

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
501. Refuges and Closures

Chapter 496

1993 EDITION

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) "Compatible" means capable of existing in harmony so as to minimize conflict.

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

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

(6) "Endangered species" means:

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

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

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

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

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

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

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

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

(13) "Species" means any species or subspecies of wildlife.

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

(15) "Threatened species" means:

(a) Any native wildlife species the commission determines is likely to become an endangered species within the foreseeable

future throughout any significant portion of its range within this state.

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

(16) "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.

(17) "Wildlife" means fish, wild birds, amphibians, reptiles and wild mammals. [1973 c.723 §3; 1975 c.253 §5; 1977 c.136 §1; 1979 c.399 §1; 1979 c.615 §1a; 1985 c.60 §7; 1987 c.686 §1; 1991 c.67 §148; 1993 c.659 §1]

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 prevent serious depletion of any indigenous species and to provide the optimum recreational and aesthetic benefits for present and future generations of the citizens of this state. In furtherance of this policy, the commission shall implement the following coequal goals of wildlife management:

(1) To maintain all species of wildlife at optimum levels.

(2) To develop and manage the lands and waters of this state in a manner that will enhance the production and public enjoyment of wildlife.

(3) To permit an orderly and equitable utilization of available wildlife.

(4) To develop and maintain public access to the lands and waters of the state and the wildlife resources thereon.

(5) To regulate wildlife populations and the public enjoyment of wildlife in a manner that is compatible with primary uses of the lands and waters of the state.

(6) To provide optimum recreational benefits. [1973 c.723 §6; 1993 c.659 §2]

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

Note: Section 6, chapter 858, Oregon Laws 1991, is repealed July 1, 1995 (see section 12, chapter 858), and provides:

Sec. 6. Fish Screening Task Force. (1) There is established within the State Department of Fish and Wildlife the Fish Screening Task Force consisting of seven members appointed by the commission.

(2) Three members shall be appointed to represent agricultural interests, three shall be appointed to represent fishing or fish conservation interests and one member shall be appointed to represent the public. Members of the task force shall serve for terms ending July 1, 1995.

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

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

(5) The duties of the task force are:

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

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

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

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

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

(f) To advise the department in preparing a report on the capital costs and effectiveness of the program provided in section 2 of this 1991 Act. An interim report shall be submitted to the Sixty-seventh Legislative Assembly, and a final report shall be submitted to the Sixty-eighth Legislative Assembly.

(g) To advise the department on the creation of the priority criteria and the priority listing referred to in section 2 (12)(a) of this 1991 Act. [1991 c.858 §6]

Note: Section 5, chapter 858, Oregon Laws 1991, provides:

Sec. 5. Content of budget requests. (1) For the biennium beginning July 1, 1993, the State Department of Fish and Wildlife shall prepare as part of its budget request a list of not less than 40 nor more than 100 nonhydroelectric-related diversions of less than 30 cubic feet per second from the priority listing established pursuant to section 2 (12)(a), chapter 858, Oregon Laws 1991, that the department expects to be equipped with appropriate fish screening or by-pass devices during the biennial period, together with an estimate of project costs for the installation, maintenance, operation and repair of such devices. Prior to requiring the installation of any such devices, the department must first obtain budget approval therefor from the Joint Committee on Ways and Means.

(2) For the biennium beginning July 1, 1995, the State Department of Fish and Wildlife shall prepare as part of its budget request a comprehensive, ten-year cost-sharing program to implement the installation of screening or by-pass devices on the 3,000 top nonhydroelectric diversions of less than 30 cubic feet per second on the priority listing established pursuant to section 2 (12)(a), chapter 858, Oregon Laws 1991, together with an estimate of project costs for the installation, maintenance, operation and repair of such devices. [1991 c.858 §5; 1993 c.478 §6]

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 pursuant to section 4, Article III, Oregon Constitution.

(4) One member of the commission shall be appointed from each of the congressional districts referred to in ORS 188.130 and 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.

(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 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; 1981 c.545 §11]

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; limitation on 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 salary, subject to applicable law regulating travel and other expenses of state officers, the director shall be reimbursed for actual and necessary travel and other expenses incurred in the performance of official duties.

(3) The commission may delegate to the director any of the powers and duties granted to or imposed upon it by law, except to revoke or refuse to issue licenses issued pursuant to the commercial fishing laws or the commission's power to adopt rules. [1975 c.253 §9; 1985 c.529 §3; 1993 c.659 §4]

496.115 [Repealed by 1975 c.253 §40]

496.118 Duties and powers of director. (1) Subject to policy direction by the commission, the director shall:

(a) Be the administrative head of the State Department of Fish and Wildlife;

(b) Have power, within applicable budgetary limitations, and in accordance with ORS chapter 240, to hire, assign, reassign and coordinate personnel of the department;

(c) Administer and enforce the wildlife laws of the state;

(d) Be authorized to participate in any proceeding before any public officer, commission or body of the United States or any state for the purpose of representing the citizens of Oregon concerning the wildlife resources of this state;

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

(f) Be responsible for the collection, application and dissemination of information pertinent to the management of the wildlife resources, and to the regulation of the uses of such resources; and

(g) Coordinate any activities of the department related to a watershed enhancement project approved by the Governor's Watershed Enhancement Board under ORS 541.375 with activities of other cooperating state and federal agencies participating in the project.

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

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

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

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. Such reports shall include all new or amended rules, policies or procedures adopted by the commission and shall include a summary of significant consultation activity under ORS 496.164. [1973 c.723 §11; 1993 c.659 §6]

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

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

496.135 [Repealed by 1973 c.723 §130]

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

(2) In accordance with the applicable provisions of ORS 183.310 to 183.550, the commission shall adopt such rules and standards as it considers necessary and proper to implement the policy and objectives of ORS 496.012 and perform the functions vested by law in the commission.

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

(4) Before submitting budget requests or information to the Governor pursuant to ORS 291.202 to 291.222, the commission shall hold a public hearing on proposals for planned expenditures and enhancement packages that the commission intends to recommend to the Governor for inclusion in the Governor's budget. [1973 c.723 §12; 1993 c.659 §7]

496.140 [Repealed by 1973 c.723 §130]

496.145 [Repealed by 1973 c.723 §130]

496.146 Discretionary 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. Permits issued pursuant to this subsection may include special hunting permits for a person and immediate family members of the person to hunt on land owned by that person in areas where permits for deer or elk are limited by quota. As used in this subsection, "immediate family members" means husband, wife, father, mother, brothers, sisters, sons, daughters, stepchildren and grandchildren. A landowner who is qualified to receive landowner preference tags from the commission may request two additional tags for providing public access and two additional tags for wildlife habitat programs. This request shall be made to the Access and Habitat Board with supporting evidence that the access is significant and the habitat programs benefit wildlife. The board may recommend that the commission grant the request. When a landowner is qualified under landowner preference rules adopted by the commission and receives a controlled hunt tag for that unit or a landowner preference tag for the landowner's property and does not use the tag during the regular season, the landowner may use that tag to take an antlerless animal, when approved by the department, to alleviate damage that is presently occurring to the landowner's property.

(5) May by rule prescribe procedures requiring the holder of any license, tag or permit issued pursuant to the wildlife laws to

keep records and make reports concerning the time, manner and place of taking wildlife, the quantities taken and such other information as the commission determines necessary for proper enforcement of the wildlife laws or to obtain information for use in wildlife management.

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

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

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

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

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

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

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

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

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

(15) May establish special hunting seasons and bag limits applicable only to those persons who are permanently unable to be mobile without the assistance of a wheelchair.

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

(17) Shall establish a preference system so that individuals who are unsuccessful in controlled hunt permit drawings for deer and elk hunting have reasonable assurance of success in those drawings in subsequent years. [1973 c.723 §13; 1977 c.177 §1; 1977 c.668 §1; 1981 c.445 §9; 1987 c.292 §2; 1993 c.659 §8]

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.

