

TITLE 41

WILDLIFE

- Chapter 496. Application, Administration and Enforcement of Wildlife Laws
497. Licenses and Permits
498. Hunting, Angling and Trapping Regulations; Miscellaneous Wildlife Protective Measures
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Chapter 496

1979 REPLACEMENT PART

Application, Administration and Enforcement of Wildlife Laws

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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) "Director" means the State Fish and Wildlife Director appointed pursuant to ORS 496.112.

(4) "Fund" means the State Wildlife Fund created by ORS 496.300.

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

(6) "Game mammal" means antelope, black bear, cougar, deer, elk, moose, mountain goat, mountain sheep and silver gray squirrel.

(7) "Guide" means any person who, for compensation, provides or offers to provide personal services in assisting or guiding any person to locate, angle for, hunt or trap wildlife or who, for compensation, provides or offers to provide transportation of angling, hunting, trapping or camping equipment for persons engaged in locating, angling for, hunting or trapping wildlife.

(8) "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.

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

(10) "Take" means to kill or obtain possession or control of any wildlife.

(11) "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.

(12) "Wildlife" means game fish, wild birds, amphibians, reptiles and wild mammals except whales and porpoises. [1973 c.723 §3; 1975 c.253 §5; 1977 c.136 §1; 1979 c.399 §1; 1979 c.615 §1a]

496.005 [Repealed by 1973 c.723 §130]

496.006 [Formerly 497.505; 1961 c.343 §1; 1967 c.594 §1; 1971 c.658 §1; repealed by 1973 c.723 §130]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

(11) *Rana catesbeiana*, commonly known as bullfrog. [1973 c.723 §§5, 131]

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 provide the optimum recreational and aesthetic benefits for present and future generations of the citizens of this state. In furtherance of this policy, the goals of wildlife management are:

(1) To maintain all species of wildlife at optimum levels and prevent the serious depletion of any indigenous species.

(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 and provides optimum public recreational benefits. [1973 c.723 §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]

496.020 [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. The State Department of Fish and Wildlife is created. The department consists of the State Fish and Wildlife Commission, the State Fish and Wildlife Director, and such other personnel as may be necessary for the efficient performance of the functions of the department. [1975 c.253 §7]

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

(2) The term of office of each member is four years. 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 in the manner provided in ORS 171.560 and 171.570.

(4) One member of the commission shall be appointed from each of the congressional districts referred to in ORS 250.295 (1973 Replacement Part), one member from that portion of the state lying west of the Cascade Mountains, one member from that portion of the state lying east of the Cascade Mountains and one member from the state at large.

(5) No member of the commission may hold any office in any sports fishing organization or commercial fishing organization or have any ownership or other direct interest in a commercial fish processing business.

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

(7) A member of the commission is entitled to compensation and expenses as provided in ORS 292.495. [1975 c.253 §8]

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) The commission shall select one of its members as chairman and another as vice chairman, for such terms and with such duties and powers necessary for the performance of the functions of such offices 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 three months at a time and place determined by the commission. The commission shall also meet at such other times and places as are specified by the call of the chairman 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. [1973 c.723 §9]

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 commission shall appoint a State Fish and Wildlife Director to serve for a term of 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 his salary, subject to applicable law regulating travel and other expenses of state officers, the director shall be reimbursed for his actual and necessary travel and other expenses incurred in the performance of his official duties.

(3) The commission may delegate to the director any of the administrative authority, powers and duties granted to or imposed upon it by law. [1975 c.253 §9]

496.115 [Repealed by 1975 c.253 §40]

496.118 Duties and powers of director. (1) The director is the executive head of the State Department of Fish and Wildlife, and shall:

(a) Be responsible to the commission for administration and enforcement of the wildlife laws.

(b) Appoint, supervise and control all commission employes and, under the policy direction of the commission, be responsible for

all of the commission's functions and activities.

(c) Establish such sections and divisions as are necessary to properly carry out the work of the commission.

(d) 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.

(2) In times of emergency, 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]

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

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 director pursuant to ORS 496.118, there are established within the State Fish and Wildlife Department 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 commission has regulatory jurisdiction. [1975 c.253 §11]

496.125 [Repealed by 1973 c.723 §130]

496.128 Reports by commission. (1) The 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. [1973 c.723 §11]

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

496.135 [Repealed by 1973 c.723 §130]

496.138 General duties and powers; rulemaking authority. (1) The commission has the authority to formulate and implement the policies and programs of this state for the management of wildlife, and may perform all acts necessary to administer and carry out the provisions of the wildlife laws.

