



# **HB 2402**

## **JOINT INTERIM TASK FORCE**

### **FUNDING FOR FISH, WILDLIFE AND RELATED OUTDOOR RECREATION AND EDUCATION**

#### **INTERIM DRAFT REPORT TO OREGON LEGISLATURE**

September 20, 2016

## A. INTRODUCTION

Oregon is rich in natural resources. Healthy fish, wildlife and habitats enhance our quality of life and contribute to our economy. Sustaining, conserving and managing these resources — as well as engaging Oregonians in related recreation and education opportunities — require a new business model. The current approach is not sufficient to address Oregon’s contemporary and future demographics, resource demands, and a changing ecological landscape. Today, the Oregon Department of Fish and Wildlife’s (ODFW) conservation work is funded primarily through fishing and hunting license sales and federal excise taxes. This financing model, established in the 1930’s, is responsible for significant conservation successes. However, it is simply insufficient to sustain, conserve and manage healthy fish, wildlife and habitats, expand hunting and fishing opportunities, or to engage Oregonians in related recreation and education opportunities. It also raises serious equity issues in that the heavy dependence on license fees puts a significant burden for funding ODFW’s operations on a narrow group of users.

The Task Force on Funding for Fish, Wildlife and Related Outdoor Recreation and Education (Task Force), established by the 2015 Legislature through HB 2402 (Appendix A), has been tasked to address the unfunded and increasing costs of conservation and management and related recreational and educational opportunities by identifying new, diversified and sustainable sources of revenue to supplement existing funding. Doing so will ensure that Oregon is a leader in terms of fish and wildlife management and conservation.

In establishing the Task Force, the Legislature directed it to:

1. “Identify and recommend potential alternative, sustainable funding sources for the State Department of Fish and Wildlife that are consistent with the intent and purposes set forth [in section 1 of the bill].”  
*(Recommendations in Section I)*

Whereas Oregon residents have a strong and growing interest in healthy populations of native flora and fauna and the habitat that sustains them; and

Whereas it is in this state's interest to enhance the State Department of Fish and Wildlife's ability to conserve the natural resources under its jurisdiction and to connect a diversity of this state's residents to those natural resources through education and outdoor recreation opportunities that include, but are not limited to, hunting and angling programs; and

Whereas hunting and angling have supported this state's fish and wildlife conservation efforts for generations and continue to provide significant recreational opportunities and economic benefits to the people and communities of this state; and

Whereas it is in this state's interest to enhance the public's engagement in and understanding of hunting and angling and the values they support; and

Whereas it is in this state's interest to diversify and broaden the base of the State Department of Fish and Wildlife's revenue stream in a sustainable manner that ensures that individual beneficiaries of the department's services equitably contribute to the revenues of the department based on the services they receive;

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From HB 2402

2. “Develop recommendations on whether adjustments are necessary to ensure that relevant department program areas are funded in accordance with the intent and purposes set forth in section 1[.]” (*Recommendations in Section J*)
3. “Identify and recommend opportunities for the department to better achieve its mission and conservation program objectives through leveraging, coordinating and budgeting funds from alternative sources and existing sources[.]” (*Recommendations in Section H*)

The stated Legislative intent (Section 1), with which advancement of the above directives is to be consistent, is:

It is the policy of the State of Oregon that wildlife shall be managed to prevent serious depletion of any indigenous species and to provide the optimum recreational and aesthetic benefits for present and future generations of the citizens of this state. In furtherance of this policy, the State Fish and Wildlife Commission shall represent the public interest of the State of Oregon and implement the following coequal goals of wildlife management:

- (1) To maintain all species of wildlife at optimum levels.
- (2) To develop and manage the lands and waters of this state in a manner that will enhance the production and public enjoyment of wildlife.
- (3) To permit an orderly and equitable utilization of available wildlife.
- (4) To develop and maintain public access to the lands and waters of the state and the wildlife resources thereon.
- (5) To regulate wildlife populations and the public enjoyment of wildlife in a manner that is compatible with primary uses of the lands and waters of the state.
- (6) To provide optimum recreational benefits.
- (7) To make decisions that affect wildlife resources of the state for the benefit of the wildlife resources and to make decisions that allow for the best social, economic and recreational utilization of wildlife resources by all user groups.

ORS 496.012: Wildlife Policy

- Non-game public benefits: Strengthen ODFW’s ability to carry out conservation, outdoor recreation and education efforts that benefit the non-hunting / non-angling public.
- Hunting and fishing equity and promotion: Equitable allocation and use of hunting and fishing license fees (and federal excise taxes), especially in maintaining and enhancing opportunities, improving habitat conservation programs, and improving public education directly related to hunting, fishing, and their benefits (including within urban and underserved communities).
- Equity in customer / benefit nexus: Ensure an equitable relationship exists between those who pay for existing and new revenue sources and the benefits produced / services provided through use of those funds.
- Sustainability: prioritizing actions and allocation of resources so as to best ensure the long-term ability of ODFW to achieve its entire mission.

The Task Force work is also connected with Senate Bill 247, which approved ODFW’s most recent fee increase. SB 247 increased fishing and hunting license fees incrementally over three biennia. The stated Legislative Intent (Section 1) is to repeal the final increment if the “Legislative Assembly adopts by law an alternative mechanism for funding the State Department of Fish and Wildlife that will result in a revenue increase to the department that is equal to or greater than the revenue increase” anticipated in the final increment.

This report documents the Task Force’s response to this Legislative direction, including the process and considerations that have guided its work; recommendations intended to address the

directives in HB 2402, as well as several additional related recommendations; and supporting documentation. The report's centerpiece is two funding scenarios that the Task Force recommends be further explored by the Legislature as sources of alternative, sustainable funding to diversify and broaden the base of ODFW's revenue stream.

Submittal of this report does not represent the culmination of the Task Force's work. Rather, these are intended to be preliminary recommendations that the Task Force will continue to refine based upon informal input from Legislative committees, individual Legislators, and key stakeholder groups. Unless directed otherwise, the Task Force intends to submit its final report to the appropriate Senate and House committees by the end of 2016 for consideration in the 2017 Session.

## B. TASK FORCE PROCESS

HB 2402 identified a wide variety of interests to be represented on the Task Force, including: hunting, fishing and conservation groups; outdoor recreation businesses; tourism industry; outdoor education; and diverse/underserved communities. The makeup of the task force (Appendix B) represents the broad interest in fish and wildlife management and conservation. The task force includes:

- Four non-voting legislative members (Senators Edwards and Whitsett / Representatives Helm and Krieger)
- Two ex-officio members (Oregon Fish and Wildlife Commission Chair Mike Finley and ODFW Director Curt Melcher)
- 17 members appointed by the Governor

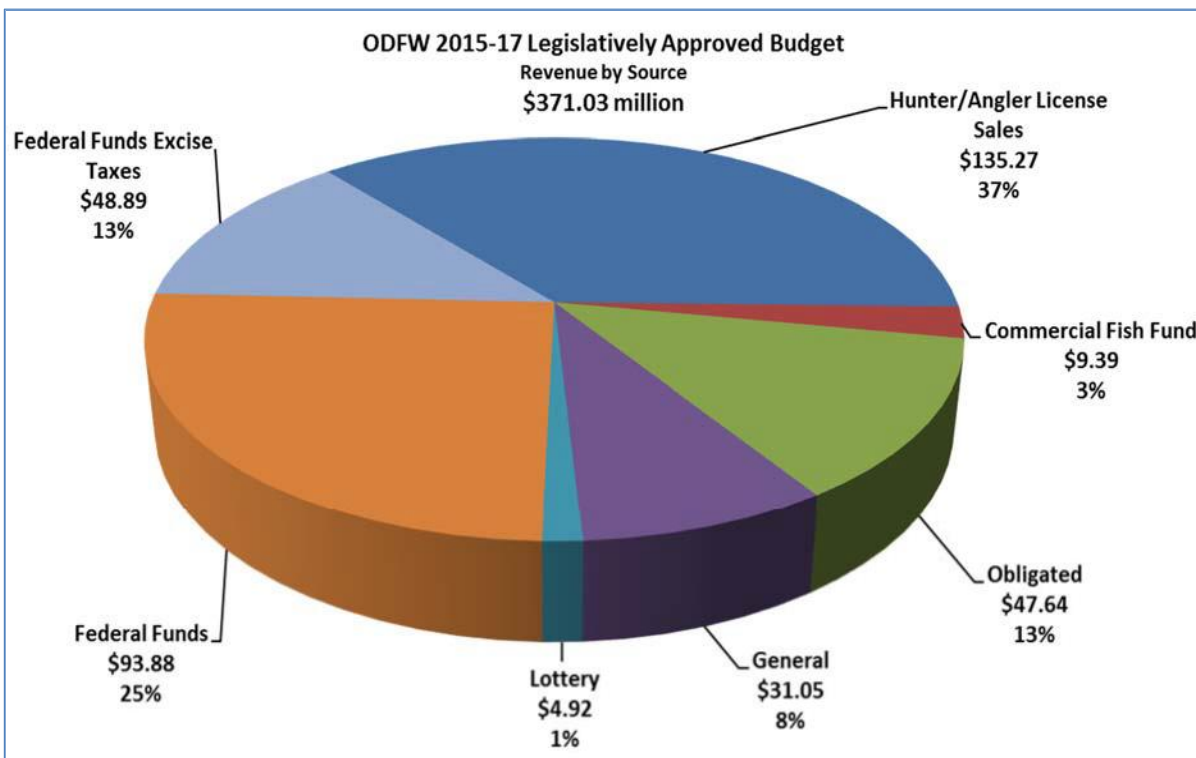
The Governor's appointees included some members who have been heavily involved in ODFW budget and policy issues. Other task force members, however, had relatively little exposure to those issues or represented interests that have not traditionally been involved in those discussions. This broad cross-section was intended to bring new perspective to an issue that has confronted ODFW and other fish and wildlife agencies for years.

Since its first meeting in January 2016, the Task Force has met at least monthly to develop the assumptions, principles, evaluation criteria, and recommendations reported here. Early sessions focused on providing background on the issues that lead to creation of the Task Force; briefings on ODFW's statutory responsibility, mission, funding, budget, and programs; and presentations on recently completed Secretary of State audits of the department. As noted in the January 2016 Audit:

"One of the challenges ODFW faces is an extremely broad and sometimes conflicting wildlife policy (ORS 496.012). ODFW's mission spans every acre of our state; the agency is responsible for management of all wildlife species in Oregon. The agency must both conserve species and regulate their harvest, as seen in the state's seven co-equal goals...Meanwhile, the agency has a budget that has not kept pace with increasing expectations...."

As noted in the Secretary of State audit, ODFW "relies heavily on users to fund its broad range of fish, wildlife, and habitat activities....A steady decline in users...puts pressure license revenues. It will become more difficult to rely on user revenues if these trends continue." Fully one-half of the department's 2015-17 revenue comes from hunters and anglers, either through license fees or federal excise taxes paid on fishing and hunting related equipment.

**Figure 1: ODFW 2015-17 Budget**



The Secretary of State audit goes on to note that the department’s future workload and demands on this narrow, limited scope of funding, are likely to increase due to “Oregon’s growing population, worsening conditions of the ocean, increasing work related to the Endangered Species Act (ESA), and changing climate are likely to continue to impact ODFW’s workload. A recent study in the journal *Science* found climate change as a threat to 1 in 6 species.” These findings are reflected in the Task Force Guiding Principles adopted by the Task Force to guide its recommendations (Section C).

As an initial step, the Task Force researched conservation funding mechanisms in other states. The Task Force solicited input from other states and the national Association of Fish and Wildlife Agencies on successful funding models elsewhere. Task Force members were also briefed on national legislation for sustainable conservation proposed by the Blue Ribbon Panel on Sustaining America’s Diverse Fish and Wildlife Resources convened by the national Association of Fish and Wildlife Agencies. The Recovering America’s Wildlife Act (H.R. 5650) was introduced in Congress in July 2016 with bipartisan support. The measure calls for dedicating \$1.3 billion in existing revenue from the development of energy and mineral resources on federal lands and waters to the Wildlife Conservation Restoration Program. Under the proposal, Oregon could receive approximately \$46 million in new federal funding to focus on conserving at-risk fish and wildlife species and increasing outdoor recreation opportunities. This new funding would require a 25% match in non-federal funding (approximately \$11 million/biennium.)

The Task Force also contracted for a statistically-valid survey of 900 Oregon residents’ opinions on fish, wildlife and habitat values; ODFW management of those resources; the availability of and participation in fish and wildlife-related recreation opportunities, knowledge of how ODFW is funded; and other related topics (Appendix D). This survey has been beneficial in helping the Task Force better understand public

awareness of the issue and potential support for sustainable funding for conservation of fish, wildlife and habitat.

The survey confirmed the high value Oregonians place on conservation of the state’s fish and wildlife and opportunities for outdoor recreation. It also revealed a significant disconnect between these values (which are reflected in public support for ODFW and its mission) and the public’s understanding of how ODFW operates and the funding challenges the agency faces in the 21<sup>st</sup> century.

Most Oregonians believe ODFW’s highest priorities should be conservation-related and think they are already paying for that through their tax dollars. More than half say they know little or nothing about ODFW, and only 14% say they know “a great deal” about the agency.

Presented with an explanation of ODFW’s current funding sources, only 4% of Oregonians surveyed say they think the agency gets too much of their state tax dollar. More than 40% say ODFW receives too little, and almost two-thirds of these people say the department is underfunded or deserves more taxpayer support because of the importance of conservation and wildlife.

#### Other key findings:

- High satisfaction with the protection and management of fish, wildlife, and habitat in Oregon in general. Satisfaction (61% of residents) well exceeds dissatisfaction (18%). A top reason for being dissatisfied with the protection and management of fish, wildlife, and habitat in Oregon related to a lack of funding, including for the staffing of enforcement officers.
- Regarding ODFW specifically, slightly more than half of Oregon residents (56%) are able to correctly name the agency responsible for protecting and managing fish, wildlife, and habitat in the state. Satisfaction with the agency is also high, with 65% of Oregonians being satisfied compared to only 12% being dissatisfied with the agency.
- ODFW is widely viewed as a credible agency, with about 9 out of 10 Oregon residents describing it as such (more than half say the agency is *very* credible).
- Respondents were asked to rate the importance of eight fish and wildlife values. The top two values in the ranking—“that healthy fish and wildlife populations exist in Oregon” and “that Oregon’s water resources are safe and well protected”—are purely ecological rather than utilitarian. While providing opportunities for hunting, fishing, and viewing wildlife, were considered important, they were ranked lower by Oregon residents.
- Respondents ranked “conserving and restoring fish and wildlife habitat,” “protecting endangered species,” and “protecting and restoring native fish and wildlife species in Oregon” as high priorities for ODFW. Human-centered efforts, such as the provision of opportunities for wildlife-related recreation and providing information and education, ranked lower.



- Regarding the Department’s current performance, “providing opportunities for fish- and wildlife-related recreation” (a human-centered effort) was ranked highest, closely followed by “protecting endangered species” (an ecological effort).
- Residents think the primary source of funding for ODFW should be general taxes (33%) followed by hunting and fishing licenses (19%).
- After being told that only 9% of the Department’s funding comes from general state tax revenues, residents were asked whether they thought that amount was too little, too much, or about right. The most common responses are that it is too little (41%) or that it is about the right amount (40%); only a small percentage of Oregon residents say that it is too much (4%).

Public involvement and comment has been an important part of the Task Force process, with comment periods provided at all meetings and targeted outreach to key stakeholders to seek input on preliminary recommendations. (Appendix F.)

News releases and public notices were distributed before all Task Force and work group meetings. All Task Force meetings were live-streamed on the legislative website at [https://www.oregonlegislature.gov/citizen\\_engagement/Pages/Legislative-Video.aspx](https://www.oregonlegislature.gov/citizen_engagement/Pages/Legislative-Video.aspx). Video recordings and all task force presentations and documents are available on legislative website at <https://olis.leg.state.or.us/liz/201511/Committees/JTFFFW/Overview>

## C. GUIDING PRINCIPLES

Early in its deliberations, the Task Force developed a set of guiding principles to articulate what it is trying to achieve in developing recommendations on alternative, sustainable funding for the State’s fish and wildlife program. It identified as an underlying need addressing the increasing costs of conservation and management and related recreational and educational opportunities through instituting new, and sustainable sources of revenue that supplement existing funding and enable ODFW to better meet its statutory mission and Legislatively-assigned responsibilities. It concluded that Oregon’s future should not be limited by the traditional model of hunting and fishing fees, but by a more diversified source of revenues, which will allow a more holistic and equitable approach to fish and wildlife conservation, management, recreation and education. Additional principles include:

- ***Balancing the needs of fish and wildlife and humans*** is becoming increasingly challenging. Population growth, development, drought, climate change, ocean acidification, and many other changes are putting new pressure on Oregon’s fish, wildlife, and wild places. At the same time, society is becoming disconnected from the natural world.
- This lack of connection with nature profoundly affects public health, our well-being, and the future of fish and wildlife in Oregon. A communication strategy, and public outreach are essential to ***developing a broader public understanding*** of the benefits, funding challenges, and opportunities associated with ODFW and its programs, as well as opportunities for enhancing ODFW’s programs, partnerships, and fiscal sustainability.
- The benefits of ODFW’s programs are shared broadly by both Oregonians and visitors to the state, and ***the costs should be shared by all***. Conservation work currently is funded primarily through fishing and hunting license sales. This financing model, established in the 1930’s, is simply insufficient to sustain, conserve and manage healthy fish, wildlife and habitats, expand hunting and

fishing opportunities, or to engage Oregonians in related recreation and education opportunities in the face of 21<sup>st</sup> century conservation challenges, changes in demographics, resource demands, and a changing ecological landscape.

