

OREGON STATE  
GAME COMMISSION

# BULLETIN

OCTOBER, 1962

# OREGON STATE GAME COMMISSION BULLETIN

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At the present time the Bulletin is circulated free of charge to anyone forwarding a written request.

## the cover

Aerial view of the Sauvie Island game management area. The Eastside checking station is in the foreground. (Photo by Ron Shay)

## BULLETIN HUNTER SAFETY TRAINING PROGRAM

### Instructors Approved

Month of August ..... 30  
Total to Date ..... 3,286

### Students Trained

Month of August ..... 1,735  
Total to Date ..... 42,990

### Firearms Accidents Reported 1962

Fatal ..... 1  
Nonfatal ..... 9

## New Regulation for Big Game Hunters

If you kill a deer or elk, remember to write on the back of your hunting license the date of kill, species, and county in which the kill is made. This is a new requirement in addition to validation of the big game tag. As in previous seasons, the big game tag must have punched out in its entirety the printed month and date of kill, be signed, and attached to the carcass as soon as the animal is killed. So don't forget to take along a sharp pencil.

## Juvenile Hunting Management Area

The E. E. Wilson Management Area will still have pheasant and quail hunting available to licensed juveniles and accompanying adults on October 13, 20, 27, 28 and November 3, 4, 10, 11. A juvenile 14 through 17 years of age accompanied by an adult licensed hunter at least 21 years old may participate in this hunt upon applying for a free permit from the Portland or Corvallis offices of the Game Commission. Not more than 75 hunting permits for upland game birds will be issued for any one hunting day.

Waterfowl hunting will be permitted for juveniles only on December 15, 16, 22, 23, 29, and 30. Hunting permits are limited to 12 for any one day. Each juvenile must be accompanied by a licensed adult, who, however, is not allowed to hunt.

## 1961 Totals Licensed Hunters and Anglers

A total of 19,394,177 sport fishermen in 50 states purchased one or more licenses to fish during 1961, according to compilation made by the Department of the Interior. The 1960 total was slightly less. This does not represent the total number of anglers in the United States as millions of other persons fish but are not required to purchase a license. Oregon was in 16th place in the number of licensed anglers, 426,233.

The 1961 licensed fishermen spent \$52,851,224 for fishing licenses, stamps, tags, and permits required by state fish and game departments to take fish legally.

The number of hunting license holders in 46 states (excluding Colorado, Wisconsin, Michigan, Minnesota) was 11,798,890 for 1961, slightly more than last year. In Oregon 306,858 individuals were licensed, placing it 15th among the states reporting.



Planted in Big Cultus Lake in June of 1958 at a size of little more than five inches, a big mackinaw trout met his fate four years later at Wickiup Reservoir. The first record of a lake trout being taken from the reservoir, the fish measured 28 inches and weighed 7½ pounds when caught this summer. To get to Wickiup Reservoir, it had to travel 20 miles or more from Big Cultus Lake down Cultus Creek to Crane Prairie Reservoir; then over the Crane Prairie spillway and down the Deschutes River to Wickiup.

Several sightings of mountain goats in the Wallows have been made in recent months. On July 19 Ted Grote reports seeing four adult mountain goats on the Matterhorn. Members of the U. S. Fish and Wildlife Service goat survey team found six adult goats and five kids of the year in a small basin near Razz Lake on July 31. Game Commission personnel on an aerial flight August 12 sighted 12 goats between the West Fork of the Wallowa River and the Lostine. Eight of these were adults and four were kids.

Channel catfish—2,500 young ones—were planted this August in the Willamette River near Independence. This is a first of a series of plantings planned for the streams of the Willamette drainage as fish become available. The channel cats released were obtained from the U. S. Fish and Wildlife Service and were flown to Portland from Miles City, Montana.

Trout bag limits for McKay and Unity Reservoirs have been increased to 30 fish per day, and 60 in possession, with no length limit. This increased limit will remain effective through December 31. The increased take was permitted because McKay Reservoir in Umatilla County was being drawn down to an extremely low level which would not support fish life and Unity Reservoir was scheduled for chemical treatment.





