Chapter 509

1991 EDITION

General Protective Regulations

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DEFINITIONS

509.001 Definitions. The definitions prescribed by ORS 506.001 to 506.025 apply to this chapter. [1965 c.570 §91]

TAKING, POSSESSING, BUYING, SELLING AND TRANSPORTING FOOD FISH

509.005 [Repealed by 1965 c.570 §152]

509.006 General prohibition regarding taking, possessing, buying, selling or handling food fish. It is unlawful to take, possess, buy, sell or otherwise handle any food fish in or from any waters of this state, during times, in a manner or by means of the fishing gear prohibited by law. [1965 c.570 §92]

509.010 [Repealed by 1965 c.570 §152]

509.011 Prohibited activities during closed season. (1) It is unlawful, during a closed season on any of the waters of this state, to:

(a) Take or transport food fish taken in or upon such waters.

(b) Make use of a boat or any fishing gear to take or transport food fish taken in such waters.

(c) Have, leave or cause to be left in such waters any fishing gear in a condition to take food fish.

(2) It is unlawful to:

(a) Buy, receive, possess or sell food fish unlawfully caught during a closed season.

(b) Make use of a vehicle of any kind whatsoever for transporting, or intended to be used for transporting, in any place, food fish unlawfully taken during a closed season, or unlawfully brought into this state. [1965 c.570 §93]

509.015 Forfeiture of boat, vessel or fishing gear unlawfully used; seizure and disposition of food fish unlawfully taken. (1) In addition to the penalty prescribed by ORS 506.991, any person convicted of violating ORS 509.011 shall forfeit the boat, vessel, vehicle and fishing gear unlawfully used, in the manner provided by ORS 506.655 to 506.680, 506.695 and 506.700, and the clear proceeds of the property forfeited shall be deposited with the State Treasury in the Common School Fund.

(2) All food fish taken, transported or possessed in violation of ORS 509.011 are subject to seizure by the director, a deputy fish or game warden or a member of the state police, either with or without arrest. Upon such seizure, the fish are subject to forfeiture and disposition pursuant to ORS 506.690. [Amended by 1957 c.133 §1; 1965 c.570 §95; 1977 c.652 §8; 1987 c.858 §9]

509.019 Consumption of catch at sea lawful without payment of fee. Notwithstanding any other provision of law, an individual lawfully engaged in commercial fishing, while at sea, may consume a portion of the lawful commercial catch, without payment of the fees required under ORS 508.505. [1987 c.178 §2; 1991 c.701 §18]

509.020 [Repealed by 1965 c.570 §152]

509.025 Selling or transporting food fish taken by angling. It is unlawful to sell within this state, or transport out of this state for the purpose of sale, food fish taken from any waters of this state by means of angling. [Amended by 1965 c.570 §94; subsection (2) enacted as 1965 c.570 §107; 1977 c.242 §6]

509.030 [Amended by 1965 c.570 §99; 1969 c.411 §3; repealed by 1975 c.1 §1 (509.031 enacted in lieu of 509.030)]

509.031 Rainbow trout as game fish; return to water of incidental commercial catch. (1) It shall be the policy of the State of Oregon that rainbow trout, Oncorhynchus mykiss, including steelhead trout are game fish, and shall be managed to provide recreational angling for the people and to protect wild native stocks. Recognizing that rainbow trout are sometimes intermingled with food fish, the commission shall regulate to minimize the incidental catch of rainbow trout that may be taken under subsection (2) of this section by commercial fishing gear, including but not limited to regulations as to season, gear and area.

(2) Any rainbow trout, Oncorhynchus mykiss, including steelhead trout taken as an incidental catch, by any person fishing commercially shall be returned immediately to the water and shall not be bought or sold within the state.

