1993 LEGISLATIVE SESSION

Oregon Coastal Zone Management Association
Oregon State Sea Grant College Program
Legislative Fellowship

FINAL REPORT

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Background

The OCZMA/Sea Grant Legislative fellowship began in 1987 primarily to provide students from the Oregon State University Marine Resource Management Program (MRM) with a means with which to apply the academic knowledge gained in science or public policy to the real-world arena of legislative politics. The program followed on the heels of the established and successful Knauss National Sea Grant Fellowship program, which places Sea Grant students in policymaking capacities in the Executive and Legislative branches of the federal government in Washington, D.C. As conceived, the OCZMA/Sea Grant fellowship would mirror national program at the state government level, and in doing so, provide the Fellow with valuable educational and professional experience and OCZMA and Sea Grant with a liaison in the Oregon Legislative Assembly. In practice, the educational component of the Fellowship is inseparable from the role the Fellow assumes as a reliable source of information on a range of coastal issues for constituents both inside and outside the legislature.

It is the attainment of the necessary expertise in coastal issues that presents the Fellow with his or her greatest challenge and greatest opportunity. The legislative session is often crisis-driven: fast-paced, fluid and responsive to shifts in public sentiment, work during session demands a self-reinforcing and often ad hoc approach to the Fellow's duties. At the same time, legislators, agencies, lobbyists and citizen activists can demonstrate a remarkable amount of foresight — or just simple perseverance — which requires the Fellow to have a familiarity with the basics of a long-standing issue or an acquaintance with someone with a long "institutional memory" in order to be able to keep up.

The Fellow of necessity must cultivate his or her own “tactical” body of knowledge — what the issues of greatest currency are and what events drive them, the people and groups who seek one or another course of action, the agencies, institutions or other mechanisms capable of implementing those actions. Each session brings its own set of “players” and issues of concern to the table; quite often the Fellow’s single biggest task is to wade into the midst of them and try to quickly make sense of what he or she sees and hears. But almost as often the issues are receiving an airing for their second, third or fourth time and many of the advocates involved have met each other before and sparred over many of the same questions. In these instances the Fellow has places to turn to for guidance and help.

The first of these, and the one from which the Fellow will receive the majority of his or her day-to-day direction, background and — occasionally — commiseration is the Oregon Coastal Zone Management Association. Both Executive Director Jay Rasmussen and Executive Assistant Georgia York function as the fellowship program’s unofficial historians — keepers of the institutional flame, as it were — and can be counted on to provide timely and valuable information drawn from their close and constant contact with coastal residents and their concerns. On more than one occasion this past session, the debate over the mass-marking of hatchery salmon serves as a notable example, I told Jay Rasmussen about a hot and somewhat controversial new idea making the rounds in the House Natural Resources Committee only to hear that not only had the issue been discussed several years earlier at OCZMA prompting but that I could expect to receive by mail later that week copies of records for the meetings held and of the conclusions reached. The OCZMA also has the principle hand in selecting and placing the Fellow with his or her second major support system: the host legislator. The host legislator provides the Fellow with not only the physical space from which he or she operates, but also something of a home-away-from-home and, not inconsiderably, a sort of instantaneous legislative legitimacy without which the Fellow’s duties become difficult, if not impossible, to carry out effectively.

Previous Fellows had operated out of the offices of Rep. Paul Hanneman, Sen. John Brenneman and then-majority leader Sen. Bill Bradbury. This session Jay Rasmussen placed me with Sen. Joan Dukes (D-Svensen) who, along with staff members Teresa Bakke and Mary Gautreaux, made me feel instantly welcome and very much a part of the office staff. Sen. Dukes, who as chair of the Senate Transportation Committee and member of four other standing committees had one of the busiest schedules of any legislator this past session, allowed me the freedom necessary to attend to the concerns of other legislators and of the Coastal Caucus while remaining completely open and accessible — almost upon demand — in those instances where I sought her knowledge, considerable expertise or counsel. The importance of this balance — and of the working relationship between the Fellow, his or her host legislator and the legislator's staff — cannot be overestimated. With several competing priorities calling for the Fellow's attention at any given moment, the ability of the Fellow to rely on the aid and camaraderie of the host legislator and the staff, and their ability in turn to rely on the Fellow, can mean the difference between keeping atop the crest of breaking issues or sinking without a trace in their wake.
This session was unique in several ways. It holds the record as the longest session in Oregon history and was, in the eyes of many observers, the most bitter and acrimonious as well. Control over the legislature was split, as in the 1991 session, between the House, which had a Republican majority, and the Senate, which held a razor-thin Democratic majority. This partisan split had numerous repercussions all during the session and played a major role in determining how long legislators stayed in Salem this year. The Senate's bare majority, in turn, had its own consequences. Organizing and leading the Democratic Caucus proved difficult right from the beginning of session when maverick Sen. Mae Yih (D-Albany) refused for a week to supply the crucial 16th vote necessary to elect the majority leadership before settling for membership on the Joint Ways and Means Committee and election to the post of Senate President Pro Tem. Sen. Yih would later join minority Republicans on several controversial votes, including a last critical vote to determine the composition of the Interim Emergency Board, the appointment of which signaled adjournment sine die.