- Funding strategies need to **consider how diverse and underserved communities would benefit** from fish, wildlife and habitat-related conservation, management, recreation or education programs associated with the funding. This is increasingly important as Oregon’s demographics change.
- Funding strategies should **consider opportunities for partnerships** with other public agencies, non-profits, the private sector, and landowners, including in areas that highlight connections between outdoor recreation, conservation, economic and educational benefits, public health, and tourism. These partnerships will leverage state investments and increase likelihood of success.
- **Monitoring and measurable outcomes** must be part of funding strategies.

## D. FUNDING OBJECTIVES

Based on the legislative direction provided in HB 2402 and its guiding principles, the Task Force identified five key objectives for funding.

- **Objective #1: Ensure the health of Oregon’s ecosystems and native species through proactive approaches intended to avoid problems before they become such** by implementing conservation programs and strategies identified in the Oregon Conservation Strategy and its accompanying Nearshore Strategy.
- **Objective #2:** Recognizing that access and opportunity around healthy outdoor places and experiences is a top Oregon value and why we live here, **improve engagement of the public in outdoor recreation opportunities related to and in support of healthy fish, wildlife, and habitats.** Help Oregonians become more engaged in healthy outdoor places and experiences as an alternative to becoming a state and nation that is increasingly more disconnected from nature and natural processes.
- **Objective #3: Improve educational outreach and engagement of the public related to and in support of healthy fish, wildlife, and habitats.**
- **Objective #4: Engage diverse and underserved communities** by ensuring that ODFW has the internal culture and capacity to improve connections to diverse and underserved communities, including the disability community.
- **Objective #5: Enhance hunting and fishing-related engagement and related recreational, economic, conservation and educational values.**

## E. FUNDING NEED

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**Recommended Funding Need: \$79.9 million/biennium**

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Early in the process, the Task Force identified the need to set a revenue target for any alternative funding option being considered. The Task Force requested that ODFW identify funding amounts needed at differing tiers of implementation of its mission and responsibilities. Specifically, ODFW was asked to identify funding levels needed to 1) maintain current operations; 2) maintain current operations and address deferred maintenance needs and unfunded mandates; and 3) fulfill its statutory mission.



<b>Table 1: ODFW Identified Funding Need by Funding Tier</b>			
	<b>Amount</b>	<b>Description</b>	<b>Outcome</b>
<b>Tier 1 – Status quo = \$6m/biennium</b>			
Status quo	\$6 m/biennium	Current conservation programs shifted off license fees to alternative funding	Avoids third increment fee increase per SB 247
<b>Tier 2 – Status quo, deferred maintenance, unfunded mandates = \$21.2 m/biennium</b>			
Status quo	\$6 m / biennium	Current conservation programs shifted off license fees to alternative funding.	Avoids third increment fee increase per SB 247.
Deferred maintenance	\$9.6 m / biennium	Debt service for bonds.	Incrementally addresses \$94 million backlog over the next 15 biennia
Unfunded mandates	\$5.6 m/biennium	Additional conservation programs shifted off license dollars to alternative funding.	Reduces impact on license fees. Stabilizes funding for current conservation programs.
<b>Tier 3 – Fully implement statutory mission = \$76.3 m /biennium</b>			
Expanded conservation Efforts	\$47.1 m / biennium	Additional funding for new and expanded conservation programs, including more fully implementing the Oregon Conservation Strategy and its marine component, the Oregon Nearshore Strategy.	Proactively addresses threats to fish and wildlife and reduces potential for threatened or endangered status. Expands research, monitoring and inventory of species and habitat. Expands ability to share scientific data with partners engaged in conservation efforts. Enhances restoration of healthy ecosystems. Increases voluntary conservation actions. Increases enforcement to protect natural resources.

<b>Improved fishing and Hunting</b>	\$18.7 m / biennium	\$11.6m in current conservation programs shifted off license fees to alternative funding. Funding for conservation programs stabilized, making license revenue available for hunting and fishing related activities. Additional \$7.1 million for enforcement, stabilized hatchery funding, and expanded hatchery production.	Reduces license fees. Expands fishing and hunting opportunities. Increases enforcement. Stabilizes funding for existing conservation programs.
<b>Connecting Oregonians with the outdoors</b>	\$10.5 m/biennium	Education, marketing and outreach programs expanded to encourage conservation and participation in outdoor recreation. Volunteer base increased. Focus on diversity and inclusion.	Increases voluntary conservation actions. Increases participation in fishing, hunting and outdoor recreation. Increases diversity in participation and agency workforce.
<b>Total ODFW-Identified Funding Need = \$85.9 million/biennium</b> Tier 3 = \$76.3 million/biennium plus Deferred maintenance = \$9.6 million/biennium			

ODFW recommended adding funding for deferred maintenance \$9.6 million/biennium to the Tier 3 funding estimate (fully implement its statutory mission), resulting in a total recommended funding level of \$85.9 million/biennium. The Task Force accepted this as an initial revenue target, requesting that its work groups further evaluate this target.

Based on the Guiding Principles and Funding Objectives identified and further review of the ODFW-identified revenue targets, the Task Force subsequently identified a **recommended funding need of approximately \$79.9 million/ biennium**. This reduction would be obtained through:

- Reduction in the administrative costs that were initially estimated.
- Reduction in redundant Oregon State Police Fish and Wildlife division spending.
- Reduction in projected spending on surveys and evaluation.
- Deletion of alternative funding for hatchery operations and increased trout production.

Table 2 summarizes the recommended funding need.

**Table 2: Recommended Funding Need**

<b>Total Funding Need</b>	\$79.9 million / biennium	
<b>Objective</b>	More fully implement ODFW’s broad statutory mission to protect and enhance Oregon’s fish and wildlife and their habitats for use and enjoyment by present and future generations. The Task Force recommends strategic investments in four key areas in order to meet the department’s statutory responsibilities and directions outlined in HB 2402.	
<b>Area of Investment</b>	<b>Recommended Level of Funding</b>	<b>Rationale</b>
<b>Expanded Conservation Efforts</b>	<b>\$46.7 million / biennium</b>	While other government agencies and organizations have a focus on conservation, ODFW is the state agency specifically charged with this responsibility. Currently, conservation efforts are primarily funded through license revenues and federal excise taxes. Additional funding is necessary to implement the conservation aspects of the department mission.
<b>Improved Fishing and Hunting / Sustaining Existing Conservation Programs</b>	<b>\$15.3 million / biennium</b>	Fishing and hunting has been, and will continue to be, a key part of the department mission. HB 2402 directs the task force to develop recommendations to maintain and enhance hunting and angling opportunities and improve public access. ODFW proposes to shift funding for current conservation programs off license fees to alternative funding. Such a shift makes it possible to reduce license fees or fund other fishing and hunting related programs. These investments, while primarily focused on fishing and hunting, would benefit other outdoor recreationists by securing additional public access, improving existing facilities, increasing wildlife populations, and protecting lands and waters used for outdoor recreation. Shifting funding for current conservation programs to alternative funding also provides stability for those efforts in the event of future reductions in license revenues.
<b>Connecting Oregonians with the Outdoors</b>	<b>\$8.3 million / biennium</b>	Oregonians are becoming increasingly disconnected from the natural world. Children spend more time online than outdoors. Urban residents have little time for outdoor recreation. This disconnect profoundly affects our health and our well-being. In addition, fishing and hunting participation is flat or declining. Increased participation generates additional license revenue to fund fish and wildlife conservation and
<b>Deferred Maintenance</b>	<b>\$9.6 million / biennium</b>	The Secretary of State audit identified significant deferred maintenance issues. A 2005 consultant report contracted by ODFW calculated \$94-million in deferred maintenance on department facilities, including offices, buildings, hatcheries, wildlife areas and other properties

	<p>Although this report has not been updated, the \$94 million backlog estimate serves as the basis for the concept to issue \$16-million in ten-year bonds per biennium for six consecutive biennium (\$2.4-million in debt service for \$16-million bonds.) Debt service would increase each biennia and peak at a total of \$14.4 million in debt service for biennium six through ten. The concept provides \$9.6 million in funding/biennium for debt service in the first biennia. In early years, excess funding would be held in reserve for future debt service. In later years, the debt service would begin declining as bonds mature, allowing the difference to be used for maintenance.</p> <p>Task Force members noted that because ODFW facilities are located throughout the state, addressing deferred maintenance could result in additional employment and spending in rural communities.</p>
<p>Calculations based on 2015-17 personnel costs.</p>	

The Task Force’s recommended funding target is further based on the following assumptions:

- The amount of General Fund and Lottery Fund monies received by ODFW remains consistent in future biennia. In 2015-17, 8% (\$31.5 million) of ODFW budget was from General Fund and 1% (\$4.92 million) was from Lottery Funds. ODFW would continue to receive federal excise tax revenue (\$48.9 million; 13%) and other federal funds (\$93.9 million; 25%) at approximately the current levels.
- New funding obtained for ODFW through alternative funding sources should be dedicated to the Department and not subject to reduction or reallocation by the Legislature.
- Implementation of conservation programs and strategies identified in the Oregon Conservation Strategy and Nearshore Strategy is the highest priority for use of alternative funding
- Funding implementation of conservation programs enhances fishing and hunting opportunities and other outdoor recreation programs on ODFW lands.
- The funding target includes an expanded communications and public education/outreach program, with a focus on underrepresented communities and urban areas.

## F. FUNDING DETAILS

The Task Force recognizes that the recommended funding level represents a significant commitment to funding for conservation, fish and wildlife management, and outdoor recreation. While the funding levels identified in Tier 1 and Tier 2 above may be more immediately achievable, the Task Force believes they do not satisfy the legislative direction provided in HB 2402 or the Guiding Principles and Funding Objectives it has adopted. Therefore, the Task Force recommends the higher funding level. It views this funding as an investment in the future of the state and for future generations and necessary to maintain Oregon’s position as a recognized leader in conservation and responsible use of its natural resources.

As noted above, the Task Force recommends investments in four key areas in order to meet the state's statutory responsibility. If fully funded and implemented, these investments would result in a 22% increase in the department's 2015-17 budget. Even with the additional investment of \$79.9 million in alternative funding, revenue from fishing and hunting license sales would continue to be the largest single source of funding for fish and wildlife management (\$135.27m in 2015-17).

If fully funded and implemented, these investments would add 198 FTE to ODFW and 16 FTE to Oregon State Police Fish and Wildlife Division. This would represent a 16% increase in FTE over the 2015-17 ODFW budget. Note that in 2015-17, the FTE count is 5% less than in 2013-15 (2013-15: 1,258 FTE; 2015-17: 1,198 FTE.)

## **1. EXPANDED CONSERVATION EFFORTS: (\$46.7 million/biennium)**

The recently updated Oregon Conservation Strategy and accompanying Nearshore Strategy provide a strong foundation and clear direction for state's conservation programs, but ODFW's budget falls far short of the levels needed to implement the strategy. It will not be possible to support a 21<sup>st</sup> century conservation program with a 20<sup>th</sup> century funding model. New programmatic investments at the level ODFW believes necessary to more fully achieve its mission will create a profoundly different agency better prepared to address the challenges involved in fish and wildlife conservation in a more diverse Oregon facing large scale changes in our natural environment.

- Proactive, effective conservation efforts built around the Oregon Conservation Strategy and its marine component, the Oregon Nearshore Strategy, to ensure healthy, sustainable populations for fish and wildlife. Taking proactive steps to address threats to fish and wildlife minimize the need for expensive emergency actions to avoid them becoming threatened or endangered. federal government, manages these species. Additionally, proactive conservation minimizes the regulatory burden for farmers, ranchers, landowners and land managers.
- Investments in science, research, monitoring and inventory of species and habitat will provide a stronger foundation for sound, informed decisions regarding fish, wildlife and habitat.
- Restoration of healthy ecosystems to benefit Oregon's fish and wildlife and to improve the environment for future generations.



- Opportunities for all Oregonians to take voluntary, proactive steps to conserve and protect fish, wildlife and habit.
- Increasing partnerships with private landowners, public land managers, universities, non-governmental conservation organizations, businesses, industry, government agencies, and citizens for on-the-ground projects to benefit fish and wildlife and their habitats.
- Expanded enforcement of laws to protect and conserve natural resources, including native species and habitats.



Specific investments include resources for:

**A. Species Monitoring, Management and Recovery**

Research, monitoring and inventory is needed to fill data gaps on more than 280 strategy species regarding their distribution, population trends, habitat requirements, movement pathways, and disease issues. This information is critical to determine what is limiting populations, develop restoration plans, and keep them off the Threatened and Endangered Species list. Significant information gaps exist in Oregon’s nearshore environment (0-3 miles.) Lack of information on species status and system health significantly limits the ability to quickly detect and respond to population trends that may be due to human activities (for example, fishing, climate change, etc.) or due to shifts in ocean conditions (for example, El Nino, ocean acidification, etc.). Funding would be provided for:

- Strategy Species Coordinators to develop and coordinate species monitoring, research and recovery.
- Wildlife Conservation Biologists to implement priority species monitoring and habitat restoration efforts, and collaborate with landowners and local partners for on-the-ground conservation activities.
- Nearshore Research Teams to increase the understanding of population trends, ecosystem health, and impacts of human activities.
- Estuary Research Teams to increase monitoring of estuaries to assess shellfish and ecosystem health to inform decisions on aquaculture siting, and updates to county general plans, and Oregon estuary plans.
- Stable and expanded Native Fish Research Monitoring and Evaluation.
- Stable and expanded Fish Conservation and Recovery programs
- “Living with Wildlife” biologists implementing a proactive approach to minimize human-wildlife conflict through education, problem solving and, where appropriate, intervention.
- Dedicated Oregon State Police Fish and Wildlife enforcement focusing on Strategy Species, Strategy Habitats and other natural resource laws.

## **B. Habitat Recovery and Monitoring**

There are 11 Strategy Habitats in Oregon, which are native habitats of conservation concern that provide important benefits to many Strategy Species and have experienced high degrees of loss since European settlement. Healthy habitats benefit all fish and wildlife (both game and nongame) and provide recreational opportunities for wildlife viewers, hikers, campers, bikers, paddlers, photographers, and other outdoor enthusiasts. Healthy habitats also provide foundation for cool, clean water and associated natural processes. Funding is provided for:

- Strategy Habitat Coordinators to coordinate and implement statewide habitat management plans and restoration efforts in partnership with private and public landowners and managers, NGOs, government agencies, and individuals.
- Stream restoration technical support for restoring critical habitat and review of water use permits.
- Fish screens maintenance to expand existing programs and enhance conservation programs statewide through partnerships with landowners, land managers and others. Additional funding provides resources to expand the program statewide.

## **C. Data Analysis, Management and Sharing**

Effective collection, management, analysis and distribution of data on fish, wildlife and habitat is critical to effective conservation efforts. ODFW capabilities to conduct complex data analysis and distribute large datasets is limited. Resources are provided to:

- Employ innovations in data collection, hardware, geographic and statistical software and information technology
- Improve how data is collected in the field, managed within ODFW, and distributed and presented to partners, stakeholders, and the general public.
- Enhance analysis of the economic and social impact of fish and wildlife management on nearshore and terrestrial ecosystems, Oregon communities, and stakeholders.

## **D. Expanded Conservation Partnerships**

While ODFW is charged with managing Oregon's fish and wildlife, it does not own or manage habitat that is critical to survival of most of those species. Private landowners are critical conservation partners. Public land managers also play an important role in providing healthy habitat. And, while ODFW has the specific statutory responsibility for conservation, other organizations and agencies also have an interest and expertise in ensuring sustainable populations of fish and wildlife. Effective conservation efforts require close, collaborative working relationships with non-governmental organizations, private landowners, public land managers, universities, businesses, industry, government agencies, volunteers and other stakeholders. Resources are provided for:

- Conservation Partnership Grants – a portion of all new alternative funding is set aside for a grant program to fund on-the-ground conservation projects by organizations, communities, landowners, government agencies, and others.
- Wildlife Rehabilitation Investments – strengthen partnerships in rehabilitating wildlife through training, certification, and grants to wildlife rehabilitation facilities for infrastructure and operational needs.

- Fish Screens and Passage – expand this voluntary incentive programs for water users to screen water diversions to keep fish in stream while allowing use of water for irrigation and domestic use. Expansion of this program would increase the number of partners involved in resolving issues related to diversions and fish passage.