(3) Nothing in this section is intended to affect Indian fishing rights as granted by federal treaties. [1975 c.1 §2 (enacted in lieu of 509.030); 1987 c.199 §1; 1991 c.47 §1]

509.035 [Repealed by 1965 c.570 §152]

509.036 [1973 c.500 §§6, 7; repealed by 1975 c.416 §2]

509.040 Small or immature salmon protected; exceptions. (1) Any person who takes any immature salmon of any variety less than 20 inches in length, or any mature salmon of any variety less than 15 inches in length, by any means other than angling, shall immediately return such salmon alive to the water.

(2) It is unlawful to:

(a) Take, buy, sell or possess immature salmon less than 20 inches or mature salmon less than 15 inches in length, taken in any waters of this state, at any time or in any manner except by angling.

(b) Take, molest, kill or injure, in any manner at any time, or expose for sale or

have in possession, except for the purpose of propagation when authorized by law, any spawning salmon.

(3) Notwithstanding subsections (1) and (2) of this section it is lawful to take precocious salmon commonly called jack salmon less than 15 inches in length from the waters of this state, except the Pacific Ocean and to buy, sell or possess such salmon.

(4) To further protect immature salmon the commission may establish by rule a minimum size for any species of salmon which is greater than 20 inches. [Amended by 1965 c.570 §97]

509.045 [Amended by 1965 c.570 §98; repealed by 1981 c.365 §23]

509.050 [Repealed by 1965 c.570 §152]

509.055 [Repealed by 1965 c.570 §152]

509.060 [Amended by 1965 c.570 §96; renumbered 509.185]

509.065 [Amended by 1959 c.254 §1; 1965 c.570 §101; renumbered 509.112]

509.070 Selling, canning, processing or preserving food fish out of water longer than 60 hours. It is unlawful to sell, can, process or preserve for food any food fish that have been removed from the water for a longer period than 60 hours, unless such fish have been artificially chilled. [Amended by 1965 c.570 §102]

509.075 Packing or selling food fish unfit for human consumption. If the commission or its authorized representatives finds that food fish about to be processed, packed, canned, preserved in ice or sold in the open market are unfit for human consumption, it or they shall notify the packer or possessor of such fish of the fact. If, in spite of any warning given to such packer or possessor, such fish are packed, demand shall be made upon the packer to keep such fish separate and apart from the balance of the output or pack of the packer, and a full report shall be made of the matter to both the state and the federal health authorities. [Amended by 1965 c 570 §103]

509.080 [Repealed by 1965 c.570 §152]

509.090 [Repealed by 1965 c 570 §152]

509.095 [Repealed by 1953 c.364 §3]

509.100 [Repealed by 1953 c.364 §3]

509.105 Possession, importation or transportation of food fish unlawfully taken in other state. It is unlawful to possess, import into this state or transport within this state any food fish which have been unlawfully taken or transported under the laws of another state. [Amended by 1957 c.291 §1; 1965 c.570 §108]

509.110 Fish transporters to require statement from shipper; examination by commission. (1) All transportation companies, common carriers or other persons or agencies transporting food fish, fresh, frozen, salted, smoked, kippered or preserved in ice, shall require of the shipper, before accepting such shipments, a signed statement in writing showing:

(a) The name of the consignor or shipper.

(b) The name of the consignee.

(c) The net weight in pounds of each species of fish in the shipment, in the whole or round, or dressed.

(d) The date of the shipment.

(2) The commission may require such statement to be forwarded to its office.