The most visible initial consequence of the bicameral split between parties was the dissolution, following the Senate rejection of a K-12 education budget passed by the House, of the Joint Ways and Means Committee. A long-standing legislative tradition, the joint committee ensured that both chambers came to early agreements about appropriations and priorities in the state budget. The necessity for two sets of hearings for agency budgets, requests for lottery proceeds and other fiscal matters probably contributed a significant amount of time to the session and to the infighting that characterized budget decisions in progressively leaner, post-Measure 5 times. The split also resulted in some fast-paced, last-minute parliamentary maneuvering between chambers as each party jockeyed to put its imprimatur on the Oregon Health Plan, the disbursement of lottery funds, the components of the sales tax measure, and other less visible issues. Removed as I was from the worst of the partisan fray, I thought little of its consequences until the very end of session, when several issues of critical interest to coastal legislators and their constituents suddenly seemed to hang in a very precarious balance. Although cheered by the outcome on most of these measures, many of the coastal legislators, agency members, lobbyists and constituents with whom I kept company spent several long hours in hearing rooms and halls alternately cooling their heels and biting their nails.

The contrast between the battles that raged on the floor of the House and the Senate and the collegial, non-political nature of most proceedings of the Coastal Caucus could not be starker. The Caucus — this session made up of two Senate Democrats, Sens. Bill Bradbury and Joan Dukes; one Senate Republican, Sen. Stan Bunn; four House Democrats, Reps. Tony Federici, Tim Josi, Hedley Rijksen and Jim Whitty; and one House Republican, Rep. Veral Tarno — invariably showed exemplary cooperation and recognition of its common interest. With no serious dissent, the Caucus united around such issues as the U.S. Commerce Department's overturning the Pacific Fishery Management Council's decisions on coastal coho and Pacific whiting allocations; on the need to begin an offshore kelp leasing program; on the need to preserve the state's shellfish testing program; and on a program to begin habitat recovery for salmon originating on the south coast and in the Grande Ronde area. Caucus members lent their signatures and, frequently, their voices in support of measures designed to implement many of the coastal programs they discussed, including two joint memorials and related correspondence directed at the White House and the Commerce Department following the whiting decision; a measure designed to remove a minimum harvest requirement from the state's kelp leasing law; a program to fully fund the state's shellfish testing program and a $10 million measure to restore salmon habitat.

Where serious disagreement did occur, as it did regarding a proposal to create a limited-entry system for the state's crab fishery and, initially, with regard to a proposal to mass-mark all hatchery-raised fish, Caucus members agreed to simply disagree and pursue their own separate courses on the issue. Absent from Caucus proceedings were any of the instances of "hostage taking" or horse trading prevalent among the larger bodies, where negotiations often proceeded among parties and chambers on the basis of their relative abilities to make and carry out threats. In the Caucus, members simply appealed for each other's support on the basis of common interest and usually received it.

The Caucus was somewhat more politically oriented than in years past, conferring about particular legislative strategies and crafting support blocs for one or another measure, but for the most part Caucus meetings continued, as before, to provide members with information and an opportunity to examine issues of mutual concern. Most meeting agendas consisted of one or more separate topical issues, usually paired with speakers who had an expertise, an involvement or an interest in them, which afforded members the opportunity to informally explore their boundaries. Locating speakers for Caucus meetings was rarely difficult, as agency staffers, lobbyists, constituent groups and others quickly grasped the advantages of being able to press their case in the relatively relaxed atmosphere of the Caucus meeting. I relied principally upon Jay Rasmussen for suggestions as to who to invite for each particular issue, though Rep. Josi and other legislators pitched in with suggestions on occasion. One of the most interesting aspects of working as the Fellow is the degree to which he or she quickly amasses the knowledge necessary to find out who to contact, and not incidentally, the "influence" necessary to be able to ensure attendance. This influence, of course, is derived entirely from the Fellow's status as an envoy from the legislators themselves and is merely reinforced by a demonstration of the
Fellow's grasp of the issues. A wise Fellow will guard himself or herself scrupulously from making frivolous use of the influence he or she wields or from concluding that his or her magnetic personality is the reason for a speaker's eagerness to attend Caucus functions — a Fellow is most effective and influential to the degree that legislators and constituents alike view him or her as a neutral, unbiased and reliable information source.

In a session marked by shortages of time for most legislators, deciding upon the day and hour for the weekly Caucus meeting time usually proved to be the biggest difficulty between and among members. Initially scheduled for Tuesday mornings, the meeting time jumped to Tuesday noons, then Wednesday noons, before finally settling for Thursday mornings. Even with comparative agreement on the schedule, attendance at Caucus meetings was occasionally spotty as legislators dealt with recurring conflicts with committee hearings, constituent concerns and other obligations. As a result, I found myself staying informally in touch with each coastal legislator's office as my time and their interest in particular coastal issues permitted. One way I devised to keep those unable to attend Caucus meetings informed about Caucus actions was to take and distribute relatively detailed meeting minutes, the complete text of which appear at the end of this report. The minutes, while modeled after minutes taken by legislative committee assistants, were somewhat more detailed as I did not have a tape recording of Caucus meetings to refer to. The minutes, to my initial surprise, assumed the status of an official record of Caucus business and were cited before the Board of Forestry on one occasion in support of a constituent request for Board action. The Fellow will find that using a laptop computer during meetings to take notes as detailed as his or her typing speed will allow contributes greatly to the accuracy and usefulness of his or her minutes.

