

<p>ORS Chapter 496 (Wildlife Administration) <a href="#">Link to ORS Chapter 496</a> <i>Statute Edition 2017 approved in Program</i></p>	<p>.004 Definitions .007 “Game bird” defined .009 “Game fish” defined .012 Wildlife policy .162 Establishing seasons, amounts and manner of taking wildlife; rules .171 Th or E Wildlife Species. Definitions for ORS 496.171 to 496.182; applicability date .182 Protection and conservation programs; mitigation of adverse impact on local economies; compliance by state agencies; rules</p>	<p>Consultation with ODFW Scientific and Incidental Take Permit In-Water Timing Guidelines (applied through DSL removal-fill permit)</p>
<p>ORS Chapter 498 (Fish Screening) <a href="#">Link to ORS Chapter 498</a> <i>Statute Edition 2013 approved in Program</i></p>	<p>.301 Policy .306 Screening or by-pass devices for water diversions; fees; costs .316 Exemption from screening or by-pass devices</p>	<p>Fish Screening Requirements</p>
<p>ORS Chapter 506 (Commercial Fishing and Fisheries) <a href="#">Link to ORS Chapter 506</a> <i>Statute Edition 2013 approved in Program</i></p>	<p>.006 General definitions .011 Types of marine life defined .016 “Salmon” defined .025 “Unlawful to buy” defined .028 “Conservation” defined .109 Food fish management policy .220 Erecting markers of closed waters; interference with markers .450 Definitions for ORS 506.450 to 506.465; rules .455 Policy .610 When possession prima facie evidence of taking fish unlawfully</p>	<p>In-Water Timing Guidelines</p>
<p>ORS Chapter 509 (Additional Fishery Requirements) <a href="#">Link to ORS Chapter 509</a> <i>Statute Edition 2017 approved in Program</i></p>	<p>.001 Definitions .112 Wasting food fish .115 Placing in waters fish harmful to food fish .120 Using electricity to disturb food fish .122Definitions for ORS 509.125 to 509.155</p>	<p>Fish Passage Approvals In-Water Blasting Permit</p>

.125 Placing substances in water to drive fish from closed areas  
.130 Placing substances in water or using explosives to take or destroy food fish  
.140 Placing explosives or harmful substances in waters in course of lawful work; permit  
.505 Placing in water matter injurious to shellfish  
.510 Taking shellfish from marked beds without permission; disturbing beds  
.580 Definitions for ORS 509.580 to 509.590, 509.600 to 509.645 and 509.910; rules  
.585 Fish passage required for artificial obstructions; statewide inventory; waiver of requirement by commission; rules; exemptions  
.600 Destroying, injuring or taking fish near fishway; permits to take fish  
.610 Maintenance of fish passage required  
.625 Power of department to inspect artificial obstructions and have fish passage constructed or remove obstruction

**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.

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- (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.

**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.

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(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.

**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.

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**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.

**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.

**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.

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**496.182 Protection and conservation programs; mitigation of adverse impact on local economies; 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)(a) 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.
- (b) The commission shall work with private landowners, affected cities, affected counties and affected local service districts, as defined in ORS 174.116, to mitigate the adverse impact on local economies when the commission adds a species to the list of threatened species or endangered species pursuant to ORS 496.172.
- (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 re-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.

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(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.



**498.301 Policy.** It is the policy of the State of Oregon to prevent appreciable damage to game fish populations or populations of nongame fish that are classified as sensitive species, threatened species or endangered species by the State Fish and Wildlife Commission as the result of the diversion of water for nonhydroelectric purposes from any body of water in this state.

**498.306 Screening or by-pass devices for water diversions; fees; costs.**

(1) Any person who diverts water from any body of water in this state in which any fish, subject to the State Fish and Wildlife Commission's regulatory jurisdiction, exist may be required to install, operate and maintain screening or by-pass devices to provide adequate protection for fish populations present at the water diversion in accordance with the provisions of this section.

