

Enrolled
Senate Bill 202

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor John A. Kitzhaber, M.D.)

CHAPTER

AN ACT

Relating to independent scientific review; creating new provisions; amending ORS 352.239, 541.890 and 541.898; repealing ORS 541.914; and declaring an emergency.

Whereas the Legislative Assembly seeks recommendations regarding independent scientific review of a broad range of natural resources issues; now, therefore,

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

**TASK FORCE ON INDEPENDENT SCIENTIFIC REVIEW
FOR NATURAL RESOURCES**

SECTION 1. The Legislative Assembly finds and declares that:

(1) Policy and program decisions made by natural resources agencies, boards and commissions can benefit from independent scientific review that:

- (a) Reflects a balance of representation from various research sectors, academic and nonacademic, public and private;**
- (b) Is performed by distinguished scientists from a range of disciplines; and**
- (c) Is clearly communicated to the public and state and local officials.**

(2) Oregon is home to many highly qualified scientists with recognized expertise in a variety of disciplines who are willing to contribute their time and knowledge to scientific reviews to inform the decisions made regarding state and local natural resources policies and programs.

SECTION 2. (1) The Task Force on Independent Scientific Review for Natural Resources is established, consisting of up to 15 members.

(2) Members of the task force shall be appointed by the Governor in consultation with the Vice Presidents of Research, or their designees, at Oregon State University, the University of Oregon and Portland State University.

(3)(a) The task force shall consist of members from the forestry, agriculture, manufacturing, conservation, academic and research sectors, and representatives of Oregon State University, the University of Oregon and Portland State University.

(b) At least one member of the task force shall have previously served on the Independent Multidisciplinary Science Team created under ORS 541.914, as in effect prior to the operative date specified in section 9 of this 2015 Act, or on another state or federal scientific review body, such as the National Academy of Sciences.

(c) Representatives from state natural resources agencies may participate as nonvoting members.

(4) The task force shall evaluate and assess the need for independent scientific review in Oregon and make appropriate recommendations. In developing its recommendations, the task force shall:

(a) Proceed with the understanding that:

(A) Independent scientific reviews are not intended to replace internal agency reviews of natural resources policy and program decisions; and

(B) Agencies are not required to use an independent scientific review panel as recommended by the task force;

(b) Evaluate whether natural resources agencies, legislators and the public would benefit from the incorporation of independent scientific review in the making of policy decisions;

(c) Evaluate whether existing state, federal and academic resources for conducting independent scientific review are meeting the needs of natural resources agencies and other policymakers; and

(d) Evaluate the mechanisms and structures that are in place in other states and at the federal level for independent scientific review related to natural resources policy.

(5)(a) If the task force determines there is a need for independent scientific review in Oregon, the task force shall make recommendations on one or more entities, which may include existing scientific entities in Oregon or a new independent scientific review entity, that are best situated to conduct or coordinate independent scientific review and whether the entities identified would need legislative authority to act as independent scientific review bodies for Oregon.

(b) If the task force recommends use of a particular existing scientific entity, the task force shall make any recommendations regarding necessary changes to the entity based on the evaluation and assessment undertaken pursuant to subsection (4) of this section. If the task force recommends the development of a new independent scientific review entity, the task force shall make recommendations regarding how to structure a new independent scientific entity.

(6) In making recommendations under subsection (5) of this section, to ensure that an entity will provide scientific review that is independent, the task force shall consider:

(a) Whether the entity should provide reports to the Legislative Assembly or otherwise be subject to special legislative oversight;

(b) Whether organizational safeguards must be established or changed within the entity to ensure that the entity is free from bias and that a wide variety of natural resources disciplines and interests are represented;

(c) How to develop or change the structure or processes of the entity's advisory board or other governing body in order to support the independence of scientific review panels convened by the entity, which shall include consideration of the entity's advisory board or other governing body directing or participating in the scientific analysis and review conducted or coordinated by the entity;

(d) How the entity's funding structure should be created, altered or supplemented to ensure that there is no perception of bias in the funding of independent scientific review panels and to ensure that adequate funds are available to convene such panels;

(e) How to develop processes for conducting or coordinating independent scientific review in order to encourage balanced, broad and diverse participation among the scientific disciplines that may be called upon in the course of independent scientific review; and

(f) How to develop procedures for the selection and deliberation of scientific experts to participate in independent scientific reviews, taking into consideration lessons learned from the processes used by the former Independent Multidisciplinary Science Team and other processes for independent scientific reviews.