## **2. IMPROVING FISHING AND HUNTING / SUSTAINING CURRENT CONSERVATION PROGRAMS (\$15.3million/biennium)**

Funding for improving fishing and hunting opportunities will primarily come from shifting funding for current conservation programs off license funds onto a new funding source. This shift (\$11.6-million/biennium in existing conservation programs) will free up license dollars for activities that directly benefit hunters and anglers. The Task Force recommends approval of these fund shifts and providing additional funding for new hunting and fishing specific efforts intended to improve fishing and hunting in Oregon. These actions will increase hunter/angler satisfaction and increase participation (and license sales) providing additional, sustainable funding for fish and wildlife management. Potential actions possible through fund shifts (\$11.6-million) include:



- Repeal of the third increment of scheduled license fee increase (per legislative intent in SB 247.)
- Additional license fee reductions, including potential fee reductions for youth anglers and hunters.
- Development of additional stocking locations with specific emphasis on providing additional fishing opportunities for urban, Hispanic, and underserved communities.
- Creation of a mobile friendly mapping tool providing information on regulations, facilities, and other nearby recreational opportunities.
- Secure and improved public fishing and hunting access, including development of ADA accessible fishing docks, piers, blinds, trails and other facilities. Such facilities could be developed in conjunction with State and local parks; ports; state, federal and local governments; NGO's and volunteers.
- Improvements to public facilities, parking signage and access at wildlife areas, hatcheries, and other department owned or managed properties.
- Expanded research, monitoring and management of game species to improve fishing and hunting opportunities.
- Expansion of the Mule Deer Initiative and other collaborative efforts intended to improve and restore important wildlife habitat.
- Improved marine fishery monitoring to provide more reliable fishery stock assessments and related access to fishing opportunities.
- Sport fishing gear studies to limit bycatch of constraining marine species such as Yelloweye Rockfish.



- Harmful algal bloom (HAB) monitoring: Implement a HABs monitoring program to provide real-time information for anticipating the timing and spatial extent of harmful algal blooms. This has public health benefits, increases predictability about fishery access, and could help reduce the time span of closures.
- Expanded enforcement of fish and wildlife statutes by Oregon State Police Fish and Wildlife Division. Particular emphasis would be placed on areas currently with limited enforcement presence.

### **3. CONNECTING OREGONIANS WITH THE OUTDOORS (\$8.3 million/biennium)**

The Task Force identified this as critical to ODFW meeting its mission and to ensure long term financial stability and support for conservation. Connecting people to nature is an important element of successful implementation of the Oregon Conservation Strategy and other conservation efforts. Providing individuals with the knowledge, skills, and motives to conserve Oregon’s native fish and wildlife enables them to work together to take strategic actions to benefit fish and wildlife.

Additional effort is also needed to engage youth, underserved communities, and diverse audiences. Participants in outdoor recreational activities, and the ODFW workforce, do not reflect Oregon’s diversity. This is not unique to ODFW. Other state fish and wildlife and natural resource agencies have similar challenges in reaching out to diverse audiences to encourage them to participate in outdoor recreation or to work for the agency.

Finally, while ODFW has had some success with efforts to increase fishing and hunting license sales, more marketing can be done to reverse a long-term decline in fishing and hunting. The Task Force recommends that, to the extent possible, ODFW contract with outside vendors for these services.

Historically, funding for outreach efforts was cut during tight budgets. While these reductions save money in the short-term, they have long-term consequences. The Task Force recommends reinvesting in education, outreach and marketing. It views efforts to Connect Oregonians with the Outdoors as important investments in the long-term sustainability of Oregon’s fish and wildlife. The Task Force recommendation includes resources for:

- Development of conservation education programs with particular emphasis on urban areas. Engage NGO’s, agencies and partners in delivering these programs.
- Addressing education / outreach gaps by building on already successful models and lessons learned (e.g., ODFW’s hunter education program).
- Instituting new ways to communicate in order to reach new, broader audiences (especially youth and millennials) through technology such as apps. Use technology to better enable the public to access outdoor activities and to provide public education about conservation values and fish and hunting opportunities.
- Increased use of volunteers, with particular emphasis on “Citizen Science” in which volunteers help collect important scientific data.
- Establishment of a more comprehensive social media strategy, including media portals; increased social media presence; campaign-oriented advertising and marketing; and engaging vendors and partners with expertise in social media, marketing and public relations.
- Evaluating lessons learned from Travel Oregon (e.g., Seven Wonders campaign), Oregon Parks and Recreation, Metro, and other agencies.

- Offering education programs in a variety of settings including traditional classrooms, in conjunction with Outdoor School, workshops and clinics, and interpretive programs and nature trails at wildlife areas, hatcheries and other ODFW facilities
- Developing external strategies focused on localized outreach, including: staff presence at public events, schools, etc.; providing content in multiple languages; identifying potential key influencers / champions to encourage participation; and developing partnerships with NGO's and others with shared interests.
- Instituting a strong, internal Human Resources program to develop recruitment and outreach material to reach more diverse audiences; actively recruit qualified candidates; regularly provide cultural competency training; strengthen career/workforce development; ensure students are exposed to career opportunities at a young age; and encourage STEM education and internships.

#### **4. DEFERRED MAINTENANCE (\$9.6 million/biennium)**

As noted in Table 2, a January 2016 Secretary of State audit identified significant deferred maintenance issues. ODFW has estimated a total of \$94-million in deferred maintenance based upon a 2005 consultant report. Maintenance on ODFW offices, storage buildings, maintenance shops, road systems, hatcheries and wildlife areas was deferred when license funding was limited during lean budget years. As a result, a significant investment is needed to ensure these facilities are able to maintain current operational goals and effectively meet department and public needs. *Note: Given that this estimate is based on a study now more than 10 years old, the Task Force recommends a more thorough assessment of deferred maintenance needs be developed in the first biennium.*

Addressing all of these infrastructure needs at once is not feasible. Therefore, a multi-biennial approach is recommended, with the issuance of \$16-million in ten-year bonds per biennium for six consecutive bienniums (\$2.4-million in debt service for \$16-million bonds.) Debt service would increase each biennium and peak at \$14.4 million in debt service for bienniums six through ten. Debt service would begin declining as bonds mature in biennium 11 through 15. The Task Force recommends providing \$9.6 million/biennium for debt service beginning in the first biennia. In early years, the difference between debt service and budget would be held in reserve for future bond payments. Later, as bonds mature, the difference between the amount budgeted for debt service and the actual bond payment would be used for maintenance. Bonding will allow ODFW to immediately begin addressing maintenance needs and avoid more expensive replacement costs later. This approach effectively resolves outstanding deferred maintenance needs identified in the Secretary of State audit and ensures ODFW has the infrastructure in place to effectively manage Oregon's natural resources. The Task Force also noted that since ODFW facilities are located throughout the state, addressing deferred maintenance at those facilities could lead to additional employment and spending in rural communities.

## **G. FUNDING CRITERIA**

The Task Force considered a wide range of funding alternatives to meet the funding need. The Task Force developed criteria based on recommendations from the national Association of Fish and Wildlife Agencies and other states that have conducted similar efforts. The specific criteria follow:

- **IS THE FUNDING SUFFICIENT TO MEET THE NEEDS?** Is it sufficient to address not just current needs but unanticipated future needs (including environmental changes) and to leverage future opportunities?
- **IS THE FUNDING SUSTAINABLE?** Does it generate continuous, dedicated funding that can grow/adapt over time (versus one-time funding)?

- IS THE FUNDING STABLE AND FLEXIBLE? Is it likely to fluctuate year to year? Is it flexible enough to adapt to changing circumstances including economic downturns, changes in the Legislature or Governor’s Office, new regulations, etc.?
- IS THE FUNDING DIVERSE AND EQUITABLE? Does it spread the cost of fish and wildlife management and conservation over a broader base? Does it involve all those who benefit, directly and indirectly, from the agency’s services and programs?
- DOES THE FUNDING DIVERSIFY OR ENHANCE ENGAGEMENT? Does it positively or adversely affect the engagement of diverse and/or underrepresented individuals, groups or communities in current and future potential programs?
- IS THE FUNDING COST EFFECTIVE? Does it require setting up costly new procedures that could reduce the net revenue? Will it be easy to collect, administer and track?
- IS THE FUNDING DEFENSIBLE? Is there a connection between the funding source and the need? Will supporters be ready and willing to make the case that this funding should go to fish and wildlife management and conservation rather than for some other purpose
- IS THE FUNDING POLITICALLY FEASIBLE? What will it take to implement this proposal? How likely is it to be approved, given Oregon’s political climate? Are there champions that will lobby for it?
- IS THE FUNDING POLITICALLY INSULATED? Is it a funding source that cannot be diverted or diluted by political entities, particularly if it's a new funding source?

The Task Force also considered how well proposed alternatives met the funding need and objectives, focusing on:

- How well do alternative funding proposals implement ODFW’s conservation mission as expressed in the Oregon Conservation Strategy and Nearshore Strategy?
- How well do alternative funding proposals improve Oregonians’ access to and engagement in outdoor recreation and education opportunities?
- Do alternative funding proposals enable shifting part of ODFW’s current conservation efforts or programs that provide broad public benefit off license dollars and onto alternative funding sources?



## H. FUNDING ALTERNATIVES

Task Force members and others were asked to cast a wide net to identify potential funding ideas. Alternative funding sources used or considered by other states were also reviewed. Initial discussions identified more than 100 potential funding options. This large set of options was evaluated based on adopted criteria and the Task Force actively considered approximately 40 funding alternatives. The initial set of alternatives that were reviewed focused on allocations of existing fees or taxes, new funding sources, and several voluntary contributions. Among these were an allocation of a portion of the marijuana tax, recreational equipment tax, a portion of unclaimed bottle deposit funds, wild bird seed excise tax, airport boarding fee, real estate transfer tax, dedication of a portion of corporate gross tax receipts, lottery fund allocation, wildlife license plate, rental car fee, etc. Through an iterative review process, the list was narrowed and researched by legislative staff, including the Legislative Revenue Office and Legislative Counsel.

### More than 100 Funding Options Considered

- Marijuana Tax
- Recreational Equipment Tax
- Beverage Container Surcharge
- Unredeemed Bottle Deposits
- Wildlife License Plate
- General Fund/Lottery Fund Allotments
- Income Tax Return Surcharge
- Rental Car Fee
- Wild Bird Seed Tax
- Recreational Vehicle Tag
- Real Estate Transfer Tax
- Fee on Agricultural Chemicals
- Voluntary Contributions

## I. FUNDING RECOMMENDATION

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### **Recommended Alternative Funding Mechanism: Establishment of the Oregon Conservation Fund financed through either an Oregon Income Tax Surcharge or a Beverage Container Surcharge**

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Based on its analysis of the funding need and a wide range of funding options, the Task Force recommends establishment of an **OREGON CONSERVATION FUND**. The Fund would be dedicated to conservation, management, research, habitat improvements, administration, enforcement, and other activities that protect, maintain, or enhance the native fish and wildlife of the state. The fund would be similar in structure and design to the State Wildlife Fund (ORS 496.300) or the Commercial Fisheries Fund (ORS 508.326(1)), both of which continuously appropriate all moneys in the fund to the State Fish and Wildlife Commission for the intended purposes. In addition, all interest earned on moneys in the fund are retained in the fund.

Two funding mechanisms, each with options for implementation, are being forwarded for the Legislature's consideration. Both mechanisms will require Legislative action, either as legislation or referral to the voters as a ballot measure(s).

The revenue projections for these funding alternatives have been developed in consultation with the Legislative Revenue Office. Legislative Counsel has been consulted on legality issues (Appendix G). Of note:

- Projections are gross estimates that will need to be further refined.

- The revenue target for these funding alternatives has been limited to approximately \$80 million per biennium based upon the recommended funding need; no effort has been made to address funding for other purposes.
- Projected revenue would be expected to be lower in at least the first biennium and would increase over time with inflation.
- Projections do not reflect costs to the state to collect and administer the new revenues.

## 5. OREGON INCOME TAX RETURN SURCHARGE

One recommended funding mechanism is a **surcharge on individual (non-corporate) tax returns based on percentage of taxable income**, with the following considerations:

- **Apportionment for out-of-state and partial year tax filers** is required in order to be Constitutionally valid. This calculation has not been factored into the projected revenue generated.
- Projected revenue is based on the number of returns filed (either individual or joint returns).
- Projected revenue generated is based on adjusting to a first biennium that is 18 months long to match the revenue start date. Consequently, the projected revenue in the second biennium more closely matches the funding need of approximately \$80 million/biennium.
- An **exemption for low income filers** is assumed. Low income is defined as an Oregon tax return adjusted gross income less than \$20,000.
- The historic contribution by hunters and fishers in financing conservation is acknowledged by providing **for annual resident license holders either an income tax credit, reduction in license fees, or a sunsetted exemption from the surcharge**. Additional research is needed before the Task Force finalizes its recommendations in this regard. (There are currently approximately 370,000 annual hunting, fishing or combined license holders.)

## 6. BEVERAGE CONTAINER SURCHARGE

A second recommended funding mechanism is a percentage rate surcharge assessed at the wholesale level on beverage containers subject to the Bottle Bill on 1/1/17.

- This would be applied to the cost of a beverage, rather than as an addition to the beverage container redemption deposit for those containers subject to the Bottle Bill on 1/1/17.

Revenue projections do not include the products that are being added to the bottle deposit system on January 1, 2018

Table 3: OREGON CONSERVATION FUND -- RECOMMENDED ALTERNATIVE FUNDING MECHANISMS		
OREGON INCOME TAX SURCHARGE (individual tax returns)		
Type of Surcharge	Surcharge	Projected Revenue Generated
Percentage of Oregon Taxable Income	0.7%	2017-2019 revenue = \$60 million
Low income filers exemption		2019-2021 revenue = \$92.9 million
Income tax credit, reduction in license fees, or a sunsetted exemption from the surcharge for annual resident hunting or angling license holders		

BEVERAGE CONTAINER SURCHARGE (at wholesale level)		
Percentage on beverage containers subject to the Bottle Bill on 1/1/17	2.02%	2017-2019 revenue = \$60 million 2019-2021 revenue = \$82.4 million

Of all of the funding alternatives considered, the Task Force feels these two options best meet the criteria outlined in Section G. They provide sufficient revenue to meet the projected need. Revenue is projected to increase with population growth. They are broad based and have minimal financial impact on any group of individuals, communities, or interests. Both options appear to be cost effective, although the Task Force recognizes additional analysis is needed if either of these proposals advances. Most important, there is a strong connection between the source of the funding and the benefit received. Healthy fish, wildlife and habitats enhance our quality of life and the state’s economy. Proactive steps to address threats to fish and wildlife avoids more costly actions, and the associated regulatory burden necessary if they become threatened or endangered.

## J. PROGRAM ADJUSTMENT RECOMMENDATIONS

As noted above, the Task Force is making significant recommendations regarding program adjustments necessary to ensure ODFW meets its statutory mission and the objectives outlined in House Bill 2402. A variety of general program adjustments are inherent in the funding objectives and outcomes outlined above, as well as in the assumptions behind the identified funding need. For example, the identified funding need is based on additional staff being dedicated to implementation of Oregon Conservation Strategy/Nearshore Strategy programs. As part of the development of the tiers of funding need, the Department provided the Task Force with programming details that, while very preliminary, are illustrative of program adjustments and staffing needs. Key program adjustments include:

Develop recommendations on whether adjustments are necessary to ensure that relevant department program areas are funded in accordance with the intent and purposes set forth in section 1

- Expanded implementation of the Oregon Conservation Strategy and the Nearshore component and other conservation efforts.
  - The Department’s science capacity should be significantly expanded, including data collection, data management and adaptive implementation.
  - Basic species and habitat monitoring should be prioritized.
  - All positions, from biologists to administration to enforcement, should also be engaged in outreach / education.
- Proposed funding shifts that would keep license fees from increasing and/or allow for fee reductions. Shifting funding for conservation programs to alternative funding reflects the reality that all Oregonians benefit from conservation. To date, those conservation efforts have been funded primarily by license fees and associated federal funds. These programmatic shifts also put conservation programs on a more stable funding source. Improving in fishing and hunting opportunities could also lead to increased participation, resulting in additional revenue for fish and wildlife management and conservation.
- Potential contracting with OWEB (or another entity) for administration of future grants programs. ODFW would provide policy guidance, criteria, and evaluate grant proposals. Issuance of grants, accounting and administration would be provided by OWEB. This approach increases efficiency by

avoiding duplication of efforts by ODFW and OWEB and improves customer service since many of the potential grantees already work with OWEB on grants. ,

- Centralized and/or networked data bases which make species information more accessible for all agencies and partners to conduct analyses, collaborate on prioritized actions and work strategically toward common goals.
- Better engagement with diverse and underrepresented communities and expanded contracting with underrepresented groups. While the state currently makes an effort to encourage bids from minority and women owned businesses, ODFW should do more, especially for deferred maintenance. Additionally, RFP's could be issued for contracts for outreach and education tasks. The expanded use of internships from underrepresented communities could build career path opportunities and relevancy for the next generation of biologists.
- Establishment of specific equity positions within the agency to develop recruitment and outreach material; regularly provide cultural competency training for department staff; and recruit qualified candidates.
- Expansion of the existing program of technical assistance to private landowner through direct involvement of conservation program biologists as well as information availability, FAQ documents and project coordination with partner agencies and NGO's.
- Development of a more comprehensive social media strategy that includes: media portals, increased social media presence, campaign-oriented advertising / marketing, and engagement of those with expertise in social media.
- Contracting for expertise in marketing and education, rather than hiring staff to conduct these programs.

