Chapter 509

2003 EDITION

General Protective Regulations

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GENERAL PROVISIONS

509.001 Definitions. The definitions prescribed by ORS 506.001 to 506.025 apply to this chapter. [1965 c.570 §91]

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TAKING, POSSESSING, BUYING, SELLING AND TRANSPORTING FOOD FISH

509.006 General prohibition regarding taking, possessing, buying, selling or handling food fish. It is unlawful to take, possess, buy, sell or otherwise handle any food fish in or from any waters of this state, during times, in a manner or by means of the fishing gear prohibited by law. [1965 c.570 §92]

509.010 [Repealed by 1965 c.570 §152]

509.011 Prohibited activities during closed season. (1) It is unlawful, during a closed season on any of the waters of this state, to:

(a) Take or transport food fish taken in or upon such waters.

(b) Make use of a boat or any fishing gear to take or transport food fish taken in such waters.

(c) Have, leave or cause to be left in such waters any fishing gear in a condition to take food fish.

(2) It is unlawful to:

(a) Buy, receive, possess or sell food fish unlawfully caught during a closed season.

(b) Make use of a vehicle of any kind whatsoever for transporting, or intended to be used for transporting, in any place, food fish unlawfully taken during a closed season, or unlawfully brought into this state. [1965 c.570 §93]

509.015 Forfeiture of boat, vessel or fishing gear unlawfully used; seizure and disposition of food fish unlawfully taken. (1) In addition to the penalty prescribed by ORS 506.991, upon conviction of a violation of ORS 509.011, the court may order the forfeiture of the boat, vessel, vehicle and fishing gear unlawfully used, in the manner provided by ORS 506.695 and 506.700, and the clear proceeds of the property forfeited shall be deposited with the State Treasury in the Common School Fund.

(2) All food fish taken, transported or possessed in violation of ORS 509.011 are subject to seizure by the State Fish and Wildlife Director, a deputy fish or game warden or a member of the state police, either with or without arrest. Upon such seizure, the fish are subject to forfeiture and disposition pursuant to ORS 506.690. [Amended by 1957 c.133 §1; 1965 c.570 §95; 1977 c.652 §8; 1987 c.858 §9; 1993 c.699 §29]

509.019 Consumption of catch at sea lawful without payment of fee. Notwithstanding any other provision of law, an individual lawfully engaged in commercial fishing, while at sea, may consume a portion of the lawful commercial catch, without payment of the fees required under ORS 508.505. [1987 c.178 §2; 1991 c.701 §18]

509.020 [Repealed by 1965 c.570 §152]

509.025 Selling or transporting food fish taken by angling. It is unlawful to sell within this state, or transport out of this state for the purpose of sale, food fish taken from any waters of this state by means of angling. [Amended by 1965 c.570 §94; subsection (2) enacted as 1965 c.570 §107; 1977 c.242 §6]

509.030 [Amended by 1965 c.570 §99; 1969 c.411 §3; repealed by 1975 c.1 §1 (509.031 enacted in lieu of 509.030)]

509.031 Rainbow trout as game fish; return to water of incidental commercial catch. (1) It shall be the policy of the State of Oregon that rainbow trout, Oncorhynchus mykiss, including steelhead trout are game fish, and shall be managed to provide recreational angling for the people and to protect wild native stocks. Recognizing that rainbow trout are sometimes intermingled with food fish, the State Fish and Wildlife Commission shall regulate to minimize the incidental catch of rainbow trout that may be taken under subsection (2) of this section by commercial fishing gear, including but not limited to regulations as to season, gear and area.

(2) Any rainbow trout, Oncorhynchus mykiss, including steelhead trout taken as an incidental catch, by any person fishing commercially shall be returned immediately to the water and shall not be bought or sold within the state.

(3) Nothing in this section is intended to affect Indian fishing rights as granted by federal treaties. [1975 c.1 §2 (enacted in lieu of 509.030); 1987 c.199 §1; 1991 c.47 §1]

509.035 [Repealed by 1965 c.570 §152]

509.036 [1973 c.500 §§6,7; repealed by 1975 c.416 §2]

509.040 Small or immature salmon protected; exceptions; rules. (1) Any person who takes any immature salmon of any variety less than 20 inches in length, or any mature salmon of any variety less than 15 inches in length, by any means other than angling, shall immediately return such salmon alive to the water.

(2) It is unlawful to:

(a) Take, buy, sell or possess immature salmon less than 20 inches or mature salmon less than 15 inches in length, taken in any waters of this state, at any time or in any manner except by angling.

(b) Take, molest, kill or injure, in any manner at any time, or expose for sale or have in possession, except for the purpose of propagation when authorized by law, any spawning salmon.

(3) Notwithstanding subsections (1) and (2) of this section it is lawful to take precocious salmon commonly called jack salmon less than 15 inches in length from the waters of this state, except the Pacific Ocean and to buy, sell or possess such salmon.

