

Enrolled
House Bill 3089

Sponsored by Representatives KRIEGER, SCHAUFLEER; Representatives BARKER, BOONE,
BRUUN, WEIDNER, WITT, Senator METSGER (at the request of Oregon Anglers)

CHAPTER

AN ACT

Relating to wildlife; creating new provisions; amending ORS 496.004, 496.146, 496.232, 496.705,
496.992, 497.415 and 497.441; and repealing ORS 497.435.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 496.004 is amended to read:

496.004. 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 **and gray wolf as a special status mammal defined by commission rule.**
- (10) "Hunt" means to take or attempt to take any wildlife by means involving the use of a weapon or with the assistance of any mammal or bird.
- (11) "Manage" means to protect, preserve, propagate, promote, utilize and control wildlife.
- (12) "Optimum level" means wildlife population levels that provide self-sustaining species as well as taking, nonconsumptive and recreational opportunities.
- (13) "Person with a disability" means a person who complies with the requirement of ORS 496.018.
- (14) "Shellfish" has the meaning given that term in ORS 506.011.
- (15) "Species" means any species or subspecies of wildlife.
- (16) "Take" means to kill or obtain possession or control of any wildlife.
- (17) "Threatened species" means:

(a) Any native wildlife species the commission determines is likely to become an endangered species within the foreseeable future throughout any significant portion of its range within this state.

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

(18) "Trap" means to take or attempt to take any wildlife by means involving the use of a trap, net, snare or other device used for the purpose of capture.

(19) "Wildlife" means fish, shellfish, amphibians and reptiles, feral swine as defined by State Department of Agriculture rule, wild birds as defined by commission rule and other wild mammals as defined by commission rule.

SECTION 1a. ORS 496.232 is amended to read:

496.232. (1) The Access and Habitat Board shall meet, adopt and recommend to the State Fish and Wildlife 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 State Department of Fish and Wildlife 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.

(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 ensure 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:

(A) Through contracting for various levels of management of these lands. These management programs may include:

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

[(B)] (ii) Controlling access.

[(C)] (iii) Opening vehicle access.

[(D)] (iv) Promoting land exchanges.

[(E)] (v) Promoting proper hunting behavior.

(B) Through the acquisition of easements.

(c) On programs that would provide for wildlife feeding to alleviate damage, to intercept wildlife before wildlife becomes 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.

SECTION 2. ORS 496.146 is amended to read:

496.146. In addition to any other duties or powers provided by law, the State Fish and Wildlife 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, taking, 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 State Department of Fish and Wildlife, 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 fishing and hunting seasons and bag limits applicable only to persons with disabilities.

(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. **In establishing the preference system, the commission shall consider giving additional preference points to persons who have been issued a resident pioneer hunting license pursuant to ORS 497.102.**

(18) May sell advertising in State Department of Fish and Wildlife publications, including annual hunting and angling regulation publications.

(19) May, notwithstanding the fees required by ORS 497.112, provide free hunting tags to an organization that sponsors hunting trips for terminally ill children.

(20) Shall, after consultation with the State Department of Agriculture, adopt rules prohibiting the use of the World Wide Web, other Internet protocols or broadcast or closed circuit media to remotely control a weapon for the purpose of hunting any game bird, wildlife, game mammal or other mammal. The rules may exempt the State Department of Fish and Wildlife or agents of the department from the prohibition.

(21) May adopt rules establishing a schedule of civil penalties, not to exceed \$6,500 per violation, for violations of provisions of the wildlife laws or rules adopted by the commission under the wildlife laws. Civil penalties established under this subsection must be imposed in the manner provided by ORS 183.745 and must be deposited in the State Wildlife Fund established under ORS 496.300.

SECTION 3. ORS 496.705 is amended to read:

496.705. (1) The State Fish and Wildlife 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)(a) The damages referred to in subsection (1) of this section [*shall be*] **are** as follows:

[(a)] (A) Each game mammal other than **moose**, mountain sheep, mountain goat, elk or silver gray squirrel, **or deer or antelope described in subparagraphs (D) and (E) of this paragraph**, \$800.