## HUNTING AND FISHING ON PRIVATE LANDS IN OREGON

By Roy C. Atchison, Assistant Attorney General

ON A SUMMER DAY IN OREGON, a fisherman was walking along the bank of one of Oregon's trout streams. As he proceeded up the bank he came upon a tributary flowing into the stream in which he was fishing. Presently he was walking up the bank of the tributary, casting his lure into a likely looking spot, when suddenly from above him an irate voice rang out and told him to get out. A person with a high-powered rifle approached and informed the angler that he was trespassing on private property; that he, the landowner, was a deputy sheriff, and that the fisherman had better leave. The angler replied that he was not on private property and that he did not have to get off. Without further ado the landowner commenced shooting into the water near the angler's feet and hitting him in the mouth with the butt of his rifle. Upon picking himself up from the water and upon being shown papers identifying the owner as a deputy sheriff, the fisherman turned and walked back downstream, which also happened to be the direction where his attorney lived.

Who was right in this situation? Must a fisherman leave private property when ordered to do so by the landowner? What if the property is posted? To what degree of force can the landowner resort in order to repel a trespasser? What, if any, would be the difference if the fish-

erman were fishing from a boat?

These and many other questions are the subject of this article.

The situation presented in the first paragraph is not merely an illustration. It actually happened.\*

Just what are the rights of the participants? To begin, you should know more of the facts surrounding the incident. The stream upon which the hapless angler was first walking was a non-navigable stream; however, the landowner's property line was at the high watermark. Therefore, initially, the angler was not trespassing on the land of this particular person. When he left the main stream and proceeded up the tributary, he became a trespasser when he crossed the property line and would have been liable in a civil suit for any damage caused by the trespass.

What can the landowner do about you when he finds you trespassing on his property?

The Oregon Supreme Court has ruled that a landowner may use whatever force to eject a trespasser as is reasonably necessary—short of taking human life or causing great bodily harm.\*

In the case mentioned, the landowner was sued for personal injuries and judgment was rendered against him for more than \$4,500, not counting his attorney's

\*Scheufle v. Newman 187 Ore. 263

fees, as the court felt that under the circumstances he used unreasonable force in repelling the trespasser.

The wisest course for a landowner to follow when a trespasser refuses to leave is to call upon an appropriate law enforcement agency to eject the trespasser, thus saving much unpleasantness and eliminating the possibility of committing a disturbance of the peace, personal injury suits and/or facing charges of assault and battery.

Persons who would like to fish or hunt on private lands should always obtain permission of the owner, or occupant, and thus avoid unpleasant occurrences which can spoil an otherwise pleasant outing. Aside from the legal implications, requesting permission to enter upon private lands is only common courtesy and goes a long way toward promoting favorable landowner-sportsmen relations.

Some sportsmen believe that their hunting and angling licenses give them the right to go upon private property in pursuit of fish and game. Nothing could be further from the truth. The right of the property owner is paramount. A sportsman must obtain permission to enter the property of another. Even though all game birds, animals, and fish belong to the state in trust for the people, the **right to hunt** is an incident of ownership of

(Continued on Page 6)



High mountain lakes like this one attract those who seek their fishing away from crowds as most of them can be reached only by hiking or horseback. Neither can they be stocked with fish by the conventional fish tankers.

# Fish Lift To High Lakes

**A**NGLERS packing into the back country lakes of the Cascade and Wallowa mountains next year will be catching scrappy rainbow trout or eastern brooks, the result of the Game Commission's aerial fish lift program this year and previous seasons as well. Some lakes receive stocks of fish every year, while others may be planted from one to six years apart, depending on the size of the lake and the angling pressure.

Aerial fish planting is fast and efficient, and the day of the pack string is in the past. With horses, it was an all-summer job to get the lakes planted. This year's aerial fish lift took nine days of flying time, in a three-week period. Nearly a million trout were dropped like falling rain into some 250 lakes in the Wallowa and Elkhorn mountains of eastern Oregon and along the backbone of the Cascades from Mt. Hood on the north to Wild Lakes Primitive area on the south.