(4) To further protect immature salmon the State Fish and Wildlife Commission may establish by rule a minimum size for any species of salmon which is greater than 20 inches. [Amended by 1965 c.570 §97]

509.045 [Amended by 1965 c.570 §98; repealed by 1981 c.365 §23]

509.050 [Repealed by 1965 c.570 §152]

509.055 [Repealed by 1965 c.570 §152]

509.060 [Amended by 1965 c.570 §96; renumbered 509.185]

509.065 [Amended by 1959 c.254 §1; 1965 c.570 §101; renumbered 509.112]

509.070 Selling, canning, processing or preserving food fish out of water longer than 60 hours. It is unlawful to sell, can, process or preserve for food any food fish that have been removed from the water for a longer period than 60 hours, unless such fish have been artificially chilled. [Amended by 1965 c.570 §102]

509.075 Packing or selling food fish unfit for human consumption. If the State Fish and Wildlife Commission or its authorized representatives finds that food fish about to be processed, packed, canned, preserved in ice or sold in the open market are unfit for human consumption, it or they shall notify the packer or possessor of such fish of the fact. If, in spite of any warning given to such packer or possessor, such fish are packed, demand shall be made upon the packer to keep such fish separate and apart from the balance of the output or pack of the packer, and a full report shall be made of the matter to both the state and the federal health authorities. [Amended by 1965 c.570 §103]

509.080 [Repealed by 1965 c.570 §152]

509.090 [Repealed by 1965 c.570 §152]

509.095 [Repealed by 1953 c.364 §3]

509.100 [Repealed by 1953 c.364 §3]

509.105 Possession, importation or transportation of food fish unlawfully taken in other state. It is unlawful to possess, import into this state or transport within this state any food fish which have been unlawfully taken or transported under the laws of another state. [Amended by 1957 c.291 §1; 1965 c.570 §108]

509.110 Fish transporters to require statement from shipper; examination by commission. (1) All transportation companies, common carriers or other persons or agencies transporting food fish, fresh, frozen, salted, smoked, kippered or preserved in ice, shall require of the shipper, before accepting such shipments, a signed statement in writing showing:

(a) The name of the consignor or shipper.

(b) The name of the consignee.

(c) The net weight in pounds of each species of fish in the shipment, in the whole or round, or dressed.

(d) The date of the shipment.

(2) The State Fish and Wildlife Commission may require such statement to be forwarded to its office.

(3) The State Fish and Wildlife Director or the authorized representative of the director may at any time examine the records of any such transportation companies, common carriers or other persons or agencies, for the purpose of enforcing this section. [Amended by 1965 c.570 §109]

WASTING, INJURING AND DESTROYING FISH

509.112 Wasting food fish. It is unlawful for any person wantonly to waste or destroy any food fish. [Formerly 509.065]

509.115 Placing in waters fish harmful to food fish. It is unlawful, without written authority from the State Fish and Wildlife Commission, to place in any of the waters of this state any species or variety of fish whatsoever which are inimical to or destructive of food fish. [Amended by 1965 c.570 §105]

509.120 Using electricity to disturb food fish. It is unlawful to use or permit to be used in any of the waters of this state any electrical device, appliance or current which in any manner has a tendency to retard, scare, frighten or obstruct any food fish in their migrations or movements in such waters without first having obtained the consent of and a permit from the State Fish and Wildlife Director. [Amended by 1965 c.570 §106]

509.122 Definitions for ORS 509.125 to 509.155. As used in ORS 509.125 to 509.155, unless the context requires otherwise:

(1) "Explosives" means any explosive substances whatever, including but not limited to powder, dynamite and nitroglycerine.

(2) "Substance deleterious to fish" includes but is not limited to any drug, powder, chemical, medicated bait, gas, cocculus indicus or extract therefrom, inimical to fish. [1965 c.570 §110]

509.125 Placing substances in water to drive fish from closed areas. It is unlawful to place or cause to be placed in any stream of this state where anadromous or food fish run or exist, within the distance from any dam, fishway or object in which the taking of any anadromous or food fish by means other than angling is prohibited by law, any blood or offal of fish, or any other substance, matter or contrivance that will frighten or drive anadromous or food fish, or with intent to drive or frighten, out of that part of the waters of any stream in which it is unlawful to take such fish. [Amended by 1965 c.570 §111]

509.130 Placing substances in water or using explosives to take or destroy food fish. It is unlawful, for the purpose of taking or destroying any food fish, to:

(1) Throw, cast or pass, or cause or permit to be thrown, cast or passed, in any waters of this state in which food fishes are wont to be, any substance deleterious to fish; or

(2) Explode or cause to be exploded in any waters of this state, any explosives. [Amended by 1963 c.112 §1; 1965 c.570 §112]

509.135 [Repealed by 1965 c.570 §152]

509.140 Placing explosives or harmful substances in waters in course of lawful work; permit. (1) Whenever in the course of removing any obstruction in any waters of this state, or in constructing any foundations for dams, bridges or other structures, or in carrying on any trade or business, any person, municipal corporation, political subdivision or governmental agency desires to use explosives or any substances deleterious to fish, such person, municipal corporation, political subdivision or governmental agency shall make application to the State Fish and Wildlife Commission for a permit to use the explosives or substances in such waters.

(2) If the commission finds it necessary that the explosives or substances be used, it may make an order granting such person, municipal corporation, political subdivision or governmental agency the right to use the explosives or substances and shall:

(a) Designate the places and period within which the explosives or substances may be used; and

(b) Prescribe such precautions as will save fish from injury.

