



Oregon

COASTAL NOTES

March 17, 1989

Legislators Meet on the Coast

The Oregon Coast played host to legislators last weekend.

The Coastal Caucus, state legislators from the coast, had invited members of the Joint Committee on Trade and Economic Development and several other legislators to join them in Newport during the Blessing of the Fleet and to learn more about the coastal fishing industry.

As the storm broke for a while on Saturday, March 11th, the legislators, marine extension agents, commodity commission representatives, OCZMA staff and a few other invited participants boarded four trawl vessels and participated directly in Newport's Blessing of the Fleet. By the end of the harbor tour, as the wind increased to a roar, the group disembarked and enjoyed a seafood buffet at the Fireside Room at the Embarcadero before meeting that evening over dinner at the Inn at Otter Crest.

Attending were the co-chairs of the Trade and Economic Development Committee, Senator **Wayne Fawbush** of Hood River and Representative **Margaret Carter** of Portland, and Committee member **Stan Bunn** of Dayton as well as Ways and Means member Senator **Jeannette Hamby** of Hillsboro.

Coast Caucus members who participated were: Senators **Bill Bradbury** and **John Brenneman** and Representatives **Tom Hanlon**, **Paul Hanneman**, **Hedy Rijken** and **Walt Schroeder**.

The major effort at organizing the event was handled by Georgia York from Representative Hanneman's

office. She also assembled and distributed a packet of information on coastal fishing that will be delivered to those legislators from Trade and Economic Development Committee who were unable to attend.

Salmon For All (Bob Eaton) and the Dungeness Crab (Tom Shafer), Salmon (Jack Crider) and Trawl (Joe Easley) Commissions generously contributed to making the weekend a success. The assistance and generosity of Bob Jacobson, OSU marine extension agent and Mark and Nancy Cooper (F/V Patience), Jim and Janet Seavers (F/V Pacific), Stan and Roberta Schones (F/V Berdie) and Terry and Marsha Thompson (F/V Olympic) was much appreciated.

Other attending were: Lincoln County Commissioner Norma McMillin; marine extension agents Paul Heikkila of Coos Bay, John Faudskar of Tillamook and Jim Bergeron of Astoria; Basil Edmunds, Economic Development Department; economist Hans Radtke; Jim Hill, Clatsop Economic Development Committee; Port of Newport manager John Mohr; Mike Sims, legislative aide to Representative Hanneman; Onno Husing, OCZMA/Sea Grant Fellow; and, Georgia York, Paul Benson and Jay Rasmussen, OCZMA.

**OCZMA Welcomes the
City of Rockaway Beach
as a New Member of the
Association!!**

The Wetlands Bill Gets a Title: SB 3

by *Onno Husing, Legislative Fellow*

Introduced by Senator John Kitzhaber at the request of the Division of State Lands (DSL), this bill is the results of the Working Group's efforts captured before the latest changes ... changes that reflect the evolving nature of this subject.

The following is a description of those parts of the wetlands bill that are fairly un-controversial: STATE WETLANDS INVENTORY The DSL will adopt by rule a State Wetlands Inventory. The inventory will be used to identify and delineate wetlands in consultation with city and county planning officials and affected state agencies. The inventory will utilize the National Wetlands Inventory developed by the U.S. Fish and Wildlife Service as a basis. The inventory provides an early warning system for property owners that their land may be a wetland or contain a wetland. Under the current system a great many wetlands are identified on an ad hoc basis as development requests are made. The wetlands inventory will be constantly subject to change as information concerning wetlands becomes available.

LOCAL GOVERNMENT CO-ORDINATION Under this section cities and counties are required to provide DSL notice of certain land use actions within wetland areas and the DSL is required to respond within 30 days. Local government will have to delay or condition

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**High Seas Slaughter Update:
NMFS Sting Operation Nets
Results...by Onno Husing**

On January 28, 1989 the National Marine Fisheries Service (NMFS) enforcement division conducted a sting operation in Seattle. According to NMFS, two individuals, a Japanese national and an American, tried to sell 24 MILLION POUNDS of immature salmon caught during high seas squid driftnet fisheries to undercover agents. That's worth an estimated 46 MILLION DOLLARS! In addition, many other cases are pending in Seattle and in California. Like all law enforcement, those caught in such activity usually only represent a fraction of the actual violations. However, even if this effort does not represent the tip of the iceberg, the scale of the tip is appalling!

In addition, recently a Taiwanese high seas driftnet vessel was found floating in the Pacific by the Coast Guard about 450 miles off the coast of Oregon. Apparently there had been a fire on board. The Coast Guard estimates the vessel had been floating out there for about eight months. On board they found one dead fisherman. In the hold they found approximately 2,000 badly decomposed immature salmon. Again, these are the deadly by products of the high seas squid fishery. Efforts to get the Taiwanese government to respond to this "incident" have met with silence.

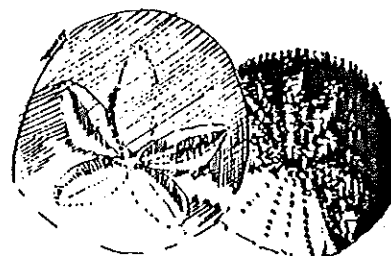
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approval of an application until an applicant: (1) gets a permit from DSL, (2) gets notice from DSL that a permit is not required, or, (3) receives notice that subsequent activities may require a permit.

