TITLE 41

WILDLIFE

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

2003 EDITION

Application, Administration and Enforcement of Wildlife Laws

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

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

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

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

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

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

(6) "Endangered species" means:

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

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

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

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

(9) "Game mammal" means antelope, black bear, cougar, deer, elk, moose, mountain goat, mountain sheep and silver gray squirrel.

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

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

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

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

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

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

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

(17) "Threatened species" means:

(a) Any native wildlife species the commission determines is likely to become an endangered species within the foreseeable future throughout any significant portion of its range within this state.

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

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

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

496.005 [Repealed by 1973 c.723 §130]

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

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

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

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

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

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

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

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

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

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

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

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

(1) Those members of the family Salmonidae, commonly known as trout, steelhead, char, grayling, Atlantic salmon and whitefish.

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

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

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

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

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

(7) Stizostedion vitreum, commonly known as walleye.

(8) Catostomus luxatus, commonly known as mullet.

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

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

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

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

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

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

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

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

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

(6) To provide optimum recreational benefits.

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

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

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

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

(1) Written certification from a licensed physician that states that the person:

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

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

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

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

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

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

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

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

496.030 [Repealed by 1973 c.723 §130]

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

496.035 [Repealed by 1973 c.723 §130]

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

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

STATE DEPARTMENT OF FISH AND WILDLIFE; COMMISSION; DIRECTOR; DUTIES AND POWERS GENERALLY

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

Note: Section 1, chapter 989, Oregon Laws 2001, provides:

Sec. 1. (1) The State Department of Fish and Wildlife shall promptly relocate the department's headquarters from Portland to Salem or to the immediate vicinity of Salem by the most cost-effective means available. The department shall work in consultation with the Oregon Department of Administrative Services to minimize the costs of:

(a) Moving all appropriate staff, furnishings and equipment to leased quarters in Salem or the immediate vicinity of Salem until a permanent headquarters is provided at a site in Salem.

(b) Disposing of the existing headquarters building in Portland as provided in ORS chapter 270. Notwithstanding ORS 270.150, the net proceeds from the sale of the existing headquarters building shall be used to pay or repay the costs incurred in the relocation of the headquarters, with any remainder returned to the General Fund.

(2) The Oregon Department of Administrative Services shall develop a suitable plan to provide, or to assist and approve the provision of, a permanent headquarters in Salem. [2001 c.989 §1; 2003 c.796 §17]

Note: The amendments to section 1, chapter 989, Oregon Laws 2001, by section 18, chapter 796, Oregon Laws 2003, become operative July 1, 2005. See section 30, chapter 796, Oregon Laws 2003. The text that is operative on and after July 1, 2005, is set forth for the user's convenience.

Sec. 1. (1) The State Department of Fish and Wildlife shall promptly relocate the department's headquarters from Portland to Salem or to the immediate vicinity of Salem by the most cost-effective means available. The department shall work in consultation with the Oregon Department of Administrative Services to minimize the costs of:

(a) Moving all appropriate staff, furnishings and equipment to leased quarters in Salem or the immediate vicinity of Salem until a permanent headquarters is provided at a site in Salem approved by the Capitol Planning Commission.

(b) Disposing of the existing headquarters building in Portland as provided in ORS chapter 270. Notwithstanding ORS 270.150, the net proceeds from the sale of the existing headquarters building shall be used to pay or repay the costs incurred in the relocation of the headquarters, with any remainder returned to the General Fund.

(2) The Oregon Department of Administrative Services shall develop a suitable plan to provide, or to assist and approve the provision of, a permanent headquarters in Salem.

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

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

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

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

(5) The duties of the task force are:

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

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

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

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

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

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

(g) To advise the department on the creation of the priority criteria and the priority listing referred to in ORS 498.306 (12)(a) or (d). [1991 c.858 §6; 1995 c.426 §3]

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

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

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

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

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

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

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

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

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

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

496.105 [Repealed by 1973 c.723 §130]

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

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

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

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

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

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

496.110 [Repealed by 1973 c.723 §130]

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

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

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

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

496.115 [Repealed by 1975 c.253 §40]

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

(2) Notwithstanding ORS 183.400, for any rule adopted by the director pursuant to

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

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

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

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

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

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

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

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

(g) Coordinate any activities of the department related to a watershed enhancement project approved by the Oregon Watershed Enhancement Board under ORS 541.375 with activities of other cooperating state and federal agencies participating in the project.

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

(3) In addition to any other duties assigned to the director, the director shall report quarterly on the activities of the department to the joint legislative committee established pursuant to ORS 171.551.

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

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

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

Note: Sections 3 and 4, chapter 248, Oregon Laws 2003, provide:

Sec. 3. Task Force on Wildlife Control Activities. (1)(a) There is created the Task Force on Wildlife Control Activities consisting of members appointed by the State Fish and Wildlife Director.

(b) The State Fish and Wildlife Director shall appoint members to the task force who represent nuisance animal control businesses, local governments and wildlife conservation organizations.

(2) The purpose of the task force is to study and make recommendations on the development of a system for the licensing and regulation of businesses conducting nuisance, damage or public health risk animal control operations. The system recommended may include reporting requirements, license revocation standards, license fee structure and standards of practice, including but not limited to trap check requirements, euthanasia methods and animal relocation standards.

(3) The State Department of Fish and Wildlife shall provide staff support to the task force.

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

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

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

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

(8) Members of the task force are not entitled to compensation or reimbursement for expenses and serve as volunteers on the task force.

(9) The task force shall submit a report containing its recommendations, including recommendations for legislation, to an interim committee related to natural resources, in the manner provided by ORS 192.245, no later than October 1, 2004. [2003 c.248 §3]

Sec. 4. Section 3 of this 2003 Act is repealed on December 31, 2004. [2003 c.248 §4]

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

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

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

496.125 [Repealed by 1973 c.723 §130]

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

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

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

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

496.135 [Repealed by 1973 c.723 §130]

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

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

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

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

496.140 [Repealed by 1973 c.723 §130]

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

496.145 [Repealed by 1973 c.723 §130]

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

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

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

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

(4) May by rule authorize the issuance of such licenses, tags and permits for angling, taking, hunting and trapping and may prescribe such tagging and sealing procedures as the commission determines necessary to carry out the provisions of the wildlife laws or to obtain information for use in wildlife management. Permits issued pursuant to this subsection may include special hunting permits for a person and immediate family members of the person to hunt on

land owned by that person in areas where permits for deer or elk are limited by quota. As used in this subsection, "immediate family members" means husband, wife, father, mother, brothers, sisters, sons, daughters, stepchildren and grandchildren. A landowner who is qualified to receive landowner preference tags from the commission may request two additional tags for providing public access and two additional tags for wildlife habitat programs. This request shall be made to the Access and Habitat Board with supporting evidence that the access is significant and the habitat programs benefit wildlife. The board may recommend that the commission grant the request. When a landowner is qualified under landowner preference rules adopted by the commission and receives a controlled hunt tag for that unit or a landowner preference tag for the landowner's property and does not use the tag during the regular season, the landowner may use that tag to take an antlerless animal, when approved by the State Department of Fish and Wildlife, to alleviate damage that is presently occurring to the landowner's property.

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

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

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

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

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

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

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

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

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

(14) May by rule prescribe fees for falconry licenses issued pursuant to the wildlife laws, unless such fees are otherwise prescribed by law. Fees prescribed by the commission pursuant to this subsection shall be based on actual or projected costs of administering falconry regulations and shall not exceed $250.

(15) May establish special fishing and hunting seasons and bag limits applicable only to persons with disabilities.

(16) May adopt optimum populations for deer and elk consistent with ORS 496.012. These population levels shall be reviewed at least once every five years.

(17) Shall establish a preference system so that individuals who are unsuccessful in controlled hunt permit drawings for deer and elk hunting have reasonable assurance of success in those drawings in subsequent years.

(18) May sell advertising in State Department of Fish and Wildlife publications, including annual hunting and angling regulation publications. [1973 c.723 §13; 1977 c.177 §1; 1977 c.668 §1; 1981 c.445 §9; 1987 c.292 §2; 1993 c.659 §8; 1999 c.25 §4; 2001 c.253 §1; 2003 c.656 §2]

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

Sec. 2. Notwithstanding any other provision of the wildlife laws, during the period beginning January 1, 1996, and ending January 2, 2010, the following provisions apply with regard to the issuance and use of landowner preference tags referred to in ORS 496.146 (4):

(1) Landowner preference tags shall be issued for the hunting of deer, elk or antelope.

(2) Landowner preference tags may be used only for hunting on the landowner's property.

(3) Landowner preference tags for the hunting of deer or elk may be transferred to any person of the landowner's choosing and shall be used for the taking of antlerless animals except as authorized by subsection (6) of this section.

(4) Landowner preference tags for the hunting of antelope are not transferable and may not be used for the taking of buck antelope.