(2) In accordance with any applicable provision of ORS 183.310 to 183.500, the commission may promulgate rules to carry out the provisions of the wildlife laws. [1973 c.723 §12]

496.140 [Repealed by 1973 c.723 §130]

496.145 [Repealed by 1973 c.723 §130]

496.146 Discretionary duties and powers. In addition to any other duties or powers provided by law, the 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, 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.

(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 \$10.

(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. [1973 c.723 §13; 1977 c.177 §1; 1977 c.668 §1]

496.150 [Repealed by 1973 c.723 §130]

496.154 Limitation on authority to condemn certain farm use property. (1) The 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 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. (1) After investigation of the supply and condition of wildlife, the 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 or trapping 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, 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, 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, hunting and trapping of any wildlife species, and establishing procedures for regulating the number of persons eligible to participate in such angling, 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. [1973 c.723 §14; 1975 c.791 §1]

496.165 [Repealed by 1973 c.723 §130]

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

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

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

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]

496.195 [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]

496.205 [Amended by 1961 c.343 §3; repealed by 1973 c.723 §130]

496.210 [Repealed by 1973 c.723 §130]

496.215 [Repealed by 1973 c.723 §130]

496.220 [Repealed by 1973 c.723 §130]

496.225 [Repealed by 1973 c.723 §130]

496.230 [1957 c.119 §2; repealed by 1973 c.723 §130]

496.235 [Repealed by 1973 c.723 §130]

496.240 [Amended by 1959 c.371 §3; 1963 c.154 §3; 1965 c.74 §4; repealed by 1973 c.723 §130]

496.245 [Repealed by 1973 c.723 §130]

496.250 [Repealed by 1971 c.418 §23]

STATE WILDLIFE FUND; RECEIPTS AND EXPENDITURES

496.300 State Wildlife Fund; uses. (1) The State Wildlife Fund is established as an account in the General Fund of the State Treasury. Except as otherwise provided by law, all moneys received by the commission pursuant to the wildlife laws, except such as may be required as a revolving fund for payroll and emergency expenses, shall be paid into the State Treasury and credited to the account. All moneys in the account are appropriated continuously to the commission to carry out the wildlife laws.

(2) An amount of the State Wildlife Fund equal to the amounts accruing from licenses issued pursuant to paragraphs (c) and (d) of subsection (1) of ORS 497.121 that are used for ocean salmon angling purposes, less the cost of issuing and processing the licenses shall be available only for propagation, management and research projects related to anadromous fish.

(3) The commission shall keep a record of all moneys deposited in the State Wildlife Fund. The record shall indicate by separate cumulative accounts the source from which the moneys are derived and the individual activity or program against which each withdrawal is charged. [1973 c.723 §15; 1975 c.118 §1; 1975 c.253 §12]

496.305 [Amended by 1959 c.692 §6; 1971 c.446 §1; repealed by 1973 c.723 §130]

496.310 [Amended by 1959 c.692 §7; repealed by 1967 c.451 §32]

496.311 Limitation on size of revolving fund. Notwithstanding any other provision of law, the revolving fund referred to in ORS 496.300 shall not exceed \$40,000. [1975 c.545 §9; 1979 c.461 §7]

496.315 [Amended by 1959 c.692 §8; 1967 c.451 §23; 1971 c.446 §2; repealed by 1973 c.723 §130]

496.320 [Amended by 1959 c.692 §9; 1971 c.446 §3; 1971 c.658 §6; repealed by 1973 c.723 §130]

496.325 [Amended by 1971 c.446 §4; 1971 c.658 §6a; repealed by 1973 c.723 §130]

496.330 [Amended by 1971 c.658 §7; repealed by 1973 c.723 §130]

496.335 [Repealed by 1973 c.723 §130]

496.340 Payments to counties in lieu of taxes. (1) Except as provided in subsection (3) of this section, whenever real property owned by the commission is exempt from taxation on July 1 of any year by reason of its ownership by the state, the commission shall pay to the county in which the property is situated an amount equal to the ad valorem taxes which would have been levied against the property if it had been assessed to a taxable owner as of January 1 of such year as provided in subsection (2) of this section. The county assessor shall determine the value of such property at its value for farm use as provided in ORS 308.370 or for forest land use, whichever is applicable, and shall notify the commission of his determination. Upon request of the commission, the Department of Revenue shall review the determination of value and shall redetermine the value if it concludes the value initially determined was substantially incorrect.

