

A-Engrossed
House Bill 3087

Ordered by the House April 12
Including House Amendments dated April 12

Sponsored by Representative WITT; Representatives HELM, SMITH DB

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.

Directs State Department of Fish and Wildlife to establish anti-poaching awareness program. Authorizes State Fish and Wildlife Commission to adopt rules to implement program.

Appropriates moneys from General Fund to State Department of Fish and Wildlife for anti-poaching awareness program.

Increases maximum penalty for certain wildlife law offenses committed with culpable mental state to five years' incarceration, \$125,000 fine, or both.

Increases maximum penalty for certain wildlife law offenses committed without culpable mental state to \$2,000 fine.

Expands State Fish and Wildlife Commission authority to adopt rules relating to use of drones by State Department of Fish and Wildlife to include use of drones for preventing and detecting poaching.

Requires Attorney General to make one or more employees of Department of Justice available to local governments to assist local governments with prosecuting violations of wildlife laws related to poaching.

Declares emergency, effective July 1, 2019.

A BILL FOR AN ACT

1
2 Relating to wildlife poaching; creating new provisions; amending ORS 496.992, 497.400 and 498.128;
3 and declaring an emergency.

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

5 **SECTION 1. (1) The State Department of Fish and Wildlife shall establish an anti-**
6 **poaching awareness program to:**

7 **(a) Increase public awareness of the impacts of poaching;**

8 **(b) Increase reporting of poaching and poaching-related activity;**

9 **(c) Increase law enforcement detection of poaching; and**

10 **(d) Promote consistent prosecution and punishment for poaching.**

11 **(2) The State Fish and Wildlife Commission may adopt rules to implement the anti-**
12 **poaching awareness program.**

13 **SECTION 2. In addition to and not in lieu of any other appropriation, there is appropri-**
14 **ated to the State Department of Fish and Wildlife, for the biennium beginning July 1, 2019,**
15 **out of the General Fund, the amount of \$_____, which may be expended for the anti-**
16 **poaching awareness program established in section 1 of this 2019 Act.**

17 **SECTION 3. ORS 496.992, as amended by section 1, chapter 14, Oregon Laws 2018, is amended**
18 **to read:**

19 496.992. (1) Except as otherwise provided by this section or other law, a violation of any pro-
20 vision of the wildlife laws, or any rule adopted pursuant to the wildlife laws, is a Class A

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 misdemeanor if the offense is committed with a culpable mental state.

2 (2) Except as otherwise provided by this section or other law, a violation of a provision of the
3 wildlife laws, or a rule adopted pursuant to the wildlife laws, that does not involve the taking of
4 wildlife is a Class D violation if the offense is committed without a culpable mental state.

5 (3) A violation of a provision of the wildlife laws, or a rule adopted pursuant to the wildlife laws,
6 that involves the taking of wildlife, other than nongame mammals and game birds, is a Class A vi-
7 olation if the offense is committed without a culpable mental state.

8 (4) A violation of a provision of the wildlife laws, or a rule adopted pursuant to the wildlife laws,
9 that involves the taking of nongame mammals or game birds is a Class C violation if the offense is
10 committed without a culpable mental state.

11 (5) A violation of a provision of the wildlife laws, or a rule adopted pursuant to the wildlife laws,
12 that involves the size or quantity limits for salmon, steelhead trout and sturgeon is a Class A vi-
13 olation if the offense is committed without a culpable mental state.

14 (6) A violation of a provision of the wildlife laws, or a rule adopted pursuant to the wildlife laws,
15 relating to the size or quantity limits for fish or shellfish, other than size and quantity limits for
16 salmon, steelhead trout and sturgeon, is a Class C violation if the offense is committed without a
17 culpable mental state.

18 (7) A violation of the nonresident licensing provisions of ORS 497.102 or 497.121 is a Class A
19 violation if the offense is committed without a culpable mental state.

20 (8) A violation of ORS 496.994 is a Class A violation if the offense is committed without a cul-
21 pable mental state.

22 **(9) A violation of ORS 498.136, 498.142 or 498.146 is a Class A violation if the offense is**
23 **committed without a culpable mental state.**

24 [(9)] (10) The second and each subsequent conviction within a 10-year period for the taking of
25 a raptor or the taking of game fish with a total value of \$200 or more or the taking of antelope,
26 black bear, cougar, deer, elk, moose, mountain goat or mountain sheep in violation of any provision
27 of the wildlife laws, or any rule adopted pursuant thereto, that occurs more than one hour prior to,
28 or more than one hour subsequent to, a season established for the lawful taking of such game
29 mammals or game fish is a Class C felony if the offense is committed with a culpable mental state.