(3) The director or the authorized representative of the director may at any time examine the records of any such transportation companies, common carriers or other persons or agencies, for the purpose of enforcing this section. [Amended by 1965 c.570 §109]

WASTING, INJURING AND DESTROYING FISH

509.112 Wasting food fish. It is unlawful for any person wantonly to waste or destroy any food fish. [Formerly 509.065]

509.115 Placing in waters fish harmful to food fish. It is unlawful, without written authority from the 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. [Amended by 1965 c.570 §105]

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 director. [Amended by 1965 c.570 §106]

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. [1965 c.570 §110]

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. [Amended by 1965 c.570 §111]

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. [Amended by 1963 c.112 §1; 1965 c.570 §112]

509.135 [Repealed by 1965 c.570 §152]

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 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. [Amended by 1963 c.112 §2; 1965 c.570 §113]

509.145 [Repealed by 1965 c.570 §152]

509.150 Use by commission of explosives or substances to destroy predatory fish. Nothing in ORS 509.125 to 509.155 prevents the commission from using any explosives or substances deleterious to fish for the purpose of destroying German carp or any other predatory fish inimical to food fish, or from carrying out any of the commercial fishing laws. [Amended by 1965 c.570 §114]

509.155 Possession of fish taken by explosives or harmful substance justifies arrest; burden of proof. Having in possession any food fish under circumstances which make it reasonable to believe that they were taken by means of explosives or substances deleterious to fish justifies the arrest of the person having the fish in possession. It is then incumbent upon such person to prove and show that the fish were taken by lawful means. [Amended by 1965 c.570 §115]

509.185 [Formerly 509.060; repealed by 1971 c.658 §32]

FISHING GEAR

509.205 [Repealed by 1965 c.570 §152]

509.206 [1965 c.570 §116; repealed by 1969 c.357 §2]

509.210 [Repealed by 1965 c.570 §152]

509.215 [Repealed by 1965 c.570 §152]

509.216 Fixed fishing gear unlawful for taking food fish; exceptions. (1) Except as provided in subsection (2) of this section, it is unlawful to take food fish by means of fixed fishing gear or seines in any of the waters of this state.

(2) The commission by rule may permit fixed fishing gear or seines for the taking of certain species of food fish other than salmon or steelhead from the waters of this state. In enacting any such rule the commission shall give due consideration to insuring that the use of such fishing gear will not restrict the free migration or impair the ultimate supply of salmon or steelhead. Any salmon or steelhead taken as an incidental catch in operation of such gear shall immediately, with care and the least possible injury to the salmon or steelhead, be released and transferred to the water without violence. [1965 c.570 §117; 1969 c.357 §1]

509.220 [Repealed by 1965 c.570 §152]

509.225 [Repealed by 1965 c.570 §152]

509.230 Possession of fish taken by lawful gear from Pacific Ocean outside Oregon jurisdiction; taking salmon only by troll within Oregon jurisdiction. (1) Subject to the conditions provided in this section, ORS 509.216 and ORS chapter 513, it is unlawful to have in possession any food fish taken in the waters of the Pacific Ocean outside the territorial jurisdiction of this state by means of any fishing gear except as provided by law or rule of the commission, for:

(a) The purpose of commercially packing, canning or preserving the fish.

(b) The manufacture of fish meal, fish oil or other fish products or by-products.

(c) Sale as fresh fish for general consumption.

(d) Bait.

(2) It is also unlawful to take any salmon for commercial purposes in any of the waters of the Pacific Ocean within the jurisdiction of this state or over which this state has concurrent jurisdiction by means of any fishing gear other than by "troll." [Amended by 1955 c.178 §1; 1961 c.680 §1; 1965 c.570 §122]

509.235 Chinese sturgeon lines prohibited. It is unlawful to use or assist in using any Chinese sturgeon line, or lines of a similar character, in the waters of this state. [Amended by 1965 c.570 §119]

509.240 Snagging nets during closed season allowed. It is lawful to operate or use a net consisting of a single nylon or cotton web of a mesh not less than 14 inches, taut measure, hung or attached to not to exceed two lead lines combined and used as a single line and a single cork line, in any of the waters of this state, during any season or period closed to commercial fishing by law or by rule of the commission, for the purpose of clearing away or removing snags or similar obstructions from gillnet drifts and other suitable or desirable fishing areas. [Amended by 1961 c.370 §1; 1965 c.570 §120]