(5) Each landowner preference tag for the hunting of deer or elk may be used to take two antlerless animals before, during or after the hunting season for which the tags are valid for the purpose of alleviating damage that is presently occurring to the landowner's property, in accordance with such rules as the State Fish and Wildlife Commission may adopt.

(6) Landowner preference tags for the hunting of deer or elk that are transferred to a person of the landowner's choosing who is not a member of the landowner's immediate family may be used to take an antlered animal only as follows:

(a) If the landowner receives one preference tag, that tag may not be so used.

(b) If the landowner receives two, three or four preference tags, one of those tags may be so used.

(c) If the landowner receives five, six or seven preference tags, two of those tags may be so used.

(d) If the landowner receives eight, nine or 10 preference tags, three of those tags may be so used. [1995 c.460 §2; 2001 c.227 §1]

496.150 [Repealed by 1973 c.723 §130]

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

(1) Provisions to prevent misuse of the permits by the registrant or by employees of the registrant.

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

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

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

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

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

(2) For the purposes of this section, "transportation" means any method of helping anadromous fish to pass dams and other obstacles so as to reduce the mortality associated with passage.

(3) Nothing in subsection (1) of this section prevents the cooperation of the commission with the federal government in programs financed pursuant to ORS 506.405. [1977 c.653 §2]

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

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

(a) Prescribe the times, places and manner in which wildlife may be taken by angling, hunting, trapping or other method and the amounts of each of those wildlife species that may be taken and possessed.

(b) Prescribe such other restrictions or procedures regarding the angling, taking, hunting, trapping or possessing of wildlife as the commission determines will carry out the provisions of wildlife laws.

(2) In carrying out the provisions of subsection (1) of this section, the power of the commission includes, but is not limited to:

(a) Prescribing the amount of each wildlife species that may be taken and possessed in terms of sex, size and other physical characteristics.

(b) Prescribing such regular and special time periods and areas closed to the angling, taking, hunting and trapping of any wildlife

species when the commission determines such action is necessary to protect the supply of such wildlife.

(c) Prescribing regular and special time periods and areas open to the angling, taking, hunting and trapping of any wildlife species, and establishing procedures for regulating the number of persons eligible to participate in such angling, taking, hunting or trapping, when the commission determines such action is necessary to maintain properly the supply of wildlife, alleviate damage to other resources, or to provide a safe and orderly recreational opportunity.

(3) Notwithstanding subsections (1) and (2) of this section, except as provided in ORS 498.146 or during those times and at those places prescribed by the commission for the hunting of elk, the commission shall not prescribe limitations on the times, places or amounts for the taking of predatory animals. As used in this subsection, "predatory animal" has the meaning for that term provided in ORS 610.002.

(4) In carrying out the provisions of this section, before prescribing the numbers of deer and elk to be taken, the commission shall consider:

(a) The supply and condition of deer and elk herds;

(b) The availability of forage for deer, elk and domestic livestock on public and private range and forest lands;

(c) The recreational opportunities derived from deer and elk populations; and

(d) The effects of deer and elk herds on public and private range and forest lands. [1973 c.723 §14; 1975 c.791 §1; 1981 c.218 §1; 2003 c.656 §3]

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

496.165 [Repealed by 1973 c.723 §130]

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

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

THREATENED OR ENDANGERED WILDLIFE SPECIES

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

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

(2) "Native" means indigenous to Oregon, not introduced.

(3) "Species" means any group or population of wildlife that interbreeds and is substantially reproductively isolated.

(4) "Verifiable" means scientific information reviewed by a scientific peer review panel of outside experts who do not otherwise have a vested interest in the process. [1995 c.590 §2]

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

(1) Shall conduct investigations of wildlife species native to this state and shall determine whether any such species is a threatened species or an endangered species.

(2) By rule, shall establish and publish, and from time to time may revise, a list of wildlife species that are threatened species or endangered species. Listed threatened species or endangered species shall be protected as provided in ORS 496.182.

(3) Shall work cooperatively with state agencies that have land management authority or regulatory authority to determine their roles within their statutory obligations in the conservation of endangered species, as described in ORS 496.182 (8).

(4) By rule, shall establish a system of permits for scientific taking of threatened species and endangered species and shall establish a system of state permits for incidental taking of state-designated threatened species and endangered species not listed by the federal government under such terms and conditions as the commission determines will minimize the impact on the species taken. An incidental taking permit or statement issued by a federal agency for a species listed under the federal Endangered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531), as amended, shall be recognized by the state as a waiver of any state protection measures or requirements otherwise applicable to the actions allowed under the federal permit.

(5) Shall cooperate with the State Department of Agriculture in carrying out the provisions of ORS 564.105.

(6) Shall adopt administrative rules to carry out the provisions of ORS 496.171 to 496.182 and 498.026. [1987 c.686 §3; 1995 c.590 §3]

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

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

(a) Those species of wildlife listed as of May 15, 1987, as a threatened species or an endangered species pursuant to the federal Endangered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531), as amended; and

(b) Those species determined as of May 15, 1987, by the State Fish and Wildlife Commission to be threatened species or endangered species.

(2) The commission, by rule, may add or remove any wildlife species from either list, or change the status of any species on the lists, upon a determination that the species is or is not a threatened species or an endangered species.

(3) A determination that a species is a threatened species or an endangered species shall be based on documented and verifiable scientific information about the species' biological status. To list a species as a threatened species or an endangered species under ORS 496.004 and 496.171 to 496.182, the commission shall determine that the natural reproductive potential of the species is in danger of failure due to limited population numbers, disease, predation or other natural or human actions affecting its continued existence and, to the extent possible, assess the relative impact of human actions. In addition, the commission shall determine that one or more of the following factors exists:

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

(b) That overutilization for commercial, recreational, scientific or educational purposes is occurring or is likely to occur; or

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

(4) Determinations required by subsection (3) of this section shall be made by the commission on the basis of verifiable scientific and other data after consultation with federal agencies, other interested state agencies, the Natural Heritage Advisory Council, other states having a common interest in the species and interested persons and organizations.

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

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

(b) Within 90 days of receipt of a petition, the commission shall respond in writing to the petitioner indicating whether the petition presents substantial scientific information to warrant the action requested.

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

(d) A final determination by the commission concerning the action requested in a petition shall be provided within one year from the date of receipt of the petition, with the option for an additional 12-month extension of time to complete the listing if the commission determines that limited information or other appropriate considerations require the extension.

(e) If the petition is denied, the petitioner may seek judicial review as provided in ORS 183.484.

(6) The commission may determine not to list a species as a threatened species or an endangered species in any of the following cases:

(a) If the species has been listed pursuant to the federal Endangered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531), as amended.

(b) If the species is currently on the list as a sensitive species, or is a candidate species or has been petitioned for listing pursuant to the federal Endangered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531), as amended.

(c) If the species has been determined, pursuant to the federal Endangered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531), as amended, to not qualify as a threatened species or an endangered species.

(7) Notwithstanding subsections (1) to (5) of this section, the commission shall take emergency action to add a species to the list of threatened species or endangered species if it determines there is a significant threat to the continued existence of the species within the state:

(a) The commission shall publish notice of such addition in the Secretary of State's bulletin and shall mail notice to affected or interested persons whose names are included on the commission's mailing list for such purposes.

(b) Such emergency addition shall take effect immediately upon publication in the Secretary of State's bulletin and shall remain valid for a period no longer than one year, unless during the period the commission completes rulemaking procedures as provided in subsection (5) of this section.

(8) The commission shall periodically review the status of all threatened species and endangered species listed under ORS 496.171 to 496.192. Each species shall be reviewed at least once every five years to determine whether verifiable scientific information exists to justify its reclassification or removal from the list, according to the criteria listed under subsections (3) and (4) of this section. If a determination is made to reclassify a species or remove it from the list, the commission, within 90 days, shall commence rulemaking to change the status of the species.

(9) Notwithstanding the provisions of this section, the commission may decide not to list a species that otherwise qualifies as a threatened or endangered species within this state if the commission determines that the species is secure outside this state or the species is not of cultural, scientific or commercial significance to the people of this state. [1987 c.686 §4; 1995 c.590 §4]

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

496.182 Protection and conservation programs; compliance by state agencies. (1) The burden of protecting and recovering threatened species or endangered species can be a significant cost to the citizens of this state and it is therefore the policy of this state to minimize duplication and overlap between state and federal laws dealing with threatened species or endangered species. To this end, nothing in this section is intended to prevent the adoption of cooperative state or federal programs when such programs provide protection for listed species without significant impact on the primary uses of state lands.

(2) At the time the State Fish and Wildlife Commission adds a species to the list of threatened species or endangered species under ORS 496.172, the commission shall establish by rule quantifiable and measurable guidelines that it considers necessary to ensure the survival of individual members of the species. These guidelines may include take avoidance and protecting resource sites such as spawning beds, nest sites, nesting colonies or other sites critical to the survival of individual members of the species.