Some members of the public and the task force have suggested that HB 2402 requires the Task Force to conduct a thorough review of ODFW programs as part of its responsibilities. The Task Force discussed at length the intent of the legislation in this regard and believes that line item budget adjustments to ODFW programs are beyond the scope of the Task Force's assignment and more properly assigned to the Fish and Wildlife Commission and the Legislature. Development of the ODFW budget is a lengthy process and includes extensive involvement of the 50-member External Budget Advisory Committee representing a wide variety of interests. In addition, public comments are received at budget meetings throughout the state and before the Fish and Wildlife Commission.

Department budget proposals, especially those including recommended increases in license fees as in 2015-17, receive significant public scrutiny and recommendations for adjustments. As part of that budget process, ODFW significantly reduced spending. The 2015-17 FTE count is 5% lower than in the preceding biennium (2013-15 – 1258.99 FTE / 2015-17 - 1198.26 FTE.) In addition, ODFW took other steps to reduce costs, including streamlining administrative processes and consolidating programs.

While the Task Force recognizes that further cost savings may be possible and additional analysis may be desirable, its ability to engage in detailed program evaluations has been limited by the schedule established in HB 2402 for delivery of its recommendations to the Legislature. Given the abbreviated timeframe, the Task Force has chosen to concentrate its energies on identification of alternative, sustainable funding, which it believes HB 2402 clearly establishes as its primary and priority assignment. At the same time, the Task Force notes that it is recommending a number of program adjustments that it feels satisfy the legislative intent in HB 2402.

## K. LEVERAGING/PARTNERSHIPS RECOMMENDATIONS

Partnerships and leveraging of available funding and staffing is critical to successful fish and wildlife management and conservation. As the January 2016 Secretary of State audit notes, while ODFW has the statutory responsibility to manage the state's fish and wildlife, it "only directly manages 3% of Oregon's lands. It has limited authority to regulate how landowners manage their lands, a challenge given that private lands comprise almost half of the state. In order to accomplish its mission, ODFW must work cooperatively with private landowners and other government agencies." This cooperative approach is especially important in Oregon's nearshore environment. The Secretary of State audit includes a graphic representation of the complexity of this effort which requires ODFW to coordinate its work with "at least 19 different partners, not including cities and counties."

Identify and recommend opportunities for the department to better achieve its mission and conservation program objectives through leveraging, coordinating and budgeting funds from alternative sources and existing sources[.]

-HB2402

In its initial presentation to the Task Force, ODFW highlighted an example of partnership efforts to restore and improve habitat. The Mule Deer Initiative was a collaborative effort involving private landowners, public land managers, organizations, and numerous volunteers. While the focus of this effort was on mule deer, it benefitted many other species as well. In five years, the initiative improved more than 260,000 acres of habitat. The Task Force recommends that ODFW aggressively pursue additional landscape level conservation efforts to benefit native fish and wildlife.

Another partnership example is the department's Hunter Education program, which relies on volunteer instructors to provide the training. As noted in the department's 2015 Volunteer Program Annual Report on the ODFW website, 527 volunteer hunter education instructors provided 28,776 hours of instruction valued at more than \$1-million. According to that same report, in 2015, nearly 14,000 volunteers contributed nearly 220,000 hours of service valued at \$6.3 million. This figure does not include the value of collaborative efforts with other state, federal and local government agencies.

Many other existing partnerships could be cited, such as working with Travel Oregon and its contractors on a new, customer focused website and with Travel Lane County on a guide to fishing locations in the area. There are also numerous examples of ongoing partnerships and cooperation with landowners on habitat restoration and fish screening projects, providing access and easements through Access and Habitat and Restoration and Enhancement programs. Cooperation with state and federal agencies, universities, and organizations resulted in the delisting of Oregon Chub (first fish to be recovered and removed from endangered species list) and precluded the need for listing of sage grouse under the federal Endangered Species Act.

The Task Force recommends ODFW expand these efforts to gain maximum benefit from state investments and engage more Oregonians in conservation. It recognizes that to best meet the objectives it has identified for alternative, sustainable funding, leveraging and coordinating with existing programs and with new and existing partners will be essential. Among the opportunities identified are:

- Leverage funds at the federal level available for conservation, engaging the public in outdoor recreation, engaging diverse and underrepresented communities, enhancing hunting and fishing opportunities, and other related aspects of these recommendations. Examples include:



- Conservation funding proposed by the National Association of Fish and Wildlife Agencies (if Legislation is successful, 3:1 match) (see Section L below.)
  - Federal Cooperative Endangered Species grants
  - Farm Bill programs that provide financial and technical assistance to landowners, tribes
- Leverage funds and expand partnerships with other state agencies, such as providing technical assistance to agencies like DEQ and Oregon Parks and Recreation that have not historically been partners with ODFW in conservation efforts. Potential examples include establishing a Recreation and Education Partnership program among agencies that reduces redundancy as well as improves connections to the public.
  - Pursue partnerships with the academic community including internships, field activities, and coordinated research efforts in science and human dimensions.
  - Continue to partner with public and private entities that own or manage land on projects to improve or restore habitat. ODFW has jurisdiction over fish and wildlife species (unless federal intervention, i.e., ESA) but not the habitat (aside from state wildlife areas). ODFW has had some success in developing these partnerships (ex. Mule Deer Initiative to restore mule deer habitat.) Additional effort should be made to develop similar partnerships to leverage available funding. Potential partners include: federal land management agencies (USFS, BLM, USFWS); state agencies; regional and local governments (METRO, counties); tribes; NGO's; watershed councils; and soil and water conservation districts.
  - Increase opportunities to coordinate with the outdoor recreation industry. For example, ODFW currently partners with Dicks, Cabelas and BiMart to highlight fishing opportunities by using a customized end-cap display. The display is located in the same area where people can purchase fishing gear associated with panfish and trout fishing. The end-caps also include ODFW branding and "how-to" information. Industry has expressed interest in expanding these promotional efforts to include other fishing, hunting and wildlife viewing activities. ODFW also partners with Cabelas to conduct classes on deer, turkey and bird hunting, as well as fishing. With more resources, these successful efforts could be expanded and could include non-hunting and fishing related activities.
  - For public education and outreach, recognize that others may have a greater reach and ability to engage broader audiences (especially in communities without a strong existing ODFW connection). Specific strategies include:
    - Collaborate with conservation organizations to educate the public about ODFW and conservation issues.
    - Identify key influencers and partner directly with them to build trust and effectively deliver conservation education.
    - Partner in outreach content and curricula. For example, cooperate with the Oregon Department of Education in content development that satisfies state curriculum criteria for teaching and OSU Extension in Outdoor School type curriculum.
    - Coordinate funding / cross-pollinate positions with other agencies on outdoor engagement (e.g., graphic designer that works across agencies).
    - Build from / learn from existing programs, such as the Youth Conservation Corps, Salmon in the Classroom, etc. ODFW currently is involved in small scale efforts like these, such as use of YCC at Ladd Marsh Wildlife Area, but expansion of these efforts is limited by available staffing

in the respective area.

- To best engage diverse and underrepresented communities, partner (including contract) with entities that represent underserved audiences and that can help grow relationships.

## L. ADDITIONAL RECOMMENDATIONS

During its deliberations, the Task Force has identified recommendations that may be more expansive than the scope of the assignments laid out in HB 2402. These include:

### **Support for National Legislation for Conservation Program Funding**

HB 2402 authorizes the Task Force to make recommendations on additional issues that “may impact the department’s funding or ability to achieve its mission.” In developing these recommendations, the Task Force recognizes that there are national efforts underway to identify new federal funding for state conservation programs. At the national level, a Blue Ribbon Panel, convened by the national Association of Fish and Wildlife Agencies, is recommending Congress approve legislation providing \$1.3-billion per year in funding for conservation programs that would, among other things, help avoid federal Endangered Species Act listings. Legislation was introduced in the current Congress and will be reintroduced early next year. If this legislation is successful, Oregon could receive approximately \$46 million per biennium in new federal funds for conservation efforts. This would require a 25% match by the State, approximately \$11.5 million in non-federal funds. This match could come from funding sources identified by the Task Force. In developing its recommendation on the funding need, the Task Force did not consider any new federal funding in recognition of the challenges inherent in securing successful Congressional approval of the Blue Ribbon Panel recommendations. The Task Force recommends that the ODFW Commission and Oregon legislature support the national effort.



### **Monitoring and Measuring Outcomes**

One of the Task Force’s Guiding Principles is that monitoring and measurable outcomes are part of the recommended funding strategies. The abbreviated timeframe for delivery of its recommendations to the Legislature has limited the Task Force’s ability to define measures for monitoring and measuring outcomes of the additional funding proposed. However, the Task Force believes that it is essential that monitoring programs and clearly-defined measures are developed and that there is regular reporting on whether and how the funding objectives are being met. Assuming approval of alternative, sustainable funding, an initial required action should be the development of appropriate monitoring and reporting programs based upon specific metrics developed by the Department in consultation with stakeholder groups. Additional suggestions include:

- By statute, ODFW is mandated to manage fish and wildlife to prevent the serious depletion of *any* indigenous species, and to maintain *all* species at optimum levels. The vast majority of species in Oregon are not Strategy Species. In order to carry out this mandate, it should develop a program for regularly assessing the status of those species, recommending conservation actions as necessary,

developing metrics for measuring the results of those actions, and coordinating efforts of all partners (state, federal, private, etc.) in implementing the program.

- By statute, ODFW is required to provide reports to each legislative session regarding the Access and Habitat and the Restoration and Enhancement programs. Similar reports on implementation of Task Force recommendations should be required.
- The Oregon Conservation Strategy identifies seven Key Conservation Issues, which are large, landscape scale issues that threaten or potentially affect many species and habitats. These issues can also affect people by reducing land productivity, reducing opportunities for recreation, altering water supplies, or increasing risk of severe wildfires. The Conservation Strategy establishes goals to address each of these issues. Performance metrics should be developed to monitor progress.
- ODFW regularly provides updates to the Legislature on Key Performance Measures (KPMs). Some of these measures could be modified to more closely reflect new efforts. For example, KPM 4 & 5 specifically reference species of concern (Threatened, Endangered or Sensitive) being monitored. These KPMs should be modified to reflect progress on monitoring Strategy Species (and Strategy Habitats) identified in the Oregon Conservation Strategy.

### **Indexing License Fees**

To provide more certainty to fee increases, address whether future hunting/fishing license fees should be indexed to the cost of inflation or some other clear measure. HB 2402 was approved as part of a divisive debate over a proposed increase in license fees. Approval of SB 247, which increased license fees, provided a short term solution to ODFW's funding needs. HB 2402 recognized that a long term funding solution was needed. Shifting the cost of current conservation efforts off license fees onto alternative funding, and funding new conservation programs with alternative funding, reduces the pressure on license fees. However, as the department's costs increase in the future, additional license fee increases will be necessary. The Task Force recommends that future fee increases be implemented gradually, rather than all at once as has occurred in the past and led to immediate declines in license sales. Indexing future fee increases to the cost of inflation is consistent with the approach taken by SB 247, which implemented incremental fee increases over three biennia. To date, 2016 license sales have been solid, showing little effect of the incremental fee increases. In fact, sales of many license types are tracking above 2015 levels. This is a stark contrast to previous fee increases in which license sales decreased significantly the year following a fee increase.

### **Education/Engagement Program Feasibility Study**

Conduct a short-term feasibility study on the components of and process for implementation of an expanded education and engagement program in response to expanded ODFW funding. This study will be useful in developing comprehensive strategies, executive in collaboration with other partners, to effectively connect Oregonians with the outdoors.

### **Updated Inventory of Deferred Maintenance Needs**

As discussed in Section F (Funding Details), the estimate of the Department's deferred maintenance costs is based on a consultant study more than 10 years old (2005). The Task Force recommends a more thorough assessment of deferred maintenance needs be developed in the first biennium following implementation of the Oregon Conservation Fund.

## APPENDICES

### **APPENDIX A**

Task Force roster

### **APPENDIX B**

HB 2402

### **APPENDIX C**

June 7, 2016 Memo from Beth Patrino, Committee Services

Subject: Information on Funding Alternatives: Response to information requested on 11 funding alternatives identified for further study

### **APPENDIX D**

Summary of survey of 900 Oregonian residents' opinions on and values related to ODFW

### **APPENDIX E**

Stakeholder Consultation

### **APPENDIX F**

Memorandum from Legislative Counsel Committee on the Legality of Proposed Funding Sources for the State Department of Fish and wildlife, August 12, 2016.

**Appendix A:**



**FUNDING FOR FISH, WILDLIFE AND RELATED OUTDOOR RECREATION AND EDUCATION  
TASK FORCE ROSTER**

<b>NAME</b>	<b>AFFILIATION</b>
<b>Members</b>	
Scott Welch	Columbia Sportswear
Rob Morrison	Leupold & Stevens Corp.
Claire Puchy	Retired, Portland Bureau of Environmental Services
Robb Ball	The Nature Conservancy
Kenji Sugahara	OR Bicycle Racing Association
Meryl Redisch	Retired, Portland Audubon Society
Bruce Taylor	OR Habitat Joint Venture
James Nash	6 Ranch Fly Fishing
Mark Labhart	Tillamook Co. Board of Commissioners
Tricia Tillman	Multnomah Co. Health Dept.
Queta Gonzalez	Center for Diversity & Environment
Kari Westlund	Travel Lane County
Nancy Bales	Gray Family Foundation
Jim Martin	Retired, Pure Fishing Company
Brad Pettinger	Oregon Trawl Commission
Mike Herbel	Neskowin Store
Paul Donheffner	OR Hunters Association
<b>EX-OFFICIO</b>	
Sen. Chris Edwards	OR Legislature
Sen. Doug Whitsett	OR Legislature
Rep. Ken Helm	OR Legislature
Rep. Wayne Krieger	OR Legislature
Mike Finley	ODFW Commission Chair
Curt Melcher	ODFW Director
<b>STAFF</b>	
Jim Owens	Facilitator Cogan Owens Greene
Alisha Morton	Associate Cogan Owens Greene
Brett Brownscombe	Natural Resource Policy Advisor Office of Oregon Governor Kate Brown
Beth Patrino	Legislative Services
Roger Fuhrman	Administrator, Information & Education Division ODFW

**Appendix B:**

78th OREGON LEGISLATIVE ASSEMBLY--2015 Regular Session

**Enrolled  
House Bill 2402**

Introduced and printed pursuant to House Rule 12.00 . Pre-session filed (at the request of Governor John A. Kitzhaber, M.D.)

CHAPTER .....

AN ACT

Relating to State Department of Fish and Wildlife funding; and declaring an emergency.

Whereas Oregon residents have a strong and growing interest in healthy populations of native flora and fauna and the habitat that sustains them; and

Whereas it is in this state's interest to enhance the State Department of Fish and Wildlife's ability to conserve the natural resources under its jurisdiction and to connect a diversity of this state's residents to those natural resources through education and outdoor recreation opportunities that include, but are not limited to, hunting and angling programs; and

Whereas hunting and angling have supported this state's fish and wildlife conservation efforts for generations and continue to provide significant recreational opportunities and economic benefits to the people and communities of this state; and

Whereas it is in this state's interest to enhance the public's engagement in and understanding of hunting and angling and the values they support; and

Whereas it is in this state's interest to diversify and broaden the base of the State Department of Fish and Wildlife's revenue stream in a sustainable manner that ensures that individual beneficiaries of the department's services equitably contribute to the revenues of the department based on the services they receive; now, therefore,

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

SECTION 1. It is the intent of the Legislative Assembly that the task force established under section 2 of this 2015 Act develop recommendations for legislation that will carry out the following purposes:

(1) Strengthen the State Department of Fish and Wildlife's ability to carry out conservation and related outdoor recreation and education programs that benefit the nonhunting and nonangling members of the public whose values and pursuits are connected to healthy native fish and wildlife and healthy fish and wildlife habitat;

(2) Maintain and enhance hunting and angling opportunities, improve public access and habitat conservation programs related to hunting and angling, and improve public education about the recreational, economic and conservation benefits of hunting and angling, including within urban and underserved communities, through employing hunting and angling license fee funds and associated federal funds in a manner that is fair and equitable to the fee payers;

(3) Ensure, to the greatest extent possible, that future fee increases, new fees or other new revenue streams for the funding of the department are developed and implemented in

a manner that ensures that individual beneficiaries of the department's services equitably contribute to the revenues of the department based on the services they receive; and

(4) Prioritize actions and allocation of resources that provide for the long-term sustainability of the department and its ability to achieve its mission.

