



Oregon

COASTAL NOTES

July 7, 1989

Onno: It's Been A Treat!

by Jay L. Rasmussen, Executive Director, OCZMA

While it is easy to think of the past legislative session as hearings, bills and more bills, for many of us the 1989 Oregon Legislative Session will be remembered because of certain individuals.

And one of the better memories will be of Onno Husing, Sea Grant and OCZMA Legislative Fellow.

It would be hard to imagine all the difficulties and negotiations on such important coastal issues as wetlands and fisheries restoration without the assistance of Onno. He tracked, wrote about and participated in the arduous adventure that culminated in the handy passage of Senate Bill 3, the wetlands reform legislation. Anyone who looks at the complexities of this legislation can only begin to understand the steady assistance Onno brought to this task. Onno's planning and legal education provided major rewards for the Association, the coast, and for the process that established this landmark legislation.

Likewise, he played a major role in the highly political realm of fisheries legislation which ended with the enactment of House Bill 3336 and the establishment of a state fisheries restoration and enhancement bill. For years we have been talking about sport and commercial interests working together and about restoring dilapidated public hatcheries and putting financial resources into natural production. With Onno's help, we can look forward to two years (at least) of concentrated effort—backed by fees and lottery money—aimed at restoring and enhancing fisheries resources.

And what would this session have been without Onno's dogged persistence on such issues as the highseas driftnet fisheries and oil spill clean-up technology. The legislative memorial

that spurred the federal government to action on the illegal or questionable highseas driftnet fisheries by Japan, Korea and Taiwan comes from Onno's pen, endorsed by the Coastal Caucus and then by the Legislature. Through Onno we know that the oil spill containment and clean-up from the Exxon Valdez disaster is not the best we can do. Much better technology is available and the federal government—and the oil companies—are beginning to make some moves in that direction.

For an untold number of weekly issues of *Coastal Notes*, Onno did his best to cover what was happening in Salem. And his best was very good. A summation of the specifics of his work will await his completion of a final report at the end of July. And, if we are fortunate, he will be with us at our August meeting at Paradise Lodge for a final oral report.

Long after many of the specifics of this past session have left me, however, many other attributes and qualities and memories that Onno brought to this effort will remain. While recall of the many times he called to let me know what was happening or about to happen may fade, the knowledge that he took that extra step to make me a closer part of the action will not be lost.

But my strongest and fondest memories will undoubtedly be of the likeable attributes Onno brought to this task. That he cared about issues and people was both laudatory and easy to see. The passion that he brought to his endeavors and to each of those working with him added immeasurably to our lives. He worked hard and with zest. For those who did not know him well, his exuberance was seen in his *Coastal*

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FISH FIGHT ON THE HOUSE FLOOR: GILLNET BAN SOUNDLY DEFEATED

by Onno Husing, Legislative Fellow

When all is said and done, it will be said that the 65th Legislative Assembly was a very good session for fisheries. The closing hours of the session proved, however, that old fish fights - like the effort by some sports groups to eliminate gillnet fisheries on the Lower Columbia River - die hard.

Despite positive initiatives and the possibility of losing big on the House Floor, those in favor of HB 3219 (the gillnet ban and assigning priority to sport fishing) were determined to get their day in the Legislature. For this group, moving the issue to the House floor had symbolic value.

As reported in the last edition of *Coastal Notes*, opponents of the gillnet ban (which included the bulk of the Coastal Caucus) could not keep the bill bottled up in the House Water Policy Committee. After Water Policy the bill was assigned to the House Rules Committee. Since House Rules is chaired by Representative David Dix - who, as a member of the Water Policy Committee had already voted to move the bill out of committee - the chances increased that the bill would be on its way to the floor. Opponents also hoped that the bill might die in the traffic jam that occurs late in the session when certain legislation gets put off to the next session.

At the heart of the argument against banning gillnets is the proposition that there is no immediate environmental emergency that would compel the Legislature to act hastily on the issue. The

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salmon runs for the Willamette are in good shape and improving. Therefore, opponents of HB 3219 felt that it was premature to take such action especially since there were so many lingering scientific uncertainties affecting those industries.

Furthermore, apart from the content of HB 3219, the opponents of HB 3219 believed that scheduling the gillnet debate for the House floor during the last hours was the worst time and place for such a discussion. At that stage in the session the members of the Legislature are already exhausted and overwhelmed by the volume of legislation that roars through the body in the closing days.