(3) For threatened species listed under ORS 496.172 and in the absence of an approved endangered species management plan described in subsection (8) of this section for an endangered species, if a state agency determines that a proposed action on land it owns or leases, or for which it holds a recorded easement, has the potential to violate the guidelines established under subsection (2) of this section, it shall notify the State Department of Fish and Wildlife. Within 90 days of such notice, the department shall recommend reasonable and prudent alternatives, if any, to the proposed action which are consistent with the guidelines.

(4) If a state agency fails to adopt the recommendations made under subsection (3) of this section, it shall, after consultation with the department, demonstrate that:

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

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

(5) When an action under this section is initiated by a person other than a state agency, the agency shall provide final ap-

proval or denial of the proposed action within 120 days of receipt of a written request for final determination.

(6) The provisions of this section do not apply to lands acquired through foreclosures of loans made pursuant to programs of the Department of Veterans' Affairs.

(7) State land owning or managing agencies shall set priorities for establishing endangered species management plans required by subsection (8) of this section after consultation with the commission on the level of biological threat and, in consideration of available funds, the immediacy and seriousness of the threat to any listed species.

(8)(a)(A) Within four months of the listing of an endangered species, the commission, in consultation and cooperation with the state land owning or managing agency, shall determine if state land can play a role in the conservation of endangered species. The commission and the land owning or managing agency shall consider species biology and geography of the land base to determine if the species or its habitat is found on state land. If the species or its habitat is not found on state land, the commission shall determine that state land has no role to play in the conservation of the species.

(B) If the species or its habitat is found on state land, the land owning or managing agency, in consultation with the State Department of Fish and Wildlife, shall determine the role its state land shall serve in the conservation of the endangered species. This role may include, but is not limited to conservation, contribution toward conservation or take avoidance. To carry out its consulting role under this subsection, the department shall provide state agencies with an assessment of the conservation needs of the endangered species. In making this determination, the land owning or managing agency shall balance the statutory requirements, rules and policies applicable to the agency's programs, the social and economic impacts that conservation would have on the state, the conservation needs of the species, the purpose of the land and the roles of other ownership categories. The agency shall balance these factors consistent with the commission's rules related to the biological aspects of species management and the statutory obligations of the land owning or managing agency, including the statutory purpose of the land.

(C) After determining the role its state land shall serve in conservation of the species, the land owning or managing agency, in consultation with the State Department of Fish and Wildlife and consistent with the commission's rules related to endangered species management plans, shall develop and approve an endangered species management plan within 18 months from the date the species is first listed as endangered. Endangered species management plans shall be based on the statutes, rules and policies applicable to the agency's programs and shall take into account any social or economic impacts that the plan may have on the state. The land owning or managing agency shall submit the plan to the commission for review and approval as provided in subparagraph (D) of this paragraph.

(D) The commission shall review the endangered species management plan approved by the land owning or managing agency under subparagraph (C) of this paragraph to determine whether the plan achieves the role defined for the land under subparagraph (B) of this paragraph. Based on the biology of the endangered species the commission may modify the endangered species management plan if necessary to be consistent with the role the land owning or managing agency has defined for the land under subparagraph (B) of this paragraph and shall approve the plan as submitted or modified within 24 months from the date the species is listed as endangered.

(b) For state agencies other than land owning or managing agencies, the commission, in consultation and cooperation with the agency, shall determine whether the agency can serve a role in the conservation of endangered species. If the commission determines that the agency has a role to play in conservation of the endangered species, the agency shall determine what role it shall serve in conservation of the endangered species. The agency shall make this determination as provided in the commission's rules related to the biological aspects of species management and in a manner consistent with the agency's statutory obligations. [1987 c.686 §5; 1995 c.590 §5]

496.185 [Repealed by 1973 c.723 §130]

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

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

(2) Notwithstanding subsection (1) of this section, other statutes may authorize administrative rules or programs to protect wildlife species, including threatened species or endangered species, and nothing in ORS 496.004, 496.171 to 496.182 or 498.026 shall

diminish the force or effect of such rules or programs. [1987 c.686 §6a]

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

496.200 [Repealed by 1973 c.723 §130]

SALMON FOR INDIAN CEREMONIES

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

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

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

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

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

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

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

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

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

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

(a) The poundage of salmon required;

(b) The date of the ceremony; and

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

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

(a) The State Department of Fish and Wildlife;

(b) The Attorney General; and

(c) The United States Department of Interior.

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

496.210 [Repealed by 1973 c.723 §130]

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

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

496.215 [Repealed by 1973 c.723 §130]

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

496.220 [Repealed by 1973 c.723 §130]

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

496.225 [Repealed by 1973 c.723 §130]

ACCESS AND HABITAT BOARD

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

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

(3) Three members of the board shall be appointed to represent the broad spectrum of agriculture and timber landowners. In making appointments pursuant to this subsection, the commission shall consider recommendations from the State Fish and Wildlife Director from a list of at least 15 persons

submitted by the State Forester and the Director of Agriculture.

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

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

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

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

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

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

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

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

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

(3) The State Department of Fish and Wildlife and the board jointly shall submit to each biennial session of the Legislative Assembly a report on expenditure of funds for the access and habitat programs and on the status of various projects. On or about July 1, 1995, the board and the department shall make another such report to the Legislative Assembly or to the Emergency Board if the Legislative Assembly is not then in session.

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

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

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

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

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

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

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

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

(A) Be on private lands.

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

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

(b) On programs that promote access to public and private lands through contracting for various levels of management of these lands. These management programs may include:

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

(B) Controlling access.

(C) Opening vehicle access.

(D) Promoting land exchanges.

(E) Promoting proper hunting behavior.

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

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

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

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

496.235 [Repealed by 1973 c.723 §130]

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

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

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

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

496.242 Access and habitat program funds. (1) Notwithstanding ORS 496.300, all moneys received by the State Fish and Wildlife Commission pursuant to section 19, chapter 659, Oregon Laws 1993, shall be deposited in the Access and Habitat Board Subaccount established in the Fish and Wildlife Account. Moneys in the subaccount may be expended only for the access and habitat programs recommended by the Access and Habitat Board for the benefit of the wildlife resources of this state.

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

(3) The department shall not assess its personnel costs in the administration of ORS 496.166 and 496.228 to 496.242 against the subaccount referred to in this section without the prior approval of the Access and Habitat Board. [1993 c.659 §14; 2001 c.822 §1]

496.245 [Repealed by 1973 c.723 §130]

496.250 [Repealed by 1971 c.418 §23]

FISH HABITAT IMPROVEMENT

496.260 Project applications; contents; notice of reasons for rejection; approval conditions; limitation on tax credit. (1) Any person may apply to the State Department of Fish and Wildlife for preliminary certification of a fish habitat improvement project. The department shall develop rules and procedures for administering its responsibilities under this section and ORS 315.134 and 496.265. Such rules shall clarify the criteria used to evaluate fish improvement projects. Applications for preliminary certification shall be made in writing on a form provided by the department and shall contain:

(a) A detailed description of the proposed project including a statement of expected benefits;

(b) Blueprints or drawings of the proposed project providing such detail as the department may require;

(c) A detailed estimate of project costs; and

(d) Such other information as the department may require.

(2) The department shall act on all applications for preliminary certification before the 120th day after the receipt of such application. At any time during that period the department may request clarification, additional detail or modification of the plans.

(3) If the department rejects an application for preliminary certification, the department shall cause written notice of the action, together with a statement of findings and the reasons therefor to the applicant.

(4) Preliminary certification of a fish habitat improvement project by the department shall not:

(a) Qualify the applicant for the tax credit provided under ORS 315.134.

(b) Exempt the project from any state or federal law, or local ordinance.

(5) Upon completion of construction or installation of a fish habitat improvement project preliminarily certified by the department under this section, a person may apply to the department for final certification of the project. The application for final certification shall be made in writing on forms provided by the department and shall include:

(a) A detailed statement of project costs; and

(b) Whatever other information the department may require.

(6) Upon receipt of an application for final project certification, the department shall cause the project to be inspected to de-

termine that the project will result in the improvement of riparian or in-stream habitat. If the department determines that the project conforms to the plans approved during the preliminary certification, the department shall provide the applicant with written notice of final certification of the project. The action of the department shall include certification of the actual cost of the project for purposes of the income tax credit relief allowed under ORS 315.134. However, in no event shall the department certify an amount for tax credit purposes that is more than 10 percent in excess of the amount approved in the preliminary certificate issued for the project under subsection (2) of this section. [1981 c.720 §22]

496.265 Limitation on amount eligible for tax credit. Notwithstanding any provisions of ORS 315.134 and 496.260 to the contrary, the State Department of Fish and Wildlife shall not preliminarily certify under ORS 496.260 (2), in any one calendar year, as eligible for tax credit under ORS 315.134, fish habitat improvement project costs in excess of $100,000. The department shall not grant preliminary certification for a fish habitat improvement project unless application under ORS 496.260 (1) is filed with the department on or before January 1, 1998. [1981 c.720 §23; 1989 c.924 §8]

496.270 Immunity from liability for damages resulting from habitat or water quality improvement project; exceptions. (1) The Legislative Assembly declares that it is the policy of the State of Oregon to encourage operators, timber owners and landowners to voluntarily improve fish and wildlife habitat. In order to carry out this policy, the Legislative Assembly encourages cooperation among operators, timber owners and landowners and other volunteers.