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

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

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

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

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

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

496.165 [Repealed by 1973 c.723 §130]

496.166 Citizen involvement for wildlife management on private lands. The Legislative Assembly finds, in the interest of all Oregonians, a necessity to improve Oregon's resource access and wildlife habitat through the further involvement of its citizens, through voluntary partnership between the department and landowners to manage wildlife on private lands and through support by additional financial revenues. [1993 c.659 §13]

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

THREATENED OR ENDANGERED WILDLIFE SPECIES

496.172 Commission management authority for threatened or endangered species. In carrying out the provisions of the

wildlife laws with regard to the management of wildlife that is a threatened species or an endangered species, the commission:

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

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

(3) By rule, shall establish programs for the protection and conservation of wildlife 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 496.172 to 496.182 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 commission determines will minimize the impact on the species taken.

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

(6) Shall adopt administrative rules to carry out the provisions of ORS 496.004, 496.172 to 496.182 and 498.026.

(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. In proposing and implementing programs for those species that are secure outside this state, the commission shall give preference to cooperative agreements, acquisitions and similar methods. [1987 c.686 §3]

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

496.176 Listing species; procedure; matters to be considered; periodic review.

(1) The lists of threatened species or endangered species established pursuant to ORS 496.172 (2) shall include:

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

(b) Those species determined as of May 15, 1987, by the commission to be threatened species or endangered species.

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

(3) A determination that a species is a threatened species or an endangered species shall be based on documented and verifiable scientific information about the species' biological status. To list a species as a threatened species or an endangered species under ORS 496.004 and 496.172 to 496.182, the commission shall determine that the natural reproductive potential of the species is in danger of failure due to limited population numbers, disease, predation or other natural or man-made factors affecting its continued existence. In addition, the commission shall determine that one or more of the following factors exists:

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

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

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

(4) Determinations required by subsection (3) of this section shall be made by the commission on the basis of the best available scientific and other data 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 commission to, by rule, add, remove or change the status of a species on the list:

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

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

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

(d) A final determination by the commission concerning the action requested in a petition shall be provided within one year from the date of receipt of the petition.

(e) 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 commission shall take emergency action to add a species to the list of threatened species or endangered species if it determines there is a significant threat to the continued existence of the species within the state:

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

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

(7) The commission shall periodically review the status of all threatened species and endangered species listed under ORS 496.004, 496.172 to 496.192, 498.026, 564.040, 564.100 to 564.135 and 564.994:

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

(b) The commission shall complete the first review of those species listed under paragraph (b) of subsection (1) of this section no later than July 1, 1989.

(8) Notwithstanding the provisions of this section, the commission may decide not to list a species that otherwise qualifies as a threatened or endangered species within this state if the commission determines that the species is secure outside this state and the species is not of cultural, scientific or commercial significance to the people of this state. [1987 c.686 §4]

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

496.182 Protection and conservation programs; compliance by state agencies; alternatives. (1) In developing protection and conservation programs pursuant to ORS 496.172 (3), the commission shall consult with other states having a common interest in particular threatened species or endan-

gered species and with other affected state agencies.

(2) In furtherance of programs to conserve or protect threatened species or endangered species under ORS 496.004, 496.172 and 496.176, state agencies shall consult and cooperate with the State Department of Fish and Wildlife. Before a state agency takes, authorizes or provides direct financial assistance for any action 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 programs established by the commission pursuant to ORS 496.172 (3); or

(b) If no program has been established for a threatened species or endangered species that may be affected by such action, determine whether such action has the potential to appreciably reduce the likelihood of the survival or recovery of the threatened species or endangered species.

(3) If a state agency determines pursuant to paragraph (b) of subsection (2) of this section 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 threatened species or endangered species, it shall notify the department. Within 90 days of such notice, 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 recommendations made under subsection (3) of this section, it shall, after consultation with the department, demonstrate that:

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

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

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

(6) The provisions of this section do not apply to lands acquired through foreclosures of loans made pursuant to programs of the Department of Veterans' Affairs. [1987 c.686 §5]

496.185 [Repealed by 1973 c.723 §130]

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

496.192 Effect of law on commercial forestland or other private land; effect on other laws. (1) Nothing in ORS 496.004, 496.172 to 496.182 or 498.026 is intended, by itself, to require an owner of any commercial forestland or other private land to take action to protect a threatened species or endangered species, or to impose additional requirements or restrictions on the use of private land:

(2) Notwithstanding subsection (1) of this section, other statutes may authorize administrative rules or programs to protect wildlife species, including threatened species or endangered species, and nothing in ORS 496.004, 496.172 to 496.182 or 498.026 shall diminish the force or effect of such rules or programs. [1987 c.686 §6a]

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

496.200 [Repealed by 1973 c.723 §130]

SALMON FOR INDIAN CEREMONIES

496.201 Department to furnish salmon for ceremonies; amount; source. (1) The State of Oregon shall, through the State Department of Fish and Wildlife, be directed to provide surplus salmon:

(a) To the Confederated Coos, Lower Umpqua and Siuslaw Indian tribes for their historical, traditional and cultural salmon ceremonies that take place each year.

(b) To the Cow Creek Band of the Umpqua Indians for their historical, traditional and cultural salmon ceremonies that take place each year.

(2) The salmon provided by the state shall meet the expressed needs of the Confederated Coos, Lower Umpqua and Siuslaw tribes up to 1,000 pounds total and the expressed needs of the Cow Creek Band of the Umpqua Indians up to 300 pounds total.

(3) The salmon provided by the state may be either surplus whole fish or carcasses.

(4) Salmon may be taken from hatcheries under either the complete or joint control of the state. [1981 c.575 §2; 1987 c.99 §1; 1993 c.460 §1]

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

496.206 Written request for salmon; contents; time for providing salmon. (1) The Indian tribes referred to in ORS 496.201 (1) are required to set forth, in writing, their request for salmon. This request shall be submitted by the duly elected tribal governing body no later than 40 days prior to the ceremony and shall include:

(a) The poundage of salmon required;

(b) The date of the ceremony; and

(c) A contact person that the state may refer questions to.

(2) Prior to any state action, the written request must be received by:

(a) The State Department of Fish and Wildlife;

(b) The Attorney General; and

(c) The United States Department of Interior.

(3) The salmon shall be provided to the Indian tribes referred to in ORS 496.201 (1) no later than 30 days after receiving a proper written request therefor. [1981 c.575 §3; 1987 c.99 §2]

496.210 [Repealed by 1973 c.723 §130]

496.211 Limitation on amount and use.

(1) The State of Oregon shall be limited to a once a year provision of salmon pursuant to ORS 496.201.

(2) If the Indian tribes referred to in ORS 496.201 (1) use salmon provided by the state for this purpose in any manner other than that described in ORS 496.201, they shall pay to the State Department of Fish and Wildlife the prevailing wholesale rate per pound of the entire amount of salmon supplied to that tribe or tribes for that year. [1981 c.575 §4; 1987 c.99 §3]

496.215 [Repealed by 1973 c.723 §130]

496.216 Disposition of salmon remaining after ceremony. Any salmon remaining after the ceremony may be distributed to tribal members without charge for their subsistence consumption only and not for sale, barter or gift to others, or may be donated to a nonprofit institution or agency. [1981 c.575 §5]

496.220 [Repealed by 1973 c.723 §130]

496.221 ORS 496.201 to 496.221 not intended to extend Indian legal or political rights. Nothing in ORS 496.201 to 496.221 is intended to extend legal or political recognition to any Indians described in ORS 496.201 (1) for any purpose other than provided in ORS 496.201 to 496.216. [1981 c.575 §6; 1987 c.99 §4]

ECOSYSTEM RESTORATION COMPACT AUTHORITY

Note: Sections 1 and 2, chapter 384, Oregon Laws 1993, provide:

Sec. 1. The government of the State of Oregon is authorized to enter into an interstate compact with the States of California, Idaho and Washington to protect and restore coastal ecosystems of these states to levels that:

(1) Prevent the need for listing any native salmonid fish species under the federal Endangered Species Act of 1973, as amended, or under any comparable state legislation; and

(2) Sustain natural production of these species at levels that provide substantial environmental, economic and social benefits. [1993 c.384 §1]

Sec. 2. (1) The Governor, or an employee of the Governor designated by the Governor, shall coordinate the efforts by the State of Oregon to work with the States of California, Idaho and Washington to develop regional plans that incorporate those local involvement and coordinated restoration activities, strategies and programs provided under chapter _____ Oregon Laws 1993 (Enrolled Senate Bill 1112), to achieve the goals of a regional interstate compact as set forth under section 1 of this Act.

