



Oregon

COASTAL NOTES

April 14, 1989

Wetlands Mitigation Requirements Applied Retroactively

A major Lane County firm has been told by the Environmental Protection Agency (EPA) that it illegally filled 20 acres of wetlands when it built its plant in Eugene in 1979. Further, it must now build new wetlands to replace those lost.

According to the April 13, 1989 edition of *The Register Guard*, "the situation is particularly puzzling for Spectra-Physics officials because the company dealt with the Army Corps of Engineers, which is responsible for issuing fill permits for wetlands, at the time of the original construction because the site is located on a flood plain."

The article continued that "No one from the corps could be reached for comment, but federal, state and local officials all agreed Wednesday that Spectra-Physics was not told in 1979 it was about to build on wetlands and, therefore, should obtain a permit."

Of course, this conjures up images of the EPA reviewing past developments since the enactment of the Clean Water Act of 1972 to determine whether they might have taken place on wetlands.

SENATE WATER POLICY COMMITTEE HOLDS FIRST HEARING ON WETLANDS LEGISLATION

by Onno Husing, Legislative Fellow

In what many afterwards described as a "love in", the Senate Water Policy Committee took a first look at SB 3. Witness after witness extolled the virtues of the bill such as: the certainty SB 3 provides developers, the identification and protection of wetlands, the agricultural policy of retaining present agricultural uses, and the expedited regulatory procedures. Those testifying also praised the Division of State Lands for recognizing that the wetlands problem needed fixing and for establishing a wetlands working group to hammer out a bill people could live with.

At present, however, there are still a few things left to tidy up in the bill and some more language on SB 3 is expected. Therefore, since all of the language was still unavailable, it was difficult for the Senators and those testifying to engage in a "brass tacks" talk about some of SB 3's technical elements. However, while more searching inquiries can be expected during future hearings on SB 3, the committee appeared to strongly support many of the concepts contained in the bill.

The next order of business is to hold a "final/final" meeting of the Wetlands Working Group. In any event, those participating in the hearing seemed relieved that the early reaction to SB 3 has been either positive or mute.

Senate Joint Memorial 22

SJM 22 (introduced by Senator Kitzhaber) urges Congress to direct the Army Corps of Engineers to implement the Columbia River spill agreement and to install appropriate bypass facilities to protect anadromous fish from dam turbines.

The memorial also urges Congress to appropriate funds appropriate to finance construction of bypass facilities. Last week, the Army Corps of Engineers did announce that they will voluntarily go along with the spill agreement, but they are still uncertain at this time about the bypass facilities funding.

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HOUSE COMMITTEE LOOKS AT SALMON LICENSE BROKERING AND ILLEGAL COMMERCIAL SALES OF RECREATIONALLY CAUGHT FISH

by Onno Husing, Legislative Fellow

The House Agriculture, Forestry, and Natural Resources Committee heard two fish bills last week.

One bill, **HB 2986** (sponsored by **Senator Dukes** and **Representative Hanlon**) would make it tougher for recreational fishermen to sell their catch to commercial fish buyers and restaurants. Under Oregon law recreational catches are prohibited from entering the commercial market. The worst case scenario disclosed during the hearing was that there are a number of individuals "on vacation" staying in trailer parks in communities like Charleston. Along with their friends, they crowd in a boat and go out every day. After they each catch their 2 fish limit, they then sell their catch to commercial fish brokers. At two fish a day for days in a row these "recreational" fishermen have found a convenient way to pay for their "vacation". Clearly, this is not what

the Oregon legislature intended when they established recreational and commercial fishing policies.

However, solutions to the problem are elusive. **HB 2986** seeks to ameliorate the situation by requiring recreational fishermen to make a mark on the fin of recreationally caught fish thereby identifying a fish as a recreational fish. Theoretically, enforcement of the ban against sale of recreational fish would be easier if such fish were marked. Such action, however, would place additional regulatory burdens on all recreational fishermen when it's the bad actors that are least likely to mark their fish anyway. ODFW also testified that illegal sales of recreational fish is a serious problem but that the marking scheme was unrealistic. The committee did not take any action on the proposal. The message those attending the hearing got was that more creative solutions will be needed

to address this very serious issue.

