Chapter 196

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Columbia River Gorge; Ocean Resource Planning; Wetlands; Removal and Fill

COLUMBIA RIVER GORGE

196.105 Definitions for ORS 196.105 to 196.125

196.107 Legislative findings on management plan; effect of plan on land use decisions; decertification of plan

196.109 Effect of revision of urban area boundaries within scenic area on management plan

196.110 Land use regulation in Columbia River Gorge National Scenic Area

196.115 Appeal from decision of Columbia River Gorge Commission or county

196.120 Exercise of eminent domain; property value

196.125 Buffer by regulation around Columbia River Gorge National Scenic Area prohibited

COLUMBIA RIVER GORGE COMPACT

196.150 Compact provisions

196.155 Authority for state officers and agencies to carry out duties under compact

196.160 Membership on Columbia River Gorge Commission

196.165 Status of commission employees for purposes of certain benefits

PACIFIC OCEAN RESOURCES COMPACT

196.175 Pacific Ocean Resources Compact ratified

196.180 Compact provisions

196.185 Representation on compact

OREGON OCEAN RESOURCES MANAGEMENT

196.405 Definitions for ORS 196.405 to 196.515

196.407 Policy

196.408 Duties of state agencies

196.410 Legislative findings for offshore oil and gas leasing

196.415 Legislative findings for ocean resources management

196.420 Policy

196.425 Oregon Ocean Resources Management Program

196.435 Primary agency for certain federal purposes; restrictions

196.438 Ocean Policy Advisory Council; members; term of office; quorum

196.443 Duties of council

196.448 Member compensation; meetings

196.451 Technical advisory committee

196.453 Project review panels; guidelines

196.455 Coordination with federal programs

196.465 Compatibility of acknowledged comprehensive plans

196.471 Territorial Sea Plan review requirements

196.485 State agency coordination requirements; incorporation of plans

196.515 Short title

196.575 Authorization to obtain federal oceanographic data; joint liaison program; use of data

196.580 Liaison program duties

WETLANDS

(Definitions)

196.600 Definitions for ORS 196.600 to 196.655

(Wetlands Mitigation Banks)

196.605 Purpose

196.610 Wetlands; acquisition and protection; powers of Director of Department of State Lands

196.615 Program for wetlands mitigation banks; program standards and criteria; rules

196.620 Resource values and credits for mitigation banks; use and withdrawal of credits; annual evaluation of system by director

196.623 Watershed enhancement project as mitigation bank; sale of mitigation credit

196.625 Fill and removal activities in mitigation banks; reports

196.630 Rules

196.635 Director to consult and cooperate with other agencies and interested parties

196.640 Oregon Wetlands Mitigation Bank Revolving Fund Account; rules

196.643 Payments to comply with permit condition, authorization or resolution of violation

196.645 Sources of account

196.650 Use of account

196.655 Report on Oregon Wetlands Mitigation Bank Revolving Fund Account; contents

196.660 Effect of ORS 196.600 to 196.655

196.665 Short title

(Wetland Conservation Plans)

196.668 Legislative findings

196.672 Policy

196.674 Statewide Wetlands Inventory; rules

196.676 Response to notices from local governments

196.678 Wetland conservation plans; contents; procedure for adopting

196.681 Duties of department; standards for approval of plan; conditions for approval; order

196.682 Permits required for removal or fill; conditions on issuance of permit

196.684 Amendment of plans; review of plans by department; review of orders by Land Use Board of Appeals

196.686 Acknowledged estuary management plans; review and approval; hearings; final order

196.687 Regulation of alteration or fill of artificially created wetlands

196.688 Public information program

196.692 Rules

REMOVAL OF MATERIAL; FILLING

Note Provision relating to fills depending on E.P.A. approval--1989 c.45 §2

196.795 Streamlining process for administering state removal or fill permits; application for state program general permit; periodic reports to legislative committee

196.800 Definitions for ORS 196.600 to 196.905

196.805 Policy

196.810 Permit required to remove material from bed or banks of waters; status of permit; exceptions; rules

196.815 Application for permit; fees; disposition of fees

196.820 Prohibition against issuance of permits to fill Smith Lake or Bybee Lake; exception

196.825 Criteria for issuance of permit; consultation with other agencies; hearing; appeal

196.830 Estuarine resource replacement as condition for fill or removal from estuary; considerations; other permit conditions

196.835 Hearing regarding issuance of permit; procedure; appeals; suspension of permit pending appeal

196.840 Closure of specified waters to removal or filling; rules

196.845 Investigations and surveys

196.850 Waiving permit requirement in certain cases; rules; notice; review

196.855 Noncomplying removal of material or filling constitutes public nuisance

196.860 Enforcement powers of director

196.865 Revocation, suspension or refusal to renew permit

196.870 Abatement proceedings; restraining order; injunction; public compensation

196.875 Double and treble damages for destruction of public right of navigation, fishery or recreation; costs and attorney fees

196.880 Fill under permit presumed not to affect public rights; public rights extinguished

196.885 Annual report of fill and removal activities; contents of report

196.890 Civil penalties

196.895 Imposition of civil penalties

196.900 Schedule of civil penalties; rules; factors to be considered in imposing civil penalties

196.905 Applicability

196.910 Monitoring fill and removal activities; public education and information materials; periodic reports to legislative committee

PENALTIES

196.990 Penalties

COLUMBIA RIVER GORGE

196.105 Definitions for ORS 196.105 to 196.125. As used in ORS 196.105 to 196.125:

(1) "Commission" means the Columbia River Gorge Commission established under section 5 of the Columbia River Gorge National Scenic Area Act, P.L. 99-663.

(2) "General management area" means the area within the scenic area that is not an urban area or special management area.

(3) "Management plan" means the management plan for the Columbia River Gorge National Scenic Area adopted by the commission.

(4) "Special management area" means any area identified as such in the Columbia River Gorge National Scenic Area Act.

(5) "Urban area" means the 13 towns or cities as identified in the Columbia River Gorge National Scenic Area Act. [1987 c.856 §1; 1993 c.317 §1]

196.107 Legislative findings on management plan; effect of plan on land use decisions; decertification of plan. (1) The Legislative Assembly, considering the recommendations of the Land Conservation and Development Commission, finds that the management plan adopted pursuant to the Columbia River Gorge National Scenic Area Act achieves on balance the purposes of the statewide planning goals adopted pursuant to ORS 197.230.

(2) Land use decisions subject to review under ORS 197.835 for compliance with the goals for those portions of Multnomah, Hood River and Wasco Counties within the Columbia River Gorge National Scenic Area, except land within urban area boundaries, are exempt from the requirements of ORS 197.610 to 197.625. This exemption becomes effective in a county when that county or the Columbia River Gorge Commission adopts and implements ordinances that are approved pursuant to sections 7(b) and 8(h) to 8(k) of the Columbia River Gorge National Scenic Area Act, P.L. 99-663.

(3) The Director of the Department of Land Conservation and Development may petition the Land Conservation and Development Commission to decertify the management plan at any time. If the Land Conservation and Development Commission receives a petition from the director, the Land Conservation and Development Commission shall decertify the management plan within 120 days, if it determines that any part of the management plan does not achieve on balance the purposes of the statewide planning goals adopted pursuant to ORS 197.230. [1993 c.317 §3]

196.109 Effect of revision of urban area boundaries within scenic area on management plan. If the urban area boundaries of the Columbia River Gorge National Scenic Area are revised to include land that was once within the general management area or the special management area, the management plan no longer applies to that land and the applicable provisions of ORS chapters 92, 195, 197, 215 and 227 and the rules, plans and ordinances adopted thereunder apply. [1993 c.317 §4]

196.110 Land use regulation in Columbia River Gorge National Scenic Area. (1) Notwithstanding any provision setting forth criteria or conditions for approval of a permit or requiring action by the county in ORS chapter 92, 195, 196, 197 or 215 or in a local ordinance or charter, a county may deny any permit or otherwise refuse to take any action that is inconsistent with the purposes and standards as provided in sections 3 and 6(d) of the Columbia River Gorge National Scenic Area Act, P.L. 99-663, or the scenic area management plan adopted pursuant to the Columbia River Gorge National Scenic Area Act, P.L. 99-663. When taking action on a permit application, a county shall follow procedures consistent with the procedures set out in ORS 215.402 to 215.438 and shall comply with the time limitations set out in ORS 215.427. The authority of a county to deny a permit or otherwise take action under this section shall be in addition to and not in lieu of any other authority for denial that may be exercised by the county pursuant to the provisions of ORS chapters 195, 196 and 197. Any action of a county taken pursuant to this subsection shall be appealed to the Columbia River Gorge Commission as provided in section 15(a)(2) of the Columbia River Gorge National Scenic Area Act, P.L. 99-663.

(2) Notwithstanding any other provision of law, a state agency may not take action that must be reviewed for compatibility with an acknowledged comprehensive plan or land use regulation in the Columbia River Gorge National Scenic Area until the agency determines through written findings that the action is consistent with the purposes and standards as provided in sections 3 and 6(d) of the Columbia River Gorge National Scenic Area Act, P.L. 99-663, and the interim guidelines or the scenic area management plan.

(3) A state agency may seek any of the administrative or judicial remedies or participate in any proceeding provided by the Columbia River Gorge National Scenic Area Act, P.L. 99-663.

(4) The provisions of ORS 197.180 do not apply to the Columbia River Gorge Commission. [1987 c.856 §2; 2003 c.181 §1]

196.115 Appeal from decision of Columbia River Gorge Commission or county. (1) For purposes of judicial review, decisions of the Columbia River Gorge Commission shall be subject to review solely as provided in this section, except as otherwise provided by the Columbia River Gorge National Scenic Area Act, P.L. 99-663.

(2)(a) A final action or order by the commission in a review or appeal of any action of the commission pursuant to section 10(c) or 15(b)(4) of the Columbia River Gorge National Scenic Area Act, or a final action or order by the commission in a review or appeal of any action of a county pursuant to section 15(a)(2) or 15(b)(4) of the Columbia River Gorge National Scenic Area Act, shall be reviewed by the Court of Appeals on a petition for judicial review filed and served as provided in subsections (3) and (4) of this section and ORS 183.482.

(b) On a petition for judicial review under paragraph (a) of this subsection the Court of Appeals also shall review the action of the county that is the subject of the commission's order, if requested in the petition.

(c) The Court of Appeals shall issue a final order on review under this subsection within the time limits provided by ORS 197.855.

(d) In lieu of judicial review under paragraphs (a) and (b) of this subsection, a county action may be appealed to the Land Use Board of Appeals under ORS 197.805 to 197.855. A notice of intent to appeal the county's action shall be filed not later than 21 days after the commission's order on the county action becomes final.

(e) Notwithstanding ORS 197.835, the scope of review in an appeal pursuant to paragraph (d) of this subsection shall not include any issue relating to interpretation or implementation of the Columbia River Gorge National Scenic Area Act, P.L. 99-663, and any issue related to such interpretation or implementation shall be waived by the filing of an appeal under paragraph (d) of this subsection.

(f) After county land use ordinances are approved pursuant to sections 7(b) and 8(h) to (k) of the Columbia River Gorge National Scenic Area Act, P.L. 99-663, the Land Use Board of Appeals shall not review land use decisions within the general management area or special management area for compliance with the statewide planning goals. The limitation of this paragraph shall not apply if the Land Conservation and Development Commission decertifies the management plan pursuant to ORS 196.107.

(3)(a) If a petition for judicial review of a commission order is filed pursuant to subsection (2)(a) of this section, the procedures to be followed by the parties, the commission and the court, and the court's review, shall be in accordance with ORS 183.480, 183.482 (1) to (7), 183.485, 183.486, 183.490 and 183.497, except as this section or the Columbia River Gorge National Scenic Area Act, P.L. 99-663, otherwise provides.

(b) Notwithstanding any provision of ORS 183.482:

(A) The commission shall transmit the original record or the certified copy of the entire record within 21 days after service of a petition for judicial review is served on the commission; and

(B) The parties shall file briefs with the court within the times allowed by rules of the court.

(c) The court may affirm, reverse or remand the order. If the court finds that the agency has erroneously interpreted a provision of law and that a correct interpretation compels a particular action, the court shall:

(A) Set aside or modify the order; or

(B) Remand the case to the agency for further action under a correct interpretation of the provision of law.

(d) The court shall remand the order to the agency if the court finds the agency's exercise of discretion to be:

(A) Outside the range of discretion delegated to the agency by law;

(B) Inconsistent with an agency rule, an officially stated agency position or a prior agency practice, unless the inconsistency is explained by the agency; or

(C) Otherwise in violation of a constitutional or statutory provision.

(e) The court shall set aside or remand the order if the court finds that the order is not supported by substantial evidence in the whole record.

(f) Notwithstanding any other provision of this section, in any case where review of a county action as well as a commission order is sought pursuant to subsection (2)(a) and (b) of this section, the court shall accept any findings of fact by the commission which the court finds to be supported by substantial evidence in the whole record, and such findings by the commission shall prevail over any findings by the county concerning the same or substantially the same facts.

(4)(a) Except as otherwise provided by this section or the Columbia River Gorge National Scenic Area Act, P.L. 99-663, if review of a county action is sought pursuant to subsection (2)(b) of this section, the procedures to be followed by the parties, the

county and the court, and the court's review, shall be in accordance with those provisions governing review of county land use decisions by the Land Use Board of Appeals set forth in ORS 197.830 (2) to (8), (10), (15) and (16) and 197.835 (2) to (10), (12) and (13). As used in this section, "board" as used in the enumerated provisions shall mean "court" and the term "notice of intent to appeal" in ORS 197.830 (10) shall refer to the petition described in subsection (2) of this section.

(b) In addition to the other requirements of service under this section, the petitioner shall serve the petition upon the persons and bodies described in ORS 197.830 (9), as a prerequisite to judicial review of the county action.

(c) In accordance with subsection (3)(b)(B) of this section, a party to a review of both a commission order and a county action shall file only one brief with the court, which shall address both the commission order and the county action.

(d) Review of a decision under ORS 197.830 to 197.845 shall be confined to the record. Subject to subsection (3)(f) of this section, the court shall be bound by any finding of fact of the county for which there is substantial evidence in the whole record. The court may appoint a master and follow the procedures of ORS 183.482 (7) in connection with matters that the board may take evidence for under ORS 197.835 (2).

(5) Approval of county land use ordinances by the commission pursuant to section 7 of the Columbia River Gorge National Scenic Area Act, P.L. 99-663, may be reviewed by the Court of Appeals as provided in ORS 183.482.

(6) Notwithstanding ORS 183.484, any proceeding filed in circuit court by or against the commission shall be filed with the circuit court for the county in which the commission has a principal business office or in which the land involved in the proceeding is located. [1987 c.856 §3; 1989 c.761 §17; 1993 c.317 §5; 1995 c.595 §16; 1999 c.621 §4]

196.120 Exercise of eminent domain; property value. Notwithstanding any other provision of law, in any proceeding by a state agency or local government to acquire property within the Columbia River Gorge National Scenic Area, through the exercise of the power of eminent domain, the property value shall not be reduced because of any diminution in value resulting from the potential of the taking. [1987 c.856 §6]

196.125 Buffer by regulation around Columbia River Gorge National Scenic Area prohibited. (1) Notwithstanding any other provision of law, no state agency, special district or local government may exercise any regulatory power for the purpose of establishing a scenic buffer around the Columbia River Gorge National Scenic Area. Such regulatory powers include but are not limited to:

(a) Exercising the power of eminent domain;

(b) Establishing scenic easements; or

(c) Adopting ordinances or land use plans that prohibit or limit the use of land.