As reported in the last issue of *Coastal Notes*, Representatives Chuck Norris and Bob Pickard issued a minority report as members of the House Water Policy Committee. The minority report proposed to substitute SB 896 (see an earlier issue of *Coastal Notes*) - which has already passed the Senate - for HB 3219. Again, SB 896 called for the establishment of a Joint Interim Legislative Task Force on Fisheries. Under SB 896, the fisheries of the Lower Columbia River and our state's relations with the state of Washington was a priority item. SB 896 was a natural choice for the minority report since SB 896's advocates have always sold the bill as a credible means to organize a state consensus (both political and scientific) on fisheries management policy.

Coastal Notes Goes Bi-Monthly

This is the last weekly edition of the Association's *Coastal Notes*. We hope readers found the weekly coverage of the 1989 Oregon Legislative session informative and enjoyable. Unless we have a special legislative wrap-up issue, we will return to our normal bi-

As the end of the session approached, the endless watch for HB 3219's progress toward the floor was underway. Like a military campaign where you hurry up and wait, this lobbying process with all of its head counts and rechecking was tedious to observe. For members of the Legislature, this process consumes an enormous amount of their energy since they are constantly subject to these bodycounts.

Discussions continued how or whether to block consideration of the bill. One possibility was there could be a vote not to suspend the rules which would not permit the bill to reach the floor. In the end the opponents decided not to try to block the bill. Rather the decision was made to take HB 3219 head on, let it be heard, and just hope the margin of victory is large enough to discourage future bans on gillnetting. Besides, it's more difficult to generate votes to stifle debate on a bill than it is to vote against the content of a bill.

Then the word came out. The morning of July 1, the Speaker's office issued the announcement that HB 3219 would hit the floor later that day. The previous predictions and promises that HB 3219 would never reach the floor proved empty.

Representative McTeague opened the debate. He forcefully called the gillnet industry an "anachronism" and that conditions over the years have changed. He claimed the income derived from the spring chinook industry only makes up a fraction of the income for these fishermen. McTeague stressed that HB 3219 only addressed gillnetters, not other commercial fishermen. And finally, McTeague argued this issue has been discussed for years, that it was not a new issue, and, the time was right to make a policy statement that gillnetting has no place in Oregon. (Also buried within HB 3219 was language which would have established a pro-recreational fishing policy.)

Representative Norris, the carrier of the minority report, argued against a gillnet ban. Norris said that he had spent a long time looking at this subject and

concluded that both sides have a lot of good arguments. Therefore, Norris reasoned, the best approach would be to adopt the minority report with its study to separate fact from fiction in this issue.

Representative Hanlon, whose district would suffer the most economic damage from a gillnet ban, made a restrained, yet passionate speech. Hanlon (he and his staff worked tirelessly on this issue) described the importance of the fishery and carefully restated the arguments in favor of adopting the minority report.

Next Representative Hanneman rose in favor of the minority report. Hanneman stressed all the positive fishery initiatives of the session focusing on HB 3336, which would expand the fishery opportunities for everyone in the state. Furthermore, Hanneman noted that the recreational and commercial fishing communities appear to be entering a new era of cooperation as representatives from both communities work toward fisheries enhancement.

Other speeches followed. The debate went on well over a half hour. It is difficult to convey just how long a debate that is at that late hour in the session. As the debate grew more convoluted one could see the appetite for further discussion vanish. Finally the time for a vote was at hand. Knowing they faced certain defeat, the proponents of HB 3219 still wanted to string out every available procedural device to delay the inevitable.

The votes and process are described below, the numbers of major steps are provided to help track the action: (1) The motion to suspend the rules and to substitute the minority report for the committee report. 41 Ayes, 18 Nays. Next, (2) the vote on the substitution itself; 51 Ayes, 8 Nays. Then, (3) since the minority report had advanced to the first reading, it needed an immediate second and third reading to officially pass the House floor. On voice vote the minority report went to third reading. Then, (4) Representative Larry Sowa

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POTPOURRI OF LEGISLATIVE ACTIVITIES

by Onno Husing, Legislative Fellow

SB 3: The Wetlands Bill Passes the House and the Senate Unanimously

Last week the Oregon Legislature unanimously passed the wetlands regulatory reform bill. The ease in which SB 3 made its way through both Houses was due to the fact that a lot of up-front work done on the bill. In addition, a thorough educational effort followed the bill once it left the Senate Water Policy Committee. It also helped that mail rained in from all quarters endorsing SB 3.