(2) (a) Except as provided in paragraph (b), (c) or (d) of this subsection, the value of the property shall be computed at its value for farm use as provided in ORS 308.370 or for forest land use, whichever is applicable, plus the percentage of the difference between that use and fair market value of the property for each year as listed below:

1972	90 percent
1973	80 percent
1974	70 percent
1975	60 percent
1976	50 percent
1977	40 percent
1978	30 percent
1979	20 percent
1980	10 percent
1981 and subsequent years	0 percent.

(b) Paragraph (a) of this subsection shall not apply if the difference between farm use as provided in ORS 308.370 or forest land use, whichever is applicable, and the fair market value of the property for other than farm use or forest land use is \$5,000 or less as of September 9, 1971, for property presently owned and on the date of acquisition for property which is acquired after September 9, 1971. The property described in this paragraph shall

be valued for purposes of this section at its value for farm use as provided in ORS 308.370 or for forest land use, whichever is applicable.

(c) Paragraph (a) or (b) of this subsection shall not apply to any property upon which open field burning takes place. If open field burning takes place on any property described in this section, the property shall be valued at its highest and best use rather than the values authorized in paragraphs (a) and (b) of this subsection on the January 1 following the date of the open field burning. If in the next year, the open field burning is discontinued, paragraph (a) or (b) of this subsection shall apply the next January 1 and each year thereafter as long as no open field burning occurs.

(d) Paragraph (a) of this subsection shall not apply to any property acquired by the commission after September 9, 1971, if such property was valued for ad valorem tax purposes at its value for farm use as provided in ORS 308.370 or for forest land use, at the time the property was acquired by the commission. However, no payments in lieu of taxes made to a county pursuant to this section prior to January 1, 1974, shall be refunded to the commission.

(3) This section does not apply to real property used for bird farms, fish hatcheries, office quarters, fishing access sites or impoundments, capital improvements or real property acquired pursuant to the Act of May 19, 1948 (62 Stat. 240) Public Law 80-537.

(4) The amount prescribed in subsection (1) of this section shall be determined annually by the assessor of the county in which the property is situated and certified by him to the county court or the board of county commissioners. A notice of the determination, signed by the county judge or the chairman of the board of county commissioners, shall be mailed to the principal office of the commission not later than October 15. The notice shall contain a statement of the value of the property and a complete explanation of the method used in computing the amount claimed pursuant to subsection (1) of this section. Not later than November 15, the commission shall pay each amount, less a discount equivalent to that which is provided in ORS 311.505. Payment shall be made to the county treasurer who shall distribute the payment to the taxing districts of the county in accordance with the schedule of percentages computed under ORS 311.390.

(5) Notwithstanding any other provision of the wildlife laws, there is appropriated annually from the moneys in the State Wildlife Fund in the State Treasury such amounts as are necessary for the purpose of making the payments to counties required by this section. [Amended by 1955 c.729 §1; 1971 c.356 §1; 1971 c.474 §1; 1973 c.723 §16]

496.345 [1959 c.692 §5; 1963 c.481 §1; part renumbered 506.345; repealed by 1971 c.446 §11]

NONGAME WILDLIFE

496.375 "Nongame wildlife" defined. As used in ORS 396.380 to 496.390 "nongame wildlife" means all wildlife species over which the State Fish and Wildlife Commission has jurisdiction, except game mammals, as defined in ORS 496.004, fur-bearing mammals as defined in ORS 496.004, game birds as defined in ORS 496.007 and game fish as defined in ORS 496.009. [1979 c.566 §1]

496.380 Designation of tax refunds to finance program. (1) Each resident individual taxpayer who files an Oregon income tax return and who will receive a tax refund from the Department of Revenue may designate that a contribution be made to the Nongame Wildlife Fund by marking the appropriate box printed on the return pursuant to subsection (2) of this section.

(2) The Department of Revenue shall print on the face of the Oregon income tax form for residents a space for a taxpayer to designate that a contribution be made to the Nongame Wildlife Fund from that taxpayer's income tax refund. The space for designating the contribution shall be in substantially the following form:

OREGON NONGAME WILDLIFE FUND.
 I wish to contribute \$1 \$3 \$5 of my
TAX REFUND TO THE NONGAME WILDLIFE FUND.

