

Routine Program Change

Updating Oregon's Enforceable Policies Regarding the Application, Administration, and Enforcement of Wildlife Laws

O.R.S. §§ 496.002-496.192

July 24, 2014

I. Introduction

The Oregon Coastal Management Program requests that the National Oceanic and Atmospheric Administration (NOAA) Office of Ocean and Coastal Resource Management (OCRM) approve updates to the OCMP to reflect changes to Oregon's statutes regarding the application, administration, and enforcement of the state's wildlife laws. Oregon requests concurrence that these updates constitute a Routine Program Change.

Section II.A describes the relevant program in ORS chapter 496 and identifies changes to the statutes since OCRM's previous approvals. Section II.B identifies those sections that state "enforceable policies" that are used in Oregon's federal consistency review determinations. Section II.C shows that the submitted updates are a Routine Program Change under NOAA regulations and guidelines.

II. Analysis of Routine Program Change

A. Discussion of the Program in Chapter 496

The OCMP was initially approved by NOAA in 1977. The effective OCMP, including ORS Chapter 496, requires compliance with the wildlife laws and any rule adopted to carry out the wildlife laws. Chapter 496 is administered by the Oregon Department of Fish and Wildlife, via the State Fish and Wildlife Commission.

In 1987, OCRM approved a Routine Program Change reflecting changes made to ORS §§ 496.012, 496.108, 496.138, 496.146, 496.154, and 496.162 since 1977 as well as the enactment in 1981 of ORS §§ 496.430 to 496.460, regarding salmon and trout enhancement. In 1992, OCRM approved a Routine Program Change reflecting changes made to ORS § 496.118 since 1977 and incorporated ORS § 496.004 to § 496.009, definitions as used in the wildlife laws, and ORS § 496.172 to § 496.192, regarding the protection and recovery of threatened and endangered wildlife species. In 2002, OCRM approved a Routine Program Change reflecting changes made to ORS §§ 496.080, 496.090, 496.112, and 496.128 since 1977; reflecting changes made to ORS §§ 496.012, 496.138, 496.146, 496.435, and 496.445 since 1987; reflecting changes made to ORS §§ 496.004, 496.118, 496.172, 496.176, and 496.182 since 1992; and incorporating ORS §§ 496.018 (regarding persons with disabilities under wildlife laws), 496.085 (regarding the composition and duties of the Fish Screening Task Force), 496.116 (regarding the delegation of rulemaking authority to the State Fish and Wildlife Director), 496.141 (requiring reports regarding the fish screening program), 496.151 (regarding the allocation of nonresident tags for outfitters and guides), 496.164 (regarding cooperation between the State Fish and Wildlife Commission

and private and public entities), 496.166 (regarding citizen involvement in wildlife management on private lands), 496.171 (defining terms for ORS §§ 496.171 to 496.182), 496.270 (immunizing landowners and timber operators from liability for harm from habitat and water quality improvement projects), and 496.458 (regarding the remote hatchbox program).

Changes since these prior Routine Program Changes are discussed below. The attached table includes the full listing of statutory provisions in ORS chapter 496 that are being updated in this submittal, including those which remain unchanged since prior OCRM approval. This is in order to ensure that the full current program remains part of the OCMP, and establishes the 2013 Edition of the Oregon Revised Statutes as the effective baseline for all of these statutory provisions, should they be further amended in the future. We are also attaching the full current versions of the statutes.

As shown in the attached table, many of the changes to these sections since their last OCRM approval, whether 1977, 1987, 1992, or 2002, were simple grammatical edits, name clarifications, terminology updates, cross-reference revisions, and subsection reordering. The word “therefore” became “therefor” in one instance. The term “taking” or phrase “or other method” was added to “angling, hunting and trapping” in several instances. The term “commission” was replaced with “State Fish and Wildlife Commission,” “director” with “State Fish and Wildlife Director,” and “State Fish and Wildlife Department” with “State Department of Fish and Wildlife” in some instances. Reference to “ORS 183.310 to 183.550,” the Administrative Procedures Act,” became “ORS chapter 183.” Reference to “ORS 498.306(12)(a) or (d)” became “ORS 498.306(14)(a) or (d)” to match a numbering change in that statute. Reference to ORS § 541.375 became ORS § 541.932 because the former was renumbered as the latter in 2011. Reference to ORS § 171.551, establishing the joint legislative committee and repealed in 2007, was removed. Reference to the Natural Heritage Advisory Council, which was abolished by the legislature in 2011, was removed.

Other specific updates are summarized as follows:

General Administration

ORS § 496.002. This section, passed in 1973, identifies the collective title of ORS chapters 496, 497, 498, and 501 as the wildlife laws.

ORS § 496.004. The definitions of “game mammal” and “wildlife” were changed, and the definition of “shellfish” was added to the list of terms defined for purposes of the wildlife laws.

ORS § 496.012. The requirements of the State Fish and Wildlife Commission were clarified to include “represent[ing] the public interest of the State of Oregon.” The goals of wildlife management were expanded to include making decisions that benefit the wildlife resources of the state and that allow for the best utilization of wildlife resources by all user groups.

ORS § 496.018. The means of proving a person’s disability for purposes of accommodation under the wildlife laws were expanded from written certification from a licensed physician to also include written certification from a certified nurse practitioner or licensed physician assistant. A second means of

providing disability was added: written proof showing the person to be at least 65 percent disabled according to the last official certification of record by the United States Department of Veterans Affairs or any branch of the U.S. Armed Forces.

State Department of Fish and Wildlife; Commission; Director; Duties and Powers Generally

ORS § 496.090. The required composition of the State Fish and Wildlife Commission was changed: set at a maximum of seven members and no members from the state “at large.” In addition, all members must be residents of the state and have a general knowledge of fish and wildlife issues and an understanding of the operation and functions of public policy boards and commissions. Changes to the statute also clarify that members serve at the pleasure of the Governor and the commission is to provide for the productive and sustainable utilization of wildlife resources for all groups of users. The statute no longer explicitly prohibits members from holding an office in a sports fishing or commercial fishing organization or from having a direct interest in a commercial fish processing business.

ORS § 496.108. The authority to select the State Fish and Wildlife Commission chairperson was moved from the commission itself to the governor. Similarly, the chairperson serves until relieved by the governor or until the member’s term expires. Changes to the statute also require that the commission hold at least one meeting per year in each of the congressional districts in this state.

ORS § 496.112. Changes to the statute allow the commission to select a State Fish and Wildlife Director for a term of less than, but still no more than, four years, but the commission may reappoint the director to additional terms.

ORS § 496.121. This section, enacted in 2005 and amended in 2009, authorizes the State Department of Fish and Wildlife to require the fingerprints of an employee, service provider, individuals working in specific positions, and those applying for any of these roles.

ORS § 496.146. The duties and powers of the commission were expanded, including adopting rules regarding civil penalties and remote control of weapons for hunting, imposing a hunting license renewal surcharge for individuals failing to comply with mandatory hunting reporting requirements, providing free hunting tags to organizations sponsoring hunting trips for terminally ill children, and selling advertisements in publications. Statutory changes also modified the preference system for hunt permit drawings.