(2) As used in this section, "Columbia River Gorge National Scenic Area" means that area designated in the Columbia River Gorge National Scenic Area Act, P.L. 99-663. [1987 c.856 §7]

COLUMBIA RIVER GORGE COMPACT

196.150 Compact provisions. The Legislative Assembly of the State of Oregon hereby ratifies the Columbia River Gorge Compact set forth below, and the provisions of such compact hereby are declared to be the law of this state upon such compact becoming effective as provided in Article III.

A compact is entered into by and between the states of Washington and Oregon, signatories hereto, with the consent of the Congress of the United States of America, granted by an Act entitled, "The Columbia River Gorge National Scenic Area Act," P.L. 99-663.

ARTICLE I

Columbia Gorge Commission Established

a. The States of Oregon and Washington establish by way of this interstate compact a regional agency known as the Columbia River Gorge Commission. The commission established in accordance with this compact shall have the power and authority to perform all functions and responsibilities in accordance with the provisions of this compact and of the Columbia River Gorge National Scenic Area Act (the federal Act), which is incorporated by this specific reference in this agreement. The commission's powers shall include but not be limited to:

1. The power to sue and be sued.

2. The power to disapprove a land use ordinance enacted by a county if the ordinance is inconsistent with the management plan, as provided in P.L. 96-663 §7(b)(3)(B).

3. The power to enact a land use ordinance setting standards for the use of nonfederal land in a county within the scenic area if the county fails to enact land use or-

dinances consistent with the management plan, as provided in P.L. 99-663 §7(c).

4. According to the provisions of P.L. 99-663 §10(c), the power to review all proposals for major development action and new residential development in each county in the scenic area, except urban areas, and the power to disapprove such development if the commission finds the development is inconsistent with the purposes of P.L. 99-663.

b. The commission shall appoint and remove or discharge such personnel as may be necessary for the performance of the commission's functions, irrespective of the civil service, personnel or other merit system laws of any of the party states.

c. The commission may establish and maintain, independently or in conjunction with any one or more of the party states, a suitable retirement system for its full-time employees. Employees of the commission shall be eligible for social security coverage in respect of old age and survivors insurance provided that the commission takes such steps as may be necessary pursuant to federal law to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

d. The commission shall obtain the services of such professional, technical, clerical and other personnel as may be deemed necessary to enable it to carry out its functions under this compact. The commission may borrow, accept, or contract for the services of personnel from any state of the United States or any subdivision or agency thereof, from any interstate agency, or from any institution, person, firm or corporation.

e. Funds necessary to fulfill the powers and duties imposed upon and entrusted to the commission shall be provided as appropriated by the legislatures of the states in accordance with Article IV. The commission may also receive gifts, grants, endowments and other funds from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of the commission and expend the same or any income therefrom according to the terms of the gifts, grants, endowments or other funds.

f. The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold and convey real and personal property and any interest therein.

g. The commission shall adopt bylaws, rules, and regulations for the conduct of its business, and shall have the power to amend and rescind these bylaws, rules and regulations. The commission shall publish its bylaws, rules and regulations in convenient form and shall file a copy thereof and of any amendment thereto, with the appropriate agency or officer in each of the party states.

ARTICLE II

The Commission Membership

a. The commission shall be made up of twelve voting members appointed by the states, as set forth herein, and one nonvoting member appointed by the U.S. Secretary of Agriculture.

b. Each state governor shall appoint the members of the commission as provided in the federal Act (three members who reside in the State of Oregon, including one resident of the scenic area, to be appointed by the Governor of Oregon, and three members who reside in the State of Washington, including one resident of the scenic area, appointed by the Governor of Washington).

c. One additional member shall be appointed by the governing body of each of the respective counties of Clark, Klickitat, and Skamania in Washington, and Hood River, Multnomah, and Wasco in Oregon, provided that in the event the governing body of a county fails to make such an appointment, the Governor of the state in which the county is located shall appoint such a member.

d. The terms of the members and procedure for filling vacancies shall all be as set forth in the federal Act.

ARTICLE III

Effective Date of Compact and Commission

This compact shall take effect, and the commission may exercise its authorities pursuant to the compact and pursuant to the Columbia River Gorge National Scenic Area Act when it has been ratified by both states and upon the appointment of four initial members from each state. The date of this compact shall be the date of the establishment of the commission.

ARTICLE IV

Funding

a. The States of Washington and Oregon hereby agree to provide by separate agreement or statute of each state for funding necessary to effectuate the commission, in-

cluding the establishment of compensation or expenses of commission members from each state which shall be paid by the state of origin.

b. The commission shall submit to the Governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that jurisdiction for presentation to the legislature thereof.

c. Subject to appropriation by their respective legislatures, the commission shall be provided with such funds by each of the party states as are necessary to provide the means of establishing and maintaining facilities, a staff of personnel, and such activities as may be necessary to fulfill the powers and duties imposed upon and entrusted to the commission.

d. The commission's proposed budget and expenditures shall be apportioned equally between the states.

e. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by the appropriate state auditing official and the report of the audit shall be included in and become a part of the annual report of the commission.

f. The accounts of the commission shall be open at any reasonable time for inspection by the public.

ARTICLE V

Severability

If any provision of this compact, or its application to any person or circumstance, is held to be invalid, all other provisions of this compact, and the application of all of its provisions to all other persons and circumstances, shall remain valid, and to this end the provisions of this compact are severable.

[Formerly 390.500]

196.155 Authority for state officers and agencies to carry out duties under compact. The Governor, the Columbia River Gorge Commission and all state agencies and counties are hereby directed and provided authority to carry out their respective functions and responsibilities in accordance with the compact executed under ORS 196.150 to 196.165 and the Columbia River Gorge National Scenic Area Act. [Formerly 390.505]

196.160 Membership on Columbia River Gorge Commission. (1) Each member of the Columbia River Gorge Commission appointed by the Governor under ORS 196.150 shall be subject to Senate confirmation pursuant to section 4, Article III of the Oregon Constitution and shall serve at the pleasure of the Governor until the member's term expires or until a disqualifying change in residence.

(2) A member shall serve a period of four years.

(3) Members of the commission appointed from Oregon are entitled to compensation and expenses as provided in ORS 292.495. [Formerly 390.510]

196.165 Status of commission employees for purposes of certain benefits. (1) The Columbia River Gorge Commission established under ORS 196.150 may designate its employees as employees and the commission as an employer subject to the Oregon Public Employees Retirement System under ORS chapters 238 and 238A or as an employer and employees subject to a retirement system provided by the State of Washington under the laws of the State of Washington.

(2) The commission may designate its employees as employees eligible under benefit plans provided under ORS 243.105 to 243.285 or under benefit plans provided under the laws of the State of Washington. [Formerly 390.515; 1991 c.67 §46; 1997 c.222 §44; 2003 c.733 §51]

PACIFIC OCEAN RESOURCES COMPACT

196.175 Pacific Ocean Resources Compact ratified. (1) The Legislative Assembly of the State of Oregon hereby ratifies the Pacific Ocean Resources Compact as set forth in ORS 196.180. This compact shall take effect after two or more of the States of Alaska, California, Hawaii or Washington ratify the compact and consent is granted by Congress as required by section 10, Article I of the Constitution of the United States.

(2) In addition to the States of Alaska, California, Hawaii and Washington, the Province of British Columbia may become an associate party to the compact, without voting power. Upon request of the Province of British Columbia and approval of Congress, the Province of British Columbia may become a full party to this compact with the same rights and powers as the party states. [1991 c.617 §1]

Note: 196.175 to 196.185 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 196 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

196.180 Compact provisions. The provisions of the Pacific Ocean Resources Compact are as follows:

ARTICLE I

Findings and Purpose

A. The parties recognize:

(1) The States of Alaska, California, Hawaii, Oregon and Washington and the Province of British Columbia have a common interest in the protection of marine and coastal resources. This common interest results from:

(a) The fluid, dynamic ocean currents and atmospheric winds that carry pollutants beyond one party's coastal area to another.

(b) The migratory nature of many important living marine resources that depend upon the marine habitat of various parties for different parts of their lifecycle.

(c) The economic reliance of each party upon renewable resources of the ocean.

(d) The use of the ocean for transport of oil and other hazardous substances between ports in the various parties and other nations.

(e) A regional interest in providing a stable environment for those communities dependent upon ocean resources and ocean trade for a livelihood.

(2) Some marine resource activities, such as fisheries, are currently highly managed with regard for their regional or transboundary nature through existing state programs, regional fisheries councils, interstate compacts and international treaties. Because there are existing formal mechanisms for interstate cooperation and coordination for these marine resource activities, this compact is not intended to encompass these activities or to grant to the Pacific Ocean Resources Compact authority to regulate resource allocation or management as it may pertain to the use and consumption of marine resources.

(3) A formal interstate agreement does not exist to address and resolve issues of mutual concern or to coordinate individual programs of the parties that affect regional interests in the areas of:

(a) Prevention of oil and hazardous substance spills;

(b) Transportation of oil and other hazardous substances;

(c) Oil and hazardous substance spill response planning;

(d) Environmental monitoring and research; and

(e) Ocean resource management.

(4) Each party has jurisdiction over the submerged and submersible lands within its territorial sea and responsibility for management of many marine resources and ocean uses. Each party has unique natural resource, social, economic and political conditions for which local management by the individual party is the most appropriate.

(5) Parties now do not have an effective means to address mutual concerns related to transport of oil and hazardous substances in waters within and beyond the party's jurisdiction that may jeopardize ocean resources and uses important to one or more coastal parties.

(6) The 1983 Presidential Proclamation of the 200-mile United States Exclusive Economic Zone has created the 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.

(7) Citizens of the Pacific states and the Province of British Columbia are increasingly concerned with the environmental integrity of the ocean and protection of all ocean resources.

(8) Recent studies conducted in the wake of major accidental releases of oil or hazardous substances have concluded that the existing system of response to spills could be improved in the following ways to provide better protection of ocean resources:

(a) Enhanced personnel training and qualifications;

(b) Improved vessel design and integrity;

(c) Better mechanisms for cost recovery by the states or the province;

(d) Improved coordination in regulatory oversight;

(e) Enhanced traffic management; and

(f) An improved information base dealing with marine and coastal environments.

(9) A spill or discharge of oil or hazardous substance from an ocean-going vessel has the potential of causing major regional impacts.

B. Therefore, the purposes of this compact shall be:

(1) To assist in the promotion of interstate commerce by encouraging uniform regulation of the transportation of oil or hazardous substance within the compact zone.

(2) To provide a legal mechanism to regulate certain ocean activities within the United States Exclusive Economic Zone.

(3) To enhance regional coordination of issues of critical importance.

(4) To work with federal agencies to advance the best interest of the region.

(5) To foster regional cooperation and pooling of resources to reduce costs and increase effective use of scarce resources.

(6) To monitor activities of concern to the parties.

(7) To address issues of mutual concern to the Pacific states and the Province of British Columbia and enhance the parties' influence over activities of concern that are not now addressed through existing compacts, including:

(a) Spill prevention;

(b) Transportation of oil and other hazardous substances;

(c) Spill response planning;

(d) Environmental monitoring and research; and

(e) Ocean resource management.

(8) To foster cooperation and coordination among the parties in order to increase the effectiveness of the individual party's ocean laws and programs.

(9) To provide technical assistance to parties for ocean activities covered by this compact.

(10) To provide for formal participation by the Province of British Columbia with the compact to more fully address issues of regional concern.

(11) To insure that the citizens of the region have opportunities to participate in discussions and deliberations of regional ocean resources issues.

(12) To establish an innovative system under which the parties can represent their shared interests within the compact zone, including:

(a) The maintenance and protection of common ocean resources; and

(b) The vessel transportation of oil and other hazardous substances.

(13) To recommend uniform safety standards for routes, crews and equipment for vessels transporting oil and hazardous substances within the compact zone and monitor the implementation of these standards and regulations by federal agencies, states or provinces and private industry.

(14) To promote more coordinated management of ocean resources that are of mutual concern.

(15) To provide a forum for the regional coordination of the individual parties' plans for the management and protection of those areas of the Pacific Ocean and adjacent waters over which the compacting parties jointly or separately now have or may acquire jurisdiction.

ARTICLE II

Definitions

As used in this compact:

(1) "Compact" means the representative body created by Article IV of this compact.

(2) "Compact zone" means the portion of the oceans bordering the parties within the 200-mile exclusive economic zone.

(3) "Hazardous substance" or "hazardous substances" means any element or compound that, when it enters in or upon the water, presents an imminent and substantial danger to the public health or welfare or the environment, including but not limited to fish, animals, vegetation or any part of the natural habitat in which they are found. "Hazardous substance" includes but is not limited to a substance designated under 33 U.S.C. §1321 (b)(2)(A), any element, compound, mixture, solution or substance designated under 42 U.S.C. §9602, any hazardous waste having characteristics identified under or listed under 42 U.S.C. §6921, any toxic pollutant listed under 33 U.S.C. §1317 (a) and any imminently hazardous chemical substance or mixture with respect to which the Administrator of the United States Environmental Protection Agency has taken action under 15 U.S.C. §2606.

(4) "Navigable waters" means the waters of the United States, including the territorial sea.

(5) "Oil" means crude petroleum oil and any other hydrocarbons regardless of gravity, which are produced at the well in liquid form by ordinary production methods, and any petroleum products or petrochemicals of any kind and in any form whether crude, refined or a petroleum by-product, including petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oily refuse or mixed with other wastes, liquefied natural gas or propane.

(6) "Party" means a state or province that ratifies this compact as provided in Article III of this compact.

(7) "Representative" means an individual appointed as provided in Article IV of this compact to represent a party to the compact.

(8) "Vessel" means a watercraft or other artificial contrivance that is constructed or adapted to carry, or that carries oil or haz-

ardous substance in bulk as cargo or cargo residue, and that:

(a) Operates on the navigable waters of the compact zone; or

(b) Transfers oil or hazardous substance in a place subject to the jurisdiction of the United States.

ARTICLE III

Operative Dates

(1) Except as provided in paragraph (2) of this Article, this compact shall become effective when two or more of the States of Alaska, California, Hawaii or Washington ratify the compact and the consent of Congress is or has been granted as required by section 10, Article I of the Constitution of the United States.

(2) This agreement shall become operative as to the Province of British Columbia as a full party upon request of the Province of British Columbia and approval of the Congress.

ARTICLE IV

Pacific Ocean Resources Compact

(1) The Pacific Ocean Resources Compact is created and shall have its offices within the territorial limits of one of the parties, shall carry out its duties and functions in accordance with this compact, shall continue in force and effect in accordance with this compact, and, except as specifically provided in this compact, shall not be considered an agency or instrumentality of the United States for the purpose of any federal law. Each party participating in this compact shall appoint two persons, subject to the applicable laws of the appointing party, to undertake the functions and duties of representatives of the compact. This compact shall be invested with the powers and duties set forth in this compact.

(2) The term of each representative shall be four years. A representative shall hold office until a successor is appointed and qualified but the successor's term shall expire four years from legal date of expiration of the term of the predecessor. Vacancies occurring in the office of a representative for any reason or cause shall be filled for the unexpired term by the party represented by the vacancy. Any party may remove the representative for that party in accordance with the statutes of the party concerned. Each representative may delegate 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 compact.

(3) The compact shall invite the Secretary of Transportation, the Administrator of the United States Environmental Protection Agency and the Administrator of the National Oceanic and Atmospheric Administration or their designees to participate as nonvoting members of the compact.

ARTICLE V

Pacific Ocean Resources Compact Authority

(1) The Pacific Ocean Resources Compact is authorized to:

(a) Facilitate the prevention of oil and hazardous substance spills by:

(A) Serving as a West Coast Spill Prevention Advisory Committee to the United States Coast Guard. As such, the compact shall advise the United States Coast Guard on matters pertaining to spill prevention within the compact zone and also shall advise the United States Coast Guard on other matters within the compact's authority as set forth in this compact.

