

CHAPTER 274

AN ACT

HB 3035

Relating to offense categories for violations of the wildlife laws; creating new provisions; and amending ORS 496.992, 497.112 and 497.400.

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

SECTION 1. ORS 496.992, as amended by section 1, chapter 14, Oregon Laws 2018, is amended to read:

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

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

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

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

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

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

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

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

(9) A violation of ORS 498.136, 498.142 or 498.146 is a Class A violation if the offense is committed without a culpable mental state.

[(9)] (10) The second and each subsequent conviction within a 10-year period for the taking of a raptor or the taking of game fish with a total value of \$200 or more or the taking of antelope, black bear, cougar, deer, elk, moose, mountain goat or

mountain sheep in violation of any provision of the wildlife laws, or any rule adopted pursuant thereto, that occurs more than one hour prior to, or more than one hour subsequent to, a season established for the lawful taking of such game mammals or game fish is a Class C felony if the offense is committed with a culpable mental state.

(11) A violation of a provision of the wildlife laws, or a rule adopted pursuant to the wildlife laws, is a Class C felony if the offense involves any of the following and is committed intentionally, knowingly or recklessly:

(a) **The unlawful taking of wildlife with the intent to sell or to barter, trade, import, export or otherwise exchange the wildlife or a part of the wildlife.**

(b) **Except as provided in this paragraph, the second and each subsequent unlawful taking of a game mammal during a 12-month period. This paragraph does not apply to the taking of silver gray squirrel.**

(c) **The unlawful taking of a moose, mountain sheep, Rocky Mountain goat or wolf.**

(d) **The third and each subsequent taking of a game fish in excess of a bag limit during a 12-month period.**

(e) **The second and each subsequent unlawful taking of nonadipose clipped steelhead during a 12-month period.**

(f) **The unlawful taking of members of the family Acipenseridae that are commonly known as green sturgeon or that are oversized and commonly known as white sturgeon.**

(g) **The unlawful taking of wildlife that is a threatened species or endangered species.**

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

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

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

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

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

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

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

[(11)] (13) If more than one minimum fine described in subsection [(10)] (12) of this section ap-

plies, the court shall impose a fine in an amount that is not less than the highest of the applicable minimum fines.

[(12)(a)] (14)(a) If a court imposes a fine as penalty for an offense under the wildlife laws that involves the unlawful taking or killing of wildlife listed under ORS 496.705 (2), the court shall order that the defendant pay all or a portion of the fine separately to the clerk of the court for paying over to the State Fish and Wildlife Commission. The clerk shall pay over to the commission the amount that the court ordered the defendant to pay separately for that purpose. The amount that the court orders to be paid separately to the clerk for paying over to the commission shall be the lesser of:

(A) The amount of the fine imposed; or

(B) The amount that the commission could recover under ORS 496.705 (2) as damages for the unlawful taking or killing.

(b) If the amount that the commission could recover under ORS 496.705 (2) as damages for the unlawful taking or killing of wildlife is more than the maximum fine established for the offense under ORS 153.018, 161.625 or 161.635 or a specific fine statute, notwithstanding ORS 153.018, 161.625 or 161.635 or any specific fine statute, the maximum fine for the offense is the amount that the commission could recover under ORS 496.705 (2) as damages for the unlawful taking or killing.

(c) If an amount paid over to the commission under this subsection is less than the amount that the commission could recover under ORS 496.705 (2) as damages for the unlawful taking or killing of wildlife, payment of the amount does not prevent the commission from bringing an action under ORS 496.705 (2) to recover damages for the unlawful taking or killing. However, notwithstanding ORS 496.705, the amount recoverable under ORS 496.705 (2) by the commission as damages for the unlawful taking or killing shall be reduced by the amount paid to the commission under this subsection from a fine imposed for the unlawful taking or killing.

