



Oregon

COASTAL NOTES

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Calendar

The next regularly scheduled meeting of OCZMA will be held May 2-3, 1991, at the Association Center in Salem. Agenda items will include: legislative activities, Pacific whiting update, in-stream water rights, wetlands and other issues. Materials for the meeting will be sent a week prior to the meeting.

MMPA Memorial heard in House Water Policy

The National Marine Fisheries Service (NMFS) is considering a new plan to manage the regulation of incidental takings of marine mammals by commercial fishermen, according to an article in the March 1991 issue of the Seattle-based journal, *The Fishermen's News*.

Under current provisions, commercial fishermen are classified into three categories depending on the frequency of interaction with marine mammals. Class I and II fishermen pay \$30 a year for a decal which allows them to "take" a marine mammal which may be interfering with their fishing activities. Currently, fishermen are required to keep a log recording their interactions with marine mammals.

Under the new proposal, NMFS would have the authority to determine what the optimal sustainable population (OSP) of a marine mammal species is, and set allowable biological removal (ABR) quotas based on these population estimates. The ABR would be established for each of the various removal activities, including removal for subsistence, scientific research, public display, and commercial fishing.

The goal of the proposed plan is to determine what the actual populations of marine mammals are. The current census based in part on the fishermen's marine mammal logs have not been very successful in coming up with these population size numbers. It is estimated that the Marine Mammal Commission-driven study, which could include increased observer programs, could take 10-20 years.

Marine Mammal Concerns Intensify

Meanwhile, the conflict between marine mammals and commercial fishermen has not let up in recent years. Tom McAllister reported in his April 8th *Outdoors* column in the *Oregonian* that at least 80 California sea lions have chosen the tip of the east end boat basin in Astoria as a haul out area. McAllister said that if ramifications of a pursued endangered species status for some salmon runs on the Columbia River result in the closure of commercial, sport and Indian fishing, there will be a new battle between the Marine Mammal Protection Act and the Endangered Species Act.

House Joint Memorial 25, sponsored by Representative Walt Schroeder (R-Gold Beach), memorializes Congress to resolve the question of optimal sustainable populations for marine mammals and make this information available to the states, as well as turning over to the states' jurisdiction over the California sea lion.

In the first public hearing for this bill, on Tuesday, April 10th in the House Water Policy Committee, of which Rep. Schroeder is a member, Rep. Schroeder introduced a possible amendment to include harbor seals for consideration to be managed by the states. Rep. Schroeder said in his testimony that California sea lions and harbor seals consume annually an amount of salmon equal to the total annual commercial fish production, or 52,000 to 54,000 metric tons of fish. Rep. Schroeder also mentioned Herschel--the seal who didn't get everyone's approval when it staked out at Seattle's Ballard Locks and along with several other

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SMMPA Memorial heard

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seals ate 59% of the world's only urban steelhead run.

Representative Jackie Taylor (D-Astoria) also testified on behalf of the bill, saying that the seals and sea lions are another "user" of the Columbia River salmon, and the state should have jurisdiction over this. Rep. Taylor said that the balance has swung too far in favor of the marine mammals, and that her concern over this issue does stem from her commercial gillnet fisheries constituency.

Marine Mammal Specialist Addresses Committee

Jeff Curtis from the Oregon Department of Fish & Wildlife (ODFW) testified in favor of the provisions of the bill on behalf of the department, and brought with him Robin Brown, marine mammal specialist with ODFW. Curtis emphasized that sea lions are not the main cause of the decline in the salmon population; agriculture and forestry practices, as well as dams and harvesting have contributed to the decline.

The Committee pursued an informative dialogue with Brown, who said that this was his first visit before a legislative committee. Representative Bill Dwyer (D-Springfield) asked Brown what kinds of population statistics ODFW was currently gathering. Brown said that in conjunction with NMFS, ODFW has been conducting marine mammal surveys that show the populations of California sea lions and harbor seals are growing at a rate of about 6% per year. Although the Department has not formulated any optimal sustainable yield data, the annual take by fishermen is about 2% per year. Brown said that the California sea lion is an opportunistic feeder, eating mostly fish, up to 5% of their body weight per day. For a harbor seal this is about 10 lbs. of food per day, and for a California sea lion, this could be between 20-30 lbs per day. Curtis, who had worked on the Marine Mammal Protection Act while in Washington, D.C., commented that the term "Optimum Sustainable Population" was coined by politicians, not biologists.