30 **(11) A violation of a provision of the wildlife laws, or a rule adopted pursuant to the**
31 **wildlife laws, is a Class C felony if the offense involves any of the following and is committed**
32 **with a culpable mental state:**

33 **(a) The second and each subsequent unlawful taking of wildlife with the intent to sell or**
34 **to barter, trade, import, export or otherwise exchange the wildlife or a part of the wildlife.**

35 **(b) An unlawful taking of wildlife by an outfitter or guide.**

36 **(c) An unlawful taking of more than 100 wildlife.**

37 [(10)] (12) If a person is convicted of a Class A misdemeanor under subsection (1) of this section,
38 in addition to any other penalty authorized by law, the court shall impose a fine that is:

39 (a) Equal to the maximum fine described in ORS 161.635 (1)(a), if the person has two or more
40 previous convictions for a Class A misdemeanor under subsection (1) of this section or if the offense
41 involves taking three or more times the daily bag limit of any wildlife.

42 (b) Not less than one-half of the maximum fine described in ORS 161.635 (1)(a), if the offense
43 involves:

44 (A) Failing to release a sturgeon more than six feet in length;

45 (B) Unlawfully taking wildlife with the intent to sell, barter, trade, import or export the wildlife,

1 or parts thereof, or selling, bartering, trading, importing or exporting unlawfully taken wildlife, or
2 parts thereof; or

3 (C) Taking a raptor and the person has a previous conviction for taking a raptor.

4 (c) Not less than one-fourth of the maximum fine described in ORS 161.635 (1)(a), if the offense
5 involves taking a raptor and the person does not have a previous conviction for taking a raptor.

6 [(11)] (13) If more than one minimum fine described in subsection [(10)] (12) of this section ap-
7 plies, the court shall impose a fine in an amount that is not less than the highest of the applicable
8 minimum fines.

9 [(12)(a)] (14)(a) If a court imposes a fine as penalty for an offense under the wildlife laws that
10 involves the unlawful taking or killing of wildlife listed under ORS 496.705 (2), the court shall order
11 that the defendant pay all or a portion of the fine separately to the clerk of the court for paying
12 over to the State Fish and Wildlife Commission. The clerk shall pay over to the commission the
13 amount that the court ordered the defendant to pay separately for that purpose. The amount that
14 the court orders to be paid separately to the clerk for paying over to the commission shall be the
15 lesser of:

16 (A) The amount of the fine imposed; or

17 (B) The amount that the commission could recover under ORS 496.705 (2) as damages for the
18 unlawful taking or killing.

19 (b) If the amount that the commission could recover under ORS 496.705 (2) as damages for the
20 unlawful taking or killing of wildlife is more than the maximum fine established for the offense un-
21 der ORS 153.018, 161.625 or 161.635 or a specific fine statute, notwithstanding ORS 153.018, 161.625
22 or 161.635 or any specific fine statute, the maximum fine for the offense is the amount that the
23 commission could recover under ORS 496.705 (2) as damages for the unlawful taking or killing.

24 (c) If an amount paid over to the commission under this subsection is less than the amount that
25 the commission could recover under ORS 496.705 (2) as damages for the unlawful taking or killing
26 of wildlife, payment of the amount does not prevent the commission from bringing an action under
27 ORS 496.705 (2) to recover damages for the unlawful taking or killing. However, notwithstanding
28 ORS 496.705, the amount recoverable under ORS 496.705 (2) by the commission as damages for the
29 unlawful taking or killing shall be reduced by the amount paid to the commission under this sub-
30 section from a fine imposed for the unlawful taking or killing.

31 [(13)(a)] (15)(a) In addition to any other penalty authorized by law, the court shall order the
32 State Fish and Wildlife Commission to revoke all licenses, tags and permits issued to a person in the
33 manner provided for in ORS 497.415 (3), (5) and (6) if the person is convicted of:

34 (A) A Class A misdemeanor under subsection (1) of this section if the offense involves:

35 (i) A violation of ORS 498.042; or

36 (ii) The unlawful taking of wildlife with the intent to sell, barter, trade, import or export the
37 wildlife, or parts thereof, or selling, bartering, trading, importing or exporting unlawfully taken
38 wildlife, or parts thereof; or

39 (B) A Class C felony under subsection [(9)] (10) of this section.