In other action, the committee heard testimony on **HB 3213**. This measure would limit the number of times a permit for commercial salmon fishing could be moved from boat to boat. Currently, there is no limit to the number of times such a licence can be transferred. Some individuals in non-coastal locations (such as Eugene) have made a business of brokering these permits. The real problem is that each time these permits are shifted from vessel to vessel, the size of the vessel is usually increased. There are serious implications for the resource, then, if these smaller operators of skiffs sell out or upgrade their fishing effort to larger boats.

The committee will hold a work session on **HB 3213** in the near future to review further amendments to the bill.

DRIVING ON THE BEACH: FUN OR FRUSTRATION?

The Senate Agriculture and Natural Resources Committee heard a bill (**SB 887**) this week that would increase the number of petitioners required to initiate a hearing on whether a particular stretch of beach should be off limits to vehicles. According to Senator Joan Dukes who spoke on behalf of the measure, the current number of 20 required makes it too easy for those seeking to close down a beach to motorized vehicles to get such a hearing from the Parks Department (Parks is a subagency of ODOT). Dukes wants to see that number raised to 150 individuals and maybe have a county residency requirement installed as well. This measure, she argued, would better insure that such a hearing would be more a product of local concerns rather than of non-coastal residents from the Willamette Valley or elsewhere in Oregon.

Testimony on the bill reflected the diversity of opinion on the entire proposition of allowing vehicles. Chairman Dick Springer (D-Portland) asked, "Aren't those driving on the beach a bunch of drunk kids?" Senator Dukes and others informed Senator Springer that a number of different people drive on the beach including the sober, the elderly, the handicapped, and some commercial fishermen and firewood collectors. Another individual blasted the entire concept of driving on the beach labelling such behavior "anthropocentric". No action was taken on **SB 887**.

evaluate fully the efficacy of the hazing procedure and to determine where cormorants go to feed once they have

been discouraged from feeding on hatchery smolts. Another hearing will be scheduled.

CORMORANT HAZING BILL RECEIVES HEARING

HB 3185, sponsored by **Representative Paul Hanneman**, seeks to provide a limited number of permits (3) to allow the "hazing" of cormorants during key periods when hatchery smolts are released into Oregon's coastal rivers. Many observers of the state's hatchery system have complained for some time that cormorants have become accustomed to feeding on these fish when they are making their way to the ocean. While natural predation and mortality is expected, these birds are thought to take an unusual amount of fish. As Blanchard Smith of the Northwest Steelheaders Association told the committee, "This is not a can we harass Oregon wildlife issue, this is a protect the resource issue". Smith called for a study of the cormorant hazing issue to accompany the issuance of three permits to

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FISHERIES ENHANCEMENT BILL AMENDED IN WAYS AND MEANS ...by Onno Husing, Legislative Fellow

More twists and turns were visited upon the fisheries enhancement legislation in the last week. After even more meetings, conferences and draft amendments, a new version of what was once SB 41, which has now transformed into HB 3336, was introduced in a Ways and Means Sub-Committee. Unlike earlier amendments to SB 41 in the "gut and stuff" form of HR 3336, these amendments were expected. HR 3336 was chosen over SB 41 as the legislative vehicle for the enhancement package for purely technical reasons (the "relating clause" worked better in HB 3336).

As explained in an earlier issue of *Coastal Notes*, Ways and Means is not supposed to deal in the substance of legislation. Again, their role is to appropriate money and determine budgetary matters. However, now that the Ways and Means Committee has two fisheries enhancement bill before it, there was no way the committee could have avoided dealing with the substance of the bill.

