

Enrolled House Bill 2881

Sponsored by Representative JENSON; Representative KRIEGER

CHAPTER

AN ACT

Relating to delisting of Aleutian Canada goose; amending ORS 496.176; and declaring an emergency.

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

SECTION 1. ORS 496.176 is amended to read:

496.176. (1) The lists of threatened species or endangered species established pursuant to ORS 496.172 (2) shall include:

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

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

(2) The commission, by rule, may add or remove any wildlife species from either list, or change the status of any species on the lists, upon a determination that the species is or is not a threatened species or an endangered species.

(3) A determination that a species is a threatened species or an endangered species shall be based on documented and verifiable scientific information about the species' biological status. To list a species as a threatened species or an endangered species under ORS 496.004 and 496.171 to 496.182, the commission shall determine that the natural reproductive potential of the species is in danger of failure due to limited population numbers, disease, predation or other natural or human actions affecting its continued existence and, to the extent possible, assess the relative impact of human actions. In addition, the commission shall determine that one or more of the following factors exists:

(a) That most populations are undergoing imminent or active deterioration of their range or primary habitat;

(b) That overutilization for commercial, recreational, scientific or educational purposes is occurring or is likely to occur; or

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

(4) Determinations required by subsection (3) of this section shall be made by the commission on the basis of verifiable scientific and other data after consultation with federal agencies, other interested state agencies, the Natural Heritage Advisory Council, other states having a common interest in the species and interested persons and organizations.

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

(a) A petition shall clearly indicate the action sought and shall include documented scientific information about the species' biological status to justify the requested action.

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

(c) If the petition is found to present such information, the commission shall commence rulemaking.

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

(e) If the petition is denied, the petitioner may seek judicial review as provided in ORS 183.484.

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

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

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

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

(7) Notwithstanding subsections (1) to (5) of this section, the commission shall take emergency action to add a species to the list of threatened species or endangered species if it determines there is a significant threat to the continued existence of the species within the state:

(a) The commission shall publish notice of such addition in the Secretary of State's bulletin and shall mail notice to affected or interested persons whose names are included on the commission's mailing list for such purposes.

(b) Such emergency addition shall take effect immediately upon publication in the Secretary of State's bulletin and shall remain valid for a period no longer than one year, unless during the period the commission completes rulemaking procedures as provided in subsection (5) of this section.

(8) The commission shall periodically review the status of all threatened species and endangered species listed under ORS 496.171 to 496.192. Each species shall be reviewed at least once every five years to determine whether verifiable scientific information exists to justify its reclassification or removal from the list, according to the criteria listed under subsections (3) and (4) of this section. If a determination is made to reclassify a species or remove it from the list, the commission, within 90 days, shall commence rulemaking to change the status of the species.

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

(a) May decide not to list a species that otherwise qualifies as a threatened or endangered species within this state if the commission determines that the species is secure outside this state or the species is not of cultural, scientific or commercial significance to the people of this state.

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

SECTION 2. This 2005 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect on its passage.

Passed by House April 20, 2005

Repassed by House June 8, 2005

.....
Chief Clerk of House

.....
Speaker of House

Passed by Senate June 6, 2005

.....
President of Senate

Received by Governor:

.....M,....., 2005

Approved:

.....M,....., 2005

.....
Governor

Filed in Office of Secretary of State:

.....M,....., 2005

.....
Secretary of State