

Chapter 564

1991 EDITION

Wild Flowers; Threatened or Endangered Plants

WILD FLOWERS

- 564.010 Definition
- 564.020 Wild flower protection
- 564.030 Enforcement
- 564.040 Department to compile list of additional protected wild flowers

THREATENED OR ENDANGERED PLANTS

- 564.100 Definitions for ORS 564.100 to 564.135
- 564.105 Responsibility to protect and conserve native plants
- 564.110 Listing threatened or endangered species; procedure; notice; periodic review
- 564.115 Protection and conservation programs; action by state agencies; alternatives; findings required if agency fails to adopt alternatives
- 564.120 Transactions in threatened or endangered species; restrictions; prohibition

- 564.125 Director of Agriculture authorized to acquire plant habitat
- 564.130 Confidentiality of information regarding threatened or endangered species; circumstances
- 564.135 Effect of law on commercial forestland or private land; effect on other laws

PENALTIES

- 564.991 Penalties
- 564.994 Penalty for violation of ORS 564.120

CROSS REFERENCES

Nurseries and nurserymen, 571.005 to 571.230

564.020

Destruction or removal of trees on state highways, 377.030

564.030

Jurisdiction over prosecutions, 561.290

AGRICULTURE

WILDFLOWERS

564.010 Definition. As used in this chapter, "department" means "State Department of Agriculture."

564.020 Wild flower protection. (1) It is the duty of all citizens of this state to protect the wild flowers of this state referred to in this section from needless destruction and waste.

(2) It shall be unlawful for any person in this state to willfully or negligently cut, dig up, trim, pick, remove, mutilate or in any manner injure or mar any plant, flower, shrub, bush, fruit or other vegetation growing upon the right of way of any public highway within this state, or upon public lands, or upon the land of another, within 500 feet of the center of any public highway, without the written permit of the owner, signed by the owner or the authorized agent of the owner.

(3) It shall be unlawful for any person to export from this state, or to sell or offer for sale or transport bulbs, corms, rhizomes, roots or plants of native wild flowers or shrubs of the state of any of the following genera:

- (a) *Lilium* (including all wild lilies).
- (b) *Calochortus* (mariposa tulip or butterfly lily).
- (c) *Fritillaria* (mission bells or snake lily).
- (d) *Erythronium* (adder's tongue, dogtooth violet or avalanche lily).
- (e) *Cypripedium* (lady's slipper).
- (f) *Calypso* (purple lady's slipper).
- (g) *Lewisia* (bitter root).
- (h) *Douglasia* or native *Rhododendron* or azalea.

(4) It shall be unlawful for any person to sell or transport or offer for sale the bulbs, corms, rhizomes, roots or parts of any of the plants or shrubs mentioned in subsections (2) and (3) of this section which have been dug, pulled up or gathered upon any highway, or within 500 feet thereof, or public lands in this state, or upon the land of any other person without written permission from the owner of such land.

(5) The provisions of this section shall not be construed to apply to any employee of the Federal Government or of the State of Oregon or of any political subdivision of the state engaged in work upon any state, county or public road or highway while performing such work under the supervision of the Federal Government, the state or any political subdivision thereof.

(6) The provisions of this section shall not be construed to apply to the owner of any tract or tracts of land, or to agents or employees of the owner, as to such tract or tracts, or to any shrub, plant or other vegetation which is declared by law to be a public nuisance.

(7) Nothing in this section shall be construed as prohibiting the digging, pulling, gathering or sending out of this state, in such quantity and at such times the department may approve, any commercially propagated plants or shrubs mentioned in subsections (2) and (3) of this section, provided the permission of the department for so doing is first obtained.

564.030 Enforcement. It shall be the duty of the department and of all its officers and employees to see that the provisions of ORS 564.020 are enforced and to present evidence of any violation of the provisions of ORS 564.020 to the district attorney of the county in which any such violation occurs. Such district attorney shall prosecute any person guilty of a violation of the provisions of ORS 564.020. Such prosecution may be brought in any of the justice courts of this state.

564.040 Department to compile list of additional protected wild flowers. In order to further protect native wild flowers and shrubs from needless destruction and waste, the department may, after investigation and public hearing and in accordance with the provisions of ORS 183.310 to 183.550, establish and amend a list of wild flowers and shrubs in addition to those listed in ORS 564.020 (3). The provisions of this chapter apply to such list. The department may take into consideration:

- (1) The laws and regulations of the United States and other states.
- (2) The effect on the scenic beauty of public roads and public land. [1963 c.461 §30; 1987 c.686 §17]

THREATENED OR ENDANGERED PLANTS

564.100 Definitions for ORS 564.100 to 564.135. As used in ORS 564.100 to 564.135:

(1) "Department" means the State Department of Agriculture.