(B) Participating as an interested person in any rulemaking proceeding by the United States Coast Guard related to the establishment of safety standards for routes, crews and equipment for vessels transporting oil and hazardous substances. The United States Coast Guard shall adopt the recommendations of the compact, unless the United States Coast Guard makes a finding, as part of the rulemaking process, that the adoption of such recommendations would not further the prevention of oil and hazardous substance spills.

(C) As an interested person, requesting the United States Coast Guard to initiate rulemaking for the establishment or amendment of safety standards for routes, crews and equipment for vessels transporting oil and hazardous substances. The United States Coast Guard shall initiate rulemaking as requested by the compact, unless the United States Coast Guard makes a finding that the initiation of such rulemaking would not further the prevention of oil and hazardous substance spills.

(D) Making recommendations to other appropriate state, federal and regional entities regarding uniform safety standards for routes, crews and equipment for vessels transporting oil and hazardous substances in the compact zone.

(b) Insure a coordinated network of oil and hazardous substance spill response plans

and programs of the parties, federal agencies and private organizations.

(c) By regulation, establish the requirements for submission of and approval by the compact of a contingency plan by any vessel transporting oil or hazardous substance in the compact zone. Such requirements shall be consistent with the requirements for response plans under section 4202 of the Oil Pollution Act of 1990 (P.L. 101-380). A plan developed in accordance with the regulations adopted by the compact and approved by the compact shall satisfy the requirements of section 4202 of the Oil Pollution Act and shall supersede any requirements of an individual party for submitting a vessel contingency or spill response plan. However, all plans approved by parties to this compact before the operative date of the compact shall remain in full force and effect until a contingency plan is approved by the compact pursuant to this paragraph. In establishing regulations under this paragraph, the compact shall work closely with officials of the parties to assure that the vessel contingency plans required under this compact include all subject areas included by the member parties, in the standards for vessel contingency plans of the parties, in aggregate, before the adoption of the compact.

(d) Establish and maintain an informational clearinghouse related to spill response, including a directory of personnel, equipment, technical expertise, organizations and other resources available to assist as part of a regional oil or hazardous substance spill response.

(e) Provide a forum for discussion and recommendation to resolve conflicts among member parties or the federal government regarding various ocean resources programs that have been or may be established by each party.

(f) Provide opportunities for public participation in compact activities by holding meetings of the compact in various locations within the territorial limits of the parties, providing opportunities for public comment at meetings and developing a public outreach program.

(g) Designate state or provincial agency officials to act on behalf of the compact as liaisons with federal agencies.

(h) Identify the regional data needs related to ocean resources and recommend a method for compiling the data in a format that can be shared by all parties.

(i) Consult with and advise any pertinent party or federal agency with regard to problems connected with ocean resources management and recommend the adoption of any rules or regulations the compact considers advisable that are within the jurisdiction of the agency.

(j) Establish sanctions and a schedule of civil penalties for violations of the rules or regulations of the compact and impose such sanctions or civil penalties in accordance with 5 U.S.C. §§551 to 559 and §§701 to 706.

(k) Request the United States Coast Guard to enforce or assist in the enforcement of any regulations adopted by the compact including but not limited to regulations related to the submission of a contingency plan or financial assurance requirements in the compact zone.

(L) Establish a schedule of reasonable fees to be assessed for the review of a contingency plan submitted under paragraph (c) of this subsection. The fees shall be sufficient to recover the costs of reviewing the plans and conducting any related inspections. The fees may be assessed in increments up to the maximum amount.

(2) In addition to the authority granted under paragraph (1) of this Article, the compact may:

(a) Accept grants and gifts.

(b) Enter into contracts for whose performance the compact shall be solely responsible in order to support its operations.

(c) Conduct and prepare, independently or in cooperation with others, studies, investigations, research and programs relating to the purposes of this compact.

(d) Conduct public hearings on matters pertaining to the purposes of this compact.

(e) Establish a standardized cost recovery formula for damages to other resources based on the amount of oil or hazardous substance spilled.

(f) Enter into an agreement with the United States Coast Guard under which the compact will administer compliance with the requirements for demonstrating financial responsibility under section 1016 of the Oil Pollution Act of 1990 in an amount established by the compact. Such proof of financial responsibility, if established by the compact, shall satisfy and supersede the requirement of any individual party for demonstrating financial responsibility. However, all financial responsibility requirements established by the parties to this compact before the compact establishes an amount under this paragraph shall remain in full force and effect until the compact establishes a requirement and enters into an agreement with the United States Coast Guard under this paragraph. In establishing the amount of financial responsibility under this paragraph, the compact shall work with officials of each party to assure that such requirements are

sufficient to satisfy the requirements of the parties, in aggregate.

(g) In accordance with the provisions of 5 U.S.C. §§551 to 559 and §§701-706, enforce the rules and regulations adopted by the compact to carry out the authority of the compact as set forth in this Article.

(h) Appoint technical and advisory committees for the purpose of advising the compact on regional ocean resources issues, data needs and format and other purposes related to the compact's activities. A technical or advisory committee appointed by the compact shall not be subject to the provisions of the Federal Advisory Committee Act (P.L. 92-463, as amended).

(i) Allow a variance from the provisions of this compact or rules or regulations adopted by the compact pursuant to this Article. A variance shall be based on a showing by the person or entity seeking the variance that the activity allowed under the variance will have no regional impact and that the variance is economically necessary. Under no circumstances may a variance result in the regulation of the transportation of oil or hazardous substance according to standards less stringent than standards imposed under federal law.

(3) The compact shall adopt all regulations necessary to carry out its duties and exercise its authority under this Article. The compact shall adopt such regulations in accordance with the provisions of 5 U.S.C. §§500 to 559.

ARTICLE VI

Pacific Ocean Resources Compact Organization

The compact shall select a chairperson and a vice chairperson. After the initial chairperson and vice chairperson are selected, the compact shall establish a rotation for the selection of the chairperson and vice chairperson so the office rotates through the parties to the compact. The compact 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. The compact 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 parties but must meet at least once a year.

ARTICLE VII

Voting and Quorum

(1) A majority of the representatives shall constitute a quorum.

(2) Each representative shall be entitled to one vote. No action or decision of the compact shall be approved unless the action or decision receives a majority of the votes of the representatives, including at least one affirmative vote from each party.

ARTICLE VIII

Support Agencies

The compact may contract for the staff support necessary to carry out the purposes of this compact or request appropriate agencies of the signatory parties to act as the research agencies of the compact.

ARTICLE IX

Parties' Powers Under Compact

Except as specifically provided in Article V of this compact, nothing in this compact shall be construed to limit the powers of any party or to repeal or prevent the enactment of any legislation or the enforcement of any requirement imposing additional conditions and restrictions to conserve ocean resources.

ARTICLE X

Absence

Continued absence of representation or of any compact representative from any party shall be brought to the attention of the appointing authority of the party not represented.

ARTICLE XI

Funding

(1) Each party shall contribute to the support of the compact.

(2) The annual contribution of each party shall be figured to the nearest $100.

(3) The compact shall prepare an annual budget which shall be approved by vote of the compact. After approval, the proposed budget shall be presented to the chief executive and legislative body of the signatory parties.

(4) Each party shall be responsible for the expenses of its own representatives.

ARTICLE XII

Withdrawal from Compact

This compact shall continue in force and remain binding upon each party 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 to the compact.

[1991 c.617 §2]

Note: See note under 196.175.

196.185 Representation on compact. One member of the Senate appointed by the President of the Senate and one member of the House of Representatives appointed by the Speaker of the House of Representatives shall act as the representatives of the State of Oregon on the Pacific Ocean Resources Compact in accordance with the powers and duties set forth in the compact. [1991 c.617 §3]

Note: See note under 196.175.

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 management 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) On behalf of the State Board of Higher Education, 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]

Note: 196.438 to 196.448 were added to and made a part of 196.405 to 196.515 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

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]

Note: See note under 196.438.

196.445 [1987 c.576 §8; 1989 c.154 §1; 1989 c.904 §52; repealed by 1991 c.501 §18]

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]

Note: See note under 196.438.

196.450 [1987 c.576 §9; repealed by 1991 c.501 §18]

196.451 Technical advisory committee. (1) To aid and advise the Ocean Policy Advisory Council in the performance of its functions, the 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 Ocean Policy Advisory Council and may establish additional committees as needed.

(2) Members of the advisory committees 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]

Note: 196.451 and 196.453 were added to and made a part of 196.405 to 196.515 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

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]

Note: See note under 196.451.

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]

196.470 [1987 c.576 §12; repealed by 1991 c.501 §18]

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:

(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) 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.

(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]

Note: 196.471 was added to and made a part of 196.405 to 196.515 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

196.475 [1987 c.576 §13; 1991 c.501 §15; repealed by 2003 c.744 §14]

196.485 State agency coordination requirements; incorporation of plans. (1) If a state agency incorporates the Oregon Ocean Resources Management Plan and Territorial Sea Plan by reference in its coordination program and, upon a finding by the Land Conservation and Development Commission that the agency has amended its rules, procedures and standards to conform with the objectives and requirements of the plan and Territorial Sea Plan, the state agency shall satisfy the requirements of state agency planning and coordination required by ORS 197.180 for ocean planning.

(2) If a state agency does not incorporate the plan or Territorial Sea Plan in its coordination program, the agency shall be subject to the state agency coordination requirements of ORS chapters 195, 196 and 197 for state agency programs, procedures and standards that in any way affect ocean resources.

(3) State agency programs or rules for management of ocean resources or ocean uses shall be consistent with the Oregon Ocean Resources Management Plan and the Territorial Sea Plan. [1987 c.576 §17; 1991 c.501 §17]

196.490 [1987 c.576 §18; repealed by 1991 c.501 §18]

196.495 [1987 c.576 §19; repealed by 1991 c.501 §18]

196.500 [1987 c.576 §20; repealed by 1991 c.501 §18]

196.505 [1987 c.576 §21; repealed by 1991 c.501 §18]

196.515 Short title. ORS 196.405 to 196.485 shall be known as the Oregon Ocean Resources Management Act. [1987 c.576 §2]

196.575 Authorization to obtain federal oceanographic data; joint liaison program; use of data. (1) The Department of Land Conservation and Development is authorized to participate on behalf of the State of Oregon with the States of Washington, California, Alaska and Hawaii in a joint liaison program with the Center for Ocean Analysis and Prediction of the National Oceanic and Atmospheric Administration.

(2) The objective of the program is to assist the states in taking maximum advantage of the oceanographic data, products and services available from the federal government through the Center for Ocean Analysis and Prediction.

(3) The Department of Land Conservation and Development shall integrate data obtained through the liaison program for use by other state agencies and maximize the use of the State Service Center for Geographic Information Systems. [1991 c.524 §§1,3]

Note: 196.575 and 196.580 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 196 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

196.580 Liaison program duties. (1) The liaison program shall:

(a) Assist state and local governments to become fully aware of oceanographic data and products available from the federal government and in particular from the Center for Ocean Analysis and Prediction.

(b) Assist the Center for Ocean Analysis and Prediction and the National Oceanic and Atmospheric Administration to become more fully aware of state and local problems and the requirements of state and local governments.

(c) Assist in setting up lines of communication to move oceanographic data and products from the Center for Ocean Analysis and Prediction to the people in the states who need those data and products.

(2) The liaison program also shall include workshops for small groups of technical experts from state and local governments, academic institutions and the private sector. The workshops shall be held at the Center for Ocean Analysis and Prediction in Monterey, California, and at other facilities in the western states as appropriate. [1991 c.524 §2]

Note: See note under 196.575.

WETLANDS

(Definitions)

196.600 Definitions for ORS 196.600 to 196.655. As used in ORS 196.600 to 196.655:

(1) "Compensatory wetland mitigation" means activities conducted by a permittee or third party to create, restore or enhance wetland functional attributes to compensate for the adverse effects of project development or to resolve violations of ORS 196.800 to 196.905.

(2) "Credit" means the measure of the increase in wetland functional attributes achieved at a mitigation bank site.

(3) "Mitigation bank" means a wetland site, created, restored or enhanced in accordance with ORS 196.600 to 196.655 to compensate for unavoidable adverse impacts due to activities which otherwise comply with the requirements of ORS 196.600 to 196.905.

(4) "Mitigation bank instrument" means the legally binding and enforceable agreement between the Director of the Department of State Lands and a mitigation bank sponsor that formally establishes the mitigation bank and stipulates the terms and conditions of the mitigation bank's construction, operation and long-term management.

(5) "Off-site compensatory wetland mitigation" means activities conducted away from the project site that restore, create or enhance wetland functional attributes in order to compensate for the adverse impacts to wetlands from project development.

(6) "On-site compensatory wetland mitigation" means activities conducted at the project site to restore, create or enhance wetland functional attributes in order to compensate for the adverse impacts to wetlands from project development.

(7) "Permit action" means activity under a specific removal or fill permit or other authorization requested or issued under ORS 196.600 to 196.905.

(8) "Service area" means the boundaries set forth in a mitigation bank instrument that include one or more watersheds identified on the United States Geological Survey, Hydrologic Unit Map - 1974, State of Oregon, for which a mitigation bank provides credits to compensate for adverse effects from project developments. Service areas for mitigation banks are not mutually exclusive.

(9) "Statewide Comprehensive Outdoor Recreation Plan" means the plan created by the State Parks and Recreation Department pursuant to the federal Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 460-L et seq.). [Formerly 541.550; 1995 c.370 §2; 2003 c.738 §3]

(Wetlands Mitigation Banks)

196.605 Purpose. It is the purpose of ORS 196.600 to 196.655 to:

(1) Promote, in concert with other federal and state programs as well as interested parties, the maintenance and conservation of wetlands;

(2) Improve cooperative efforts among private, nonprofit and public entities for the management and protection of wetlands;

(3) Offset losses of wetland functional attributes caused by activities which otherwise comply with state and federal law in order to create, restore or enhance wetland functional attributes;

(4) Maintain and encourage a predictable, efficient regulatory framework for environmentally acceptable development; and

(5) Provide an option for accomplishing off-site compensatory wetland mitigation

when on-site compensatory wetland mitigation is not practicable. [Formerly 541.555; 2003 c.738 §4]

196.610 Wetlands; acquisition and protection; powers of Director of Department of State Lands. Subject to approval by the State Land Board, the Director of the Department of State Lands may:

(1) Charge a fee for purchase of credits in the mitigation bank as provided by ORS 196.600 to 196.655.

(2) Acquire or accept title to lands suitable for use in mitigation banks or actions, or to protect sensitive or unique wetlands habitat.

(3) Pay costs incurred for alterations needed to create, restore or enhance wetland areas for purposes of carrying out the provisions of ORS 196.600 to 196.655 or 196.800 to 196.905.

(4) Authorize payment of administrative, research or scientific monitoring expenses of the Department of State Lands in carrying out the provisions of ORS 196.600 to 196.655 or 196.800 to 196.905.

(5) Disburse funds received under the Federal Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.), for such purposes as specifically stipulated in a grant award.

(6) Receive funds under the Federal Emergency Wetlands Resources Act of 1986, P.L. 99-645, for the voluntary acquisition of wetlands and interests therein according to the wetlands provisions of the Statewide Comprehensive Outdoor Recreation Plan. Funds received under the Federal Emergency Wetlands Resources Act of 1986, P.L. 99-645, shall be used for nonmitigation complementary purposes and programs of ORS 196.600 to 196.655. [Formerly 541.557; 1993 c.18 §36; 2003 c.738 §5]

196.615 Program for wetlands mitigation banks; program standards and criteria; rules. (1) In accordance with the provisions of ORS 196.600 to 196.655, upon the approval of the State Land Board, the Director of the Department of State Lands shall initiate and implement a program for wetlands mitigation banks. The director shall encourage the development of and the expeditious approval of mitigation banks and other types of compensatory wetland mitigation.

