



Oregon

# COASTAL NOTES

March 3, 1989

## *A Strong and Clear Role For Local Governments...*

### **In Decisions On Ocean Resource Policies and Projects**

Staff of the Ocean Resources Management Task Force has recently released a paper on the subject of *Ocean Governance and Resource Management*—one of the first plan elements to be considered by the Task Force.

OCZMA (Jay Rasmussen, Director) is a statutory and active member of the Task Force.

SB 630 requires the Task Force to prepare recommendations for a

Council would provide a discussion and resolution forum, advise the Governor on ocean policy issues, advise the State Land Board and state agencies, establish project review panels and committees, and coordinate with adjacent states.

One cited plan policy states: "Local governments shall have a strong and clear role in state decisions on ocean

through membership on the appropriate Project Review Panel.

•by legislation that creates the Advisory Council, creation of a special local government consultation procedure that requires the Governor to formally request the views, recommendations, and comments of local governments on specific policies and projects which are likely to have onshore or nearshore effects. Coordinated counties and cities responses to the request require a formal response from the Governor. And if the Governor or a state agency rejects the recommendation of the local government, it must provide a written justification to the local government before a decision is officially adopted.

***Oregon's coastal local governments are fundamental participants in the Oregon Ocean Resources Management Program. New and better mechanisms are required to ensure their full participation.***

permanent ocean resources planning and management process that includes options for an advisory body to succeed the Task Force, advisory committees, the role of the Governor, state and federal agencies, local governments, citizens and other interested parties.

The findings and plan policies, approved in concept by the Task Force at its recent meeting in Coos Bay, calls for the creation of an Ocean Policy Advisory Council administered from the Office of the Governor. The

resource use policies and projects." Suggested needed actions to accomplish this policy include:

•local government representation on the proposed Ocean Policy Advisory Council by the Oregon Coastal Zone Management Association, Inc. a county commissioner or elected city official from a coastal jurisdiction, and a representative of a coastal port district.

•participation of affected coastal communities in specific project review

The Task Force is scheduled to meet in Newport on March 10 and consider, among other items, the management of living marine resources.

#### **In this Issue:**

- Senate Bill 41
- Wetlands
- Driftnet Controversy Update

## WETLANDS MANAGEMENT REFORM...by Onno Husing, Legislative Fellow

This third article on wetlands focuses on current efforts to create comprehensive wetlands legislation. Due to the number of substantive issues under consideration only a portion of the package will be reviewed in this issue of *Coastal Notes*. An informational hearing on wetlands is scheduled for Monday, March 6 at 1:30 pm before a joint meeting of House Water Policy and the Environment and Energy Committees.

With respect to wetlands, the Division of State Lands (DSL) stands at the center of the Oregon's bureaucratic structure. DSL's mission is to assist the State Land Board which is made up of the Governor, the Secretary of State, and the State Treasurer. This unique arrangement in Oregon state government was established under the Oregon Constitution. The State Land Board's Constitutional mandate is twofold: (1) manage the state lands in a manner that best represents the state's interests, and (2) make as much money as possible for the state's common school fund. For the management of private wetlands, however, this twin objective provides little direction to the State Land Board and DSL. Rather, the Removal and Fill Act—the state's version of the federal 404 program—establishes the ground rules for state action on wetlands.

However, as previous articles in *Coastal Notes* demonstrated, the current management regime under the Removal/Fill Law has led to a number of acrimonious encounters among developers, local planners, and state agencies. The one thing everyone can agree on is that we don't need anymore Botts Marshes. How to accomplish that goal in a manner which makes developers, environmentalists, local government, state government, and different federal agencies happy is another matter. However, thanks to the

herculean efforts of a number of individuals participating in a Wetlands Working Group sponsored by DSL, the state may be inching closer to (although some may interpret this as lurching toward) taming this unruly beast.

Perhaps the most important and elementary measure receiving wide support is the proposal to establish a statewide wetlands inventory. The inventory, which builds upon the national wetlands inventory, would provide a means to take a first crack at identifying wetlands BEFORE development proposals are initiated. The way things operate now wetlands are identified on an ad hoc basis following a request that bubbles up from the local level.

Therefore, the benefit of a state wetlands inventory is that it provides an early warning system to developers and planners. They can consult the wetlands inventory map and see if the property contains or constitutes what the state tentatively considers wetlands. There will be "red flags" all over the inventory map letting people know that the map is not conclusive. Keep in mind that just because their property is not classified as a wetland on the map doesn't mean they are home free. However, with the wetlands inventory the applicant at least will have an up front indication of where they stand. Presumably, this will lessen uncertainty for developers and planners.

