

House Bill 3656

Sponsored by Representative ESQUIVEL; Representatives BOONE, CLEM, HUFFMAN, JOHNSON, SCHAUFLE, SPRENGER, WHISNANT

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires State Fish and Wildlife Commission and State Department of Fish and Wildlife to advise, consult and cooperate with other state agencies, political subdivisions, other states, the federal government and private landowners regarding fish and wildlife management.

Specifies that before commission makes determination that species is threatened or endangered, commission shall consult with federal agencies, other interested state agencies and affected cities and counties.

Requires commission to work with affected cities and counties to mitigate adverse impact on local economies when commission adds species to list of threatened species or endangered species.

A BILL FOR AN ACT

1 Relating to wildlife; creating new provisions; and amending ORS 496.164, 496.176 and 496.182.

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

3 **SECTION 1.** ORS 496.164 is amended to read:

4 496.164. The State Fish and Wildlife Commission and the State Department of Fish and Wildlife
5 [may] **shall** advise, consult and cooperate with other agencies of this state and political subdivisions,
6 other states [or] **and** the federal government and private landowners with respect to fish and wildlife
7 management. The commission and the department shall provide such information, recommendations
8 or advice in writing if requested by another state or federal agency to do so. Technical advice and
9 information shall be based on the best available scientific information. Policy or implementation
10 recommendations provided in administrative rulemaking proceedings shall be based on consideration
11 of all the goals of wildlife management in ORS 496.012, in addition to applicable scientific informa-
12 tion. State agencies, boards or commissions receiving policy or implementation recommendations
13 shall consider such recommendations in the context of their respective statutory responsibilities, and
14 shall take into account the extent to which such recommendations are substantiated with the best
15 available scientific information and based on consideration of all of the goals of wildlife management
16 in ORS 496.012.

17 **SECTION 2.** ORS 496.176 is amended to read:

18 496.176. (1) The lists of threatened species or endangered species established pursuant to ORS
19 496.172 (2) shall include:

20 (a) Those species of wildlife listed as of May 15, 1987, as a threatened species or an endangered
21 species pursuant to the federal Endangered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531), as
22 amended; and
23

24 (b) Those species determined as of May 15, 1987, by the State Fish and Wildlife Commission to
25 be threatened species or endangered species.

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

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 species or an endangered species.

2 (3) A determination that a species is a threatened species or an endangered species shall be
 3 based on documented and verifiable scientific information about the species' biological status. To list
 4 a species as a threatened species or an endangered species under ORS 496.004 and 496.171 to
 5 496.182, the commission shall determine that the natural reproductive potential of the species is in
 6 danger of failure due to limited population numbers, disease, predation or other natural or human
 7 actions affecting its continued existence and, to the extent possible, assess the relative impact of
 8 human actions. In addition, the commission shall determine that one or more of the following factors
 9 exists:

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

12 (b) That overutilization for commercial, recreational, scientific or educational purposes is oc-
 13 curring or is likely to occur; or

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

16 (4) Determinations required by subsection (3) of this section shall be made by the commission
 17 on the basis of verifiable scientific and other data after consultation with federal agencies, other
 18 interested state agencies, **affected cities and counties**, the Natural Heritage Advisory Council,
 19 other states having a common interest in the species and interested persons and organizations.

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

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

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

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

29 (d) A final determination by the commission concerning the action requested in a petition shall
 30 be provided within one year from the date of receipt of the petition, with the option for an additional
 31 12-month extension of time to complete the listing if the commission determines that limited infor-
 32 mation or other appropriate considerations require the extension.

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

34 (6) The commission may determine not to list a species as a threatened species or an endangered
 35 species in any of the following cases:

36 (a) If the species has been listed pursuant to the federal Endangered Species Act of 1973 (P.L.
 37 93-205, 16 U.S.C. 1531), as amended.

38 (b) If the species is currently on the list as a sensitive species, or is a candidate species or has
 39 been petitioned for listing pursuant to the federal Endangered Species Act of 1973 (P.L. 93-205, 16
 40 U.S.C. 1531), as amended.

41 (c) If the species has been determined, pursuant to the federal Endangered Species Act of 1973
 42 (P.L. 93-205, 16 U.S.C. 1531), as amended, to not qualify as a threatened species or an endangered
 43 species.

44 (7)(a) Notwithstanding subsections (1) to (5) of this section, the commission shall take emergency
 45 action to add a species to the list of threatened species or endangered species if it determines there

1 is a significant threat to the continued existence of the species within the state[.].

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

5 [(b)] (c) Such emergency addition shall take effect immediately upon publication in the Secretary
6 of State's bulletin and shall remain valid for a period no longer than one year, unless during the
7 period the commission completes rulemaking procedures as provided in subsection (5) of this section.

8 (8) The commission shall periodically review the status of all threatened species and endangered
9 species listed under ORS 496.171 to 496.192. Each species shall be reviewed at least once every five
10 years to determine whether verifiable scientific information exists to justify its reclassification or
11 removal from the list, according to the criteria listed under subsections (3) and (4) of this section.
12 If a determination is made to reclassify a species or remove it from the list, the commission, within
13 90 days, shall commence rulemaking to change the status of the species.

14 (9) Notwithstanding the provisions of this section, the commission:

15 (a) May decide not to list a species that otherwise qualifies as a threatened or endangered
16 species within this state if the commission determines that the species is secure outside this state
17 or the species is not of cultural, scientific or commercial significance to the people of this state.

18 (b) May not include *Branta canadensis leucopareia*, commonly known as the Aleutian Canada
19 goose, on the lists of threatened species or endangered species.