(7) The task force also shall make recommendations regarding the structure and function of the process to be used by the recommended entities in the course of independent scientific reviews. In making recommendations under this subsection, the task force shall consider:

(a) Whether the entity should respond to inquiries from the Governor's office or the Legislative Assembly, the citizen boards of natural resources agencies or from other appropriate parties;

(b) Whether the entity should independently select science issues to review;

(c) Whether a state agency should be required to respond in writing to a report issued by an independent scientific review panel, explaining how the agency intends to implement the panel's suggestions or why the agency does not plan to implement the suggestions;

(d) How to enhance involvement of the University of Oregon, Oregon State University, Portland State University and other universities in the independent scientific review process; and

(e) How to provide a scientific review process that is open to the public and that inspires public confidence in, and understanding of, the review process without compromising the independence of the review.

(8) A majority of the voting members of the task force constitutes a quorum for the transaction of business.

(9) Official action by the task force requires the approval of a majority of the voting members of the task force.

(10) The task force shall elect one of the voting members to serve as chairperson.

(11) If there is a vacancy for any cause, the Governor shall, in consultation with the Vice Presidents of Research, or their designees, at Oregon State University, the University of Oregon and Portland State University, make an appointment to become immediately effective.

(12) The task force shall meet at times and places specified by a majority of the voting members of the task force.

(13) The task force may adopt rules necessary for the operation of the task force.

(14) The task force shall have its first meeting on or before January 1, 2016.

(15) The task force shall submit a report of its findings and recommendations to the Governor and to an appropriate committee of the Legislative Assembly in the manner provided in ORS 192.245 no later than September 15, 2016.

(16) The Institute for Natural Resources shall provide staff support to the task force.

(17) Members of the task force are not entitled to compensation, but may be reimbursed for actual and necessary travel and other expenses incurred by them in the performance of their official duties in the manner and amounts provided for in ORS 292.495. Claims for expenses shall be paid out of funds appropriated to the Institute for Natural Resources for purposes of the task force.

(18) All agencies of state government, as defined in ORS 174.111, are directed to assist the task force in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish such information and advice as the members of the task force consider necessary to perform their duties.

SECTION 3. Sections 1 and 2 of this 2015 Act are repealed on January 2, 2019.

INSTITUTE FOR NATURAL RESOURCES

SECTION 4. ORS 352.239 is amended to read:

352.239. *[(1) There is created within the Oregon University System the Institute for Natural Resources. The Institute for Natural Resources shall be administered by Oregon State University and other institutions in the Oregon University System.]*

(1) **The Institute for Natural Resources is established at Oregon State University. In administering the institute, Oregon State University may seek the cooperation of other public universities listed in ORS 352.002.**

(2) The Institute for Natural Resources shall serve the following purposes:

(a) Serve as a clearinghouse for scientifically based natural resources information.

(b) Provide scientifically based natural resources information to the public in integrated and accessible formats.

(c) Coordinate efforts with other state agencies and bodies to provide natural resources information to the public in a comprehensive manner.

(d) Facilitate and conduct research.

(e) Provide information and technical tools to assist decision-making on natural resources issues.

(f) Assist the State Parks and Recreation Commission in carrying out the Natural Areas Program by maintaining a data bank that contains a classification of natural heritage resources and an inventory of the locations of the resources. At a minimum, the institute shall record in the data bank the location of state natural areas, the natural heritage resources in those areas, sites that are inhabited by rare species, and lists that rank by rarity species, plant communities and ecosystem types. The institute shall make the information included in the data bank available to private landowners, researchers and local, state and federal agencies.

(g) Assist the State Parks and Recreation Department in carrying out the Natural Areas Program by reviewing and providing recommendations on proposals for registration and dedication of natural areas.

(3) When making observations on private land, an employee of [*an institution in the Oregon University System*] **a public university listed in ORS 352.002** who is compiling information for the Natural Areas Program pursuant to subsection (2)(f) of this section must obtain permission from the landowner before **entering private land, collecting information or** entering the information into the data bank.

(4) Using existing resources, state agencies designated by the Governor shall enter into a memorandum of understanding, or other agreement deemed appropriate by the Governor, with the institute that defines and clarifies the roles and responsibilities of the agencies in order to prevent duplication of effort and to ensure that agency resources are used efficiently.