SECTION 2. (1)(a) The Task Force on Funding for Fish, Wildlife and Related Outdoor Recreation and Education is established, consisting of not fewer than 16 or more than 22 members appointed as follows:

(A) The President of the Senate shall appoint two nonvoting members from among members of the Senate.

(B) The Speaker of the House of Representatives shall appoint two nonvoting members from among members of the House of Representatives.

(C) The State Fish and Wildlife Commission shall appoint one nonvoting member from among the members of the commission.

(D) The Governor shall appoint not fewer than 11 or more than 17 members. All members of the task force appointed by the Governor shall have a general knowledge, understanding and interest in fish, wildlife and fish and wildlife habitat-related natural resource issues. In making appointments, the Governor shall endeavor, to the extent the Governor deems practicable, to ensure that each of the following are represented on the task force:

(i) The outdoor recreation business community;

(ii) Conservation interests;

(iii) Hunting interests;

(iv) Angling interests;

(v) Outdoor recreation interests other than hunting and fishing;

(vi) Members of the general public interested in the health of Oregon's fish, wildlife and fish and wildlife habitat and outdoor recreation and who represent members of Oregon's diverse communities that may be underserved or underrepresented by the State Department of Fish and Wildlife's current operations;

(vii) The travel and tourism industry;

(viii) Counties and tribal governments;

(ix) The outdoor education community;

(x) The sport fishing industry; and

(xi) The commercial fishing industry.

(b) The State Fish and Wildlife Director, or the director's designee, shall serve ex officio as a nonvoting member of the task force.

(2) The task force shall:

(a) Identify and recommend potential alternative, sustainable funding sources for the State Department of Fish and Wildlife that are consistent with the intent and purposes set forth in section 1 of this 2015 Act and that may include:

(A) The taxation of the sale of recreational outdoor equipment, clothing or related goods;

(B) Contributions from businesses, organizations and individuals to support the protection and conservation of native nongame wildlife and nongame wildlife habitat;

(C) Fees for services provided by the department to other agencies, organizations or interests;

(D) Fees levied on activities and uses of natural resources that provide commercial benefits and impact fish, wildlife or fish or wildlife habitat;

(E) Endowments, trust funds or other instruments capable of providing stable funding in perpetuity; or

(F) Other funding models, mechanisms or partnerships.

(b) Develop recommendations on whether adjustments are necessary to ensure that relevant department program areas are funded in accordance with the intent and purposes set forth in section 1 of this 2015 Act, while taking into consideration for each relevant program:

(A) The public services provided through the program;

- (B) The funding necessary for the program to provide optimal benefits; and
- (C) The sources of funding for the program.

(c) Identify and recommend opportunities for the department to better achieve its mission and conservation program objectives through leveraging, coordinating and budgeting funds from alternative sources and existing sources including, but not limited to, federal funds, licenses and permits, lottery funds and mitigation funds.

(3) In carrying out its duties under subsection (2) of this section, the task force shall:

(a) Solicit, collect and consider testimony and recommendations from a wide variety of stakeholders;

(b) Ensure that any recommendations made by the task force comply with the department's mission, the Oregon Constitution and federal law;

(c) Identify, procure and consider any research, surveys and other information that the task force deems necessary for developing informed recommendations;

(d) Consider the practicality of proposed options, including, but not limited to, the logistics of implementation and administration; and

(e) Identify and develop strategies for informing and educating the public about:

(A) The long-term funding needs of the department;

(B) The benefits of providing stable, alternative funding for the management and conservation of fish, wildlife and fish and wildlife habitat; and

(C) The net economic benefits to Oregon's economy of fishing, hunting and other wildlife-related recreation and habitat improvement and protection efforts.

(4) The task force may:

(a) Accept comments and exhibits from public and private sources, examine department records and take other actions reasonable for carrying out the work of the task force; and

(b) Make recommendations on other issues that may impact the department's funding or ability to achieve its mission, including but not limited to the recruitment and retention of hunters and anglers, promotion of the department's programs, predation, and habitat improvement.

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

(6) Official action by the task force, including adoption of the report and recommendations described in subsection (11) of this section, requires the approval of a majority of the voting members of the task force.

(7) The task force shall elect one of its members to serve as chairperson.

(8) If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective.

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

(10) The task force may adopt procedures necessary for the operation of the task force.

(11) The task force shall submit a report in the manner provided by ORS 192.245, and may include recommendations for legislation, to the interim committees of the Legislative Assembly related to the environment and natural resources no later than September 15, 2016.

(12) The Legislative Administration Committee shall provide staff support to the task force.

(13) The Legislative Administration Committee may accept, on behalf of the task force, contributions of moneys and assistance from the United States Government or its agencies or from any other source, public or private, and agree to conditions placed on the moneys not inconsistent with the duties of the task force. All moneys received by the Legislative Administration Committee under this subsection shall be deposited into the Fish, Wildlife and Related Outdoor Recreation and Education Fund established under section 3 of this 2015 Act to be used for the purposes of carrying out the duties of the task force.



(14) Members of the task force who are not members of the Legislative Assembly 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 incurred in performing functions of the task force shall be paid out of funds appropriated to the Legislative Administration Committee for purposes of the task force under this section.

(15) 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. Tht;. Fish, Wildlife and Related Outdoor Recreation and Education Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Fish, Wildlife and Related Outdoor Recreation and Education Fund shall be credited to the fund. All moneys in the Fish, Wildlife and Related Outdoor Recreation and Education Fund are continuously appropriated to the Legislative Administration Committee for the purposes of carrying out the duties of the task force established under section 2 of this 2015 Act.

SECTION 4. (1) Sections 1 to 3 of this 2015 Act are repealed on December 31, 2016.

(2) Any moneys remaining in the Fish, Wildlife and Related Outdoor Recreation and Education Fund on December 31, 2016, that are unexpended, unobligated and not subject to any conditions shall revert to the General Fund.

SECTION 5. 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 House June 26, 2015

Received by Governor:

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

Timothy G. Sekerak, Chief Clerk of House

Approved:

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

Tina Kotek, Speaker of House

Passed by Senate June 30, 2015

Kate Brown, Governor

Filed in Office of Secretary of State:

Peter Courtney, President of Senate

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

Jeanne P. Atkins, Secretary of State

## **Appendix C:**

June 7, 2016

**TO:** Task Force on Funding for Fish, Wildlife and Related Outdoor Recreation and Education

**FROM:** Beth Patrino, Committee Services

**SUBJECT:** Information on Funding Alternatives

At its meeting on May 17, 2016, the Task Force on Funding for Fish, Wildlife and Related Outdoor Recreation and Education (Task Force) identified the following 11 funding alternatives for further study and requested additional information about each alternative:

1. Marijuana tax revenue
2. Tax on recreational equipment
3. 5-cents of Bottle Bill deposit
4. New bottled water fee
5. General Fund
6. Lottery Fund
7. Wildlife license plate
8. Personal income tax return surcharge
9. Lodging tax
10. Rental car fee
11. 1% for Wildlife Program

The information requested is presented below along with some basic background information on each funding source.

### **CONCEPT 1: MARIJUANA TAX REVENUE**

**Background:** Measure 91 (2014) legalized the sale and use of marijuana for recreational purposes. HB 2041 (2015) established a 17 percent tax on the retail sale of marijuana-related items beginning January 1, 2016. The tax is collected by marijuana retailers at the point of sale and remitted to the Department of Revenue (DOR) on a quarterly basis. Retailers are allowed to retain 2 percent of their gross collections in order to cover costs. After covering its administrative costs DOR deposits the remaining revenue in the Oregon Marijuana Account.<sup>1</sup>

### **Task Force Questions and Answers:**

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<sup>1</sup> [Revenue Measures Passed by the 78<sup>th</sup> Legislature - 2015 Session - Research Report #3-15](#) prepared by the Legislative Revenue Office

1. *Revenue available for distribution (LRO May 2016 estimate):*  
2015-2017: \$43 million  
2017-2019: \$60 million
2. *Who receives these revenues?* The current distribution from the account (as set in Ballot Measure 91):
  - 40% to the Common School Fund
  - 20% to mental health
  - 15% to State Police
  - 10% to cities
  - 10% to counties
  - 5% to the Oregon Health Authority
3. *Who else may be interested in this revenue?* Everyone included in the current revenue distribution formula above, but especially local governments, law enforcement and mental health advocates.
4. *Cost of implementation (collection mechanism, ease of administration):* Redirecting revenues to a different program is a budget decision. The collection mechanism is in place.
5. *What is the certainty of this revenue stream going forward?* "... (t)he revenue stream and cost expenditures are likely to stabilize and become more predictable during the 2015-2017 biennium and the succeeding four biennia."<sup>2</sup>
6. *What is the legality of the marijuana program going forward?* At the federal level, marijuana continues to be classified as a Schedule I substance under the Controlled Substances Act. Schedule I substances are considered to have a high potential for dependency and no accepted medical use. Distribution of marijuana remains a federal offense.<sup>3</sup>
7. *Which counties have opted out of selling recreational marijuana?* [Here](#) is a map of local control of marijuana businesses in Oregon (see page 7 of this presentation).
8. *What is the effect of marijuana growing operations on conservation values (i.e., habitat, water quality, etc.)?* The answer to this question largely depends on the type of marijuana grow. Illegal grow sites are essentially unregulated, and have the potential to have more negative impacts on natural resources. Legal grow sites in Oregon will be treated similarly to

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<sup>2</sup> [Updated Marijuana Tax Revenue Estimates – Research Brief #4016, May 2016](#) prepared by the Legislative Revenue Office

<sup>3</sup> State Medical Marijuana Laws, National Conference of State Legislatures, April 2016

other agricultural operations. Currently, the Oregon Water Resources Department is engaging with the industry over water issues, and the Oregon Department of Agriculture regarding pesticide applications. There is also a [task force](#) studying best practices for the marijuana industry.

A specific example of the effect of marijuana grow sites on wildlife has been identified for the West Coast Fisher. Federal biologists have recognized the use and prevalence of anticoagulant rodenticides (AR) within fisher habitat as a major threat to the species. According to the U.S. Fish and Wildlife Service, the proximity of a large number of marijuana cultivation sites to fisher populations in California and Oregon have led researchers to implicate marijuana cultivation sites as likely the most significant source of AR exposure in fishers.<sup>4</sup>

## CONCEPT #2: TAX ON RECREATIONAL EQUIPMENT<sup>5</sup>

**Background:** A tax on equipment such as hiking packs, stoves, mountain bikes, snow shoes, skis, snowboards, tents, sleeping bags, boots, and the like would expand the funding base beyond the traditional hunting and angling population. Items that are typically subject to an excise tax under the Dingell-Johnson and Pittman-Robertson Acts (DJ/PR) would be excluded from this tax. Additionally, there would be no taxes on services related to these outdoor activities. The taxation of apparel could be difficult due to the ability of the apparel to be used in situations other than outdoor recreation.

### Task Force Questions and Answers:

1. *What equipment would be taxed?* The type of gear that would be taxed would be gear that is used for the following categories of outdoor recreation: Trail-based sports, bicycling, camping, snow-based sports, water-based sports, and wildlife viewing. To a lesser extent, some outdoor gear used for hunting and fishing would be subject to the tax. This estimate would include all of the equipment used in these sports (This likely includes products in the following list: skis, ski, snowshoe, and hiking poles, boots, bindings, canoes, kayaks, rafts, stand up paddle boards, trail running shoes, biking shoes, boots, bicycles, helmets, lights, binoculars, spotting scopes, field guides, technical backpacks, hydration systems, tents, sleeping bags, sleeping pads, stoves, water purification products, hammocks, coolers, wind/kite surfing equipment, head lamps, lanterns, technical tarp systems, camping chairs, snow shoes, compasses, maps, knives, multi-tools, avalanche safety equipment) The list may be refined as the concept develops.

It is important to note that detailed information is not available on the sales of these types of products. As a preliminary approach, surveys of outdoor recreation are utilized to estimate the size

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<sup>4</sup> Fisher Toxicant Fact Sheet, U.S. Fish and Wildlife Service, October 2014

<sup>5</sup> Information provided by Christine Broniak, Economist, Legislative Revenue Office

of the market for outdoor gear. Respondents who participate in these types of activities report on their gear expenditures in a given year. If respondents don't participate in outdoor activities, their expenditures will not be counted. It is possible that some types of gear will be used by individuals who do not report participating in outdoor recreational activities. The survey is likely to capture a subset of the market for outdoor gear. The uncaptured portion of the market is the gear purchased by individuals for purposes other than outdoor recreation. Examples of this would be travelers who purchase hiking boots for their trip or students who purchase a high-tech backpack suitable for outdoor recreation but use it only for books.

### *Surveys of Expenditures*

In an Outdoor Industry Association Survey conducted by Southwick Associates entitled "The Economic Contributions of Outdoor Recreation, 2013," respondents reported on their expenditures to participate in various types of outdoor activities. The expenditures were divided into three major categories of motorized sports, non-motorized sports, and wildlife-related recreation. The non-motorized category includes trail-based sports, bicycling, camping, snow-based sports, and water-based sports. The motorized category includes motorcycling, off-road riding, boating, snowmobiling, and RVing. Expenditures are reported for equipment and accessories associated with non-motorized recreation. Expenditures are omitted for apparel and services, as these items would not be taxed. Estimates for wildlife watching expenditures can be added to the non-motorized category from the separate "National Survey of Fishing, Hunting, and Wildlife Related Recreation." Certain expenditures for fishing and hunting were omitted because they are already subject to DJ/PR taxes and apparel was excluded as a taxable item for all categories due to the difficulty in separating out sport specific apparel from more casual apparel. A ten percent portion of apparel was then added back to account for applying the tax to outdoor footwear. The non-motorized recreation (excluding wildlife-watching) expenditures are allocated to Oregon as follows:

Expenditures \$Thousands	Trail	Biking	Camping	Snow	Water	Total
Oregon Expenditures on Trips and Equipment	1,407,990	973,629	2,786,438	842,903	631,569	6,642,528
U.S. Total Expenditures on Trips and Equipment	61,992,868	72,341,361	121,358,059	45,540,009	30,665,486	331,897,784
Oregon Percentage	2.3%	1.3%	2.3%	1.9%	2.1%	2.0%
U.S. Total Equipment and Accessories Expenditures \$Thousands						
Equipment Expenditures	1,852,017	3,336,760	5,617,651	1,421,244	854,539	13,082,211
Accessory Expenditures	1,377,141	1,353,039	1,177,723	1,058,795	594,619	5,561,317
10% of Apparel Expenditures (Footwear)	218,220	196,143		123,372		537,735
Total	3,447,378	4,885,942	6,795,374	2,603,411	1,449,158	19,181,263
	x 2.3%	x 1.3%	x 2.3%	x 1.9%	x 2.1%	x 2.0%
	=	=	=	=	=	=
Oregon Total Equipment and Accessory Expenditures \$Thousands	78,297	65,759	156,025	48,187	29,846	383,890

The 2011 USFWS "National Survey of Fishing, Hunting, and Wildlife-Associated Recreation" reports on the various types of equipment that may be used for wildlife related recreation. Certain hunting and fishing expenditures, labelled "Auxiliary Equipment" by the survey, include sleeping bags, packs, duffel bags, tents, binoculars and field glasses, special fishing and hunting clothing, foul weather gear, boots and waders, maintenance and repair of equipment, processing and taxidermy costs, and

electronic equipment such as GPS devices. These categories of expenditures in state total \$46.0 million for hunting and fishing combined. (FHWAR Survey, Table 23) It is assumed that 70 percent of these expenditures would be for taxable items. The total that would be taxable is estimated to be \$32.2 million. This estimate is admittedly imperfect, but more detailed breakdowns within this category are not available. For wildlife watching, further equipment breakdowns are available (FHWAR Survey, Table 33.)

- Binoculars and spotting scopes: \$26.0 million
- Day Packs, Carrying Cases and Special Clothing: \$22.5 million (less 1/3 for clothing): \$15.0 million
- Auxiliary equipment: \$29.5 million
- Total Wildlife Watching Equipment Expenditures: \$70.5 million

The total expenditures for wildlife-related recreation are \$102.7 million. In addition to the \$384 million spent on gear for the other sports, the total of the expenditures for taxed equipment is \$486.7 million. A tax of 1 percent on this equipment would yield \$4.9 million per year.

2. *How would such a tax be administered and what would the administrative costs be?* Sales taxes are collected by retailers (including online retailers) on relevant items and remitted to the Department of Revenue on a periodic basis. Costs apply to enforce the payment of this tax and to set up the required forms and online infrastructure to collect the taxes.

Administrative costs are generally estimated to be roughly 1 percent of the amount of sales tax collected. Administrative costs for the collection of this type of tax are therefore estimated to be \$50,000 per year. It is possible that the costs could be slightly higher because the 1 percent figure reflects economies of scale involved in collection of a more comprehensive sales tax.

3. *How much revenue would this tax raise?* A tax of 1 percent on this equipment would yield \$4.9 million per year.