ORS § 496.151. The requirement that outfitters and guides pay twice the normal nonresident permit fee was removed from the system for allocating nonresident deer and elk hunting permits.

ORS § 496.156. This section, passed in 1977, requires the commission, in carrying out its duties, functions, and powers, to give high priority to expenditures for transporting upstream and downstream migrants in those areas where dams and other such obstacles present a passage problem to juvenile or adult salmon.

Threatened or Endangered Wildlife Species

ORS § 496.176. The legislature explicitly prohibited from being included on the state lists of threatened species or endangered species the Aleutian Canada goose.

Fish and Wildlife Habitat Improvement

ORS § 496.270. This section is being removed from the OCMP because it is not an enforceable policy. It announces the policy of the state to encourage operators, timber owners, and landowners to voluntarily improve fish and wildlife habitat and protects them from liability for harm resulting from specific habitat and water quality improvement projects

ORS §§ 496.430-496.460. These sections are being removed from the OCMP because they do not contain enforceable policies relevant to the OCMP and in practice are not connected to the coastal program. They concern salmon and trout enhancement, including state restoration goals, rehabilitation and improvement requirements for stocks and their habitats, and the creation of state programs and projects.

B. Enforceable Policies

OCRM initially approved Oregon's Coastal Management Program, including entire state statutes as part of the approved program. Subsequently OCRM has requested that states identify enforceable policies within their statutes as updates are submitted. While Oregon seeks to incorporate all updates to ORS § 496.002 to § 496.192 into the OCMP, we have identified specific sections that define enforceable policies for federal consistency purposes.

Each of the sections identified specifies a substantive enforceable policy; identifies when a license, tag, or permit is required; or announces affirmative obligations. Statutory sections not defined as enforceable are those that are purely procedural, that contain only statements of findings, or that merely grant state officials authority to undertake administrative acts not affecting the potential activities of federal actors or licensees.

Thus, statements of policy, requirements for authorizations, lists of conditions for authorizations, provisions for rules that define regulatory requirements, and definitions that specify the content of obligations and requirements are enforceable policies. The sections in this Routine Program Change stating enforceable policies are: 496.004, 496.007, 496.009, 496.012, 496.146, 496.162, 496.171, 496.172, and 496.182. The attached table identifies these with an X and describes the content of each section.

These policies are rendered enforceable by the licenses, tags, and permits required in 496.146 and 496.172; by the duty of state agencies to protect and recover endangered and threatened species from actions on state lands in 496.182; and by the rules concerning civil penalties, recordkeeping, and restrictions on certain activities referenced in 496.146, 496.162, and 496.172.

C. Action as Routine Program Change

Pursuant to CZMA §306(e) and 15 C.F.R. §923.84, this section explains why this update to Oregon’s program is a Routine Program Change and does not constitute an amendment. Under 15 C.F.R. §923.80(d), amendments are defined as substantial changes in one or more of five listed coastal management program areas:

- (1) uses subject to management;
- (2) special management areas;
- (3) boundaries;
- (4) authorities and organization; and
- (5) coordination, public involvement and the national interest.

OCRM’s 1996 Program Change guidance states that a “substantial change” is a high threshold requiring case-by-case determination. Statutory changes are identified in the attached table. The table relates each change to Oregon’s authority as previously approved as part of the OCMP in 1977 or in subsequent RPCs (1987, 1992, and 2002 in this instance). Each change is described in detail in the right-hand column of the table.

1. Uses subject to management.

This submittal does not identify new uses subject to management.

2. Special management areas.

This submittal does not designate or change special management areas. It does not establish new criteria for special management areas. Details regarding special hunting and angling areas and wildlife refuge and management areas already are provided for in the current program.

3. Boundaries.

This submittal does not change the boundaries of Oregon’s coastal zone.

4. Authorities and organization.

This submittal does not change Oregon’s administration of the OCMP. The same authorities continue to apply these programs.

5. Coordination, public involvement, and the national interest.

This submittal does not change any coordination, public involvement, or national interest provisions of the OCMP.

Accordingly, this submittal is a Routine Program Change, and Oregon requests OCRM concurrence.

Application, Administration and Enforcement of Wildlife Laws

Statutes to Be Incorporated into the Program

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ¹	Statutory History
GENERAL PROVISIONS						
496.002	Short title	Notes that ORS chapters 496, 497, 498, and 501 may be cited as the wildlife laws			1973	<ul style="list-style-type: none"> • Enacted in 1973
STATE DEPARTMENT OF FISH AND WILDLIFE; COMMISSION; DIRECTOR; DUTIES AND POWERS GENERALLY						
496.121	Authority of department to require fingerprints	Authorizes the State Department of Fish and Wildlife to require the fingerprints of an employee, service provider, individuals working in specific positions, and those applying for any of these roles.			2005 2009	<ul style="list-style-type: none"> • Enacted in 2005, amended in 2009
496.156	Expenditure priority for anadromous fish management	Requires the State Fish and Wildlife Commission, in carrying out its duties, functions, and powers, to give high priority to expenditures for transporting			1977	<ul style="list-style-type: none"> • Enacted in 1977

¹ Oregon is seeking to establish the 2013 Edition of the Oregon Revised Statutes and the 2014 Oregon Laws supplement as the effective baseline for the statutory provisions incorporated into the Oregon Coastal Management Program (OCMP). The year in the “updates adopted and effective” column refers to the year(s) during which the Oregon legislature adopted changes to the statutory provisions incorporated into the OCMP.

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		upstream and downstream migrants in those areas where dams and other such obstacles present a passage problem to juvenile or adult salmon				

Changes to Statutes in the Program since Last OCRM Approval

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ²	Changes Since Last Approval
GENERAL PROVISIONS						
496.004	Definitions	Defines terms as used in ORS chapters 496, 497, 498, and 501	X	2002	2001 2003 2007 2009	<ul style="list-style-type: none"> Added to the definition of “Game mammal” in subsection (9) “and gray wolf as a special status mammal defined by commission rule” Added a new subsection (14), the definition of “shellfish” The subsection numbering of all subsequent definitions is adjusted accordingly Added to the definition of “Wildlife” in the new subsection (19) “shellfish”

² Oregon is seeking to establish the 2013 Edition of the Oregon Revised Statutes and the 2014 Oregon Laws supplement as the effective baseline for the statutory provisions incorporated into the Oregon Coastal Management Program (OCMP). The year in the “updates adopted and effective” column refers to the year(s) during which the Oregon legislature adopted changes to the statutory provisions incorporated into the OCMP.

