and garbage;

(c) Parking and access road improvement;

(d) Signs indicating land ownership;

(e) Tree and riparian zone protection and restoration;

(f) Educational programs; and

(g) Initiation of additional volunteer programs.

(3) Before restricting access through the use of a permit system, all other management options shall be considered.

(4) Special emphasis shall be placed on protecting the recreation area and all adjacent property from recreationist-caused wildfires. This goal shall be equal in priority to the other primary goals set forth in this section. This protection shall include but not be limited to:

(a) Permanent adoption of a fire rule that provides the same protection as the fire rule in force during the 1986 fire season.

(b) Requiring boater passes to include the name of the group leader, date and section of river used.

(c) The establishment of information centers near major points of entry into the recreation area to provide users with information and education regarding the fire rules and general rules of the river.

(d) Conducting cadet patrols at the levels considered necessary to facilitate reasonable compliance with recreation area rules. [1987 c.624 §§4,20]

390.940 Relationship to other laws. The State Parks and Recreation Department and state and local managing agencies shall manage the Deschutes River Scenic Waterway Recreation Area according to the provisions of ORS 390.805 to 390.925 and 390.930 to 390.940 and rules adopted under ORS 390.805 to 390.925 and 390.930 to 390.940. Federal and tribal managing agencies with jurisdiction over their respective lands and waters shall be encouraged to manage their lands and waters in a manner consistent with the provisions of ORS 390.805 to 390.925 and 390.930 to 390.940. [1987 c.624 §§5,21]

AUTHORITY OF CITIES TO RESTRICT HUNTING AND TRAPPING

448.305 Special ordinance authority of certain cities. (1) Subject to subsection (2) of this section, by ordinance a city may prohibit or restrict access for purposes of fishing, hunting, camping, hiking, picnicking, trapping of wild animals or birds, harvesting of timber or mining or removal of minerals or carrying on any other activity in its watershed area, or by ordinance may permit any such activity in its watershed area upon conditions specified in the ordinance. However, no ordinance passed under authority of this section shall prohibit the hunting or trapping of fur-bearing or predatory mammals doing damage to public or private property or prohibit the hunting or trapping of any bird or mammal for scientific purposes, as defined in ORS 497.298 (3).

(2) Subsection (1) of this section applies only to cities with respect to watershed areas which are the subject of an agreement between the city and the United States or any department or agency thereof, which agreement authorizes such action by the city.

(3) Violation of an ordinance adopted by any city pursuant to this section is a Class C misdemeanor.

(4) After adoption of an ordinance pursuant to subsection (1) of this section, a city shall post the area with suitable signs setting forth the prohibition of access or the conditions of limited access imposed by the ordinance. Failure to post the area as required in this subsection shall be a defense in any prosecution under an ordinance adopted by any city under authority of this section. [Formerly 449.327; 2011 c.597 §198]

REGULATION OF ENERGY FACILITIES

469.350 Application for site certificate; comment and recommendation. (1) Applications for site certificates shall be made to the Energy Facility Siting Council in a form prescribed by the council and accompanied by the fee required by ORS 469.421.

(2) Copies of the notice of intent and of the application shall be sent for comment and recommendation within specified deadlines established by the council to the Department of Environmental Quality, the Water Resources Commission, the State Fish and Wildlife Commission, the Water Resources Director, the State Geologist, the State Forestry Department, the Public Utility Commission of Oregon, the State Department of Agriculture, the Department of Land Conservation and Development, the Oregon Department of Aviation, any other state agency that has regulatory or advisory responsibility with respect to the facility and

any city or county affected by the application.

(3) Any state agency, city or county that is requested by the council to comment and make recommendations under this section shall respond to the council by the specified deadline. If a state agency, city or county determines that it cannot respond to the council by the specified deadline because the state agency, city or county lacks sufficient resources to review and comment on the application, the state agency, city or county shall contract with another entity to assist in preparing a response. A state agency, city or county that enters into a contract to assist in preparing a response may request funding to pay for that contract from the council pursuant to ORS 469.360.

(4) The State Department of Energy shall notify the applicant whether the application is complete. When the department determines an application is complete, the department shall notify the applicant and provide notice to the public. [Formerly 453.345; 1977 c.794 §10; 1989 c.88 §2; 1993 c.569 §6; 1995 c.505 §9; 2001 c.683 §10; 2009 c.399 §4]

RESTORATION OF BURNED FORESTLAND

477.747 Policies and plans for restoration of burned forestland. The State Forestry Department, the State Parks and Recreation Department, the State Department of Fish and Wildlife, the Department of State Lands and any other state agency with oversight responsibilities for state forestlands shall promote the effective use of state resources by adopting and implementing policies and management plans to begin efforts to restore and recover forestlands burned by fire so that social, economic and environmental values are not lost due to delay. These agencies shall coordinate, to the extent needed, to promote the efficient use of state resources in developing their fire restoration and recovery policies and plans. The Oregon Department of Administrative Services may assist state agencies under this section in developing contract and other procedures to expedite restoration and recovery efforts. The Oregon Department of Administrative Services shall provide appropriate contracting assistance and exceptions as may be necessary to expedite restoration and recovery efforts. [2003 c.456 §1]

USE OF FIREWORKS FOR CONTROL OF PREDATORY ANIMALS

480.124 Use for control of predatory animals allowed. Notwithstanding the provisions of ORS 480.111 to 480.165, fireworks may be purchased, maintained, used and exploded by federal or state agencies author-

ized and required by ORS 610.002 to 610.020 to eradicate and control predatory animals. Such purchase and use shall be in compliance with rules and regulations promulgated by the State Fire Marshal, with the approval of the state agencies authorized and required by ORS 610.002 to 610.020 to eradicate and control predatory animals. [1961 c.293 §3]

RECLAMATION OF MINING LANDS

517.795 Department to consult with and cooperate with other agencies. (1) The State Department of Geology and Mineral Industries shall consult with other state agencies as necessary to ensure that rules developed by the department and those agencies regarding exploration or monitoring well requirements for sites described under ORS 517.790 do not conflict.

(2) The department and any other state agencies imposing requirements for exploration or monitoring wells for sites described under ORS 517.790 may enter into agreements for the department to act on behalf of the agencies in informing the landowner or operator of the requirements and overseeing enforcement of the requirements. [1997 c.184 §1]

517.855 Disruption of portion of mining property preserved from mining. (1) Any portion of a mining property that is preserved from mining, including, but not limited to, a setback, buffer zone or no-impact area, may be excavated, reduced, added to, elevated, reshaped, contoured, graded or otherwise disrupted for the purpose of facilitating the reclamation of the mined area or integrating the reclaimed area with its surroundings.

(2) Subsection (1) of this section does not permit the removal for profit of any valuable mineral. [1997 c.186 §2]

CHEMICAL PROCESS MINING

517.956 Requirements for mining operations; rules. Mining operations in Oregon shall comply with the following:

(1) Mining operations shall be undertaken in a manner that minimizes environmental damage through the use of the best available, practicable and necessary technology to ensure compliance with environmental standards.

(2) Protection measures for fish and wildlife shall be consistent with policies of the State Department of Fish and Wildlife, including:

(a) Protective measures to maintain an objective of zero wildlife mortality. All chemical processing solutions and associated waste water shall be covered or contained to

preclude access by wildlife or maintained in a condition that is not harmful to wildlife.

(b) On-site and off-site mitigation ensuring that there is no overall net loss of habitat value.

(c) No loss of existing critical habitat of any state or federally listed threatened or endangered species.

(d) Fish and wildlife mortality shall be reported in accordance with a monitoring and reporting plan approved by the State Department of Fish and Wildlife.

(e) The State Department of Fish and Wildlife shall establish by rule standards for review of a proposed mining operation for the purpose of developing conditions for fish and wildlife habitat protection that satisfy the terms of this section for inclusion in a consolidated permit by the State Department of Geology and Mineral Industries.

(3) Surface reclamation of a mine site shall:

(a) Ensure protection of human health and safety, as well as that of livestock, fish and wildlife;

(b) Ensure environmental protection;

(c) Require certification to the operator, by the State Department of Fish and Wildlife and the State Department of Agriculture, that a self-sustaining ecosystem, comparable to undamaged ecosystems in the area, has been established in satisfaction of the operator's habitat restoration obligations; and

(d) Include backfilling or partial backfilling as determined on a case-by-case basis by the State Department of Geology and Mineral Industries when necessary to achieve reclamation objectives that cannot be achieved through other mitigation activities. [1991 c.735 §4; 2003 c.14 §341; 2007 c.318 §25; 2013 c.371 §9]

517.988 Permit conditions by State Department of Fish and Wildlife; violations of State Department of Fish and Wildlife conditions. (1) The State Department of Fish and Wildlife shall develop conditions for the protection of fish and wildlife resources that shall be included in any permit issued by the State Department of Geology and Mineral Industries under the process established under ORS 517.952 to 517.989.

(2) The State Department of Fish and Wildlife shall have the right of ingress and egress to and from a mine operating under a permit that includes conditions imposed pursuant to subsection (1) of this section, doing no unnecessary injury to the property of the mine operator, to determine whether the operator is complying with such conditions. If

the State Department of Fish and Wildlife determines that a violation has occurred, the State Department of Fish and Wildlife shall inform the State Department of Geology and Mineral Industries of the violation and the State Department of Geology and Mineral Industries shall cooperate with the State Department of Fish and Wildlife to take appropriate enforcement action. [1991 c.735 §24b; 2013 c.371 §23]

GEOHERMAL WELLS

522.125 Circulation of application to state agencies; suggested conditions to permit. (1) Upon receipt of a complete application for a permit to drill or operate a geothermal well, the State Department of Geology and Mineral Industries shall circulate copies of the application to the Water Resources Department, the State Department of Fish and Wildlife, the Department of Environmental Quality, the State Parks and Recreation Department, the Department of Land Conservation and Development, the State Department of Energy, the Department of State Lands and the governing body of the county and the geothermal heating district in which the well will be located. The State Department of Geology and Mineral Industries may circulate copies to other public agencies that have an interest in the application.

(2) Any public agency receiving a copy of the application as provided in subsection (1) of this section may suggest conditions under which a permit should be granted. A public agency shall submit any suggested conditions to the State Department of Geology and Mineral Industries within 45 days of the public agency's receipt of the copy of the application. The department shall consider any suggested conditions that a public agency submits to the department within the 45-day period. [1975 c.552 §6; 1981 c.694 §5; 1989 c.904 §66; 2009 c.794 §12]

FORESTRY ADMINISTRATION

526.900 Review of state regulations and policies affecting implementation of conservation strategies. (1) The State Forestry Department and the State Department of Agriculture shall, in consultation with relevant state agencies and other public or private organizations, review state statutes, rules, policies and programs that affect landowner decisions to implement conservation strategies.

(2) The review conducted under subsection (1) of this section shall include:

(a) Establishing a statewide strategy for the implementation and coordination of in-

centives, regulatory disincentives, expedited permit processes and related taxes.

(b) The development of a stewardship agreement program for rural lands that establishes a baseline management standard for landowners and a voluntary higher standard that provides natural resource benefits and regulatory certainty for landowners. [2001 c.708 §17]

526.905 Management plans or policies to reduce risk of loss of forest resources.

(1) Pursuant to its authority to improve the efficient and effective use of state resources, the Oregon Department of Administrative Services shall coordinate with the State Department of Fish and Wildlife, the State Parks and Recreation Department, the State Forestry Department, the Department of State Lands and any other state agency that has oversight responsibilities for state forestlands to adopt forest management plans or policies that:

(a) Establish forest health programs and management strategies designed to reduce the risk of catastrophic loss of forest resources from disease and insect infestation.

(b) Establish goals and strategies for managing forest fuel accumulation in order to reduce the risk of catastrophic fires in areas historically subject to frequent, periodic fires.

(2) To the extent that a state agency with oversight responsibilities for state forestlands has, as of January 1, 2004, policies, approved forest management plans or other strategies designed to address forest health and forest fuels management, those policies, plans and strategies may be incorporated into the plans and policies developed by the Oregon Department of Administrative Services.

(3) The Oregon Department of Administrative Services may develop forest fuel reduction and forest health restoration projects that may be implemented by state agencies. Such projects may include procedures for:

(a) Identifying forests that are at high risk of loss due to fuel accumulation, disease or insect infestation.

(b) Cooperating with local governments to identify locations where the urban-forest interface poses the greatest risk of contributing to damage or loss during a fire.

(c) Establishing priority areas for the projects due to natural, economic or scenic values. [2003 c.424 §1]

OREGON FOREST PRACTICES ACT

527.610 Short title. ORS 527.610 to 527.770, 527.990 (1) and 527.992 are known as the Oregon Forest Practices Act. [Formerly 527.010; 1991 c.634 §2]

527.620 Definitions for ORS 527.610 to 527.770. As used in ORS 527.610 to 527.770, 527.990 and 527.992:

(1) "Board" means the State Board of Forestry.

(2) "Cumulative effects" means the impact on the environment which results from the incremental impact of the forest practice when added to other past, present and reasonably foreseeable future forest practices regardless of what governmental agency or person undertakes such other actions.

(3) "DBH" means the diameter at breast height which is measured as the width of a standing tree at four and one-half feet above the ground, on the uphill side.

(4) "Edge of the roadway" means:

(a) For interstate highways, the fence.

(b) For all other state highways, the outermost edge of pavement, or if unpaved, the edge of the shoulder.

(5) "Forest practice" means any operation conducted on or pertaining to forestland, including but not limited to:

(a) Reforestation of forestland;

(b) Road construction and maintenance;

(c) Harvesting of forest tree species;

(d) Application of chemicals;

(e) Disposal of slash; and

(f) Removal of woody biomass.

(6) "Forest tree species" means any tree species capable of producing logs, fiber or other wood materials suitable for the production of lumber, sheeting, pulp, firewood or other commercial forest products except trees grown to be Christmas trees as defined in ORS 571.505 on land used solely for the production of Christmas trees.

(7) "Forestland" means land that is used for the growing and harvesting of forest tree species, regardless of how the land is zoned or taxed or how any state or local statutes, ordinances, rules or regulations are applied.

(8) "Harvest type 1" means an operation that requires reforestation but does not require wildlife leave trees. A harvest type 1 is an operation that leaves a combined stocking level of free to grow seedlings, saplings, poles and larger trees that is less than the stocking level established by rule of the board that represents adequate utilization of the productivity of the site.

(9) "Harvest type 2" means an operation that requires wildlife leave trees but does not require reforestation. A harvest type 2 does not require reforestation because it has an adequate combined stocking of free to grow seedlings, saplings, poles and larger trees, but leaves:

(a) On Cubic Foot Site Class I, II or III, fewer than 50 11-inch DBH trees or less than an equivalent basal area in larger trees, per acre;

(b) On Cubic Foot Site Class IV or V, fewer than 30 11-inch DBH trees or less than an equivalent basal area in larger trees, per acre; or

(c) On Cubic Foot Site Class VI, fewer than 15 11-inch DBH trees or less than an equivalent basal area in larger trees, per acre.

(10) "Harvest type 3" means an operation that requires reforestation and requires wildlife leave trees. This represents a level of stocking below which the size of operations is limited under ORS 527.740 and 527.750.

(11) "Landowner" means any individual, combination of individuals, partnership, corporation or association of whatever nature that holds an ownership interest in forestland, including the state and any political subdivision thereof.

(12) "Operation" means any commercial activity relating to the establishment, management or harvest of forest tree species except as provided by the following:

(a) The establishment, management or harvest of Christmas trees, as defined in ORS 571.505, on land used solely for the production of Christmas trees.

(b) The establishment, management or harvest of hardwood timber, including but not limited to hybrid cottonwood, that is:

(A) Grown on land that has been prepared by intensive cultivation methods and that is cleared of competing vegetation for at least three years after tree planting;

(B) Of a species marketable as fiber for inclusion in the furnish for manufacturing paper products;

(C) Harvested on a rotation cycle that is 12 or fewer years after planting; and

(D) Subject to intensive agricultural practices such as fertilization, cultivation, irrigation, insect control and disease control.

(c) The establishment, management or harvest of trees actively farmed or cultured for the production of agricultural tree crops, including nuts, fruits, seeds and nursery stock.

(d) The establishment, management or harvest of ornamental, street or park trees within an urbanized area, as that term is defined in ORS 221.010.

(e) The management or harvest of juniper species conducted in a unit of less than 120 contiguous acres within a single ownership.

(f) The establishment or management of trees intended to mitigate the effects of agricultural practices on the environment or fish and wildlife resources, such as trees that are established or managed for windbreaks, riparian filters or shade strips immediately adjacent to actively farmed lands.

(g) The development of an approved land use change after timber harvest activities have been completed and land use conversion activities have commenced.

(13) "Operator" means any person, including a landowner or timber owner, who conducts an operation.

(14) "Single ownership" means ownership by an individual, partnership, corporation, limited liability company, trust, holding company or other business entity, including the state or any political subdivision thereof. Single ownership includes ownership held under different names or titles where the same individual or individuals, or their heirs or assigns, are shareholders (other than those of public corporations whose stock is traded on the open market), partners, business trustees or officers, or otherwise have an interest in or are associated with each property.

(15) "State Forester" means the State Forester or the duly authorized representative of the State Forester.

(16) "Suitable hardwood seedlings" means any hardwood seedling that will eventually yield logs or fiber, or both, sufficient in size and quality for the production of lumber, plywood, pulp or other forest products.

(17) "Timber owner" means any individual, combination of individuals, partnership, corporation or association of whatever nature, other than a landowner, that holds an ownership interest in any forest tree species on forestland.

(18) "Visually sensitive corridor" means forestland extending outward 150 feet, measured on the slope, from the outermost edge of the roadway of a scenic highway referred to in ORS 527.755, along both sides for the full length of the highway.

(19) "Wildlife leave trees" means trees or snags required to be retained as described in ORS 527.676 (1).

(20) "Written plan" means a document prepared by an operator, timber owner or landowner that describes how the operation is planned to be conducted. [1971 c.316 §3; 1987 c.919 §9; 1991 c.547 §1; 1991 c.634 §3; 1991 c.919 §1; 1995 s.s. c.3 §39; 1996 c.9 §2; 1999 c.59 §166; 2001 c.451 §1; 2003 c.740 §2; 2011 c.276 §6]

527.630 Policy; rules. (1) Forests make a vital contribution to Oregon by providing jobs, products, tax base and other social and economic benefits, by helping to maintain

forest tree species, soil, air and water resources and by providing a habitat for wildlife and aquatic life. Therefore, it is declared to be the public policy of the State of Oregon to encourage economically efficient forest practices that ensure the continuous growing and harvesting of forest tree species and the maintenance of forestland for such purposes as the leading use on privately owned land, consistent with sound management of soil, air, water, fish and wildlife resources and scenic resources within visually sensitive corridors as provided in ORS 527.755 and to ensure the continuous benefits of those resources for future generations of Oregonians.

(2) It is recognized that operations on forestland are already subject to other laws and to regulations of other agencies which deal primarily with consequences of such operations rather than the manner in which operations are conducted. It is further recognized that it is essential to avoid uncertainty and confusion in enforcement and implementation of such laws and regulations and in planning and carrying out operations on forestlands.

(3) To encourage forest practices implementing the policy of ORS 527.610 to 527.770 and 527.990 and 527.992, it is declared to be in the public interest to vest in the State Board of Forestry exclusive authority to develop and enforce statewide and regional rules pursuant to ORS 527.710 and to coordinate with other state agencies and local governments which are concerned with the forest environment.

(4) The board may adopt and enforce rules addressing scenic considerations only in accordance with ORS 527.755.

(5) The board shall adopt and enforce forest practice rules to reduce the risk of serious bodily injury or death from a rapidly moving landslide only in accordance with ORS 527.710 (10). As used in this subsection, "rapidly moving landslide" has the meaning given in ORS 195.250.

(6) The State of Oregon should provide a stable regulatory environment to encourage investment in private forestlands. [1971 c.316 §4; 1987 c.919 §10; 1991 c.634 §4; 1991 c.919 §10; 1995 s.s. c.3 §39L; 1996 c.9 §14; 1999 c.1103 §11; 2003 c.740 §9]

527.640 Forest regions. The State Board of Forestry shall establish a number of forest regions, but not less than three, necessary to achieve the purposes described in ORS 527.630. [1971 c.316 §6]

527.650 Forest practice committees; members; qualifications; appointment; terms. (1) The State Board of Forestry shall establish a forest practice committee for each forest region established pursuant to ORS 527.640. Each such committee shall

consist of nine members, a majority of whom must reside in the region. Members of each committee shall be qualified by education or experience in natural resource management and not less than two-thirds of the members of each committee shall be private landowners, private timber owners or authorized representatives of such landowners or timber owners who regularly engage in operations.

(2) Members of forest practice committees shall be appointed by the board for three-year terms. If there is a vacancy for any cause, the board shall make an appointment to become immediately effective for the unexpired term. Each such committee shall select a chairperson from among its members. A staff member of the State Forestry Department shall be designated by the State Forester to serve as the secretary, without voting power, for each such committee. [1971 c.316 §7; 2005 c.22 §377]

527.660 Committees to review rules.

Each forest practice committee shall review proposed forest practice rules in order to assist the State Board of Forestry in developing rules appropriate to the forest conditions within its region. Committee recommendations are advisory only and the committees need not be consulted prior to the adoption of any forest practice rule. [1971 c.316 §8; 1987 c.919 §11]

527.665 Notice of reforestation requirements to be given in forestland transfers; effect of failure to notify; damages. (1) In any transaction for the conveyance of an ownership interest in forestland, the transferor must provide to the transferee, prior to the date of execution of the conveyance, written notice of any reforestation requirements imposed upon the land pursuant to the Oregon Forest Practices Act.

(2) The failure of the transferor to comply with subsection (1) of this section does not invalidate an instrument of conveyance executed in the transaction. However, for any such failure the transferee may bring against the transferor an appropriate action to recover the costs of complying with the reforestation requirements. The court may award reasonable attorney fees to the prevailing party in an action brought under the provisions of this section. [1983 c.759 §4; 1995 c.618 §79]

527.670 Commencement of operations; rules; written plan; effect of plan; notice of chemical application; fees. (1) The State Board of Forestry shall designate the types of operations for which notice shall be required under this section.

(2) The board shall identify by rule the types of operations that require a written plan.

(3) In addition to any other types of operations identified by the board, the board shall adopt rules to require a written plan for the following:

(a) An operation that occurs within 100 feet of a stream determined by the State Forester to be used by fish or for domestic use, unless:

(A) The board, by rule, provides that a written plan is not required because the operation will be conducted according to a general vegetation retention prescription described in administrative rule;

(B) The operation will not directly affect the riparian management area and the State Forester, acting under authority granted by a board rule, waives the written plan requirement; or

(C) The operation will be conducted pursuant to a stewardship agreement entered into under ORS 541.423.

(b) An operation that occurs within 100 feet of a resource site that is inventoried under ORS 527.710 (3) as a significant wetland but is not classified by board rule as an estuary, unless:

(A) The board, by rule, provides that a written plan is not required because the operation will be conducted according to a general vegetation retention prescription described in administrative rule;

(B) The operation will not directly affect the riparian management area and the State Forester, acting under authority granted by a board rule, waives the written plan requirement; or

(C) The operation will be conducted pursuant to a stewardship agreement entered into under ORS 541.423.

(c) An operation that occurs within 300 feet of a resource site inventoried under ORS 527.710 (3), other than a site described in paragraph (b) of this subsection, unless the operation:

(A) Will be conducted pursuant to a stewardship agreement entered into under ORS 541.423; and

(B) Is consistent with the purposes and policies of any relevant Safe Harbor Agreements or Candidate Conservation Agreements entered into between the State of Oregon and agencies of the United States Government, pursuant to the federal Endangered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531 et seq.) and federal regulations.

(4) The distances set forth in subsection (3) of this section are solely for the purpose of defining an area within which a hearing may be requested under ORS 527.700 and not the area to be protected by the board's rules adopted pursuant to ORS 527.710 (3)(c).

(5) For the purpose of determining the distances set forth in subsection (3) of this section "site" means the specific resource site and not any additional buffer area.

(6) An operator, timber owner or landowner, before commencing an operation, shall notify the State Forester. The notification shall be on forms provided by the State Forester and shall include the name and address of the operator, timber owner and landowner, the legal description of the operating area, and any other information considered by the State Forester to be necessary for the administration of the rules promulgated by the board pursuant to ORS 527.710. Promptly upon receipt of such notice, the State Forester shall provide a copy of the notice to whichever of the operator, timber owner or landowner did not submit the notification. The State Forester shall provide a copy of notices involving chemical applications to persons within 10 miles of the chemical application who hold downstream surface water rights pursuant to ORS chapter 537, if such a person has requested that notification in writing. The board shall adopt rules specifying the information to be contained in the notice. All information filed with the State Forester pertaining to chemical applications shall be public record.

(7) An operator, timber owner or landowner that filed an original notification shall notify the State Forester of any subsequent change in the information contained in the notification.

(8) Within six working days of receipt of a notice or a written plan filed under subsection (6) or (7) of this section, the State Forester shall make a copy of the notice or written plan available to any person who requested of the State Forester in writing that the person be provided with copies of notice and written plan and who has paid any applicable fee established by the State Forester for such service. The State Forester may establish a fee for providing copies of notices and written plans under this subsection not to exceed the actual and reasonable costs. In addition, the State Forester shall provide a copy of the notification to the Department of Revenue and the county assessor for the county in which the operation is located, at times and in a manner determined through written cooperative agreement by the parties involved.

(9) Persons may submit written comments pertaining to the operation to the State Forester within 14 calendar days of the date the notice or written plan was filed with the State Forester under subsection (2), (6) or (7) of this section. Notwithstanding the provisions of this subsection, the State Forester may waive any waiting period for

operations not requiring a written plan under subsection (3) of this section, except those operations involving aerial application of chemicals.

(10) If an operator, timber owner or landowner is required to submit a written plan of operations to the State Forester under subsection (3) of this section:

(a) The State Forester shall review a written plan and may provide comments to the person who submitted the written plan;

(b) The State Forester may not provide any comments concerning the written plan earlier than 14 calendar days following the date that the written plan was filed with the State Forester nor later than 21 calendar days following the date that the written plan was filed; and

(c) Provided that notice has been provided as required by subsection (6) of this section, the operation may commence on the date that the State Forester provides comments or, if no comments are provided within the time period established in paragraph (b) of this subsection, at any time after 21 calendar days following the date that the written plan was filed.

(11)(a) Comments provided by the State Forester, or by the board under ORS 527.700 (6), to the person who submitted the written plan are for the sole purpose of providing advice to the operator, timber owner or landowner regarding whether the operation described in the written plan is likely to comply with ORS 527.610 to 527.770 and rules adopted thereunder. Comments provided by the State Forester or the board do not constitute an approval of the written plan or operation.

(b) If the State Forester or the board does not comment on a written plan, the failure to comment does not mean that an operation carried out in conformance with the written plan complies with ORS 527.610 to 527.770 or rules adopted thereunder nor does the failure to comment constitute a rejection of the written plan or operation.

(c) If the State Forester or board determines that an enforcement action may be appropriate concerning the compliance of a particular operation with ORS 527.610 to 527.770 or rules adopted under ORS 527.610 to 527.770, the State Forester or board shall consider, but are not bound by, comments that the State Forester provided under this section or comments that the board provided under ORS 527.700.

(12) If the operation is required under rules described in subsection (3) of this section to have a written plan and comments have been timely filed under subsection (9) of this section pertaining to the operation

requiring a written plan, the State Forester shall:

(a) Provide a copy of the State Forester's review and comments, if any, to persons who submitted timely written comments under subsection (9) of this section pertaining to the operation; and

(b) Provide to the operator, timber owner and landowner a copy of all timely comments submitted under subsection (9) of this section. [1971 c.316 §9; 1987 c.919 §12; 1991 c.634 §5; 1991 c.919 §11; 1995 s.s. c.3 §39a; 1996 c.9 §3; 1997 c.413 §1; 2003 c.539 §39; 2003 c.740 §3; 2007 c.608 §5; 2011 c.54 §1]

527.672 Aerial herbicide applications.

When a forest operation involves applying herbicides by aircraft near an inhabited dwelling or school, the operator is responsible for leaving an unsprayed strip of at least 60 feet adjacent to the dwelling or school. The responsibility of the operator under this section is in addition to any responsibility of the aerial pesticide applicator under ORS chapter 634. [2015 c.833 §21]

527.674 Rules requiring approval of written plan prohibited. The State Board of Forestry may not adopt or enforce a rule under ORS 527.610 to 527.770 that requires that the board or the State Forester approve written plans as a required precedent to conducting a forest practice or operation. [2003 c.740 §13]

527.676 Leaving snags and downed logs in harvest type 2 or 3 units; green trees to be left near certain streams. (1)

In order to contribute to the overall maintenance of wildlife, nutrient cycling, moisture retention and other resource benefits of retained wood, when a harvest type 2 unit exceeding 25 acres or harvest type 3 unit exceeding 25 acres occurs the operator shall leave on average, per acre harvested, at least:

(a) Two snags or two green trees at least 30 feet in height and 11 inches DBH or larger, at least 50 percent of which are conifers; and

(b) Two downed logs or downed trees, at least 50 percent of which are conifers, that each comprise at least 10 cubic feet gross volume and are no less than six feet long. One downed conifer or suitable hardwood log of at least 20 cubic feet gross volume and no less than six feet long may count as two logs.

(2) In meeting the requirements of this section, the operator has the sole discretion to determine the location and distribution of wildlife leave trees, including the ability to leave snags, trees and logs in one or more clusters rather than distributed throughout the unit and, if specifically permitted by the State Board of Forestry by rule, to meet the wildlife leave tree requirements by counting

snags, trees or logs otherwise required to be left in riparian management areas or resource sites listed in ORS 527.710, subject to:

(a) Safety and fire hazard regulations;

(b) Rules or other requirements relating to wildlife leave trees established by the State Board of Forestry or the State Forester; and

(c) All other requirements pertaining to forest operations.

(3) In meeting the requirements of this section, the State Forester:

(a) Shall consult with the operator concerning the selection of wildlife leave trees when the State Forester believes that retaining certain trees or groups of trees would provide increased benefits to wildlife.

(b) May approve alternate plans submitted by the operator to meet the provisions of this section, including but not limited to waiving:

(A) The requirement that at least 50 percent of wildlife leave trees be conifers, upon a showing that a site is being intensively managed for hardwood production; and

(B) In whole or in part, the requirements of this section for one operation if an alternate plan provides for an equal or greater number of wildlife leave trees in another harvest type 2 or harvest type 3 operation, that the State Forester determines would achieve better overall benefits for wildlife.

(c) May require, for operations adjacent to a fish-bearing or domestic use stream, in addition to trees otherwise required to be left in riparian management areas, up to 25 percent of the green trees required to be retained under this section to be left in or adjacent to the riparian management area of the stream.

(d) May require by rule, for operations adjacent to a small, nonfish-bearing stream subject to rapidly moving landslides as defined in ORS 195.250, that available green trees and snags be left in or adjacent to the stream. The operator must leave available green trees and snags under this paragraph within an area that is 50 feet on each side of the stream and no more than 500 feet upstream from a riparian management area of a fish-bearing stream.

(4) When a harvest type 2 or harvest type 3 unit occurs adjacent to a prior harvest type 2 or harvest type 3 unit, resulting in a combined total contiguous acreage of harvest type 2 or harvest type 3 under single ownership exceeding 25 acres, the wildlife leave tree and downed log requirements of subsection (1) of this section apply to the combined total contiguous acreage. [1996 c.9 §9 (enacted in lieu of 527.675); 2001 c.340 §1]

527.678 Wildlife food plots; rules. (1) As used in this section:

(a) "Forest tree species" has the meaning given that term in ORS 527.620.

(b) "Small forestland" means forestland as defined in ORS 527.620 that:

(A) Has an owner that owns or holds common ownership interest in at least 10 acres of Oregon forestland but less than 5,000 acres of Oregon forestland; and

(B) Constitutes all forestland within a single tax lot and all forestland within contiguous parcels owned or held in common ownership by the owner.

(c) "Wildlife food plot" means a small forestland area that, instead of being used for growing and harvesting a forest tree species, is planted in vegetation capable of substantially contributing to wildlife nutrition.

(2) The owner of a small forestland that is subject to reforestation requirements under ORS 527.610 to 527.770 may, notwithstanding any contrary provision of the reforestation requirements for the forestland, establish wildlife food plots within the boundaries of the small forestland. The combined size of the wildlife food plots described in this subsection may not exceed:

(a) 2.5 percent of the small forestland, if the small forestland is 500 acres or less in size;

(b) 2.0 percent of the small forestland, if the small forestland is more than 500 acres but not more than 1,000 acres in size; or

(c) 1.0 percent of the small forestland, if the small forestland is more than 1,000 acres in size.

(3)(a) The State Board of Forestry shall adopt rules for carrying out this section. The board shall consult with the State Department of Fish and Wildlife to identify vegetation capable of substantially contributing to wildlife nutrition.

(b) The establishment of a wildlife food plot as provided by board rules is a forest practice providing for the overall maintenance of forestland resources as described in ORS 527.710 and supersedes any contrary reforestation requirement under ORS 527.610 to 527.770 for the wildlife food plot.

(c) Notwithstanding ORS 527.670 (1), the establishment or relocation of a wildlife food plot, and the reforestation of a location that ceases to be a wildlife food plot, are forest operations requiring notice to the State Forester under ORS 527.670. [2015 c.64 §1]

527.680 Violation by operator; citation; order to cease violation; order to repair damage; temporary order where violation continuing; service on operator. (1)

Whenever the State Forester determines that an operator has committed a violation under ORS 527.990 (1), the State Forester may issue and serve a citation upon the operator or authorized representative. The State Forester shall cause a copy of the citation to be mailed or delivered to the timber owner and landowner. Whenever the State Forester determines that the landowner has failed to comply with the reforestation rules under ORS 527.710, the State Forester may issue and serve a citation upon the landowner or authorized representative. Each citation issued under this section shall specify the nature of the violation charged and any damage or unsatisfactory condition that has occurred as the result of such violation.

(2) Whenever a citation is served pursuant to subsection (1) of this section, the State Forester:

(a) Shall issue and serve upon the landowner or operator or authorized representative an order directing that the landowner or operator cease further violation. If the order is served upon an operator, the State Forester shall cause a copy of such order to be mailed or delivered to the timber owner and landowner; and

(b) May issue and serve an order upon the landowner or operator and shall cause a copy of such order to be mailed or delivered to the timber owner and landowner, directing the landowner or operator, where practical and economically feasible, to make reasonable efforts to repair the damage or correct the unsatisfactory condition specified in the citation within a period specified by the State Forester.

(3) In the event the order issued under subsection (2)(a) of this section has not been complied with, and the violation specified in such order is resulting in continuing damage, the State Forester by temporary order, may direct the landowner or operator to cease any further activity in that portion of the operation that is resulting in such damage. Such temporary order shall be in effect until the date of the expiration of the period as prescribed in subsection (4) of this section or until the date that the violation ceases, whichever date occurs first.

(4) A temporary order issued under subsection (3) of this section shall be served upon the landowner or operator or authorized representative, and the State Forester shall cause a copy of such temporary order to be mailed or delivered to the operator, timber owner and landowner. If requested by the operator, timber owner or landowner, the State Board of Forestry, following the appeal procedures of ORS 527.700, must hold a hearing on the temporary order within five working days after the receipt by the board

of the request. A temporary order issued and served pursuant to subsection (3) of this section shall remain in effect not more than five working days after such hearing unless the order is sooner affirmed, modified or revoked by the board.

(5) If a landowner or operator fails to comply with a final order issued under subsection (2)(b) of this section within the time specified in the order, or if the landowner or operator fails to comply with a final order imposing civil penalties for violation of any provision of the Oregon Forest Practices Act, the State Forester may issue an order that prohibits the affected landowner or operator from conducting any new operations on any forestland in this state until the landowner or operator has complied with the order to correct an unsatisfactory condition, make repair or pay the civil penalty, as the case may be, to the satisfaction of the State Forester. [1971 c.316 §10; 1983 c.759 §1; 1997 c.306 §1]

527.683 Notice of violation. (1) No civil penalty prescribed in ORS 527.992 shall be imposed until the person incurring the penalty has received notice in writing from the State Forester specifying the violation. Such notice is in addition to the notice required in ORS 183.745.

(2) The citation issued pursuant to ORS 527.680 (1) and the order issued pursuant to ORS 527.680 (2)(b) shall each constitute the notice required by subsection (1) of this section. [1987 c.919 §25; 1991 c.734 §48]

527.685 Civil penalty considerations; rules. (1) The State Board of Forestry shall by rule establish the amount of civil penalty that may be imposed for a particular violation. Except as provided in subsection (5) of this section, no civil penalty shall exceed \$5,000 per violation.

(2) In imposing a penalty authorized by this section, the State Forester may consider the following factors:

(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.

(b) Any prior violations of statutes, rules, orders and permits pertaining to the Oregon Forest Practices Act.

(c) The gravity and magnitude of the violation.

(d) Whether the violation was repeated or continuous.

(e) Whether the cause of the violation was an unavoidable accident, negligence or an intentional act.

(f) The size and type of ownership of the operation.

(g) Any relevant rule of the board.

(h) The violator's cooperativeness and efforts to correct the violation.

(3) The penalty imposed under this section may be remitted or mitigated upon such terms and conditions as the board determines to be proper and consistent with the public benefit. Upon the request of the person incurring the penalty, the board shall consider evidence of the economic and financial condition of the person in determining whether a penalty shall be remitted or mitigated.

