

1991 Oregon Legislative OCZMA- Sea Grant Fellowship

Final Report

by
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I. Background

The OCZMA/Sea Grant Legislative Fellowship was created in 1987 primarily as a means to provide a student from the OSU Marine Resource Management Program (MRM) with experience in applying the knowledge she or he had gained in science and public policy through the MRM program at the state government level. The National Sea Grant Fellowship in Washington, D.C. was already in existence, and the OCZMA/Sea Grant Fellowship would mirror that at the state and local level. In addition to providing the student with valuable educational and professional experience, OCZMA and Sea Grant both benefitted by having a liaison in the Legislature. The legislative fellow serves as an information valve; providing information on coastal issues to the Coastal Caucus legislators, and also informing those outside the legislature, including the local coastal governments represented by OCZMA and Sea Grant Extension agents, for example, of what was happening in Salem.

The application process for the 1991 Legislative Fellowship began in April of 1990, eight months in advance of the move to Salem. By late April, the acceptance letter came, and I was on my way to familiarizing myself with the possible issues that the Legislature would be considering.

Immediately I was put on the mailing list of the Oregon Coastal Zone Management Association, Inc (OCZMA). The information they provided me with on a regular basis included meeting agendas, and background reports on a wide variety of topics from dredging to Pacific whiting. Additionally, I was sent copies of OCZMA meeting minutes, which enabled me to develop a sense of what the coastal issues would be based on the topics of interest to the Association.

In November, Jay Rasmussen and I went to Salem and discussed with Senator Bradbury and the Executive Director of the Majority Office, Peter Toll, the feasibility of having the the fellowship housed in the Senate Majority Office. In 1987 the fellowship had begun in the office of Representative Paul Hanneman, and in 1989, the fellow was located in the office of Senator Brenneman; both of whom were senior Republican legislators. In the fall of 1990, Senator Bradbury was the most influential Democratic legislator among the eight Coastal Caucus legislators. Both Senator Bradbury and Toll were willing to house the fellow; after two sessions the fellowship concept had proven a welcome and necessary additional staff person to a coastal legislator. One major factor would not be resolved until January, and that was the possibility that Senator Bradbury would be appointed by the Governor to the position of Secretary of State.

Senator Bradbury was not appointed Secretary of State, and remained Democratic majority leader of the Senate. However, in early January, Senator Mike Thorne, then co-chair of the budget-writing Ways and Means Committee, announced that he would be leaving the Oregon Legislature immediately in order to take a job as Director of the Port of Portland. His vacancy left Senator Bradbury as the second ranking Senator after Senate President John Kitzhaber. It was decided that Senator Bradbury would take on Thorne's position as co-chair immediately. One of the early tests of Bradbury's leadership was his being reaffirmed as majority leader. There were

potential conflicts in holding the position of majority leader in conjunction with the additional position of Ways and Means chair, which is considered to be one of the most influential positions a legislator could hold. The Democratic Caucus upheld Bradbury's role as majority leader, and gave tremendous credit to Senator Bradbury that he could take on both tasks and do them well.

The factors which led to the fellowship being located in the office both of the Senate Majority Leader and of the Co-chair of Ways and Means were unforeseen when Jay Rasmussen approached Senator Bradbury to host the Legislative fellow, but ultimately worked to the great benefit of myself, as well as OCZMA and Sea Grant. The Senator was already considered one of the most influential ocean policy legislators, having been the primary sponsor of the 1987 legislation which enacted the Oregon Ocean Task Force to draft the Oregon Ocean Management Plan, and now he was also going to co-control the state budget.

Between April 1990 and January 1991, I attended and made a presentation at an OCZMA meeting, I attended a Wetland meeting in Salem. I also took courses in State and Local Government and Public Sector Economics at Oregon State University to complete my preliminary preparation. In November I attended a conference on Ocean and Coastal Issues sponsored by the Oregon Natural Resources Council, and a meeting sponsored by Senator Bradbury on the possibility of forming a Coastal Conservancy in Oregon. Upon recommendation of Emily Toby, OCZMA/Sea Grant Legislative Fellow in 1987, I had read Alan Rosenthal's *Legislative Life*, (1981. New York: Harper and Row). I decided that I would try to be at least as prepared as a freshman legislator, and I deliberately did not have any expectations for the the fellowship except to learn as much as possible. By January I had an idea of what could happen with the Legislative Fellowship but no idea of what would be in store for me.

II. Mechanics

One of the biggest questions is how the fellow actually becomes a non-partisan information provider, remaining informed about the issues, but at the same time not advocating any particular program or piece of legislation. This is often a challenge in that the fellow becomes a liaison or voice for various interest groups; she must communicate ideas effectively without being an advocate. Early on, it was critical for me to establish credibility, carve out my niche in the majority office, as well as with the other coastal legislators. Perhaps because of my location in one of the most political offices in the legislature, it was easier to draw the line between my role as an issue-specialist and others' roles as political or caucus specialists. Although the flexibility and independence which are built into the position are probably the most important factors in the ability the fellow has to be effective, my circumstances of working in one of the largest legislative offices meant that I also had to demonstrate that I was part of that office, as opposed to merely using it as a place to make and receive phone calls. Perhaps because of the dynamics within the office itself, I gradually became one of the Majority Office staff.

In contrast to other internship positions in Senator Bradbury's office, I worked full time and was to be there for the duration of the session. I took on the role of "ocean and coastal fellow" in the Majority Office. Most calls coming into the office about the ocean and coastal issues, whether from the Senator's constituents on the South Coast, press people, or agency staff, were referred to me. I also was given letters coming in to Senator Bradbury to respond to on his behalf. Once I was asked by a staff person in Senator Cliff Trow's office (D-Corvallis) to respond to a letter coming into his office concerning high seas drift nets. After some initial adjustment, my staff role in the majority office was thus well defined.

The role of the legislative fellow with respect to the other coastal caucus members is less well defined. Each of the coastal caucus members has legislative assistants as well as interns to respond to constituent concerns, and committee staff to do background work in preparation for hearings on specific bills. In addition to working on correspondence for Senator Bradbury, I also assisted Senator Brenneeman and Representative Josi with a constituent concern from Manzanita regarding wetlands. I was also asked by Representative Schroeder to collect background information on marine mammals which might be pertinent to Representative Schroeder's Congressional memorial regarding state take-over of management of California sea lions and harbor seals.

My major function with the coastal caucus, however, was to arrange for weekly breakfast meetings with speakers on issues of interest to the coast. The caucus met every Monday morning at 7:00 a.m., at JB's Restaurant near the Capitol. Monday morning had advantages in that the caucus could discuss the events of the coming week. However, with a few of the coastal legislators returning to their districts on the weekend, often there would not be full attendance. Former coastal Representative Paul Hanneman was a regular attendee, as were several of the caucus staff people.

In contrast to the image the word "caucus" usually conjures in one's minds, and in the minds of a lot of Salem insiders, the coastal caucus is not extremely political. Of the eight coastal caucus members, six are Democrats and two are Republicans. Almost exclusively, the discussions held at coastal caucus breakfasts are of a social or informational nature, and rarely focused on vote strategies or political positions among the caucus as a whole. The Monday morning breakfast did give some opportunity for one-on-one discussion between members, which could have been more political in nature. Three out of four breakfasts were devoted to informational breakfast speakers. About every three weeks, no speaker would be scheduled, to leave the entire hour free for an "in-house" discussion. This often focused on bill updates, budget reports, or other issues that would require caucus attention. For example, the caucus wrote several letters during the session on issues of state-wide and national concern. In support of federal highway funding, at the initiation of the Oregon Department of Transportation (ODOT), the caucus directed a letter to the Congressional Delegation in support of money for Highway 101. Later, the caucus directed a letter to Governor Barbara Roberts in support of her being the keynote speaker at a Highway 101 Conference being sponsored by OCZMA and ODOT. The caucus also wrote a letter to the Governor in support for some form of relief or declaration of emergency for salmon trollers, due to harvest restrictions imposed by the Pacific Fishery Management Council (PFMC).

Initially, I was given a lot of guidance from Senator Bradbury as to whom should be invited to speak. As the session progressed, I was more and more on my own to make decisions about speakers. Senator Bradbury was aware of trying not to fracture the solidarity the caucus has built up over the years. I was interested in the secondary land issue early on, but was not yet aware of how political this issue was, nor how coastal caucus opinions might be so divided on the issue of secondary lands, and land use planning generally. I suggested a breakfast speaker on the topic, but Bradbury decided to steer away from it. As it turned out, Representative Tim Josi, a freshman legislature from Tillamook County, suggested we have a breakfast on the issue. With the impetus coming from a new caucus member, Senator Bradbury agreed to it, and we scheduled Craig Greenleaf, acting Director of the Department of Land Conservation and Development (DLCD), and Steve Marks, Legislative Assistant to Senate President John Kitzhaber to talk about DLCD's plans for secondary lands, as well as several pieces of legislation pending during the session on the issue, including one sponsored by Senator Kitzhaber.

Other coastal caucus members suggested topics. Jay Rasmussen also provided ideas and relayed interested people to me, mostly agency staff with whom OCZMA works. The topics were usually issues of a timely nature in the 1991 legislature, the Shellfish Program and commercial fisheries for example. Others speakers came to preview issues not directly being dealt with legislatively, tourism, coastal natural hazards, the Astoria Seafood Consumer Center, for example. I would schedule the speakers one or two weeks in advance, and show the tentative agenda to Senator Bradbury for his approval or additional suggestions. As time went on, and Senator Bradbury became increasingly busy, I would give the approval to interested speakers myself -- mostly agency staff wanting to answer any questions from the coastal caucus, or merely to be present as a representative of their agency, prior to a floor vote on a particular budget issue.

In addition to the Monday meetings, I made a habit of stopping by each of the coastal legislator's offices several times a week, to offer information on issues I had been researching, and to see if there were any questions. I also stayed in contact with staff people; in early January, I organized a coastal caucus staff lunch, which Representative Rijken also attended. I also encouraged staff people to attend the coastal caucus breakfast meetings and asked them for topic suggestions.

During the legislative session, the fellow will also need to become familiar with committee staff. Often, the legislative fellow will turn to a committee staff person for assistance when copies of committee testimony or amendments to bills are needed. I found that offering my assistance to committee staff on bills I was specifically working on, helped with the information exchange.

There is a great deal of importance in preserving the "politically neutral" characteristics of the OCZMA/Sea Grant Fellowship. Obviously, when you speak of the "fellowship" as being neutral, this boils down to the fellow herself, making a highly conscious effort to remain neutral on all issues. One immediate advantage the fellow has in this regard is the fact that for the most part, the coastal caucus is politically neutral. In Oregon, political "blocs" for voting purposes or policy-making, are as likely to be regional as they are party-oriented.

During the 1991 legislative session, the ocean and coastal issues I dealt with were not of an extremely political nature. Some of the fisheries issues I covered and was involved in were more political, focusing on the tension between the commercial and sport industry, both within the legislature, and between the legislature and the Oregon Department of Fish and Wildlife. OCZMA made a point of staying out of highly contentious issues this session as it did with Oregon Aquafoods, for example, in the 1987 session. OCZMA did not take a proactive position with secondary lands legislation this session -- a highly political issue which ultimately did not survive the committee process -- although this would certainly have had an impact on coastal communities had it passed. OCZMA Director Jay Rasmussen also did not spend as much time in Salem as he had in the past. Rather than having Rasmussen do all of the Association's lobbying - primarily for funding through state agency budgets - OCZMA hired Paul Hanneman to lobby for them. I suspect that this session, the fellow was more independent than in the past, less visibly linked to OCZMA.

III. Oregon Coastal Notes

The most visible part of the legislative fellow's work during the session is producing weekly articles for OCZMA's *Oregon Coastal Notes* newsletter. The newsletter has a readership of about 200, ranging from various branches of local government to agency staff people, Sea Grant and Sea Grant Extension Staff and legislators. OCZMA's membership consists primarily of local

coastal government, county commissioners, mayors, soil and water conservation districts, port districts and harbor masters. The legislative fellow's agenda in terms of *Coastal Notes* coverage is in part a reflection of the Association membership and what they are specifically interested in, partly a product of which bills are sifted through the legislative committee process, and to some extent shaped by the fellow's interest and where she spends her daily energies. Articles for the newsletter were transmitted to OCZMA in Newport using a computer modem on a Macintosh computer located in Senator Bradbury's office. The transmission was done Thursday morning, and if necessary, would be updated on Friday. OCZMA edited the text and did the newsletter layout, printing and distribution. The newsletter would be in the hands of the readership by Monday.

Several times I heard from agency staff people that they used *Oregon Coastal Notes* to stay informed about committee hearings, often finding out about bill action in the newsletter prior to hearing about it from other department staff. As experienced by the two previous legislative fellows, the process of writing the newsletter enables the fellow to maintain a high level of understanding about the issues being covered. In addition to keeping very close watch on major ocean and coastal legislation by attending committee hearings, transforming hearing notes into a full article for the newsletter results in an increased understanding of the issues. Towards the end of the session when the pace of Salem life has dramatically picked up, the fellow has a knowledge of the issues and information on the progress of bills that few Salem insiders have, and thus becomes a great resource to people both inside and outside Salem needing information on the status of legislation. I found that although the newsletter-writing portion of the fellowship was very time-consuming, the hard work does not go unnoticed, and most likely contributes to building the credibility of the legislative fellow.

IV. Recommendations

1. I would recommend to the next legislative fellow, that he or she make an attempt to pick out one or two issues to follow closely during the legislative session and become an "expert" on. This might be an issue that the fellow has a prior background in, fisheries, or wetlands, for example. It might be an issue OCZMA or Sea Grant are also interested in.

As soon as the legislative fellow arrives in Salem, there are quite a lot of activities that will keep the fellow busy; writing *Coastal Notes* newsletters, sitting in on Committees, working on constituent concerns in the host office, etc. Taking the time to delve into one or two issues thoroughly not only makes the fellow more useful in being a direct source of information on those issues, as opposed to a conduit of information, but this attention to specific issues allows the fellow to take advantage of having exceptional access to agency personnel, as well as the legislative library and the host office's issue files. While there is no question that the fellow will leave Salem with a tremendous amount of experience and contacts just by having been there, I found that coming away from the internship with a fair amount of knowledge on several specific issues I worked on was most rewarding.

2. A meeting during the first month of the Legislative Session with the Legislative Fellow, his/her advisor in the College of Oceanography, and Jay Rasmussen, or current Director of OCZMA would be recommended. Because most of the day-to-day advising comes from the OCZMA Director, and is for the most part a procedural, political and largely non-academic nature, the Fellow should be given a clear sense of how to fit the internship into his/her academic program.

3. Pre-session and late-session interviews conducted by the Legislative Fellow with the coastal caucus legislators on a one-on-one basis should be encouraged if not arranged for the fellow by OCZMA or the host legislator.

I found the late-session interviews I conducted independently with three of the coastal caucus members to be extremely useful for getting to know the coastal caucus better. Pre-session interviews would have been useful for me to get a sense of who these coastal legislators are, what they are interested in, what pieces of legislation they have found critical in the past, and what their expectations are for the session. It would be a good introduction to both the issues and the politics of the coastal caucus and the legislature generally. One or two of the coastal caucus members played virtually no role in the caucus breakfast meetings, despite one of them holding a critical committee Chair position. A pre-session interview with each of them would have given me another basis for communication and interaction other than the breakfast meetings.

4. Although essentially *Oregon Coastal Notes* becomes a record of the Fellow's activities, I would recommend that the Fellow also keep a personal journal to record experiences and observations of the Internship and of the Oregon Legislative process.

V. Annotated Summary of Legislation by Issue (with *Oregon Coastal Notes* articles).

...Fisheries

The 1991 Legislative Session was one characterized by program maintenance rather than program expansion for fisheries resources. As a result of Ballot Measure 5, commercial fishermen were required to contribute more in the way of fish landing taxes and boat license fees than ever before. In addition to a fee increase, commercial fishermen saw a major change in the way fees are assessed, moving from a fee based on the amount or poundage of fish landed to a fee based on the value of the fish, or "ad valorem fee."

This change was facilitated by Oregon Fish and Wildlife Commissioner and Sea Grant Extension Agent, Bob Jacobson, who conducted a series of meetings with commercial fishermen up and down the coast to discuss the change to ad valorem. By the beginning of the 1991 Session, the commercial fishing industry was in consensus about the change. At a coastal caucus breakfast in February, Jacobson spoke to the coastal caucus about the change, which fishermen felt would be a more equitable taxing system than the poundage fee. Senator Brenneman held another meeting with commercial fishermen later on in February, and shortly thereafter, with the guidance of Senator Bradbury, the Ways and Means Committee introduced SB 1202, which replaced several poundage fee bills drafted by ODFW as the focus of the commercial fishing fee increase. Ultimately, SB 1202 was passed by the legislature assessing 1.09% of the value of non-salmon food-fish, and 3.15% of the value of salmon, to be distributed primarily to the State General Fund as "back-fill" for ODFW's budget, and also to the Commercial Fisheries Fund, ear-marked for Department work in the area of commercial fisheries.

In addition to passing the commercial fish fee bill, the legislature extended the Restoration and Enhancement Program through 1997. The Restoration and Enhancement fees remained unchanged at \$.05 per pound; the R&E fund was not included in the ad valorem switch. In other fisheries-related action, Ways and Means add-backs prevented the potential closure of the Fall Creek and Trask Hatcheries through budget restoration, and once again the legislature failed to pass salmon labeling laws. A bill introduced by Senator Kennemer which would have banned gill-net fishing in the Columbia River was only given one public hearing in the Senate Agriculture and Natural Resources Committee, and remained there throughout the session. Representative Walt Schroeder had introduced a bill, HJM 25, which memorialized Congress to allow the State to take-over the management of the California Sea Lion and Harbor Seal. This bill made it through the

House, but failed to be heard in the Senate Water Policy Committee.

Representative Dave McTeague successfully guided passage of a pilot fish-screening and fish by-pass program. McTeague had been working on a similar measure for the past two sessions, and finally received the support from both the fishing community who would pay for some of the program, as well as irrigators who would be asked to support the effort.

Several actions of the Pacific Fishery Management Council (PFMC) prompted Oregon Legislative attention. Prior to the decision to increase the allocation of Pacific whiting for on-shore processing, the Coastal Caucus wrote a letter to the PFMC in support of this. In April, Oregon delegates to the Pacific Fisheries Legislative Task Force brought a resolution in support of on-shore processing as well as better on-board monitoring to maintain low by-catch rates on whiting harvesting and catcher-processor vessels. Finally, the Ways and Means Committee appropriated funding to the Economic Development Department to further study on-shore processing of whiting.

The restriction of the salmon troll fishery by the PFMC in an effort to protect endangered species of Klamath River chinook dealt a hard blow to these coastal fishermen. Legislation was passed to allow salmon trollers to forgo the renewal of their fishing permits and boat licenses without losing their place in the restricted entry fishery if they chose not to fish this season. This bill, SB 1219 was introduced by the Coastal Caucus at the request of Governor Barbara Roberts.

Oregon Coastal Notes Articles Regarding Fisheries Issues

FISHERY FEES DRAW ATTENTION (2-1-91)

Fishermen and ODFW Talking

In an effort to recoup losses in the agency's budget from the Measure 5-influenced budget from Governor Roberts, the Oregon Department of Fish and Wildlife (ODFW) has proposed increases in poundage fees for commercial fishermen. Fishermen and processors have shown mixed reactions to the increases—some sympathy but concerns on the size of the increases and the usage of the funds.

In the Governor's new proposed budget, nearly two and one half million dollars of state general fund moneys that were earmarked for commercial fisheries are suggested to be withheld. The Department has proposed offsetting this loss with fee increases for salmon, sturgeon, crabs, clams, shad, smelt, albacore tuna, halibut, shrimp and for several other species. A first time assessment is proposed for Pacific whiting.

Without new revenues, the Department indicates it must slice about \$2.3 million in services to the fisheries including \$900,000 in propagation with the closure of two coastal hatcheries— Trask and Fall Creek. Other programs threatened include services related to ocean salmon, ocean habitat, Columbia River management, and marine finfish and other fisheries information. (see chart)

Several meetings recently have occurred between the Department and representatives of the commercial fisheries. A general theme coming from the fishing industry is that the Department should not expect to make up all its funding reductions by passing all those costs directly to an industry that can ill afford major new fees.

Industry representatives have shown empathy for the Department's position but are asking for consideration of several concepts and for additional information. Fishermen have asked the Department's support in the creation of a commercial fishery advisory body to review the agency's workprograms that apply to marine fisheries and to allow the industry to become more knowledgeable about revenue needs and uses.

The industry noted that before consensus on fee increases can be considered, ODFW is to produce information on converting fees from poundage to ad valorem, or value rates. With a few exceptions, landed poundage has recently remained fairly constant and efforts to raise additional state revenues are limited to higher poundage rates. For some fisheries like salmon, this system does not recognize the wide range of values fishermen receive. For example, a 10 cents per pound fee affects one dollar a pound coho more adversely than the higher value chinook. With interest in this approach shown by the industry, the agency is preparing a conversion of existing poundage revenues into ad valorem by species for further review..

Further information is sought on revenues that might be achieved from increases in certain licenses including those placed on boats, crews, and dealers. Further, they seek details on the number of agency personnel assigned to marine fisheries by species and on what specific cuts would be made if the agency failed to achieve all of its requested revenue.

Salmon fishermen strongly noted that they should not and can not be expected to pay for all the costs of salmon management when so much of what they are left to harvest—or not harvest—has been impacted by dams, habitat alterations, and other factors beyond their control. There was support for ODFW meeting many of its habitat review costs from sources that contribute to the problem of salmon abundance and agency costs—for example, the review of fill and removal permits.

OCZMA is working to see if a consensus can be achieved on the new fees and to focus additional effort on retention of the two hatcheries—the largest single budget item under threat. It is extremely unlikely that there will be any coastal support for closing the hatcheries and further reducing the production of salmonids.

The Department's budget is scheduled for late February before the Ways and Means Committee.

HOUSE WATER POLICY HEARS FISH BILLS (2-22-91)

The first bill on the docket was HB 2606, which changes the statute in reference to the scientific name for steelhead trout. Representative Dave McTeague (D-Milwaukie) sponsored the bill and came before the Committee to testify on its behalf. Rep. McTeague said that this is a housekeeping bill and provided the Committee with a copy of an article from the American Fisheries Society journal *Fisheries*, dated January-February 1989. The scientific name for rainbow trout, and its anadromous counterpart steelhead trout has been changed from *Salmo gairdneri* to *Oncorhynchus mykiss*. In the *Fisheries* (Vol. 14, No.1) article, Gerald Smith and Ralph Stearly from the Museum of Paleontology at the University of Michigan, have studied the osteology and biochemistry of trout and salmon and have concluded that "rainbow and cutthroat trout ... are more closely related to Pacific salmon (*Oncorhynchus*) than to brown trout and Atlantic salmon (*Salmo*)."

Rep. McTeague said that a second minor issue with this bill was that of the continued status of steelhead trout as exclusively a game fish. "Quite frankly, I don't believe any responsible fisher would wish to revisit the acrimony of the 1960's and 70's over this issue." He said that by reaffirming that the rainbow and steelhead trout, despite the new scientific names, are truly and exclusively game fish, "we can put to rest this speculation, however slight, that they can now be harvested commercially."

Jeff Curtis from ODFW also testified in favor of the bill. Representative Jackie Taylor, joined by Jim Harris from Salmon For All, also testified that they had no objections to this simple name change. HB 2606 was passed out of Committee, and Rep. McTeague will carry the bill on the floor.

House Joint Memorial 9, sponsored by Representative Bob Shiprack (D-Beavercreek) was up next for a public hearing. HJM 9 memorializes the Pacific Northwest Electric Power and Conservation Planning Council to amend the Columbia River Basin Fish and Wildlife Program to provide funding for state agencies in Oregon and Washington to buy back lower Columbia River commercial fishing permits.

Senator Joan Dukes testified that she was wary of this bill, as it appears to set a precedent for state policy singling out one user, rather than looking at the Columbia River and the Endangered Species Act as a unit. Sen. Dukes strongly urged the Committee not to continue with this memorial, as it is an inappropriate position for the state of Oregon to take.

Rep. Shiprack joined Sen. Dukes at the testimony table. Rep. Shiprack said that he had never put in a memorial before and that he often has felt that they weren't the best use of legislators time. However, he said that this is a small step Oregon can take to reduce problems of the Salmon Summit. He said that there was no hidden agenda here, and it would allow a voluntary buy-back if permit holders would like to take advantage of this.

Committee member Rep. Walt Schroeder (R-Gold Beach) asked Rep. Shiprack who else would be interested in this issue. Rep. Shiprack said, "Certainly nobody makes their living on gillnetting anymore." Sen. Dukes reiterated, "You don't make a business selling shoes by just selling Nikes — gillnetters, although small, are part of the economy of the state." Sen. Dukes doesn't want a "de facto" argument of larger issues surrounding the Columbia River with such a memorial. Rep. Shiprack added in the end that he agreed with Sen. Dukes that this memorial would be sending a policy message to the Northwest Power Planning Council from the state.

Rep. Jackie Taylor and Jim Harris from Salmon for All also testified against the memorial. Taylor said that it is "improper to manage the resources in such a way that favors one user group over another. Fish are public resources, and commercial fishing provides public access to those resources." She urged the committee to table the

memorial. Harris added, "buy-backs should not be made in the name of protecting fish—this points to harvest rather than other factors that are also at fault in species decline."

Jeff Curtis, ODFW, said that the Department does support this bill, although not unconditionally. If there were to be harvest restrictions, Curtis said that they should be across the board, not singling out any one fishery. Committee member Representative Larry Sowa (D-Oregon City) said that if there are harvest reductions why should we buy back any permits? Curtis responded by saying the issue was part of a larger social policy question, one that the legislature will address in a number of ways this session, with the timber industry as an example. Jim Myron from Oregon Trout testified that he does recommend the permit buy-backs as one way to reduce the strain on the Columbia River stocks.

The public hearing on HJM 9 was closed without further action.

The last public hearing of the day was held on House Joint Memorial 5. Sponsored by Representative Sam Dominy (D-Cottage Grove), HJM 5 memorializes Congress to provide funding and direction for construction of fish ladders at certain dams on the upper Willamette River. Committee member Representative Bill Dwyer (D-Springfield) was a co-sponsor of this bill and testified on its behalf. Rep. Dwyer testified that of the three dams pointed to in the Memorial, Dexter Dam could take ladders easily, Lookout Dam, would be more difficult, and Hills Creek would be nearly impossible to engineer a fish ladder for. Despite these difficulties, Rep. Dwyer thinks it is a good idea to set this kind of precedent in Congress.

Jill Zarnowitz, ODFW Assistant Chief of the Habitat Conservation Division, testified in favor of the memorial. She said it could even be expanded to include more dams. Zarnowitz added that while the memorial includes ladders to allow returning adult fish back up around the dams, it won't provide a means for juveniles to migrate down the river.

Committee chair Representative Chuck Norris (R-Hermiston) said that there would be another public hearing on HJM 5.

COASTAL CAUCUS BREAKFAST (2-22-91)

Fisheries was the subject at hand this past Monday, Feb. 18, when the Coastal Caucus met for its weekly breakfast meeting at JB's Restaurant.

Because fisheries concerns in Oregon are not limited to the Coast alone, this week the Caucus extended invitations to other members of the legislature to share in the information presented by the speakers Scott Boley, Bob "Jake" Jacobson, and Jim Martin.

In addition to Representatives Hedy Rijken (D-Newport), Walt Schroeder, Tim Josi, Jackie Taylor, Senators Bill Bradbury and Joan Dukes of the Coastal Caucus, legislators in attendance included: Representative Chuck Norris (R-Hermiston), Representative Dave McTeague (D-Milwaukie), Representative Larry Sowa (D-Oregon City), Senator Bill Kennemer (R-Milwaukie).

Other guests at the breakfast meeting were: Paul Hanneman, Jeff Curtis, Terry Thompson, Sheila Thyberg, Sally Schroeder, Betty Lou Norris, Dean Willard, Debby Boone, Scott Wykoff, Dale Pearson, Dixie Boley, Evan Tyler Boley, and Mara Brown.

After a few minutes of table shuffling and bill-back passing, Scott Boley, Port of Gold Beach Commissioner and representative to the Pacific Fisheries Management Council (PFMC), began his portion of the presentation. Boley opened by listing a handful of issues which have an economic impact on commercial fishermen, including regulations and fees involving marine safety and radio licenses, poundage fee increases, and marine mammal permits. Boley likened these things to a pack of pirhanas: too many small bites and the industry dies.

Boley said that the budget is like that too: it is important to remember, in a decision on fee increases, for example, that what is at issue is not a single fee package, but how that fee package impacts an entire fishery being squeezed from all sides.

According to Boley, the Columbia River endangered species issue is only the tip of an iceberg, and that there are a hundred other anadromous species being considered for listing as endangered under the Endangered Species Act.

These foreboding messages led to Boley's main focus which had an entirely positive overtone. Boley had spent the weekend in Coos Bay at a fisheries leadership conference promoting "Fishermen Solidarity" and focusing on problems facing the industry. He said they examined the issues from the perspective of how the fishing industry can act on these problems. Three members of the Pacific Fisheries Management Council representing Oregon, California, and Washington were at the conference. Boley commented that the tri-state representation reflects the

future direction of fisheries management. There are a multitude of species which must be dealt with on a coast-wide basis. Coordination is in Oregon's interest, and of national interest in that it involves Canada and the Bonneville Power Administration.

One of the important debates at the fisheries leadership conference, according to Boley, was over the definition of a "viable fisheries": What is the percentage of natural and hatchery fish at present stock levels? What are the goals for improvement? What percentage change in the proportion of wild and hatchery fish would it take to bring about such a goal?

Boley closed his discussion by emphasizing the importance of having a salmon labeling bill, to require accurate labeling at the retail level. Consumers should know the origin of fish, how it was caught, and whether it was fresh or frozen, he maintained. He added that such a bill should also include a penalty provision for those who misrepresent salmon for monetary purposes.

The next speaker was Bob Jacobson, Oregon Fish and Wildlife Commissioner, a Sea Grant extension agent for Newport, and also a commercial fisherman. He relayed to the crowd that he had had people "breathing fire" in his office over the proposed level of poundage fee increases.

