

# House Bill 2393

Sponsored by Representative NELSON

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Allows person to accompany disabled person to assist with hunting activities. Conforms definitions.

## A BILL FOR AN ACT

1  
2 Relating to hunting; creating new provisions; and amending ORS 496.004, 496.018, 496.146, 496.303,  
3 498.136, 498.170 and 498.306.

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

5 **SECTION 1.** ORS 496.004 is amended to read:

6 496.004. As used in the wildlife laws, unless the context requires otherwise:

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

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

10 [(3)] (2) "Compatible" means capable of existing in harmony so as to minimize conflict.

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

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

13 (3) "**Disabled person**" means a person who is in compliance with the requirements in ORS  
14 **496.018**.

15 [(6)] (4) "Endangered species" means:

16 (a) Any native wildlife species determined by the **State Fish and Wildlife** Commission to be in  
17 danger of extinction throughout any significant portion of its range within this state.

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

20 [(7)] (5) "Fund" means the State Wildlife Fund created by ORS 496.300.

21 [(8)] (6) "Fur-bearing mammal" means beaver, bobcat, fisher, marten, mink, muskrat, otter,  
22 raccoon, red fox and gray fox.

23 [(9)] (7) "Game mammal" means antelope, black bear, cougar, deer, elk, moose, mountain goat,  
24 mountain sheep and silver gray squirrel.

25 [(10)] (8) "Hunt" means to take or attempt to take any wildlife by means involving the use of  
26 a weapon or with the assistance of any mammal or bird.

27 [(11)] (9) "Manage" means to protect, preserve, propagate, promote, utilize and control wildlife.

28 [(12)] (10) "Optimum level" means wildlife population levels that provide self-sustaining species  
29 as well as taking, nonconsumptive and recreational opportunities.

30 [(13) "*Person with a disability*" means a person who complies with the requirement of ORS  
31 *496.018*.]

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

1 [(14)] (11) "Shellfish" has the meaning given that term in ORS 506.011.

2 [(15)] (12) "Species" means any species or subspecies of wildlife.

3 [(16)] (13) "Take" means to kill or obtain possession or control of any wildlife.

4 [(17)] (14) "Threatened species" means:

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

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

10 [(18)] (15) "Trap" means to take or attempt to take any wildlife by means involving the use of  
11 a trap, net, snare or other device used for the purpose of capture.

12 [(19)] (16) "Wildlife" means fish, shellfish, wild birds, amphibians and reptiles, feral swine as  
13 defined by State Department of Agriculture rule and other wild mammals.

14 **SECTION 2.** ORS 496.018 is amended to read:

15 496.018. In order to be considered a **disabled** person [*with a disability*] under the wildlife laws,  
16 a person shall provide to the State Fish and Wildlife Commission either:

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

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

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

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

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

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

30 (2) Written proof that the last official certification of record by the United States Department  
31 of Veterans Affairs or any branch of the Armed Forces of the United States shows the person to  
32 be at least 65 percent disabled.

33 **SECTION 3.** ORS 498.170 is added to and made a part of ORS chapter 498.

34 **SECTION 4.** ORS 498.170 is amended to read:

35 498.170. (1) A person [*who is not visually impaired and*] who accompanies a [*hunter who possesses*  
36 *a visually impaired hunter license*] **disabled person** may:

37 (a) Assist the [*hunter*] **disabled person** in selecting a game animal or bird;

38 (b) Assist the **disabled person in the** aiming or sighting of a firearm;

39 (c) Advise the [*hunter*] **disabled person** when to fire a firearm;

40 (d) Shoot a game animal or bird on behalf of the [*hunter*] **disabled person** while in the immedi-  
41 ate presence of the [*hunter*] **disabled person**; and

42 (e) Tag and retrieve game animals and birds on behalf of the [*hunter*] **disabled person**.

43 (2) [*The*] **A** person accompanying a [*hunter who is visually impaired*] **disabled person**:

44 (a) Shall be required to possess a valid hunting license[. *The person accompanying a visually*  
45 *impaired hunter*]; **and**

1       **(b)** May [also] hunt game animals or birds if the person possesses the appropriate tags, permits  
 2 and stamps for the area and time period.