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						<p>and “feral swine as defined by State Department of Agriculture rule”</p> <ul style="list-style-type: none"> Replaced “wild birds” with “wild birds as defined by commission rule” and “wild mammals” with “other wild mammals as defined by commission rule” in the definition of “Wildlife”
496.007	“Game bird” defined	Identifies the birds that qualify as “game birds” for purposes of ORS chapters 496, 497, 498, and 501, unless the context requires otherwise	X	1992		<ul style="list-style-type: none"> None
496.009	“Game fish” defined	Identifies the fish that qualify as “game fish” for purposes of ORS chapters 496, 497, 498, and 501, unless the context requires otherwise	X	1992	1999	<ul style="list-style-type: none"> None
496.012	Wildlife policy	Notes the policy of the State of Oregon is to manage wildlife so as to prevent serious depletion of any indigenous species and to provide the optimum recreational and aesthetic benefits for present and future generations of the citizens of the state; requires the State Fish and Wildlife Commission to implement specified goals of wildlife management	X	2002	2001	<ul style="list-style-type: none"> Added to the requirements of the State Fish and Wildlife Commission in the second sentence: “represent the public interest of the State of Oregon and” Added subsection (7): a goal of wildlife management is “To make decisions that affect wildlife resources of the state for the benefit of the wildlife resources and to make decisions that allow for the best social, economic and recreational utilization of wildlife resources by all

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						user groups”
496.016	Applicability of wildlife laws to commercial fishing laws	Clarifies that nothing in ORS chapters 496, 497, 498, and 501 is intended to affect any of the provisions of the commercial fishing laws, but also that nothing in the commercial fishing laws is intended to authorize the taking of game fish in a manner prohibited by ORS chapters 496, 497, 498, and 501		1977		<ul style="list-style-type: none"> • None
496.018	Person with disability under wildlife laws	Identifies the evidence required in order to be considered a person with a disability under ORS chapters 496, 497, 498, and 501		2002	2001 2005 2007	<ul style="list-style-type: none"> • Replaced “... a person shall provide written certification from a licensed physician that states that the person:” with “a person shall provide to the State Fish and Wildlife Commission either: (1) Written certification from a licensed physician, certified nurse practitioner or licensed physician assistant that states that the person:” • Numbered subsections became alphabetized subsections under subsection (1) • Added to the end of the section “or (2) Written proof that the last official certification of record by the United States Department of Veterans Affairs or any branch of the Armed Forces of the United States shows the

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						person to be at least 65 percent disabled”
STATE DEPARTMENT OF FISH AND WILDLIFE; COMMISSION; DIRECTOR; DUTIES AND POWERS GENERALLY						
496.080	State Department of Fish and Wildlife	Establishes the State Department of Fish and Wildlife under the State Fish and Wildlife Commission		2002		<ul style="list-style-type: none"> • None
496.085	Fish Screening Task Force; qualifications of members; duties	Establishes the Fish Screening Task Force within the State Department of Fish and Wildlife; sets the composition of the task force, the terms of its members, and duties		2002	2005 2007	<ul style="list-style-type: none"> • “therefore” became “therefor” in subsection (3) • Reference to ORS 498.306(12)(a) or (d) changed to ORS 498.306(14)(a) or (d)
496.090	State Fish and Wildlife Commission; members; terms; qualifications; compensation and expenses	Establishes the State Fish and Wildlife Commission; sets the composition of the task force, means of appointment, and the terms of its members		2002	2001 2013	<ul style="list-style-type: none"> • Composition of the State Fish and Wildlife Commission is reduced from “at least seven members and may consist of up to nine members” to simply “seven members” • Added to the end of the first sentence of subsection (2): “but a member serves at the pleasure of the Governor” • Removed “Two members of the commission may be appointed from the state at large” from subsection (4) • Removed subsection (5): “No member of the commission may hold any office in any sports fishing organization or commercial fishing

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						<p>organization or have any ownership or other direct interest in a commercial fish processing business”</p> <ul style="list-style-type: none"> • Added a new subsection (5): “Members appointed to the commission shall be residents of this state, as defined in ORS 497.002” • Added a new subsection (6): “All members of the commission shall represent the public interest of the state and make decisions affecting the wildlife resources of the state for the benefit of those resources. Consistent with the requirements of this subsection, the commission shall provide for the productive and sustainable utilization of wildlife resources for all groups of users” • Added a new subsection (7): “All members of the commission shall have a general knowledge of fish and wildlife issues and an understanding of the operation and functions of public policy boards and commissions. In making appointments to the commission, the Governor shall consider appointing members who possess natural resource backgrounds such as backgrounds in commercial fishing,

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						<p>recreational fishing, hunting, agriculture, forestry and conservation”</p> <ul style="list-style-type: none"> • Subsection (6) was renumbered as subsection (8), and member removal was changed from “only for cause” to “only by the Governor” • Subsection (7) was renumbered as subsection (9)
496.108	Commission officers; quorum; meetings	Identifies the officer positions of the commission and how the positions are to be filled; identifies the frequency and means by which the commission meets and conducts business		1987	2001	<ul style="list-style-type: none"> • Subsection (1) was changed from “The State Fish and Wildlife Commission shall select one of its members as chairperson and another as vice chairperson, for such terms and with such duties and powers necessary for the performance of the functions of such offices as the commission determines appropriate” to “(a) The Governor shall designate one member of the State Fish and Wildlife Commission as chairperson. The member shall serve as chairperson until the member’s term expires or until relieved by the Governor. The chairperson shall have the powers and duties as are provided by the rules of the commission. (b) The commission shall select one of its members as vice chairperson, for a term and with the duties and powers

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						<p>necessary for the performance of the functions of the office as the commission determines appropriate.”</p> <ul style="list-style-type: none"> Added subsection (5): “The commission shall hold at least one meeting per year in each of the congressional districts in this state”
496.112	State Fish and Wildlife Director; term; compensation and expenses; delegation of commission powers to director	Requires the State Fish and Wildlife Commission to appoint a State Fish and Wildlife Director; identifies the maximum term and how compensation is determined; authorizes the commission to delegate to the director its powers and duties, with exceptions		2002	2001	<ul style="list-style-type: none"> Replaced “term of four years” with “term not to exceed four years” in subsection (1) Added subsection (4): “The commission may reappoint the director to additional terms”
496.116	Delegation of rulemaking authority to director; requirements	Requires the State Fish and Wildlife Director to comply with the requirements of ORS 496.138 when adopting administrative rules; requires any person wishing to petition the Court of Appeals to determine the validity of a rule adopted by the director to first request that the State Fish and Wildlife Commission do so		2002		<ul style="list-style-type: none"> None
496.118	Duties and powers of director	Identifies the duties and powers of the State Fish and Wildlife		2002	2007	<ul style="list-style-type: none"> Reference to ORS 541.375 changed to ORS 541.932 in subsection (1)(g)