(3) It is unlawful to disregard such order or fail to obtain such order or permit before using explosives or substances deleterious to fish. [Amended by 1963 c.112 §2; 1965 c.570 §113]

509.145 [Repealed by 1965 c.570 §152]

509.150 Use by commission of explosives or substances to destroy predatory fish. Nothing in ORS 509.125 to 509.155 prevents the State Fish and Wildlife Commission from using any explosives or substances deleterious to fish for the purpose of destroying German carp or any other predatory fish inimical to food fish, or from carrying out any of the commercial fishing laws. [Amended by 1965 c.570 §114]

509.155 Possession of fish taken by explosives or harmful substance justifies arrest; burden of proof. Having in possession any food fish under circumstances which make it reasonable to believe that they were taken by means of explosives or substances deleterious to fish justifies the arrest of the person having the fish in possession. It is then incumbent upon such person to prove and show that the fish were taken by lawful means. [Amended by 1965 c.570 §115]

509.185 [Formerly 509.060; repealed by 1971 c.658 §32]

509.205 [Repealed by 1965 c.570 §152]

509.206 [1965 c.570 §116; repealed by 1969 c.357 §2]

509.210 [Repealed by 1965 c.570 §152]

509.215 [Repealed by 1965 c.570 §152]

FISHING GEAR

509.216 Fixed fishing gear unlawful for taking food fish; exceptions; rules. (1) Except as provided in subsection (2) of this section, it is unlawful to take food fish by means of fixed fishing gear or seines in any of the waters of this state.

(2) The State Fish and Wildlife Commission by rule may permit fixed fishing gear or seines for the taking of certain species of food fish other than salmon or steelhead from the waters of this state. In enacting any such rule the commission shall give due consideration to insuring that the use of such fishing gear will not restrict the free migration or impair the ultimate supply of salmon or steelhead. Any salmon or steelhead taken as an incidental catch in operation of such gear shall immediately, with care and the least possible injury to the salmon or steelhead, be released and transferred to the water without violence. [1965 c.570 §117; 1969 c.357 §1]

509.220 [Repealed by 1965 c.570 §152]

509.225 [Repealed by 1965 c.570 §152]

509.230 Possession of fish taken by lawful gear from Pacific Ocean outside Oregon jurisdiction; taking salmon only by troll within Oregon jurisdiction. (1) Subject to the conditions provided in this section, ORS 509.216 and ORS chapter 513, it is unlawful to have in possession any food fish taken in the waters of the Pacific Ocean outside the territorial jurisdiction of this state by means of any fishing gear except as

provided by law or rule of the State Fish and Wildlife Commission, for:

(a) The purpose of commercially packing, canning or preserving the fish.

(b) The manufacture of fish meal, fish oil or other fish products or by-products.

(c) Sale as fresh fish for general consumption.

(d) Bait.

(2) It is also unlawful to take any salmon for commercial purposes in any of the waters of the Pacific Ocean within the jurisdiction of this state or over which this state has concurrent jurisdiction by means of any fishing gear other than by "troll." [Amended by 1955 c.178 §1; 1961 c.680 §1; 1965 c.570 §122]

509.235 Chinese sturgeon lines prohibited. It is unlawful to use or assist in using any Chinese sturgeon line, or lines of a similar character, in the waters of this state. [Amended by 1965 c.570 §119]

509.240 Snagging nets during closed season allowed. It is lawful to operate or use a net consisting of a single nylon or cotton web of a mesh not less than 14 inches, taut measure, hung or attached to not to exceed two lead lines combined and used as a single line and a single cork line, in any of the waters of this state, during any season or period closed to commercial fishing by law or by rule of the State Fish and Wildlife Commission, for the purpose of clearing away or removing snags or similar obstructions from gillnet drifts and other suitable or desirable fishing areas. [Amended by 1961 c.370 §1; 1965 c.570 §120]

509.245 Notice to director of use of snagging net. Any person desiring to operate a snagging net as provided in ORS 509.240 shall, before operating or attempting to so operate such net, obtain from the State Fish and Wildlife Director a snagging permit by forwarding a written request to the office of the State Fish and Wildlife Commission specifically providing:

(1) The particular gillnet drift, fishing ground or other area to be cleared;

(2) The waters in which located;

(3) The mesh size of the snagging net to be used; and

(4) The dates on which or within which the proposed snagging operations will be carried on. In specifying any such dates, no one notice is valid for a period of more than 30 days from the date thereof. [Amended by 1965 c.570 §121]

509.250 [Repealed by 1965 c.570 §152]

509.252 [1955 c.477 §1; 1957 c.130 §1; repealed by 1963 c.246 §12]

509.255 [Repealed by 1961 c.183 §1]

509.260 [Repealed by 1961 c.155 §1]

509.265 [Repealed by 1965 c.570 §152]

509.270 [Repealed by 1965 c.570 §152]

509.275 [Repealed by 1965 c.570 §152]

509.280 [Repealed by 1965 c.570 §152]

509.285 [Repealed by 1965 c.570 §152]

509.290 [Repealed by 1965 c.570 §152]

509.295 [Repealed by 1965 c.570 §152]

509.300 [Repealed by 1965 c.570 §152]

NET FISHING FOR SALMON IN PACIFIC OCEAN

509.355 Definitions for ORS 509.355 to 509.385. As used in ORS 509.355 to 509.385:

(1) "Citizen of this state" means a person who maintains the usual place of abode of the person within this state or who otherwise qualifies as a citizen of this state under the laws of this state.