20 **SECTION 3.** ORS 496.182 is amended to read:

21 496.182. (1) The burden of protecting and recovering threatened species or endangered species
22 can be a significant cost to the citizens of this state and it is therefore the policy of this state to
23 minimize duplication and overlap between state and federal laws dealing with threatened species or
24 endangered species. To this end, nothing in this section is intended to prevent the adoption of co-
25 operative state or federal programs when such programs provide protection for listed species with-
26 out significant impact on the primary uses of state lands.

27 (2)(a) At the time the State Fish and Wildlife Commission adds a species to the list of threatened
28 species or endangered species under ORS 496.172, the commission shall establish by rule quantifiable
29 and measurable guidelines that it considers necessary to ensure the survival of individual members
30 of the species. These guidelines may include take avoidance and protecting resource sites such as
31 spawning beds, nest sites, nesting colonies or other sites critical to the survival of individual mem-
32 bers of the species.

33 **(b) The commission shall work with affected cities and counties to mitigate the adverse**
34 **impact on local economies when the commission adds a species to the list of threatened**
35 **species or endangered species pursuant to ORS 496.172.**

36 (3) For threatened species listed under ORS 496.172 and in the absence of an approved endan-
37 gered species management plan described in subsection (8) of this section for an endangered species,
38 if a state agency determines that a proposed action on land it owns or leases, or for which it holds
39 a recorded easement, has the potential to violate the guidelines established under subsection (2) of
40 this section, it shall notify the State Department of Fish and Wildlife. Within 90 days of such notice,
41 the department shall recommend reasonable and prudent alternatives, if any, to the proposed action
42 which are consistent with the guidelines.

43 (4) If a state agency fails to adopt the recommendations made under subsection (3) of this sec-
44 tion, it shall, after consultation with the department, demonstrate that:

45 (a) The potential public benefits of the proposed action outweigh the potential harm from failure

1 to adopt the recommendations; and

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

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

7 (6) The provisions of this section do not apply to lands acquired through foreclosures of loans
8 made pursuant to programs of the Department of Veterans' Affairs.

9 (7) State land owning or managing agencies shall set priorities for establishing endangered spe-
10 cies management plans required by subsection (8) of this section after consultation with the com-
11 mission on the level of biological threat and, in consideration of available funds, the immediacy and
12 seriousness of the threat to any listed species.

13 (8)(a)(A) Within four months of the listing of an endangered species, the commission, in consul-
14 tation and cooperation with the state land owning or managing agency, shall determine if state land
15 can play a role in the conservation of endangered species. The commission and the land owning
16 or managing agency shall consider species biology and geography of the land base to determine if
17 the species or its habitat is found on state land. If the species or its habitat is not found on state
18 land, the commission shall determine that state land has no role to play in the conservation of the
19 species.

20 (B) If the species or its habitat is found on state land, the land owning or managing agency, in
21 consultation with the State Department of Fish and Wildlife, shall determine the role its state land
22 shall serve in the conservation of the endangered species. This role may include, but is not limited
23 to conservation, contribution toward conservation or take avoidance. To carry out its consulting
24 role under this subsection, the department shall provide state agencies with an assessment of the
25 conservation needs of the endangered species. In making this determination, the land owning or
26 managing agency shall balance the statutory requirements, rules and policies applicable to the
27 agency's programs, the social and economic impacts that conservation would have on the state, the
28 conservation needs of the species, the purpose of the land and the roles of other ownership catego-
29 ries. The agency shall balance these factors consistent with the commission's rules related to the
30 biological aspects of species management and the statutory obligations of the land owning or man-
31 aging agency, including the statutory purpose of the land.

32 (C) After determining the role its state land shall serve in conservation of the species, the land
33 owning or managing agency, in consultation with the State Department of Fish and Wildlife and
34 consistent with the commission's rules related to endangered species management plans, shall de-
35 velop and approve an endangered species management plan within 18 months from the date the
36 species is first listed as endangered. Endangered species management plans shall be based on the
37 statutes, rules and policies applicable to the agency's programs and shall take into account any so-
38 cial or economic impacts that the plan may have on the state. The land owning or managing agency
39 shall submit the plan to the commission for review and approval as provided in subparagraph (D)
40 of this paragraph.

41 (D) The commission shall review the endangered species management plan approved by the land
42 owning or managing agency under subparagraph (C) of this paragraph to determine whether the plan
43 achieves the role defined for the land under subparagraph (B) of this paragraph. Based on the biol-
44 ogy of the endangered species the commission may modify the endangered species management plan
45 if necessary to be consistent with the role the land owning or managing agency has defined for the

1 land under subparagraph (B) of this paragraph and shall approve the plan as submitted or modified
2 within 24 months from the date the species is listed as endangered.

3 (b) For state agencies other than land owning or managing agencies, the commission, in con-
4 sultation and cooperation with the agency, shall determine whether the agency can serve a role in
5 the conservation of endangered species. If the commission determines that the agency has a role to
6 play in conservation of the endangered species, the agency shall determine what role it shall serve
7 in conservation of the endangered species. The agency shall make this determination as provided in
8 the commission's rules related to the biological aspects of species management and in a manner
9 consistent with the agency's statutory obligations.

10 **SECTION 4. (1) The amendments to ORS 496.176 by section 2 of this 2011 Act apply to**
11 **determinations made by the State Fish and Wildlife Commission on or after the effective**
12 **date of this 2011 Act.**

13 **(2) The amendments to ORS 496.182 by section 3 of this 2011 Act apply to species added**
14 **to the list of threatened species or endangered species pursuant to ORS 496.172 on or after**
15 **the effective date of this 2011 Act.**

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