[(b)] (B) Each **moose**, mountain sheep or mountain goat, **other than those described in subparagraphs (F), (G) and (H) of this paragraph**, [*\$6,800*] **\$10,000**.

[(c)] (C) Each elk, **other than those described in subparagraph (I) of this paragraph**, \$1,500.

- (D) Each deer with at least four points on one antler, \$7,500.**
- (E) Each antelope with at least one horn equal to or greater than 14 inches, \$7,500.**
- (F) Each moose with antlers, \$25,000.**
- (G) Each mountain sheep that has at least one horn equal to or greater than one half curl, \$25,000.**
- (H) Each mountain goat that has at least one horn equal to or greater than six inches, \$25,000.**
- (I) Each elk with at least six points on one antler, \$15,000.**
- [(d)]* **(J)** Each silver gray squirrel, \$20.
- [(e)]* **(K)** Each game bird other than wild turkey, \$20.
- [(f)]* **(L)** Each wild turkey, \$100.
- [(g)]* **(M)** Each game fish other than salmon, steelhead trout, halibut or sturgeon, \$10.
- [(h)]* **(N)** Each **sturgeon other than those specified in subparagraph (O) of this paragraph,** salmon, steelhead trout[,] or halibut [*or sturgeon*], \$250.
- (O) Each oversized sturgeon, as specified by the commission by rule, \$1,000.**
- [(i)]* **(P)** Each fur-bearing mammal other than bobcat or fisher, \$100.
- [(j)]* **(Q)** Each bobcat or fisher, \$700.
- [(k)]* **(R)** 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, \$1,000.
- [(L)]* **(S)** 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, \$50.
- (T) Each bald eagle, golden eagle, goshawk, osprey, peregrine falcon or any other raptor listed as a threatened species or an endangered species by the commission by rule, \$5,000.**
- (U) Each raptor except those specified in subparagraph (T) of this paragraph, \$2,000.**

- (b) For purposes of this subsection:**
- (A) A point must be at least one inch, measured from the main beam of the antler to the tip of the point.**
- (B) Horn length must be measured from the base of the hairline to the tip of the horn.**
- (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 circuit 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.

SECTION 4. ORS 496.992 is amended to read:

496.992. (1) Except as otherwise provided by ORS 153.022 and other 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 ORS 153.022 and other law, violation of any provision of the wildlife laws or any rule promulgated pursuant thereto is punishable as a Class A violation in the manner prescribed in ORS chapter 153 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 a **raptor or 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.

SECTION 5. ORS 497.415 is amended to read:

497.415. (1) *[Except as provided in ORS 497.435,]* When any person is convicted of a violation of law or any rule adopted pursuant thereto or otherwise fails to comply with the requirements of a citation in connection with such violation as provided in subsection (2) of this section, the court *[may]* **shall** order the State Fish and Wildlife Commission to revoke *[such of the]* **all** licenses, tags and permits issued to that person pursuant to the wildlife laws *[as the court considers appropriate]*. Revocation of licenses, tags and permits is in addition to and not in lieu of other penalties provided by law.

(2) The license, tag and permit revocation provisions of subsection (1) of this section apply to the following persons:

(a) Any person who is convicted of a violation of the wildlife laws, or any rule adopted pursuant thereto, or who otherwise fails to comply with the requirements of a citation in connection with any such offense when the base fine amount for the offense is \$50 or more.

(b) Any person who is convicted of a violation of ORS 164.245, 164.255, 164.265, 164.345, 164.354 or 164.365 committed while the person was angling, taking shellfish, hunting or trapping or who otherwise fails to comply with the requirements of a citation in connection with any such offense when the base fine amount for the offense is \$50 or more.

(c) Any person who is convicted of a violation of ORS 166.630 or 166.638 committed while hunting or who otherwise fails to comply with the requirements of a citation in connection with any such offense when the base fine amount for the offense is \$50 or more.