(3) This section shall apply to taxable years beginning on or after January 1, 1979. [1979 c.566 §2]

496.385 Nongame Wildlife Fund created; continuous appropriation for program purposes. (1) There is established in the General Fund of the State Treasury a Nongame Wildlife Fund consisting of all moneys transferred to it under this section. The Director of the Department of Revenue

shall transfer to the fund an amount equal to the total amount designated by individuals to be paid to the fund under ORS 496.380.

(2) Moneys contained in the Nongame Wildlife Fund are continuously appropriated for the purposes specified in ORS 496.390.

[1979 c.566 §3]

496.390 Control over fund by department; use of moneys. The State Department of Fish and Wildlife shall have access to and control of the moneys held in the Nongame Wildlife Fund, but shall use such moneys only to protect and preserve nongame wildlife and their habitat. [1979 c.566 §4]

496.405 [Amended by 1971 c.658 §7a; repealed by 1973 c.723 §130]

496.410 [Repealed by 1973 c.723 §130]

496.415 [Amended by 1971 c.658 §8; repealed by 1973 c.723 §130]

496.420 [1959 c.146 §1; repealed by 1973 c.723 §130]

WILDLIFE COOPERATION; FEDERAL WILDLIFE AID

496.505 [Formerly 497.505; 1961 c.343 §1, repealed by 1973 c.723 §130]

496.510 Assent to federal wildlife-restoration statute; duty of commission with regard thereto. The State of Oregon assents to the Act of Congress entitled, "An Act to provide that the United States shall aid the states in wildlife-restoration projects, and for other purposes," approved September 2, 1937, Public No. 415, 75th Congress (50 Stat. 917, 16 U.S.C.A. s. 669). The State Fish and Wildlife Commission shall perform such acts as may be necessary to the conduct and establishment of cooperative wildlife-restoration projects, as defined in said Act of Congress, in compliance with said Act and with rules and regulations promulgated by the Secretary of the Interior thereunder.

496.515 [Amended by 1971 c.658 §9; repealed by 1973 c.723 §130]

496.520 [Repealed by 1973 c.723 §130]

496.525 Federal fish restoration and management aid; powers of commission with regard thereto. (1) The State of Oregon assents to the provisions of the Act of Congress entitled, "An Act to provide that the United States shall aid the states in fish restoration and management projects, and for other purposes," approved August 9, 1950,

Public Law No. 681, 81st Congress (64 Stat. 430, 16 U.S.C.A. s. 777).

(2) The State Fish and Wildlife Commission shall perform such acts as may be necessary to the conduct and establishment of cooperative fish restoration projects, as defined in said Act of Congress, in compliance with said Act and rules and regulations promulgated thereunder by the Secretary of the Interior.

WILDLIFE LAW ENFORCEMENT AND ENFORCEMENT OFFICERS

496.605 Enforcement of wildlife laws by State Fish and Wildlife Director, deputies and peace officers. The State Fish and Wildlife Director and any of his deputies and all other peace officers of this state or any political subdivision thereof have jurisdiction of and may enforce any of the provisions of the wildlife laws. [Amended by 1973 c.723 §17]

496.610 State police to enforce wildlife laws; enforcement expense paid from wildlife fund. (1) The Department of State Police shall employ a sufficient number of state police to enforce the wildlife laws.

(2) The services and expenses of the Department of State Police incurred in the enforcement of the wildlife laws shall be paid from the State Wildlife Fund.

(3) The members of the state police assigned to enforce the wildlife laws shall be selected from names suggested by the commission. If the commission fails to submit sufficient qualified nominees for such positions, the Department of State Police shall make its own selections. [Amended by 1971 c.658 §10; 1973 c.723 §18]

496.615 Commission employes to supplement state police. The commission, with the approval of the Governor and Superintendent of State Police, may employ such persons as they deem necessary or expedient for the enforcement of the wildlife laws. The services and expenses of these persons are payable out of the State Wildlife Fund. It is the intention of this section and ORS 496.610 that the commission employ only such persons as agreed upon between the commission, the Governor and the Superintendent of State Police, and that the duties of wildlife law enforcement, so far as is economical and practicable, be performed by the Department of State Police. [Amended by 1973 c.723 §19]

496.620 Nonliability of law enforcement officers. No person authorized to enforce the wildlife laws shall suffer any civil liability for the enforcement or attempted enforcement of any provisions of the wildlife laws or for the exercise or attempted exercise of any of the duties or privileges granted to or imposed by law upon the commission or such persons. [Amended by 1971 c.658 §11; 1973 c.723 §20]

496.625 [Amended by 1971 c.658 §12, repealed by 1973 c.723 §130]

496.630 District attorneys to prosecute criminal cases; jurisdiction of courts. (1) Upon information or complaint of the commission, any person authorized to enforce the wildlife laws or any private person as provided in ORS 496.905, district attorneys shall prosecute every criminal case in which it appears that there has been a violation of the wildlife laws or any rule promulgated pursuant thereto.