Representative Paul Hanneman carried SB 3 on the House floor and Senator Bradbury carried the bill on the Senate floor. Representative Cease called the bill "the major environmental initiative of the Legislature" on the House floor as he urged Members to pass the bill.

HB 3336: Governor Holds Signing Ceremony and Press Conference

With all of the various fishery interests at his side, Governor Goldschmidt held a ceremony commemorating the passage of HB 3336. Goldschmidt glowingly spoke of the promise of HB 3336 and how pleased he was that everyone finally agreed on the bill. Goldschmidt opened by saying, "They asked my old boss Vice-President Mondale why he fished and Mondale replied, because it was cheaper than a psychiatrist". Representative Hanneman congratulated the Governor and said it was the first time in many years that the state of Oregon had a Governor that was committed to fisheries. Considering all of the bad blood spilled on the issue early in the session, (and some of the late acrimony stirred up by the gillnet issue) looking at the unity this ceremony represented was gratifying for all participants.

HB 2986: Survives Close Call at the End of the Session

HB 2986 had a number of transformations during the session. The bill started out early as a means to require additional marking of recreationally

caught fish. Then criminal sanctions were stuffed in (a friendly stuff) to provide for vandalizing STEP projects. Then, even later, a license lottery system for several fisheries including gillnets was added.

And then, unexpectedly and very late in the session just as the bill was moving toward conference committee deliberations, a last minute amendment relating to the Salt Caves Dam project threatened the entire package. Complicated discussions took place twice in conference committees in an attempt to create an amendment that didn't help or hinder the consideration of a Salt Caves Dam project (or, some future project like Salt Caves). The last minute "glitch" had to do with the provisions relating to interfering in STEP projects. Interests in the Klamath Falls area saw this as a roadblock to the project and wanted to be sure that HB 2986 posed no threat to the project.

Once the conference committee agreed on very neutral language, the measure passed both the Senate and the House unanimously.

SB 1152: Oil Development Moratorium Bill Finds Rough Going in the End

SB 1152 is another proposal that has experienced a number of transformations through the session. First, the bill was a rather innocuous call for greater ocean planning and coordination between the state of Washington and Oregon. Then, later in the session after the Exxon Valdez oil spill, the bill became the vehicle for a state offshore oil exploration and development moratorium. In the closing days of the session when the bill moved into a conference committee, there was a last minute debate as to whether exploration should also be banned.

Oil company lobbyists exercised damage control through the entire process. Their aim was to limit the scope of the moratorium. First, they sought to

have the Oregon ban sunset or expire in 6 years like the bill recently passed by the Washington Legislature. The oil companies also wanted exploration to proceed because it was economical to do so when those efforts were being conducted in the region. Industry officials tried to convince the conference committee that many exploration methods do not have any substantive negative effects to the environment. One lobbyist warned, "How can I turn around and go to my people (the oil companies) and try to convince them to have work done in the Portland shipyard or act upon other opportunities in Oregon when you are sending them such a negative signal?"

After several failed conference committees, innovative language drafted in the Legislative Counsel's office broke the deadlock. In the new and improved SB 1152, the exploration issue was handed off to the Oregon Ocean Resources Management Task Force. Any exploration, then, could only proceed following the Task Force's approval.

In virtually every respect (except the temporary six year ban on production), SB 1152 ended up being a restatement of current law under the SB 630 process. Many were pleased with the new language because it reinforced the primacy of the Task Force process. Oil industry representatives were pleased because they are willing to work with the Task Force process rather than trying to eventually overcome an outright ban on exploration. Once the bill was refashioned in conference committee, SB 1152 had an easy time sailing through the House and the Senate.

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Notes articles. I suspect that for many of us around Onno, he was a kindred spirit of the joy of life, of issues, of people.

To our Dutchman fellow, it's been a treat! Thank you.

Many Thanks for a Fine Fellow!

While the past six months of legislative activity has been well-covered by Onno Husing, Sea Grant and OCZMA Legislative Fellow, special thanks from the Association is well-deserved for those who helped make this effort so rewarding.

To Bill Wick, Oregon Sea Grant director, whose continuing commitment to the idea of a legislative fellow and to this year's program, our special appreciation. This session, Bill helped avert the possibility of no such program.