(2) "Director" means the Director of Agriculture.

(3) "Endangered species" means:

(a) Any native plant species determined by the department to be in danger of extinction throughout any significant portion of its range.

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

(4) "Plant" means any member of the plant kingdom, including the seeds, roots or parts thereof, native to this state.

(5) "Species" means any species or its subspecies or variety, whichever is the first taxonomic subspecific category for the plant in question.

(6) "Take" means to collect, cut, damage, destroy, dig, kill, pick, remove or otherwise disturb.

(7) "Threatened species" means:

(a) Any native plant species the director determines by a finding of fact is likely to become an endangered species within the foreseeable future throughout any significant portion of its range.

(b) Any native plant species listed as a threatened species pursuant to the federal Endangered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531 et seq.), as amended. [1987 c.686 §8]

564.105 Responsibility to protect and conserve native plants. The director has the responsibility to protect and conserve the native plants of this state that are threatened species or endangered species. In carrying out that responsibility, the director:

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

(2) By rule, shall establish and publish, and from time to time may revise, a list of plant species that are threatened species or endangered species.

(3) By rule, shall establish programs for the protection and conservation of plant species that are threatened species or endangered species. As used in this section, "conservation" means the use of methods and procedures necessary to bring a species to the point at which the measures provided under ORS 564.105 to 564.120 are no longer necessary. Such methods and procedures include, but are not limited to, activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation and transplantation.

(4) By rule, shall establish a system of permits for scientific taking of threatened species and endangered species under such terms and conditions as the director determines will minimize the impact on the species taken.

(5) Shall cooperate with the State Fish and Wildlife Commission in carrying out the provisions of ORS 496.172.

(6) Shall adopt administrative rules to carry out the provisions of ORS 564.105 to 564.120.

(7) Shall set priorities for establishing programs under this section after consideration of available funds and the immediacy and seriousness of the threat to any listed species. [1987 c.686 §9]

564.110 Listing threatened or endangered species; procedure; notice; periodic review. (1) The lists of threatened species or endangered species established pursuant to ORS 564.105 (2) initially shall include those species listed as of May 15, 1987, as a threatened species or an endangered species pursuant to the federal Endangered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531 et seq.), as amended.

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

(3) A determination that a species is a threatened species or an endangered species shall be based on documented and verifiable scientific information about the species' biological status. To list a species as a threatened species or an endangered species under ORS 564.100 to 564.130, the director shall determine that the natural reproductive potential of the species is in danger of failure due to limited population numbers, disease, predation or other natural or man-made factors affecting its continued existence. In addition, the director shall determine that one or more of the following factors exists:

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

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

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

(4) Determinations required by subsection (3) of this section shall be made on the basis of the best scientific and other data available to the department, after consultation with federal agencies, other interested state agencies, the Natural Heritage Advisory Council, other states having a common interest in the species and interested persons and organizations.

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

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

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

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

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

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

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

(b) Such emergency addition shall take effect immediately upon publication in the Secretary of State's bulletin and shall remain valid for a period no longer than one year, unless during the one-year period the department completes rulemaking procedures as provided in subsections (1) to (4) of this section.

(7) The director shall periodically review the status of all threatened and endangered plant species listed under ORS 496.004, 496.172 to 496.192, 498.026, 564.040 and 564.100 to 564.135:

(a) Each species shall be reviewed at least once every five years to determine whether substantial, documented scientific information exists to justify its reclassification or removal from the list, according to the criteria listed under subsection (3) of this section.

(b) If a determination is made to reclassify a species or remove it from the list, the department, within 90 days, shall commence rulemaking to change the status of the species.

(8) By July 1, 1988, the department shall conduct an initial review of existing scientific information for the purpose of determining those species for which current

information is adequate to begin rulemaking as provided in this section. [1987 c.686 §10]

564.115 Protection and conservation programs; action by state agencies; alternatives; findings required if agency fails to adopt alternatives. (1) In developing protection and conservation programs pursuant to ORS 564.105 (3), the department shall consult with other states having a common interest in particular threatened species or endangered species and with other affected state agencies.