Committee hearings and Oregon Coastal Notes

By far the majority of the fellow's time not spent in Caucus business goes toward following the progress of legislation through its various committees. Committee hearings are the backbone of the legislative process in Oregon and in most other state legislatures. Unlike the situation in Congress, where last-minute floor amendments and other parliamentary maneuvers can leave the status of legislation in doubt right up until the final votes are tallied, and sometimes beyond, Oregon House and Senate rules require that all amendments, hearings and other formal action on measures take place in committee. During the seven months between opening day and sine die I might have attended either the House or Senate floor sessions a total of seven to nine times, and the majority of those instances came at the end, when controversial measures left unresolved in committee headed for frequently partisan showdowns on the floor. Committee hearings are generally of two types: formal hearings and work sessions, the latter equivalent to bill “mark up” sessions at the Congressional level, when votes for or against proposed amendments, committee recommendations for passage and other actions are actually taken. For the most part, work sessions tend to be anti-climactic, a pro forma result of debates already conducted either in hearings or among informal work groups composed of advocates for or against a measure. But occasionally divisions among committee members concealed during hearings will appear and committee votes can offer a clear picture of the treatment a measure will likely receive on the chamber floor.

The Fellow's function, for the most part, is to observe and record this action, digesting and disseminating it for the readers of the OCZMA newsletter Oregon Coastal Notes. For many coastal residents and industry members this publication offers an important glimpse inside Salem politics and into the issues that affect them. The contents of the newsletter generally reflect the progress of particular legislative measures of interest to coastal readers — measures the Fellow will learn to spot after some experience with them — but occasional detours into happenings outside the legislature or into areas that do not have an obvious coastal angle to them can provide some perspective. The bulk of my coverage for Coastal Notes this session revolved around a few particular issues and the progress they made through the committee process. I found that most of the interesting and revealing debates about each measure took place at its earliest hearing. When less pressed for time and less sure of their positions on the issues, legislators are more likely to allow extended and detailed presentations on each bill and to be more tolerant of each side's attempts to craft a compromise. The closer the bill comes toward committee approval, the more similar the arguments for and against a measure become, and the more focused the disagreements become, leaving little to report. By the time a measure passes, a simple line noting that fact in Coastal Notes should suffice, barring controversy on the floor or in the opposite chamber.

But in point of fact, finding ample material for each issue of the newsletter is rarely difficult. Far more difficult is finding the time to summarize and write about what occurred. Although Coastal Notes is nominally a weekly publication, I found it increasingly difficult after several weeks to keep to that schedule when other duties demanded my time. Furthermore, having had some experience in layout and having access to the necessary computer equipment, I offered to produce the newsletter in its entirety in Salem. The Fellow may wish to evaluate whether the same arrangement would suit him or her, depending on the scope of his or her other duties. The importance of the newsletter, however, cannot be overemphasized — it is the Fellow's only means with which to communicate not only to the OCZMA membership, to whom he or she usually will give an oral report on a monthly or bi-monthly basis during session, but to others among whom Coastal Notes
circulates. This audience of about 200 includes legislators, agency members, local government officials, Sea Grant Extension agents and numerous others. The Fellow's ability to give a detailed summary of events related to the coast can serve as a valuable aid to that audience.

Like other institutions, the legislature is slowly accommodating to the advantages that office automation and computer technology offer. The Fellow should have some familiarity with the more common computer tools in general use and be poised to learn more when necessary. The OCZMA itself may be on the brink of adding substantially to its computer capacities, in part to take advantage of the benefits of teleconferencing, electronic mail and other technologies, and will likely wish to use those capacities to improve communication between the Association and the Fellow during the legislative session. I found that having access to my personal Macintosh PowerBook aided me enormously when I needed to take notes in committee hearings or Caucus meetings, make presentations outside Salem, or take a Coastal Notes layout home to catch up at night or on the weekend — it became such a part of my daily routine that some colleagues began to joke about having to have it surgically removed from my shoulder at the end of session.

**Preparation and Mechanics**

Selection of the Fellow begins several months before session does, in part to allow him or her to prepare for the job. As a law student and with a bit of previous background in legislative work I had something of a leg up in preparing myself for the mechanics of the fellowship — how legislatures work, what sorts of places to go for what sorts of information, etc. — but in point of fact the most useful form of preparation is getting to know people and the issues they are concerned with. As someone who had a background in legislative research and in the law, I found myself initially surprised at how personality-driven much of the legislature — and, by extension, much of government — is. Given the time constraints in which most legislators, lobbyists and others operate during session, none has the luxury to wait for a particular question to be thoroughly researched, annotated and footnoted, much less the time to read the results of that research. Quite often the quickest and most accurate answer to a question or concern is in the hands of an agency official, a lobbyist, a citizen activist or a similar source. I found, floundering at first but catching on after a short while, that these sources could provide me with the answers I needed and were usually more than willing to talk extensively about the background of an issue, provide documentation, appear before the Coastal Caucus to give presentations and otherwise lend their expertise to me when most needed. In such an environment, the best academic preparation is, frequently, irrelevant.

Even so, I reviewed my knowledge of legislative procedure, took a course in local government law and tried to keep in contact with OCZMA as much as possible. An initial presentation at the OCZMA annual conference in September 1992 familiarized me with the nature of the organization, some of its members and the sorts of duties I would likely undertake. Because of scheduling conflicts I was unable to meet with the coastal legislators before session or with the heads of the various natural resource agencies — a lapse I regret, in retrospect — but I found that simply making their acquaintance as soon as possible after session began did go a long way toward paving the way for my later role. I usually first encountered most of the agency heads with whom I would later have dealings in committee hearings, and while there I also took the time to introduce myself when needed to committee administrators and committee assistants, whose good graces I had many an occasion to depend on.

