

**PROPOSED AMENDMENTS TO
HOUSE BILL 4006**

1 On page 1 of the printed bill, line 2, delete “496.164,”.

2 Delete lines 5 through 27 and delete pages 2 through 5 and insert:

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

4 “496.176. (1) The lists of threatened species or endangered species estab-
5 lished pursuant to ORS 496.172 (2) shall include:

6 “(a) Those species of wildlife listed as of May 15, 1987, as a threatened
7 species or an endangered species pursuant to the federal Endangered Species
8 Act of 1973 (P.L. 93-205, 16 U.S.C. 1531), as amended; and

9 “(b) Those species determined as of May 15, 1987, by the State Fish and
10 Wildlife Commission to be threatened species or endangered species.

11 “(2) The commission, by rule, may add or remove any wildlife species from
12 either list, or change the status of any species on the lists, upon a determi-
13 nation that the species is or is not a threatened species or an endangered
14 species.

15 “(3) A determination that a species is a threatened species or an endan-
16 gered species shall be based on documented and verifiable scientific infor-
17 mation about the species’ biological status. To list a species as a threatened
18 species or an endangered species under ORS 496.004 and 496.171 to 496.182,
19 the commission shall determine that the natural reproductive potential of the
20 species is in danger of failure due to limited population numbers, disease,
21 predation or other natural or human actions affecting its continued existence
22 and, to the extent possible, assess the relative impact of human actions. In

1 addition, the commission shall determine that one or more of the following
2 factors exists:

3 “(a) That most populations are undergoing imminent or active deteri-
4 oration of their range or primary habitat;

5 “(b) That overutilization for commercial, recreational, scientific or edu-
6 cational purposes is occurring or is likely to occur; or

7 “(c) That existing state or federal programs or regulations are inadequate
8 to protect the species or its habitat.

9 “(4) Determinations required by subsection (3) of this section shall be
10 made by the commission on the basis of verifiable scientific and other data
11 after consultation with federal agencies, other interested state agencies, **af-**
12 **ected cities, affected counties, affected local service districts as de-**
13 **ined in ORS 174.116**, other states having a common interest in the species
14 and interested persons and organizations.

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

17 “[a] (b) A petition shall clearly indicate the action sought and shall
18 include documented scientific information about the species’ biological status
19 to justify the requested action.

20 “[b] (c) Within 90 days of receipt of a petition, the commission shall
21 respond in writing to the petitioner indicating whether the petition presents
22 substantial scientific information to warrant the action requested.

23 “[c] (d) If the petition is found to present such information, the com-
24 mission shall commence rulemaking.

25 “[d] (e) A final determination by the commission concerning the action
26 requested in a petition shall be provided within one year from the date of
27 receipt of the petition, with the option for an additional 12-month extension
28 of time to complete the listing if the commission determines that limited
29 information or other appropriate considerations require the extension.

30 “[e] (f) If the petition is denied, the petitioner may seek judicial review

1 as provided in ORS 183.484.

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

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

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

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

12 “(7)(a) Notwithstanding subsections (1) to (5) of this section, the com-
13 mission shall take emergency action to add a species to the list of threatened
14 species or endangered species if it determines there is a significant threat
15 to the continued existence of the species within the state[:].

16 “[a)] (b) The commission shall publish notice of such addition in the
17 Secretary of State’s bulletin and shall mail notice to affected or interested
18 persons whose names are included on the commission’s mailing list for such
19 purposes.

20 “[b)] (c) Such emergency addition shall take effect immediately upon
21 publication in the Secretary of State’s bulletin and shall remain valid for a
22 period no longer than one year, unless during the period the commission
23 completes rulemaking procedures as provided in subsection (5) of this sec-
24 tion.

25 “(8) The commission shall periodically review the status of all threatened
26 species and endangered species listed under ORS 496.171 to 496.192. Each
27 species shall be reviewed at least once every five years to determine whether
28 verifiable scientific information exists to justify its reclassification or re-
29 moval from the list, according to the criteria listed under subsections (3) and
30 (4) of this section. If a determination is made to reclassify a species or re-

1 move it from the list, the commission, within 90 days, shall commence
2 rulemaking to change the status of the species.

3 “(9) Notwithstanding the provisions of this section, the commission:

4 “(a) May decide not to list a species that otherwise qualifies as a
5 threatened or endangered species within this state if the commission deter-
6 mines that the species is secure outside this state or the species is not of
7 cultural, scientific or commercial significance to the people of this state.

8 “(b) May not include *Branta canadensis leucopareia*, commonly known as
9 the Aleutian Canada goose, on the lists of threatened species or endangered
10 species.

11 **“SECTION 2.** ORS 496.182 is amended to read:

12 “496.182. (1) The burden of protecting and recovering threatened species
13 or endangered species can be a significant cost to the citizens of this state
14 and it is therefore the policy of this state to minimize duplication and over-
15 lap between state and federal laws dealing with threatened species or en-
16 dangered species. To this end, nothing in this section is intended to prevent
17 the adoption of cooperative state or federal programs when such programs
18 provide protection for listed species without significant impact on the pri-
19 mary uses of state lands.