Jacobson said there had been five different meetings in Newport with commercial fishermen. He said Jim Martin and Jeff Curtis of the Oregon Department of Fish and Wildlife (ODFW) were at those meetings and took their share of flack. Jacobson provided an overview of the major topics and conclusions reached during the meetings:

1. Poundage fees proposed by the ODFW are not supported for several reasons. Questions about the equity of ODFW putting the burden of the budget shortfall on the commercial seafood industry, when the budget cuts also impact the recreational fisheries. Also, non-salmon segments of the commercial fishing industry are being asked to support ODFW programs that are mainly geared at salmon management.

2. There was agreement that the ODFW should switch from a straight poundage fee to an ad valorem value assessment.

3. Support exists for a more evenly distributed increase in all ODFW commercial seafood industry license fees rather than proposed poundage fee increases. Some amount of additional poundage fees would be supported with the exception of salmon which took a \$.05/lb. raise in fees during the last legislative session, bringing salmon to \$.10/lb. for poundage fees.

4. A general feeling was that communication between the industry and ODFW needs to be improved. The formation of an industry advisory committee was recommended.

Jacobson stated that while these concerns came from the Newport fishing community, he would like to hold similar meetings from Astoria to Brookings to determine whether the same concerns and conclusions would be reached in those other areas.

Jim Martin, Chief of Fisheries at ODFW, spoke next in response to a question from Sen. Bradbury, asking for an explanation of the general picture that was driving ODFW towards the poundage fee increases. Martin admitted that even before Ballot Measure 5, ODFW anticipated proposing poundage fee increases to improve and to pay for increasingly complex management schemes, and to make up for lost federal revenues. Martin said he recognizes the problems with the poundage fees and added that the solution to dealing with the \$ 2.3 million shortfall in ODFW's budget was a balancing act between three choices:

- 1) Restoring the budget;
- 2) Increasing user fees; and
- 3) Cutting programs out of the budget.

'91 WHITING SEASON COMPLICATIONS CAUSE DISTRESS (2-22-91)

The director of the Northwest region of the National Marine Fisheries Service (NMFS) has advised the Pacific Fishery Management Council (PFMC) on aspects of considerable concern to the incipient efforts to promote shore-based processing of Pacific whiting and to the incidental catch of salmon from the expected catcher-processor fleet off the Oregon coast early this year.

The November 1990 PFMC meeting adopted a proposal for analysis and review that would provide for a quota on Pacific whiting for delivery to shore-side processors. It was widely expected that a final decision would be made by the Council in March. However, NMFS is now reporting that the regulatory process may not be completed until mid-May "at the earliest." The letter notes that "if the fishery starts as early as anticipated and a large number of vessels are successful in locating and harvesting large concentrations of whiting, it is possible that the quota could be taken before any regulations are in place."

Besides the glacial pace of the allocation process, events in Alaska may prompt some of the vessels to be moved south and arrive off the West Coast in early March—roughly a month earlier than expected. Thus the greater gap between an expected allocation decision and the 1991 whiting season.

Related to this is a proposed observer and reporting regulatory package for bycatches by the catcher-processors which probably will not be in place "until after the majority of the fishery has already occurred. Although voluntary compliance may be possible, attempts to reduce the salmon bycatch limited to lower than the .25 salmon per metric ton of whiting agreed to by the joint venture operators, "we understand it may be unrealistic because most of the vessels are new to the Pacific whiting fishery and may require a "learning-curve" in order to understand the various ways they may avoid salmon bycatches."

The attention given to Pacific whiting at the upcoming March PFMC meeting may be greater than many expected.

A DECADE OF FORGONE BENEFITS (3-1-91)

The preliminary forecasted numbers of ocean salmon that will be available in 1991 to ocean sport and commercial fishermen is looking bleak. A glance backward illustrates a decade of lost benefits to coastal communities that appears to be continuing.

Between 1981 and 1990, considerable losses to community personal income in coastal Oregon and Washington have resulted from constraints placed on harvests and from declines in overall abundance of ocean salmon stocks. Those losses extend further than to the fishing industry itself and includes losses throughout the coastal economy.

For coastal Oregon, 30 to 50% of the total income that would have been generated by salmon troll and recreational fisheries was foregone with roughly one-third of the loss borne by the sport fishery and two-thirds by the commercial industry.

Coastal Washington experienced an even greater decrease of 80% with a near-even splitting of the losses between sport and troll. In both cases, the losses result from efforts by the industry and fishery managers to conserve stocks whose decline is heavily attributable to a variety of environmental stresses. For an essentially rural area already hard hit by problems in the timber industry, the effects are roughly equivalent to losing 3,700 residents.

The coastal contribution to salmon conservation has been continuous and it has been costly. The coast has actively supported restoration and enhancement projects; it's the home of the Salmon and Trout Enhancement Program (STEP) and a major contributor to funding of other programs including the Restoration and Enhancement Program established by the 1989 Legislature. We hope to see others share in future conservation efforts.

CONTROVERSIAL FISHERY BILLS SUBJECT OF SENATE AGRICULTURE (3-15-91)

Last Friday, March 8th, the Senate Agriculture and Natural Resources Committee heard public testimony on three bills relating to commercial fishing.

A bill introduced by Senator Brenneman was first to be addressed. SB 608 would create a halibut tag, the proceeds of which would create a fund to research and manage the halibut fishery. This bill was drafted on behalf of the Port of Newport. John Mohr, Manager, Port of Newport, was there to testify. Mohr said that in the past five years, the commercial charterboat industry has greatly increased, and that halibut is their first preference of catch, switching to salmon when the halibut quota is met. Mohr also said that he believed the population of halibut to be underestimated, and that the quota set has been met each year.

This bill has the support of both the commercial fishermen and the charterboat people; they like the idea of dedicated funds. Committee Chair, Senator Dick Springer (D-Portland) mentioned that he has been halibut fishing in Alaska: "It was a great day; I can understand the need for this very much." Jeff Curtis and Kay Brown from the Department of Fish & Wildlife (ODFW) also testified in support of the bill. Curtis informed the Committee that the tag has the potential of raising \$10,000-\$25,000 for the fund depending on how many tags are sold. About 2,000-3,000 people would buy tags now. Curtis stated that setting up a subaccount would be an administrative burden, but that the Department would be happy to work with Senator Brenneman, and to support a dedicated fund if that is what is desired.

Not put off by the 8:00 a.m. meeting time of the Committee, three hearing rooms full of people wearing stickers that read: "I Support Commercial Fishing," came to testify against or show opposition to SB 611. The bill would severely restrict fishing that impacts non-targeted species. The sponsor of SB 611, Senator Bill Kennemer

(D-Portland) was the first to testify. Kennemer mentioned that due to an oversight, the bill, which would require all commercial fishing to be selective to the point of zero by-catch, was amended to restrict its scope to the Columbia River, from its mouth to the Bonneville Dam.

Senator Kennemer stated: "In my view, this bill is about fish management. It is not about eliminating the gillnetter, and is not an attack on coastal fishermen, but it is about managing a vital resource. It is about selective harvest to protect the runs, and protect the survival of the native wild fish." Kennemer characterized unselective harvesting by its "drop-out" or "by-kill"—when fish are injured or are caught and die when they are set free.

Sen. Kennemer continued: "The bill is about using modern technology to enhance species in terms of which fish would be appropriate to harvest and which fish appropriate to let breed. This is a policy bill. It will have its impacts; it will have its impacts on real people."

Sen. John Brenneman, back behind the Committee stage, asked Sen. Kennemer if he had any research to back up the content of his testimony. Sen. Kennemer responded that he didn't have anything specifically about gillnetting, but he did have information on managing fish. This was not shared with the Committee at this time.

Representative Larry Sowa (D-Oregon City) was next to testify on the bill. Rep. Sowa was also a sponsor of the bill and is a veterinarian by profession. Sowa commented that he is a fish conservationist, and that he is not a dedicated sport fisherman. He is merely looking out for the genetic integrity of the species. Rep. Dave McTeague (D-Milwaukie) also supports this bill. He feels that it is important that Oregon comes to the table and examines the way it harvests threatened and endangered species.

The next set of testimony came from the opponents of the bill.

Rep. Jackie Taylor (D-Astoria) came up to testify with Joe Easley, Administrator from the Oregon Trawl Commission. Rep. Taylor stated that the threatened and endangered species issue would require a cooperative effort of commercial, recreational, and treaty fishermen, as well as all other Columbia River user groups. Rep. Taylor asked how Oregon could expect to unilaterally eliminate one user group without compliance from Washington. Rep. Taylor is also part Native American, and respects the treaty rights with respect to fishing although she is a member of a non treaty-recognized tribe.

Joe Easley, who is also a member of the Clatsop Economic Development Committee, suggested that this bill would transfer the fish resource to a user group who can't even catch all that they are allocated, and it would be a blow to the region's economy as well.

A couple of questions came from the Committee at this point. Senator Joyce Cohen (D-Lake Oswego) asked "Why haven't we been able to establish a plan to salvage the drop out so the fish are not wasted?" Senator Tricia Smith (D-Salem) asked "I don't want to get into the issue of whether this is an anti-gillnet or a conservation bill—but are there ways to make the gillnet fishermen more selective?"

While Sen. Cohen's question was left unanswered, Rep. Taylor replied to Sen. Smith's concern by saying that the timing of the gillnet season is designed to eliminate the incidental take.

Sen. Dukes testified next. Sen. Dukes began by telling the Committee that this was her third session in the Legislature and the third time that she has sat in front of this Committee with a good portion of her constituents behind her. The legislature is once again proposing to get rid of their jobs. Sen. Dukes said that all of these fishermen were a part of the resource, and they have cut back on their harvesting, and that they work with ODFW under regulations.

Sen. Dukes also stated that there are thousands of fish at the hatcheries each year that are not taken.

Sen. Dukes, who was accompanied by Astoria Mayor Willis Van Deusen, ended up by saying: "A colleague of mine had said earlier that the gillnetters are hearty people and can withstand a change in profession. I am personally offended by this—since when is the state in the business of taking jobs away from those who are hearty?"

Testimony Continues This Week

On Monday, March 11th, at 5:30 p.m., the Senate Agriculture and Natural Resources scheduled a hearing on SB 614, a bill to increase poundage fees to canners and processors of fish in order to create a Commercial Fishing Fund.

Jeff Curtis and Kay Brown from ODFW presented a few pie charts on the Department's budget to put the fee hikes required of the bill into perspective. Curtis discussed the foot work being done by Bob Jacobson to inform fishermen up and down the coast about the various fee increases and to hear their opinion of the issues of ad valorem fees. Sen. Tricia Smith asked Curtis if the ad valorem fees would fall under Measure 5—a question she was quick to come up with when ad valorem was first mentioned in this session several weeks ago. Curtis responded that they

had taken the question to the Attorney General's office, and that, "No it would not, as long as fish are not considered property." Sen. Springer asked when the Department would be ready with the ad valorem fee package so that the Committee could have a work session. Senators Dukes and Brenneman came up to testify against the bill, making a "coastal team," in the words of the Committee Chair.

Paul Hanneman, Hanneman & Associates, also testified against the bill. When he sat down in front of the Committee he remarked that many of them had known him under a different letterhead, but that he was representing the Oregon Salmon Commission, the Oregon Trawl Commission, and the Independent Troll Fishermen of Oregon. Hanneman noted that some of the past regulations have been at the good of the fishery, but that the commercial industry is being hit this year both by new federal regulations and the low stocks of fish which could restrict south coast fisheries. Hanneman said that two amendments to SB 614 could be adopted, one to change to the ad valorem system, and one to create fishermen advisory committees. All who testified asked for more time to come together on this bill, particularly with some of the most interested parties attending the PFMC meetings in California that week.

Referring back to an earlier comment from Sen. Dukes that the only one in support of this measure was ODFW, Sen. Springer closed the hearing by asking Curtis to make sure they meet with Sen. Dukes, and see that they meet all of the concerns of the constituents.

Whiting Allocation Decision Made (3-15-91) **Study Also Completed**

Early reports from this week's San Francisco meeting of the Pacific Fishery Management Council (PFMC) indicates that the much awaited allocation decision on Pacific whiting has been made. The Council reaffirmed its November recommendation for a shore-side reserve allocation of 36,000 metric tons during 1991—a precedent setting action. The overall quota is 228,000 metric tons. Of the remaining tonnage, a further split was made between harvesters that deliver at sea and the catcher/processors.

In addition, a salmon bycatch rate of .05 salmon per metric ton of whiting was adopted—a very strict threshold. The bycatch limit is, however, voluntary. Compliance is policed by industry along with other limitations: no night fishing, a daily bycatch report with cumulative weekly summaries, full use of onboard observers, and, if the weekly bycatch rate is exceeded, a temporary termination of fishing by the offending vessel. The allocation to fishermen delivering to shore-side processors is extremely important to the development of a Pacific whiting fishery for Oregon. The commercial fishing industry in Oregon is facing the challenge of a period of considerable change. Pacific whiting, could produce \$86 million in income to coastal communities. However, the industry is also facing the loss of one of its most important and profitable fisheries—the joint venture operations that were engaged in the catching of Pacific whiting for delivery to processing ships from foreign countries such as the U.S.S.R. and Japan.

In 1990, the joint venture boats caught almost 400 million pounds of whiting for the foreign processing ships. The fishery generated \$24 million in personal income for Washington, Oregon and California communities. About \$16 million went to Oregon coastal communities.

Recognizing the impending changes challenging the industry, a study administered by OCZMA and funded by the Oregon Departments of Agriculture and Economic Development and by Captain R. Barry Fisher, has been documenting the fishery resource, marketing needs, and infrastructure requirements of Pacific whiting. The report will be presented to the Natural Resources subcommittee of Ways and Means on Monday, March 18 during the subcommittee's review of the Department of Agriculture's budget.

According to the summary, "Pacific whiting is the most abundant fish off the West Coast. More than half of the fish swimming off the West Coast are whiting, making it the coast's largest harvested biomass. Biologists estimate that around 440 million pounds of whiting could be caught most years, off Canada and the Western U.S. By comparison, all the other groundfish species caught off Washington, Oregon and California totaled 305 million pounds last year. So there has always been a great deal of interest in figuring out what to do with such a large body of fish."

The American joint ventures began in 1978 and during the last decade, processing ships from Poland, Bulgaria, Japan, China and South Korea have bought the whiting caught by American trawl boats, and processed it at while at sea.

The end to the joint venture fishery with foreign processors is occurring because of several factors:
• with proper handling during capture, processing and distribution, a product can be developed of sufficient quality to interest the market.

- an American factory processor fleet has been created that is capable, like the foreign processors, of catching the fish and processing it on board. This is part of the Magnuson Fishery Conservation and Management Act's goal to phase out foreign fishing in waters under U.S. jurisdiction.

However, as few as 10 factory processors, a portion of the fleet of Seattle-based processing ships that were built during the last decade mainly to harvest the enormous pollock resources off Alaska, could take the entire whiting quota in about 45 days.

When several factory processor companies told the Pacific Fishery Management Council in November they would have at least two vessels processing whiting off Oregon this year, considerable concern developed among those interested in developing onshore processing capabilities—including here in Oregon. The results of the study, and the efforts of study leader Dr. Hans Radtke, were critical in making a case for a shore-side allocation.

"To do that," the study summary continues, "the Council in November decided to split the 1991 whiting quota of 500 million pounds. Shoreside processors will be given about 80 million pounds, while the offshore factory ships will receive 422 million pounds. The decision must be ratified when the Council meets in March, and there is expected to be much opposition from the factory trawler owners, who will argue they must have the opportunity to catch all of the available whiting. They also do not want an allocation precedent set here that could be used in Alaska, where the stakes are much higher."

Without some new allocations, the 50 joint venture boats, with 35 of them based in Oregon ports, will be hard-pressed at a time when other trawl fisheries are facing smaller quota and greater restrictions. Should they enter other existing trawl fisheries, it could have a destabilizing influence across through the entire West Coast fishing industry.

At the same time, the shore-side processing industry for Pacific whiting is growing. In 1989, Oregon coastal processors used about 800,000 pounds of whiting. By 1990, that had jumped to 5 million pounds, with more processors expressing interest in the fishery. The presence of factory catcher/processors, however, cloud this growth potential.

According to the report, the "needs of the shore-based plants and the factory processors are quite different. The plants need to make substantial investments in equipment to process large amount of whiting onshore. They need the fish to be available to them over a long period of time, to justify the economic expenditures. They are reluctant to make the investment if the bulk of the catch will be taken by the floating processors. The factory processors, on the other hand, need to take as much whiting as quickly as they can, so they can return to Alaska for the second pollock opening in June. The fleet is heavily over-capitalized, and whiting is the only major fishery left for them to exploit. There will be little contribution to Oregon coastal economies (from the factory processors)."

Over the past 20 months, OCZMA has administered the whiting project and produced the overview, summary report and technical reports. In so doing, steering and technical committees were formed and met over ten times to review the project. Also, a two-day technical seminar was held in Astoria with nearly 100 attendees.

Oregon needs to continue to position itself and its local fishing industry for a growth in allocation in 1992. This will ensure that the economic benefits available from the Pacific whiting resource will be realized by Oregon's fishing industry and coastal communities.

—Jay L. Rasmussen

More on Pacific Whiting (3-29-91)

The Council's recently approved allocation that has been forwarded to the Secretary of Commerce calls for:

- 104,000 metric tons to vessels that catch and process aboard.
- 88,000 metric tons to vessels that catch but do not process aboard.
- 36,000 metric tons for a reserve to be allocated later, but with priority for vessels that deliver to shoreside plants.

Voluntary conditions negotiated with the salmon industry and approved by the Council with each of the above groups independently accountable for their actions:

- That each vessel in the fishery be a signed party of the industry's salmon bycatch management plan.
- That each of the three groups salmon bycatch on a cumulative basis be less than .05 salmon per metric ton of whiting.
- That each group take measures necessary to police themselves to ensure adherence to the agreement.
- That each vessel over 125 feet carry a National Marine Fisheries Services (NMFS) observer 100 percent of

the time.

- That observer reports be submitted to NMFS weekly or more frequently if requested.
- That vessels refrain from fishing at night or in a 12-mile square around the mouth of the Klamath River and a 10-mile square around the mouth of the Columbia River.

A request by the California Department of Fish and Game that no whiting be harvested south of the 39 degree north latitude was not agreed to and may result in legal action. (This summary is based on the Midwater Trawlers Cooperative newsletter of March 18, 1991)

FISH RESTORATION AND ENHANCEMENT BILL PASSES SENATE FLOOR (3-29-91)

Senate Bill 246, extending the fees and surcharges on certain commercial and recreational fishing licenses, was carried by Senator Wayne Fawbush (D-Hood River) on the floor of the Senate Thursday morning, March 28th.

Sen. Fawbush praised the collaborative efforts reflected in the bill, and affirmed its endorsement by Senators Joan Dukes, Bill Bradbury and John Brenneman, and also Representatives Dave McTeague and Bill Dwyer. Sen. Brenneman spoke to the bill and urged strong support by other senators. Senator Eugene Timms (R-Burns), who joins Sen. Brenneman on the Agriculture and Natural Resources Committee, also supported the bill although he cautioned the members that they should continue to see that the money goes where it can do the most good. Senator Clifford Trow (D-Corvallis), Chair of the Ways and Means Subcommittee on Natural Resources spoke to the bill, and added that the bill requires projects to get the approval of both the Restoration and Enhancement Board and the Oregon Department of Fish & Wildlife before they are authorized. Sen. Trow said that the process has generally worked very well and that there is no opposition to the bill.

Sen. Fawbush closed the floor discussion to confirm that the majority of the Restoration and Enhancement funds go toward hatchery restoration and enhancement. SB 246 passed out of the Senate with 25-2 with three excused. Senators Peg Jolin (D-Cottage Grove) and Jim Bunn (R-McMinnville) cast the "No" votes.

MMPA MEMORIAL HEARD IN HOUSE WATER POLICY (4-12-91)

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

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 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.

SALMON LABELING BILL HAS FIRST PUBLIC HEARING (4-12-91)

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.

SALMON LABELING BILL PASSED OUT OF COMMITTEE (5-11-91)

On Tuesday May 7th, the House Water Policy Committee held a second work session on HB 2782, which would require labels on salmon products, providing information to consumers about the product. At the last public hearing, the Committee told the salmon industry representatives to work out some of the concerns of the original bill with Roger Martin and Jack Monroe, lobbyists for the retail industry.

On Tuesday, changes were proposed which would limit the labeling requirements to include whether the salmon was imported to the United States, and whether it was of farmed or natural origin. The Committee agreed to send these amendments to Legislative Counsel for drafting. A final work session will be scheduled.

ACTION EXPECTED ON COMMERCIAL FISH FEES (5-15-91)

The Department of Fish and Wildlife's budget was back in worksession on April 2-3 before the Natural Resources Subcommittee of Ways and Means. A critical element of the budget is the inclusion of a companion commercial fishing fee bill to help offset the Governor's recommended reduction in general funds to the Department.

The fee concept emerging is an increase in commercial fishing licenses ranging from boats to sellers coupled with higher fees on landed fish, crab, and shrimp. A first-time fee would be placed on landed Pacific whiting. The revenue from the increases would offset over \$1.2 million dollars of the Department's shortfall of \$2.3 million. Should the fee bill pass, the Ways and Means co-chairs, Representative Tony Van Vliet (R-Corvallis) and Senator Bill Bradbury (D-Bandon), will provide an additional \$500,000 of general funds that along with a slightly larger cut in the Department's programs, balance out the shortfall. The general fund portion would not be available should the fee bill not pass.

The increased fee revenue plus the additional general fund contribution would continue the operations of the

Trask hatchery in Tillamook County and the Fall Creek hatchery in Lincoln County. Other continued programs would be in marine resources and in state police enforcement of fishery regulations.

On Tuesday, April 3, during continued Subcommittee discussion about the sport-commercial equity of potential cuts that the Department will still need to take that may affect non-commercial activities of the Department, Sen. Bradbury remarked: "Let's be clear about this. The commercial industry has brought \$1.2 million to the table. Without this, the cuts we would face, including closing hatcheries, will have serious repercussions for the sport fisheries as well."

It is expected that the new fee bill being assembled in Ways and Means will go first to the Senate Committee on Agriculture. It is expected that the commercial fishing industry will not oppose the increases. However, a combination of those legislators who are either opposed to fee increases generally or who are pressing for higher commercial fees may result in a defeat of the bill, particularly in the House. —JLR

RESTORATION AND ENHANCEMENT BILL PASSES BOTH HOUSES (5-17-91)

The Restoration and Enhancement bill did not receive too much attention or deliberation this session, probably because all the wrinkles had been worked out during the 1989 session, when this fund to restore Oregon fisheries was established and because of its operation and project success.

Last session's bill included a sunset provision to 1991, which will be extended to 1997.

SB 246 passed the Senate floor in a swift vote of concurrence to minor amendments made in the House, and should have no delay in being signed into law by the Governor.

PACIFIC STATES MARINE FISHERIES COMMISSION MEETING (5-24-91)

Last Thursday, May 16th, I had the pleasure of attending a meeting for the Oregon delegation to the Pacific States Marine Fisheries Commission (PSMFC). Senator Bill Bradbury (D-Bandon) has been newly appointed as the legislative representative to the Commission for Oregon. With the announcement of the revenue forecast last week, Sen. Bradbury was unable to attend the meeting himself. The Commission is looking forward to continuing their relationship with Sen. Bradbury, who has long had a dialogue with the PSMFC and the Pacific Fishery Management Council (PFMC) whose membership overlaps slightly with the Commission's.

In attendance at the meeting, which was held in the PSMFC's offices in Portland were Guy Thornburgh, PSMFC Director; Russell Porter, PSMFC; Dave Hanson, PSMFC; Jim Martin, ODFW; Kay Brown, ODFW; Joe Easley, Oregon Trawl Commission; Jack Marincovich, Columbia River Gillnetters; Frank Warrens, Recreational/Charterboat Fisheries Representative; Ron Sparks, Building Contractor, Newport.

From Marine Mammal Program ...

The PSMFC has a large part in National Marine Fishery Service (NMFS) budget issues, and allocating both federal and state funds for fishery-related projects in the Northwest. The Commission "staffs" several projects which are directly NMFS supported: PacFIN, or Pacific Fisheries Information Network, is a computer based compilation of all fish ticket landings, vessel descriptions, and groundfish species composition data from Washington, Oregon and California. The data base will be useful to fishery management teams of the regional Pacific Fishery Management Councils. Another computer data base, RecFIN, Recreational Fisheries Information Network, is currently not funded for the west coast, except possibly a small amount for California. The majority of the congressional allocation for RecFIN was directed at the east coast. The focus of RecFIN is coordination of recreational fisheries data, perhaps aiming towards a federal/state management partnership similar to the Fishery Management Council approach for the commercial industry.

The PSMFC has also been very much involved in the National Marine Fisheries Service (NMFS) marine mammal surveys. PSMFC is directly involved in the marine mammal observer program which is looking at the incidental take of marine mammals in connection with the Columbia River gillnet salmon fishery, as well as looking at the damage to gear by marine mammals. Observers are reporting their findings. Currently, commercial fishermen keep their own logs on marine mammal interaction.

In general, there is a feeling that there is a conflict between the Marine Mammal Protection Act (MMPA), and the Magnuson Fishery Conservation and Management Act, both of which are administered by the National Marine Fisheries Service. The PSMFC sees its role as addressing a reasonable ecosystem balance, and sees a problem in the administering of the MMPA which is aimed at protecting a single species in an ecosystem. The MMPA is up for reauthorization in 1992, along with the Endangered Species Act.

The Commission might be asked to take a position on whether or not to support takings of marine

mammals, for subsistence or for scientific purposes -- the taking of minke whales by the Japanese, for example. The question is whether whales should be treated any differently from other harvested species, which are managed to allow a taking above the optimum sustainable population (OSP) levels. In a position of conservation and wise use of resources, the Commission might not object to the recent proposal by the Japanese to take 1% of the minke whale population over the OSP level.

To High Seas Driftnets...

The PSMFC has also been involved in the high seas driftnet issue, primarily in coordinating the opposition to the driftnets, and lobbying on Capitol Hill. At the Commission meeting, Joe Easley brought up the issue of consistency between the marine mammal issue and the driftnet issue concerning a platform of wise use of resources. On the one hand, it is important that the Commission maintain the coalition that has been developed in recent years with environmental organizations over support for a driftnets ban. However, it was felt that the Commission could maintain that their support for a ban on driftnets was consistent with allowing some take of marine mammals, because the overall goal is still to maintain a healthy population of animals.

Do Not Feed Marine Mammals in the Wild

The Oregon delegation discussed briefly a proposed rule of the National Marine Fisheries Service that would prohibit feeding marine mammals in the wild. Feeding marine mammals might disrupt the normal behavior of the mammals and would be inconsistent with the goals of the MMPA. Feeding of marine mammals might be more of an issue on the east coast, where the business of whale watching from large passenger vessels is thriving. On the west coast, this new rule could impact the feeding of harbor seals off the dock by tourists. Jim Martin, Chief of Fisheries with the Oregon Department of Fish and Wildlife, asked whether permitted disposal of fish wastes might also be affected by the feeding ban. Harbor seals are known to congregate around discharge pipes near harborside fish processing plants. Although the discharge is processed, occasionally larger pieces of fish are also in the fluids being pumped out, and could be construed as contributing to unnatural feeding.

Salmon Listing Discussed

Salmon and the Endangered Species Act was also a topic of Thursday's meeting. There was some indication that the governors of the Northwestern states are pushing for Bonneville Power Authority to take over the recovery plan for the salmon. Also discussed was the tendency of the utilities and irrigators to point the finger in the direction of fisheries in blame for the decline of salmon species.

Education is a Major Focus

Education issues are a big part of the Pacific States Marine Fisheries Commission's activities. Education on habitat issues such as non point source pollution and wetlands are critical to prevent further destruction of habitat. Fran Recht is on board to coordinate the West Coast Habitat Education Program. (Look for an upcoming issue of Coastal Notes on this subject.)

The 1991 annual meeting of the Pacific States Marine Fisheries Commission will be held October 2-4, 1991 in Coos Bay. Contact Guy Thornburgh, PSMFC, (503) 326-7025, for more information.

HOUSE WATER POLICY HARD AT WORK (5-24-91)

Angling Fee Bill on its Way to House Floor

The House Water Policy Committee deliberated on SB 247 on Tuesday, May 21st, and voted to move the bill onto the floor. Representative Walt Schroeder (R-Gold Beach) voted no, explaining that he had received several letters from south coast Chambers of Commerce in opposition to the measure. The bill will be carried by Representative Bill Dwyer (R-Springfield).

ODFW Fee Bill Moves over to House Agriculture and Natural Resources...

Other action in Tuesday's Committee was a work session on SB 1202, assessing a fee based on a percentage of the value of all non-salmon commercial fisheries to raise replacement revenue for the General Fund. Rep. Schroeder made a motion to move the bill over to the House Agriculture and Natural Resources Committee.

Rep. Schroeder explained by saying that, traditionally, assignments of fisheries-related bills to House Committees followed the rule of thumb: if it is swimming in the water it goes to Water Policy; if it is on the dock, it goes to House Agriculture and Forestry. Rep. Dwyer questioned tradition, and for a while it appeared as though the bill might remain in Water Policy. There was some discussion of an early Coastal Caucus breakfast, in which Fish and Wildlife Commissioner Bob "Jake" Jacobson spoke to an overflow crowd about the proposed switch from poundage to an ad valorem fee assessment. Reps. Larry Sowa (D-Oregon City), Chuck Norris (R-Hermiston) and Walt Schroeder of the Water Policy Committee were all at that Coastal Caucus Breakfast.

After Some Discussion...

There was concern that Schroeder intended to have the bill moved to the House Agriculture and Natural Resources Committee, which he Chairs, for the purpose of lowering the ad valorem rate. (See earlier *Coastal Notes* if you are just beginning to follow this one...) Rep. Schroeder said that his intent was to make sure the rate reflected what the industry agreed to (which he thought was 1.09% in comparison to the bill's 1.25%). Chair Norris reflected that Bob Jacobson will probably have to come and testify, and then upon reminding the committee that there was a motion on the table, and hearing no objections said, "We'll duke this one out on the dock over in the House Agriculture and Natural Resources Committee in a couple of days."

