

Senate Bill 289

Sponsored by Senator FERRIOLI (Pre-session filed.)

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 to consult with cities and counties on impact to local economies from additions to lists of threatened or endangered species.

Requires commission to work with cities and counties to mitigate adverse economic impact on local economies after species listed as threatened or endangered.

A BILL FOR AN ACT

1
2 Relating to wildlife; creating new provisions; and amending ORS 496.172, 496.176 and 496.182.

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

4 **SECTION 1.** ORS 496.176 is amended to read:

5 496.176. (1) The lists of threatened species or endangered species established pursuant to ORS
6 496.172 (2) shall include:

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

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

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

15 (3) A determination that a species is a threatened species or an endangered species shall be
16 based on documented and verifiable scientific information about the species' biological status. To list
17 a species as a threatened species or an endangered species under ORS 496.004 and 496.171 to
18 496.182, the commission shall determine that the natural reproductive potential of the species is in
19 danger of failure due to limited population numbers, disease, predation or other natural or human
20 actions affecting its continued existence and, to the extent possible, assess the relative impact of
21 human actions. In addition, the commission shall determine that one or more of the following factors
22 exists:

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

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

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

29 (4)(a) Determinations required by subsection (3) of this section shall be made by the commission
30 on the basis of verifiable scientific and other data after consultation with federal agencies, other

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 interested state agencies, the Natural Heritage Advisory Council, other states having a common
2 interest in the species and interested persons and organizations.

3 **(b) Before adding any species to the list pursuant to subsection (2) of this section, the**
4 **commission shall consult with affected cities and counties:**

5 **(A) In making the determinations required by subsection (3) of this section; and**

6 **(B) To determine the impact that the listing will have on local economies.**

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

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

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

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

16 (d) A final determination by the commission concerning the action requested in a petition shall
17 be provided within one year from the date of receipt of the petition, with the option for an additional
18 12-month extension of time to complete the listing if the commission determines that limited infor-
19 mation or other appropriate considerations require the extension.

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

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

23 (a) If the species has been listed pursuant to the federal Endangered Species Act of 1973 (P.L.
24 93-205, 16 U.S.C. 1531), *[as amended]* **as in effect on the effective date of this 2011 Act.**

25 (b) If the species is currently on the list as a sensitive species, or is a candidate species or has
26 been petitioned for listing pursuant to the federal Endangered Species Act of 1973 (P.L. 93-205, 16
27 U.S.C. 1531), *[as amended]* **as in effect on the effective date of this 2011 Act.**

28 (c) If the species has been determined, pursuant to the federal Endangered Species Act of 1973
29 (P.L. 93-205, 16 U.S.C. 1531), *[as amended]* **as in effect on the effective date of this 2011 Act,** to
30 not qualify as a threatened species or an endangered species.

31 (7)(a) Notwithstanding subsections (1) to (5) of this section, the commission shall take emergency
32 action to add a species to the list of threatened species or endangered species if it determines there
33 is a significant threat to the continued existence of the species within the state[:].

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

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

40 (8) The commission shall periodically review the status of all threatened species and endangered
41 species listed under ORS 496.171 to 496.192. Each species shall be reviewed at least once every five
42 years to determine whether verifiable scientific information exists to justify its reclassification or
43 removal from the list, according to the criteria listed under subsections (3) and (4) of this section.
44 If a determination is made to reclassify a species or remove it from the list, the commission, within
45 90 days, shall commence rulemaking to change the status of the species.

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

(a) 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 or the species is not of cultural, scientific or commercial significance to the people of this state.

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

SECTION 2. ORS 496.182 is amended to read:

496.182. (1) The burden of protecting and recovering threatened species or endangered species can be a significant cost to the citizens of this state and it is therefore the policy of this state to minimize duplication and overlap between state and federal laws dealing with threatened species or endangered species. To this end, nothing in this section is intended to prevent the adoption of cooperative state or federal programs when such programs provide protection for listed species without significant impact on the primary uses of state lands.

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

(b) The commission shall work with affected cities and counties to mitigate the adverse impact on local economies when:

(A) The commission adds a species to the list of threatened species or endangered species pursuant to ORS 496.172; or

(B) A species is listed pursuant to the federal Endangered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531), as in effect on the effective date of this 2011 Act.

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

(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.

(7) State land owning or managing agencies shall set priorities for establishing endangered species management plans required by subsection (8) of this section after consultation with the com-

1 mission on the level of biological threat and, in consideration of available funds, the immediacy and
2 seriousness of the threat to any listed species.

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

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

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

31 (D) The commission shall review the endangered species management plan approved by the land
32 owning or managing agency under subparagraph (C) of this paragraph to determine whether the plan
33 achieves the role defined for the land under subparagraph (B) of this paragraph. Based on the biol-
34 ogy of the endangered species the commission may modify the endangered species management plan
35 if necessary to be consistent with the role the land owning or managing agency has defined for the
36 land under subparagraph (B) of this paragraph and shall approve the plan as submitted or modified
37 within 24 months from the date the species is listed as endangered.

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

45 **SECTION 3.** ORS 496.172 is amended to read:

1 496.172. In carrying out the provisions of the wildlife laws with regard to the management of
 2 wildlife that is a threatened species or an endangered species, the State Fish and Wildlife Commis-
 3 sion:

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

6 (2) By rule, shall establish and publish, and from time to time may revise, a list of wildlife spe-
 7 cies that are threatened species or endangered species. Listed threatened species or endangered
 8 species shall be protected as provided in ORS 496.182.

9 (3) Shall work cooperatively with state agencies that have land management authority or regu-
 10 latory authority to determine their roles within their statutory obligations in the conservation of
 11 endangered species, as described in ORS 496.182 (8).

12 (4) By rule, shall establish a system of permits for scientific taking of threatened species and
 13 endangered species and shall establish a system of state permits for incidental taking of state-
 14 designated threatened species and endangered species not listed by the federal government under
 15 such terms and conditions as the commission determines will minimize the impact on the species
 16 taken. An incidental taking permit or statement issued by a federal agency for a species listed under
 17 the federal Endangered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531), [*as amended*] **as in effect**
 18 **on the effective date of this 2011 Act**, shall be recognized by the state as a waiver of any state
 19 protection measures or requirements otherwise applicable to the actions allowed under the federal
 20 permit.

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

23 (6) Shall adopt administrative rules to carry out the provisions of ORS 496.171 to 496.182 and
 24 498.026.

25 **SECTION 4. (1) The amendments to ORS 496.176 by section 1 of this 2011 Act apply to**
 26 **additions made by the State Fish and Wildlife Commission on or after the effective date of**
 27 **this 2011 Act.**

28 **(2) The amendments to ORS 496.182 by section 2 of this 2011 Act apply to species added**
 29 **to the list of threatened species or endangered species pursuant to ORS 496.172, and species**
 30 **listed pursuant to the federal Endangered Species Act of 1973, on or after the effective date**
 31 **of this 2011 Act.**

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