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

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

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

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

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

(b) Leaving large woody debris within the waters of this state to protect, retain and recruit large woody debris for the purposes of fish habitat and water quality improvement.

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

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

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

FISH RESOURCE PROTECTION, RESTORATION AND ENHANCEMENT

Note: Sections 1, 2 and 10 to 13, chapter 512, Oregon Laws 1989, provide:

Sec. 1. This Act shall be known and may be cited as the Oregon Fisheries Restoration and Enhancement Act of 1989. [1989 c.512 §1]

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

Sec. 10. (1) Notwithstanding ORS 506.306, all moneys received by the State Fish and Wildlife Commission pursuant to sections 4, 6 and 8, chapter 512, Oregon Laws 1989, shall be deposited in a separate subaccount in the State Wildlife Fund. Except as provided in subsection (2) of this section, moneys in the subaccount may be expended only for the department's fish restoration and enhancement programs for the benefit of the fish resources of this state.

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

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

Sec. 11. (1) There is established within the State Department of Fish and Wildlife the Restoration and Enhancement Board, consisting of seven members appointed by the State Fish and Wildlife Commission.

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

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

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

(5) A member of the board shall receive no compensation for services as a member. However, subject to any applicable law regulating travel and other expenses of state officers and employees, a member shall be reimbursed for actual and necessary travel and other expenses incurred in the performance of official duties from such moneys made available by sections 4, 6 and 8 of this 1989 Act.

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

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

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

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

Sec. 12. (1) The Restoration and Enhancement Board shall meet, adopt and recommend to the State Fish and Wildlife Commission, within 120 days after July 1, 1989, and at not more than 120-day intervals thereafter, fish restoration and enhancement programs.

(2) The commission shall review such programs and may approve or disapprove any or all program recommendations by the board. Funds may be expended from the subaccount referred to in section 10, chapter 512, Oregon Laws 1989, for projects that have been approved by the commission.

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

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

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

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

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

(5) All moneys made available for the fish restoration and enhancement program from surcharges received under sections 4, 6 and 8, chapter 512, Oregon Laws 1989, and from gifts and grants made to carry out the fish restoration and enhancement program may be expended only if recommended by the board and approved by the commission. Such amounts may be expended:

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

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

(6) The board may accept, from whatever source, gifts or grants for the purposes of fish restoration and enhancement. All moneys so accepted shall be deposited in the subaccount referred to in section 10, chapter 512, Oregon Laws 1989. Unless otherwise required by the terms of a gift or grant, gifts or grants shall be expended as provided in subsection (5) of this section.

(7) As used in this section:

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

(A) Angler access.

(B) New fishways and screens.

(C) Habitat.

(D) New hatchery equipment and technology.

(E) Public education.

(F) Aquatic inventories.

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

(A) Modification of existing fishways and existing screens.

(B) Hatchery restoration.

(C) Liberation equipment. [1989 c.512 §12; 1997 c.8 §12]

Sec. 13. (1) Individuals who reside in the various regions established for administration of the salmon and trout enhancement program may form advisory councils to discuss and consider fish restoration and enhancement programs and projects and shall make recommendations thereon to the Restoration and Enhancement Board. When the board considers proposals affecting a region, the board shall consult with the advisory council for that region if one exists.

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

(3) Individuals who serve as members of an advisory council shall receive no compensation or expenses for service as a member. [1989 c.512 §13]

496.275 Salmon resource protection and restoration; review of public and private production facilities; approval of production facilities by department. (1) The Legislative Assembly hereby declares the necessity to review all options and means for the protection and restoration of Oregon's salmon resource that promote local economic development and enjoyment by all the citizens of Oregon. Options and means shall include operation of salmon production facilities, in cooperation with the State Department of Fish and Wildlife, by both public and private nonprofit agencies as well as by public local partnerships, to meet local production and harvest needs as well as to help restore and maintain natural salmon spawning populations. Such cooperative production projects shall be operated using scientifically sound hatchery practices and shall be consistent with objectives to protect and restore natural fish production.

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

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

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

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

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

(e) Make recommendations on methods by which operations of facilities referred to in subsections (2) to (4) of this section can generate revenue for sustainable production, including but not limited to state bonding, license surcharges, ad valorem taxes, local economic development funds, service districts, sale of excess eggs and salmon, and gifts, grants and donations.

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

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

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

(4) The department shall make a report on its activities under subsections (2) to (4) of this section to an appropriate interim committee of the Legislative Assembly by September 1, 1996.

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

PILOT PROGRAMS

(Aquaculture Products From Private Facilities)

Note: Sections 1 and 3, chapter 347, Oregon Laws 1999, provide:

Sec. 1. (1) The State Department of Fish and Wildlife shall create a pilot program to purchase aquaculture products from private aquaculture facilities. In implementing the program, the department shall spend at least 10 percent of the annual trout hatchery funds of the department on trout produced by private aquaculture facilities. Except as provided in subsection (3) of this section, the department shall contract with aquaculture facilities located within the State of Oregon.

(2) The duration of a contract under subsection (1) of this section shall be for a minimum of one year and shall be determined by the contracting aquaculture facility. However, the contract may not extend beyond June 30, 2006.

(3) The department may purchase aquaculture products from an out-of-state aquaculture facility if:

(a) The private facilities within the State of Oregon are unable to provide the specified aquaculture products, and the department provides the facilities with reasonable notice of intent to purchase from an out-of-state aquaculture facility; or

(b) The aquaculture products from facilities within the State of Oregon are infected or diseased.

(4) As used in this section, "aquaculture" means agriculture devoted to the propagation, cultivation, maintenance, harvesting, processing, distribution and marketing of aquatic plants and animals in marine, brackish or fresh water that are for human consumption, bait or game purposes. [1999 c.347 §1; 2001 c.935 §1]

Sec. 3. Sections 1 and 2, chapter 347, Oregon Laws 1999, are repealed on June 30, 2006. [1999 c.347 §3; 2001 c.935 §2]

(Collection, Recycling and Disposal of Fishing Tackle)

Note: Sections 1 and 2, chapter 188, Oregon Laws 2003, provide:

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

(2) The program shall consist of collection points located at or near established fishing areas and boat ramps on a maximum of six rivers, including the Rogue and North Santiam Rivers. At each collection point, the department shall work with conservation and outdoor sports groups to provide a container for collection of tackle and post permanent signs or other notices that explain the program, the benefits of proper tackle recycling and disposal and the Oregon conservation ethic.

(3) The State Department of Fish and Wildlife may work cooperatively with the State Parks and Recreation

Department to establish a method by which deposited tackle may be collected for recycling and disposal.

(4) The State Department of Fish and Wildlife shall report to the Seventy-third Legislative Assembly on the efficacy of the program established under this section. [2003 c.188 §1]

Sec. 2. Section 1 of this 2003 Act is repealed on January 2, 2008. [2003 c.188 §2]

(Landowner Preference Tags)

Note: Section 1, chapter 461, Oregon Laws 2003, provides:

Sec. 1. Notwithstanding any other provision of the wildlife laws, the State Department of Fish and Wildlife shall create and implement a Southwest Oregon Landowner Preference Pilot Program during the period beginning July 1, 2004, and ending June 30, 2008, that:

(1) Addresses damage caused by elk on privately owned lands in Jackson, Josephine, Coos, Curry and Douglas Counties.

(2) Provides landowner preference tags only for areas where elk are currently causing damage, where there has been a history of elk damage coupled with actions to alleviate elk damage or where the department has designated the area as an elk deemphasis area.

(3) Limits the use of tags to taking antlerless elk.

(4) Limits the use of tags to taking elk on property owned, leased or rented by the landowner complaining of elk damage or on property owned, leased or rented by a business entity that includes the landowner as a principal partner or shareholder.

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

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

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

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

(9) Authorizes department biologists to sell and exchange tags.

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

(11) Requires landowners to record the number of elk taken and, within 10 days after the end of a designated hunt period, to report to the local department biologist the number of elk taken. [2003 c.461 §1]

STATE WILDLIFE FUND; RECEIPTS AND EXPENDITURES

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

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

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

Note: Section 5, chapter 822, Oregon Laws 2001, provides:

Sec. 5. Notwithstanding any other assignment of investment and interest earnings on moneys in the State Wildlife Fund, for the period beginning on July 1, 2001, and ending June 30, 2005, one-half of all investment and interest earnings on moneys in the State Wildlife Fund are transferred and appropriated to the Fish and Wildlife Deferred Maintenance Subaccount. [2001 c.822 §5]

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

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

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

(B) All moneys received pursuant to ORS 498.306.