509.245 Notice to director of use of snagging net. Any person desiring to operate a snagging net as provided in ORS 509.240 shall, before operating or attempting to so operate such net, obtain from the director a snagging permit by forwarding a written request to the office of the commission specifically providing:

(1) The particular gillnet drift, fishing ground or other area to be cleared;

(2) The waters in which located;

(3) The mesh size of the snagging net to be used; and

(4) The dates on which or within which the proposed snagging operations will be carried on. In specifying any such dates, no one notice is valid for a period of more than 30 days from the date thereof. [Amended by 1965 c.570 §121]

509.250 [Repealed by 1965 c.570 §152]

509.252 [1955 c.477 §1; 1957 c.130 §1; repealed by 1963 c.246 §12]

509.255 [Repealed by 1961 c.183 §1]

509.260 [Repealed by 1961 c.155 §1]

509.265 [Repealed by 1965 c.570 §152]

509.270 [Repealed by 1965 c.570 §152]

509.275 [Repealed by 1965 c.570 §152]

509.280 [Repealed by 1965 c.570 §152]

509.285 [Repealed by 1965 c.570 §152]

509.290 [Repealed by 1965 c.570 §152]

509.295 [Repealed by 1965 c 570 §152]

509.300 [Repealed by 1965 c.570 §152]

NET FISHING FOR SALMON IN PACIFIC OCEAN

509.355 Definitions for ORS 509.355 to 509.385. As used in ORS 509.355 to 509.385:

(1) "Citizen of this state" means a person who maintains the usual place of abode of the person within this state or who otherwise qualifies as a citizen of this state under the laws of this state.

(2) "International waters" means waters outside the territorial boundaries of any state, territory or country. [1957 c.152 §1]

509.360 When ORS 509.355 to 509.385 operative; proof. (1) ORS 509.355 to 509.385 shall not be operative at any time unless laws or rules or regulations of California, Washington and Canada are effective which, in substance or effect, contain provisions:

(a) Similar to and which accomplish the purposes of ORS 509.355 to 509.385; or

(b) Which prohibit the possession or transportation within their respective territorial waters of the Pacific Ocean of salmon taken by any type of net within the international waters of the Pacific Ocean or within their respective territorial waters of the Pacific Ocean and not accompanied by a certificate issued under the authority of this state or of another state, territory or country showing that such salmon were lawfully taken.

(2) Such laws or rules or regulations of California, Washington and Canada shall be considered effective upon receipt by the Secretary of State of this state of certified written statements from the respective secretaries of state of California and Washington and from the Department of State of the United States on behalf of Canada setting forth such laws or rules or regulations and the date on which they are effective. Such certified written statements, together with a written statement of the Attorney General of this state that the provisions of subsection (1) of this section are satisfied by such laws or rules or regulations, are conclusive proof that the provisions of subsection (1) of this section are so satisfied. In any prosecution for violation of any provision of ORS 509.365, 509.370 or 509.375, proof of the existence of such certified written statements and written statement of the Attorney General of this state need not be made unless demanded by the defendant prior to the commencement of trial. [1957 c.152 §§9, 10; 1965 c.570 §123]

Note: 509.355 to 509.390 are operative and in full force and effect. A written statement of the Attorney General of the State of Oregon, dated October 16, 1957, states that the provisions of 509.360 are satisfied.