(2)(a) The State Department of Fish and Wildlife shall establish a cost-sharing program to implement the installation of screening or by-pass devices on not less than 150 water diversions or 150 cubic feet per second of diverted water per biennium. The department shall select the water diversions to be screened from the priority listing of diversions established by the department and reviewed by the Fish Screening Task Force. The installation of a screening or by-pass device may be required only if:

(A) The water diversion is 30 cubic feet per second or more;

(B) A new water right is issued for the water diversion;

(C) The point of water diversion is transferred as described in ORS 540.525;

(D) Fewer than 150 persons per biennium volunteer to request such installation on the diversions for which they are responsible; or

(E) The Fish Screening Task Force has reviewed and approved the department's request to require installation of screening or by-pass devices in order to complete the screening of a stream system or stream reach. (b) The limitations on the number of diversions or cubic feet per second of diverted water to be screened as provided in this section do not prevent the installation of screening and by-pass devices for diversions by persons responsible for diversions who are willing to pay the full cost of installing screening and by-pass devices. (c) Cost-sharing program funds may not be provided under this subsection for screening or by-pass devices on a water diversion involving water rights issued on or after January 1, 1996, unless the Fish Screening Task Force finds there is good cause to allow an exception. The department shall give preference to diversions of 30 cubic feet per second or less when making cost-sharing program funds available.

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

(4) If the department constructs and installs the screening or by-pass device, a fee shall be assessed against the person responsible for the diversion in an amount that does not exceed 40 percent of the construction and installation costs of the device. The fee shall be paid into the Fish Screening Subaccount. If the person responsible for the diversion constructs and installs the by-pass or screening device, the person shall be reimbursed from the Fish Screening Subaccount or other state funds in an amount that does not exceed 60 percent of the actual construction and installation costs of the device.

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

(6) The department is responsible for major maintenance and repair of screening or by-pass devices at water diversions of less than 30 cubic feet per second, and if failure by the department to perform major maintenance on or repair such devices results in damage or blockage to the water diversion on which a device has been installed, the person responsible for the water diversion shall give written notice of such damage or blockage to the department. If within seven days of the notice, the department fails to take appropriate action to perform major maintenance on or repair the device, and to repair any damage that has occurred, the person responsible for the water diversion may remove the device. If an emergency exists that will result in immediate damage to livestock or crops, the person responsible for the water diversion may remove the screening or by-pass device. A person required to comply with this section is responsible for minor maintenance and shall, in a timely manner, notify the department of the need for activities associated with major maintenance.

(7) A person who diverts water at a rate of 30 cubic feet per second or more is responsible for all maintenance of an installed screening or by-pass device.

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

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

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

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

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

(d) If the person responsible for a diversion on which a screening or by-pass device is installed fails to conduct appropriate inspection and minor maintenance, the department may perform such activities and charge and collect from the person responsible a fee not to exceed \$150 for each required visit to the location of the screening or by-pass device.

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(e) If the department determines that a person must install, operate, maintain, repair or replace a screening or by-pass device under this section, the department shall notify the person, by registered mail, of the specific action the person is required to take. The person may request a contested case hearing before the State Fish and Wildlife Commission, to be conducted as provided in ORS chapter 183.

(11) A person may not interfere with, tamper with, damage, destroy or remove in any manner not associated with regular and necessary maintenance procedures any screening or by-pass devices installed pursuant to this section.

(12) The department may maintain an action to cover any costs incurred by the department when a person who is required to comply with this section fails to comply. Such action shall be brought in the circuit court for the county in which the screening or by-pass device is located.

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

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

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

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

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

(A) Fish species status.

(B) Fish numbers.

(C) Fish migration.

(D) Diversion size.

(E) Diversion amount.

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

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

(c) After the priority listing has been updated, the persons responsible for the diversions on the list shall be notified that their diversions appear on the list. Such persons also shall be furnished a description of the fish screening cost-sharing program.

(d)(A) The department shall notify, by means of registered mail, each person responsible for the first 250 diversions on the priority listing on or before January 1, 1996. The department shall furnish information regarding the fish screening cost-sharing program to each person responsible for a diversion included in the first 250 diversions on the priority listing on or before January 1, 1996. A person may not be required to install a screening or by-pass device unless previously notified by the department of the requirement to install such devices.

(B) On January 1 of each even-numbered year, the department shall notify each person responsible for a diversion included in the first 250 diversions on the priority listing. However, the department is not required to notify in a subsequent year any person previously notified. The department shall include with such notification information regarding the fish screening cost-sharing program.