(2) In developing regional plans under subsection (1) of this section, the Governor shall work with affected Indian tribes, the Water Resources Department, the State Department of Fish and Wildlife and the Restoration and Enhancement Board and agencies of the States of California, Idaho and Washington that have corresponding responsibilities in those states and that are responsible for watershed or fisheries management and for other activities pertaining to the goals of the interstate compact as set forth in section 1 of this Act.

(3) Until such time as the agencies in California, Idaho, Oregon and Washington present a final, proposed interstate compact for enactment by their respective legislative bodies, the Governor may establish cooperative agreements with the states of California, Idaho and Washington that allow the states to coordinate their individual efforts in developing state programs that further the region-wide goals set forth under section 1 of this Act. [1993 c.384 §2]

Editor's note: Senate Bill 1112 (1993) did not become law.

496.225 [Repealed by 1973 c.723 §130]

ACCESS AND HABITAT BOARD

496.228 Access and Habitat Board; qualification of members; expenses; term; meetings. (1) There is established within the State Department of Fish and Wildlife the Access and Habitat Board, consisting of seven members appointed by the commission.

(2) Three members shall be appointed to represent the broad spectrum of hunters. In making appointments pursuant to this subsection, the commission shall consider recommendations from the State Fish and Wildlife Director.

(3) Three members of the board shall be appointed to represent the broad spectrum of agriculture and timber landowners. In making appointments pursuant to this subsection, the commission shall consider recommendations from the State Fish and Wildlife Director from a list of at least 15 persons submitted by the State Forester and the Director of Agriculture.

(4) One member of the board shall be appointed to represent the public and shall serve as the board chairperson.

(5) A member of the board shall receive no compensation for services as a member. However, subject to any applicable law regulating travel and other expenses of state officers and employees, a member shall be reimbursed for actual and necessary travel

and other expenses incurred in the performance of official duties from such moneys as are made available by section 19, chapter 659, Oregon Laws 1993.

(6) The term of office of a member of the board is four years. A member of the board is eligible for reappointment.

(7) An official action of the board may be taken only upon the affirmative vote of at least four members.

(8) The board shall select such officers for such terms and with such duties and powers as the board considers necessary for the performance of those offices.

(9) The board shall meet at such times and at such places as may be determined by the chair or by the majority of the members of the board. [1993 c.659 §15]

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

496.232 Board to make program recommendations; commission approval; report; fund expenditure qualifications; gifts and grants. (1) The Access and Habitat Board shall meet, adopt and recommend to the commission, within 120 days after November 4, 1993, and at not more than 120-day intervals thereafter, access and habitat programs.

(2) The commission shall review such programs and may approve or disapprove the program recommendation by the board. Funds may be expended from the subaccount referred to in ORS 496.242 for projects that have been approved by the commission.

(3) The department and the board jointly shall submit to each biennial session of the Legislative Assembly a report on expenditure of funds for the access and habitat programs and on the status of various projects. On or about July 1, 1995, the board and the department shall make another such report to the Legislative Assembly or to the Emergency Board if the Legislative Assembly is not then in session.

(4) In recommending access and habitat programs, the board shall:

(a) Recommend a mix of projects that provides a balance between access and habitat benefits.

(b) Recommend projects that are to be implemented by volunteers under volunteer coordinators and nonprofit organizations engaged in approved access and habitat activities.

(c) Recommend programs that recognize and encourage the contributions of landowners to wildlife and programs that minimize the economic loss to those landowners.

(d) Encourage agreements with landowners who request damage control hunts to insure public access to those hunts.

(e) Encourage projects that result in obtaining matching funds from other sources.

(5) All moneys made available for the access and habitat programs from surcharges received under section 19, chapter 659, Oregon Laws 1993, and from gifts and grants made to carry out the access and habitat programs may be expended only if the board so recommends and the commission so approves. Such amounts may be expended:

(a) On programs that benefit wildlife by improving habitat. These programs shall be in coordination with the Wildlife Division and shall be in addition to programs provided by federal funds. These programs may:

(A) Be on private lands.

(B) Provide seed and fertilizer to offset forage consumed by wildlife and for other programs that enhance forage.

(C) Be adjacent to agricultural and forest land to attract animals from those crops.

(b) On programs that promote access to public and private lands through contracting for various levels of management of these lands. These management programs may include:

(A) Creating hunting lease programs that provide access at present levels or stimulate new access.

(B) Controlling access.

(C) Opening vehicle access.

(D) Promoting land exchanges.

(E) Promoting proper hunting behavior.

(c) On programs that would provide for wildlife feeding to alleviate damage, to intercept wildlife before they become involved in a damage situation and for practical food replacement in severe winters.

(d) On programs to coordinate volunteers to improve habitat, repair damage to fences or roads by wildlife or recreationists, monitor orderly hunter utilization of public and private lands and assist the Oregon State Police in law enforcement activities.

(e) On programs that provide for auction or raffle of tags to provide incentives for habitat or access.

(6) The board may accept, from whatever source, gifts or grants for the purposes of access and habitat. All moneys so accepted shall be deposited in the subaccount referred to in ORS 496.242. Unless otherwise required by the terms of a gift or grant, gifts or grants shall be expended as provided in subsection (5) of this section. [1993 c.659 §16]

496.235 [Repealed by 1973 c.723 §130]

496.236 Advisory councils to board; duties; no compensation or expenses for members. (1) Individuals who reside in the various regions established for administration of the wildlife resources may form advisory councils, with membership in the same proportion as described for the board, to discuss and consider access and habitat programs and projects and to make recommendations thereon to the Access and Habitat Board. When the board considers proposals affecting a region, the board shall consult with the advisory council for that region if one exists.

(2) Employees of the State Department of Fish and Wildlife or other professional biologists who are residents of the various regions may act in an advisory capacity to the various councils.

(3) An individual who serves as a member of an advisory council shall receive no compensation or expenses for service as a member. [1993 c.659 §17]

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

496.242 Access and habitat program funds. (1) Notwithstanding ORS 496.300, all moneys received by the commission pursuant to section 19, chapter 659, Oregon Laws 1993, shall be deposited in a separate subaccount in the State Wildlife Fund. Moneys in the subaccount may be expended only for the access and habitat programs recommended by the Access and Habitat Board for the benefit of the wildlife resources of this state.

(2) The department shall credit the subaccount with a sum equal to 15 percent of the other fund budget for the green forage and Deer Enhancement and Restoration programs in each biennium.

(3) The department shall not assess its personnel costs in the administration of ORS 496.166 and 496.228 to 496.242 against the subaccount referred to in this section without the prior approval of the Access and Habitat Board. [1993 c.659 §14]

496.245 [Repealed by 1973 c.723 §130]

496.250 [Repealed by 1971 c.418 §23]

FISH HABITAT IMPROVEMENT

496.260 Project applications; contents; notice of reasons for rejection; approval conditions; limitation on tax credit. (1) Any person may apply to the State Department of Fish and Wildlife for preliminary certification of a fish habitat improvement project. The department shall develop rules and procedures for administering its responsibilities under this section and ORS 315.134 and 496.265. Such rules shall clarify the criteria used to evaluate fish improvement projects. Applications for preliminary

certification shall be made in writing on a form provided by the department and shall contain:

(a) A detailed description of the proposed project including a statement of expected benefits;

(b) Blueprints or drawings of the proposed project providing such detail as the department may require;

(c) A detailed estimate of project costs; and

(d) Such other information as the department may require.

(2) The department shall act on all applications for preliminary certification before the 120th day after the receipt of such application. At any time during that period the department may request clarification, additional detail or modification of the plans.

(3) If the department rejects an application for preliminary certification, the department shall cause written notice of the action, together with a statement of findings and the reasons therefor to the applicant.

(4) Preliminary certification of a fish habitat improvement project by the department shall not:

(a) Qualify the applicant for the tax credit provided under ORS 315.134.

