

OREGON COASTAL Notes

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Bill to alter ODFW mission gets nod in House committee

Last-minute technical wrangling over the extent of the Department of Fish and Wildlife (ODFW) director's power to administer state wildlife laws and questions about the degree to which the department should conform its management goals to federal, state and local land-use regulations marked a temporary halt to a heated debate over a measure that seeks to re-orient ODFW wildlife policies.

The decision Friday at a House Agriculture and Forestry Subcommittee work session to pass House Bill 2538 to the full House Natural Resources Committee for consideration brought an end to more than three weeks of crowded hearings and intensive work group sessions that saw passionate and, at times, bitter testimony from both champions and detractors of the embattled department. But the draft that finally emerged from the work group — eighth in a series — still failed to appease some opponents to the measure and, according to assistant attorneys general Penny Harrison and Cheryl Coon, still left several thorny legal questions unresolved.

As amended, the bill would restructure ODFW to separate the functions of the Oregon Fish and Wildlife Commission from those of the department itself, giving the commission ultimate authority to set state wildlife policy and to adopt rules to implement state wildlife laws, an arrangement under which most other state agencies already operate. Existing law, however, treats ODFW as one entity composed of the commission, the department director and all departmental employees. The bill also directs the commission to regulate wildlife populations in a manner "compatible with primary uses of lands and waters of this state," a policy the bill defines as ensuring "harmony" or the minimization of conflict between wildlife populations and land uses "zoned or otherwise designated by federal or state law."

The latter provision remains a sticking point with bill opponents and with department

Director Randy Fisher, who objected to the vagueness of the bill's standards for determining compatibility between land uses and wildlife populations and the prospect of constantly having to revise wildlife policies to account for changing land use practices.

"We still want to know what it really means to have wildlife management compatible with private land uses — that's still the basic question — it always has been and always will be," Fisher said. "What does this mean when land uses are changing?"

Fisher added that because the bill does not provide adequate guidelines for resolving conflicts between wildlife populations and primary land uses, it fails in its attempt to clarify the department's role in the administration of the state's wildlife policy. User groups who

believe they have accomplished certain aims with this measure may cry foul when they discover some time later that the commission may have a different interpretation of its duties under the law, Fisher said.

Assistant attorneys general Harrison and Coon, in a written submission forwarded to committee members, also raised the possibility that the compatibility requirement could jeopardize federal funding for wildlife protection programs — funding the federal government supplies only if it finds that a state has adequate statutory authority to protect wildlife.

But Rep. Ray Baum (R-LaGrande), a strong bill proponent and one of its key work-group architects, said the definitions of such terms as

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Commerce department whiting decision prompts angry Coastal Caucus response

A United States Department of Commerce decision April 15 overturning a Pacific Fishery Management Council (PFMC) recommendation and effectively awarding the majority of this season's allocation of Pacific whiting to Puget Sound-based factory trawlers, followed less than two weeks later by another decision overturning a PFMC-recommended level for this season's ocean salmon harvest, has prompted calls by the legislature's Coastal Caucus for investigations into the Commerce Department's decision-making.

In letters sent late last month to Commerce Secretary Ron Brown, President Bill Clinton, White House staff aides and Oregon congressional delegation members, the Caucus called for a General Accounting Office investigation into the groundfish management decision process governed by the Magnuson Fishery Conservation and Management Act (FCMA) and the PFMC's regional Fish Man-

agement Plan. The letters also call on Congress to hold field hearings in Oregon to review the decision-making process and to investigate the impact the department's decision has had on the economies of coastal Oregon communities.

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The Senate this week will also introduce SJM 21, a joint memorial sponsored by Sens. Bill Bradbury (D-Bandon), Stan Bunn (R-Newberg), Joan Dukes (D-Svensen) and Mae Yih (D-Albany) which asks Congress to press the department to explain the basis for its whiting decision and also calls for a GAO investigation and field hearings into the matter. Further actions in the Caucus may include drafting letters and a joint memorial to sup-

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Fishery council role unclear in wake of whiting decision

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port amending the FCMA during its reauthorization hearings in Congress this month to narrow the Commerce secretary's discretion to overturn the recommendations of its subordinate agencies. The U.S. House Committee on Merchant Marine and Fisheries has held two hearings on reauthorization already and has scheduled a third hearing for May 26 in Washington, D.C.

Technically, the April 15 Commerce department decision merely declined to permanently reserve a specific annual portion of the whiting catch for shore-based processors, as the PFMC recommended, instead opting for this season to open the fishery to all processors on a first-come, first-served basis.

But the PFMC, noting the undeniably greater efficiency of the factory-trawler fleet, had recommended allocating the greater part of the catch to hard-pressed coastal processors because, although slower to exploit the fishery, shore-based harvesters tended to use more of what they caught, including fish species

they did not set out to catch. Commerce, however, in its decision saw no justification

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for giving shore-based processors rights to harvest more whiting than they had historically been able to use.