Brown said that while in the past sea lions were killed for terrestrial animal feed, the existing culture does not see any value in their use as far as harvesting is concerned. Committee Chair, Representative Chuck Norris (R-Hermiston) remarked that they are protected because they are there, and asked Brown whether the sea lions were an important part of the marine environment. Brown replied that as a biologist, he views them as a part of a very complex system that has been in place for thousands of years. Brown also said that there is no evidence that seals and sea lions are detriments to anadromous fish. In addition to salmon, the marine mammals also

eat lampreys, of which very little is known except that they are a predator of salmon. The sentiment around the country at this time also reflects the belief that these mammals are a very important component of the marine ecosystem.

Rep. Schroeder asked Brown about the interaction between the California sea lion and the endangered stellar sea lion. Brown replied that the California sea lion population in Oregon are almost entirely male, and as breeding populations of this mammal have increased in California, the male populations in the north have also increased. In California there is some evidence that the more aggressive California sea lion has outcompeted the stellars. In Oregon, however, there is no overlap of the breeding season. The two mammal populations do share the same diet, but while the California sea lion populations have grown, the stellar populations have stayed low.

Rep. Schroeder commented that "the California sea lion might be the spotted owl of the stellar sea lion."

Representative Larry Sowa (D-Oregon City), who supported the measure, wanted to go on record that this bill was a wildlife issue, not a "protect-the-gillnet" issue as it has been characterized by some. Brown added that the gillnetters have the \$30 exemption from the MMPA, which does not include the stellar sea lion. However, beginning with non-lethal methods and progressing to lethal methods, a fisherman may remove a California sea lion or harbor seal. There is currently a study being done to estimate the mammal take on the Columbia River.

Compromise Possible for the Future

Brown concluded by saying that a huge community of people would like to see the marine mammals absolutely protected, and that the existing exemptions are a result of bargaining at the legislative process from coastal congressmen. Curtis also added that in the long run a trade-off might be a possibility. In the future, we might see increased management of the marine mammals in conjunction with increased habitat protection.

The Committee went into a work session on the bill although they did not yet move the bill out. Rep. Schroeder asked Paul Hanneman to testify. When Hanneman was a member of the Pacific Fishery Legislative Task Force (PFLTF), they passed a similar resolution about state take over of the marine mammal management program. Rep. Schroeder recommended adding language to reflect the PFLTF's involvement with the issue as another "whereas" clause in the bill. Rep. Dwyer is also in support of the bill and wants to expand the memorial to include the California and Washington delegation to let them know Oregon has a problem with this issue and to begin a dialogue with the other states.

—Mara Brown
Legislative Fellow

Salmon labeling bill has first public hearing

On Wednesday, April 10th, in the House Agriculture, Forestry and Natural Resources Committee, HB 2782 received its first public hearing.

The bill, sponsored by Representative Walt Schroeder (R-Gold Beach) and Senator Bill Bradbury (D-Bandon), on behalf of the Oregon Salmon Commission, would have labelling put on a salmon product to indicate the species, the country of origin, and whether the salmon was of natural origin, or aquaculture origin, or from a state hatchery, and whether the fish was fresh or frozen. The bill also establishes that intentional mislabeling of salmon species, country of origin, method of production and whether fresh or frozen shall be a Class B misdemeanor.

Rep. Schroeder introduced the measure and discussed the background of the bill and the process leading to the current language of the bill. Initially, labeling would have required "state of origin" in addition to country but this was deleted, as well as the requirement that the method of harvest be included on the label.

Proponents testifying on behalf of the bill were Paul Hanneman, Hanneman & Associates; Tom Robinson, Manager, Oregon Salmon Commission; and Jim Johnson, President, Independent Troll Fishermen. Basically, the bill arises in response to consumer demand for Oregon troll-caught salmon, and the desire to know what

kind of salmon they are buying. Also behind the bill, is the desire to capitalize adding value to Oregon's dwindling salmon resources, and to encourage the marketing of the product.

Jeff Curtis and Kay Brown of the Oregon Department of Fish & Wildlife (ODFW) testified in support of the bill. Curtis said that the move to change the fee assessment on commercial fisheries from poundage to ad valorem goes along with this, which hopefully will add to the value of the salmon.