(5) State agencies may contract with the institute to fulfill agency needs regarding the collection, storage, integration, analysis, dissemination and monitoring of natural resources information and natural resources research and training.

SECTION 4a. If Senate Bill 80 becomes law, section 4 of this 2015 Act (amending ORS 352.239) is repealed and ORS 352.239, as amended by section 155, chapter __, Oregon Laws 2015 (Enrolled Senate Bill 80), is amended to read:

352.239. (1) The Institute for Natural Resources is established at Oregon State University. In administering the institute, Oregon State University may seek the cooperation of other public universities listed in ORS 352.002.

(2) The Institute for Natural Resources shall serve the following purposes:

(a) Serve as a clearinghouse for scientifically based natural resources information.

(b) Provide scientifically based natural resources information to the public in integrated and accessible formats.

(c) Coordinate efforts with other state agencies and bodies to provide natural resources information to the public in a comprehensive manner.

(d) Facilitate and conduct research.

(e) Provide information and technical tools to assist decision-making on natural resources issues.

(f) Assist the State Parks and Recreation Commission in carrying out the Natural Areas Program by maintaining a data bank that contains a classification of natural heritage resources and an inventory of the locations of the resources. At a minimum, the institute shall record in the data bank the location of state natural areas, the natural heritage resources in those areas, sites that are inhabited by rare species, and lists that rank by rarity species, plant communities and ecosystem

types. The institute shall make the information included in the data bank available to private landowners, researchers and local, state and federal agencies.

(g) Assist the State Parks and Recreation Department in carrying out the Natural Areas Program by reviewing and providing recommendations on proposals for registration and dedication of natural areas.

(3) When making observations on private land, an employee of Oregon State University, or another public university listed in ORS 352.002 that is providing administrative support, [and] who is compiling information for the Natural Areas Program pursuant to subsection (2)(f) of this section must obtain permission from the landowner before **entering private land, collecting information or** entering the information into the data bank.

(4) Using existing resources, state agencies designated by the Governor shall enter into a memorandum of understanding, or other agreement deemed appropriate by the Governor, with the institute that defines and clarifies the roles and responsibilities of the agencies in order to prevent duplication of effort and to ensure that agency resources are used efficiently.

(5) State agencies may contract with the institute to fulfill agency needs regarding the collection, storage, integration, analysis, dissemination and monitoring of natural resources information and natural resources research and training.

INDEPENDENT MULTIDISCIPLINARY SCIENCE TEAM ABOLISHED

SECTION 5. The Independent Multidisciplinary Science Team is abolished.

SECTION 6. ORS 541.914 is repealed.

SECTION 7. ORS 541.890 is amended to read:

541.890. As used in ORS 541.890 to 541.969:

(1) “Adaptive management” means applying management or practices over time and across the landscape to achieve site specific resource goals using an integrated and science based approach that results in changes over time in response to feedback or monitoring.

(2) “Associated uplands” includes those lands of a watershed that are critical to the functioning and protection of a riparian area.

(3) “Board” means the Oregon Watershed Enhancement Board created under ORS 541.900.

[(4)] *“Independent Multidisciplinary Science Team” means the scientific team of recognized experts in fisheries, artificial propagation, stream ecology, forestry, range, watershed and agricultural management created under ORS 541.914.*

[(5)] (4) “Native” means indigenous to Oregon and not introduced.

[(6)] (5) “Oregon Conservation Strategy” means the comprehensive wildlife conservation strategy for this state adopted by the State Fish and Wildlife Commission.

[(7)] (6) “Oregon Plan” means the guidance statement and framework described in ORS 541.898.

[(8)] (7) “Protect” or “protection” means to minimize or mitigate adverse effects on native fish or wildlife habitat to the maximum extent practicable given the anticipated duration, geographic scope and primary purpose of proposed activities.

[(9)] (8) “Restore” or “restoration” means to take actions likely to achieve sustainable population levels of native fish or wildlife and their habitats.

[(10)] (9) “Riparian area” means a zone of transition from an aquatic ecosystem to a terrestrial ecosystem, dependent upon surface or subsurface water, that reveals through the zone’s existing or potential soil-vegetation complex the influence of such surface or subsurface water. A riparian area may be located adjacent to a lake, reservoir, estuary, pothole, spring, bog, wet meadow, muskeg or ephemeral, intermittent or perennial stream.

