

OREGON COASTAL Notes

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Agency rulemaking review proposal clears House panel

A House measure that would subject agency rulemaking to legislative oversight will go to the full Legislative Rules and Reorganization Committee for approval — but in a substantially revised form — despite objections from measure proponents who believe the House Rules Subcommittee blunted their intent.

A visibly upset Bob Carpenter, who served on Secretary of State Phil Keisling's Oregon Administrative Rule Advisory Committee, watched today as committee members quizzed Legislative Counsel Committee representative Dave Heynderickx about the constitutional implications of HJR 22, jumping up during the frequent recesses called during the work session on the measure to press committee members to strengthen the legislature's oversight role.

"We had a good bill here," he told another measure proponent sitting nearby. "What they're trying to decide now is whether to screw it up or whether to screw it up royally."

The revised version of the resolution would require the legislature to appoint a joint administrative rule oversight committee with the power to nullify agency rules once adopted. The measure requires a member of the legislature to request a review of an offending rule within six months of its adoption before the committee can suspend its operation. Once suspended, the rule would be ineffective unless the full legislature adopted a joint resolution approving it.

In prior testimony before the House Rules Subcommittee, Carpenter told committee members that the oversight body should review rules at the behest of aggrieved individuals and businesses, not necessarily just legislators, and that the review should take place before the agency has promulgated a final rule. The original bill draft would have prohibited state agencies from implementing and enforcing their proposed rules until after they had submitted them to the committee for approval.

But Heynderickx told the committee that reviewing proposed rules would force the committee to constantly revise its legal analyses to take account of shifts in their form. Once the agency has adopted a rule, Heynderickx said, the committee would have something final to work with and could approve or reject the rule using its own criteria.

Rep. Lonnie Roberts (D-Portland) said he would favor a 90-day period before the rule could take effect so that the oversight committee could review it, but Heynderickx said that agencies generally decide when they want a rule to take effect, in part because this deadline determines when an agency must provide notice to the public and seek comment on proposed rules. The oversight committee would have the power to review a final rule immediately after its adoption, Heynderickx added, which is usually well before it takes effect.

The resolution passed over the objections of Rep. Dave McTeague (D-Milwaukie), who said he understood why agency rulemaking might benefit from some oversight, but that he thought giving the power to suspend agency rules to a small joint committee would "invite mischief."

"I'm concerned that we may be giving too much power to this secondary committee," Rep. McTeague said. "[There should be] a standard written into the constitution — you want to give clear constitutional direction to this body."

The legislature often gives difficult and controversial jobs to agencies, partly because they have the necessary expertise and partly because the legislature itself cannot always agree on how it should implement a policy it decides on, Rep. McTeague said. Giving the power to suspend controversial rules might in effect subvert legislative intent by stripping agencies of the ability to carry out broad legislative mandates and giving policy-making authority to a small subset of the Legisla-

tive Assembly, he added.

Rep. McTeague suggested that one remedy to this dilemma might be to require the oversight committee to review rules only to determine whether they fall within the scope and intent of the legislation that called for their promulgation. But his attempt to amend the resolution to add language restricting the extent of review failed when Rep. Cedric Hayden (R-Lyons) said the committee would probably have to rely on a referee to determine what constituted legislative intent and whether the proposed rules fell within the scope of that intent.

The committee has scheduled no further action on House Bill 2262, a measure heard in tandem with HJR 22 in recent weeks, pending later action on other measures dealing with the adoption of legislative rules.

House subcommittee seeks to bind agencies to use 'sound' science

A proposal requiring certain state agencies to use the "best verifiable" scientific evidence and to conduct contested case hearings when promulgating rules or listing endangered species passed the House Subcommittee on Agriculture and headed for the full House Natural Resources Committee Friday.

The measure, aimed primarily at the Department of Fish and Wildlife, the Department of Environmental Quality and the Forestry Department, passed with only Rep. Marilyn Dell (D-McMinnville) voting no.

As amended, House Bill 2848 cuts back substantially its broad command that agencies use a tighter standard of scientific evidence in nearly all their rulemaking proceedings and focuses on agency actions dealing with endangered species listings.

Forestry board delays riparian rules

Citing a need to experiment with a proposed riparian-area protection regime before applying it to timber harvesting statewide, the Oregon Board of Forestry Wednesday decided not to adopt rules implementing the plan until September, pending a Forestry Department report on how it affects monitoring sites around the state.

State Forester Jim Brown said the board accepted the recommendation of departmental staff and Anne Squier, the governor's natural resources specialist, to look at the "real world" effects of the proposed rules on 37 sites where the department has already applied the new restrictions and to collect additional data from about a dozen more sites in eastern Oregon and the Klamath Basin. The department also plans to study the economic impact of the proposed rules on landowners during the same period, Brown said.

The delay means that existing riparian management rules will continue to govern timber harvesting on private land until the Department of Forestry assesses the effects of the proposed regime, Forest Practices Section Director Charlie Stone said.