COASTAL CAUCUS BREAKFAST (6-5-91)

Fish Habitat Education Program

Fran Recht, project director for the Fishermen Involved in Saving Habitat (FISH) program of the Pacific States Marine Fisheries Commission (PSMFC), was the invited speaker for the Coastal Caucus Breakfast on June 3rd. It was a day for sharing innovative ideas and hearing about some of the problems coastal habitats throughout the country are facing.

Jim Martin, ODFW, Speaks First

Before Fran Recht got underway, Jim Martin, Chief of Fisheries from the Oregon Department of Fish & Wildlife (ODFW) gave a brief presentation and was there to answer any questions from the Coastal Caucus. Martin shared "a bit of good news and a bit of bad news" with the Caucus, updating them on ODFW legislative issues. The bad news was that the shellfish fee bill, SB 247 failed in the House. Martin briefly mentioned the impacts this foregone opportunity will have on the Department's commercial shellfish programs. Some loss will be taken in the area of soft-shell crab testing and the placing of buoys around urchin beds. The good news is that some add-backs in the ODFW budget put the Fall Creek and Trask River hatchery programs in the clear.

Martin reported that the salmon fishing season is beginning to gear up, and that although there is an extremely constrained chinook fishery on the South Coast, the coho season looks strong. The halibut season was also successful, although Martin alerted the Caucus to ongoing deliberations by the Pacific Fishery Management Council (PFMC) concerning halibut allocations between recreational, commercial and tribe fisheries in Oregon and Washington, and described the PFMC November meeting as "quite a fracas."

Bycatch Issue Critical

More good news: the offshore factory trawler fishery for whiting is just about over, and the salmon bycatch was maintained at a level below the agreed upon .05 salmon per metric ton limit. However, the rock fish bycatch is still a concern; some 650 metric tons of rock fish was taken by the factory trawlers, and is not allowed to be brought in to shore. Martin said that waste in the trawl fishery as a whole is a critical problem. The option to force trawlers to bring in everything they catch has been considered but in addition to the fact that most of the fish caught are not marketable, there are practical limitations with vessel hold space. Other solutions include working on more selective gear. Martin mentioned that the overall trip limits are tight, with the policy to sustain a year-long fishery and avoid a "boom or bust" situation.

A few other issues were raised by Coastal Caucus members. Representative Walt Schroeder (R-Gold Beach) asked whether a memorial urging a state take-over of the management of the California sea lion and harbor seal would be helpful to Martin to take to Washington D.C. when deliberating on marine mammal issues. Martin thought it would help their position with Congress. Representative Schroeder's HJM 25 has been passed out of the House, but it has not been scheduled for a hearing in the Senate Water Policy Committee.

Squawfish Bounty Saves Money

Senator John Brenneman (R-Newport) asked more about the bounty on Columbia River squawfish. Martin confirmed that the Department was offering a \$3.00 per fish bounty. What sounds like a lot of money is really preventing the squawfish from eating about \$30.00 of salmon.

Rep. Schroeder had the last comment, getting back to the Department's shellfish projects. Rep. Schroeder said that the ad valorem fees being paid by the urchin fishery will represent a sizeable increase in their fees, while at the same time the urchin projects are going to be cut back or eliminated -- surely the urchin fishery should get back some of what they are paying in to the general fund. Martin said that unfortunately, this biennium (with Measure 5 cuts), the commercial fishing fees will only recover money lost from the general fund subsidy of the Department of Fish and Wildlife.

Habitat Education and Grassroots Support Needed

Fran Recht took over at this point. Recht opened her presentation by mentioning a conference she had recently attended in Maryland, "Stemming the Tide," a National Symposium on Fish Habitat Conservation, in which two conclusions were reached: 1. Education is critical to prevent habitat loss; and, 2. Grassroots support from commercial fishermen is necessary to increase awareness of the impact of habitat loss to the economy.

Wetlands and Water Quality

Recht's new habitat program focuses on assuring that commercial and recreational fishermen are involved in such things as preserving wetlands and maintaining coastal water quality. The program promotes ocean stewardship, starting with the way fishermen and boat yards handle vessel related wastes such as oil and bottom paints, and urge the recycling of these products. On a local level, fishermen will be exposed to habitat issues, and be instrumental in public outreach to promote such activities as wetland protection, bay monitoring, storm drain stenciling, and building coalitions for habitat protection work.

On a national and state level, fishermen will be involved in promoting measures to improve habitat, water quality and wetlands.

Finally, the fishermen will continue to build their image with the public and work towards establishing coalitions with local and national environmental groups in a synchronized effort to protect fish habitat.

"No Wetlands -- No Seafood"

Recht provided a bit of background information leading to the need for the habitat education program. While fish populations have been in decline, and critical spawning and rearing grounds in coastal wetlands have been destroyed, the consumption of fish is on the increase. To turn around the historical under-valuation of habitat, coastal fishermen must be educated and start responding to the activities which jeopardize their livelihoods. In other words: "No Wetlands No Seafood," as the program slogan goes.

Economics of Wetlands

Fran Recht offered some facts about the economic importance of wetlands:

1. Each year 17 million marine recreational fishermen pursue about \$7.5 billion nation-wide pursuing wetland dependent fish.
2. Commercial fisheries for wetland dependent species contributed \$7 billion to the nation's GNP in 1987.
3. The 408,000 acres of saltwater wetlands lost to development between 1954 and 1974 are estimated to cost the fishing industry \$208 million annually.
4. Seven out of ten of the most economically valuable fish and shellfish species in the US require coastal wetlands for breeding habitat: shrimp, salmon, oysters, menhaden, clams, crabs, flounder.
5. Despite their importance, coastal wetlands in the US continue to be lost at the rate of 40,000 acres (64 square miles) per year. 63% of this loss is occurring in Louisiana due to natural and man-made changes. Everywhere else, coastal wetland loss is directly proportional to population density and urbanization.

Coalition Building

Recht stressed the need for coalition building between groups who should be fighting together to save fisheries resources, rather than "neutralizing" each individual group's effect by fighting each other.

Jim Martin spoke again at the end of the meeting, saying that in order to supply the world with seafood, we will have to develop currently underutilized fish species such as squid and anchovy, as well as turning to aquaculture. Martin continued to say that if we destroy the habitat and near shore area, we are jeopardizing our ability to maintain our current share of fisheries as part of the world-wide food base.

Martin predicted that within our lifetime, there will be a food shortage throughout the world due to habitat destruction, as well as the impact of increased ultraviolet-B radiation on primary production in the food chain. If we, as a country, do protect our habitat, however, we will have the cleanest ocean and coastal system in the world, and will be in a good place to provide fish to the world.

SB 1219 (6-21-91)

The bill which would give ocean salmon trollers relief from fees this year is still awaiting a hearing in the House Judiciary Committee.

A public hearing was held on this bill this morning, June 20th. Representative Walt Schroeder (R-Gold Beach) testified and introduced an amendment to the bill requiring an emergency clause.

The bill is now scheduled for a final worksession on Saturday, June 22nd.

COMMERCIAL FEE BILL PASSES HOUSE (6-21-91)

SB 1202 passed the House floor 39-7 on Thursday, June 20, 1991. All coastal House members voted for the bill.

Ways and Means Committee member Representative Bob Shiprack carried the bill. He stated that this bill, in addition to raising revenue to meet cuts in the Department of Fish and Wildlife's budget, changed the rate from poundage to ad valorem (based on value). Because the change "makes us suspicious of the amount that will be raised, we have allowed the Commission to adjust the non-salmon rate upwards slightly."

Shiprack noted that failure to pass the bill would mean a loss of \$500,000 in general funds, closure of two coastal hatcheries, and cuts in state policy and marine programs. "This is," he noted, "a small start in achieving commercial parity with sports. It is the best effort of the legislature and the industry." The two hatcheries covered by this bill are the Trask and Fall Creek.

TROLL PERMIT REQUIREMENT SUSPENDED (7-3-91)

SB 1219, sponsored by the Coastal caucus at the request of Governor Barbara Roberts, was passed with an emergency clause by the House, and concurred on by the Senate during one of the final days of the legislative session.

The measure will allow the holder of a salmon troll permit to forgo renewal of that permit as well as the boat license if the troller chooses not to fish this season. Anyone taking advantage of this during the calendar year 1991 will not lose his or her place in the restricted ocean fishery, and may renew next year.

...Ocean Policy

In spite of the primary focus on funding this session, several pieces of ocean policy legislation were passed. The Department of Land Conservation and Development (DLCD) came to the legislature with SB 162, establishing an Ocean Policy Advisory Council to draft a plan for Oregon's Territorial Sea, based on the recommendations of the Oregon Ocean Management Task Force.

DLCD held a meeting with local planners in April to discuss ocean resource issues. During his explanation of SB 162, Bob Bailey, Outer Continental Shelf Coordinator for the Department spoke of the bill's intent to foster a "seamless web" between state and local government in ocean planning. Prompted by several local planners who contacted Senator Bradbury after that meeting, Senator Bradbury introduced an amendment which deleted a section of the bill which, contrary to the intent to foster cooperation, would have allowed the Land Conservation and Development Commission to impose amendments to local comprehensive plans on the basis of the Policy Council's recommendations.

Other amendments adopted before the bill was in its final form changed the representation of the Policy Council slightly to increase the scope of representation, including the addition of local elected officials and representatives from the recreational fishing industry. Based on the recommendations of the Task Force in The Oregon Ocean Plan, the Policy Council has a similar configuration to the Task Force: "a broadly representative policy advisory council ... would be similar to the Ocean Resources Management Task Force where the many diverse interests in ocean resources and uses have had a 'seat at the table'." In an amendment suggested by OSU Sea Grant Extension Agent Jim Good, in addition to being a member of the Policy Council itself, the Director of Sea Grant was named as the head of a scientific and technical advisory committee that will assist the Policy Council in drafting the management plan.

Adding another aspect to Oregon's ocean policy, the legislature passed SB 499 which would ban all private and public exploration and development for hard minerals within the State's Territorial Sea, but permit academic research. Statewide Planning Goal 19 asserts that protection and management of renewable resources has a priority over non-renewable resources. The Ocean Resources Management Task Force recommended that additional biological and environmental

information on the impacts of hard mineral mining was needed before the state could exercise an option to enter into a lease agreement for private exploration of off-shore minerals. A majority opinion of the Task Force recommended a five year moratorium on lease sales until such academic information was gathered. However, because the mineral development community had not successfully demonstrated that mineral development could be done without adversely impacting the environment and renewable resources, SB 499 was passed to strengthen the intent of Goal 19. According to Senator Bradbury, "the gold off Gold Beach is swimming in the ocean."

It is not clear whether a federal lease sale for hard mineral exploration in the 200 mile zone would challenge Oregon's ban of public and private exploration and development. In any event, a job of the Policy Council should be to draft guidelines and regulations for mineral mining in the event that the federal government proceeds with lease sales for mining within the 200 mile zone, despite the inconsistency with Oregon's ban under the Coastal Zone Management Act.

Additionally, the Policy Council should draft guidelines for academic research, clearly distinguishing between exploration and research so that a conflict between scientists and public interest groups as seen in Gold Beach in August, 1990, may be avoided in the future. While the bill does not permit public exploration for minerals, it is possible that activities conducted by the U.S. Department of Interior's Minerals Management Service (MMS), although characterized as "exploration" by the MMS, would be construed as "research" under Ocean Policy Council guidelines approved by a diverse range of interest groups. It may be that with an outright ban on development, any activity other than marine mineral development would be research; definitionally, it would be impossible to conduct activities with the intent to use the information for future development.

Oregon Coastal Notes Regarding Ocean Policy Issues

PACIFIC OCEAN RESOURCES COMPACT INTRODUCED (2-1-91)

On Thursday, January 31, 1991, legislation pertaining to the Pacific Ocean Resources Compact was introduced concurrently in the five states participating in the Compact.

The Compact involves the states of Oregon, Washington, Alaska, California and Hawaii, and eventually could include British Columbia. In Oregon, SB 500 is being sponsored by Senator Bill Bradbury, the Senate Majority Leader, and also has the support of Senate Republican Leader John Brenneeman, and Representative Walt Schroeder, who have signed on to the bill. The three legislators were present at a press conference Thursday in the Capitol Press Room. The Ocean Compact as an interstate compact, generally shares the characteristics of interstate compacts as the most binding legal means of establishing cooperation between states. The U.S. Constitution provides for interstate compacts in Article I, Section 10 such that "No state shall, without the consent of Congress...enter into any agreement or compact with another State, or with a foreign power." Each state in a compact agreement is bound by its own state statute and also subject to Constitutional endorsement of contracts. A state in the Compact cannot jeopardize the terms of the Compact or unilaterally withdraw from the Compact except as outlined in the Compact. As contracts, interstate compacts take precedence over other state laws that conflict with the provision of the Compact.

The Pacific Ocean Resources Compact grew in part out of the combined efforts of the Ocean Resources Committee of the Western Legislative Council and the recommendation for the establishment of an interstate compact made by the States/British Columbia (BC) Task Force on Oil Spills. The States/BC Task Force recommendation was an element of the final report presented to the Western Legislative Conference on July 2, 1990. SB 500 thus reflects the intent of both of these working groups as much as possible.

Originally, it was thought that the formation of the Compact would come under Section 309 of the Coastal Zone Management Act (CZMA) which granted congressional preapproval for interstate compacts concerned with ocean resources management issues. However, the 1990 Reauthorization of the CZMA did not include the preauthorization language. Upon ratification by one or more states, the Compact would take on the status of an

international treaty and require the approval of the Canadian government as well as the Congress. Because of differences in the legislative process, BC will probably hold non-voting status with respect to the Ocean Compact.

The Ocean Compact addresses what is considered the "Compact Zone"--the area within the states' Territorial Seas extended to include the area with the U.S. Exclusive Zone--out to 200 miles from the mean high water mark.

Implementation Explained

The Compact establishes a framework through which the states and British Columbia can represent their interests in the compact zone, and also provide a means for citizens to address their concerns over interests within the compact zone. More specifically, this includes the establishment of uniform safety standards for routes, crews and equipment for vessels transporting oil and other hazardous substances within the compact zone. The Compact also stipulates the provisions for the implementation of these standards and regulations by federal agencies, states or provinces and private industries. Other goals of the Ocean Compact are to maintain and protect common ocean resources through the coordination of the parties' ocean resources management plans.

The implementation of the Ocean Compact would be carried out in part by the delegates from each state who would be appointed as representatives of the parties to undertake the duties and responsibilities of the Compact. The Secretary of Transportation, the Administrator of the Environmental Protection Agency (EPA), and the Administrator of the National Oceanic and Atmospheric Administration (NOAA) or their delegates may also serve as non-voting members of the Compact.

Compact Authority Described

The authority of the Ocean Compact centers on its provision to prevent oil or other hazardous substance spills. In addition to establishing uniform vessel safety standards, the Compact will have the authority to coordinate the oil and hazardous substance spill response plans and programs of the states, federal agencies and private organizations. The Compact also establishes the requirements for the submission and approval of a contingency plan by any vessel transporting oil or hazardous substances in the compact zone. Such requirements are to be at least as stringent as those required under the Federal Oil Spill Pollution Act of 1990. The vessel contingency plan itself must comply with the Oil Pollution Act.

The Compact also calls for coordination of the parties' individual or regional oil or hazardous material spill response systems, by maintaining a directory of personnel, equipment, technical expertise, organizations and other resources available in the event a spill response within the compact zone is needed. In addition to the spill response coordination, the Compact calls for interstate cooperation regarding studies or data which relates to ocean resources and needs to be compiled and shared among the parties.

The Compact will eventually designate state or provincial agency officials to serve as liaisons with federal agencies, so that the Compact may advise those agencies with regards to ocean management issues and necessary regulation.

There is a provision in the Compact which allows for a variance from the provisions of the Compact. This applies only when the activity allowed under the variance does not have any regional impact and that the variance is economically necessary. However, the Compact stipulates that under no circumstances will the activity allowed by the variance result in the regulation or transportation of oil or other hazardous substances to standards less stringent than standards imposed under federal law.

At this time the legislation is written to appropriate an unspecified amount of general fund revenues to carry out the provisions of the Compact.

Historically, compacts were used to settle interstate boundary disputes. However, reflecting the increasing complexity of modern problems, half of the approximately 200 compacts formed since the Delaware River Compact of 1783, have been established after WWII.

Examples of compacts are found in all areas of state concern, including health, education, transportation, and natural resources. Issues under these categories often have such public good characteristics as non-excludability. Specific examples of compacts in natural resources include the Colorado River Compact, the Pacific and Gulf States Marine Fisheries Compacts, and the Columbia River Basin Fish and Wildlife Program. Another important compact which provided some guidance in the language of the Ocean Compact, is the Northwest Power Planning Council.

The following points were extrapolated from a publication of the Legislative Service Bureau of Michigan, and address the common arguments in favor of and in opposition to the formation of interstate compacts. Arguments that have been made in favor of interstate compacts include the following:

- 1) The interstate compact is a means for the states to preserve their position in the federal system and to reduce the burden on the federal government.

2) The interstate compact can be effective in the establishment of joint agencies with two or more states. Furthermore, while compacts may appear to diminish state autonomy in specific areas, they also pave the way for greater state achievements and interstate problem solving.

3) Compacts take precedence over ordinary state statutes and they represent one of the most powerful ways of achieving intergovernmental action.

Arguments that can be made against the formation of interstate compacts including the following:

- 1) A considerable amount of time is needed to initiate, negotiate and ratify a compact.
- 2) Because compacts are increasingly controlled by the specialists who are responsible for their implementation, the public may feel separated from the process of negotiating and forming compact issues.
- 3) Compacts may become overly interest group-oriented as opposed to meeting the needs of the general public or addressing the actual issues at hand.

Legislators introducing the bill in the five participating states are Senator Sam Cotten of Alaska; Assemblyman Dan Hauser of California; Senator Jack Metcalf of Washington who is the Chair of Senate Committee on Agriculture and Natural Resources in Washington; and in Hawaii, Representative Pete Apo. The British Columbia contact person is Richard Dallan, Office of Deputy Minister, Ministry of Environment.

Press Conference Response

According to Senator Bradbury "The Compact dramatically improves the ability of the region and of Oregon to prevent oil spills." Oregon has been a leader in developing an ocean resources management plan, and there is a need to coordinate the efforts of the individual states in the region. As put by Senator Brenneman today at the press conference, "Fish and Wildlife know no boundaries." There is a clear benefit to the natural resources in establishing regional or ecosystem management plans. Brenneman recounted his first hand experience with oil spills in the 1983 spill in Yaquina Bay resulting from the grounding of the Blue Magpie. Brenneman indicated that it was swift action by the Coast Guard and other local response teams that prevented greater catastrophe, although still hundreds of birds were killed by the spill. Representative Schroeder feels that this measure is long overdue, and that perhaps there is greater danger in the transshipment of oil than the potential harm from drilling. Schroeder also reminded us of the old proverb "An ounce of prevention is worth a pound of cure."

OCEAN MANAGEMENT ISSUES ADDRESSED AT COASTAL CAUCUS (3-22-91)

Bob Bailey came from the hub of agency networking to address ocean management issues during breakfast with the Coastal Caucus this past Monday, March 18th. Bailey is the Outer Continental Shelf (OCS) Coordinator for the Ocean Resources Division of the Oregon Department of Land Conservation and Development (DLCD).

Bailey framed his discussion around the 1990 reauthorization of the federal Coastal Zone Management Act (CZMA). With the reauthorization, Congress strengthened the role of the state in offshore management activities, categorically stating that federal activities such as lease sales and dredge and fill activities would have to be consistent with state land use goals. It is hoped that the issue of federal consistency will be extended to include coastal planning activities—those of the Army Corps of Engineers, for example.

Bailey also mentioned the new CZMA requirement that states develop a non-point source (NPS) pollution plan within five years. Bailey doesn't see a tremendous change in the way the state deals with NPS pollution currently, but the issue will be brought to the attention of the public and will perhaps result in an increased push to prevent NPS pollution in the coastal zone.

The discussion of federal consistency led right in to talking about the history and future of Ocean Management Planning in Oregon. Bailey said that all federal activities out to 200 miles would have to be consistent with Oregon's Ocean Management Plan, which was developed as a result of a legislative mandate from the 1989 legislative session. LCDC has a bill in to change the Ocean Resources Management Task Force into an Ocean Resource Management Council. (Look in next week's Coastal Notes for an update on this bill as well as offshore mineral mining.)

OREGON'S OCEAN MANAGEMENT BILLS HEARD (4-5-91)

On Wednesday, April 3rd, the Senate Agriculture and Natural Resources Committee held a work session on two bills impacting Oregon's ocean management policies. SB 499 and SB 162 were passed out of the Senate Committee with "do pass" recommendations.

SB 499 would ban all private or governmental exploration or development within the state-owned territorial sea as written in the final SB 499-4 amendments adopted by the Committee. The original version of the bill allowed

Division of State Lands to enter contracts for governmental research or exploration but prohibited governmental or private development and private exploration for hard minerals in the territorial seas. However, the bill was subsequently amended to ban all hard mineral development or exploration—public or governmental—but allow academic research, by or on behalf of a governmental agency or academic institution. This first set of amendments was presented in SB 499-2, and adopted by the Committee last week.

SB 499-2 amendments begged a definitional distinction between "exploration" and "research" which would ban governmental exploration on the one hand, but allow research on behalf of a governmental institution on the other. During the week between the adoption of the "dash 2's" and Wednesday's work session, a series of definitions were faxed back and forth between interested parties until a relative agreement could be met. The major players working with Senator Bill Bradbury (D-Bandon) in the definition-drafting process were the League of Women Voters of Oregon, OSU College of Oceanography, Division of State Lands (DSL), Department of Land Conservation and Development (DLCD) and the Department of Geology and Mineral Industries (DOGAMI).

On March 20th, the Committee had its first public hearing on the mineral mining bill. Sen. Bradbury, the sponsor of the measure, testified at that time. "A number of developers have been interested in gold off Gold Beach on the South coast—dredging the sea floor for hoped-for minerals. The reality is that gold off Gold Beach is swimming." Sen. Bradbury, who was also instrumental in passing last session's Ocean Management Task Force bill, also confirmed that the state's ocean policy has put a priority on the development of renewable resources over non-renewable resources: "In other words, fish before minerals—unless it can be shown that non-renewable resource development can be done without harming the renewable resources of the ocean."

Sen. Bradbury was again present on Wednesday to present the new definitions to the Committee. The definition of "exploration" as used in the SB 499-4 amendments is: "exploration" means any activity the principle purpose of which is to define, characterize or evaluate hard mineral deposits for possible commercial development or production." Because the bill bans both governmental and private exploration, the data generated by this activity can be private or public. Additionally, because with passage of this bill, hard mineral development would be outlawed, no such activity could be conducted with the intent to develop hard minerals.

Dennis Olmstead, from DOGAMI testified with recommendations that the definition of exploration include that it would yield private or proprietary data. However, when asked by Senator Bob Kintigh (R-Springfield) whether there could be any exploration that would be public, Olmstead said that he thought there could be.

The definition of research is very inclusive. In the language adopted by the Committee; "scientific research" means any activity the principal purpose of which is to improve scientific or technical understanding of earth, ocean or atmospheric processes, hazards or resources and for which the data generated are non proprietary or public. Under SB 606 that was enacted by the 1987 Legislature and effectively repealed by this new legislation, DSL could enter into contracts for exploration of hard minerals, but it was specified that the data generated by these exploratory studies were to be made public.

Senator Eugene Timms (R-Burns) on the Committee was uncertain about enacting a permanent ban of mineral development. Sen. Timms was concerned that somewhere down the line, his grandchildren would need to develop these resources and they would not be able to. "I don't want to disturb the natural resources, but I get darn nervous about locking things up. Once you get a law passed, it is hard to reverse it." Aside from the fact that this bill is entirely repealing a measure enacted two sessions ago, Chair Sen. Springer reminded Sen. Timms; "That's what we thought about ANWAR (Arctic National Wildlife Refuge)— But if they want it; they usually get it." (President George Bush's newly revealed energy strategy includes plans for future oil and gas drilling in the Alaskan wildlife reserve)

When all members were present to vote on the 499-4 bill; the Committee passed the bill out 5 "ayes"; 2 "nays"; Sen. Timms and Sen. Kintigh dissenting. Sen. Bradbury will carry the bill on the floor probably early next week.

The Committee also held a work session on Senate Bill 162, which was printed at the request of DLCD. Sen. Bradbury had testified on this originally when it was up for a work session two weeks ago. Noting the importance of the reauthorization of the federal Coastal Zone Management Act (CZMA), Sen. Bradbury said that "We need the Ocean Policy Council to develop a plan, develop and collate important ocean resource data and coordinate state agencies so that Oregon speaks with one voice when talking to private, federal or state proponents of various ocean activities." He continued: "This plan will drive federal actions which must be consistent with state CZM plans—if we say no to oil and gas in the state territorial sea plan—the feds have to be consistent with that standard. This maximizes state control off our shore and is a model for the entire nation that is now being copied by

other coastal states." The bill received the support of DSL and DOGAMI at that last public hearing.

On Wednesday, three sets of amendments to the bill were adopted by the Committee. The first set contained several pieces of language that had been agreed to by LCDC and the League of Women Voters of Oregon who spoke with some concerns earlier. Another set reflected points that LCDC was introducing on its own, and a third set reflected where the League had dissented from LCDC. A portion of the League's concerns were adopted to the bill.

The original ocean management bill creates an Ocean Policy Advisory Council, to be located in the office of the Governor. The Council is charged with the task of preparing a territorial sea management plan for Oregon.

Of the amendments added to SB 162, one would restore the definition of territorial sea to the language already in the statute, that is: the waters and seabed extending three geographical miles seaward from the coastline in conformance with federal law. Under federal law, there may be several different definitions of territorial sea. The Outer Continental Shelf Lands Act (OCSLA) defines it as three geographical miles from the line of ordinary low water. However the definition used by the Department of the Interior's Mineral Management Service defines territorial sea as extending three nautical miles from the mean lower low water baseline datum.

Another amendment adds to the Ocean Policy Advisory Council the director or director's designee of OSU Sea Grant. The amended version of SB 162 also statutorily mandates the use of a technical advisory committee chaired by the OSU Sea Grant College Program or other similarly qualified member of the Ocean Policy Advisory Committee. The territorial sea plan as adopted by the Council will be compatible with acknowledged local comprehensive plans.

The Committee unanimously passed the bill out of Committee as amended and it will be sent "do pass" to Ways and Means, by prior assignment.

OCEAN LIAISON PROGRAM BILL PASSES OUT OF HOUSE COMMITTEE (4-12-91)

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.

OCEAN DAY IN SENATE (4-19-91)

Two ocean bills were carried on the Senate Floor Tuesday, April 16th by Senator Bill Bradbury (D-Bandon).

Ocean Policy Concept Passes

Sen. Bradbury stressed the importance of ocean planning in Oregon, and commented that SB 162 is a continuation of the 1987 legislative session's passage of SB 630. The bill establishes a policy council to develop a plan for the state's territorial seas. Because the 1990 reauthorization of the federal Coastal Zone Management Act requires any federal activity in the exclusive economic zone from 3-200 miles to be consistent with state planning in the 3-mile territorial seas, Oregon's planning process could have a direct impact on the direction the federal government takes with respect to ocean resources.

Senator Larry Hill (D-Springfield), chair of the Senate Water Policy Committee, commented that the bill specifies that the council can take no action with respect to fisheries harvest regulations. Sen. Hill asked whether the prohibition would effect only levels of harvest? Sen. Bradbury replied that the reason for the prohibition was so that the ocean policy council would not get involved with activities regulated by the Pacific Fishery Management Council (PFMC). However, Sen. Bradbury said that setting policy on marine mammals, for example, was clearly within the purview of the Ocean Policy Council.

SB 162 passed on the Senate floor with 26 "aye" votes. Senators Lenn Hannon (R-Ashland) and Eugene Timms (R-Burns) voted no.

Ocean Mineral Mining Bill Carried on Floor

Senator Bradbury also carried SB 499 on the Senate floor Tuesday morning (April 16th), stating that Oregon state law clearly puts a priority on renewable resources over non-renewable resources. Five years ago, when the Ocean Resources Management Task Force was starting their work, they allowed ocean mineral research, and said that the development of marine minerals could only happen if it can be shown that mineral mining won't lead to the

damage of renewable resources.

Sen. Bradbury emphasized that the bill clearly allows research, and by banning exploration and development, Oregon can protect its "swimming gold."

Senator Grattan Kerans (D-Eugene) reminded Sen. Bradbury of the minority report he participated in during the Ocean Task Force days, saying that no exploration for hard minerals shall occur.

Senator Mae Yih (D-Albany) asked Sen. Bradbury if the prohibition interfered with federal jurisdiction over coastal waters. Sen. Bradbury answered by saying that the bill affects the territorial sea out to 3-miles.

Sen. Yih, speaking to the bill, stated that she was opposed to this prohibition because she is concerned that the state may lose an opportunity to explore for minerals and generate revenues. Sen. Yih felt that we should be able to do at sea what we do on land, and she felt that the development of minerals could be done without environmental harm.

After Sen. Yih, Senator Wayne Gensky (R-Medford) spoke and said that the same argument made by Sen. Yih was made in Southern California with regards to oil drilling. "Californians have literally ruined their coast in Southern California. After years of swimming and surfing in a beautiful area, now you come out of the water and wipe off the oil from your body and the surfboard." Sen. Gensky urged a yes vote, saying it was the least they could do.

Sen. Bradbury closed the discussion by addressing the comments by Sen. Kerans. Sen. Bradbury "fondly remembered" the minority report Sen. Kerans was referring to and noted that he changed his views because after four years of the public process, the mineral industry has had time to come forward and demonstrate that they can mine and not harm the marine ecosystem. Sen. Bradbury ended by reminding the senators that the "gold is swimming off the South Coast; it is not in the ground."

SB 499 passed on the Senate floor with 23 "aye" votes. Senators Bob Kintigh (R-Springfield), Eugene Timms (R-Burns), and Mae Yih (D-Albany) voted no.