3       (3) A [hunter who possesses a visually impaired hunter license] **disabled person hunting with**  
 4 **the assistance of another person pursuant to this section** must comply with all [other] tag,  
 5 permit and stamp requirements of the State Fish and Wildlife Commission and applicable hunting  
 6 laws.

7       [(4) As used in this section, “visually impaired hunter” means a person who files proof with the  
 8 commission that the person’s central visual acuity does not exceed 20/200 in the better eye with best  
 9 correction or that the person’s visual acuity, if better than 20/200, is accompanied by a limit to the field  
 10 of vision to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.]

11       **SECTION 5.** ORS 498.136 is amended to read:

12       498.136. (1) Except as provided in subsection (2) of this section, [no] a person [shall] **may not**  
 13 hunt wildlife from a motor-propelled vehicle.

14       (2) The State Fish and Wildlife Commission, by rule, may authorize hunting from a motor-  
 15 propelled vehicle by a **disabled** person [with a disability] or for the purpose of alleviating damage  
 16 by wildlife to other resources.

17       (3) Nothing in the wildlife laws, or rules adopted pursuant thereto, is intended to prohibit [the  
 18 able-bodied companion of] a **person accompanying a disabled** person [with a disability] who is  
 19 lawfully hunting from a motor-propelled vehicle from killing an animal wounded by the disabled  
 20 person and applying thereto the tag issued to such disabled person for the taking of such an animal,  
 21 even if [that able-bodied] **the accompanying** person has already validated any tag required for the  
 22 taking of such an animal.

23       **SECTION 6.** ORS 496.146 is amended to read:

24       496.146. In addition to any other duties or powers provided by law, the State Fish and Wildlife  
 25 Commission:

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

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

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

34       (4) May by rule authorize the issuance of such licenses, tags and permits for angling, taking,  
 35 hunting and trapping and may prescribe such tagging and sealing procedures as the commission  
 36 determines necessary to carry out the provisions of the wildlife laws or to obtain information for  
 37 use in wildlife management. Permits issued pursuant to this subsection may include special hunting  
 38 permits for a person and immediate family members of the person to hunt on land owned by that  
 39 person in areas where permits for deer or elk are limited by quota. As used in this subsection,  
 40 “immediate family members” means husband, wife, father, mother, brothers, sisters, sons, daughters,  
 41 stepchildren and grandchildren. A landowner who is qualified to receive landowner preference tags  
 42 from the commission may request two additional tags for providing public access and two additional  
 43 tags for wildlife habitat programs. This request shall be made to the Access and Habitat Board with  
 44 supporting evidence that the access is significant and the habitat programs benefit wildlife. The  
 45 board may recommend that the commission grant the request. When a landowner is qualified under

1 landowner preference rules adopted by the commission and receives a controlled hunt tag for that  
2 unit or a landowner preference tag for the landowner's property and does not use the tag during the  
3 regular season, the landowner may use that tag to take an antlerless animal, when approved by the  
4 State Department of Fish and Wildlife, to alleviate damage that is presently occurring to the land-  
5 owner's property.

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

11 (6) May establish special hunting and angling areas or seasons in which only persons less than  
12 18 years of age or over 65 years of age are permitted to hunt or angle.

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

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

18 (9) May establish and develop wildlife refuge and management areas and prescribe rules gov-  
19 erning the use of such areas and the use of wildlife refuge and management areas established and  
20 developed pursuant to any other provision of law.

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

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

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

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

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

36 (15) May establish special fishing and hunting seasons and bag limits applicable only to **disabled**  
37 persons [*with disabilities*].

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

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

43 (18) May sell advertising in State Department of Fish and Wildlife publications, including annual  
44 hunting and angling regulation publications.

45 **SECTION 7.** ORS 496.303 is amended to read:

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

7 (2)(a) The Fish Screening Subaccount is established in the Fish and Wildlife Account. The sub-  
 8 account shall consist of:

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

10 (B) All moneys received pursuant to ORS 498.306.