Jack Monroe and Roger Martin both came out in opposition to the bill, on behalf of the Oregon retailers. Martin said that this was an overly simple solution to a very complex problem of salmon decline. This would be a law to help the commercial fishermen, but the retailer would have to carry out the provisions as well as enforce them.

The Oregon Department of Agriculture (ODA) estimated a small fiscal impact of the bill, mainly for the purposes of verification and identifying salmon. The impact would be \$19,605 and the addition of a .19 FTE (full time employee) for the 91-93 biennium and \$22,598 with a .25 FTE for the 93-95 biennium.

A work session scheduling was held until some agreement could be met between the proponents and the retailers.

—Mara Brown
Legislative Fellow

Bradbury holds dialogue with PCMC

On Tuesday, April 10th, Senator Bill Bradbury addressed the Pacific Fishery Management Council (PFMC) in Portland.

Sen. Bradbury spoke to the need for better habitat protection for Oregon's fishery resources, and urged the Council to establish a position of Habitat Manager, as part of the Council. Sen. Bradbury also urged the Council to appoint a biological committee to study habitat degradation and recommend changes to public and private activities affecting fish runs.

Sen. Bradbury said that current Council actions which are on the way to a policy of "No fishermen and no fish" are unacceptable. An officially adopted habitat study by the Council would strengthen his hand in state policy decisions about habitat, Bradbury said.

In conjunction with his broad habitat policy recommendations, Sen. Bradbury specifically opposed two of the options the Council is considering for the Klamath Management Zone. One would decrease the harvest from 52% to 45% of the estimated population

resources of Oregon Coast Natural (OCN) Coho. The other would extend the Klamath zone farther north.

After Sen. Bradbury's testimony, a 20-minute dialogue with the Council ensued. Several of the Council members spoke in agreement with Sen. Bradbury and expressed their frustration with lack of funding to create such a position, and asked the Senator for his assistance with funding through his contacts at the federal level.

Larry Six, Director, of the PFMC noted that he briefed the Pacific Fisheries Legislative Task Force (PFLTF) at their March meeting in San Diego. Sen. Bradbury said that this set a precedent for State-Council interaction, adding that quite a few of the PFLTF members would be very important resources for the Council states could work on the politics.

A comment from the Council said that the doors are open for habitat improvement, even though there is still a long way to go before we stop losing fish.

State agencies propose wetlands study to EPA

The Oregon natural resource agencies joined in a proposal to the Environmental Protection Agency (EPA) for the development of a state wetland conservation strategy and associated program enhancement for Oregon.

The primary objective of the proposal is to develop a four-phase statewide wetlands management strategy. Topics of program development include:

- Development of a state wetland functional assessment methodology;
- Funding assistance for preparation of local wetland conservation plans;
- Continuation of water quality standards development for wetlands;
- Water quality monitoring and data

collection from created and disturbed wetlands; and

- Development of public information materials for the state program.

Public information materials resulting from the fifth project goal include the following:

- Willamette Valley Wetland Plant Guide;
- Wetland Restoration Guide;
- Wetland Planning Guide for local governments;
- Oregon's Wetland Calendar; and
- Oregon's Wetland Conservation Strategy brochure.

The project will be coordinated by the Assistant Director for the Environmental Planning and Permits Section, and the Wetlands

Program Manager of the Oregon Division of State Lands (DSL).

Water quality projects will be carried out by the Oregon Department of Environmental Quality (DEQ), and fish and wildlife evaluations by the Oregon Department of Fish & Wildlife (ODFW).

The Oregon Department of Land Conservation and Development (DLCD) will assist in working with the local governments in developing wetlands conservation plans.

The proposed project completion is July 1992. For more information on this project contact the Division of State Lands

—Mara Brown
Legislative Fellow

DEQ removal fill permit fee bill passes out of Senate

The Senate Agriculture and Natural Resources Committee passed out a bill which would authorize the Oregon Department of Environmental Quality (DEQ) to assess a fee on sewage treatment permits, as well as permits for removal and fill projects. Under SB 330, DEQ is also authorized to charge an annual fee to point and nonpoint sources discharging pollutants into a stream and causing violation of water quality standards.

The fees assessed will cover the expenses related to review and decisions related to the permits, and could include legal expenses, expenses incurring from information evaluation, or independent contractor studies. The Environmental Quality Commission (EQC) may establish a fee schedule on permit applications under section 401 of the Federal Water Pollution Control Act, better known as the Clean Water Act, based on the relevant

costs to the Department.