(C) All gifts, grants and other moneys from whatever source that may be used to carry out the provisions of ORS 498.306, 498.311 and 509.615.

(D) All moneys received from the surcharge on angling licenses imposed by ORS 497.124.

(b) All moneys in the subaccount shall be used to carry out the provisions of ORS 315.138, 498.306, 498.311, 509.615 and 509.620. However, moneys received from the surcharge on angling licenses imposed by ORS

497.124 shall be expended only to carry out the provisions of law relating to the screening of water diversions at a rate less than 30 cubic feet per second.

(c) Of the moneys in the subaccount budgeted for administrative expenses, up to 50 percent of that amount may be expended for activities associated with the screening of diversions over 30 cubic feet per second and for fish passages issues.

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

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

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

(6) The Upland Bird Subaccount is established in the Fish and Wildlife Account. All moneys received by the State Fish and Wildlife Commission from the sale of upland bird stamps, from the sale of any art works and prints related to the upland bird stamp and from private hunting preserve permit fees shall be deposited in the subaccount. Moneys in the subaccount may be expended only for promoting the propagation and conservation of upland birds and the acquisition, development, management, enhancement, sale or exchange of upland bird habitat, and for activities related to the design, production, issuance and arrangements for sale of the upland bird stamps and related art works and prints. Expenditures of moneys in the subaccount shall be made for the benefit of programs within this state in such amounts and at such times as the commission determines appropriate to most directly benefit the upland bird resources of the state.

(7)(a) The Fish and Wildlife Deferred Maintenance Subaccount is established in the Fish and Wildlife Account. Interest earnings on moneys in the subaccount shall be credited to the subaccount. The subaccount shall consist of moneys authorized by the Legislative Assembly from the State Wildlife Fund and moneys obtained by gift, grant, bequest or donation from any other public or private source.

(b) The principal in the subaccount may be utilized only as provided in paragraph (c) of this subsection. Interest earnings on the moneys in the subaccount may be expended only for the maintenance of fish hatcheries and State Department of Fish and Wildlife facilities other than administrative facilities located in Portland.

(c) The department may borrow funds from the principal of the subaccount to maintain adequate cash flow requirements. However, moneys borrowed from the principal must be repaid to the subaccount:

(A) Within six months from the date on which the moneys were borrowed.

(B) With interest at the standard rate that the State Treasurer charges to state agencies for other loans. Interest paid under this subparagraph shall be paid to the subaccount.

(d) For purposes of this subsection, "principal" means moneys authorized by the Legislative Assembly for transfer to the subaccount from the State Wildlife Fund, including any assignment of earnings on moneys in the fund and other moneys obtained by gift, grant, bequest or donation deposited into the subaccount.

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

(9) The Marine Shellfish Subaccount is established in the Fish and Wildlife Account. Interest earnings on moneys in the subaccount shall be credited to the subaccount. All moneys received by the commission from the sale of resident and nonresident shellfish licenses pursuant to ORS 497.121 shall be

deposited in the subaccount. Moneys in the subaccount shall be used for the protection and enhancement of shellfish for recreational purposes, including shellfish sanitation costs and the cost of enforcement of wildlife laws pertaining to the taking of shellfish. The State Fish and Wildlife Director, or a designee, the Director of Agriculture, or a designee, and the Superintendent of State Police, or a designee, shall jointly make a recommendation to the Governor for inclusion in the Governor's budget beginning July 1 of each odd-numbered year.

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

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

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

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

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

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

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

(b) Using the record created pursuant to paragraph (a) of this subsection, the commission shall report, in the budget documents submitted to the Legislative Assembly, on the application of investment and interest earnings to the maintenance of fish hatcheries and other State Department of Fish and Wildlife facilities. [2001 c.822 §3; 2003 c.612 §2; 2003 c.656 §12]

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

Note: Section 13, chapter 656, Oregon Laws 2003, provides:

Sec. 13. Notwithstanding ORS 496.303 (9), the State Department of Fish and Wildlife may use moneys received from the sale of resident and nonresident shellfish licenses during the 2004 calendar year to pay for the administrative expenses of the department in establishing the shellfish licensing program. [2003 c.656 §13]

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

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

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

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

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

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

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

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

496.335 [Repealed by 1973 c.723 §130]

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

the value if it concludes the value initially determined was substantially incorrect.

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

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

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

(3) This section does not apply to real property used for bird farms, fish hatcheries, office quarters, fishing access sites or impoundments, capital improvements or real property acquired pursuant to the Act of May 19, 1948 (62 Stat. 240), Public Law 80-537.

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

(5) Notwithstanding any other provision of the wildlife laws, there is appropriated annually from the moneys in the State Wildlife Fund in the State Treasury such amounts as are necessary for the purpose of making the payments to counties required by this section. [Amended by 1955 c.729 §1; 1971 c.356 §1; 1971 c.474 §1; 1973 c.723 §16; 1991 c.459 §420; 1997 c.541 §441; 1999 c.314 §73]

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

NONGAME WILDLIFE

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

496.380 Designation of tax refunds to finance program. (1) Individual taxpayers who file an Oregon income tax return and who will receive a tax refund from the Department of Revenue may designate that a contribution be made to the Nongame Wildlife Fund by marking the appropriate box printed on the return pursuant to subsection (2) of this section.

(2) The Department of Revenue shall print on the face of the Oregon income tax form for residents a space for taxpayers to designate that a contribution be made to the Nongame Wildlife Fund from their income tax refund. The space for designating the contribution shall provide for checkoff boxes as indicated under ORS 305.749. [1979 c.566 §2; 1981 c.411 §5; 1989 c.987 §21]

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

(a) An amount credited to the fund under ORS 305.749, which shall be transferred by the Department of Revenue to the fund.

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

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

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

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

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

496.410 [Repealed by 1973 c.723 §130]

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

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

SALMON AND TROUT ENHANCEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Ensure that the program is scientifically sound;

(b) Be consistent with the goals of the Oregon Plan, as described in ORS 541.405; and

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

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

(2) The committee shall review the policies of the State Department of Fish and Wildlife and make recommendations to the State Fish and Wildlife Commission and to

the department concerning the implementation of salmon and trout enhancement projects.

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

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

ADOPTION OF PLANS FOR NATURAL PRODUCTION OF ANADROMOUS FISH RUNS

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

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

(a) Hood;

(b) Deschutes;

(c) Fifteenmile Creek;

(d) John Day;

(e) Umatilla;

(f) Walla Walla;

(g) Grande Ronde; and

(h) Imnaha.

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

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

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

(1) Incorporate sound science;

(2) Be based upon adaptive management, incorporating monitoring and evaluation and clearly defined objectives and outcomes;

(3) Benefit fish and wildlife;

(4) Be consistent with efforts of the State of Oregon to recover salmonid populations listed under the federal Endangered Species Act, 16 U.S.C. 1531 to 1544; and

(5) Include a risk versus benefit analysis to wild fish. [1999 c.671 §2; 2001 c.97 §2]

Note: See note under 496.470.

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

Note: See note under 496.470.

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

WILDLIFE COOPERATION; FEDERAL WILDLIFE AID

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

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

496.520 [Repealed by 1973 c.723 §130]

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

(2) The State Fish and Wildlife Commission shall perform such acts as may be nec-

essary to the conduct and establishment of cooperative fish restoration projects, as defined in said Act of Congress, in compliance with said Act and rules and regulations promulgated thereunder by the Secretary of the Interior.

MIGRATORY WATERFOWL STAMP

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

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

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

UPLAND BIRD STAMP

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

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

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

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

(2) Establish a fund to be financed by the sale of upland bird stamps and any art works and prints related to the upland bird stamp for the purposes of promoting the propagation and conservation of upland birds and acquiring, developing, managing, enhancing, purchasing or acquiring through lands exchange upland bird habitat; and

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

Note: See note under 496.558.

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

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

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

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

WILDLIFE LAW ENFORCEMENT AND ENFORCEMENT OFFICERS

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

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

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

(3) The Superintendent of State Police may appoint special enforcement officers au-

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

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

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

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

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

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

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

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

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

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

496.655 [Repealed by 1973 c.723 §130]

496.660 [Amended by 1971 c.658 §16; 1973 c.723 §26; repealed by 1991 c.267 §1]

496.665 Issuance of search warrants; places searched; use and disposition of seized property. (1) Any court having jurisdiction of the offense, upon receiving proof or probable cause for believing in the concealment of any wildlife taken, killed or had in possession, under control, or shipped contrary to the wildlife laws, shall issue a search warrant and cause a search to be made in any place, and to that end cause any building, enclosure, car, automobile, boat, apartment, chest, box, parcel, crate or basket to be opened and the contents examined by any person authorized to enforce the wildlife laws.

