Department of Agriculture

Chapter 603

Division 10

PLANTS, SEED PLANTS AND ENDANGERED, THREATENED, AND CANDIDATE SPECIES

603-010-0001
Definitions

These rules, pertaining to ORS 564.040 and 564.100, are intended to provide for protection of certain plants, seed plants, and endangered species, threatened species and candidate species, and to provide for the orderly and systematic development of certain plants for commercial purposes and for the orderly and systematic development of certain plants for commercial purposes and controlling of threatened species and endangered species. As used in these rules, unless the context requires otherwise, the following shall apply:

(1) "Commission" means the Oregon Fish and Wildlife Commission.
Statutory/Other Authority: ORS 564.100
Statutory/Other Implemented: ORS 561.190, 564.040, 564.100, 564.105, 564.990
History:
FWC 6-1999, f.5-5-99, cert. ef. 5-7-99

603-010-0002
Definitions

(1) "Department" means the Department of Agriculture.

(2) Section 9 "Cultivated" means any control, mowing, or pesticide including, in the taking of a threatened or endangered species, disturbing and destroying, regardless of the taking, and of such disturbing, or destroying of a threatened or endangered species, or any other activity which is not a "taking" of a threatened or endangered species under a section of an ancient species, as well as any exchange, transfer, or sale of roots or parts of such species, or any other activity which is not a "taking" of a threatened or endangered species under a section of an ancient species, or any other activity which is not a "taking" of a threatened or endangered species under a section of an ancient species.

(3) "Cultivated" means the control, mowing, or pesticide including, in the taking of a threatened or endangered species, disturbing and destroying, regardless of the taking, and of such disturbing, or destroying of a threatened or endangered species, or any other activity which is not a "taking" of a threatened or endangered species under a section of an ancient species, or any other activity which is not a "taking" of a threatened or endangered species under a section of an ancient species.

(4) "Department" means the Oregon Department of Agriculture.

(5) "Director" means the Director of the Oregon State Department of Agriculture, or his or her designated representative.

(6) "Endangered Species" means:

(a) Any native plant species determined by the director to be in danger of extinction throughout all or a significant portion of its range; or

(b) Any native plant species that is endangered throughout all or a significant portion of its range in Oregon.

(7) "Natural" means that the plant species is not cultivated, or has been cultivated for less than one year, and is not a hybrid or a genetically modified organism.

(8) "Threatened Species" means:

(a) Any native plant species determined by the director to be in danger of extinction throughout all or a significant portion of its range; or

(b) Any native plant species that is endangered throughout all or a significant portion of its range in Oregon.

(9) "Natural" means that the plant species is not cultivated, or has been cultivated for less than one year, and is not a hybrid or a genetically modified organism.

(10) "Candidate Species" means any native species that is being considered for listing as a threatened or endangered species under the provisions of ORS 564.040 and 564.100 and rules.

(11) "Taking" means to take, or attempt to take, or to pursue, or to hunt, or to harass, or to kill, or to wound, or to poison, or to poison with intent to kill, or to destroy, or to collect, or to possess, or to transport, or to offer for sale, or to offer for sale, or to transport, or to offer for sale, or to possess, or to transport, or to offer for sale, or to possess, or to transport, or to offer for sale, or to possess

permits) may be denied, granted, or conditionally granted contingent on modification of the original application, based on the nature of the request and qualifications of the applicant. A final decision on the granting or denial of a permit shall be made within 120 days of receipt of the final application. Notification of denial shall be in writing, and shall include the reason(s) for not granting the permit.

(7) Any permit granted for the purposes listed in this rule will be issued free of charge.

(8) Commercial and research permits must be provided for inspection upon request by any law enforcement officer, affected public land manager, or staff member of the department when the permittee is engaged in activities authorized by the permit.

(9) No commercial or research permit granted by the director shall allow or promote any activity prohibited by the federal Endangered Species Act of 1973 (PL 93-205, 16 USC § 1531) as amended, nor prohibit any activity that is authorized pursuant to exemptions or permits provided for under the federal Endangered Species Act, or any regulation issued thereunder.

(10) Commercial and research permits issued by the director do not extend to the bearer the authority to study, collect, propagate, transport, import, export, purchase, sell, or otherwise take, or transplant or introduce species also listed as threatened or endangered by the federal government without written approval of the U.S. Fish and Wildlife Service and other appropriate federal agencies.

(11) A permit issued by the director does not extend to the bearer the right to trespass or study, collect, propagate, transport, import, export, purchase, sell, possess, or otherwise take, or transplant or introduce listed species on lands not under state management without concurrent permission of the appropriate land owner or manager.

(12) State agencies are exempt from the permit requirements described in section (5) of this rule, for management actions that are addressed under the consultation process described in OAR 603-073-0090(5). Furthermore federal agencies or their agents are not required to obtain state permits for activities described in this rule when such activities occur exclusively on federally-owned properties, or when such activities require the transport of listed plants to federal or state facilities via state or private roadways.

(13) Any commercial permit issued for the purposes listed in this rule shall be valid for a period not to exceed two years, and may be renewed upon reapplication, or revoked at the discretion of the director.

(14) Upon receipt of the annual research summary (see subsection (5)(i) of this rule), research permits may automatically be renewed without additional departmental paperwork when requested by the permittee, at the discretion of the director. Research permits may be cancelled if there is evidence that the original research is no longer in progress or is violating provisions of the permit.