(2) Subject to the approval of the State Land Board, the Department of State Lands shall adopt, by rule, standards and criteria for the site selection process, operation and evaluation of mitigation banks. Criteria to be considered shall include but need not be limited to:

(a) Historical wetland trends, including the estimated rate of current and future losses of the respective types of wetlands.

(b) The contributions of the wetlands to:

(A) Wildlife, migratory birds and resident species;

(B) Commercial and sport fisheries;

(C) Surface and ground water quality and quantity, and flood moderation;

(D) Outdoor recreation including enhancement of scenic waterways; and

(E) Scientific and research values.

(c) Regional economic needs.

(3) For each mitigation bank, the department shall establish a well-defined plan, including preliminary objectives, inventory of resource values and an evaluation and monitoring program. [Formerly 541.560; 1991 c.67 §48; 2003 c.738 §6]

196.620 Resource values and credits for mitigation banks; use and withdrawal of credits; annual evaluation of system by director. (1) For each mitigation bank, the Department of State Lands shall establish a system of resource values and credits.

(2) A credit from a mitigation bank may be withdrawn for a condition imposed on a permit in accordance with ORS 196.825 (5), for any other authorization issued in accordance with ORS 196.800 to 196.905 or to resolve a violation of ORS 196.800 to 196.905.

(3) Credits from a freshwater mitigation bank may be used only as described in subsection (2) of this section for permits, authorizations or resolutions of violations approved within the service area of the mitigation bank, consistent with the mitigation bank instrument, unless the Director of the Department of State Lands determines, in exceptional circumstances, that it is environmentally preferable to exceed this limitation.

(4) Credits from an estuarine mitigation bank may be used only as described in subsection (2) of this section for permits, authorizations or resolutions of violations approved within the same estuarine ecological system.

(5) The director may not withdraw any credits from any mitigation bank until the director:

(a) Has taken actions sufficient to establish hydrological function of the mitigation bank site;

(b) Has conducted other creation, restoration and enhancement actions to establish other wetland functions and values at the mitigation bank site; and

(c) Evaluated the results of the actions and determined that a high probability exists

that the wetland functions and values of the mitigation bank site are equal to or greater than the functions and the values of the wetland area to be damaged or destroyed.

(6) The price for any mitigation credit shall be set at an amount that will compensate the state for all of the costs and expenses the state has incurred, and is expected to incur in establishing and maintaining that portion of the mitigation bank.

(7) The director shall not consider the availability or nonavailability of mitigation bank credits in deciding whether to grant or deny any removal or fill permit under ORS 196.600 to 196.905.

(8) The director annually shall:

(a) Evaluate the wetlands functions and values created within each wetland mitigation bank site; and

(b) Compare the current functions and values with those that the director anticipated that the mitigation bank would provide. If the director finds any significant disparity between the actual and anticipated functions and values, the director shall:

(A) Suspend the withdrawal of credits to that mitigation site; or

(B) Take prompt action to ensure that the anticipated functions and values are established.

(9) The director may not withdraw credits from the mitigation bank for a specific permit, authorization or resolution of a violation if the director determines that:

(a) The credits for that specific permit, authorization or resolution of a violation would not adequately maintain habitat or species diversity; or

(b) The mitigation bank site for which credits are proposed to be withdrawn is not sufficiently similar in wetland functions and values to the wetland area to be damaged or destroyed. [Formerly 541.565; 1997 c.444 §3; 2003 c.738 §7]

196.623 Watershed enhancement project as mitigation bank; sale of mitigation credit. (1) The Department of State Lands may approve a watershed enhancement program and certify the project as a wetlands mitigation bank under ORS 196.600 to 196.655 if the watershed enhancement program complies with the rules adopted by the department under ORS 196.615 for certification of a program as a wetlands mitigation bank.

(2) A person, state agency, federal agency, federally recognized Indian tribe, watershed council or political subdivision in this state that owns land upon which is located a watershed enhancement program that qualifies as a wetlands mitigation bank under subsection (1) of this section may sell mitigation credit from the mitigation bank subject to ORS 196.600 to 196.655 and the rules of the Department of State Lands adopted under ORS 196.600 to 196.655. [1997 c.444 §2]

196.625 Fill and removal activities in mitigation banks; reports. (1) The Director of the Department of State Lands shall maintain a record of fill and removal activities and actions for each mitigation bank implemented and conduct monitoring of mitigation banks with moneys from the Oregon Wetlands Mitigation Bank Revolving Fund Account.

(2) The director shall provide annual reports to the State Land Board on moneys spent and received for each wetland mitigation bank. [Formerly 541.567; 2003 c.738 §8]

196.630 Rules. Subject to the approval of the State Land Board, the Director of the Department of State Lands shall adopt rules according to the provisions of ORS chapter 183 to carry out the provisions of ORS 196.600 to 196.655. [Formerly 541.570]

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, Economic and Community 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 comple-

mentary 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]

196.640 Oregon Wetlands Mitigation Bank Revolving Fund Account; rules. (1) The Oregon Wetlands Mitigation Bank Revolving Fund Account is established, separate and distinct from the General Fund. All moneys received under ORS 196.645 shall be paid into the State Treasury and credited to the account. All moneys in the account are appropriated continuously to the Department of State Lands to be used by the department as set forth in ORS 196.650. The moneys in the account may be invested and reinvested as provided in ORS 293.701 to 293.820. Interest earned by the account shall be credited to the account.

(2) The department shall keep a record of all moneys deposited in the account. 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.

(3) The department shall publish annually the record of moneys deposited in and removed from the account.

(4) The Director of the Department of State Lands may adopt rules for prioritizing expenditures from the account for the purposes specified in ORS 196.650. [Formerly 541.577; 2003 c.738 §10]

196.643 Payments to comply with permit condition, authorization or resolution of violation. A person who provides off-site compensatory wetland mitigation in order to comply with a condition imposed on a permit in accordance with ORS 196.825 (5), an authorization issued in accordance with ORS 196.800 to 196.905 or a resolution of a violation of ORS 196.800 to 196.905 may make a payment for credits to an approved mitigation bank with available credits, or to the Oregon Wetlands Mitigation Bank Revolving Fund Account, if credits from a mitigation bank are not available. If the person is making a payment to the Oregon Wetlands Mitigation Bank Revolving Fund Account, the payment shall be equal to the average cost of credits available from all active mitigation banks in the state. [2003 c.738 §22]

196.645 Sources of account. The following moneys shall be paid into the Oregon Wetlands Mitigation Bank Revolving Fund Account:

(1) Any moneys appropriated for that purpose by the Legislative Assembly;

(2) Moneys received from conditions imposed on a permit, authorizations or resolutions of violations, except civil penalties, involving compensatory wetland mitigation in which the Department of State Lands is the party responsible for the compensatory wetland mitigation;

(3) Moneys awarded for such purposes as specifically stipulated under grants through the Federal Emergency Wetlands Resources Act of 1986, P.L. 99-645, or the Federal Coastal Zone Management Act of 1972, 16 U.S.C. 1451 et seq., as amended;

(4) Moneys obtained by gift, bequest, donation or grant from any other public or private source for the purposes of ORS 196.600 to 196.655 or 196.800 to 196.905;

(5) Repayment of moneys from the account, including interest on such moneys; and

(6) Moneys obtained from interest or other earnings from investments of moneys in the account. [Formerly 541.580; 1999 c.59 §50; 2003 c.738 §11]

196.650 Use of account. The Department of State Lands may use the moneys in the Oregon Wetlands Mitigation Bank Revolving Fund Account for the following purposes:

(1) For the voluntary acquisition of land suitable for use in mitigation banks.

(2) To pay for specific projects to create, restore or enhance wetland areas for purposes of carrying out the provisions of ORS 196.600 to 196.905. Moneys deposited in the account for wetland impacts may be used only for wetland creation, restoration and enhancement.

(3) For purchase of credits from approved mitigation banks.

(4) For payment of administrative, research or scientific monitoring expenses of the department in carrying out the provisions of ORS 196.600 to 196.655.

(5) For the disbursal of funds received under the Federal Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.), for such purposes as specifically stipulated in a grant award.

(6) For the disbursal of funds received under the Federal Emergency Wetlands Resources Act of 1986, P.L. 99-645, for the voluntary acquisition of wetlands and interests therein as identified in the wetlands provisions of the Statewide Comprehensive Outdoor Recreation Plan. [Formerly 541.585; 1993 c.18 §37; 2003 c.738 §12]

196.655 Report on Oregon Wetlands Mitigation Bank Revolving Fund Account; contents. As part of the report to the State Land Board required under ORS 196.885, the Director of the Department of

State Lands shall prepare an annual report on the Oregon Wetlands Mitigation Bank Revolving Fund Account. The report shall include, but need not be limited to:

(1) The financial status of the account;

(2) Creation, restoration or enhancement activities and credits sold, granted or otherwise disposed of or remaining in mitigation banks established under ORS 196.600 to 196.655;

(3) Wetlands acquired with moneys in the account;

(4) Compensatory wetland mitigation projects financed with moneys in the account; and

(5) For each mitigation bank, a summary of activities, including but not limited to:

(a) A description of the location, size, number of potential credits and credits withdrawn for each specific permit action; and

(b) The status of all mitigation bank activities pending or completed during the past year. [Formerly 541.587; 2003 c.738 §13]

196.660 Effect of ORS 196.600 to 196.655. ORS 196.600 to 196.655 are intended to be supplementary to, and are not intended to abrogate, any state or federal law relating to wetlands. [Formerly 541.590; 1999 c.59 §51]

196.665 Short title. ORS 196.600 to 196.655 may be cited as the "Oregon Wetlands Mitigation Bank Act of 1987." [Formerly 541.595]

(Wetland Conservation Plans)

196.668 Legislative findings. The Legislative Assembly finds that:

(1) Wetlands provide a natural means of flood and storm damage protection through the absorption and storage of water during high runoff periods, thereby reducing flood crests and preventing loss of life and property;

(2) Wetlands provide essential breeding, spawning, rearing, feeding, nesting and wintering habitats for a major portion of this state's fish and wildlife;

(3) Wetlands provide essential habitat for waterfowl using the Pacific Flyway and for the rearing of salmon and other anadromous and resident fish;

(4) Wetlands act as accumulation areas for sediments which retain nutrients and other pollutants that may prevent entry of the pollutants into other waterways;

(5) Wetlands provide a valuable public service of maintaining clean water by retaining nutrients, metals and toxic materials from the water to protect water quality;

(6) Wetlands provide significant opportunities for environmental and ecological research, public recreation and education and provide scenic diversity and aesthetic value as open space and areas of visual enjoyment;

(7) Much of this state's original wetlands have been diked, drained, filled, dredged, ditched or otherwise altered;

(8) There is continuing development pressure on wetlands in Oregon;

(9) There are often conflicts between wetland protection and other resource values and uses;

(10) Uncoordinated regulation of wetlands by local, state and federal agencies can cause confusion, frustration and unreasonable delay and uncertainty for the general public; and

(11) Wetland management is a matter of this state's concern since benefits and impacts related to wetland resources can be international, national, regional and statewide in scope. [1989 c.837 §2]

196.670 [Formerly 541.605; renumbered 196.800 in 1989]

196.672 Policy. In addition to the policy described in ORS 196.805, it is the policy of the State of Oregon to:

(1) Promote the protection, conservation and best use of wetland resources, their functions and values through the integration and close coordination of statewide planning goals, local comprehensive plans and state and federal regulatory programs.

(2) Use a single definition of "wetlands" for the purposes of ORS 196.800 to 196.905 and statewide planning goals and a single, uniform methodology of delineating wetland boundaries.

(3) Develop a statewide inventory of wetlands based on uniform identification standards and criteria at a scale practicable for planning and regulatory purposes, and to make such inventory available to state agencies and local governments to facilitate better management of wetland resources and closer coordination of local, state and federal wetland programs.

(4) Maintain a stable resource base of wetlands through the mitigation of losses of wetland resources and the adoption of the procedural mitigation standard currently used by federal agencies.

(5) Establish the opportunity to increase wetland resources by encouraging wetland restoration and creation where appropriate.

(6) Reduce the delays and uncertainty which can occur in the current wetland planning and regulatory framework through improved coordination of the provisions in ORS 196.800 to 196.905 with local land use

planning and regulation and by providing mechanisms for expedited permit review consistent with the protection and conservation of wetland resources.

(7) Continue to meet the requirements of federal law in the protection and management of wetland resources, while asserting the interests of this state, in concert with those of local governments in urging the federal resource and regulatory agencies to develop a uniform wetland policy and more consistent, cohesive standards to implement the Federal Water Pollution Control Act (33 U.S.C. 1344).

(8) Develop and provide information to the general public concerning the functions, values and distribution of wetlands of this state to raise public awareness of these resources.

(9) Promote the protection of wetland values on private lands by developing and using public recognition programs, incentives and other nonregulatory actions.

(10) Encourage wetlands as an interim use of mining and construction sites on lands that were not originally wetlands and are designated for other than wetland purposes in an acknowledged comprehensive plan, while insuring that interim wetland use does not limit the future use of such sites for mining and construction. [1989 c.837 §3]

196.674 Statewide Wetlands Inventory; rules. (1) The Department of State Lands shall compile and maintain a comprehensive Statewide Wetlands Inventory.

(2) In compiling the Statewide Wetlands Inventory, the department shall develop, by rule, a system for uniform wetland identification, delineation and comprehensive mapping. Initial inventories shall be based upon the National Wetlands Inventory prepared by the United States Department of the Interior, Fish and Wildlife Service. The Department of State Lands shall consult with the public, local governments and affected state and federal agencies concerning the accuracy of the inventory.

(3) The Department of State Lands shall revise the inventory maps as new or more complete information becomes available.

(4) The Department of State Lands shall provide each city and county planning office with copies of the Statewide Wetlands Inventory covering the local jurisdiction.

(5) The Department of State Lands shall provide each state agency with a copy of the inventory upon request.

(6) Copies of the Statewide Wetlands Inventory shall be made available to the general public, through the Department of State Lands, upon payment of a fee to offset administrative and reproduction costs.

(7) A wetland inventory developed by another party may be utilized by the Department of State Lands if it is consistent with standards adopted pursuant to this section, after consulting with the affected local government, and is reviewed and approved by the Department of State Lands as complying with the standards adopted pursuant to subsection (2) of this section.

(8) Nothing in this section shall restrict the regulatory jurisdiction of the Department of State Lands under ORS 196.800 to 196.905.

(9) In compiling and updating the Statewide Wetlands Inventory, the Department of State Lands shall identify opportunities for wetland creation, restoration and enhancement when the information is available. [1989 c.837 §6; 2003 c.253 §6]

196.675 [Formerly 541.610; renumbered 196.805 in 1989]

196.676 Response to notices from local governments. The Department of State Lands shall respond to the notice received from local governments pursuant to ORS 215.418 (1) and 227.350 (1) within 30 days of receipt of the notice. The response shall state whether a permit is or in the future will be required or whether a permit has been issued by the department for the activity which is subject to notice. [1989 c.837 §7]

196.678 Wetland conservation plans; contents; procedure for adopting. (1) Any city or county may develop and submit to the Department of State Lands a wetland conservation plan for review pursuant to the provisions of ORS 196.678 to 196.684.