(4) The board, by rule, may delegate to the State Forester upon such conditions as deemed necessary, all or part of the authority of the board provided in subsection (3) of this section to assess, remit or mitigate civil penalties.

(5) For a violation of ORS 527.745, or rules for reforestation adopted pursuant to ORS 527.745, the State Forester may impose a civil penalty in an amount equal to the estimated cost of reforesting lands pursuant to ORS 527.690. [1987 c.919 §26; 2007 c.214 §1]

527.687 Civil penalty procedure. (1) Subject to the notice provisions of ORS 527.683, any civil penalty under ORS 527.992 shall be imposed in the manner provided in ORS 183.745.

(2) In no case shall a hearing requested under ORS 183.745 be held less than 45 days from the date of service of the notice of penalty to allow the party to prepare testimony. The hearing shall be held not more than 180 days following issuance of the notice unless all parties agree on an extension.

(3) Hearings under this section shall be conducted by an administrative law judge assigned from the Office of Administrative Hearings established under ORS 183.605.

(4) Except as provided in subsection (5) of this section, all civil penalties recovered under ORS 527.610 to 527.770, 527.990 and 527.992 shall be paid to the General Fund.

(5) Civil penalties recovered under ORS 527.685 (5) shall be deposited in the State Forestry Department Account under ORS 526.060 and used, consistently with ORS 527.690, by the State Forester to reforest the land that is the subject of a violation of ORS 527.745 or rules for reforestation adopted pursuant to ORS 527.745. Civil penalties described in this subsection that exceed the costs of reforestation shall be paid to the General Fund. [1987 c.919 §27; 1991 c.634 §6; 1991 c.734 §121; 1995 s.s. c.3 §39k; 1996 c.9 §13; 1999 c.849 §§107,108; 2003 c.75 §45; 2007 c.214 §2]

527.690 Failure to comply with order to reforest or repair damage; estimate of cost of repair; notification; board authorization for repair; cost of repair as lien upon operator, timber owner or

landowner. (1) In the event an order issued pursuant to ORS 527.680 (2)(b) directs the repair of damage or correction of an unsatisfactory condition, including compliance with reforestation requirements, and if the operator or landowner does not comply with the order within the period specified in such order and the order has not been appealed to the State Board of Forestry within 30 days, the State Forester based upon a determination by the forester of what action will best carry out the purposes of ORS 527.630 shall:

(a) Maintain an action in the Circuit Court for Marion County or the circuit court for the county in which the violation occurred for an order requiring the landowner or operator to comply with the terms of the forester's order or to restrain violations thereof; or

(b) Estimate the cost to repair the damage or the unsatisfactory condition as directed by the order and shall notify the operator, timber owner and landowner in writing of the amount of the estimate. Upon agreement of the operator, timber owner or the landowner to pay the cost, the State Forester may proceed to repair the damage or the unsatisfactory condition. In the event approval of the expenditure is not obtained within 30 days after notification to the operator, timber owner and landowner under this section, the State Forester shall present to the board the alleged violation, the estimate of the expenditure to repair the damage or unsatisfactory condition and the justification for the expenditure.

(2) The board shall review the matter presented to it pursuant to subsection (1) of this section and shall determine whether to authorize the State Forester to proceed to repair the damage or correct the unsatisfactory condition and the amount authorized for expenditure. The board shall afford the operator, timber owner or landowner the opportunity to appear before the board for the purpose of presenting facts pertaining to the alleged violation and the proposed expenditure.

(3) If the board authorizes the State Forester to repair the damage or correct the unsatisfactory condition, the State Forester shall proceed, either with forces of the State Forester or by contract, to repair the damage or correct the unsatisfactory condition. The State Forester shall keep a complete account of direct expenditures incurred, and upon completion of the work, shall prepare an itemized statement thereof and shall deliver a copy to the operator, timber owner and landowner. In no event shall the expenditures exceed the amount authorized by subsection (2) of this section. An itemized

statement of the direct expenditures incurred by the State Forester, certified by the State Forester, shall be accepted as prima facie evidence of such expenditures in any proceeding authorized by this section. If the State Forester's action to repair the damage or correct the unsatisfactory condition arose from an operation for which a bond, cash deposit or other security was required under ORS 527.760, the State Forester shall retain any applicable portion of a cash deposit and the surety on the bond or holder of the other security deposit shall pay the amount of the bond or other security deposit to the State Forester upon demand. If the amount specified in the demand is not paid within 30 days following the demand, the Attorney General, upon request by the State Forester, shall institute proceedings to recover the amount specified in the demand.

(4) The expenditures in cases covered by this section, including cases where the amount collected on a bond, deposit or other security was not sufficient to cover authorized expenditures, shall constitute a general lien upon the real and personal property of the operator, timber owner and landowner within the county in which the damage occurred. A written notice of the lien, containing a statement of the demand, the description of the property upon which the expenditures were made and the name of the parties against whom the lien attaches, shall be certified under oath by the State Forester and filed in the office of the county clerk of the county or counties in which the expenditures were made within six months after the date of delivery of the itemized statement referred to in subsection (3) of this section, and may be foreclosed in the manner provided in ORS chapter 88.

(5) All moneys recovered under this section shall be paid into the State Forestry Department Account. [1971 c.316 §11; 1981 c.757 §10; 1983 c.28 §1; 1991 c.919 §12]

527.700 Appeals from orders of State Forester; hearing procedure; rules; stay of operation.

(1) Any operator, timber owner or landowner affected by any finding or order of the State Forester issued under ORS 527.610 to 527.770 and 527.992 may request a hearing within 30 days after issuance of the order. The hearing shall be commenced within 14 days after receipt of the request for hearing and a final order shall be issued within 28 days of the request for the hearing unless all parties agree to an extension of the time limit.

(2) The State Board of Forestry may delegate to the administrative law judge the authority to issue final orders on matters under this section. Hearings provided under this section shall be conducted as contested

case hearings under ORS 183.413 to 183.470. The board may establish such rules as it deems appropriate to carry out the provisions of this section. Appeals from final hearing orders under this section shall be provided in ORS 183.482, except that the comments of the board or the State Forester concerning a written plan are not reviewable orders under ORS 183.480.

(3) Any person adversely affected or aggrieved by an operation described in subsection (4) of this section may file a written request to the board for a hearing if the person submitted written comments pertaining to the operation within the time limits established under ORS 527.670 (9).

(4) A request for hearing may be filed under subsection (3) of this section only if a written plan was required by rules adopted under ORS 527.670 (3).

(5) A request for hearing filed under subsection (3) of this section shall be filed within 14 calendar days of the date the State Forester completed review of the written plan and issued any comments. Copies of the complete request shall be served, within the 14-day period, on the operator, timber owner and landowner. The request shall include:

(a) A copy of the written plan on which the person is requesting a hearing;

(b) A copy of the comments pertaining to the operation that were filed by the person requesting the hearing;

(c) A statement that shows the person is adversely affected or aggrieved by the operation and has an interest which is addressed by the Oregon Forest Practices Act or rules adopted thereunder; and

(d) A statement of facts that establishes that the operation is of the type described in ORS 527.670 (3).

(6) If the board finds that the person making the request meets the requirement of subsection (5)(c) of this section, the board shall set the matter for hearing within 21 calendar days after receipt of the request for hearing. The operator, timber owner and landowner shall be allowable parties to the hearing. The person requesting the hearing may raise, in the hearing, only those issues that the person raised in written comments filed under ORS 527.670 (9) relating to conformity with the rules of the board. The board shall issue its own comments, which may affirm, modify or rescind comments of the State Forester, if any, on the written plan within 45 days after the request for hearing was filed, unless all parties agree to an extension of the time limit. The comments of the board or of the State Forester concerning a written plan are not reviewable orders under ORS 183.480.

(7) The board may award reasonable attorney fees and expenses to each of the prevailing parties against any other party who the board finds presented a position without probable cause to believe the position was well-founded, or made a request primarily for a purpose other than to secure appropriate action by the board.

(8)(a) Upon the written request of a person requesting a hearing under subsection (3) of this section, a stay of the operation subject to the hearing may be granted upon a showing that:

(A) Commencement or continuation of the operation will constitute a violation of the rules of the board;

(B) The person requesting the stay will suffer irreparable injury if the stay is not granted; and

(C) The requirements of subsections (3), (4) and (5) of this section are met.

(b) If the board grants the stay, it shall require the person requesting the stay to give an undertaking which may be in the amount of the damages potentially resulting from the stay, but in any event shall not be less than \$15,000. The board may impose other reasonable requirements pertaining to the grant of the stay. The board shall limit the effect of the stay to the specific geographic area or elements of the operation for which the person requesting the stay has demonstrated a violation of the rules and irreparable injury under paragraph (a) of this subsection.

(c) If the board determines in its comments that the written plan pertaining to the operation for which the stay was granted is likely to result in compliance with ORS 527.610 to 527.770 or the rules of the board, the board may award reasonable attorney fees and actual damages in favor of each of the prevailing parties, to the extent incurred by each, against the person requesting the stay.

(9) If the board rescinds or modifies the comments on the written plan as submitted by the State Forester pertaining to any operation, the board may award reasonable attorney fees and costs against the state in favor of each of the prevailing parties.

(10) As used in this section, "person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character. [Formerly 527.240; 1983 c.28 §2; 1987 c.919 §13; 1999 c.849 §110; 2003 c.75 §94; 2003 c.740 §4; 2011 c.54 §2]

527.710 Duties and powers of board; rules; inventory for resource protection; consultation with other agencies required. (1) In carrying out the purposes of

ORS 527.610 to 527.770, 527.990 (1) and 527.992, the State Board of Forestry shall adopt, in accordance with applicable provisions of ORS chapter 183, rules to be administered by the State Forester establishing standards for forest practices in each region or subregion.

(2) The rules shall ensure the continuous growing and harvesting of forest tree species. Consistent with ORS 527.630, the rules shall provide for the overall maintenance of the following resources:

(a) Air quality;

(b) Water resources, including but not limited to sources of domestic drinking water;

(c) Soil productivity; and

(d) Fish and wildlife.

(3)(a) In addition to its rulemaking responsibilities under subsection (2) of this section, the board shall collect and analyze the best available information and establish inventories of the following resource sites needing protection:

(A) Threatened and endangered fish and wildlife species identified on lists that are adopted, by rule, by the State Fish and Wildlife Commission or are federally listed under the Endangered Species Act of 1973 as amended;

(B) Sensitive bird nesting, roosting and watering sites;

(C) Biological sites that are ecologically and scientifically significant; and

(D) Significant wetlands.

(b) The board shall determine whether forest practices would conflict with resource sites in the inventories required by paragraph (a) of this subsection. If the board determines that one or more forest practices would conflict with resource sites in the inventory, the board shall consider the consequences of the conflicting uses and determine appropriate levels of protection.

(c) Based upon the analysis required by paragraph (b) of this subsection, and consistent with the policies of ORS 527.630, the board shall adopt rules appropriate to protect resource sites in the inventories required by paragraph (a) of this subsection.

(4) Before adopting rules under subsection (1) of this section, the board shall consult with other agencies of this state or any of its political subdivisions that have functions with respect to the purposes specified in ORS 527.630 or programs affected by forest operations. Agencies and programs subject to consultation under this subsection include, but are not limited to:

(a) Air and water pollution programs administered by the Department of Environmental Quality under ORS chapters 468A and 468B and ORS 477.013 and 477.515 to 477.532;

(b) Mining operation programs administered by the Department of Geology and Mineral Industries under ORS 516.010 to 516.130 and ORS chapter 517;

(c) Game fish and wildlife, commercial fishing, licensing and wildlife and bird refuge tax incentive programs administered by the State Department of Fish and Wildlife under ORS 272.060 and ORS chapters 496, 498, 501, 506 and 509;

(d) Park land, Willamette River Greenway, scenic waterway and recreation trail programs administered by the State Parks and Recreation Department under ORS 358.480 to 358.545, 390.310 to 390.368, 390.805 to 390.925, 390.950 to 390.989 and 390.121;

(e) The programs administered by the Columbia River Gorge Commission under Public Law 99-663 and ORS 196.110 and 196.150;

(f) Removal and fill programs administered by the Department of State Lands under ORS 196.800 to 196.900;

(g) Federal Safe Drinking Water Act programs administered by the Oregon Health Authority under ORS 448.273 to 448.990;

(h) Conservation and conservation tax incentive programs administered by the State Parks and Recreation Department under ORS 273.563 to 273.591;

(i) Open space land tax incentive programs administered by cities and counties under ORS 308A.300 to 308A.330;

(j) Water resources programs administered by the Water Resources Department under ORS 536.220 to 536.540; and

(k) Pesticide control programs administered by the State Department of Agriculture under ORS chapter 634.

(5) In carrying out the provisions of subsection (4) of this section, the board shall consider and accommodate the rules and programs of other agencies to the extent deemed by the board to be appropriate and consistent with the purposes of ORS 527.630.

(6) The board shall adopt rules to meet the purposes of another agency's regulatory program where it is the intent of the board to administer the other agency's program on forestland and where the other agency concurs by rule. An operation performed in compliance with the board's rules shall be deemed to comply with the other agency's program.

(7)(a) The board may enter into cooperative agreements or contracts necessary in carrying out the purposes specified in ORS 527.630.

(b) The State Forestry Department shall enter into agreements with appropriate state agencies for joint monitoring of the effectiveness of forest practice rules in protecting forest resources and water quality.

(8) If, based upon the study completed pursuant to section 15 (2)(f), chapter 919, Oregon Laws 1991, the board determines that additional rules are necessary to protect forest resources pursuant to ORS 527.630, the board shall adopt forest practice rules that reduce to the degree practicable the adverse impacts of cumulative effects of forest practices on air and water quality, soil productivity, fish and wildlife resources and watersheds. Such rules shall include a process for determining areas where adverse impacts from cumulative effects have occurred or are likely to occur, and may require that a written plan be submitted for harvests in such areas.

(9)(a) The State Forester, in cooperation with the State Department of Fish and Wildlife, shall identify streams for which restoration of habitat would be environmentally beneficial. The State Forester shall select as a priority those streams where restoration efforts will provide the greatest benefits to fish and wildlife, and to streambank and streambed stability.

(b) For those streams identified in paragraph (a) of this subsection, the State Forester shall encourage landowners to enter into cooperative agreements with appropriate state agencies for conduct of restoration activities.

(c) The board, in consultation with appropriate state agencies, shall study and identify methods for restoring or enhancing fish and wildlife populations through restoration and rehabilitation of sites beneficial to fish and wildlife.

(d) The board shall adopt rules to implement the findings of this subsection.

(10) In addition to its responsibilities under subsections (1) to (3) of this section, the board shall adopt rules to reduce the risk of serious bodily injury or death caused by a rapidly moving landslide directly related to forest practices. The rules shall consider the exposure of the public to these safety risks and shall include appropriate practices designed to reduce the occurrence, timing or effects of rapidly moving landslides. As used in this subsection, "rapidly moving landslide" has the meaning given that term in ORS 195.250. [1971 c.316 §5; 1987 c.919 §14a; 1989 c.171 §69; 1989 c.904 §38; 1991 c.634 §7; 1991 c.919 §13; 1993 c.18 §126; 1995 c.79 §300; 1997 c.274 §54; 1997 c.413

§2; 1999 c.1103 §12; 2001 c.114 §52; 2001 c.540 §24; 2003 c.14 §342; 2003 c.539 §40; 2003 c.740 §7; 2009 c.217 §13; 2009 c.595 §983; 2011 c.83 §25; 2011 c.319 §21]

527.714 Types of rules; procedure; findings necessary; rule analysis. (1) The rulemaking authority of the State Board of Forestry under ORS 527.610 to 527.770 consists generally of the following three types of rules:

(a) Rules adopted to implement administration, procedures or enforcement of ORS 527.610 to 527.770 that support but do not directly regulate standards of forest practices.

(b) Rules adopted to provide definitions or procedures for forest practices where the standards are set in statute.

(c) Rules adopted to implement the provisions of ORS 527.710 (2), (3), (6), (8), (9) and (10) that grant broad discretion to the board and that set standards for forest practices not specifically addressed in statute.

(2) When considering the adoption of a rule, and prior to the notice required pursuant to ORS 183.335, the board shall determine which type of rule described in subsection (1) of this section is being considered.

(3) If the board determines that a proposed rule is of the type described in subsection (1)(a) or (b) of this section, or if the proposed rule is designed only to clarify the meaning of rules already adopted or to make minor adjustments to rules already adopted that are of the type described in subsection (1)(c) of this section, rulemaking may proceed in accordance with ORS 183.325 to 183.410 and is not subject to the provisions of this section.

(4) If the board determines that a proposed rule is of the type described in subsection (1)(c) of this section, and the proposed rule would change the standards for forest practices, the board shall describe in its rule the purpose of the rule and the level of protection that is desired.

(5) If the board determines that a proposed rule is of the type described in subsection (1)(c) of this section, including a proposed amendment to an existing rule not qualifying under subsection (3) of this section, and the proposed rule would provide new or increased standards for forest practices, the board may adopt such a rule only after determining that the following facts exist and standards are met:

(a) If forest practices continue to be conducted under existing regulations, there is monitoring or research evidence that documents that degradation of resources maintained under ORS 527.710 (2) or (3) is likely, or in the case of rules proposed under ORS

527.710 (10), that there is a substantial risk of serious bodily injury or death;

(b) If the resource to be protected is a wildlife species, the scientific or biological status of a species or resource site to be protected by the proposed rule has been documented using best available information;

(c) The proposed rule reflects available scientific information, the results of relevant monitoring and, as appropriate, adequate field evaluation at representative locations in Oregon;

(d) The objectives of the proposed rule are clearly defined, and the restrictions placed on forest practices as a result of adoption of the proposed rule:

(A) Are to prevent harm or provide benefits to the resource or resource site for which protection is sought, or in the case of rules proposed under ORS 527.710 (10), to reduce risk of serious bodily injury or death; and

(B) Are directly related to the objective of the proposed rule and substantially advance its purpose;

(e) The availability, effectiveness and feasibility of alternatives to the proposed rule, including nonregulatory alternatives, were considered, and the alternative chosen is the least burdensome to landowners and timber owners, in the aggregate, while still achieving the desired level of protection; and

(f) The benefits to the resource, or in the case of rules proposed under ORS 527.710 (10), the benefits in reduction of risk of serious bodily injury or death, that would be achieved by adopting the rule are in proportion to the degree that existing practices of the landowners and timber owners, in the aggregate, are contributing to the overall resource concern that the proposed rule is intended to address.

(6) Nothing in subsection (5) of this section:

(a) Requires the board to call witnesses;

(b) Requires the board to allow cross-examination of witnesses;

(c) Restricts ex parte communications with the board or requires the board to place statements of such communications on the record;

(d) Requires verbatim transcripts of records of proceedings; or

(e) Requires depositions, discovery or subpoenas.

(7) If the board determines that a proposed rule is of the type described in subsection (1)(c) of this section, and the proposed rule would require new or increased standards for forest practices, as part of or in

addition to the economic and fiscal impact statement required by ORS 183.335 (2)(b)(E), the board shall, prior to the close of the public comment period, prepare and make available to the public a comprehensive analysis of the economic impact of the proposed rule. The analysis shall include, but is not limited to:

(a) An estimate of the potential change in timber harvest as a result of the rule;

(b) An estimate of the overall statewide economic impact, including a change in output, employment and income;

(c) An estimate of the total economic impact on the forest products industry and common school and county forest trust land revenues, both regionally and statewide; and

(d) Information derived from consultation with potentially affected landowners and timber owners and an assessment of the economic impact of the proposed rule under a wide variety of circumstances, including varying ownership sizes and the geographic location and terrain of a diverse subset of potentially affected forestland parcels.

(8) The provisions of this section do not apply to temporary rules adopted by the board. [1996 c.9 §16 (enacted in lieu of 527.713); 1999 c.1103 §13; 2003 c.740 §10]

527.715 Rules to establish standards and procedures. The State Board of Forestry shall establish, by rule, the standards and procedures to implement the provisions of ORS 197.180, 197.270, 197.825, 215.050, 477.440, 477.455, 477.460, 526.009, 526.016, 526.156, 527.620, 527.630, 527.660, 527.670, 527.683 to 527.724, 527.736 to 527.760 and 527.992. [1987 c.919 §28; 1991 c.919 §14; 2013 c.307 §7]

527.721 Coordination with state and local agencies for review and comment on operations. By rule or by cooperative agreement entered into following an opportunity for public comment before the State Board of Forestry, the board shall provide for coordination with appropriate state and local agencies regarding procedures to be followed for review and comment on individual forest operations. [1987 c.919 §16 (enacted in lieu of 527.720)]

527.722 Restrictions on local government adoption of rules regulating forest operations; exceptions. (1) Notwithstanding any provisions of ORS chapters 195, 196, 197, 215 and 227, and except as provided in subsections (2), (3) and (4) of this section, no unit of local government shall adopt any rules, regulations or ordinances or take any other actions that prohibit, limit, regulate, subject to approval or in any other way affect forest practices on forestlands located outside of an acknowledged urban growth boundary.

(2) Nothing in subsection (1) of this section prohibits local governments from adopting and applying a comprehensive plan or land use regulation to forestland to allow, prohibit or regulate:

(a) Forest practices on lands located within an acknowledged urban growth boundary;

(b) Forest practices on lands located outside of an acknowledged urban growth boundary, and within the city limits as they exist on July 1, 1991, of a city with a population of 100,000 or more, for which an acknowledged exception to an agriculture or forestland goal has been taken;

(c) The establishment or alteration of structures other than temporary on-site structures which are auxiliary to and used during the term of a particular forest operation;

(d) The siting or alteration of dwellings;

(e) Physical alterations of the land, including but not limited to those made for purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction or recreational facilities, when such uses are not auxiliary to forest practices; or

(f) Partitions and subdivisions of the land.

(3) Nothing in subsection (2) of this section shall prohibit a local government from enforcing the provisions of ORS 455.310 to 455.715 and the rules adopted thereunder.

(4) Counties may prohibit, but in no other manner regulate, forest practices on forestlands:

(a) Located outside an acknowledged urban growth boundary; and

(b) For which an acknowledged exception to an agricultural or forest land goal has been taken.

(5) To ensure that all forest operations in this state are regulated to achieve protection of soil, air, water, fish and wildlife resources, in addition to all other forestlands, the Oregon Forest Practices Act applies to forest operations inside any urban growth boundary except in areas where a local government has adopted land use regulations for forest practices. For purposes of this subsection, "land use regulations for forest practices" means local government regulations that are adopted for the specific purpose of directing how forest operations and practices may be conducted. These local regulations shall:

(a) Protect soil, air, water, fish and wildlife resources;

(b) Be acknowledged as in compliance with land use planning goals;

(c) Be developed through a public process;

(d) Be developed for the specific purpose of regulating forest practices; and

(e) Be developed in coordination with the State Forestry Department and with notice to the Department of Land Conservation and Development.

(6) To coordinate with local governments in the protection of soil, air, water, fish and wildlife resources, the State Forester shall provide local governments with a copy of the notice or written plan for a forest operation within any urban growth boundary. Local governments may review and comment on an individual forest operation and inform the landowner or operator of all other regulations that apply but that do not pertain to activities regulated under the Oregon Forest Practices Act.

(7) The existence or adoption by local governments of a comprehensive plan policy or land use regulation regulating forest practices consistent with subsections (1) to (5) of this section shall relieve the State Forester of responsibility to administer the Oregon Forest Practices Act within the affected area.

(8) The Director of the Department of Land Conservation and Development shall provide the State Forester copies of notices submitted pursuant to ORS 197.615, whenever such notices concern the adoption, amendment or repeal of a comprehensive land use regulation allowing, prohibiting or regulating forest practices. [1979 c.400 §2; 1987 c.919 §17; 1991 c.919 §29; 2001 c.268 §1]

527.724 Forest operations to comply with air and water pollution control rules and standards; effect of violation. Subject to ORS 527.765 and 527.770, any forest operations on forestlands within this state shall be conducted in full compliance with the rules and standards of the Environmental Quality Commission relating to air and water pollution control. In addition to all other remedies provided by law, any violation of those rules or standards shall be subject to all remedies and sanctions available under statute or rule to the Department of Environmental Quality or the Environmental Quality Commission. [1979 c.400 §3; 1991 c.919 §19]

527.730 Conversion of forestland to other uses. Nothing in the Oregon Forest Practices Act shall prevent the conversion of forestland to any other use. [1971 c.316 §12; 1991 c.634 §8]

527.736 Forest practice standards for operations on public and private land; exceptions; rules. (1) The standards established in ORS 527.740 to 527.750 shall be administered by the State Forester as standards

applying to all operations in the state, including those on forestland owned by the state or any political subdivision thereof. Pursuant to ORS 527.710 the State Board of Forestry shall adopt, repeal or amend forest practice rules as necessary to be consistent with and to implement the standards established in ORS 527.740 to 527.750. Except as provided in ORS 527.714, nothing in ORS 468B.100 to 468B.110, 477.562, 527.620, 527.670, 527.690, 527.710, 527.715, 527.722, 527.724 and 527.736 to 527.770 shall affect the powers and duties of the board to adopt, or the State Forester to administer, all other regulations pertaining to forest practices under applicable state law.

(2) Nothing in ORS 527.740 to 527.750 is intended to apply to cutting of trees that is for growth enhancement treatments, as defined by the State Forester, such as thinning or precommercial thinning.

(3) The State Board of Forestry may modify or waive the limitations and requirements of ORS 527.676, 527.740, 527.750 and 527.755 for the purposes of a bona fide research project conducted by:

- (a) A federal agency;
- (b) Agencies of the executive department, as defined in ORS 174.112;
- (c) An educational institution; or
- (d) A private landowner.

(4) The State Board of Forestry may agree as a term of a stewardship agreement entered into under ORS 541.423 to modify or waive the limitations and requirements of ORS 527.676, 527.740, 527.750 and 527.755.

(5) The State Board of Forestry may modify or waive the limitations and requirements of ORS 527.676, 527.740, 527.750 and 527.755 for the purpose of an operation for the planting, growing, managing or harvesting of hardwood timber, including but not limited to hybrid cottonwood, if:

(a) The timber is grown on land that has been prepared by intensive cultivation methods and is cleared of competing vegetation for at least three years after planting;

(b) The timber is harvested on a rotation cycle of more than 12 years and less than 20 years after planting; and

(c) The timber is subject to intensive agricultural practices, including but not limited to fertilization, cultivation, irrigation, insect control and disease control. [1991 c.919 §3; 1993 c.657 §5; 1995 s.s. c.3 §39r; 1996 c.9 §20; 2008 c.11 §1]

527.740 Harvest type 3 limitations; exceptions. (1) No harvest type 3 unit within a single ownership shall exceed 120 acres in size, except as provided in ORS 527.750.

(2) No harvest type 3 unit shall be allowed within 300 feet of the perimeter of a prior harvest type 3 unit within a single ownership if the combined acreage of the harvest type 3 areas subject to regulation under the Oregon Forest Practices Act would exceed 120 acres in size, unless the prior harvest type 3 unit has been reforested as required by all applicable regulations and:

(a) At least the minimum tree stocking required by rule is established per acre; and either

(b) The resultant stand of trees has attained an average height of at least four feet; or

(c) At least 48 months have elapsed since the stand was created and it is "free to grow" as defined by the State Board of Forestry.

(3) Any acreage attributable to riparian areas or to resource sites listed in ORS 527.710 (3) that is located within a harvest unit shall not be counted in calculating the size of a harvest type 3 unit.

(4) The provisions of this section shall not apply when the land is being converted to managed conifers or managed hardwoods from brush or hardwood stands that contain less than 80 square feet of basal area per acre of trees 11 inches DBH or greater or when the harvest type 3 results from disasters such as fire, insect infestation, disease, windstorm or other occurrence that the State Forester determines was beyond the landowner's control and has substantially impaired productivity or safety on the unit or jeopardizes nearby forestland. The prior approval of the State Forester shall be required for such conversion or harvest type 3 operations that exceed 120 acres in size.

(5) The provisions of this section do not apply to any operation where the operator demonstrates to the State Forester that:

(a) The trees are subject to a cutting right created by written contract prior to October 1, 1990, which provides that the trees must be paid for regardless of whether the trees are cut, or subject to a cutting right created by reservation in a deed prior to October 1, 1990; and

(b) If the provisions of this section were applied, the cutting right would expire before all the trees subject to the cutting right could reasonably be harvested. [1991 c.919 §4; 1995 s.s. c.3 §39b; 1996 c.9 §4]

527.745 Reforestation of certain harvest types; adoption of standards; rules.

(1) The State Board of Forestry shall adopt standards for the reforestation of harvest type 1 and harvest type 3. Unless the board makes the findings for alternate standards under subsection (2) of this section, the

standards for the reforestation of harvest type 1 and harvest type 3 shall include the following:

(a) Reforestation, including site preparation, shall commence within 12 months after the completion of harvest and shall be completed by the end of the second planting season after the completion of harvest. By the end of the fifth growing season after planting or seeding, at least 200 healthy conifer or suitable hardwood seedlings or lesser number as permitted by the board by rule, shall be established per acre, well-distributed over the area, which are "free to grow" as defined by the board.

(b) Landowners may submit plans for alternate practices that do not conform to the standards established under paragraph (a) of this subsection or the alternate standards adopted under subsection (2) of this section, including but not limited to variances in the time in which reforestation is to be commenced or completed or plans to reforest sites by natural reforestation. Such alternate plans may be approved if the State Forester determines that the plan will achieve equivalent or better regeneration results for the particular conditions of the site, or the plan carries out an authorized research project conducted by a public agency or educational institution.

(2) The board, by rule, may establish alternate standards for the reforestation of harvest type 1 and harvest type 3, in lieu of the standards established in subsection (1) of this section, but in no case can the board require the establishment of more than 200 healthy conifer or suitable hardwood seedlings per acre. Such alternate standards may be adopted upon finding that the alternate standards will better assure the continuous growing and harvesting of forest tree species and the maintenance of forestland for such purposes, consistent with sound management of soil, air, water, fish and wildlife resources based on one or more of the following findings:

(a) Alternate standards are warranted based on scientific data concerning biologically effective regeneration;

(b) Different standards are warranted for particular geographic areas of the state due to variations in climate, elevation, geology or other physical factors; or

(c) Different standards are warranted for different tree species, including hardwoods, and for different growing site conditions.

(3) Pursuant to ORS 527.710, the board may adopt definitions, procedures and further regulations to implement the standards established under subsection (1) of this section, without making the findings required in sub-

section (2) of this section, if those procedures or regulations are consistent with the standards established in subsection (1) of this section.

(4) The board shall encourage planting of disease and insect resistant species in sites infested with root pathogens or where planting of susceptible species would significantly facilitate the spread of a disease or insect pest and there are immune or more tolerant commercial species available which are adapted to the site.

(5) Notwithstanding subsections (1), (2) and (3) of this section, in order to remove potential disincentives to the conversion of underproducing stands, as defined by the board, or the salvage of stands that have been severely damaged by wildfire, insects, disease or other factors beyond the landowner's control, the State Forester may suspend the reforestation requirements for specific harvest type 1 or harvest type 3 units in order to take advantage of the Forest Resource Trust provisions, or other cost-share programs administered by the State Forester or where the State Forester is the primary technical adviser. Such suspension may occur only on an individual case basis, in writing, based on a determination by the State Forester that the cost of harvest preparation, harvest, severance and applicable income taxes, logging, site preparation, reforestation and any other measures necessary to establish a free to grow forest stand will likely exceed the gross revenues of the harvest. The board shall adopt rules implementing this subsection establishing the criteria for and duration of the suspension of the reforestation requirements.

(6) Notwithstanding subsections (1), (2) and (3) of this section, at the request of the Department of Transportation, the State Forester shall consult with the department concerning reforestation requirements for harvest type 1 and harvest type 3 in areas that are within or adjacent to a state highway right of way. The State Forester shall waive reforestation requirements in areas deemed to be unsuitable for reforestation by the department in order to maintain motorist safety and to protect highways, bridges and utility lines. [1991 c.919 §6; 1993 c.562 §1; 1995 s.s. c.3 §39c; 1996 c.9 §5; 2012 c.56 §5]

527.750 Exceeding harvest type 3 size limitation; conditions; rules. (1) Notwithstanding the requirements of ORS 527.740, a harvest type 3 unit within a single ownership that exceeds 120 acres but does not exceed 240 acres may be approved by the State Forester if all the requirements of this section and any additional requirements established by the State Board of Forestry are met. Proposed harvest type 3 units that are

within 300 feet of the perimeter of a prior harvest type 3 unit, and that would result in a total combined harvest type 3 area under a single ownership exceeding 120 acres but not exceeding 240 acres, may be approved by the State Forester if the additional requirements are met for the combined area. No harvest type 3 unit within a single ownership shall exceed 240 contiguous acres. No harvest type 3 unit shall be allowed within 300 feet of the perimeter of a prior harvest type 3 unit within a single ownership if the combined acreage of the areas subject to regulation under the Oregon Forest Practices Act would exceed 240 acres, unless:

(a) The prior harvest type 3 unit has been reforested by all applicable regulations;

(b) At least the minimum tree stocking required by rule is established per acre; and

(c)(A) The resultant stand of trees has attained an average height of at least four feet; or

(B) At least 48 months have elapsed since the stand was created and it is "free to grow" as defined by the board.

(2) The requirements of this section are in addition to all other requirements of the Oregon Forest Practices Act and the rules adopted thereunder. The requirements of this section shall be applied in lieu of such other requirements only to the extent the requirements of this section are more stringent. Nothing in this section shall apply to operations conducted under ORS 527.740 (4) or (5).

(3) The board shall require that a plan for an alternate practice be submitted prior to approval of a harvest type 3 operation under this section. The board may establish by rule any additional standards applying to operations under this section.

(4) The State Forester shall approve the harvest type 3 operation if the proposed operation would provide better overall results in meeting the requirements and objectives of the Oregon Forest Practices Act.

(5) The board shall specify by rule the information to be submitted for approval of harvest type 3 operations under this section, including evidence of past satisfactory compliance with the Oregon Forest Practices Act. [1991 c.919 §7; 1995 s.s. c.3 §39d; 1996 c.9 §6; 2003 c.740 §5; 2005 c.22 §378]

527.755 Scenic highways; visually sensitive corridors; operations restricted; exemptions. (1) The following highways are hereby designated as scenic highways for purposes of the Oregon Forest Practices Act:

(a) Interstate Highways 5, 84, 205, 405; and

(b) State Highways 6, 7, 20, 18/22, 26, 27, 30, 31, 34, 35, 36, 38, 42, 58, 62, 66, 82, 97, 101, 126, 138, 140, 199, 230, 234 and 395.

(2) The purpose of designating scenic highways is to provide a limited mechanism that maintains roadside trees for the enjoyment of the motoring public while traveling through forestland, consistent with ORS 527.630, safety and other practical considerations.

(3) The State Board of Forestry, in consultation with the Department of Transportation, shall establish procedures and regulations as necessary to implement the requirements of subsections (4), (5) and (6) of this section, consistent with subsection (2) of this section, including provisions for alternate plans. Alternate plans that modify or waive the requirements of subsection (4), (5) or (6) of this section may be approved when, in the judgment of the State Forester, circumstances exist such as:

(a) Modification or waiver is necessary to maintain motorist safety, protect improvements such as dwellings and bridges, or protect forest health;

(b) Modification or waiver will provide additional scenic benefits to the motoring public, such as exposure of distant scenic vistas;

(c) Trees that are otherwise required to be retained will not be visible to motorists;

(d) The operation involves a change of land use that is inconsistent with maintaining a visually sensitive corridor; or

(e) The retention of timber in a visually sensitive corridor will result in severe economic hardship for the owner because all or nearly all of the owner's property is within the visually sensitive corridor.

(4)(a) For harvest operations within a visually sensitive corridor, at least 50 healthy trees of at least 11 inches DBH, or that measure at least 40 square feet in basal area, shall be temporarily left on each acre.

(b) Overstory trees initially required to be left under paragraph (a) of this subsection may be removed when the reproduction understory reaches an average height of at least 10 feet and has at least the minimum number of stems per acre of free to grow seedlings or saplings required by the board for reforestation, by rule.

(c) Alternatively, when the adjacent stand, extending from 150 feet from the outermost edge of the roadway to 300 feet from the outermost edge of the roadway, has attained an average height of at least 10 feet and has at least the minimum number of stems per acre of free to grow seedlings or saplings required by the board for reforesta-

tion, by rule, or at least 40 square feet of basal area per acre, no trees are required to be left in the visually sensitive corridor, or trees initially required to be left under paragraph (a) of this subsection may be removed. When harvests within the visually sensitive corridor are carried out under this paragraph, the adjacent stand, extending from 150 feet from the outermost edge of the roadway to 300 feet from the outermost edge of the roadway, shall not be reduced below the minimum number of stems per acre of free to grow seedlings or saplings at least 10 feet tall required by the board for reforestation, by rule, or below 40 square feet of basal area per acre until the adjacent visually sensitive corridor has been reforested as required under subsection (6) of this section and the stand has attained an average height of at least 10 feet and has at least the minimum number of stems per acre.

(5) Harvest areas within a visually sensitive corridor shall be cleared of major harvest debris within 30 days of the completion of the harvest, or within 60 days of the cessation of active harvesting activity on the site, regardless of whether the harvest operation is complete.

(6) Notwithstanding the time limits established in ORS 527.745 (1)(a), when harvesting within a visually sensitive corridor results in a harvest type 1 or harvest type 3, reforestation shall be completed by the end of the first planting season after the completion of the harvest. All other provisions of ORS 527.745 shall also apply to harvest type 1 or harvest type 3 within visually sensitive corridors.