(C) Before any person is required to install a screening or by-pass device, the department shall confirm the need for the device through a visual, on-site inspection by appropriate staff of the fish screening division of the department, or a district biologist of the department.

(15) As used in this section:

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

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

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

(d) "Fish screen" means a screen, bar, rack or other barrier, including related improvements necessary to ensure its effective operation, to provide adequate protection for fish populations present at a water diversion.

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

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

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

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

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**498.316 Exemption from screening or by-pass devices.** ORS 498.306 does not require the installation of screening or by-pass devices in those water diversions for which the State Fish and Wildlife Commission, by contract or other form of agreement with the person diverting the water, has made such other provision as the commission determines is adequate for the protection of the game fish in the body of water from which water is being diverted.

**506.006 General definitions.** As used in the commercial fishing laws, unless the context requires otherwise:

(1) “Angling” means fishing for personal use with one line attached to a pole held in hand while landing the fish, or with a handoperated line without rod or reel, to which may be attached not to exceed three hooks, except on floating bass plugs.

(2) “Boat” means any vessel, any floating craft, powered, towed, rowed or otherwise propelled which is used for landing or taking food fish.

(3) “Buy” includes offer to buy, barter, exchange or trade.

(4) “Commercial purposes” means taking food fish with any gear unlawful for angling, or taking or possessing food fish in excess of the limits permitted for personal use, or taking, fishing for, handling, processing, or otherwise disposing of or dealing in food fish with the intent of disposing of such food fish or parts thereof for profit, or by sale, barter or trade, in commercial channels.

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

(6) “Department” means the State Department of Fish and Wildlife.

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

(8) “Fishing gear” means any appliance or device intended for or capable of being used to take food fish except by angling.

(9) “Fixed fishing gear” includes but is not limited to stationary gear operated at a fixed location.

(10) “Personal use” means taking or fishing for food fish by angling or by such other means and with such gear as the commission may authorize for fishing for personal use, or possessing the same for the use of the person fishing for, taking or possessing the same and not for sale or barter.

(11) “Sell” includes offer or possess for sale, barter, exchange or trade.

(12) “Take” means fish for, hunt, pursue, catch, capture or kill or attempt to fish for, hunt, pursue, catch, capture or kill.

(13) “Transport” means transport by any means, and includes offer or receive for transportation.

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(14) "Waters of this state" means all waters over which the State of Oregon has jurisdiction, or joint or other jurisdiction with any other state or government, including waters of the Pacific Ocean and all bays, inlets, lakes, rivers and streams within or forming the boundaries of this state.

**506.011 Types of marine life defined.** As used in the commercial fishing laws, unless the context requires otherwise:

(1) "Anadromous fish" includes but is not limited to salmon, as defined in ORS 506.016; *roccus saxatilis*, commonly known as striped bass; *alosa sapidissima*, commonly known as shad; *acipenser medirostris* and *Acipenser transmontanus*, commonly known as sturgeon; and *thaleichthys pacificus*, commonly known as smelt.

(2) "Animals living intertidally on the bottom" includes but is not limited to starfish, sea urchins, sea cucumbers, snails, bivalves, worms, coelenterates and shore, hermit and other small crabs not included within subsection (1) or (7) of this section.

(3) "Black rockfish" means *Sebastes melanops*, commonly known as black rockfish.

(4) "Blue rockfish" means *Sebastes mystinus*, commonly known as blue rockfish.

(5) "Food fish" means any animal over which the State Fish and Wildlife Commission has jurisdiction pursuant to ORS 506.036.

(6) "Nearshore fish" means:

- (a) *Enophrys bison*, commonly known as buffalo sculpin;
- (b) *Hemilepidotus hemilepidotus*, commonly known as red Irish lord;
- (c) *Hemilepidotus spinosus*, commonly known as brown Irish lord;
- (d) *Scorpaenichthys marmoratus*, commonly known as cabezon;
- (e) *Hexagrammos decagrammus*, commonly known as kelp greenling;
- (f) *Hexagrammos lagocephalus*, commonly known as rock greenling;
- (g) *Hexagrammos stelleri*, commonly known as whitespotted greenling;
- (h) *Oxylebius pictus*, commonly known as painted greenling;
- (i) *Sebastes atrovirens*, commonly known as kelp rockfish;