(2) A wetland conservation plan shall include the following elements:

(a) A description and maps of the area to be covered by the plan;

(b) A detailed inventory of the wetlands, identifying the location, quality and quantity of the wetland resource and the source of the water for the wetlands within the area covered by the plan;

(c) An assessment of wetland functions and values, including an historical analysis of wetland degradation, alterations and losses;

(d) Designation of wetland areas for protection, conservation or development. Wetlands within areas designated for development shall be delineated to determine regulatory boundaries;

(e) A mitigation plan, including a program for replacement of planned wetland losses and restoration of lost functions and values through creation of new wetlands or enhancement of existing wetland areas which

designates specific sites within the plan area and actions for restoration and enhancement;

(f) Policies and implementing measures establishing protection, conservation and best use of the wetlands in the plan area;

(g) Specification of sites for fill or removal, or both, and the conditions and procedures under which fill or removal, or both, may occur;

(h) Monitoring provisions that insure the wetland mitigation measures are implemented and mitigation goals are achieved;

(i) Identification of public uses of the wetlands and waters and conflicting planned uses; and

(j) Specification of buffer areas and uses allowed on lands which are adjacent to wetlands and which are necessary to maintain, protect or restore wetland functions and values.

(3) The proposed wetland conservation plan shall be adopted by the affected local government according to the procedures set forth in ORS 197.610 to 197.625. [1989 c.837 §10]

196.680 [Formerly 541.615; renumbered 196.810 in 1989]

196.681 Duties of department; standards for approval of plan; conditions for approval; order. (1) In accordance with rules adopted pursuant to this chapter, the Department of State Lands shall:

(a) Review any proposed wetland conservation plan or proposed amendment to an approved wetland conservation plan against the standards in this section;

(b) Prepare a proposed order that approves, approves with conditions or denies the proposed wetland conservation plan or proposed amendment to an approved wetland conservation plan;

(c) Provide notice and the opportunity for public hearing and comment on the proposed order;

(d) Consult with affected local, state and federal agencies; and

(e) Consider the applicable findings made in the order of acknowledgment issued by the Land Conservation and Development Commission.

(2) The Director of the Department of State Lands may approve by order a wetland conservation plan that includes the necessary elements of ORS 196.678 (2) and meets the standards of subsections (3) and (4) of this section.

(3) A wetland conservation plan shall comply with the following standards:

(a) Uses and activities permitted in the plan including fill or removal, or both, conform to sound policies of conservation and will not interfere with public health and safety;

(b) Uses and activities permitted in the plan including fill or removal, or both, are not inconsistent with the protection, conservation and best use of the water resources of this state and the use of state waters for navigation, fishing and public recreation; and

(c) Designation of wetlands for protection, conservation and development is consistent with the resource functions and values of the area and the capability of the wetland area to withstand alterations and maintain important functions and values.

(4) Wetland areas may be designated for development including fill or removal, or both, only if they meet the following standards:

(a) There is a public need for the proposed uses set forth in the acknowledged comprehensive plan for the area;

(b) Any planned wetland losses shall be fully offset by creation, restoration or enhancement of wetland functions and values or in an estuarine area, estuarine resource replacement is consistent with ORS 196.830; and

(c) Practicable, less damaging alternatives, including alternative locations for the proposed use are not available.

(5) Approval by the director of a wetland conservation plan shall be conditioned upon adoption by the affected local governments of comprehensive plan policies and land use regulations consistent with and sufficient to implement the wetland conservation plan. Appropriate implementing measures may include the following planning and zoning requirements regulating:

(a) Adjacent lands or buffer areas necessary to maintain, protect or restore wetland functions and values, including riparian vegetation, and the uses to be allowed in those areas;

(b) Sites for mitigation of impacts from development activities;

(c) Upland areas adjacent to wetlands; and

(d) Activities or location of buildings, structures and improvements which may affect wetland values or functions, such as storm water runoff.

(6) The director shall issue an order approving, approving with conditions or denying a wetland conservation plan, including a clear statement of findings which sets forth the basis for the approval, conditioning or denial. The order shall include:

(a) A clear statement of findings that the elements specified in ORS 196.678 (2) have been developed;

(b) The findings in support of the determination of compliance or noncompliance with the standards in subsections (3) and (4) of this section; and

(c) The conditions under which fill or removal or both may occur.

(7) The director may, as a part of an order approving a plan, authorize site-specific fill or removal without an individual permit as required by ORS 196.810 provided that:

(a) The director adopts findings demonstrating that fill or removal for any proposed project complies with ORS 196.682 (1)(a) to (e); or

(b) The director adopts findings that specific areas of fill or removal within areas designated as development in the plan meet the following standards:

(A) The fill or removal approved by the order will result in minimal impacts to the wetland system in the planning area;

(B) The public need for the proposed area of fill or removal outweighs the environmental damage likely to result from full development;

(C) The director conditions any such order as necessary to ensure that the fill or removal, or both, is designed to minimize impacts from implementing the project; and

(D) Full replacement of wetland losses is provided through creation, restoration or enhancement of wetlands with comparable functions and values.

(8) Upon a finding by the director that a fill or removal, or both, authorized under subsection (7)(b) of this section has caused or is likely to cause more than minimal adverse impact to the wetland system considering required mitigation conditions, the director shall revise the order to require individual permit review according to ORS 196.682 or provide additional conditions to ensure that adverse impacts are minimal. Such revision shall not be subject to ORS 196.684. [1989 c.837 §11; 1999 c.59 §52]

196.682 Permits required for removal or fill; conditions on issuance of permit. (1) Except where otherwise provided by the order approving the plan, individual permit applications shall be required for removal or fill, or both, in areas subject to an approved wetland conservation plan. If individual permit applications are to be reviewed under the authority of the Director of the Department of State Lands, then application fees and review procedures shall be in accordance with ORS 196.815, 196.825 (5) and (6) and 196.835. In lieu of the substantive standards for permit issuance in ORS 196.815 (1) and 196.825 (1), (2) and (3), the Department of State Lands shall issue a permit if the removal or fill, or both, is consistent with the wetland conservation plan or can be conditioned to be consistent with the plan. The department shall condition any such permit as necessary to insure that the project:

(a) Is properly designed or configured to minimize the need for alterations to waters of the state;

(b) Is the minimum size necessary to reasonably provide for the proposed use;

(c) Complies with applicable provisions of the acknowledged comprehensive plan and land use regulations for the area;

(d) Is designed to minimize impacts from implementing the project; and

(e) Is conditioned to insure wetland creation, restoration or enhancement measures are implemented to fully replace impacted resources.

(2) In any order approving a plan which authorizes any fill or removal or both, without the necessity of subsequently obtaining an individual permit, the director shall condition such approval as necessary to insure that the project complies with the conditions of subsection (1) of this section and clearly delineates the wetland area in which fill or removal, or both, is to occur. [1989 c.837 §12]

196.684 Amendment of plans; review of plans by department; review of orders by Land Use Board of Appeals. (1) Local governments shall provide notice to the Department of State Lands of any proposed amendments to the land use plan and ordinances affecting lands subject to a wetland conservation plan approved under this section.

(2) Amendments to plan policies, maps and implementing ordinances by the local government within an approved wetland conservation plan shall be reviewed by the department against the requirements of this section. These provisions do not exempt local governments from the provisions of ORS 197.610 to 197.625.

(3) The Director of the Department of State Lands shall provide notice and the opportunity for public comment and hearing as defined by rule on the matter of including the amendment in the wetland conservation plan.

(4) If the director finds that the proposed local government amendment to acknowledged comprehensive plan and land use regulations meets the requirements of ORS 196.681, the director shall approve the plan by order, and notify the local government within 10 days of the completion of the pub-

lic review provided in subsection (3) of this section.

(5) If the amendments to acknowledged comprehensive plan and land use regulations adopted by the local government are determined not to comply with the requirements of ORS 196.668 to 196.692, 196.800, 196.810, 196.825, 196.830, 196.850 to 196.860, 196.885, 196.905, 197.015, 197.279, 215.213, 215.283, 215.284, 215.418 and 227.350, the director shall revoke the approval order or amend the order to insure compliance with the requirements of ORS 196.668 to 196.692, 196.800, 196.810, 196.825, 196.830, 196.850 to 196.860, 196.885, 196.905, 197.015, 197.279, 215.213, 215.283, 215.284, 215.418 and 227.350.

(6) The department shall review each approved wetland conservation plan every five years. After such review the director shall either modify, reissue or rescind the order approving the plan.

(7) In conducting the five-year review of an approved wetland conservation plan, the director shall provide notice and the opportunity for public comment and hearing on whether:

(a) There has been a substantial change in circumstances that would affect the wetland resources subject to the plan and would adversely affect the compliance of the plan with the standards in ORS 196.681;

(b) Changes have been made in applicable state law, statewide land use planning goals, federal law or agency rules that require the plan to be changed; and

(c) In the director's evaluation, the plan as implemented over the preceding five years meets the goals established in the plan.

(8) Wetland conservation plans approved by the Director of the Department of State Lands pursuant to ORS 196.668 to 196.692 shall be deemed to comply with the requirements of any statewide planning goals relating to wetlands, other than estuarine wetlands, for those areas, uses and activities which are regulated by the plan.

(9) An order by the director regarding approval, amendment or review of a wetland conservation plan shall be reviewable by the Land Use Board of Appeals as a land use decision of a state agency. For the purpose of such review, the director's order shall not become final until the local government adopts its wetland conservation plan or plan amendment. The Land Use Board of Appeals shall consolidate for review appeals of the director's order and the local government adoption. The Land Use Board of Appeals shall review such order for compliance with the requirements of ORS 196.668 to 196.692, 196.800, 196.810, 196.825, 196.830, 196.850 to 196.860, 196.885, 196.905, 197.015, 197.279, 215.213, 215.283, 215.284, 215.418 and 227.350.

(10) Nothing in this section shall be construed to require a contested case proceeding regarding approval, amendment or review of a wetland conservation plan.

(11) Nothing in this section shall be construed to affect the evaluation of a permit application in areas that do not have a wetland conservation plan.

(12) Upon a finding by the director, after a public hearing, that an affected local government is not enforcing the comprehensive plan provisions or land use regulations set forth in the conditions of the order, as specified in ORS 196.681 (5), and that such lack of enforcement has resulted or would result in adverse impacts to wetlands, the director shall modify, suspend or revoke approval of the wetland conservation plan. [1989 c.837 §13]

196.685 [Formerly 541.620; renumbered 196.815 in 1989]

196.686 Acknowledged estuary management plans; review and approval; hearings; final order. (1) For the purposes of this section, an acknowledged estuary management plan includes the comprehensive plan and land use regulations adopted by cities and counties to satisfy the requirement of statewide planning goals related to estuarine resources including shoreland portions of estuarine sites designated for development as those plans and regulations existed on January 1, 1989.

(2) Any city or county may submit an acknowledged estuary management plan for review and approval by the Department of State Lands pursuant to the provisions of this section. The plan shall be submitted with a written request for review.

(3) To allow timely and effective review of acknowledged estuary management plans, the department may limit acceptance for review to two plans but not more than one plan for a deep draft development estuary at any one time.

(4) With the consent of the city or county submitting an estuary management plan for review and approval, the department may extend any or all of the deadlines set forth in this section.

(5) Acknowledged estuary management plans shall be presumed to comply with requirements for approval of wetland conservation plans specified in ORS 196.681.

(6) Within 10 days of acceptance of a request for review, the department shall provide notice to affected state agencies, local governments, federal agencies and the public of receipt of the acknowledged estuary management plan and of the request for review and approval of the acknowledged estuary

management plan as a wetland conservation plan.

(7) Within 30 days of acceptance of a request for review and upon provision of at least two weeks' notice, the department shall hold a public informational hearing on the proposed approval of the acknowledged estuary management plan as a wetland conservation plan.

(8) Within 60 days of acceptance of the request for review, the department shall conduct a preliminary review of the acknowledged estuary management plan. The department shall consult with the affected local government prior to finalizing the preliminary review.

(9) Except as provided in subsection (10) of this section, the Director of the Department of State Lands shall approve the acknowledged estuary management plan by order within 60 days of completion of the preliminary review.

(10) A contested case hearing shall be held within 30 days of the completion of the preliminary review or receipt of a request for hearing if:

(a) The director determines there is probable cause to believe that the estuary management plan does not meet the standards for approving wetland conservation plans or unreasonably interferes with the use of the estuary for navigation, fisheries or public recreation; or

(b) A hearing is requested and the request:

(A) Is made in writing within 60 days of the date of mailing of notice of completion of review;

(B) Clearly states the reasons for requesting the hearing; and

(C) Provides sufficient information for the director to determine that there is probable cause to believe that the estuary management plan does not meet the standards for approving wetland conservation plans or unreasonably interferes with the use of the estuary for navigation, fisheries or public recreation.

(11) The director shall approve the acknowledged estuary management plan as a wetland conservation plan by order unless the director finds by a preponderance of the evidence that the estuary management plan does not meet the standards for approving wetland conservation plans or unreasonably interferes with the use of the estuary for navigation, fisheries or public recreation or that substantial fills proposed in an estuary management plan for nonwater dependent use are not for a public use and would not satisfy a public need that outweighs harm to navigation, fisheries or public recreation.

(12) The director shall prepare a proposed order for review by the parties within 30 days of any contested case hearing held pursuant to subsection (10) of this section.

(13) A final order from the director that recommends, pursuant to subsection (8) of this section, denial of an estuary management plan as a wetland conservation plan shall identify deficient elements and provisions of the acknowledged estuary management plan and what measures may be taken to correct those deficiencies.

(14) Individual permit applications shall be required for removal or fill, or both, in areas subject to an approved estuary management plan. Individual permit applications shall be reviewed in accordance with ORS 196.815, 196.825 (5) and (6), 196.830 and 196.835. In lieu of the substantive standards for permit issuance in ORS 196.815 (1) and 196.825 (1), (2) and (3), the department shall issue a permit if the removal or fill, or both, is determined by the director to be consistent with the estuary management plan or can be conditioned to be consistent with the plan. The department shall condition any such permit as necessary to insure that the project:

(a) Is designed or configured to minimize alterations to waters of the state;

(b) Is the minimum size necessary to reasonably provide for the proposed use;

(c) Is consistent with the resource capabilities of the area and the purposes of the management unit, unless this has been previously determined in the approved estuary management plan;

(d) Is designed to minimize impacts from implementing the project; and

(e) Has estuarine resource replacement measures for creation, restoration or enhancement that replaces impacted resources.

(15) Judicial review of an order granting or denying approval of an estuary management plan as provided in this section shall be as provided in ORS 183.470.

(16) Following approval by the director of an estuary management plan, the requirements of ORS 196.684 shall apply to the approved estuary management plan. [1989 c.837 §14]

196.687 Regulation of alteration or fill of artificially created wetlands. (1) Notwithstanding the provisions of ORS 196.600 to 196.905, state or local governments shall not prohibit or restrict the alteration or fill of wetland areas up to one acre in size that have been artificially created from upland for

the purpose of controlling, storing or maintaining storm water.

(2) An area that was developed as a storm water detention or retention facility as a condition of a development approval shall not be altered or filled without acceptance by the approving authority of a plan to mitigate the loss of functional capabilities of the detention or retention facility.

(3) Until a local government adopts an ordinance to conform its comprehensive plan and land use regulations to the provisions of this section, the provisions of subsection (1) of this section shall apply directly to proposed activities in wetland areas. Any portion of a goal, rule, comprehensive plan, land use regulation or ordinance not in conformance with the provisions of this section on September 9, 1995:

(a) Shall not be implemented or enforced; and

(b) Has no legal effect.

(4) The provisions of this section do not apply to land used to mitigate the loss of wetlands.

(5) If the Department of State Lands assumes responsibility under 33 U.S.C. §1344(g) of the Federal Water Pollution Control Act, ORS 196.600 to 196.905 shall apply to artificially created wetlands described in subsections (1) and (2) of this section. [1995 c.482 §1]

Note: 196.687 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 196 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

196.688 Public information program. (1) The Department of State Lands shall develop a public information program to educate permit applicants and the general public about:

(a) Wetland functions and values.

(b) The status and trends of Oregon's wetlands.