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

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

14 (b) All moneys in the subaccount shall be used to carry out the provisions of ORS 315.138,  
 15 498.306, 498.311, 509.615 and 509.620. However, moneys received from the surcharge on angling li-  
 16 censes imposed by ORS 497.124 shall be expended only to carry out the provisions of law relating  
 17 to the screening of water diversions at a rate less than 30 cubic feet per second.

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

21 (3) The Fish Endowment Subaccount is established in the Fish and Wildlife Account. The sub-  
 22 account shall consist of transfers of moneys authorized by the Legislative Assembly from the State  
 23 Wildlife Fund and gifts and grants of moneys from whatever source for the purpose of paying the  
 24 expense of maintaining fish hatcheries operated by the **State Department of Fish and Wildlife**.

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

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

40 (6) The Upland Bird Subaccount is established in the Fish and Wildlife Account. All moneys  
 41 received by the State Fish and Wildlife Commission from the sale of upland bird stamps, from the  
 42 sale of any art works and prints related to the upland bird stamp and from private hunting preserve  
 43 permit fees shall be deposited in the subaccount. Moneys in the subaccount may be expended only  
 44 for promoting the propagation and conservation of upland birds and the acquisition, development,  
 45 management, enhancement, sale or exchange of upland bird habitat, and for activities related to the

1 design, production, issuance and arrangements for sale of the upland bird stamps and related art  
2 works and prints. Expenditures of moneys in the subaccount shall be made for the benefit of pro-  
3 grams within this state in such amounts and at such times as the commission determines appropriate  
4 to most directly benefit the upland bird resources of the state.

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

10 (b) The principal in the subaccount may be utilized only as provided in paragraph (c) of this  
11 subsection. Interest earnings on the moneys in the subaccount may be expended only for the main-  
12 tenance of fish hatcheries and [State] department [of *Fish and Wildlife*] facilities other than admin-  
13 istrative facilities located in Portland.

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

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

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

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

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

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

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

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

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

44 (b) All moneys in the subaccount shall be used for the propagation and conservation of antelope,  
45 for research, development, management, enhancement and sale or exchange of antelope habitat and

1 for programs within the state that in the discretion of the commission most directly benefit antelope  
2 resources of this state.

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

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

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

13 (b) Using the record created pursuant to paragraph (a) of this subsection, the commission shall  
14 report, in the budget documents submitted to the Legislative Assembly, on the application of in-  
15 vestment and interest earnings to the maintenance of fish hatcheries and other [*State*] department  
16 [*of Fish and Wildlife*] facilities.

17 **SECTION 8.** ORS 498.306 is amended to read:

18 498.306. Any person who diverts water, at a rate of less than 30 cubic feet per second, from any  
19 body of water in this state in which any fish, subject to the State Fish and Wildlife Commission's  
20 regulatory jurisdiction, exist may be required to install, operate and maintain screening or by-pass  
21 devices to provide adequate protection for fish populations present at the water diversion in ac-  
22 cordance with the following provisions:

23 (1)(a) The State Department of Fish and Wildlife shall establish a cost-sharing program to im-  
24 plement the installation of screening or by-pass devices on not less than 75 water diversions referred  
25 to in this section per year. The department shall select the water diversions to be screened from the  
26 priority listing of diversions established by the department and reviewed by the Fish Screening Task  
27 Force. The installation of a screening or by-pass device may be required only when:

28 (A) Fewer than 75 persons per year volunteer to request such installation on the diversions for  
29 which they are responsible; or

30 (B) The Fish Screening Task Force has reviewed and approved the department's request to re-  
31 quire installation of screening or by-pass devices in order to complete the screening of a stream  
32 system or stream reach.

33 (b) The limitations on the number of diversions to be screened as provided in this section and  
34 section 5, chapter 858, Oregon Laws 1991, do not prevent the installation of fish screening and by-  
35 pass devices for diversions by persons responsible for diversions who are willing to pay the full cost  
36 of installing fish screening and by-pass devices.

37 (2) When selecting diversions to be equipped with screening or by-pass devices, the department  
38 shall attempt to solicit persons who may volunteer to request the installation of such devices on the  
39 diversions for which they are responsible. When selecting diversions to be equipped with screening  
40 or by-pass devices, the department shall select those diversions that will provide protection to the  
41 greatest number of indigenous naturally spawning fish possible.