(2) Unless otherwise specifically provided, justice courts and district courts have concurrent jurisdiction in the first instance with the circuit court of all wildlife law offenses.

[Amended by 1959 c.352 §1; 1959 c.692 §10; 1967 c.523 §6; 1973 c.723 §21]

496.635 [Amended by 1971 c.658 §13, repealed by 1973 c.723 §130]

496.640 Service of process by law enforcement personnel. The persons mentioned in ORS 496.645 have all powers and rights of a peace officer in serving warrants, subpoenas or other legal process in the enforcement of the wildlife laws. [Amended by 1971 c.658 §14, 1973 c.723 §22]

496.645 Arrest without warrant of violators; trial. Any person authorized to enforce the wildlife laws may, without warrant, arrest any person violating any of the wildlife laws, and take the person before any court having jurisdiction of the offense. The court shall proceed without delay to hear, try and determine the matter and enter judgment according to allegations and proofs. [Amended by 1971 c.658 §15; 1973 c.723 §23]

496.650 Issuance of citation to violator. Should any person making an arrest mentioned in ORS 496.645 for the violation of the wildlife laws desire not to forthwith take the person arrested before the justice of the peace or judge having jurisdiction or desire not to immediately take the arrested person

into custody, the person making the arrest may issue a citation to the person arrested.

[Amended by 1973 c.723 §24]

496.655 [Repealed by 1973 c.723 §130]

496.660 Search by law enforcement personnel; institution of proceedings. (1) Any person mentioned in ORS 496.645 may search any person, and examine any boat, automobile, aircraft, conveyance, vehicle, game bag, game coat or other receptacle for wildlife, or cold storage rooms, warehouses, taverns, boarding houses, restaurants, club rooms, outhouses, saloons, depots, hotels and all other places, except private dwelling houses, wherein wildlife may be kept or sold, and examine all packages and boxes held either for storage or shipment which they have reason to believe contain evidence of violations of the wildlife laws.

(2) Any hindrance or interference to such search is prima facie evidence of a violation of law by parties who hindered or interfered, or attempted to hinder or interfere, in the search or examination.

(3) If upon diligent search or inquiry or both, the person can discover evidence sufficient in his judgment to secure a conviction, or if the person has cause to believe he has sufficient evidence to justify it, he shall at once institute proceedings against the alleged offenders. [Amended by 1971 c.658 §16; 1973 c.723 §26]

496.665 Issuance of search warrants; places searched; use and disposition of seized property. (1) Any court having jurisdiction of the offense, upon receiving proof or probable cause for believing in the concealment of any wildlife taken, killed or had in possession, under control, or shipped contrary to the wildlife laws, shall issue a search warrant and cause a search to be made in any place, and to that end cause any building, inclosure, car, automobile, boat, apartment, chest, box, parcel, crate or basket to be opened and the contents examined by any person authorized to enforce the wildlife laws.

(2) All wildlife, or parts thereof, thus discovered shall be held by the commission as evidence against any party accused of the crime in connection therewith.

(3) Upon conviction of the parties accused, such wildlife, or parts thereof, shall be disposed of by the commission. Any funds arising

from the disposal shall become a part of the State Wildlife Fund. [Amended by 1971 c.658 §17; 1973 c.723 §27]

496.670 Arrests and searches made on Sunday. The arrests and searches mentioned in ORS 496.645 and 496.660 may be made on Sunday. In this event the persons arrested shall be taken before any justice of the peace or judge having jurisdiction, who shall bind over the persons arrested to appear and be proceeded against as soon as may be on week day following the arrest.

496.675 Seizure without warrant by law enforcement personnel. The persons mentioned in ORS 496.645 may at any time, without warrant, seize and take possession of:

(1) Any wildlife which has been caught, taken or killed, or had in possession or under control, which have been killed, had in possession or shipped, at any time, in any manner or for any purpose contrary to the wildlife laws.