(b) Exempt the project from any state or federal law, or local ordinance.

(5) Upon completion of construction or installation of a fish habitat improvement project preliminarily certified by the department under this section, a person may apply to the department for final certification of the project. The application for final certification shall be made in writing on forms provided by the department and shall include:

(a) A detailed statement of project costs; and

(b) Whatever other information the department may require.

(6) Upon receipt of an application for final project certification, the department shall cause the project to be inspected to determine that the project will result in the improvement of riparian or in-stream habitat. If the department determines that the project conforms to the plans approved during the preliminary certification, the department shall provide the applicant with written notice of final certification of the project. The action of the department shall include certification of the actual cost of the project for purposes of the income tax credit relief allowed under ORS 315.134. However, in no event shall the department certify an amount for tax credit purposes that is more than 10

percent in excess of the amount approved in the preliminary certificate issued for the project under subsection (2) of this section. [1981 c.720 §22]

496.265 Limitation on amount eligible for tax credit. Notwithstanding any provisions of ORS 315.134 and 496.260 to the contrary, the State Department of Fish and Wildlife shall not preliminarily certify under ORS 496.260 (2), in any one calendar year, as eligible for tax credit under ORS 315.134, fish habitat improvement project costs in excess of \$100,000. The department shall not grant preliminary certification for a fish habitat improvement project unless application under ORS 496.260 (1) is filed with the department on or before January 1, 1998. [1981 c.720 §23; 1989 c.924 §8]

496.270 Immunity from liability for damages resulting from habitat improvement project; exceptions. (1) An operator, timber owner or landowner shall not be held liable for any damages resulting from a fish and wildlife habitat improvement project done in cooperation and consultation with the State Department of Fish and Wildlife unless the damages were caused by willful, wanton or intentional conduct on the part of the operator, timber owner or landowner or unless the damages were caused by the gross negligence of the operator, timber owner or landowner. As used in this subsection "gross negligence" means negligence which is materially greater than the mere absence of reasonable care under the circumstances, and which is characterized by indifference to or reckless disregard of the rights of others.

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

Note: 496.270 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 496 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

FISH RESTORATION AND ENHANCEMENT

Note: Sections 1, 2 and 10 to 13, chapter 512, Oregon Laws 1989, provide:

Sec. 2. The Legislative Assembly finds, in the interest of all Oregonians, a necessity to improve Oregon's fishery resource through the further involvement of its citizens and through support by additional financial revenues. [1989 c.512 §2]

Sec. 10. (1) Notwithstanding ORS 506.306, all moneys received by the commission pursuant to sections 4, 6 and 8, chapter 512, Oregon Laws 1989, shall be deposited in a separate subaccount in the State Wildlife Fund. Except as provided in subsection (2) of this section, moneys in the subaccount may be expended only for the department's fish restoration and enhancement programs for the benefit of the fish resources of this state.

(2) Fees collected from salmon ranching permits authorized under ORS 508.700 to 508.745 will not be commingled with public fishery funds collected and deposited in the subaccount referred to in this section. Notwithstanding any other provision of law, these funds will be used to monitor the effect and impact of private salmon ranching on the fishery resources of Oregon.

(3) The department shall not divert present budgeted funds to other projects as user surcharge funds become available and shall not embark on new programs not vital to the restoration of Oregon fisheries as required by Oregon Revised Statutes and administrative rules. The department shall not assess its personnel costs in the administration of chapter 512, Oregon Laws 1989, against the subaccount referred to in this section without the prior approval of the Restoration and Enhancement Board. [1989 c.512 §10; 1991 c.184 §4]

Sec. 11. (1) There is established within the State Department of Fish and Wildlife the Restoration and Enhancement Board, consisting of seven members appointed by the commission.

(2) Three members shall be appointed to represent the ocean and inland recreational fisheries. In making appointments pursuant to this subsection, the commission shall consider recommendations from the State Fish and Wildlife Director.

(3) Three members of the board shall be appointed to represent the commercial troll and gillnet fisheries and the fish processing industry. In making appointments pursuant to this subsection, the commission shall consider recommendations from the State Fish and Wildlife Director.

(4) One member of the board shall be appointed to represent the public.

(5) A member of the board shall receive no compensation for services as a member. However, subject to any applicable law regulating travel and other expenses of state officers and employees, a member shall be reimbursed for actual and necessary travel and other expenses incurred in the performance of official duties from such moneys made available by sections 4, 6 and 8 of this 1989 Act.

(6) The term of office of a member of the board is four years. A member of the board is eligible for reappointment.

(7) An official action of the board may be taken only upon the affirmative vote of four members.

(8) The board shall select such officers for such terms and with such duties and powers as the board considers necessary for the performance of those offices.

(9) The board shall meet at such times and at such places as may be determined by the chair or by the majority of the members of the board. [1989 c.512 §11]

Sec. 12. (1) The Restoration and Enhancement Board shall meet, adopt and recommend to the commission, within 120 days after the effective date of this 1989 Act [July 1, 1989], and at not more than 120-day intervals thereafter, fish restoration and enhancement programs.

(2) The commission shall review such programs and may approve or disapprove any or all program recommendations by the board. Funds may be expended from the subaccount referred to in section 10 of this 1989 Act for projects which have been approved by the commission.

(3) The department and the board jointly shall submit to each biennial session of the Legislative Assembly a report on expenditure of funds for the fish restoration and enhancement program and on the status of various projects. The board and the department also shall make such a report on or about July 1, 1990, to the Legislative Assembly or to the Emergency Board if the Legislative Assembly is not then in session.

(4) In recommending fish restoration and enhancement programs, the board shall:

(a) Recommend a mix of projects which provide a balance between restoration and enhancement benefits.

(b) Recommend projects that are to be implemented by the salmon and trout enhancement program and nonprofit organizations engaged in approved restoration and enhancement activities.

(c) Encourage projects which result in obtaining matching funds from other sources.

(5) All moneys made available for the fish restoration and enhancement program from surcharges received under sections 4, 6 and 8 of this 1989 Act and from gifts and grants made to carry out the fish restoration and enhancement program may be expended only if recommended by the board and approved by the commission. Such amounts may be expended:

(a) On programs benefiting the commercial fishing industry in the same proportion as revenues received from surcharges under sections 6 and 8 of this 1989 Act bear to the total amount of surcharge revenues.

(b) On programs benefiting recreational angling in the same proportion as revenues received from the surcharge under section 4 of this 1989 Act bear to the total amount of surcharge revenues.

(6) The board may accept, from whatever source, gifts or grants for the purposes of fish restoration and enhancement. All moneys so accepted shall be deposited in the subaccount referred to in section 10 of this 1989 Act. Unless otherwise required by the terms of a gift or grant, gifts or grants shall be expended as provided in subsection (5) of this section. [1989 c.512 §12]

Sec. 13. (1) Individuals who reside in the various regions established for administration of the salmon and trout enhancement program may form advisory councils to discuss and consider fish restoration and enhancement programs and projects and shall make recommendations thereon to the Restoration and Enhancement Board. When the board considers proposals affecting a region, the board shall consult with the advisory council for that region if one exists.

(2) Employees of the State Department of Fish and Wildlife who are residents of the various regions may act in an advisory capacity to the various councils.

(3) Individuals who serve as members of an advisory council shall receive no compensation or expenses for service as a member. [1989 c.512 §13]

Sec. 1. This Act shall be known and may be cited as the Oregon Fisheries Restoration and Enhancement Act of 1989. [1989 c.512 §1]

STATE WILDLIFE FUND; RECEIPTS AND EXPENDITURES

496.300 State Wildlife Fund; sources; uses; special accounts. (1) The State Wildlife Fund is established in the State Treasury separate and distinct from the General Fund. 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 fund. Except as provided in subsection (5) of this section, all moneys in the fund are appropriated continuously to the commission to carry out the wildlife laws. Interest earnings on all moneys in the fund shall be retained in the fund.

(2) All moneys received by the commission from the sale of migratory waterfowl stamps shall be deposited in the State Wildlife Fund.