(2) All wildlife, or parts thereof, thus discovered shall be held by the State Fish and Wildlife Commission as evidence against any party accused of the crime in connection therewith.

(3) Upon conviction of the parties accused, such wildlife, or parts thereof, shall be disposed of by the commission. Any funds arising from the disposal shall become a part of the State Wildlife Fund. [Amended by 1971 c.658 §17; 1973 c.723 §27]

496.670 Arrests made on Sunday. The arrests mentioned in ORS 496.645 may be made on Sunday. In this event the persons arrested shall be taken before any justice of the peace or judge having jurisdiction, who shall bind over the persons arrested to appear and be proceeded against as soon as may be on week day following the arrest. [Amended by 1991 c.267 §2]

496.675 Seizure without warrant by law enforcement personnel. The persons mentioned in ORS 496.645 may at any time, without warrant, seize and take possession of:

(1) Any wildlife which has been caught, taken or killed, or had in possession or under control, which have been killed, had in possession or shipped, at any time, in any manner or for any purpose contrary to the wildlife laws.

(2) Any guns, boats, fishing or other apparatus used for the purpose of hunting or fishing, at any time, in any manner or for any purpose contrary to the wildlife laws. [Amended by 1971 c.658 §18; 1973 c.723 §28]

496.680 Seizure of unlawful devices and unlawfully taken wildlife; forfeiture; disposition; repayment of administrative costs. (1) All wildlife taken by, or in the possession of any person in violation of the wildlife laws, and all guns, boats, traps, fishing apparatus and implements used in angling, hunting or trapping or taking any wildlife in violation of the wildlife laws may be seized by any person authorized to enforce the wildlife laws, and may be forfeited.

(2) All wildlife shot by any person while violating any provision of ORS 164.245 to 164.270 or 498.120 shall be seized by any person authorized to enforce the wildlife laws and shall be forfeited.

(3) If forfeited, such property shall be turned over to the State Fish and Wildlife Commission by order of the court at the time of passing sentence for the violation.

(4) The commission may dispose of such property in any manner it considers proper, but the clear proceeds derived from the sale of any seized guns, boats, traps, fishing apparatus or implements shall be deposited in the Common School Fund. Any wildlife taken in violation of the wildlife laws may be disposed of forthwith or used for food purposes, under rules of the commission, to prevent spoilage.

(5) Upon conviction of a person for taking wildlife while violating any provision of ORS 164.245 to 164.270 or 498.120, the court shall include in the sentence a requirement that the convicted person pay to the seizing agency an amount equal to the cost incurred in seizing, storing and disposing of the seized and forfeited wildlife. [Amended by 1971 c.658 §19; 1973 c.723 §29; 1987 c.858 §6; 1993 c.440 §2; 1999 c.1051 §272]

496.685 [Repealed by 1971 c.743 §432]

496.690 Possession of wildlife as evidence of illegal taking. The fact that any person has any wildlife, or any part thereof, in possession when it is illegal to take or have same is prima facie evidence that such person killed such wildlife illegally. [Amended by 1971 c.658 §20]

496.695 Counseling, aiding or sharing in violation. Any person who counsels, aids or assists in any violation of the wildlife laws, or shares in any of the proceeds of such violation by receiving or possessing any wildlife, shall incur the penalties provided for the person guilty of such violation. [Amended by 1971 c.658 §21; 1973 c.723 §30]

496.700 Investigating violations; summoning witnesses. (1) Where the State Fish and Wildlife Commission has been furnished information of the violation of any of the wildlife laws, the commission, or one especially authorized by it, may proceed to the place where the offense is said to have been committed and summon and examine under oath witnesses to ascertain the facts and to avoid useless and frivolous indictments or prosecutions.

(2) Witnesses shall be paid by the commission from the State Wildlife Fund at the rate of $5 per day and mileage from their places of residence at the rate of eight cents per mile.

(3) No witness so summoned shall refuse to attend or testify under this section. [Amended by 1971 c.658 §22; 1973 c.723 §31]

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

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

(a) Each game mammal other than mountain sheep, mountain goat, elk or silver gray squirrel, $800.

(b) Each mountain sheep or mountain goat, $6,800.

(c) Each elk, $1,500.

(d) Each silver gray squirrel, $20.

(e) Each game bird other than wild turkey, $20.

(f) Each wild turkey, $100.

(g) Each game fish other than salmon, steelhead trout, halibut or sturgeon, $10.

(h) Each salmon, steelhead trout, halibut or sturgeon, $250.

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

(j) Each bobcat or fisher, $700.

(k) Each specimen of any wildlife species whose survival is specified by the wildlife

laws or the laws of the United States as threatened or endangered, $1,000.

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

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

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

(5) Any circuit or justice court has jurisdiction to try any case for the recovery of damages for the unlawful taking or killing of any of the wildlife as provided by this section. [Amended by 1961 c.343 §4; 1969 c.302 §1; 1973 c.723 §32; 1981 c.108 §1; 1995 c.658 §106; 2003 c.98 §1]

496.710 Compelling testimony in enforcement proceedings. In any action or proceeding for the enforcement of any of the provisions of the wildlife laws, or in any investigation before a grand jury, district attorney or other officer, or any criminal proceeding, no person shall be excused from testifying concerning any offense committed by another or by the person on the ground that the testimony of the person may incriminate the person. However, such testimony shall not be used against the person in any prosecution for any crime or misdemeanor under the laws of the state, nor shall the person be subject to any criminal prosecution or any penalty or forfeiture for or on account of any transaction, matter or thing concerning which the person has been compelled to testify or to produce evidence, documentary or otherwise. [Amended by 1971 c.658 §23; 1973 c.723 §33]

496.715 Disposition of fines. (1) One-half of all fines imposed in justice courts as provided in the wildlife laws and collected in money shall be credited and distributed under ORS 137.293 and 137.295, to the treasurer of the county in which the action or proceeding is commenced, as a monetary obligation payable to the county, to be credited to the general fund of the county. One-half of all fines so imposed and collected in justice courts shall be credited and distributed under ORS 137.293 and 137.295, as a monetary obligation payable to the state. Fines so imposed and collected in circuit courts shall be credited and distributed under ORS 137.293 and 137.295, as monetary obligations payable to the state. The district attorney of the county, upon payment of any judgment, shall satisfy it of record as attorney for the state.

(2) Payment of fines collected in justice courts under this section shall be made within the first 20 days of the month following the month in which collected. [Amended by 1959 c.530 §8; 1961 c.391 §1; 1971 c.186 §5; 1973 c.723 §34; 1981 s.s. c.3 §115; 1983 c.763 §50; 1987 c.905 §25; 1995 c.658 §107]

WILDLIFE LAW VIOLATOR COMPACT

496.750 Wildlife Law Violator Compact. The Wildlife Violator Compact is hereby enacted into law and entered into on behalf of this state with all other states legally joining therein in a form substantially as follows:

ARTICLE I
FINDINGS, DECLARATION OF POLICY AND PURPOSE

(a) The party states find that:

(1) Wildlife resources are managed in trust by the respective states for the benefit of all residents and visitors.

(2) The protection of their respective wildlife resources can be materially affected by the degree of compliance with state statute, law, regulation, ordinance or administrative rule relating to the management of those resources.

(3) The preservation, protection, management and restoration of wildlife contributes immeasurably to the aesthetic, recreational and economic aspects of these natural resources.

(4) Wildlife resources are valuable without regard to political boundaries, therefore, all persons should be required to comply with wildlife preservation, protection, management and restoration laws, ordinances and administrative rules and regulations of all party states as a condition precedent to the continuance or issuance of any license to hunt, fish, trap or possess wildlife.

(5) Violation of wildlife laws interferes with the management of wildlife resources and may endanger the safety of persons and property.

(6) The mobility of many wildlife law violators necessitates the maintenance of channels of communications among the various states.

(7) In most instances, a person who is cited for a wildlife violation in a state other than the person's home state:

(i) Must post collateral or bond to secure appearance for a trial at a later date; or

(ii) If unable to post collateral or bond, is taken into custody until the collateral or bond is posted; or

(iii) Is taken directly to court for an immediate appearance.

(8) The purpose of the enforcement practices described in paragraph (7) of this subdivision is to insure compliance with the terms of a wildlife citation by the person who, if permitted to continue on the person's way after receiving the citation, could return to the person's home state and disregard the person's duty under the terms of the citation.

(9) In most instances, a person receiving a wildlife citation in the person's home state is permitted to accept the citation from the officer at the scene of the violation and to immediately continue on the person's way after agreeing or being instructed to comply with the terms of the citation.

(10) The practice described in paragraph (7) of this subdivision causes unnecessary inconvenience and, at times, a hardship for the person who is unable at the time to post collateral, furnish a bond, stand trial or pay the fine, and thus is compelled to remain in custody until some alternative arrangement can be made.