OCEAN POLICY ADVISORY COUNCIL BILL HEARD (5-17-91)

On Thursday, May 9th, the House Water Policy Committee, held a public hearing held on SB 162, which creates an Ocean Policy Advisory Council to work on management plans for Oregon's Territorial Sea.

Representative Larry Sowa (D-Oregon City) expressed concerns about the representation on the Policy Council, which as currently written, would have 21 members, including two from the commercial fishing industry and one from the sport fishing industry.

Amendments are expected to be brought before the Water Policy Committee, but the next work session has yet to be scheduled.

BAN OF MARINE MINERAL DEVELOPMENT AS GOOD AS LAW (5-24-91)

SB 499, sponsored by Senator Bill Bradbury (D-Bandon) and co-sponsored by other members of the Coastal Caucus, passed out of the House Tuesday, May 22nd with an overwhelming majority of 48 "aye" votes. The legislation to ban marine mineral development went unopposed in the House Water Policy Committee, and was carried on the floor by committee member Representative Larry Sowa (D-Oregon City).

The bill, originally scheduled for Friday, was carried over twice due to the large number of bills on the House Third Reading Calendar Friday and Monday. After reconvening for a second session on Tuesday, the House vote on the measure came close to 5:00 p.m. Those opposed included Representatives Cedric Hayden (R-Fall Creek), Liz VanLeeuwen (R-Halsey), D.E. Jones (R-Ontario), Bob Shiprack (D-Beavercreek), Randy Miller (R-Lake Oswego), and Bill Markham (R-Riddle). The measure passed without discussion on the floor, and the next step of the process for this measure will be found under the pen of Governor Barbara Roberts.

JOINT LIAISON BILL MOVES OUT OF W&M (6-6-91)

On Tuesday, June 4th, the Ways and Means Subcommittee on Transportation and Public Safety passed out a measure that would allow Oregon to participate in a joint liaison program with the Center for Ocean Analysis and Prediction of the National Oceanic and Atmospheric Administration (NOAA) in Pebble Beach, California. The Department of Land Conservation and Development will be representing the State, administered through the Department's Ocean Management Program.

SB 496, sponsored by Senator Bill Bradbury (D-Bandon), will have no fiscal impact, as it continues activities that the agency has already been involved in.

Other activity of the Subcommittee was to pass the entire budget for the Department of Land Conservation and Development. The budget includes two directives involving the Department's Transportation Rule. One would give priority to cities and counties abiding by the transportation rule and promoting alternative transportation when distributing urban growth grants; the other asks the Department to assess the costs of administering the transportation rule and including this is the budget request for the 1993 biennium.

On Monday, June 3rd, the Subcommittee passed the budget for the Department of Energy, including \$500,000 to fund the Geographical Information System (GIS) center, which is used by several state agencies.

OCEAN POLICY COUNCIL PASSES (6-21-91)

SB 162 passed out of Ways and Means Full Committee on Wednesday, June 12th, and was voted on by the House on June 19th. The House passed the measure with 48 aye votes, 10 members were excused and Representative Carolyn Oakley (R-Albany) and Representative Lonnie Roberts (D-Portland) voted no.

The measure establishes a 23-member Ocean Policy Advisory Council in the office of the Governor, which among others includes representatives from commercial and recreational fisheries, representatives from natural resource agencies, the Director of OSU Sea Grant, ports, local government, and a conservation or environmental organization.

In addition to money already included in the budget for the Department of Land Conservation and Development for their major role in coordinating the activities of the Policy Council, the Ways and Means Transportation subcommittee appropriated money to the Department of Fish and Wildlife and the Department of Geology and Mineral Industries for the purpose of ocean resource planning activities.

...Oil Spill Prevention Legislation

The effort to negotiate with a diverse array of "shareholders" who all have an interest in oil spill prevention legislation was steered by Senator Dick Springer (D-Portland), Chair of the Senate Agriculture and Natural Resources Committee.

Initially, there were three bills relating to navigation and oil spill regulation. The 1989 Legislature began the effort to regulate oil and hazardous materials by passing Senate Bill 1039 which required the 1991 session to develop an interagency response plan for oil and hazardous material spills. Similar to preventive legislation enacted by the state of Washington, Oregon's legislation was aimed at providing a framework for the regulations and requirements for oil spill contingency plans for vessels transporting oil or for facilities storing oil.

The three oil spill prevention bills introduced in the beginning of the 1991 session included SB 477, sponsored at the request of the Portland Steamboat Operator's Association by Senator Springer, and was limited to the Columbia and Willamette River systems. SB 76 was drafted at the request of the Joint Interim Committee on Environment, Energy and Hazardous Materials, and primarily required a show of financial responsibility for vessels and facilities with the potential for spilling oil into state waters. The third bill, SB 242, was drafted by the Department of Environmental Quality, and was a much more comprehensive piece of legislation that created an oil spill prevention and response program and established the guidelines for a detailed spill response and prevention "contingency" plan.

Senator Springer essentially transferred the responsibility to work on oil spill issues from his Committee to a specially convened subcommittee, which was staffed by Peter Green, the Administrator of the Senate Agriculture and Natural Resources Committee, and facilitated by Bruce Sutherland and Andy Schaedel of the Department of Environmental Quality. From early March through early June, the subcommittee met once or twice a week, including several meetings in Portland, to discuss the major provisions of these pieces of legislation and work towards integrating the key elements of each into SB 242, which was the way the bill finally passed. Present at the oil spill subcommittee were representatives from all the major oil interest groups,

including ports, steamship operators, oil companies, environmental organizations, and state agencies. Initially, a lack of representation by coastal ports, including fishery interests, created some problems for the bill; these were resolved toward the end of the session.

The enrolled version of SB 242 requires that persons operating a cargo or tank vessel of 300 gross tons or more or an oil facility with over 10,000 gallons of above ground storage capacity to submit an oil spill prevention and emergency response plan to the Department of Environmental Quality. Vessels used solely for the purposes of commercial fish harvesting are exempt, as are vessels used for spill response. The "contingency plan" must include:

- * complete details of spill response
- * procedures for early detection of an oil spill
- * demonstration of ownership or access to an emergency response communications network
- * periodic training and drill programs for personnel
- * a detailed description of equipment, training and procedures to be used by the crew of a vessel to minimize an oil spill or contain and clean up the spilled oil
- * provide arrangements for pre-positioning oil spill containment equipment and trained personnel and strategic locations which could be deployed in the event of a spill
- * provide for a disposal of recovered oil in accordance with local, state and federal law

The Department of Environmental Quality is responsible for adopting a schedule for submission of plans. It is expected that an alternate schedule will be adopted for the coast and Willamette River. DEQ is required to review and approve the plans and also determine whether the vessel or facility has demonstrated adequate financial responsibility. DEQ is also permitted to conduct on-site, unannounced inspections of facilities and vessels to check for compliance with regulations and written plans. DEQ will also work with other natural resource agencies and with other states to develop a method of natural resource valuation that incorporates non-market and market values in assessing damages resulting from an oil spill.

The bill establishes Harbor Safety Committees for the Columbia River and for the Oregon Coast. Subcommittees for Coos Bay and Yaquina Bay were also established. The Columbia River Harbor Safety Committee may be operated jointly with the State of Washington. The safety committee membership includes representatives from local authorities, vessel operators, pilots' organizations, fishermen, environmental organizations and the public at large. The role of the safety committees is to develop safety plans and make recommendations to the Coast Guard, the Board of Maritime Pilots and the ports on such issues as:

- * pilotage requirements
- * reducing deadweight tonnage for pilotage service for vessels carrying oil
- * establishing regional speed limits for tank vessels
- * the feasibility of establishing a near-miss reporting system
- * guidelines for tugs and tank vessels on tow cable requirements
- * requiring towing systems and plans on all tanker vessels carrying oil

DEQ and the Fire Marshall's Office are directed to conduct a study regarding whether or not the bill should be expanded to apply to hazardous materials as well as oil.

In addition to passing the oil spill contingency planning legislation, the Legislature passed SB 500, which ratified the Pacific Ocean Resources Compact for Oregon. The compact invited Oregon, Washington, Alaska, California, Hawaii and British Columbia to ratify the compact this year. All five states introduced identical pieces of legislation at the same time, although Oregon was the only state which successfully steered the bill through to signing by the Governor.

Washington's bill passed the House, but did not make the deadline for a hearing in the Senate committee; Alaska's bill was worked on intensely but did not pass through the House of Origin, and California and Hawaii were basically waiting for other states to take the lead on the compact. British Columbia will probably not attempt to ratify full compact membership, but hopefully will participate in meetings. The other states involved with the compact are operating with annual legislatures, with bills having a two-year life. In order to preserve the momentum generated this session for the compact, it will be crucial for the states to meet this fall and discuss the provisions of the compact and the process for ratifying it in the other states. There are also several points of possible conflict in the compact, Alaska wanted barge exemption which Oregon's bill did not include, for example, and these need to be worked out.

Major changes were made to the compact bill in Oregon after early opposition from the oil industry. As originally worded, the compact could have superceded regulations and requirements established by the federal government, but the bill was subsequently amended to be consistent with federal law. The final bill also requires that the compact only go into effect after three states ratify it, not two, as it was originally drafted. Many of the amendments were worked out during an April meeting of the Ocean Resources Committee of the Western Legislative Conference. It was this committee that recommended formation of an interstate compact to address oil spill prevention and regional ocean management issues in November of 1989.

The major provision of the interstate compact, is to work toward adoption of uniform safety standards for routes, crews and equipment in the compact zone and coordination of oil and hazardous material spill response plans. The compact would also work toward coordination of ocean management, which although specifically excludes fisheries management, could include issues such as mineral mining, the formation of marine parks or sanctuaries, and coordination of marine mammal - fisheries interaction regulations.

The compact emphasizes the maintenance and protection of marine resources, and a recognition of the need for increased regional cooperation in dealing with an ecosystem that depends on and is impacted by activities in the entire east Pacific rim.

One of the powers of the compact is to serve as a West Coast Spill Prevention Advisory Committee to the United States Coast Guard. Acting as an "interested person" the compact can initiate Coast Guard rule-making with respect to routes, crews and equipment for vessels transporting oil or hazardous materials. The Coast Guard is directed to adopt these rules unless its makes a finding as part of the rule-making process that the compact's recommendations would not further the prevention of oil and hazardous substance spills.

The compact also has the authority to develop regional requirement contingency plans for vessels as well as guidelines for demonstration of financial responsibility. The compact will also serve to coordinate a regional method of cost recovery, development of a matrix to calculate an assessment of damages done by a spill based on a valuation of the resources and the amount of oil spilled.

Once approved by two additional states, the compact must be ratified by Congress. It was originally thought that the compact could take advantage of pre-approval authority granted by the Coastal Zone Management Act, but this pre-approval was amended out of the CZMA in the 1990 reauthorization. Approval of the compact by Congress would elevate the compact to the stature of federal law.

A fully-ratified compact would have a tremendous amount of effectiveness to bring coordination among states, not only to bring together the work of state agencies in the area of oil

spill prevention, but going beyond that into coordinating ocean management throughout the Northwest Coast.

Oregon Coastal Notes Articles on Oil Spill Prevention Legislation

PACIFIC OCEAN RESOURCES COMPACT INTRODUCED (2-1-91)

On Thursday, January 31, 1991, legislation pertaining to the Pacific Ocean Resources Compact was introduced concurrently in the five states participating in the Compact.

The Compact involves the states of Oregon, Washington, Alaska, California and Hawaii, and eventually could include British Columbia. In Oregon, SB 500 is being sponsored by Senator Bill Bradbury, the Senate Majority Leader, and also has the support of Senate Republican Leader John Brenneman, and Representative Walt Schroeder, who have signed on to the bill. The three legislators were present at a press conference Thursday in the Capitol Press Room.

The Ocean Compact as an interstate compact, generally shares the characteristics of interstate compacts as the most binding legal means of establishing cooperation between states. The U.S. Constitution provides for interstate compacts in Article I, Section 10 such that "No state shall, without the consent of Congress...enter into any agreement or compact with another State, or with a foreign power." Each state in a compact agreement is bound by its own state statute and also subject to Constitutional endorsement of contracts. A state in the Compact cannot jeopardize the terms of the Compact or unilaterally withdraw from the Compact except as outlined in the Compact. As contracts, interstate compacts take precedence over other state laws that conflict with the provision of the Compact.

The Pacific Ocean Resources Compact grew in part out of the combined efforts of the Ocean Resources Committee of the Western Legislative Council and the recommendation for the establishment of an interstate compact made by the States/British Columbia (BC) Task Force on Oil Spills. The States/BC Task Force recommendation was an element of the final report presented to the Western Legislative Conference on July 2, 1990. SB 500 thus reflects the intent of both of these working groups as much as possible.

Originally, it was thought that the formation of the Compact would come under Section 309 of the Coastal Zone Management Act (CZMA) which granted congressional preapproval for interstate compacts concerned with ocean resources management issues. However, the 1990 Reauthorization of the CZMA did not include the preauthorization language. Upon ratification by one or more states, the Compact would take on the status of an international treaty and require the approval of the Canadian government as well as the Congress. Because of differences in the legislative process, BC will probably hold non-voting status with respect to the Ocean Compact.

The Ocean Compact addresses what is considered the "Compact Zone"--the area within the states' Territorial Seas extended to include the area with the U.S. Exclusive Zone--out to 200 miles from the mean high water mark.

Implementation Explained

The Compact establishes a framework through which the states and British Columbia can represent their interests in the compact zone, and also provide a means for citizens to address their concerns over interests within the compact zone. More specifically, this includes the establishment of uniform safety standards for routes, crews and equipment for vessels transporting oil and other hazardous substances within the compact zone. The Compact also stipulates the provisions for the implementation of these standards and regulations by federal agencies, states or provinces and private industries. Other goals of the Ocean Compact are to maintain and protect common ocean resources through the coordination of the parties' ocean resources management plans.

The implementation of the Ocean Compact would be carried out in part by the delegates from each state who would be appointed as representatives of the parties to undertake the duties and responsibilities of the Compact. The Secretary of Transportation, the Administrator of the Environmental Protection Agency (EPA), and the Administrator of the National Oceanic and Atmospheric Administration (NOAA) or their delegates may also serve as non-voting members of the Compact.

Compact Authority Described

The authority of the Ocean Compact centers on its provision to prevent oil or other hazardous substance spills. In addition to establishing uniform vessel safety standards, the Compact will have the authority to coordinate the oil and hazardous substance spill response plans and programs of the states, federal agencies and private organizations. The Compact also establishes the requirements for the submission and approval of a contingency

plan by any vessel transporting oil or hazardous substances in the compact zone. Such requirements are to be at least as stringent as those required under the Federal Oil Spill Pollution Act of 1990. The vessel contingency plan itself must comply with the Oil Pollution Act.

The Compact also calls for coordination of the parties' individual or regional oil or hazardous material spill response systems, by maintaining a directory of personnel, equipment, technical expertise, organizations and other resources available in the event a spill response within the compact zone is needed. In addition to the spill response coordination, the Compact calls for interstate cooperation regarding studies or data which relates to ocean resources and needs to be compiled and shared among the parties.

The Compact will eventually designate state or provincial agency officials to serve as liaisons with federal agencies, so that the Compact may advise those agencies with regards to ocean management issues and necessary regulation.

There is a provision in the Compact which allows for a variance from the provisions of the Compact. This applies only when the activity allowed under the variance does not have any regional impact and that the variance is economically necessary. However, the Compact stipulates that under no circumstances will the activity allowed by the variance result in the regulation or transportation of oil or other hazardous substances to standards less stringent than standards imposed under federal law.

At this time the legislation is written to appropriate an unspecified amount of general fund revenues to carry out the provisions of the Compact.

Historically, compacts were used to settle interstate boundary disputes. However, reflecting the increasing complexity of modern problems, half of the approximately 200 compacts formed since the Delaware River Compact of 1783, have been established after WWII.

Examples of compacts are found in all areas of state concern, including health, education, transportation, and natural resources. Issues under these categories often have such public good characteristics as non-excludability. Specific examples of compacts in natural resources include the Colorado River Compact, the Pacific and Gulf States Marine Fisheries Compacts, and the Columbia River Basin Fish and Wildlife Program. Another important compact which provided some guidance in the language of the Ocean Compact, is the Northwest Power Planning Council.

The following points were extrapolated from a publication of the Legislative Service Bureau of Michigan, and address the common arguments in favor of and in opposition to the formation of interstate compacts.

Arguments that have been made in favor of interstate compacts include the following:

1) The interstate compact is a means for the states to preserve their position in the federal system and to reduce the burden on the federal government.

2) The interstate compact can be effective in the establishment of joint agencies with two or more states. Furthermore, while compacts may appear to diminish state autonomy in specific areas, they also pave the way for greater state achievements and interstate problem solving.

3) Compacts take precedence over ordinary state statutes and they represent one of the most powerful ways of achieving intergovernmental action.

Arguments that can be made against the formation of interstate compacts including the following:

1) A considerable amount of time is needed to initiate, negotiate and ratify a compact.

2) Because compacts are increasingly controlled by the specialists who are responsible for their implementation, the public may feel separated from the process of negotiating and forming compact issues.

3) Compacts may become overly interest group-oriented as opposed to meeting the needs of the general public or addressing the actual issues at hand.

Legislators introducing the bill in the five participating states are Senator Sam Cotten of Alaska; Assemblyman Dan Hauser of California; Senator Jack Metcalf of Washington who is the Chair of Senate Committee on Agriculture and Natural Resources in Washington; and in Hawaii, Representative Pete Apo. The British Columbia contact person is Richard Dallan, Office of Deputy Minister, Ministry of Environment.

Press Conference Response

According to Senator Bradbury "The Compact dramatically improves the ability of the region and of Oregon to prevent oil spills." Oregon has been a leader in developing an ocean resources management plan, and there is a need to coordinate the efforts of the individual states in the region. As put by Senator Brenneman today at the press conference, "Fish and Wildlife know no boundaries." There is a clear benefit to the natural resources in establishing regional or ecosystem management plans. Brenneman recounted his first hand experience with oil spills in the 1983 spill in Yaquina Bay resulting from the grounding of the Blue Magpie. Brenneman indicated that it was swift action

by the Coast Guard and other local response teams that prevented greater catastrophe, although still hundreds of birds were killed by the spill. Representative Schroeder feels that this measure is long overdue, and that perhaps there is greater danger in the transshipment of oil than the potential harm from drilling. Schroeder also reminded us of the old proverb "An ounce of prevention is worth a pound of cure."

SENATE AGRICULTURE AND NATURAL RESOURCES (2-8-91)

Oil spills were the topic of Monday's February 4, 1991 Senate Agriculture and Natural Resources Committee. Senator Springer, the Committee Chair, began with a recollection of the 1988 Nestucca oil spill which dumped 231,000 gallons of oil off the coast of Washington in December, 1988. According to the Executive Summary of the Final Report of that Task Force, it was this spill which led to the formation of the British Columbia/Washington Task Force on Oil Spills. The day after the Task Force's first meeting, the Exxon Valdez spill occurred. Alaska, Oregon and California joined the Task Force soon after.

As a result of the Task Force recommendations, several bills have been drafted to implement these findings. Last week's *Coastal Notes* expanded on SB 500, the Pacific Ocean Resources Compact. Several other bills regarding oil spill prevention legislation were the subject of Monday's public hearing. SB 76 describes the financial responsibilities associated with an oil spill.

Under SB 76, the holder of an oil spill contingency plan who fails to implement that plan is responsible for the damages that result from an oil spill. The bill also establishes values for wildlife that may be destroyed as a result of food or water supply contamination. Some of the values are: \$750 for each elk; \$3,500 for each sheep or mountain goat; \$5 for each game fish other than salmon or steelhead trout; \$125 for each salmon or steelhead trout; \$50 for a fur-bearing mammal other than a bobcat or fisher.

SB 242 requires an oil spill contingency plan for vessels other than passenger vessels operating in the Columbia River. The Department of Environmental Quality (DEQ) will be the agency that authorizes the contingency plans. The bill also requests DEQ to "develop natural resource valuation using market and nonmarket values when assessing damages." DEQ is also directed to coordinate oil spill research, and coordinate response training with industry and the Coast Guard.

The bill also establishes harbor safety committees for the Oregon International Port of Coos Bay, Port of Newport, the Port of Astoria and the Port of Portland. The committees would operate under the direction of the Ports Division of the Economic Development Department. Each committee will have 11 members, among others including the local port authorities, commercial fishermen, environmental organizations, local planning authorities, and tanker vessel operators. SB 242 calls for the contingency plan to be renewed every 5 years, as opposed to every 3 years as called for in SB 76.

Among others, representatives from DEQ, ODFW and the Oregon Environmental Council (OEC) testified on behalf of the bills. Jean Cameron, director of the OEC recommended that the bill be expanded to include petroleum conservation measures in addition to being a spill prevention measure. It was noted that both California and Washington have a fee placed on petroleum products to generate a contingency fund. Oregon has a constitutional amendment prohibiting fee placing on petroleum products.

John Burns, a representative of the Western States Petroleum Association was present to testify on the bills. Burns was concerned over the issue of liability. He feels that the environmental community is concerned that emergency responders to an oil spill should have immunity from liability. Burns reported that generally the petroleum industries are supportive of these oil spill prevention efforts. Burns noted, however, that his top priority this session is finding funding for underground storage facility insurance.

The next work session on SB 76 and SB 242 will be in two to four weeks, allowing for the Committee to consider the proposed amendments.

SENATE HEARS INTERSTATE COMPACT UPDATE (2-22-91)

On Friday, February 15, Senator Bill Bradbury (D-Bandon) testified before the Senate Committee on Agriculture And Natural Resources on behalf of the Pacific Ocean Resources Compact, SB 500.

Sen. Bradbury began by emphasizing that the main point of the legislation is to prevent oil spills. The current federal legislation, the 1990 Oil Pollution Act, mainly addresses oil spill clean up and liability issues. Sen. Bradbury said that the "Compact gives us as "party states" the power to regulate things we can't do anything about now." Responding to a question from Vice-Chair Senator Joyce Cohen (D-Oregon City), Sen. Bradbury said that it would have to be worked out exactly how the vessel contingency plan required under the Compact would incorporate

local port requirements that may be in practice now.

Based on gross state product, each state in the Compact would contribute at least 10% and no more than 50% of the Compact budget. Sen. Bradbury said that he is looking into funding sources for Oregon's share other than general funds, as is currently written in the compact. A complete public hearing will be held on Monday, Feb. 18, 1991.

Sen. Bradbury also testified on SB 496, which authorizes LCDC to be the information conduit between Oregon and the Center For Ocean Analysis And Prediction (COAP) of the National Oceanic and Atmospheric Administration (NOAA) in a joint liaison program. The program for oceanographic data would include Oregon, Washington, California, Alaska and Hawaii and basically does two things: Determines what type of oceanographic data is needed by the states; and, informs states as to what types of data NOAA/COAP have to offer.

SENATE AGRICULTURE COMMITTEE HEARS OIL SPILL LEGISLATION (2-22-91)

Several bills relating to oil contingency planning have been the focus of a work group to try to formulate one piece of legislation that addresses the Willamette and Columbia River systems, oil spill contingency planning throughout the state-owned waters, and spill liability issues.

On Wednesday, March 13th, the Senate Agriculture and Natural Resources Committee heard testimony from Bruce Sutherland and Andy Schaedel from the Department of Environmental Quality (DEQ), who walked through the product of these deliberations—SB 242-2. The new version of SB 242 reflects the cutting and pasting of many elements from each bill. SB 242-2 requires a contingency plan for oil and hazardous materials for cargo vessels greater than 300 gross tons, and for oil terminal facilities, offshore exploration and production facilities, tanker vessels and barges, and pipelines. A plan is required to be submitted by the vessel or facility owner or operator and is to be renewed every 5 years. There are civil penalties up to \$10,000 per day if no plan is submitted. The contingency plan required of the bill also requires proof of financial assurance, as outlined in the original DEQ bill. For tankers and barges over 3000 gross tons, proof of \$1,200 per GT up to \$10 million is required.

The biggest barge on the Columbia is slightly over 8,000 gross tons for refined oil. Tankers on the Columbia average about 35,000 gross tons. The financial assurance standards adopted in this amended version of SB 242 reflect federal financial assurance limits. SB 242-2 also requires vessels to have two officers on deck at all times, demonstration of structural integrity, and storage of booms. The issue of double hulls was not addressed in the bill because it is required under the 1990 Federal Oil Pollution Act.

The boom storage issue raised a bit of concern from testimony by the Steamship Operators. There is also question whether state requirement of booms supersedes federal law. The new bill also requires Harbor and Regional Safety Committees.

Curt Oxley, a representative of the Government and Public Affairs Unit of Arco Marine, testified in support of the SB 242-2. Oxley stated that the Federal Oil Pollution Act reserved a complimentary role for the state in the area of oil spill prevention. Oxley testified that the legislation under consideration was balanced, and did not diminish the competitiveness of the Port of Portland. Oxley also felt that implementation of these regulations should be able to be made fairly quickly.

Oxley also made a few additional comments about related issues. It is preferred that SB 500, the Ocean Resources Compact remain a separate bill, and that consideration be made for responders of an oil spill to have limited immunity from liability. Oxley also expressed caution on the issue of funding. He stated that he would refrain from commenting directly until there is more clarity about the fee structure and who would pay. SB 242-2 gives the state the authority to assess a fee for review of a contingency plan.

OIL SPILL BILL HAS WORK SESSION (4-5-91)

SB 242, Oregon's oil spill contingency planning bill, was worked on by the Senate Agriculture and Natural Resources Committee on Wednesday, April 3rd. The Committee adopted all of the amendments presented by Bruce Sutherland and Andy Schaedel of the Department of Environmental Quality (DEQ).

Alan Willis, representing the Port of Portland, was concerned that the costs and regulations associated with contingency planning "would adversely impact the competitiveness of shippers and vessel operators on the Columbia River."

The present version of SB 242 includes the creation of harbor safety committees for Coos Bay, Portland, Astoria and Newport, who are given authority to develop harbor safety plans, and establishing pilotage requirements and towing systems for tankers. Willis raised the question of whether ports should be charged with the promulgation of

rules related to certain tug and towing vessels carrying oil or hazardous materials. The Port of Portland is opposed to this. Willis suggested that if the Committee had felt that the state needed additional rulemaking over issues the Coast Guard currently has jurisdiction over, DEQ should have rulemaking authority.

Senator Dick Springer (D-Portland) responded by reading directly from a passage in the statutes—ORS 77.120 which establishes the Port's authority over harbors, wharf lines and navigation—"A port shall have the authority to engage in the control or prevention of river and stream bank erosion, and the prevention of damage from floodwater and sediment, and to make, establish, change, modify or abolish such rules and regulations to preserve natural resources and prevent estuary and stream pollution within the boundaries of the district."

Sen. Springer then stated that "the law anticipates some regulatory roles for ports in terms of protecting the resources." Dave Obern, from the State Marine Board testified that small marina facilities are not impacted by the amendments.

The bill was not passed out of Committee at that time, because there is still some work to be done over the issue of fee assessment, and how the state will fund the actual contingency planning process. At issue is how to structure the fee schedules so that the small ports will not have to assess fees higher than those assessed on the Columbia River.

OIL SPILL CONTINGENCY PLAN PASSES (4-12-91)

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.

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 ACTS ON OIL SPILL CONTINGENCY PLAN (5-11-91)

Senator Bill Bradbury (D-Bandon) officially carried SB 242 on the Senate floor, which had most recently come from Ways and Means. Sen. Bradbury rose and was given permission to ask Senator Dick Springer (D-Portland) a question: "If you were carrying this bill, what would you say?" Sen. Springer, Chair of the Agriculture and Natural Resources Committee answered stating that the bill authorizes the Department of Environmental Quality (DEQ) to adopt regulations for vessels or facilities which may be subject to oil spills. Sen. Springer went through the provisions of the bill section by section, and also acknowledged that there was some concern from the small ports on the coast about the means of financing the agency costs of implementing and reviewing oil spill contingency plans, as well as offsetting the costs to the ports for adopting their own plans and regulations.

Sen. Springer made it clear that the bill does not intend to create any undue hardships for the smaller ports, although the fee schedule is currently left up to DEQ administrative rule-

making.

Senator John Brenneman (R-Newport) asked Sen. Springer several questions about the bill, focusing on the impact the bill will have on larger fishing vessels, as well as the impact the fee schedule will have on smaller ports. The bill exempts vessels under 300 gross tons from having to submit an oil spill contingency plan, but this may still include some of the larger fishing vessels operating on the coast. Similarly, on-shore facilities which store less than 10,000 gallons of oil are exempt from the regulations.

Sen. Brenneman, who was Mayor of Newport during the 1983 Blue Magpie oil spill in Yaquina Bay, said that although he is concerned about the impact of oil spills on the coast, "this is not an excellent bill yet" and that he hoped some of the concerns about fees and the impacts to the coastal ports can be worked out on the House side.

In response to Sen. Brenneman's concerns, Sen. Springer told the Senate that he did not recall hearing from any fishing vessel operators in committee, and said that if they are going to be operating in Alaska or Washington, they are going to be subject to regulations anyway. The possibility exists for amending the bill in the House committee to outline the DEQ rulemaking process with respect to fee setting. This would help the smaller ports know what to expect in terms of the implementation process. Similarly, there may be changes in the exemption language to include all commercial fishing vessels.

The bill passed, with Senators John Brenneman (R-Newport), Lenn Hannon (R-Ashland), Bob Kintigh (R-Springfield) and Eugene Timms (R-Burns) casting the "no" votes. SB 242 goes to the House, where it is uncertain which committee it will be appointed to—Water Policy, Agriculture, Forestry and Natural Resources, and Environment and Energy are all still possibilities.

SENATE OIL SPILL BILL UPDATE (6-6-91)

The House Environment and Energy Committee had a public hearing and work session on Senate Bill 242, which directs the Department of Environmental Quality (DEQ) to implement and regulate the requirements for oil spill contingency plans for vessels and facilities storing oil.

Several amendments were adopted which satisfy outstanding concerns held by coastal ports and the oil industry. Industry amendments were presented in one hand-engrossed version of the bill, and among other things, deletes the requirement for boom storage, and changed the language with regard to the Department of Fish and Wildlife (ODFW) volunteer wildlife rescue training program funding. Originally, ODFW and the Department of Land Conservation and Development (DLCD) would be reimbursed by DEQ for their assistance in reviewing contingency plans. New language is added such that ODFW will be reimbursed under provisions of the Federal Oil Pollution Act.