(c) The Statewide Wetlands Inventory.

(d) Wetland regulation.

(2) Upon request, the department shall, within the limits of staffing ability, provide technical assistance to other state agencies and local governments and the public in identifying and delineating the boundaries of wetlands. [1989 c.837 §20]

196.690 [Formerly 541.622; renumbered 196.820 in 1989]

196.692 Rules. (1) The Department of State Lands shall adopt rules to carry out the provisions of ORS 196.668 to 196.692, 196.800, 196.810, 196.825, 196.830, 196.850 to 196.860, 196.885, 196.905, 197.015, 197.279, 215.213, 215.283, 215.284, 215.418 and 227.350.

(2) Rules adopted pursuant to subsection (1) of this section shall include rules governing the application for and issuance of permits to remove material from the beds or banks of any waters of this state or to fill any waters of this state including, but not limited to, clear and objective standards and criteria for determining whether to grant or deny a permit. [1989 c.837 §32; 2001 c.460 §1]

196.695 [Formerly 541.625; renumbered 196.825 in 1989]

196.700 [Formerly 541.626; renumbered 196.830 in 1989]

196.705 [Formerly 541.627; renumbered 196.835 in 1989]

196.710 [Formerly 541.630; renumbered 196.840 in 1989]

196.715 [Formerly 541.635; renumbered 196.845 in 1989]

196.718 [Enacted in lieu of 541.640; renumbered 196.850 in 1989]

196.720 [Formerly 541.645; renumbered 196.855 in 1989]

196.725 [Formerly 541.650; renumbered 196.860 in 1989]

196.730 [Formerly 541.655; renumbered 196.865 in 1989]

196.735 [Formerly 541.660; renumbered 196.870 in 1989]

196.740 [Formerly 541.662; renumbered 196.875 in 1989]

196.745 [Formerly 541.665; renumbered 196.880 in 1989]

196.750 [Formerly 541.670; renumbered 196.885 in 1989]

196.755 [Formerly 541.675; renumbered 196.890 in 1989]

196.760 [Formerly 541.680; renumbered 196.895 in 1989]

196.765 [Formerly 541.685; renumbered 196.900 in 1989]

196.770 [Formerly 541.695; renumbered 196.905 in 1989]

REMOVAL OF MATERIAL; FILLING

Note: Section 2, chapter 45, Oregon Laws 1989, provides:

Sec. 2. Provision relating to fills depending on E.P.A. approval. (1) Notwithstanding any other provision of ORS 541.605 to 541.685 [renumbered 196.800 to 196.900 in 1989]:

(a) As used in ORS 541.605 to 541.685 [renumbered 196.800 to 196.900 in 1989], "fill" means the deposit by artificial means of material in any waters of this state.

(b) In the manner provided by ORS 541.640 [196.850], the director may provide a general exception from the application of ORS 541.605 to 541.685 [renumbered 196.800 to 196.900 in 1989] for fills that involve less than 50 cubic yards of material and will not result in substantial harm to the water resources of this state.

(2) This section does not become operative until the federal Environmental Protection Agency grants authority to the Department of State Lands to administer permits for the discharge of dredged or fill material under Section 404 of the Federal Water Pollution Control Act (P.L. 92-500, as amended). [1989 c.45 §2]

Note: See second note under 196.800.

196.795 Streamlining process for administering state removal or fill permits; application for state program general permit; periodic reports to legislative committee. (1) The Department of State Lands shall continue to pursue methods to streamline the process for administering permits for the removal of material from the bed or banks of any waters of this state or for filling the waters of this state, reducing paperwork, eliminating duplication, increasing certainty and timeliness and enhancing resource protection. The efforts of the Department of State Lands shall include but need not be limited to applying to the United States Army Corps of Engineers for a state program general permit as authorized in federal regulations implementing section 404 of the Federal Water Pollution Control Act, and section 10 of the Rivers and Harbors Act of 1899, as amended. In conjunction with these activities, the Department of State Lands may continue to investigate the possibility of assuming the federal regulatory program under 33 U.S.C. 1344(g) of the Federal Water Pollution Control Act.

(2) The department shall report periodically to the Joint Legislative Committee on Land Use on the progress in implementing subsection (1) of this section. [1995 c.474 §1; 1997 c.116 §1; 1999 c.59 §53]

Note: 196.795 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 196 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

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) "Department" means the Department of State Lands.

(3) "Director" means the Director of the Department of State Lands.

(4) "Estuary" means a body of water semienclosed by land and connected with the open ocean within which salt water is usually diluted by fresh water derived from the land. "Estuary" includes all estuarine waters, tidelands, tidal marshes and submerged lands extending upstream to the head of tidewater. However, the Columbia River Estuary extends to the western edge of Puget Island.

(5) "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.

(6) "General authorization" means a rule adopted by the director authorizing, without a permit from the department, a category of activities involving removal or fill, or both, on a statewide or other geographic basis.

(7) "Governmental body" includes the federal government when operating in any capacity other than navigational servitude, the State of Oregon and every political subdivision therein.

(8) "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.

(9) "Material" means rock, gravel, sand, silt and other inorganic substances removed from waters of this state and any materials, organic or inorganic, used to fill waters of this state.

(10) "Mitigation" means the reduction of adverse effects of a proposed project by considering, in the following order:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action;

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;

(c) Rectifying the impact by repairing, rehabilitating or restoring the affected environment;

(d) Reducing or eliminating the impact 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 impact by replacing or providing comparable substitute wetland or water resources.

(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 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 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 natural waterways including all tidal and nontidal bays, intermittent streams, constantly flowing streams, lakes, wetlands and other bodies of water in this state, navigable and nonnavigable, including that portion of the Pacific Ocean which is in the boundaries of this state. "Waters of this state" does not include the ocean shore, as defined in ORS 390.605, with the exception of those areas 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]

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. The text that is operative after that approval, including amendments by section 8, chapter 253, Oregon Laws 2003, and section 15, chapter 738, Oregon Laws 2003, 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) "Department" means the Department of State Lands.

(3) "Director" means the Director of the Department of State Lands.

(4) "Estuary" means a body of water semienclosed by land and connected with the open ocean within which salt water is usually diluted by fresh water derived from the land. "Estuary" includes all estuarine waters, tidelands, tidal marshes and submerged lands extending upstream to the head of tidewater. However, the Columbia River Estuary extends to the western edge of Puget Island.

(5) "Fill" means the deposit by artificial means of material at one location in any waters of this state.

(6) "General authorization" means a rule adopted by the director authorizing, without a permit from the department, a category of activities involving removal or fill, or both, on a statewide or other geographic basis.

(7) "Governmental body" includes the federal government when operating in any capacity other than navigational servitude, the State of Oregon and every political subdivision therein.

(8) "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.

(9) "Material" means rock, gravel, sand, silt and other inorganic substances removed from waters of this state and any materials, organic or inorganic, used to fill waters of this state.

(10) "Mitigation" means the reduction of adverse effects of a proposed project by considering, in the following order:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action;

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;

(c) Rectifying the impact by repairing, rehabilitating or restoring the affected environment;

(d) Reducing or eliminating the impact 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 impact by replacing or providing comparable substitute wetland or water resources.

(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 the taking of material in any waters of this state or 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 natural waterways including all tidal and nontidal bays, intermittent streams, constantly flowing streams, lakes, wetlands and other bodies of water in this state, navigable and nonnavigable, including that portion of the Pacific Ocean which is in the boundaries of this state. "Waters of this state" does not include the ocean shore, as defined in ORS 390.605, with the exception of those areas 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, 196.825, 196.850, 196.895, 196.905, 196.990, 390.835, 421.628 and 459.047 by sections 1 to 10 of this 2001 Act and the

repeal of section 2, chapter 45, Oregon Laws 1989, by section 13 of this 2001 Act 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]

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.

(4) The director shall delineate wetlands in accordance with the United States Army Corps of Engineers Wetlands Delineation Manual of 1987, or subsequent federal manual as adopted by rule by the director, and applicable guidance issued by the United States Army Corps of Engineers for the area in which the wetlands are located.

(5) The Department of State Lands shall give priority to the review of wetland delineation reports submitted with or in advance of an application for fill or removal of material from the waters of this state. [Formerly 541.610 and then 196.675; 2003 c.738 §16]

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, no person or governmental body may remove any material from the beds or banks 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 wetlands conservation plan.

(b) Notwithstanding the permit requirements of this section and notwithstanding the provisions of ORS 196.800 (5) 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) No person may be 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) No permit may be 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 498.311, 498.316, 498.326 or 509.600 to 509.645.

(e) Nothing in this section limits or otherwise changes the exemptions under ORS 196.905.

(f) 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) No governmental body may 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 governmental body 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 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 onsite evaluation by an employee or representative of the department.

(c) If issued orally, shall be confirmed in writing by the department within five days. [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]

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. The text that is operative after that approval, including amendments by section 97, chapter 14, Oregon Laws 2003, 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 or governmental body may not remove any material from the beds or banks 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 wetlands 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 498.311, 498.316, 498.326 or 509.600 to 509.645.

(d) Nothing in this section limits or otherwise changes the exemptions under ORS 196.905.

(2) A governmental body 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 governmental body 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 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.

(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; fees; disposition of fees. (1) Each applicant for a permit to remove material from the bed or banks or fill any waters of this state first shall file a written application with the Director of the Department of State Lands, specifying the nature and amount of material to be removed or the amount of fill, the waters and the specific location from which it is to be removed or where the fill will be placed, the method of removal or filling and the times during which removal or filling is to be conducted. The director may require additional information as is necessary to enable the director to determine whether the granting of the permit applied for is consistent with the protection, conservation and best use of the water resources of this state. For the purposes of this subsection, fills or removals of material at locations not more than one mile apart may be combined in one application.

(2) The Director of the Department of State Lands shall furnish to any member of the public upon written request and at the expense of the member of the public a copy of any application for a permit pursuant to subsection (1) of this section.

(3)(a) 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, $50.

(B) For a removal by a public body, $150.

(C) For a removal by a commercial operator, $150.

(D) For a fill by a private operator, or a person contracting to perform services for a private operator, $150.

(E) For a fill by a public body, $375.

(F) For a fill by a commercial operator, $375.

(G) For erosion-flood repair, including riprap, by a private landowner or public body, or a person contracting to perform services for such persons, 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 4,999 cubic yards, $75 for private operator, $75 for public body and $75 for commercial operator.

(C) 5,000 to 50,000 cubic yards, $150 for private operator, $150 for public body and $150 for commercial operator.

(D) Over 50,000 cubic yards, $225 for private operator, $225 for public body and $225 for commercial operator.

(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 2,999 cubic yards, $75 for private operator, $75 for public body and $75 for commercial operator.

(C) 3,000 to 10,000 cubic yards, $150 for private operator, $150 for public body and $150 for commercial operator.

(D) Over 10,000 cubic yards, $225 for private operator, $225 for public body and $225 for commercial operator.

(d) For the purposes of this subsection, the following terms shall have the following meanings:

(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 regulations promulgated by the Department of State Lands; and

(E) "Erosion-flood repair" means riprap or any other work necessary to preserve existing facilities and land from flood and high

stream flows, in accordance with regulations promulgated by the department.

(4) 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 (3) of this section.

(5) Annually on the anniversary date of the permit, 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 (3) of this section, except that the applicant shall pay only the base fee. 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 any extension 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.

(6) 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, 196.990 and 541.990 and as otherwise required by law. [Formerly 541.620 and then 196.685]

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; consultation with other agencies; hearing; appeal. (1) The Director of the Department of State Lands shall issue a permit to remove material from the beds or banks of any waters of this state applied for under ORS 196.815 if the director determines that the removal described in the application will not be inconsistent with the protection, conservation and best use of the water resources of this state as specified in ORS 196.805.

(2) The director shall issue a permit applied for under ORS 196.815 for filling waters of this state if the director determines that the proposed fill would not unreasonably interfere with the paramount policy of this state to preserve the use of its waters for navigation, fishing and public recreation.

(3) In determining whether or not a permit shall be issued, the director shall consider all of the following:

(a) The public need for the proposed fill and the social, economic or other public benefits likely to result from the proposed fill. When the applicant for a fill 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 is not accomplished.

(c) The availability of alternatives to the project for which the fill is proposed.

(d) The availability of alternative sites for the proposed fill.

(e) Whether the proposed fill conforms to sound policies of conservation and would not interfere with public health and safety.

(f) Whether the proposed fill is in conformance with existing public uses of the waters and with uses designated for adjacent land in an acknowledged comprehensive plan and zoning ordinances.

(g) Whether the proposed fill is compatible with the acknowledged comprehensive plan and land use regulations for the area where the proposed fill is to take place or can be conditioned on a future local approval to meet this criterion.

(h) Whether the proposed fill is for streambank protection.

(i) Whether the applicant has provided all practicable mitigation to reduce the adverse effects of the proposed fill in the manner set forth in ORS 196.800 (10). If off-site compensatory wetland mitigation is proposed, the applicant shall document the impracticability of on-site compensatory wetland mitigation.

(4) The director may issue a permit for a substantial fill in an estuary for a nonwater dependent use only if the fill 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, 196.830 and subsections (1) and (2) of this section and to provide

mitigation for the reasonably expected adverse impacts from project development. In formulating such conditions the director may request comment from the State Geologist, the State Fish and Wildlife Director, the State Forester, the Director of the Department of Environmental Quality, the administrative officer of the Soil and Water Conservation Commission, the Director of Agriculture, the State Parks and Recreation Director, the State Marine Director, the Director of Transportation, the Director of the Economic and Community Development Department, the Water Resources Director and affected local governmental units. Each permit is valid only for the time specified therein. Obtaining a lease from the Department of State Lands may not be one of the conditions to be considered in granting a permit under ORS 196.815. The Director of the Department of State Lands shall impose, as conditions to any permit, general authorization or wetland conservation plan, measures to provide mitigation for the reasonably expected adverse impacts from project development. Compensatory wetland mitigation shall be limited to replacement of the functional attributes of the lost wetland.

(6) Any applicant whose application for a permit has been deemed incomplete or has been denied, or who objects to any of the conditions imposed under subsections (1), (2) and (5) of this section by the Director of the Department of State Lands, may, within 21 days of the denial of the permit 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.

(7) 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 involving fill or removal of material within 90 days after the date the director determines that the application is complete unless:

(A) An extension of time is granted under subsection (9)(b) of this section; or

(B) The applicant and the director agree to a longer time period.

(8) Permits issued under this section shall be in lieu of any permit that might be required for the same operation under ORS 164.775, 164.785, 468.010, 468.030 to 468.045, 468.055, 468.060, 468.075, 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 is issued; and

(b) The standards for granting such permits are substantially the same as those established pursuant to ORS 164.775, 164.785, 468.010, 468.035, 468.040, 468.055, 468.110, 468.120, 468B.005 to 468B.030 and 468B.048 to 468B.085 to the extent they affect water quality.

(9)(a) Any agency or other unit of government requested by the director to comment on an application for a permit under subsection (5) of this section must submit its comments to the director not more than 30 days after receiving the request for comment. If an agency or other unit of government fails to comment on the application within 30 days, the director shall assume the agency or other unit of government has no objection and shall approve or deny the application.

(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.

(10) 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.

(11) As used in this section:

(a) "Applicant" means a landowner or person authorized by a landowner to conduct a removal or fill activity.

(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 subsections (1) to (5) of this section. [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; 2003 c.253 §9; 2003 c.738 §17a]

Note: Operation of the amendments to 196.825 by section 3, 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, including amendments by section 10, chapter 253, Oregon Laws 2003, and section 18a, chapter 738, Oregon Laws 2003, is set forth for the user's convenience.

196.825. (1) The Director of the Department of State Lands shall issue a permit to remove material from the beds or banks of any waters of this state applied for under ORS 196.815 if the director determines that the removal described in the application 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.