[(13)(a)] (15)(a) In addition to any other penalty authorized by law, the court shall order the State Fish and Wildlife Commission to revoke all licenses, tags and permits issued to a person in the manner provided for in ORS 497.415 (3), (5) and (6) if the person is convicted of:

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

(i) A violation of ORS 498.042; or

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

(B) A Class C felony under subsection [(9)] (10) of this section.

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

[(14)] (16) Upon the third conviction within a 10-year period for violation of a provision of the wildlife laws, or a rule adopted pursuant to the wildlife laws, the court shall order all guns, boats, vehicles, traps, fishing apparatus, electronic devices and other implements used in committing the third or subsequent offense to be seized and forfeited to the State of Oregon, to be turned over to the State Fish and Wildlife Commission for disposal in the manner provided for in ORS 496.680.

[(15)] (17) As used in this section:

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

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

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

SECTION 2. ORS 497.112 is amended to read:

497.112. (1) The State Fish and Wildlife Commission is authorized to issue, upon application, to persons desiring to hunt wildlife the following general tags and shall charge the applicable fees under the fee schedule in ORS 497.061:

(a) Resident annual elk tag to hunt elk.

(b) Nonresident annual elk tag to hunt elk.

(c) Special annual elk tag for holders of pioneer combination licenses or disabled veteran hunting licenses to hunt elk.

(d) Resident annual deer tag to hunt deer.

(e) Nonresident annual deer tag to hunt deer.

(f) Resident annual black bear tag to hunt black bear.

(g) Nonresident annual black bear tag to hunt black bear.

(h) Resident annual mountain sheep tag to hunt mountain sheep.

(i) Nonresident annual mountain sheep tag to hunt mountain sheep.

(j) Resident annual mountain goat tag to hunt mountain goat.

(k) Nonresident annual mountain goat tag to hunt mountain goat.

(L) Resident annual cougar tag to hunt cougar.

(m) Nonresident annual cougar tag to hunt cougar.

(n) Resident annual antelope tag to hunt antelope.

(o) Nonresident annual antelope tag to hunt antelope.

(p) Resident annual turkey tag to hunt turkey.

(q) Resident annual youth turkey tag to hunt turkey.

(r) Nonresident annual youth turkey tag to hunt turkey.

(s) Nonresident annual turkey tag to hunt turkey.

(t) Outfitter and guide annual deer tag for a nonresident to hunt deer.

(u) Outfitter and guide annual elk tag for a non-resident to hunt elk.

(2)(a) Notwithstanding ORS 496.146 (10), the commission is authorized to issue each year one special tag that is auctioned to the highest bidder in a manner prescribed by the commission for each of the following:

- (A) Mountain sheep;
- (B) Antelope; and
- (C) Mountain goat.

(b) In addition to the tags referred to in paragraph (a) of this subsection, the commission is authorized to issue each year one special tag that is raffled in a manner prescribed by the commission for each of the following:

- (A) Mountain sheep;
- (B) Antelope; and
- (C) Mountain goat.

(c) Moneys received under this subsection for:

(A) Mountain sheep tags shall be placed in the Mountain Sheep Subaccount established in ORS 496.303;

(B) Antelope tags shall be placed in the Antelope Subaccount established in ORS 496.303; and

(C) Mountain goat tags shall be placed in the Mountain Goat Subaccount established in ORS 496.303.

(d) Notwithstanding ORS 496.146 (10), the commission, upon the recommendation of the Access and Habitat Board to fulfill the board's charge of providing incentives to increase public access and habitat improvements to private land, is authorized to issue each year up to 10 elk and 10 deer tags to hunt deer or elk. The tags shall be auctioned or raffled to the highest bidder in a manner prescribed by the commission. The Access and Habitat Board, in recommending any tags, shall include a proposal as to the land on which each tag can be used and a percentage of funds received from the tags that may revert to the landowner if the tag is limited to private land. However, the percentage cannot be more than 50 percent and the programs must, by written agreement, provide for public access and habitat improvements.

(3) The tags referred to in subsection (1) of this section are in addition to and not in lieu of the hunting licenses required by law.