(2) "International waters" means waters outside the territorial boundaries of any state, territory or country. [1957 c.152 §1]

509.360 When ORS 509.355 to 509.385 operative; proof. (1) ORS 509.355 to 509.385 shall not be operative at any time unless laws or rules or regulations of California, Washington and Canada are effective which, in substance or effect, contain provisions:

(a) Similar to and which accomplish the purposes of ORS 509.355 to 509.385; or

(b) Which prohibit the possession or transportation within their respective territorial waters of the Pacific Ocean of salmon taken by any type of net within the international waters of the Pacific Ocean or within their respective territorial waters of the Pacific Ocean and not accompanied by a certificate issued under the authority of this state or of another state, territory or country showing that such salmon were lawfully taken.

(2) Such laws or rules or regulations of California, Washington and Canada shall be considered effective upon receipt by the Secretary of State of this state of certified written statements from the respective secretaries of state of California and Washington and from the Department of State of the United States on behalf of Canada setting forth such laws or rules or regulations and the date on which they are effective. Such certified written statements, together with a written statement of the Attorney General of this state that the provisions of subsection (1) of this section are satisfied by such laws or rules or regulations, are conclusive proof that the provisions of subsection (1) of this section are so satisfied. In any prosecution for violation of any provision of ORS 509.365, 509.370 or 509.375, proof of the existence of such certified written statements and written statement of the Attorney Gen-

eral of this state need not be made unless demanded by the defendant prior to the commencement of trial. [1957 c.152 §§9,10; 1965 c.570 §123]

Note: 509.355 to 509.385 are operative and in full force and effect. A written statement of the Attorney General of the State of Oregon, dated October 16, 1957, states that the provisions of 509.360 are satisfied.

509.365 Taking salmon by net in waters of Pacific Ocean over which Oregon has jurisdiction prohibited. No person shall fish for or take, by the use of any type of net, any salmon within the waters of the Pacific Ocean, over which this state has jurisdiction, lying westerly of the following described line: Commencing at the point of intersection of the California-Oregon state boundary with the Pacific Ocean high water mark shoreline; thence northerly along such high water mark shoreline, including extensions thereof across the waters of the bays or tidal areas of streams emptying into the Pacific Ocean, to the mouth of the Columbia River; thence northerly across the waters of the Columbia River along the line designating and defining the mouth of such river under ORS 511.130 (1961 Replacement Part) to the point of intersection of such line with the Oregon-Washington state boundary. [1957 c.152 §2]

509.370 Taking of salmon by net in international waters of Pacific Ocean by Oregon citizen prohibited. No citizen of this state shall fish for or take, by the use of any type of net, any salmon within the international waters of the Pacific Ocean. [1957 c.152 §3]

509.375 Transporting or possessing salmon unlawfully taken by net in certain waters prohibited. No person shall transport through the waters of this state wherein net fishing for salmon is prohibited or have in possession anywhere within this state any salmon which were taken by any type of net within the international waters of the Pacific Ocean or within the territorial waters of this state or of another state, territory or country wherein such fishing is prohibited and which are not accompanied by a certificate issued under the authority of this state or of another state, territory or country showing that such salmon were lawfully taken. [1957 c.152 §4]

509.380 [1957 c.152 §5; repealed by 1965 c.570 §152]

509.385 Exceptions. ORS 509.355 to 509.385 do not apply to:

(1) Those species of salmon in those areas within the international waters of the Pacific Ocean which are regulated by the International Pacific Salmon Fisheries Commission or by United States laws or rules or regulations promulgated pursuant to such laws.

(2) The use of nets for fishing for or taking salmon for purposes of scientific investigation authorized by the laws of this state. [1957 c.152 §6]

509.390 [1957 c.152 §7; repealed by 1965 c.570 §152]

509.405 [Repealed by 1955 c.274 §1]

509.410 [Repealed by 1955 c.274 §1]

CRABS AND OTHER SHELLFISH

(Crabs)

509.415 Gear used in taking crab; selling crabs unlawfully taken. (1) No person shall take a crab from any of the waters of the state for commercial purposes, with or by the use of any other gear than that specifically known as crab ring or crab pot, or sell or offer for sale crabs unlawfully caught.

(2) The taking of Dungeness crab (Cancer magister) for commercial purposes from any of the waters of this state, by the use of any gear except that commonly known as crab ring or crab pot, is prohibited.

(3) Each crab ring or crab pot used for the taking of crabs for commercial purposes must have attached to it a tag identifying the owner or the vessel from which the rings or pots are operated. [Amended by 1997 c.252 §2]

509.420 [Repealed by 1965 c.570 §152]

509.425 [Amended by 1965 c.570 §128; 1969 c.675 §1; 1981 c.638 §3; renumbered 622.220]

509.427 [1969 c.675 §10; 1981 c.638 §4; renumbered 622.230]

509.429 [1969 c.675 §11a; 1981 c.638 §5; renumbered 622.240]

509.430 [Repealed by 1965 c.570 §152]

509.431 [1969 c.675 §11; 1981 c.638 §6; renumbered 622.250]

509.433 [1969 c.675 §12; 1981 c.638 §7; renumbered 622.260]

509.435 [Repealed by 1965 c.570 §152]

509.436 [1965 c.570 §59d; 1969 c.675 §2; 1981 c.638 §8; renumbered 622.270]