As a staff assistant for the entire Coastal Caucus, the Fellow in theory has eight or more interests to consider when deciding his or her priorities. In fact, however, one or two of those legislators at a time tends to take the initiative on those issues of particular interest to him or her and the Fellow can comfortably respond to those needs. Senate President Bill Bradbury has enjoyed a reputation as a leader on coastal issues and this session was no exception. Most of the time I spent working on coastal issues came in response to direction from Sen. Bradbury, including his plans to establish a $10 million salmon habitat restoration program. Rep. Tim Josi, the Coastal Caucus chair by acclamation, took the initiative in setting the broad agenda for the Caucus and giving me direction as needed to ensure its smooth operation. At one point or another I found myself responding to requests from all Caucus members, whether it was composing correspondence, drafting press releases or preparing testimony, functions that cement the Fellow’s role as a valuable and specialized adjunct to coastal legislators’ staffs.

One slight change I found myself making in the scope of the Fellow’s duties from years past was the increased degree to which I involved myself as a quasi-lobbyist on specific legislation. In truth, this is probably something that, if not handled delicately, could damage the Fellow’s neutrality and credibility. But the Fellow comes to Salem with two somewhat contradictory sets of rules under which he or she must operate. On one hand, neutrality is expected and necessary, particularly if the Fellow is to function as an objective reporter and information source. On the other, the Fellow should seek to aid coastal legislators to any degree possible, even when that means advancing the particular interests of legislators in particular legislation or particular issues. I chose to solve this dilemma by seeking consensus from the Coastal Caucus itself and then “advocating” on its
behave, rather than on behalf of one legislator or one issue. I also sought to make clear in discussions with non-
legislative staff that I did in fact function as a de facto legislative staff member and that any information I could
provide would be from that perspective. When writing Coastal Notes, however, I found that my previous train-
ing in journalism served as my best resource in maintaining an objective and factual tone, apart from whatever
work I might have done for or against a particular piece of legislation. It was not a perfect solution, by any
means, but I found myself at a loss to imagine a more effective way to handle the problem.

Recommendations

The very nature of the fellowship ensures that each Fellow must define the scope and nature of the
tasks he or she wishes to undertake. For that reason, much of the previous Fellow's experience, while poten-
tially interesting and occasionally comforting to succeeding Fellows, is of only limited relevance to the situa-
tion the new Fellow will confront with the new session. Many of the names will have changed by the time the
new Fellow comes aboard, certainly among the membership in the House and now, as I write this, speculation
abounds about who will return to his or her Senate seat as well. Names and positions among lobbyists, citizen
activists and others will undoubtedly shift as well, to the point that advice about where to go and who to see to
solve specific problems will often, and inevitably, be out of date. Of course, certain constants will remain so —
the Fellow can expect that many of the agency officials he or she will need to call upon will remain the same
(though the names of the agency heads may well change, depending on the outcome of the upcoming governor's
race) and that most of the same inter-party and inter-chamber dynamics will remain tense for some time to
come. But bearing those cautions in mind, I would make the following recommendations to succeeding Fel-
lovs:

• **Remain flexible.** Although easy to say, this is difficult to practice, particularly when the new Fellow
finds him or herself wondering just what sort of maelstrom he or she has just stepped into. Rest assured
that for the most part, as one legislative staffer told me at the beginning, "Nobody knows what's going
on around here at the beginning of the session and if they tell you they do, they're lying." This is true
even for long-term legislators and staff, each of whom must confront a new set of faces and styles after
each election, and is a trend that will likely accelerate now that the clock has begun to toll on term
limitations. I found my confidence and capabilities growing simply by keeping my eyes open and
allowing myself to ask naive questions and (sometimes) accepting naive answers in return. Without
trying to contradict the advice of my predecessors, I would actually recommend against coming into
session with a particular issue or set of issues to "work on" or specialize in. Much of the challenge of the Fellowship is in learning to master, in a comparatively short time, the parameters of an issue the Fellow
may or may not have ever heard of before and of choosing a course of action to take in response.
Whatever the Fellow's background and interests might be, the course of events at the legislature will
inevitably dictate most of what the Fellow ends up "specializing" in anyway, so the Fellow should be
prepared to some degree to surrender to "go with the flow" and to change his or her priorities at a
moment's notice. That does not mean that the Fellow should abandon, conceal or not indulge his or
her particular interests, merely that pursuing these interests to the exclusion of other issues could make
the fellowship difficult for both the Fellow, who misses the chance to find out about what goes on
outside his or her specialty, and for others who count on the Fellow for somewhat more encyclopedic
knowledge.

• **Read the rules.** Part of being effective at ferreting out information and serving as both watchdog and
advocate requires knowing what is likely to happen to legislation as it makes its way through the
process. I learned, somewhat ruefully, how important parliamentary procedure could be in the last days
of this session as complex partisan maneuvering caught me off guard (I took some comfort in the fact
that it also caught a lot of others off guard as well) on more than one occasion. As session nears sine die
the remaining issues will usually be the most controversial, the most intractable and, therefore, the
most subject to the legislative equivalent of three-card monte. Knowing in advance what each chamber's
leadership can do to block legislation, "gut and stuff" measures and otherwise try to prevail in what is,
in the end, a purely political process, will help the Fellow keep on top of developments as they happen.