Amendments introduced by Representative Jim Whitty (D-Coos Bay) were adopted which would exclude vessels used solely for commercial fish harvesting from the provisions of the bill. This would not include vessels that process fish on-board. The original bill excluded vessels under 300 gross tons, but there were some concerns for the larger fishing boats that would be left in, as well as a concern regarding possible changes being made in procedure for Coast Guard determination of gross tonnage figures.

The Oregon Public Ports Association (OPPA) sponsored amendments which would guide DEQ in establishing fees and regulations for coastal ports. Amendments were adopted which include that on the Oregon coast, DEQ "assist affected local agencies and industry groups to complete an inventory of existing plans and resources, and to identify or establish an organization to coordinate oil spill contingency planning as part of the alternative schedule adopted for the Oregon coast described under section 6 (1) of this 1991 Act." DEQ will also assist the coast in securing necessary funds and equipment to carry out the plans where adequate resources do not exist. Finally, language was omitted saying that the ports "may" have the authority to adopt and regulate tow cable requirements. This issue was important to the Senate Agriculture and Natural Resources Committee which deliberated on the bill earlier, and may be sending the bill into conference committee.

Amendments were adopted which are the product of DEQ and industry negotiations, regarding the caps set on fees for barges and facilities. Fees on all non-self propelled tank vessels (barges) are \$28 per trip; fees on all cargo vessels are \$25 per trip. Fees assessed to on-shore facilities will not exceed \$81,000 in total annually, and fees on all self propelled tank vessels will not exceed \$72,600 in total annually. These fees are for the purposes of recovering DEQ plan review, inspections and training activities in the bill.

There will be a final work session on Thursday, June 6th.

PACIFIC OCEAN RESOURCES COMPACT BILL PASSES (7-3-91)

SB 500, sponsored by Senator Bill Bradbury (D-Bandon) was carried on the House floor on June 27, 1991, by Representative Carl Hosticka (D-Eugene), a member of the House Legislative Rules and Reapportionment that held a work session on the bill after the measure passed the House floor but was reconsidered by Republican Majority Leader Greg Walden (R-Hood River).

Under changes made by the Rules Committee - Chaired by Representative Walden - Oregon will be represented on the compact by two legislators, one from each House. The Compact goes into effect when two additional states join Oregon in passing a similar bill as SB 500, and meets the approval of Congress.

The Senate swiftly concurred with the changes made in the House, and the East Pacific Rim Interstate Oil Compact will be signed by Governor Barbara Roberts.

SENATE PASSES OIL SPILL PLAN (7-3-91)

SB 242-C passed the Senate on Saturday, June 29, 1991. Senator Dick Springer (D-Portland) carried the bill which would require oil spill contingency plans for oil facilities and vessels.

The requirements apply to facilities that can store or transport 10,000 or more gallons of oil that are near navigable waterways, as well as cargo or passenger vessels of more than 300 gross tons, excluding vessels solely used for fishing, and to oil tankers and barges. While the provisions of the bill apply only to oil, DEQ will conduct a study to determine whether the Act should also apply to hazardous material spills in the navigable waters of the state.

According to the final budget report and measure summary, DEQ is required to adopt rules, set standards for the plans, conduct inspections, and coordinate with the state of Washington and other state and local agencies. ODFW reviews plans and will implement a program of wildlife rescue training for volunteers.

The Ports Division of the Economic Development Department is required to establish and provide support for harbor safety committees established under the measure. The Ports Division is also required to work cooperatively with existing organizations and agencies that provide research and technical services, including the Division of State Lands, the State Marine Board, and OSU Sea Grant marine extension services.

Several points of contention were worked out during the last few weeks of the session. Funding DEQ's expenditures of \$456,688 will be paid by cargo vessels, oil barges, tankers and storage facilities for oil spill plan review, inspections, plan renewals and monitoring activities. ODFW received \$108,401 in general funds to implement the wildlife rescue training.

Economic Development Department received \$70,551 for the purpose of assisting the harbor safety committees. The fee schedule is as follows: on all cargo vessels, \$25 per trip; on all nonself-propelled tank vessels, \$28 per trip; offshore facilities, onshore facilities and self propelled tank vessels not to exceed \$153,600 per year for all such facilities and vessels.

The harbor safety committee is required to make recommendations for establishing guidelines for tugs on tank vessels for tow cable size, materials and equipment design. If the safety committee recommends to the United States Coast Guard that they adopt such guidelines, and the committee determines it has not acted under these recommendations, the committee may then recommend to the port that the port adopt rules to implement the committee's recommendations.

EAST PACIFIC RIM COMPACT (6-21-91)

SB 500 passed the Full Ways and Means Committee on Wednesday, June 12th and successfully passed the Senate floor the following Saturday. The bill was referred to the Speaker of the House for committee assignment, and was then referred to Ways and Means. Having already passed through that committee one time, the bill automatically was given the "do pass" recommendation.

The bill would make Oregon a part of a five-state compact to adopt west coastwide standards for vessels transporting oil and other hazardous materials off shore. The Compact is not established until at least two states pass identical bills, and at that point will need Congressional approval.

SB 500 was voted on by the House on June 19th, and passed with 59 aye votes; Representative Lonnie Roberts (D-Portland) voting no. However, House Majority Leader Greg Walden (R-Hood River), served notice of possible reconsideration, and the House voted on June 20 to pull the bill into House Rules Committee for the purpose of adding some amendments. The proposed amendments would:

- Increase the number of states needed to ratify the Compact from one other than Oregon to two other states

or three total; and

- outline the appointment of Oregon's two representatives to the Compact.

The measure should advance through the House Rules Committee and be back for a House floor vote in the near future.

...Shellfish Sanitation Program

Perhaps one of the first visible casualties of Ballot Measure 5 to coastal communities was the possible elimination of the Shellfish Sanitation Program located in the Health Division of the Department of Human Resources. In order to comply with a directive from the Executive Department to cut a certain percentage of their total budget, the Department of Human Resources made an administrative decision to cut out whole programs that were considered less beneficial than other state-funded human resource programs.

Cutting out entire programs ostensibly prevents the "watering down" of existing programs that an "across the board" cut may have resulted in. Too, the deletion of an entire program elicits louder complaints from an organized user group rallying to restore the cutting of their program. It is more difficult, politically, for a Department or special interest group to lobby for additional general funding if the program budget was merely trimmed rather than eliminated entirely. Whether or not politics played into the budget-cutting decisions made by agency directors prior to the 1991 legislative session, the battle for the restoration of the Shellfish Sanitation Program created an early crisis for the commercial shellfishing community.

One of the first Coastal Caucus breakfasts featured a panel on the Shellfish Program for the benefit of the coastal legislators. The speakers included Debby Cannon, Coordinator of the Shellfish Program for the Department of Human Resources and Sue Cameron, Director of the Tillamook County Health Department, and coordinator of the Tillamook Bay Sanitation Technical Advisory Committee and Tim Smith, Director of the West Coast Shellfish Growers Association located in Olympia, Washington. John Faudskar, Sea Grant Extension Agent for Tillamook County was also present to show support and represent the commercial shellfish growers. Hal Nauman of the Health Division and Maryanne Guichard, Chief of the Office of Shellfish Programs in the Washington State Department of Health, were also present to show their support of the Program, and answer any additional questions of the Coastal Caucus.

The purpose of this presentation was to deliver the message early on that the Shellfish Program went beyond the relatively small number of commercial oysters harvested that rely directly on shellfish inspection to keep their business afloat, but that the program is maintaining and monitoring the health of coastal waters for all of Oregon's public. This theme on the implications of the program cut to public health and water quality was presented shortly after the caucus breakfast to the Ways and Means subcommittee on Human Resources, Chaired by Senator Frank Roberts. A number of oyster growers and local government representatives testified in front of that committee.

The budget for the Department of Human Resources, itself, went through a major funding struggle in order to avoid additional budget cuts in other programs. Under the first budget turned out by the subcommittee the shellfish program was not funded. However, the department's budget went through several rounds of "add-backs" toward the end of the session. The shellfish program was clearly a "pet program" of Senator Bill Bradbury's and the subcommittee used the program as leverage to garner additional general fund money for the Department. Eventually, after numerous calls and letters from shellfish growers to the Ways and Means subcommittee, additional funds were handed out by the Ways and Means co-chairs, Senator Bradbury and Representative Tony

Van Vliet, and the Shellfish Program was included in final add-backs at the less-than-full level of \$250,000.

During the final days of the session, Senator Bradbury introduced the "Christmas Tree bill" which included final budget appropriations to a variety of programs that did not receive funding through the committee process. Included in this bill was additional support for the Shellfish Program. In addition to avoiding a threat of non-compliance from the National Shellfish Sanitation Program, the full restoration of funds will enable Oregon's shellfish industry to continue to grow, and quality of coastal estuaries to improve.

Time might be well spent in a future legislative session determining the feasibility of establishing more interagency coordination to bring together all the elements of shellfish production and marketing. Putting all of the agency pieces together in one department might also be beneficial to the shellfish program. Emphasis should be placed on the importance of coastal water quality to the coastal economy as well as for the benefit of the entire state.

Oregon Coastal Notes Articles Regarding Shellfish Issues

OREGON SHELLFISH PROGRAM THREATENED (2-8-91)

Proposed budget cuts by the State of Oregon cast a dark cloud over the state's commercial shellfish industry.

Governor Barbara Robert's budget entirely omits the Shellfish Sanitation Program in the budget of the Health Division. Without the water quality monitoring, commercial shellfish products could not be marketed in interstate commerce. This essentially bars any sale of these products.

Shellfish Oversight Complex

Regulations pertaining to shellfish in Oregon can fall under the jurisdiction of the Oregon Department of Fish and Wildlife, the Oregon Department of Agriculture, the Division of State Lands, the Oregon Health Division of the Department of Human Resources, the Department of Land Conservation and Development, and the Department of Environmental Quality. There is no one agency with jurisdiction extensive enough to deal with all of the issues relating to shellfish aquaculture. As a result, shellfish is dealt with in a patchwork management system which involves extensive interagency interaction.

Oregon Department of Fish and Wildlife (ODFW). ODFW is responsible for all fish, shellfish, and other animals living intertidally on the bottom within the waters of the state (ORS 506.036). This excludes commercial oyster cultivation; however, some shellfish aquaculture operations require a fish propagation permit.

Oregon Department of Agriculture (ODOA). Commercial oyster cultivation falls under the jurisdiction of the ODOA. This includes those oysters which are cultivated on state-owned lands. There are 27 growers on state-owned lands in five estuaries: Coos Bay (5 growers); Netarts Bay (7 growers); Tillamook Bay (7 growers); Winchester Bay (2 growers); Yaquina Bay (6 growers).

ODOA has the existing authorization (under ORS 622.290) to assess the following annual fees and taxes:

- Annual Use (Production) Tax: \$.05/gallon shucked
 \$.05/bushel in shell
- Annual Cultivation Fee: \$2.00/acre of land under lease
- Total Received Annually: \$8,500.00

Oregon Division of State Lands (DSL). DSL has jurisdiction over state-owned submerged and submersible lands. Shellfish aquaculture requires a permit on these lands. Any aquaculture activity involving fill and/or removal of more than 50 cubic yards of material/year requires a DSL permit as long as the use is consistent with the statewide planning goals.

Oregon Health Division (OHD), Department of Human Resources (DHR). Under the federal Food and Drug Administration (FDA), it is the Health Division that establishes shellfish harvest and processing sanitation standards and water quality standards for shellfish harvest. The shellfish program under the Health Division currently funds the water quality monitoring (fecal coliform count) that is among the factors that contribute to the Health Division's decision to close a bay (or keep it open) for shellfish growing and harvesting.

Shellfish grounds are classified as:

- 1) Approved: the fecal coliform count is less than 14 colony forming isolates per 100 ml or the mean total coliform is less than 70 per 100 ml. The ground must also be free of other marine toxins.
- 2) Conditionally approved: The ground must meet standards given limited rainfall, and minimal use of marinas and docks.
- 3) Closed areas: These may be approved or conditionally approved areas which are temporarily closed, or restricted areas where pollution is limited, or prohibited areas where there are high coliform counts and high counts of paralytic shellfish poison.

Current fees assessed by the Health Division include:

Distributors or shipper of shellfish: \$15.00/yr.

Oyster growers: \$40.00/yr.

(also pay poundage fee to DOA)

Oyster shucker/picker/processors: \$55.00/yr.

Commercial harvesters of mussels and clams:

Pay ODFW for a commercial license fee.

They do not pay the Health Division, but are still certified by the Health Division for a sanitation certificate.

Recreational harvesters of clams and mussels:

No fee assessment currently.

Oregon Department of Land Conservation and Development (DLCD). Goal 16 of the Land Conservation and Development Commission outlines the land-use planning goals of Oregon's estuaries and associated wetlands. The goal allows aquaculture that is consistent with the classification of the estuary--whether it is classified for preservation, conservation, or more intense development.

Oregon Department of Environmental Quality (DEQ). DEQ issues permits through the National Pollutant Discharge Elimination System (NPDES) as authorized by the Federal Clean Water Act. Changes in pH, dissolved oxygen, and changes in temperature are considered pollutants. Compliance with national standards for settleable and suspended solids in the water might affect aquaculture.

Several Actions Possible

What actions might be taken to reduce or eliminate this budgetary threat?

Representative Tim Josi held a meeting about the Shellfish Program last Friday, February 1st with representatives of the industry and others. Josi is working on several options for refunding or otherwise continuing the program. The Shellfish Program currently is budgeted at \$439,382 of which \$250,991 are in salary and benefits, \$95,468 in services and supplies, \$91,323 in contracts with counties, and \$1,600 in capital outlays.

Options include a shellfish stamp tacked on to SB 247 which now contains the ODFW's request for non-dedicated fee increases. Under this approach, the resident annual stamp would be \$3, the daily stamp \$1, the non-resident annual stamp \$9, and the non-resident 10-day stamp would be \$5. The proposal includes recreational shellfish as defined in ORS 506.011: "Shellfish includes but is not limited to abalone, clams, crabs, crayfish, mussels, oysters, piddocks, scallops and shrimp."

Presuming all annual stamps are resident stamps, sales of 106,500 of annual stamps and 26,950 daily stamps, with an effective date of January 1, 1992, the total revenue would be \$519,705 for the 91-91 biennium. Allowing for administrative costs (\$20,000) and considering the non-resident's stamps are not used in the calculation, this would be sufficient to support the Shellfish Sanitation Program.

Another option is to have the same shellfish fee structure as outlined above but drawn up in a separate bill from SB 247. Creating shellfish license fees, the bill would establish a shellfish fund, separate from the general fund budget, that would be dedicated to fund such expenses as are contained in the Shellfish Program.

Other options being considered include authorizing the DOA and the Health Division to work cooperatively in conducting the water quality monitoring. For example, collection would be by the Soil and Water Conservation Districts and enforcement would be the task of the Health Division. Also, commercial cultivation of all shellfish species on state-owned lands could be established under the authority of one agency.

Further possible courses of action might include increasing the annual cultivation fee to ODOA to cover some program costs. Funds could be transferred to the Soil and Water Conservation Districts for water sampling if necessary.

With the state's commercial shellfish industry on the line, a workable solution must be found.

COASTAL CAUCUS BREAKFAST (3-1-91)

Taking over the back room of JB's Restaurant Monday morning February 25, the Coastal Caucus heard a presentation on Oregon's Shellfish Program.

Since the article in the Feb. 8 issue of Coastal Notes about the Shellfish Program, the Health Division was able to produce a pared down budget for the Program as an alternative to completely cutting the program out of the Division's budget.

At a cost of \$250,000, this reduced budget reflects the absolute minimum requirements Oregon could meet under the National Shellfish Sanitation Program (NSSP) and still maintain a viable Oyster industry for shipment out of state. Debby Cannon, Coordinator of the Shellfish Program, and Tim Smith, Director of the Pacific Coast Oyster Growers Association out of Olympia, WA, came to speak to the Caucus about the new budget, and how this would put Oregon with respect to the federal requirements.

After a brief introduction from Rep. Josi, Sue Cameron from the Tillamook County Health Department and co-chair of the Tillamook Bay Sanitation Technical Advisory Committee, briefly spoke to the value of the Shellfish Program. Cameron said that "the \$250,000 will save the industry this biennium," and she was pleased to see the "spirit of compromise" that this new budget reflected of the Health Division.

Debby Cannon discussed the roles of other agencies and counties which coordinate with the Health Division on the Shellfish Program and then went right into the new budget and explained where the cuts were made to come up with this "short term fix" for the Program. The previous amount for the Shellfish Program that was to be entirely cut this biennium was \$439,382.

The 1991-1993 Adjusted Budget for the Shellfish Sanitation Program consists of the following main line items: (These figures were provided by the Health Division.)

- Salary and OPE 131,700
- Services/ Supplies 52,300
- Contracts with Counties 66,000

Included in the adjusted Program are such activities as:

1. Collecting routine water quality samples from current growing areas.
2. Collecting minimum Paralytic Shellfish Poisoning (PSP) sites for active harvest areas of known risk.
3. Inspect licensed shellfish dealers at minimum Food and Drug Administration (FDA) frequency.
4. Provide response to shellfish related incidents (pollution and PSP) in commercial growing areas.
5. Provide program coordination and technical consultation.
6. Send one Division person to Interstate Shellfish Sanitation Conference.

The program activities deleted from the full program budget (approximately \$182,000) are primarily located in the area of Water Quality Monitoring. Some of these cuts are:

1. Stop sampling bays classified as "prohibited" and review of this data for potential harvest.
2. Defer shoreline sanitary survey updates (required every 3 years) of existing shellfish growing areas.
3. No samples conducted of growing areas currently closed to commercial shellfish harvest.
4. Do not change shellfish management plans in response to improvements in sewage treatment plans when field studies are necessary to verify impact of change.
5. Discontinue training for staff and education for licensed industry and the public.

While it may be argued that any budget is a good budget in this context, it is important to analyze what this pared down budget leaves out in comparison to a fully funded program. The "250 Budget" eliminates frequent testing in a conditionally approved area. This means that an area like Coos Bay, which is conditionally approved, would most likely be closed after an inch of rain. With continuous testing, the bay may be kept open a bit longer than that pre-set amount of rainfall. PSP testing is also a critical area of the program, and these tests will be done less frequently. The field person whose position would be cut plays an important role in being an emergency responder when there is a crisis in a bay—for example in the event of an oil spill. Finally, Oregon may lose its credibility to be able to comply with the FDA and the Interstate Shellfish Sanitation Conference.

It is important to note that the Shellfish Program is not the only thing Governor Roberts chose to cut out of the Health Division's budget as a result of Measure 5. Among other things, the School-based Clinics program was reduced, the Private Well Testing Database was eliminated and the Fluoride Mouth Rinse program in schools was cut out.

Tim Smith provided the federal context for the Shellfish Program in Oregon. Smith is the Oyster industry representative for Oregon, Washington, California and Alaska to the NSSP. Smith discussed 1991 Shellfish Safety

Legislation, that could provide the opportunity for Oregon to have half of its Program funded by the federal government in the next biennium. Smith indicated that funding would go towards half of the amount Oregon had budgeted the program—implying that the state should demonstrate strong support for the program in its budget this biennium.

Smith called the West Coast oyster industry the "shining star of seafood safety nationwide," at a time when the industry in other parts of the country is declining. Smith also said that the shellfish program is really a "consumer safety, water quality and public health program," in that quality shellfish is an early indicator of the quality of these other programs. Smith closed the shellfish presentation by saying that "from the national perspective, \$402,000 is the baseline for Oregon's Shellfish Program." This is the amount budgeted to the Shellfish Program in the last biennium.

John Faudskar, OSU Extension Service, Hal Nauman of the Health Division and Maryanne Guichard, Chief of the Office of Shellfish Programs in the Washington state Department of Health, were also present to show their support of the Program, and answer any additional questions of the Coastal Caucus. Joe Easley from the Oregon Trawl Commission stopped by JB's to introduce himself to new members, and to introduce Terry Miller, the new area director out of Astoria with the Fisherman's Marketing Association. In addition to the Coastal Caucus, others attending the breakfast meeting were Paul Hanneman, Dean Willard, Debby Boone, Sally Schroeder, Joe Arvidson, Mara Brown.

SHELLFISH PROGRAM IN WAYS AND MEANS (3-15-91)

Public hearings in Ways and Means subcommittees are usually attended by only a handful of immediately interested spectators, and are characteristically more formal than hearings in the substantive committees, and Subcommittee conversation is often out of reach of the microphones.

However, on Thursday, March 7, the Ways and Means Subcommittee on Human Resources, Chaired by Senator Frank Roberts (D-Portland), was surprised by a full crowd of constituents when it heard public testimony on Oregon's Shellfish Program and the School Based Clinics (SBC) Program, both of which had been eliminated in the Health Division's budget for this biennium.

Part of the Ways and Means process is its procedure for taking testimony as people have signed up rather than hearing all testimony on the Shellfish Program in order; for example, the testimony was interspersed. Oyster growers had a chance to learn a bit about the merits of the SBC's, as they sat through personalized testimony from high school students from as far away as Ashland; likewise, the students and their teachers learned a bit about shellfish and water quality issues well into the afternoon.

Among others, Commissioner Doris Sheldon from the Port of Garibaldi spoke to the merits of the Shellfish Program, and the uniqueness of the shellfish industry to the Oregon Coast. Sheldon told of a letter from Governor Barbara Roberts to the ports anticipating more visitors than ever to the coast in the near future. People come to the coast to harvest shellfish, and tourists and residents will be in jeopardy if the program is not funded. Sheldon urged the Committee to "restore the public trust" by refunding the Shellfish Program.

While the public testimony evoked little direct response from the subcommittee that afternoon, public testimony was carried over to the next day. With HR 170 back to its usual ambiance, and a small gathering of people, mostly from the Department of Human Resources itself, the subcommittee seemed a little more willing to think through the budget process out loud, and share its thoughts with the public. While it seemed as though the subcommittee was randomly pouring through the Division's budget, it did land on the Shellfish Program several times. It appears from the early conversation in the room, that there is the intent to at least fund the Program at the "250" level (See Coastal Notes of March 1st) and possibly establish a user fee package for the difference of the cost of the fully implemented program. This one might not pan out until just short of sine die.

OREGON SHELLFISH ISSUES UPDATE (5-17-91)

Shellfish Program; Oregon Health Division

At this time, the Shellfish Program in the Health Division of the Department of Human Resources for monitoring estuarine water quality for shellfish growing is still waiting in Ways and Means for a possible add-back to the overall budget for the Department.

Shellfish Program; Oregon Department of Fish and Wildlife

ODFW's Shellfish Program has been proposed to be funded through sale of general recreational fishing licenses to recreational shellfish harvesters. This bill, SB 247, has passed the Senate and is waiting for action on the

House side.

The Shellfish Program of the Oregon Department of Fish and Wildlife (ODFW) focuses on monitoring, research and inventory of marine invertebrate populations in Oregon. This includes commercial shellfish species such as pink shrimp and dungeness crab, as well as sea urchins and clams. Recreational shellfish research includes clams, crabs, and mussels. The Department also reviews activities with respect to crab resources including monitoring ocean crab resources and working to resolve coastwide management issues. Bay crab resource work includes assessing the economic evaluation of the recreational crab fishery. The Department also monitors the recreational clam fishery through spawning stock surveys and also works on enhancement activities such as introducing new species.

National Shellfish Pollution Indicator Study

The Oregon Health Division as well as the Oregon shellfish industry have been active in planning the National Shellfish Pollution Indicator Study, which is funded by the National Oceanic and Atmospheric Administration (NOAA), and managed by the Louisiana Universities Marine Consortium (LUMCON).

Netarts Bay in Oregon was chosen as a pristine site for collection of baseline data. The National Shellfish Study involved work on developing new indicators of human fecal pollution in shellfish, which also has implications for improved management of drinking water and waste water. After extensive field studies to test the effectiveness of several new techniques for making water quality assessments, results and recommendations will be presented to the National Shellfish Sanitation Program. Tim Smith, Director of the Pacific Coast Oyster Growers Association, who spoke early in the session to the Coastal Caucus, is one of the advisors to the study.

Current Health Division Shellfish Program

Positions:

1.00 FTE Program Coordinator, Environmental Health Specialist 3

1.00 FTE Shellfish Technician, Environmental Health Specialist 1

1.00 FTE Laboratory Technician, Microbiologist 2

3 Part-time (3-6 hours per week) to collect samples for Paralytic Shellfish Poison (PSP)

Services and supplies:

Travel, rent, telephone, printing (licenses, forms and warning signs), shipping and processing of labor samples, operating a small boat, etc.

Capital equipment:

Salinity field test kits.

Contracts with Tillamook, Lincoln, Douglas and Coos County health departments:

Collect a portion of the bay water samples, PSP samples, assist with sanitary survey of failing septic systems, post pollution warning signs for recreational clam digger, respond to various emergency situations.

SHELLFISH PROGRAM UPDATE (6-6-91)

With the main budget for the Department of Human Resources having already been passed by the House, the Ways and Means Subcommittee on Human Resources added back funding for the School Based Clinics program for \$750,000, and restored the Shellfish Sanitation Program at \$250,000. These two programs had earlier in the session been pitted together in a public hearing, which was attended by an overflow crowd of shellfish growers and high-school health clinic supporters.

These final add-backs also carry a note saying that in the event of a threat to decertify Oregon's shellfish program due to non-compliance with the National Shellfish Sanitation Program, the program will be restored to a higher funding level by the Emergency Board.

SENATOR BILL BRADBURY COMMENTS ON 1991 SESSION (7-3-91)

Ocean and Coastal Resources Gain

"Several measures that will mean better protection of our ocean resources—and those whose livelihood depends on them—were adopted this session. They include a ban on marine mining, authorizing development of a comprehensive oil spill response plan, and establishing the Ocean Policy Council."

Shellfish Program Fully Restored; Ports Get Funding

Senator Bradbury continued: "The shellfish inspection program was fully restored. With full funding, the program will continue to meet federal export requirements. The port dredging fund got \$3.5 million and the

revolving fund for port improvement projects gained \$1 million in lottery funds. Both will be important for keeping our deep water ports in good shape and ready to take advantage of opportunities."

Landmark Recycling Legislation Passes

On other environmental legislation, Senator Bradbury commented that "a landmark measure which will no doubt become a model for other states will greatly expand recycling opportunities, set goals for reducing the overall amounts of waste through recycling, and strengthen markets for products made from recycled materials."

...Water Policy

Developing and maintaining a thorough understanding of the regulations and statutes pertaining to water requires a continuous effort to keep track of administrative rule-making and legislative changes. Unlike most committees whose audiences seemed to change frequently other than for a few regular agency representatives, the water policy committees in Salem have a dedicated following. Every Tuesday and Thursday, about 20 people would turn out to monitor Representative Chuck Norris's House Water Policy Committee in HR E at 1:30, and then at 3:00, the same group of people would be found in Room 137 awaiting Senator Larry Hill and his Senate Water Policy Committee. One Tuesday early on in the session, in a rather unconventional request, Chuck Norris asked everybody in the audience during a House Water Policy meeting to introduce themselves to the committee. I suspect that the faces don't change much from session to session.

My tracking of water issues focused on two bills, SB 1163, the Streamflow Restoration and Conservation Act, and SB 330, which although primarily a fee bill for the Department of Environmental Quality, began to consider the problem of non-point source pollution. Neither one of these bills was completely successful this session.

I spent a considerable amount of time looking into the issue of instream water rights, initially in preparation for a water right conference O CZMA was interested in hosting. In March, Jay Rasmussen and I met with Martha Pagel, the Governor's Natural Resource Advisor, and Dave Riley, Pagel's assistant. The purpose of our meeting was to bring up the instream water right issue as one that was of particular concern to the coast, and explore the possibility of getting help from the Governor's office in having the directors of natural resource agencies participate in O CZMA's conference. It was clear that despite a major interest in the part of Pagel and Riley, instream water rights were not on the Governor's legislative agenda. Ultimately, trying to organize agency directors and legislators for such a conference during the legislative session was unsuccessful. However, O CZMA invited John Borden, Water Rights Coordinator for the Water Resources Department (WRD), and Dave Riley to the May Association meeting. Borden was the main speaker and after a brief summary of the issue, he responded to questions from the O CZMA members, which could have continued for hours.

SB 1163 went a lot farther than most proponents and opponents of the bill probably thought it would. Watching this bill through committee work sessions, as well as sitting in on a "sausage-making" session with Senator Larry Hill, Audrey and Tom Simmons of Water Watch, Dave Nelson and Kip Lombard of Water Resources Congress, I was aware that the bill was not one which the Governor's office was very involved in. As opposed to the mining bill, for example, which Martha Pagel facilitated, or the Oil Spill Contingency Planning legislation which the Governor supported in her budget, Senator Hill was alone on this one. Water Watch, representing the "instream" and environmental interests, was a major promoter of the bill, which was drafted on their behalf. I was told by a staff person that one reason for the bill's failure was the lack of leadership by Water Watch's Tom Simmons. Although he had a lot of enthusiasm and ability to generate ideas, his constant redrafting of the bill and presenting often entirely new 30

page documents at committee hearings without having worked on changes with other interest groups isolated many people. Water Resources Congress, representing the irrigation community, was another major player in the legislation. The attorney for Water Resources Congress is Kip Lombard, a former representative from Ashland. During the last hearing the bill had in the House Rules Committee, Lombard talked about the reasons WRC was willing to come to the table on this issue. Primarily, it was the anticipation of a ballot measure to restore Oregon's declining fisheries through similar conservation methods, which propelled WRC to cooperate with the legislative process which would more likely result in a better outcome for the irrigation community than a ballot measure possibly would.

SB 1163 had a difficult time getting out of the Senate Water Policy Committee. There were major concerns about the impact the bill would have on the agriculture community, as well as, initially, severe funding constraints. The bill that passed the Senate revolved around the work of the Governor's Strategic Water Management Group, thus cutting the projected \$4 million dollar impact on WRD had they been the coordinators of the bill's provisions. In addition to providing incentives to putting water back instream through conservation and improved withdrawal efficiency, the bill contained a civil suit provision, which many in the agricultural community were opposed to.