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		Director				<ul style="list-style-type: none"> Replaced “joint legislative committee established pursuant to ORS 171.551” with “appropriate legislative committee” in subsection (3)
496.124	Fish Division; Wildlife Division; authority	Establishes the Fish Division and Wildlife Division within the State Department of Fish and Wildlife; vests the Wildlife Division with responsible for the management of all wildlife over which the State Fish and Wildlife Commission has regulatory jurisdiction, except fish and other marine life		1977		<ul style="list-style-type: none"> Replaced “director” with “State Fish and Wildlife Director” Replaced “State Fish and Wildlife Department” with “State Department of Fish and Wildlife” Replaced “commission” with “State Fish and Wildlife Commission”
496.128	Reports by commission	Requires the State Fish and Wildlife Commission to report on its activities to the Governor and to the Legislative Assembly biennially and as directed by the Governor or the Legislative Assembly; identifies the required content of those reports		2002		<ul style="list-style-type: none"> None
496.138	General duties and powers; rulemaking authority; hearing prior to budget request to Governor	Requires the State Fish and Wildlife Commission to implement the policies and programs of the state for the management of wildlife; authorizes the commission to perform any other duty vested in it by law; authorizes the		2002		<ul style="list-style-type: none"> Replaced “ORS 183.310 to 183.550” with ORS chapter 183” in subsection (2)

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		commission to adopt rules and standards as it deems necessary and proper to meet these requirements; requires the commission to hold a public hearing on any proposed rule or standard and on budget requests or information to be submitted to the Governor				
496.141	Fish screening program report	Requires the State Department of Fish and Wildlife to biennially provide to the Joint Committee on Ways and Means a report regarding the fish screening program; identifies the required contents of the report		2002		<ul style="list-style-type: none"> • None
496.146	Additional powers of commission; rules; fees; penalties	Identifies specific powers of the State Fish and Wildlife Commission in addition to any other duties or powers provided by law, including authorizing the issuance of licenses, tags, and permits for angling, taking, hunting, and trapping and prescribe associated rules regarding procedures; authorizes the commission to establish and develop wildlife refuge and management areas and prescribe rules governing the use of such	X	2002	2001 2003 2005 2007 2009 2011 2013	<ul style="list-style-type: none"> • Added “rules; fees; penalties” to title • Added “taking” to the list of activities for which the commission may authorize the issuance of licenses, tags, and permits in subsection (4) • Added to the end of subsection (17) “In establishing the preference system, the commission shall consider giving additional preference points to persons who have been issued a resident pioneer hunting license pursuant to ORS 497.102” • Added subsection (18): “May sell advertising in State Department of

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		<p>areas; authorizes the commission to adopt rules establishing a schedule of civil penalties for violations of provisions of the wildlife laws or rules adopted by the commission under the wildlife laws</p>				<p>Fish and Wildlife publications, including annual hunting and angling regulation publications”</p> <ul style="list-style-type: none"> • Added subsection (19): “May, notwithstanding the fees required by ORS 497.112, provide free hunting tags to an organization that sponsors hunting trips for terminally ill children” • Added subsection (20): “Shall, after consultation with the State Department of Agriculture, adopt rules prohibiting the use of the World Wide Web, other Internet protocols or broadcast or closed circuit media to remotely control a weapon for the purpose of hunting any game bird, wildlife, game mammal or other mammal. The rules may exempt the State Department of Fish and Wildlife or agents of the department from the prohibition” • Added subsection (21): “May adopt rules establishing a schedule of civil penalties, not to exceed \$6,500 per violation, for violations of provisions of the wildlife laws or rules adopted by the commission under the wildlife laws. Civil penalties established under this subsection must be

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						<p>imposed in the manner provided by ORS 183.745 and must be deposited in the State Wildlife Fund established under ORS 496.300”</p> <ul style="list-style-type: none"> Added subsection (22): “May by rule impose a surcharge not to exceed \$25 for the renewal of a hunting license on any person who fails to comply with mandatory hunting reporting requirements. Amounts collected as surcharges under this subsection must be deposited in the State Wildlife Fund established under ORS 496.300”
496.151	Allocation of nonresident tags for outfitters and guides	Requires the State Fish and Wildlife Commission to establish by rule a system for allocating hunting permits; identifies the requirements of that permit system		2002	2003	<ul style="list-style-type: none"> Deleted subsection (3): “A fee for the permit that is twice the normal nonresident fee”
496.154	Limitation on authority to condemn certain farm use property	Prohibits the State Fish and Wildlife Commission from commencing any proceeding to exercise the power of eminent domain to acquire any real property that was devoted to farm use on January 1, 1974, unless the commission first obtains approval therefor from the local governmental agencies		1987		<ul style="list-style-type: none"> Replaced “commission” with “State Fish and Wildlife Commission” in subsection (1)

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		having land use planning authority over such lands and then from the Joint Committee on Ways and Means				
496.162	Establishing seasons, amounts and manner of taking wildlife; rules	Requires the State Fish and Wildlife Commission to prescribe by rule the times, places, and manner in which wildlife may be taken by angling, hunting, trapping, or other method and the amounts of each of those wildlife species that may be taken and possessed, as well as other restrictions or procedures regarding the angling, taking, hunting, trapping or possessing of wildlife; identifies the powers of the commission in carrying out this requirement	X	1987	2003	<ul style="list-style-type: none"> • Added “rules” to the end of the title • Replaced “commission” with “State Fish and Wildlife Commission” in subsection (1) • Added “or other method” to the list of activities for which the commission shall prescribe the times, place and manner in subsection (1)(a) • Added “taking” to the list of activities for which the commission shall prescribe other restrictions or procedures in subsection (1)(b) • Added “taking” to the list of activities for which the commission may prescribe regular and special time period and area closures in subsection (2)(b) • Added “taking” to the list of activities for which the commission may prescribe regular and special time period and area openings and may establish procedures for regulating the number of persons eligible to participate in subsection (2)(c)
496.164	Cooperation with public and private	Authorizes the State Fish and Wildlife Commission and the		2002		<ul style="list-style-type: none"> • None

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	agencies for fish and wildlife management; technical information and policy recommendations; use of recommendations by state agencies	State Department of Fish and Wildlife to advise, consult and cooperate with other state agencies, states, the federal government, and private landowners with respect to fish and wildlife management; requires the commission and department to provide such information, recommendations, or advice in writing if requested by another state or federal agency to do so; requires state agencies, boards, and commissions receiving policy or implementation recommendations to consider them				
496.166	Citizen involvement for wildlife management on private lands	Notes the Legislative Assembly's finding that further involvement of citizens, through voluntary partnership between the State Department of Fish and Wildlife and landowners in the management of wildlife on private lands and through support by additional financial revenues, is necessary to improve Oregon's resource access and wildlife habitat		2002		<ul style="list-style-type: none"> • None

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THREATENED OR ENDANGERED WILDLIFE SPECIES						
496.171	Definitions for ORS 496.171 to 496.182; applicability date	Defines terms as used in ORS 496.171 to 496.182	X	2002		<ul style="list-style-type: none"> None
496.172	Commission management authority for threatened or endangered species; rules	Requires the State Fish and Wildlife Commission to investigate native wildlife species, determine whether any such species is threatened or endangered, and establish by rule a list of wildlife species that are threatened species or endangered species; requires the commission to establish by rule a system of permits for scientific taking of threatened and endangered species and shall establish a system of state permits for incidental taking of state-designated threatened species and endangered species not listed by the federal government; requires the commission to adopt administrative rules to carry out the provisions of ORS 496.171 to 496.182 and 498.026	X	2002		<ul style="list-style-type: none"> None
496.176	Listing species; procedure; matters	Identifies species required to be on the list of threatened species		2002	2005 2011	<ul style="list-style-type: none"> Removed “the Natural Heritage Advisory Council” from the list of

