

House Bill 2498

Sponsored by Representative SMITH D (at the request of former Representative Wayne Krieger) (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**.

Transfers regulatory authority over propagation of finfish in private commercial aquaculture facilities from State Department of Fish and Wildlife and State Fish and Wildlife Commission to State Department of Agriculture.

Prohibits releasing finfish produced by private commercial aquaculture facility into waters of state unless finfish health is certified by State Department of Agriculture.

Requires Oregon Business Development Department to establish and administer grant program for economic development projects involving operation of private commercial aquaculture facilities or utilization of finfish propagated in private commercial aquaculture facility.

A BILL FOR AN ACT

1
2 Relating to aquaculture; creating new provisions; and amending ORS 118.140, 215.203, 308A.056,
3 316.045, 317.063, 497.252, 506.001 and 506.036.

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

TRANSFER

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6
7
8 **SECTION 1.** (1) As used in this section, "finfish" and "private commercial aquaculture
9 facilities" have the meaning given those terms in section 8 of this 2017 Act.

10 (2) The duties, functions and powers of the State Department of Fish and Wildlife and
11 the State Fish and Wildlife Commission relating to the propagation of finfish in private
12 commercial aquaculture facilities are imposed upon, transferred to and vested in the State
13 Department of Agriculture.

RECORDS, PROPERTY, EMPLOYEES

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16
17 **SECTION 2.** (1) The State Fish and Wildlife Director shall:

18 (a) Deliver to the State Department of Agriculture all records and property within the
19 jurisdiction of the director or the State Fish and Wildlife Commission that relate to the du-
20 ties, functions and powers transferred by section 1 of this 2017 Act; and

21 (b) Transfer to the State Department of Agriculture those State Department of Fish and
22 Wildlife employees engaged primarily in the exercise of the duties, functions and powers
23 transferred by section 1 of this 2017 Act.

24 (2) The Director of Agriculture shall take possession of the records and property, and
25 shall take charge of the employees and employ them in the exercise of the duties, functions
26 and powers transferred by section 1 of this 2017 Act, without reduction of compensation but
27 subject to change or termination of employment or compensation as provided by law.

28 (3) The Governor shall resolve any dispute between the State Department of Fish and

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 **Wildlife or the State Fish and Wildlife Commission and the State Department of Agriculture**
 2 **relating to transfers of records, property and employees under this section, and the**
 3 **Governor’s decision is final.**

4
 5 **UNEXPENDED REVENUES**

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 7 **SECTION 3. (1) The unexpended balances of amounts authorized to be expended by the**
 8 **State Department of Fish and Wildlife for the biennium beginning July 1, 2017, from revenues**
 9 **dedicated, continuously appropriated, appropriated or otherwise made available for the pur-**
 10 **pose of administering and enforcing the duties, functions and powers transferred by section**
 11 **1 of this 2017 Act are transferred to and are available for expenditure by the State Depart-**
 12 **ment of Agriculture for the biennium beginning July 1, 2017, for the purpose of administering**
 13 **and enforcing the duties, functions and powers transferred by section 1 of this 2017 Act.**

14 **(2) The expenditure classifications, if any, established by Acts authorizing or limiting**
 15 **expenditures by the State Department of Fish and Wildlife remain applicable to expenditures**
 16 **by the State Department of Agriculture under this section.**

17
 18 **ACTION, PROCEEDING, PROSECUTION**

19
 20 **SECTION 4. The transfer of duties, functions and powers to the State Department of**
 21 **Agriculture by section 1 of this 2017 Act does not affect any action, proceeding or prose-**
 22 **cution involving or with respect to the duties, functions and powers begun before and pend-**
 23 **ing at the time of the transfer, except that the State Department of Agriculture is**
 24 **substituted for the State Department of Fish and Wildlife or the State Fish and Wildlife**
 25 **Commission in the action, proceeding or prosecution.**

26
 27 **LIABILITY, DUTY, OBLIGATION**

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 29 **SECTION 5. (1) Nothing in sections 1 to 7 of this 2017 Act relieves a person of a liability,**
 30 **duty or obligation accruing under or with respect to the duties, functions and powers**
 31 **transferred by section 1 of this 2017 Act. The State Department of Agriculture may under-**
 32 **take the collection or enforcement of any such liability, duty or obligation.**

33 **(2) The rights and obligations of the State Department of Fish and Wildlife and the State**
 34 **Fish and Wildlife Commission legally incurred under contracts, leases and business trans-**
 35 **actions executed, entered into or begun before the effective date of section 1 of this 2017 Act**
 36 **accruing under or with respect to the duties, functions and powers transferred by section 1**
 37 **of this 2017 Act are transferred to the State Department of Agriculture. For the purpose of**
 38 **succession to these rights and obligations, the State Department of Agriculture is a contin-**
 39 **uation of the State Department of Fish and Wildlife or the commission and not a new au-**
 40 **thority.**

