



# Oregon

Tina Kotek, Governor

**Department of Fish & Wildlife**

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**To:** The Honorable Ken Helm, Chair  
House Committee on Agriculture, Land Use, Natural  
Resources, and Water

### **Senate Bill 886A**

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The Department appreciates the opportunity to provide testimony in support of Senate Bill 886A, which addresses challenges the Department has identified in implementing statutes adopted in 2019.

House Bill 2841 passed in the 2019 legislative session giving the Department the authority to refuse disclosure of certain fish and wildlife information under public disclosure laws (ORS 496.182). Sensitive species data includes telemetry, radio frequency or other locational data about a species, an individual member of a species or the habitat of a species or individual member of a species.

Species covered by this statute include:

- Federal or state threatened and endangered (T&T) listed species,
- Species under consideration for T&E listing,
- Species defined by rule as sensitive species (e.g., at risk, small or declining populations),
- Species of commercial value or black-market value, or game species, and
- Species with a history of harm/vulnerable to harm.

Under the ORS 496.182 nondisclosure language, the Department is required to enter into a nondisclosure of agreement to share this species data with federal, state, tribal, and other public entities. This has posed a significant challenge to obtain funding and developing shared analyses of fish and wildlife population health that inform species management. For example, the Department regularly contracts with or receives grants from federal agencies to use Department staff and expertise to collect critical species data and/or conduct assessment and analysis of data. The Department historically shared these data freely with our co-managers (e.g., US Fish and Wildlife Service and National Marine Fisheries Service) to ensure the best available information is being used for status assessments and decision making. The Department also shared data regularly with universities to address State research needs and leverage faculty expertise.

In addition to hindering access to data the federal government has funded, federal agencies are subject to federal Freedom of Information Act requirements and have been reluctant to engage in the State's nondisclosure requirements. Senate Bill 886A removes federal governments, tribal governments, public utilities, accredited colleges and universities, and other public bodies defined under ORS 174.109 from the section requiring confidentiality agreements when sensitive species data is released. However, the language still retains the latitude for the Department to develop agreements with these entities if needed.

Additionally, Senate Bill 886 deletes a duplicative review process for contested cases created in the 2019 law. ORS 496.182 currently creates two pathways for contested cases: a petition to the Attorney General to review a public body's denial of the right to inspect records under ORS 192.411 and an additional Court of Appeals review as an order in a contested case per ORS 183.415. This scheme creates two paths to review the same decision, which could lead to divergent decisions and is very inefficient. SB 886A retains one pathway – the standard procedure by which a person can petition the Attorney General for public record law review under ORS 192.411.

Other provisions of the bill extend the sunset on the authority to refuse disclosure of sensitive species data from January 2, 2024, to January 2, 2029. SB 886A also instructs the Department to report to the legislature data on wolf-livestock conflict and a summary of discussions related to the release of wolf location data during the Department's upcoming five-year review of the Oregon Wolf Conservation and Management Plan.

The proposed changes in SB 886A retain the Legislature's interest in providing protections for Oregon's fish and wildlife while allowing the flexibility needed for the Department to collaborate with its partners.

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