DEQ introduced amendments at the work session, which deleted language which would have allowed the Department to deny section 401 permits on the basis of considerations of water quality impacts caused by the project pursuant to the reauthorization of the Clean Water Act.

While some question was raised as to how DEQ would assess nonpoint source fees, the Committee passed the bill out. Senators John Brenneman (R-Newport) and Eugene Timms (R-Burns) were excused; Senators Tricia Smith (D-Salem), Dick Springer (D-Portland), Shirley Gold (D-Portland) and Joyce Cohen (D-Lake Oswego) voted yes; Senator Bob Kintigh (R-Springfield) voted no.

—Mara Brown
Legislative Fellow

Senate ocean liaison program bill passes out of House committee

The House Water Policy Committee passed SB 496 out of Committee on Thursday, April 11th.

The bill authorizes the Oregon Department of Land Conservation and Development (DLCD) to participate on behalf of

Oregon in a joint liaison program concerning oceanographic data. DLCD will be participating on behalf of Oregon with the states of Washington, California, Alaska and Hawaii in a liaison program with the Center for Ocean Analysis and Prediction of

the National Oceanic and Atmospheric Administration (NOAA). The bill has a minor fiscal impact and was sent to Ways and Means with a "do pass" recommendation.

—Mara Brown
Legislative Fellow

Coastal Caucus Breakfast

Land use planning topic of discussion

Craig Greenleaf, Deputy Director of the Oregon Department of Land Conservation and Development (DLCD), and Steve Marks, Legislative Aide to Senator John Kitzhaber (D-Roseburg), were the guest speakers Monday morning, April 8th, at the Coastal Caucus breakfast at JB's Restaurant in Salem.

Greenleaf opened the presentation with an overview of the secondary lands policies of the Land Conservation and Development Commission (LCDC). LCDC was directed by the 1989 Legislature to propose a process for identifying secondary lands and to conduct a pilot program to determine how such a process would work. The six pilot counties involved in the program were Clackamas, Coos, Deschutes, Jackson, Lane, and Union. In December 1990, after a collaborative effort by LCDC, technical advisory committees and local counties, secondary lands had been identified in these counties. In the past four months, LCDC has been evaluating the results, including an independent evaluation by Oregon State University and Soil Conservation Service Specialists. The Departments of Agriculture and Forestry and interest groups also added input to the evaluation phase of the project.

Definition of Secondary Lands

The definition of secondary lands as used by LCDC is: "secondary resource lands are agricultural and forest lands with either of the following:

- Less productive soils with limited capabilities for crop, forest or range production; or
- A pattern of parcelization and development which makes those lands contribute less to Oregon's agricultural and forest economy than commercial agricultural and forest operations.

The designation of secondary resource lands shall have no significant adverse impact on surrounding commercial farm or forest operations, which are key components of Oregon's economy."

—DLCD Overview

The new secondary lands proposal is designed to be less restrictive than current farm and conservation zones. Uses relating to farming and forestry would be allowed, as well as conditional approval of special uses such as churches, schools and golf courses. Lot sizes are smaller than in primary farm or forest zones, at about 20 acres minimum. Houses are allowed in a secondary zone if they meet citing standards, without having to demonstrate a farming or forestry related use.

Greenleaf spent some time going through the process of identifying secondary lands, so that Marks could then contrast the LCDC process with the process developed by President Kitzhaber.

The first step under the LCDC plan is for the county to identify which areas will be considered for possible secondary land status. The county may consider all lands zoned for farming and forestry, or it may consider a portion of these. DLCD reviews the sites selected by the counties, and then the process begins to analyze these areas for their potential as cropland, rangeland or forestland. Land that is too productive remains primary. The land that is not eliminated in this first cut is then given a "composite test" to screen further for fire hazard areas, hazardous sites, and small (less than 320 acres) parcels of land within primary farm or forest areas. A county can develop its own set of composite tests, which must be approved by LCDC.

The LCDC plan also calls for the establishment of local technical committees, to assist the county that decides to go into the secondary lands planning process. The technical committee would include the local district conservationist, district forester, OSU Extension Specialist, watermaster, and other interested local people such as farmers and forest land owners.

The Legislature has not approved the LCDC proposal yet, and several other proposals have been put forth as other options for the Legislature to review.