[(11)] (10) “Soil and water conservation district” means a political subdivision of the state as described in ORS 568.550.

[(12)] (11) “Stewardship” means the careful and responsible management of the environment.

[(13)] (12) “Tribe” means a federally recognized Indian tribe in Oregon.

~~[(14)]~~ **(13)** “Watershed” means the entire land area drained by a stream or system of connected streams such that all streamflow originating in the area is discharged through a single outlet.

~~[(15)]~~ **(14)** “Watershed council” means a voluntary local organization, designated by a local government group convened by a county governing body, to address the goal of sustaining natural resource and watershed protection, restoration and enhancement within a watershed.

SECTION 8. ORS 541.898 is amended to read:

541.898. (1) As used in this section when referring to salmonid recovery:

(a) “Listed unit” means one population or a group of populations of a species, such as an evolutionarily significant unit, that has been listed as threatened or endangered under the federal Endangered Species Act of 1973 (P.L. 93-205), as amended, or under ORS 496.171 to 496.192.

(b) “Native fish” means a fish indigenous to Oregon and not introduced. Naturally produced fish and hatchery produced fish are both native fish if the fish are indigenous to Oregon and not introduced.

(c) “Naturally produced” means a fish that reproduces and completes its full life cycle in its natural habitat. Naturally produced progeny of hatchery fish are naturally produced.

(d) “Population” means a group of fish that:

(A) Originates and reproduces in a particular area at a particular time;

(B) Does not interbreed to any substantial degree with any other group reproducing in a different area or in the same area at a different time; and

(C) Is composed of naturally produced fish, hatchery produced fish or a combination of both.

(e) “Recovery” means that a proportion of the constituent populations of naturally produced native fish belonging to a listed unit are sufficiently abundant, productive and diverse in life histories and distribution such that the listed unit as a whole is likely to be self-sustaining into the foreseeable future.

(f) “Self-sustaining” means having a sufficient proportion and distribution of constituent populations:

(A) Likely to survive prolonged periods of habitat, oceanic, climatic and environmental conditions that are detrimental to a population; and

(B) Having habitat of sufficient quality and quantity likely to provide survival rates adequate to maintain associated ecological, cultural and economic benefits.

(2) The Legislative Assembly finds that the efforts of many Oregonians have resulted in the creation of the Oregon Plan, and recognizes that the Oregon Plan is guided by the following mission and goals:

(a) The mission of the Oregon Plan is to restore the watersheds of Oregon and to recover the fish and wildlife populations of those watersheds to productive and sustainable levels in a manner that provides substantial ecological, cultural and economic benefits.

(b) The goals of the Oregon Plan that guide the citizens of Oregon in achieving the mission of the Oregon Plan are the:

(A) Establishment and maintenance of an infrastructure that provides long-term continuity in leadership, direction and oversight of watershed restoration and species recovery.

(B) Continued opportunity for a wide range of natural resource uses that are consistent with watershed restoration and species recovery.

(C) Implementation of existing laws and environmental regulations to achieve the mission before enacting new laws and environmental regulations.

(D) Development and maintenance of funding for programs to protect and restore watersheds.

(E) Development of expectations for the sustainability of interrelated natural resources that accurately reflect a scientific understanding of the physical and biological constraints of the ecosystem.

(F) Enhancement of habitat available to support healthy populations of fish and wildlife throughout the state.

(G) Production of populations of threatened or endangered species to achieve levels of natural production consistent with overall restoration goals.

(H) Establishment of a science-based system that supports evaluation of the Oregon Plan and provides a basis for making appropriate future changes to management programs.

(I) Coordination of activities and programs among federal, state and local governments and other entities.

(J) Use of voluntary and collaborative processes to achieve the mission of the Oregon Plan whenever possible.

(3) The Oregon Plan is a comprehensive program for the protection and recovery of species and for the restoration of watersheds throughout this state. The Oregon Plan combines the regulatory and other actions of state and federal agencies and local governments with voluntary watershed restoration by private landowners and others. The Oregon Plan includes, but is not limited to:

(a) Programs and policies found in the following statutes:

(A) ORS 196.600 to 196.905;

(B) ORS chapter 197;

(C) ORS chapter 274;

(D) ORS chapter 366;

(E) ORS chapter 390;

(F) ORS chapters 465, 466, 468 and 468B;

(G) ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992;

(H) ORS chapter 477;

(I) ORS chapters 496, 497, 498, 501, 506, 507, 508, 509 and 511;