(7) Landowners and operators shall not be liable for injury or damage caused by trees left within the visually sensitive corridor for purposes of fulfilling the requirements of this section, when carried out in compliance with the provisions of the Oregon Forest Practices Act.

(8) The following are exempt from this section:

(a) Harvest on single ownerships less than five acres in size;

(b) Harvest within an urban growth boundary, as defined in ORS 195.060; and

(c) Harvest within zones designated for rural residential development pursuant to an exception adopted to the statewide land use planning goals under ORS 197.732. [1991 c.919 §17; 1993 c.306 §1; 1995 s.s. c.3 §39e; 1996 c.9 §7; 1997 c.249 §179; 2007 c.383 §1]

527.760 Reforestation exemptions for land use changes. (1) The State Board of Forestry shall review its rules governing changes in land use and adopt or amend rules as necessary to assure that only bona

fide, established and continuously maintained changes from forest uses are provided an exemption from reforestation requirements. The board shall set specific time periods for the completion of land use conversions. Among other factors, the board shall condition exemptions from reforestation requirements upon:

(a) Demonstrating the intended change in land use is authorized under local land use and zoning ordinances, including obtaining and maintaining all necessary land use or construction permits and approvals for the intended change in land use;

(b) Demonstrating progress toward the change in land use within the time required for planting of trees, and substantial completion and continuous maintenance of the change in land use in a time certain;

(c) Allowing an exemption for only the smallest land area necessary to carry out the change in land use, and requiring that additional land area within the harvest unit remains subject to all applicable reforestation requirements; and

(d) Allowing an exemption only to the extent that the proposed land use is not compatible with the maintenance of forest cover.

(2) The board may require that, prior to commencing an operation where a change in land use is proposed, a bond, cash deposit, irrevocable letter of credit or other security be filed with the State Forester in an amount determined by the State Forester sufficient to cover the cost of site preparation and reforestation for the area subject to an exemption from reforestation due to a change in land use, and shall require that provisions be made for the administration and collection on such bond or security deposit in the event that the change in land use is not established or continuously maintained within a time certain.

(3) Nothing in this section is intended to exempt any change in land use from, nor affect the applicability and administration of, any planning, zoning or permitting requirements provided under state or local laws or regulations. [1991 c.919 §8]

527.765 Best management practices to maintain water quality; rules. (1) The State Board of Forestry shall establish best management practices and other rules applying to forest practices as necessary to insure that to the maximum extent practicable non-point source discharges of pollutants resulting from forest operations on forestlands do not impair the achievement and maintenance of water quality standards established by the Environmental Quality Commission for the waters of the state. Such best management

practices shall consist of forest practices rules adopted to prevent or reduce pollution of waters of the state. Factors to be considered by the board in establishing best management practices shall include, where applicable, but not be limited to:

(a) Beneficial uses of waters potentially impacted;

(b) The effects of past forest practices on beneficial uses of water;

(c) Appropriate practices employed by other forest managers;

(d) Technical, economic and institutional feasibility; and

(e) Natural variations in geomorphology and hydrology.

(2) The board shall consult with the Environmental Quality Commission in adoption and review of best management practices and other rules to address nonpoint source discharges of pollutants resulting from forest operations on forestlands.

(3)(a) Notwithstanding ORS 183.310 (8), upon written petition for rulemaking under ORS 183.390 of any interested person or agency, the board shall review the best management practices adopted pursuant to this section. In addition to all other requirements of law, the petition must allege with reasonable specificity that nonpoint source discharges of pollutants resulting from forest operations being conducted in accordance with the best management practices are a significant contributor to violations of such standards.

(b) Except as provided in paragraph (c) of this subsection, if the board determines that forest operations being conducted in accordance with the best management practices are neither significantly responsible for particular water quality standards not being met nor are a significant contributor to violations of such standards, the board shall issue an order dismissing the petition.

(c) If the petition for review of best management practices is made by the Environmental Quality Commission, the board shall not terminate the review without the concurrence of the commission, unless the board commences rulemaking in accordance with paragraph (e) of this subsection.

(d) If a petition for review is dismissed, upon conclusion of the review, the board shall issue an order that includes findings regarding specific allegations in the petition and shall state the board's reasons for any conclusions to the contrary.

(e) If, pursuant to review, the board determines that best management practices should be reviewed, the board shall com-

mence rulemaking proceedings for that purpose. Rules specifying the revised best management practices must be adopted not later than two years from the filing date of the petition for review unless the board, with concurrence of the Environmental Quality Commission, finds that special circumstances require additional time.

(f) Notwithstanding the time limitation established in paragraph (e) of this subsection, at the request of the Environmental Quality Commission, the board shall take action as quickly as practicable to prevent significant damage to beneficial uses identified by the commission while the board is revising its best management practices and rules as provided for in this section. [1991 c.919 §20; 2003 c.75 §95; 2003 c.749 §11]

527.770 Good faith compliance with best management practices not violation of water quality standards; subsequent enforcement of standards. A forest operator conducting, or in good faith proposing to conduct, operations in accordance with best management practices currently in effect shall not be considered in violation of any water quality standards. When the State Board of Forestry adopts new best management practices and other rules applying to forest operations, such rules shall apply to all current or proposed forest operations upon their effective dates. However, nothing in this section prevents enforcement of water quality standards against a forest operator conducting operations after the time provided in ORS 527.765 (3)(e) for adoption of revised best management practices if the board either has not adopted revised management practices or has not made a finding that such revised best management practices are not required. [1991 c.919 §21; 2003 c.749 §12]

527.990 Criminal penalties. (1) Subject to ORS 153.022, violation of ORS 527.670, 527.672, 527.676, 527.740, 527.750 or 527.755, or any rule promulgated under ORS 527.710 is a Class A misdemeanor. Each day of operation in violation of an order issued under ORS 527.680 (3) shall be deemed to be a separate offense.

(2) Violation of ORS 527.260 (1) is a Class A misdemeanor. Violation of ORS 527.260 (3) is a Class C misdemeanor. [Amended by 1953 c.262 §2; 1971 c.316 §14; 1987 c.919 §32; 1991 c.686 §10; 1995 s.s. c.3 §39h; 1996 c.9 §10; 1999 c.1051 §317; 2011 c.597 §223; 2015 c.833 §22]

527.992 Civil penalties. (1) In addition to any other penalty provided by law, any person who fails to comply with any of the following may incur a civil penalty in the amount adopted under ORS 527.685:

(a) The requirements of ORS 527.670, 527.672, 527.676, 527.740, 527.750 or 527.755.

(b) The terms or conditions of any order of the State Forester issued in accordance with ORS 527.680.

(c) Any rule or standard of the State Board of Forestry adopted or issued pursuant to ORS 527.710.

(d) Any term or condition of a written waiver, or prior approval granted by the State Forester pursuant to the rules adopted under ORS 527.710.

(2) Imposition or payment of a civil penalty under this section shall not be a bar to actions alleging trespass under ORS 105.810, nor to actions under ORS 161.635 or 161.655 seeking to recover an amount based on the gain resulting from individual or corporate criminal violations. [1987 c.919 §24; 1995 s.s. c.3 §39i; 1996 c.9 §11; 2003 c.740 §6; 2015 c.833 §23]

STATE FORESTS; COMMUNITY FORESTS

(Acquisition, Management and Development of State Forests)

530.050 Management of lands acquired; powers of forester; rules. Under the authority and direction of the State Board of Forestry except as otherwise provided for the sale of forest products, the State Forester shall manage the lands acquired pursuant to ORS 530.010 to 530.040 so as to secure the greatest permanent value of those lands to the state, and to that end may:

(1) Protect the lands from fire, disease and insect pests, cooperate with the counties and with persons owning lands within the state in the protection of the lands and enter into all agreements necessary or convenient for the protection of the lands.

(2) Sell forest products from the lands, and execute mining leases and contracts as provided for in ORS 273.551.

(3) Enter into and administer contracts for the sale of timber from lands owned or managed by the State Board of Forestry and the State Forestry Department.

(4) Enter into and administer contracts for activities necessary or convenient for the sale of timber under subsection (3) of this section, either separately from or in conjunction with contracts for the sale of timber, including but not limited to activities such as timber harvesting and sorting, transporting, gravel pit development or operation, and road construction, maintenance or improvement.

(5) Permit the use of the lands for other purposes, including but not limited to forage and browse for domestic livestock, fish and

wildlife environment, landscape effect, protection against floods and erosion, recreation, and protection of water supplies when, in the opinion of the board, the use is not detrimental to the best interest of the state.

(6) Grant easements, permits and licenses over, through and across the lands. The State Forester may require and collect reasonable fees or charges relating to the location and establishment of easements, permits and licenses granted by the state over the lands. The fees and charges collected shall be used exclusively for the expenses of locating and establishing the easements, permits and licenses under this subsection and shall be placed in the State Forestry Department Account.

(7) Require and collect fees or charges for the use of state forest roads. The fees or charges collected shall be used exclusively for purposes of maintenance and improvements of the roads and shall be placed in the State Forestry Department Account.

(8) Reforest the lands and cooperate with the counties, and with persons owning timberlands within the state, in the reforestation, and make all agreements necessary or convenient for the reforestation.

(9) Require such undertakings as in the opinion of the board are necessary or convenient to secure performance of any contract entered into under the terms of this section or ORS 273.551.

(10) Sell rock, sand, gravel, pumice and other such materials from the lands. The sale may be negotiated without bidding, provided the appraised value of the materials does not exceed \$2,500.

(11) Enter into agreements, each for not more than 10 years duration, for the production of minor forest products.

(12) Establish a forestry carbon offset program to market, register, transfer or sell forestry carbon offsets. In establishing the program, the forester may:

(a) Execute any contracts or agreements necessary to create opportunities for the creation of forestry carbon offsets; and

(b) Negotiate prices that are at, or greater than, fair market value for the transfer or sale of forestry carbon offsets.

(13) Do all things and make all rules, not inconsistent with law, necessary or convenient for the management, protection, utilization and conservation of the lands. [Amended by 1953 c.65 §5; 1955 c.421 §3; 1957 c.228 §1; 1959 c.141 §1; 1963 c.475 §1; 1965 c.128 §1; 1967 c.396 §3; 1983 c.759 §9; 2001 c.752 §8; 2005 c.103 §37; 2015 c.447 §1]

(Elliott State Forest; Common School Forest Lands)

530.500 Authority of State Forester in management, protection, utilization and conservation of lands and waters; rules. In order to accomplish the purposes of ORS 530.490, the State Forester may:

(1) Protect the lands from fire, disease and insect pests, cooperate with the counties and with persons owning lands within the state in the protection of the lands and enter into all agreements necessary or convenient for the protection of the lands.

(2) Enter into and administer contracts for the sale of timber from lands owned or managed by the State Board of Forestry and the State Forestry Department.

(3) Enter into and administer contracts for activities necessary or convenient for the sale of timber under subsection (2) of this section, either separately from or in conjunction with contracts for the sale of timber, including but not limited to activities such as timber harvesting and sorting, transporting, gravel pit development or operation, and road construction, maintenance or improvement.

(4) Permit the use of the lands for other purposes, including but not limited to fish and wildlife environment, landscape effect, protection against flood and erosion, recreation and production and protection of water supplies when the use is not detrimental to the purpose for which the lands are dedicated.

(5) Contract with other governmental bodies for the protection of water supplies to facilitate the multiple use of publicly owned water supplies for recreational purposes as well as a source of water for domestic and industrial use.

(6) Grant permits and licenses on, over and across the lands.

(7) Reforest the lands and cooperate with persons owning timberlands within the state in the reforestation, and make all agreements necessary or convenient for the reforestation.

(8) Establish a forestry carbon offset program to market, register, transfer or sell forestry carbon offsets. In establishing the program, the forester may:

(a) Execute any contracts or agreements necessary to create opportunities for the creation of forestry carbon offsets; and

(b) Negotiate prices that are at, or greater than, fair market value for the transfer or sale of forestry carbon offsets.

(9) Do all things and make all rules and regulations, not inconsistent with law, necessary or convenient for the management,

protection, utilization and conservation of the lands.

(10) Require such undertakings as in the opinion of the State Forester are necessary or convenient to secure performance of any agreement authorized in ORS 530.450 to 530.520. [1957 c.240 §6; 1959 c.141 §2; 1967 c.396 §7; 1969 c.194 §1; 2001 c.752 §9; 2005 c.103 §38; 2015 c.447 §2]

WATER RESOURCES ADMINISTRATION

536.015 Water Resources Department Hydroelectric Fund; uses; sources. (1) The Water Resources Department Hydroelectric Fund is established separate and distinct from the General Fund of the State Treasury. Except as provided in subsections (4) to (6) of this section, of the moneys in the Water Resources Department Hydroelectric Fund:

(a) A portion equal to 67 percent of the total moneys received each year shall be transferred to the fund created under ORS 496.835;

(b) A portion equal to 10.3 percent of the total moneys received each year shall be transferred to an account of the Department of Environmental Quality to be used to review applications for certification of hydroelectric projects under ORS 468B.040 and 468B.045; and

(c) All of the remaining moneys received each year are continuously appropriated to the Water Resources Commission and the Water Resources Department to provide for the payment of the administrative expenses of the commission and the department in carrying out their responsibilities related to the issuance of permits, licenses or water right certificates for hydroelectric projects.

(2) The following shall be deposited into the State Treasury and credited to the Water Resources Department Hydroelectric Fund:

(a) Fees received by the Water Resources Department for hydroelectric projects under ORS 536.050, 543.078 to 543.092, 543.210, 543.280, 543.300, 543.710, 543A.405 and 543A.415; and

(b) All moneys received on behalf of this account by gift, grant or appropriation from whatever source.

(3) All interest, if any, from moneys credited to the Water Resources Department Hydroelectric Fund shall be credited to the fund and shall inure to the benefit of the Water Resources Department Hydroelectric Fund.

(4) Application fees received under ORS 543A.405 shall be disbursed to the various agencies in the amounts specified in the cost reimbursement agreement executed with each reauthorization applicant.

(5) Four cents of each 28 cents paid as a reauthorization fee under ORS 543A.415 shall be paid to the Department of Environmental Quality.

(6) Annual fees paid under ORS 543.078 shall be disbursed to state agencies pursuant to a memorandum of agreement developed by the Department of Environmental Quality, the State Department of Fish and Wildlife and the Water Resources Department. [1991 c.869 §2; 1997 c.449 §36; 1999 c.873 §13]

536.017 Records of expenditures from Water Resources Department Hydroelectric Fund. The Water Resources Commission and the State Department of Fish and Wildlife shall maintain records of expenditures from the Water Resources Department Hydroelectric Fund established under ORS 536.015. The records shall account for costs imposed against specific operating hydroelectric projects and against projects in the process of obtaining a state or federal hydroelectric permit, certificate or license. [1991 c.869 §13]

536.050 Fees; rules; refunds; waiver and reduction of certain fees. (1) The Water Resources Department may collect the following fees in advance:

(a) For examining an application for a permit:

(A) To appropriate water, except as provided under ORS 543.280 for an application for a hydroelectric project:

(i) A base fee of \$800 for an appropriation of water through a single use, point of diversion or point of appropriation;

(ii) \$300 for the first second-foot or fraction thereof appropriated under the permit;

(iii) \$300 for each additional second-foot or fraction thereof appropriated under the permit;

(iv) \$300 for each additional use, point of diversion or point of appropriation included in the application;

(v) If appropriating stored water, \$30 for the first acre-foot or fraction thereof up to 20 acre-feet, plus \$1 for each additional acre-foot or fraction thereof; and

(vi) If appropriating ground water, in addition to any other fees, \$350 for each application filed.

(B) To store water under ORS 537.400 or 537.534 (4):

(i) A base fee of \$800;

(ii) \$30 for the first acre-foot or fraction thereof up to 20 acre-feet, plus \$1 for each additional acre-foot or fraction thereof; and

(iii) \$125 for each additional storage location.

(C) To exclusively appropriate stored water:

(i) A base fee of \$450; and

(ii) \$30 for the first acre-foot or fraction thereof up to 20 acre-feet, plus \$1 for each additional acre-foot or fraction thereof.

(b) For a permit issued under ORS 537.147, 537.211, 537.409 or 537.625 to appropriate or store water:

(A) A base fee of \$450 for recording the permit; and

(B) An additional fee of \$575 if the permit is issued pursuant to a final order that contains provisions requested by the applicant for mitigating impacts to the proposed water source.

(c) For filing and recording the assignment or partial assignment of a water right application, permit or license under ORS 537.220 or 537.635, \$85.

(d) For copying records in the department, \$2 for the first page and 50 cents for each additional page.

(e) For certifying copies, documents, records or maps, \$10 for each certificate.

(f) For a blueprint copy of any map or drawing, the actual cost of the work.

(g) For a computer-generated map, the actual cost of the work.

(h) For examining an application for approval of a change to an existing water right or permit:

(A) A base fee of \$1,000 for a change to a single water right or permit;

(B) \$800 for each additional type of change requested;

(C) For a request for a change in place of use or type of use or for a water exchange under ORS 540.533, \$300 for each second-foot or fraction thereof requested beyond the first second-foot;

(D) \$450 for each additional water right or permit included in the application; and

(E) An additional fee of \$350 per application, if the application is for an additional point of appropriation, a change in a point of appropriation or a change from surface water to ground water or for substitution as described in ORS 540.524.

(i) For examining an application for a temporary change in place of use under ORS 540.523, for a temporary transfer under ORS 540.585 or for a temporary change in place of use, a change in the point of diversion to allow for the appropriation of ground water or a change of a primary right to a supplemental right under ORS 540.570, a base fee of \$700 for the first water right or permit,

plus \$225 for each additional water right or permit included in the application and:

(A) For nonirrigation uses, \$175 for each second-foot or fraction thereof requested beyond the first second-foot; or

(B) For irrigation uses, \$2 per acre of land irrigated or, if the application and required map are submitted to the department in a department-approved digital format, 50 cents per acre of land irrigated.

(j) For submitting a protest to the department:

(A) \$700 if the protest is by a nonapplicant; and

(B) \$350 if the protest is by an applicant.

(k) For filing an application for extension of time within which irrigation or other works shall be completed or a water right perfected, \$575.

(L) For a limited license under ORS 537.143 or 537.534 (2), the fee established by rule by the Water Resources Commission.

(m) For filing, examining and certifying a petition under ORS 541.329, \$350 plus 10 cents per acre of water involved in the application. For purposes of computing this fee, when any acreage within a quarter quarter of a section is involved, the 10 cents per acre shall apply to all acres in that quarter quarter of a section. Notwithstanding the fee amount established in this paragraph, a district notifying the department under ORS 541.327 (4) shall pay the actual cost of filing, examining and certifying the petition.

(n) For requesting standing under ORS 537.153, 537.621 or 543A.120, \$200.

(o) For participating in a contested case proceeding under ORS 537.170, 537.622 or 543A.130, \$500.

(p) Except for an applicant, for obtaining a copy of both a proposed final order and a final order for a water right application under ORS 537.140 to 537.252, 537.505 to 537.795 or 543A.005 to 543A.300 or an extension issued under ORS 537.230, 537.248 or 537.630, \$25.

(q) For examining an application to store water under ORS 537.409:

(A) A base fee of \$350; and

(B) \$30 for each acre-foot or fraction thereof.

(r) For submitting a notice of intent under ORS 543A.030 or 543A.075, the amount established by the Water Resources Director under ORS 543A.410.

(s) For examining an application for a substitution made under ORS 540.524:

(A) A base fee of \$725 for the first well substitution; and

(B) A fee of \$350 for each additional well substitution.

(t) For examining an application for an allocation of conserved water under ORS 537.455 to 537.500:

(A) A base fee of \$1,000 for the first water right that is part of the allocation; and

(B) An additional fee of \$350 for each water right that is part of the allocation beyond the first water right.

(u) For submitting a water management and conservation plan pursuant to rules of the commission:

(A) \$500, if the plan is submitted by an agricultural water supplier;

(B) \$900, if the plan is submitted by a municipal water supplier serving a population of 1,000 or fewer persons; or

(C) \$1,800, if the plan is submitted by a municipal water supplier serving a population of more than 1,000 persons.

(v) For examining a new application for an in-stream water right lease under ORS 537.348:

(A) \$450 for an application for a lease with four or more landowners or four or more water rights; or

(B) \$300 for all other applications.

(w) For examining an application for an in-stream water right lease renewal, \$110.

(x) For submitting a claim of beneficial use under a permit or transfer having a priority date of July 9, 1987, or later, \$175.

(y) For submitting a request no later than 60 days after cancellation of a permit under ORS 537.260 to reinstate the permit, \$450.

(z) For submitting a request for a basin program exception under ORS 536.295, \$575.

(aa) For processing an application under ORS 537.225 for an assignment of water right to one or more landowners and issuance of replacement water right permits, the actual cost of the work.

(2)(a) The department may charge a dam owner an annual fee based upon the dam's hazard rating as determined by the department. The fees the department may charge the dam owner are:

(A) \$85 for a dam with a low hazard rating.

(B) \$170 for a dam with a significant hazard rating.

(C) \$575 for a dam with a high hazard rating.

(D) If the dam owner fails to pay an annual fee on or before six months after the billing date, a late fee of \$100.

(b) If a dam owner fails to pay an annual fee or a late fee charged by the department, the department may, after giving the dam owner notice by certified mail, place a lien on the real property where the dam is located for the fees owed by the dam owner.

(3) Notwithstanding the fees established under subsection (1) of this section, the commission may establish lower examination and permit fees by rule for:

(a) The right to appropriate water for a storage project of five acre-feet or less; or

(b) The right to appropriate water for the purpose of allowing the applicant to water livestock outside of a riparian area, as that term is defined in ORS 541.890.

(4)(a) The director may refund all or part of a fee paid to the department under this section if the director determines that a refund of the fee is appropriate in the interests of fairness to the public or necessary to correct an error of the department.

(b) The director may refund all or part of the protest fee described in subsection (1)(j) of this section to the legal owner or occupant who filed a protest under ORS 540.641 if an order of the Water Resources Commission establishes that all or part of a water right has not been canceled or modified under ORS 540.610 to 540.650.

(5) The director may waive all or part of a fee for a change to a water right permit under ORS 537.211 (4), a change to a water right subject to transfer under ORS 540.520 or 540.523 or an allocation of conserved water under ORS 537.470, if the change or allocation of conserved water is:

(a) Made pursuant to ORS 537.348;

(b) Necessary to complete a project funded under ORS 541.932; or

(c) Approved by the State Department of Fish and Wildlife as a change or allocation of conserved water that will result in a net benefit to fish and wildlife habitat.

(6) Notwithstanding the fees established pursuant to this section, the commission may adopt by rule reduced fees for persons submitting materials to the department in a digital format approved by the department.

(7) All moneys received under this section, less any amounts refunded under subsection (4) of this section, shall be deposited in the Water Resources Department Water Right Operating Fund.

(8) Notwithstanding subsection (7) of this section, all fees received by the department for power purposes under ORS 543.280 shall be deposited in the Water Resources Department Hydroelectric Fund established by ORS 536.015. [Amended by 1961 c.187 §3; 1967 c.36 §1; 1973

c.163 §4; 1975 c.581 §21; 1981 c.627 §1; 1983 c.256 §1; 1985 c.673 §12; 1987 c.815 §8; 1989 c.587 §1; 1989 c.758 §1; 1989 c.933 §4; 1989 c.1000 §6; 1991 c.734 §49a; 1991 c.869 §4; 1995 c.416 §1; 1995 c.752 §6; 1997 c.449 §35; 1997 c.587 §1; 1999 c.555 §3; 1999 c.664 §1; 1999 c.665 §1; 1999 c.873 §19; 2003 c.594 §1; 2003 c.691 §4; 2003 c.705 §7; 2005 c.156 §1; 2007 c.188 §1; 2007 c.267 §1; 2009 c.819 §§5,12; 2013 c.166 §§4,5; 2013 c.644 §1]

Note: The amendments to 536.050 by section 2, chapter 644, Oregon Laws 2013, become operative July 1, 2017. See section 16, chapter 644, Oregon Laws 2013. The text that is operative on and after July 1, 2017, is set forth for the user's convenience.

536.050. (1) The Water Resources Department may collect the following fees in advance:

(a) For examining an application for a permit:

(A) To appropriate water, except as provided under ORS 543.280 for an application for a hydroelectric project:

(i) A base fee of \$700 for an appropriation of water through a single use, point of diversion or point of appropriation;

(ii) \$250 for the first second-foot or fraction thereof appropriated under the permit;

(iii) \$250 for each additional second-foot or fraction thereof appropriated under the permit;

(iv) \$250 for each additional use, point of diversion or point of appropriation included in the application;

(v) If appropriating stored water, \$25 for the first acre-foot or fraction thereof up to 20 acre-feet, plus \$1 for each additional acre-foot or fraction thereof; and

(vi) If appropriating ground water, in addition to any other fees, \$300 for each application filed.

(B) To store water under ORS 537.400 or 537.534 (4):

(i) A base fee of \$700;

(ii) \$25 for the first acre-foot or fraction thereof up to 20 acre-feet, plus \$1 for each additional acre-foot or fraction thereof; and

(iii) \$100 for each additional storage location.

(C) To exclusively appropriate stored water:

(i) A base fee of \$400; and

(ii) \$25 for the first acre-foot or fraction thereof up to 20 acre-feet, plus \$1 for each additional acre-foot or fraction thereof.

(b) For a permit issued under ORS 537.147, 537.211, 537.409 or 537.625 to appropriate or store water:

(A) A base fee of \$400 for recording the permit; and

(B) An additional fee of \$500 if the permit is issued pursuant to a final order that contains provisions requested by the applicant for mitigating impacts to the proposed water source.

(c) For filing and recording the assignment or partial assignment of a water right application, permit or license under ORS 537.220 or 537.635, \$75.

(d) For copying records in the department, \$2 for the first page and 50 cents for each additional page.

(e) For certifying copies, documents, records or maps, \$10 for each certificate.

(f) For a blueprint copy of any map or drawing, the actual cost of the work.

(g) For a computer-generated map, the actual cost of the work.

(h) For examining an application for approval of a change to an existing water right or permit:

(A) A base fee of \$900 for a change to a single water right or permit;

(B) \$700 for each additional type of change requested;

(C) For a request for a change in place of use or type of use or for a water exchange under ORS 540.533, \$250 for each second-foot or fraction thereof requested beyond the first second-foot;

(D) \$400 for each additional water right or permit included in the application; and

(E) An additional fee of \$300 per application, if the application is for an additional point of appropriation, a change in a point of appropriation or a change from surface water to ground water or for substitution as described in ORS 540.524.

(i) For examining an application for a temporary change in place of use under ORS 540.523, for a temporary transfer under ORS 540.585 or for a temporary change in place of use, a change in the point of diversion to allow for the appropriation of ground water or a change of a primary right to a supplemental right under ORS 540.570, a base fee of \$600 for the first water right or permit, plus \$200 for each additional water right or permit included in the application and:

(A) For nonirrigation uses, \$150 for each second-foot or fraction thereof requested beyond the first second-foot; or

(B) For irrigation uses, \$2 per acre of land irrigated or, if the application and required map are submitted to the department in a department-approved digital format, 50 cents per acre of land irrigated.

(j) For submitting a protest to the department:

(A) \$600 if the protest is by a nonapplicant; and

(B) \$300 if the protest is by an applicant.

(k) For filing an application for extension of time within which irrigation or other works shall be completed or a water right perfected, \$500.

(L) For a limited license under ORS 537.143 or 537.534 (2), the fee established by rule by the Water Resources Commission.

(m) For filing, examining and certifying a petition under ORS 541.329, \$300 plus 10 cents per acre of water involved in the application. For purposes of computing this fee, when any acreage within a quarter quarter of a section is involved, the 10 cents per acre shall apply to all acres in that quarter quarter of a section. Notwithstanding the fee amount established in this paragraph, a district notifying the department under ORS 541.327 (4) shall pay the actual cost of filing, examining and certifying the petition.

(n) For requesting standing under ORS 537.153, 537.621 or 543A.120, \$150.

(o) For participating in a contested case proceeding under ORS 537.170, 537.622 or 543A.130, \$350.

(p) Except for an applicant, for obtaining a copy of both a proposed final order and a final order for a water right application under ORS 537.140 to 537.252, 537.505 to 537.795 or 543A.005 to 543A.300 or an extension issued under ORS 537.230, 537.248 or 537.630, \$20.

(q) For examining an application to store water under ORS 537.409:

(A) A base fee of \$300; and

(B) \$25 for each acre-foot or fraction thereof.

(r) For submitting a notice of intent under ORS 543A.030 or 543A.075, the amount established by the Water Resources Director under ORS 543A.410.

(s) For examining an application for a substitution made under ORS 540.524:

(A) A base fee of \$630 for the first well substitution; and

(B) A fee of \$300 for each additional well substitution.

(t) For examining an application for an allocation of conserved water under ORS 537.455 to 537.500:

(A) A base fee of \$850 for the first water right that is part of the allocation; and

(B) An additional fee of \$300 for each water right that is part of the allocation beyond the first water right.

(u) For submitting a water management and conservation plan pursuant to rules of the commission:

(A) \$400, if the plan is submitted by an agricultural water supplier;

(B) \$800, if the plan is submitted by a municipal water supplier serving a population of 1,000 or fewer persons; or

(C) \$1,600, if the plan is submitted by a municipal water supplier serving a population of more than 1,000 persons.

(v) For examining a new application for an in-stream water right lease under ORS 537.348:

(A) \$400 for an application for a lease with four or more landowners or four or more water rights; or

(B) \$250 for all other applications.

(w) For examining an application for an in-stream water right lease renewal, \$100.

(x) For submitting a claim of beneficial use under a permit or transfer having a priority date of July 9, 1987, or later, \$150.

(y) For submitting a request no later than 60 days after cancellation of a permit under ORS 537.260 to reinstate the permit, \$400.

(z) For submitting a request for a basin program exception under ORS 536.295, \$500.

(aa) For processing an application under ORS 537.225 for an assignment of water right to one or more landowners and issuance of replacement water right permits, the actual cost of the work.

(2)(a) The department may charge a dam owner an annual fee based upon the dam's hazard rating as determined by the department. The fees the department may charge the dam owner are:

(A) \$75 for a dam with a low hazard rating.

(B) \$150 for a dam with a significant hazard rating.

(C) \$500 for a dam with a high hazard rating.

(D) If the dam owner fails to pay an annual fee on or before six months after the billing date, a late fee of \$100.

(b) If a dam owner fails to pay an annual fee or a late fee charged by the department, the department may, after giving the dam owner notice by certified mail, place a lien on the real property where the dam is located for the fees owed by the dam owner.

(3) Notwithstanding the fees established under subsection (1) of this section, the commission may establish lower examination and permit fees by rule for:

(a) The right to appropriate water for a storage project of five acre-feet or less; or

(b) The right to appropriate water for the purpose of allowing the applicant to water livestock outside of a riparian area, as that term is defined in ORS 541.890.

(4)(a) The director may refund all or part of a fee paid to the department under this section if the director determines that a refund of the fee is appropriate in the interests of fairness to the public or necessary to correct an error of the department.

(b) The director may refund all or part of the protest fee described in subsection (1)(j) of this section to the legal owner or occupant who filed a protest under ORS 540.641 if an order of the Water Resources Commission establishes that all or part of a water right has not been canceled or modified under ORS 540.610 to 540.650.

(5) The director may waive all or part of a fee for a change to a water right permit under ORS 537.211 (4), a change to a water right subject to transfer under ORS 540.520 or 540.523 or an allocation of conserved water under ORS 537.470, if the change or allocation of conserved water is:

- (a) Made pursuant to ORS 537.348;
- (b) Necessary to complete a project funded under ORS 541.932; or
- (c) Approved by the State Department of Fish and Wildlife as a change or allocation of conserved water that will result in a net benefit to fish and wildlife habitat.

(6) Notwithstanding the fees established pursuant to this section, the commission may adopt by rule reduced fees for persons submitting materials to the department in a digital format approved by the department.

(7) All moneys received under this section, less any amounts refunded under subsection (4) of this section, shall be deposited in the Water Resources Department Water Right Operating Fund.

(8) Notwithstanding subsection (7) of this section, all fees received by the department for power purposes under ORS 543.280 shall be deposited in the Water Resources Department Hydroelectric Fund established by ORS 536.015.

536.235 Policy on minimum streamflows. It is the policy of the State of Oregon that establishment of minimum perennial streamflows is a high priority of the Water Resources Commission and the Water Resources Department. [1983 c.796 §2; 1985 c.673 §13]

536.300 Formulation of state water resources program; public hearing in affected river basin. (1) The Water Resources Commission shall proceed as rapidly as possible to study: Existing water resources of this state; means and methods of conserving and augmenting such water resources; existing and contemplated needs and uses of water for domestic, municipal, irrigation, power development, industrial, mining, recreation, wildlife, and fish life uses and for pollution abatement, all of which are declared to be beneficial uses, and all other related subjects, including drainage, reclamation, floodplains and reservoir sites.

(2) Based upon said studies and after an opportunity to be heard has been given to all other state agencies which may be concerned, the commission shall progressively formulate an integrated, coordinated program for the use and control of all the water resources of this state and issue statements thereof.

(3) The commission may adopt or amend a basin program only after holding at least one public hearing in the affected river basin. After the commission itself conducts one public hearing in the affected river basin, the commission may delegate to the Water Resources Director the authority to

conduct additional public hearings in the affected river basin. [1955 c.707 §10(1), (2); 1965 c.355 §2; 1985 c.673 §14]

536.310 Purposes and policies to be considered in formulating state water resources program. In formulating the water resources program under ORS 536.300 (2), the Water Resources Commission shall take into consideration the purposes and declarations enumerated in ORS 536.220 and also the following additional declarations of policy:

(1) Existing rights, established duties of water, and relative priorities concerning the use of the waters of this state and the laws governing the same are to be protected and preserved subject to the principle that all of the waters within this state belong to the public for use by the people for beneficial purposes without waste;

(2) It is in the public interest that integration and coordination of uses of water and augmentation of existing supplies for all beneficial purposes be achieved for the maximum economic development thereof for the benefit of the state as a whole;

(3) That adequate and safe supplies be preserved and protected for human consumption, while conserving maximum supplies for other beneficial uses;

(4) Multiple-purpose impoundment structures are to be preferred over single-purpose structures; upstream impoundments are to be preferred over downstream impoundments. The fishery resource of this state is an important economic and recreational asset. In the planning and construction of impoundment structures and milldams and other artificial obstructions, due regard shall be given to means and methods for its protection;

(5) Competitive exploitation of water resources of this state for single-purpose uses is to be discouraged when other feasible uses are in the general public interest;

(6) In considering the benefits to be derived from drainage, consideration shall also be given to possible harmful effects upon ground water supplies and protection of wildlife;

(7) The maintenance of minimum perennial streamflows sufficient to support aquatic life, to minimize pollution and to maintain recreation values shall be fostered and encouraged if existing rights and priorities under existing laws will permit;

(8) Watershed development policies shall be favored, whenever possible, for the preservation of balanced multiple uses, and project construction and planning with those ends in view shall be encouraged;

(9) Due regard shall be given in the planning and development of water recreation facilities to safeguard against pollution;

(10) It is of paramount importance in all cooperative programs that the principle of the sovereignty of this state over all the waters within the state be protected and preserved, and such cooperation by the commission shall be designed so as to reinforce and strengthen state control;

(11) Local development of watershed conservation, when consistent with sound engineering and economic principles, is to be promoted and encouraged;

(12) When proposed uses of water are in mutually exclusive conflict or when available supplies of water are insufficient for all who desire to use them, preference shall be given to human consumption purposes over all other uses and for livestock consumption, over any other use, and thereafter other beneficial purposes in such order as may be in the public interest consistent with the principles of chapter 707, Oregon Laws 1955, under the existing circumstances; and

(13) Notwithstanding any other provision of this section, when available supplies of water are insufficient in the South Umpqua River to provide for both the needs of human consumption pursuant to a municipal water right and the maintenance of previously established minimum streamflows, preference shall be given to the municipal needs if the municipality adopts and enforces an ordinance restricting use of the water so obtained to direct human consumption uses. [1955 c.707 §10(3); 1979 c.170 §1; 1987 c.546 §1]

Note: The Legislative Counsel has not, pursuant to 173.160, undertaken to substitute specific ORS references for the words "chapter 707, Oregon Laws 1955," in 536.310 and 536.330. Chapter 707, Oregon Laws 1955, enacted into law and amended the ORS sections which may be found by referring to the 1955 Comparative Section Table located in Volume 20 of Oregon Revised Statutes.

536.340 Classification of water as to highest and best use and quantity of use; enforcement of laws concerning loss of water rights; prescribing preferences for future uses. (1) Subject at all times to existing rights and priorities to use waters of this state, the Water Resources Commission:

(a) May, by a water resources statement referred to in ORS 536.300 (2), classify and reclassify the lakes, streams, underground reservoirs or other sources of water supply in this state as to the highest and best use and quantities of use thereof for the future in aid of an integrated and balanced program for the benefit of the state as a whole. The commission may so classify and reclassify portions of any such sources of water supply separately. Classification or reclassification of sources of water supply as provided in this

subsection has the effect of restricting the use and quantities of use thereof to the uses and quantities of uses specified in the classification or reclassification, and no other uses or quantities of uses except as approved by the commission under ORS 536.370 to 536.390 or as accepted by the commission under ORS 536.295. Restrictions on use and quantities of use of a source of water supply resulting from a classification or reclassification under this subsection shall apply to the use of all waters of this state affected by the classification or reclassification, and shall apply to uses listed in ORS 537.545 that are initiated after the classification or reclassification that imposes the restriction.