The bill did pass the Senate, and was eventually scheduled a hearing in the House Rules Committee. By this time, the standing committees were shut down. On the House side, the bill was "stuffed" with eight House Bills that did not get a hearing on the Senate side. The inclusion of these bills, essentially gave the bill support from Representative Chuck Norris. Despite testimony in support of the bill from counties, municipalities, WRD, Water Resources Congress and Water Watch, the bill did not make it out of the House Rules Committee.

There were some major black holes in the legislation, one being, how to coordinate the role of SWMG with the already-in-existence water masters? Along these lines, would the water basin authorities created in the bill have different, overlapping, or identical districts as the present water basins? The need for putting water back instream, as well as continuing to work out problems and implement the 1987 Instream Water Right Act, will most likely be a project for the interim. Based on how far the various user groups came in reaching consensus on many of the issues in the bill, it is clear that with the leadership added by support from the Governor, work in streamflow restoration and water conservation can go a long way.

As originally introduced, SB 330 would have allowed the Department of Environmental Quality (DEQ) to assess fees for point source and non-point source pollution. Although the bill passed out of the Senate Agriculture and Natural Resources Committee in this form, it spent most of the session in the Transportation and Regulation Subcommittee of Ways and Means.

Under the reauthorization of the Coastal Zone Management Act of 1990, all coastal states are required to work toward the reduction of non-point source pollution. While some of the work of DEQ does already begin to address non-point source pollution, more money will be required in this area in the future. The fee bill proposed by DEQ wasn't necessarily a solution to the pollution problem, but it took advantage of the large problem by attaching fees to the pollution. Ideally, fees are a way to create a disincentive to pollution, and raise money to combat the problem. However, DEQ was under fire for the impact of fees on industries and the business community. A budget note applicable across all DEQ programs directs the public agency "to strive at all times to be responsive to the businesses and individuals it serves. In addition to its regulatory mandates to protect public health and environment, the Department shall pro-actively provide adequate information to the public to assist them in avoiding violations."

The Transportation and Regulation Subcommittee eventually stripped SB 330 of all its fee generating capacities with respect to non-point source pollution. Amendments to the bill clarify that fees for point source discharge permits, already required under statute, may be collected on an annual basis.

Oregon Coastal Notes Articles Regarding Water Policy

RESPONSE MIXED TO WATER METER BILL AT SENATE HEARING (3-1-91)

The Senate Water Policy Committee held a public hearing Friday, February 21 on a bill which would require the installation of water meters by municipal water suppliers by January 1, 1996.

The bill, SB 327, also calls for a municipal water supplier to submit plans outlining how it plans to promote water conservation and details on how it plans to install water meters.

Bill Young from the Water Resources Department (WRD) testified that the plans required of the bill would be phased in by mid-1993. WRD would hope to start with volunteers from those municipalities that already have dealt with water meter planning to develop models for other municipalities to develop similar plans.

The definition of "municipal water suppliers" as used in the bill would probably apply to the 242 or so incorporated cities that provide water. Although this was not clear, the bill is not intended to apply to all of the water supply entities in the state, which would be more than 3000 suppliers currently regulated by the Health Division. The bill also does not intend to require the owners of rental units to provide individual water meters to each unit.

Tom O'Conner from the League of Oregon Cities testified that in January 1991, the League did a survey of their membership in order to determine which cities did not meter their water service. Of the 242 cities, 31 responded that they do not currently meter their water service, but that eight of these 31 were in the process of installation.

The City of Reedsport, population 4,940, was one of these 31 cities without water meters. Jeff Mackle testified against the bill on behalf of the City of Reedsport. In addition, written testimony to the Committee from Nolan Young, Reedsport City Manager, stated that passage of this bill would result in a 25% increase in water rates and a cost to the city of almost \$750,000. The city is currently having to increase water rates 97% over the next 18 months to finance the \$3 million construction of a slow-sand filter that is being mandated by amendments to the federal Safe Drinking Act.

Reedsport obtains its water from Clear Lake, which is located on the edge of the Oregon Dunes. While the City supports the principals of water conservation that seem to be driving this legislation, they do not feel meters should be mandated in an area, like Reedsport, where water supply is not of critical concern.

The cities of Talent and Garibaldi also submitted written testimony, both in opposition to the bill. Like Reedsport, Garibaldi is also facing added expenses in order to comply with new federal mandates. Also at issue is whether mandatory state agency review is necessary to ensure that local governments are pursuing water conservation.

Jim Myron from Oregon Trout testified in favor of the water conservation efforts reflected in the bill. Myron, however, indicated that Oregon Trout would like to see the bill amended to call for the elimination of "declining block rate structures". Under this type of rate structure, the cost per unit of water is reduced as consumption increases. Oregon Trout testified that this encourages over-use, and is just as unacceptable as non-metered water use.

The committee moved another bill affecting "G-Web" - the Governor's Watershed Enhancement Board - out of committee with a "do pass" recommendation to Ways and Means. Senate Bill 328 would allow G-Web to accept money from private or public sources, including the federal government. The funds received will be kept in a separate account within the General Fund to be used for watershed enhancement projects and the administration of such projects.

NESTUCCA RIVER BILL HEARD IN HOUSE WATER POLICY (5-11-91)

HB 3323, sponsored by Representative Tim Josi (D-Bay City), to exempt portions of the Nestucca River from the state scenic waterways designation generated controversy and question over the intent of the legislation and how it would impact the scenic waterways process during a work session in the House Water Policy Committee.

Louise Bilheimer, Oregon Rivers Council and Liz Frenkel, Sierra Club testified against the bill with the

position that the bill seeks legislative relief for something that should be done through the rulemaking process.

There is a greater concern that the exemption on the Nestucca will erode away at the State Scenic Waterways Act (SSWA) which, according to testimony from David Moskowitz, Executive Director of the Association of Northwest Steelheaders, serves as a model of conservation planning in the nation.

Moskowitz also commented that the dispute on the Nestucca, which the landowners attribute to the scenic waterways designation is really the "result of poor etiquette and illegal behavior by a variety of river users." Moskowitz said that the dispute is part of the "age-old conflict between river users and adjacent landowners."

Rep. Josi spoke to the bill, and said that he was saddened to see this issue get this far. Rep. Josi is giving his constituents the chance to be heard. Rep. Josi urged that the bill be passed out of Committee and given a chance at a floor vote.

The State Parks Department planner for this portion of the Nestucca spoke before the Committee and stated that Parks is still going through the rulemaking process. He said, "I think we are getting close to something we can all work with."

Chairman Chuck Norris (R-Hermiston) closed the work session without further action on the bill.

AQUATIC PLANTS BILL HEARD IN SENATE WATER POLICY (5-11-91)

Onno Husing and Wilbur TERNYK appeared before the Senate Water Policy Committee on Thursday, April 25th, to defend the need for SB 1149, requiring the Division of State Lands (DSL) to regulate the harvesting of aquatic plants. Onno Husing and Wilbur TERNYK are currently working together as wetland, beach and dune consultants.

Onno Husing, who has a law degree from the University of Oregon, testified that the current state statutes do not address aquatic plants specifically, most of which are on public lands. He added that DSL is in a good position to be involved in the regulation of aquatic plant harvesting because they currently administer removal-fill permits which often involves the filling of wetland areas and subsequent mitigation requirements, both of which may involve aquatic plants.

Wilbur TERNYK told the Committee that in Florida and parts of the East Coast, there are some huge mitigation projects. There is concern that as mitigation of wetlands increases, there will be an increase in the need for aquatic plants, and the problem of people stripping natural wetlands for their plant species in order to replant them in an artificial wetland may escalate. TERNYK, who is a Commissioner on the Port of Siuslaw, and Mayor of the City of Florence was formerly the Director of the Oregon Coastal Conservation and Development Commission (OCCDC) which has since been absorbed by the Department of Land Conservation and Development. TERNYK asked the committee: "Are we going to destroy marshes to create marshes?"

There are hundreds of natural wetland plant species, some of these are propagated by rhizomes and will grow back when they are removed. Others, that only propagate by seed, will not grow back once they are removed. TERNYK said that no one has addressed these issues or determined which plants are diggable, which ones would not grow back, and even which plants are endangered.

In addition to the direct effect on plant diversity, there are indirect effects associated with removing or replanting aquatic plants without regulation or monitoring. There is the possibility of introducing plant diseases when people export, or import, plants from one region to another. TERNYK had a sample of diseased tufted hairgrass to show the committee. Also, in addition to getting the plant itself, when you dig up a plant from a wetland, you take with it mud which contains organisms that may not be compatible with benthic communities in another region. TERNYK said that "this has the makings of a real ecological disaster."

TERNYK said that some changes are needed to make the taking of aquatic plants more responsible, due to the growing mitigation business. "Somebody should pay attention to what's going on before we foul things up."

Janet Neuman, Director of DSL, and Ken Bierly, manager of the wetlands program for DSL, also spoke before the Committee.

Neuman flagged three things for the Committee:

- DSL hasn't sensed that there is a serious amount of damage due to the removal of plants, nor have they seen that there is not a serious problem with the removal of estuary plants that requires statutory attention.
- The bill is currently too broad, especially in the definition of "facultative plants" which are just as likely to be found in wetlands as non-wetlands, and also the definition of "harvest" which may capture agricultural and forestry activities as well.
- The bill has a fiscal impact on DSL, probably requiring one additional staff person. The bill also includes

civil penalties which would go into the state general fund, however, the wetland program is funded by the general school fund.

Ken Bierly said that he thought there may be an opportunity to establish rules regarding the aquatic plant issue in the removal-fill permit process. Neuman also mentioned addressing aquatic plants as part of a public education project, teaching people not to destroy one wetland in place of another. The possibility of making "salvage" a condition of a removal permit was also considered a sensible idea.

Senator Larry Hill (D-Springfield), Chair of the Senate Water Policy Committee, suggested that DSL sit down with Husing and Ternyik to discuss this information, saying that he thought the problem will get bigger before it gets smaller; "it would be wise to plan ahead."

Sen. Hill also said that he is not optimistic about statutory change this session, but that working toward a solution is a good idea. Sen. Hill asked that DSL and Husing and Ternyik return before the legislature next session to inform them of what progress they have made, and what sort of rulemaking DSL has drafted.

DEQ REMOVAL FILL PERMIT FEE BILL PASSES OUT OF SENATE AG (4-12-91)

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 Brennenman (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.

THE COAST AND INSTREAM WATER RIGHTS (5-17-91)

(This is first of a two-part background paper on the history, process and coastal issues involved in instream water rights in Oregon and serves as an introduction for an OCZMA workshop being planned on this issue)

In 1987, the Oregon legislature passed the Instream Water Right Act, providing a mechanism for balancing fish and wildlife habitat needs and recreational interests with traditional water uses which have mostly focused on out of stream withdrawals. The issues and concerns generated by this change in the law are being expressed throughout the state; questions are being raised about the law's affect on prior appropriations, future development, and basin planning and watershed management generally. These questions have been voiced at meetings with the Water Resources Department in many parts of the state.

While each region, including the coast, may have particular concerns unique to the watersheds in that area, the major facts and issues created by the instream water rights legislation are applicable everywhere. The coast shares similar concerns with other rural counties and regions in the state over how the increased instream needs will impact future development. Additionally, coastal streams will undoubtedly be impacted by changes in water rights management due to protection or enhancement of endangered species of anadromous fish.

This paper attempts to provide some background information on the instream water rights issues generally, so that people finding themselves involved in instream water right issues will have a place from which to start following future changes in the law and the implementation of administrative rules in compliance with the laws.

The Water Budget

In an overly simplified water budget, input from precipitation and atmospheric moisture is balanced by evaporation outflow from rivers and streams into the ocean. In addition to the natural water budget, other factors act to take water out of stream such as diverting water for irrigation, manufacturing, steam electrical generation, and

domestic and municipal uses. Since 1955, Oregon has had legislation requiring a minimum perennial stream flow to remain in the water basin.

This amount has been determined either by the "Oregon Method" for determining the optimum needs of fish and wildlife or through measuring techniques used by the U.S. Geological Survey and the Water Resources Department. Examples of instream water uses are hydroelectric power generation, support of aquatic life, navigation and waste water treatment and dilution.

These instream activities utilize water without removing it from the source of flow. Out of stream uses are withdrawal and consumption of water out of the stream channel or groundwater aquifer through which it naturally flows.

In addition to concerns about stream flow, groundwater depletion is a serious problem. As a consequence of low water tables, and reduced stream flows problems such as saltwater intrusion into aquifers, an increased threat of other aquifer contaminants, land subsidence, interference with drainage and sewers, and an increased threat of flooding are possible. (From *America's Water: Current Trends and Emerging Issues*; The Conservation Foundation, Washington D.C.; 1984.)

Clean Water Act

On the federal level, the amendments to the Federal Water Pollution Control Act in 1972 were a reflection of changes in historical values for water resource development. Traditional values associated with management of water resources were focused on "efficiency" both in the sense of economic efficiency, and also in terms of being able to appropriate as much water as possible so it is not "lost" or "wasted" by being left to flow freely into the ocean.

Changes in public values have resulted in consideration of equity of uses, and environmental quality, for example, which contributed to the provisions in the Clean Water Act. Regional economic development has also been a federal concern; water development resulting in the generation of benefits for one region may not be newly created benefits but rather may be shifted from another region.

The effort to look at a larger picture in terms of water resource management, and to incorporate new values into a well established water right system, has generated a controversy of interests between the various instream and out of stream uses, as well as questions of efficiency of use.

Oregon Water Code

Oregon water laws were enacted in 1909. These first laws provided a procedure for making determinations and keeping records of the water rights to the surface waters of the state that were initiated prior to February 24, 1909. These were called vested water rights. The Doctrine of Prior Appropriation is known throughout Western water law: First in time is the first in right given that the water has been used in a beneficial manner. (From WRD Biennial Report 87-88)

With respect to water rights, Oregon's water code centers on four major premises:

1. Surface or groundwater may be legally diverted for use only if used for a beneficial purpose;
2. The more senior the water right, the longer water is available in a time of shortage;
3. A water right is attached to the land where it was established, as long as the water is used; if the land is sold, the water right goes with the land to the new owner; and,
4. A water right is valid as long as it is used at least once every five years; after five consecutive years of non-use, the right is considered forfeited.

However, there are some uses of water that do not require water rights. These are called "exempt uses". Exempt uses of surface water include the landowner's use of a spring which does not naturally flow off of the property from which it comes from. Stock watering is also an exempted use if it comes from a surface source which has not been otherwise changed. Salmon and Trout Restoration and Enhancement Program (STEP) egg incubation activities are also exempt.

In a dispute over whose right to appropriate water will be honored, several issues are crucial. The most important factor is the relative date of priority -- who was granted the water right first. Other considerations are the quantity of water appropriated and the use to which the water has been applied. Also significant in the dispute, is the land to which the water is appurtenant.

The Water Resources Department makes "findings of fact" and "orders of determination" which are finally upheld or modified by the circuit courts. Vested rights on small streams flowing into the Columbia River, and all streams flowing directly into the ocean, except the Rogue River remain undetermined. 1987 Law required a registration statement of claim to an undetermined vested surface right be filed with WRD before December 1, 1992.

Recent Oregon Legislation

The 1987 Legislature created a state instream water right program.

SB 140 required the Water Resources Commission to convert existing minimum streamflows to instream water rights. Instream water rights are different from minimum stream flows in that they cannot be waived by WRC during a time of water shortage. This new law allows the Department of Fish and Wildlife, and Department of Environmental Quality and Parks and Recreation to request instream water rights from the Commission.

Under **SB 140**, public uses of water can be protected by the issuance of water rights. Instream water rights are held in trust by the Water Resources Department for the benefit of the people of Oregon. Public uses are broadly defined to include conservation, maintenance and enhancement of fish and wildlife and aquatic life, fish and wildlife habitat and any other ecological values. Public benefit also includes recreation, pollution abatement and navigation. Public benefit means a benefit that accrues to the public at large rather than to a person, a small group of persons or to a private enterprise.

The bill calls for all existing minimum stream flows to be converted to instream water rights. The bill also establishes a process for reserving water for future out of stream use for economic development.

An instream water right does not diminish the public ownership of the waters of the state, nor shall an instream water right take away or impair any permitted, certificated, or decreed water use right vested prior to the date of the instream water right.

The Department of Fish and Wildlife has the authority to request certificates for instream water rights in which there are public uses relating to the conservation, maintenance and enhancement of fish and wildlife or fish and wildlife habitat.

The Department of Environmental Quality may be granted a water right to protect and maintain water quality standards. The Parks and Recreation Department may request a certificate for instream rights to state waters in which there are public uses relating to recreation and scenic attraction.

SB 140 allows a person to purchase or lease existing water right or portion of a water right or accept a gift of a water right for conversion to an instream water right. Any water right purchased pursuant to the 1987 Act will retain the priority date of the water right purchased, leased or received as a gift. Any person may lease an existing water right for use as an instream water right for a specified period without losing the original priority date.

The bill also specifies that the use of state waters for multipurpose storage or municipal uses or by a municipal applicant for a hydroelectric project shall take precedence over an instream water right with review by the Commission, except if the instream water right was converted from minimum stream flow requirements, or resulted from a lease or transfer of an existing water right.

Any state agency may request the Water Resources Commission to reserve unappropriated water for future economic development. Review of the application shall be conducted at the time of the reservation and at the time the reserved water is applied to consumptive or out of stream uses.

Senate Bill 142, passed by the 1987 Legislature requires water use reporting by public agencies, including irrigation districts.

The bill requires that any governmental agency that holds a water right shall submit an annual report to the Water Resources Department. This report shall include the amount of water used by the governmental entity, the period of use and the categories of beneficial use to which the water is applied. This includes any state or federal agency, local government, irrigation district and water control district.

[Next week, further legislation in 1987, current agency responsibilities and activities, and pending legislation]

THE COAST AND INSTREAM WATER RIGHTS (5-24-91)

AGENCY RESPONSES

Water Resources Department

The Water Resources Department has been reviewing applications for instream water rights. On April 16, the Commission accepted staff recommendations concerning the way in which flow levels are listed on an instream water right certificate, as well as approved a memorandum of understanding regarding exemptions for domestic and livestock purposes.

Four options for listing flows on instream water right certifications were described in the staff report to the Commission:

- A. List only one flow level which protects the public resource fully. Other levels listed to protect valuable peak flows would be identified so as not to be confused with management objectives for a particular month.
- B. List two flow levels, one to identify and protect the actual flows listed today, the other to establish a

management objective to be achieved through conservation, riparian area enhancement, storage, and or other methods.

C. List two flow levels, one flow representing the minimum flow necessary to support fish and wildlife needs, one flow representing the optimization of resources.

D. List up to three flow levels for each month or time period. The highest figure represents unusual events the applicant feels should be protected. The mid-level flow would represent the management target for stream recovery. The low level would identify current water availability -- what is estimated to be unappropriated in the stream today.

Staff recommended, and the Commission approved, option A -- requiring WRD to list one flow level which protects the public resources thoroughly. This is the easiest to implement and the least confusing to someone reading the certificate in the future. The flows listed on the certificate will be the target flows which fully protect the instream resource.

Option B was not recommended but a variation of this was supported by ODFW. In the case where an applicant requests an amount the department feels is higher than the estimated average natural flow (EANF), two numbers could be listed, one at the EANF and one as a target which may be achieved through future enhancement activities.

1% Exemption for Livestock

WRD and ODFW are working together to develop a stockwater use exception. That condition could be included in each new instream water right certificate. WRD had worked with ODFW to develop a livestock exception to be placed on all new instream water rights. Discussions have also included a domestic use exception.

The Commission approved the exemption concept and a Memorandum of Understanding is currently being developed between WRD and ODFW which limits the amount of water rights WRD will issue for these uses. The exemption will be limited to one percent of the average available monthly flow during the low flow month. This refers to the available flow after existing water rights are satisfied, this amount will be determined for each stream with a pending in-stream water right.

The exception for domestic uses could be expanded to allow for the irrigation of up to one-half acre of non-commercial lawn or garden in addition to the use allowed for domestic purposes. ODFW would retain the right to identify specific streams where no exceptions should be allowed, this could be specified on an instream application.

When an instream water right fully appropriates the remaining stream flows, ODFW and WRD would usually recommend that, excepting stream and livestock uses, the stream will be withdrawn from future appropriations.

The Water Resources Department has received over 500 applications for instream water rights to date. The majority of these are from the Department of Fish and Wildlife and are located in areas ODFW feels are of the highest priority. WRD has been working through these applications although it is proceeding slowly so as to incorporate a larger picture of both instream and out of stream appropriations.

Oregon Department of Fish and Wildlife

The Department of Fish and Wildlife (ODFW) is required to work with the Water Resources Department in processing the applications for instream rights, and also work with WRD to enforce those rights. The Department has responded to the changes in water right law by quickly submitting applications for instream rights to obtain priority dates to protect fish and wildlife interests. ODFW adopted administrative rules on instream applications in October of 1989.

In order to act in a timely manner in applying for instream water rights in priority streams, rivers and standing waters, ODFW has embarked on a 5-year implementation plan. The first action is to develop a list of priority waterways based on several factors. Of primary importance is the protection of federally and state listed threatened and endangered species. Other consideration based on the water requirements of fish at various stages of their life cycle are also important such as migration, spawning, and incubation requirements. Habitat protection and water quality needs of fisheries as well as aesthetic and recreational uses of waterways, and scenic waterways needs are included in the determination of priority streams and rivers.

ODFW is applying for instream water rights in priority waterways where adequate streamflow information is available, and also developing a list of waterways where instream rights are a priority but flow data is incomplete or out of date. ODFW is also assessing unappropriated waterways to be considered for reservation for future economic development. ODFW has applied for over 400 instream water rights, the majority of which are pending action by the WRD.

In order to address public concerns and misconceptions about instream water rights, ODFW has plans to develop a public education program.

Department of Parks and Recreation

On May 2, 1991, the Parks and Recreation Commission, adopted rules setting the policy, methods and standards the Oregon Parks and Recreation Department will use in submitting applications for instream water rights to the Water Resources Department. The Parks Department will submit applications for instream rights to streams, lakes and wetlands to protect the scenic and recreational values of these areas. A goal stated by Parks in its rules is to have an instream right for every stream, river, lake and wetland where there is a scenic or recreational value.

Parks uses what is called the "Oregon Recreation Methodology" for determining the level of flow needed on a waterway to meet public recreational values. For any given month there is a specific flow level needed to accommodate the major scenic and recreational activities within that waterway. Parks will base its determination on an analysis of the water in question, and an assessment of the types of recreational uses that occur on that water. Included is a description of institutional constraints, which include such things as dam releases, minimum perennial streamflows or other instream water rights, an acknowledged local comprehensive land use plan.

Parks rules specify that where recreation flow data does not exist, "the instream flow requirements of ODFW or DEQ, whichever is highest, may satisfy the recreation flow requirement necessary for recreational value and scenic attraction." Parks will coordinate with WRD to establish priorities for instream rights, and develop some system of monitoring.

The Parks rules state that the initiation of an instream water right can come from local, state and federal agencies, or the public at large, however, the formal instream request must be made by Parks, DEQ or ODFW. Priority of applications is for streams 1. designated as a State Scenic Waterway or National Wild and Scenic River 2. with significant statewide recreation opportunities, 3. with recreational opportunities of regional significance 4. waterway which has the potential to be adversely impacted by out of stream appropriations, and 5. a waterway that has been identified as an important recreational resource in a local comprehensive plan or regional economic strategy.

Department of Environmental Quality

The Department of Environmental Quality (DEQ) will begin public hearings on its proposed rules in response to the instream water rights laws, ORS 537.332 to 537.360.

The Department of Environmental Quality has proposed to get a list of where instream rights have been established at the request of ODFW and Parks and work from these. The first activity for DEQ will be to determine where there are streams currently violating water quality standards, and the corresponding amounts of water needed to meet instream standards and assimilate the waste.

Around the time the instream water right law was being established, changes in the Federal Clean Water Act were underway to de-emphasize the discharge facility in granting permits, or making "technology based" permit decisions, in favor of looking at the overall quality of the receiving waters. This led to the establishment of Total Maximum Daily Loads or TMDL for stream segments that were considered water quality limited.

In the discussion regarding the community impact of instream water rights for water quality, DEQ notes that the public benefits by improved water quality for such instream uses as livestock watering, anadromous fish passage, salmonoid fish spawning and rearing, water contact recreation. DEQ acknowledges that some out of stream applications may be adversely impacted by the reduced availability of flow, however, improving water quality is essential to such out of stream uses as domestic water supply, industrial water supply, and irrigation. Also public and private dischargers will have their dilution water protected for them in instream water rights, where otherwise they may have been required to eliminate the waste, or further treat the water prior to discharge.

DEQ makes note of the fact that instream water rights for the purpose of pollution abatement, is contrary to the goals of the Clean Water Act for eliminating discharge. However, the Environmental Quality Commission's of encouraging a no-discharge alternative is still in effect. Once water quality goals have been met, possibly as a result of reduced discharge, the instream rights can be reduced or abandoned.

The DEQ has proposed rules, and will be conducting public hearings in Portland, Eugene, Bend and Baker City, to solicit public comment.

1991 Legislative Session

SB 1163

Senate Bill 1163 is sponsored by the Senate Committee on Water Policy at the request of Water Watch of Oregon. The measure establishes the Streamflow Restoration and Water Conservation Act.

The bill declares an emergency for the purposes of restoring Oregon's fishery resources. The need for this

legislation is based on findings that in some rivers and streams a sufficient quantity and quality of water has not been protected for the public and that past mismanagement of Oregon's water resources is one of the major contributors to the decline in salmon, steelhead and other fishery resources. Further, the bill finds that overappropriation of Oregon's streams has destroyed essential spawning and rearing habitat for salmon, steelhead and other fish species, and unless action is taken immediately to restore streamflows in public waterways, this resource will be destroyed.

The bill has gone through extensive revisions over the past several weeks. The original draft, which called for considerable involvement on the part of the Water Resources Department and Commission, yielded a fiscal impact statement of over \$4 million. Revisions to the bill are primarily focused on essentially eliminating this fiscal impact, and coordinating the efforts of several prominent water user groups to ensure that the bill would have a good chance of passage this session.

Revisions to the bill have been coordinated by Water Policy Chair Senator Larry Hill (D-Springfield) and the Senate Water Policy Committee Assistant, Lisa Zavala. Tom and Audrey Simmons, Water Watch, have been representing the concerns of the environmental organizations. Oregon Water Resources Congress represents primarily out-of-stream water users, such as irrigators, and other agricultural interests.

As originally drafted, the Water Resources Commission would have been responsible for all the provisions of the bill, the revision puts in place of the Commission a volunteer Strategic Water Management Group. "SWMG" will consist of people appointed by the Governor, possibly with people who are currently active in basin planning.

SWMG (pronounced "Swim-gee") will develop a statewide Streamflow Restoration and Water Conservation Plan by July 1, 1993. All water right holders will be required to reduce waste to a minimum. SWMG will also be authorized to create a river basin authority in each river basin, or subbasins as necessary to implement the Streamflow Restoration Plan. Representation on the volunteer basin authority will comprise of seven members, five of whom reside in the river basin or subbasin, or have a substantial water right there, and two of whom represent the general public use of water.

The basin authority members will be appointed by the Governor, considering recommendations from local governments and citizen organizations, with the intention of achieving a balance of interests and user groups. No compensation will be given to the members on the authority. The role of the local authority is to participate with SWMG in developing the statewide plan, and assist in implementing the plan after adoption.

The river basin authority will develop a basin plan, which includes an inventory of the surface and groundwater resources in each river basin or sub-basin showing water use, availability of unappropriated water and shortfalls of water for public uses and other beneficial uses, develop and implement watershed and riparian zone restoration and enhancement projects, identify multipurpose sites and the need to protect such sites for future development, coordinate activities of federal, state and local interests so the objectives of the Streamflow Restoration and Water Conservation Plan is implemented.

The new version of SB 1163 provides for a citizen to take action against an individual who is violating water rights. Money recovered from the imposition of fines or civil penalties will be directed to the Fish Screen Account in the Department of Fish and Wildlife. No action can be taken against a water right violation if the state is "diligently perusing" an administrative order to enforce the requirement concerned. In the civil suit provisions, the goal is to be able to capture the major violations of the permit process or water use that can be reasons for a civil suit, but at the same time not be so strict as to include small technical errors as warranting a suit.

The Water Resources Department is required to coordinate all agency requests for instream water rights on the same reach. The measure would also make statutory language similar to the MOU now underway between the WRD and ODFW exempting domestic and livestock water rights of a cumulative total of up to one percent of the current average available streamflow for the lowest month of the year, even after an instream water right has been established.

The measure also amends language from 1987 SB 140 to mandate application for instream water rights by ODFW, DEQ and Parks. Additionally, the bill states that any requests that have not been made shall be made as soon as this Act becomes effective. The instream water rights will not exceed the estimated average natural flows, except where periodic overflows are significant for public use.

The bill also stipulated that without exception, the Water Resources Department will reject an application for out of stream water use if this will result in overappropriation of the waterway, or allow waste. A water right owner may submit to the department plans to make improvements, or implement conservation measures, and

apply to the WRD for application to use this conserved water out of stream. The applicant can provide a map of the area and a statement of use of the conserved water and the applicant need not provide a report made by a certified water rights examiner.

The bill incorporates the concept of water banking -- whereby out of stream water rights may be granted in one place in exchange for converting an out of stream water right somewhere else to an instream right.

SB 1163 has been passed out of the Senate Water Policy Committee, and will be scheduled for a floor vote by the Senate.

CLEAR LAKE ISSUE ADDRESSED (6-6-91)

The Water Policy Committee heard SB 1080, Thursday, May 30th, a bill sponsored by Senator John Brennenman (R-Newport) and Representative Hedy Rijken (D-Newport). SB 1080 would give authority to local water supply districts to exercise powers of sanitary districts and cities to protect the water quality of the watershed.

Lane County Commissioner, Ellie Dumdi, was present to testify. The bill was drafted to be specific to Clear Lake, the water source for the Florence area. However, there was some confusion over the use of the term "watershed" in the bill, when the intent was to use the term "aquifer." According to testimony, Clear Lake is the only waterbody in the state that has been designated by the Environmental Protection Agency as a "sole source aquifer."