41
 42 **RULES**

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 44 **SECTION 6. Notwithstanding the transfer of duties, functions and powers by section 1**
 45 **of this 2017 Act, the rules of the State Department of Fish and Wildlife and the State Fish**

1 and Wildlife Commission with respect to such duties, functions or powers that are in effect
 2 on the effective date of section 1 of this 2017 Act continue in effect until superseded or re-
 3 pealed by rules of the State Department of Agriculture. References in the rules of the State
 4 Department of Fish and Wildlife or the State Fish and Wildlife Commission to the State
 5 Department of Fish and Wildlife, an officer or employee of the State Department of Fish and
 6 Wildlife, the State Fish and Wildlife Commission or a member or employee of the State Fish
 7 and Wildlife Commission are considered to be references to the State Department of Agri-
 8 culture or an officer or employee of the State Department of Agriculture.

9 **SECTION 7.** Whenever, in any uncodified law or resolution of the Legislative Assembly
 10 or in any rule, document, record or proceeding authorized by the Legislative Assembly, in
 11 the context of the duties, functions and powers transferred by section 1 of this 2017 Act,
 12 reference is made to the State Department of Fish and Wildlife, an officer or employee of
 13 the State Department of Fish and Wildlife, the State Fish and Wildlife Commission or a
 14 member or employee of the State Fish and Wildlife Commission whose duties, functions or
 15 powers are transferred by section 1 of this 2017 Act, the reference is considered to be a
 16 reference to the State Department of Agriculture or an officer or employee of the State
 17 Department of Agriculture who by this 2017 Act is charged with carrying out the duties,
 18 functions and powers.

19
 20 **STATE DEPARTMENT OF AGRICULTURE REGULATIONS**

21
 22 **SECTION 8.** (1) As used in this section and section 9 of this 2017 Act:

23 (a) “Finfish”:

24 (A) Except as provided in this paragraph, means an aquatic animal having gills and a
 25 bony structure and having limbs in the shape of fins.

26 (B) Does not mean a member of the family Acipenseridae, commonly known as green
 27 sturgeon or white sturgeon.

28 (b) “Food fish,” notwithstanding ORS 506.036 (4), has the meaning given that term in ORS
 29 506.011.

30 (c) “Game fish” has the meaning given that term in ORS 496.009.

31 (d) “Private commercial aquaculture facility”:

32 (A) Means a for-profit operation designed to produce marketable finfish as a final product
 33 in isolation from waters of this state.

34 (B) Does not mean an operation producing finfish for aquarium, scientific or educational
 35 purposes.

36 (2) A person may not operate a private commercial aquaculture facility unless the person
 37 holds a license for the facility issued by the State Department of Agriculture.

38 (3) The department may refuse to issue or renew a license, or may suspend or revoke a
 39 license, if the department finds that operation of the private commercial aquaculture facility
 40 creates or would create an unreasonable risk of harm to existing game fish or food fish
 41 populations in waters of this state.

42 (4) The department may charge reasonable fees for applications and licenses issued under
 43 this section.

44 (5) A private commercial aquaculture facility may not release effluent water from the
 45 facility directly into waters of this state. A person may not release a finfish that is the

1 product of a private commercial aquaculture facility into waters of this state unless the
 2 finfish has been certified by the department to be free of disease, parasites or other condi-
 3 tions that might create an unreasonable risk of harm to existing game fish or food fish
 4 populations in waters of this state. The department may adopt rules to further restrict the
 5 release of finfish produced by private commercial aquaculture facilities as the department
 6 deems reasonable to ensure the finfish do not create an unreasonable risk of harm to exist-
 7 ing game fish or food fish populations in waters of this state.

8 (6) The department may adopt rules for the operation of private commercial aquaculture
 9 facilities that ensure the facilities do not create an unreasonable risk of harm to existing
 10 game fish or food fish populations in waters of this state. The department may conduct in-
 11 spections and require record keeping and reporting to ensure compliance with the rules.

12 (7) ORS chapter 497, ORS 508.700 to 508.745 and related rules of the State Department
 13 of Fish and Wildlife and of the State Fish and Wildlife Commission do not apply to a private
 14 commercial aquaculture facility.

15
 16 **OREGON BUSINESS DEVELOPMENT DEPARTMENT GRANTS**

17
 18 **SECTION 9.** The Oregon Business Development Department shall establish and adminis-
 19 ter a program to issue grants from the Oregon Business, Innovation and Trade Fund for
 20 economic development projects involving the operation of private commercial aquaculture
 21 facilities licensed under section 8 of this 2017 Act or that utilize finfish propagated in a pri-
 22 vate commercial aquaculture facility. The department shall adopt rules establishing business
 23 development plan, economic feasibility, economic necessity and other requirements the de-
 24 partment deems reasonable as qualifications for obtaining grants under this section.

25 **SECTION 10.** ORS 118.140 is amended to read:

26 118.140. (1) As used in this section:

27 (a) "Adjusted gross estate" means the value of the gross estate reduced by the sum of the
 28 amounts allowable under sections 2053 and 2054 of the Internal Revenue Code.