(b) Shall diligently enforce laws concerning cancellation, release and discharge of excessive unused claims to waters of this state to the end that such excessive and unused amounts may be made available for appropriation and beneficial use by the public.

(c) May, by a water resources statement referred to in ORS 536.300 (2) and subject to the preferential uses named in ORS 536.310 (12), prescribe preferences for the future for particular uses and quantities of uses of the waters of any lake, stream or other source of water supply in this state in aid of the highest and best beneficial use and quantities of use thereof. In prescribing such preferences the commission shall give effect and due regard to the natural characteristics of such sources of water supply, the adjacent topography, the economy of such sources of water supply, the economy of the affected area, seasonal requirements of various users of such waters, the type of proposed use as between consumptive and nonconsumptive uses and other pertinent data.

(2) In classifying or reclassifying a source of water supply or prescribing preferences for the future uses of a source of water supply under subsection (1) of this section, the commission shall:

(a) Comply with the requirements set forth in the Water Resources Department coordination program developed pursuant to ORS 197.180; and

(b) Cause notice of the hearing held under ORS 536.300 (3) to be published in a newspaper of general circulation once each week for two successive weeks in each county:

(A) In which waters affected by the action of the commission under subsection (1) of this section are located; or

(B) That is located within the basin under consideration.

(3) Before beginning any action under subsection (2) of this section that would limit new ground water uses that are exempt un-

der ORS 537.545 from the requirement to obtain a water right, the commission shall:

(a) Review the proposed action to determine whether the proposal is consistent with ORS 537.780;

(b) Provide an opportunity for review by:

(A) Any member of the Legislative Assembly who represents a district where the proposed action would apply; and

(B) Any interim committee of the Legislative Assembly responsible for water-related issues; and

(c) Receive and consider a recommendation on the proposal from the ground water advisory committee appointed under ORS 536.090. [1955 c.707 §10(6); 1963 c.414 §1; 1989 c.9 §2; 1989 c.833 §54; 1997 c.510 §1; 2011 c.52 §1]

WATER APPROPRIATION

(Limited Licenses)

537.131 Reclaimed water. As used in ORS 537.132, 540.510 and 540.610, "reclaimed water" means water that has been used for municipal purposes and after such use has been treated in a treatment works as defined in ORS 454.010, and that, as a result of treatment, is suitable for a direct beneficial purpose or a controlled use that could not otherwise occur. [1991 c.370 §2; 1997 c.244 §1]

537.132 Exemption from permit requirement for use of reclaimed water; rules. (1) The provisions of ORS 537.130 requiring application for a permit to appropriate water shall not apply to the use of reclaimed water, if:

(a) The use of reclaimed water is authorized by the national pollutant discharge elimination system or water pollution control facilities permit issued pursuant to ORS 468B.050 or 468B.053;

(b) The Department of Environmental Quality, in reviewing an application for a permit pursuant to ORS 468B.050 or 468B.053, has consulted with the State Department of Fish and Wildlife on the impact to fish and wildlife to determine that the application of reclaimed water under ORS 537.130, 537.131, 537.132, 540.510 and 540.610 shall not have a significant negative impact on fish and wildlife; and

(c) The Department of Environmental Quality has determined the use of reclaimed water is intended to improve the water quality of the receiving stream.

(2) Any person using or intending to use reclaimed water shall file with the Water Resources Department a reclaimed water registration form setting forth the following:

(a) Name and mailing address of the registrant;

(b) The date the use of reclaimed water is initiated;

(c) Source of reclaimed water supply, including a description of the location of the reclaimed water treatment facility and the name and mailing address of the owner and operator of the facility;

(d) Nature of the use of the reclaimed water;

(e) Amount of reclaimed water used or proposed to be used;

(f) Location and description of the ditch, canal, pipeline or any other conduction facility used or to be used to transport the reclaimed water from the treatment facility to the place of use;

(g) A statement declaring the existence of a written contract or agreement to provide reclaimed water including the name and address of the reclaimed water provider and the date and terms of such contract or agreement;

(h) A description of the season of use and the place of use of the reclaimed water, and any restrictions applicable to the use of the reclaimed water; and

(i) If the reclaimed water is used in lieu of using water under an existing water right, the application, permit and certificate number of such right, or if the right is granted pursuant to a decree of circuit court, the volume and page number setting forth the right.

(3) If a municipality has discharged waste water into a natural watercourse for five or more years, and the discharge represents more than 50 percent of the total average flow of the natural watercourse and if such discharge would cease as a result of the use of reclaimed water in accordance with the provisions of ORS 540.510 (3) and this section, the director of the department shall notify any persons who, according to the department records, have a water right that may be affected by the cessation of the discharge by the municipality.

(4) If a person holding an affected water right demonstrates to the department that the cessation of discharge by the municipality substantially impairs the ability to satisfy a water right, the person shall be entitled to a preference to the use of the reclaimed water. However, the delivery of the reclaimed water to the person claiming such preference shall be accomplished through a conveyance facility or channel other than a natural watercourse.

(5) If a municipality has a less expensive alternative for the disposal and distribution of the reclaimed water, the municipality shall not be obligated to incur expenses or

cost beyond the expenses or costs of such alternative.

(6) The Water Resources Commission shall adopt rules to implement the notice and preference provisions and impairment evaluation standards of this section. [1991 c.370 §3; 1997 c.286 §8]

537.135 Permit required to appropriate water for recharging ground water sources; minimum perennial streamflow required for permit; exception. (1) The appropriation of water for the purpose of recharging ground water basins or reservoirs is declared to be for a beneficial purpose. Permits for such appropriation may be granted by the Water Resources Department on application made therefor. Any such application shall substantially comply with ORS 537.140 and shall be subject to the provisions of ORS 537.150 to 537.230, as are other applications and permits to appropriate water.

(2) Any person proposing to apply to a beneficial use the water stored artificially in any such ground water basin or reservoir shall file an application for permit, to be known as the secondary permit, in compliance with the provisions of ORS 537.130, 537.140, 537.142 and 537.145 to 537.230. The application shall refer to the artificially recharged ground water basin or reservoir as a supply of water and shall include the written consent of the holder of the recharge permit or certificate to appropriate the artificially recharged water.

(3) The Water Resources Commission shall develop standards that an applicant must meet before the department approves a permit to appropriate water for the purpose of recharging ground water.

(4) Before issuing a permit for the purpose of recharging ground water, the department shall determine, under ORS 537.170, whether the proposed ground water recharge project would impair or be detrimental to the public interest.

(5) The department shall not issue a ground water recharge permit unless the supplying stream has a minimum perennial streamflow established for the protection of aquatic and fish life. The State Department of Fish and Wildlife may waive this prerequisite if a minimum perennial streamflow for protection of aquatic and fish life is not required for the supplying stream. [1961 c.402 §1; 1985 c.673 §26; 1987 c.499 §1; 1995 c.416 §3]

537.141 Uses of water not requiring water right application, permit or certificate; rules. (1) The following water uses do not require an application under ORS 537.130 or 537.615, a water right permit under ORS

537.211 or a water right certificate under ORS 537.250:

(a) Emergency fire-fighting uses;
 (b) Nonemergency fire-fighting training, provided:

(A) The source of the water is existing storage and the use occurs with permission of the owner of the stored water; or

(B) If the source of water is other than existing storage, the use occurs with the prior written approval of the watermaster in the district where the training will take place and subject to any conditions the watermaster determines are necessary to prevent injury to existing water rights and to protect in-stream resources;

(c) Water uses that divert water to water tanks or troughs from a reservoir for a use allowed under an existing water right permit or certificate for the reservoir;

(d) Fish screens, fishways and fish bypass structures, as exempted by rule of the Water Resources Commission;

(e) Land management practices intended to save soil and improve water quality by temporarily impeding or changing the natural flow of diffuse surface water across agricultural lands when storage of public waters is not an intended purpose. Such practices include but are not limited to:

(A) Terraces;

(B) Dikes;

(C) Retention dams and other temporary impoundments; and

(D) Agronomic practices designed to improve water quality and control surface runoff to prevent erosion, such as ripping, pitting, rough tillage and cross slope farming;

(f) Livestock watering operations that comply with the requirements under subsections (2) and (3) of this section;

(g) Forest management activities that require the use of water in conjunction with mixing pesticides as defined in ORS 634.006, or in slash burning;

(h) The collection of precipitation water from an artificial impervious surface and the use of such water;

(i) Land application of ground water so long as the ground water:

(A) Has first been appropriated and used under a permit or certificate issued under ORS 537.625 or 537.630 for a water right issued for industrial purposes or a water right authorizing use of water for confined animal feeding purposes;

(B) Is reused for irrigation purposes and the period of irrigation is a period during

which the reused water has never been discharged to the waters of the state; and

(C) Is applied pursuant to a permit issued by the Department of Environmental Quality or the State Department of Agriculture under either ORS 468B.050 to construct and operate a disposal system or ORS 468B.215 to operate a confined animal feeding operation; and

(j) Surface mining practices that result in the removal of water from a surface mine subject to an operating permit or reclamation plan approved by the State Department of Geology and Mineral Industries, unless the water is used for a subsequent beneficial use.

(2) The use of surface water for livestock watering may be exempted under subsection (1) of this section if:

(a) The water is diverted from a stream or other surface water source to a trough or tank through an enclosed water delivery system;

(b) The delivery system either is equipped with an automatic shutoff or flow control mechanism or includes a means for returning water to the surface water source through an enclosed delivery system; and

(c) The operation is located on land from which the livestock would otherwise have legal access to both the use and source of the surface water source.

(3) If the diversion system described in subsection (2) of this section is located within or above a scenic waterway, the amount of water that may be used without a water right is limited to one-tenth of one cubic foot per second per 1,000 head of livestock. Nothing in this section shall prevent the Water Resources Commission from approving an application for a water right permit for a delivery system not qualifying under subsection (2) of this section.

(4) The Water Resources Department, in conjunction with local soil and water conservation districts, the Oregon State University Extension Service, the State Department of Agriculture and the State Department of Fish and Wildlife and any other organization interested in participating, shall develop and implement a voluntary educational program on livestock management techniques designed to keep livestock away from streams and riparian areas.

(5) To qualify for an exempt use under subsection (1)(g) of this section, the user shall:

(a) Submit notice of the proposed use, including the identification of the proposed water source, to the Water Resources Department and to the State Department of

Fish and Wildlife at the time notice is provided to other affected agencies pursuant to ORS 527.670; and

(b) Comply with any restrictions imposed by the department pertaining to sources of water that may not be used in conjunction with the proposed activity.

(6) Except for the use of water under subsection (1)(i) of this section, the Water Resources Commission by rule may require any person or public agency diverting water as described in subsection (1) of this section to furnish information with regard to such water and the use thereof. For a use of water described in subsection (1)(i) of this section, the Department of Environmental Quality or the State Department of Agriculture shall provide to the Water Resources Department a copy of the permit issued under ORS 468B.050 or 468B.215 authorizing the land application of ground water for reuse. The permit shall provide the information regarding the place of use of such water and the nature of the beneficial reuse. [1993 c.595 §3; 1995 c.184 §1; 1995 c.274 §9a; 1995 c.537 §2; 1995 c.752 §7; 1997 c.199 §1; 1997 c.244 §2; 1999 c.335 §1; 2001 c.248 §11; 2003 c.470 §4; 2007 c.189 §1]

537.142 Water right permit or certificate not required for egg incubation project under salmon and trout enhancement program. (1) No water right certificate or permit is required for the use of the surface waters of this state if the water is to be used for a salmon and trout enhancement project certified by the State Department of Fish and Wildlife under ORS 496.430 to 496.460.

(2) The use of water for a salmon and trout enhancement project under subsection (1) of this section is a beneficial use and such use shall be allowed on all the waters of this state, whether or not the project is located on waters of this state for which the use is restricted pursuant to any of the following:

(a) A scenic waterway designation under ORS 390.805 to 390.925.

(b) A statutory withdrawal from appropriation under ORS chapter 538.

(c) A program adopted by the Water Resources Commission under ORS 536.300 to 536.400.

(d) An administrative withdrawal from appropriation by the Water Resources Director or the Water Resources Commission.

(e) Any other statutory or administrative restriction on the use of the waters.

(3) If the use of the waters of this state under subsection (1) of this section conflicts with the use of water under a permit issued under ORS 537.240 or a use allowed under a water right certificate issued under ORS

537.250, the use permitted under subsection (1) of this section shall be subordinate. [1985 c.310 §2; 1989 c.587 §2]

537.143 Limited license to use or store surface or ground water or to use stored water; rules.

(1) Notwithstanding the provisions of ORS 537.130, the Water Resources Commission may establish by rule a procedure to allow a person to obtain a limited license to use or store ground water not otherwise exempt under ORS 537.545, to use or store surface water, to use stored water or to use stored water for purposes for which the stored water is authorized and in accordance with a contract with a local, state or federal government after the person complies with the notice provisions set forth in ORS 537.144. Uses eligible for a limited license shall be for a short-term or fixed duration and may include but are not limited to road construction and maintenance, general construction and forestland or rangeland management. Except as provided in subsections (4) to (6) and (9) of this section, the use of water for a purpose specifically prohibited by a basin program or for irrigation is not eligible for a limited license.

(2) The use of water under a limited license under subsection (1) of this section shall not have priority over any water right exercised according to a permit or certificate and shall be subordinate to all other authorized uses that rely upon the same source. The Water Resources Department may revoke the right to use of water acquired under a limited license pursuant to subsection (1) of this section at any time if the use causes injury to:

- (a) Any other water right; or
- (b) A minimum perennial streamflow.

(3) Except as provided in subsections (4), (5) and (11) of this section, the licensee shall give notice to the Water Resources Department at least 15 days in advance of using the water under the limited license and shall maintain a record of use. The record shall include but need not be limited to an estimate of the amount of water used, the period of use and the categories of beneficial use to which the water is applied. During the period of the limited license, the record of use shall be available for review by the department upon request.

(4) The Water Resources Director may issue a limited license in conjunction with an enforcement order to address an illegal water use, including irrigation use or a use specifically prohibited by a basin program. The director may issue a limited license for such a use upon a finding that:

(a) The person did not knowingly violate state laws regarding a water use permit;

(b) The immediate termination of the illegal use would cause serious and undue hardship to the water user that could be ameliorated by providing a period of time in which to achieve compliance with the law; and

(c) The continued use under a limited license outweighs the public benefits of termination, including deterrence of illegal uses and protection of the water source.

(5) An enforcement order issued under subsection (4) of this section shall specify an amount of time in which the person using water illegally shall bring such use into compliance. The duration of the limited license shall not exceed the duration of time allowed in the enforcement order to achieve compliance. A licensee using water under a limited license issued in conjunction with an enforcement order need not provide the department with advance notice of water use, but shall comply with the other requirements of this section.

(6) The director may issue a limited license for irrigation if the sole purpose of the use is:

(a) To provide water necessary to establish a crop for which no further irrigation will be required after the crop is established;

(b) To mitigate the impacts of drought when additional water is needed beyond a prescribed irrigation season in order to avoid irreparable damage to the user's crop; or

(c) Under a limited license issued pursuant to subsection (9) of this section.

(7) Nothing in this section is intended to prohibit any person from obtaining a water right certificate under ORS 537.250 or 537.630 for any use for which a limited license is obtained under this section.

(8) Except as provided in subsection (10) of this section, the department may not issue a limited license for the same use for more than five consecutive years.

(9) Notwithstanding any other provision of this section, if the use of water under the limited license is for the use of stored water consistent with the purposes for which the stored water is authorized and the use of water is authorized by a contract between the user and a local, state or federal government:

(a) The limited license may be issued for a period of up to one year; and

(b) The limited license shall be revoked if the contract between the user and the local, state or federal government is terminated for any reason.

(10) At the end of the one-year limited license period in subsection (9) of this section, the user may reapply for a limited li-

cense under ORS 537.144 provided that there is an authorized contract between the user and a local, state or federal government.

(11) The director may issue a limited license authorizing immediate use of water if the director finds that an emergency exists and the water is needed to protect the public health, safety and welfare. Notwithstanding subsection (8) of this section, the director may issue a limited license for such a use for a period of 60 days. [1989 c.933 §2; 1993 c.595 §1; 1995 c.274 §8; 1997 c.38 §1; 1997 c.366 §1]

537.153 Review of application; proposed final order; presumption that use will not impair or be detrimental to public interest; standing; protest; final order; contested case hearing. (1) Within 60 days after the Water Resources Department proceeds with the application under ORS 537.150 (5), the department shall complete application review and issue a proposed final order approving or denying the application or approving the application with modifications or conditions. The department may request the applicant to provide additional information needed to complete the review. If the department requests additional information, the request shall be specific and shall be sent to the applicant by registered mail. The department shall specify a date by which the information must be returned, which shall be not less than 10 days after the department mails the request to the applicant. If the department does not receive the information or a request for a time extension under ORS 537.175 by the date specified in the request, the department may reject the application and may refund fees in accordance with ORS 536.050 (4)(a). The time period specified by the department in a request for additional information shall allow the department to comply with the 60-day time limit established by this subsection.

(2) In reviewing the application under subsection (1) of this section, the department shall presume that a proposed use will not impair or be detrimental to the public interest if the proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310 (12), if water is available, if the proposed use will not injure other water rights and if the proposed use complies with rules of the Water Resources Commission. This shall be a rebuttable presumption and may be overcome by a preponderance of evidence that either:

(a) One or more of the criteria for establishing the presumption are not satisfied; or

(b) The proposed use will impair or be detrimental to the public interest as demonstrated in comments, in a protest under sub-

section (6) of this section or in a finding of the department that shows:

(A) The specific public interest under ORS 537.170 (8) that would be impaired or detrimentally affected; and

(B) Specifically how the identified public interest would be impaired or detrimentally affected.

(3) The proposed final order shall cite findings of fact and conclusions of law and shall include but need not be limited to:

(a) Confirmation or modification of the preliminary determinations made in the initial review;

(b) A brief statement that explains the criteria considered relevant to the decision, including the applicable basin program and the compatibility of the proposed use with applicable land use plans;

(c) An assessment of water availability and the amount of water necessary for the proposed use;

(d) An assessment of whether the proposed use would result in injury to existing water rights;

(e) An assessment of whether the proposed use would impair or be detrimental to the public interest as provided in ORS 537.170;

(f) A draft permit, including any proposed conditions, or a recommendation to deny the application;

(g) Whether the rebuttable presumption that the proposed use will not impair or be detrimental to the public interest has been established; and

(h) The date by which protests to the proposed final order must be received by the department.

(4) The department shall mail copies of the proposed final order to the applicant and to persons who have requested copies and paid the fee required under ORS 536.050 (1)(p). The department also shall publish notice of the proposed final order by publication in the weekly notice published by the department.

(5) Any person who supports a proposed final order may request standing for purposes of participating in any contested case proceeding on the proposed final order or for judicial review of a final order. A request for standing shall be in writing and shall be accompanied by the fee established under ORS 536.050 (1)(n).

(6) Any person may submit a protest against a proposed final order. A protest shall be in writing and shall include:

(a) The name, address and telephone number of the protestant;

(b) A description of the protestant's interest in the proposed final order and, if the protestant claims to represent the public interest, a precise statement of the public interest represented;

(c) A detailed description of how the action proposed in the proposed final order would impair or be detrimental to the protestant's interest;

(d) A detailed description of how the proposed final order is in error or deficient and how to correct the alleged error or deficiency;

(e) Any citation of legal authority supporting the protest, if known; and

(f) The protest fee required under ORS 536.050.

(7) Requests for standing and protests on the proposed final order shall be submitted within 45 days after publication of the notice of the proposed final order in the weekly notice published by the department. Any person who asks to receive a copy of the department's final order shall submit to the department the fee required under ORS 536.050 (1)(p), unless the person has previously requested copies and paid the required fee under ORS 537.150 (7), the person is a protestant and has paid the fee required under ORS 536.050 (1)(j) or the person has standing and has paid the fee under ORS 536.050 (1)(n).

(8) Within 60 days after the close of the period for receiving protests, the Water Resources Director shall:

(a) Issue a final order as provided under ORS 537.170 (6); or

(b) Schedule a contested case hearing if a protest has been submitted and if:

(A) Upon review of the issues, the director finds that there are significant disputes related to the proposed use of water; or

(B) Within 30 days after the close of the period for submitting protests, the applicant requests a contested case hearing. [1995 c.416 §11; 1997 c.446 §2; 1997 c.587 §5; 2007 c.188 §2; 2009 c.819 §§7,14; 2013 c.644 §5]

537.230 Time allowed for construction of irrigation or other work; extension; survey; map; requirements for supplemental water right. (1) Except for a holder of a permit for municipal use, the holder of a water right permit shall prosecute the construction of any proposed irrigation or other work with reasonable diligence and complete the construction within a reasonable time, as fixed in the permit by the Water Resources Department, not to exceed five years from the date of approval.

(2) The holder of a permit for municipal use shall commence and complete the con-

struction of any proposed works within 20 years from the date on which a permit for municipal use is issued under ORS 537.211. The construction must proceed with reasonable diligence and be completed within the time specified in the permit, not to exceed 20 years. However, the department may order and allow an extension of time to complete construction or to perfect a water right beyond the time specified in the permit under the following conditions:

(a) The holder shows good cause. In determining the extension, the department shall give due weight to the considerations described under ORS 539.010 (5) and to whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right;

(b) The extension of time is conditioned to provide that the holder may divert water beyond the maximum rate diverted for beneficial use before the extension only upon approval by the department of a water management and conservation plan; and

(c) For the first extension issued after June 29, 2005, for a permit for municipal use issued before November 2, 1998, the department finds that the undeveloped portion of the permit is conditioned to maintain, in the portions of waterways affected by water use under the permit, the persistence of fish species listed as sensitive, threatened or endangered under state or federal law. The department shall base its finding on existing data and upon the advice of the State Department of Fish and Wildlife. An existing fish protection agreement between the permit holder and a state or federal agency that includes conditions to maintain the persistence of any listed fish species in the affected portion of the waterway is conclusive for purposes of the finding.

(3) Except as provided in ORS 537.240 and 537.248 and subsection (2) of this section, the Water Resources Department, for good cause shown, shall order and allow an extension of time, including an extension beyond the five-year limit established in subsection (1) of this section within which irrigation or other works shall be completed or the right perfected. In determining the extension, the department shall give due weight to the considerations described under ORS 539.010 (5) and to whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right.

(4) Except as provided in subsection (5) of this section and ORS 537.409, upon completion of beneficial use as required under this section, the permittee shall hire a water right examiner certified under ORS 537.798

to survey the appropriation. Within one year after application of water to a beneficial use or the beneficial use date allowed in the permit, the permittee shall submit a map of the survey as required by the Water Resources Department, which shall accompany the request for a water right certificate submitted to the department under ORS 537.250. If any property described in the permit is not included in the request for a water right certificate, the permittee shall state the identity of the record owner of that property.

(5) The Water Resources Director may waive the requirement under subsection (4) of this section that a permittee hire a water right examiner certified under ORS 537.798 if:

(a) The permit is a supplemental water right that shares the same distribution system and same place of use as the primary water right; and

(b) The department determines that there is sufficient information in the records of the department to determine proof of beneficial use.

(6) Notwithstanding ORS 537.410, for purposes of obtaining a water right certificate under ORS 537.250 for a supplemental water right, the permittee shall have a facility capable of handling the full rate and duty of water requested from the supplemental source and be otherwise ready, willing and able to use the amount of water requested, up to the amount of water approved in the water right permit. To obtain a certificate for a supplemental water right, the permittee is not required to have actually used water from the supplemental source if:

(a) Water was available from the source of the primary water right and the primary water right was used pursuant to the terms of the primary water right; or

(b) The nonuse of water from the supplemental source occurred during a period of time within which the exercise of the supplemental water right permit was not necessary due to climatic conditions. [Amended by 1985 c.617 §1; 1985 c.673 §201; 1987 c.542 §4; 1995 c.367 §2; 1995 c.416 §35; 1995 c.473 §5; 1997 c.446 §4; 1997 c.502 §1; 1997 c.557 §1; 1999 c.453 §1; 1999 c.665 §2; 2005 c.410 §1]

(In-Stream Water Rights)

537.332 Definitions for ORS 537.332 to 537.360. As used in ORS 537.332 to 537.360:

(1) "In-stream" means within the natural stream channel or lake bed or place where water naturally flows or occurs.

(2) "In-stream flow" means the minimum quantity of water necessary to support the public use requested by an agency.

(3) "In-stream water right" means a water right held in trust by the Water Resources Department for the benefit of the people of the State of Oregon to maintain water in-stream for public use. An in-stream water right does not require a diversion or any other means of physical control over the water.

(4) "Public benefit" means a benefit that accrues to the public at large rather than to a person, a small group of persons or to a private enterprise.

(5) "Public use" includes but is not limited to:

(a) Recreation;

(b) Conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and any other ecological values;

(c) Pollution abatement; or

(d) Navigation. [1987 c.859 §2; 1995 c.416 §32]

537.334 Findings. The people of the State of Oregon find and declare that:

(1) Public uses are beneficial uses.

(2) The recognition of an in-stream water right under ORS 537.336 to 537.348 shall not diminish the public's rights in the ownership and control of the waters of this state or the public trust therein. The establishment of an in-stream water right under the provisions of ORS 537.332 to 537.360 shall not take away or impair any permitted, certificated or decreed right to any waters or to the use of any waters vested prior to the date the in-stream water right is established pursuant to the provisions of ORS 537.332 to 537.360. [1987 c.859 §3]

537.336 State agencies authorized to request in-stream water rights; agreement required when supply is stored water. (1) The State Department of Fish and Wildlife may request the Water Resources Commission to issue water right certificates for in-stream water rights on the waters of this state in which there are public uses relating to the conservation, maintenance and enhancement of aquatic and fish life, wildlife and fish and wildlife habitat. The request shall be for the quantity of water necessary to support those public uses as recommended by the State Department of Fish and Wildlife.

(2) The Department of Environmental Quality may request the Water Resources Commission to issue water right certificates for in-stream water rights on the waters of this state to protect and maintain water quality standards established by the Environmental Quality Commission under ORS 468B.048. The request shall be for the quantity of water necessary for pollution abate-

ment as recommended by the Department of Environmental Quality.

(3) The State Parks and Recreation Department may request the Water Resources Commission to issue water right certificates for in-stream water rights on the waters of this state in which there are public uses relating to recreation and scenic attraction. The request shall be for the quantity of water necessary to support those public uses as recommended by the State Parks and Recreation Department.

(4) Any request for an in-stream water right to be supplied from stored water shall refer to the reservoir for a supply of water and shall show by documentary evidence that an agreement has been entered into with the owners of the reservoir for a sufficient interest in the reservoir to impound enough water for the purposes set forth in the request. [1987 c.859 §4; 1989 c.904 §68; 1995 c.673 §1]

537.338 Rules for state agency request for in-stream water right. The Water Resources Commission by rule shall establish standards, criteria and procedures by which a state agency included under ORS 537.336 may request an in-stream water right to be issued under ORS 537.336. [1987 c.859 §5]

537.341 Certificate for in-stream water right. Subject to the provisions of ORS 537.343, the Water Resources Commission shall issue a certificate for an in-stream water right. The in-stream water right shall date from the filing of the application with the commission. The certificate shall be in the name of the Water Resources Department as trustee for the people of the State of Oregon and shall be issued by the commission according to the procedures established under ORS 537.338. The commission shall forward a copy of each certificate issued under this section to the state agency requesting the in-stream water right. A certificate for an in-stream water right supplied by stored water shall refer to the reservoir described in the request filed under ORS 537.336. [1987 c.859 §6; 1995 c.673 §2]

537.343 Proposed final order; conditions. (1) A proposed final order issued under ORS 537.170 (6) for an in-stream water right certificate may include any condition the Water Resources Director considers necessary, but which is consistent with the intent of ORS 537.332 to 537.360. The proposed final order may:

- (a) Approve the in-stream water right for the quantity of water requested;
- (b) Approve the requested in-stream water right for a lesser quantity of water; or
- (c) Reject the requested in-stream water right.

(2) If the director reduces or rejects the in-stream water right as requested, or conditions the in-stream water right, the director shall include a statement of findings that sets forth the basis for the reduction, rejection or conditions. The director shall be the final authority in determining the level of in-stream flow necessary to protect the public use.

(3) After the director issues a final order approving an in-stream water right, the Water Resources Department shall issue a certificate for an in-stream water right according to the provisions of ORS 537.341. [1987 c.859 §7; 1995 c.416 §20]

537.346 Conversion of minimum perennial streamflows to in-stream water rights; special provisions for Willamette Basin. (1) All minimum perennial streamflows established on any waters of this state before June 25, 1988, shall be converted to in-stream water rights after the Water Resources Commission reviews the streamflows and the Water Resources Department issues a certificate for an in-stream water right in accordance with ORS 537.343 with the same priority date as the minimum perennial streamflow.

(2) The priority date for that portion of an in-stream water right that uses the stored water component of a minimum perennial streamflow in the Willamette Basin shall be the date the commission or its predecessor adopted the minimum perennial streamflow containing the stored water component.

(3) Notwithstanding the priority date established under subsection (2) of this section, until the state enters into a contract that meets the criteria set forth in subsection (4) of this section with the owner of the storage facility to release the stored water for the purpose of satisfying the in-stream water right, for that portion of an in-stream water right in the Willamette Basin converted from the stored water component of a minimum perennial streamflow, the department:

(a) May not require the release of the stored water; and

(b) Shall not regulate the use of water to provide water for the portion of the in-stream water right using stored water.

(4) A contract for the release of stored water to satisfy an in-stream water right shall:

(a) Include as parties to the contract the State of Oregon and the owner of the storage facility;

(b) Specifically allow the state to obtain the release of stored water to satisfy an in-stream water right; and

(c) Identify a method to determine the specific quantity of water released from storage to satisfy the stored water component of the in-stream water right.

(5) If the federal government does not release water to satisfy a stored water component of an in-stream water right pursuant to a contract that satisfies the criteria set forth in subsection (4) of this section, the department may not regulate the use of water by other water right holders to satisfy the stored water component of an in-stream water right or take any other action that impairs the rights of any person under a valid contract for the use of the stored water. [1987 c.859 §8; 1995 c.72 §1; 1997 c.212 §3; 1999 c.59 §170; 2001 c.104 §227]

537.348 Purchase, lease or gift of water right for conversion to in-stream water right; priority dates; split use. (1) Any person may purchase or lease all or a portion of an existing water right or accept a gift of all or a portion of an existing water right for conversion to an in-stream water right. Any water right converted to an in-stream water right under this section shall retain the priority date of the water right purchased, leased or received as a gift. At the request of the person the Water Resources Commission shall issue a new certificate for the in-stream water right showing the original priority date of the purchased, gifted or leased water right. Except as provided in subsections (2) to (6) of this section, a person who transfers a water right by purchase, lease or gift under this subsection shall comply with the requirements for the transfer of a water right under ORS 540.505 to 540.585.

(2) Subject to subsections (3) to (6) of this section, any person who has an existing water right may lease all or a portion of the existing water right for use as an in-stream water right for a specified period without the loss of the original priority date. During the term of the lease, the use of the water right as an in-stream water right shall be considered a beneficial use. The term of the lease may not exceed five years. There is no limitation on the number of times that the lease may be renewed. However, the total period for which a water right may be leased for split use as described in subsection (3) of this section may not exceed 10 years regardless of the number of leases or renewals of leases issued for the water right.

(3) A lease of all or a portion of an existing water right for use as an in-stream water right under subsection (2) of this section may allow the split use of the water between the existing water right and the in-stream water right during the same calendar year, provided:

(a) The uses of the existing water right and the in-stream water right are not concurrent; and

(b) The holders of the water rights measure and report to the Water Resources Department the use of the existing water right and the in-stream water right.

(4) A person who has an existing water right and wishes to lease the water right as described in subsection (2) of this section must file a request and obtain department approval of the lease. Upon receipt of the request, the department shall provide notice of the request by inclusion in the weekly notice published by the department. Any allegation of injury must be delivered to the department no later than 21 days after publication of the request in the weekly notice.

(5) After publishing notice of a request made under subsection (2) of this section and allowing time for the delivery of allegations of injury, the department shall issue an order approving the request if the department finds that the leasing of the water right for in-stream use can be effected without injury to other existing water rights or can be conditioned to prevent injury to other existing water rights. If the lease is for the split use of water between the existing water right and the in-stream water right during the same calendar year, the conditions imposed in the order approving the request must include, but need not be limited to, compliance with subsection (3) of this section.

(6) The department at any time may revoke or modify an order issued for a lease under subsection (2) of this section if the department determines that the use of the water right for in-stream use under the lease has resulted in or may result in injury to an existing water right. [1987 c.859 §9; 2001 c.205 §§1,2; 2013 c.165 §1]

Note: The amendments to 537.348 by section 2, chapter 165, Oregon Laws 2013, become operative January 2, 2024. See section 3, chapter 165, Oregon Laws 2013. The text that is operative on and after January 2, 2024, is set forth for the user's convenience.

537.348. (1) Any person may purchase or lease all or a portion of an existing water right or accept a gift of all or a portion of an existing water right for conversion to an in-stream water right. Any water right converted to an in-stream water right under this section shall retain the priority date of the water right purchased, leased or received as a gift. At the request of the person the Water Resources Commission shall issue a new certificate for the in-stream water right showing the original priority date of the purchased, gifted or leased water right. Except as provided in subsections (2) to (5) of this section, a person who transfers a water right by purchase, lease or gift under this subsection shall comply with the requirements for the transfer of a water right under ORS 540.505 to 540.585.

(2) Subject to subsections (3) to (5) of this section, any person who has an existing water right may lease all or a portion of the existing water right for use as an in-stream water right for a specified period without the loss of the original priority date. During the term

of the lease, the use of the water right as an in-stream water right shall be considered a beneficial use. The term of the lease may not exceed five years. There is no limitation on the number of times that the lease may be renewed.

(3) A person who has an existing water right and wishes to lease the water right as described in subsection (2) of this section must file a request and obtain department approval of the lease. Upon receipt of the request, the department shall provide notice of the request by inclusion in the weekly notice published by the department. Any allegation of injury must be delivered to the department no later than 21 days after publication of the request in the weekly notice.

(4) After publishing notice of a request made under subsection (2) of this section and allowing time for the delivery of allegations of injury, the department shall issue an order approving the request if the department finds that the leasing of the water right for in-stream use can be effected without injury to other existing water rights or can be conditioned to prevent injury to other existing water rights.

(5) The department at any time may revoke or modify an order issued for a lease under subsection (2) of this section if the department determines that the use of the water right for in-stream use under the lease has resulted in or may result in injury to an existing water right.

Note: Section 5 (2), chapter 165, Oregon Laws 2013, provides:

Sec. 5. (2) Notwithstanding the amendments to ORS 537.348 by section 2 of this 2013 Act, any lease or lease renewal allowing the split use of water between an existing water right and an in-stream water right during the same calendar year and having a term that began before the operative date of the amendments to ORS 537.348 by section 2 of this 2013 Act [January 2, 2024] may continue in effect until the earlier of the expiration of the term or five years after the operative date of the amendments to ORS 537.348 by section 2 of this 2013 Act. This subsection does not allow the total period for which a water right may be leased for the split use of water during the same calendar year to exceed 10 years. [2013 c.165 §5(2)]

537.349 Processing request for in-stream water right. Except as provided in ORS 537.343, the Water Resources Department shall process a request received under ORS 537.336 for a certificate for an in-stream water right in accordance with the provisions for obtaining a permit to appropriate water under ORS 537.140 to 537.252. [1995 c.416 §19]

537.350 Legal status of in-stream water right. (1) After the Water Resources Commission issues a certificate for an in-stream water right under ORS 537.341 to 537.348, the in-stream water right shall have the same legal status as any other water right for which a certificate has been issued.

(2) An in-stream water right is not subject to cancellation under ORS 537.260 or 537.410 to 537.450 but an in-stream water right may be canceled under ORS 540.610 to 540.650. [1987 c.859 §10]

537.352 Precedence of uses. Notwithstanding any provision of ORS 537.332 to 537.343 and 537.350, the right to the use of the waters of this state for a project for

multipurpose storage or municipal uses or by a municipal applicant, as defined in ORS 537.282, for a hydroelectric project, shall take precedence over an in-stream water right when the Water Resources Department conducts a review of the proposed project in accordance with ORS 537.170. The precedence given under this section shall not apply if the in-stream water right was established pursuant to ORS 537.346 or 537.348. [1987 c.859 §11; 1995 c.416 §42]

537.354 In-stream water right subject to emergency water shortage provisions. An in-stream water right established under the provisions of ORS 537.332 to 537.360 shall be subject to the provisions of ORS 536.700 to 536.780. [1987 c.859 §12]

537.356 Request for reservation of unappropriated water for future economic development; priority date of reservation. (1) Any local government, local watershed council or state agency or any other individual cooperating jointly with a local government, local watershed council or state agency may request the Water Resources Commission to reserve unappropriated water for multipurpose storage for future economic development.

(2) A request under subsection (1) of this section shall be in writing on a form provided by the Water Resources Department. Before deciding whether to approve the request and initiate a rulemaking process, the commission shall request comments from any local government or watershed council within the geographic area or basin affected by the request. The comment period shall be closed not later than 120 days after the request is submitted.

(3) The priority date for any reservation established under this section shall be the date on which the commission takes action to initiate the rulemaking process. [1987 c.859 §13; 1997 c.445 §1]

537.358 Rules for reservation for future economic development; application for use of reserved water. (1) In adopting a rule under ORS 537.356 to reserve unappropriated water for multipurpose storage for future economic development, the Water Resources Commission shall include a public interest review that takes into consideration the factors described under ORS 537.170.