Operation "fish lift" stemmed from the Hood River airstrip, the Chiloquin airstrip, the Fall River airstrip, and the airstrip at Joseph. Each field is located a short distance or few miles from a Game Commission hatchery for quickness in the transfer of fish from hatchery to plane.

Aerial fish planting began more than a dozen years ago on an experimental basis to speed up the high lakes fish plants and reduce the manpower required. The pilot project was contracted by Sam Whitney, and during the years that followed he has probably aerial-dropped more than 20 million trout into the basin lakes of the high mountains.

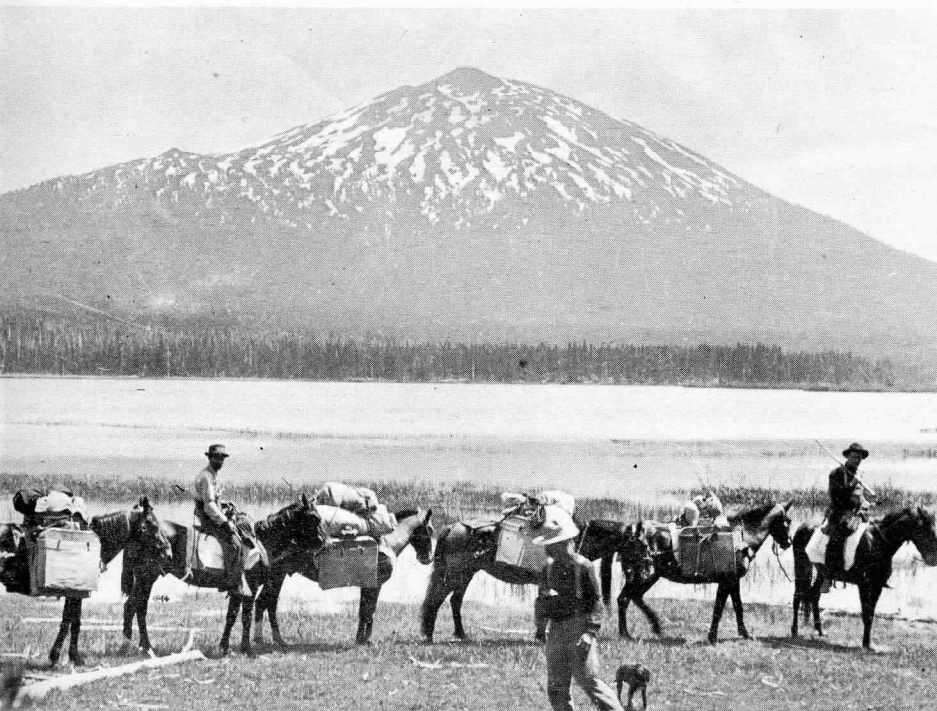
Fish are dropped at elevations of not less than 100 feet above the water, the optimum elevation being from 150 to 500 feet. Elevations under 100 feet may result in injury or death to the fish as their air speed has not been reduced to normal fall rate by the time they hit the water.

## PICTURE STORY

by

MILT GUYMON

Back in 1913, this is the way the fish were taken to the back country lakes. Here the pack strings pause for a rest stop at Elk Lake before proceeding on their long trip up the mountains. Many of the high lakes at that time were still barren of fish life. (William L. Finley Photo)



In 1962 this Piper Pawnee single-seater was used to drop the fish into the high mountain lakes. It is equipped with a five-compartment aerated tank and capable of stocking five lakes on a single flight.





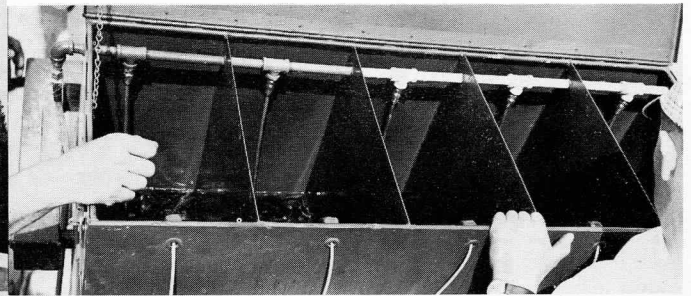
At Fall-River Hatchery, district fishery biologist, Monty Montgomery, carefully weighs out fish into buckets for each flight schedule.