509.365 Taking salmon by net in waters of Pacific Ocean over which Oregon has jurisdiction prohibited. No person shall fish for or take, by the use of any type of net, any salmon within the waters of the Pacific Ocean, over which this state has jurisdiction, lying westerly of the following described line: Commencing at the point of intersection of the California-Oregon state boundary with the Pacific Ocean high water mark shoreline; thence northerly along such high water mark shoreline, including extensions thereof across the waters of the bays or tidal areas of streams emptying into the Pacific Ocean, to the mouth of the Columbia River; thence northerly across the waters of the Columbia River along the line designating and defining the mouth of such river under ORS 511.130 (1961 Replacement Part) to the point of intersection of such line with the Oregon-Washington state boundary. [1957 c.152 §2]

509.370 Taking of salmon by net in international waters of Pacific Ocean by Oregon citizen prohibited. No citizen of this state shall fish for or take, by the use of any type of net, any salmon within the international waters of the Pacific Ocean. [1957 c.152 §3]

509.375 Transporting or possessing salmon unlawfully taken by net in certain waters prohibited. No person shall transport through the waters of this state wherein net fishing for salmon is prohibited or have in possession anywhere within this state any salmon which were taken by any type of net within the international waters of the Pacific Ocean or within the territorial waters of this state or of another state, territory or country wherein such fishing is prohibited and which are not accompanied by a certificate issued under the authority of this state or of another state, territory or country showing that such salmon were lawfully taken. [1957 c.152 §4]

509.380 [1957 c.152 §5; repealed by 1965 c.570 §152]

509.385 Exceptions. ORS 509.355 to 509.385 do not apply to:

(1) Those species of salmon in those areas within the international waters of the Pacific Ocean which are regulated by the International Pacific Salmon Fisheries Commission or by United States laws or rules or regulations promulgated pursuant to such laws.

(2) The use of nets for fishing for or taking salmon for purposes of scientific investigation authorized by the laws of this state. [1957 c.152 §6]

509.390 [1957 c.152 §7; repealed by 1965 c.570 §152]

CRABS AND OTHER SHELLFISH

509.405 [Repealed by 1955 c.274 §1]

509.410 [Repealed by 1955 c.274 §1]

(Crabs)

509.415 Gear used in taking crab; selling crabs unlawfully taken. (1) No person shall take a crab from any of the waters of the state for commercial purposes, with or by the use of any other gear than that specifically known as crab ring or crab pot, or sell or offer for sale crabs unlawfully caught.

(2) The taking of Dungeness crab (cancer magister) for commercial purposes from any of the waters of this state, by the use of any gear except that commonly known as crab ring or crab pot, is prohibited.

509.420 [Repealed by 1965 c.570 §152]

509.425 [Amended by 1965 c.570 §128; 1969 c.675 §1; 1981 c.638 §3; renumbered 622.220]

509.427 [1969 c.675 §10; 1981 c.638 §4; renumbered 622.230]

509.429 [1969 c.675 §11a; 1981 c.638 §5; renumbered 622.240]

509.430 [Repealed by 1965 c.570 §152]

509.431 [1969 c.675 §11; 1981 c.638 §6; renumbered 622.250]

509.433 [1969 c.675 §12; 1981 c.638 §7; renumbered 622.260]

509.435 [Repealed by 1965 c.570 §152]

509.436 [1965 c.570 §59d; 1969 c.675 §2; 1981 c.638 §8; renumbered 622.270]

509.439 [1969 c.675 §13; 1981 c.638 §9; renumbered 622.280]

509.440 [Repealed by 1965 c.570 §152]

509.441 [1969 c.675 §8; 1981 c.638 §10; renumbered 622.290]

509.445 [Repealed by 1965 c.570 §152]

509.450 [Repealed by 1965 c.570 §152]

509.451 [1969 c.675 §9; 1981 c.638 §11; renumbered 622.300]

509.455 [Amended by 1969 c.675 §3; renumbered 622.320]

509.460 [Amended by 1963 c.113 §1; 1965 c.570 §124; renumbered 509.505]

509.465 [Repealed by 1969 c.675 §21]

509.470 [Renumbered 622.330]

509.475 [Amended by 1965 c.570 §125; renumbered 509.510]

509.480 [Repealed by 1969 c.675 §21]

509.485 [Repealed by 1969 c.675 §21]

509.490 [Repealed by 1969 c.675 §21]

509.495 [Amended by 1969 c.675 §4; renumbered 622.340]