(3) All moneys received by the commission from the sale of art works and prints related to the migratory waterfowl stamp shall be deposited in a separate subaccount in the State Wildlife Fund. Moneys in the subaccount may be expended only for activities that promote the propagation, conservation and recreational uses of migratory waterfowl and for activities related to the design, production, issuance and arrangements for sale of the migratory waterfowl stamps and related art works and prints. Expenditures of moneys in the subaccount may be made within this state, in other states or in foreign countries, in such amounts as the commission determines appropriate. Expenditures in other states and foreign countries shall be on such terms and conditions as the commission determines will benefit most directly the migratory waterfowl resources of this state.

(4) 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.

(5)(a) The Fish Screening Subaccount is established in the State Wildlife Fund. The subaccount shall consist of:

(A) All penalties recovered under ORS 536.900 to 536.920.

(B) All moneys received pursuant to section 2, chapter 858, Oregon Laws 1991.

(C) All gifts, grants and other moneys from whatever source that may be used to carry out the provisions of ORS 498.248, 509.615 and section 2, chapter 858, Oregon Laws 1991.

(b) All moneys in the subaccount are appropriated continuously to the State Department of Fish and Wildlife to carry out the provisions of ORS 498.248, 509.615, 509.620 and section 2, chapter 858, Oregon Laws 1991.

(6)(a) The Fish Screening Administration Subaccount is established in the State Wildlife Fund. The subaccount shall consist of all moneys received from the surcharge on angling licenses imposed by section 15, chapter 858, Oregon Laws 1991.

(b) All moneys in the subaccount are appropriated continuously to the State Department of Fish and Wildlife to carry out the provisions of ORS 315.138, 496.300, 498.252 and 498.276.

(7) The Fish Endowment Account is established in the State Treasury, separate and distinct from the General Fund. The account shall consist of transfers of moneys authorized by the Legislative Assembly from the State Wildlife Fund and gifts and grants of moneys from whatever source for the purpose of paying the expense of maintaining fish hatcheries operated by the department. Interest earnings on moneys in the account, but no portion of the principal, may be transferred to the State Wildlife Fund and may be expended only for the maintenance of fish hatcheries operated by the department.

(8) The Halibut Research Account is created as a subaccount in the State Wildlife Fund. All moneys received from the issuance of halibut tags pursuant to ORS 497.121 shall be credited to the account. Moneys in the account may be expended only for halibut population studies and other research. [1973 c.723 §15; 1975 c.118 §1; 1975 c.253 §12; 1983 c.8 §1; 1983 c.801 §6; 1989 c.618 §10; 1989 c.749 §6; 1991 c.435 §2; 1991 c.858 §7]

Note: Section 5, chapter 594, Oregon Laws 1983, provides:

Sec. 5. Limit on spending on lower Deschutes River. Notwithstanding any other provision of law, the State Department of Fish and Wildlife may not expend any moneys for acquisition of land along the Lower Deschutes River until:

(1) The department determines that adequate funds are available from other sources so that such other funds, together with moneys available for expenditure by the department, will be adequate to complete the entire land acquisition proposed in the project; and

(2) The department has adequate contractual or other legal assurances that title to all such land will vest in the State Department of Fish and Wildlife. [1983 c.594 §5]

Note: Section 8, chapter 749, Oregon Laws 1989, provides:

Sec. 8. Transfers to Fish Endowment Account. (1) During the period beginning July 1, 1989, and ending June 30, 1995, one-half of all investment and interest earnings on moneys in the State Wildlife Fund shall be transferred to the Fish Endowment Account.

(2) During the period beginning July 1, 1989, and ending June 30, 1991, one-half of the proceeds from the sale of timber from the State Department of Fish and Wildlife property at Eel Lake shall be transferred to the Fish Endowment Account. [1989 c.749 §8]

Note: Section 13, chapter 858, Oregon Laws 1991, provides:

Sec. 13. Certain subaccounts abolished. (1) On July 1, 1995, the subaccount referred to in ORS 496.300 (5) is abolished. On that date all unexpended and unobligated moneys in the subaccount revert to the State Wildlife Fund.

(2) On January 1, 1996, the Fish Screening Administration Subaccount referred to in ORS 496.300 (6) is abolished. On that date all unexpended and unobligated moneys in the subaccount revert to the State Wildlife Fund. [1991 c.858 §13]

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.645 §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 charged against the property if it had been assessed to a taxable owner as of July 1 of such year as provided in subsection (2) of this section. The county assessor shall determine the value of such property and shall notify the commission of the determination of the county assessor. 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) or (c) 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 forestland use, whichever is applicable.

(b) Paragraph (a) 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 paragraph (a) of this subsection on the July 1 following the date of the open field burning. If in the next year, the open field burning is discontinued, paragraph (a) of this subsection shall apply the next July 1 and each year thereafter as long as no open field burning occurs.

(c) 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 forestland 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 sec-

tion 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 the assessor 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; 1991 c.459 §420]

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 496.380 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) Individual taxpayers who file 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 taxpayers to designate that a contribution be made to the Nongame Wildlife Fund from their income tax refund. The space for designating the contribution shall provide for checkoff boxes as indicated under ORS 305.749. [1979 c.566 §2; 1981 c.411 §5; 1989 c.987 §21]

496.385 Nongame Wildlife Fund. (1) There is established as a separate and distinct fund in the State Treasury a Nongame Wildlife Fund. The Nongame Wildlife Fund shall consist of:

(a) An amount credited to the fund under ORS 305.749, which shall be transferred by the Department of Revenue to the fund.

(b) Gifts, grants and donations, in money or otherwise, for use as described in subsection (2) of this section, which the State Treasurer may solicit and accept from private and public sources and shall cause to be deposited and credited to the Nongame Wildlife Fund.

(c) Interest or other earnings on the amounts described in paragraphs (a) and (b) of this subsection which shall inure to the benefit of the Nongame Wildlife Fund.

(2) Moneys contained in the Nongame Wildlife Fund are continuously appropriated for the purposes specified in ORS 496.390. [1979 c.566 §3; 1987 c.758 §4; 1989 c.987 §22]

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]

SALMON AND TROUT ENHANCEMENT

496.430 "Native stocks" defined. As used in ORS 496.435 to 496.455, "native stocks" means those anadromous fish that naturally propagate in a given watershed. [1981 c.317 §2]

496.435 Policy to restore native stocks. Consistent with other provisions of law, it is declared to be a goal of the people of the State of Oregon to restore native stocks of salmon and trout to their historic levels of abundance. In order to achieve this goal in a cost-effective manner, the State of Oregon shall engage in a program to rehabilitate and improve natural habitat and native stocks and insure that the level of harvest does not

exceed the capacity of stocks to reproduce themselves. [1981 c.317 §3]

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

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

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

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

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

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

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

(6) Grant funds to citizens for the implementation of approved enhancement projects from such moneys as may be available to the commission therefor. [1981 c.317 §5]

496.450 Application for project; subjects for projects; conditions for approval. (1) Any citizen or group of citizens may submit to the commission a proposal for a project to be implemented under the salmon and trout enhancement program or may submit a request for advice and assistance in developing such a project.

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

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

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

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

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

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

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

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

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

496.465 Interference with project prohibited. Except for activities or projects authorized by a unit of municipal, state or federal government, no person shall disturb, damage, destroy or interfere with the operation of a salmon and trout enhancement project referred to in ORS 496.450. [1989 c.940 §2]

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

WILDLIFE COOPERATION; FEDERAL WILDLIFE AID

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 Law 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.

MIGRATORY WATERFOWL STAMP

496.550 Migratory waterfowl stamp; design selection; production of stamps and art works. (1) The State Fish and Wildlife Commission shall arrange, by contest or other appropriate means, for the selection of the design of the annual migratory waterfowl stamp required by ORS 497.151 and for the production and sale of the stamps.