Representative Chuck Norris (R-Hermiston) made public his intent to pass the bill out of committee although he sent Sen. Brennenman and Commissioner Dumdi to Legislative Council to amend the bill to clarify its intent to cover only Clear Lake. A constitutional provision prevents bills from overtly specifying a particular city in the provisions of the bill.

The measure was brought back before the Committee on Tuesday, June 4th, amended, and passed on to the House Floor.

THE COAST AND INSTREAM WATER RIGHTS (6-6-91)

Other instream water right bills being considered by the 1991 session of the Oregon Legislature include:

HB 3465: Passed the House floor, June 3, 1991; Sponsored by Representative Nelson, requires public notification of instream water right applications. Passed unanimously; Bunn excused.

HB 2191: Passed the House floor June 4, 1991; Filed at the request of Water Resources Department, establishes process for any state agency to request permit from WRC for reservation of water for future economic development. Requires secondary use certificate for use of reserved water, allows commission to impose conditions on permit or certificate.

Concluding Considerations

In order to incorporate federal changes in the Clean Water Act, as well as being able to implement changes due to a possible federal listing of salmon as threatened and endangered species, it is important that Oregon take a strong role in working through these issues. The state can serve to act as a bridge between the federal changes and local basin authorities to ensure that local user concerns both instream and out of stream are considered. However, with agencies only now establishing administrative rules as a result of the 1987 instream water rights legislation, this session may be too soon to take any further legislative action on the instream water rights issue. State agencies need time to coordinate with each other as well as with the local governments and to work out critical issues such as how the water resources department will address water reservations for future economic development.

For the future, the state may look for ways to further the management of water quality with water quantity. In Oregon the authority over these are dealt with separately by DEQ and WRD. It might be possible to incorporate administrative consolidation, as with the Washington Department of Ecology which integrates both water quality and quantity.

Another issue to continue to look at is that of Watershed Management as an alternative to individual permit granting. Oregon is moving toward this with the instream water rights law, in terms of coordinating agencies under state-wide water use planning goals. Water management is a crucial component of larger land use planning issues, and could be dealt with by local governments at the time of implementing the local comprehensive plan.

ISSUES FOR DISCUSSION:

1. Is there a state policy for working towards striking a balance of competing uses and needs for water?
2. How will instream water rights affect use of water for agricultural purposes?
3. How will instream water rights affect municipal storage for future water needs?

4. How will the public be notified of changes in water rights laws, and administrative rule-making process?
5. What will be the timing and nature of public education? How will the public be made aware of the background and necessity which brought about instream water rights legislation? Which agencies will be responsible for public education?
6. How will industrial point source and non point source pollution be affected by instream water rights? Does a right to water quantity ensure a right to water quality?
7. Which agency will be responsible for inter-agency coordination? Are agencies well coordinated with respect to instream water rights?
8. How will instream water rights and basin planning affect and be affected by land use planning?
9. What are the prospects for the creation of state-wide water use planning goals --similar to the state-wide land use planning goals? Will these be planned by basin, region, need?
10. What will be the role of local governments in working with the various state agencies to determine changes in appropriation of local water basins and creation of instream water rights?
11. How will local comprehensive land use plans be affected by instream water rights?
12. What will be the process for addressing reservations of water for future economic development? Does the rule requiring prior notification to DEQ, ODFW, and Parks, of application for future reservation decrease the chance of obtaining the appropriation? Should a more balanced approach be looked into?

STREAMFLOW RESTORATION AND WATER CONSERVATION BILL PASSES SENATE (6-21-91)

SB 1163, a bill which would amend the 1987 instream water rights legislation and provide for recovery of water through conservation, passed the Senate floor on Tuesday, June 18th.

After passage out of the Senate Water Policy Committee, subsequent referrals to Ways and Means were rescinded by order of the Senate President.

Senator Larry Hill (D-Springfield), Chair of the Senate Water Policy Committee, led off the floor debate. Sen. Hill emphasized that despite enactment of the 1987 instream water right act, most streams have not been protected yet, and even if they have rights, they are junior rights, having a lower priority than prior-dated out of stream appropriations. SB 1163's effort at improved efficiency is not a new idea, said Sen. Hill, but current law which is not enforced. The law now allows for use without waste, although it is not enforced.

Sen. Hill emphasized the need for strong local participation in efforts to conserve water. He also said that concerns of water availability have been before this legislature in the past, and that dams which are environmentally acceptable and economically feasible remain an important part of water management. Sen. Hill went through the measure section by section, and told the Senate that the measure carried a fiscal impact of about \$300,000. Although the bill has not passed through the House, Sen. Hill said the bill was on the "fast track" and should go to the House for further amendments in the civil action provisions, then through Ways and Means, before a House floor vote.

Senator Eugene Timms (R-Bend) led the opposition on the floor. Sen. Timms objected to using the State Water Management Group (SWMG) as the primary administrator of the bill's provisions, including coordination of the local water basin authorities established in the bill. Sen. Timms objected to what he saw as a "bureaucratic" mode of taking care of water resources, as opposed to having Water Resources Department do the managing.

Sen. Timms said it was wrong of the Senate to take action on this bill, prior to its referral to Ways and Means, and made a motion to refer the bill to the appropriations committee.

Senator Wayne Fawbush (D-Hood River) spoke to Sen. Timms' referral. "I think it is important before we vote on this to stop and think about the process. It deserves to be considered by this body at large rather than have the issue side-stepped." Sen. Fawbush reminded the Senate that half of the bills coming out of his Trade and Economic Development Committee were voted on without a Ways and Means referral. Sen. Fawbush characterized the motion as a misuse of the authority of Ways and Means, using it as a "burial ground", or a way to avoid the issue. "We owe it to the process that we continue this discussion. If you really don't like the bill -- vote no -- don't hide your vote. I urge you to reject this effort to sidetrack this major issue."

Sen. Hill spoke to the motion briefly, as did Senator Bill Bradbury (D-Bandon), Co-Chair of Ways and Means. Sen. Hill said that if the intent of the motion was to ensure a prudent fiscal analysis then the referral to Ways and Means after hearing by a House substantive committee review does that. "The motion will kill the bill. We should deal with it now." Sen. Bradbury also opposed the motion.

Senator Jim Bunn (R-McMinnville) at this point made a motion to table the bill. Sen. Bunn's motion failed, as did Sen. Timms' motion to refer the bill to Ways and Means.

Floor debate was continued. First commending the Water Policy Committee and Senator Larry Hill for the work they have put into the measure over the past several months, Senator Scott Duff (D-Adams) opposed the measure for what Sen. Duff felt was the incompleteness of the bill, and because he felt it did not address the issue of water storage.

Senator Dick Springer (D-Portland) spoke in favor of the bill. Sen. Springer said that as with any innovation local users will be slow to adopt new practices, and that this was not just an Eastern Oregon problem. "People's traditional ways of thinking have to change. They are changing," said Sen. Springer.

Sen. Hill closed the floor debate, addressing the concerns of Senators Timms and Duff. The bill's definition of "efficient use" takes into account certain things including economic factors. Also, local basin authorities are made up of local people, so that the definition of efficient practices will be a local definition. "The bill puts local control in the hands of local people to achieve state-wide conservation of water resources," said Sen. Hill.

Refuting the claim by Sen. Timms that SWMG's role was not intended to be so broad, Sen. Hill read from the statutes, which specify that SWMG should coordinate agencies and water related plans. Sen. Hill said further that such an important issue should be at the level of the Governor.

Sen. Hill said that until the bill is adopted, we can't put a drop of water in stream. He went on to say that the fiscal impact is a critical problem, but that this effort is no more expensive than a medium sized dam.

Summarizing, Sen. Hill said: "We have a bill before us that is an opportunity to do something. If we don't do anything, we'll have more dry streams ... more threatened and endangered species with all their repercussions. We will have a lack of water, perhaps a critical shortage of water. The Sandy River is an example of why we need this. Running from crisis to crisis isn't the solution. We need a comprehensive approach. The bill is intended to have tremendous impact."

With House Water Policy Chair Representative Chuck Norris (R-Hermiston) and Representative Dave McTeague (D-Milwaukie) looking on, the Senate passed the measure with 18 "aye" votes.

The measure has been assigned to House Rules with subsequent referral to Ways and Means. Senator Larry Hill said on the floor that an amendment was intended for the section dealing with citizen suits, possibly to reduce or eliminate the major point of contention with the Oregon Farm Bureau.

DEQ's SB 330 PASSES WITH AMENDMENTS (7-3-91)

SB 330 provides some funding to DEQ in order to implement its responsibilities for certifying that federal water quality standards are met for fill and removal projects and reviewing waste load allocations in water quality limited streams.

The original bill with the establishment of non-point source fees was strongly opposed by leading agricultural and water use interest groups such as Oregon Water Resources Congress, Water For Life, Oregon Farm Bureau, Northwest Mining Association and the Oregon Public Ports Association.

As originally drafted, the bill would have included fees on non-point source pollution to pay for the expenditures of the department. The Ways and Means subcommittee on Transportation and Regulation chaired by Senator Larry Hill (D-Eugene) deleted these proposed fees, and approved \$100,000 General Funds for program expenses related to water quality limited streams and \$120,000 General Funds for fill and removal certification. Amendments to the bill clarify that fees for point source discharge permits, already required under state statute, may be collected on an annual basis.

SB 1163 HEARD IN HOUSE RULES (7-3-91)

The House Legislative Rules and Reapportionment Committee held a public hearing on SB 1163, in what turned out to be a final attempt to reach an agreement on the Streamflow Restoration and Water Conservation Act. The bill was presented in a substantially different form than had been passed by the Senate a week earlier, with the inclusion of seven House Bills that had passed the House but were not scheduled a hearing in the Senate Water Policy Committee.

Representative Chuck Norris (R-Hermiston), Chair of House Water Policy, gave the introductory remarks to the Committee, describing his position on the bill as one of "strained neutrality". When asked by Representative Carl Hosticka (D-Eugene) if the bill held together in one piece or whether it was a collection of pieces, Representative Norris replied, "Well they're all relating to water." The discussion continued from there.

Bob Hunter, the attorney for Water Watch, and Water Resources Congress attorney and former Representative Kip Lombard (R-Ashland), were involved in the negotiating and drafting of the final version of the bill. Water Watch supported the final bill, which according to Tom Simmons of Water Watch, originated conceptually last session but died in Ways and Means. According to Hunter, the bill went far in providing incentives to farmers and fishermen to work together to conserve water resources.

Lombard provided some insight as to why Oregon Water Resources Congress was involved in the extensive negotiation process: "What other than the spotted owl has dominated the headlines in recent times? The drought, fish resources in the Columbia River," Lombard said. "Oregonians like their water, they like it instream, they don't particularly like dry streambeds. How do you think the majority of the voters would vote on a measure that would put water instream?" Lombard asked rhetorically. "Most of my irrigator clients recognize that there are changes in the wind—brought on by drought and public pressure."

Lombard expressed that the final version of the bill would have been "workable" without having enthusiastic support from the irrigation community. Lombard also said that the definitions of efficient water practices in the bill were not too far from today's practices. "This measure would push irrigators a little further a little faster."

Other endorsements of the bill came during the public hearing that day, June 21. Tom O'Connor from the League of Oregon Cities endorsed the bill as amended. Water Resources Department was also supportive in theory, although they had not had much time to review the amendments.

Leading members of the agricultural community did not testify at that hearing, although apparently the bill did not yet meet their concerns. SB 1163 remained in the House Rules Committee upon adjournment of the Legislative session.

...Other Issues

Glance through *Oregon Coastal Notes* articles for the entire 1991 legislative session and you will see just how broad coastal issues are. Although in this final report I have highlighted the articles which focused on water policy, oil spill prevention, ocean policy, fisheries and shellfish -- state parks, Highway 101 and polystyrene floatation devices are some of the other issues which impacted the coast this session.

Some of these "other issues" came in the way of Coastal Caucus breakfasts. I think this reflects well on the usefulness of the breakfasts for the purpose of bringing up issues that were not always of the most critical nature *legislatively*. The breakfasts were a good time for speakers from within the coastal community to share new ideas with the coastal legislators, in a rare opportunity to have 6 or 7 legislators together in an informal setting first thing Monday morning!

Oregon Coastal Notes Articles Regarding Other Issues

HOUSE TRANSPORTATION COMMITTEE VISITS OREGON COAST THROUGH HIGHWAY 101 PRESENTATION (2-22-91)

On Tuesday, February 19, the House Transportation Committee chaired by Cedric Hayden (R-Fall Creek), held an informational meeting on Coast Highway Planning. Three Oregon Transportation Commissioners discussed the parkway concept, which has been modified depending on whether the area is urban, suburban, or scenic.

Formerly called the "Roosevelt Coast Military Highway," in 1931 the Commission renamed the highway the Oregon Coast Highway. Highway 101 is somewhat unique as a state highway in that it spans the entire length of the coast, it serves a number of functions almost as diverse as the Oregon coast itself, yet it provides the main link between all of those communities. Oregon's Highway Division has the task of creating a long range plan for the Coast highway. The parkway concept has attracted national attention as a way to incorporate a roadway that has elements of a scenic highway, but not exclusively, and elements of a main town road, and other areas like portions of Tillamook County that need upgrading to modern standards. In addition, the highway could be the backbone of Oregon's fastest growing industry--tourism. The Department of Transportation is looking into incorporating the Coast Highway into a larger tri-state plan with Washington and California as part of the federal Surface

Transportation Act of 1991.

The Commission emphasized that they are pursuing proactive planning, rather than merely responding to congestion problems; as such, they are seeking to coordinate highway plans with local land use plans and future development plans. Commissioner John Whitty said that they consider this to be a modern transportation system, one that will be a truly integrated transportation system to enhance the environmental resources as well as the quality of life.

Senator Joan Dukes (D-Astoria) and chair of the Senate Transportation Committee, came to speak on the highway planning. Highway 101 runs through a good portion of her district. Sen. Dukes said 101 is essential not only for those people who live on the coast, but for the thousands of visitors to the coast each year. Pointing at the problems with the highway, Sen. Dukes said that when people come down from Canada or up from California, they get to Tillamook and ask "How do I get to I-5?" Sen. Dukes stressed that we need to think about Highway 101 as a unit, and that while traffic had increased, the capacity for dealing with it hadn't. Sen. Dukes said that goals needed to be established for the coast—for example setting average speeds for the highway that still allowed for people to stop at local districts.

Despite the vast nature of the highway project, local communities are essential parts of the planning process. "Sometimes we can be so political that we never can reach the end -- Highway 101 is a good example of this," Sen. Dukes concluded. Committee member Representative Jackie Taylor, whose district overlaps with Sen. Dukes, commented that she appreciated Sen. Duke's coming to express her concerns to the Committee.

After a video about the coast highway, and the "Pacific States Scenic Corridor," Ken Husby, an engineer from the Oregon Department of Transportation (ODOT), presented a few more specifics about the highway plan. Husby frankly noted that with the overall goals of "improving congestion, enhancing community and enhancing economic development," there will be disadvantages, and these will be felt most keenly by present roadside development. The location of accessways, "left turns" will be negotiated with local government in the land use process. "Highway 101 is a state highway first and a city street second," Husby said.

The planning process for the Coast Highway is ongoing and involves compliance with state land use planning goals as well as federal standards in compliance with the National Environmental Protection Act. The Highway Division is making an effort to coordinate the Environmental Impact Statement (EIS) plans at the early planning stages of the corridor project as opposed to later development stages. Within the larger 20-year plans for the Coast Highway, the Division creates 6-year plans, which are reviewed every two years so that planning can be coordinated with funding. The proposals for the next 6-year plan will be in by July 1, 1991, and the public hearing process will begin in early 1992.

Community perspectives on Coast Highway plans were presented to the Committee next, with comments heard from Dr. Walter Johnson, Seaside Mayor; Dr. Griffin Thomas, Tillamook Mayor, and Kathleen Stockton, Lincoln City Manager. While Thomas said that in his judgement 90% of the people from Tillamook he had talked to are against the parkway concept, Stockton said that her city approves a project for a scenic parkway in the south portion of Lincoln City, the so called "Taft Area." Stockton said that in meetings held last summer about the proposed parkway for the central part of the city, merchants had supported a by-pass rather than a parkway plan.

POLYSTYRENE FLOATATION DEVICES BILL PASSED OUT OF SENATE COMMITTEE WITH AMENDMENTS (3-29-91)

Senate Bill 261, which was introduced by the Joint Interim Committee on Environment, Energy and Hazardous Materials, was discussed in one public hearing and at the final work session last Monday, March 25th, and was passed out of the Senate Agriculture and Natural Resources Committee with amendments.

The original bill called for the encapsulation of submersible polystyrene devices on docks, buoys and floats within three years of the enactment of the legislation. This would have included all polystyrene floatation devices currently in use, and those newly installed. The Oregon State Marine Board is responsible for adopting rules and carrying out the provisions of the measure.

The bill provides a response to growing concern by the public about the harmful effects of polystyrene and other plastics in the marine environment. Annex V of the International Marine Pollution (MARPOL) Treaty, which was enacted in 1988, made it illegal to dispose of any plastic trash at sea or in any navigable waters of the U.S. In Oregon, the Pacific Marine Fisheries Commission's Marine Debris Project, administered by Fran Recht, was instrumental in establishing port recycling programs and educational programs to assist vessels in complying with the provisions of Annex V.

Testimony from the Oregon Department of Fish and Wildlife noted that Oregon had been an early leader in the effort to reduce plastics and other wastes from the environment. Oregon's first annual coastal beach cleanup program began in 1984, and in 1989, Oregon joined with other coastal states in a coordinated program to inventory wastes picked up during beach clean-up activities. In 1989, 62% of the material cleaned up from the beach was some kind of plastic. Of this plastic, 13% was polystyrene—or styrofoam—material.

A similar trash inventory of the Willamette River system was conducted by the Environmental Learning Center after the 1989 clean up of beaches and other river bed areas including Lake Oswego, Swan Island and Columbia Slough. Approximately 65% of the trash was plastics, and of this 70% was "spheroidal expanded foam" which is typical of "bead-board" polystyrene floatation devices.

Testimony was provided in the form of a memorandum from the U.S. Army Corps of Engineers, Mobile District, dated August 13, 1987 which set guidelines for Lakeshore Management Plans and called for all new docks to have floatation devices made of material which would not become waterlogged or sink when punctured. "Closed cell (extruded) expanded polystyrene of good quality and manufactured for marine use will be required." Floatation material made of "bead-board" construction has a life expectancy of 5-7 years and has a tendency to break down into small particles. In a 1989 memorandum to all lessees having marina facilities, the Mobile District of the Army Corps of Engineers said that it was "considering the possibility of requiring that floatation used in all new docks, and all replacement docks be either a product other than the "beaded" foam, such as extruded polystyrene, or if the beaded foam is used, that it be encased in a more durable material."

A document from the Sacramento, California, District Corps of Engineers from July 1986 also required small berthing facilities to use encased expanded polystyrene floatation devices in polyvinyl or lightweight concrete. Extruded polystyrene was not required to be covered unless it was used in a fuel float. The Sacramento district also required floatation devices to be securely fastened.

After looking at the testimony and calling a subgroup to work on the bill, SB 261-4 amendments were drafted. The amendments define the term "submersible polystyrene device" as any molded or expanded type of polystyrene foam used for floatation. (This is the "beaded" foam.) The bill is also amended to allow repair and maintenance of a dock or float existing on the effective date of the bill with an expanded submersible polystyrene device. Thus, "grandfathering" existing structures. The State Marine Board will adopt rules to outline what types of encapsulation devices are acceptable, as well as for the maintenance of existing polystyrene floatation devices.

The engrossed version of SB 261 will go to a floor vote in the Senate, and if passed by the House, would go into effect in January of 1992.

JOINT TRADE AND ECONOMIC DEVELOPMENT COMMITTEE HEARS SB 713 (3-29-91)

On Monday, March 25th, the Joint Trade and Economic Development Committee, Chaired by Senator Wayne Fawbush (D-Hood River), held a work session on SB 713, which would create a Rural Oregon Leadership Development Act.

The goal of the legislation is to provide rural communities assistance in assessing their economic opportunities and planning for long-term economic development as well as being able to participate in state economic development programs. The bill defines "rural area" as including areas located entirely outside of the acknowledged Portland Metropolitan Area Regional Urban Growth Boundary and the acknowledged urban growth boundaries of the Cities of Eugene, Springfield, Keizer, Salem and Medford. "Rural community" means a community located in a rural area.

The bill authorizes the Oregon Economic Development Department (OEDD) to enter into contracts with a qualified person to carry out the provisions of the Act. That person will be responsible for planning, coordinating and implementing the rural revitalization and leadership development program. In order to facilitate the Act, the Committee presented a plan for a Rural Development Institute with the following goals, as adapted from the Trade Committee staff summary:

- **Community Development:** Provide rural communities with a SWOT (Strengths, Weaknesses, Opportunities, and Threats) analysis. The OEDD Community Initiatives Program contracted for SWOTS for 50 communities participating in its program this biennium.

- **Strategic Planning:** Work with the communities to evaluate the SWOT analysis and develop short and long range strategic plans for growth.

- **Technical Assistance:** Professional staff of the Institute would provide technical assistance to the communities in need or those engaged in their strategic plan. The Institute would also direct communities to other

resources located in the state, colleges and universities, or in the private sector.

- **Community Leaders:** The Institute will provide training to individuals from the participating communities as well as other rural residents who have the potential to become leaders. The training will, among other functions teach: effective management skills, conflict resolution, consensus building methods, functions of local, state and national government, and effective communication skills. The leadership training will also expose them to regional, national and international issues that effect rural areas.

As presented by the Committee, the Rural Development Institute would be a private, non-profit corporation established with assistance from OEDD. The Institute's Board of Directors would have representatives from rural Oregonians, business leaders, OSU Extension Service, University of Oregon, OEDD, and others. The Institute will have the authority to hire an executive director, select participating communities, review and approve service contracts, develop and review programs, and raise funds.

The Institute would not provide direct funding for community development projects but would serve as a "capacity-building" entity. To carry out its work, the Institute would seek financing from four major sources: private businesses; the state; private foundations; and participating communities.

Members of the Committee had some concerns about the bill. Senator Jeannette Hamby (R-Hillsboro) stated that most of the leaders from rural communities that she had come into contact with had in fact been very effective and that perhaps they had benefitted from the small community size. Senator Jim Hill (D-Portland) expressed concerns that there are other communities in Oregon such as minority communities that would benefit from such a leadership and economic development program. Minority communities located within urban growth boundaries are not covered under the definitions in the bill. The next public hearing on this bill has not been scheduled.

FISHING ROCK HEADLAND PRESERVATION WELL RECEIVED (3-29-91)

The Senate Agriculture and Natural Resources Committee heard a bill Wednesday, March 20th, sponsored by Senator John Brenneman (R-Newport) and Representative Hedy Rijken (D-Newport) to appropriate general fund money to the State Parks and Recreation Department for purchase of Fishing Rock Headland in Lincoln County.

Dave Wright, Park Land Supervisor for the Parks and Recreation Department testified in support of SB 461. Fishing Rock Headland, located north of Depoe Bay, is a minor coastal headland in comparison to well known major headlands such as Tillamook Head and Cape Blanco, which are already protected by the State Parks system. A local group, known as Friends of Fishing Rock, initiated the push for public acquisition of this land after a local developer submitted plans for a residential subdivision of the headland to the Lincoln County Planning Department.

The State Parks and Recreation Department has determined that out of the 15 acres owned by the developer, setting aside 6.5 acres of the headland will be suitable to protect the headland, as well as provide enough land for public access and recreation.

Wright testified that the State Parks Commission agreed to support this acquisition and would include the project in their 1991-93 budget request if the local area could raise 25% of the estimated cost of \$760,000. Sen. Brenneman was influential in convincing the developer to donate 25% of the value of the land and obtained an option to buy the property for \$570,000. Lincoln County has contributed \$35,000 toward the acquisition, but Sen. Brenneman was quick to point out that the County also "contributed" the money it gave up in potential property tax revenues, and this is a testimony to the importance of the acquisition to the County.

In addition to the presentation of a slide show depicting various views of Fishing Rock Headland, Norma McMillin, former Lincoln County Commissioner, testified on behalf of the acquisition. McMillin told the Committee that the acquisition of Fishing Rock Headland was one of the projects she didn't get to see finished when her term in office ended. It was clear from the passion with which she spoke how important the preservation of this area is to McMillin. "I know the value of a piece of property like this, and I am deeply concerned about public access issues. This is a national treasure we are preserving." McMillin also talked about the unsuitableness of such unstable soils for development, and alluded to the history of past coastal erosion events leading to major property damage.

While the bill was not scheduled for a work session that morning, Senator Eugene Timms (R-Burns) said that this was a great project, and Committee Chair Dick Springer (D-Portland) implied that it would be scheduled for a work session and passed the bill out of Committee.

STATE PARKS TOPIC OF DEBATE (4-5-91)

This session there are four senate bills circulating around the Capitol that establish a mechanism for state parks acquisition.

Senate Joint Resolution (SJR) 13, sponsored by Senator Paul Phillips (R-Tigard), Senate President Kitzhaber (D-Roseburg) and Representative Bob Shiprack (D-Beavercreek), authorizes the issuance of general obligation bonds for state parks and recreation and fish restoration and enhancement projects, upon voter approval of amendment to the Oregon Constitution at the next general election.

SB 786 is the legislative counterpart to SJR 13's constitutional amendment. Money obtained from the sale of bonds, with a maximum of \$250 million, will go into the State Parks and Recreation Development Fund. As stated in SJR 13, the money can be used for:

- The acquisition, development and maintenance of the state park system, and the creation of overnight camping and recreational facilities in each county of this state, with emphasis on easy access to all people of this state.

- The acquisition, development and maintenance of fish and wildlife habitat, spawning areas, fish viewing areas and other fish habitat enhancement programs authorized by law.

Possibility of Fuel Tax Mechanism

Two other revenue sources for state parks would come from fuel taxes. The *Oregonian* and the *Eugene Register-Guard* have supported the gas tax and have indicated that it is the most logical and direct revenue source for parks.

In 1980, the dedicated gas tax was removed from parks, when Oregonians voted on a constitutional amendment to separate State Parks from the gas-tax-supported highway fund. Both SJR 12 and SB 785 are sponsored by Sen. Kitzhaber and Sen. Phillips. SJR 12 would require voter approval at the next general election to amend the Oregon Constitution to allow a specially dedicated fuel tax to be used for state parks acquisitions. Currently, monies from fuel taxes are used for highways, road construction and maintenance.

SB 785 requires that a dealer of motor vehicle fuels shall pay a one cent per gallon license tax on the first sale, use or distribution of motor vehicle fuel. In addition, there will be a one cent per gallon tax on the use of fuel in a motor vehicle. The proceeds of each of these taxes will go toward the State Parks and Recreation Department Fund. The uses of these funds are primarily for the acquisition, maintenance and development of state parks and do not include fish restoration and enhancement. These bills have been referred to the Senate Committee on Transportation with subsequent referral to Revenue and School Finance. Neither has been scheduled a public hearing at this point.

Committee Hears Bond Authority Bills

On Friday, March 29th, the Senate Agriculture and Natural Resources Committee held a public hearing on SB 786 and SJR 13. Brian Booth, Chairman of the State Parks and Recreation Commission testified in support of SB 785, SB 786, SJR 12, and SJR 13. Booth noted that while there has been much talk of investing in the parks infrastructure, little action has been taken to stop private development and with it, the privatization of "special places" that should be preserved for all Oregonians. Booth stated that "Oregon's park system is one of the best-known and best-attended in the United States. In 1990, attendance was nearly 40 million visitors -- the fifth highest in the nation." Compare this statistic with the fact that general fund dollars provide 18% of the Parks Department budget, with park user fees and recreational vehicle fees making up a large portion of the budget, at "survival level maintenance." According to Booth, the operating budget per visit is 49th out of 50 states. The last state park was built during the governorship of Tom McCall, over 20 years ago.

Two years ago, the 1989 Legislature created the Department of Parks and Recreation and the Parks Commission which took effect on January 1, 1990. The Commission, composed of 7 members selected by the Governor, has adopted the 2010 Plan, as recommended by the 2010 Committee, as the Park's Department mission. They have also developed a 6 year plan called "Protect the Best of Oregon" for the first 6 years of the 2010 plan. Brian Booth testified that the population of Oregon is expected to increase 25% by 2010. Coupling this with a predicted increase in tourism, park use is expected to increase by 40% by 2010. Booth said that two-thirds of all pleasure travelers visit a state park while in Oregon.

Bonding Mechanism Could Fund 2010 Projects

New York, New Jersey and California use bonding to acquire parks and open spaces. Washington state has passed five bond measures. David Talbot, Director of the Parks and Recreation Department testified in support of the bond mechanism and summarized the recommended spending based on the 2010 plan.

The five program areas are:

- "Protecting the Investment" through rehabilitation and maintenance projects.
- "Increasing Assets" through land acquisition, campgrounds and day-use areas, boating, trails, technical staff.
- "Preserving Our Heritage" through natural resources, ocean shores, greenways, scenic waterways, and the parks history program.
- "Telling Others About Our Oregon" through interpretive services.
- "Increasing the Return" through concessions, marketing, co-ops and volunteers, and outdoor recreation advocacy.

Economic Impacts of Parks

Facts on the economic impacts of parks offered by Dave Talbot included:

- \$256 million spent within 25 miles of surveyed day use areas.
- \$30 million spent within 25 miles of state park campgrounds.
- \$22 million spent for state park expenditures within in local area for payroll, services and supplies.
- \$308 million annual total.

Terry Ann Rogers, Legislative Coordinator for Governor Barbara Roberts testified in support for these measures on behalf of the Governor. Rogers remained to listen to the entire hearing, which included testimony from a handful of citizens and parks volunteers in support of the legislation. In her inaugural address, Governor Roberts had emphasized land use planning and environmental protection as her top priorities.

Support from Variety of Sources

Claire Puchy from the Oregon Department of Fish and Wildlife (ODFW) testified on behalf of the Department in support of the concepts reflected in the state parks bills. Puchy commented that there is a common thread to many bills introduced this session. Puchy stated "the recognition that public demand for parks, open spaces, natural areas, fish and wildlife appreciation and tourism related to these resources is growing, but our opportunities for securing them for present and future generations is diminishing."