40 (b) Notwithstanding ORS 497.415 (5), upon having a license, tag or permit revoked under para-
41 graph (a)(A)(i) of this subsection for the second time in a 10-year period, a person is prohibited from
42 applying for or obtaining another such license, tag or permit.

43 [(14)] (16) Upon the third conviction within a 10-year period for violation of a provision of the
44 wildlife laws, or a rule adopted pursuant to the wildlife laws, the court shall order all guns, boats,
45 vehicles, traps, fishing apparatus, electronic devices and other implements used in committing the

1 third or subsequent offense to be seized and forfeited to the State of Oregon, to be turned over to
2 the State Fish and Wildlife Commission for disposal in the manner provided for in ORS 496.680.

3 [(15)] (17) As used in this section:

4 (a) "Culpable mental state" has the meaning given that term in ORS 161.085.

5 (b) "Previous conviction" includes a conviction entered in the same sentencing proceeding if the
6 conviction is for a separate criminal episode as defined in ORS 131.505.

7 (c) "Raptor" means a member of the order Falconiformes or Strigiformes and includes owls,
8 hawks, falcons, eagles, osprey and harriers.

9 **SECTION 4. The amendments to ORS 496.992 by section 3 of this 2019 Act apply to of-**
10 **fenses committed on or after the effective date of this 2019 Act.**

11 **SECTION 5.** ORS 497.400, as amended by section 2, chapter 14, Oregon Laws 2018, is amended
12 to read:

13 497.400. No person shall:

14 (1) Apply for, obtain or possess for personal use or for the use of any other person more licenses,
15 tags or permits issued by the State Fish and Wildlife Commission than are authorized for personal
16 use during the current year by the wildlife laws and rules promulgated pursuant thereto.

17 (2) Alter, borrow, loan or transfer to another person any license, tag or permit issued by the
18 commission.

19 (3) In applying for a license, tag or permit issued by the commission, knowingly make any false
20 statement of any information required by the application regarding the person in whose name the
21 license, tag or permit is to be issued.

22 (4) Possess any license, tag or permit that has been altered, borrowed, loaned or transferred or
23 for which any false statements were knowingly made in applying therefor.

24 (5) Apply for or obtain any license, tag or permit issued by the commission when civil damages
25 due pursuant to ORS 496.705, moneys due the State Department of Fish and Wildlife from court-
26 ordered restitutions for violations of the wildlife laws or moneys due the commission under ORS
27 496.992 [(12)] (14) have not been paid.

28 **SECTION 6.** ORS 498.128 is amended to read:

29 498.128. (1) The State Fish and Wildlife Commission shall adopt rules prohibiting the use of
30 drones for the following purposes related to the pursuit of wildlife:

31 (a) Angling;

32 (b) Hunting;

33 (c) Trapping;

34 (d) Aiding angling, hunting or trapping through the use of drones to harass, track, locate or
35 scout wildlife; and

36 (e) Interfering in the acts of a person who is lawfully angling, hunting or trapping.

37 (2) Rules adopted to carry out the prohibitions provided for in this section may include ex-
38 emptions for:

39 (a) Subject to ORS 837.360, the State Department of Fish and Wildlife and the department's
40 agents and contractors for the use of drones in carrying out the duties of the department[; or], **in-**
41 **cluding but not limited to the prevention or detection of poaching; and**

42 (b) The use of drones in a manner otherwise prohibited under this section if the purpose of the
43 use is to benefit wildlife management or habitat or for the protection of property.

44 (3) Nothing in this section is meant to limit the use of drones by a person who is lawfully en-
45 gaging in activities authorized under the commercial fishing laws.

1 (4) As used in this section, “drone” means:

2 (a) An unmanned flying machine;

3 (b) An unmanned water-based vehicle; or

4 (c) Any other vehicle that is able to operate in the air, in or under the water or on land, either
5 remotely or autonomously, and without a human occupant.

6 **SECTION 7. The Attorney General shall make one or more employees of the Department
7 of Justice available to a local government to assist the local government with prosecuting
8 violations of the wildlife laws related to poaching.**

9 **SECTION 8. This 2019 Act being necessary for the immediate preservation of the public
10 peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect
11 July 1, 2019.**

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