509.500 [Amended by 1977 c.242 §7; renumbered 622.350]

(Shellfish)

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. [Formerly 509.460]

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. [Formerly 509.475]

FISHWAYS; SCREENING DEVICES; HATCHERIES NEAR DAMS

509.600 Destroying, injuring or taking food fish near fishway; permits to take fish. (1) It is unlawful willfully or knowingly to destroy, injure or take food fish within 600 feet of any fishway, except as permitted by subsection (2) of this section or in the case of angling under ORS 498.216. 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 commission may grant permits to take fish other than those fish classified under the family salmonidae within 600 feet of any fishway in a manner that will not otherwise violate paragraph (a) of subsection (1) of this section. [1965 c.570 §104; 1973 c.723 §122; 1981 c.646 §6]

509.605 Fishways required over artificial obstructions; approval by director; failure to complete fishway. (1) Except as otherwise provided in ORS 498.268 or 509.640 or 509.645 or the state water resources policy formulated under ORS 536.295 to 536.350, it is unlawful for any person, municipal corporation, political subdivision or governmental agency to construct or maintain any dam or artificial obstruction across any stream in this state frequented by anadromous or food fish without providing a passageway for such fish over the dam or artificial obstruction as near the main channel as practicable.

(2) The director shall examine, from time to time, all dams and artificial obstructions in all waters of this state frequented by anadromous or food fish. If in the opinion of the director there is not a free passage for such fish over any dam or artificial obstruction, and except as otherwise provided in ORS 509.640, the director may notify the owner or occupant thereof to provide free passage within a reasonable time with a durable and efficient fishway, of such form and capacity and in such location as shall be determined by the director. Except as otherwise provided in ORS 509.645, no owner or occupant of such dam or artificial obstruction shall fail to complete such fishway to the satisfaction of the director within the time specified.

(3) Any person, municipal corporation, political subdivision or governmental agency shall, prior to construction of any dam or artificial obstruction in any waters of this state, obtain a determination from the director as to the need or lack of need for passage for anadromous or food fish. If the director determines that a fish passage facility is needed, approval of the proposed plans and specifications for such facility must be obtained from the director prior to construction of the dam or artificial obstruction. [Amended by 1955 c.707 §49; 1963 c.178 §1; 1965 c.570 §131; 1973 c.723 §123]

509.610 Maintenance of fishway required. (1) Subject to ORS 509.645, when the director requires a fishway to be provided pursuant to ORS 509.605, the owner or occupant of a dam or artificial obstruction shall keep the fishway in repair and open and free from obstruction to the passage of anadromous or food 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 director, constitutes a separate offense. [Amended by 1955 c.707 §52; 1965 c.570 §132]

509.615 Commission authorized to require installation of screening or by-pass devices in certain water diversions. (1) Any person who diverts water from any body of water in this state in which fish exist shall install, operate and maintain, at the expense of the person, such fish screening or by-pass devices that the department determines are necessary to prevent fish from leaving the body of water and entering the diversion.

(2) Upon failure of any person to install, operate and maintain fish screening or by-pass devices as required under subsection (1) of this section, the department may install, operate and maintain, at the expense of the responsible person, fish screening or by-pass devices necessary to prevent the fish from leaving the body of water and entering the diversion.

(3) The department shall have the right of ingress and egress to and from those places where the department determines that fish screening or by-pass devices are required, doing no unnecessary injury to the property of the landowner, for the purpose of installing, maintaining and replacing such fish screening or by-pass devices, and, if installed by a person under subsection (1) of this section, to determine whether such fish screening and by-pass devices meet department requirements. The department may order a person responsible under subsection (1) of this section to repair or replace fish screening or by-pass devices found to be noncomplying, at the expense of the responsible person.