To Senator John Brenneman we extend our grateful appreciation for making a place for Onno in his office. Also to the Senator and his staff, we give thanks for all your help.

To Professor Dick Hildreth of the University of Oregon, our thanks for responding with Onno's name when we were looking for a person to fill the fellowship.

To Representative Paul Hanne-man and to Mike Sims and Georgia York for all the aid and hospitality you gave Onno and OCZMA during the session, our most sincere appreciation.

And finally, we thank all the members of the Coastal Caucus for their interest in the Legislative Fellowship program and for their dedication to the coast.

—JR

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moved that the minority report be moved to Ways and Means, which meant a sure death for the proposal! That motion failed. Then (5) McTeague moved to table the bill. That motion failed. And then (6), with all parliamentary options exhausted, the vote mercifully ended the debate. Like a long prize fight that had finally come to a close, the House adopted the minority report study concept by a 47 to 5 margin.

Just prior to the close of debate, Representative McTeague made some

revealing statements about why he backed a gillnet ban and why he opposed the study. "When I first got to the Legislature", McTeague argued, "I had a naive notion that we could achieve a balanced approach to fisheries in this state, then I discovered the Legislative body is controlled by the commercial fishing industry, that's why I don't trust a study done by this body called for under the minority report!" Whether these statements are true or not, the comments represented McTeague's parting shot for the session.

Believe it or not, business on this measure was not done with the adoption of the minority report. Since the House had passed the measure, it was on its way to the Senate President's desk for scheduling. Despite the fact that SB 896 had passed the Senate earlier in the session, resistance surfaced in the Senate to the measure. One senator in particular questioned the necessity of proceeding with SB 896 when there were other opportunities of achieving a dialogue on this and related subjects.

In the end, since there was a certain amount of confusion following the floor debate, the decision was made not to act on the measure. The atmosphere seemed spoiled by the House debate. People couldn't readily understand why McTeague and Sowa seemed reluctant to embrace a study (they thought it would be a whitewash). And further, at the other end of the spectrum, people became suspicious of the study for the opposite reason (some feared it was a ploy to eliminate the gillnet industry. Therefore, in the closing hours it was agreed that the bill wouldn't even reach the Senate Rules Committee (the only substantive committee open at the time).

The death of the minority report in the Senate illustrates that even though formal voting rules calling for standard majorities normally apply in committee, in reality late in the session things often operate on consensus. Therefore, if one senator strongly objects to a conference committee, in many cases other senators will back off and allow the bill to die. At last, the issue was finished for the ses-

sion.

The prospects for a revival of the issue next session seem great. For some the elimination of the gillnet industry remains a high priority item of unfinished business. In the interim, the success or failure of the enhancement board under HB 3336 should have a large impact on this issue.

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SB 1039, Oil Spill Response Planning Passes House and Senate Unanimously

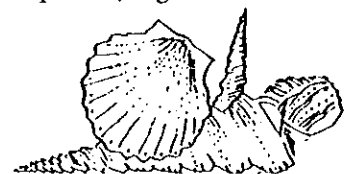
With a healthy one-half million dollar appropriation from the Ways and Means Committee built into it, SB 1039 unanimously passed both the House and the Senate. As reported in an earlier Coastal Notes, this bill would provide oil spill planning for the great majority of the state's waters not covered by the Lower Columbia, Yaquina and Coos Bay plans.

In addition, SB 1038 also had little trouble passing the House and Senate floor. Again, SB 1038 requires major carriers of oil on state waters to show proof of insurance in case of an oil spill.

SB 1064 - Ports Dredging Account - Passes House and Senate

With only one dollar placed in the account, SB 1064 passed both the House and Senate. The dollar merely keeps the account open for the possibility that in the event of a lottery surplus, the state can consider pouring lottery monies into helping the ports pay for new cost-sharing relationships established for dredging. In the past the federal government assumed the full costs of dredging. Some resisted the proposal, no doubt based on the premise that today's one dollar accounts become tomorrow's appropriations.

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HB 3493, Oil Bill Passes House and Senate Floor Unanimously

Yet another oil spill bill had an easy passage in the Oregon Senate and House. Along with SB's 1038 and 1039, HB 3493 completes the oil spill response picture. HB 3493 establishes civil penalties for those who willfully or negligently cause the discharge of oil into state waters. Under the bill the DEQ will have the discretion to set the amount of the penalty. In addition, HB 3493 establishes an Oil Spillage Control Fund within the General Fund that will act as a revolving fund for monies recovered under the Act.