Stone said the proposed rules would generally extend the area away from the stream bank to which existing riparian-area management restrictions apply to about 100 ft. and would require landowners to leave more wood mass and other vegetation along stream banks to improve water temperatures and turbidity.

Existing rules for Class I streams — those

important for fish propagation and domestic water use — divide the area along the stream bank into two general categories: the riparian area itself, to which strict harvest regulations apply; and a riparian management area (RMA) three times the width of the stream channel in which landowners may conduct more intensive harvest activity, Stone said. The rules now require harvesters to leave all standing snags and downed wood, preserve 75 percent of the stream bank shading that existed before harvest and maintain at least a 50 percent canopy cover over the riparian area itself, Stone said. In the RMA landowners must leave only non-merchantable timber and nine trees per acre — or a total of 10 square feet of basal area — to meet existing regulations, he added.

The draft rules presented to the board last week capped a nearly two-year long effort by the department to establish a stream-protection program that would allow the restoration and enhancement of declining runs of anadromous fish species — declines some observers have blamed on stream-side logging practices.

But the draft rules do not represent a consensus among affected interest groups. Stone said some environmental and fisheries interests have held out for a management regime that would prohibit all timber harvesting in a band between 100 and 300 ft. wide along each stream bank. Stone said he believes this proposal would unfairly burden landowners and would not significantly improve fish habitat.

"Leaving the stream alone won't produce the necessary material," Stone said.

Because past logging practices left little woody debris in or along streams, he explained, there is insufficient vegetation to allow natural regeneration in riparian areas. The vegetation that does exist is generally hardwoods, he added — restoring conifers to stream banks generally requires some management activity or natural disturbances that open up sufficient habitat.

Stone said the board's delay in adopting final rules will give the various interest groups a chance to reach some agreement.

"Even if we don't get better answers to the questions we have about management alternatives, if we get people thinking about the same sites and posing questions to each other we can hopefully bring them closer together on this issue," Stone said.

Brown said the board has heard from some groups that have tried to reach some consensus on the issue, including a panel of Coquille-area fishing and timber interests, who submitted a model management plan for the Coquille River basin (see related story, page 3). Brown said the department summarized the Coquille proposal at the board meeting and that it reflected "pretty much in line with where the board was heading" on this issue.

The board will wait to hear from the department this September before taking any additional public comment or deciding on a course of action, Brown said.

Fish and Wildlife sees bleak prospects for salmon harvest

A severe depression in wild stocks of coastal coho salmon and declining abundances of other salmon species may force substantial cutbacks in season length and catch quota for both commercial and recreational fishermen this year, Department of Fish and Wildlife (ODFW) biologists told salmon harvesters at a meeting Tuesday.

Commercial harvesters may be facing a zero catch quota on all coho south of Cape Falcon this season, while sport fishermen may have to content themselves with a total coho catch of between 80,000 and 100,000 fish — half of last year's quota, biologists said. Other limited opportunities may exist for commercial fishing in the area between Florence and Cape Arago and in the Klamath Management Zone (KMZ) in the late summer and early fall, they added.

The somber cast to the annual Oregon Coastal Zone Management Association Salmon Users Group meeting in Newport last week was apparent in ODFW's most optimistic predictions for this season, which called for a slightly higher commercial catch quota on chinook — slightly higher, that is, than last year's season, which saw only 50 percent of the average historic harvest. Even this quota may change if it endangers the threatened Snake River fall chinook or if estimates of Klamath and California chinook stocks turn out to be inaccurate, biologists warned.

Concern for the accuracy of the estimates that serve as the basis for the quotas dominated much of the discussion at the meeting, as biologists noted that sampling in coastal streams revealed lower numbers of returning coho than standard index counts predicted.

Preliminary estimates of abundance set the likely number of wild coho between 184,000 and 265,000, but the sampling results convinced ODFW to use the lower estimate in setting quotas, agency representative Burnie Bohn said. Together with hatchery-bred coho numbering about 484,000 and additions from Salmon and Trout Enhancement Program and California stocks, the total number of coho off the Oregon coast is probably about 677,000, or about 28,000 fewer fish than last season, Bohn said.

ODFW biologist Don McIsaac said several proposals have emerged to ensure that harvesters catch relatively fewer wild coho, including a proposal to mark all hatchery raised coho by clipping their adipose fin. This proposal, however, could disrupt hatchery man-

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Parks director blames upkeep costs for day-use fee hike

Increasing the day-use access fee for certain state parks does not violate Oregon law guaranteeing "free and uninterrupted" access to state beaches, as some coastal area residents have charged, Oregon Parks and Recreation Department Director Bob Meinen told Coastal Caucus members Wednesday.

Meinen, referring to a 1992 attorney general's opinion on the subject, said that the parks department may charge fees for access to facilities it provides or maintains, so long as the fees do not impede access to the beach itself. Meinen said the department settled on the fee increase as a way of getting day users of the parks to contribute to needed maintenance that, until now, only recreational vehicle and campground fees have paid for.