• **Be objective.** This is, as noted above, more difficult than it appears but it is essential. The Fellow can
get away with bending the rules a bit here to respond to the demands of his or her duties — one permis-
sible definition of "objectivity," for example, is that which is the consensus of the Coastal Caucus. But
the Fellow should try to compartmentalize his or her functions as a staff member from his or her
functions as an information provider and explain, if necessary, which hat he or she wears at which
time. The most obvious place where objectivity should be preserved at all costs is in writing for Coastal
Notes. Despite my more recent law training, I found that my undergraduate training as a journalist

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proved far more relevant and helpful to the fellowship and to the task of producing the newsletter. I would go so far as to recommend that the fellowship selection committee give a slight preference to those with a journalism, communications or similarly rigorous writing background (but not that it raise that preference to the level of a qualification) since I found in common with other legislative staff members I talked to that the majority of the "product" the Fellow produces is correspondence, press releases, policy statements, or "news-type" coverage of legislative happenings.

- **Stay informed.** This would almost seem to go without saying, but in fact information about the legislature outside of the narrow range within which the Fellow operates can be very difficult to come by. The Legislative Media Office puts together a more-or-less daily summary of press clippings about the legislature that is quite helpful, but press coverage can suffer from a certain amount of oversimplification. The reasons for staying on top of the issues the Fellow has responsibility for are obvious, but less obvious is the benefit that comes from knowing about what is going on elsewhere. Like the law itself, the legislature operates as a "seamless web," and the surface disparity between such issues as the Oregon Health Plan and lottery appropriations for a developmental fisheries board could well conceal a deeper connection based not on the issues addressed in the legislation but on how badly each side wants it and what it will trade to get it. The legislature operates on a logic all its own, and the Fellow will find that careful attention to what sorts of surprising conclusions can result from that logic will yield interesting benefits. I paid, for example, insufficient attention to each chamber's appropriations committees and found myself completely bewildered at the committee procedure and the twists and turns legislation took once in their control. A short tour of some of the other committees likely to consider coastal legislation early in the session before concentrating on the natural resource committees will pay dividends later, I suspect. I would also recommend that the Fellow take advantage of the knowledge of other staff members in his or her host office concerning the personalities and procedures of some of the other committees and have at least a cursory knowledge of each committee's area of responsibility. Finally, it always helps to make friends in other offices and other parts of the capitol — not strictly for the knowledge the Fellow can gain, but simply because that's one of the most enjoyable aspects of working at the legislature. Besides, not all of the information the Fellow needs to be effective comes from the process itself — never discount the value of rumor, innuendo and gossip (he says with a broad wink).

- **Try to relax.** Legislative work is stressful and legislative staff members (and legislators) find a real need for relaxation and get-togethers. Examples of the types of activities staff organizers came up with this session are: "practice" sine die parties (which came close to becoming a nasty joke the longer the session wore on), usually at a Salem legislative hangout called Magoo's; inter-chamber softball matches; skits at the "real" sine die party (which actually took place about a month before the session closed); luncheons of various sorts; and other informal activities outside the workplace. OCZMA or various coastal lobbying organizations will usually host get-togethers at some point during the session. Each of these venues is a good place to meet and get to know some of the people who will affect the course of legislation during the session, not just as legislators, lobbyists or staff members, but as engaging people. Don't pass such opportunities up.

**Issue summary**

This session would not qualify as a banner year for coastal issues, particularly in view of the competition for legislative attention waged among the Oregon Health Plan, the budget battles, the sales tax measure, lottery receipts and other high-visibility issues, but significant legislation nonetheless passed. Here are some of the highlights:

- **Shellfish testing.** Health Division Director Michael Skeels, responding to Measure 5-mandated budget reductions, zero-funded for the second biennium in a row the state's shellfish toxicological testing program, prompting a swift legislative response from the Coastal Caucus. Rep. Tim Josi introduced a House measure to impose a licensing fee on shellfish growers and a $5 and $10 annual recreational harvest fee on state residents and non-residents, respectively, to pay for the program, whose costs topped $500,000 per biennium. Sen. Joan Dukes introduced a similar measure, with lower recreational harvest fees and a two-tiered licensing fee for growers. The House measure died almost immediately as marina owners who rented recreational harvest equipment mounted strong opposition to it. The Senate measure, which also proposed transferring the entire program to the Department of Agriculture, passed the Senate after a vigorous debate over both the transfer provision and the licensing fees. But it too ran into substantial opposition during House hearings, forcing measure backers to retreat entirely on the...
recreational fee provision. The funding picture for the program finally cleared late in the session when House Appropriations Committee chair Rep. John Minnis promised general fund monies to continue the program for this biennium. The House also agreed to Senate provisions for the transfer of the testing program. Although rescued this biennium, the future of the program may still be in doubt with the next round of anticipated agency budget cuts. Program backers believe, however, that the Department of Agriculture is less likely to target the testing program for elimination since it does not have to compete with other programs aimed at protecting the public health.

Another measure dealing with the state's shellfish program, a proposal to transfer the leasing authority over shellfish beds from the Department of Agriculture to the Division of State Lands, died almost immediately after shellfish growers vigorously opposed the bill. State Lands Director Gary Gustafson said that he will instead study the feasibility of combining authority over all state lands, including submerged lands, in one agency.

- **Fisheries.** This was, as usual, a busy year for fisheries issues, but relatively few of them saw a satisfactory conclusion. Much of this session focused on crisis management for the declining salmon fishery, for which legislators and many industry members placed a substantial amount of blame on the Department of Fish and Wildlife. Budget hearings for that agency were particularly contentious this session and several proposals for agency reorganization found enthusiastic supporters.