(2) A person requesting use of the reserved water for new storage shall submit a water right application and comply with the procedure set forth in ORS 537.140 to 537.252, except that the priority date for a storage right approved for use of reserved water shall be the date of the reservation. The commission by rule may describe a process for ensuring that the proposed use is consistent with the requirements of the rule

establishing the reservation. [1987 c.859 §14; 1997 c.445 §2]

537.360 Relationship between application for in-stream water right and application for certain hydroelectric permits. If an application is pending under this chapter for a water right permit to use water for hydroelectric purposes or under ORS 543.010 to 543.610 for a hydroelectric permit or license at the time the Water Resources Commission receives an application for an in-stream water right under ORS 537.336 for the same stream or reach of the stream, the commission shall not take any action on the application for an in-stream water right until the commission issues a final order approving or denying the pending hydroelectric application. [1987 c.859 §15]

WITHDRAWALS FROM APPROPRIATION

538.110 Tumalo Creek, Deschutes County; diversion prohibited; excepted uses; existing rights. For the purpose of maintaining and perpetuating the recreational and scenic resources of Oregon, the waters of that portion of Tumalo Creek, in Deschutes County, situated above a point one-half mile above the intake of the Columbia Southern Canal in section 2, township 18 south, range 10 east, Willamette Meridian, in Deschutes County, shall not be diverted for any purposes whatsoever, except for municipal, domestic and stock uses. Nothing in this section shall be construed to impair any vested rights existing as of June 4, 1929, in the creek or its tributaries. This section shall not apply to the waters of the south fork of Tumalo Creek. [Amended by 1959 c.223 §1]

538.140 Diamond Lake and tributaries; diversion, interruption or appropriation of waters prohibited; excepted uses. In order to maintain, increase and perpetuate game fish and game fish propagation within Oregon, the waters or use of the waters of Diamond Lake and its tributaries situated in Douglas County shall not be diverted, interrupted or appropriated for any purpose whatsoever, except for domestic use on contiguous and surrounding land or other water uses necessary to maintain, increase and perpetuate game fish and game fish propagation in Diamond Lake and its tributaries. [Amended by 1999 c.252 §1]

538.150 Hackett Creek, Clackamas County, and tributaries; appropriation, condemnation and diversion prohibited; protection of fish. The waters of Hackett Creek, a tributary of the Sandy River located in Clackamas County, and of the tributaries of Hackett Creek, are withdrawn from appropriation or condemnation and shall not be

diverted or interrupted for any purpose whatsoever, except for protecting fish life therein by the State Fish and Wildlife Commission.

538.170 Johnson Creek in Multnomah and Clackamas Counties; limitations on appropriation or diversion. (1) Except as provided in subsection (2) of this section, the waters of Johnson Creek, a tributary of the Willamette River and located in Multnomah and Clackamas Counties and all tributaries thereof, except flows of Crystal Springs Creek and its tributaries in excess of 10 cubic feet per second measured at the mouth of Crystal Springs Creek:

(a) Are withdrawn from appropriation or condemnation; and

(b) Shall not be diverted or interrupted for any purpose whatsoever, except for the purpose of protecting fish life therein by the State Department of Fish and Wildlife or for the purpose of developing hydroelectric power not to exceed 25 theoretical horsepower if such hydroelectric development does not diminish perennial streamflow required for the maintenance of fish life.

(2) The tributaries withdrawn from appropriation and condemnation, but not the main channel, of Johnson Creek are open to appropriation and storage from December 1 to June 1 of each year. Water stored during this period may be used at any time. [Amended by 1953 c.221 §2; 1965 c.249 §1; 1973 c.50 §1; 1979 c.360 §1]

538.270 Rogue River; withdrawal from appropriation; excepted water uses; tributaries. Subject to water rights existing on May 26, 1967, the waters flowing in the main channel of the Rogue River from its intersection with the south line of section 27, township 33 south, range 1 east of the Willamette Meridian in Jackson County, to its confluence with the Pacific Ocean, are withdrawn from appropriation; except that this section shall not prevent the appropriation and use of such waters for domestic, stock, irrigation, municipal, fish, wildlife, recreation and road maintenance purposes, nor prevent the appropriation, diversion and use of the waters of any stream tributary to the river. [Amended by 1959 c.205 §1; 1967 c.310 §1; 1989 c.291 §1]

CHANGES IN USE OF WATER

540.523 Temporary transfer of water right or permit; terms; revocation; status of supplemental water right or permit. (1) In accordance with the provisions of this section, any person who holds a water use subject to transfer may request that the Water Resources Department approve the temporary transfer of place of use and, if necessary to convey water to the new tem-

porary place of use, temporarily change the point of diversion or point of appropriation for a period not to exceed five years. An application for a temporary transfer shall:

(a) Be submitted in writing to the Water Resources Department;

(b) Be accompanied by the appropriate fee for a change in the place of use as set forth in ORS 536.050;

(c) Include the information required under ORS 540.520 (2); and

(d) Include any other information the Water Resources Commission by rule may require.

(2) Notwithstanding the notice and waiting requirements under ORS 540.520, the department shall approve by order a request for a temporary transfer under this section if the department determines that the temporary transfer will not injure any existing water right.

(3) All uses of water for which a temporary transfer is allowed under this section shall revert automatically to the terms and conditions of the water use subject to transfer upon expiration of the temporary transfer period.

(4) The time during which water is used under an approved temporary transfer order does not apply toward a finding of forfeiture under ORS 540.610.

(5) The department may revoke a prior approval of the temporary transfer at any time if the department finds that the transfer is causing injury to any existing water right.

(6) Any map that may be required under subsection (1) of this section need not be prepared by a certified water right examiner.

(7) The lands from which the water right is removed during the period of a temporary transfer shall receive no water under the transferred water right.

(8) When an application for a temporary change of the place of use for a primary water right is submitted in accordance with this section, the applicant also shall indicate whether the land described in the application has an appurtenant supplemental water right or permit. If the applicant also intends to temporarily transfer the supplemental water right or permit, the applicant also shall include the information required under ORS 540.520 (2) for the supplemental water right or permit. If the applicant does not include the supplemental water right or permit in the temporary transfer application, the Water Resources Department shall notify the applicant that the supplemental water right or permit will be canceled before the department issues the order approving the temporary transfer of the primary water right,

unless within 30 days the applicant modifies the application to include the supplemental water right or permit or withdraws the application. The department may approve the temporary transfer of the supplemental water right or permit in accordance with the provisions of this section. The department may not approve the temporary transfer of a supplemental water right or permit if the temporary transfer would result in enlargement of the original water right or injury to an existing water right. If the department approves the temporary transfer of the primary water right but does not approve the temporary transfer of the supplemental water right or permit, the department shall notify the applicant of the department's intent not to allow the temporary transfer of the supplemental water right or permit before the department issues the order for the temporary transfer of the primary water right. If the department does not allow the temporary transfer of the supplemental right, the supplemental right shall remain appurtenant to the land described in the application, but may not be exercised until the primary right reverts to the original water use. If the primary water right does not revert soon enough to allow use of water under the supplemental right within five years, the supplemental right shall become subject to cancellation for nonuse under ORS 540.610.

(9) In issuing an order under subsection (2) of this section, the department shall include any condition necessary to protect other water rights. [1995 c.274 §6; 1997 c.42 §4; 1997 c.587 §12; 2001 c.788 §§3,9]

540.525 Installation of fish screening or by-pass device as prerequisite for transfer of point of diversion. (1) Upon receipt of an application for a change in the point of diversion under ORS 540.520, the Water Resources Department shall consult with the State Department of Fish and Wildlife to determine whether the diversion is:

(a) Equipped with an appropriate fish screening or by-pass device; or

(b) Included on the priority list of screening projects established pursuant to section 8, chapter 933, Oregon Laws 1989.

(2) If the original point of diversion is included in the priority list of screening projects established pursuant to section 8, chapter 933, Oregon Laws 1989, the department, after consulting with the State Department of Fish and Wildlife, may require the installation of an appropriate fish screening or by-pass device at the new point of diversion.

(3) When consulting with the State Department of Fish and Wildlife, the department shall determine whether the installation of an appropriate fish screening

or by-pass device is necessary to prevent fish from leaving the body of water and entering the diversion.

(4) Any individual who is required to install a fish screening or by-pass device under this section at a point of diversion may participate in the State Department of Fish and Wildlife's cost-sharing program for the installation of screening or by-pass devices. [1995 c.274 §6a; 2007 c.625 §11]

540.530 Order authorizing change of use, place of use or point of diversion; consent to injury; new or modified certificate. (1)(a) If, after hearing or examination, the Water Resources Commission finds that a proposed change can be effected without injury to existing water rights, the commission shall make an order approving the transfer and fixing a time limit within which the approved changes may be completed.

(b) If, after hearing or examination, the commission finds that a proposed change in point of diversion cannot be effected without injury to existing water rights, upon receipt by the commission of an affidavit consenting to the change from every holder of an affected water right, the commission may make an order approving the transfer and fixing a time limit within which the approved changes may be completed.

(c) If, after hearing or examination, the commission finds that a proposed change in point of diversion cannot be effected without injury to an in-stream water right granted pursuant to a request under ORS 537.336 or an in-stream water right created pursuant to ORS 537.346 (1), the Water Resources Department may consent to the change only upon a recommendation that the department do so from the agency that requested the in-stream water right. The agency that requested the in-stream water right may recommend that the department consent to the change only if the change will result in a net benefit to the resource consistent with the purposes of the in-stream water right.

(d)(A) If an in-stream water right would be injured by a proposed change under paragraph (c) of this subsection, the department shall obtain a recommendation from the agency that requested the in-stream water right. If the recommendation of the agency is to consent to the change, the department shall provide public notice of the recommendation and, consistent with state laws regarding cooperation with Indian tribes in the development and implementation of state agency programs that affect tribes or rights and privileges of tribes, the department shall consult with affected Indian tribes.

(B) The recommendation of an agency under this paragraph must be in writing and, if the recommendation is to consent to the

change, must describe the extent of the injury to the in-stream water right, the effect on the resource and the net benefit that will occur as a result of the proposed change. The recommendation may include any proposed conditions that are necessary to ensure that the proposed change will be consistent with the recommendation.

(C) In determining whether a net benefit will result from the proposed change, the recommendation of an agency must include an analysis of the cumulative impact of any previous changes under paragraphs (b) and (c) of this subsection that allow injury to the affected in-stream water right.

(D) A person may comment on the recommendation of an agency. The comment must be in writing and must be received by the department within 30 days after publication of notice under this paragraph. If a written comment received by the department requests a meeting on the proposed change, the department and the agency that requested the in-stream water right shall hold a joint public meeting within 90 days of the receipt of the comment requesting a meeting.

(e)(A) If, after review of public comments and consultation with the agency that requested the in-stream water right, the agency that requested the in-stream water right does not withdraw its recommendation to consent to the change, the department may approve the change consistent with the requirements of paragraphs (b) and (c) of this subsection.

(B) An order approving a change under paragraph (c) of this subsection shall include written findings on the extent of the injury to the in-stream water right, the effect on the resource and the net benefit that will occur as a result of the change. The order shall include any conditions necessary to ensure that the change will be consistent with the findings and ensure that the change will result in a continued net benefit to the resource consistent with the purposes of the in-stream water right.

(C) In determining whether a net benefit will result from the change, the order of the department must include an analysis of the cumulative impact of any previous changes approved under paragraphs (b) and (c) of this subsection that allow injury to the affected in-stream water right.

(f) The time allowed by the commission for completion of an authorized change under paragraphs (a) to (e) of this subsection may not be used when computing a five-year period of nonuse under the provisions of ORS 540.610 (1).

(2)(a) If a certificate covering the water right has been previously issued, the commission shall cancel the previous certificate

or, if for an irrigation district, the commission may modify the previous certificate and, when proper proof of completion of the authorized changes has been filed with the commission, issue a new certificate or, if for an irrigation district, modify the previous certificate, preserving the previously established priority of rights and covering the authorized changes. If only a portion of the water right covered by the previous certificate is affected by the changes, a separate new certificate may be issued to cover the unaffected portion of the water right.

(b) If the change authorized under subsection (1) of this section is necessary to allow a change in a water right pursuant to ORS 537.348, is necessary to complete a project funded under ORS 541.932, or is approved by the State Department of Fish and Wildlife as a change that will result in a net benefit to fish and wildlife habitat, the Water Resources Department, at the discretion of the Water Resources Director, may waive or assist the applicant in satisfying any of the proof of completion requirements of paragraph (a) of this subsection. The assistance provided by the department may include, but need not be limited to, development of a final proof survey map and claim of beneficial use.

(3) Upon receiving notification of the merger or consolidation of municipal water supply entities, or the formation of a water authority under ORS chapter 450, the commission shall cancel the previous certificates of the entities replaced by the merger, consolidation or formation and issue a new certificate to the newly formed municipality or water authority. The new certificate shall preserve the previously established priority of rights of the replaced entities and shall allow beneficial use of the water on any lands acquired in the merger, consolidation or formation. [Amended by 1975 c.581 §26b; 1983 c.807 §2; 1985 c.673 §95; 1989 c.707 §4; 1993 c.577 §37; 1999 c.664 §3; 1999 c.804 §1; 2001 c.299 §§1,2; 2005 c.614 §4]

FORFEITURE OF WATER RIGHTS

540.610 Use as measure of water right; forfeiture for nonuse; confirmation of rights of municipalities. (1) Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state. Whenever the owner of a perfected and developed water right ceases or fails to use all or part of the water appropriated for a period of five successive years, the failure to use shall establish a rebuttable presumption of forfeiture of all or part of the water right.

(2) Upon a showing of failure to use beneficially for five successive years, the appropriator has the burden of rebutting the presumption of forfeiture by showing one or more of the following:

(a) The water right is for use of water, or rights of use, acquired by cities and towns in this state, by appropriation or by purchase, for all reasonable and usual municipal purposes.

(b) A finding of forfeiture would impair the rights of such cities and towns to the use of water, whether acquired by appropriation or purchase, or heretofore recognized by act of the legislature, or which may hereafter be acquired.

(c) The use of water, or rights of use, are appurtenant to property obtained by the Department of Veterans' Affairs under ORS 407.135 or 407.145 for three years after the expiration of the period of redemption provided for in ORS 18.964 while the land is held by the Department of Veterans' Affairs, even if during such time the water is not used for a period of more than five successive years.

(d) The use of water, or rights of use, under a water right, if the owner of the property to which the right is appurtenant is unable to use the water due to economic hardship as defined by rule by the Water Resources Commission.

(e) The period of nonuse occurred during a period of time within which land was withdrawn from use in accordance with the Act of Congress of May 28, 1956, chapter 327 (7 U.S.C. 1801-1814; 1821-1824; 1831-1837), or the Federal Conservation Reserve Program, Act of Congress of December 23, 1985, chapter 198 (16 U.S.C. 3831-3836, 3841-3845). If necessary, in a cancellation proceeding under this section, the water right holder rebutting the presumption under this paragraph shall provide documentation that the water right holder's land was withdrawn from use under a federal reserve program.

(f) The end of the alleged period of nonuse occurred more than 15 years before the date upon which evidence of nonuse was submitted to the commission or the commission initiated cancellation proceedings under ORS 540.631, whichever occurs first.

(g) The owner of the property to which the water right was appurtenant is unable to use the water because the use of water under the right is discontinued under an order of the commission under ORS 537.775.

(h) The nonuse occurred during a period of time within which the water right holder was using reclaimed water in lieu of using water under an existing water right.

(i) The nonuse occurred during a period of time within which the water right holder was reusing water through land application as authorized by ORS 537.141 (1)(i) or 537.545 (1)(g) in lieu of using water under an existing water right.

(j) The owner or occupant of the property to which the water right is appurtenant was unable to make full beneficial use of the water because water was not available. A water right holder rebutting the presumption under this paragraph shall provide evidence that the water right holder was ready, willing and able to use the water had it been available.

(k) The holder of a water right is prohibited by law from using the water. If the prohibition is subject to remedial action that would allow the use of the water, the water right holder shall provide evidence that the water right holder is conducting the remedial action with reasonable diligence.

(L) The nonuse occurred during a period of time within which the exercise of all or part of the water right was not necessary due to climatic conditions, so long as the water right holder had a facility capable of handling the full allowed rate and duty, and was otherwise ready, willing and able to use the entire amount of water allowed under the water right.

(m) The nonuse occurred during a period of time within which the water was included in a transfer application pending before the Water Resources Department.

(n) The nonuse of a supplemental water right occurred during a period of time when the primary water right used in conjunction with that supplemental water right was leased as an in-stream water right pursuant to ORS 537.348.

(3) Notwithstanding subsection (1) of this section, if the owner of a perfected and developed water right uses less water to accomplish the beneficial use allowed by the right, the right is not subject to forfeiture so long as:

(a) The user has a facility capable of handling the entire rate and duty authorized under the right; and

(b) The user is otherwise ready, willing and able to make full use of the right.

(4) The right of all cities and towns in this state to acquire rights to the use of the water of natural streams and lakes, not otherwise appropriated, and subject to existing rights, for all reasonable and usual municipal purposes, and for such future reasonable and usual municipal purposes as may reasonably be anticipated by reason of growth of population, or to secure sufficient water supply in cases of emergency, is expressly confirmed.

(5) After a water right is forfeited under subsection (1) of this section, the water that was the subject of use shall revert to the public and become again the subject of appropriation in the manner provided by law, subject to existing priorities. [Amended by 1985 c.689 §5; 1987 c.339 §4; 1989 c.699 §1; 1989 c.833 §61a; 1991

c.370 §6; 1995 c.356 §2; 1995 c.366 §1; 1997 c.42 §5; 1997 c.244 §5; 1997 c.283 §1; 1999 c.335 §3; 1999 c.804 §§3,4; 2005 c.222 §1; 2005 c.542 §70; 2005 c.625 §70]

HABITAT STEWARDSHIP AGREEMENTS

541.423 Stewardship agreements; contents; procedures for adoption; rules. (1) As used in this section, "stewardship agreement" means an agreement voluntarily entered into and signed by a landowner, or representative of the landowner, and the State Department of Agriculture or the State Board of Forestry that sets forth the terms under which the landowner will self-regulate to meet and exceed applicable regulatory requirements and achieve conservation, restoration and improvement of fish and wildlife habitat or water quality.

(2) The State Department of Agriculture and the State Board of Forestry may, individually or jointly, enter into stewardship agreements with landowners.

(3) The purposes of a stewardship agreement are to provide:

(a) An incentive for landowners to provide for conservation, restoration and improvement of fish and wildlife habitat or water quality;

(b) A mechanism to coordinate, facilitate and memorialize a landowner's compliance with the requirements of state and federal regulatory schemes; and

(c) A mechanism to combine or coordinate multiple incentive programs among agencies and levels of government to:

(A) Improve the delivery of financial and technical assistance to landowners engaged in conservation activities;

(B) Reduce redundancy among programs;

(C) Simplify application procedures;

(D) Leverage the investment of federal funds;

(E) Make more efficient use of technical assistance funds;

(F) Provide greater incentives for landowners;

(G) Foster partnerships and improve cooperation with nongovernmental organizations;

(H) Provide greater environmental benefits;

(I) Tailor and more effectively target conservation programs administered by federal, state and local governments to the unique conservation needs of, and opportunities presented by, individual parcels of eligible land; and

(J) Give landowners an increased level of regulatory certainty.

(4) The State Board of Forestry and the State Department of Agriculture, in consultation with the State Department of Fish and Wildlife, shall adopt by rule procedures and criteria for stewardship agreements. The procedures and criteria shall include, but need not be limited to:

(a) The certification of a land management plan which shall, at a minimum, include:

(A) A comprehensive description and inventory of the subject property, its features and uses; and

(B) A prescription for the protection of resources that exceeds land management practices, standards and activities otherwise required by law and that is designed to achieve conservation, restoration and improvement of fish and wildlife habitat or water quality.

(b) A requirement that each landowner subject to a stewardship agreement demonstrate a clear capability to carry out the provisions of the land management plan and have a past record of good compliance with applicable laws and regulations regarding land use and management.

(5) Each government agency that is a party to a stewardship agreement shall conduct periodic audits on lands subject to the stewardship agreement to determine whether the land management plan is being implemented and whether the agreement should be continued, revised or discontinued.

(6) Stewardship agreements may provide benefits to landowners that include, but are not limited to:

(a) Expedited permit processing;

(b) Regulatory certainty;

(c) Priority consideration for cost-share assistance or other financial incentives and technical assistance; and

(d) Government certification that certain land management practices have been implemented.

(7) Within a stewardship agreement and on a case-by-case basis, the State Department of Agriculture or the State Board of Forestry may provide a landowner with an increased level of regulatory certainty regarding state rules. The stewardship agreement may identify specific voluntary landowner actions that exceed regulatory requirements. In return, the State Department of Agriculture or the State Board of Forestry may agree to exempt the landowner from future changes to a specific rule.

(8) The State Department of Agriculture and the State Board of Forestry may, individually or jointly, make a binding determination that activities undertaken by a

particular landowner, or a representative of the landowner, as part of a stewardship agreement are consistent with the purposes and policies of any relevant Safe Harbor Agreements or Candidate Conservation Agreements entered into between the State of Oregon and agencies of the United States Government, pursuant to the federal Endangered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531 et seq.) and federal regulations. [2003 c.539 §31; 2007 c.608 §4]

541.425 Stewardship Agreement Grant Fund. (1) The Stewardship Agreement Grant Fund is established separate and distinct from the General Fund. The Stewardship Agreement Grant Fund shall consist of all moneys placed in the fund as provided by law. All moneys in the Stewardship Agreement Grant Fund are continuously appropriated to the State Board of Forestry to provide grants to carry out the purposes of stewardship agreements described in ORS 541.423. Interest accruing to the Stewardship Agreement Grant Fund shall be credited to the fund. Funds appropriated and not expended by the completion of a biennium shall remain in the Stewardship Agreement Grant Fund.

(2) The State Board of Forestry shall administer the Stewardship Agreement Grant Fund and provide grants from the fund to landowners who have entered into stewardship agreements for the purposes described in ORS 541.423.

(3) In addition to the funds made available for the purposes of ORS 541.423, the board also may accept gifts and grants from any public or private source for the purpose of providing the grants described in subsection (2) of this section. [2007 c.608 §1]

541.426 Criteria for funding projects from Stewardship Agreement Grant Fund. The State Board of Forestry may award funds from the Stewardship Agreement Grant Fund only for the purposes described in ORS 541.425. Any projects that the board approves for funding must comply with the following criteria:

(1) There must be matching contribution from other program funds, in-kind services or other investment in the project; and

(2) The project must provide a public benefit through improved water quality or improved fish or wildlife habitat. [2007 c.608 §2]

WATER SUPPLY DEVELOPMENT PROJECTS

541.689 Projects requiring determination of seasonally varying flows; methodology. (1) The Water Resources Department shall make a determination as

provided under subsection (2) of this section if an application for a loan or grant from the Water Supply Development Account is for a project that requires a water storage or aquifer recharge permit or limited license for the storage of water outside of the official irrigation season and:

(a) Impounds surface water on a perennial stream;

(b) Diverts water from a stream that supports state or federally listed sensitive, threatened or endangered fish species; or

(c) Diverts more than 500 acre-feet of surface water annually.

(2) The department shall review a completed application for a project described in subsection (1) of this section to determine whether the applicable seasonally varying flows have been established under this section for the stream of interest. If the department determines that the applicable seasonally varying flows have not previously been established, the department shall establish the seasonally varying flows before issuing a loan or grant from the account. The department may use account moneys to pay the cost of establishing a seasonally varying flow and to pay other costs directly related to project development.

(3) The Water Resources Department shall establish any seasonally varying flows under subsection (2) of this section in consultation with the State Department of Fish and Wildlife and any affected Indian tribes. The Water Resources Department may rely upon existing scientific data and analysis or may fund new data and analysis. The Water Resources Department shall establish seasonally varying flows using a methodology established by Water Resources Commission rules.

(4) If the department establishes applicable seasonally varying flows for the stream of interest, the department shall make the seasonally varying flows a condition of:

(a) The new or existing water storage or aquifer recharge permit or limited license for the storage of water issued for any project described in subsection (1) of this section that receives a loan or grant from the account; and

(b) The new or existing water storage or aquifer recharge permit or limited license for the storage of water issued for any subsequent project that:

(A) Receives a loan or grant from the account;

(B) Is for the storage of water outside of the official irrigation season; and

(C) Has a diversion point that is subject to seasonally varying flows.

(5) The applicant for or holder of a permit or license described in subsection (4)(b) of this section may request that the applicable seasonally varying flows established under subsection (2) of this section for the stream of interest be altered based upon new information. There is, however, a rebuttable presumption that existing applicable seasonally varying flows protect and maintain the biological, ecological and physical functions of the stream to the extent required by commission rules.

(6) The department shall condition a water storage permit and resulting certificate, aquifer recharge permit and resulting certificate or limited license for a project that receives a grant or loan from the account and meets the other conditions described in subsection (4) of this section to protect the seasonally varying flow in effect at the time the loan or grant is issued for the project.

(7) For purposes of any project that receives a loan or grant from the account and meets the other conditions described in subsection (4) of this section, the department shall use a seasonally varying flow methodology provided by commission rules in lieu of any other methodologies for determining seasonally varying flows or any methodologies for determining peak and ecological flows outside of the official irrigation season.

(8) Subsections (1) to (7) of this section do not eliminate or alter any applicable standard for department review of an application to determine whether water is available for purposes of reviewing an application for a new water storage or aquifer recharge permit or a limited license for the storage of water. [2013 c.784 §13; 2015 c.156 §6]

NORTH UMPQUA RIVER DAMS

541.875 Dams and use of water for hydroelectric generation on North Umpqua prohibited; exceptions. (1) No person shall construct, operate or maintain, and no officer or agency of this state shall issue any permit for the construction, operation or maintenance of, any dam or hydroelectric facility on:

(a) That portion of the North Umpqua River between Soda Springs Dam and the confluence of the North Umpqua River and South Umpqua River; or

(b) The main stem Umpqua River from the confluence of the North Umpqua River and the South Umpqua River to the ocean.

(2) Nothing in this section applies to the repair, structural repair, maintenance or improvement of any dam constructed on the North Umpqua River prior to November 1, 1981, with the approval of the Water Resources Commission and the State Depart-

ment of Fish and Wildlife. The commission and the State Department of Fish and Wildlife shall not unreasonably withhold or delay such approval, but may withhold approval for reasonable cause, including but not limited to a substantiated finding that the repairs, structural repairs, maintenance or improvements:

(a) Fail to comply with applicable safety rules or regulations;

(b) Raise the height of the dam; or

(c) Diminish the current ability of anadromous fish to travel past the dam.

(3) No person shall appropriate and no officer or agency of this state shall issue or approve any license, permit or certificate for the use of water for hydroelectric generation at a dam at the location referred to in subsection (1) of this section. [1981 c.151 §2; 1983 c.652 §2; 1985 c.673 §129; 1991 c.479 §1]

541.880 Responsibility of government entity for repair or maintenance costs of dams on North Umpqua. Nothing contained in ORS 541.875 shall be construed to impose any additional obligation on any governmental entity to pay for the repair, structural repair, maintenance or improvement of any existing dam referred to in ORS 541.875 (2). [1991 c.479 §2]

WATERSHED MANAGEMENT AND ENHANCEMENT (Definitions)

541.890 Definitions for ORS 541.890 to 541.969. As used in ORS 541.890 to 541.969:

(1) “Adaptive management” means applying management or practices over time and across the landscape to achieve site specific resource goals using an integrated and science based approach that results in changes over time in response to feedback or monitoring.

(2) “Associated uplands” includes those lands of a watershed that are critical to the functioning and protection of a riparian area.

(3) “Board” means the Oregon Watershed Enhancement Board created under ORS 541.900.

(4) “Independent Multidisciplinary Science Team” means the scientific team of recognized experts in fisheries, artificial propagation, stream ecology, forestry, range, watershed and agricultural management created under ORS 541.914.

(5) “Native” means indigenous to Oregon and not introduced.

(6) “Oregon Conservation Strategy” means the comprehensive wildlife conservation strategy for this state adopted by the State Fish and Wildlife Commission.

(7) “Oregon Plan” means the guidance statement and framework described in ORS 541.898.

(8) “Protect” or “protection” means to minimize or mitigate adverse effects on native fish or wildlife habitat to the maximum extent practicable given the anticipated duration, geographic scope and primary purpose of proposed activities.

(9) “Restore” or “restoration” means to take actions likely to achieve sustainable population levels of native fish or wildlife and their habitats.

(10) “Riparian area” means a zone of transition from an aquatic ecosystem to a terrestrial ecosystem, dependent upon surface or subsurface water, that reveals through the zone’s existing or potential soil-vegetation complex the influence of such surface or subsurface water. A riparian area may be located adjacent to a lake, reservoir, estuary, pothole, spring, bog, wet meadow, muskeg or ephemeral, intermittent or perennial stream.

(11) “Soil and water conservation district” means a political subdivision of the state as described in ORS 568.550.

(12) “Stewardship” means the careful and responsible management of the environment.

(13) “Tribe” means a federally recognized Indian tribe in Oregon.

(14) “Watershed” means the entire land area drained by a stream or system of connected streams such that all streamflow originating in the area is discharged through a single outlet.

(15) “Watershed council” means a voluntary local organization, designated by a local government group convened by a county governing body, to address the goal of sustaining natural resource and watershed protection, restoration and enhancement within a watershed. [Formerly 541.351]

Note: The amendments to 541.890 by section 7, chapter 771, Oregon Laws 2015, become operative January 1, 2017. See section 9, chapter 771, Oregon Laws 2015. The text that is operative on and after January 1, 2017, is set forth for the user’s convenience.

541.890. As used in ORS 541.890 to 541.969:

(1) “Adaptive management” means applying management or practices over time and across the landscape to achieve site specific resource goals using an integrated and science based approach that results in changes over time in response to feedback or monitoring.

(2) “Associated uplands” includes those lands of a watershed that are critical to the functioning and protection of a riparian area.

(3) “Board” means the Oregon Watershed Enhancement Board created under ORS 541.900.

(4) “Native” means indigenous to Oregon and not introduced.

(5) “Oregon Conservation Strategy” means the comprehensive wildlife conservation strategy for this

state adopted by the State Fish and Wildlife Commission.

(6) "Oregon Plan" means the guidance statement and framework described in ORS 541.898.

(7) "Protect" or "protection" means to minimize or mitigate adverse effects on native fish or wildlife habitat to the maximum extent practicable given the anticipated duration, geographic scope and primary purpose of proposed activities.

(8) "Restore" or "restoration" means to take actions likely to achieve sustainable population levels of native fish or wildlife and their habitats.

(9) "Riparian area" means a zone of transition from an aquatic ecosystem to a terrestrial ecosystem, dependent upon surface or subsurface water, that reveals through the zone's existing or potential soil-vegetation complex the influence of such surface or subsurface water. A riparian area may be located adjacent to a lake, reservoir, estuary, pothole, spring, bog, wet meadow, muskeg or ephemeral, intermittent or perennial stream.

(10) "Soil and water conservation district" means a political subdivision of the state as described in ORS 568.550.

(11) "Stewardship" means the careful and responsible management of the environment.

(12) "Tribe" means a federally recognized Indian tribe in Oregon.

(13) "Watershed" means the entire land area drained by a stream or system of connected streams such that all streamflow originating in the area is discharged through a single outlet.

(14) "Watershed council" means a voluntary local organization, designated by a local government group convened by a county governing body, to address the goal of sustaining natural resource and watershed protection, restoration and enhancement within a watershed.

(The Oregon Plan)

541.895 Legislative findings; principles of Oregon Plan; policy. (1) The Legislative Assembly finds that:

(a) The long-term protection of the water resources of this state, including sustainable watershed functions, is an essential component of Oregon's environmental and economic stability and growth;

(b) Each watershed in Oregon is unique, requiring different management techniques and programs;

(c) Management techniques and programs for the protection and enhancement of watersheds can be most effective and efficient when voluntarily initiated at the local level;

(d) Cooperative partnerships between affected private individuals, interested citizens, tribes and representatives of local, state and federal agencies may improve opportunities to achieve the protection, enhancement and restoration of the state's watersheds; and

(e) The establishment of such cooperative partnerships should be encouraged by local individuals, local organizations and representatives of state agencies.

(2) The Legislative Assembly declares that the Oregon Plan for integrating regulatory efforts while fostering incentives and voluntary action for environmental stewardship should be founded upon the following principles:

(a) Promoting collaboration and partnerships among local, state, regional, tribal and federal governments and private individuals and organizations;

(b) Establishing clear, technically defensible, practicable and achievable recovery and restoration objectives;

(c) Assessing the conditions in each watershed to determine the quality of the existing environment, to identify the causes for declines in habitat, fish and wildlife populations and water quality, and to assist with the development of locally integrated action plans for watersheds that will achieve agreed-upon protection and restoration objectives;

(d) Coordinating implementation of integrated watershed action plans;

(e) Monitoring and ensuring implementation of the integrated watershed action plans using adaptive management to make appropriate changes in action plans and goals as needed; and

(f) Establishing funding priorities across basins based on the value of programs and projects for watershed and habitat recovery.

(3) It is the policy of the State of Oregon that:

(a) Voluntary programs initiated at the local level to protect and enhance the quality and stability of watersheds are a high priority of the state and should be encouraged;

(b) State agencies are encouraged to respond cooperatively to local watershed protection and enhancement efforts and coordinate their respective activities with other state agencies and affected local, regional, tribal and federal governments and private landowners to the greatest degree practicable; and

(c) State agencies responding to local watershed protection and enhancement efforts are encouraged to foster local watershed planning, protection and enhancement efforts before initiating respective action within a watershed. [Formerly 541.353]

541.898 Oregon Plan described; goals; elements; Governor to negotiate with federal government. (1) As used in this section when referring to salmonid recovery:

(a) "Listed unit" means one population or a group of populations of a species, such as an evolutionarily significant unit, that has been listed as threatened or endangered under the federal Endangered Species Act of

1973 (P.L. 93-205), as amended, or under ORS 496.171 to 496.192.

(b) "Native fish" means a fish indigenous to Oregon and not introduced. Naturally produced fish and hatchery produced fish are both native fish if the fish are indigenous to Oregon and not introduced.

(c) "Naturally produced" means a fish that reproduces and completes its full life cycle in its natural habitat. Naturally produced progeny of hatchery fish are naturally produced.

(d) "Population" means a group of fish that:

(A) Originates and reproduces in a particular area at a particular time;

(B) Does not interbreed to any substantial degree with any other group reproducing in a different area or in the same area at a different time; and

(C) Is composed of naturally produced fish, hatchery produced fish or a combination of both.

(e) "Recovery" means that a proportion of the constituent populations of naturally produced native fish belonging to a listed unit are sufficiently abundant, productive and diverse in life histories and distribution such that the listed unit as a whole is likely to be self-sustaining into the foreseeable future.

(f) "Self-sustaining" means having a sufficient proportion and distribution of constituent populations:

(A) Likely to survive prolonged periods of habitat, oceanic, climatic and environmental conditions that are detrimental to a population; and

(B) Having habitat of sufficient quality and quantity likely to provide survival rates adequate to maintain associated ecological, cultural and economic benefits.

(2) The Legislative Assembly finds that the efforts of many Oregonians have resulted in the creation of the Oregon Plan, and recognizes that the Oregon Plan is guided by the following mission and goals:

(a) The mission of the Oregon Plan is to restore the watersheds of Oregon and to recover the fish and wildlife populations of those watersheds to productive and sustainable levels in a manner that provides substantial ecological, cultural and economic benefits.

(b) The goals of the Oregon Plan that guide the citizens of Oregon in achieving the mission of the Oregon Plan are the:

(A) Establishment and maintenance of an infrastructure that provides long-term continuity in leadership, direction and oversight

of watershed restoration and species recovery.

(B) Continued opportunity for a wide range of natural resource uses that are consistent with watershed restoration and species recovery.

(C) Implementation of existing laws and environmental regulations to achieve the mission before enacting new laws and environmental regulations.

(D) Development and maintenance of funding for programs to protect and restore watersheds.

(E) Development of expectations for the sustainability of interrelated natural resources that accurately reflect a scientific understanding of the physical and biological constraints of the ecosystem.

(F) Enhancement of habitat available to support healthy populations of fish and wildlife throughout the state.

(G) Production of populations of threatened or endangered species to achieve levels of natural production consistent with overall restoration goals.

(H) Establishment of a science-based system that supports evaluation of the Oregon Plan and provides a basis for making appropriate future changes to management programs.

(I) Coordination of activities and programs among federal, state and local governments and other entities.

(J) Use of voluntary and collaborative processes to achieve the mission of the Oregon Plan whenever possible.