29 (b) "Family member" means a member of the family, as defined in section 2032A of the Internal
 30 Revenue Code, of the decedent.

31 (c) "Farm business" means a business operated for the primary purpose of obtaining a profit in
 32 money by:

33 (A) Raising, harvesting or selling fruit or crops;

34 (B) Feeding, breeding, managing or selling livestock, poultry, fur-bearing animals or bees, or the
 35 produce thereof;

36 (C) Dairying and selling dairy products;

37 (D) Breeding, stabling or training equines;

38 (E) Propagating, cultivating, maintaining or harvesting aquatic species, birds or animal species
 39 to the extent allowed by the rules adopted by the State Fish and Wildlife Commission;

40 **(F) Operating a private commercial aquaculture facility licensed under section 8 of this**
 41 **2017 Act;**

42 [(F)] (G) Raising nursery stock;

43 [(G)] (H) Practicing animal husbandry; or

44 [(H)] (I) Raising other agricultural or horticultural products.

45 (d) "Farm use" has the meaning given that term in ORS 308A.056.

1 (e) "Fishing business" has the meaning given that term in section 1301(b)(4) of the Internal Re-
 2 venue Code.

3 (f) "Forestland" has the meaning given that term in ORS 321.201.

4 (g) "Forestry business" means a business operated for the primary purpose of obtaining a profit
 5 in money by the planting, cultivating, caring for, preparing, harvesting or cutting of timber or trees
 6 for market.

7 (h) "Homesite" has the meaning given that term in ORS 308A.250.

8 (i) "Natural resource property" means the following property in this state, if on the date of the
 9 decedent's death the property is owned by the decedent and used in the operation of a farm business,
 10 forestry business or fishing business owned by the decedent:

11 (A) Real property used as forestland or as forestland homesites, not to exceed 5,000 acres, or
 12 that is in farm use.

13 (B) Timber or trees.

14 (C) Crops, fruit or other horticultural products, both growing and stored.

15 (D) Forestry business or farm business equipment.

16 (E) Livestock, poultry, fur-bearing animals, bees, dairying animals, equines, aquatic species, birds
 17 or other animal species, including stored products or by-products.

18 (F) Nursery stock as defined in ORS 571.005.

19 (G) Boats, gear, equipment, vessel licenses or permits, commercial fishing licenses or permits
 20 and other real or personal property used in the operation of a fishing business.

21 (H) Real or personal property used to process and sell the catch of a fishing business in fresh,
 22 canned or smoked form directly to consumers, including a restaurant with seating capacity of fewer
 23 than 15 seats at which catch from the fishing business is prepared and sold.

24 (I) An operating allowance.

25 (J) Any other tangible and intangible personal property used in the operation of a farm business,
 26 forestry business or fishing business.

27 (j) "Operating allowance" means cash or a cash equivalent that is spent, maintained, used or
 28 available for the operation of a farm business, forestry business or fishing business and not spent
 29 or used for any other purpose.

30 (k) "Qualified beneficiary" has the meaning given that term in ORS 130.010.

31 (L) "Real property" means real property, as defined in ORS 307.010, that is in this state.

32 (2)(a) An estate shall be allowed a credit for the value of natural resource property claimed.
 33 Any operating allowance claimed under this section may not exceed the lesser of \$1 million or 15
 34 percent of the total value of natural resource property claimed, not including the operating allow-
 35 ance.

36 (b) The credit allowed under this section shall be computed by multiplying the tax that would
 37 be payable under this chapter absent the credit by a ratio, the numerator of which is an amount
 38 equal to the lesser of the amount of natural resource property claimed under this section or \$7.5
 39 million, and the denominator of which is an amount equal to the total adjusted gross estate.

40 (c) An executor may:

41 (A) Elect not to claim the credit allowed under this section;

42 (B) Elect to claim less than the full amount of the credit allowed under this section; or

43 (C) Elect to claim the credit only for the value of certain assets.

44 (3) Except as provided in subsections (4), (7) and (8) of this section, a credit is allowed under this
 45 section only if:

- 1 (a) The total adjusted gross estate does not exceed \$15 million;
- 2 (b) The total value of natural resource property in the estate is at least 50 percent of the total
3 adjusted gross estate that is in this state;
- 4 (c) The natural resource property is transferred to a family member; and
- 5 (d) During an aggregate period of five out of the eight years ending on the date of the decedent's
6 death, the decedent or a family member operated a farm business, forestry business or fishing busi-
7 ness and the property for which a credit is claimed under this section is part of the business.
- 8 (4) Property that otherwise meets the requirements of this section shall be allowed a credit un-
9 der this section if:
- 10 (a) The property is the subject of a net cash lease to or from the decedent or a qualified bene-
11 ficiary who is a family member;
- 12 (b) The property is held in trust for a qualified beneficiary who is a family member; or
- 13 (c) The property replaces natural resource property, and the replacement property would oth-
14 erwise meet the definition of natural resource property except that it was acquired after the date
15 of the decedent's death but before the estate tax return is filed. In order to qualify under this par-
16 agraph, real property must be replaced with real property.
- 17 (5) A credit is allowed under this section for the following real property only if the real property
18 was owned by the decedent or a family member during an aggregate period of five out of the eight
19 years ending on the date of the decedent's death and used in a business described in subsection (3)(d)
20 of this section:
- 21 (a) Real property used as forestland or as forestland homesites, not to exceed 5,000 acres.
- 22 (b) Real property used in farm use.
- 23 (6) A credit is allowed under this section for property used in the operation of a fishing business
24 only if the decedent or a family member, during an aggregate period of five out of the eight years
25 ending on the date of the decedent's death:
- 26 (a) Owned a vessel used in taking food fish or shellfish for commercial purposes as defined in
27 ORS 506.006;
- 28 (b) Held a boat license as provided in ORS 508.260;
- 29 (c) Held a commercial fishing license under ORS 508.235; and
- 30 (d) Held one or more restricted fisheries permits as provided in ORS chapter 508 or an equiv-
31 alent restricted vessel permit system under the laws of another state.
- 32 (7) For the purpose of meeting the requirements of subsection (5) of this section, in determining
33 the period of time during which the decedent or a family member owned real property received in
34 exchange under section 1031 of the Internal Revenue Code or acquired in an involuntary conversion
35 under section 1033 of the Internal Revenue Code, the period during which the decedent or a family
36 member owned the exchanged or acquired real property, if the exchanged or acquired real property
37 was used in the farm business or forestry business, may be included.
- 38 (8) Property that otherwise meets the requirements of this section and that is owned indirectly
39 by the decedent or a family member qualifies for a credit under this section if the property is owned
40 through an interest in a limited liability company or in a corporation, partnership or trust as the
41 terms corporation, partnership or trust are used in section 2032A(g) of the Internal Revenue Code.
42 In order to qualify under this subsection, at least one family member must materially participate in
43 the business after the transfer. For purposes of this subsection, "materially participate" means to
44 engage in active management, as defined in section 2032A of the Internal Revenue Code, of the farm
45 business, forestry business or fishing business. The Department of Revenue may adopt rules to ad-

1 minister this subsection consistent with this definition.

2 (9)(a) A disposition shall occur and an additional tax under ORS 118.005 to 118.540 shall be im-
 3 posed if the natural resource property for which a credit is allowed under this section is not used
 4 in the operation of a farm business, forestry business or fishing business for at least five out of the
 5 eight calendar years following the decedent's death or is transferred to a person other than a family
 6 member or another entity eligible for the credit allowed under this section.

7 (b) The use of cash or other assets for which a credit is claimed under this section for the
 8 payment of federal estate taxes or state inheritance or estate taxes shall be a disposition and an
 9 additional tax shall be imposed under this subsection.

10 (c) The conveyance after the decedent's death of property that otherwise meets the requirements
 11 of this section and is conveyed as a qualified conservation contribution, as defined in section 170(h)
 12 of the Internal Revenue Code, is not a disposition requiring payment of additional tax under this
 13 subsection.

14 (d) Natural resource property may be replaced with real property or personal property after the
 15 credit is claimed and not result in a disposition subject to an additional tax if the replacement
 16 property is used in the operation of the farm business, forestry business or fishing business. Real
 17 property for which a credit is claimed under this section may be replaced only with real property
 18 that would otherwise qualify as natural resource property and that replacement must be made
 19 within one year to avoid a disposition and additional tax, except that a replacement of property that
 20 is involuntarily converted under section 1033 of the Internal Revenue Code must occur within two
 21 years.

22 (e) The additional tax liability shall be the amount of additional tax that would have been im-
 23 posed, had the disqualified property not been included in the numerator of the ratio in subsection
 24 (2)(b) of this section, multiplied by ((five minus the number of years the property was used as natural
 25 resource property) divided by five). The additional tax liability is the responsibility of the owner of
 26 the property at the time of the disposition or disqualifying event and is due within six months after
 27 the date on which the disposition or event occurs. The Department of Revenue may establish by rule
 28 procedures for reporting the additional tax due, consistent with ORS chapter 305.

29 (f) Prior to the executor's identification of property for which a credit under this section is
 30 claimed, the executor shall notify the transferee of the potential for tax consequences to the
 31 transferee if the transferee fails to meet the conditions of paragraph (a) of this subsection. The
 32 transferee's written acknowledgment of this notice shall be attached to the estate tax return.

33 (10) The executor shall identify property for which a credit under this section is claimed, by
 34 asset, on a form prescribed by the department and filed with the estate tax return. Transferees of
 35 property for which a credit under this section has been claimed shall file a report with the depart-
 36 ment on a form prescribed by the department. This report shall be filed annually until the require-
 37 ments of subsection (9)(a) of this section are met and shall require tracking of each asset for which
 38 the credit has been claimed, with confirmation that each asset falls into one of the following cate-
 39 gories:

40 (a) The asset is still used in the operation of a farm business, forestry business or fishing busi-
 41 ness;

42 (b) The asset has been replaced with property that meets the requirements of subsection (9)(d)
 43 of this section; or

44 (c) The asset has been subject to a disposition under subsection (9) of this section, resulting in
 45 additional tax.