Pressure from the Oregon congressional delegation may have had a hand, some observers believe, in the department's recent decision to halt factory-trawler whiting operations at a 100,000 metric ton harvest level and reserve the remaining portion of the open fishery — another 10,000 to 12,000 metric tons — for harvest by shore-based processors.

National Marine Fisheries Service (NMFS) reports on the distribution of the whiting catch, which indicated that at-sea processing ships averaged a catch of more than 4,000 metric tons per fishing day while shore-based processors averaged 36 metric tons per day, may also have influenced the department's

decision. The decision to partially reallocate the harvest, however, still leaves questions about the role of the PFMC process and about whether next or succeeding seasons' allocations would also favor factory trawler efficiency with an open allocation.

A letter to Brown from PFMC chair Philip Anderson questioned the substance and the timing of the allocation rule, noting that the council had submitted its findings and recommendations for an allowable catch to NMFS in December of last year, while Commerce waited until the day the whiting fishery opened — well after harvesters had made investment, hiring and marketing plans — to render its decision on the allocation.

"There is a risk now that the public will feel that the regional council process is a waste of their time and money," Anderson wrote. "There is little incentive for the public to use the council process in the future if [it perceives] that the secretary may significantly alter the council's measure and implement a substitute without council input."

ODFW director questions compatibility requirement in wildlife bill

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"primary uses" and "compatibility" give sufficient guidance to the commission and by themselves introduce more clarity to the wildlife laws than has ever before existed. The bill will require the department, every five years or so, to survey land-use practices where its wildlife jurisdiction overlaps with state or federal land-use designations or local zoning, Rep. Baum added, but the department must take some responsibility, in common with landowners, to balance a need for wildlife habitat against other needs. He also dismissed the possibility that the bill could cause a loss of federal funding as speculative.

"The idea that this [bill] 'could' result in a loss of federal funding is attorney language, which is some of the most conservative advice you're going to get," Rep. Baum said. "I think the feds would accept the program proposed [under this bill]."

The assistant attorneys general also questioned the proposed definition of "optimum [wildlife] population," which no longer insists that wildlife species be self-sustaining and therefore could permit such practices as captive breeding and artificial feeding as methods for sustaining wildlife populations, and the relocation of language protecting "optimum

public recreational benefits" from a section of the existing statute that called for compatibility with primary land uses to a section providing for "utilization" of available wildlife. The latter change, they said, would remove an existing requirement to balance wildlife population management that is compatible with primary land uses against its benefit to public recreation and instead require the weighing of public recreational benefits only where wildlife management provides for harvesting.

Fisher added that the bill appears to address two primary areas of concern to its sponsors: an overabundance of some game animals on farm land, which can result in crop destruction and conflicts with hunters who pursue game species onto private lands; and the content of advice about wildlife management the department gives to other state and local resource management agencies.

The first concern is not a problem that requires a statutory solution, Fisher said, since the department has adequate authority to regulate wildlife populations that threaten existing land uses. The second problem, although the department provides only required consultation in most cases and makes few resource management decisions itself, is a legitimate source of disagreement, Fisher said.

"I think we have a good program for the protection of [fish and game species]," Fisher said. "The real question comes when you're talking about species you don't hunt or fish."

Oregon Forest Industries Council representative Ray Wilkison, however, said the bill would not require ODFW to favor only game species in its management goals. Rather, the department would need to balance its management goals against primary land uses only when a species is abundant or healthy, he said. When a species is in trouble the department can work to prevent a species' population decline regardless of the effect its efforts have on private land, he said.

In contrast to the prolonged debate over the wisdom of the bill's compatibility requirement and an involved discussion about whether federal land designations fall under the rubric of the "zoning" to which the department's wildlife management goals must conform, a question about the permitted scope of the ODFW director's powers required only a technical amendment to the bill's language. The amendment ensures that the director's responsibility extends only to those laws identified in statute as "the wildlife laws" and not to all laws which, directly or indirectly, con-

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Parks commission allows coastal cities to request curbs on unwanted beach use

Coastal cities can now petition for the right to enforce, in cooperation with the state, specific local provisions aimed at controlling camping and camp fires, alcohol use, merchandising, boat launching and a host of other activities on ocean beaches within city limits under rules approved Thursday at a State Parks and Recreation Commission hearing.

Parks and Recreation Department Director Bob Meinen, who urged the commission to adopt the rules, said the department had insufficient staff and resources to divert from its primary mission of patrolling state park facilities to assist in what normally are matters for local law enforcement.