(3) The Oregon Plan is a comprehensive program for the protection and recovery of species and for the restoration of watersheds throughout this state. The Oregon Plan combines the regulatory and other actions of state and federal agencies and local governments with voluntary watershed restoration by private landowners and others. The Oregon Plan includes, but is not limited to:

(a) Programs and policies found in the following statutes:

(A) ORS 196.600 to 196.905;

(B) ORS chapter 197;

(C) ORS chapter 274;

(D) ORS chapter 366;

(E) ORS chapter 390;

(F) ORS chapters 465, 466, 468 and 468B;

(G) ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992;

(H) ORS chapter 477;

(I) ORS chapters 496, 497, 498, 501, 506, 507, 508, 509 and 511;

(J) ORS 517.702 to 517.989;

(K) ORS 527.310 to 527.370, 527.610 to 527.770, 527.990 (1) and 527.992;

(L) ORS chapter 530;

(M) ORS chapters 536 to 543A;

(N) ORS 543A.005 to 543A.415; and

(O) ORS 568.210 to 568.808 and 568.900 to 568.933;

(b) Commitments of state agencies in the form of measures;

(c) Actions of local governments and federal agencies taken in coordination with the state and consistent with the purposes of the Oregon Plan;

(d) Voluntary activities undertaken by watershed councils, soil and water conservation districts, landowners and other entities and consistent with the purposes of the Oregon Plan;

(e) Scientific review by the Independent Multidisciplinary Science Team, and others, of the activities performed under the Oregon Plan;

(f) Programs and activities identified to address a coordinated approach for the recovery of native salmonid populations within Oregon;

(g) The guidance statement and framework provided by the healthy streams partnership developed to provide cooperative solutions and voluntary approaches to improving the water quality of streams and to achieve healthy streams throughout Oregon; and

(h) Programs for the restoration and enhancement of multiple species and of the habitat of those species.

(4) The Oregon Plan is subject to modification and alteration to enhance program efforts consistent with appropriate guidance principles developed by the Legislative Assembly.

(5) The purpose of the Oregon Plan is to enhance, restore and protect Oregon's native salmonid populations, watersheds, fish and wildlife habitat and water quality, while sustaining a healthy economy.

(6) The Oregon Plan shall:

(a) Provide for coordination of local, state, federal and tribal agency responsibilities and authorities for native salmonid, watershed and habitat restoration throughout Oregon.

(b) Rely on watershed councils and soil and water conservation districts, which are directed to cooperate in the development of local watershed plans that assess watershed conditions and create watershed action plans

and strategies for the implementation of the local watershed action plans.

(c) Focus state policies and resources on achieving native salmonid recovery and watershed restoration while sustaining a healthy economy and environment.

(7) The Oregon Plan shall focus on aiding the recovery of species listed as threatened or endangered under the federal Endangered Species Act or under ORS 496.171 to 496.192 until such time as recovery is achieved. Once recovery has been achieved for any species listed as threatened or endangered under ORS 496.171 to 496.192, the Governor shall direct the State Fish and Wildlife Commission to begin rulemaking, as provided in ORS 496.176, to remove the species from the list created pursuant to ORS 496.172. Upon recovery, adequate measures pursuant to the Oregon Plan shall remain in place, as necessary, to help a species avoid a return to threatened or endangered status.

(8)(a) The Governor, or the Governor's designee, shall negotiate with federal officials to obtain assurances to the effect that compliance with the Oregon Plan and the programs and policies found in the statutes listed in subsection (3) of this section and implementation of related state programs and policies will satisfy federal requirements imposed by the federal Endangered Species Act. Specifically, the Governor, or the Governor's designee, shall seek an exemption to the requirements of 16 U.S.C. 1533(d), shall seek to enter into a cooperative agreement pursuant to 16 U.S.C. 1535(c) or shall seek to obtain a permit that allows the incidental taking of species under 16 U.S.C. 1539(a).

(b) State agencies responsible for implementing the programs and policies found in the statutes listed in subsection (3) of this section shall work with the Governor, or the Governor's designee, and with federal officials to provide the information necessary to obtain the exemptions, agreement or permit specified in paragraph (a) of this subsection. [Formerly 541.405]

Note: The amendments to 541.898 by section 8, chapter 771, Oregon Laws 2015, become operative January 1, 2017. See section 9, chapter 771, Oregon Laws 2015. The text that is operative on and after January 1, 2017, is set forth for the user's convenience.

541.898. (1) As used in this section when referring to salmonid recovery:

(a) "Listed unit" means one population or a group of populations of a species, such as an evolutionarily significant unit, that has been listed as threatened or endangered under the federal Endangered Species Act of 1973 (P.L. 93-205), as amended, or under ORS 496.171 to 496.192.

(b) "Native fish" means a fish indigenous to Oregon and not introduced. Naturally produced fish and hatchery produced fish are both native fish if the fish are indigenous to Oregon and not introduced.

(c) "Naturally produced" means a fish that reproduces and completes its full life cycle in its natural habitat. Naturally produced progeny of hatchery fish are naturally produced.

(d) "Population" means a group of fish that:

(A) Originates and reproduces in a particular area at a particular time;

(B) Does not interbreed to any substantial degree with any other group reproducing in a different area or in the same area at a different time; and

(C) Is composed of naturally produced fish, hatchery produced fish or a combination of both.

(e) "Recovery" means that a proportion of the constituent populations of naturally produced native fish belonging to a listed unit are sufficiently abundant, productive and diverse in life histories and distribution such that the listed unit as a whole is likely to be self-sustaining into the foreseeable future.

(f) "Self-sustaining" means having a sufficient proportion and distribution of constituent populations:

(A) Likely to survive prolonged periods of habitat, oceanic, climatic and environmental conditions that are detrimental to a population; and

(B) Having habitat of sufficient quality and quantity likely to provide survival rates adequate to maintain associated ecological, cultural and economic benefits.

(2) The Legislative Assembly finds that the efforts of many Oregonians have resulted in the creation of the Oregon Plan, and recognizes that the Oregon Plan is guided by the following mission and goals:

(a) The mission of the Oregon Plan is to restore the watersheds of Oregon and to recover the fish and wildlife populations of those watersheds to productive and sustainable levels in a manner that provides substantial ecological, cultural and economic benefits.

(b) The goals of the Oregon Plan that guide the citizens of Oregon in achieving the mission of the Oregon Plan are the:

(A) Establishment and maintenance of an infrastructure that provides long-term continuity in leadership, direction and oversight of watershed restoration and species recovery.

(B) Continued opportunity for a wide range of natural resource uses that are consistent with watershed restoration and species recovery.

(C) Implementation of existing laws and environmental regulations to achieve the mission before enacting new laws and environmental regulations.

(D) Development and maintenance of funding for programs to protect and restore watersheds.

(E) Development of expectations for the sustainability of interrelated natural resources that accurately reflect a scientific understanding of the physical and biological constraints of the ecosystem.

(F) Enhancement of habitat available to support healthy populations of fish and wildlife throughout the state.

(G) Production of populations of threatened or endangered species to achieve levels of natural production consistent with overall restoration goals.

(H) Establishment of a science-based system that supports evaluation of the Oregon Plan and provides a basis for making appropriate future changes to management programs.

(I) Coordination of activities and programs among federal, state and local governments and other entities.

(J) Use of voluntary and collaborative processes to achieve the mission of the Oregon Plan whenever possible.

(3) The Oregon Plan is a comprehensive program for the protection and recovery of species and for the restoration of watersheds throughout this state. The Oregon Plan combines the regulatory and other actions of state and federal agencies and local governments with voluntary watershed restoration by private landowners and others. The Oregon Plan includes, but is not limited to:

(a) Programs and policies found in the following statutes:

(A) ORS 196.600 to 196.905;

(B) ORS chapter 197;

(C) ORS chapter 274;

(D) ORS chapter 366;

(E) ORS chapter 390;

(F) ORS chapters 465, 466, 468 and 468B;

(G) ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992;

(H) ORS chapter 477;

(I) ORS chapters 496, 497, 498, 501, 506, 507, 508, 509 and 511;

(J) ORS 517.702 to 517.989;

(K) ORS 527.310 to 527.370, 527.610 to 527.770, 527.990 (1) and 527.992;

(L) ORS chapter 530;

(M) ORS chapters 536 to 543A;

(N) ORS 543A.005 to 543A.415; and

(O) ORS 568.210 to 568.808 and 568.900 to 568.933;

(b) Commitments of state agencies in the form of measures;

(c) Actions of local governments and federal agencies taken in coordination with the state and consistent with the purposes of the Oregon Plan;

(d) Voluntary activities undertaken by watershed councils, soil and water conservation districts, landowners and other entities and consistent with the purposes of the Oregon Plan;

(e) Scientific review by independent scientific review panels, and others, of the activities performed under the Oregon Plan;

(f) Programs and activities identified to address a coordinated approach for the recovery of native salmonid populations within Oregon;

(g) The guidance statement and framework provided by the healthy streams partnership developed to provide cooperative solutions and voluntary approaches to improving the water quality of streams and to achieve healthy streams throughout Oregon; and

(h) Programs for the restoration and enhancement of multiple species and of the habitat of those species.

(4) The Oregon Plan is subject to modification and alteration to enhance program efforts consistent with appropriate guidance principles developed by the Legislative Assembly.

(5) The purpose of the Oregon Plan is to enhance, restore and protect Oregon's native salmonid populations, watersheds, fish and wildlife habitat and water quality, while sustaining a healthy economy.

(6) The Oregon Plan shall:

(a) Provide for coordination of local, state, federal and tribal agency responsibilities and authorities for native salmonid, watershed and habitat restoration throughout Oregon.

(b) Rely on watershed councils and soil and water conservation districts, which are directed to cooperate in the development of local watershed plans that assess watershed conditions and create watershed action plans

and strategies for the implementation of the local watershed action plans.

(c) Focus state policies and resources on achieving native salmonid recovery and watershed restoration while sustaining a healthy economy and environment.

(7) The Oregon Plan shall focus on aiding the recovery of species listed as threatened or endangered under the federal Endangered Species Act or under ORS 496.171 to 496.192 until such time as recovery is achieved. Once recovery has been achieved for any species listed as threatened or endangered under ORS 496.171 to 496.192, the Governor shall direct the State Fish and Wildlife Commission to begin rulemaking, as provided in ORS 496.176, to remove the species from the list created pursuant to ORS 496.172. Upon recovery, adequate measures pursuant to the Oregon Plan shall remain in place, as necessary, to help a species avoid a return to threatened or endangered status.

(8)(a) The Governor, or the Governor's designee, shall negotiate with federal officials to obtain assurances to the effect that compliance with the Oregon Plan and the programs and policies found in the statutes listed in subsection (3) of this section and implementation of related state programs and policies will satisfy federal requirements imposed by the federal Endangered Species Act. Specifically, the Governor, or the Governor's designee, shall seek an exemption to the requirements of 16 U.S.C. 1533(d), shall seek to enter into a cooperative agreement pursuant to 16 U.S.C. 1535(c) or shall seek to obtain a permit that allows the incidental taking of species under 16 U.S.C. 1539(a).

(b) State agencies responsible for implementing the programs and policies found in the statutes listed in subsection (3) of this section shall work with the Governor, or the Governor's designee, and with federal officials to provide the information necessary to obtain the exemptions, agreement or permit specified in paragraph (a) of this subsection.

(Oregon Plan Administration)

541.906 Rules. (1) In accordance with the applicable provisions of ORS chapter 183, the Oregon Watershed Enhancement Board shall adopt rules and standards to carry out the watershed enhancement program.

(2) The rules and standards adopted by the board under subsection (1) of this section shall include, but need not be limited to:

(a) Grant application requirements and review and selection criteria for projects to receive assistance or funding from the board, including funding from the Flexible Incentives Account established under ORS 541.937.

(b) Criteria for distributing to those entities specified in ORS 541.932 those funds appropriated to the board for funding projects. The criteria shall include a process for periodic review of the distribution by the appropriate legislative committee.

(c) Conditions for approval by the board for implementation of a project including but not limited to:

(A) Provisions satisfactory to the board for inspection and evaluation of the implementation of a project including all necessary agreements to allow the board and employees of any cooperating agency provid-

ing staff services for the board access to the project area;

(B) Provisions satisfactory to the board for controlling the expenditure of and accounting for any funds granted by the board for implementation of the project;

(C) An agreement that those initiating the project will submit all pertinent information and research gained from the project to the board for inclusion in the centralized repository established by the board; and

(D) Provisions for the continued maintenance of the portion of the riparian area or associated uplands enhanced by the project. [Formerly 541.396]

541.910 Voluntary local watershed councils; protection against liability.

(1) Local government groups are encouraged to form voluntary local watershed councils in accordance with the guidelines set forth in subsection (2) of this section. The Oregon Watershed Enhancement Board may work cooperatively with any local watershed council that may be formed. Requests from local watershed councils for state assistance shall be evaluated on the basis of whether the requesting organization reflects the interests of the affected watershed and the potential to protect and enhance the quality of the watershed in question.

(2) Local watershed councils formed under subsection (1) of this section shall consist of a majority of local residents, including local officials. A watershed council may be a new or existing organization as long as the council represents a balance of interested and affected persons within the watershed and assures a high level of citizen involvement in the development and implementation of a watershed action program. A local watershed council may include representatives of local government, representatives of non-government organizations and private citizens, including but not limited to:

(a) Representatives of local and regional boards, commissions, districts and agencies;

(b) Representatives of federally recognized Indian tribes;

(c) Public interest group representatives;

(d) Private landowners;

(e) Industry representatives;

(f) Members of academic, scientific and professional communities; and

(g) Representatives of state and federal agencies.

(3) If more than one watershed council exists in a county, each watershed council shall periodically report the activities of the council to the county governing body.

(4) The Oregon Department of Administrative Services may provide to voluntary local watershed councils and their officers, employees and agents acting within the scope of their employment or duties, protection against liability as part of the insurance provided to the Oregon Watershed Enhancement Board pursuant to ORS 278.120 to 278.215. The Oregon Watershed Enhancement Board, after consulting the Oregon Department of Administrative Services and local watershed councils, shall establish guidelines for liability coverage and limits of coverage. The Oregon Department of Administrative Services shall determine any additional contributions to be apportioned to the Oregon Watershed Enhancement Board for extending insurance to voluntary local watershed councils, and the Oregon Watershed Enhancement Board shall pay the assessments from such moneys as may be available for those assessments. [Formerly 541.388]

541.912 Duties of Natural Resources Division. In addition to the duties conferred on the Natural Resources Division of the State Department of Agriculture under ORS 561.400 and 568.210 to 568.808 and 568.900 to 568.933, the division shall:

(1) In cooperation with the Oregon Watershed Enhancement Board, provide appropriate personnel who, under the direction of the board, shall:

(a) Serve as community advisors to cooperatively develop watershed enhancement projects with volunteers; and

(b) Cooperatively evaluate watershed enhancement projects with those responsible for project implementation.

(2) Provide technical assistance to individuals responsible for implementation of a watershed enhancement project.

(3) Work with the Oregon Watershed Enhancement Board to coordinate the implementation of enhancement projects with the activities of other agencies, including but not limited to, those state and federal agencies participating in coordinated resource management planning. [Formerly 541.390]

541.914 Independent Multidisciplinary Science Team; duties; agency response to science team recommendations. (1) There is created an Independent Multidisciplinary Science Team consisting of up to seven scientists with recognized expertise in fisheries, artificial propagation, stream ecology, forestry, range, watershed and agricultural management. The Governor, the President of the Senate and the Speaker of the House of Representatives shall jointly appoint the Independent Multidisciplinary Science Team. The decision to appoint a member of the team shall be a unanimous decision by the

appointing authorities. The members of the Independent Multidisciplinary Science Team shall serve for four years and may be reappointed for a subsequent term. The team shall be governed by generally accepted guidelines and practices governing the activities of independent science boards such as the National Academy of Sciences.

(2) The Independent Multidisciplinary Science Team shall:

(a) Review implementation of the Oregon Plan and other programs for achieving healthy streams as described in ORS 541.898.

(b) Prepare and submit to the Governor, the Legislative Assembly and the public an annual report on the implementation of the Oregon Plan, including any recommendations for changes or adjustments to the initiative.

(c) Serve as an independent scientific peer review panel to the state agencies responsible for developing and implementing the Oregon Plan and other salmon or stream enhancement programs throughout this state.

(d) Report regularly to the appropriate legislative committee concerning the duties described under this subsection and other requests by the committee.

(3) If the Independent Multidisciplinary Science Team submits suggestions to an agency responsible for implementing a portion of the Oregon Plan, the agency shall respond in writing to the team, explaining how the agency intends to implement the suggestion or why the agency does not implement the suggestion. The team shall include any agency responses in its report under subsection (2)(b) of this section.

(4) Members of the Independent Multidisciplinary Science Team shall be compensated for their services and are eligible for reimbursement of travel and other reasonable expenses in accordance with ORS 292.495.

(5) Compensation for members of the Independent Multidisciplinary Science Team shall be determined by the appointing authorities.

(6) The office of the Governor shall provide administrative support and services to the Independent Multidisciplinary Science Team. [Formerly 541.409]

Note: 541.914 is repealed January 1, 2017. See sections 6 and 9, chapter 771, Oregon Laws 2015.

541.916 Responsibilities of state agency participating in Oregon Plan. Any state agency participating in the programs and activities described in ORS 541.898 shall:

(1) Upon request of any person who believes the person's private property rights may be adversely affected by the Oregon Plan, provide the person with written infor-

mation about the agency's dispute resolution services available pursuant to ORS 183.502.

(2) Report to the appropriate legislative committee any dispute resolution services requested under this section, and the outcome of such dispute resolution. [Formerly 541.411]

(Watershed Enhancement Program)

541.923 Watershed management program; project funding; high priority watersheds. (1) The Oregon Watershed Enhancement Board shall initiate a watershed management program that relies on the establishment of voluntary local watershed councils comprised of residents, state and federal agency staff, members of federally recognized Indian tribes and other citizens interested in the management of watersheds and that provides for the development by these partnerships of local plans that may include but are not limited to the assessment of the watershed condition, the creation of a watershed action plan and a strategy for implementing the action plan. The program shall focus state resources on the achievement of sustainable watershed health, including funding major projects that contribute to the overall health of a watershed. In addition, the board shall fund smaller, voluntary projects for watershed enhancement and for restoration of riparian areas and associated uplands.

(2) In carrying out the program under subsection (1) of this section, the board may designate high priority watersheds. However, the designation of high priority watersheds is intended only as a management tool for state agencies in allocating resources to support coordinated watershed management activities. Such designation is not intended to establish or confer any right, duty or authority, nor to have any legal significance beyond that described in this section, nor to discourage or prohibit the formation and function of voluntary local watershed councils in other watersheds.

(3) The elected officials representing the appropriate local government groups containing or within a proposed watershed council area shall determine whether to participate in the voluntary formation of a local watershed council. When multiple local government groups are involved within an area that would be served by a watershed council, the affected local government groups shall together determine their respective roles and the appropriate method for appointing members to a local watershed council. [Formerly 541.384]

541.929 Duties of board; integrated watershed planning framework; expenditures. (1) In addition to the duties set forth in ORS 541.926, in carrying out the provisions of ORS 541.890 to 541.969, the Oregon Watershed Enhancement Board:

(a) Shall establish a framework for a locally based integrated watershed planning and management process designed to assist watershed councils, soil and water conservation districts and other partners and to support the efforts of watershed councils, soil and water conservation districts and other partners to work within the requirements of state and federal laws without duplication of planning effort. The framework shall include all of the following:

(A) Guidance and protocols for watershed assessments to encourage consistent assessment methods across all watersheds and agencies, including assessment of cumulative effects. At a minimum, such guidance shall address the following plan components:

(i) A description of the watershed;

(ii) An assessment of current watershed conditions and the distribution and condition of habitat; and

(iii) Identification of conditions preventing watershed restoration.

(B) Guidance on how to prepare watershed action plans. At a minimum, such guidance shall address the following plan components:

(i) Applicable water quality standards and native salmonid and habitat recovery objectives;

(ii) Proposed measures needed to restore watershed health;

(iii) Timeline and budget estimates for implementation of action measures in priority order; and

(iv) Monitoring and evaluation systems.

(b) May review plans, actions and rules of state agencies pertaining to restoration and protection grants for the purpose of coordinating the board's grant program with other ongoing grant programs.

(c) Shall establish statewide and regional goals and priorities that shall become the basis for funding decisions by the board. In adopting such goals and priorities, the board shall adopt priorities for grant funding based on the Oregon Plan, the Oregon Conservation Strategy, the watershed health and native fish recovery programs of this state and measurable goals. In carrying out this function, the board shall consider local economic and social impacts among the criteria.

(d) Shall support development and implementation of a system that enables standard-

ized collection, management and reporting of natural resources information in Oregon, including water data, geographic information system data and information on native fish and wildlife and habitat.

(e) Shall promote the availability of information on the effects of watershed enhancement.

(f) May not have regulatory or enforcement authority except for the fiscal responsibilities described in ORS 541.890 to 541.969.

(2) In addition to any other expenditures consistent with ORS 541.945, moneys in the Watershed Conservation Operating Fund may be expended in the form of grants or allocations:

(a) To soil and water conservation districts and watershed councils for costs of employing staff to further the development and implementation of activities, projects and programs for the purposes described in ORS 541.945; or

(b) For a specific project or program application or for implementation of an approved action plan.

(3) To the maximum extent practicable, soil and water conservation districts and watershed councils shall share technical staff. [Formerly 541.371]

541.932 Watershed enhancement project assistance; criteria for funding approval; acquisition of interest in land or water. (1)(a) The following entities may submit a request for funding for, or for advice and assistance in developing, a project under ORS 541.890 to 541.969:

- (A) A person;
- (B) An Indian tribe;
- (C) A watershed council;
- (D) A soil and water conservation district;
- (E) A community college;
- (F) A public university listed in ORS 352.002;
- (G) An independent not-for-profit institution of higher education; or
- (H) A political subdivision of this state that is not a state agency.

(b) A state agency or federal agency may apply for funding under this section only as a coapplicant with an entity described in paragraph (a) of this subsection.

(2) The request under subsection (1) of this section shall be filed in the manner, be in the form and contain the information required by the Oregon Watershed Enhancement Board, regardless of the anticipated funding source for the project.

(3) The board may establish a grant program through soil and water conservation districts organized under ORS 568.210 to 568.808 and 568.900 to 568.933 that provides funds for local implementation of watershed enhancement, education and monitoring efforts.

(4) The board may fund implementation of action plans based on a watershed assessment that addresses water quality and aquatic resources of the watershed.

(5) A project may use mechanical, vegetative or structural methods including, but not limited to, management techniques, erosion control, streambank stabilization, forest, range or crop land treatment, site specific in-stream structures, acquisitions or leases of land or water rights from a willing owner, watershed assessments, landowner incentives and action plan development, implementation and monitoring.

(6) The actions of a soil and water conservation district carried out pursuant to a grant program established by the board under subsection (3) of this section shall not be subject to review and approval by the Natural Resources Division under ORS 561.400.

(7) If a project or a portion of a project is not subject to the funding criteria described in ORS 541.958 and applies to receive funding from the board, the board may approve the project or portion of a project for funding only if the project or portion of a project:

- (a) Is based on sound principles of native fish or wildlife habitat conservation or watershed management;
- (b) Uses methods most adapted to the project locale;
- (c) Meets the criteria established by the board under ORS 541.906; and
- (d) Contributes to either:

(A) The improved health of a stream, lake or reservoir and toward the achievement of standards that satisfy the requirements of the Federal Water Pollution Control Act (P.L. 92-500), as amended; or

(B) The conservation or restoration of habitat for, or of watershed or ecosystem function for, native fish or wildlife.

(8) The Oregon Watershed Enhancement Board may fund a project for the restoration of a riparian area or associated upland that is carried out in conjunction with a storage structure. However, the board shall not approve funding for any proposed project that consists solely of construction of a storage structure for out-of-stream use.

(9) The Oregon Watershed Enhancement Board may fund projects involving the acquisition of lands and waters, or interests

therein from willing sellers, for the purpose of maintaining or restoring watersheds and habitat for native fish or wildlife. Interests in these lands and waters may be held by local, state and federal agencies, tribes, not-for-profit land conservation organizations and trusts, public universities listed in ORS 352.002, independent not-for-profit institutions of higher education or political subdivisions of this state, as long as the entity continues to use the land or water for the purposes specified under section 4b, Article XV of the Oregon Constitution.

(10) If the Oregon Watershed Enhancement Board approves funding for a project under this section, the board may not disburse funds to the applicant for any part of the project that requires the applicant to obtain a permit or license from a local, state or federal agency or governing body until the applicant presents evidence that the agency has granted the permit or license. [Formerly 541.375]

(Program Funding)

541.935 Oregon Plan for Salmon and Watersheds Legal Fund; sources; uses. There is hereby established in the State Treasury the Oregon Plan for Salmon and Watersheds Legal Fund for the purpose of funding the activities of the Department of Justice in providing legal advice to or appearing on behalf of a state agency that takes, funds or authorizes actions when those actions are challenged under the federal Endangered Species Act (16 U.S.C. 1531 et seq.), as amended, or the Federal Water Pollution Control Act (P.L. 92-500), as amended, to the limits of the fund. The fund created by this section shall consist of all moneys received on behalf of the fund by gift, grant or appropriation, from whatever source. Moneys in the fund are continuously appropriated to the Department of Justice for the uses described in this section. Such uses may include, but need not be limited to, participation in a legal proceeding involving an action taken by a citizen or political subdivision of this state, where that action is authorized or funded by this state, and where:

(1) The state agency that authorizes or funds the action:

(a) Determines that the action is consistent with the Oregon Plan and is in compliance with applicable state laws; and

(b) Recommends to the Attorney General that the state participate in such legal challenge; and

(2) The Attorney General, after consulting with the Governor, the President of the Senate and the Speaker of the House of

Representatives, determines that such participation is in the best strategic interest of the state. [Formerly 541.415]

541.937 Flexible Incentives Account; sources; uses. (1) There is created a Flexible Incentives Account in the State Treasury, separate and distinct from the General Fund. Interest earned by the account shall be credited to the account. The moneys in the account are continuously appropriated to the Oregon Watershed Enhancement Board for the purposes specified in this section.

(2) The Oregon Watershed Enhancement Board shall use the Flexible Incentives Account to assist landowners in the implementation of strategies intended to protect and restore native species of fish, wildlife and plants and to maintain long-term ecological health, diversity and productivity in a manner consistent with statewide, regional or local conservation plans. The board shall seek to fund those strategies that offer the greatest public benefit at the lowest cost. The account may also be used to fund activities to achieve the purposes of stewardship agreements entered into under ORS 541.423 between a landowner, or a representative of the landowner, and the State Department of Agriculture or the State Board of Forestry.

(3) The account shall consist of moneys appropriated to it by the Legislative Assembly and moneys provided to the board by federal, state, regional or local governments for the purposes specified in this section. The board may accept private moneys in the form of gifts, grants and bequests for deposit into the account. [Formerly 541.381]

541.940 Parks and Natural Resources Fund. (1) There is established in the State Treasury, separate and distinct from the General Fund, the Parks and Natural Resources Fund to be administered by the Oregon Department of Administrative Services. All moneys transferred from the State Lottery Fund and all other moneys authorized to be transferred to the Parks and Natural Resources Fund from whatever source are appropriated continuously for the public purposes of restoring and protecting Oregon's parks, beaches, watersheds and native fish and wildlife habitats. Fifteen percent of the net proceeds from the Oregon State Lottery shall be deposited in the Parks and Natural Resources Fund created under this subsection.

(2) The Legislative Assembly may not limit expenditures from the Parks and Natural Resources Fund. The Legislative Assembly may appropriate other moneys or revenues to the Parks and Natural Resources Fund. [Formerly 541.377]

541.942 Natural Resources Subaccount. (1) Of the moneys deposited into the Parks and Natural Resources Fund created under ORS 541.940 from the Oregon State Lottery, 50 percent shall be deposited into a Natural Resources Subaccount for the public purpose of financing the restoration and protection of native fish and wildlife, watersheds and water quality in Oregon. The State Treasurer may invest and reinvest the moneys in the Natural Resources Subaccount as provided in ORS 293.701 to 293.857.

(2) Moneys in the Natural Resources Subaccount shall be used to accomplish each of the following:

(a) Protecting and improving water quality in the rivers, lakes and streams of this state by restoring natural watershed functions or stream flows;

(b) Securing long-term protection for lands and waters that provide significant habitats for native fish and wildlife;

(c) Restoring and maintaining habitat needed to sustain healthy and resilient populations of native fish and wildlife;

(d) Maintaining the diversity of plants, animals and ecosystems in this state;

(e) Involving people in voluntary actions to protect, restore and maintain the ecological health of lands and waters in this state; and

(f) Remedying the conditions that limit the health of fish and wildlife, fish and wildlife habitats and watershed functions that are in the greatest need of conservation.

(3) Except as provided in subsections (4) and (5) of this section, of the moneys deposited into the Natural Resources Subaccount from the Oregon State Lottery:

(a) Sixty-five percent of the moneys shall be deposited into the Watershed Conservation Grant Fund established under ORS 541.947 to be used by the Oregon Watershed Enhancement Board for the purposes set forth in ORS 541.956; and

(b) Thirty-five percent of the moneys shall be deposited into the Watershed Conservation Operating Fund established under ORS 541.945.

(4) If the amount transferred from the Oregon State Lottery to the Parks and Natural Resources Fund during a biennium is more than 150 percent of the amount that was transferred during the 2009-2011 biennium, except as provided in subsection (5) of this section, the State Treasurer shall, during the next following biennium, deposit from the Natural Resources Subaccount to the Watershed Conservation Grant Fund the amount described in subsection (3)(a) of this section plus an amount equal to the differ-

ence between the amount deposited from the subaccount to the Watershed Conservation Grant Fund during the preceding biennium and 70 percent of the moneys received by the subaccount from the Oregon State Lottery during the preceding biennium.

(5) The requirements in subsections (3) and (4) of this section apply only for biennia in which the Legislative Assembly does not require a greater percentage of the Natural Resources Subaccount moneys to be deposited into the Watershed Conservation Grant Fund. The Legislative Assembly may not authorize the percentage of Natural Resources Subaccount moneys deposited into the Watershed Conservation Grant Fund in a biennium to be less than the percentage required to be deposited under subsections (3) and (4) of this section. [2011 c.643 §9]

541.945 Watershed Conservation Operating Fund; purposes. (1) The Watershed Conservation Operating Fund is established in the State Treasury separate and distinct from the General Fund. The Watershed Conservation Operating Fund shall consist of all moneys placed in the fund as provided by law. The purpose of the fund is to carry out activities that support all of the purposes described in ORS 541.942. Moneys in the Watershed Conservation Operating Fund shall be used for each of the following:

(a) To develop, implement or update state conservation strategies or plans to protect or restore native fish or wildlife habitats or to protect or restore natural watershed or ecosystem functions to improve water quality or stream flows;

(b) To develop, implement or update regional or local strategies or plans that are consistent with state strategies or plans described in paragraph (a) of this subsection;

(c) To develop, implement or update state strategies or plans to prevent, detect, control or eradicate invasive species that threaten native fish or wildlife habitats or that impair water quality;

(d) To support local delivery, including but not limited to delivery by watershed councils, soil and water conservation districts and other community-based organizations, of watershed education activities and other programs or projects that protect or restore native fish or wildlife habitats, watersheds or ecosystems;

(e) To pay the Oregon Watershed Enhancement Board costs of administering the Watershed Conservation Grant Fund;

(f) To enforce fish and wildlife laws and regulations and fish and wildlife habitat protection laws and regulations; and

(g) To reimburse the Secretary of State as described in ORS 297.230 for the costs of

audits performed by the Secretary of State under section 4c, Article XV of the Oregon Constitution.

(2) Interest accruing to the Watershed Conservation Operating Fund shall be credited to the fund. Watershed Conservation Operating Fund moneys appropriated and not expended by the completion of a biennium shall remain in the Watershed Conservation Operating Fund.

(3) Any public or private source may make gifts or grants to the Watershed Conservation Operating Fund. [2011 c.643 §16]

541.947 Watershed Conservation Grant Fund. (1) The Watershed Conservation Grant Fund is established separate and distinct from the General Fund. The Watershed Conservation Grant Fund shall consist of all moneys placed in the fund as provided by law. All moneys in the Watershed Conservation Grant Fund are continuously appropriated to the Oregon Watershed Enhancement Board for grants to fund projects described in ORS 541.958 that use grant moneys as provided under ORS 541.956. Interest accruing to the Watershed Conservation Grant Fund shall be credited to the fund. Watershed Conservation Grant Fund moneys appropriated and not expended by the completion of a biennium shall remain in the Watershed Conservation Grant Fund.

(2) The board also may accept gifts and grants from any public or private source for the purpose of providing the grants described in this section. [2011 c.643 §12]

541.949 Authority of board to accept moneys; disposition. (1) The Oregon Watershed Enhancement Board may accept moneys from any public or private source, including the federal government, made available for the purpose of encouraging, promoting and securing watershed enhancement or to facilitate and assist in carrying out the functions of the board, including administrative expenses, as provided by law.

(2) All moneys received by the board under this section shall be deposited in the State Treasury and kept in separate accounts in the General Fund designated according to the purposes for which moneys were made available.

(3) Notwithstanding the provisions of ORS 291.238, all moneys received under this section are continuously appropriated to the board for the purpose for which they were made available and shall be expended in accordance with the terms and conditions upon which they were made available. [Formerly 541.372]

541.950 Authority of Governor to accept moneys; disposition. (1) The Governor may receive gifts, grants, bequests, endowments and donations of moneys from public and private sources, including the federal government, for the purpose of implementing the Oregon Plan, as described in ORS 541.898, and the Oregon Conservation Strategy.

(2) If requested by the source, the Governor shall deposit moneys received under this section into the Watershed Conservation Grant Fund for use as provided under ORS 541.956. The Governor shall deposit all other moneys received under this section in the State Treasury to the credit of the Watershed Conservation Operating Fund established under ORS 541.945. [Formerly 541.373]

(Program Projects)

541.956 Watershed Conservation Grant Fund purposes. The purpose of the Watershed Conservation Grant Fund is to provide funding for grants to achieve the purposes and uses described in ORS 541.942 and to implement the mission of the Oregon Plan, including but not limited to grants to further the Oregon Conservation Strategy and the watershed health and native fish recovery programs of this state. Moneys appropriated to the fund shall be used only for the following activities:

(1) Acquiring from willing owners interests in land or water that will protect or restore native fish or wildlife habitats. The interests may include, but need not be limited to, fee interests, conservation easements or leases.

(2) Projects to protect or restore native fish habitat or wildlife habitat.

(3) Projects to protect or restore natural watershed or ecosystem functions in order to improve water quality or stream flows.

(4) Resource assessment, planning, design and engineering, technical assistance, monitoring and outreach activities necessary for carrying out subsections (1) to (3) of this section. [2011 c.643 §13]

541.958 Criteria for project receiving moneys from Watershed Conservation Grant Fund. The Oregon Watershed Enhancement Board may award funds from the Watershed Conservation Grant Fund only for activities described in ORS 541.956. Any project that the board approves for funding shall comply with the following criteria:

(1) There is a matching contribution from other program funds, in-kind services or other investment in the project;

(2) The project to be funded is reviewed and approved by a technical committee es-

established in accordance with ORS 541.926; and

(3) The project provides a public benefit by supporting improved:

- (a) Water quality;
- (b) Native fish or wildlife habitat; or
- (c) Watershed or ecosystem function.

[Formerly 541.401]

541.960 Title restrictions on land purchased through grant agreement; rules.

(1) Land purchased through a grant agreement with the Oregon Watershed Enhancement Board shall be subject to title restrictions that are consistent with the conservation purposes of the grant and give the board the authority to approve, approve with conditions or deny the sale or transfer of the land. The board may require conditions on the sale or transfer to:

- (a) Ensure consistency with the intent of the original grant;
- (b) Ensure the ability of the party receiving the land through the sale or transfer to carry out the obligations under the grant agreement; and
- (c) Address the disposition of proceeds from the sale or transfer, including any provisions for repayment, with interest, of any grant funds.

(2) The board may not allow a sale or transfer that results in any profit to any person.

(3) The board shall, by rule, define "profit" for the purpose of not allowing sales or transfers and shall specify the process and criteria that the board will use in considering whether to approve, approve with conditions or deny a sale or transfer. [Formerly 541.376]

(Reports)

541.963 Oregon Watershed Enhancement Board report to Legislative Assembly. The Oregon Watershed Enhancement Board shall report biennially to the Legislative Assembly on the implementation of the management program under ORS 541.923 and grants awarded under ORS 541.956. The report shall include but need not be limited to:

(1) An explanation of the effectiveness and workability of the partnership process described in ORS 541.923;

(2) A description of any modifications to the process that have been instituted; and

(3) Recommendations concerning the need for future legislative action. [Formerly 541.392]

541.965 State agency reports to be provided to board. In order to assist the Oregon Watershed Enhancement Board in

developing and maintaining a centralized repository under ORS 541.926, the following agencies shall provide the board with a copy of any report produced by the agency that is related to enhancement or restoration of riparian areas or associated uplands:

(1) The Department of Environmental Quality.

(2) The State Department of Fish and Wildlife.

(3) The Water Resources Department.

(4) The State Forestry Department.

(5) The State Department of Agriculture.