Buckets are emptied of fish into the aerated hopper at the stern end of the truck bed. Hopper is mounted on a hydraulic lift.



Truck is backed against the plane, the hopper is hoisted overhead and fish and water are flushed into corresponding compartments of hopper in the plane. Pilot is given flight schedule, aerial photographs, and maps of lakes to be stocked.



Close-up of aerated hopper used on truck and in plane. Each of the five compartments is marked a different color.

Plane flies over West Hank lake below the trees and drops its allotted load of fish. The center of the lake is the target bullseye. Fish are dropped at elevations from 150 to 500 feet. Elevations under 100 feet may result in injury or death to the fish as their air speed has not been reduced to normal fall rate by the time they hit the water.



# Hunting and Fishing On Private Lands

(Continued from Page 3)

the land and is controlled absolutely by the landowner.

Before we go any farther perhaps it would be well to define a trespass so far as it concerns hunters and anglers. A trespass is an unauthorized entry upon the land of another. There are two types of penalties which can be imposed on trespassers—one is civil and the other is criminal. A trespasser is liable for any damage caused by reason of the trespass under a civil suit brought by the party aggrieved. This is a common law remedy which has been enacted into law by the Oregon legislature to cover various types of trespass. In some instances the law has prescribed the damages which can be recovered by the owner. For example, when a person cuts down or digs up or injures any tree, timber, or shrub on the land of another person, he is liable for treble damages (ORS 405.810)\*. If a person maliciously damages telegraph poles or lines, or shoots off insulators on any telegraph line, or damages any other property pertaining to a telephone line, he not only is criminally liable but the telephone company can recover damages in a sum equal to one hundred times the amount of actual damage (164.630).

A criminal penalty is generally set out in the statute which defines the various types of trespass. Almost all trespasses are misdemeanors, which means that the maximum penalty which could be prescribed would be imprisonment for not more than one year and a fine of not more than \$1,000, or both.

I am sure you are all aware that anyone who destroys any growing thing (164.430), or damages or defaces buildings (164.450) or personal property (164.900) is committing a crime. This also applies to removal of earth or stone (164.420). The penalty for knocking

\*All references henceforth are to Oregon Revised Statutes unless otherwise designated.

Hunters, stopping to ask permission to hunt, are waved on with a good luck wish by the landowner. Hunters who ignore posted signs and show no respect for private property are largely responsible for increase in posted lands.



down a fence or leaving a gate open can be as high as \$500 (164.410).

The best policy with regard to gates is to leave them as you find them. A rancher reported last year that a "helpful" hunter closed an open gate costing him a fine horse. It seems that the owner left the gate open so that his horse would have access to water. When the gate was closed, the horse was unable to reach the water and died as a result.

A little-known law (164.450) provides that in the case of a person who maliciously destroys or defaces any building or shelter, or the contents therein constructed by any person other than the person destroying or defacing same, can be fined not less than \$50, nor more than \$250, and any person acting as an informer in such a case is entitled to one-half of the fine imposed.

**In the case of livestock** or other farm animals the law prescribes the maximum penalty of three years in a penitentiary or \$1,000 fine, or both, to any trespasser who wantonly kills, wounds, or poisons an animal belonging to someone else (164.710). Any person who tears down, alters, or defaces any poster or notice which is put up pursuant to any law requiring or authorizing it to be done can be punished by a maximum of six months in jail or a \$300 fine (164.840).

It is also prescribed as a crime to destroy or interfere with the monuments erected for a mining claim (164.860); boundary markers, lamps, rails, posts, barricades, or warning devices (164.871); surveyors' markers (164.880); scientific records, documents, and instruments (164.890); or any other personal property (164.900).

Incidentally, any hunter or angler who is convicted of destroying or damaging anyone's personal or real property, by virtue of 497.285, is subject to losing his hunter's or angler's license for the remainder of the year and for the succeeding year.