Senate President John Kitzhaber has introduced a secondary lands plan through SB 91. There are several plans on the House side going through hearing processes in the House Environment and Energy Committee. Representative John Schoon (R-Rickreall) has unveiled a plan, HB 3560, that reflects a compromise between the House and Senate majority opinions on secondary lands. Co-sponsors of the bill include House Speaker Larry Campbell (R-Eugene), Representative Walt Schroeder (R-Gold Beach), Representative Larry Sowa (D-Oregon City) and Senate President Kitzhaber and Senator Scott Duff (D-Adams).

Senator Kitzhaber's Plan

Steve Marks (known as the natural resources whiz pin in the Senate) presented an overview of SB 91. With a similar evaluation process to that of LCDC, the main difference in the secondary lands delineation process is that under SB 91, the first step is an upfront test to determine whether lands are productive. Then through additional criteria, some of the remaining areas are identified as secondary lands. "You may end up with some areas that are not suitable for forestry but that don't have water for development either", Marks said.

Some of the major provisions of Senator Kitzhaber's bill is the establishment of a mapping process for secondary lands including

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Oil spill contingency plan passes

On Wednesday, April 11th in the Senate Agriculture and Natural Resources Committee, the Oregon Department of Environmental Quality (DEQ) Oil Spill Contingency Plan was passed out of Committee and to Ways and Means. SB 242, in its final amended form, requires persons operating an oil facility, cargo or tank vessel to submit a contingency plan to DEQ which addresses oil spill prevention and spill response considerations.

DEQ must determine that the covered vessel has proof of financial responsibility before approving a plan.

The bill also allows DEQ to conduct inspections of facilities and vessels, and to coordinate with the state of Washington to determine that U.S. Coast Guard inspections of Washington vessels are adequate. If DEQ finds them inadequate, they are required to establish a state tank vessel inspection program.

DEQ, along with other states, will coordinate their efforts in developing educational programs

Resource Valuation Method to be Developed

DEQ is also required to work with other natural resource agencies to develop a method of natural resource valuation that fully incorporates nonmarket and market values in assessing damages resulting from oil discharges. DEQ, along with other states, will coordinate their efforts in developing educational programs for operators of fishing vessels, ferries, ports, cruise ships and marinas, and to annually review the interagency

response plan prepared under SB 1039.

The amended bill establishes harbor safety committees for the Columbia River and the Oregon coast, with subcommittees in Coos Bay, and Newport.

The safety committees will develop safety plans and can recommend to the Coast Guard and the Board of Maritime Pilots on the issues of pilotage requirements, regional tanker speed limits, and near-miss reporting system. The safety committees can also make recommendations to the Coast Guard on such things as tow cable regulations and requirements.

Fee Schedule Left Open

Finally, the bill as passed out of Committee, requires DEQ to establish a schedule of fees to be placed in an Oil Spill Prevention Fund to cover the costs of plan review and other required tasks. In establishing fees, the Commission must place a cap on the fees, and consider such factors as relative risk, fees in adjacent jurisdictions and economic impacts of the fees.

Senate Agriculture and Natural Resources Committee Schedule

Monday, April 15; 8:15 AM; HRC

SB 555: A work session will be held on this bill that defines class I, II, III waters for the purpose of the Forest Practices Act.

SB 1202: Public hearing and possible work session on this ad valorem commercial fishing license fees bill.

Wednesday, April 17; 8:00 AM; HRC

SB 500: A work session on the Pacific Ocean Resources Compact.

Friday, April 19; 8:00 AM; HRC

SB 91: Public hearing and possible work session on Senate President Kitzhaber's secondary lands planning bill.

Coastal Caucus continued...

arbitration between LCDC and the county proposal when a dispute occurs. Citizen appeal of the county ordinances to the Land Use Board of Appeals (LUBA) is available. The bill also establishes a right to farm and forestry, and to give protection to farmers and forest managers. Urban reserve areas are established, as well as recognition for rural communities, both with LCDC rule adoption.

While somewhat similar to the 6-county pilot study, Senator Kitzhaber's bill was based on a regionalized approach to secondary lands designation and application of primary lands protection. As with the LCDC plan, there is a 20-acre minimum for land division on secondary lands, as well as a 320-acre minimum block size test. The bill also stipulates primary lands protections for exclusive farm use zones, and forest zones.

—Mara Brown
Legislative Fellow