SECTION 11. ORS 215.203 is amended to read:

215.203. (1) Zoning ordinances may be adopted to zone designated areas of land within the county as exclusive farm use zones. Land within such zones shall be used exclusively for farm use except as otherwise provided in ORS 215.213, 215.283 or 215.284. Farm use zones shall be established only when such zoning is consistent with the comprehensive plan.

(2)(a) As used in this section, “farm use” means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. “Farm use” includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. “Farm use” also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. “Farm use” also includes the propagation, cultivation, maintenance and harvesting of aquatic, bird and animal species that are under the jurisdiction of the State Fish and Wildlife Commission, to the extent allowed by the rules adopted by the commission. **“Farm use” includes the operation of a private commercial aquaculture facility licensed by the State Department of Agriculture under section 8 of this 2017 Act.** “Farm use” includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. “Farm use” does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees as defined in subsection (3) of this section or land described in ORS 321.267 (3) or 321.824 (3).

(b) “Current employment” of land for farm use includes:

(A) Farmland, the operation or use of which is subject to any farm-related government program;

(B) Land lying fallow for one year as a normal and regular requirement of good agricultural husbandry;

(C) Land planted in orchards or other perennials, other than land specified in subparagraph (D) of this paragraph, prior to maturity;

(D) Land not in an exclusive farm use zone which has not been eligible for assessment at special farm use value in the year prior to planting the current crop and has been planted in orchards, cultured Christmas trees or vineyards for at least three years;

(E) Wasteland, in an exclusive farm use zone, dry or covered with water, neither economically tillable nor grazeable, lying in or adjacent to and in common ownership with a farm use land and which is not currently being used for any economic farm use;

(F) Except for land under a single family dwelling, land under buildings supporting accepted farm practices, including the processing facilities allowed by ORS 215.213 (1)(u) and 215.283 (1)(r) and the processing of farm crops into biofuel as commercial activities in conjunction with farm use under ORS 215.213 (2)(c) and 215.283 (2)(a);

(G) Water impoundments lying in or adjacent to and in common ownership with farm use land;

(H) Any land constituting a woodlot, not to exceed 20 acres, contiguous to and owned by the owner of land specially valued for farm use even if the land constituting the woodlot is not utilized in conjunction with farm use;

(I) Land lying idle for no more than one year where the absence of farming activity is due to the illness of the farmer or member of the farmer’s immediate family. For purposes of this paragraph,

1 illness includes injury or infirmity whether or not such illness results in death;

2 (J) Any land described under ORS 321.267 (3) or 321.824 (3); and

3 (K) Land used for the processing of farm crops into biofuel, as defined in ORS 315.141, if:

4 (i) Only the crops of the landowner are being processed;

5 (ii) The biofuel from all of the crops purchased for processing into biofuel is used on the farm
6 of the landowner; or

7 (iii) The landowner is custom processing crops into biofuel from other landowners in the area
8 for their use or sale.

9 (c) As used in this subsection, “accepted farming practice” means a mode of operation that is
10 common to farms of a similar nature, necessary for the operation of such farms to obtain a profit
11 in money, and customarily utilized in conjunction with farm use.

12 (3) “Cultured Christmas trees” means trees:

13 (a) Grown on lands used exclusively for that purpose, capable of preparation by intensive culti-
14 vation methods such as plowing or turning over the soil;

15 (b) Of a marketable species;

16 (c) Managed to produce trees meeting U.S. No. 2 or better standards for Christmas trees as
17 specified by the Agriculture Marketing Services of the United States Department of Agriculture; and

18 (d) Evidencing periodic maintenance practices of shearing for Douglas fir and pine species, weed
19 and brush control and one or more of the following practices: Basal pruning, fertilizing, insect and
20 disease control, stump culture, soil cultivation, irrigation.

21 **SECTION 12.** ORS 308A.056 is amended to read:

22 308A.056. (1) As used in ORS 308A.050 to 308A.128, “farm use” means the current employment
23 of land for the primary purpose of obtaining a profit in money by:

24 (a) Raising, harvesting and selling crops.

25 (b) Feeding, breeding, managing or selling livestock, poultry, fur-bearing animals or honeybees
26 or the produce thereof.

27 (c) Dairying and selling dairy products.

28 (d) Stabling or training equines, including but not limited to providing riding lessons, training
29 clinics and schooling shows.

30 (e) Propagating, cultivating, maintaining or harvesting aquatic species and bird and animal
31 species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission.

32 **(f) Propagating finfish in a private commercial aquaculture facility licensed by the State**
33 **Department of Agriculture under section 8 of this 2017 Act.**

34 [(f)] (g) On-site constructing and maintaining equipment and facilities used for the activities
35 described in this subsection.