WETLANDS CONSERVATION PLAN (WCP) Once a WCP has been adopted DSL will be required to rely on land use "needs" spelled out in the acknowledged plan. The WCP will be required to include local measures for "related adjacent uplands" particularly for riparian areas and development sites. In addition, the WCP will be presumed to satisfy Goals 5 and 17 for areas and activities covered by the plan. Under the new wetlands legislation Goal 16 remains the standard for estuary plans and amendments. With respect to WCP approval, appeals, and amendments, WCP planning will be triggered by a local government request to DSL. DSL approval conditioned on adoption of local measures and such measures are to be adopted through the plan amendment process. Under the plan locals are required to notify DSL of post-acknowledgment amendments and DSL may revoke or modify approval if comprehensive plan changes are made.

GOAL COMPLIANCE Goal 5 (the natural resources goal) remains in force. Wetland Plans are "deemed to comply" with Goals 5/17 for those "areas, uses, and activities" regulated by the plan. Therefore, the opportunity remains to challenge a WCP due to the failure to comply with Goal 5 for conflicting uses not addressed by the WCP. In addition, coastal shorelands are not considered part of the estuary plans except for shoreland parts of estuary development sites. Goal 16 remains the standard for plan amendments.

The remaining details of the wetlands package include the agricultural exemption and the section of the bill that treats acknowledged estuary plans. **A hearing is scheduled for March 28th although the final details on a package of amendments has yet to be agreed upon by the Working Group.** Hopefully, in next week's Coastal Notes we will be able to outline some near final areas of this extremely important issue.



Quote of the Week:

After a number of anti-commercial fishing industry bills were introduced before the Legislature Representative Tom Hanlon (D-Astoria) noted on the floor of the House that the opening ceremonies for the day were conducted by a priest from St. Peter's Parish. Hanlon said:

"I would like to point out that St. Peter was a commercial fisherman and that he and his boss did a pretty good job at supplying consumers with fish".

Information Requested on Onshore Facilities

There is some discussion on the coast of possible actions by local governments relating to the onshore siting, construction and operation of facilities that might be generated from offshore oil and gas development as well as from mineral mining. Several coastal local governments in California have passed ordinances that either require voter approval of such onshore facilities or establish a moratorium.

In order to better understand what is involved with these types of actions, OCZMA has requested information from the University of Oregon Coastal Law Center on:

- A description of the causes and effects of those local responses, their legal mechanisms and particularly the use of either moratoria or required voter approval;
- How those local actions have fared in the state and federal legal systems (our understanding is that local actions have been upheld in both courts);
- The relationship in Oregon of similar actions with the state's planning requirements through local comprehensive plans, Goal 19, and with the Oregon Ocean Resources Management Task Force; and,
- The implications of local actions and the transfer of potential economic benefits (whatever they may or may not be) from offshore development to offshore processing, to other areas of the coast or to other states.

Information gained will be shared with Oregon's coastal local governments.

Just Introduced: Port Dredging Fund Proposed

At the request of the International Port of Coos Bay, Senate Bill 1064 has been introduced.

The bill would establish a general fund supported port dredging account and appropriates \$10 million for "paying the state or local share of dredging costs in the deepwater ports of this state when payment of such a state or local share is required by federal law or regulation."

The bill limits the state funds to dredging activities that are carried out in the harbors and channels of the Ports of Astoria, Coos Bay, Newport and Portland. Further, when those funds are used, the Economic Development Commission can impose a user fee on the port or on the private terminal operator within the port that benefit directly or operationally from the dredging.

RECREATIONAL BOATING SAFETY: NEW STANDARDS OF LIABILITY?

ORS 30.115 is known as the "guest passenger statute". For guests on recreational boats (and, incidentally airplanes), this statute means that in the event of injury or death aboard a boat, a guest can only recover damages from their host IF they can prove that the host was "grossly negligent" or that the injury was intentional. This "grossly negligent" standard of proof goes way beyond the normal "negligence" standard for most civil suits. Under the regular negligence doctrine, the "reasonable person under the circumstances" test is applied. In contrast, to pursue a claim under the "grossly negligent" standard requires the plaintiff to demonstrate showing of clearly outrageous behavior. This standard rules out compensation in a great number of boating accidents.

The Senate Judiciary Committee is currently re-evaluating the "guest passenger" statute. The Committee is

contemplating whether to change the standard from "gross" negligence or intoxication to simple negligence. Like many hearing on this subject matter, young widows are trotted out to tell gruesome tales of uncompensation and scoundrels getting off scot-free. Their plight is compelling. However, this debate (like all discussions involving the role of litigation in our society) goes beyond the suffering of particular individuals and encompasses broader social themes of whether all injuries or problems can or should be resolved in court. Would such a change lead to a proliferation of frivolous lawsuits? Would leaving the guest passenger statute intact deny well deserved victims just compensation? Or, should some other resolution to the issue be pursued such as a compensation board that would remove these disputes from court (those disputes that don't entail gross negligence or intoxication) be more appropriate? Stay tuned for updates.