509.439 [1969 c.675 §13; 1981 c.638 §9; renumbered 622.280]

509.440 [Repealed by 1965 c.570 §152]

509.441 [1969 c.675 §8; 1981 c.638 §10; renumbered 622.290]

509.445 [Repealed by 1965 c.570 §152]

509.450 [Repealed by 1965 c.570 §152]

509.451 [1969 c.675 §9; 1981 c.638 §11; renumbered 622.300]

509.455 [Amended by 1969 c.675 §3; renumbered 622.320]

509.460 [Amended by 1963 c.113 §1; 1965 c.570 §124; renumbered 509.505]

509.465 [Repealed by 1969 c.675 §21]

509.470 [Renumbered 622.330]

509.475 [Amended by 1965 c.570 §125; renumbered 509.510]

509.480 [Repealed by 1969 c.675 §21]

509.485 [Repealed by 1969 c.675 §21]

509.490 [Repealed by 1969 c.675 §21]

509.495 [Amended by 1969 c.675 §4; renumbered 622.340]

509.500 [Amended by 1977 c.242 §7; renumbered 622.350]

(Shellfish)

509.505 Placing in water matter injurious to shellfish. It is unlawful for any person, municipal corporation, political subdivision or governmental agency to deposit or allow to escape into, or cause or permit to be deposited or escape into any public waters of this state, any substance of any kind which will or shall in any manner injuriously affect the life, growth or flavor of shellfish in or under such waters. [Formerly 509.460]

509.510 Taking shellfish from marked beds without permission; disturbing beds. It is unlawful, without the permission of the legal occupants, to take up shellfish from natural or artificially planted beds, which beds have been lawfully and plainly marked. It is unlawful willfully to disturb the shellfish in such beds, the surfaces of such beds, or the markers. [Formerly 509.475]

(Krill)

509.515 Landing or possession of krill prohibited. A person who holds a license or permit issued under the commercial fishing laws may not possess or land any species of euphausiids, commonly known as krill, or take euphausiids from any waters of the Pacific Ocean over which this state has jurisdiction, including the area outside the territorial jurisdiction of this state but within the part of the exclusive economic zone of the United States represented by a straight line extension of the boundaries of the state drawn seaward a distance of 200 nautical miles. [2003 c.809 §18]

FISH PASSAGE; FISHWAYS; SCREENING DEVICES; HATCHERIES NEAR DAMS

509.580 Definitions for ORS 509.580 to 509.590, 509.600 to 509.645 and 509.910; rules. As used in ORS 509.580 to 509.590, 509.600 to 509.645 and 509.910:

(1) "Artificial obstruction" means any dam, diversion, culvert or other human-made device placed in the waters of this state that precludes or prevents the migration of native migratory fish.

(2) "Construction" means:

(a) Original construction;

(b) Major replacement;

(c) Structural modifications that increase storage or diversion capacity; or

(d) For purposes of culverts, installation or replacement of a roadbed or culvert.

(3) "Emergency" means unforeseen circumstances materially related to or affected by an artificial obstruction that, because of adverse impacts to a population of native migratory fish, requires immediate action. The State Fish and Wildlife Director may further define the term "emergency" by rule.

(4) "Fundamental change in permit status" means a change in regulatory approval for the operation of an artificial obstruction where the regulatory agency has discretion to impose additional conditions on the applicant, including but not limited to licensing, relicensing, reauthorization or the granting of new water rights, but not including water right transfers or routine maintenance permits.

(5) "In-proximity" means within the same watershed or water basin and having the highest likelihood of benefiting the native migratory fish populations directly affected by an artificial obstruction.

(6) "Native migratory fish" means those native fish that migrate for their life cycle needs and that are listed in the rules of the State Fish and Wildlife Director.

(7) "Net benefit" means an increase in the overall, in-proximity habitat quality or quantity that is biologically likely to lead to an increased number of native migratory fish after a development action and any subsequent mitigation measures have been completed.

(8) "Oregon Plan" means the guidance statement and framework described in ORS 541.405. [2001 c.923 §1]

Note: 509.580 to 509.595 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 509 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

509.585 Fish passage required for artificial obstructions; statewide inventory; waiver of requirement by commission; rules; exemptions. (1) It is the policy of the State of Oregon to provide for upstream and downstream passage for native migratory fish and the Legislative Assembly finds that cooperation and collaboration between public and private entities is necessary to accomplish the policy goal of providing passage for native migratory fish and to achieve the enhancement and restoration of Oregon's native salmonid populations, as envisioned by the Oregon Plan. Therefore, except as provided in ORS chapter 509, fish passage is required in all waters of this state in which native migratory fish are currently or have historically been present.

(2) Except as otherwise provided by this section or ORS 509.645, a person owning or operating an artificial obstruction may not construct or maintain any artificial obstruction across any waters of this state that are inhabited, or historically inhabited, by native migratory fish without providing passage for native migratory fish.