Perhaps the chief success story for fisheries this session was the passage of a $10 million program for watershed restoration in two important salmon habitats, the Grande Ronde and the Rogue. The implementing legislation for the program went through several incarnations before much of it became a budget note in the legislature's omnibus lottery appropriations bill, SB 81. As this is written the Water Resources Department has already begun hiring staff and fleshing out its restoration programs, with an eye to implementing quick and visible improvements to watershed conditions. The Department will also operate under three related mandates when carrying out the restoration program: HB 2215 encourages the formation of local watershed councils to direct watershed restoration projects - Water Resources has indicated that such councils will be the backbone of its own efforts and the principle recipients of grant funds under the restoration program; SB 1075 encourages the state to establish cooperative agreements with other state fisheries management agencies to participate in a regional salmon restoration effort - the Washington State legislature also passed a watershed restoration measure this year and may be a prime candidate for such an agreement, particularly near the Grand Ronde area; and SJR 42 encourages the Governor to seek ways in which to cooperate with other states in a regional salmon restoration effort. There have also been several developments at the federal level that give this effort some currency and some wider impact: President Clinton's new Forest Management Plan will include money targeted toward watershed restoration efforts, with Oregon slated to be one of the largest recipients of such funding; the Department of the Interior and the Department of Agriculture, as this is written, have released some of their recommendations for the PacFish program, most of which are regulatory, but some of which may include funding; and the Bureau of Land Management, though unofficially, has spearheaded a cooperative public-private initiative called Health to the Salmon, which hopes to raise money from private industry contributions to fund salmon restoration projects. Spurred on by a petition calling for the listing of Oregon coastal coho under the Endangered Species Act, salmon restoration has taken on a new urgency and may benefit from a serious fiscal commitment.

Other developments in fisheries included the establishment of a developmental fisheries board, which will study the potential other fish species have for development as commercially-viable harvest species. SB 81 provides about $85,000 in seed money for the board. That measure also provides about $125,000 for a study of critical salmon spawning habitat in Oregon streams and directs the Division of State Lands to put in place licensing requirements for gravel removal from those streams it deems critical to salmon rearing. The state will also study whether more state fisheries should establish limited-entry provisions to conserve dwindling stocks under the provisions of SB 938. Finally, the state will also investigate the feasibility of marking all hatchery reared fish by clipping the adipose fin under the provisions of HJM 11 and HJR 35. Both resolutions also require the state to pursue discussions with other coastal states, Indian tribes and the province of British Columbia to "desequester" or make available for wider use, the adipose clip.

Several fisheries-related measures did not survive the session, including a proposal to make Oregon's Dungeness crab fishery a limited-entry operation. SB 911, despite wide support from crab harvesters along the coast, died in the Senate Agriculture and Natural Resources Committee after Newport-area crab harvesters organized heavy opposition to it. SB 936 and 937, proposals to cap landing fees for salmon harvesting and to make ocean scallop permits freely transferable, respectively,
shared a similar fate in that committee.

Outside the legislature, the biggest news of the season might have been the U.S. Commerce Department's decision to reverse a Pacific whiting allocation recommendation by the Pacific Fishery Management Council that favored Oregon shore-based harvesters and processors. The 11th-hour decision, and a similar decision to overturn the PFMC recommendation on coastal coho two weeks later, prompted a tide of anger in the fishing community and led to three separate congressional committee hearings on the subject. The Coastal Caucus responded with two memorials of its own directed at the Commerce Department and Congress, which is holding hearings on the reauthorization of the Magnuson Fisheries Conservation and Management Act this fall. The memorials ask for a congressional investigation into the Commerce Department decision, which many charged came at the behest of Clinton Administration ally Tyson Foods, and for specific amendments to the Magnuson Act designed to curb Commerce's power to overturn PFMC recommendations. As this is written, no conclusive action has occurred on either front — further congressional hearings on the Magnuson Act will continue this fall, but no announced plans exist to launch an investigation into the Department's actions. A lawsuit aimed at reversing the Department's action on the coho allocation filed by the Pacific Coast Federation of Fishermen's Associations is still pending at this writing.

**Water.** By far the majority of the legislative measures with coastal impacts (though frequently these impacts were incidental) were those dealing with water. House and Senate Water committee members confronted a sprawling set of water measures this session, many seeking only incremental changes in existing law, but some seeking extensive restructuring of its use and management. The more controversial of these, HB 2155 and HB 2215, dealt with the allocation of conserved water and the establishment of local watershed councils. Both measures underwent substantial reworking during the course of legislative deliberations, but both emerged with at least some of their core provisions intact. HB 2155 saw an extensive battle waged over the allocation formula for water saved by installing efficiency measures for its transportation and use, with irrigators and other users favoring a 75 percent allocation to the user and a 25 percent allocation to the state, and environmentalists favoring an even split. Controversy erupted also over a proposal to dedicate the state's allocation toward instream flows, with lobbyists from Water for Life arguing that any dedications of that nature should go toward replacing existing instream water rights rather than further expanding such rights. HB 2215 was no less controversial in its first incarnation, which called for the formation of local watershed councils under the direction and leadership of the Strategic Water Management Group, a board composed of officials from nine state resource agencies. As reported out, after extensive work-group negotiations, the measure provides authority to encourage the formation of such councils and vests that authority in local government bodies. By contrast, relatively little controversy attended the expansion of the state's negotiating authority with Oregon's Native American tribes, many of whom hold extensive water rights that predate those of later settlers under federal law. A measure to permit the state to negotiate with federally recognized tribes in order to settle water rights rather than going through the expensive and lengthy litigation process that characterizes most water rights adjudication achieved nearly unanimous support. The measure was prompted in part by the often bitter adjudication process that occurred during the determination of water rights for the Klamath Indian Tribe.