### **CONCEPT 3: 5-CENTS OF BOTTLE BILL DEPOSIT<sup>6</sup>**

**Background:** How the bottle bill works:

- Oregon retail stores pay beverage distributors a 5-cent deposit for each container of bottled water, beer and soft drinks they purchase. The containers included in Oregon's Bottle Bill are water/flavored water, beer/malt beverages, soda water/mineral water, and carbonated soft drinks. All redeemable containers are labeled with the OR 5¢ refund value on the label. Container sizes are up to and including 3 fluid liters. Effective January 1, 2018, all beverage containers except distilled liquor, wine, dairy or plant-based milk, and infant formula will

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<sup>6</sup> Information provided by Mazen Malik, Senior Economist, Legislative Revenue Office

include a deposit. The expansion is expected to increase containers with a deposit by 200 million per year.<sup>7</sup>

- Consumers then pay the 5-cent container deposit to the retailer when they make a purchase. When they're finished, the consumer can return the containers to retail stores or BottleDrop centers in Oregon to redeem their 5-cents. In 2011, the Legislative Assembly passed House Bill 3145, which set a trigger for the deposit to increase to 10-cents if the recycling rate falls below 80 percent for two consecutive years, but not before 2017. It is expected that the Oregon Liquor Control Commission will decide in August 2016 to increase the deposit to 10-cents effective April 1, 2017. The 2014 redemption rate for all container types was 68.28%; 2015 data will be available after July 1.<sup>8</sup>
- Distributors pay retail stores the 5-cent redemption for each container returned to the distributor for recycling. Deposits on containers not returned for a refund (unredeemed deposits) are kept by the distributors.
- Beverage distributors or their contractors who collect containers from stores keep the income from the sale of recyclable material.

#### **Task Force Questions and Answers:**

1. *What is the annual dollar value of beverage container deposits?* Slightly more than \$100 million.
2. *What is the value of unredeemed bottle deposits in Oregon?* The Oregon Beverage Recycling Cooperative (OBRC), a cooperative corporation owned by Oregon beverage distributors and grocery retailers, estimates the current value of unredeemed deposits is approximately \$25 million/year.
3. *How are unredeemed deposits currently used?* Under the Bottle Bill, any unclaimed deposits remain with the distributors. OBRC manages the bottle deposit flow, reimburses retailers for refunds paid to the public, picks up and processes returned beverage containers across the state, and builds and operates the BottleDrop redemption centers. There are currently 15 Bottle Drop centers in operation, with plans to add 4 new centers each year until there are 45 locations by 2023. The addition of 4 centers each year is expected to increase the OBRC annual budget by \$2.5 million. The current OBRC annual operating budget is \$26 million.
4. *When the deposit increases to 10-cents, what is the expected percentage of unredeemed deposits?* The increase is likely to shrink the unredeemed amount as a result of the higher

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<sup>7</sup> "Oregon's Bottle Bill Operations & Recent Legislation, Presentation to AOR Forum, April 14, 2016, John Anderson, President, OBRC

<sup>8</sup> [http://www.oregon.gov/OLCC/pages/bottle\\_bill.aspx#Beverage\\_Container\\_Return\\_Data](http://www.oregon.gov/OLCC/pages/bottle_bill.aspx#Beverage_Container_Return_Data)

reward to redeem. OBRC estimates that the redemption rate will move up to 85%.<sup>9</sup> At that rate, the value of the unredeemed deposits would remain approximately \$25 million/year. If the rate goes higher (92% - 95%), the value of unredeemed deposits would fall to \$5 - \$7 million/year.

5. *When the bottle bill deposit goes from 5-cents to 10-cents where will the additional five-cents go that isn't redeemed by consumers?* Under the current bottle bill system, unredeemed deposits are kept by the distributors.

#### **CONCEPT 4: NEW BOTTLED WATER FEE**

**Background:** Collect a fee of \$0.01 per bottle of water sold in the state.

##### **Task Force Questions and Answers:**

1. *How many bottles of water are sold in Oregon each year?* There is not data collected on the number of bottles of water sold in Oregon. Based on data generated in 2009 when water bottles were added to the Bottle Bill deposit system, it was estimated that between 200 and 220 million bottles were sold.<sup>10</sup>
2. *How much revenue would a new per bottled water fee generate?* A \$0.01 fee per bottle would yield an estimated \$2.2 million/year if 220 million bottles are sold. Bottled water consumption has been growing at a rate of 4.31% per year, so the revenue stream is projected to increase.
3. *How might a bottled water fee be administered? Would this fee be assessed and collected at the distributor/wholesale level?* The system by which distributors collect the funds from the bottle bill is already in place. A diversion of these funds would likely have some administrative costs, but these would be reduced somewhat by the enforcement in place for the current bottle bill.

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<sup>9</sup>Oregon's Bottle Bill Operations & Recent Legislation, Presentation to AOR Forum, April 14, 2016, John Anderson, President, OBRC

<sup>10</sup> Information provided by Mazen Malik, Senior Economist, Legislative Revenue Office



## CONCEPT 5: GENERAL FUND<sup>11</sup>

### Task Force Questions and Answers:

1. *What percentage of the General Fund would be required to yield a goal of \$20 million/year in funding for fish and wildlife programs?*  
0.111 percent
2. *Is it possible to dedicate a portion of the General Fund?* While it is possible to dedicate a portion of the General Fund to a particular agency or program, there isn't a lot of difference between doing so and the regular budgeting process. One legislature can't bind a future legislature to a budget decision as there is nothing to prevent a future legislature from changing a previous dedication.
3. *What is the General Fund appropriation to ODFW in the 2015 – 2017 budget?*  
\$31,162,079

## CONCEPT 6: LOTTERY FUND

**Background:** Oregon voters first approved the establishment of a state lottery in 1984 with funds dedicated to economic development purposes. Since that time, voters have approved constitutional amendments directing Lottery funds to be used for public education (1995) and natural resources (1998 and 2010). The Oregon Legislature transfers 1 percent of Lottery revenues every biennium to fund problem gambling treatment. The current funding allocation (net proceeds after costs of administration and payment of prizes) is:

- Public education (57 percent) - Lottery dollars are distributed into four areas within education: the Education Stability Fund, the State School Fund, colleges and universities and bonds. Lottery funds allocated to public education are administered by the Department of Education and Oregon University Systems.
- Economic development/job creation (27 percent) - Lottery funds are allocated for job creation and economic development, providing assistance for a variety of Oregon's industries such as: manufacturing, high-tech, agriculture, fisheries, solar, medical, tourism, as well as small businesses. Business Oregon administers these funds and programs.
- State parks & natural resources (15 percent) - Lottery funds allocated to state parks and natural resources are administered through the Parks and Natural Resources Fund and divided equally between state parks (7.5%) and watershed enhancement/salmon restoration (7.5%). The Oregon Watershed Enhancement Board administers most of the funds for watershed enhancement and restoration.

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<sup>11</sup> Information provided by Paul Siebert, Principal Legislative Analyst, Legislative Fiscal Office

- Problem gambling treatment (1 percent) - Lottery funds allocated for problem gambling treatment are administered by the Oregon Department of Human Services and are distributed to programs throughout the state.<sup>12</sup>

#### **Task Force Questions and Answers:**

1. *How much revenue would a 1% dedication of Lottery funds equal?*<sup>13</sup> Based on the current revenue forecast, 1% of total lottery revenue is about \$13.1 million per biennium.
2. *What is the Lottery Fund appropriation to ODFW in the 2015- 2017 budget?*<sup>14</sup>  
\$4,917,581
3. *Does the Oregon Constitution dictate the allocation of available Lottery revenue between the prize pool and the funds available for other purposes?* Article XV, section 4, of the Oregon Constitution requires that at least 84 percent of the total annual revenues from the sale of lottery tickets be returned to the public in the form of prizes and net revenues benefitting the public purpose. ORS 461.500 directs that at least 50% of total annual revenues be returned to the public in the form of prizes.

#### **CONCEPT 7: WILDLIFE LICENSE PLATE**

**Background:** In 2015, the Legislature approved two new special registration plates and changed the laws regarding these plates (House Bill 2730). The bill repealed laws limiting the number of specialty license plates that may be issued by the Oregon Department of Transportation (ODOT) and directs ODOT to establish procedures for the creation of future specialty plates. New plates cannot be created or issued until ODOT receives the amount necessary to cover costs of initiating a plate program. The bill also specifies that if, once a plate is issued, ODOT does not issue at least 2,000 sets in any year, that particular set will cease production. The new program for creation of new specialty plates is scheduled to begin on July 1, 2017.

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<sup>12</sup> <http://www.oregonlottery.org/about/oregon-lottery-information/how-lottery-funds-are-allocated>

<sup>13</sup> Information provided by Paul Siebert, Principal Legislative Analyst, Legislative Fiscal Office

<sup>14</sup> Information provided by Paul Siebert, Principal Legislative Analyst, Legislative Fiscal Office

**Task Force Questions and Answers:**

1. *What is the cost of establishing a new license plate and who pays?*<sup>15</sup> To apply, an organization must submit an application, a digital copy of their proposed plate design and a \$5,000 preapproval fee. The Department of Motor Vehicles (DMV) will review each application and plate design for compliance with state laws and DMV rules. Since this is not an allowable use of the highway fund, an organization requesting a specialty plate must pay the upfront costs. Prior to the production and issuance of a new special registration plate, an organization must collect at least 3,000 pre-sale vouchers and \$120,000 in surcharge fees (3,000 X \$40/each) from individuals wishing to purchase the organization’s proposed special registration plate. Once the organization has collected at least 3,000 vouchers and \$120,000 in surcharge fees, it must also submit the balance of the start-up costs to DMV; the amount will depend on various factors, especially plate design, but is estimated to be in the \$80,000 ballpark.
2. *How much revenue do specialty plates generate?* A breakdown of the different specialty license plate types and FY 2014 revenue is provided in the chart below. Some existing specialty plates require a one-time fee, others charge a fee at both issuance and renewal. With the new program, the fees will be the same for all new specialty plates: \$40 at issuance and renewal. In its [analysis](#) of HB 2730 (2015), the Legislative Revenue Office noted: “The specialty plate program seems to have a stable portion out of the total plate market. It seems that the introduction of any new plate (depending on success) will potentially slice away a piece of that market share.”

<b>Specialty Plates (year established)</b>	<b>Surcharge</b>	<b>Fund Recipients</b>	<b>Revenue for FY 2014</b>
Salmon (1998)	\$54 per set (\$34 surcharge at issuance <i>and</i> renewal)	OWEB and OPRD	\$486,947.20
Crater Lake (2002)	\$44 per set (\$20 surcharge is a one-time fee)	Crater Lake National Park	\$203,762.75
Cultural Trust (2006)	\$54 per set (\$30 surcharge at issuance <i>and</i> renewal)	Oregon Cultural Trust	\$367,857.40
Pacific Wonderland (2009)	\$124 per set (\$100 surcharge is one-time fee) *Limited to 80,000 sets	Oregon State Capitol Foundation and Oregon Historical Society	\$577,500.76
Wine Country (2012)	\$54 per set (\$30 surcharge at issuance <i>and</i> renewal)	Oregon Tourism Commission	\$202,748.85

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<sup>15</sup> Information provided by Amy Joyce, Legislative Liaison, ODOT

			Combined for FY 2014: \$1,838,816.96
Portland Trail Blazers* (new plate)	\$20 per year of registration	Trail Blazers Foundation	
Breast Cancer Awareness* (new plate)	\$20 per year of registration	Oregon Health Authority-managed fund	

3. *Can organizations access a list of vanity plate purchasers to further its mission?* No, organizations cannot get a list of people with certain plates due to privacy laws for DMV records.

#### **CONCEPT 8: PERSONAL TAX RETURN SURCHARGE<sup>16</sup>**

**Background:** A \$10 surcharge on individual tax returns. Individuals with a hunting or fishing license would be exempt from this charge.

#### **Task Force Questions and Answers:**

1. *What revenue would be generated by this surcharge?* In 2013, 1,942,678 tax returns were filed with the Department of Revenue. Of those returns, it is estimated that 370,000 unique annual license holders will be exempt from the charge. Therefore, the revenue is estimated to be \$15.7 million per year.
2. *Could tiers be created to make more progressive? Or subject to means test?* Yes.
3. *Might the use of income tax surcharge funds affect the receipt of federal funds by ODFW?* The US Fish and Wildlife Service will provide information responding to this question prior to the next Task Force meeting on June 30, 2016.

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<sup>16</sup> Information provided by Christine Broniak, Economist, Legislative Revenue Office

## CONCEPT 9: LODGING TAX

**Background:** In 2003 the Oregon Legislature established a state lodging tax to provide funding for Travel Oregon. The law required at least 80 percent of net lodging tax receipts be spent on state tourism marketing programs. For new or increased local taxes, the 2003 state law required 70 percent of net revenue to be spent to fund tourism promotion or tourism-related facilities. No new additional taxes can be levied by local governments, unless those taxes are used to fund local tourism programs.

In 2016 the Oregon Legislature passed HB 4146, which included two changes to the state lodging tax rate. Beginning July 1, 2016, the tax rate will be 1.8 percent of the total price charged for lodging. The rate will drop to 1.5 percent on July 1, 2020. Additional taxes can be levied by local governments, and these taxes fund local programs. The measure also established a Transient Lodging Work Group to study issues related to the lodging tax. A report is due in December 2016.

The 2016 law also changed how Travel Oregon is required to spend lodging tax proceeds. The amount required to be spent on state tourism programs decreases from 80 to 65 percent of net lodging tax revenue, while the amount to be spent on regional tourism programs goes to at least 20 percent from a previous maximum of 15 percent. A new dedication of ten percent is to be spent on a competitive grant program “to help develop and improve the economies of communities throughout Oregon by means of the improvement, expansion, and promotion of the visitor industry.” The law specifies that the grants may be spent on “tourism-related facilities and tourism-generating events, including sporting events.”

State lodging taxes apply to “transient lodging” for periods of less than 30 consecutive days, and lodging providers and lodging intermediaries must collect and remit the tax. Transient lodging includes:

- Hotels and motels;
- Bed and breakfast facilities;
- RV sites in RV parks or campgrounds;
- Resorts and inns;
- Lodges and guest ranches;
- Cabins;
- Condominiums;
- Short-term rental apartments and duplexes;
- Vacation rental houses;
- Tent sites and yurts in private and public campgrounds; and
- Any other dwelling unit, or portion of a dwelling unit, used for temporary overnight stays.

Oregon law allows entities to withhold 5 percent of the state lodging taxes collected to cover the costs for record keeping, reporting, and collecting the tax.<sup>17</sup>

### *State Lodging Receipts*

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<sup>17</sup> Oregon Dept. of Revenue: [http://www.oregon.gov/DOR/forms/FormsPubs/lodging-tax-program\\_604-401.pdf](http://www.oregon.gov/DOR/forms/FormsPubs/lodging-tax-program_604-401.pdf)

Oregon has collected approximately \$145 million in statewide lodging tax since the program began in 2004. Lodging receipts have grown steadily each year with the exception of a decline in 2009, and receipts for calendar year 2015 were \$17.8 million, a 14.8 percent increase from \$15.5 million in 2014. The Portland Metro region was the source of \$7.2 million of the net lodging tax receipts, or 42 percent, with an additional 12% coming from the rest of the Willamette Valley. Hotels and motels account for 75 percent of statewide net receipts, which vary by quarter and are highest July-September.<sup>18</sup>

**Task Force Question and Answer:**

1. *How much revenue would a higher lodging tax generate?* A 0.1% increase will generate \$1.6 million in the coming year. A one percent increase in the state lodging tax would generate approximately \$16 million/year.

**CONCEPT 10: RENTAL CAR FEE<sup>19</sup>**

**Background:** In total, more than 40 states levy a charge on rental cars, either by imposing an additional tax, daily fee, or both. At least 15 states authorize local governments to impose their own taxes or fees and rental car companies add on charges for off-site rentals, airport fees, and insurance coverage.<sup>20</sup>

Oregon does not have a statewide surcharge on car rentals. In 2009, Multnomah County increased its surcharge on rental cars and moving trucks from 12.5 percent to 17 percent. The increase was expected to increase the average county car rental tax from about \$10 a day to about \$13.45, and raise close to \$5 million per year. In the fiscal year ending on June 30, 2013 Multnomah County took in over \$21 million dollars in revenue from its car rental tax.<sup>21</sup> However, a tax on vehicles may have some restrictions imposed on sources of the highway fund.

**Task Force Question and Answer:**

1. *How much revenue would a new car rental fee generate?* A 1% state car rental tax would likely generate \$1.4 million/year.

**CONCEPT 11: 1 PERCENT FOR OREGON’S WILDLIFE – VOLUNTARY MARKET BASED FUNDING PROPOSAL**

**Background:** 1% for the Planet (1% FTP) is an international nonprofit founded by Yvon Chouinard (founder of Patagonia) and Craig Mathews (owner of Blue Ribbon Flies) comprised of businesses that donate at least one percent of annual sales to environmental causes. 1% FTP officially launched in 2002 and today consists of more than 1,200 member companies in 48 countries, supporting more than 3,300 nonprofits, with donations exceeding \$100 million. 1% FTP’s mission is to build, support and activate an

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<sup>18</sup> Oregon Dept. of Revenue: [https://www.oregon.gov/DOR/programs/gov-research/Documents/state-lodging-report\\_604-005.pdf](https://www.oregon.gov/DOR/programs/gov-research/Documents/state-lodging-report_604-005.pdf)

<sup>19</sup> Information provided by Mazen Malik, Senior Economist, Legislative Revenue Office

<sup>20</sup> National Conference of State Legislatures

<sup>21</sup> Multnomah County

alliance of businesses financially committed to creating a healthy planet. Member companies can display the 1% FTP logo on their products.