(3) The State Department of Fish and Wildlife shall complete and maintain a statewide inventory of artificial obstructions in order to prioritize enforcement actions based on the needs of native migratory fish. This prioritization shall include, but need not be limited to, the degree of impact of the artificial obstruction on the native migratory fish, the biological status of the native migratory fish stocks in question and any other factor established by the department by rule. The department shall establish a list of priority projects for enforcement purposes. Priority artificial obstructions are subject to the State Fish and Wildlife Commission's authority as provided in ORS 509.625. Unless requested by persons owning or operating an artificial obstruction, the department shall primarily direct its enforcement authority toward priority projects, emergencies and projects described in subsection (4) of this section. The priority project list shall be subject to periodic review and amendment by the department and to formal review and amendment by the commission no less frequently than once every five years.

(4) A person owning or operating an artificial obstruction shall, prior to construction, fundamental change in permit status or abandonment of the artificial obstruction in any waters of this state, obtain a determination from the department as to whether native migratory fish are or historically have been present in the waters. If the department determines that native migratory fish are or historically have been present in the waters, the person owning or operating the artificial obstruction shall either submit a proposal for fish passage to the department or apply for a waiver pursuant to subsection (7) of this section. Approval of the proposed fish passage facility or of the alternatives to fish passage must be obtained from the department prior to construction, permit modification or abandonment of the artificial obstruction.

(5) Consistent with the purpose and goals of the Oregon Plan, the department shall seek cooperative partnerships to remedy fish passage problems and to ensure that problems are corrected as soon as possible. The department and the person owning or operating the artificial obstruction are encouraged to negotiate the terms and conditions of fish passage or alternatives to fish passage, including appropriate cost sharing. The negotiations may include, but are not limited to, consideration of equitable factors.

(6) The department shall submit a proposed determination of the required fish passage or alternatives to fish passage to the commission for approval. The determination may be the result of the negotiations described in subsection (5) of this section or, if no agreement was reached in the negotiations, a determination proposed by the department. If a protest is not filed within the time period specified in ORS 509.645, the proposed determination shall become a final order.

(7)(a) The commission shall waive the requirement for fish passage if the commission determines that the alternatives to fish passage proposed by the person owning or operating the artificial obstruction provide a net benefit to native migratory fish.

(b) Net benefit to native migratory fish is determined under this subsection by comparing the benefit to native migratory fish that would occur if the artificial obstruction had fish passage to the benefit to native migratory fish that would occur using the proposed alternatives to fish passage. Alternatives to fish passage must result in a benefit to fish greater than that provided by the artificial obstruction with fish passage. The net benefit to fish shall be determined based upon conditions that exist at the time of comparison.

(c) The State Fish and Wildlife Director shall develop rules establishing general criteria for determining the adequacy of fish passage and of alternatives to fish passage. The general criteria shall include, but not be limited to:

(A) The geographic scope in which alternatives must be conducted;

(B) The type and quality of habitat;

(C) The species affected;

(D) The status of the native migratory fish stocks;

(E) Standards for monitoring, evaluating and adaptive management;

(F) The feasibility of fish passage and alternatives to fish passage;

(G) Quantified baseline conditions;

(H) Historic conditions;

(I) Existing native migratory fish management plans;

(J) Financial or other incentives and the application of incentives;

(K) Data collection and evaluation; and

(L) Consistency with the purpose and goals of the Oregon Plan.

(d) To the extent feasible, the department shall coordinate its requirements for adequate fish passage or alternatives to fish passage with any federal requirements.

(8) A person owning or operating an artificial obstruction may at any time petition the commission to waive the requirement for fish passage in exchange for agreed-upon alternatives to fish passage that provide a net benefit to native migratory fish as determined in subsection (7) of this section.

(9)(a) Artificial obstructions without fish passage are exempt from the requirement to provide fish passage if the commission:

(A) Finds that a lack of fish passage has been effectively mitigated;

(B) Has granted a legal waiver for the artificial obstruction; or

(C) Finds there is no appreciable benefit to providing fish passage.

(b) The commission shall review, at least once every seven years, the artificial obstructions exempted under this subsection that do not have an exemption expiration date to determine whether the exemption should be renewed. The commission may revoke or amend an exemption if it finds that circumstances have changed such that the relevant requirements for the exemption no longer apply. The person owning or operating the artificial obstruction may protest the decision by the commission pursuant to ORS 509.645.

(10) If the fundamental change in permit status is an expiration of a license of a federally licensed hydroelectric project, the commission's determination shall be submitted to the Federal Energy Regulatory Commission as required by ORS 543A.060 to 543A.410.

(11) To the extent that the requirements of this section are preempted by the Federal Power Act or by the laws governing hydroelectric projects located in waters governed jointly by Oregon and another state, federally licensed hydroelectric projects are exempt from the requirements of this section.

(12) A person subject to a decision of the commission under this section shall have the right to a contested case hearing according to the applicable provisions of ORS chapter 183. [2001 c.923 §2]

Note: See note under 509.580.

509.590 Fish Passage Task Force; reports to legislature. (1) The State Fish and Wildlife Director shall establish a Fish Passage Task Force to advise the director and the State Department of Fish and Wildlife on matters related to fish passage in Oregon, including but not limited to funding, cost sharing and prioritization of efforts. The director shall determine the members and the specific duties of the task force by rule.

(2) The department shall provide staff necessary for the performance of the functions of the task force.

(3) A member of the task force may not receive compensation for services as a member of the task force. In accordance with ORS 292.495, a member of the task force may receive reimbursement for actual and necessary travel or other expenses incurred in the performance of official duties.