36 [(g)] (h) Preparing, storing or disposing of, by marketing, donation to a local food bank or school
37 or otherwise, the products or by-products raised for human or animal use on land described in this
38 section.

39 [(h)] (i) Implementing a remediation plan previously presented to the assessor for the county in
40 which the land that is the subject of the plan is located.

41 [(i)] (j) Using land described in this section for any other agricultural or horticultural use or
42 animal husbandry or any combination thereof.

43 (2) “Farm use” does not include the use of land subject to timber and forestland taxation under
44 ORS chapter 321, except land used exclusively for growing cultured Christmas trees or land de-
45 scribed in ORS 321.267 (3) or 321.824 (3) (relating to land used to grow certain hardwood timber,

1 including hybrid cottonwood).

2 (3) For purposes of this section, land is currently employed for farm use if the land is:

3 (a) Farmland, the operation or use of which is subject to any farm-related government program;

4 (b) Land lying fallow for one year as a normal and regular requirement of good agricultural
5 husbandry;

6 (c) Land planted in orchards or other perennials, other than land specified in paragraph (d) of
7 this subsection, prior to maturity;

8 (d) Land not in an exclusive farm use zone that has not been eligible for assessment at special
9 farm use value in the year prior to planting the current crop and has been planted in orchards,
10 cultured Christmas trees or vineyards for at least three years;

11 (e) Wasteland, in an exclusive farm use zone, dry or covered with water, neither economically
12 tillable nor grazeable, lying in or adjacent to and in common ownership with farm use land and that
13 is not currently being used for any economic farm use;

14 (f) Except for land under a single family dwelling, land under buildings supporting accepted
15 farming practices, including the processing facilities allowed by ORS 215.213 (1)(u) and 215.283 (1)(r)
16 and the processing of farm crops into biofuel as commercial activities in conjunction with farm use
17 under ORS 215.213 (2)(c) and 215.283 (2)(a);

18 (g) Water impoundments lying in or adjacent to and in common ownership with farm use land;

19 (h) Any land constituting a woodlot, not to exceed 20 acres, contiguous to and owned by the
20 owner of land specially valued for farm use even if the land constituting the woodlot is not utilized
21 in conjunction with farm use;

22 (i) Land lying idle for no more than one year when the absence of farming activity is the result
23 of the illness of the farmer or a member of the farmer's immediate family, including injury or
24 infirmity, regardless of whether the illness results in death;

25 (j) Land described under ORS 321.267 (3) or 321.824 (3) (relating to land used to grow certain
26 hardwood timber, including hybrid cottonwood);

27 (k) Land subject to a remediation plan previously presented to the assessor for the county in
28 which the land that is the subject of the plan is located; or

29 (L) Land used for the processing of farm crops into biofuel, as defined in ORS 315.141, if:

30 (i) Only the crops of the landowner are being processed;

31 (ii) The biofuel from all of the crops purchased for processing into biofuel is used on the farm
32 of the landowner; or

33 (iii) The landowner is custom processing crops into biofuel from other landowners in the area
34 for their use or sale.

35 (4) As used in this section:

36 (a) "Accepted farming practice" means a mode of operation that is common to farms of a similar
37 nature, necessary for the operation of these similar farms to obtain a profit in money and custom-
38 arily utilized in conjunction with farm use.

39 (b) "Cultured Christmas trees" means trees:

40 (A) Grown on lands used exclusively for that purpose, capable of preparation by intensive cul-
41 tivation methods such as plowing or turning over the soil;

42 (B) Of a marketable species;

43 (C) Managed to produce trees meeting U.S. No. 2 or better standards for Christmas trees as
44 specified by the Agricultural Marketing Service of the United States Department of Agriculture; and

45 (D) Evidencing periodic maintenance practices of shearing for Douglas fir and pine species, weed

1 and brush control and one or more of the following practices:

- 2 (i) Basal pruning;
- 3 (ii) Fertilizing;
- 4 (iii) Insect and disease control;
- 5 (iv) Stump culture;
- 6 (v) Soil cultivation; or
- 7 (vi) Irrigation.

8 **SECTION 13.** ORS 316.045 is amended to read:

9 316.045. (1) As used in this section:

10 (a) "Farming" means:

11 (A) Raising, harvesting and selling crops;

12 (B) Feeding, breeding, managing or selling livestock, poultry, fur-bearing animals or honeybees
13 or the produce thereof;

14 (C) Dairying and selling dairy products;

15 (D) Stabling or training equines, including but not limited to providing riding lessons, training
16 clinics and schooling shows;

17 (E) Propagating, cultivating, maintaining or harvesting aquatic species and bird and animal
18 species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission;

19 **(F) Propagating finfish in a private commercial aquaculture facility licensed by the State
20 Department of Agriculture under section 8 of this 2017 Act;**

21 ~~[(F)]~~ (G) On-site constructing and maintaining equipment and facilities used for the activities
22 described in this subsection;

23 ~~[(G)]~~ (H) Preparing, storing or disposing of, by marketing or otherwise, the products or by-
24 products raised for human or animal use on land employed in activities described in this subsection;
25 or

26 ~~[(H)]~~ (I) Any other agricultural or horticultural activity or animal husbandry, or any combina-
27 tion of these activities, except that "farming" does not include growing and harvesting trees of a
28 marketable species other than growing and harvesting cultured Christmas trees or certain hardwood
29 timber described in ORS 321.267 (3) or 321.824 (3).