(2) The commission may produce stamps in such number as the commission considers appropriate and may make stamps available for the creation of migratory waterfowl art prints and other related art works and may arrange for the sale of stamps, prints and art works to persons desiring to purchase those items. [1983 c.801 §5]

496.555 Contract on migratory waterfowl stamp matters. In carrying out its duties, functions and powers with regard to the migratory waterfowl stamp, the State Fish and Wildlife Commission may contract for the performance of those duties, functions and powers. The contract may include, among other matters, provisions for advance payment or reimbursement for services performed pursuant to any such contract. All costs and expenses incurred pursuant to this section shall be paid from the subaccount referred to in ORS 496.300 (3). [1983 c.801 §4]

UPLAND BIRD STAMP

496.558 "Upland bird" defined. As used in ORS 496.558 to 496.570 and 497.153, "upland bird" means those bird family members commonly known as pheasant, quail, grouse and partridge, including chukars. [1989 c.406 §2]

Note: 496.558 and 496.562 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 496 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

496.562 Policy. The purposes of ORS 496.558 to 496.570 and 497.153 are to:

(1) Authorize the State Fish and Wildlife Commission to issue to hunters an upland bird stamp for a specified fee;

(2) Establish a fund to be financed by the sale of upland bird stamps and any art works and prints related to the upland bird stamp for the purposes of promoting the propagation and conservation of upland birds and acquiring, developing, managing, enhancing, purchasing or acquiring through lands exchange upland bird habitat; and

(3) Provide the State Fish and Wildlife Commission with improved data on the location and number of upland bird hunters. [1989 c.406 §1]

Note: See note under 496.558.

496.566 Contest for stamp design; sale of art works; contracts for stamp matters. (1) The State Fish and Wildlife Commission shall arrange, by contest or other appropriate means, for the selection of the design of the annual upland bird stamp authorized by ORS 497.153 and for the production and sale of the stamps.

(2) The commission may produce stamps in such number as the commission considers

appropriate and may make stamps available for the creation of upland bird art prints and other related art works and may arrange for the sale of stamps, prints and art works to persons desiring to purchase those items.

(3) In carrying out its duties, functions and powers with regard to the upland bird stamp, the State Fish and Wildlife Commission may contract for the performance of those duties, functions and powers. The contract may include, among other matters, provisions for advance payment or reimbursement for services performed pursuant to any such contract. All costs and expenses incurred pursuant to this section shall be paid from the subaccount referred to in ORS 496.300 (4). [1989 c.406 §6]

496.570 Dedication of proceeds from sale of stamps and art works. Notwithstanding ORS 496.300, all moneys received by the commission from the sale of upland bird stamps and from the sale of any art works and prints related to the upland bird stamp shall be deposited in a separate subaccount in the State Wildlife Fund. Moneys in the subaccount may be expended only for promoting the propagation and conservation of upland birds and the acquisition, development, management, enhancement, sale or exchange of upland bird habitat, and for activities related to the design, production, issuance and arrangements for sale of the upland bird stamps and related art works and prints. Expenditures of moneys in the subaccount shall be made for the benefit of programs within this state in such amounts and at such times as the commission determines appropriate to most directly benefit the upland bird resources of the state. [1989 c.406 §7]

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 deputies of the director 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; payment of expenses from wildlife fund; appointment of federal agents. (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 Superintendent of State Police may appoint special enforcement officers authorized to enforce the wildlife laws. Individuals so appointed must be special agents of the United States Fish and Wildlife Service or the National Marine Fishery Service, and shall serve at the pleasure of the superintendent without additional compensation. Each such special enforcement officer shall have all powers and authority of a peace officer of this state in serving warrants, subpoenas and other legal process in enforcement of the wildlife laws. [Amended by 1971 c.658 §10; 1973 c.723 §18; 1983 c.364 §4]

496.615 Commission employees 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 153.710, 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 [Amended by 1971 c.658 §16; 1973 c.723 §26; repealed by 1991 c.267 §1]

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, enclosure, 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 made on Sunday. The arrests mentioned in ORS 496.645 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. [Amended by 1991 c.267 §2]

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; disposition; repayment of administrative costs. (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) All wildlife shot by any person while violating any provision of ORS 164.245 to 164.270 or 498.120 shall be seized by any person authorized to enforce the wildlife laws and shall be forfeited.

(3) 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.

(4) The commission may dispose of such property in any manner it considers proper, but the clear proceeds derived from the sale of any seized guns, boats, traps, fishing apparatus or implements shall be deposited in the Common School 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.

(5) Upon conviction of a person for taking wildlife while violating any provision of ORS 164.245 to 164.270 or 498.120, the court shall include in the sentence a requirement that the convicted person pay to the seizing agency an amount equal to the cost incurred in seizing, storing and disposing of the seized and forfeited wildlife. [Amended by 1971 c.658 §19; 1973 c.723 §29; 1987 c.858 §6; 1993 c.440 §2]

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 unlawful killing of wildlife; jurisdiction of courts. (1) The commission may institute suit for the recovery of damages for the unlawful taking or 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) Each game mammal other than mountain sheep, mountain goat, elk or silver gray squirrel, \$400.

(b) Each mountain sheep or mountain goat, \$3,500.

(c) Each elk, \$750.

(d) Each silver gray squirrel, \$10.

(e) Each game bird other than wild turkey, \$10.

(f) Each wild turkey, \$50.

(g) Each game fish other than salmon or steelhead trout, \$5.

(h) Each salmon or steelhead trout, \$125.

(i) Each fur-bearing mammal other than bobcat or fisher, \$50.

(j) Each bobcat or fisher, \$350.

(k) Each specimen of any wildlife species whose survival is specified by the wildlife laws or the laws of the United States as threatened or endangered, \$500.

(L) Each specimen of any wildlife species otherwise protected by the wildlife laws or

the laws of the United States, but not otherwise referred to in this subsection, \$25.

(3) In any such action, the court shall award to the prevailing party, in addition to costs and disbursements, reasonable attorney fees.

(4) Such civil damages shall be in addition to other penalties prescribed by the wildlife laws for the unlawful taking or killing of wildlife.

(5) Any district or justice court has jurisdiction to try any case for the recovery of damages for the unlawful taking or 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; 1981 c.108 §1]

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 the person on the ground that the testimony of the person may incriminate the person. However, such testimony shall not be used against the person in any prosecution for any crime or misdemeanor under the laws of the state, nor shall the person be subject to any criminal prosecution or any penalty or forfeiture for or on account of any transaction, matter or thing concerning which the person 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. (1) One-half of all fines imposed in justice courts as provided in the wildlife laws and collected in money shall be credited and distributed under ORS 137.293 and 137.295, to the treasurer of the county in which the action or proceeding is commenced, as a monetary obligation payable to the county, to be credited to the general fund of the county. One-half of all fines so imposed and collected in justice courts shall be credited and distributed under ORS 137.293 and 137.295, as a monetary obligation payable to the state. Fines so imposed and collected in district courts shall be credited and distributed under ORS 137.293 and 137.295, as monetary obligations payable to the state. The district attorney of the county, upon payment of any judgment, shall satisfy it of record as attorney for the state.

(2) Payment of fines collected in justice courts 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; 1981 s.a. c.3 §115; 1983 c.763 §50; 1987 c.905 §25]

WILDLIFE LAW VIOLATOR COMPACT

496.750 Wildlife Law Violator Compact. The Wildlife Violator Compact is hereby enacted into law and entered into on behalf of this state with all other states legally joining therein in a form substantially as follows:

ARTICLE I**FINDINGS, DECLARATION OF POLICY AND PURPOSE**

(a) The party states find that:

(1) Wildlife resources are managed in trust by the respective states for the benefit of all residents and visitors.

(2) The protection of their respective wildlife resources can be materially affected by the degree of compliance with state statute, law, regulation, ordinance or administrative rule relating to the management of those resources.

(3) The preservation, protection, management and restoration of wildlife contributes immeasurably to the aesthetic, recreational and economic aspects of these natural resources.

(4) Wildlife resources are valuable without regard to political boundaries, therefore, all persons should be required to comply with wildlife preservation, protection, management and restoration laws, ordinances and administrative rules and regulations of all party states as a condition precedent to the continuance or issuance of any license to hunt, fish, trap or possess wildlife.

(5) Violation of wildlife laws interferes with the management of wildlife resources and may endanger the safety of persons and property.

(6) The mobility of many wildlife law violators necessitates the maintenance of channels of communications among the various states.