(3) When a court orders the revocation of a license, tag or permit pursuant to this section *[or ORS 497.435]*, the court shall take up any such licenses, tags and permits and forward them, together with a copy of the revocation order, to the commission. Upon receipt thereof, the commission shall cause revocation of the appropriate licenses, tags and permits in accordance with the court order.

(4) For purposes of the Wildlife Violator Compact:

(a) The commission shall suspend a violator's license as defined in ORS 496.750 for failure to comply with the terms of a citation from a party state. A copy of a report of failure to comply from the licensing authority of the issuing state shall be conclusive evidence. Suspension under this paragraph commences on the date the commission issues a final order pursuant to the provisions of ORS chapter 183 to suspend the license in this state. The period of suspension under this paragraph is the period provided by Oregon law or such longer period as provided by commission rule based on the period of suspension imposed by the party state.

(b) The commission shall revoke a violator's license as defined in ORS 496.750 for a conviction in a party state. A report of conviction from the licensing authority of the issuing state shall be conclusive evidence. Revocation under this paragraph commences on the date the commission issues a final order pursuant to the provisions of ORS chapter 183 to revoke the license in this state. The period of revocation under this paragraph is the period provided by Oregon law or such longer period as provided by commission rule based on the period of revocation imposed by the party state.

(5)(a) No person who has had a license, tag or permit revoked pursuant to this section for the first time shall apply for or obtain another such license, tag or permit for the period of *[24]* **36** months from the date the court or commission ordered the revocation.

(b) Upon having a license, tag or permit revoked for a second time pursuant to this section, no person shall apply for or obtain another such license, tag or permit for the period of *[three]* **five** years.

(c) Upon having a license, tag or permit revoked for a third or subsequent time pursuant to this section, *[no]* **a person** *[shall apply for or obtain]* **is prohibited from applying for or obtaining** another such license, tag or permit *[for the period of five years]*.

(6)(a) If a person convicted of conduct described in subsection (2) of this section does not possess at the time of conviction those licenses, tags and permits issued pursuant to the wildlife laws that the court would have revoked pursuant to this section, the court shall specify by order those licenses, tags and permits that would have been revoked and shall forward a copy of the order to the

commission. No person who is the subject of such a court order shall apply for, possess or obtain another such license, tag or permit for the period of [24] **36** months from the date of the order.

(b) Upon being the subject of a court order under this subsection for a second time, no person shall apply for or obtain another such license, tag or permit for the period of [three] **five** years.

(c) Upon being the subject of a court order under this subsection for a third [or subsequent] time, [no] a person [shall apply for or obtain] **is prohibited from applying for or obtaining** another such license, tag or permit [for the period of five years].

SECTION 6. ORS 497.441 is amended to read:

497.441. No person who has had a license, tag or permit revoked pursuant to ORS 497.415 [or 497.435] shall engage in the activity for which the license, tag or permit is required:

(1) During the remainder of the period for which the license, tag or permit was issued; or

(2) During the period for which the person is prohibited by law from applying for or obtaining another such license, tag or permit.

SECTION 7. ORS 497.435 is repealed.

SECTION 8. (1) **The amendments to ORS 496.705 by section 3 of this 2009 Act apply to the unlawful taking or killing of wildlife occurring on or after the effective date of this 2009 Act.**

(2) **The amendments to ORS 496.992 by section 4 of this 2009 Act apply to acts or conduct occurring on or after the effective date of this 2009 Act.**

(3) **The amendments to ORS 497.415 by section 5 of this 2009 Act apply to offenses committed on or after the effective date of this 2009 Act.**

(4) **The repeal of ORS 497.435 by section 7 of this 2009 Act does not affect the revocation of hunting licenses, tags and permits ordered before the effective date of this 2009 Act.**

Passed by House May 8, 2009

Received by Governor:

Repassed by House June 25, 2009

.....M.,....., 2009

Approved:

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Chief Clerk of House

.....M.,....., 2009

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Speaker of House

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Governor

Passed by Senate June 11, 2009

Filed in Office of Secretary of State:

.....M.,....., 2009

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President of Senate

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Secretary of State