(6) The agricultural extension service of Oregon State University. [Formerly 541.395]

541.967 Agency report to legislative committee prior to adjustment of expenditure limitation or additional funding related to Oregon Plan. Notwithstanding any other provision of law, if during the interim between legislative sessions any agency responsible for implementing a portion of the Oregon Plan or a program for the enhancement or restoration of streams throughout the state requires additional funding or an adjustment to the agency's expenditure limitations as approved by the Legislative Assembly to complete implementation of the Oregon Plan, the agency shall first submit a report to the appropriate legislative committee. The committee shall review the request and present a recommendation to the Emergency Board at the time the agency submits its request to the Emergency Board. [Formerly 541.413]

541.969 Report to Legislative Assembly by state agencies receiving subaccount moneys. Each state agency that receives moneys from the Natural Resources Subaccount created under ORS 541.942 shall submit a report to the Legislative Assembly each biennium regarding the use of the moneys by the agency. The report shall include, but need not be limited to, a description of the measurable biennial and cumulative results of the activities and programs for which the agency expended the moneys. Reports required by this section are in addition to any audit report supplied by the Secretary of State under ORS chapter 297. [2011 c.643 §10]

541.972 Oregon Watershed Enhancement Board reports to Governor and Legislative Assembly on Oregon Plan. (1) The Oregon Watershed Enhancement Board shall, by January 15 of each odd-numbered year, submit a report to the Governor and to the appropriate committee or committees of the Legislative Assembly that assesses the implementation and effectiveness of the Oregon Plan in the state. The report shall ad-

dress each drainage basin in the state and shall include, but need not be limited to:

(a) A status report on watershed and key habitat conditions in the drainage basin based on available information;

(b) An assessment of data and information needs deemed critical to monitoring and evaluating watershed and habitat enhancement programs and efforts;

(c) An overview of state agency programs addressing watershed conditions;

(d) An overview of voluntary restoration activities addressing watershed conditions;

(e) A summary of investments made by the board from funds received under section 4b, Article XV of the Oregon Constitution, and all other sources; and

(f) The recommendations of the board for enhancing the effectiveness of Oregon Plan implementation in each drainage basin.

(2) In order to provide the board with the information necessary to complete the report described in subsection (1) of this section, each natural resources agency shall provide information requested by the board in the format and at the times determined by the board.

(3) For purposes of this section, "natural resources agency" includes:

(a) Department of Environmental Quality;

(b) State Department of Agriculture;

(c) State Department of Fish and Wildlife;

(d) State Forestry Department;

(e) Department of State Lands;

(f) Water Resources Department;

(g) Department of Land Conservation and Development;

(h) State Department of Geology and Mineral Industries;

(i) Oregon Watershed Enhancement Board;

(j) Fish and Wildlife Division of the Department of State Police;

(k) Department of Transportation;

(L) State Parks and Recreation Department;

(m) Oregon Business Development Department;

(n) State Marine Board; and

(o) Any other state agency that is required to manage, allocate or protect natural resources, either as the primary responsibility of the agency or in conjunction with the primary responsibilities of the agency.

(4) In addition to the report specified under subsection (1) of this section, the Oregon Watershed Enhancement Board shall report regularly during the interim on the implementation of the Oregon Plan to the appropriate legislative committee. [Formerly 541.420]

HYDROELECTRIC PROJECTS

543.017 Minimum standards for development of hydroelectric power; public interest considerations; rules. (1) In order to carry out the policy set forth in ORS 543.015, the following minimum standards shall apply to any action of the Water Resources Commission relating to the development of hydroelectric power in Oregon:

(a) The anadromous salmon and steelhead resources of Oregon shall be preserved. The commission shall not approve activity that may result in mortality or injury to anadromous salmon and steelhead resources or loss of natural habitat of any anadromous salmon and steelhead resources except when an applicant proposes to modify an existing facility or project in such a manner that can be shown to restore, enhance or improve anadromous fish populations within that river system.

(b) Any activity related to hydroelectric development shall be consistent with the provisions of the Columbia River Basin Fish and Wildlife Program providing for the protection, mitigation and enhancement of the fish and wildlife resources of the region as adopted by the Pacific Northwest Electric Power and Conservation Planning Council pursuant to Public Law 96-501.

(c) Except as provided in this paragraph, no activity may be approved that results in a net loss of wild game fish or recreational opportunities. If a proposed activity may result in a net loss of any of the above resources, the commission may allow mitigation if the commission finds the proposed mitigation in the project vicinity is acceptable. Proposed mitigation that may result in a wild game fish population, or the fishery the wild game fish population provides, being converted to a hatchery dependent resource is not acceptable mitigation. A water dependent recreational opportunity must be mitigated by another water dependent recreational opportunity. Mitigation of water dependent recreational opportunities that, in the judgment of the commission, are of statewide significance with a recreational opportunity that is readily available on other waters of this state is not acceptable mitigation. In deciding whether mitigation is acceptable, the commission shall consult with other local, state and federal agencies.

(d) Other natural resources in the project vicinity, including water quality, wildlife,

scenic and aesthetic values, and historic, cultural and archaeological sites, shall be maintained or enhanced. No activity may be approved that, in the judgment of the commission after balancing gains and losses to all affected natural resources, may result in a net loss of natural resources. In determining whether the proposed activity may result in a net loss of natural resources, the commission may consider mitigation if the commission determines the proposed mitigation in the project vicinity is acceptable. Mitigation may include appropriate measures considered necessary to meet the net loss standard. In determining whether mitigation is acceptable, the commission shall consult with appropriate state, federal and local agencies.

(e) In determining whether it is in the public interest to allocate water for a proposed hydroelectric development, the commission shall consider present and future power needs and shall make a finding on the need for the power. For a hydroelectric project with a nominal electric generating capacity of 25 megawatts or more, the Water Resources Commission shall consider any recommendation by the Energy Facility Siting Council. The Energy Facility Siting Council's recommendation shall be based solely on information contained in the hearing record of the Water Resources Commission. The commission's order on the proposed hydroelectric development shall describe the Energy Facility Siting Council's recommendations on the need for the power. If the commission's decision on the need for power is contrary to the Energy Facility Siting Council's recommendation, the commission's order shall explain the commission's failure to follow the recommendation of the Energy Facility Siting Council. The commission also shall consult with the Energy Facility Siting Council on other matters within the expertise of the Energy Facility Siting Council.

(2) The commission shall adopt all necessary rules to carry out the policy set forth in ORS 543.015 and to implement the minimum standards set forth in subsection (1) of this section. In the absence of implementing rules, any action of the commission relating to hydroelectric development shall comply with the standards as set forth in this section.

(3) Nothing in this section limits the authority of any state agency to make recommendations regarding appropriate license conditions during the consideration of the issuance of a license or permit for an existing hydroelectric project. [1985 c.569 §3; 1993 c.544 §6; 1995 c.229 §2; 2007 c.71 §176]

543.085 Periodic review of annual fee.

(1) The Water Resources Director shall appoint a review panel to review the amount of the annual fee established under ORS 543.078 in 2003 and 2009 and every eight years thereafter. The review panel shall consist of at least one representative from the following and others at the director's discretion:

- (a) The Department of Environmental Quality;
- (b) The State Department of Fish and Wildlife;
- (c) The Public Utility Commission;
- (d) The Water Resources Department;
- (e) Investor owned utilities;
- (f) Publicly owned utilities;
- (g) Municipalities;
- (h) Environmental organizations;
- (i) Agricultural organizations; and
- (j) Nonutility owners of hydroelectric projects.

(2) All holders paying annual fees under ORS 543.078 shall be notified by the Water Resources Department at least 60 days in advance of the meeting of the review panel established in subsection (1) of this section, and provided the opportunity to submit comments to the panel.

(3) Any periodic review conducted under subsection (1) of this section shall evaluate each agency's hydroelectric program to determine if current staffing levels, activities and funding are appropriate to fulfill program objectives. There shall be a presumption that the fee should not change. To overcome the presumption and alter the existing fee, the panel must find compelling reasons for alteration and must reach unanimous consent on the new fee. If the presumption is overcome, upon completion of the review process the director shall either adjust the annual fee as recommended by the panel or elect not to adjust the fee. Any change in the annual fee as a result of this section shall become effective on the January 1 following the director's action. The director shall notify all holders of any change in the annual fee and the effective date of such change. [1999 c.873 §8]

543.265 Testing of fish protection measures as condition for hydroelectric project permit or license; scope and cost.

The Water Resources Department shall impose as a condition to any water right permit to appropriate water for hydroelectric purposes granted under ORS 537.211 or any license granted under ORS 543.260 that the person operating the hydroelectric project shall, during the operational lifetime of the

project, perform or allow the State Department of Fish and Wildlife to perform, any tests or studies required by the department to evaluate the effectiveness of measures for the protection of fish. The scope and cost of these studies will be negotiated between the State Department of Fish and Wildlife and the operator. [1985 c.674 §6; 1987 c.158 §116; 1995 c.416 §40]

REAUTHORIZATION OF HYDROELECTRIC PROJECTS

543A.025 Minimum standards for decision on reauthorization of water right; rules. (1) Following the process set forth in ORS 543A.005 to 543A.410, the Water Resources Director shall issue a water right for continued operation of an existing hydroelectric project upon a finding that the proposed use will not impair or be detrimental to the public interest, considering:

(a) Conserving the highest use of the water for all purposes, including irrigation, domestic use, municipal water supply, power development, public recreation, protection of commercial and game fishing and wildlife, fire protection, mining, industrial purposes, navigation, scenic attraction or any other beneficial use to which the water may be applied for which it may have a special value to the public.

(b) The maximum economic development of the waters involved.

(c) The control of the waters of this state for all beneficial purposes, including drainage, sanitation and flood control.

(d) The amount of waters available for appropriation for beneficial use.

(e) The prevention of wasteful, uneconomic, impracticable or unreasonable use of the waters involved.

(f) All vested and inchoate rights to the waters of this state or to the use of the waters of this state, and the means necessary to protect such rights.

(g) The state water resources policy formulated under ORS 536.295 to 536.350 and 537.505 to 537.534.

(2) In determining whether the proposed use will impair or be detrimental to the public interest, the following minimum standards shall apply:

(a) For impacts to fish and wildlife resources attributable to the project, the Water Resources Department shall require:

(A) Mitigation for:

(i) Adverse impacts that occur due to new construction or operational changes to the project; and

(ii) Ongoing adverse impacts existing at the time of reauthorization; and

(B) Appropriate measures to promote restoration and rehabilitation of fish and wildlife resources to support goals expressed in statute or in standards, plans, guidelines and policies adopted by rule by the State Fish and Wildlife Commission.

(b) All conditions included in a water right certificate issued to reauthorize the use of water for hydroelectric purposes shall be consistent with any plan adopted by the Pacific Northwest Electric Power and Conservation Planning Council for the protection, mitigation and enhancement of the fish and wildlife resources of the region.

(c) The project shall comply with water quality standards adopted by the Environmental Quality Commission.

(d) The project shall not endanger the public health and safety. The project shall be operated in a manner that provides practical protection from vulnerability to seismic and geologic hazards.

(e) Wetland resources shall be protected, maintained or enhanced. The Water Resources Department shall impose conditions on reauthorization consistent with this paragraph after considering impacts to wetland resources associated with the project, including wetlands lost or created by construction and operation of the project, and mitigation proposed by the applicant. Reauthorization that results in a net loss to existing wetland resources shall not be approved.

(f) Other resources in the project vicinity including recreational opportunities, scenic and aesthetic values, historic, cultural and archaeological sites, and botanical resources shall be protected, maintained or enhanced. The department shall impose conditions on reauthorization consistent with this paragraph after considering impacts to such resources associated with the project, including resources lost or created by construction and operation of the project, and mitigation proposed by the applicant. If the project results in a net loss to existing resources, reauthorization shall not be approved.

(3) In determining the mitigation, restoration and rehabilitation measures required under subsection (2) of this section, the Water Resources Department shall consider historic impacts, ongoing impacts and projected future impacts of the project and the existence and success of past mitigation measures associated with the project. Required mitigation, restoration and rehabilitation may include measures to restore or replace the benefits of historic resource conditions in

order to meet resource goals contained in standards, plans, guidelines and policies adopted by rule by the State Fish and Wildlife Commission and in rules adopted by other state agencies with regulatory or advisory responsibility for the project.

(4) The Water Resources Commission shall adopt all rules necessary to carry out the policy set forth in ORS 543A.020 and to implement the minimum standards set forth in subsection (2) of this section. In the absence of implementing rules, the department may act on applications for reauthorization of a project subject to the standards set forth in this section.

(5) As used in this section, "mitigation" means addressing the adverse effects of a project proposed for reauthorization by considering, in the following order of priority:

(a) Avoiding the impact altogether by not taking a certain development action or parts of that action;

(b) Minimizing impacts by limiting the degree or magnitude of the development action and its implementation;

(c) Rectifying the impact by repairing or rehabilitating the affected environment;

(d) Reducing or eliminating the impact over time by preservation or maintenance operations during the life of the development action by monitoring and taking appropriate corrective measures; and

(e) Compensating for the impact by replacing or providing comparable substitute resources or environments. [1997 c.449 §5]

543A.075 Notice of intent to apply for reauthorization of right to use water for hydroelectric purposes. (1) Each person operating an existing federally licensed project and intending to apply for reauthorization shall submit to the Water Resources Department a notice of intent to file an application for reauthorization of the water right for the project. If the person intends to seek reauthorization concurrently with federal relicensing, the notice of intent shall be submitted at the same time the person provides the information to the department under ORS 543A.071 (3). The notice of intent shall include:

(a) The name and post-office address of the applicant;

(b) The federal project number;

(c) The expiration date of the federal license and state water right for the project;

(d) An unequivocal statement of the applicant's intention to file an application for reauthorization of the state water right;

(e) The location of the project by county and stream and, when appropriate, by city or nearby city;

(f) The amount of water in cubic feet per second; and

(g) The project capacity.

(2) Upon receipt of a notice of intent under subsection (1) of this section, the department shall:

(a) Convene the Hydroelectric Application Review Team for the project. The team shall consist of representatives of the Water Resources Department, the Department of Environmental Quality and the State Department of Fish and Wildlife and may include a representative of any other agency that has regulatory or advisory responsibility for the project or a resource or hazard affected by the project.

(b) Provide public notice of the receipt of the notice of intent. The public notice shall provide the date of the public scoping meeting to be conducted under ORS 543A.085 and include a description of the hydroelectric project, the location of the project, the expiration dates of the water right for the project and the Federal Energy Regulatory Commission license for the project, and information pertaining to how an interested person may obtain future notices about the application and participate in the reauthorization process.

(3) Any person who is authorized by the Federal Energy Regulatory Commission to apply for a license for a federally licensed project may apply to reauthorize a water right for the project. The team shall process such applications under the standards and process set forth in ORS 543A.060 to 543A.300 for a federally licensed project. A nonowner applicant may obtain a water right with the priority date of the expiring water right only if the applicant submits a notice of intent within six months after the owner submits a preliminary application as described in ORS 543A.080, or within 30 days after June 30, 1997, whichever is later. [1997 c.449 §15; 1999 c.873 §16]

DRAINAGE DISTRICTS

(Drainage District Act)

547.060 Scope of Drainage District Act. As used in this chapter, "Drainage District Act" means ORS 547.005 to 547.030, 547.057, 547.105 to 547.150, 547.205 to 547.240, 547.250 to 547.265, 547.310, 547.315, 547.455 to 547.475, and 547.555 to 547.580. [Amended by 2015 c.544 §13]

**(Board of Supervisors; Administration;
Surety Bonds; Warrants)**

547.105 Election of supervisors; qualifications and terms of office; quorum for transaction of business at owners' meetings.

(1) Within 30 days after any drainage district has been organized under the provisions of the Drainage District Act, the county clerk of the county in which the petition was filed shall call a meeting of the owners of land situated in the district for the purpose of electing a board of supervisors with three or five supervisors as determined by the owners of land within the district.

(2) The county clerk shall give notice of the meeting by publication in some newspaper published in each county in which lands of the district are situated, at least 10 days before the date of the meeting.

(3) The supervisors must be owners of land in the district.

(4)(a) The owners, assembled at the place and time required by the notice, shall organize by the election of a chairperson and secretary of the meeting who shall conduct the election. Each owner is entitled to one vote in person or by proxy for each acre of land owned by the owner in the district. If an owner is a not a natural person, the owner may appoint a designee, in a writing filed with the secretary, to exercise the authority of the owner, including the voting and serving as a supervisor of the district. The designee shall serve as a representative of the owner until the designee resigns, or the owner replaces the designee, in a writing filed with the secretary.

(b) Notwithstanding paragraph (a) of this subsection, at or before the organizing meeting, an owner that is not a natural person may appoint a designee in a writing filed with the county clerk.

(5) The three or five persons receiving the highest number of votes must be declared elected as supervisors. The supervisors shall determine the terms of their offices by lot. If three supervisors are elected, the supervisors shall serve, respectively, one, two and three years. If five supervisors are elected, one supervisor shall serve one year, two supervisors shall serve two years, and two supervisors shall serve three years. The supervisors first elected shall serve until their successors are elected and qualified.

(6) At a meeting of owners, owners that represent at least a majority of the acreage in the district constitute a quorum for the transaction of district business. In a year in which a quorum of owners is not achieved at the annual meeting called under ORS 547.110, owners representing at least 35 per-

cent of the acreage in the district constitute a quorum for the annual meeting in the succeeding year. [Amended by 1959 c.379 §1; 2003 c.223 §1; 2015 c.544 §18]

547.110 Annual meeting; election of supervisors; owners entitled to vote. In the same month of each year after the election of the first board of supervisors, the board shall call a meeting of the owners of land in the district. The board shall give notice in the manner provided for in ORS 547.105. The owners shall meet at the time and place fixed by the board and elect one or two supervisors in the manner prescribed in ORS 547.105, who shall hold office for three years and until a successor is elected and qualified. However, after the report of the commissioners has been confirmed by the court under the provisions of ORS 547.235, only the owners, or the designees of the owners, of the land having benefits attributed to the land are entitled to vote at the annual meetings held under the provisions of this section. [Amended by 1969 c.669 §14; 1991 c.459 §425b; 2003 c.223 §2; 2015 c.544 §19]

INVASIVE SPECIES COUNCIL

570.755 Definition of invasive species; Invasive Species Council duties. (1) As used in this section, "invasive species" means nonnative organisms that cause economic or environmental harm and are capable of spreading to new areas of the state. "Invasive species" does not include humans, domestic livestock or nonharmful exotic organisms.

(2) The Invasive Species Council shall:

(a) Create and maintain appropriate Internet sites, toll-free telephone numbers or other means of communication for statewide use in reporting sightings of invasive species.

(b) Encourage the reporting of invasive species sightings by publicizing means of communication made available by the council under paragraph (a) of this subsection.

(c) Forward reports of invasive species sightings to appropriate agencies.

(d) Produce educational materials and press releases concerning invasive species.

(e) Conduct educational meetings and conferences.

(f) Develop a statewide plan for dealing with invasive species. The plan should include, but need not be limited to, a review of state authority to prevent the introduction of invasive species and to eradicate, contain or manage existing invasive species.

(g) Solicit proposals and review applications for grants or loans to further projects providing education about invasive species.

(h) Provide grants or loans to agencies, organizations or individuals for eradicating new invasions.

(3) The council may:

(a) Approve the expenditure of funds by the council, or any member thereof, for the production of educational materials or the presentation of educational materials.

(b) Enter into contracts and other agreements with persons, the federal government, state governments and local governments or units of federal, state or local governments or with Indian tribes, on matters pertaining to invasive species.

(c) Adopt rules or perform other acts the council considers reasonable for carrying out the powers, duties and functions of the council. [Formerly 561.685]

570.770 Invasive Species Council; membership; terms. (1) The Invasive Species Council is established within the State Department of Agriculture. The council shall consist of 18 members. The State Invasive Species Coordinator appointed under ORS 570.780 is a nonvoting ex officio member of the council. The following persons are voting ex officio members of the council:

(a) The Director of Agriculture or a designated representative.

(b) The president of Portland State University or a designated representative.

(c) The State Fish and Wildlife Director or a designated representative.

(d) The administrative head of the Sea Grant College of Oregon State University or a designated representative.

(e) The State Forester or a designated representative.

(f) The Director of the Department of Environmental Quality or a designated representative.

(g) The State Marine Director or a designated representative.

(2) The voting ex officio members of the council described in subsection (1) of this section shall collectively appoint 10 voting members to the council.

(3) The term of office of each appointed voting member is two years, but an appointed voting member serves at the pleasure of the voting ex officio members of the council. Before the expiration of a term, the voting ex officio members of the council shall appoint a successor whose term begins on January 1 next following. An appointed voting member may not serve more than two successive terms on the council. If there is a vacancy in an appointed voting member position for any cause, the voting ex officio members of the council shall make an appointment to

become immediately effective for the unexpired term.

(4) In making appointments to the council, the voting ex officio members of the council shall endeavor to appoint persons representative of the geographic, cultural and economic diversity of this state. The voting ex officio members of the council may give consideration to nominations submitted by federal and state agencies, local governments, universities, industry and other groups having an interest in invasive species.

(5) A voting appointed member of the council is not entitled to compensation under ORS 292.495. A member of the council is not entitled to reimbursement for expenses. At the discretion of the council, council members may be reimbursed from funds available to the council for actual and necessary travel and other expenses incurred by members of the council in the performance of their official duties, subject to the limits described in ORS 292.495. [Formerly 561.687; 2013 c.181 §1; 2015 c.486 §1]

570.780 Invasive Species Coordinator; administrative expenses of Invasive Species Council. (1) The Invasive Species Council shall appoint a State Invasive Species Coordinator to serve at the pleasure of the voting members of the council.

(2) The State Department of Agriculture is responsible for ensuring payment of the administrative expenses of the council. The State Department of Agriculture may enter into interagency agreements under ORS 190.110 with the State Department of Fish and Wildlife, the State Forestry Department, the Department of Environmental Quality, the State Marine Board, Portland State University and Oregon State University for sharing the administrative expenses of the council.

(3) The State Department of Agriculture shall act as the fiscal agent of the council for purposes of:

(a) Budgeting, interagency agreements for sharing administrative expenses or other mechanisms for paying the administrative and other expenses of the council;

(b) Drafting and processing contracts, other agreements, grant applications or other documents;

(c) Receiving gifts, grants, donations or other moneys on behalf of the council and ensuring the appropriate crediting of those moneys to the Invasive Species Council Account or the trust account described in ORS 570.800; and

(d) Taking all reasonable actions to ensure the council is in compliance with state financial administration laws. [Formerly 561.691; 2013 c.181 §2; 2015 c.486 §2]

CONTROL OF EXOTIC ANIMALS

609.205 Prohibitions against keeping of wild or exotic animals. Notwithstanding the provisions of ORS chapters 496, 497 and 498 relating to wildlife, and ORS 609.305 to 609.355 and 609.992 relating to exotic animals, a city or county may prohibit by ordinance the keeping of wildlife, as defined in ORS 496.004, and may prohibit by ordinance the keeping of exotic animals as defined in ORS 609.305. [1977 c.802 §3; 1985 c.437 §9]

609.305 “Exotic animal” defined. As used in ORS 609.305 to 609.355 and 609.992, “exotic animal” means:

(1) Any member of the family Felidae not indigenous to Oregon, except the species *Felis catus* (domestic cat);

(2) Any nonhuman primate;

(3) Any nonwolf member of the family Canidae not indigenous to Oregon, except the species *Canis familiaris* (domestic dog);

(4) Any bear, except the black bear (*Ursus americanus*); and

(5) Any member of the order Crocodylia. [1985 c.437 §2; 1999 c.699 §3; 2009 c.492 §1]

609.309 Policy on exotic animals. It is the policy of this state to protect the public against health and safety risks that exotic animals pose to the community, ensure the health, welfare and safety of exotic animals and ensure the security of facilities in which exotic animals are kept, so as to avoid undue physical or financial risk to the public. [1985 c.437 §1; 1999 c.699 §4; 2009 c.492 §2]

609.312 Seller to provide buyer with informational material. A person who sells an exotic animal must, prior to accepting the offer to purchase, provide the prospective purchaser of the exotic animal with informational material approved by the State Department of Agriculture regarding the care, husbandry, health and nutritional needs of the exotic animal. This section does not allow the sale of an exotic animal to a person located in this state other than an entity described in ORS 609.345. [1999 c.699 §2; 2009 c.492 §3]

609.325 Conditions for keeping exotic animal. Any person who keeps an exotic animal shall keep the animal under conditions of confinement or control that, given the nature of the animal, would be imposed by a reasonable and prudent keeper to avoid physical or financial risk to the public as a result of escape of the animal or otherwise. [1985 c.437 §4; 1999 c.699 §7]

609.329 Liability for escape or injury. (1) A keeper of an exotic animal is strictly liable for:

(a) Costs incurred by any person or city, county or state agency in attempting to remedy the animal’s escape from custody;

(b) Personal injury, property damage or similar loss directly or indirectly caused by the animal’s escape from custody, the lack of custody over the animal or efforts to remedy the animal’s escape from custody; and

(c) Personal injury directly caused by the animal while in custody.

(2) Notwithstanding subsection (1) of this section, if an injury or escape by an exotic animal is in whole or in part the result of a willful unlawful act by a person other than the keeper, the keeper’s liability for damages resulting from the escape or injury is the amount of total damages multiplied by the percentage of fault attributable to the keeper’s negligence. [1985 c.437 §5; 1999 c.699 §8]

609.335 Department rules regulating keeping of exotic animals; sanctions for rule violations. (1) The State Department of Agriculture shall adopt reasonable rules for issuing permits to keep exotic animals and establishing conditions for keeping the exotic animals. The conditions shall be directed toward ensuring the health, welfare and safety of the exotic animals and, where necessary, the security of facilities in which the exotic animals are kept so as to avoid undue physical or financial risk to the public. The rules shall be no more restrictive upon keepers of exotic animals than is reasonably necessary to carry out the purposes of ORS 609.309.

(2) The department may revoke a permit upon finding a violation of rules adopted under this section, or the department may issue a finding of violation and a warning to remedy the violation by a specified date. [1985 c.437 §7; 1999 c.699 §9; 2009 c.492 §6]

609.341 Permit requirement for keeping of exotic animal; breeding of animal. (1) A person may not keep an exotic animal in this state unless the person possesses a valid State Department of Agriculture permit for that animal issued prior to January 1, 2010, or issued as provided in ORS 609.351.

(2) Except as provided in subsection (4) of this section, a person keeping an exotic animal in this state may not breed that animal.

(3) A person may not keep an exotic animal in this state for more than 30 days after the expiration, revocation or suspension of a permit.

(4)(a) A person may breed a small exotic feline if the person:

(A) Is exempt from the requirements for a permit under ORS 609.345; or

(B) Breeds a small exotic feline with a member of the species *Felis catus* (domestic cat), and:

(i) The person has a permit issued by the State Department of Agriculture under ORS 609.351; and

(ii) The person provides written documentation, including the person's business license, that the person bred the animals for the purpose of retail sale of the offspring.

(b) As used in this subsection, "small exotic feline" means a member of the family Felidae, except the species *Felis catus* (domestic cat), that weighs 50 pounds or less when fully mature. [Formerly 609.319]

609.345 Exceptions to permit requirement. (1) The requirements for a permit in ORS 609.335 and 609.341 do not apply to the following:

(a) A wildlife rehabilitation center operated under a valid permit issued by the State Fish and Wildlife Commission pursuant to ORS 497.308.

(b) A facility operated under a valid license or research facility registration issued by the United States Department of Agriculture pursuant to the federal Animal Welfare Act of 1970 (7 U.S.C. 2133 or 2136).

(c) An exotic animal protection organization, including humane societies and animal shelters, incorporated under ORS chapter 65, that houses an exotic animal at the written request of the state or a state agency for a period not to exceed 30 days.

(d) A law enforcement agency.

(e) A licensed veterinary hospital or clinic.

(f) An educational facility that houses a member of the order Crocodylia pursuant to a written request of the state, a local government or a state agency stating the need to house the member of the order Crocodylia at the educational facility.

(g) A person or organization that takes in an exotic animal in an emergency situation but that does not otherwise qualify for an exemption under this section. The person or organization may keep the exotic animal for not more than 48 hours during which time the person or organization must make a good faith effort to contact a law enforcement agency, the State Department of Agriculture or a wildlife rehabilitation center described in paragraph (a) of this subsection.

(h) A person with a disability as defined in 42 U.S.C. 12102(2)(A) who possesses a service monkey if:

(A) The person presents, at the request of the State Department of Agriculture, written proof from a medical doctor that the

person has a disability and that the service monkey performs specific tasks for the benefit of the person with the disability;

(B) The service monkey was obtained from, and trained at, a nonprofit organization whose mission is to improve the quality of life of persons with disabilities; and

(C) The person complies with any requirements of the Americans with Disabilities Act relating to service animals.

(2) As used in subsection (1)(h) of this section, "service monkey" means a nonhuman primate of the genus *Cebus* that is trained to perform specific tasks for a person with a disability. [Formerly 609.315]

609.992 Penalties for ORS 609.319; transfer of rights in exotic animal. (1) Violation of ORS 609.341 is a Class B misdemeanor.

(2) In addition to and not in lieu of any jail sentence or fine it may impose, a court may require a defendant convicted under ORS 609.341 to forfeit any rights of the defendant in any exotic animal kept in violation thereof and to repay reasonable costs incurred by any person, city, county or state agency in caring for the animal prior to judgment.

(3) When the court orders the defendant's rights in the exotic animal to be forfeited, the court may further order that those rights be given over to an appropriate person or agency demonstrating a willingness to accept and care for the animal or to the county or an appropriate animal care agency for further disposition in accordance with accepted practices for humane treatment of animals. This subsection shall not constitute or authorize any limitation upon the right of the person or agency to whom rights are granted to resell or otherwise make disposition of the animal. A transfer of rights under this subsection constitutes a transfer of ownership. [1985 c.437 §6]

PREDATORY ANIMALS

610.002 "Predatory animals" defined.

As used in this chapter, "predatory animal" or "predatory animals" includes feral swine as defined by State Department of Agriculture rule, coyotes, rabbits, rodents and birds that are or may be destructive to agricultural crops, products and activities, but excluding game birds and other birds determined by the State Fish and Wildlife Commission to be in need of protection. [1959 c.240 §2; 1971 c.658 §29; 1977 c.136 §4; subsection (2) of 610.002 renumbered 610.003; 1979 c.399 §2; 2001 c.125 §2]

610.003 Bobcat and red fox control permitted. Notwithstanding any other provision of law, the State Department of Agriculture, after consultation with the State

Department of Fish and Wildlife, may implement bobcat and red fox control procedures as authorized under this chapter, for a specified period of time and within a specified area, if the State Department of Agriculture determines such action is necessary to protect domestic mammals or birds. [Formerly subsection (2) of 610.002; 1979 c.399 §4]

610.005 Administration of laws for destruction of predatory animals. The laws for the destruction, eradication or control of predatory animals by the state shall be administered by the State Department of Agriculture. Any sums appropriated by the legislature for such purposes shall be expended in cooperation with the United States Department of Agriculture. No part of any such appropriation shall be paid for bounties. [Amended by 1959 c.240 §3; 1989 c.750 §1]

610.010 Cooperation with United States Department of Agriculture. The State Department of Agriculture shall enter into definite cooperative agreements with the United States Department of Agriculture, prescribing the manner, terms and conditions of such cooperation and the amounts which the state and federal governments will contribute thereto. [Amended by 1959 c.240 §4; 1989 c.750 §2]

610.015 County appropriations for destruction of predatory animals. The various county courts and boards of county commissioners may appropriate out of county general funds any amount of money that, in their judgment, is necessary to be expended in cooperating with the State Department of Agriculture and with the United States Department of Agriculture in carrying out ORS 610.002 to 610.040 and 610.105. However, no county shall be called upon to appropriate any amount of money for the purpose of such sections where it is not spent within the border of the county. [Amended by 1959 c.240 §5; 1981 c.95 §2; 1989 c.750 §3]

610.020 Predatory Animal, Rabbit and Rodent Control Fund. (1) From all money received by the State Fish and Wildlife Commission from the General Fund, or from any funds eligible for the purpose set forth in subsection (2) of this section, the State Fish and Wildlife Commission shall set aside an amount of at least \$60,000 in any one calendar year in a budget fund to be known as the Predatory Animal, Rabbit and Rodent Control Fund.

(2) Such fund shall be expended by the State Fish and Wildlife Commission in cooperation with the State Department of Agriculture and the United States Department of Agriculture for the control and destruction of predatory animals, rabbits and rodents in the state. Any part of such fund remaining unexpended at the end of any calendar year

shall remain in the fund for expenditure during the succeeding year. [Amended by 1959 c.680 §1; 1989 c.750 §4; 2001 c.930 §1]

610.025 County appropriations matching state funds for control and eradication of predatory animals; gifts from private persons. (1) On presentation of a petition signed by 100 taxpayers of any county and a statement from the State Department of Agriculture to the effect that certain state funds are available for expenditure in the county where the petitioners reside, the county court may appropriate from the general fund of the county an amount of money equal to, or in excess of, the state funds available for expenditure within the county and forward such money to the State Department of Agriculture to be expended for the control and eradication of predatory animals as provided by ORS 610.030 to 610.040.

(2) The county court or board of county commissioners of any county may accept gifts and donations from private persons or associations of persons to be expended for the control and eradication of predatory animals as provided by ORS 610.025 to 610.040. Moneys received by the county under this subsection shall be forwarded to the State Department of Agriculture to be expended for the control and eradication of predatory animals as provided by ORS 610.025 to 610.040. [Amended by 1953 c.606 §4; 1965 c.485 §1]

610.030 Apportionment of money appropriated by state to eradicate animals. (1) The State Department of Agriculture shall apportion any money appropriated by the Legislative Assembly for the purpose set forth in ORS 610.025, among the counties according to the necessity for control and eradication of predatory animals and the financial cooperation received from the counties.

(2) Moneys paid or forwarded pursuant to ORS 610.025 by the county court of any county to the State Department of Agriculture, and moneys allotted by the State Department of Agriculture for expenditure within any county, hereby are appropriated continuously for and shall be expended only in the control of coyotes and other harmful predatory animals within the boundaries of the county in accordance with the terms and conditions fixed by the State Department of Agriculture and the United States Department of Agriculture, unless otherwise authorized by the county court. [Amended by 1953 c.606 §4; 1965 c.485 §2; 1989 c.750 §5; 1999 c.59 §182]

610.032 Refund of unexpended funds appropriated by county for predatory animal control. Any unexpended and unobligated funds appropriated by a county court or board of county commissioners for the de-

struction, eradication or control of predatory animals under ORS 610.015 or 610.025 may be refunded if the State Department of Agriculture finds that such funds are not necessary to carry out ORS 610.002 to 610.040 and 610.105. [1959 c.541 §2; 1981 c.95 §3]

(Predator damage control districts)

Note: Sections 1 to 8, chapter 650, Oregon Laws 2015, provide:

Sec. 1. As used in sections 1 to 7 of this 2015 Act:

(1) "Agricultural land" means land used for the production of livestock for commercial sale or land that is cultivated, planted or irrigated for the production of domestic crops.

(2) "Eligible land" means agricultural land, forestland or mixed farm and forest use land.

(3) "Eligible petitioner" means an owner of 10 or more acres of eligible land.

(4) "Forestland" has the meaning given that term in ORS 477.001.

(5) "Livestock" means cattle and other bovines, sheep, goats, horses and other domesticated animals that are raised for the purpose of providing meat or other products for human consumption or use or for other commercial sales.

(6) "Predatory animals" means animals listed in ORS 497.655 and bears, bobcats and red foxes. [2015 c.650 §1]

Sec. 2. (1)(a) Notwithstanding ORS 198.705 to 198.955, one or more predator damage control districts may be formed within a county under this section for the purpose of funding county services to prevent, reduce and mitigate damage to property from predatory animals.

(b) The governing body of a county may adopt by ordinance or resolution criteria for formation of a predator damage control district that do not conflict with the provisions of sections 1 to 7 of this 2015 Act. The criteria shall apply to predator damage control districts formed on or after the effective date of the ordinance or resolution.

(2)(a) The formation of a predator damage control district may be initiated by a petition signed by more than 50 percent of the eligible petitioners who cumulatively own more than 50 percent by area of the eligible land within the proposed predator damage control district. All signatures must bear dates that are within a single six-month period.

(b) The petition must include:

(A) The name of the proposed district;

(B) A description of the boundaries of the proposed district;

(C) The names of the petitioners, identifying the chief petitioners, and the number of acres of eligible land that each petitioner owns;

(D) A statement that the petitioners agree to pay the reasonable charges incurred in forming the district; and

(E) A statement that explains the damage to property from predatory animals occurring within the proposed district and the need for district revenue to prevent, reduce and mitigate the damage.

(3)(a) The petition must be presented for filing to the county clerk of the county in which the proposed predator damage control district is located.

(b) Within 10 days after the date on which the petition is filed, the county clerk, in consultation with the county assessor, shall determine whether the petition

meets the requirements of subsection (2) of this section. If the petition does not meet the requirements, the county clerk shall notify the chief petitioners and return the petition.

(c) If the petition meets the requirements of subsection (2) of this section, the county clerk shall file the petition, attaching to it a certificate of the county assessor stating that:

(A) The county assessor has compared the signatures of the petitioners with the appropriate records and has determined the number of eligible petitioners appearing on the petition; and

(B) The petition meets the requirements of subsection (2) of this section.

(4) After the petition has been filed, the county clerk shall set a time for a public hearing on the question of the formation of the district and, at least 15 days before the hearing and for not less than five consecutive days, shall post notice of the hearing:

(a) On the website of the county; and

(b) On or near the doors of the meeting room of the governing body of the county or on any official public bulletin board customarily used for the purpose of posting public notices pertaining to the business of the county.

(5) The governing body of the county shall hear testimony on the question of the formation of the district that is presented at the public hearing. The governing body shall make a determination whether to form the district based on the petition and the testimony. [2015 c.650 §2]

Sec. 3. (1)(a) At any time after the formation of a predator damage control district under section 2 of this 2015 Act, the advisory board appointed under section 4 of this 2015 Act may request that the governing body of the county annex to or withdraw from the district territory that is adjacent to the external boundaries of the district.

(b) The request must be accompanied by a statement of the reason for the annexation or withdrawal and the signatures of the owners of the property to be annexed or withdrawn.