(4) The commission may, at the time of issue only, indorse upon the tags referred to in subsection (1) of this section an appropriate designation indicating whether it is for a game animal to be taken with bow and arrow or with firearms, at the choice of the applicant. The commission may prescribe by rule that the holder of such a tag is not authorized to take the game animal by any other means than the tag so indorsed.

(5) Except as provided in subsection (6) of this section, a person is not eligible to obtain, in a lifetime, more than one controlled hunt tag issued by the commission to hunt mountain sheep and one controlled hunt tag issued by the commission to hunt mountain goat.

(6) A person is eligible to obtain mountain sheep tags, antelope tags or mountain goat tags described in subsection (2)(a) and (b) of this section, regardless of whether the person has previously taken a mountain sheep, antelope or mountain goat or previously obtained a mountain sheep tag, antelope tag or mountain goat tag issued pursuant to subsection (1) or (2)(a) or (b) of this section.

(7) The number of nonresident mountain goat tags and nonresident mountain sheep tags shall be decided by the commission, but:

(a) The number of nonresident mountain goat tags may not be less than five percent nor more than 10 percent of all mountain goat tags issued.

(b) The number of nonresident mountain sheep tags may not be less than five percent nor more than 10 percent of all mountain sheep tags issued.

(8) The number of tags issued by drawing under subsection (1)(g), (m) and (o) of this section shall be decided by the commission, but for each class of tag so issued, the number may not be more than three percent of all tags of that class issued for hunting in a particular area except one nonresident tag may be issued for each hunt when the number of authorized tags is less than 35.

(9) The number of tags issued by drawing under subsection (1)(b) and (e) of this section shall be decided by the commission, but for each class of tag so issued, the number may not be more than five percent of all tags of that class issued for hunting in a particular area except one nonresident tag may be issued for each hunt when the number of authorized tags is fewer than 35. The commission shall set the percentage by rule each year after holding a public hearing.

(10) If a controlled hunt for game mammals is undersubscribed during the primary controlled hunt drawing, the commission may issue the unallocated tags to licensed hunters at up to four times the standard tag fee on a first-come, first-served basis. This controlled hunt tag program shall be in addition to and not replace any existing controlled hunt tag program.

(11) The commission by rule may authorize the issuance of free tags to hunt antelope, deer and elk to provide an incentive to increase compliance with hunting reporting requirements.

(12) The commission shall implement a program to encourage persons to report violations of the wildlife laws. The program shall include, but need not be limited to, provisions for offering a person either preference points in a scaled system determined by the commission, or a cash reward, for information leading to citations or arrest for unlawful take, possession, **take while in violation of criminal trespass laws** or waste of antelope, bear, cougar, deer, elk, moose, mountain goat, mountain sheep or wolf.

SECTION 3. ORS 497.400, as amended by section 2, chapter 14, Oregon Laws 2018, is amended to read:

497.400. No person shall:

(1) Apply for, obtain or possess for personal use or for the use of any other person more licenses, tags or permits issued by the State Fish and Wildlife Commission than are authorized for personal use during the current year by the wildlife laws and rules promulgated pursuant thereto.

(2) Alter, borrow, loan or transfer to another person any license, tag or permit issued by the commission.

(3) In applying for a license, tag or permit issued by the commission, knowingly make any false statement of any information required by the application regarding the person in whose name the license, tag or permit is to be issued.

(4) Possess any license, tag or permit that has been altered, borrowed, loaned or transferred or for

which any false statements were knowingly made in applying therefor.

(5) Apply for or obtain any license, tag or permit issued by the commission when civil damages due pursuant to ORS 496.705, moneys due the State Department of Fish and Wildlife from court-ordered restitutions for violations of the wildlife laws or moneys due the commission under ORS 496.992 [(12)] (14) have not been paid.

SECTION 4. The amendments to ORS 496.992 by section 1 of this 2019 Act apply to offenses committed on or after the effective date of this 2019 Act.

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