(7) In most instances, a person who is cited for a wildlife violation in a state other than the person's home state:

(i) Must post collateral or bond to secure appearance for a trial at a later date; or

(ii) If unable to post collateral or bond, is taken into custody until the collateral or bond is posted; or

(iii) Is taken directly to court for an immediate appearance.

(8) The purpose of the enforcement practices described in paragraph (7) of this subdivision is to insure compliance with the terms of a wildlife citation by the person who, if permitted to continue on the person's

way after receiving the citation, could return to the person's home state and disregard the person's duty under the terms of the citation.

(9) In most instances, a person receiving a wildlife citation in the person's home state is permitted to accept the citation from the officer at the scene of the violation and to immediately continue on the person's way after agreeing or being instructed to comply with the terms of the citation.

(10) The practice described in paragraph (7) of this subdivision causes unnecessary inconvenience and, at times, a hardship for the person who is unable at the time to post collateral, furnish a bond, stand trial or pay the fine, and thus is compelled to remain in custody until some alternative arrangement can be made.

(11) The enforcement practices described in paragraph (7) of this subdivision consume an undue amount of law enforcement time.

(b) It is the policy of the party states to:

(1) Promote compliance with the statutes, laws, ordinances, regulations and administrative rules relating to management of wildlife resources in their respective states.

(2) Recognize the suspension of wildlife license privileges of any person whose license privileges have been suspended by a party state and treat this suspension as if it had occurred in their state.

(3) Allow violators to accept a wildlife citation, except as provided in subdivision (b) of Article III, and proceed on the violator's way without delay whether or not the person is a resident in the state in which the citation was issued, provided that the violator's home state is party to this compact.

(4) Report to the appropriate party state, as provided in the compact manual, any conviction recorded against any person whose home state was not the issuing state.

(5) Allow the home state to recognize and treat convictions recorded for their residents which occurred in another party state as if they had occurred in the home state.

(6) Extend cooperation to its fullest extent among the party states for obtaining compliance with the terms of a wildlife citation issued in one party state to a resident of another party state.

(7) Maximize effective use of law enforcement personnel and information.

(8) Assist court systems in the efficient disposition of wildlife violations.

(c) The purpose of this compact is to:

(1) Provide a means through which the party states may participate in a reciprocal program to effectuate policies enumerated in

subdivision (b) of this Article in a uniform and orderly manner.

(2) Provide for the fair and impartial treatment of wildlife violators operating within party states in recognition of the person's right of due process and the sovereign status of a party state.

ARTICLE II DEFINITIONS

As used in this compact, unless the context requires otherwise:

(a) "Citation" means any summons, complaint, ticket, penalty assessment or other official document issued by a wildlife officer or other peace officer for a wildlife violation containing an order which requires the person to respond.

(b) "Collateral" means any cash or other security deposited to secure an appearance for trial, in connection with the issuance by a wildlife officer or other peace officer of a citation for a wildlife violation.

(c) "Compliance" with respect to a citation means the act of answering the citation through appearance at a court, a tribunal or payment of fines, costs and surcharges, if any, or both such appearance and payment.

(d) "Conviction" means a conviction, including any court conviction, of any offense related to the preservation, protection, management or restoration of wildlife which is prohibited by state statute, law, regulation, ordinance or administrative rule, or a forfeiture of bail, bond or other security deposited to secure appearance by a person charged with having committed any such offense, or payment of a penalty assessment, or a plea of nolo contendere, or the imposition of a deferred or suspended sentence by the court.

(e) "Court" means a court of law, including Magistrate's Court and the Justice of the Peace Court.

(f) "Home state" means the state of primary residence of a person.

(g) "Issuing state" means the party state which issues a wildlife citation to the violator.

(h) "License" means any license, permit or other public document which conveys to the person to whom it was issued the privilege of pursuing, possessing or taking any wildlife regulated by statute, law, regulation, ordinance or administrative rule of a party state.

(i) "Licensing authority" means the department or division within each party state which is authorized by law to issue or approve licenses or permits to hunt, fish, trap, or possess wildlife.

(j) "Party state" means any state which enacts legislation to become a member of this Wildlife Compact.

(k) "Personal recognizance" means an agreement by a person made at the time of issuance of the wildlife citation that the person will comply with the terms of that citation.

(L) "State" means any state, territory or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Provinces of Canada or other countries.

(m) "Suspension" means any revocation, denial or withdrawal of any or all license privileges, including the privilege to apply for, purchase or exercise the benefits conferred by any license.

(n) "Terms of the citation" means those conditions and options expressly stated upon the citation.

(o) "Wildlife" means all species of animals, including but not necessarily limited to mammals, birds, fish, reptiles, amphibians, mollusks and crustaceans, which are defined as "wildlife" and are protected or otherwise regulated by statute, law, regulation, ordinance or administrative rule in a party state. Species included in the definition of "wildlife" vary from state to state and determination of whether a species is "wildlife" for the purposes of this compact shall be based on local law.

(p) "Wildlife law" means any statute, law, regulation, ordinance or administrative rule developed and enacted to manage wildlife resources and the use thereof.

(q) "Wildlife officer" means any individual authorized by a party state to issue a citation for a wildlife violation.

(r) "Wildlife violation" means any cited violation of a statute, law, regulation, ordinance or administrative rule developed and enacted to manage wildlife resources and the use thereof.

ARTICLE III

PROCEDURES FOR ISSUING STATE

(a) When issuing a citation for a wildlife violation, a wildlife officer shall issue a citation to any person whose primary residence is in a party state in the same manner as if the person were a resident of the home state and shall not require the person to post collateral to secure appearance, subject to the exceptions contained in subdivision (b) of this Article, if the officer receives the person's personal recognizance that the person will comply with the terms of the citation.

(b) Personal recognizance is acceptable:

(1) If not prohibited by local law or the compact manual; and

(2) If the violator provides adequate proof of the violator's identification to the wildlife officer.

(c) Upon conviction or failure of a person to comply with the terms of a wildlife citation, the appropriate official shall report the conviction or failure to comply to the licensing authority of the party state in which the wildlife citation was issued. The report shall be made in accordance with procedures specified by the issuing state and shall contain the information specified in the compact manual as minimum requirements for effective processing by the home state.

(d) Upon receipt of the report of conviction or noncompliance required by subdivision (c) of this Article, the licensing authority of the issuing state shall transmit to the licensing authority in the home state of the violator the information in a form and content as contained in the compact manual.

ARTICLE IV

PROCEDURES FOR HOME STATE

(a) Upon receipt of a report of failure to comply with the terms of a citation from the licensing authority of the issuing state, the licensing authority of the home state shall notify the violator, shall initiate a suspension action in accordance with the home state's suspension procedures and shall suspend the violator's license privileges until satisfactory evidence of compliance with the terms of the wildlife citation has been furnished by the issuing state to the home state licensing authority. Due process safeguards will be accorded.

(b) Upon receipt of a report of conviction from the licensing authority of the issuing state, the licensing authority of the home state shall enter such conviction in its records and shall treat such conviction as if it occurred in the home state for the purposes of the suspension of license privileges.

(c) The licensing authority of the home state shall maintain a record of actions taken and make reports to issuing states as provided in the compact manual.

ARTICLE V

RECIPROCAL RECOGNITION OF SUSPENSION

All party states shall recognize the suspension of license privileges of any person by any state as if the violation on which the suspension is based had in fact occurred in their state and could have been the basis for suspension of license privileges in their state.

ARTICLE VI

APPLICABILITY OF OTHER LAWS

Except as expressly required by provisions of this compact, nothing herein shall be construed to affect the right of any party state to apply any of its laws relating to license privileges to any person or circumstance, or to invalidate or prevent any agreement or other cooperative arrangements between a party state and a nonparty state concerning wildlife law enforcement.

ARTICLE VII

COMPACT ADMINISTRATOR PROCEDURES

(a) For the purpose of administering the provisions of this compact and to serve as a governing body for the resolution of all matters relating to the operation of this compact, a board of compact administrators is established. The board shall be composed of one representative from each of the party states to be known as the compact administrator. The compact administrator shall be appointed by the head of the licensing authority of each party state and will serve and be subject to removal in accordance with the laws of the state the administrator represents. A compact administrator may provide for the discharge of the administrator's duties and the performance of the administrator's functions as a board member by an alternate. An alternate may not be entitled to serve unless written notification of the alternate's identity has been given to the board.