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ²	Changes Since Last Approval
	to be considered; periodic review	and endangered species; authorizes the commission to add or remove any wildlife species from the list or change the status of any species on the list by rule; sets the requirements for listing decisions and reviewing the list as well as the process for challenging a commission decision regarding listings				<p>entities the commission must consult in subsection (4)</p> <ul style="list-style-type: none"> Created a subsection (9)(a) from the language of the former subsection (9) and added subsection (9)(b): “May not include Branta canadensis leucopareia, commonly known as the Aleutian Canada goose, on the lists of threatened species or endangered species”
496.182	Protection and conservation programs; compliance by state agencies; rules	Announces the policy of the state to the policy of this state to minimize duplication and overlap between state and federal laws dealing with threatened and endangered species; requires the commission to establish by rule quantifiable and measurable guidelines necessary to ensure the survival of the species; requires state land owning or managing agencies to set priorities for establishing endangered species management plans, to determine the role its state land shall serve in the conservation of an endangered species if it or its habitat is found on the land, and to develop and	X	2002		<ul style="list-style-type: none"> Added “rules” to the title

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective²	Changes Since Last Approval
		approve an endangered species management plan; authorizes the commission to determine the role an agency that does not own or manage land has to play in conservation of the endangered species				
496.192	Effect of law on commercial forestland or other private land; effect on other laws	Clarifies that nothing in ORS 496.004, 496.171 to 496.182, or 498.026 is intended to impose additional requirements or restrictions on the use of private land, including regarding the protection of threatened and endangered species		2002		<ul style="list-style-type: none"> • None

Statutes that Were in the Program but Are Being Removed

ORS Section	Title at Last Approval	Description	Last OCRM Approval	Changes Since Last Approval
FISH AND WILDLIFE HABITAT IMPROVEMENT				
496.270	Immunity from liability for damages resulting from habitat or water	Announces the policy of the state to be to encourage operators, timber owners, and landowners to voluntarily	2002	<ul style="list-style-type: none"> • None

ORS Section	Title at Last Approval	Description	Last OCRM Approval	Changes Since Last Approval
	quality improvement project; exceptions	improve fish and wildlife habitat; protects landowners and timber operators from liability for harm resulting from specific habitat and water quality improvement projects, with exceptions		
SALMON AND TROUT ENHANCEMENT				
496.430	Definitions for ORS 496.430 and 496.435 to 496.455	Defines the term “native stocks” for purposes of ORS 496.435 to 496.455	1987	<ul style="list-style-type: none"> • Amended in 2003
496.435	Policy to recover and sustain native stocks	Declares the goal of the state to be to restore native stocks of salmon and trout to their historic levels of abundance; requires the state to rehabilitate and improve natural habitat and native stocks, ensure that the level of harvest does not exceed the capacity of stocks to reproduce, and promote rehabilitation of salmon and trout populations	2002	<ul style="list-style-type: none"> • Amended in 2003
496.440	Enhancement program to be conducted by commission; objective	Requires the State Fish and Wildlife Commission to conduct a salmon and trout enhancement program, and in such manner as to provide the greatest possible opportunity for citizen volunteer participation	1987	<ul style="list-style-type: none"> • None

ORS Section	Title at Last Approval	Description	Last OCRM Approval	Changes Since Last Approval
496.445	Duties of commission	Requires the State Fish and Wildlife Commission to provide appropriate personnel to act as community advisors and cooperatively develop and evaluate enhancement projects with citizen volunteers, provide technical assistance, coordinate project implementation with other agencies, provide materials to promote public awareness and involvement in the program, supervise local brood stock projects, provide funding, develop and implement a remote hatchbox program, and report annually to the legislature	2002	<ul style="list-style-type: none"> • None
496.450	Application for project; subjects for projects; conditions for approval	Allows any citizen or group of citizens to submit to the commission a proposal for a salmon and trout enhancement program project; authorizes the commission only to approve projects based on sound biological principles and that use fish stocks most adapted to the project locale	1987	<ul style="list-style-type: none"> • Amended in 2003
496.455	Use of native stocks for projects;	Authorizes the State Fish and Wildlife Commission to	1987	<ul style="list-style-type: none"> • None

ORS Section	Title at Last Approval	Description	Last OCRM Approval	Changes Since Last Approval
	conditions	authorize the taking of native stocks and their sexual products in carrying out its duties, functions, and powers under the wildlife laws or commercial fishing laws, with exceptions		
496.458	Remote hatchbox program; rules	Requires the State Fish and Wildlife Commission to develop and implement a remote hatchbox program; identifies the requirements for implementing that program and parameters for rules adopted under this statute	2002	<ul style="list-style-type: none"> Amended subsection 1 that is to sunset in 2016
496.460	Salmon and Trout Enhancement Program Advisory Committee; members; duties and powers; travel and expenses	Establishes the Salmon and Trout Enhancement Program Advisory Committee to advise the State Fish and Wildlife Commission; identifies the means of member appointment, tasks of the committee, and allowable reimbursement	1987	<ul style="list-style-type: none"> None

Text of ORS Chapter 496 Statutes Included in the July 24, 2014 RPC
2013 Edition Oregon Revised Statutes

GENERAL PROVISIONS

496.002 Short title. ORS chapters 496, 497, 498 and 501 may be cited as the wildlife laws. [1973 c.723 §2]

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

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

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

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

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

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

(6) “Endangered species” means:

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

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

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

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

(9) “Game mammal” means antelope, black bear, cougar, deer, elk, moose, mountain goat, mountain sheep, silver gray squirrel and gray wolf as a special status mammal defined by commission rule.

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

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

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

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

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

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

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

(17) “Threatened species” means:

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

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

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

(19) “Wildlife” means fish, shellfish, amphibians and reptiles, feral swine as defined by State Department of Agriculture rule, wild birds as defined by commission rule and other wild mammals as defined by commission rule. [1973 c.723 §3; 1975 c.253 §5; 1977 c.136 §1; 1979 c.399 §1; 1979 c.615 §1a; 1985 c.60 §7; 1987 c.686 §1; 1991 c.67 §148; 1993 c.659 §1; 1999 c.25 §3; 2001 c.125 §1; 2003 c.656 §1; 2007 c.523 §1; 2009 c.778 §1]

496.005 [Repealed by 1973 c.723 §130]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) *Stizostedion vitreum*, commonly known as walleye.

(8) *Catostomus luxatus*, commonly known as mullet.