(J) ORS 517.702 to 517.989;

(K) ORS 527.310 to 527.370, 527.610 to 527.770, 527.990 (1) and 527.992;

(L) ORS chapter 530;

(M) ORS chapters 536 to 543A;

(N) ORS 543A.005 to 543A.415; and

(O) ORS 568.210 to 568.808 and 568.900 to 568.933;

(b) Commitments of state agencies in the form of measures;

(c) Actions of local governments and federal agencies taken in coordination with the state and consistent with the purposes of the Oregon Plan;

(d) Voluntary activities undertaken by watershed councils, soil and water conservation districts, landowners and other entities and consistent with the purposes of the Oregon Plan;

(e) Scientific review by [*the Independent Multidisciplinary Science Team*] **independent scientific review panels**, and others, of the activities performed under the Oregon Plan;

(f) Programs and activities identified to address a coordinated approach for the recovery of native salmonid populations within Oregon;

(g) The guidance statement and framework provided by the healthy streams partnership developed to provide cooperative solutions and voluntary approaches to improving the water quality of streams and to achieve healthy streams throughout Oregon; and

(h) Programs for the restoration and enhancement of multiple species and of the habitat of those species.

(4) The Oregon Plan is subject to modification and alteration to enhance program efforts consistent with appropriate guidance principles developed by the Legislative Assembly.

(5) The purpose of the Oregon Plan is to enhance, restore and protect Oregon's native salmonid populations, watersheds, fish and wildlife habitat and water quality, while sustaining a healthy economy.

(6) The Oregon Plan shall:

(a) Provide for coordination of local, state, federal and tribal agency responsibilities and authorities for native salmonid, watershed and habitat restoration throughout Oregon.

(b) Rely on watershed councils and soil and water conservation districts, which are directed to cooperate in the development of local watershed plans that assess watershed conditions and create watershed action plans and strategies for the implementation of the local watershed action plans.

(c) Focus state policies and resources on achieving native salmonid recovery and watershed restoration while sustaining a healthy economy and environment.

(7) The Oregon Plan shall focus on aiding the recovery of species listed as threatened or endangered under the federal Endangered Species Act or under ORS 496.171 to 496.192 until such time as recovery is achieved. Once recovery has been achieved for any species listed as threatened or endangered under ORS 496.171 to 496.192, the Governor shall direct the State Fish and Wildlife Commission to begin rulemaking, as provided in ORS 496.176, to remove the species from the list created pursuant to ORS 496.172. Upon recovery, adequate measures pursuant to the Oregon Plan shall remain in place, as necessary, to help a species avoid a return to threatened or endangered status.

(8)(a) The Governor, or the Governor's designee, shall negotiate with federal officials to obtain assurances to the effect that compliance with the Oregon Plan and the programs and policies found in the statutes listed in subsection (3) of this section and implementation of related state programs and policies will satisfy federal requirements imposed by the federal Endangered Species Act. Specifically, the Governor, or the Governor's designee, shall seek an exemption to the requirements of 16 U.S.C. 1533(d), shall seek to enter into a cooperative agreement pursuant to 16 U.S.C. 1535(c) or shall seek to obtain a permit that allows the incidental taking of species under 16 U.S.C. 1539(a).

(b) State agencies responsible for implementing the programs and policies found in the statutes listed in subsection (3) of this section shall work with the Governor, or the Governor's designee, and with federal officials to provide the information necessary to obtain the exemptions, agreement or permit specified in paragraph (a) of this subsection.

SECTION 9. Section 5 of this 2015 Act, the amendments to ORS 541.890 and 541.898 by sections 7 and 8 of this 2015 Act and the repeal of ORS 541.914 by section 6 of this 2015 Act become operative on January 1, 2017.

MISCELLANEOUS

SECTION 10. The unit captions used in this 2015 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2015 Act.

SECTION 11. There is appropriated to the Higher Education Coordinating Commission, for the biennium beginning July 1, 2015, out of the General Fund, the amount of \$108,907 to be distributed to Oregon State University to be used for the purposes of the Institute for Natural Resources.

SECTION 12. This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.

Passed by Senate June 29, 2015

Repassed by Senate July 3, 2015

.....
Lori L. Brocker, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House July 2, 2015

.....
Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2015

Approved:

.....M,....., 2015

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2015

.....
Jeanne P. Atkins, Secretary of State