(2) Any guns, boats, fishing or other apparatus used for the purpose of hunting or fishing, at any time, in any manner or for any purpose contrary to the wildlife laws. [Amended by 1971 c.658 §18; 1973 c.723 §28]

496.680 Seizure of unlawful devices and unlawfully taken wildlife; forfeiture and disposition. (1) All wildlife taken by, or in the possession of any person in violation of the wildlife laws, and all guns, boats, traps, fishing apparatus and implements used in angling, hunting or trapping or taking any wildlife in violation of the wildlife laws may be seized by any person authorized to enforce the wildlife laws, and may be forfeited.

(2) If forfeited, such property shall be turned over to the commission by order of the court at the time of passing sentence or for forfeiture of bail for the violation.

(3) The commission may dispose of such property in any manner it considers proper, but any moneys derived from the sale of any seized guns, boats, traps, fishing apparatus or implements shall be deposited in the State Wildlife Fund. Any wildlife taken in violation of the wildlife laws may be disposed of forthwith or used for food purposes, under rules of the commission, to prevent spoilage. [Amended by 1971 c.658 §19; 1973 c.723 §29]

496.685 [Repealed by 1971 c.743 §432]

496.690 Possession of wildlife as evidence of illegal taking. The fact that any person has any wildlife, or any part thereof, in

possession when it is illegal to take or have same is prima facie evidence that such person killed such wildlife illegally. [Amended by 1971 c.658 §20]

496.695 Counseling, aiding or sharing in violation. Any person who counsels, aids or assists in any violation of the wildlife laws, or shares in any of the proceeds of such violation by receiving or possessing any wildlife, shall incur the penalties provided for the person guilty of such violation. [Amended by 1971 c.658 §21; 1973 c.723 §30]

496.700 Investigating violations; summoning witnesses. (1) Where the commission has been furnished information of the violation of any of the wildlife laws, the commission, or one especially authorized by it, may proceed to the place where the offense is said to have been committed and summon and examine under oath witnesses to ascertain the facts and to avoid useless and frivolous indictments or prosecutions.

(2) Witnesses shall be paid by the commission from the State Wildlife Fund at the rate of \$5 per day and mileage from their places of residence at the rate of eight cents per mile.

(3) No witness so summoned shall refuse to attend or testify under this section. [Amended by 1971 c.658 §22; 1973 c.723 §31]

496.705 Damage suits for knowingly unlawful killing of wildlife; jurisdiction of courts. (1) The commission may institute suit for the recovery of damages for the knowingly unlawful killing of any of the wildlife referred to in subsection (2) of this section that are the property of the state.

(2) The damages referred to in subsection (1) of this section shall be as follows:

(a) Any game mammal other than silver gray squirrel, not less than \$100 nor more than \$300.

(b) Any silver gray squirrel, not less than \$2 nor more than \$5.

(c) Any game bird, not less than \$2 nor more than \$5.

(d) Any game fish, not less than \$1 nor more than \$100.

(e) Any other wildlife protected by the wildlife laws or the laws of the United States, not less than \$2 nor more than \$300.

(3) Such civil liability shall be in addition to other penalties prescribed by the wildlife laws for the unlawful killing of wildlife.

(4) Any district or justice court has jurisdiction to try any case for the recovery of damages for the killing of any of the wildlife as provided by this section. [Amended by 1961 c.343 §4; 1969 c.302 §1; 1973 c.723 §32]

496.710 Compelling testimony in enforcement proceedings. In any action or proceeding for the enforcement of any of the provisions of the wildlife laws, or in any investigation before a grand jury, district attorney or other officer, or any criminal proceeding, no person shall be excused from testifying concerning any offense committed by another or by himself on the ground that his testimony may incriminate him. However, such testimony shall not be used against him in any prosecution for any crime or misdemeanor under the laws of the state, nor shall he be subject to any criminal prosecution or any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he has been compelled to testify or to produce evidence, documentary or otherwise. [Amended by 1971 c.658 §23; 1973 c.723 §33]

496.715 Disposition of fines and confiscation sale proceeds. (1) One-half of all fines imposed in justice or district courts as provided in the wildlife laws, and collected in money shall be paid to the treasurer of the county in which the action or proceedings were commenced and credited to the general fund of the county. The district attorney of the county, upon payment of any judgment, shall satisfy it of record as attorney for the state. The other one-half of such moneys shall be paid by the justice or district courts to the Department of Revenue, who shall deposit these moneys in the State Wildlife Fund.