(4) The task force shall report semiannually to the joint legislative committee created under ORS 171.551, or to the appropriate interim legislative committee with responsibility for salmon restoration or species recovery, to advise the committee on matters related to fish passage. [2001 c.923 §3]

Note: See note under 509.580.

509.595 Director to report on fish passage rules, adequacy and implementation. The State Fish and Wildlife Director shall report to the Governor, the Speaker of the House of Representatives, the President of the Senate and the joint interim committee established pursuant to ORS 171.551 or the appropriate interim legislative committee with responsibility for salmon restoration or species recovery:

(1) Prior to the adoption of rules relating to fish passage;

(2) Prior to the establishment of the general criteria for determining the adequacy of fish passage and of alternatives to fish passage required to be established under ORS 509.585 (7)(c); and

(3) Semiannually on the progress that the director has made in implementing ORS 509.580 to 509.590. [2001 c.923 §20]

Note: See note under 509.580.

509.600 Destroying, injuring or taking fish near fishway; permits to take fish. (1) A person may not willfully or knowingly destroy, injure or take fish within 600 feet of any fishway, except as permitted by subsection (2) of this section. Actions that violate this section include, but are not limited to:

(a) Hindering, annoying or disturbing fish entering, passing through, resting in or leaving such fishway, or obstructing the passage of fish through the fishway at any time or in any manner.

(b) Placing anything in the fishway.

(c) Using any fishing gear within 600 feet of the fishway.

(d) Taking fish at any time anywhere within 600 feet of the fishway.

(e) Doing any injury to the fishway.

(2) The State Fish and Wildlife Commission may by rule or by issuance of permits authorize the taking of fish within 600 feet of any fishway. [1965 c.570 §104; 1973 c.723 §122; 1981 c.646 §6; 2001 c.923 §8]

509.605 [Amended by 1955 c.707 §49; 1963 c.178 §1; 1965 c.570 §131; 1973 c.723 §123; repealed by 2001 c.923 §21]

509.610 Maintenance of fish passage required. (1) Subject to ORS 509.645, when the State Department of Fish and Wildlife requires fish passage to be provided pursuant to ORS 509.585, the person owning or operating an artificial obstruction shall keep the fish passage in such repair as to provide adequate fish passage of native migratory fish at all times.

(2) Each day of neglect or refusal to comply with subsection (1) of this section, after notification in writing by the department, constitutes a separate offense.

(3) A person owning or operating an artificial obstruction is responsible for maintaining, monitoring and evaluating the effectiveness of fish passage or alternatives to fish passage. [Amended by 1955 c.707 §52; 1965 c.570 §132; 2001 c.923 §9]

509.615 Commission authorized to require installation of screening or by-pass devices in certain water diversions. (1) Any person who diverts water, at a rate of 30 cubic feet per second or more, from any body of water in this state in which fish exist shall install, operate and maintain, at the expense of the person, such fish screening or by-pass devices that the State Department of Fish and Wildlife determines are necessary to prevent fish from leaving the body of water and entering the diversion.

(2) Upon failure of any person to install, operate and maintain fish screening or by-pass devices as required under subsection (1) of this section, the department may install, operate and maintain, at the expense of the responsible person, fish screening or by-pass devices necessary to prevent the fish from leaving the body of water and entering the diversion.

(3) The department or its agent shall have the right of ingress and egress to and from those places where the department determines that fish screening or by-pass devices are required, doing no unnecessary injury to the property of the landowner, for the purpose of installing, inspecting, maintaining and replacing such fish screening or by-pass devices, and, if installed by a person under subsection (1) of this section, to determine whether such fish screening and by-pass devices meet department requirements. The department may order a person responsible under subsection (1) of this section to repair or replace fish screening or by-pass devices found to be noncomplying, at the expense of the responsible person.

(4) If the department considers the installation, operation, maintenance, repair or replacement of fish screening or by-pass devices under subsections (1) to (3) of this section necessary, the department shall provide formal notice or through record of personal contact notifying the person who diverts water of the action the person is required to take. The person may request a hearing before the State Fish and Wildlife Commission according to provisions of ORS chapter 183.

(5) No person shall interfere with, tamper with, damage, destroy or remove in a manner not associated with regular and necessary maintenance procedures any fish screening or by-pass devices in a manner not associated with regular and necessary maintenance procedures.

(6) The department may maintain an action to recover any costs the department incurs in installing, maintaining or replacing fish screening or by-pass devices on behalf of a person responsible under subsection (1) of this section. Such action shall be brought in the circuit court for the county in which the fish screening or by-pass devices are located.

(7) As used in this section:

(a) "By-pass device" means any pipe, flume, open channel or other means of conveyance that transports fish back to the body of water from which the fish were diverted.

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

(c) "Person" means any person, partnership, corporation, association, municipal corporation, political subdivision or governmental agency.