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

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

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

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

- (1) To maintain all species of wildlife at optimum levels.
- (2) To develop and manage the lands and waters of this state in a manner that will enhance the production and public enjoyment of wildlife.
- (3) To permit an orderly and equitable utilization of available wildlife.
- (4) To develop and maintain public access to the lands and waters of the state and the wildlife resources thereon.
- (5) To regulate wildlife populations and the public enjoyment of wildlife in a manner that is compatible with primary uses of the lands and waters of the state.
- (6) To provide optimum recreational benefits.
- (7) To make decisions that affect wildlife resources of the state for the benefit of the wildlife resources and to make decisions that allow for the best social, economic and recreational utilization of wildlife resources by all user groups. [1973 c.723 §6; 1993 c.659 §2; 2001 c.762 §6]

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

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

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

- (1) Written certification from a licensed physician, certified nurse practitioner or licensed physician assistant that states that the person:
 - (a) Is permanently unable to walk without the use of, or assistance from, a brace, cane, crutch, prosthetic device, wheelchair, scooter or walker;
 - (b) Is restricted by lung disease to the extent that the person's forced expiratory volume for one second, when measured by a spirometer, is less than 35 percent predicted, or arterial oxygen tension is less than 55 mm/Hg on room air at rest;
 - (c) Has a cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV, according to standards established by the American Heart Association;
 - (d) Has a permanent, physical impairment that prevents the person from holding or shooting

a firearm or bow or from holding a fishing rod in hand; or

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

(2) Written proof that the last official certification of record by the United States Department of Veterans Affairs or any branch of the Armed Forces of the United States shows the person to be at least 65 percent disabled. [1999 c.25 §2; 2001 c.571 §1; 2005 c.471 §12; 2007 c.587 §1]

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

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

496.030 [Repealed by 1973 c.723 §130]

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

496.035 [Repealed by 1973 c.723 §130]

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

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

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

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

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

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

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

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

(5) The duties of the task force are:

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

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

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

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

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

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

(g) To advise the department on the creation of the priority criteria and the priority listing referred to in ORS 498.306 (14)(a) or (d). [1991 c.858 §6; 1995 c.426 §3; 2005 c.22 §368; 2007 c.625 §5a]

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

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

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

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

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

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

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

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

(9) A member of the commission is entitled to compensation and expenses as provided in ORS 292.495. [1975 c.253 §8; 1981 c.545 §11; 1997 c.249 §177; 1999 c.697 §1; 2001 c.762 §1; 2013 c.1 §75]

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

496.105 [Repealed by 1973 c.723 §130]

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

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

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

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

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

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

496.110 [Repealed by 1973 c.723 §130]

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

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

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

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

496.115 [Repealed by 1975 c.253 §40]

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

(2) Notwithstanding ORS 183.400, for any rule adopted by the director pursuant to subsection (1) of this section, before a person may petition the Court of Appeals to determine the validity of the rule, the person shall first request that the State Fish and Wildlife Commission

determine the validity of the rule. The determination of the commission may be reviewed in accordance with ORS 183.400. [1999 c.697 §5]

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

- (a) Be the administrative head of the State Department of Fish and Wildlife;
- (b) Have power, within applicable budgetary limitations, and in accordance with ORS chapter 240, to hire, assign, reassign and coordinate personnel of the department;
- (c) Administer and enforce the wildlife laws of the state;
- (d) Be authorized to participate in any proceeding before any public officer, commission or body of the United States or any state for the purpose of representing the citizens of Oregon concerning the wildlife resources of this state;
- (e) Establish such sections and divisions as are necessary to properly carry out the work of the commission;
- (f) Be responsible for the collection, application and dissemination of information pertinent to the management of the wildlife resources, and to the regulation of the uses of such resources; and
- (g) Coordinate any activities of the department related to a watershed enhancement project approved by the Oregon Watershed Enhancement Board under ORS 541.932 with activities of other cooperating state and federal agencies participating in the project.

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

(3) In addition to any other duties assigned to the director, the director shall report quarterly on the activities of the department to the appropriate legislative committee.

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

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

(6) Notwithstanding the provisions of ORS 496.112 (3), in times of emergency or with respect to regulating wildlife taking, the director may exercise the full powers of the commission until such times as the emergency ends or the commission meets in formal session. [1975 c.253 §10; 1987 c.734 §12; 1993 c.659 §5; 1999 c.697 §3; 2007 c.354 §16]

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

496.121 Authority of department to require fingerprints. For the purpose of requesting a state or nationwide criminal records check under ORS 181.534, the State Department of Fish and Wildlife may require the fingerprints of a person who:

- (1)(a) Is employed or applying for employment by the department; or
- (b) Provides services or seeks to provide services to the department as a contractor, vendor or volunteer; and

(2) Is, or will be, working or providing services in a position:

(a) In which the person has direct access to persons under 18 years of age, elderly persons or persons with disabilities;

(b) That has personnel or human resources functions as one of the position's primary responsibilities;

(c) In which the person is providing information technology services and has control over, or access to, information technology systems that would allow the person to harm the information technology systems or the information contained in the systems;

(d) That involves the use, possession, issuance, transport, purchase, sale or forfeiture of firearms or munitions, access to firearms or munitions or the training of others in the use or handling of firearms;

(e) In which the person resides on property managed by the department;

(f) In which the person has access to information, the disclosure of which is prohibited by state or federal laws, rules or regulations or information that is defined as confidential under state or federal laws, rules or regulations;

(g) That has payroll functions or in which the person has responsibility for receiving, receipting or depositing money or negotiable instruments, for billing, collections or other financial transactions or for purchasing or selling property or has access to property held in trust or to private property in the temporary custody of the state;

(h) That has mailroom duties as a primary duty or job function;

(i) In which the person has responsibility for auditing the department;

(j) In which the person has access to Social Security numbers, dates of birth or criminal background information of employees or members of the public; or

(k) In which the person has access to tax or financial information about individuals or business entities. [2005 c.730 §60; 2009 c.208 §1]

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

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

496.125 [Repealed by 1973 c.723 §130]

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

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

1993 c.659 §6]

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

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

496.135 [Repealed by 1973 c.723 §130]

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

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

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

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

496.140 [Repealed by 1973 c.723 §130]

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

496.145 [Repealed by 1973 c.723 §130]

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

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

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

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

(4) May by rule authorize the issuance of such licenses, tags and permits for angling, taking, hunting and trapping and may prescribe such tagging and sealing procedures as the commission determines necessary to carry out the provisions of the wildlife laws or to obtain information for use in wildlife management. Permits issued pursuant to this subsection may include special hunting permits for a person and immediate family members of the person to hunt on land owned by that person in areas where permits for deer or elk are limited by quota. As used in this subsection, "immediate family members" means husband, wife, father, mother, brothers, brothers-in-law, sisters, sisters-in-law, sons, daughters, stepchildren and grandchildren. A landowner who is qualified to receive landowner preference tags from the commission may request two additional tags for providing public access and two additional tags for wildlife habitat programs. This request shall be made to the Access and Habitat Board with supporting evidence that the access is significant and the habitat programs benefit wildlife. The board may recommend that the commission grant the request. When a landowner is qualified under landowner preference rules adopted by the commission and receives a controlled hunt tag for that unit or a landowner preference tag for the landowner's property and does not use the tag during the regular season, the landowner may use that tag to take an antlerless animal, when approved by the State Department of Fish and Wildlife, to alleviate damage that is presently occurring to the landowner's property.