(2) All moneys arising from the sale of confiscated property under the provisions of the wildlife laws, shall be paid to the Department of Revenue. The Department of Revenue shall deposit these moneys in the State Wildlife Fund.

(3) Payment of fines and sale proceeds under this section shall be made within the first 20 days of the month following the month in which collected. [Amended by 1959 c.530 §8; 1961 c.391 §1; 1971 c.186 §5; 1973 c.723 §34]

**WILDLIFE AND COMMERCIAL
FISHING LAW OFFENSE
PROCEDURE**

496.905 Citation for violation of wildlife or commercial fishing laws or rules; form of complaint. (1) A citation conforming to the requirements of this section shall be used by individuals authorized to enforce any of the provisions of the wildlife and commercial fishing laws and rules adopted under those laws and for citing any violations thereof.

(2) The citation shall consist of at least four parts. Additional parts may be inserted by law enforcement agencies for administrative use. The required parts are:

- (a) The complaint.
- (b) The abstract of record.
- (c) The police record.
- (d) The summons.

(3) Each of the parts shall contain the information or blanks required by rules of the Supreme Court under ORS 1.525.

(4) The complaint shall contain a form of certificate in which the complainant shall certify, under penalties of false swearing provided in ORS 162.075, that the complainant has reasonable grounds to believe, and does believe, that the person cited committed the offense contrary to law or rule. The certification if made by a police officer need not be made before a magistrate or any other person. A private person shall certify before a magistrate, clerk or deputy clerk of the court and this action shall be entered in the court record. A certificate conforming to this section shall be deemed equivalent of a sworn complaint.

(5) The complaint shall be set aside by the court upon the motion of the defendant before plea when it does not conform to the requirements of this section. This section does not prohibit the use of a uniform citation for other offenses in addition to wildlife or commercial fishing law offenses. [1967 c.604 §1; 1969 c.59 §1; 1971 c.388 §3; 1973 c.723 §35; 1979 c.477 §11]

496.910 Private person may commence action. A private person may commence an action for a violation of the wildlife and commercial fishing laws and rules adopted under those laws, as provided in subsection (4) of ORS 496.905. [1967 c.604 §2; 1973 c.723 §36; 1979 c.477 §12]

496.915 Contents of summons. A summons in an alleged violation of the wildlife and commercial fishing laws and rules promulgated pursuant thereto is sufficient if it

contains the following:

(1) The name of the court, the name of the person cited, the date on which the citation was issued, the name of the complainant and the time and place at which the person cited is to appear in court.

(2) A statement or designation of the offense in such manner as can be readily understood by a person making a reasonable effort to do so, and the date, time and place at which the offense is alleged to have occurred.

(3) A notice to the person cited that a complaint will be filed with the court based on the offense.

(4) The amount of bail, if any, fixed for the offense. [1967 c.604 §3; 1973 c.723 §37]

496.920 Contents of complaint. Except as provided in this section, a complaint in an alleged violation of the wildlife and commercial fishing laws and rules adopted under those laws is sufficient if it contains the following:

(1) The name of the court, the name of the state or of the city or other public body in whose name the action is brought and the name of the defendant.

(2) A statement or designation of the offense in such manner as can be readily understood by a person making a reasonable effort to do so and the date, time and place at which the offense is alleged to have occurred.

(3) A certificate as provided in subsection (4) of ORS 496.905 signed by the complainant. [1967 c.604 §4; 1973 c.723 §38; 1979 c.477 §13]

496.925 Delivery of summons and complaint. An officer issuing the citation shall cause the summons to be delivered to the person cited and shall cause the complaint to be delivered to the court. When the complaint is certified by a private person the court shall cause the summons to be delivered to the defendant. [1967 c.604 §5]

496.927 Forwarding of citation and court disposition information to Department of State Police. (1) Each person who enforces the wildlife laws or commercial fishing laws shall cause the portion of the citation referred to in paragraph (c) of subsection (2) of ORS 496.905, or a copy thereof, to be forwarded to the Department of State Police.