(c) The governing body shall adopt the requested annexation or withdrawal of the territory if the governing body finds that the change is in the best interest of the property and the property owners in light of the purpose for which the district was formed.

(2)(a) A petition for dissolution of a predator damage control district formed under section 2 of this 2015 Act may be presented for filing with the county clerk if the petition meets the signature requirements of section 2 (2)(a) of this 2015 Act and states why the district is no longer necessary for the purpose described in section 2 (1) of this 2015 Act.

(b) The filing, notice and hearing requirements of section 2 (3) and (4) of this 2015 Act apply to a petition for dissolution of a district.

(3) The governing body of the county shall hear testimony on the question of the dissolution of the district that is presented at the public hearing. The governing body shall make a determination whether to dissolve the district based on the petition and the testimony. [2015 c.650 §3]

Sec. 4. (1)(a) Within 30 days after formation of a predator damage control district, the governing body of the county in which the district is located shall appoint an advisory board consisting of five members who reside in the district as follows:

(A) One member who owns industrial forestland located in the district;

(B) One member who owns woodlot forestland located in the district;

(C) Two members who are livestock producers in the district; and

(D) One member who owns land located in the district.

(b)(A) The term of an advisory board member is three years.

(B) Notwithstanding subparagraph (A) of this paragraph, the governing body shall assign initial terms of office to members so that the terms expire at staggered intervals.

(c) After the appointment of the first advisory board, successor advisory board members shall be appointed by majority vote of the advisory board. An advisory board member may be reappointed to successive terms of office.

(2) The advisory board:

(a) Shall conduct advisory board meetings as public meetings and meet at least annually; and

(b) May adopt rules governing the conduct of advisory board business. [2015 c.650 §4]

Sec. 5. (1) Each property tax year, the following annual charges may be incurred by a landowner with respect to land located in a predator damage control district for the purpose of paying the actual cost to the county of preventing, reducing and mitigating damage to the property from predatory animals:

(a) \$1 per acre for land described in section 6 (2) and (3) of this 2015 Act.

(b) \$25 for land described in section 6 (4) of this 2015 Act.

(2) Notwithstanding subsection (1) of this section, each year the advisory board of a predator damage control district shall consider whether the charges specified in subsection (1) of this section are sufficient to pay the cost to the county described in subsection (1) of this section and may recommend to the governing body of the county the charges as specified or greater or lesser amounts. The recommendation must be received by the county on or before a date prescribed by the county.

(3) The governing body of the county shall consider the recommended amounts of the charges and may:

(a) Amend the amounts to reflect the county's estimate of the cost described in subsection (1) of this section for the following property tax year; and

(b) Further increase or reduce the amounts to reflect a deficit or excess, respectively, in the amount of the charge for the current property tax year. [2015 c.650 §5]

Sec. 6. (1) An owner of land within a predator damage control district may incur, in accordance with the provisions of this section, an annual charge determined under section 5 of this 2015 Act.

(2)(a) An owner of land within a predator damage control district is presumed to have elected to incur the per acre charge determined under section 5 of this 2015 Act for land that is:

(A) Located outside of any incorporated city;

(B) Zoned for farm use, forest use or mixed farm and forest use; and

(C) On a tax lot of 10 or more acres.

(b) Notwithstanding paragraph (a) of this subsection, the owner may elect not to incur the charge with respect to land described in paragraph (a) of this subsection. An election under this paragraph shall apply:

(A) If made at the time the predator damage control district is formed, to the first property tax year in which charges may be incurred; or

(B) To the next following property tax year.

(c) An owner that has elected not to incur the charge pursuant to paragraph (b) of this subsection may subsequently elect to incur the charge for the next following property tax year by payment for that year of an amount equal to three times the amount of the charge determined under section 5 of this 2015 Act for that year.

(3) An owner of land within a predator damage control district that is on a tax lot of 10 or more acres but not otherwise described in subsection (2) of this section may elect to incur the per acre charge determined under section 5 of this 2015 Act.

(4) An owner of land within a predator damage control district that is on a tax lot of less than 10 acres may elect to incur the flat rate charge determined under section 5 of this 2015 Act.

(5) The predator damage control district advisory board shall prescribe annual deadlines by which the advisory board must receive notices of election made under subsections (2) to (4) of this section. [2015 c.650 §6]

Sec. 7. (1) Each year, on or before a date prescribed by the governing body of the county in which the district is located, the advisory board of a predator damage control district shall submit to the county a list showing for the following property tax year:

(a) The names of landowners that have elected to incur the charge under section 6 of this 2015 Act;

(b) The names of landowners that have elected to discontinue incurring the charge; and

(c) Each tax account for which a charge has been incurred, the size of the tax lot and whether the charge is the per acre charge or the flat rate charge.

(2)(a) The governing body of the county shall certify the information submitted by all advisory boards for predator damage control districts within the county and the amount of the charges determined under section 5 of this 2015 Act to the county assessor.

(b) The charges shall be entered upon the tax rolls of the county and be collected and accounted for in the same manner in which county taxes are collected and accounted for.

(c) A charge does not give rise to a lien on the property for which the charge is incurred.

(3) The county may not provide services to prevent, reduce or mitigate damage from predatory animals to property within a predator damage control district for any period during which:

(a) The owner has elected not to incur the applicable charge for the services; or

(b) The charge remains delinquent. [2015 c.650 §7]

Sec. 8. Sections 1 to 7 of this 2015 Act are repealed January 2, 2022. [2015 c.650 §8]

610.035 Employment of hunters and trappers; cooperation with United States Department of Agriculture. (1) The State Department of Agriculture may employ hunters and expert trappers throughout the state for the purpose of controlling and eradicating coyotes and other harmful predatory animals. The department may also provide funds for administrative purposes in connection with predatory animal control and eradication.

(2) For the purpose of carrying on this work the department shall enter into contracts with the United States Department of Agriculture in order to prevent duplication, secure proper administration and enlist the

financial support of the federal government.
[Amended by 1989 c.750 §6]

610.040 Money from sale of skins.

Money received by the State Department of Agriculture from the sale of skins shall be paid into the State Treasury and expended in the county from which the skins were taken, in the control and eradication of predatory animals.

610.045 Keeping coyotes in captivity.

Coyotes shall not be kept in captivity except in public parks or zoos or in compliance with the terms and conditions of a permit issued pursuant to ORS 497.308 and 497.312. The justice court and circuit court have concurrent jurisdiction of any violation of this section. [Amended by 1977 c.247 §3]

610.050 Theft of animal control device or animal caught by device. (1) No person shall steal, take or molest a trap, poison bait station, coyote getter or other device which is operated, possessed or controlled by an employee of a county, state or federal government for the purpose of the eradication of noxious or predatory animals.

(2) No person shall steal, take or molest any noxious or predatory animal captured or killed by any such device described in subsection (1) of this section. [1959 c.299 §2(1),(2)]

610.055 Findings on wildlife damage.

The Legislative Assembly finds and declares that it is the policy of this state that:

(1) Appropriate measures must be taken to assist farmers, ranchers and others in resolving wildlife damage problems; and

(2) Federal, state, county and other local governments involved in wildlife damage control should mutually cooperate in their related efforts. [2001 c.792 §1]

610.060 Effect of certain wildlife law provisions on predatory animal control.

Nothing in the wildlife laws is intended to deny the right of any person to control predatory animals as provided in ORS 610.105. [1971 c.658 §28; 1973 c.723 §126; 1975 c.214 §2; 1975 c.791 §3]

610.105 Authority to control noxious rodents or predatory animals. Any person owning, leasing, occupying, possessing or having charge of or dominion over any land, place, building, structure, wharf, pier or dock which is infested with ground squirrels and other noxious rodents or predatory animals, as soon as their presence comes to the knowledge of the person, may, or the agent of the person may, proceed immediately and continue in good faith to control them by poisoning, trapping or other appropriate and effective means. [Amended by 1971 c.658 §30]

610.150 Wolf predation loss compensation program; county qualification; rules; report. (1) As used in this section:

(a) "Livestock" means ratices, psittacines, horses, mules, jackasses, cattle, llamas, alpacas, sheep, goats, swine, bison, domesticated fowl and any fur-bearing animal bred and maintained commercially, or otherwise, within pens, cages or hutches.

(b) "Working dog" means any animal of the species *Canis familiaris* used to aid in the herding or guarding of livestock.

(2) The State Department of Agriculture shall establish and implement a wolf depredation compensation and financial assistance grant program, using moneys in the Wolf Management Compensation and Proactive Trust Fund established under ORS 610.155, to provide grants to assist counties to implement county programs under which:

(a) Compensation is paid to persons who suffer loss or injury to livestock or working dogs due to wolf depredation; and

(b) Financial assistance is provided to persons who implement livestock management techniques or nonlethal wolf deterrence techniques designed to discourage wolf depredation of livestock.

(3) Subject to available funding in the Wolf Management Compensation and Proactive Trust Fund established under ORS 610.155, a county qualifies for a grant under the wolf depredation compensation and financial assistance grant program if the county:

(a) Establishes a county program to:

(A) Compensate persons who suffer loss or injury to livestock or working dogs due to wolf depredation; and

(B) Provide financial assistance to persons who implement livestock management techniques or nonlethal wolf deterrence techniques designed to discourage wolf depredation of livestock.

(b) Contributes an amount of moneys equal to 10 percent of the amount necessary to implement, during the calendar year, the county program.

(c) Establishes a procedure by which persons applying for compensation under the county program provide evidence of the loss or injury to livestock or working dogs due to wolf depredation. Evidence of the loss or injury must include a finding by the State Department of Fish and Wildlife or the department's designated agent that wolf depredation was the probable cause of the loss or injury.

(d) Establishes a county advisory committee to oversee the county program, consisting of one county commissioner, two

members who own or manage livestock and two members who support wolf conservation or coexistence with wolves. The county advisory committee, once established by the county, shall agree upon two county business representatives to serve as additional county advisory committee members.

(e) Establishes a procedure by which persons applying for financial assistance under the county program provide an estimate of the potential cost of the livestock management techniques or nonlethal wolf deterrence techniques designed to discourage wolf depredation.

(4) In accordance with the Oregon Wolf Conservation and Management Plan, the Director of Agriculture shall adopt rules to implement the provisions of this section, including but not limited to rules that:

(a) Require that livestock owners and managers experiencing above-normal loss or injury to livestock or working dogs due to wolf depredation be given priority by counties for grant moneys received under the wolf depredation compensation and financial assistance grant program.

(b) Require counties participating in the wolf depredation compensation and financial assistance grant program to:

(A) Prepare an annual report that specifies the actions taken by, and compensation paid and financial assistance provided to, counties under the wolf depredation compensation and financial assistance grant program;

(B) Distribute grant program funds, to the extent possible, in an equal and balanced manner between payments to compensate for loss or injury to livestock or working dogs due to wolf depredation and payments to implement livestock management techniques or nonlethal wolf deterrence techniques designed to discourage wolf depredation of livestock, with a minimum of 30 percent of grant program funds being distributed for livestock management techniques or nonlethal wolf deterrence techniques designed to discourage wolf depredation of livestock; and

(C) Establish compensation rates for loss or injury to livestock or working dogs due to wolf depredation that are based on fair market value and the recommendation of the county advisory committee described in subsection (3)(d) of this section.

(c) Establish eligibility requirements for compensation under county programs that ensure, contingent upon available funds, that:

(A) Outside an area of known wolf activity, as designated by the State Department of Fish and Wildlife, confirmed loss or injury to livestock or working dogs shall be com-

pensated regardless of the preexistence of wolf deterrence techniques;

(B) Within an area of known wolf activity, as designated by the State Department of Fish and Wildlife, confirmed loss or injury to livestock or working dogs, as well as missing livestock above the level based on loss or injury attributable to causes other than wolf depredation established by the county advisory committee described in subsection (3)(d) of this section, shall be compensable if owners have demonstrated implementation of best management practices to deter wolves, including reasonable use of nonlethal methods when practicable, giving priority for compensation of confirmed losses at fair market value and with other compensation claims determined according to the recommendation of the county advisory committee; and

(C) Any compensation for loss or injury to livestock or working dogs due to wolf depredation is based upon a finding by the local advisory committee that the person did not unreasonably or purposefully create circumstances that attract wolves or encourage conflict between wolves and livestock or working dogs.

(5) Each biennium the State Department of Agriculture shall prepare a report that specifies the actions taken by counties, compensation paid by counties and financial assistance provided to counties under the wolf depredation compensation and financial assistance grant program, and shall submit the report to the Legislative Assembly and post the report on the department's website for public access.

(6) The State Department of Agriculture may use moneys in the Wolf Management Compensation and Proactive Trust Fund established under ORS 610.155 to pay expenses incurred in administering the wolf depredation compensation and financial assistance grant program. [2011 c.690 §1]

610.155 Wolf Management Compensation and Proactive Trust Fund. (1) The Wolf Management Compensation and Proactive Trust Fund is established separate and distinct from the General Fund. Interest earned on the moneys in the Wolf Management Compensation and Proactive Trust Fund shall be credited to the fund. All moneys in the fund are continuously appropriated to the State Department of Agriculture for the purpose of establishing and implementing the wolf depredation compensation and financial assistance grant program described in ORS 610.150.

(2) The fund shall consist of moneys appropriated by the Legislative Assembly for the purposes of the fund and any gifts,

grants, donations, endowments or bequests from any public or private source. The State Department of Agriculture may seek out and receive any gifts, grants, donations, endowments or bequests for the purpose of establishing and implementing the wolf depredation compensation and financial assistance grant program described in ORS 610.150. The department shall deposit such moneys into the fund. [2011 c.690 §2]

610.990 Penalties. (1) Violation of ORS 610.045 is a Class A violation.

(2) Violation of ORS 610.050 is a Class A misdemeanor. [Amended by 1959 c.299 §3; subsection (2) enacted as 1959 c.299 §2(3); 1971 c.743 §401; 1981 c.95 §4; 1999 c.1051 §209; 2011 c.597 §251]

SHELLFISH: OYSTERS, CLAMS AND MUSSELS

622.270 Reports of cultivators. (1) Any person cultivating oysters, clams or mussels on public or private land in this state shall file an annual report with the State Department of Agriculture before March 1 of each year showing the number of gallons, bushels or dozens of each species of oysters, or the number of pounds of each species of clams or mussels harvested by the person during the preceding calendar year. The report shall be made on forms provided by the department.

(2) Individually identifiable information procured by or furnished to the department in connection with obtaining data under this section is a trade secret under ORS 192.501 and is not subject to public disclosure under ORS 192.410 to 192.505. The department may use and disclose the information in aggregated form. [Formerly 509.436; 1997 c.375 §5; 2015 c.814 §2]

622.310 Effect on prior-acquired rights. Except as required in ORS 622.270 for production reporting, nothing in ORS 506.036 and 622.210 to 622.310 affects any oyster cultivation right acquired prior to January 1, 1982, pursuant to chapter 675, Oregon Laws 1969. [1981 c.638 §12; 2015 c.814 §3]

622.330 Private oyster beds acquired under prior law not affected. Except as required in ORS 622.270 for production reporting, nothing in ORS 509.505, 511.625, 622.210 to 622.300 and 622.320 interferes with any rights in, or ownership of, any private plantations of oysters or oyster beds acquired or held under law existing on February 17, 1921. [Formerly 509.470; 2015 c.814 §4]

SALMON REGISTRATION PLATE

805.256 Disposition of moneys from salmon registration plate surcharge. (1) After deduction of the cost of administration of the salmon registration plate program, moneys from the surcharge imposed by ORS 805.255 shall be transferred and appropriated as follows:

(a) Half of the moneys shall be transferred to the Watershed Conservation Grant Fund and used only for funding projects under ORS 541.956 to:

(A) Protect or restore native salmon habitat; or

(B) Restore natural watershed or ecosystem functions by removing artificial obstructions to native salmon migration.

(b) Half of the moneys shall be transferred to the State Parks and Recreation Department Fund established under ORS 390.134 and continuously appropriated for the purposes described in ORS 390.134 (4).

(2) As used in this section, "the cost of administration of the salmon registration plate program" is the sum of all Department of Transportation expenses for the issuance or transfer of salmon registration plates under ORS 805.255 that are above the normal costs of issuing, renewing and transferring registration plates in the normal course of the business of the department. These expenses include, but are not limited to, the costs of collecting the salmon registration plate surcharge and transferring salmon registration plates. [1997 c.672 §7; 2003 c.14 §465; 2009 c.21 §37; 2011 c.643 §19; 2015 c.742 §1]

PROHIBITION ON CARRYING FIREARM OR BOW WHILE OPERATING SNOWMOBILE OR ALL-TERRAIN VEHICLE

821.240 Operating snowmobile or all-terrain vehicle while carrying firearm or bow; exemptions; penalty. (1) A person commits the offense of operating a snowmobile or an all-terrain vehicle while carrying a firearm or bow if the person operates any snowmobile or all-terrain vehicle with a firearm in the possession of the person, unless the firearm is unloaded, or with a bow, unless all arrows are in a quiver.

(2) Subsection (1) of this section does not apply to:

(a) A person who is licensed under ORS 166.291 and 166.292 to carry a concealed handgun;

(b) A law enforcement officer; or

(c) An honorably retired law enforcement officer, unless the person who is a retired law enforcement officer has been convicted of an offense that would make the person

ineligible to obtain a concealed handgun license under ORS 166.291 and 166.292.

(3) As used in this section, “unloaded” means:

(a) If the firearm is a revolver, that there is no live cartridge in the chamber that is aligned with the hammer of the revolver;

(b) If the firearm is a muzzle-loading firearm, that the firearm is not capped or primed; or

(c) If the firearm is other than a revolver or a muzzle-loading firearm, that there is no live cartridge in the chamber.

(4) The offense described in this section, operating a snowmobile or an all-terrain vehicle while carrying a firearm or bow, is a Class B traffic violation. [1983 c.338 §729; 1985 c.393 §45; 1985 c.459 §31a; 1987 c.587 §14; 1989 c.991 §15a; 1991 c.589 §1; 2011 c.662 §6; 2015 c.709 §6]

AQUATIC INVASIVE SPECIES PREVENTION

(Generally)

830.560 Launching boat with aquatic invasive species prohibited; rules. (1) As used in this section:

(a) “Aquatic invasive species” means any aquatic life or marine life determined by the State Fish and Wildlife Commission by rule to be invasive or any aquatic noxious weed determined by the State Department of Agriculture to be invasive.

(b) “Launch” means any act that places a boat into a waterway for recreational boating, for flushing or testing an engine or for any other purpose.

(2) Except as provided in subsection (3) of this section, a person may not launch a boat into the waters of this state if:

(a) The boat has any visible aquatic species on its exterior hull or attached to any motor, propulsion system or component, anchor or other attached apparatus outside of the hull, or on the trailer or other device used to transport the boat; or

(b) The boat has any aquatic invasive species within its bilge, livewell, motorwell or other interior location.

(3) The State Fish and Wildlife Commission, in consultation with the State Department of Agriculture, by rule may allow the presence of certain aquatic species on or within a boat for activities including but not limited to hunting and photography.

(4) The State Marine Board shall provide information to the public about any rules adopted under subsection (3) of this section. [2009 c.303 §2]

(Permits)

830.565 Permit required. (1) A person may not operate a manually propelled boat that is 10 feet or more in length or a motorboat on the waters of this state without first obtaining an aquatic invasive species prevention permit from the State Marine Board under ORS 830.570.

(2) A person who obtains an aquatic invasive species prevention permit for a manually propelled boat may use the permit on any manually propelled boat the person operates on the waters of this state. [2009 c.764 §7]

830.570 Board to issue permit; fees. (1) The State Marine Board shall issue and renew an aquatic invasive species prevention permit to a person who pays the fee for the permit described in ORS 830.575.

(2) The board may appoint agents to issue aquatic invasive species prevention permits.

(3) Agents shall issue permits in accordance with procedures prescribed by the board by rule and shall charge and collect the aquatic invasive species prevention permit fees prescribed by law.

(4) The board may authorize an agent other than a board employee to charge a service fee of \$2, in addition to the permit fee, for the issuance service performed by the agent.

(5) The board shall supply the agents with motorboat and manually propelled boat aquatic invasive species prevention permits. [2009 c.764 §8]

830.575 Fees for permit. Notwithstanding ORS 830.790 (3), fees for issuance and renewal of an aquatic invasive species prevention permit are as follows:

(1) The biennial fee for a motorboat issued a certificate of number under ORS 830.795 is \$5.

(2) The annual fee for a manually propelled boat 10 feet or more in length is \$5.

(3) The annual fee for a motorboat operated by a nonresident is \$20.

(4) The annual fee for an operator of a boat livery is:

(a) \$30 for an operator who owns 6 to 10 manually propelled boats;

(b) \$55 for an operator who owns 11 to 20 manually propelled boats; or

(c) \$100 for an operator who owns 21 or more manually propelled boats. [2009 c.764 §9]

830.580 Rules; contracting services. (1) The State Marine Board shall adopt rules for the implementation and administration of ORS 830.565 to 830.575, including but not

limited to the exemption of certain boats from the requirements of ORS 830.565.

(2) Nothing in ORS 830.565 to 830.575 prevents the board from contracting any service provided under ORS 830.565 to 830.575 to any private person or entity or other unit of government. [2009 c.764 §10]

830.585 Aquatic Invasive Species Prevention Fund. The Aquatic Invasive Species Prevention Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Aquatic Invasive Species Prevention Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the State Marine Board for the purpose of administering the aquatic invasive species prevention permit program under ORS 830.565 to 830.575 and preventing and controlling aquatic invasive species. [2009 c.764 §11]

(Prevention Efforts)

830.587 Definitions for ORS 830.589, 830.594 and 830.999. As used in ORS 830.589, 830.594 and 830.999:

(1) "Aquatic invasive species" means any aquatic species of wildlife or any freshwater or marine invertebrate, as specified by the State Fish and Wildlife Commission by rule, or any aquatic noxious weeds as specified by the State Department of Agriculture by rule.

(2) "Recreational or commercial watercraft" means any boat, any equipment used to transport a boat and any auxiliary equipment for a boat, including but not limited to attached or detached outboard motors. [Formerly 570.850]

830.589 Watercraft check stations; rules. (1) The State Department of Fish and Wildlife, the State Marine Board or the State Department of Agriculture may require a person transporting a recreational or commercial watercraft to stop at a check station to inspect the watercraft for the presence of aquatic invasive species. The purpose of the administrative search authorized under this section is to prevent and limit the spread of aquatic invasive species within Oregon.

(2) The State Department of Fish and Wildlife, the State Marine Board or the State Department of Agriculture may decontaminate, or recommend decontamination of, any recreational or commercial watercraft that the agency inspects at a check station operated under authority of this section.

(3) All check stations operated under authority of this section must be plainly marked by signs that comply with all state and federal laws and must be staffed by at least one uniformed employee of the State Department of Fish and Wildlife, the State Marine Board or the State Department of

Agriculture trained in inspection and decontamination of recreational or commercial watercraft.

(4) An agency that operates a check station under this section shall require all persons transporting recreational or commercial watercraft to stop at the check station, and the agency shall inspect every recreational or commercial watercraft that goes through the check station.

(5) Notwithstanding ORS 496.992, a person transporting a recreational or commercial watercraft who stops at a check station for inspection and who cooperates in the decontamination process is not subject to criminal sanctions for possessing or transporting aquatic invasive species.

(6) The State Department of Fish and Wildlife, the State Marine Board and the State Department of Agriculture may adopt rules to carry out the provisions of this section. [Formerly 570.855]

830.594 Report of prevention efforts.

(1) The State Department of Fish and Wildlife, after consultation with the State Marine Board, the State Department of Agriculture and the Department of State Police, shall report biennially to the Legislative Assembly on efforts to prevent aquatic invasive species from entering this state and may include in the report suggested legislation necessary to more effectively prevent aquatic invasive species from entering this state.

(2) Reports to the Legislative Assembly required under this section must be made in accordance with ORS 192.245. [Formerly 570.860]

(Penalties)

830.990 Penalties. (1)(a) Violation of ORS 830.565 by a person operating a manually propelled boat is a Class D violation. Notwithstanding ORS 153.019, the presumptive fine for a violation of ORS 830.565 by a person operating a manually propelled boat is \$30.

(b) Violation of ORS 830.565 by a person operating a motorboat is a Class D violation. Notwithstanding ORS 153.019, the presumptive fine for a violation of ORS 830.565 by a person operating a motorboat is \$50.

(2) A person who violates ORS 830.050, 830.088, 830.090, 830.092, 830.094, 830.230, 830.415, 830.710, 830.720, 830.770, 830.780, 830.810, 830.850 or 830.855, or rules adopted to carry out the purposes of those statutes, commits a Class D violation.

(3) A person who violates ORS 830.220, 830.240, 830.245, 830.250, 830.375, 830.475 (4), 830.480, 830.785, 830.805 or 830.825, or rules adopted to carry out the purposes of those statutes, commits a Class C violation.

(4) A person who violates ORS 830.110, 830.175, 830.180, 830.185, 830.187, 830.195, 830.210, 830.215, 830.225, 830.235, 830.260, 830.300, 830.315 (2) and (3), 830.335, 830.340, 830.345, 830.350, 830.355, 830.360, 830.362, 830.365, 830.370, 830.410, 830.420, 830.495, 830.560, 830.775, 830.795 or 830.830, or rules adopted to carry out the purposes of those statutes, commits a Class B violation.

(5) A person who violates ORS 830.305 or 830.390, or rules adopted to carry out the purposes of those statutes, commits a Class A violation.

(6) A person who violates ORS 830.383 commits a Class B misdemeanor.

(7) A person who violates ORS 830.035 (2), 830.053, 830.315 (1), 830.325, 830.475 (1), 830.730 or 830.955 (1) commits a Class A misdemeanor.

(8) A person who violates ORS 830.475 (2) commits a Class C felony.

(9) A person who violates ORS 830.944 commits a Class A violation. [Formerly 488.991; 1991 c.759 §7; 1997 c.74 §2; 1997 c.568 §5; 1997 c.737 §6; 1999 c.550 §4; 1999 c.692 §12; 1999 c.716 §13a; 1999 c.1051 §95; 2003 c.157 §1; 2005 c.299 §3; 2009 c.303 §3; 2009 c.764 §12; 2011 c.381 §1; 2011 c.597 §329; 2013 c.1 §97; 2013 c.186 §4; 2013 c.680 §17; 2015 c.27 §63]

830.999 Penalty for transporting aquatic invasive species; exceptions; use of penalty moneys; rules. (1) A person is subject to a civil penalty in an amount to be determined by the State Fish and Wildlife Director of not more than \$6,250 if the person knowingly transports aquatic invasive species on or in a recreational or commercial watercraft. A second or subsequent violation of this subsection within a five-year period shall result in a civil penalty in an amount not less than \$5,000 and not more than \$15,000.

(2) Subsection (1) of this section does not apply to:

(a) A person who transports aquatic invasive species in ballast water.

(b) A person who complies with all instructions for the proper decontamination of the recreational or commercial watercraft given by an employee authorized under ORS 830.589 (1) to inspect recreational or commercial watercraft.

(c) A person who transports aquatic invasive species to the State Department of Fish and Wildlife or the State Department of Agriculture, or to another destination designated by the State Fish and Wildlife Commission by rule, in a manner designated by the commission for purposes of identifying or reporting an aquatic invasive species.

(3) The civil penalties authorized in this section shall be imposed as provided in ORS

183.745. Any civil penalty recovered under this section shall be deposited in the State Wildlife Fund. The commission by rule shall adopt the formula the State Fish and Wildlife Director shall use in determining the amount of civil penalties under this section. [Formerly 570.865]

UNMANNED AIRCRAFT SYSTEMS (Definitions)

837.300 Definitions. As used in ORS 837.300 to 837.390 and 837.995:

(1) “Unmanned aircraft system” means an unmanned flying machine, commonly known as a drone. “Unmanned aircraft system” does not include a model aircraft as defined in section 336 of the FAA Modernization and Reform Act of 2012 (P.L. 112-95) as in effect on July 29, 2013.

(2) “Law enforcement agency” means an agency that employs police officers, as defined in ORS 133.525, or that prosecutes offenses.

(3) “Public body” has the meaning given that term in ORS 174.109.

(4) “Warrant” means a warrant issued under ORS 133.525 to 133.703. [2013 c.686 §1; 2015 c.315 §1]

(Use of Unmanned Aircraft Systems by Law Enforcement Agencies)

837.320 Authorized use upon issuance of warrant; exigent circumstances. (1) A law enforcement agency may operate an unmanned aircraft system, acquire information through the operation of an unmanned aircraft system, or disclose information acquired through the operation of an unmanned aircraft system, if:

(a) A warrant is issued authorizing use of an unmanned aircraft system; or

(b) The law enforcement agency has probable cause to believe that a person has committed a crime, is committing a crime or is about to commit a crime, and exigent circumstances exist that make it unreasonable for the law enforcement agency to obtain a warrant authorizing use of an unmanned aircraft system.

(2) A warrant authorizing the use of an unmanned aircraft system must specify the period for which operation of the unmanned aircraft system is authorized. In no event may a warrant provide for the operation of an unmanned aircraft system for a period of more than 30 days. Upon motion and good cause shown, a court may renew a warrant after the expiration of the 30-day period. [2013 c.686 §3; 2015 c.315 §3]

837.335 Search and rescue; use in emergencies. (1) A law enforcement agency may operate an unmanned aircraft system, acquire information through the operation of an unmanned aircraft system, or disclose information acquired through the operation of an unmanned aircraft system, for the purpose of search and rescue activities, as defined in ORS 404.200.

(2) A law enforcement agency may operate an unmanned aircraft system, acquire information through the operation of an unmanned aircraft system, or disclose information acquired through the operation of an unmanned aircraft system, for the purpose of assisting an individual in an emergency if:

(a) The law enforcement agency reasonably believes that there is an imminent threat to the life or safety of the individual, and documents the factual basis for that belief; and

(b) Not more than 48 hours after the emergency operation begins, an official of the law enforcement agency files a sworn statement with the circuit court that describes the nature of the emergency and the need for use of an unmanned aircraft system.

(3) A law enforcement agency may operate an unmanned aircraft system, acquire information through the operation of an unmanned aircraft system, or disclose information acquired through the operation of an unmanned aircraft system, during a state of emergency that is declared by the Governor under ORS chapter 401 if:

(a) The unmanned aircraft system is used only for the purposes of preserving public safety, protecting property or conducting surveillance for the assessment and evaluation of environmental or weather related damage, erosion or contamination; and

(b) The unmanned aircraft system is operated only in the geographical area specified in a proclamation pursuant to ORS 401.165 (5). [2013 c.686 §5; 2015 c.315 §5]

837.340 Criminal investigations. (1) A law enforcement agency may operate an unmanned aircraft system, acquire information through the operation of an unmanned aircraft system, or disclose information acquired through the operation of an unmanned aircraft system, for the purpose of reconstruction of a specific crime scene, or similar physical assessment, related to a specific criminal investigation.

(2) The period that a law enforcement agency may operate an unmanned aircraft system under this section may not exceed five days for the purpose of reconstruction of a specific crime scene, or similar physical

assessment, related to a specific criminal investigation. [2013 c.686 §6; 2015 c.315 §6]

837.345 Training. (1) A law enforcement agency may operate an unmanned aircraft system for the purpose of training in:

(a) The use of unmanned aircraft systems; and

(b) The acquisition of information through the operation of an unmanned aircraft system.

(2) Any image or other information that is acquired through the use of an unmanned aircraft system by a law enforcement agency under this section, and any evidence derived from that image or information:

(a) Is not admissible in, and may not be disclosed in, a judicial proceeding, administrative proceeding, arbitration proceeding or other adjudicatory proceeding; and

(b) May not be used to establish reasonable suspicion or probable cause to believe that an offense has been committed. [2013 c.686 §7; 2015 c.315 §7]

(Public Bodies)

837.360 Restrictions; civil penalties; registration; fees; rules. (1) A public body may not operate an unmanned aircraft system in the airspace over this state without registering the unmanned aircraft system with the Oregon Department of Aviation.

(2) The Oregon Department of Aviation may impose a civil penalty of up to \$10,000 against a public body that violates subsection (1) of this section.

(3) Evidence obtained by a public body through the use of an unmanned aircraft system in violation of subsection (1) of this section is not admissible in any judicial or administrative proceeding and may not be used to establish reasonable suspicion or probable cause to believe that an offense has been committed.

(4) The Oregon Department of Aviation shall establish a registry of unmanned aircraft systems operated by public bodies and may charge a fee sufficient to reimburse the department for the maintenance of the registry.

(5) The Oregon Department of Aviation shall require the following information for registration of an unmanned aircraft system:

(a) The name of the public body that owns or operates the unmanned aircraft system.

(b) The name and contact information of the individuals who operate the unmanned aircraft system.

(c) Identifying information for the unmanned aircraft system as required by the department by rule.

(6) A public body that registers one or more unmanned aircraft systems under this section shall provide an annual report to the Oregon Department of Aviation that summarizes:

(a) The frequency of use of the unmanned aircraft systems by the public body during the preceding calendar year; and

(b) The purposes for which the unmanned aircraft systems have been used by the public body during the preceding calendar year.

(7) The State Aviation Board may adopt all rules necessary for the registration of unmanned aircraft systems in Oregon that are consistent with federal laws and regulations. [2013 c.686 §8; 2015 c.315 §8]

837.365 Weaponized unmanned aircraft systems. A public body may not operate an unmanned aircraft system that is capable of firing a bullet or other projectile, directing a laser or otherwise being used as a weapon. [2013 c.686 §10; 2015 c.315 §9]

(Civil Remedies)

837.375 Interference with an unmanned aircraft system; unauthorized control. In addition to any other remedies allowed by law, a person who intentionally interferes with, or gains unauthorized control over, an unmanned aircraft system licensed by the Federal Aviation Administration, or operated by the Armed Forces of the United States as defined in ORS 352.313, an agency of the United States or a federal, state or local law enforcement agency, is liable to the owner of the unmanned aircraft system in an amount of not less than \$5,000. The court shall award reasonable attorney fees to a prevailing plaintiff in an action under this section. [2013 c.686 §14; 2015 c.315 §10]

837.380 Owners of real property; Attorney General. (1) Except as provided in subsection (2) of this section, a person who owns or lawfully occupies real property in this state may bring an action against any person or public body that operates an unmanned aircraft system that is flown over the property if:

(a) The operator of the unmanned aircraft system has flown the unmanned aircraft system over the property on at least one previous occasion; and

(b) The person notified the owner or operator of the unmanned aircraft system that the person did not want the unmanned aircraft system flown over the property.

(2) A person may not bring an action under this section if:

(a) The unmanned aircraft system is lawfully in the flight path for landing at an airport, airfield or runway; and

(b) The unmanned aircraft system is in the process of taking off or landing.

(3) A prevailing plaintiff may recover treble damages for any injury to the person or the property by reason of a trespass by an unmanned aircraft system as described in this section, and may be awarded injunctive relief in the action.

(4) A prevailing plaintiff may recover attorney fees under ORS 20.080 if the amount pleaded in an action under this section is \$10,000 or less.

(5) The Attorney General, on behalf of the State of Oregon, may bring an action or claim for relief alleging nuisance or trespass arising from the operation of an unmanned aircraft system in the airspace over this state. A court shall award reasonable attorney fees to the Attorney General if the Attorney General prevails in an action under this section. [2013 c.686 §15; 2015 c.315 §11]

(Preemption)

837.385 Preemption of local laws regulating unmanned aircraft systems. Except as expressly authorized by state statute, the authority to regulate the ownership or operation of unmanned aircraft systems is vested solely in the Legislative Assembly. Except as expressly authorized by state statute, a local government, as defined ORS 174.116, may not enact an ordinance or resolution that regulates the ownership or operation of unmanned aircraft systems or otherwise engage in the regulation of the ownership or operation of unmanned aircraft systems. [2013 c.686 §17; 2015 c.315 §12]

(Penalties)

837.990 Penalties. (1) Except as otherwise provided in this section and subject to ORS 153.022, a person commits a Class A violation if the person violates any provision of this chapter or any rule adopted, or order issued, under this chapter.

(2) The offense described in ORS 837.080, prohibited operation of an aircraft, is a Class B misdemeanor. [Formerly 493.991; 1999 c.1051 §115; 2005 c.75 §5; 2007 c.71 §248]

837.995 Crimes involving unmanned aircraft systems; penalties. (1) A person commits a Class A felony if the person possesses or controls an unmanned aircraft system and intentionally causes, or attempts to cause, the unmanned aircraft system to:

(a) Fire a bullet or other projectile at an aircraft while the aircraft is in the air;

(b) Direct a laser at an aircraft while the aircraft is in the air; or

(c) Crash into an aircraft while the aircraft is in the air.

(2) A person who intentionally interferes with, or gains unauthorized control over, an unmanned aircraft system licensed by the Federal Aviation Administration, or operated by the Armed Forces of the United States as defined in ORS 352.313, an agency of the United States or a federal, state or local law enforcement agency, commits a Class C felony. [2013 c.686 §13; 2015 c.315 §13]

837.998 Civil penalties. (1) Except as provided in subsection (2) of this section, in addition to any other penalty provided by law, the Director of the Oregon Department of Aviation may impose a civil penalty not to exceed \$720 for each violation of any provision of this chapter or any rule adopted, or order issued, under this chapter.

(2) The director may impose a civil penalty not to exceed \$2,500 for violation of ORS 837.080 or any rule adopted, or order issued, under this chapter to enforce ORS 837.080.

(3) The director shall impose civil penalties under this section in the manner provided in ORS 183.745. [2013 c.403 §2]

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