Exemptions for stock watering ponds and similar small diversions for human and livestock consumption played an important role in deliberations about water this session. As many as seven different measures dealing with exemptions, temporary registrations, permitting or other ways to avoid going through the state's water use permit process made their way through both chambers. Most of these measures died, either by being consolidated with other similar measures or simply dropping by the wayside. Controversy also followed a proposal to give the Water Resources Department more authority to withdraw groundwater sources from use when drought conditions or overuse threaten the viability of aquifers and a proposal to incorporate destination resorts into the definition of "quasi-municipalities" for the purposes of state water basin plans.

Another measure introduced with fanfare and greeted with trepidation by water users was a proposal by Senate Democratic Majority Leader Dick Springer (D-Portland) that would have revoked the water rights of anyone caught tampering with a fish screening device attached to a water diversion. Bill proponents cited the high cost of state and federal salmon restoration efforts along the Columbia River and other state waterways, for which fish screening devices are a key component, and said that vandals and others bent on defeating the salmon protection measures need to be reminded of the importance of that protection. But opponents objected to the cancellation of water rights as an extreme reaction out of proportion to the offense and said inadvertent damage or displacement of fish screens during routine maintenance could put them at risk of losing their businesses or their livelihoods. The two chambers'
• Miscellaneous. Other developments of note included a proposal by the Division of State Lands to
forestry and endangered species. Although usually a contentious arena, forest issues reached a new
gustafson put together a kelp advisory committee earlier this year, which held hearings along the coast
begin leasing bull kelp beds off the south Oregon coast to prospective harvesters. Division head Gary
strategies, may have a substantial impact in this area before the new year.

A Coquille-area coalition of agricultural, timber and fishing interests watched developments in
restrictions on logging along streams and their widening of the area to which the restrictions would

The new rules attracted a great deal of controversy with their expansion of restrictions on logging along streams and their widening of the area to which the restrictions would apply. A Coquille-area coalition of agricultural, timber and fishing interests watched developments in this arena closely, having proposed to the Board a private, voluntary effort to achieve many of the same protection goals with the incentive of property tax breaks to attract the cooperation of landowners.

Other forestry issues of note included a decision by the state Board of Forestry to suspend the
drafting of a species recovery plan, HB 2927 passed out of the House with most of its core provisions intact, but died in the Senate Agriculture and Natural Resources Committee, which this session seemed to content itself with warding off most of the House committee's most energetic efforts to restructure state law.

The Department of Fish and Wildlife also underwent a sometimes caustic upbraiding this
session, which culminated in hearings on a bill to alter the department's organization and mission.
ODFW chief Randy Fisher had the uncomfortable job of responding to criticism from landowners, the hunting community, environmentalists and others who faulted the department for doing not enough or far too much to protect elk herds, migratory birds, fish species or various other critters from depletion. House Bill 2538, as eventually passed by both chambers, confined itself to reorganizing ODFW to reflect the board and department organization favored by most other state natural resources agencies rather than the previous arrangement, in which the department and the Fish and Wildlife Commission operated essentially as one indivisible entity, and settled for language directing the department to ensure a vaguely defined "compatibility" between its wildlife goals and pre-existing land uses.

Other forestry issues of note included a decision by the state Board of Forestry to suspend the
adoption of a set of draft riparian protection rules pending a study of their effectiveness in a series of
test sites around the state. The new rules attracted a great deal of controversy with their expansion of

• Forestry and endangered species. Although usually a contentious arena, forest issues reached a new plateau of controversy this year with the highly visible presence of the President and Vice-President in the April 2 Forest Summit in Portland. Despite pleas for some sort of reconciliation, neither side in the controversy showed much willingness to compromise its stance, a situation mirrored with perfect clarity in the legislature this session. The House Natural Resources Committee, in the hands of Republican legislators for the second session in a row, held several hearings on measures designed to amend the state's endangered species act to ease the burden on landowners and forest-industry interests resulting from the listing of the Northern Spotted Owl and the Marbled Murrelet and the imminent listing of a number of salmon species. Many of the same long-standing adversaries on this issue again locked horns in hearings marked by a display of icy civility and barely concealed hostility. The end product of seven initial bills addressing everything from specific listing decisions to the length of time permitted for the
drafting of a species recovery plan, HB 2927 passed out of the House with most of its core provisions intact, but died in the Senate Agriculture and Natural Resources Committee, which this session seemed to content itself with warding off most of the House committee's most energetic efforts to restructure state law.

One of the more visible casualties of this session's water agenda was a proposal to allow the state
local governments to impose regulations to protect the purity of groundwater sources near municipal areas. The proposal, dubbed "wellhead protection," died after a protracted battle between agricultural and other water user interests on one side and municipal water-supply agencies and environmentalists on the other. Water users charged that wellhead protection would create an unneeded new state bureaucracy and would have a severe impact on their businesses, while proponents cited the astronomical costs of groundwater remediation after an aquifer has been polluted and said that the costs of condemning and buying the land necessary to protect a municipal water source are higher than most small towns can afford. Both sides rejected a compromise that would educate water users about the need to protect wellheads, agreeing that such a bill would be redundant and unproductive. The controversy arose in part from a condemnation battle over the municipal water source for the City of McMinnville.

But the water issue with the highest visibility this session was the substantial backlog of water
proposed to the Board a private, voluntary effort to achieve many of the same protection goals with the incentive of property tax breaks to attract the cooperation of landowners. Developments in the federal arena, including the release of the new PacFish goals and implementation strategies, may have a substantial impact in this area before the new year.