Unlike earlier actions, this week's amendments were welcome products of negotiations among various legislative offices and the Governor's office. However, because the print on these amendments barely had time to dry before the proposal was "popped" in the committee, the members of the Ways and Means avoided taking action on the bill. The Committee elected to provide one last round of double checking and negotiation on a limited number of items before the proposal either dies, is referred back to subcommittee (which is unlikely) or sent along to the House and Senate Floor.

The following are the latest amendments to HB 3336. Please note these amendments and the entire bill are still subject to change: Under section 10(3) the ODFW is instructed not to assess its personnel costs in the administration of the 1989 Act against monies collected under the fisheries enhancement bill; Under section 11(3) the tie breaking member of the enhancement board is to "represent the public" (reference to a conservation organization was re-

moved); There is now a timetable set up to prod the enhancement board using 120 day intervals for action; The department and the board (not just the department) must report to the Legislature; All revenues are to be used exclusively for fishery enhancement projects. (None of the money can be used for ODFW salaries or any project not directly related to fish production or enhancement); The bill raises most fishing license fees by \$2, adds a 5 cents a pound to tax commercially caught salmon, and raises boat permits to \$65; The bill provides 2 million dollars per biennium from lottery dollars; and New regional citizen advisory boards will be created to suggest projects to the enhancement board consideration.

In addition, it should be noted that SB 41 did not die. Rather, SB 41 is now the means to authorize the ODFW to establish an interest bearing account from monies left over from their last operating budget (called an "ending balance"). The interest from these monies are to be used for making up for deferred maintenance of vehicles and buildings and other infrastructure not directly related to fisheries enhancement.

officer. The French officer— who was by then was working with Rick and knew that Rick was responsible for the shooting— told his men to "Round up the usual suspects". In this case he likened HB 3219 and HB 3215 as measures to "Round up the usual suspects— the gillnetters!" The comparison met with applause and laughter. The House Water Policy Committee took no action on HB 3215. The prospects for success for either proposal are bleak.

In other action before the Committee, a measure proposing to increase the membership of the Salmon Commission (so that broader representation of coastal fishermen would be facilitated) sailed through the Committee. The next action will occur on the House Floor where passage is expected without controversy.

Recreational Fishing Interests Seek a Ban on Commercial Sturgeon Fishery

by Onno Husing, Legislative Fellow

In what was nearly a replay of last week's hearing on HB 3219 (attempting to ban the commercial gillnet fishery in the lower Columbia River), the House Water Policy held a hearing on HB 3215. Curiously, last week's hearing was marked by a strong turnout by recreational fishery interests and commercial fishery interest. However, during this week's sturgeon hearing, recreational fishermen were conspicuous in their absence.

As a result the hearing room was packed by gillnetters that fish for both salmon and sturgeon. The only person testifying on behalf of HB 3215 was representative Larry Sowa. Representative Tom Hanlon asked Representative Sowa a series of questions. These included: "Isn't it true that recreational fishermen catch 85% of the harvested sturgeon?", and therefore inquired Hanlon, "If we genuinely have a problem with the resource, doesn't it make sense that we ask the recreational fishermen to help solve the problem?". Representative Sowa paused, looked reflectively up at the Committee and said, "Mr. Chairman, I guess it's a matter of philosophy, in the past there used to be plenty of wildlife and the state finally had to put an end to commercial harvest of wildlife".

Further testimony revealed there is no targeted fishery on sturgeon and that sturgeon is only a by-catch to the directed salmon fishery. Other data from ODFW and testimony from fishermen also portrayed the sturgeon resource as being in healthy shape. In addition, it appears there are plenty of statutory and regulatory means already on the books to pursue increased fishery management techniques if and when such measures are necessary.

One individual skillfully used a scene from the movie *Casablanca* to characterize these efforts to put gillnetters out of business. The scene was the end of the movie when Rick (the movie's protagonist) shot the Nazi commanding

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