(4) If the department considers the installation, operation, maintenance, repair or replacement of fish screening or by-pass devices under subsections (1) to (3) of this section necessary, the department shall notify by certified mail the person who diverts water of the action the person is required to take. The person may request a hearing before the State Fish and Wildlife Commission according to provisions of ORS 183.310 to 183.550.

(5) No person shall interfere with, tamper with, damage, destroy or remove any fish screening or by-pass devices installed pursuant to this section.

(6) The department may maintain an action to recover any costs the department incurs in installing, maintaining or replacing fish screening or by-pass devices on behalf of a person responsible under subsection (1) of this section. Such action shall be brought in the district or circuit court for the county in which the fish screening or by-pass devices are located.

(7) As used in this section:

(a) "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.

(b) "Department" means the State Department of Fish and Wildlife.

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

(d) "Screening" means a screen, grating or other barrier and related improvements or measures necessary to insure efficient operation of the screening device to prevent the passage of fish from a body of water into a diversion. [Amended by 1957 c.135 §1; 1963 c.111 §1; 1965 c.570 §135; 1987 c.488 §2]

509.620 Condemning inadequate and ordering new fishways. Where in the judgment of the commission, any fishway is inadequate, as constructed under ORS 509.605 or otherwise, the commission may condemn the fishway and order a new fishway installed in accordance with plans and specifications determined by the commission.

509.625 Power of commission to inspect artificial obstructions and have fishways constructed. (1) The commission may determine or ascertain by inspection of any dam or artificial obstruction whether it would be advisable to construct, or order the construction pursuant to ORS 509.605 by the owners thereof, of fishways over the dam or obstruction. The commission may construct or order the construction, pursuant to ORS 509.605, of such number of fishways in any stream inhabited by anadromous or food fish as is deemed adequate to provide a good and sufficient passageway for such fish.

(2) Where a fishway has heretofore 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 fishway. However, such construction or reconstruction shall not interfere with the prime purpose of the dam or obstruction. This subsection shall not be construed to require the improvement or rebuilding of fishways by the commission. [Amended by 1955 c.707 §53; 1963 c.232 §1; 1965 c.570 §133]

509.630 Power of commission to establish fishways in natural stream obstructions. The commission may determine or ascertain by inspection of any natural obstruction whether it would be advisable to construct fishways over or around such natural obstruction. If it is deemed advisable the commission may construct fishways in any stream inhabited by anadromous or food fish adequate to provide a good and sufficient passageway for such fish. [Amended by 1965 c.570 §134]

509.635 Oregon City fishway under control of commission; removal of obstructions. (1) The fishways over the falls in the Willamette River, near Oregon City, are under the care and control of the commission, which may make any extensions, additions, alterations or repairs to the same that become necessary.

(2) The commission, or its duly authorized representatives, may remove any artificial obstructions placed in the Willamette River above the falls which would prevent the free passage of fish up the river. [Amended by 1965 c.570 §136]

509.640 When dams to be provided with hatchery facilities. (1) If in its opinion

the height of a dam in any of the rivers or streams of this state will make a fish ladder or fishway thereover impracticable, the commission, in lieu of the requirement of a fishway under ORS 509.605 (2) and subject to ORS 509.645, may require that the owner of the dam:

(a) Convey to the state a site of the size and dimensions satisfactory to the commission, at such place as may be selected by the commission.

(b) Erect thereon a hatchery and hatchery residence, according to plans and specifications to be furnished by the commission.

(c) Enter into an agreement with the commission, secured by a good and sufficient bond, to furnish all water and light, without expense, to operate the proposed hatchery.

(2) Except as otherwise provided in ORS 509.645, no owner of the dam shall fail to comply with subsection (1) of this section to the satisfaction of the commission within a reasonable time specified.

(3) This section does not apply to:

(a) Dams constructed prior to February 18, 1921, in streams to a height where the construction of a fish ladder is impracticable, provided an agreement has been entered into and executed with reference to the construction and maintenance of such dam between the commission and the owners thereof.