(11) The enforcement practices described in paragraph (7) of this subdivision consume an undue amount of law enforcement time.

(b) It is the policy of the party states to:

(1) Promote compliance with the statutes, laws, ordinances, regulations and administrative rules relating to management of wildlife resources in their respective states.

(2) Recognize the suspension of wildlife license privileges of any person whose license privileges have been suspended by a party state and treat this suspension as if it had occurred in their state.

(3) Allow violators to accept a wildlife citation, except as provided in subdivision (b) of Article III, and proceed on the violator's way without delay whether or not the person is a resident in the state in which the citation was issued, provided that the violator's home state is party to this compact.

(4) Report to the appropriate party state, as provided in the compact manual, any conviction recorded against any person whose home state was not the issuing state.

(5) Allow the home state to recognize and treat convictions recorded for their residents which occurred in another party state as if they had occurred in the home state.

(6) Extend cooperation to its fullest extent among the party states for obtaining compliance with the terms of a wildlife citation issued in one party state to a resident of another party state.

(7) Maximize effective use of law enforcement personnel and information.

(8) Assist court systems in the efficient disposition of wildlife violations.

(c) The purpose of this compact is to:

(1) Provide a means through which the party states may participate in a reciprocal program to effectuate policies enumerated in subdivision (b) of this Article in a uniform and orderly manner.

(2) Provide for the fair and impartial treatment of wildlife violators operating within party states in recognition of the person's right of due process and the sovereign status of a party state.

ARTICLE II
DEFINITIONS

As used in this compact, unless the context requires otherwise:

(a) "Citation" means any summons, complaint, ticket, penalty assessment or other official document issued by a wildlife officer or other peace officer for a wildlife violation containing an order which requires the person to respond.

(b) "Collateral" means any cash or other security deposited to secure an appearance for trial, in connection with the issuance by a wildlife officer or other peace officer of a citation for a wildlife violation.

(c) "Compliance" with respect to a citation means the act of answering the citation through appearance at a court, a tribunal or payment of fines, costs and surcharges, if any, or both such appearance and payment.

(d) "Conviction" means a conviction, including any court conviction, of any offense related to the preservation, protection, management or restoration of wildlife which is prohibited by state statute, law, regulation, ordinance or administrative rule, or a forfeiture of bail, bond or other security deposited to secure appearance by a person charged with having committed any such offense, or payment of a penalty assessment, or a plea of nolo contendere, or the imposition of a deferred or suspended sentence by the court.

(e) "Court" means a court of law, including Magistrate's Court and Justice Court.

(f) "Home state" means the state of primary residence of a person.

(g) "Issuing state" means the party state which issues a wildlife citation to the violator.

(h) "License" means any license, permit or other public document which conveys to the person to whom it was issued the privilege of pursuing, possessing or taking any wildlife regulated by statute, law, regulation, ordinance or administrative rule of a party state.

(i) "Licensing authority" means the department or division within each party state which is authorized by law to issue or approve licenses or permits to hunt, fish, trap, or possess wildlife.

(j) "Party state" means any state which enacts legislation to become a member of this Wildlife Compact.

(k) "Personal recognizance" means an agreement by a person made at the time of issuance of the wildlife citation that the person will comply with the terms of that citation.

(L) "State" means any state, territory or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Provinces of Canada or other countries.

(m) "Suspension" means any revocation, denial or withdrawal of any or all license privileges, including the privilege to apply for, purchase or exercise the benefits conferred by any license.

(n) "Terms of the citation" means those conditions and options expressly stated upon the citation.

(o) "Wildlife" means all species of animals, including but not necessarily limited to mammals, birds, fish, reptiles, amphibians, mollusks and crustaceans, which are defined as "wildlife" and are protected or otherwise regulated by statute, law, regulation, ordinance or administrative rule in a party state. Species included in the definition of "wildlife" vary from state to state and determination of whether a species is "wildlife" for the purposes of this compact shall be based on local law.

(p) "Wildlife law" means any statute, law, regulation, ordinance or administrative rule developed and enacted to manage wildlife resources and the use thereof.

(q) "Wildlife officer" means any individual authorized by a party state to issue a citation for a wildlife violation.

(r) "Wildlife violation" means any cited violation of a statute, law, regulation, ordinance or administrative rule developed and enacted to manage wildlife resources and the use thereof.

ARTICLE III
PROCEDURES FOR ISSUING STATE

(a) When issuing a citation for a wildlife violation, a wildlife officer shall issue a citation to any person whose primary residence is in a party state in the same manner as if the person were a resident of the home state and shall not require the person to post collateral to secure appearance, subject to the exceptions contained in subdivision (b) of this Article, if the officer receives the person's personal recognizance that the person will comply with the terms of the citation.

(b) Personal recognizance is acceptable:

(1) If not prohibited by local law or the compact manual; and

(2) If the violator provides adequate proof of the violator's identification to the wildlife officer.

(c) Upon conviction or failure of a person to comply with the terms of a wildlife citation, the appropriate official shall report the conviction or failure to comply to the licensing authority of the party state in which the wildlife citation was issued. The report shall be made in accordance with procedures specified by the issuing state and shall contain the information specified in the compact manual as minimum requirements for effective processing by the home state.

(d) Upon receipt of the report of conviction or noncompliance required by subdivision (c) of this Article, the licensing authority of the issuing state shall transmit to the licensing authority in the home state of the violator the information in a form and content as contained in the compact manual.

ARTICLE IV
PROCEDURES FOR HOME STATE

(a) Upon receipt of a report of failure to comply with the terms of a citation from the licensing authority of the issuing state, the licensing authority of the home state shall notify the violator, shall initiate a suspension action in accordance with the home state's suspension procedures and shall suspend the violator's license privileges until satisfactory evidence of compliance with the terms of the wildlife citation has been furnished by the issuing state to the home state licensing authority. Due process safeguards will be accorded.

(b) Upon receipt of a report of conviction from the licensing authority of the issuing state, the licensing authority of the home state shall enter such conviction in its records and shall treat such conviction as if it occurred in the home state for the purposes of the suspension of license privileges.

(c) The licensing authority of the home state shall maintain a record of actions taken and make reports to issuing states as provided in the compact manual.

ARTICLE V
RECIPROCAL RECOGNITION
OF SUSPENSION

All party states shall recognize the suspension of license privileges of any person by any state as if the violation on which the suspension is based had in fact occurred in their state and could have been the basis for suspension of license privileges in their state.

ARTICLE VI
APPLICABILITY OF OTHER LAWS

Except as expressly required by provisions of this compact, nothing herein shall be construed to affect the right of any party state to apply any of its laws relating to license privileges to any person or circumstance, or to invalidate or prevent any agreement or other cooperative arrangements between a party state and a nonparty state concerning wildlife law enforcement.

ARTICLE VII
COMPACT ADMINISTRATOR
PROCEDURES

(a) For the purpose of administering the provisions of this compact and to serve as a governing body for the resolution of all matters relating to the operation of this compact, a board of compact administrators is established. The board shall be composed of one representative from each of the party states to be known as the compact administrator. The compact administrator shall be appointed by the head of the licensing authority of each party state and will serve and be subject to removal in accordance with the laws of the state the administrator represents. A compact administrator may provide for the discharge of the administrator's duties and the performance of the administrator's functions as a board member by an alternate. An alternate may not be entitled to serve unless written notification of the alternate's identity has been given to the board.

(b) Each member of the board of compact administrators shall be entitled to one vote. No action of the board shall be binding unless taken at a meeting at which a majority of the total number of votes on the board are cast in favor thereof. Action by the board shall be only at a meeting at which a majority of the party states are represented.

(c) The board shall elect annually, from its membership, a chairperson and vice-chairperson.

(d) The board shall adopt bylaws, not inconsistent with the provisions of this compact or the laws of a party state, for the conduct of its business and shall have the power to amend and rescind its bylaws.

(e) The board may accept for any of its purposes and functions under this compact all donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States or any governmental agency, and may receive, utilize and dispose of the same.

(f) The board may contract with or accept services or personnel from any governmental or intergovernmental agency, individual, firm, corporation or any private nonprofit organization or institution.

(g) The board shall formulate all necessary procedures and develop uniform forms and documents for administering the provisions of this compact. All procedures and forms adopted pursuant to board action shall be contained in the compact manual.

ARTICLE VIII
ENTRY INTO COMPACT
AND WITHDRAWAL

(a) This compact shall become effective when it has been adopted by at least two states.

(b) (1) Entry into the compact shall be made by resolution of ratification executed by the authorized officials of the applying state and submitted to the chairperson of the board.

(2) The resolution shall be in a form and content as provided in the compact manual and shall include statements that in substance are as follows:

(i) A citation of the authority by which the state is empowered to become a party to this compact;

(ii) Agreement to comply with the terms and provisions of the compact; and

(iii) That compact entry is with all states then party to the compact and with any state that legally becomes a party to the compact.