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

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

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

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

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

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

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

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

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

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

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

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

(17) Shall establish a preference system so that individuals who are unsuccessful in controlled hunt permit drawings for deer and elk hunting have reasonable assurance of success in those drawings in subsequent years. In establishing the preference system, the commission shall consider giving additional preference points to persons who have been issued a resident pioneer hunting license pursuant to ORS 497.102.

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

(19) May, notwithstanding the fees required by ORS 497.112, provide free hunting tags to an organization that sponsors hunting trips for terminally ill children.

(20) Shall, after consultation with the State Department of Agriculture, adopt rules prohibiting the use of the World Wide Web, other Internet protocols or broadcast or closed circuit media to remotely control a weapon for the purpose of hunting any game bird, wildlife, game mammal or other mammal. The rules may exempt the State Department of Fish and Wildlife or agents of the department from the prohibition.

(21) May adopt rules establishing a schedule of civil penalties, not to exceed \$6,500 per violation, for violations of provisions of the wildlife laws or rules adopted by the commission under the wildlife laws. Civil penalties established under this subsection must be imposed in the manner provided by ORS 183.745 and must be deposited in the State Wildlife Fund established under ORS 496.300.

(22) May by rule impose a surcharge not to exceed \$25 for the renewal of a hunting license on any person who fails to comply with mandatory hunting reporting requirements. Amounts collected as surcharges under this subsection must be deposited in the State Wildlife Fund established under ORS 496.300.

(23) May by rule establish annual and daily Columbia Basin salmon, steelhead and sturgeon recreational fishing endorsements with a fee not to exceed \$9.75 per annual license and \$1 per day per daily license. An endorsement is required to fish for salmon, steelhead or sturgeon in the Columbia Basin and is in addition to and not in lieu of angling licenses and tags required under the wildlife laws. Amounts collected as fees under this subsection must be deposited in the Columbia River Fisheries Enhancement Fund established under section 7, chapter 672, Oregon Laws 2013.

(24) May by rule establish multiyear licenses and may prescribe fees for such licenses. Fees prescribed by the commission for multiyear licenses may provide for a discount from the annual

license fees that would otherwise be payable for the period of time covered by the multiyear license. [1973 c.723 §13; 1977 c.177 §1; 1977 c.668 §1; 1981 c.445 §9; 1987 c.292 §2; 1993 c.659 §8; 1999 c.25 §4; 2001 c.253 §1; 2003 c.656 §2; 2005 c.365 §1; 2007 c.338 §1; 2009 c.778 §2; 2011 c.521 §1; 2013 c.236 §1; 2013 c.363 §7; 2013 c.672 §9]

Note: The amendments to 496.146 by section 10, chapter 672, Oregon Laws 2013, become operative January 2, 2022. See section 11, chapter 672, Oregon Laws 2013. The text that is operative on and after January 2, 2022, is set forth for the user's convenience.

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

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

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

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

(4) May by rule authorize the issuance of such licenses, tags and permits for angling, taking, hunting and trapping and may prescribe such tagging and sealing procedures as the commission determines necessary to carry out the provisions of the wildlife laws or to obtain information for use in wildlife management. Permits issued pursuant to this subsection may include special hunting permits for a person and immediate family members of the person to hunt on land owned by that person in areas where permits for deer or elk are limited by quota. As used in this subsection, "immediate family members" means husband, wife, father, mother, brothers, brothers-in-law, sisters, sisters-in-law, sons, daughters, stepchildren and grandchildren. A landowner who is qualified to receive landowner preference tags from the commission may request two additional tags for providing public access and two additional tags for wildlife habitat programs. This request shall be made to the Access and Habitat Board with supporting evidence that the access is significant and the habitat programs benefit wildlife. The board may recommend that the commission grant the request. When a landowner is qualified under landowner preference rules adopted by the commission and receives a controlled hunt tag for that unit or a landowner preference tag for the landowner's property and does not use the tag during the regular season, the landowner may use that tag to take an antlerless animal, when approved by the State Department of Fish and Wildlife, to alleviate damage that is presently occurring to the landowner's property.

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

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

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

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

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

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

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

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

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

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

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

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

(17) Shall establish a preference system so that individuals who are unsuccessful in controlled hunt permit drawings for deer and elk hunting have reasonable assurance of success in those drawings in subsequent years. In establishing the preference system, the commission shall consider giving additional preference points to persons who have been issued a resident pioneer hunting license pursuant to ORS 497.102.

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

(19) May, notwithstanding the fees required by ORS 497.112, provide free hunting tags to an organization that sponsors hunting trips for terminally ill children.

(20) Shall, after consultation with the State Department of Agriculture, adopt rules prohibiting the use of the World Wide Web, other Internet protocols or broadcast or closed circuit media to remotely control a weapon for the purpose of hunting any game bird, wildlife, game mammal or other mammal. The rules may exempt the State Department of Fish and Wildlife or agents of the department from the prohibition.

(21) May adopt rules establishing a schedule of civil penalties, not to exceed \$6,500 per violation, for violations of provisions of the wildlife laws or rules adopted by the commission under the wildlife laws. Civil penalties established under this subsection must be imposed in the manner provided by ORS 183.745 and must be deposited in the State Wildlife Fund established under ORS 496.300.

(22) May by rule impose a surcharge not to exceed \$25 for the renewal of a hunting license on any person who fails to comply with mandatory hunting reporting requirements. Amounts

collected as surcharges under this subsection must be deposited in the State Wildlife Fund established under ORS 496.300.

(23) May by rule establish multiyear licenses and may prescribe fees for such licenses. Fees prescribed by the commission for multiyear licenses may provide for a discount from the annual license fees that would otherwise be payable for the period of time covered by the multiyear license.

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

Sec. 2. Landowner preference tags. Notwithstanding any other provision of the wildlife laws, during the period beginning January 1, 1996, and ending January 2, 2020, the following provisions apply with regard to the issuance and use of landowner preference tags referred to in ORS 496.146 (4):

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

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

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

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

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

(6) Landowner preference tags for the hunting of deer or elk may be transferred to a person of the landowner's choosing as follows:

(a) A landowner who is issued only one tag may not transfer that tag.

(b) A landowner who is issued two or more tags may transfer not more than 50 percent of the tags to a person who is not an immediate family member, as defined in ORS 496.146 (4). If the calculation of the number of tags eligible for transfer under the provisions of this paragraph results in a fraction, the commission shall round up the number of tags to the next whole number.

(7)(a) As specified pursuant to a formula determined by the commission by rule, the number of landowner preference tags issued for mule deer must be based upon the management, research and habitat needs set forth in the wildlife management plan for mule deer.

(b) If the population of mule deer in a wildlife management unit is greater than the goal specified in the wildlife management plan for mule deer, a landowner who is issued a landowner preference tag is eligible, pursuant to criteria established by rule of the commission, for the number of tags that corresponds to the number of acres that landowner has registered with the State Department of Fish and Wildlife for participation in the program.