Building a credible wetlands inventory will take some additional state resources. Fortunately, the Governor's office has indicated that they are solidly behind this effort and therefore individuals are feeling confident that the right people will be on the job to undertake this sensitive task.

What are some of the benefits

gained from such an inventory? Developers benefit by reducing uncertainty in the development process. Local government is helped by knowing what areas of their community are problematic. As such, they can plan more realistically and efficiently in advance of conflict. In addition, the environmental community gains by having a systematic process where important wetlands are identified instead of a procedure that relies principally on government taking enforcement actions on an ad hoc basis.

Another central feature of the draft wetlands bill is the "general authorization" section. This measure proposes to streamline the development process by eliminating the need for lengthy review of certain "minor" projects. What constitutes a minor project would be determined later by rule by DSL. Under such an arrangement, those projects qualifying for the "general authorization" will not have to undergo the "individual permit" process. Hopefully, this measure will make the system more efficient and will allow scarce governmental resources to be diverted to more pressing needs.

Next week *Coastal Notes* will take on some of the issues in the comprehensive wetlands draft bill that remain unresolved. Among these include:

- What kind of agricultural exemption provision will emerge;
- What kind of review will DSL undertake for LCDC acknowledged estuary plans; and,
- What kind of notice provision will be used to ensure appropriate and timely review by DSL of locally-generated development proposals that effect wetlands.

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**FISH WARS REVISITED: SB 41 RIDES AGAIN...***by Onno Husing, Legislative Fellow*

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The time crept near on the work session for Senate Bill 41 before the Senate Agriculture and Natural Resources Committee. Countless phone calls meetings, briefings, rendezvous and circulating draft amendments had been initiated. In addition, direct talks among people that rarely negotiate preceded this highly anticipated event.

Would a fisheries enhancement package emerge and go to the Ways and Means Committee that could balance what are often conflicting interests and foster a new era of cooperation? Or, would the enhancement package go down in flames for the time being because old, deep-seated mistrusts simply couldn't be overcome?

It was a beautiful sunny day that afternoon as everyone congregated in and outside Hearing Room C. The hearing started a little late, which added to the mounting tension. Then the hearing began. What happened in the hearing for recreational and commercial fishermen, and others was like open heart surgery without anesthesia in public as some senators tore into representatives of those groups. For two or three hours efforts to open old wounds came under the heading of "primal scream" therapy. My rose colored glasses quickly fell off.

What I also saw were some stirring profiles in courage, as representatives of different interest groups truly acted like statesmen in the name of compromise. These individuals took enormous risks at alienating their own organizations and friends on behalf of the resource. The outcome? The 41 package limped out of committee and is on its way to the Ways and Means Committee. The vote? Yes votes: **Bill Bradbury** (D, Bandon), **John Brenneman** (R, Newport), **Jim Bunn** (R, Dayton), and

**Bob Kintigh** (R, Springfield) and **Dick Springer** (D, Portland), Chair. No votes: **Wayne Fawbush** (D, Hood River) and **Grattan Kerans** (D, Eugene).

In addition to the final vote there were two other "sub votes" prior to action on the overall package. The first vote dealt with an amendment proposing to exclude private aquaculture from contributing fees. That measure was defeated. The second vote concerned whether the proposed enhancement board would operate on a simple majority or on a "super-majority" basis. The amendment supported having a simple majority and that amendment passed.

This second vote on the composition and voting structure of the enhancement board dominated the hearing. The issue provided an opportunity for some to capitalize on the mistrust existing between the user groups. At the center of this controversy is the preference of the commercial fishermen preferring a "super majority vote", a five out of seven voting arrangement before the enhancement board could approve enhancement projects. Representatives from the commercial fishing industry believed such a measure would alleviate some of their fears that they would get steamrolled on the enhancement board.

On the other hand, representatives of the recreational fishery generally preferred a simple majority vote of four out of seven. They favored this proposal because they feared the commercial folks could stall any projects if a "super-majority" vote process prevailed. "Gridlock" became the operative phrase of the day.

These different points of view on this subject seem to reflect either the pessimistic or optimistic nature of the holder. The optimists believed sports and commercial fishing representatives

would be crazy to engage in gridlock because the pressure to come to terms and get projects underway would be enormous.

Conversely, representing the pessimistic view, **Senator Grattan Kerans** stated, "I don't know, I've been around here long enough to know that in some cases, some would let their own house burn down just so long as their neighbors' house burned down with it".