(d) "Screening" means a screen, grating or other barrier and related improvements or measures necessary to insure efficient operation of the screening device to prevent the passage of fish from a body of water into a diversion. [Amended by 1957 c.135 §1; 1963 c.111 §1; 1965 c.570 §135; 1987 c.488 §2; 1993 c.478 §9; 1995 c.426 §6]

509.620 Condemning inadequate or nonfunctioning fish passage; requiring new fish passage. If, in the judgment of the State Department of Fish and Wildlife, fish passage is not functioning as intended or is inadequate, as constructed under ORS 509.585, the State Fish and Wildlife Commission may condemn the fish passage and order new fish passage installed in accordance with plans and specifications determined by the department. [Amended by 2001 c.923 §10]

509.625 Power of department to inspect artificial obstructions and have fish passage constructed or remove obstruction. (1) The State Department of Fish and Wildlife may determine or ascertain by inspection of any artificial obstruction whether it would be advisable to construct fish passage, or order the construction pursuant to ORS 509.585 of fish passage, at the artificial obstruction. Without affecting other remedies to enforce the requirement to install fish passage, if the State Fish and Wildlife Commission determines that an emergency exists, the commission may order the construction, pursuant to ORS 509.585, of fish passage in the waters of this state inhabited by native migratory fish as deemed adequate to provide passage for native migratory fish.

(2) Where fish passage has previously been constructed with or without the approval of the commission and has proved useless or inadequate for the purposes for which it is intended, the commission may improve or rebuild such fish passage. However, such construction or reconstruction shall not interfere with the prime purpose of the artificial obstruction. This subsection may not be construed to require the improvement or rebuilding of fish passage by the commission.

(3)(a) The commission may order a person owning or operating an artificial obstruction on the priority list created pursuant to ORS 509.585 who has been issued a water right, owners of lawfully installed culverts or owners of other lawfully installed obstructions to install fish passage or to provide alternatives to fish passage if the commission can arrange for nonowner or nonoperator funding of at least 60 percent of the cost.

(b) Notwithstanding paragraph (a) of this subsection, the commission may order installation of fish passage or alternatives to fish passage without regard to funding sources:

(A) If the person owning or operating the artificial obstruction is already subject to an obligation to install fish passage or to provide alternatives to fish passage under ORS 509.585;

(B) If the commission declares an emergency under this section; or

(C) If the person owning or operating the artificial obstruction has not been issued a water right or if the artificial obstruction has been otherwise unlawfully installed.

(4) If a person who owns or operates an artificial obstruction and who is required to provide fish passage under ORS 509.585 fails to provide fish passage in the manner and time required by the State Department of Fish and Wildlife, the commission may remove, replace or repair the artificial obstruction or any parts of the obstruction at the expense of the owner or operator. [Amended by 1955 c.707 §53; 1963 c.232 §1; 1965 c.570 §133; 2001 c.923 §11]

509.630 Power of department to establish fish passage in natural stream obstructions. The State Department of Fish and Wildlife may determine or ascertain by inspection of any natural obstruction whether it would be advisable to construct fish passage over or around such natural obstruction. If it is deemed advisable the State Fish and Wildlife Commission may construct fish passage that provides adequate passage for native migratory fish in the waters of this state inhabited by native migratory fish. [Amended by 1965 c.570 §134; 2001 c.923 §12]

509.635 Oregon City fishway under control of commission; removal of obstructions. (1) The fishways over the falls in the Willamette River, near Oregon City, are under the care and control of the State Fish and Wildlife Commission, which may make any extensions, additions, alterations or repairs to the same that become necessary.

(2) The commission, or its duly authorized representatives, may remove any artificial obstructions placed in the Willamette River above the falls which would prevent the free passage of fish up the river. [Amended by 1965 c.570 §136]

509.640 [Amended by 1955 c.707 §54; repealed by 2001 c.923 §21]

509.645 Filing protest with Water Resources Commission; review and determination by Water Resources Commission; alternative dispute resolution. (1) A person owning or operating an artificial obstruction may request alternative dispute resolution at any point in the process of determining fish passage requirements.

(2) A person owning or operating an artificial obstruction may file a protest with the State Fish and Wildlife Commission within 30 days from the receipt of the State Department of Fish and Wildlife determinations under ORS 509.585. The person shall identify the grounds for protesting the department's determinations.

(3) The commission may, after sufficient opportunity for public review and comment, approve, deny or modify the proposed determinations. [1955 c.707 §51; 1973 c.723 §124; 2001 c.923 §13]

ENFORCEMENT

509.910 Injunction to prevent certain violations; jurisdiction; service on corporation. (1) The State Fish and Wildlife Commission may maintain an action for an injunction to enjoin and restrain any person, municipal corporation, political subdivision

or governmental agency of this state from violating any of the provisions of ORS 509.130, 509.140, 509.505, 509.585, 509.610, 509.615 and 509.625.

(2) Any action authorized by this section shall be tried in the circuit court of the county in which the violation occurs or in Marion or Multnomah County.

(3) If the defendant is a corporation with its principal office and place of business in a county other than in which the waters flow or are situated, such action shall be deemed an action of local nature and service of summons made on a corporation in any county where the corporation has its principal office and place of business. If it is a foreign corporation, service may be made on the statutory agent but if there is no such statutory agent then upon the Secretary of State as in other cases provided by law. [1963 c.303 §1; 1977 c.242 §8; 1979 c.284 §16; 2001 c.923 §14]

509.990 [Subsection (8) of 1963 Replacement Part enacted as 1955 c.477 §2; subsection (10) of 1963 Replacement Part enacted as 1957 c.152 §8; repealed by 1965 c.570 §152]

509.991 [1965 c.570 §59e; repealed by 1969 c.675 §21]

509.992 [1969 c.675 §15; repealed by 1977 c.242 §10]

CHAPTER 510

[Reserved for expansion]