(c) The commission may specify by rule a formula for determining the number of landowner preference tags that are available for controlled hunts for mule deer in a wildlife management unit in which the population of mule deer is less than the goal specified for that wildlife management unit in the wildlife management plan for mule deer.

(8) Landowners shall pay a \$30 fee to register for participation in the program.

(9) A landowner shall pay a \$15 fee to modify the landowner's tag distribution. [1995 c.460 §2; 2001 c.227 §1; 2009 c.349 §1; 2009 c.832 §2a; 2013 c.363 §1]

Note: Sections 3 to 5, chapter 363, Oregon Laws 2013, provide:

Sec. 3. Oregon Landowner Damage Program. Notwithstanding any other provision of the wildlife laws, the State Department of Fish and Wildlife shall create and implement an Oregon Landowner Damage Program that:

- (1) Addresses damage caused by elk on privately owned lands in Oregon.
 - (2) Provides landowner damage tags only for areas where elk are currently causing damage, where there has been a history of elk damage coupled with actions to alleviate elk damage or where the department has designated the area as an elk deemphasis area.
 - (3) Limits the use of damage tags to taking antlerless elk.
 - (4) Limits the use of damage tags to taking elk on property owned, leased or rented by the landowner complaining of elk damage or on property owned, leased or rented by a business entity that includes the landowner as a principal partner or shareholder.
 - (5) Allows exchange of unused general season elk tags or controlled hunt elk tags for landowner damage tags.
 - (6) Does not impose a limit on the number of total damage tags available for each landowner, except that no more than five damage tags may be valid at any one time.
 - (7) Does not impose a minimum acreage requirement for landowner participation.
 - (8) Allows landowners to register for participation in the program at any time prior to the issuance of damage tags.
 - (9) Establishes a \$30 fee for landowners to register for participation in the program.
 - (10) Establishes a \$15 fee for landowners to modify the landowner's damage tag distribution.
 - (11) Authorizes department biologists to sell and exchange damage tags.
 - (12) Authorizes department biologists to establish the period of validity for damage tags through negotiation with landowners.
 - (13) Requires landowners to record the number of elk taken and, within 10 days after the end of a designated hunt period, to report to the local department biologist the number of elk taken.
- [2013 c.363 §3]

Sec. 4. (1) Except as provided in subsection (2) of this section, section 3 of this 2013 Act becomes operative on January 1, 2014.

(2) The State Fish and Wildlife Commission may adopt rules or take any other action before the operative date specified in subsection (1) of this section that is necessary to implement, on and after the operative date specified in subsection (1) of this subsection, section 3 of this 2013 Act. [2013 c.363 §4]

Sec. 5. Sections 3 and 4 of this 2013 Act are repealed on January 2, 2020. [2013 c.363 §5]

496.150 [Repealed by 1973 c.723 §130]

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

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

registrant.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Prescribing such regular and special time periods and areas closed to the angling, taking, hunting and trapping of any wildlife species when the commission determines such action is necessary to protect the supply of such wildlife.

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

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

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

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

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

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

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

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

496.165 [Repealed by 1973 c.723 §130]

496.166 Citizen involvement for wildlife management on private lands. The Legislative Assembly finds, in the interest of all Oregonians, a necessity to improve Oregon's resource access and wildlife habitat through the further involvement of its citizens, through voluntary partnership between the State Department of Fish and Wildlife and landowners to manage

wildlife on private lands and through support by additional financial revenues. [1993 c.659 §13]

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

THREATENED OR ENDANGERED WILDLIFE SPECIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) The commission may determine not to list a species as a threatened species or an

endangered species in any of the following cases:

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

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

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

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

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

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

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

(9) Notwithstanding the provisions of this section, the commission:

(a) May decide not to list a species that otherwise qualifies as a threatened or endangered species within this state if the commission determines that the species is secure outside this state or the species is not of cultural, scientific or commercial significance to the people of this state.

(b) May not include *Branta canadensis leucopareia*, commonly known as the Aleutian Canada goose, on the lists of threatened species or endangered species. [1987 c.686 §4; 1995 c.590 §4; 2005 c.402 §1; 2011 c.319 §20]

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

496.182 Protection and conservation programs; compliance by state agencies; rules. (1)

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

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

resource sites such as spawning beds, nest sites, nesting colonies or other sites critical to the survival of individual members of the species.

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

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

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

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

(5) When an action under this section is initiated by a person other than a state agency, the agency shall provide final approval or denial of the proposed action within 120 days of receipt of a written request for final determination.

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

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

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

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

(C) After determining the role its state land shall serve in conservation of the species, the land owning or managing agency, in consultation with the State Department of Fish and Wildlife and consistent with the commission's rules related to endangered species management plans,

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

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

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

496.185 [Repealed by 1973 c.723 §130]

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

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

(2) Notwithstanding subsection (1) of this section, other statutes may authorize administrative rules or programs to protect wildlife species, including threatened species or endangered species, and nothing in ORS 496.004, 496.171 to 496.182 or 498.026 shall diminish the force or effect of such rules or programs. [1987 c.686 §6a]

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

496.200 [Repealed by 1973 c.723 §130]

FISH AND WILDLIFE HABITAT IMPROVEMENT

496.270 Immunity from liability for damages resulting from habitat or water quality improvement project; exceptions. (1) The Legislative Assembly declares that it is the policy of the State of Oregon to encourage operators, timber owners and landowners to voluntarily

improve fish and wildlife habitat. In order to carry out this policy, the Legislative Assembly encourages cooperation among operators, timber owners and landowners and other volunteers.

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

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

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

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

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

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

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

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

SALMON AND TROUT ENHANCEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Ensure that the program is scientifically sound;

- (b) Be consistent with the goals of the Oregon Plan, as described in ORS 541.898; and
- (c) Identify protocols for determining when the use of remote hatchboxes is an appropriate activity under the Oregon Plan. [1999 c.189 §4]

Note: Sections 1 and 2, chapter 871, Oregon Laws 2009, provide:

Sec. 1. Remote hatchbox program evaluation in Rogue River basin streams. For the period commencing January 1, 2010, and ending December 31, 2015, the State Fish and Wildlife Commission may evaluate the remote hatchbox program, established pursuant to ORS 496.445 and 496.458, in select Rogue River basin streams after consultation with local communities, groups participating in the salmon and trout enhancement program established under ORS 496.440, conservation groups working on matters related to the Rogue River basin and the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration. Consultation under this section must include, but not be limited to, matters related to remote hatchbox placement and monitoring, data collection, adult returns and fishery contribution. [2009 c.871 §1]

Sec. 2. Section 1 of this 2009 Act is repealed on January 2, 2016. [2009 c.871 §2]

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

(2) The committee shall review the policies of the State Department of Fish and Wildlife and make recommendations to the State Fish and Wildlife Commission and to the department concerning the implementation of salmon and trout enhancement projects.

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