- (j) *Sebastes auriculatus*, commonly known as brown rockfish;
- (k) *Sebastes carnatus*, commonly known as gopher rockfish;
- (L) *Sebastes caurinus*, commonly known as copper rockfish;
- (m) *Sebastes chrysomelas*, commonly known as black and yellow rockfish;
- (n) *Sebastes dalli*, commonly known as calico rockfish;
- (o) *Sebastes maliger*, commonly known as quillback rockfish;
- (p) *Sebastes miniatus*, commonly known as vermilion rockfish;
- (q) *Sebastes nebulosus*, commonly known as china rockfish;
- (r) *Sebastes nigrocinctus*, commonly known as tiger rockfish;
- (s) *Sebastes rastrelliger*, commonly known as grass rockfish;
- (t) *Sebastes serranoides*, commonly known as olive rockfish; or
- (u) *Sebastes serriceps*, commonly known as treefish.

(7) "Shellfish" includes but is not limited to abalone, clams, crabs, crayfish or crawfish, mussels, oysters, piddocks, scallops and shrimp.

**506.016 "Salmon" defined.** As used in the commercial fishing laws, "salmon" means all anadromous species of salmon, including but not limited to:

- (1) *Oncorhynchus gorbuscha*, commonly known as humpback, humpies or pink salmon.
- (2) *Oncorhynchus keta*, commonly known as chum or dog salmon.
- (3) *Oncorhynchus kisutch*, commonly known as coho or silver salmon.
- (4) *Oncorhynchus nerka*, commonly known as sockeye, red or blueback salmon.
- (5) *Oncorhynchus tshawytscha*, commonly known as chinook salmon.

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**506.025 “Unlawful to buy” defined.** Whenever the commercial fishing laws state that it is unlawful to buy any food fish, illegally taken, this prohibition means that it is unlawful to buy, knowing or having reasonable cause to believe that the fish have been illegally taken or transported within this state, or unlawfully imported or otherwise unlawfully brought into this state.

**506.028 “Conservation” defined.** As used in the commercial fishing laws, unless the context requires otherwise, “conservation” means providing for the utilization and management of the food fish of Oregon to protect the ultimate supply for present and future generations, preventing waste and implementing a sound management program for sustained economic, recreational and aesthetic benefits.

**506.109 Food fish management policy.** It is the policy of the State of Oregon that food fish shall be managed to provide the optimum economic, commercial, recreational and aesthetic benefits for present and future generations of the citizens of this state. In furtherance of this policy, the goals of food fish management are:

- (1) To maintain all species of food fish at optimum levels in all suitable waters of the state and prevent the extinction of any indigenous species.
- (2) To develop and manage the lands and waters of this state in a manner that will optimize the production, utilization and public enjoyment of food fish.
- (3) To permit an optimum and equitable utilization of available food fish.
- (4) To develop and maintain access to the lands and waters of the state and the food fish resources thereon.
- (5) To regulate food fish populations and the utilization and public enjoyment of food fish in a manner that is compatible with other uses of the lands and waters of the state and provides optimum commercial and public recreational benefits.
- (6) To preserve the economic contribution of the sports and commercial fishing industries in a manner consistent with sound food fish management practices.
- (7) To develop and implement a program for optimizing the return of Oregon food fish for Oregon’s recreational and commercial fisheries.

**506.220 Erecting markers of closed waters; interference with markers.** Whenever deadlines are established on any of the waters of this state, either by legislative enactment or by order of the State Fish and Wildlife Commission, the commission shall, within a reasonable time, erect suitable monuments or markers in the water or on the banks of the water designating the closed portion of the water. It is unlawful to remove, destroy, alter or mutilate any of these monuments or markers.

**506.450 Definitions for ORS 506.450 to 506.465; rules.** As used in ORS 506.450 to 506.465, “developmental fishery” means activity for the development of commercial taking of an underutilized food fish species. The State Fish and Wildlife Commission by rule shall determine those species of food fish that are underutilized.



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**506.455 Policy.** It is the policy of the State of Oregon to institute a management system for developmental fishery resources that addresses both long term commercial and biological values and that protects the long term sustainability of those resources through planned commercial development when appropriate.