(b) Each member of the board of compact administrators shall be entitled to one vote. No action of the board shall be binding unless taken at a meeting at which a majority of the total number of votes on the board are cast in favor thereof. Action by the board shall be only at a meeting at which a majority of the party states are represented.

(c) The board shall elect annually, from its membership, a chairperson and vice-chairperson.

(d) The board shall adopt bylaws, not inconsistent with the provisions of this compact or the laws of a party state, for the conduct of its business and shall have the power to amend and rescind its bylaws.

(e) The board may accept for any of its purposes and functions under this compact all donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States or any governmental agency, and may receive, utilize and dispose of the same.

(f) The board may contract with or accept services or personnel from any governmental or intergovernmental agency, individual, firm, corporation or any private nonprofit organization or institution.

(g) The board shall formulate all necessary procedures and develop uniform forms and documents for administering the provisions of this compact. All procedures and forms adopted pursuant to board action shall be contained in the compact manual.

ARTICLE VIII

ENTRY INTO COMPACT AND WITHDRAWAL

(a) This compact shall become effective when it has been adopted by at least two states.

(b) (1) Entry into the compact shall be made by resolution of ratification executed by the authorized officials of the applying state and submitted to the chairperson of the board.

(2) The resolution shall be in a form and content as provided in the compact manual and shall include statements that in substance are as follows:

(i) A citation of the authority by which the state is empowered to become a party to this compact;

(ii) Agreement to comply with the terms and provisions of the compact; and

(iii) That compact entry is with all states then party to the compact and with any state that legally becomes a party to the compact.

(3) The effective date of entry shall be specified by the applying state, but shall not be less than 60 days after notice has been given by the chairperson of the board of the compact administrators or by the secretariat of the board to each party state that the resolution from the applying state has been received.

(c) A party state may withdraw from this compact by official written notice to the other party states, but a withdrawal shall not take effect until 90 days after notice of withdrawal is given. The notice shall be directed to the compact administrator of each member state. No withdrawal shall affect the validity of this compact as to the remaining party states.

ARTICLE IX

AMENDMENTS TO THE COMPACT

(a) This compact may be amended from time to time. Amendments shall be presented in resolution form to the chairperson of the board of compact administrators and may be initiated by one or more party states.

(b) Adoption of an amendment shall require endorsement by all party states and shall become effective 30 days after the date of the last endorsement.

(c) Failure of a party state to respond to the compact chairman within 120 days after receipt of the proposed amendment shall constitute endorsement.

ARTICLE X

CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes stated herein. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, individual, or circumstance is held invalid, the compact shall not be affected thereby. If this compact shall be held contrary to the constitution of any party state thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

ARTICLE XI

TITLE

This compact shall be known as the Wildlife Violator Compact.

[1989 c.1056 §2]

PERMIT FOR WATER FOR HYDROELECTRIC PURPOSES

496.815 Definitions for ORS 496.815 to 496.825. As used in ORS 496.815 to 496.825:

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

(2) "Director" means the State Fish and Wildlife Director.

(3) "Person" means an individual, corporation, association, firm, partnership, joint stock company, municipal corporations and all other political subdivisions of the State of Oregon. The Federal Government or any of its agencies are specifically excluded. [1985 c.674 §1]

496.820 Permit or license fee. (1) Any person applying for a permit to appropriate water for hydroelectric purposes under ORS 537.150 to 537.250 or any person applying for a preliminary permit or license under ORS 543.010 to 543.620 shall pay an administration fee of \$350 to the State Department of Fish and Wildlife.

(2) If a person pays the administration fee under subsection (1) of this section at the time the person applies for a preliminary permit under ORS 543.210, the person shall not also be required to pay the fee when applying for a license for the same project under ORS 543.010 to 543.620. [1985 c.674 §2]

496.825 Application fee; exception. (1) In addition to any other fee required by law, at the time the person applies to the Water Resources Department for a license to operate a hydroelectric project under ORS 543.010 to 543.620 or for a permit to appropriate water for hydroelectric purposes under ORS 537.150 to 537.230, the person shall pay to the director an application fee the amount of which shall be the greater of:

(a) \$1,000; or

(b) Thirty-five cents for each kilowatt of proposed capacity of the project.

(2) The director shall postpone the payment of the fee under subsection (1) of this section for a permit to appropriate water under ORS 537.150 to 537.230 until the person submits final plans and specifications for the project to the Water Resources Department under ORS 537.150.

(3) Subsection (1) of this section shall not apply to any applicant for a permit or license for a project producing 100 theoretical horsepower or less. [1985 c.674 §3]

496.830 Penalty fee. A person who fails to pay the fee required under section 4, chapter 674, Oregon Laws 1985, or the assessment under section 5, chapter 674, Oregon Laws 1985, or ORS 543.265 on the due date shall pay in addition to the assessed amount due, a penalty in the amount of one percent of the fee per month for the period that the fee is past due. The director may bring an action to collect an unpaid fee or assessment in the name of the State of Oregon in the Circuit Court of Marion County or the circuit court of the county in which the project is located. The director shall be entitled to recover all costs and attorney fees incurred in the legal action. [1985 c.674 §7]

496.835 Oregon Fish and Wildlife Hydroelectric Fund. (1) There is created within the State Treasury a revolving fund known as the Oregon Fish and Wildlife Hydroelectric Fund, separate and distinct from the General Fund. The moneys in this fund are continuously appropriated for use by the department in its activities related to hydroelectric projects including payment of necessary administrative expenses.

(2) The fund created by subsection (1) of this section shall consist of all moneys received under sections 4 and 5, chapter 674, Oregon Laws 1985, ORS 496.820 and 496.825

and moneys transferred from the Water Resources Department Hydroelectric Fund as provided in ORS 536.015.

(3) Moneys in the fund may be invested as provided in ORS 293.701 to 293.820. Interest from any source derived from the investment of the moneys of the fund shall be credited to the fund. [1985 c.674 §8; 1991 c.869 §3]

496.905 [1967 c.604 §1; 1969 c.59 §1; 1971 c.388 §3; 1973 c.723 §35; 1979 c.477 §11; renumbered 153.710]

496.910 [1967 c.604 §2; 1973 c.723 §36; 1979 c.477 §12; renumbered 153.705]

496.915 [1967 c.604 §3; 1973 c.723 §37; renumbered 153.715]

496.920 [1967 c.604 §4; 1973 c.723 §38; 1979 c.477 §13; renumbered 153.720]

496.925 [1967 c.604 §5; renumbered 153.725]

496.927 [1977 c.350 §2; 1979 c.477 §14; renumbered 153.730]

496.930 [1967 c.604 §6; renumbered 153.745]

496.935 [1967 c.604 §7; renumbered 153.750]

496.940 [1967 c.604 §8; renumbered 153.755]

496.945 [1967 c.604 §9; renumbered 153.760]

496.950 [1967 c.604 §10; renumbered 153.765]

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

PENALTIES

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 when the offense is committed with a culpable mental state as defined in ORS 161.085. 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) Except as otherwise provided by law, violation of any provision of the wildlife laws, or any rule promulgated pursuant thereto is punishable as a violation in the manner prescribed in ORS 161.635 when the offense is committed with no culpable mental state as defined in ORS 161.085.

(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 when the offense is committed with a culpable mental state as defined in ORS 161.085. [1973 c.723 §39; 1975 c.578 §3; 1977 c.350 §3; 1977 c.353 §1; 1983 c.364 §1; 1985 c.372 §1]

496.994 Obstructing the taking of wildlife prohibited. (1) A person commits

the offense of obstructing the taking of wildlife if the person, having no right to do so, intentionally interferes with the lawful taking, or the process of taking, of wildlife by another with the intent to prevent the taking.

(2) Obstructing the taking of wildlife is a violation as defined in ORS 161.565, punishable as provided in ORS 161.635 (3). [1987 c.473 §2; 1989 c.171 §67]

WILDLIFE