As mentioned previously, the simple majority won the day. The optimists swallowed their pride because they continued to believe that it would be political suicide for anyone to sit on the money in blind pursuit of principle. On the other hand, pessimists left the hearing feeling somewhat relieved thinking they reduced the potential for gridlock by adjusting the voting structure.

As a result of this preoccupation with the voting structure of the enhancement board, the standards found elsewhere in SB 41 that would govern the discretion of the board and therefore place the voting procedure of the board in its full context were overshadowed. Those standards would attempt to confine the board's latitude by directing the board to apportion the projects based on the economic contribution of the user groups. This means simply that if recreational fishermen put in 80%, then 80% of the money spent has to go to projects which meet the needs of the recreational fishery. Easier said than done? Maybe. The hearing also was sprinkled with plenty of lofty remonstrances about the perils of decentralized government reminiscent of old battles over STEP.

In the end there was plenty of shell shock to go around. Since the hearing, however, I've heard a great many people say they are still committed to getting a fisheries enhancement bill.

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## And Introducing...by Onno Husing, Legislative Assistant

### *The Following Bills Were Introduced to the Oregon Legislature:*

•**SB 671** (sponsored by Senators Dukes, Bradbury, Brenneman, Brockman, Cease, Houck, Kennemer, Kerans, Kintigh, McCoy, Otto, Timms; Representatives Hanlon, Hanneman, Rijken, Schroeder, Whitty— at the request of the Oregon Charterboat Association, Columbia River Sport Fishing Association) prescribes a licensing system for vessels used to carry passengers for hire for recreational purposes in certain waters of the Pacific Ocean.

•**SB 687** (sponsored by Senators Grensky, Brockman, Bunn, Shoemaker) would authorize persons who have permanent total disability determined under Worker's Compensation Law to obtain a disabled persons' angling license.

•**SB 688** (sponsored by Senators Grensky, Brockman, Bunn, Kintigh, Timms) requires ratification by a majority of cities and a majority of counties before amendments to land use goals take effect.

•**SB 700** (sponsored by Senators Thorne, Fawbush, Houck, Otto, Phillips, Timms; Representatives Agrons, Baum, Gilmour, D.E. Jones, Norris; Senator Bradbury) would authorize agricultural commodity commissions to make political contributions to protect the interests of a commodity industry.

•**SB 709** (sponsored by Senator Phillips; Representatives Agrons, Baum, Repine, Rijken, Schroeder— at the request of John Thomas) requires the State Department of Agriculture to establish a definition and standard of identity for lowfat unpasteurized milk.

•**SB 747** (sponsored by Senators Bunn, Brenneman; Representatives Bunn, Hanneman) would remove Walker Creek from the Oregon Scenic Waterways System.

•**SB 748** (sponsored by Senators Kintigh, Brenneman, Bunn, Kennemer, Timms; Representatives Campbell, Edmunson, Hayden, D.E. Jones, Roberts, Schroeder, Shiprack— at the request of the Oregon Small Woodlots Associa-

tion) authorizes individuals owning certain forest parcels to construct and maintain residences on the land, notwithstanding land use laws and requires such owners to maintain a fuel-free fire break around all structures and access for fire-fighting vehicles.

•**HB 2243** (filed at the request of the Division of State Lands) allows the DSL to recover the costs to locate abandoned property.

•**HB 2968** (sponsored by Representatives Minnis, Roberts, Wehage) permits owners of real property to defer connection to sewer treatment works for up to ten years for onsite operational sewage treatment disposal systems and prohibits sewer fees during deferral period.

•**HB 2970** (sponsored by Representatives Minnis, Roberts) prohibits municipalities from assessing full fees for sewage treatment works for which construction was previously financed with federal moneys. In addition, this measure modifies the assessment fee for real property owners within a local improvement district responsible for receiving federal moneys for construc-

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## High Seas Driftnets — Update

This week copies of a brochure from SEACOPS and a copy of my editorial on highseas driftnets from last week's *Coastal Notes* were placed on each Legislator's floor desk.

In addition, **Senator Brenneman** brought up the issue on the Senate floor and **Representative Paul Hanneman** did the same on the House floor. **Representative Hanneman** also requested that I write a Joint Memorial for the Oregon Legislature that exhorts the United States Congress to enact a host of powerful sanctions against these nations if they continue those unregulated high seas fisheries. The draft is now at the Legislative Counsel's office and copies will be available soon. We are getting strong and positive feedback.

The Northwest Steelheaders organization is ordering videotapes that graphically show this deadly business at work. The Steelheaders are also promising to start a public awareness campaign. East Coast chapters of SEACOPS are on the drawing board. Other editorials are planned. Things are happening.