Approved nonprofit partners are primarily focused on environmental issues and have been referred by one of the member companies. Member businesses give 1% of their sales directly to the [nonprofit\(s\)](#) of their choosing, and 1% FTP monitors the nonprofit partners to track their impact and annually verifies that members are making their contributions.

**Task Force Questions and Answers:** Answers to the following questions are dependent upon the type and scope of program that is established by a private entity or NGO.

1. *What would outdoor industry association reaction be?*
2. *How would 1% funding be spent?*
3. *What is the collection entity? What is the administrative mechanism?*



Trillium Lake, Photo credit: Rick Swart, ODFW

## **New Study Provides Conversation Starter on Alternative Funding for Oregon Department of Fish and Wildlife**

Uncertain future trends in hunting and fishing participation have caused many agencies to begin to explore potential alternative sources of funding. While hunting and fishing license dollars make up the primary means of support for most agencies, the conservation and management services provided by state fish and wildlife departments benefit all citizens, not just hunters and anglers. As a result, there is growing interest in measuring the attitudes of the general population (including non-hunters and non-anglers) with regard to their awareness and understanding of the work of their state fish and wildlife agency and its value to their daily lives. Knowing this information is the first step to broadening agency funding support down the road.

Responsive Management recently completed a new study for the Oregon Legislative Task Force on Funding for Fish, Wildlife, and Related Outdoor Recreation and Education to determine Oregon residents' attitudes toward wildlife and wildlife-related funding, as well as their knowledge of and opinions on the Oregon Department of Fish and Wildlife and its efforts. The study entailed a scientific telephone survey of Oregon residents, with landlines and cell phones called in their exact proportions.

In addition to exploring knowledge and impressions of the Oregon Department of Fish and Wildlife, the survey examined opinions related to the protection of fish, wildlife, and habitat; satisfaction with the Department overall; opinions on Department priorities; knowledge of Department funding; and information sources about fish, wildlife, recreation, and conservation. The research also explored respondents' participation in outdoor recreation, including any constraints to participation experienced.





*Black-Necked Stilt*  
Photo credit: Martyne Reesman, ODFW

### **Ecological Values More Important to Oregonians Than Utilitarian Values**

A few basic findings from the survey affirm the importance of wildlife and their habitat to Oregon residents. An early question asked respondents to rate the importance of eight fish and wildlife values using a 0 to 10 scale. The top two values in the ranking--"that healthy fish and wildlife populations exist in Oregon" and "that Oregon's water resources are safe and well protected"--are purely ecological rather than utilitarian. The more utilitarian values, such as the provision of opportunities for hunting, fishing, and viewing wildlife, received lower ratings of importance from Oregon residents.

An open-ended question then asked about the most important fish, wildlife, or habitat issue in Oregon (residents could say anything that came to mind). The top issues are habitat loss, lack of water, low/declining fish populations, urban sprawl, and conservation/management of resources in general.

### **High Ratings for the Oregon Department of Fish and Wildlife**

Before focusing on the Department specifically, the survey measured satisfaction with the protection and management of fish, wildlife, and habitat in Oregon in general. Satisfaction (61% of residents) well exceeds dissatisfaction (18%). (Interestingly, a top reason for being dissatisfied with the protection and management of fish, wildlife, and habitat in Oregon is related to a lack of funding, including for the staffing of enforcement officers.)

Regarding the Department specifically, slightly more than half of Oregon residents (56%) are able to correctly name the agency responsible for protecting and managing fish, wildlife, and habitat in the state. Satisfaction with the agency is also high, with 65% of Oregonians being satisfied compared to only 12% being dissatisfied with the agency. The Department is also widely viewed as a credible agency, with about 9 out of 10 Oregon residents describing it as such (more than half say the agency is very credible).

### **Importance of Ecological Values Translates to Preferred Department Priorities**

The survey presented ten efforts of the Department and asked residents to rate how important each one should be for the agency on a 0 to 10 scale. Residents were then asked to rate the performance of the Department in the same areas.

Regarding how important the efforts should be, ecological efforts are again at the top of the ranking: "conserving and restoring fish and wildlife habitat," "protecting endangered species," and "protecting and restoring native fish and wildlife species in Oregon."

Comparatively human-centered efforts, such as the provision of opportunities for wildlife-related recreation and providing information and education, rank lower.

Regarding the Department's current performance, the effort with the highest mean rating is "providing opportunities for fish- and wildlife-related recreation" (a human-centered effort), closely followed by "protecting endangered species" (an ecological effort). After these, ecological efforts tend to be rated higher than the more human-centered efforts.



Gray Wolf, Wenhua Park  
Photo credit: ODFW

### **Diverging Opinions on Department Funding**

In an open-ended question (respondents could answer with anything that came to mind), residents were asked how they thought the Department was funded. The most common response was taxes in general (53% named this). This answer, of course, is not entirely correct, as relatively little of the agency's funding comes from general taxes. The next most common response was a correct funding source: hunting and fishing licenses (30% named this source). Meanwhile, just 4% of residents named excise taxes on hunting and fishing equipment (an important funding source).

Another open-ended question asked what residents think should be the primary source of funding for the Department. General taxes was the top response (33% gave this answer), with no elaboration on the type of taxes or otherwise more specifically defining the taxes. The second most common response was hunting and fishing licenses (19%). General state taxes (7%) was third, but this response is nearly the same as the top response (taxes in general), suggesting that 40% of respondents think that general state taxes should be the primary source of funding for the Oregon Department of Fish and Wildlife.

After being informed that only 9% of the Department's funding comes from general state tax revenues, residents were asked whether they thought that amount was too little, too much, or about right. The most common responses are that it is too little (41%) or that it is about the right amount (40%); only a small percentage of Oregon residents say that it is too much (4%).

### **Complete Survey Findings and Crosstabulations Available Online**

The survey data were analyzed by key demographics, including county of residence, gender, and age. To examine the differences in attitudes among Oregon residents who were familiar or unfamiliar with the Oregon Department of Fish and Wildlife, Responsive Management also crosstabulated the data by awareness of the agency. [The full survey report is available here.](#)

### **Additional Research to Explore Attitudes Toward Specific Funding Mechanisms**

Responsive Management will be working with the Oregon Legislative Task Force on Funding for Fish, Wildlife, and Related Outdoor Recreation and Education again this fall to conduct a survey that will examine opinions on specific funding mechanisms and options for the Department and its efforts.

**[Please click here for the full report.](#)**

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**Appendix E:**

**APPENDIX E**

**HB 2402 TASK FORCE SUMMARY OF  
STAKEHOLDER INPUT**

The following summarizes informal input obtained in presentations arranged by Task Force members with key constituent communities. The goals of these presentations were to provide an update on the Task Force process and to obtain feedback on preliminary recommendations, especially those on alternative funding sources. This informal outreach is ongoing.

Organization	Contact	Presenter	Date/Location/Notes
<b><i>OUTDOOR RECREATION COMMUNITY</i></b>			
<b>Outdoor recreation community leaders</b> (9 representatives of various organizations/businesses)	Welch/Sugahara	Welch Owens	September 9 Mazama Mountaineering Center, Portland
<ul style="list-style-type: none"> <li>• In outreach materials, re-label branding/marketing to education/outreach. When referring to the Oregon Conservation Strategy in materials, describe what it is/accomplishes.</li> <li>• What lessons from elsewhere, e.g. Missouri, are we copying?</li> <li>• With the proposal to shift grant administration to OWEB, be careful to not lose connections to constituencies; concern re loss of relationships.</li> <li>• To provide context, identify the size of ODFW’s workforce in relation to other agencies.</li> <li>• Describe what’s not getting done; use antidotes. Describe the importance of the work that could be accomplished with alternative funding. Clearly describe what my taxpayer dollars are being used for.</li> <li>• Governments is really not the best messenger for engaging the public and underrepresented communities; use the conservation and other groups that are better keyed in. For example, the Intertwine Alliance can better access Portland region constituencies.</li> <li>• Review the Alliance’s Conservation Strategy for the Portland/Vancouver Region.</li> <li>• Income tax surcharge               <ul style="list-style-type: none"> <li>○ Will automatically be referred by the Legislature.</li> <li>○ The connection to the conservation funding need is not clear.</li> <li>○ The Arts Tax should not be held up as an example; to most, it is annoying.</li> <li>○ Flat fee versus percentage is preferable.</li> </ul> </li> <li>• No support for a license holder exemption.</li> <li>• Beverage container tax               <ul style="list-style-type: none"> <li>○ Limited opposition; more doable if the right coalition is built.</li> <li>○ Need to better explain that it is at the wholesale level; what does that mean?</li> </ul> </li> <li>• Important to spell out leveraging opportunities. How will existing resources be better leveraged?</li> <li>• Outdoor recreation objective: the vision hasn’t been articulated. ODFW should not be the leader in outdoor recreation; its role is one of partnering.</li> <li>• Volunteer programs: Recommendations should promote their use. Address their role in promoting/undertaking conservation.</li> </ul>			
<b><i>CONSERVATION COMMUNITY</i></b>			

<b>Oregon Conservation Network</b> (14 conservation organization representatives)	Adam Myer	Labhart Owens	August 26 ODFW Headquarters, Salem
<ul style="list-style-type: none"> <li>• It's been a really good process thus far, with participation on the Task Force of a diverse group of interests not normally present.</li> <li>• The bigger lift is not to convince that alternative funding is needed, but trying to fit into the larger budget conversation at the Legislature.</li> <li>• The primary focus is appropriately making the Conservation Strategy the priority.</li> <li>• Be positive about the program adjustments and leveraging being recommended. A key program adjustment is the effort to keep license fees from increasing or even being reduced; funding conservation may in the long run be able to bring license fees down. Some disappointment (one group representative) that more has not been done in these areas. There needs to be a continued conversation, if only to satisfy the legislature and the average person. In conversing with legislators, it is difficult for them to support more funding without knowing that existing programs have been evaluated.</li> <li>• The need for data and monitoring is not just an ODFW issue; ODFW's work informs conservation efforts by other agencies, e.g. Integrated Water Resource Strategy. ODFW cannot do its mission without the data to know what is happening. Need to reference that ODFW's conservation work helps with abundant clean water for all Oregonians.</li> <li>• There should be a plan if this doesn't move forward this legislative session. How do we not lose the movement and effort?</li> <li>• Most present questioned the appropriateness of an exemption with the income tax surcharge for fish and wildlife license holders. To do so reduces the revenue generated and requires a higher surcharge. If alternative funding results in reduced fees, license holders are then benefitting two ways. License holders directly benefit from conservation measures. License fees are voluntary and provide a personal benefit, whereas a surcharge would be mandatory for all others; fairness issue. The proposed surcharge is a fee imposed on the general public for general public benefit; why is there an exemption benefitting one particular segment of the public. The exemption question clouds the conversation. Makes it seem as if license holders are not financially contributing to the expanded conservation effort. Not a deal killer to have this exemption, but there will be stronger support without it. It is recognized that this exemption may make it easier for legislators. If we go to a ballot measure, not including it results in a cleaner message. There are some who are suspicious about supporting ODFW and political decisions in past. Exemption just exacerbates the divide between "hook and bullet" types and "conservation types". There is a strong argument that if this funding comes through, it releases some pressure on hunting and fishing licenses.</li> <li>• The proposed exemption for license holders is likely to become a big sticking point.</li> <li>• In lieu of an exemption for license holders, consider a "credit".</li> <li>• License holders routinely bring up all of the money they have paid over time; need to beef up the discussion on the contribution that has been made by hunters and anglers.</li> <li>• With the income tax surcharge, option 1 is probably more feasible and more supportable.</li> <li>• The beverage container tax should be couched not just benefitting conservation but also as a health issue. May be more politically feasible because the tax is built in at front end; the</li> </ul>			

consumer doesn't see it. Catches visitors; the surcharge does not. Only those buying beverages are impacted; with the surcharge, everyone is impacted. At 1 cent, it's not going to change any behavior.

- Mixed opinion within the group on preference for surcharge vs beverage tax. Any tax is going to be difficult; neither option is going to be easier than any other
- Rationale for alternative funding needs to clearly state the goal is to "help prevent" federal listings.
- Clean air and water need to added as outcomes.
- Leveraging federal funding needs to be accentuated. The more you leverage federal funds, the more you put a federal overlay on top of state programs. Can capture some of these federal funds without tying up license dollars.

<b>Land Trust Alliance</b> Kelly Beamer, ED	Redisch	Redisch	September 13
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- Interested in learning how ODF&W's deficit budget got to its current situation and to know what the most viable path forward was, either through legislative action, voter approval or some other administrative action.
- Is there a sunset date if a funding mechanism was achieved -- "would this funding sunset and then go to the voters for permanence, like Measure 76"?
- Both funding concepts were creative and not typical. In favor of exemptions for license holders.
- Alliance can be expected to support either one of the funding concepts, based on the funding going towards implementing the Conservation Strategy and Nearshore Strategy.
- Positive and collaborative view on how ODFW does its work in the field and noted that the Land Trusts relied on ODFW field biologists and other natural resource professionals to help them identify and optimize land protection and restoration projects.
- When asked what is most important in terms of hiring- more regional biologists.
- Strongly supportive of more hunting and fishing education for youth.
- More assistance to Land Trusts and more tools for land acquisition desired. Other states provide more resources in this arena.
- Important for ODFW to reach out to and engage with diverse communities.
- Requested to be kept informed.

***UNDERSERVED/UNDERREPRESENTED COMMUNITIES***

<b>African American Outdoor Association/ Center for Diversity &amp; the Environment</b> (10 representatives from various groups)	Gonzalez/Tillman	Owens	September 8 Leaven Community Center, Portland
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- Alternative funding proposals: are there really no other options?
- Income tax surcharge may be the more palatable if the conservation need can be sold
  - What is the rationale for a license holder exemption?
  - How is the low income exemption determined? Is it sufficient to minimize adverse effects on low income persons?

- Haven't adequately framed the value proposition. Is it worth it to put an additional \$86 million/biennium into conservation? How valuable are fish and wildlife to you? Avoid a negative, sky-is-falling approach.
- Beverage container tax: consider partnering with the beverage industry by sharing a portion of the proceeds.
- Outreach to underserved populations is lacking. For example, hunter education classes are not held in the inner city where the youth we want to involve are located. Programs need to be targeted to inner city residents; participation should be subsidized.
- An agency-wide equity lenses is needed. One equity position is not enough; equity advocates are needed across the state in all programs.
- The state has not really partnered with the African American community. Department has an attitude that it knows what we need; instead it should be listening to what we say we need/want and involving cultural organizations in designing programs vs. trying to fit us into programs they have designed. Let us champion education/outreach efforts to underserved groups.
- Internships are an excellent way to integrate minorities into the organization.
- Outreach to underserved communities is not just about African Americans; it's about engaging all cultures.
- National Park service is a model for outreach/inclusion efforts.

***OUTDOOR SPORTS COMMUNITY***

<b>Outdoor Sports Group Leaders</b> (12 representatives from various groups)	Donheffner	Donheffner Owens	August 17 ODFW Headquarters, Salem
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- Representatives from OHA, Rocky Mt. Elk Foundation, Forestry interests, Foundation for North American Wild Sheep (FNAWS), general sportsmen, OSP.
- Suggestions made for improving outreach materials.
- Scale the revenue generated by funding alternatives to "fit" with the needs and not present potential revenue generation taxes at levels that exceed the goal (ie reduce the percent or amounts to that needed to achieve the goal and not more).
- Beverage tax proposal fared much better than the income tax concepts. Current income taxes in Oregon are felt to be high enough, and efforts to increase income taxes may not be the best approach, and politically less feasible than a beverage tax (which has its own challenges).
- The preferred option was the fixed rate beverage tax, followed by the percentage tax on beverages.
- Of the two income tax options, the fixed surcharge ranked ahead of the surtax, but again, the income tax options were less favored than a beverage tax.
- Unanimous support for dedicating whatever revenue is generated to ODFW. Without the tax being dedicated, the groups support fell short.