30 (b) "Section 1231 gain" has the meaning given that term in section 1231 of the Internal Revenue
31 Code.

32 (2) Notwithstanding ORS 316.037, taxable income that consists of net long-term capital gain shall
33 be subject to tax under this chapter at a rate of five percent if all of the following conditions apply:

34 (a) The gain is:

35 (A) Derived from the sale or exchange of capital assets consisting of ownership interests in a
36 corporation, partnership or other entity in which, prior to the sale or exchange, the taxpayer owned
37 at least a 10 percent ownership interest; or

38 (B) Section 1231 gain.

39 (b) The property that was sold or exchanged consisted of:

40 (A) Ownership interests in a corporation, partnership or other entity that is engaged in the
41 trade or business of farming; or

42 (B) Property that is predominantly used in the trade or business of farming.

43 (c) The sale or exchange is to a person who is not related to the taxpayer under section 267 of
44 the Internal Revenue Code.

45 (d) The sale or exchange constitutes a substantially complete termination of all of the taxpayer's

1 ownership interests in a trade or business that is engaged in farming or a substantially complete
 2 termination of all of the taxpayer's ownership interests in property that is employed in the trade
 3 or business of farming. Ownership of a farm dwelling or farm homesite does not constitute owner-
 4 ship of property employed in the trade or business of farming.

5 (3) If the taxpayer has net long-term capital gain derived in part from the sale or exchange of
 6 property described in subsection (2)(b) of this section and in part from the sale or exchange of all
 7 other property, the net long-term capital gain that is subject to tax under this section shall be de-
 8 termined as follows:

9 (a) Compute the net long-term capital gain derived from all property described in subsection
 10 (2)(b) of this section that was sold or exchanged during the tax year.

11 (b) Compute the net capital gain or loss from the sale or exchange of all other property during
 12 the tax year.

13 (c) If the amount determined under paragraph (b) of this subsection is a net capital gain, the
 14 gain that is subject to tax under subsection (2) of this section shall be the amount determined under
 15 paragraph (a) of this subsection.

16 (d) If the amount determined under paragraph (b) of this subsection is a net capital loss, the gain
 17 that is subject to tax under subsection (2) of this section shall be the amount determined under
 18 paragraph (a) of this subsection minus the amount determined under paragraph (b) of this subsection.

19 **SECTION 14.** ORS 317.063 is amended to read:

20 317.063. (1) As used in this section:

21 (a) "Farming" means:

22 (A) Raising, harvesting and selling crops;

23 (B) Feeding, breeding, managing or selling livestock, poultry, fur-bearing animals or honeybees
 24 or the produce thereof;

25 (C) Dairying and selling dairy products;

26 (D) Stabling or training equines, including but not limited to providing riding lessons, training
 27 clinics and schooling shows;

28 (E) Propagating, cultivating, maintaining or harvesting aquatic species and bird and animal
 29 species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission;

30 **(F) Propagating finfish in a private commercial aquaculture facility licensed by the State
 31 Department of Agriculture under section 8 of this 2017 Act;**

32 ~~[(F)]~~ (G) On-site constructing and maintaining equipment and facilities used for the activities
 33 described in this subsection;

34 ~~[(G)]~~ (H) Preparing, storing or disposing of, by marketing or otherwise, the products or by-
 35 products raised for human or animal use on land employed in activities described in this subsection;
 36 or

37 ~~[(H)]~~ (I) Any other agricultural or horticultural activity or animal husbandry, or any combina-
 38 tion of these activities, except that "farming" does not include growing and harvesting trees of a
 39 marketable species other than growing and harvesting cultured Christmas trees or certain hardwood
 40 timber described in ORS 321.267 (3) or 321.824 (3).

41 (b) "Section 1231 gain" has the meaning given that term in section 1231 of the Internal Revenue
 42 Code.

43 (2) Notwithstanding ORS 317.061, taxable income that consists of net long-term capital gain shall
 44 be subject to tax under this chapter at a rate of five percent if all of the following conditions apply:

45 (a) The gain is:

1 (A) Derived from the sale or exchange of capital assets consisting of ownership interests in a
 2 corporation, partnership or other entity in which, prior to the sale or exchange, the taxpayer owned
 3 at least a 10 percent ownership interest; or

4 (B) Section 1231 gain.

5 (b) The property that was sold or exchanged consisted of:

6 (A) Ownership interests in a corporation, partnership or other entity that is engaged in the
 7 trade or business of farming; or

8 (B) Property that is predominantly used in the trade or business of farming.