I have been reminded, however, that these high seas DRIFTNET fisheries are NOT the functional equivalent of some of our own local and highly regulated gillnet fisheries. I agree. These local gillnet operations are carefully controlled and should not be confused with the high seas driftnet business that was the target of my editorial.

.. by Onno Husing, Legislative Fellow

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tion of treatment works.

•**HB 2983** (sponsored by Representatives Hanlon, Burton, Whitty) declares that it is a state policy to encourage ports to enter agreements with other ports for cooperative action as a means of avoiding duplication of activity and increasing efficiency of port programs for international trade. In addition, the bill requires the Oregon Port Planning and Development Advisory Committee to determine the effect on deepwater ports in this state of port activities conducted at Tongue Point and extends the life of the advisory committee until December 31, 1995.

•**HB 2984** (sponsored by Representative Hanlon) prohibits operation of a hatchery for sturgeon without a permit issued by the State Fish and Wildlife Commission and prohibits the commission from issuing a permit unless the hatchery will be operated only for scientific and educational purposes.

•**HB 2985** (sponsored by Representative Hanlon) prohibits the taking of sturgeon eggs for artificial propagation without a permit from the State Fish and Wildlife Commission and requires the commission to issue permits only for educational and scientific purposes.

•**HB 2986** (sponsored by Representative Hanlon, Senator Dukes) requires the marking of salmon or sturgeon that have not been taken lawfully by commercial fishing activities and prohibits the sale of marked fish.

•**HB 3080** (sponsored by Representatives Dwyer, Clark, Dominy, Edmunson, Hugo, Mannix, McTeague, Repine, Roberts; Senators Cease, Grensky, Kerans) creates a Leaking Underground Storage Tank Account in the State Treasury. The bill would

appropriate moneys in an account to the Department of Environmental Quality for clean up of spills from leaking underground gas storage tanks and increases the motor vehicle fuel tax and use fuel by one percent per gallon and dedicates the money to an account. In addition, the bill would limit the liability of independent service station owners for leaks from underground storage tanks. See last week's issue of Coastal Notes for a discussion of this issue.

•**HB 3106** (sponsored by Representatives Bunn, Hanneman; Senators Brenneman, Bunn) removes Walker Creek from the Oregon Scenic Waterways System.

•**HB 3123** (sponsored by Representative McTeague, Representative Dwyer) would establish a program administered by the State Fish and Wildlife Commission to provide access for recreational angling activities, establishes an Angling Access Account in the State Wildlife Fund and appropriates money to the commission for the purposes of the act and appropriates lottery proceeds to fund the program.

**Legislative Quote of the Week:**

On the floor of the Senate during a discussion concerning the proposal to raise insurance rates **President Kitzhaber** agreed with a motion to kill the bill in saying, "Yeah, I think we've already been adequately screwed."

**OCZMA MEETING AGENDA**

Dinner \* [informal]

Thursday Evening, March 9, 1989  
6:30 p.m.-8:30 p.m.

Black Angus, 220 Commercial Street S.E., Salem

**Association Meeting**

Friday, March 10, 1989

8:30 a.m.—1:30 a.m.

Room 434, Oregon State Capitol, Salem

Administrative Report—Georgia York, OCZMA

- Approval of January Association Minutes
- Approval of January and February Treasurer's Reports
- Upcoming Legislative Committee Visit to the Coast
- Next Meeting Date and Place
- Association Membership
- Establishment of 1989-90 Membership Dues

Director's Report—Jay L. Rasmussen, OCZMA

- Governance and Local Government—Ocean Resources Management Task Force
- Salmon Fishery Issues and Activities
- I-5 Relocation—RESOLUTION
- Division of State Lands Budget and OCZMA
- Department of Agriculture Budget and OCZMA
- Other

Legislative Report—Onno Husing, Legislative Fellow

- Highseas Driftnets
- Activities Update
- Other

Land Use & Economic Development Report—Paul Benson, OCZMA

- Flow Lane Monitoring Program Port of Bandon and Port of Bay City
- Tillamook Bay Restoration Concept
- Maintenance Dredging Benefits
- Garibaldi Boat Basin Expansion Project
- Secondary Lands
- Other

Wetland Issues—Onno Husing, OCZMA Fellow, discussion leader; Ken Bierly, DSL; Bob Cortright, DLCD

Coastal Economic Model—Hans Radtke and Shannon Davis, Project Consultants

LUNCH \* [with membership activities reports] Room 50, Oregon State Capitol

\*Coastal legislators invited if their busy schedules allow.