(3) The effective date of entry shall be specified by the applying state, but shall not be less than 60 days after notice has been given by the chairperson of the board of the compact administrators or by the secretariat of the board to each party state that the resolution from the applying state has been received.

(c) A party state may withdraw from this compact by official written notice to the other party states, but a withdrawal shall not take effect until 90 days after notice of withdrawal is given. The notice shall be directed to the compact administrator of each

member state. No withdrawal shall affect the validity of this compact as to the remaining party states.

ARTICLE IX

AMENDMENTS TO THE COMPACT

(a) This compact may be amended from time to time. Amendments shall be presented in resolution form to the chairperson of the board of compact administrators and may be initiated by one or more party states.

(b) Adoption of an amendment shall require endorsement by all party states and shall become effective 30 days after the date of the last endorsement.

(c) Failure of a party state to respond to the compact chairman within 120 days after receipt of the proposed amendment shall constitute endorsement.

ARTICLE X

CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes stated herein. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, individual, or circumstance is held invalid, the compact shall not be affected thereby. If this compact shall be held contrary to the constitution of any party state thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

ARTICLE XI

TITLE

This compact shall be known as the Wildlife Violator Compact.

[1989 c.1056 §2]

PERMIT FOR WATER FOR HYDROELECTRIC PURPOSES

496.815 Definitions for ORS 496.815 to 496.825. As used in ORS 496.815 to 496.825:

(1) "Department" means the State Department of Fish and Wildlife.

(2) "Director" means the State Fish and Wildlife Director.

(3) "Person" means an individual, corporation, association, firm, partnership, joint stock company, municipal corporations and all other political subdivisions of the State of Oregon. The federal government or any of its agencies are specifically excluded. [1985 c.674 §1]

496.820 Permit or license fee. (1) Any person applying for a permit to appropriate water for hydroelectric purposes under ORS 537.150 to 537.252 or any person applying for a preliminary permit or license under ORS 543.010 to 543.610 shall pay an administration fee of $350 to the State Department of Fish and Wildlife.

(2) If a person pays the administration fee under subsection (1) of this section at the time the person applies for a preliminary permit under ORS 543.210, the person shall not also be required to pay the fee when applying for a license for the same project under ORS 543.010 to 543.610. [1985 c.674 §2]

496.825 Application fee; exception. (1) In addition to any other fee required by law, at the time the person applies to the Water Resources Department for a license to operate a hydroelectric project under ORS 543.010 to 543.610 or for a permit to appropriate water for hydroelectric purposes under ORS 537.150 to 537.230, the person shall pay to the State Fish and Wildlife Director an application fee the amount of which shall be the greater of:

(a) $1,000; or

(b) Thirty-five cents for each kilowatt of proposed capacity of the project.

(2) The director shall postpone the payment of the fee under subsection (1) of this section for a permit to appropriate water under ORS 537.150 to 537.230 until the person submits final plans and specifications for the project to the Water Resources Department under ORS 537.150.

(3) Subsection (1) of this section shall not apply to any applicant for a permit or license for a project producing 100 theoretical horsepower or less. [1985 c.674 §3]

496.830 Penalty fee. A person who fails to pay the fee required under section 4, chapter 674, Oregon Laws 1985, or the assessment under section 5, chapter 674, Oregon Laws 1985, or ORS 543.265 on the due date shall pay in addition to the assessed amount due, a penalty in the amount of one percent of the fee per month for the period that the fee is past due. The State Fish and Wildlife Director may bring an action to collect an unpaid fee or assessment in the name of the State of Oregon in the Circuit Court of Marion County or the circuit court of the county in which the project is located. The director shall be entitled to recover all costs and attorney fees incurred in the legal action. [1985 c.674 §7]

496.835 Oregon Fish and Wildlife Hydroelectric Fund. (1) There is created within the State Treasury a revolving fund known as the Oregon Fish and Wildlife Hydroelectric Fund, separate and distinct from the General Fund. The moneys in this fund are continuously appropriated for use by the department in its activities related to hydroelectric projects including payment of necessary administrative expenses.

(2) The fund created by subsection (1) of this section shall consist of all moneys received under sections 4 and 5, chapter 674, Oregon Laws 1985, ORS 496.820 and 496.825 and moneys transferred from the Water Resources Department Hydroelectric Fund as provided in ORS 536.015.

(3) Moneys in the fund may be invested as provided in ORS 293.701 to 293.820. Interest from any source derived from the investment of the moneys of the fund shall be credited to the fund. [1985 c.674 §8; 1991 c.869 §3]

496.905 [1967 c.604 §1; 1969 c.59 §1; 1971 c.388 §3; 1973 c.723 §35; 1979 c.477 §11; renumbered 153.710]

496.910 [1967 c.604 §2; 1973 c.723 §36; 1979 c.477 §12; renumbered 153.705]

496.915 [1967 c.604 §3; 1973 c.723 §37; renumbered 153.715]

496.920 [1967 c.604 §4; 1973 c.723 §38; 1979 c.477 §13; renumbered 153.720]

496.925 [1967 c.604 §5; renumbered 153.725]

496.927 [1977 c.350 §2; 1979 c.477 §14; renumbered 153.730]

496.930 [1967 c.604 §6; renumbered 153.745]

496.935 [1967 c.604 §7; renumbered 153.750]

496.940 [1967 c.604 §8; renumbered 153.755]

496.945 [1967 c.604 §9; renumbered 153.760]

496.950 [1967 c.604 §10; renumbered 153.765]

PENALTIES

496.951 Base fines for wildlife law violations. (1) The base fine amount for a violation of wildlife laws or rules as described in ORS 496.992 (2) that is required in violation proceedings under ORS chapter 153 shall be as follows:

(a) Violations that do not involve the taking of wildlife, except for violations of the nonresident licensing provisions of ORS 497.102 and 497.121 and the provisions of ORS 496.994, $75.

(b) Violations that involve the taking of nongame mammals or game birds, and size or quantity limits for fish and shellfish, except salmon, steelhead trout and sturgeon, $150.

(c) Violations that involve the taking of salmon, steelhead trout, sturgeon, wildlife not otherwise provided for and all other wildlife offenses, $299.

(2) The base fine amount established under subsection (1) of this section includes the unitary assessment required under ORS 137.290 and the county assessment required under ORS 137.309.

(3) A court may not establish a base fine amount for a violation of an offense described in subsection (1) of this section other than the amount listed in this section. [1995 c.545 §4; 1997 c.19 §1; 1999 c.1051 §105]

496.990 [Amended by 1967 c.523 §1; repealed by 1973 c.723 §130]

496.992 Penalties. (1) Except as otherwise provided by ORS 153.022 and other law, violation of any provision of the wildlife laws, or any rule promulgated pursuant thereto, is a Class A misdemeanor when the offense is committed with a culpable mental state as defined in ORS 161.085. If the defendant is sentenced to pay a fine, failure to pay the fine, or any portion thereof, shall be treated as provided in ORS 161.685.

(2) Except as otherwise provided by ORS 153.022 and other law, violation of any provision of the wildlife laws or any rule promulgated pursuant thereto is punishable as a Class A violation in the manner prescribed in ORS chapter 153 when the offense is committed with no culpable mental state as defined in ORS 161.085.

(3) The second and each subsequent conviction within a 10-year period for the taking of game fish with a total value of $200 or more or the taking of antelope, black bear, cougar, deer, elk, moose, mountain goat or mountain sheep in violation of the wildlife laws or any rule promulgated pursuant thereto which occurs more than one hour prior to or more than one hour subsequent to a season established for the lawful taking of such game mammals or game fish is a Class C felony when the offense is committed with a culpable mental state as defined in ORS 161.085. [1973 c.723 §39; 1975 c.578 §3; 1977 c.350 §3; 1977 c.353 §1; 1983 c.364 §1; 1985 c.372 §1; 1995 c.545 §5; 1999 c.1051 §106]

496.994 Obstructing the taking of wildlife prohibited. (1) A person commits the offense of obstructing the taking of wildlife if the person, having no right to do so, interferes with the lawful taking, or the process of taking, of wildlife by another with the intent to prevent the taking.

(2) Obstructing the taking of wildlife is a Class A misdemeanor. [1987 c.473 §2; 1989 c.171 §67; 1995 c.468 §1]

496.996 Attempts to take wildlife decoy as unlawful wildlife taking. (1) A person commits the crime of unlawful taking of wildlife if:

(a) The person discharges a firearm or other hunting device, traps, or acts toward a wildlife decoy in any manner consistent with an unlawful taking of wildlife; and

(b) The wildlife decoy is under the control of law enforcement officials.

(2) As used in this section, "wildlife decoy" means any simulation or replication of wildlife, in whole or in part, used by law enforcement officials for purposes of enforcing state wildlife laws. [1995 c.125 §2]