(2) When a person is convicted of violation of any provision of the wildlife laws or commercial fishing laws, or any rule promulgated pursuant thereto, or forfeits bail in connection

therewith, the court in which such conviction or forfeiture occurs shall forward to the Department of State Police an abstract of record of the conviction or forfeiture. [1977 c.350 §2; 1979 c.477 §14]

496.930 Appearance of defendant; return of summons and bail in lieu of appearance. The defendant shall either appear in court at the time indicated in the summons, or prior to such time shall deliver to the court the summons, together with check or money order in the amount of the bail set forth in the summons, and inclosing therewith:

(1) A request for a hearing; or

(2) A statement of matters in explanation or mitigation of the offense charged; or

(3) The executed appearance, waiver of hearing and plea of guilty appearing on the summons. [1967 c.604 §6]

496.935 Effect of defendant's written statement. If a defendant has submitted to the court a written statement as provided in subsection (2) of ORS 496.930, it constitutes a waiver of hearing and consent to judgment by the court declaring a forfeiture of bail on the basis of such statement and any testimony or written statement of the arresting officer or other witnesses which may be presented to the court. [1967 c.604 §7]

496.940 Hearing on request of defendant; notice. If the defendant requests a hearing, or if pursuant to ORS 496.945 the court directs that a hearing be had, the court shall fix a date and time for the hearing and, unless notice is waived, shall at least five days in advance of the hearing mail to the defendant notice of the date and time so fixed. [1967 c.604 §8]

496.945 Judgment. In any case the court may direct that a hearing be held. Otherwise, the court may enter the appropriate judgment, impose a fine, direct that the fine be paid out of the bail deposited by the defendant and remit to the defendant any amount by which the bail exceeds the fine. No sentence to jail may be imposed, nor any fine imposed in excess of the bail deposited by the defendant, unless a hearing is held. [1967 c.604 §9]

496.950 Warrant of arrest when defendant fails to comply; not to be issued later than 60 days after forfeiture of defendant's security. (1) If a person cited fails

to comply with the provisions of ORS 496.930, or if he fails to appear at any time fixed by the court, a warrant for his arrest may be issued. A warrant issued by a circuit, district or justice court may be served, without further indorsement, in any county in this state.

(2) No warrant of arrest may be issued pursuant to this section after a period of 60 days from the date of the entry of an order declaring a forfeiture of bail or other security given by the arrested person. Unless a warrant has been issued before the expiration of that period, the order of forfeiture shall be deemed a final disposition of the case. [1967 c 604 §10]

PENALTIES

496.990 [Amended by 1967 c.523 §1; repealed by 1973 c.723 §130]

496.992 Penalties. (1) Except as otherwise provided by law, violation of any provision of the wildlife laws, or any rule promulgated pursuant thereto, is a Class A misdemeanor. If the defendant is sentenced to pay a fine, failure to pay the fine, or any portion thereof, shall be treated as provided in ORS 161.685.

(2) In lieu of the fine provided in ORS 161.635, and in addition to the imprisonment provided in ORS 161.615, the taking of game fish with a total value of \$200 or more or the taking of antelope, black bear, cougar, deer, elk, moose, mountain goat or mountain sheep in violation of the wildlife laws or any rule promulgated pursuant thereto which occurs

between one hour prior to and one hour subsequent to a season established under ORS 496.162 for the lawful taking of such game mammals or game fish is punishable as follows:

(a) For the first conviction, a fine not to exceed \$1,000.

(b) For the second conviction within a 10-year period, a fine not to exceed \$1,500.

(c) For the third conviction within a 10-year period, a fine not to exceed \$2,000.

(d) For the fourth and subsequent convictions within a 10-year period, a fine not to exceed \$2,500.

(3) The second and each subsequent conviction within a 10-year period for the taking of game fish with a total value of \$200 or more or the taking of antelope, black bear, cougar, deer, elk, moose, mountain goat or mountain sheep in violation of the wildlife laws or any rule promulgated pursuant thereto which occurs more than one hour prior to or more than one hour subsequent to a season established for the lawful taking of such game mammals or game fish is a Class C felony.

(4) In addition to the penalties of subsections (2) and (3) of this section, all wildlife taken by, or in the possession of any person sentenced under subsection (2) of this section and all guns, traps, hunting and angling apparatus used in the violation may be seized by persons authorized to enforce the wildlife laws and may be ordered forfeited by the court in which the conviction occurs. [1973 c.723 §39; 1975 c.578 §3; 1977 c.350 §3; 1977 c.353 §1]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
October 1, 1979.

Thomas G. Clifford
Legislative Counsel