But Meinen's distinction did not completely satisfy Rep. Jim Whitty (D-Coos Bay), who criticized the department for failing to adequately explain why it is charging an access fee and what facilities the fee will cover.

"We [coastal legislators] catch hell for our decisions," he told Meinen. "We need to have answers—I don't like to give constituents an 'uhm, ah' kind of answer, which we have to do now."

Meinen acknowledged that the department has not been entirely successful in communicating the seriousness of its budgetary shortfalls to either the public or the legislature, but said that it has printed detailed brochures explaining its fee policies and is trying to meet with the public to explain its fiscal needs.

"I think the park service has done a good job in maintenance, but perhaps not as good a job at telling [the legislature] what goes on behind the scenes," Meinen said. He added that the department has deferred millions of dollars of needed maintenance for so long that it may have to shut some facilities down because the Department of Environmental Quality has declared them unsafe for people to use.

Rep. Whitty also questioned how the department could control access to its facilities if beach users, who would not pay a fee for beach access, could simply "get in through the back door," walking onto state park facilities from the beach.

Meinen said the department did not intend to restrict all access to park facilities only to those who paid a fee. Rather, he said, the fee is intended to apply primarily to motor vehicle access. In certain areas, such as the Sunset Beach park Rep. Whitty used as an example, controlling motor vehicle access may require

more attention, Meinen said, but controlling access to most park areas will not be a significant problem.

Meinen added that the fee, which will apply initially to nine of 66 state park facilities, will generate about \$400,000 in revenue for the department. Expanding the fee to 26 park areas around the state could generate as much as \$1.5 million, he said.

The Caucus also heard a presentation from three members of the Coquille Watershed Fisheries and Timber Coalition, who explained their proposal for cooperative riparian protection along the Coquille River. The plan, which the coalition submitted to the Board of Forestry for consideration in its riparian rulemaking process (see related story, page 2), sets out a required regime for riparian protection and restoration during and after stream-side logging operations. The plan gives responsibility to the riparian landowner to abide by its requirements, but subjects the landowner to the supervision of Forestry Department forest practices officers.

Oregon State University marine extension agent Paul Heikkila told the Caucus that landowners, timber harvesters and fishery resource users had begun the plan because they thought the Forestry Department's riparian

rulemaking process had grown at a chaotic pace and that it was time to look at riparian management from a non-agency perspective.

"We think this is a good proposal, particularly for south coast fisheries," Heikkila said. "With this type of activity, instead of sitting there arguing about the last fish and the last tree we can start a cooperative process in motion."

Heikkila said the heart of the proposal, embodied in House Bill 2614, is a series of tax credits targeted toward relieving the landowner of the sole burden of protecting riparian resources and a provision calling for the development of site-specific management plans for individual riparian areas.

Coos Head Lumber and Plywood Co. Chief Forester Mike Groben concurred.

"We need to look at how to enhance the stream and propose a way to finance it," Groben said. "There should be some flexibility there that isn't there under the present regulations."

Groben added that he found landowners generally enthusiastic about the plan.

"We recognize now as timber owners that we affect fisheries much more than we did 10 years ago," Groben said. "It's not out intention, in order to get the trees, to destroy the fisheries."

Governor calls for \$10 million program to restore endangered salmon fisheries

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agement efforts all along the west coast, which rely on that mark to identify fish tagged for creel surveys, McIsaac said.

The meeting served as a prelude to this week's meeting of the Pacific Fishery Management Council (PFMC) in San Francisco, where preliminary fishing quotas for the three west coast states will be decided. Final quotas will await an April 5-9 PFMC meeting in Portland. Oregon biologists anticipate that the PFMC might further reduce the harvest quota they set for coho out of concern for wild stocks.

In other developments, Bohn noted that Governor Barbara Roberts has submitted a \$10 million budget request to the legislature for salmon restoration. The restoration program will distribute funds to nine state agencies with jurisdiction over activities in salmon habitat and will focus its initial

efforts on two pilot watersheds: the Grande Ronde in the Willowa and Union county area of eastern Oregon and the Coquille and Rogue River basins along the south coast.

As part of its role in the project, ODFW has begun drafting a "Blueprint for Restoration," which will consist of an 18-month-long action plan for the agency, which has overall coordination responsibilities for the restoration project, and will include provisions for cooperative efforts with California and Washington.

By way of contrast, cooperative efforts between Canadian and U.S. fish managers appear distant, as negotiators from both sides remain deadlocked in treaty talks that will allocate the coho harvest between the nations. Canadian officials have insisted on an allocation of 1.8 million coho, while U.S. officials want a cutback to 1.3 million.



The Oregon Coastal Zone Management Association, Inc. (OCZMA) is a voluntary association of coastal counties, cities, ports and soil & water conservation districts established to provide a forum for the resolution of issues of particular concern to the local governments of the coast and the people they represent.

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