The original intent of the bill initiated by Representative Dwyer of Springfield was to criminalize the negligent operation of tankers. Dwyer was outraged to learn that under Oregon law, if the Exxon Valdez accident had occurred in Oregon waters, the captain would only be charged with a misdemeanor. An earlier version of HB 3493 contained the call for a Class B felony and a \$100,000 fine. In the end, HB 3493 was softened. The bill now only calls for the establishment of a Class A misdemeanor, punishable by a fine of \$2,500 and a maximum imprisonment of one year, or both.

The bill does strengthen the state's hand in these matters. However, state oil spill language may be eclipsed by federal legislation in the near future. If the Congress finally does move more forcefully in this area it will have been prodded by incidents like the Exxon Valdez and by state legislatures like Oregon's that won't wait for federal statutes to test the waters.

HB 2288 Passes Legislature

After a tedious run of hearings on the House side, HB 2288, the "raise it or waive it" measure had an easy time of it on the floor of the Senate and the House. On the Senate side the measure passed 27-1. Afterwards, on 6/27/89 the House voted 54-0 to concur with the Senate

amendments. In other land use action relating to EFUs, the House concurred with Senate amendments and repassed HB 2682.

Botts Marsh Progress Made

Efforts at resolving the Botts Marsh issue on Nehalem Bay continue at what seems to be glacial speed.

Following numerous discussions with DSL and with the applicant and his legal counsel, the OCZMA director, Jay L. Rasmussen, has met with Martha Pagel of the Division and Diane Spies, the applicant's attorney with the following excerpts from the announcement stating where we are and where OCZMA's effort is going:

The Oregon Coastal Zone Management Association, Inc. (OCZMA) has announced that renewed negotiations toward development of an integrated marina project including a restaurant, motel, boat slips and associated activities on Nehalem Bay near Wheeler have been launched by the state and the Oregon Coastal Zone Management Association (OCZMA) with the cooperation of the project developer.

Proposed uses in the Botts Marsh area required a land-use exception, which was contained in Tillamook County's comprehensive land-use plan. The Oregon Land Conservation and Development Commission (LCDC) acknowledged that the proposed Scovell project complies with state-wide land-use goals. The LCDC decision was upheld by the Oregon Supreme Court on appeal by 1000 Friends of Oregon.

However, necessary state and federal permits for fill and removal in the estuary containing the project site were denied by the DSL and the U.S. Army Corps of Engineers. While acknowledging that a project could be developed at Botts Marsh under the local comprehensive plan, the Division has contended that the particular Scovell proposal did not meet the independent requirements of the state's fill-removal law. Scovell asserts that the LCDC

approval met the exact requirements.

Scovell filled a writ of mandamus against the state in Tillamook County Circuit Court in June of 1988. Through the writ, Scovell sought to compel the state either to issue a permit or show cause as to why a permit could not be issued. The Circuit Court agreed with Scovell and mandated the state to issue the permit. However, the state has indicated it will appeal that decision. The parties have now agreed to continue settlement discussions while the legal appeals proceed.

Scovell has contended that in successfully meeting all land-use requirements, he has met similar requirements for a permit as well. However, DSL Director Martha Pagel says a major stumbling block in issuance of a permit for the Scovell project has been the failure to meet the state's fill-removal law requirements and "consider alternative project-designs of lesser impact to the waters of the state." While DSL has distinct statutory fill-and-removal authority for wetlands within the state, Scovell claims the DSL was required to participate in the LCDC proceedings and since it did not, it is required to comply with the Supreme Court ruling.

The consulting firm of Cogan Sharpe Cogan, Portland, will produce an outline for a marina project that reasonably meets the original concept of Scovell's proposed project and meets permit standards under state law. The consultants will operate under OCZMA contract, with funds provided by DSL through efforts by state Rep. Paul Han-neman (R-Cloverdale).

According to Scovell's attorney, Diane Spies of Lake Oswego, Scovell is willing to cooperate with the effort toward securing an economically feasible project at Botts Marsh for the developer and satisfying for the state, without compromising either party's legal standing. Garibaldi-area consultant Paul Benson will work with Scovell in assisting Cogan Sharpe Cogan, OCZMA, and the state toward selecting engineering, hydrological and other special subcontractors.