42 (3) If the department constructs and installs the by-pass or screening device, a fee shall be as-  
43 sessed against the person responsible for the diversion in an amount that does not exceed \$5,000 or  
44 40 percent of the construction and installation cost of the devices, whichever amount is the lesser.  
45 The fee shall be paid into the Fish Screening Subaccount. If the person responsible for the diversion

1 constructs and installs the by-pass or screening device, the person shall be reimbursed from the Fish  
2 Screening Subaccount in an amount that does not exceed \$10,000 or 60 percent of the actual con-  
3 struction and installation costs of the device, whichever amount is the lesser.

4 (4) The department's cost of major maintenance and repair of screening or by-pass devices shall  
5 be paid from the Fish Screening Subaccount.

6 (5) The department is responsible for major maintenance and repair of screening or by-pass de-  
7 vices, and if failure by the department to perform major maintenance on or repair such devices re-  
8 sults in damage or blockage to the water diversion on which the devices have been installed, the  
9 person responsible for the water diversion shall give written notice of such damage or blockage to  
10 the department. If within seven days of the notice, the department fails to take appropriate action  
11 to perform major maintenance on or repair the devices, and to repair any damage that has occurred,  
12 the person responsible for the water diversion may remove the device. If an emergency exists that  
13 will result in immediate damage to livestock or crops, the person responsible for the water diversion  
14 may remove the screening or by-pass device. A person required to comply with this section shall be  
15 responsible for minor maintenance and shall, in a timely manner, notify the department of the need  
16 for activities associated with major maintenance.

17 (6) A person required to comply with this section may design, construct and install screening  
18 or by-pass devices adequate to prevent fish from leaving the body of water and entering the diver-  
19 sion or may request the department to design, construct and install such devices. However, if a  
20 person required to comply with this section fails to comply within 180 days after notice to comply  
21 by the department, the department shall design, install and operate on that person's water diversion  
22 appropriate screening or by-pass devices and shall charge and collect from the person the actual  
23 costs thereof in an amount not to exceed the average cost for diversions of that size.

24 (7) If the diversion requiring screening or by-pass devices is located on public property, the de-  
25 partment shall obtain from the property owner approval or permits necessary for such devices.  
26 Activities of the department pursuant to this section shall not interfere with existing rights of way  
27 or easements of the person responsible for the diversion.

28 (8)(a) The department or its agent shall have the right of ingress and egress to and from those  
29 places where screening or by-pass devices are required, doing no unnecessary injury to the property  
30 of the landowner, for the purpose of designing, installing, inspecting, performing major maintenance  
31 on or repairing such devices.

32 (b) If a screening or by-pass device installed by the department must be removed or replaced  
33 due to inadequate design or faulty construction, the person responsible for the diversion shall bear  
34 no financial responsibility for its replacement or reconstruction.

35 (c) If a screening or by-pass device installed by the person responsible for the diversion must  
36 be removed or replaced due to faulty construction, the person shall bear full financial responsibility  
37 for its replacement or reconstruction.

38 (d) If the person responsible for a diversion on which a screening or by-pass device is installed  
39 fails to conduct appropriate inspection and minor maintenance, the department may perform such  
40 activities and charge and collect from the person responsible a fee not to exceed \$25 for each re-  
41 quired visit to the location of the screening or by-pass device.

42 (9) No person shall interfere with, tamper with, damage, destroy or remove in any manner not  
43 associated with regular and necessary maintenance procedures any screening or by-pass devices in-  
44 stalled pursuant to this section.

45 (10) The department may maintain an action to cover any costs incurred by the department



1 when a person who is required to comply with this section fails to comply. Such action shall be  
2 brought in the circuit court for the county in which the water diversion is located.

3 (11) Upon receiving notice from the department to comply with this section, a person responsible  
4 for a water diversion may be excused from compliance if the person demonstrates to the Fish  
5 Screening Task Force that:

6 (a) The installation and operation of screening or by-pass devices would not prevent appreciable  
7 damage to the fish populations in the body of water from which water is being diverted.