(b) Dams, for the construction of which permits have been granted by the commission under this section as it existed prior to the 1955 amendment of this section. Such dams are subject to and governed by this section as it existed prior to the 1955 amendment of this section. [Amended by 1955 c.707 §54]

509.645 Filing protest with Water Resources Commission; review and determination by Water Resources Commission as to whether fishway or hatchery facilities in public interest. (1) Any owner or occupant of a dam or artificial obstruction may file a protest with the Water Resources Commission within 10 days after receipt of notification from the director as provided in ORS 509.605 (2), or within 10 days after receiving notice of the requirement by the State Fish and Wildlife Commission under ORS 509.640, on the ground that providing the dam or artificial obstruction with a fishway or providing the dam with hatchery facilities as required by the State Fish and Wildlife Commission, as the case may be, would impair or be detrimental to the public interest.

(2) Within a reasonable time after the filing of the protest under subsection (1) of this section, the Water Resources Commission shall hold a public hearing thereon. The Water Resources Commission shall give written notice of the hearing to each owner or occupant of the dam or artificial obstruction, who is known to or can be reasonably ascertained by the Water Resources Commission, and to the State Fish and Wildlife Commission at least 10 days prior to the hearing.

(3) The Water Resources Commission, after the hearing, shall make a determination as to whether providing the dam or artificial obstruction with a fishway or providing the dam with hatchery facilities as required by the State Fish and Wildlife Commission, as the case may be, would impair or be detrimental to the public interest. The determination shall be binding upon each owner or occupant of the dam or artificial obstruction and the State Fish and Wildlife Commission. The determination shall approve the requirement of the fishway or the hatchery facilities, as the case may be, approve the requirement subject to conditions specified in the determination or disapprove the requirement. If each owner or occupant of the dam or artificial obstruction complies with the determination, such owner or occupant shall be deemed not in violation of ORS 509.605 or 509.640, as the case may be.

(4) In determining whether providing the dam or artificial obstruction with a fishway or providing the dam with hatchery facilities as required by the State Fish and Wildlife Commission, as the case may be, would impair or be detrimental to the public interest, the Water Resources Commission shall have due regard for:

(a) The state water resources policy formulated under ORS 536.295 to 536.350.

(b) The considerations set forth in ORS 536.310.

(5) In the event protests are filed with the Water Resources Commission under both subsection (1) of this section and ORS 498.268, the Water Resources Commission may consider and determine the protests in a combined proceeding under this section and ORS 498.268. [1955 c.707 §51; 1973 c.723 §124]

ENFORCEMENT

509.910 Injunction to prevent certain violations; jurisdiction; service on corporation. (1) The State Fish and Wildlife Commission may maintain an action for an injunction to enjoin and restrain any person, municipal corporation, political subdivision or governmental agency of this state from violating any of the provisions of ORS 509.130, 509.140, 509.505, 509.605, 509.610, 509.615 and 509.625.

(2) Any action authorized by this section shall be tried in the circuit court of the county in which the violation occurs.

(3) If the defendant is a corporation with its principal office and place of business in a county other than in which the waters flow or are situated, such action shall be deemed an action of local nature and service of summons made on a corporation in any county where the corporation has its principal office and place of business. If it is a foreign corporation, service may be made on the statutory agent but if there is no such statutory agent then upon the Secretary of State as in other cases provided by law. [1963 c.303 §1; 1977 c.242 §8; 1979 c.284 §16]

509.990 [Subsection (8) of 1963 Replacement Part enacted as 1955 c.477 §2; subsection (10) of 1963 Replacement Part enacted as 1957 c.152 §8; repealed by 1965 c.570 §152]

509.991 [1965 c.570 §59e; repealed by 1969 c.675 §21]

509.992 [1969 c.675 §15; repealed by 1977 c.242 §10]

CHAPTER 510

[Reserved for expansion]