To get back to our fisherman, since the property owner's land ran to the high watermark, the fisherman was not trespassing on his land initially. This situation

is not normally found on nonnavigable streams. Ordinarily, an owner of a creek or nonnavigable river frontage owns to the thread or center of the main channel of the stream unless he owns land on both banks, in which case he would own both bed and banks of the stream. Anyone walking up the bank, or wading in the stream without permission, would be trespassing.

Oregon law prescribes that the area between the ordinary high watermarks on navigable streams is public highway for access of licensed hunters, anglers, and trappers (498.125). This is true even in those rare cases where title to the bed and banks is in private ownership. The Act of Congress admitting Oregon into the Union gave title to the tidelands and the bed and banks between the ordinary high watermark to the state. Some of this land was conveyed to private individuals but the Oregon Supreme Court has ruled that the state, while it could convey the title to the land, was unable to convey the right of access or right to navigate, which was historically vested in the public.\* Therefore, a licensed hunter, angler, or trapper can travel with impunity either on foot or in a boat in any area between the ordinary high watermarks on any navigable body of water.

Now, the next question is: What is navigable? Oregon law does not define navigability; therefore, the Supreme Court had to decide the question. The Court ruled that there were four kinds of navigability:\*\* (1) Those waters in which the tide ebbs and flows; (2) Those which are navigable in fact for boats, vessels, or lighters; (3) Streams not navigable for any purpose, and (4) The larger rivers susceptible of a great volume of commerce.

**The Supreme Court** has never decided which test applies to the "navigable" streams the legislature referred to in 498.125. This is the law which made the bed and banks public highway for access of hunters, trappers, and anglers. There is no question about access on the shore of the ocean or the bays where there are tides. Also there is no question about large rivers such as the Columbia, Snake, or Willamette. The question arises when we get on smaller streams, which can be boated readily but whose banks and beds are in private ownership. These streams are "navigable in fact" but cannot support a great volume of commerce and, of course, have no tides.

A safe rule to follow is to ascertain the ownership of the bed of the stream.

\*Corvallis & Eastern R. Co. v. Benson 61 Or. 359  
\*\*Guilliam v. Beaver Lake Club 90 Ore 13

(Continued on Page 7)





A self-registration station for hunters established by the Game Commission on private land in the Steens area made available to the public for hunting.

## Hunting and Fishing On Private Lands

(Continued from Page 6)

If it is in private ownership, the fisherman, by all means, should obtain permission from the owner if he intends to walk or wade it.

A person fishing from a boat is in a different category from the bank fisherman. All waters of the state are public waters and the Supreme Court has ruled that on waters that are "navigable in fact"—that is, for waters that can be boated—there exists a public easement for purposes of navigation and "commerce"; commerce not being limited to navigation for pecuniary profit.\*\*\* This, of course, refers only to boating and does not give permission to disembark from a boat onto private lands.

What are the landowner's duties to the trespasser?

Originally, the landowner had no responsibility for the safety of a trespasser. This is still the general rule; however, there are some exceptions. Once the landowner has discovered the presence of a trespasser, the landowner is required to exercise reasonable care for his safety with regard to any activity he is engaged in and possibly as to any highly dangerous condition on the land. For example, a landowner who is blasting some stumps would not be permitted to go ahead and set off the charge if there were a trespasser in a position where he might be injured. If the landowner has knowledge that trespassers frequently enter upon a particular place or area, he would be required to exercise reasonable care with regard to dangerous activities or conditions existing on the land.

One of the most common exceptions to the rule that the landowner is free from duty to the trespasser is the case of trespassing children. Where a trespass by children is foreseeable, such as a water

tower or other "attractive nuisance," the landowner is required to take reasonable precautions to protect the children from injury due to their immaturity and failure to appreciate the dangerous qualities of certain structures and other installations.

There is a special statute applying to hunters (498.120) which provides that one who hunts with a gun or dog on cultivated or enclosed lands of another without permission can be prosecuted upon signing of a complaint by the owner, occupant, or lessee of such lands. This law is in addition to the general trespass law (164.460) (1) which makes a misdemeanor of mere entry on enclosed lands and refusal to depart upon verbal, written, or printed notice of the lawful occupant of such lands.