(2) The director shall issue a permit applied for under ORS 196.815 for filling waters of this state if the director determines that the proposed fill:

(a) Would not unreasonably interfere with the paramount policy of this state to preserve the use of its waters for navigation, fishing and public recreation; and

(b) Is consistent with ORS 196.600 to 196.905.

(3) In determining whether to issue a permit under subsection (1) or (2) of this section, the director shall consider all of the following:

(a) The public need for the proposed fill and the social, economic or other public benefits likely to result from the proposed fill. When the applicant for a fill 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 is not accomplished.

(c) The availability of alternatives to the project for which the fill is proposed.

(d) The availability of alternative sites for the proposed fill.

(e) Whether the proposed fill conforms to sound policies of conservation and would not interfere with public health and safety.

(f) Whether the proposed fill is in conformance with existing public uses of the waters and with uses designated for adjacent land in an acknowledged comprehensive plan and zoning ordinances.

(g) Whether the proposed fill is compatible with the acknowledged comprehensive plan and land use regulations for the area where the proposed fill is to take place or can be conditioned on a future local approval to meet this criterion.

(h) Whether the proposed fill is for streambank protection.

(i) Whether the applicant has provided all practicable mitigation to reduce the adverse effects of the proposed fill in the manner set forth in ORS 196.800 (10). If off-site compensatory wetland mitigation is proposed, the applicant shall document the impracticability of on-site compensatory wetland mitigation.

(4) The director may issue a permit for a substantial fill in an estuary for a nonwater dependent use only if the fill 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, 196.830 and subsections (1) and (2) of this section and to provide mitigation for the reasonably expected adverse impacts from project development. In formulating such conditions the director may request comment from the State Geologist, the State Fish and Wildlife Director, the State Forester, the Director of the Department of Environmental Quality, the administrative officer of the Soil and Water Conservation Commission, the Director of Agriculture, the State Parks and Recreation Director, the State Marine Director, the Director of Transportation, the Director of the Economic and Community Development Department, the Water Resources Director and affected local governmental units. Each permit is valid only for the time specified therein. Obtaining a lease from the Department of State Lands may not be one of the conditions to be considered in granting a permit under ORS 196.815. The Director of the Department of State Lands shall impose, as conditions to any permit, general authorization or wetland conservation plan, measures to provide mitigation for the reasonably expected adverse impacts from project development. Compensatory wetland mitigation shall be limited to replacement of the functional attributes of the lost wetland.

(6) Any applicant whose application for a permit has been deemed incomplete or has been denied, or who objects to any of the conditions imposed under subsections (1), (2) and (5) of this section by the director, may, within 21 days of the denial of the permit 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.

(7) 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 involving fill or removal of material within 90 days after the date the director determines that the application is complete unless:

(A) An extension of time is granted under subsection (9)(b) of this section; or

(B) The applicant and the director agree to a longer time period.

(8) Permits issued under this section shall be in lieu of any permit that might be required for the same operation under ORS 164.775, 164.785, 468.010, 468.030 to 468.045, 468.055, 468.060, 468.075, 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 is issued; and

(b) The standards for granting such permits are substantially the same as those established pursuant to ORS 164.775, 164.785, 468.010, 468.035, 468.040, 468.055, 468.110, 468.120, 468B.005 to 468B.030 and 468B.048 to 468B.085 to the extent they affect water quality.

(9)(a) Any agency or other unit of government requested by the director to comment on an application for a permit under subsection (5) of this section must submit its comments to the director not more than 30 days after receiving the request for comment. If an agency or other unit of government fails to comment on the application within 30 days, the director shall assume the agency or other unit of government has no objection and shall approve or deny the application.

(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.

(10) 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.

(11) As used in this section:

(a) "Applicant" means a landowner or person authorized by a landowner to conduct a removal or fill activity.

(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 subsections (1) to (5) of this section.

Note: See second note under 196.800.

196.830 Estuarine resource replacement as condition for fill or removal from estuary; considerations; other permit conditions. (1) As used in this section, "estuarine resource replacement" means the creation, restoration or enhancement of an estuarine area to maintain the functional characteristics and processes of the estuary, such as its natural biological productivity, habitats and species diversity, unique features and water quality.

(2) Except as provided in subsection (4) of this section, the Director of the Department of State Lands shall require estuarine resource replacement as a condition of any permit for filling or removal of material from an intertidal or tidal marsh area of an estuary.

(3) If the director requires estuarine resource replacement, the director shall consider:

(a) The identified adverse impacts of the proposed activity;

(b) The availability of areas in which replacement activities could be performed;

(c) The provisions of land use plans for the area adjacent to or surrounding the area of the proposed activity;

(d) The recommendations of any interested or affected state or local agencies; and

(e) The extent of compensating activity inherent in the proposed activity.

(4) Notwithstanding any provisions of this chapter and ORS chapter 195, 197 or the statewide planning goals adopted thereunder to the contrary, the director may:

(a) Waive estuarine resource replacement in part for an activity for which replacement would otherwise be required if, after consultation with appropriate state and local agencies the director determines that:

(A) There is no alternative manner in which to accomplish the purpose of the project;

(B) There is no feasible manner in which estuarine resource replacement could be accomplished;

(C) The economic and public need for the project and the economic and public benefits resulting from the project clearly outweigh the potential degradation of the estuary;

(D) The project is for a public use; and

(E) The project is water dependent or the project is publicly owned and water related; or

(b) Waive estuarine resource replacement wholly or in part for an activity for which replacement would otherwise be required if the activity is:

(A) Filling for repair and maintenance of existing functional dikes and negligible physical or biological damage to the tidal marsh or intertidal areas of the estuary will result;

(B) Riprap to allow protection of an existing bankline with clean, durable erosion resistant material when a need for riprap protection is demonstrated that cannot be met with natural vegetation and no appreciable increase in existing upland will occur;

(C) Filling for repair and maintenance of existing roads and negligible physical or biological damage to the tidal marsh or intertidal areas of the estuary will result;

(D) Dredging for authorized navigation channels, jetty or navigational aid installation, repair or maintenance conducted by or under contract with the Army Corps of Engineers;

(E) Dredging or filling required as part of an estuarine resource restoration or enhancement project agreed to by local, state and federal agencies; or

(F) A proposed alteration that would have negligible adverse physical or biological impact on estuarine resources.

(5) Nothing in this section is intended to limit the authority of the director to impose conditions on a permit under ORS 196.825 (4). [Formerly 541.626 and then 196.700]

196.835 Hearing regarding issuance of permit; procedure; appeals; suspension of permit pending appeal. Any person aggrieved or adversely affected by the grant of a permit by the Director of the Department of State Lands may file a written request for hearing with the director within 21 days after the date the permit was granted. If the director finds that the person making the written request has a legally protected interest which is adversely affected by the grant of the permit, the director shall set the matter down for hearing within 30 days after receipt of the request. The hearing shall be conducted as a contested case in accordance with ORS 183.415 to 183.430, 183.440 to 183.460 and 183.470. The permittee shall be a party to the proceeding. Within 45 days of the 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 original order. Appeals from the director's final order may be taken to the Court of Appeals in the manner provided by ORS 183.482. A permit to fill granted by the director may be suspended by the director during the pendency of the proceedings before the director and any appeal. The director shall not suspend the permit unless the person aggrieved or adversely affected by grant of permit makes a showing before the director by clear and convincing evidence that commencement or continuation of the fill would cause irremediable damage and would be inconsistent with ORS 196.600 to 196.905. [Formerly 541.627 and then 196.705; 2003 c.738 §19]

196.840 Closure of specified waters to removal or filling; rules. Any agency listed in ORS 196.825 (5) may request the Water Resources Commission by rule to close one or more specified waters of this state to the issuance of permits. After a public hearing held in conformity with ORS chapter 183, if the Water Resources Commission finds that issuance of permits with respect to such water resources would be inconsistent with the protection, conservation and best use of the water resources of this state as specified in ORS 196.805, the Water Resources Commission may by rule close such waters to the issuance of permits and to any other removals or fills under ORS 196.850 for an indefinite period or during such other times as are stated in the rule. [Formerly 541.630 and then 196.710]

196.845 Investigations and surveys. In considering applications for permits, the Director of the Department of State Lands may cause investigations or surveys to be made of the location of the work contemplated to determine whether such removal or filling is consistent with ORS 196.805 and 196.825. [Formerly 541.635 and then 196.715]

196.850 Waiving permit requirement in certain cases; rules; notice; review. (1) Notwithstanding ORS 196.810, the Department of State Lands may, by rule, grant general authorization for removal of material from the bed or banks or the filling of any waters of the state without a permit from the department if the department finds that those activities subject to the general authorization are substantially similar in nature and would cause only minimal individual and cumulative environmental impacts, and would not result in long-term harm to water resources of the state. The department shall condition any such general authorization upon actions necessary to minimize environmental impacts.

(2) The department shall provide notice of any proposed general authorization to affected federal and state agencies, local governments and the public. The notice shall include:

(a) A clear description of the proposal; and

(b) Draft findings and any proposed conditions pursuant to subsection (1) of this section.

(3) Any person proposing to conduct an action under a general authorization shall

notify the department in writing prior to conducting such action.

(4) The department shall amend or rescind any general authorization upon a determination that the activities conducted under the authorization have resulted in or would result in more than minimal environmental impacts or long-term harm to the water resources of this state.

(5) The department shall review each general authorization adopted pursuant to this section every five years. The review shall include public notice and opportunity for public hearing. After such review, the department may either modify, reissue or rescind the general authorization.

(6) In addition to the grounds for review set forth in ORS 183.400 (4), on judicial review of the validity of a rule adopted under this section, the rule shall be reviewable for substantial evidence in the rulemaking record. The record shall include copies of all documents before the agency relevant to whether the requirement of subsection (1) of this section has been met. [1989 c.837 §9 (enacted in lieu of 541.640); renumbered 196.850 in 1989; 2003 c.253 §11]

Note: Operation of the amendments to 196.850 by section 4, 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, including amendments by section 12, chapter 253, Oregon Laws 2003, is set forth for the user's convenience.

196.850. (1) Notwithstanding ORS 196.810, the Department of State Lands may, by rule, grant general authorization for removal of material from the bed or banks or the filling of any waters of the state without a permit from the department if the department finds that those activities subject to the general authorization are substantially similar in nature and would cause only minimal individual and cumulative environmental impacts, and would not result in long-term harm to water resources of the state. The department shall condition any such general authorization upon actions necessary to minimize environmental impacts.

(2) The department shall provide notice of any proposed general authorization to affected federal and state agencies, local governments and the public. The notice shall include:

(a) A clear description of the proposal; and

(b) Draft findings and any proposed conditions pursuant to subsection (1) of this section.

(3) Any person proposing to conduct an action under a general authorization shall notify the department in writing prior to conducting the action. The person may not commence the action until the person receives a letter of authorization from the department.

(4) The requirements of subsection (3) of this section shall be waived if the Director of the Department of State Lands issues a general authorization and the authorized activity:

(a) Involves less than 50 cubic yards of material;

(b) Will be conducted during periods that minimize adverse effects to fish and wildlife in accordance with guidance provided by the State Department of Fish and Wildlife;

(c) Will not dam or divert a waterway in a manner that obstructs fish passage or vessel navigation; and

(d) Will not violate water quality standards as established by the Department of Environmental Quality.

(5) The Department of State Lands shall amend or rescind any general authorization upon a determination that the activities conducted under the authorization have resulted in or would result in more than minimal environmental impacts or long-term harm to the water resources of this state.

(6) The department shall review each general authorization adopted pursuant to this section every five years. The review shall include public notice and opportunity for public hearing. After such review, the department may either modify, reissue or rescind the general authorization.

(7) In addition to the grounds for review set forth in ORS 183.400 (4), on judicial review of the validity of a rule adopted under this section, the rule shall be reviewable for substantial evidence in the rulemaking record. The record shall include copies of all documents before the agency relevant to whether the requirement of subsection (1) of this section has been met.

Note: See second note under 196.800.

196.855 Noncomplying removal of material or filling constitutes public nuisance. The removal of material from the beds or banks or filling any of the waters of this state without a permit issued under ORS 196.825, 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 wetlands conservation plan, is a public nuisance. [Formerly 541.645 and then 196.720]

196.860 Enforcement powers of director. (1) If the Director of the Department of State Lands determines that material is being removed from or filling is occurring in any of the waters of this state without a permit issued under ORS 196.825, 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 wetlands conservation plan, the director may:

(a) Investigate, hold hearings, make orders and take action, as provided in ORS 196.600 to 196.905, as soon as possible.

(b) For the purpose of investigating conditions relating to such removal or filling, through the employees or the duly authorized representatives of the Department of State Lands, enter at reasonable times upon any private or public property.

(c) Conduct public hearings in accordance with ORS chapter 183.

(d) Publish findings and recommendations as they are developed relative to public policies and procedures necessary for the correction of conditions or violations of ORS 196.600 to 196.905.

(e) Give notice of any proposed order relating to a violation by personal service or by mailing the notice by registered or certified mail to the person or governmental body

affected. Any person aggrieved by a proposed order of the director may request a hearing within 20 days of the date of personal service or mailing of the notice. Hearings shall be conducted under the provisions of ORS chapter 183 applicable to contested cases, and judicial review of final orders shall be conducted in the Court of Appeals according to ORS 183.482. If no hearing is requested or if the party fails to appear, a final order shall be issued upon a prima facie case on the record of the agency.

(f) Take appropriate action for the enforcement of any rules or final orders. Any violation of ORS 196.600 to 196.905 or of any rule or final order of the director under ORS 196.600 to 196.905 may be enjoined in civil abatement proceedings brought in the name of the State of Oregon; and in any such proceedings the director may seek and the court may award a sum of money sufficient to compensate the public for any destruction or infringement of any public right of navigation, fishery or recreation resulting from such violation. Proceedings thus brought by the director shall set forth if applicable the dates of notice and hearing and the specific rule or order of the director, together with the facts of noncompliance, the facts giving rise to the public nuisance, and a statement of the damages to any public right of navigation, fishery or recreation, if any, resulting from such violation.

(2) In addition to the administrative action the director may take under subsection (1) of this section, the director may enter an order requiring any person to cease and desist from any violation if the director determines that such violation presents an imminent and substantial risk of injury, loss or damage to water resources.

(a) An order under this subsection:

(A) May be entered without prior notice or hearing.

(B) Shall be served upon the person by personal service or by registered or certified mail.

(C) Shall state that a hearing will be held on the order if a written request for hearing is filed by the person subject to the order within 10 days after receipt of the order.

(D) Shall not be stayed during the pendency of a hearing conducted under paragraph (b) of this subsection.

(b) If a person subject to an order under this subsection files a timely demand for hearing, the director shall hold a contested case hearing according to the applicable provisions of ORS chapter 183. If the person fails to request a hearing, the order shall be entered as a final order upon prima facie case made on the record of the agency.

(c) Neither the director nor any duly authorized representative of the department shall be liable for any damages a person may sustain as a result of a cease and desist order issued under this subsection.

(d) The state and local police shall cooperate in the enforcement of any order issued under this subsection and shall require no further authority or warrant in executing or enforcing such order. If any person fails to comply with an order issued under this subsection, the circuit court of the county in which the violation occurred or is threatened shall compel compliance with the director's order in the same manner as with an order of that court.