(15) Any person engaged in the study, propagation, or scientific taking of a listed species under a personal services contract with the department shall not be required to obtain a department permit for the activities specified in the contract. This exception is applicable only when provided in writing in the contract, and will not extend beyond the contract termination date.

(16) For the purposes of this rule, a commercial or research permit authorized by the director may be signed by the director or assistant director of the department, or by the program leader of the subdivision of the department that administers these rules.

Statutory/Other Authority: ORS 561 & 564
Statutes/Other Implemented: ORS 561.190, 564.020 & 564.105
History:
AD 13-1995, f. & cert. ef. 7-12-95
AD 16-1989, f. & cert. ef. 10-27-89

603-073-0110
Reintroduction and Transplantation Protocols

(1) The department may artificially augment populations of listed species in appropriate habitat on state-managed lands, or on other lands with permission of the owner. Such activities may include adding new plants to an existing population of the species (enhancement); creating an entirely new population of the species at an historic site where the species is now considered extinct (reestablishment); or developing a new population at a site deemed environmentally appropriate, but where there is no evidence of previous occurrence (introduction).

(2) Other persons may also enhance, reestablish, or introduce populations of listed species, contingent upon acquisition of a research permit, per OAR 603-073-0100(5). This activity may take place only after the person provides evidence to the department, in a written proposal (as part of the research permit application), that the project will be consistent with the conservation and recovery of the species, and not inconsistent with agency land management goals. if the work is proposed for other than state-managed lands, written permission of the land owner is required. Moreover, the development of new populations may proceed only when the proposal also demonstrates that the activity does not constitute an interference with the practices and actions of local public and private landowners on their own property. Specifically, reestablishment or introduction of new populations of listed plant species may not take place if it is determined by the managing state agency that such action, even if solely on state-managed lands, would hinder the lawful use of pesticides on adjacent agricultural, forest, or other properties.

(3) The department reserves the right to approve or deny any proposal for enhancing, reestablishing, or introducing populations of listed species on state-managed lands. Such a proposal shall be submitted to the department at least 180 days prior to the anticipated start of field work. The department shall respond to the proposal within 60 days of receipt. Failure to provide a written proposal to the department within the above time frame, or to evaluate potential effects on adjacent landowners when selecting sites for new populations of listed species, may result in the population(s) not being protected under these rules.

(4) Enhancing, reestablishing, or introducing populations of listed species may be accomplished by the distribution of seeds or other propagules, the transplantation of plants cultivated from seeds or vegetative organs, or the transplantation of wild plants from one site to another. Any proposal to enhance, reestablish, or introduce populations of a listed species will be reviewed by the department to ensure that appropriate considerations are given to genetic factors, and that the activity is in the conservation interest of the species. In making any determination on the soundness of a proposal, the department may consult with the U.S. Fish and Wildlife Service or other appropriate federal agency, affected state agencies, any affected private parties, the department's Technical Advisory Committee (as described in these rules), or any recognized experts in horticulture, plant genetics, plant conservation biology, or related fields. Finally, any proposal involving the take of any listed species (as defined in these rules) must follow the permit requirements outlined in OAR 603-073-0100.

(5) Reestablished and introduced populations are considered experimental and, with respect to recovery evaluations, shall not initially be tallied among the total number of natural populations known for a species. To be recognized as formally established, there must be verifiable biological evidence that a population is self-perpetuating and likely to persist and remain viable, defined as follows:

(a) For annual or biennial species, reproducing individuals must reappear at the site for five or more successive years, with the population size during the fifth or any later year not less than 80% that of the original number of plants that survived to reproduce in the first year after population establishment (with these originating from vegetative transplants or sown seed);

(b) For herbaceous and woody perennial species, reproducing individuals must reappear at the reintroduction site for eight or more successive years, with the population size during the eighth or any later year not less than 80% that of the original number of plants that survived to reproduce in the second year (in the case of populations originating from vegetative plantings) or third year (for perennial species started from seed);

(c) To be considered formally established, the size of artificially created populations must equal, or exceed, 90% of the estimated mean size of extant natural populations for the species existing at the time of initial planting (to be determined in consultation with the department). Alternately, created populations may also be considered established if they attain 90% of the estimated mean size of existing natural populations by their fifth year (for annuals and biennials) or eighth year (for perennials), or during any subsequent year.

(6) Regardless of date of initial planting, all artificially created or reestablished populations of listed species are afforded protection under these rules equal to that of naturally existing populations, providing the requirements in sections (2) and (3) of this rule are followed.

(7) The department recognizes the importance of in situ conservation of listed plant species. Accordingly, enhancement, reestablishment, or introduction of populations of listed species may be used as modes of recovery in only the most critical cases, and shall not be employed as routine mitigation tools to offset species' takes.

(8) To assist the department in establishing conservation priorities, including the need for plant species to be reclassified from endangered to threatened, or vice versa, or removed from state listing, federal agencies and private landowners shall, to the best of their ability, inform the department of any projects on their properties pertaining to the enhancement, reestablishment, or introduction of state-listed plant populations.

Statutory/Other Authority: ORS 561 & 564
Statutes/Other Implemented: ORS 561.190, 564.040, 564.105(2), 564.105(4) & 564.105(6)
History:
AD 13-1995, f. & cert. ef. 7-12-95

Oregon State Archives • 800 Summer Street NE • Salem, OR 97310
Phone: 503-373-0701 • Fax: 503-373-0953 • Adminrules.Archives@sos.oregon.gov

© 2022 Oregon Secretary of State
All Rights Reserved