It is interesting to note that both laws referred to in the preceding paragraph apply to "enclosed lands." There is no statute providing for prosecution of someone who enters upon unenclosed lands. Enclosure is defined in 164.460 as, "Any barrier such as a river, lake, or other obstruction to the passage of stock and also the established and posted boundaries of Indian reservations within the state." Even though both laws refer to enclosed lands and one of them includes cultivated lands, no sportsman should enter unenclosed lands under the supposition that there is a "loophole" in the law. A civil suit for damages could still be brought by the landowner.

It might be well at this point to briefly discuss posting. Oregon law (164.460) (2) requires that printed or written notices containing the name of the owner or lawful occupant of the lands and requiring all persons to forbear trespassing on the lands and to depart therefrom, which are posted in three conspicuous places on the lands, is sufficient prima facie evidence of notice mentioned in 164.460 (1). Posting applies to all persons other than the owners or other lawful occupants of lands. Therefore, the landowner may hunt upon his land whether

posted or not and anyone else can do the same provided he obtains permission to do so.

In conclusion, I would like to add that the purpose of this article is to acquaint the sportsman and the landowner with a better knowledge of their rights and liabilities and inform them of the contents of Oregon laws pertaining to trespass and damage to private property generally.

As time goes on, more and more property is becoming paved, developed, and subdivided, thus reducing the available area for hunting, trapping, and fishing. At the same time the inexorable growth of the population and the increased amount of leisure time are putting a greater demand upon the remaining recreational areas. The sportsman is caught between these irresistible forces in his effort to find good hunting and fishing. To add to the burden, the conduct of a small minority of hunters and anglers causes property owners to put up signs reading: "Keep Out. This means you"; "Trespassers will be shot"; or "Prosecuted to the full extent of the law," and so on.

Many of the complaints of landowners, upon investigation, prove to be groundless. A great many more are fully justified. It is immaterial whether there is merit in a complaint or not if the landowner thinks he has been abused. Don't forget, he is the judge, jury, and chief sign poster with no right of appeal.

Landowners for the most part are reasonable and not inhospitable. Most sportsmen respect private property and will go out of their way to avoid causing any damage. Since the landowner is in the driver's seat, it is up to the individual sportsman to convince him by his conduct that all hunters and fishermen are not undetected vandals. This is just another example of where the great multitude suffer for the transgressions of a few, so remember to ask permission before entering upon private lands and respect private property more than if it were your own.

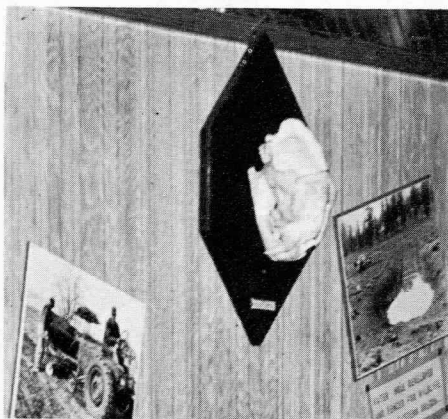
Good Hunting!

### About the Author



For the past five years Roy Atchison has been assigned to the Game Commission as Assistant Attorney General. Previous to this assignment he spent eight years with the Oregon Bureau of Labor in charge of its legal department. He was born, educated, and except for three years during World War II, has spent his entire life in Oregon.

\*\*\*Luscher v. Reynolds 153 Ore 625



Mounted cougar skull stolen from the Game Commission exhibit at the State Fair was the largest recorded in Oregon and the fifth largest one listed in the Boone and Crockett big game record books.

## Part of State Fair Exhibit Departs

Someone admired the Game Commission Exhibit at the Oregon State Fair a little too much.

The display contained various fish and wildlife and a number of mounted skulls of big game animals. During the progress of the fair one of the large chinook salmon ended up in someone's personal belongings. Though rather distressing, this was not as serious as one of the other losses.