<b>NW Sportfishing Industry Association Board</b>	Martin	Martin	August 9
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- Whatever the Task Force settles on as the final funding strategy will be supported.
- Of the two proposals, the tax surcharge is generally favored over the beverage tax

<ul style="list-style-type: none"> <li>It is understood that the funding model currently is inequitable and also not feasible for the future.</li> </ul>			
<b>BUSINESS COMMUNITY</b>			
<b>Oregon Business Council (OBC)</b>	Ball	TBD	TBD
<ul style="list-style-type: none"> <li>OBC and OBA consumed with work in opposition to Measure 97; thus input limited to informal, personal comments from executive directors.</li> <li>Staff recognizes that ODFW's funding model needs to be fixed.</li> </ul>			
<b>OR Restaurant &amp; Lodging Association</b> (Briefing of Executive Director and lobbyists)	Westlund	Westlund	September 6
<ul style="list-style-type: none"> <li>The briefings were helpful in articulating the contrasting challenges of the two proposals: <ul style="list-style-type: none"> <li>Income tax is likely to have many folks irritated and opposed, because any tax proposal, typically. Because of its general nature, it may not rise to the top of the list for anyone.</li> <li>Beverage containers will have fewer opposed, but they are likely to be very focused and active in their opposition.</li> </ul> </li> <li>ORLA itself seems unlikely to weigh in either way, due to a number of more relevant and pressing topics anticipated in the upcoming session, but until language is drafted there is no way to forecast if any action might be recommended by the ORLA Policy Committee.</li> <li>It was noted that ORLA, and other business groups, are more likely to support tax and fee measures that are directly related...transient room tax and growing tourism, gas taxes tied to roads, etc. It was not readily apparent that bottles are tied to conservation, though I shared our committee's perspective that they are tied to litter control and habitat health. Also shared was our perspective that beverage containers meet our goal of broadening the revenue generation across all/most Oregonians as well as visitors.</li> <li>In general, it is anticipated that it will be a challenging session with a myriad of revenue generating proposals if BM97 fails. That makes things especially difficult to forecast.</li> </ul>			
<b>LABOR COMMUNITY</b>			
<b>ODFW Labor Management Committee</b>	Melcher	Melcher Fuhrman	August 30
Presentation to Labor Management Committee and SEIU representatives. Additional discussions to be scheduled.			
<b>LOCAL GOVERNMENT COMMUNITY</b>			
<b>LOC</b> (Executive Director and Legislative Director)	Labhart	Labhart	August 1
Not a high priority for their upcoming Legislative agenda but will be watching the progress. No position taken either way. They both indicated that their priorities will be watching Measure 97, PERS, Transportation and Education funding packages. They asked to be kept informed as the process moves along though.			
<b>AOC</b> (Executive Director)	Labhart	Labhart	August 1

Very interested in the work of the Task Force but as with LOC this matter is not a high priority. Advise if we wish the AOC Legislative Committee to weigh on any funding packages.

**OTHER**

**ODFW External Budget Advisory Committee (EBAC)**  
( 14 representatives of various constituent groups)

Fuhrman

Labhart  
Owens

August 30

- What are the details of improved hunting and fishing opportunities? Address how reallocated license fees will result in improved hunting/fishing.
  - Not implementing third phase of fee increases.
  - Increased funding going into hunting/fishing.
  - Spending on conservation improves directly and indirectly hunting/fishing.
- Income Tax Surcharge
  - To receive federal matching funds, need to ensure that amount is less than the cost of a license.
  - Percentage surcharge doesn't work.
  - Why are businesses not included in the tax surcharge?
- License holder exemption
  - One goal was to give relief to people who have been paying for conservation in the state for many years. In 1930's did not think that hunters and anglers would pay for more than fishing/hunting and have to pay for conservation. Either reduce or minimize fees in future.
  - Concern that license holder exemption enables people to avoid paying the surcharge; creating different classes of taxpayers
  - Might put another barrier in front of us if don't have the exemption. Issue of double taxation without a license holder exemption. If there isn't relief for current payers, it probably wouldn't be supported. Need to include some sort of component that addresses that issue, politics might be messy.
  - Tradeoff for license holder exemption is forgoing future fee increases.
  - Some hunters/fishers think there should be no exemption. To allow an exemption just takes money away from the department.
  - The goal of the alternative funding is to improve services that benefit all Oregonians, not going to one group. With there's an exemption for license holders, why not start making exemptions for other groups.
- Beverage container tax
  - Out-of-staters pay and eliminates the issue of license holder exemption.
  - The percentage option would be automatically indexed to inflation.
  - Because there are fewer wholesalers, it may be easier to collect. It is essentially a sales tax on beverage containers.
- Preferred option
  - Question is what can we get passed by the legislature? Should do something that can be approved this session.



<ul style="list-style-type: none"> <li>○ Not worth the fight to discuss the exemption. Beverage tax is the best approach. It's different than what other agencies are looking at.</li> <li>○ Knowing all of the other needs in the state, and if beverage tax is viable, just make it 5% and address all of the other needs as well. No one is going to know the difference between 1% and 5% on a bottle of pop.</li> <li>● Shifting grant administration to OWEB would probably not be supported by CCA. OWEB has lottery fund responsibility. Over time, shifted away from recreational opportunities. Did not provide funding to ODFW as originally projected.</li> </ul>			
<b>OR Fish &amp; Wildlife Commission</b>	Fuhrman	Labhart Owens	August 4
Presentation only. No opinions expressed on draft Task Force recommendations.			

## Appendix F:



900 COURT ST NE S101  
SALEM, OREGON 97301-4065  
(503) 986-1243  
FAX: (503) 373-1043  
www.oregonlegislature.gov/lc

Dexter A. Johnson  
LEGISLATIVE COUNSEL

### STATE OF OREGON LEGISLATIVE COUNSEL COMMITTEE

August 12, 2016

Representative Ken Helm  
900 Court Street NE H490  
Salem OR 97301

Re: Legality of proposed funding sources for State Department of Fish and Wildlife

Dear Representative Helm:

The task force established under House Bill 2402 (2015)<sup>1</sup> has requested an analysis of four of the various potential funding options for the State Department of Fish and Wildlife currently being considered by the task force.<sup>2</sup> All of these four options would be imposed on income tax returns filed in Oregon. The first three impose a surcharge in a flat amount on every personal income tax return, and the fourth would require each taxpayer to add an additional percentage to the taxpayer's tax liability. As discussed below, the first three options would likely be unconstitutional, absent provisions tailored to nonresident taxpayers and exemptions for low-income taxpayers. The fourth option, which is a surtax, would be constitutional if a nonresident's surtax liability were apportioned in the same way that a nonresident's income is apportioned.

#### Distinction between a fee and a tax

We first examine each funding mechanism to determine whether it is a fee or a tax. The distinction between a fee and a tax is significant, because a bill that establishes a new fee or increases an existing fee is not considered to be a bill for raising revenue, but a bill that enacts a tax or increases an existing tax is considered to be a bill for raising revenue and therefore, under the Oregon Constitution, must originate in the House of Representatives and must obtain at least a three-fifths majority vote in favor in both chambers for passage.<sup>3</sup> A bill that imposes some form of charge in which there is not some form of equivalent exchange of value in exchange for the charge and that uses revenues from the charge for general governmental purposes is a bill that imposes a tax.<sup>4</sup> In other words, a bill that levies a tax, in the strict sense of the words, and uses the revenues in support of general government is a bill for raising revenue. By contrast, a bill that authorizes a fee for a particular purpose, and allows the person subject to the fee to forgo the benefit conferred by not paying the fee, is not a bill for raising revenue.<sup>5</sup>

Here, for each proposed funding option, a taxpayer would not have the option to forgo paying the surcharge and would not receive a direct benefit in return, other than good

<sup>1</sup> Chapter 712, Oregon Laws 2015.

<sup>2</sup> These options and their legality were discussed at the July 27, 2016, meeting of the task force.

<sup>3</sup> Article IV, sections 18 and 25, Oregon Constitution; *Northern Counties Trust v. Sears*, 30 Or. 388, 401-402 (1895); see also *Dale v. Kulongoski*, 322 Or. 240 (1995) (the meaning of the phrase "bills for raising revenue" for three-fifths vote purposes is the same as for Origination Clause purposes).

<sup>4</sup> *National Cable Television Association v. United States*, 415 U.S. 336 (1974).

<sup>5</sup> *Northern Counties Trust*, 30 Or. at 401-402.

government. The benefit that the taxpayer would receive—conservation of wildlife or habitat—is comparable to other general benefits of good government enjoyed by the public, such as roads, public safety services and fire protection. Thus, such a surcharge would likely be viewed by a court as a tax. In order for the Legislative Assembly to enact one of the four proposed tax return based options, the Oregon Constitution would require that the measure originate in the House of Representatives (under Article IV, section 18) and receive a three-fifths majority of votes cast in each chamber (under Article IV, section 25).

### Prohibition against poll or head taxes

We next consider whether a flat surcharge imposed on all personal income tax returns would be an unconstitutional poll or head tax. Article IX, section 1a, of the Oregon Constitution, provides in part that “[n]o poll or head tax shall be levied or collected in Oregon.” The Oregon Court of Appeals recently considered a challenge, based on Article IX, section 1a, to the City of Portland Arts Education and Access Income Tax (Arts Tax), which by its wording imposes a \$35 tax on:

the income of each income-earning resident of the City of Portland, Oregon who is at least eighteen years old. No tax will be imposed on filer(s) within any household that is at or below the federal poverty guidelines established by the federal Department of Health and Human Services for that tax year.<sup>6</sup>

The provisions of the Arts Tax also limited “income-earning residents” to those with “income of \$1,000 or more in the tax year” and included a definition of “income” that excluded certain payments, including those that the city was prohibited from taxing by state or federal law.<sup>7</sup> The court examined the available legislative history and determined that the constitutional prohibition applied to a single tax in a fixed amount, levied per capita on every resident without regard for ability to pay. When Article IX, section 1a, was adopted in 1910, there existed a statewide poll tax, which had an exemption for firefighters but none based on a taxpayer’s financial resources.<sup>8</sup> In amending the Oregon Constitution, the voters sought to remedy this perceived unfairness. In *Wittemyer v. City of Portland*, the Court of Appeals observed that the Arts Tax was not imposed per capita, on every person, as it contained exemptions based on ability to pay, and held that the Arts Tax was therefore not a poll tax. Because the Arts Tax contained exemptions designed to avoid the ills that the voters sought to avoid in adopting Article IX, section 1a, it did not violate that provision. Similarly, the proposed surcharge denoted by the task force as Option 2, which would contain an exemption for low-income taxpayers, as well as license holders, would likely be constitutional in this regard. Conversely, Options 1 and 3 do not exempt low-income taxpayers and would amount to unconstitutional poll or head taxes. We note that by including those persons required to file Oregon personal income tax returns, the proposed options would exempt some people of very limited means but not others—for example, those who file and claim the earned income tax credit or those with earned income who are also claimed as dependents on other taxpayer returns. We believe that Options 1 and 3 would be unconstitutional poll or head taxes if enacted.

### Imposition of surcharge on nonresident taxpayers

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<sup>6</sup> *Wittemyer v. City of Portland*, 278 Or. App. 746, 747 (2016), quoting Portland City Code 5.73.020.

<sup>7</sup> *Wittemyer*, 278 Or. at 748.

<sup>8</sup> *Id.* at 753.

A flat tax imposed on all personal income tax returns, without modification, would be invalid as it applied to nonresident taxpayers. States have taxing power over nonresidents—for example, over income of nonresidents derived from within the state.<sup>9</sup> However, a state's exercise of taxing power beyond its borders is not without limitation.<sup>10</sup>

Courts customarily examine state taxes imposed on out-of-state taxpayers under the Commerce Clause of the United States Constitution. Article I, section 8, of the United States Constitution, grants Congress the authority to “regulate [c]ommerce . . . among the several [s]tates.” This language contains a negative implication, known as the dormant Commerce Clause, which prohibits states from discriminating against or burdening interstate commerce.<sup>11</sup> The dormant Commerce Clause prohibits taxation that discriminates against or unduly burdens interstate commerce.<sup>12</sup>

In order to be constitutional under the dormant Commerce Clause, a tax on nonresidents must meet the requirements set forth in *Complete Auto Transit, Inc. v. Brady*.<sup>13</sup> A tax is valid under the dormant Commerce Clause if it “is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State.”<sup>14</sup> A nonresident with income from sources in Oregon is required to file a personal income tax return.<sup>15</sup> This nonresident has nexus with Oregon, for the purpose of income taxation, because the nonresident has income derived from Oregon sources. This at least partially satisfies the first prong of *Complete Auto Transit*. However, a taxpayer that derives a small portion of the taxpayer's income from Oregon might successfully argue that the imposition of an additional tax burden on the nonresident amounts to an improper overreach by the state.

The surcharge in any of the first three options is likely invalid under the second prong of the *Complete Auto Transit* test, because it is imposed as a flat tax and not apportioned.<sup>16</sup> While Oregon does tax the income of nonresidents, the taxpayer's income is prorated under ORS 316.130 so that only income derived from Oregon sources is taxed. A similar provision applies to part-year residents, whose income is prorated under ORS 316.117. Both of these statutes employ a ratio: the taxpayer's total adjusted gross income is the denominator and the taxpayer's adjusted gross income attributable to Oregon is the numerator. This ratio is then multiplied by the taxpayer's Oregon taxable income. In this way, Oregon income tax imposed on nonresidents is apportioned. The state may tax “only that portion of the revenues from the interstate activity which reasonably reflects the in-state component of the activity being taxed.”<sup>17</sup>

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<sup>9</sup> *Shaffer v. Carter*, 252 U.S. 37, 55 (1920).

<sup>10</sup> See *Norfolk & Western Railway Company v. Missouri State Tax Commission*, 390 U.S. 317 (1968); *Hans Rees' Sons, Incorporated v. North Carolina*, 283 U.S. 123 (1931).

<sup>11</sup> See *Pennsylvania v. West Virginia*, 262 U.S. 553, 596 (1923).

<sup>12</sup> *Quill Corporation v. North Dakota*, 504 U.S. 298, 309 (1992); *Oklahoma Tax Commission v. Jefferson Lines*, 514 U.S. 175, 179 (1995).

<sup>13</sup> *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977). We note that a tax must satisfy all four parts of the *Complete Auto Transit* test. As the proposed surcharge would fail the second prong, we do not discuss the final two prongs, but note that they are interrelated.

<sup>14</sup> *Complete Auto Transit*, 430 U.S. at 279.

<sup>15</sup> ORS 316.362 (1)(b).

<sup>16</sup> *American Trucking Associations v. Scheiner*, 483 U.S. 266 (1987).

<sup>17</sup> *Goldberg v. Sweet*, 488 U.S. 252, 262 (1989); see also *Container Corporation of America v. Franchise Tax Board*, 463 U.S. 159, 169-170 (1983); *Tyler Pipe Industries v. Washington State Department of Revenue*, 483 U.S. 232, 247 (1987). Courts may also examine a state tax imposed on nonresidents using a due process analysis. This inquiry is similar, if not identical, to the examination of nexus. In both cases, the question is whether a person's connection to the state, whether described as minimum contacts or as nexus, is sufficient for the person to be subject to the state's

As the nonresident taxpayers' nexus with Oregon is necessarily based on income derived from this state, the proposed surcharge must be analyzed as an income tax. A flat surcharge of a defined amount would not be imposed in proportion to the taxpayer's connection to the state, as it thus would not be fairly apportioned. As a result, we believe that an option that incorporates principles of apportionment would be upheld if challenged on dormant Commerce Clause grounds. This would include Options 1 to 3, (with exemptions sufficient to avoid characterization as head or poll taxes) if the flat amount were then multiplied by any apportionment ratio applicable to the taxpayer under ORS 316.117 or 316.130, or Option 4, if calculated after apportionment.<sup>18</sup>

The opinions written by the Legislative Counsel and the staff of the Legislative Counsel's office are prepared solely for the purpose of assisting members of the Legislative Assembly in the development and consideration of legislative matters. In performing their duties, the Legislative Counsel and the members of the staff of the Legislative Counsel's office have no authority to provide legal advice to any other person, group or entity. For this reason, this opinion should not be considered or used as legal advice by any person other than legislators in the conduct of legislative business. Public bodies and their officers and employees should seek and rely upon the advice and opinion of the Attorney General, district attorney, county counsel, city attorney or other retained counsel. Constituents and other private persons and entities should seek and rely upon the advice and opinion of private counsel.

Very truly yours,

DEXTER A. JOHNSON  
Legislative Counsel



By  
Catherine M. Tosswill  
Senior Deputy Legislative Counsel

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jurisdiction, whether it is in the form of a summons for a court proceeding or in the form of taxation. *Kulick v. Department of Revenue*, 290 Or. 507 (1981).

<sup>18</sup> That the surcharge in question would support wildlife conservation efforts, and the fact that wild animals do not always adhere to state boundaries in their movements, is not dispositive in our consideration of whether the proposed funding options would be taxes rather than fees, or in our analysis under the dormant Commerce Clause. The cases addressing questions around state ownership of game animals are not relevant to these inquiries. See, e.g., *Maine v. Taylor*, 477 U.S. 131 (1986) (upholding state statute that prohibited importation of out-of-state live bait fish as exercise of state regulatory power); *Hughes v. Oklahoma*, 441 U.S. 322 (1979) (holding that state ban on export of minnows violated Commerce Clause and rejecting argument to uphold state statute based on fictional state ownership of wildlife). What is at issue in this discussion is the impact on interstate commerce of imposing a tax on nonresident taxpayers and the propriety of the state requiring those taxpayers to fund the operations of an Oregon state agency.