Sara Vickerman, testified on behalf of Defenders of Wildlife, the main force behind last session's "Resource Conservation Trust Fund (RCTF)." Vickerman supports providing bonding authority for state parks as consistent with the goals of Defenders of Wildlife. The 1989 Legislature established the RCTF to help State Parks reach their 2010 goals, as well as to help fund other state agencies and private organizations habitat restoration projects.

The Fund was created but no funding mechanism was put in place; hence, Vickerman has in the past characterized the move as "empty bag legislation." This session, HB 2349 has been proposed by the Joint Interim Committee on Revenue and School Finance to fund the RCTF and State Parks through a five cent tax per container to be paid by the manufacturer of a beverage offered to a distributor or dealer for sale in Oregon. Sixty percent of the proceeds from the tax would go to State Parks and 40% of the money would go to the RCTF. HB 2349 continues to sit idle in the House Business and Consumer Affairs Committee.

A second funding proposal from the Joint Interim Committee on Revenue and School Finance, HB 2347, has been referred to the House Environment and Energy Committee, chaired by Rep. Fred Parkinson (R-Silverton). HB 2347 reflects the funding mechanism proposed by the RCTF. The bill calls for a 10% gross receipts tax on commercial and industrial solid waste collection, and also a freeze on the inflationary adjustment for personal income tax exemption credit. The bill does not explicitly divide the revenue generated by these mechanisms into Parks and RCTF—this will be left up to the legislature. This bill is also still a "sleeper" in the House Committee.

Vickerman concurred with Liz Frenkel of the Sierra Club who testified earlier that the mission statement of State Parks should be made statutory. Frenkel said that there is a "bit of a glitch" between the State Parks' mission statement, which is what the public sees, and the statutory authority of the State Parks which is less specific. Senator Paul Phillips (R-Tigard), who after an initial introduction had remained in the back of the hearing room, at this point testified with Frenkel that he would support working the mission statement into the bill, saying that this would "help to broaden the bill's constituency."

Committee Chair Sen. Dick Springer (D-Portland) closed the work session by saying that he would make sure that amendments to reflect the incorporation of the Parks mission statement would be ready when they go into a work session on the bill in a couple of weeks. They will try to move the bills out of Committee at that time.

STATE PARKS BONDING AUTHORITY BILLS PASSED OUT OF SENATE (4-19-91)

SB 786 and SJR 13 were passed out of the Senate Agriculture and Natural Resource Committee with amendments on Wednesday, April 17th. Senator Phillips (R-Tigard) introduced the amendments, which would

incorporate the Parks' Mission Statement into SB 786 as requested by Liz Frenkel of the Sierra Club.

Frenkel also voiced concern that the Parks' 2010 plan had a low rate of acquisition, and was a very modest proposal. Dave Talbot, Oregon State Parks Director agreed with this, and said he would like to see the percentage doubled. Rough calculations from Liz Frenkel suggested that the Parks Department is projecting from 7% to about 15% funding property acquisition in the next 20 years.

The question of whether the legislature should place a threshold or cap on the percentage of acquisition is one of policy, Talbot said. "The bureaucrats on one hand will say give us some flexibility. The Legislature wants to set the percentage." The Committee did adopt a 30% requirement for new acquisition, but knows this will be going to Ways and Means and could be amended.

SJR 13 is a constitutional amendment to allow bonding authority for State Parks. The mission statement was amended into this bill as well. Both bills passed out of Committee unanimously. SB 786 was sent as a "do pass" to Ways and Means, and SJR was sent as a "do pass" to the Senate floor.

COASTAL CAUCUS HEARS ABOUT SEAFOOD CONSUMER CENTER (4-26-91)

On Monday, April 22nd, the Coastal Caucus heard about plans to build a Seafood Consumer Center in Astoria which is still in the planning phases. The presentation was made from Rick Gustafson, the Interim Director for the Center.

In attendance were Representative Jackie Taylor; Representative Walt Schroeder; Representative Tim Josi, Senator Bill Bradbury and Senator John Brennen. Marty Swedberg, Legislative Aide to Senator Joan Dukes; Debby Boone, Legislative Aide to Representative Jim Whitty; Joe Easley, Administrator, Oregon Trawl Commission; Mike Simms, Hanneman & Associates; Sally Schroeder; and Diane Heinz were also present. Joining Rick Gustafson was Thayne Dutson, Director of the OSU Agricultural Experiment Station.

The Seafood Consumer Center would be a non-profit corporation aimed at bringing all aspects of seafood education under one roof in Astoria. Involvement by Clatsop Community College, OSU Extension, and seafood consumers would form the basis of the Center, with additional space possible for organizations such as the Oregon Trawl Commission, Salmon For All, and the Oregon Department of Fish & Wildlife (ODFW).

The project received \$1 million from the U.S. Department of Commerce last year, and hopes to have that funding repeated for this year. Two sites are being considered for the development of the Center and possible accompanying hotel and restaurant: the Astoria fairgrounds (in an urban renewal district) and the east end mooring basin. Gustafson told the Caucus that the U.S. Army Corps of Engineers is looking at that site for a fisheries renewal project. The east end mooring basin is also home to a large herd of California sea lions, which may be an attraction to hotel developers. Gustafson said they had no preference for either site at this point.

A Regional Research Facility for Seafood

The overall goal for the Consumer Center according to Gustafson is for it to become a regional facility for West coast seafood research. A large part of the Center would be consumer oriented in teaching the public how to cook, prepare, and harvest seafood.

Thayne Dutson, OSU Agricultural Experiment Station, said that they are hoping to attract financial support from the Oregon Department of Agriculture for the Astoria and Newport facilities and labs. Some monies directed at the Agricultural Experiment Station are currently going toward the Center as well as fisheries research in Newport. An extensive federal grant for seafood research is an idea for the future but would require a match from the state. Details of the financial packet would be ready about a year from now.

Major development for Astoria

Gustafson told the Caucus that the Seafood Consumer Center would be a major development project for Astoria, and that there is a lot of local support for the proposal. The combination of a hotel and restaurant in conjunction with the research facility could allow some kind of lease agreement that will assist in keeping the Center operational.

Some recent actions in regard to the Center include a funding proposal for the center in the Clatsop County regional strategy fund, and with the Oregon Tourism Alliance. Nippon Suisan, one of the largest surimi processors in the world is also trying to negotiate with the Seafood Consumer Center to establish a research center for shore-based surimi processing.

Next Monday, April 29th, the Coastal Caucus will be hearing a presentation on coastal natural hazards, with Jim Good, OSU College of Oceanography as the speaker.

FOREST PRACTICES ACT CONTINUES TO BE DELIBERATED IN SENATE (4-26-91)

For several months now, extensive hearings have been given to two Senate bills, SB 555 and SB 1125, which modify the Oregon Forest Practices Act. SB 1125 is sponsored by Senator Joyce Cohen (D-Lake Oswego) and co-sponsored by Senator John Brenneman (R-Newport), Representatives Bill Dwyer (D-Springfield) and Walt Schroeder (R-Gold Beach), and is known as the Oregon Forest Industries (OFIC) bill.

SB 555 is sponsored by the Senate Committee on Agriculture and Natural Resources. Some of the major points of the bills are discussed here, extracted from the bills themselves, along with public testimony, and a comparative chart prepared by the Senate Agriculture and Natural Resource Committee Staff, and the Oregon Department of Forestry (DOF).

Stream Classification

SB 555 redefines the classification for streams, puts the current stream classification into statute, and adds a third classification. Class I streams are those with domestic uses, angling, water dependent recreation, or habitat for spawning, rearing or migration of anadromous or game fish. Class II waters are those with significant summertime cooling on Class I streams, and Class III waters are all other waters of the state with a definite channel or bed. SB 1125 requires the Board of Forestry to establish 3 classes, and to give particular consideration to streams greater than 8 percent grade that have important influence on Class I waters. The Board must consider vegetated buffers along those streams. Currently, there are three stream classifications: Class I, Class II sp and Class II. Due to difficulty applying it on the ground, Class II sp is not used. The Board of Forestry would prefer to see the stream classification changed through rule rather than by statute. The Board would also like a systematic examination of waters to be conducted with the Oregon Department of Fish & Wildlife (ODFW), and to seek funding for a riparian rule effectiveness study in the next biennium.

Clearcuts and Visually Sensitive Corridors

SB 1125 defines clearcut and "visually sensitive corridor as: "a clearcut is any harvest unit in western Oregon that leaves fewer than 50 trees per acre, well distributed over the unit and that measure at least 11 inches at DBH (diameter at 4 1/2 feet from the ground or breast height). In eastern Oregon, a clearcut is defined as leaving fewer than 15 trees per acre that are well distributed over the unit and at least 10 inches at DBH." SB 1125 defines visually sensitive corridor as "forestland located within the area extending 150 feet from the shoulder of a scenic highway." The bill designates scenic highways for the purposes of the Act, including Interstate Highways 5, 84, 205 and 405, and State Highways 20, 18/22, 34, 101, 234 and others.

SB 555 allows the State Forester to condition written plans so as to limit clearcuts to 80 acres or less if there is a serious threat posed by the clearcut. SB 1125 limits clearcuts, as defined, to 120 acres unless excepted, and limits contiguous clearcuts by requiring "green-up" of adjacent land before cutting. There are currently no restrictions on clearcut size or spacing.

The Committee bill sets a minimum of 250 stems per acre within three growing seasons after a clearcut. SB 1125 provides that clearcuts are replanted beginning at most 12 months after cut, and completed after the end of the second planting season; after 5 years, 200 stems per acre must be free to grow. SB 1125 allows for written plans that vary from these standards.

SB 555 also adds habitat protection to the purposes of the Forest Practices Act. The current program provides for overall maintenance of fish and wildlife resources, as well as protection of resource sites for threatened and endangered species, sensitive bird nesting, roosting and watering sites, and wetlands. Current practices also call for protection of critical wildlife habitat identified in 1984 under an agreement with ODFW.

Water Quality Authority

Under current laws and programs, the water quality authority rests with the Department of Environmental Quality (DEQ). The OFIC bill would remove DEQ's authority to enforce state and federal water laws with respect to forestry. The Board of Forestry will establish best management practices and other regulations applying to forest practices and water quality.

Slash Burning

The Committee bill would increase the slash burning fee from \$2 to \$15.50 per acre. The fee increases \$5 per year to a cap of \$35 per year in 1995. SB 555 also requires the State Forester to establish a system for reducing acres burned such that by 1996 slash burning is done only for fire prevention. Currently, slash burning is regulated through implementation of the Smoke Management Plan and Visibility Plan. Permits and instruction compliance are required. There is a \$2 per acre fee for registration and burning, and the fees are used to improve the management

of burning and to reduce emissions. Programs and fees are scheduled to "sunset" in 1991. While the OFIC does not address the slash burning issue, the Board of Forestry recommends making the current programs and fees permanent by removing the December, 1991 sunset clause.

Forest Practices Enforcement Fund

The OFIC bill also creates a Forest Practices Enforcement Fund which includes civil penalty assessments of up to \$200,000 per biennium. The fund can be used for purposes such as reforestation if the responsible party has failed to comply with reforestation requirements. Civil penalty assessments that exceed \$200,000 in a biennium shall be paid to the General Fund. Currently, all civil penalty money is returned to the General Fund.

Forest Management Policies

The Committee bill, SB 1125, revises state policy to assure that "forest management policies" assure growing and harvesting of trees. The State Forester may limit cutting in specific areas so as to assure continuous growing and harvesting of trees and protection of other forest values. SB 555 modifies Board authority to permit rulemaking that influences when and how a landowner manages property, and allows the Board to create rules protecting fish and wildlife habitat. Current policy encourages economically efficient forest practices that assure the continuous growing and harvesting for forest tree species, while providing for the maintenance of air, water, soil, and fish and wildlife resources.

Balance of Interests Supported by Board

The Board of Forestry supports current emphasis on achieving an appropriate balance of the soil, air, water, fish, and wildlife resource benefits and the jobs, products, tax base and other social and economic benefits derived from the continued growing and harvesting of trees under sound management practices. The Board recognizes a private landowner's right, within existing regulations, to choose whether or not to harvest trees on his or her property.

Senator Springer's Statement on SB 555

During one of the early public hearings on the bill, Senator Dick Springer (D-Portland), who requested that the bill be drafted, testified before the Senate Agriculture Committee about the major provisions and intentions of the bill. Sen. Springer stated: "SB 555 does not do away with the Forest Practices Act. Instead it acknowledges the value of the existing structure and grants additional authority to the Board of Forestry to pass rules that recognize that the world has changed."

Sen. Springer discussed the major provisions of the bill; one of the foremost issues being that of cumulative impacts. The Board of Forestry would be granted the authority to condition logging operations based on the cumulative impact of that one operation combined with other operations in the same watershed.

Sen. Springer closed his testimony by stating that he believed the provisions of the bill reflected what the public expects, at a minimum, in reform of the Forest Practices Act.

Representative Walt Schroeder Passes Forestry Bills out of Committee

Representative Schroeder moved four bills out of the House Agriculture, Forestry and Natural Resources Committee that deal with small woodlands. HBs 2318; 2319; 2320 and 2322 were passed out of Rep. Schroeder's Committee and are now being heard in the House Revenue and School Finance Committee, as assigned by prior reference.

The bills, which were drafted at the request of the Joint Interim Committee on Forest Products Policy, are aimed at increasing timber production on small woodland tracts which are owned by an individual or family corporation, from 5 -5000 acres.

HB 2318 allows cost expensing of certain reforestation and management costs otherwise required to be capitalized for income and excise tax purposes. Under the present law, the expenses of reforestation and some management may not be claimed until the timber is harvested 60-100 years in the future. HB 2318 allows a small woodland owner who harvests timber to subtract expenses within a ten year period of incurring the expenses. Additionally, the landowner is responsible for preparing a simple treatment plan to be reviewed by the State Forester.

HB 2319 provides Western Oregon forest landowners more planning ability for tax liability, to result in more even forest land assessment rates. The bill also changes the index used in valuing land under the Western Oregon Forest Land Program to match the system used in Eastern Oregon.

HB 2320 provides that land receiving special forest assessment is actually in tree production. It further provides that the State Forester is authorized to assist the landowner in developing a management plan to:

- regenerate all suitable non-stocked land;
- maintain "free-to-grow" conditions;

- protect from fire, insects, disease, animal damage, vegetative competition; and
- finalize harvest.

Rep. Schroeder said that the bill essentially means that "If you're getting special forest lands assessment, the land must be producing trees." The bill pertains to Western Oregon only at this time.

HB 2322 provides incentives for small woodland owners to increase the amount of forest on their land through capitol gains treatment for woodland owners: 60% capitol gains deduction on state income tax is allowed. Rep. Schroeder said that the purpose of the bill is to stimulate investment in forest land and reduce the effect of increased burdens due to the 1986 Federal Tax Act which reconnected state tax to federal law, and increased taxes to Oregon forest owners from 4% to 9%.

HB 2317 is still in Committee, and is aimed at providing a market for immature timber. The bill permits forest land owners to sell timber "cutting rights" to the State, for trees 10 years or older given certain conditions. One of the purposes of this bill is to prevent the harvesting of premature timber. The landowner is paid to manage the timber, and would have one opportunity to buy back cutting rights at harvest time. Loss due to fire, insects, disease, etc., will be borne by the State.

The Senate Forest Practices Act bills are scheduled for a work session on Monday, April 29th, in the Senate Agriculture and Natural Resources Committee.

PUBLISHER OF OREGON COAST MAGAZINE AT COASTAL CAUCUS (5-11-91)

Starting off National Tourism Week on Monday, May 6th, Rob Spooner, publisher of the *Oregon Coast Magazine* spoke to the Coastal Caucus about some of his current and projected activities to promote the Oregon Coast. Spooner and his wife, Elisha, together do the publishing and editing and direct the distribution of the Magazine, which has a circulation of approximately 60,000 readers.

Spooner told the Caucus that he took over the Magazine in 1987, leaving a position with *Northwest Magazine* in Seattle. The circulation has tripled since Spooner's takeover, and has branched out into several other related projects, including a Northwest Travel publication and a supplementary Oregon Coast Getaway Guide which are currently underway.

Spooner made a case for his role in promoting tourism on the coast, independent from state funding. "All we would like is a level playing field—the chance to do the job of promoting the coast." In past funding years, the State supported the efforts of a non-profit organization, the Oregon Coast Alliance, to promote the coast. With private advertising in the *Oregon Coast Magazine* and Spooner's other tourist-targeted publications being the main source of revenue for these ventures, the existence of other small publications aimed at the same readership is not so good for chasing limited advertising dollars.

Rob Spooner told the Caucus he plans to proceed with the publications he has been producing, and not worry about other efforts to promote the coast which may or may not come into fruition. Spooner is committed to getting the word out to people interested in the Oregon Coast through the newsstands. He said that "if people are not willing to pay \$2.95 for a magazine on the newsstand, they are probably not serious about planning a vacation."

Spooner's closing remarks to the Caucus, was in the form of a bit of advice: "be critical of information and statistics presented to the legislature that may be the result of biased research." Citing a statistic that "every dollar spent on advertising will bring \$18.00 to the state," Spooner explained the misrepresentation of this information because it does not factor in the cost of production. When you hear the familiar words: "Our research shows that..." remember that the people presenting the information are the ones that paid for the research.

Next Monday, May 13th, the breakfast speakers will be June Carlson and Don Byard from the Department of Transportation.

RURAL LEADERSHIP ACT BILL (5-24-91)

The Rural Leadership Act, SB 713, has passed out of the House Trade and Economic Development Committee and is in the Ways and Means Committee.

The bill went through several changes on the Senate side prior to passing out of the Senate Trade Committee. The final version incorporates the Committee's recommendations for establishing an Oregon Rural Development Institute. The Economic Development Department (OEDD) is directed to establish the non-profit Institute in conjunction with OSU Extension, private businesses, and others. OEDD will contract with the Institute for the development of a Rural Revitalization and Leadership Development Program to provide community development assistance and leadership training.

Amendments to the bill direct the Institute to give preference to distressed rural communities, and also give particular effort to serving minority residents of communities with a large population of minority residents.

There is a possibility of allocating lottery funds for the establishment of the program, although the intention is not to provide funding for the implementation of community development projects.

AGREEMENT REACHED ON FOREST PRACTICES ACT

A conference committee was selected to reach agreement on SB 1025, revising the Oregon Forest Practices Act, after the Senate voted not to concur with substantial changes made to the Senate bill in the House Agriculture, Forestry and Natural Resources Committee, Chaired by Representative Walt Schroeder (R-Gold Beach).

The Oregon Legislature passed the current forest practices act in 1971. The Board of Forestry addressed specific problems through rulemaking, and in 1987, the Legislature made significant statutory changes.

The conference committee was made up of members from the House and Senate standing committees who had spent substantial time on the bill during the session. Senator Dick Springer (D-Portland), Chair of the Senate Agriculture and Natural Resources Committee, was joined by Senators Tricia Smith (D-Salem), Joyce Cohen (D-Portland), Bob Kintigh (R-Springfield). Representative Walt Schroeder was joined by Representatives John Meek (R-Hillsboro), and Bill Dwyer (D-Springfield).

Concurrence was reached on several issues, including cumulative effects and immature timber harvests. Some of the major provisions of the bill, extrapolated from the staff measure summary are as follows:

- *Wildlife Habitat:*

Requires certain snags and green trees to be left in clearcuts over 10 acres. Allows forester to require some of these trees to be grouped and left in the riparian area. This is repealed on January 1, 1995. Modifies board rule-making mandate by requiring that rules provide for identification of streams in which restoration of habitat would be environmentally beneficial, to identify methods of restoration, to encourage landowners to enter into cooperative agreements to restore, and to adopt rules to implement the findings.

- *Reforestation:*

Sets certain reforestation requirements in statute. Requires that reforestation commence within 12 months and be completed by the end of the second planting season. Requires State Board of Forestry to encourage planting species resistant to root pathogens.

- *Cumulative Effects and Forest Management:*

Provides the state forester with authority to condition approval of written plans by limiting timing, method, and extent of harvest so as to achieve protection of forest resources under the Act. Requires Board to adopt rules that reduce to the extent practicable adverse effects of cumulative effects, based on the results of a study.

- *Immature Harvests:*

The Board shall adopt rules and standards for which a written plan may be required for harvest operations involving clear cutting of any stand of an average age of less than 40 years. The written plan for such an operation must address the environmental consequences of the harvest and the economic costs and benefits.

COASTAL CAUCUS VISITS WITH OPPA (3-15-91)

The Coastal Caucus joined the Oregon Public Ports Association (OPPA) for breakfast last Monday, March 11, at the Chumaree Inn in Salem, as part of OPPA's Legislative Conference. Rep. Walt Schroeder (R-Gold Beach) said that all but one of his port districts were represented at the breakfast, and the one not there was in San Francisco at the Pacific Fishery Management Council Meeting. Paget Engen, OPPA Legislative Liaison, had arranged for Senator Bill Bradbury (D-Bandon) and Senator John Brenneman (R-Newport) to be the speakers that morning, along with International Port of Coos Bay General Manager, Paul Vogel. They addressed a crowd of about 50 people.

Sen. Bradbury touched on a lot of the issues the Coastal Caucus has been concerned with over the past several weeks, including Pacific whiting, the Shellfish Program, and the Port Maintenance Dredging Fund for new dredging requirements. This session, just over \$5 million lottery dollars has been proposed for the dredging fund. Sen. Bradbury emphasized that while this would be a two-year fix for the fund, and he was concerned that it does not establish an on-going mechanism for this kind of fund. He said that if a permanent funding mechanism was not found, every session the ports would have to fight for the money all over again. While Sen. Bradbury said that the lottery is the "only loose form of money" around the Legislature right now, he closed by remarking that he hoped that a long-term solution to the dredging fund would be found this session.

Sen. Brenneman began by saying that he knew Paget when she was with the League of Oregon Cities, and

he was Mayor of Newport. Without reminiscing too long, Sen. Brenneman's talk focused on the issue of Oregon Aqua-Foods, a subject we haven't been hearing much about in the halls of the Capitol during this time of chronic fee hikes in the fishing industry. Sen. Brenneman admitted that the fiscal impact of Measure 5 might be overshadowing the chances of a state take-over of these facilities, but that perhaps he could tap into those "loose" lottery funds for a Springfield or Yaquina Bay purchase. (A rough calculation estimates that you could buy them both for the cost of the dredging fund.)

Sen. Brenneman ended by passing on an interesting bit of information to the OPPA membership. The Senator recently published a survey in his local newspapers -- mainly about budget issues. Out of about 400 responders, the reaction to a sales tax was basically split 50/50. However, when he gave the same survey to a group representing community leadership, 80%-90% of those leaders thought a sales tax to fund education was needed.

LAND USE PLANNING TOPIC OF DISCUSSION IN COASTAL CAUCUS (4-12-91)

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 zoning 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 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.

SEA GRANT DIRECTOR MEETS COASTAL CAUCUS (4-19-91)

Stepping into a position he feels was a "rare opportunity" (he became the new director of Oregon Sea Grant as of January 1991), Bob Malouf seems back at home in Oregon.

Bill Wick, who was Oregon Sea Grant's director from 1974-1991 retired at the end of December 1990. Oregon Sea Grant was founded in 1968, and for the first six years of the program, it had a coordinator rather than a director.

Although most recently Malouf was the director of Sea Grant in New York, Malouf is not a New Yorker, and by his own account, gets a bit defensive about this characterization. Malouf grew up in Missoula, Montana and got his B.S. and Ph.D. from Oregon State University in the Department of Fisheries and Wildlife, specializing in oyster management and aquaculture. In 1983-1984, Malouf was president of the National Shellfish Industries.

As Director of the New York Sea Grant, Malouf explained that the Sea Grant Program was a multi-campus system housed in the State University of New York (SUNY) universities. The program was also connected with Cornell University, which is officially New York's Land Grant College. Malouf describes the inclusion of Cornell as adding tremendous political power to the Sea Grant Program.

The marine environment in New York not only encompasses the ocean and harbors of Long Island and New York City, but the Sea Grant Program extended into the Great Lakes region as well. The shipping industry and marine pollution were two of the issues Malouf dealt with in the Great Lakes region.

Malouf said that he wouldn't have left New York to come anywhere but Oregon, and described Oregon Sea Grant as "the flagship of the national program—one of the largest."

Due to changes at the national level, the job Malouf will do is different from that of past directors. A new system of competition has been established for the funding of Sea Grant programs. Oregon Sea Grant will be competing with other states in its region. Malouf characterizes the ideal Sea Grant research project today as "one that addresses a local issue, has national significance," and has a very strong connection to the sciences.

"There are really two Sea Grants in Oregon: the Extension Sea Grant and the Research Sea Grant." Malouf wants to bring these two back together. Malouf concluded that Sea Grant's role in Oregon is to "create and collect information through research, and disseminate this information through extension."

At the end of Malouf's presentation, he opened the floor up to questions. The discussion turned towards Oregon's Shellfish Program. Dean Willard, legislative assistant to Rep. Tim Josi, confirmed that the Ways and Means Human Resources Subcommittee had recently reviewed all of the proposed funding levels for the Program, including the "250", the "400", and three in between, and declined them all in favor of an outright cut.

Malouf added that shellfish area closures portray an image of unclean waters and has an impact beyond that

of the shellfish growers themselves.

Federal shellfish administrators have indicated that funding the program at an amount less than the \$400,000 target range would garner scrutiny and possibly lead to a non-compliance ruling.

Willard left off the discussion with the current status of the program: "It is fairly high on the list as an 'add-back' in Ways and Means."

COASTAL HAZARDS TOPIC OF COASTAL CAUCUS BREAKFAST (5-11-91)

After a brief update on the Port Revolving Fund, presented by Paget Engen, Executive Director of the Oregon Public Ports Association (OPPA), and John Mohr, Manager of the Port of Newport, the Coastal Caucus heard a presentation on the present and future state of natural hazards planning and management on Oregon's coast.

Jim Good, Sea Grant Extension Agent and College of Oceanography Professor, gave the Caucus an overview of two research projects he is involved with on the coast, and also previewed a conference planned for the fall.

One of the projects Good has underway is the Oceanfront Development and Shore Protection Policy in Oregon: An Evaluation. Good spoke of the quickening pace of shorefront development along the Oregon Coast in the last few decades, and because of it, the increasing occurrences of erosion events that are likely to have an impact on adjacent public and private development. Shore protection structures built to prevent major property loss from erosion often affect the sand supply, public access, aesthetics, and raise questions about the adequacy of laws regulating the building of protective structures and shoreline development generally.

Good spoke briefly about the state laws and regulations that form Oregon's management framework within its federally-approved coastal management program. LCDC statewide planning goals concerning natural hazards, beaches and dunes and coastal shorelands, as well as the Removal-Fill Law and ocean shore law affect coastal hazards management.

Good's study involves extensive Geographical Information System (GIS) mapping, which is designed to examine related data in the Siletz littoral cell which is the pilot study area for the larger questions about development and shore protection.

Good spoke briefly about another project he is working on which involves the Potential Impacts of Alternative Sea Level Rise Scenarios in Seaside, Oregon. The objective of this project is to look at the impact of one, two and four-foot sea level rise scenarios on public and private property, wetlands and shoreline retreat. A GIS system is also planned for this project, where existing tax lot maps, topographic maps and wetland maps will be digitized and evaluated by overlaying the different sea level rise projections.

A workshop entitled Coastal Natural Hazards: Science, Engineering and Public Policy is scheduled for October 1-3 in Newport at the Hotel Newport. The workshop tentatively features a pre-conference field trip and several panel discussions. Panel I would look into coastal earthquakes, tsunamis and landslides in the Pacific Northwest. Panel II would cover coastal processes and hazards, and a third panel would discuss shore protection and engineering.

A post-conference meeting is also planned to form a working group to evaluate policy issues stemming from workshop topic and ideas.

Good wrapped up his presentation by discussing the possibility of future shoreline planning done on the basis of littoral cell units, units of sand transport bounded by headlands, which can cross county boundaries. Current land use planning is done through the county comprehensive plans, rather than working from the geological and ecological units to set the areas for management.

Caucus Hears Coast Highway Presentation (5-17-91)

On Monday, May 13th, June Carlson, planner for Highway 101 with the Highway Division of the Oregon Department of Transportation (ODOT) briefed the Coastal Caucus on the status of plans to work on the Coast Highway. Carlson was joined by Don Byard and John Rist of the Department.

Carlson, who was born in Tillamook, highlighted the multi-faceted nature of the "Corridor Study" referring to 101 in Oregon. The study looks at traditional elements of highway planning, the location of right of ways, for example, as well as non-traditional elements, such as how land use planning affects highways and vice versa. As members of the Coastal Caucus are very aware, the highway is a focus of often conflicting uses. The inclusion of an environmental impact assessment as well as a consideration of the highway's impact on economic development and tourism are part of the study, reflecting the importance of working out any conflicts early on in the planning

stages of highway improvement.

The corridor study also includes a look at the structure and capacity of bridges, incorporating a multi-modal transportation system (bicycles, public transportation, etc), visual resources and parallel or secondary street planning.

The key to planning the future of the highway as a whole system rests on the ability to implement the changes at different times and in different locations along the coast, without losing sight of the unified corridor concept. Several demonstration projects are underway for Bandon and Lincoln City to see how the concept can work in different coastal communities in the state, and also to serve as an example of the integration of local, state and federal planning efforts.

John Rist spoke a bit about the coordination of Oregon's planning study with Washington and California, and the possibility of receiving federal funding for the planning as part of the Surface Transportation Act of 1991. Rist noted the importance of maintaining high priority status for the Pacific Coast Highway on the federal level and having this support continue throughout the process, especially when actual construction begins.

Representative Tim Josi (D-Bay City) asked June Carlson whether she was aware of any problems with undergrounding utility lines on the coast. Carlson was not aware of any, but told the Caucus that undergrounding power and telephone lines was part of the planning in certain areas.

The Coastal Caucus did not bring up many concerns, coastal legislators may be waiting until the Highway 101 Conference planned for September 5-6, 1991 in Newport, sponsored by ODOT and OCZMA.