Two mounted skulls were stolen during the waning hours of the fair. Both were mounted on black, diamond shaped boards with small tags giving the scientific names



Mounted skull of mule deer was also taken from the State Fair exhibit of the Game Commission.

of the animals. One of the skulls was that of a mule deer with a nice rack of antlers.

The other skull was that of a cougar and will be difficult if not impossible to replace. It was the fifth largest one listed in the Boone and Crockett big game record books and had been given to the Commission for display purposes. It is the largest one ever recorded having been taken in Oregon.

If any person should run across this trophy, the Commission would appreciate its return and would ask no questions. The mounted skull can be returned to any Game Commission office or representative.

## OCTOBER-NOVEMBER HUNTING CALENDAR

See hunting synopsis for details on open areas, exceptions, etc.

| SPECIES                                    | OPEN SEASON                              |
|--|--|
| Silver gray squirrels .....                | Sept. 1 - Oct. 31, Southwest Area        |
| Silver gray squirrels .....                | Entire Year, Northwest Area              |
| Huns and chukars .....                     | Sept. 8 - Dec. 2                         |
| Cock pheasants .....                       | 8 a.m. Oct. 13 - Nov. 18                 |
| Valley, bobwhite, and mountain quail ..... | 8 a.m. Oct. 13 - Nov. 18, Western Oregon |
| Valley, bobwhite, and mountain quail ..... | 8 a.m. Oct. 13 - Dec. 2, Eastern Oregon  |
| Ducks - geese .....                        | Noon, Oct. 20 - Jan. 2                   |
| Coot .....                                 | Noon, Oct. 20 - Jan. 2                   |
| Snipe .....                                | Oct. 27 - Nov. 25                        |
| American and red br. merganser .....       | Noon, Oct. 20 - Jan. 2                   |
| Buck deer .....                            | Sept. 29 - Oct. 21                       |
| Deer unit permits .....                    | Oct. 6 - 21                              |
| Elk, Coastal .....                         | Oct. 27 - Nov. 9                         |
| Elk, Cascade, N.E. and S.E. areas .....    | Oct. 27 - Nov. 25                        |
| Bear (where classed as game) .....         | Sept. 1 - Dec. 15                        |
| Bear (rest of state) .....                 | Entire Year                              |

## Oregon State Game Commission Bulletin

1634 S. W. ALDER STREET  
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JULIUS B MASSEY  
RT3BOX 210  
HOOD RIVER ORE

## LOOK TO YOUR CONDUCT, HUNTER . . .

If the heft of your gun is so pleasant,  
That hunting's your sport supreme;  
If you thrill to the rise of a pheasant,  
From the brush along the stream;  
Then, look to your conduct, Hunter.

For a field to work with dog and gun,  
Is never a right, but a privilege won.

If the call of the goose is alluring,  
And will rush you off to the blind;  
If the sport of the hunt is enduring,  
And forever is fresh in your mind;  
Then, look to your conduct, Hunter.

For a pond to shoot with dog and gun,  
Is never a right, but a privilege won.

If the lure of the woods is inviting,  
And you'll never deny its call;  
If the track of the deer is exciting,  
And you go for your buck each fall;  
Then, look to your conduct, Hunter.

For a wood to tramp with your trusty gun,  
Is never a right, but a privilege won,  
*With good outdoor manners.*

—Irv Luiten

Member, Governor's Red  
Hat Days Committee

## Elk Hunters Apply For Permit Hunts

Almost 30,000 applications by elk hunters were included in the September 7 drawings for the 10,700 permits authorized for units or special areas. Individual chances in some areas were good but in the popular elk hunting units the odds were high. The Starkey Unit had more than 4,340 applications for 600 permits; Ukiah Unit, 2,380 applications for 400 permits; Desolation Unit, 2,240 applications for 400 permits, and Umatilla Unit with 2,000 applications for 300 permits. Also heavily oversubscribed were the Chesnimnus, Sled Springs, and Heppner Units.

No drawings were held for the following areas which were still undersubscribed by the deadline date: Clatsop Unit (bull elk), Wilson Agricultural Area, the Clatsop Agricultural Area, and the Shaw Mountain hunt. Late applicants, however, have taken up the permits left.