9 (c) The sale or exchange is to a person who is not related to the taxpayer under section 267 of
 10 the Internal Revenue Code.

11 (d) The sale or exchange constitutes a substantially complete termination of all of the taxpayer's
 12 ownership interests in a trade or business that is engaged in farming or a substantially complete
 13 termination of all of the taxpayer's ownership interests in property that is employed in the trade
 14 or business of farming.

15 (3) If the taxpayer has net long-term capital gain derived in part from the sale or exchange of
 16 property described in subsection (2)(b) of this section and in part from the sale or exchange of all
 17 other property, the net long-term capital gain that is subject to tax under this section shall be de-
 18 termined as follows:

19 (a) Compute the net long-term capital gain derived from all property described in subsection
 20 (2)(b) of this section that was sold or exchanged during the tax year.

21 (b) Compute the net capital gain or loss from the sale or exchange of all other property during
 22 the tax year.

23 (c) If the amount determined under paragraph (b) of this subsection is a net capital gain, the
 24 gain that is subject to tax under subsection (2) of this section shall be the amount determined under
 25 paragraph (a) of this subsection.

26 (d) If the amount determined under paragraph (b) of this subsection is a net capital loss, the gain
 27 that is subject to tax under subsection (2) of this section shall be the amount determined under
 28 paragraph (a) of this subsection minus the amount determined under paragraph (b) of this subsection.

29 **SECTION 15.** ORS 506.001 is amended to read:

30 506.001. **Except as provided in this section**, all laws enacted for the protection, propagation
 31 and preservation of food fish or for the protection and development of commercial fisheries in this
 32 state, including but not limited to ORS chapters 506, 507, 508, 509, 511 and 513, may be cited as the
 33 commercial fishing laws. **This section does not apply to laws or rules regarding State De-**
 34 **partment of Agriculture regulation of private commercial aquaculture facilities.**

35 **SECTION 16.** ORS 497.252 is amended to read:

36 497.252. (1) Except as provided in ORS 508.700 to 508.745 and 622.220 **and section 8 of this 2017**
 37 **Act**, no person shall engage in the business of propagating game fish or food fish for sale unless a
 38 fish propagation license is first obtained from the State Department of Fish and Wildlife.

39 (2) The State Fish and Wildlife Commission may refuse to issue a license to an applicant if the
 40 commission finds that the conduct of the fish propagation business would tend to be harmful to ex-
 41 isting game fish or food fish populations.

42 (3) The commission, by rule, may prescribe requirements for the care, inspection, transportation
 43 and the sale, taking or other disposition of the game fish or food fish, and for such record keeping
 44 and reporting procedures as will insure that the propagation activities are conducted in such man-
 45 ner as will not be harmful to existing game fish or food fish populations.

1 (4) Persons propagating the following food fish under the license prescribed in subsection (1) of
2 this section are exempt from the licensing provisions of ORS 508.025 and 508.035:

3 (a) Food fish raised entirely in, then harvested from facilities which are enclosed or designed
4 to prevent escape and from which the fish are not released for natural rearing.

5 (b) Food fish harvested from the wild under licenses prescribed in ORS 508.025 and 508.035 and
6 on which the appropriate fee has been paid at the time holding or rearing commences in the licensed
7 fish propagation facility.

8 (5) As used in this section, food fish has the meaning as defined in ORS 506.011.

9 **SECTION 17.** ORS 506.036 is amended to read:

10 506.036. (1) Except as otherwise provided in subsection (4) of this section and in ORS 506.045
11 and 506.050, the State Fish and Wildlife Commission has exclusive jurisdiction over all fish, shellfish,
12 and all other animals living intertidally on the bottom, within the waters of this state. The com-
13 mission has joint or other jurisdiction with any other state or government over all such fishes within
14 the waters of the Columbia River and its tributaries where such waters form the boundaries of this
15 state.

16 (2) The commission has jurisdiction over those species of fish, shellfish and all other animals
17 living intertidally on the bottom referred to in subsection (1) of this section transported into or
18 landed in this state which have been taken in waters outside this state.

19 (3) The duty of protection, preservation, propagation, cultivation, development and promotion
20 of all fishes under its jurisdiction is delegated to and imposed upon the commission.

21 (4) **The commission has no regulatory authority or jurisdiction over the propagation of**
22 **finfish in private commercial aquaculture facilities licensed by the State Department of Ag-**
23 **riculture under section 8 of this 2017 Act.** The commission has no regulatory authority or juris-
24 diction over the commercial cultivation of oysters in the waters of this state. However, nothing in
25 this subsection is intended to affect the authority of the commission under ORS 509.140.

26
27 **UNIT CAPTIONS**

28
29 **SECTION 18.** **The unit captions used in this 2017 Act are provided only for the conven-**
30 **ience of the reader and do not become part of the statutory law of this state or express any**
31 **legislative intent in the enactment of this 2017 Act.**