8 (b) Installation and operation of screening or by-pass devices would not be technically feasible.

9 (c) Installation of screening or by-pass devices would result in undue financial hardship.

10 (12)(a) Not later than January 1, 1996, the **State Department of Fish and Wildlife**, with the  
11 assistance of the Fish Screening Task Force and the Water Resources Department, shall establish  
12 and publish an updated priority listing of 3,500 water diversions in the state that should be equipped  
13 with screening or by-pass devices. Changes may be made to the list whenever deletions are made for  
14 any reason. The priority listing shall include the name and address of the person currently respon-  
15 sible for the water diversion, the location of the diversion, size of the diversion, type of screening  
16 or by-pass device required, estimated costs for construction and the installation of screening or by-  
17 pass devices for the individual diversion and species of fish present in the water body. When devel-  
18 oping the priority listing, the **State Department of Fish and Wildlife** shall base priorities for the  
19 installation of screening or by-pass devices on unscreened diversions on the following criteria:

20 (A) Fish species status.

21 (B) Fish numbers.

22 (C) Fish migration.

23 (D) Diversion size.

24 (E) Diversion amount.

25 (F) Any other criteria that the department, in consultation with the Fish Screening Task Force,  
26 considers appropriate.

27 (b) Criteria identified in this subsection shall be given appropriate consideration by the depart-  
28 ment when updating its priority listing. The priority list will be updated to give the highest priority  
29 to those diversions that save the greatest number of fish and simultaneously protect the greatest  
30 number of threatened or endangered fish species.

31 (c) After the priority list has been updated, the persons responsible for the diversions on the list  
32 shall be notified that their diversion appears on the list. Such persons also shall be furnished a de-  
33 scription of the fish screening program.

34 (d)(A) The department shall notify, by means of registered mail, each person responsible for the  
35 first 250 diversions on the priority listing on or before January 1, 1996. The department shall furnish  
36 information regarding the fish screening program to each person responsible for a diversion included  
37 in the first 250 diversions on the priority listing on or before January 1, 1996. No person shall be  
38 required to install a screening or by-pass device unless previously notified by the department of the  
39 requirement to install such devices.

40 (B) On or before January 1, 1998, and each even-numbered year thereafter, the department will  
41 notify each person responsible for the first 250 diversions on the priority listing. However, the de-  
42 partment is not required to notify in a subsequent year any person previously notified. The depart-  
43 ment shall include with such notification, information regarding the fish screening program to each  
44 person responsible for a diversion included in the first 250 diversions on the priority listing.

45 (C) Before any person is required to install a screening or by-pass device on a diversion of less

1 than 30 cubic feet per second, the department shall confirm the need for the screening device  
2 through a visual, on-site inspection by appropriate staff of the fish screening division of the depart-  
3 ment, or a district biologist of the department.

4 (13) As used in this section:

5 (a) "Behavioral barrier" means a system that utilizes a stimulus to take advantage of natural  
6 fish behavior to attract or repel fish. A behavioral barrier does not offer a physical impediment to  
7 fish movement, but uses such means as electricity, light, sound or hydraulic disturbance to move or  
8 guide fish.

9 (b) "Body of water" includes but is not limited to irrigation ditches, reservoirs, stock ponds and  
10 other artificially created structures or impoundments.

11 (c) "By-pass device" means any pipe, flume, open channel or other means of conveyance that  
12 transports fish back to the body of water from which the fish were diverted but does not include  
13 fishways or other passages around a dam.

14 (d) "Fish screen" means a screen, bar, rack or other barrier, including related improvements  
15 necessary to insure its effective operation, to provide adequate protection for fish populations pres-  
16 ent at a water diversion.

17 (e) "Major maintenance" means all maintenance work done on a fish screening or by-pass device  
18 other than minor maintenance.

19 (f) "Minor maintenance" means periodic inspection, cleaning and servicing of fish screening or  
20 by-pass devices at such times and in such manner as to ensure proper operation of the screening  
21 or by-pass device.

22 (g) "Screening device" means a fish screen or behavioral barrier.

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

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