20 “(2)(a) At the time the State Fish and Wildlife Commission adds a species
21 to the list of threatened species or endangered species under ORS 496.172,
22 the commission shall establish by rule quantifiable and measurable guide-
23 lines that it considers necessary to ensure the survival of individual members
24 of the species. These guidelines may include take avoidance and protecting
25 resource sites such as spawning beds, nest sites, nesting colonies or other
26 sites critical to the survival of individual members of the species.

27 **“(b) The commission shall work with affected cities, affected coun-**
28 **ties and affected local service districts, as defined in ORS 174.116, to**
29 **mitigate the adverse impact on local economies when the commission**
30 **adds a species to the list of threatened species or endangered species**

1 **pursuant to ORS 496.172.**

2 “(3) For threatened species listed under ORS 496.172 and in the absence
3 of an approved endangered species management plan described in subsection
4 (8) of this section for an endangered species, if a state agency determines
5 that a proposed action on land it owns or leases, or for which it holds a re-
6 corded easement, has the potential to violate the guidelines established under
7 subsection (2) of this section, it shall notify the State Department of Fish
8 and Wildlife. Within 90 days of such notice, the department shall recommend
9 reasonable and prudent alternatives, if any, to the proposed action which are
10 consistent with the guidelines.

11 “(4) If a state agency fails to adopt the recommendations made under
12 subsection (3) of this section, it shall, after consultation with the depart-
13 ment, demonstrate that:

14 “(a) The potential public benefits of the proposed action outweigh the
15 potential harm from failure to adopt the recommendations; and

16 “(b) Reasonable mitigation and enhancement measures shall be taken, to
17 the extent practicable, to minimize the adverse impact of the action on the
18 affected species.

19 “(5) When an action under this section is initiated by a person other than
20 a state agency, the agency shall provide final approval or denial of the pro-
21 posed action within 120 days of receipt of a written request for final deter-
22 mination.

23 “(6) The provisions of this section do not apply to lands acquired through
24 foreclosures of loans made pursuant to programs of the Department of
25 Veterans’ Affairs.

26 “(7) State land owning or managing agencies shall set priorities for es-
27 tablishing endangered species management plans required by subsection (8)
28 of this section after consultation with the commission on the level of bi-
29 ological threat and, in consideration of available funds, the immediacy and
30 seriousness of the threat to any listed species.

1 “(8)(a)(A) Within four months of the listing of an endangered species, the
2 commission, in consultation and cooperation with the state land owning or
3 managing agency, shall determine if state land can play a role in the con-
4 servation of endangered species. The commission and the land owning or
5 managing agency shall consider species biology and geography of the land
6 base to determine if the species or its habitat is found on state land. If the
7 species or its habitat is not found on state land, the commission shall de-
8 termine that state land has no role to play in the conservation of the species.

9 “(B) If the species or its habitat is found on state land, the land owning
10 or managing agency, in consultation with the State Department of Fish and
11 Wildlife, shall determine the role its state land shall serve in the conserva-
12 tion of the endangered species. This role may include, but is not limited to
13 conservation, contribution toward conservation or take avoidance. To carry
14 out its consulting role under this subsection, the department shall provide
15 state agencies with an assessment of the conservation needs of the endan-
16 gered species. In making this determination, the land owning or managing
17 agency shall balance the statutory requirements, rules and policies applica-
18 ble to the agency’s programs, the social and economic impacts that conser-
19 vation would have on the state, the conservation needs of the species, the
20 purpose of the land and the roles of other ownership categories. The agency
21 shall balance these factors consistent with the commission’s rules related to
22 the biological aspects of species management and the statutory obligations
23 of the land owning or managing agency, including the statutory purpose of
24 the land.

25 “(C) After determining the role its state land shall serve in conservation
26 of the species, the land owning or managing agency, in consultation with the
27 State Department of Fish and Wildlife and consistent with the commission’s
28 rules related to endangered species management plans, shall develop and
29 approve an endangered species management plan within 18 months from the
30 date the species is first listed as endangered. Endangered species manage-

1 ment plans shall be based on the statutes, rules and policies applicable to
2 the agency's programs and shall take into account any social or economic
3 impacts that the plan may have on the state. The land owning or managing
4 agency shall submit the plan to the commission for review and approval as
5 provided in subparagraph (D) of this paragraph.

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

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

24 **“SECTION 3. (1) The amendments to ORS 496.176 by section 1 of this**
25 **2012 Act apply to determinations made by the State Fish and Wildlife**
26 **Commission on or after the effective date of this 2012 Act.**

27 **“(2) The amendments to ORS 496.182 by section 2 of this 2012 Act**
28 **apply to species added to the list of threatened species or endangered**
29 **species pursuant to ORS 496.172 on or after the effective date of this**
30 **2012 Act.**