**506.610 When possession prima facie evidence of taking fish unlawfully.**

(1) The possession or custody of food fish on, near, adjacent to or in the vicinity of any waters of this state, during the closed season on such waters, is prima facie evidence that such fish were unlawfully taken during the closed season on such waters.

(2) In all cases where such possession or custody by accused persons on, near, adjacent to or in the vicinity of any of such closed waters is proven, the burden of proof is shifted to the persons found having such possession or custody, to establish that the fish were lawfully taken during an open season and from waters from which it was at such time lawful to take such fish.

**509.001 Definitions.** The definitions prescribed by ORS 506.001 to 506.025 apply to this chapter.

**509.112 Wasting food fish.** It is unlawful for any person wantonly to waste or destroy any food fish.

**509.115 Placing in waters fish harmful to food fish.** It is unlawful, without written authority from the State Fish and Wildlife Commission, to place in any of the waters of this state any species or variety of fish whatsoever which are inimical to or destructive of food fish.

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

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

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

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

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

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

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

**509.140 Placing explosives or harmful substances in waters in course of lawful work; permit.**

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

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

- (a) Designate the places and period within which the explosives or substances may be used; and
- (b) Prescribe such precautions as will save fish from injury.

(3) It is unlawful to disregard such order or fail to obtain such order or permit before using explosives or substances deleterious to fish.

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

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

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

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

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(2) “Construction” means:

- (a) Original construction;
- (b) Major replacement;
- (c) Structural modifications that increase storage or diversion capacity; or
- (d) For purposes of culverts, installation or replacement of a roadbed or culvert.

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

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

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

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

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

(8) “Oregon Plan” means the guidance statement and framework described in ORS 541.898.

**509.585 Fish passage required for artificial obstructions; statewide inventory; waiver of requirement by commission; rules; exemptions.**

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

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

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

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

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

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

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

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

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

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- (A) The geographic scope in which alternatives must be conducted;
  - (B) The type and quality of habitat;
  - (C) The species affected;
  - (D) The status of the native migratory fish stocks;
  - (E) Standards for monitoring, evaluating and adaptive management;
  - (F) The feasibility of fish passage and alternatives to fish passage;
  - (G) Quantified baseline conditions;
  - (H) Historic conditions;
  - (I) Existing native migratory fish management plans;
  - (J) Financial or other incentives and the application of incentives;
  - (K) Data collection and evaluation; and
  - (L) Consistency with the purpose and goals of the Oregon Plan. (d) To the extent feasible, the department shall coordinate its requirements for adequate fish passage or alternatives to fish passage with any federal requirements.

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

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

- (A) Finds that a lack of fish passage has been effectively mitigated;
- (B) Has granted a legal waiver for the artificial obstruction; or
- (C) Finds there is no appreciable benefit to providing fish passage. (b) The commission shall review, at least once every seven years, the artificial obstructions exempted under this subsection that do not have an exemption expiration date to determine whether the exemption should be renewed.

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The commission may revoke or amend an exemption if it finds that circumstances have changed such that the relevant requirements for the exemption no longer apply. The person owning or operating the artificial obstruction may protest the decision by the commission pursuant to ORS 509.645.

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

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

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

**509.600 Destroying, injuring or taking fish near fishway; permits to take fish.**

(1) A person may not willfully or knowingly destroy, injure or take fish within 600 feet of any fishway, except as permitted by subsection

(2) of this section. Actions that violate this section include, but are not limited to:

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

(b) Placing anything in the fishway.

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

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

(e) Doing any injury to the fishway.

(2) The State Fish and Wildlife Commission may by rule or by issuance of permits authorize the taking of fish within 600 feet of any fishway.

**509.610 Maintenance of fish passage required.**

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

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

(3) A person owning or operating an artificial obstruction is responsible for maintaining, monitoring and evaluating the effectiveness of fish passage or alternatives to fish passage.

**509.625 Power of department to inspect artificial obstructions and have fish passage constructed or remove obstruction.**

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

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

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

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

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

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

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

(4) If a person who owns or operates an artificial obstruction and who is required to provide fish passage under ORS 509.585 fails to provide fish passage in the manner and time required by the State Department of Fish and Wildlife, the commission may remove, replace or repair the artificial obstruction or any parts of the obstruction at the expense of the owner or operator.