

**Enrolled**  
**House Bill 4006**

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Agriculture and Natural Resources)

CHAPTER .....

AN ACT

Relating to wildlife; creating new provisions; amending ORS 496.176 and 496.182; and declaring an emergency.

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

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

496.176. (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 State Fish and Wildlife 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 496.171 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 human actions affecting its continued existence and, to the extent possible, assess the relative impact of human actions. 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 verifiable scientific and other data after consultation with federal agencies, other interested state agencies, **private landowners, affected cities, affected counties, affected local service districts as defined in ORS 174.116**, other states having a common interest in the species and interested persons and organizations.

(5)(a) Any person may petition the commission to, by rule, add, remove or change the status of a species on the list[.].

[(a)] (b) 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)] (c) 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)] (d) If the petition is found to present such information, the commission shall commence rulemaking.

[(d)] (e) 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, with the option for an additional 12-month extension of time to complete the listing if the commission determines that limited information or other appropriate considerations require the extension.

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

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

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

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

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

(7)(a) 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)] (b) 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)] (c) 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 period the commission completes rulemaking procedures as provided in subsection (5) of this section.

(8) The commission shall periodically review the status of all threatened species and endangered species listed under ORS 496.171 to 496.192. Each species shall be reviewed at least once every five years to determine whether verifiable scientific information exists to justify its reclassification or removal from the list, according to the criteria listed under subsections (3) and (4) 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.

(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 co-

operative 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 private landowners, affected cities, affected counties and affected local service districts, as defined in ORS 174.116, to mitigate the adverse impact on local economies when the commission adds a species to the list of threatened species or endangered species pursuant to ORS 496.172.**

(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 commission on the level of biological threat and, in consideration of available funds, the immediacy and seriousness of the threat to any listed species.

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

(B) If the species or its habitat is found on state land, the land owning or managing agency, in consultation with the State Department of Fish and Wildlife, shall determine the role its state land shall serve in the conservation of the endangered species. This role may include, but is not limited to conservation, contribution toward conservation or take avoidance. To carry out its consulting role under this subsection, the department shall provide state agencies with an assessment of the conservation needs of the endangered species. In making this determination, the land owning or managing agency shall balance the statutory requirements, rules and policies applicable to the agency's programs, the social and economic impacts that conservation would have on the state, the conservation needs of the species, the purpose of the land and the roles of other ownership categories. The agency shall balance these factors consistent with the commission's rules related to the

biological aspects of species management and the statutory obligations of the land owning or managing agency, including the statutory purpose of the land.

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

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

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

**SECTION 3. (1) The amendments to ORS 496.176 by section 1 of this 2012 Act apply to determinations made by the State Fish and Wildlife Commission on or after the effective date of this 2012 Act.**

**(2) The amendments to ORS 496.182 by section 2 of this 2012 Act apply to species added to the list of threatened species or endangered species pursuant to ORS 496.172 on or after the effective date of this 2012 Act.**

**SECTION 4. This 2012 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect on its passage.**

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**Passed by House February 10, 2012**

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

**Passed by Senate February 27, 2012**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M,....., 2012

**Approved:**

.....M,....., 2012

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John Kitzhaber, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2012

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Kate Brown, Secretary of State