(2) In furtherance of programs to conserve or protect threatened species or endangered species under ORS 564.105 to 564.115, state agencies shall consult and cooperate with the department and any other state agency that has established programs to conserve or protect threatened species or endangered species. Before a state agency takes, authorizes or provides direct financial assistance to any activity on land owned or leased by the state, or for which the state holds a recorded easement, the state agency, in consultation with the department, shall:

(a) Determine that the action on land owned or leased by the state or for which the state holds a recorded easement is consistent with a program established by the department pursuant to ORS 564.105 (3); or

(b) If no program has been established for the listed species, determine whether such action has the potential to appreciably reduce the likelihood of the survival or recovery of any species of plant that is threatened or endangered.

(3) If a state agency determines that a proposed action on land owned or leased by the state, or for which the state holds a recorded easement, has the potential to appreciably reduce the likelihood of the survival or recovery of any species that is a threatened species or an endangered species, it shall notify the department. Within 90 days, the department shall recommend reasonable and prudent alternatives, if any, to the proposed action which are consistent with conserving and protecting the affected species.

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

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

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

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

(6) An action initiated by a person other than a state agency that has met the standards or mitigation requirements of a federal agency for a particular species under the federal Endangered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531 et seq.), as amended, shall be deemed to meet the requirements of ORS 564.100 to 564.130.

(7) The provisions of this section do not apply to lands acquired through foreclosures of loans made pursuant to programs of the Department of Veterans' Affairs. [1987 c.686 §11]

564.120 Transactions in threatened or endangered species; restrictions; prohibition. (1) Except as otherwise provided pursuant to ORS 564.105, no person shall take, import, export, transport, purchase or sell, or attempt to take, import, export, transport, purchase or sell any threatened species or endangered species.

(2) No person shall take or attempt to take any threatened species or endangered species without first having obtained permission from the person who owns or leases the land upon which the species is growing. When land is owned by the State of Oregon and leased for private use, permission to take or attempt to take a threatened species or endangered species must first be obtained from the director. [1987 c.686 §12]

564.125 Director of Agriculture authorized to acquire plant habitat. The Director of Agriculture is authorized, on behalf of the State of Oregon, to acquire habitat, or interests therein, the department considers necessary for the protection of threatened species or endangered species. Acquisition may be by gift, grant, devise, purchase, exchange or any other method by which the department is authorized to acquire real property. [1987 c.686 §14]

564.130 Confidentiality of information regarding threatened or endangered species; circumstances. (1) Notwithstanding ORS 192.410 to 192.505, the director of the appropriate agency may hold confidential, and refuse to disclose, information concerning the location of a threatened or endangered wildlife or plant species upon a

determination that, based on prior experience, unlawful taking is likely to occur if the location is disclosed.

(2) In no instance shall the director of the appropriate agency refuse to disclose information concerning the location of a threatened or endangered wildlife or plant species to the owner of lands on which the species is known to exist. [1987 c.686 §15]

564.135 Effect of law on commercial forestland or private land; effect on other laws. (1) Nothing in ORS 564.100 to 564.130 is intended, by itself, to require an owner of any commercial forestland or other private land to take action to protect a threatened species or endangered species, or to impose additional requirements or restrictions on the use of private land.

(2) Notwithstanding any other provision of law, nothing in ORS 496.004, 496.172 to 496.192, 498.026, 564.040 and 564.100 to 564.135 or ORS 527.610 to 527.770 and 527.992 shall be interpreted to require protection of a species listed under ORS 564.100 to 564.130 or its habitat on private forestland.

(3) The existence of a species listed under ORS 564.100 to 564.130 on privately owned forestland shall not require protection of its habitat as a biological site under ORS 527.610 to 527.770 and 527.992. However, if other elements exist that qualify such habitat as a biological site, such habitat may be protected as a biological site under ORS 527.610 to 527.770 and 527.992.

(4) Species listed under ORS 564.100 to 564.130 may be subject to protection under ORS chapters 196 and 197 provided that the full process of inventory and analysis required by any open spaces, scenic and historic areas and natural resources goal is fulfilled and included in any acknowledged land use plan or amendment. [1987 c.686 §16]

564.910 [Repealed by 1953 c.488 §2]

564.990 [Repealed by 1963 c.461 §34]

PENALTIES

564.991 Penalties. Violation of this chapter and regulations authorized by ORS 564.040 is punishable, upon conviction, by a fine of not more than \$500. [1963 c.461 §31]

564.994 Penalty for violation of ORS 564.120. Violation of ORS 564.120 is a Class A misdemeanor. [1987 c.686 §13]