(3) As used in this section, "violation" means removing material from or placing fill in, any of the waters of this state without a permit or in a manner contrary to the conditions set out in a permit issued under ORS 196.825. [Formerly 541.650 and then 196.725]

196.865 Revocation, suspension or refusal to renew permit. If the Director of the Department of State Lands finds that a person or governmental body holding a permit issued under ORS 196.825 is removing material from the bed or banks or filling any of the waters of this state contrary to the conditions set out in the permit, the director may revoke, suspend or refuse to renew such permit. The director may revoke a permit only after giving notice and opportunity for a hearing as provided in ORS 183.415 to 183.430, 183.440 to 183.460 and 183.470. [Formerly 541.655 and then 196.730]

196.870 Abatement proceedings; restraining order; injunction; public compensation. (1) In addition to any enforcement action taken under ORS 196.860, civil proceedings to abate alleged public nuisances under ORS 196.855 may be instituted at law or in equity, in the name of the State of Oregon, upon relation of the Director of the Department of State Lands or by any person in the person's name.

(2) Before beginning any action under subsection (1) of this section, a person other than the director shall provide 60 days notice to the director of the intended action. A person other than the director may not begin an action under subsection (1) of this section if the director has commenced and is diligently prosecuting civil, criminal or administrative proceedings in the same matter.

(3) The director may institute an action in the name of the State of Oregon for a temporary restraining order or preliminary injunction if a threatened or existing nuisance under ORS 196.855 creates an emergency that requires immediate action to protect the public health, safety or welfare.

The director shall not be required to furnish a bond in such proceeding.

(4) The State Land Board, the Director of the Department of State Lands and the employees or duly authorized representatives of the Department of State Lands shall not be liable for any damages a defendant may sustain as a result of an injunction, restraining order or abatement order issued under this section.

(5) A case filed under this section shall be given preference on the docket over all other civil cases except those given an equal preference by statute.

(6) In any action brought under this section, the plaintiff may seek and the court may award a sum of money sufficient to compensate the public for any destruction or infringement of any public right of navigation, fishery or recreation resulting from an existing public nuisance under ORS 196.855. Any money received by the plaintiff under this subsection shall be deposited in the Common School Fund. [Formerly 541.660 and then 196.735]

196.875 Double and treble damages for destruction of public right of navigation, fishery or recreation; costs and attorney fees. (1) If any person or governmental body, through negligence, violates ORS 196.810, the Director of the Department of State Lands, in a proceeding brought pursuant to ORS 196.870, may seek and the court may award double a sum of money sufficient to compensate the public for any destruction or infringement of any public right of navigation, fishery or recreation resulting from such violation.

(2) If any person or governmental body intentionally violates ORS 196.810, the director, in a proceeding brought pursuant to ORS 196.870, may seek and the court may award treble a sum of money sufficient to compensate the public for any destruction or infringement of any public right of navigation, fishery or recreation resulting from such violation.

(3) An award made pursuant to this section shall be in addition to and not in lieu of any criminal penalties imposed for a violation of ORS 196.810.

(4) In any action brought under ORS 196.870, the court shall award to the prevailing party the costs of suit and reasonable attorney fees at trial and on appeal. Subject to the provisions of ORS 20.140, any costs and attorney fees so awarded to the director shall be deposited in the Common School Fund to offset the director's expenses of bringing such action. [Formerly 541.662 and then 196.740]

Note: 196.875 [formerly 541.662 and 196.740] was enacted by two identical provisions, section 10 of chapter 330 and section 13 of chapter 674, Oregon Laws 1973. Both are compiled as a single section.

196.880 Fill under permit presumed not to affect public rights; public rights extinguished. If the Director of the Department of State Lands issues a permit to fill pursuant to ORS 196.600 to 196.905, it shall be presumed that such fill does not infringe upon the public rights of navigation, fishery or recreation, and the public rights to lands created by the fill shall be considered extinguished. [Formerly 541.665 and then 196.745]

196.885 Annual report of fill and removal activities; contents of report. The Director of the Department of State Lands shall submit an annual report to the State Land Board on the activities conducted under ORS 196.600 to 196.905. The annual report shall include the following:

(1) The number of fill and removal permits applied for, denied and granted, organized according to whether or not the permits were for waters subject to section 404 of the Federal Water Pollution Control Act (P.L. 92-500, as amended). For all permits granted or outstanding during the prior year, a separate summary shall be included for fills and removals, organized by river or other water body, that shows:

(a) The total number of permits, the number of new permits and the number of renewal permits.

(b) The volume and acreage of fills and removals authorized during the past year, and the volume and acreage of fills and removals completed during the past year.

(2) By river or other water body, a summary of the total volume and acreage of fills and removals made under a general waiver, general permit or similar authority.

(3) A summary of mitigation measures, including a description of each mitigation project approved during the past year including the location and size of each mitigation project and a report on the status of all mitigation projects pending or completed during the past year.

(4) A summary of enforcement activities, including:

(a) The number of potential violations reported.

(b) The number of compliance investigations conducted.

(c) The results of compliance actions, including:

(A) The number of cases resolved by voluntary compliance, administrative hearings and judicial enforcement proceedings;

(B) The amount of damages and penalties assessed;

(C) The amount of damages and penalties recovered; and

(D) A brief description of each after-the-fact permit issued, including the location and size by volume and acreage.

(5) A description of staffing, including the number of full-time equivalent positions devoted to the permit program and, for each position, the qualifications and job description.

(6) The report on the Oregon Wetlands Mitigation Bank Revolving Fund Account as required under ORS 196.655.

(7) The number of and average time for responding to notices received by local governments and the number of responses that took more than 30 days.

(8) The number of wetland conservation plans approved by the director and a description of each, including the issues raised during the approval process. [Formerly 541.670 and then 196.750]

196.890 Civil penalties. Any person who violates any provision of ORS 196.600 to 196.905 or any rule, order or permit adopted or issued under ORS 196.600 to 196.905 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 $10,000 per day of violation. [Formerly 541.675 and then 196.755]

196.895 Imposition of civil penalties. (1) Civil penalties under ORS 196.890 shall be imposed as provided in ORS 183.745.

(2) The provisions of this section are in addition to and not in lieu of any other penalty or sanction provided by law. An action taken by the Director of the Department of State Lands under this section may be joined by the director with any other action taken against the same person under ORS 196.860 (1)(f).

(3) Any civil penalty recovered under this section shall be deposited in the Common School Fund for use by the Department of State Lands in administration of ORS 196.600 to 196.905, 196.990 and 541.990 and as otherwise required by law. [Formerly 541.680 and then 196.760; 1991 c.734 §12]

Note: Operation of the amendments to 196.895 by section 5, 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.

196.895. (1) Except as provided in subsection (4) of this section, civil penalties under ORS 196.890 shall be imposed as provided in ORS 183.745.

(2) The provisions of this section are in addition to and not in lieu of any other penalty or sanction provided by law. An action taken by the Director of the Department of State Lands under this section may be joined by the director with any other action taken against the same person under ORS 196.860 (1)(f).

(3) Any civil penalty recovered under this section shall be deposited in the Common School Fund for use by the Department of State Lands in administration of ORS 196.600 to 196.905, 196.990 and 541.990 and as otherwise required by law.

(4) Notwithstanding any provision of ORS 183.745, any person having an interest that is adversely affected or aggrieved by an alleged violation for which civil penalties are imposed under ORS 196.890 may intervene in a contested case proceeding pertaining to the imposition of civil penalties under this section.

Note: See second note under 196.800.

196.900 Schedule of civil penalties; rules; factors to be considered in imposing civil penalties. (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.

(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 permits pertaining to waters of the state.

(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 196.805.

(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 196.805. 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. [Formerly 541.685 and then 196.765]

196.905 Applicability. (1) Nothing in ORS 196.600 to 196.905 applies to filling the beds of the waters of this state for the purpose of constructing, operating and maintaining dams or other diversions for which permits or certificates have been or shall be issued under ORS chapter 537 or 539 and for which preliminary permits or licenses have been or shall be issued under ORS 543.010 to 543.610.

(2) Nothing in ORS 196.600 to 196.905 applies to removal of materials from the beds or banks or filling of the waters of a nonnavigable natural waterway, or any portion thereof, in this state, if:

(a) Such waterway or portion is situated within forestland; and

(b) Such removal or filling is directly connected with a forest management practice conducted in accordance with ORS 527.610 to 527.770, 527.990 and 527.992.

(3) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, on converted wetlands for normal farming and ranching activities such as plowing, grazing, seeding, cultivating, conventional crop rotation, harvesting for the production of food and fiber, upland soil and water conservation practices or reestablishment of crops under federal conservation reserve program provisions.

(4) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the following activities on exclusive farm use zoned lands:

(a) Drainage or maintenance of farm or stock ponds;

(b) Maintenance of farm roads in such a manner as to not significantly adversely affect wetlands;

(c) Subsurface drainage, by deep ripping, tiling or moling, on converted wetlands; and

(d) Any activity described as a farm use in ORS 215.203 that is conducted on prior converted cropland as described in subsection (8) of this section, so long as agricultural management of the land has not been abandoned for five or more years.

(5) The exemption in subsections (3) and (4) of this section shall not apply to any fill or removal which involves changing an area of wetlands to a nonfarm use.

(6) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the maintenance or reconstruction of structures such as dikes, dams, levees, groins, riprap, tidegates, drainage ditches, irrigation ditches and tile drain systems, provided that:

(a) The structure was serviceable within the past five years; and

(b) Such maintenance or reconstruction would not significantly adversely affect wetlands or other waters of this state to a greater extent than the wetlands or waters of this state were affected as a result of the original construction of those structures.

(7) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable roads or transportation structures such as groins and riprap protecting roads, causeways and bridge abutments or approaches.

(8) For the purposes of this section, "converted wetland":

(a) Means wetlands that on or before June 30, 1989, have been diked, drained, dredged, filled, leveled or otherwise manipulated to impair or reduce the flow, circulation or reach of water for the purpose of enabling production of an agricultural commodity and are managed for that purpose; and

(b) Includes land that the Natural Resources Conservation Service of the United States Department of Agriculture, or its successor agency, certifies as prior converted cropland or farmed wetlands, so long as agricultural management of the land has not been abandoned for five or more years. [Formerly 541.695 and then 196.770; 1999 c.610 §1]

Note: Operation of the amendments to 196.905 by section 6, 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, including amendments by section 13, chapter 253, Oregon Laws 2003, is set forth for the user's convenience.

196.905. (1) Notwithstanding the exemptions in subsections (3) to (8) of this section, a permit under ORS 196.600 to 196.905 is required for any fill or removal of material in or from the waters of this state when:

(a) The fill or removal is a part of an activity whose purpose is to bring an area of state waters into a use to which it was not previously subject; and

(b)(A) The flow or circulation of the waters of this state may be impaired; or

(B) The reach of the waters may be reduced.

(2) Nothing in ORS 196.600 to 196.905 applies to removal of materials from the beds or banks or filling of the waters of a nonnavigable natural waterway, or any portion thereof, in this state, if:

(a) Such waterway or portion is situated within forestland; and

(b) Such removal or filling is directly connected with a forest management practice conducted in accordance with ORS 527.610 to 527.770, 527.990 and 527.992.

(3) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, on converted wetlands for normal farming and ranching activities such as plowing, grazing, seeding, cultivating, conventional crop rotation, harvesting for the production of food and fiber, upland soil and water conservation practices or reestablishment of crops under federal conservation reserve program provisions.

(4) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the following activities on exclusive farm use zoned lands:

(a) Drainage or maintenance of farm or stock ponds;

(b) Subsurface drainage, by deep ripping, tiling or moling, on converted wetlands;

(c) Maintenance of farm roads, provided that:

(A) The farm roads are constructed and maintained in accordance with construction practices designed to minimize any adverse effects to the aquatic environment;

(B) Borrow material for farm road maintenance does not come from waters of this state unless authorized by the Department of State Lands; and

(C) Maintenance activities are confined to the scope of construction for the original project; and

(d) Any activity described as a farm use in ORS 215.203 that is conducted on prior converted cropland as described in subsection (10)(a) of this section, so long as agricultural management of the land has not been abandoned for five or more years.

(5) The exemption in subsections (3) and (4) of this section may not apply to any fill or removal which involves changing an area of wetlands or converted wetlands to a nonfarm use.

(6) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the maintenance or reconstruction of structures such as dikes, dams, levees, groins, riprap, tidegates, drainage ditches, irrigation ditches and tile drain systems, provided that:

(a) The structure was serviceable within the past five years; and

(b) Such maintenance or reconstruction would not significantly adversely affect wetlands or other waters of this state to a greater extent than the wetlands or waters of this state were affected as a result of the original construction of those structures.

(7) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for temporary dams constructed for crop or pasture irrigation purposes that are less than 50 cubic yards, provided the following conditions are satisfied:

(a) The removal or filling is conducted during periods that minimize adverse effects to fish and wildlife in accordance with guidance provided by the State Department of Fish and Wildlife;

(b) The removal or filling does not jeopardize a threatened or endangered species or adversely modify or destroy the habitat of a threatened or endangered species listed under federal or state law; and

(c) Temporary fills are removed in their entirety and the area is restored to its approximate original elevation.

(8) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable roads or transportation structures such as groins and riprap protecting roads, causeways and bridge abutments or approaches.

(9) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the maintenance of access roads constructed to move mining equipment, subject to the following conditions:

(a) The access roads are constructed and maintained in accordance with construction practices that minimize adverse effects to the aquatic environment;

(b) Borrow material for access road maintenance does not come from waters of this state unless authorized by the Department of State Lands; and

(c) Maintenance activities are confined to the scope of construction for the original project.

(10) For the purposes of this section:

(a) "Converted wetland" means:

(A) Wetlands that on or before June 30, 1989, have been diked, drained, dredged, filled, leveled or otherwise manipulated to impair or reduce the flow, circulation or reach of water for the purpose of producing an agricultural product and are managed for that purpose; or

(B) Those areas that the Natural Resources Conservation Service of the United States Department of Agriculture, or its successor agency, certifies as prior converted cropland or farmed wetlands, so long as agricultural management of the land has not been abandoned for five or more years.

(b) "Harvesting" means physically removing crops or other agricultural products.

(c) "Plowing" includes all forms of primary tillage, including moldboard, chisel or wide-blade plowing, discing, harrowing or similar means of breaking up, cutting, turning over or stirring soil to prepare it for planting crops or other agricultural products. "Plowing" does not include:

(A) The redistribution of soil, rock, sand or other surface materials in a manner that changes areas of waters of this state into dry land; or

(B) Rock crushing activities that result in the loss of natural drainage characteristics, the reduction of water storage and recharge capability, or the overburdening of natural water filtration capacity.

(d) "Seeding" means the sowing of seed or placement of seedlings to produce crops or other agricultural products.

Note: See second note under 196.800.

196.910 Monitoring fill and removal activities; public education and information materials; periodic reports to legislative committee. The Department of State Lands shall:

(1) Monitor removal and fill activities, including but not limited to prospecting and placer mining, within designated essential indigenous anadromous salmonid habitat areas to determine the effects of such activities on salmonid spawning and rearing habitat and compile the results in an annual report.

(2) Cooperate with the State Department of Fish and Wildlife and other interested parties to develop and distribute public education and information materials designed to increase understanding and awareness of permit requirements and acceptable removal and fill practices related to prospecting and placer mining.

(3) Report periodically to the Joint Legislative Committee on Land Use on the progress of the Department of State Lands in implementing ORS 196.810. [1997 c.508 §2; 1999 c.59 §54; 2003 c.253 §14]

Note: 196.910 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 196 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

PENALTIES

196.990 Penalties. Violation of ORS 196.810 is a misdemeanor. [Formerly subsection (4) of 541.990]

Note: Operation of the amendments to 196.990 by section 7, 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.

196.990. (1) A person commits the offense of unlawful removal from or filling of waters of this state if the person knowingly violates ORS 196.810 or an order issued thereunder, or any rule or condition of a permit issued under ORS 196.600 to 196.905.

(2) Notwithstanding ORS 161.515, unlawful removal from or filling of waters of this state is an offense punishable by a fine of up to $10,000 per day of violation.

Note: See second note under 196.800.