But because Oregon law grants exclusive jurisdiction to the department to manage beach activities, cities cannot simply extend their jurisdiction over beach areas even when they are inside city limits, Meinen said. The rule the commission adopted would permit cities to draft and hold hearings on proposed rules they would then submit to the commission for approval, he said. The commission, in turn,

would ensure that the proposed rules do not interfere with the Oregon Beach Bill before adopting them and allowing cities to share enforcement duties with the state, Meinen said. Once the commission adopts them, however, the rules do not bind local governments to enforce them, he said.

Under the provisions of the beach bill, a city's proposed rule cannot obstruct or interfere with public access to the beach or establish a fee for beach use. Furthermore, any proposed rule would apply only to the beaches within city boundaries and may not conflict with parks department rules governing the ocean shores recreation area.

The cities of Seaside and Cannon Beach have sought these changes since the early 1980s, department representative Peter Bond said. The initial list of uses or activities certain jurisdictions may restrict or prohibit includes: the presence of horses, livestock or unleashed dogs; camping; outdoor merchandising or commercial activity; windsailing; alcohol consumption; beach fires; fireworks; golfing and boat launching.

Endangered species bill gets second go-round in House subcommittee

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cern the state's wildlife resources.

House Bill 2538 originally required a survey and report on wildlife-caused damage to private property, but committee members substituted for those provisions language taken from HB 3505, a measure backed by the Oregon Forest Industries Council, the Oregon Farm Bureau, the Oregon Small Woodlands Association and other resource users, that sought to substantially alter the department's mission and powers.

The original draft of HB 3505 would have sharply curtailed ODFW's ability to pursue wildlife policies that conflicted with primary land uses or had an economic impact on landowners. Testimony that occasionally pitted hunters and other recreational wildlife enthusiasts against farmers, ranchers and other resource users led bill sponsors to soften their stance in later negotiations.

In other action, the committee again approved a bill designed to modify the listing procedures for threatened and endangered species under the state's endangered species act. The measure, House Bill 2927, passed out of the House Natural Resources Committee but ran into trouble on the House floor after Rep. Marilyn Dell (D-McMinnville) objected to provisions that forced the department to account for the economic impact of listing a species and required the de-listing of species when ODFW failed to abide by deadlines for completing species recovery plans or reviewing the need for a species' continued listing.

The committee approved amendments that instead suspended the listing pending the completion of the recovery plan or the review — a change that would allow ODFW to reactivate a species' listing without going through the rulemaking procedures required for an initial listing — and that required ODFW merely to "include consideration" of the economic impacts of listing a species in its decision-making. The committee also removed the requirement for "sound verifiable" scientific information about a species' biological status from the listing process, returning to the existing statutory requirement for "verifiable" science.

The amended version passed unanimously.

Water bills wend their way through House

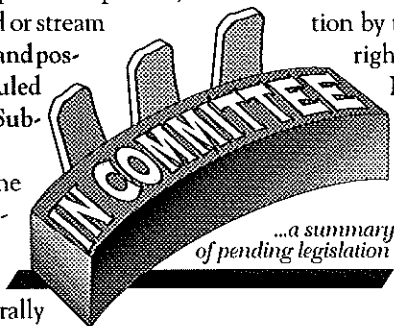
HB 2107 would allow the registration of water uses, in lieu of the Department of Water Resources' water right application process, where the use is for wetland or stream restoration. Public hearing and possible work session scheduled for May 13 in the House Subcommittee on Water.

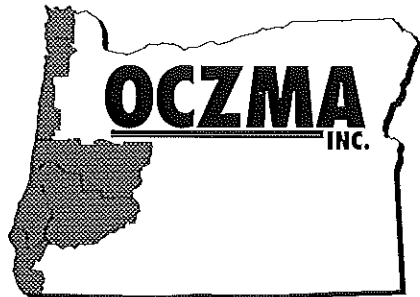
HB 2109 would allow the Water Resources Department to negotiate the extent of federally reserved water rights with any federally recognized Indian tribe in the state of Oregon. Passed the House; floor vote on third reading scheduled for May 12 in the Senate after a 'do pass' recommendation from the Senate Water Policy Committee.

HB 2155 A-Engrossed would establish state policy for the conservation of water resources, granting 25 percent of the conserved water to the state and 75 percent to the conserving water user. The state may use its 25

percent portion for instream water uses or, if not needed for this purpose, will make the conserved water available for appropriation by the next most junior water right holder. Passed House Natural Resources Committee; up for a floor vote in the House after second reading on May 11.

HB 2215 A-Engrossed would encourage the formation of voluntary partnerships among local, state and federal interests for watershed management and would allow local governments to form local watershed councils. The bill also directs the Strategic Water Management Group to assist in the creation of pilot watershed action programs. Referred by House speaker to House Appropriations-A Committee after passing the House Natural Resources Committee. Public hearing and possible work session scheduled for May 10.





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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Address correction requested