



# Oregon

Kate Brown., Governor

**Department of Fish and Wildlife**

Office of the Director

4034 Fairview Industrial Drive SE

Salem, OR 97302

(503) 947-6044

FAX (503) 947-6042

odfw.com

**Date:** May 24, 2019

**To:** The Honorable Michael Dembrow, Chair  
Senate Committee on Environment and Natural Resources



## House Bill 2841 A

Shannon Hurn, Deputy Director for Fish and Wildlife Programs  
Oregon Department of Fish and Wildlife

The department appreciates the opportunity to discuss House Bill 2841A with you today. The department collects valuable information on where species occur on the landscape and how they use existing habitat. Additionally department staff conduct biological and health assessments on individual members of the species and analyze quantitative information about the populations. Field collection of this data can result in records that show sensitive geographic information directly tied to a species' location. Many of Oregon's wildlife species have strong site fidelity and return to the same locations to breed, nest, spawn, etc. year after year. Collection of this data can also involve obtaining real time location information of individual members of a species. Often, millions of bits of data are collected with current digital technology and require considerable time to analyze, summarize, publish and otherwise make available to the public.

The departments' mission to protect and enhance Oregon's wildlife requires a conservative approach to releasing data or information that could potentially result in direct harm to a species, or result in the commercialization of species. It is not always easy to predict when harm will occur. There are obvious occurrences of take and malicious killing of wildlife, but there are incidence of harm occurring from humans simply wanting to observe wildlife in their natural habitat, especially young wildlife. Furthermore, release of raw data incompletely analyzed, summarized or not yet made available to the public would allow for improper use as well as threatening the involvement of cooperative research with universities.

House Bill 2841A -10's makes changes to public records law and establish a retroactive date to which the criteria and public records exemptions are valid for information and data that can compromise a member of a species or its population.

During any average month the department has around twenty open public records requests. Many of these are requests for reports, compiled information or simply answers to questions posed on how a wildlife resource is managed. In the past when sensitive date or information is requested, the department would review the request under ORS 192.345 and apply a public interest balancing test

for listed species before releasing information. If the information did not pertain to a listed species the department would often work with the requesters to determine how best to fill their information need while not compromising the species through direct data sharing.

The department has made considerable effort to work with requesters, in all types of situations to fill information needs. HB 2841A -10 does not give the department discretion to stop working to assist requesters in obtaining the information they need, but does codify in law the priority to protect data and the species it was obtained from, while filling public records requests.

### **Overview of 2841A -10 by Subsection**

In Section 2, three subsections provide criteria by which information and data could be exempt from public disclosure. Currently, ORS 192.345 already allows for fish and wildlife information to be exempt if it is related to a threatened or endangered species in some circumstances. Section 2 (1) of HB 2841A expands that protection to species that are under consideration for listing and for species designated as sensitive (OAR 635-1-0040). Section 2(2) allows that the department may refuse to disclose location data if harm may come to an individual member of a species or the population, and Section 2(3) allows for refusal of telemetry, radio frequency or other locational data, as well as unpublished study results, and confidential information voluntarily provided by private landowners.

Section 2(4) and (5) allows for the disclosure of what is deemed sensitive information or data by confidentiality agreement. As currently provided in this subsection all resource partners, landowners and stakeholders would be eligible for consideration to receive information by confidentiality agreement. The department currently has confidentiality agreements with parties for some sensitive data, and this addition to the law enhances the enforceability of those agreements.

Section 2(4) specifies that if the department denies an information or data request under the provisions of HB 2841-A, then the requester will be provided appeal and remedy information under ORS 183.415.

Section (6) provides that information or data provided to one party does not need to be provided to any other requester based on previous disclosure.

Section (7) prohibits the department from refusing disclosure of information related to total numbers or health of a species or population within Oregon.

Section (8) requires the department not refuse to disclose information under subsection 2(3) when there is an ongoing petition, litigation or another administrative or legal action for the conservation or protection of a species, or the preparation of any of these legal actions for the same purpose.

Section (9) allows the department to look at ways to generalize or aggregate data to fulfill that will meet the requesters need for information but is not likely to result in harm to a member of a species or the population.

Thank you for the opportunity to provide these comments on the -10 amendments for HB 2841A.