• Miscellaneous. Other developments of note included a proposal by the Division of State Lands to
begin leasing bull kelp beds off the south Oregon coast to prospective harvesters. Division head Gary
Gustafson put together a kelp advisory committee earlier this year, which held hearings along the coast
and made a series of recommendations in a June 15 report to the division. Leasing could commence as early as this fall if the Division can complete preparatory work on the proposal. The advisory committee concluded that kelp harvesting has the potential to become an important Oregon industry but that sufficient protection for the resource must be incorporated into any leasing program. Gustafson's decision on the program was to allow the leasing of a few test plots to interested harvesters, with a period of evaluation designed to examine the effects of the harvest on the kelp resource in comparison with adjacent plots left untouched.

One of the principle obstacles to beginning a leasing program was the existence in state law of a minimum harvest requirement for any leases granted. The provision called for the harvest of 1,000 metric tons of kelp each year of the lease and directed the Division to terminate the leases of harvesters unable to meet this requirement. The Division asked for and received a repeal of this language this session, enabling it to proceed with the leases immediately following session. The Division's only previous attempt to begin a leasing program ended in failure two years ago when the harvest contractor could not meet the 1,000 ton harvest requirement during all four years of the lease term.

One final measure of interest to coastal residents was the passage of a measure designed to remove the fee income necessary to run diking districts from the property-tax limitation language of Measure 5. Districts along the Columbia River and several coastal streams faced a revenue shortfall that would have caused them to abandon maintenance of the expensive flood-control facilities, putting millions of dollars of streamside property at risk. A threatened cancellation of flood insurance and Army Corps of Engineers flood control project funding prompted the legislature to permit diking districts to incorporate under a different chapter of the Oregon statutes so as to avoid designation as a local district subject to the Measure 5 cap. An Oregon Supreme Court decision upholding Measure 5 restrictions in a case involving a sewer district in the city of Roseburg raised speculation that diking districts would be treated similarly despite the fact that they generate their income from user fees for specific projects rather than from more broad-based tax assessments.
SHELLFISH PROGRAMS

February 1, 1993

Oyster growers see problems with program transfer to DSL

 Worried about potential disruptions to the supportive relationship they have cultivated with the state Department of Agriculture, coastal oyster growers testified Jan. 29 before the Senate Agriculture and Natural Resources Committee against Senate Bill 6, which proposes to transfer regulatory authority over shellfish production from Agriculture to the Division of State Lands (DSL).

The growers, who two weeks ago formed the Oregon Shellfish Producers, their first trade association, said their already fragile industry could suffer irreparable damage if the expertise and familiarity with industry concerns that now characterizes the agriculture department were lost in the move to an agency with little experience with shellfish production. "We see ourselves as farmers, growing a crop," grower Lee Hansen said.

But committee members, led by Sen. Jim Bunn (R-McMinnville) and Sen. Joyce Cohen (D-Lake Oswego), questioned the growers' opposition to the measure, asking them to identify what specific expertise they might lose in the transfer to DSL and whether they feared that DSL might raise lease fees for the state submerged lands they use for oyster production because of the agency's mandate to maximize revenue from state land leases.

Both the Department of Agriculture and DSL support the measure on the ground of administrative efficiency, contending that oyster cultivation is the only remaining program involving state submerged lands that DSL does not administer. The agencies also noted that any remaining revenue in the revolving fund used to administer the program will go into the state's school fund.

A work session will be scheduled later.

February 15, 1993

DSL offers compromise on shellfish program transfer

Reacting to increasing opposition from growers and coastal legislators to a measure that would transfer leasing authority over oyster cultivation to the Division of State Lands (DSL), Director Gary Gustafson proposed Friday that DSL study the mariculture industry over the 1993-1995 interim with an eye toward drafting comprehensive legislation to govern all mariculture authorizations on state tidal and submerged lands.

Gustafson presented the Senate Agriculture and Natural Resources committee during a hearing on Senate Bill 6 with a brief letter of agreement co-signed by the chair of the Oregon Shellfish Industry Steering Committee that called for DSL to cooperate with growers and other interests in a work group that would consider the consolidation of existing Oregon law related to mariculture. The letter also charged the work group with responsibility for promoting management efficiency, protecting the environment and maintaining a healthy mariculture industry. Gustafson pledged that DSL would work with the Department of Agriculture, which now has jurisdiction over oyster cultivation, and with any other state department with interests in the area.

But Gustafson's offer did not appease bill opponents, including Sen. Joan Dukes (D-Svensen), who told the committee that SB 6 "is a particularly unnecessary and bad move." Dukes said the shellfish issue goes beyond the question of who has jurisdiction over submerged lands leasing and that she would prefer to see all state agency programs related to shellfish cultivation, including the water quality testing program now housed in the Health Division, transferred to Agriculture.

"DSL has no experience in this area," Dukes said. "When the mission is to protect the public interest and support a small industry, all functions should be under one umbrella."

Scattering responsibility for mariculture regulation among state agencies is particularly harmful when one agency proposes a fee increase for growers, Dukes said. Where an agency with overall responsibility for the program could properly weigh the benefits in increased services against the potential damage to the industry before raising fees, Dukes explained, uncoordinated agency management might simply do harm.

Sen. Gordon Smith (R-Pendleton), however, echoed concerns expressed by Sen. Joyce Cohen (D-Lake Oswego) in a Jan. 29 hearing on the measure, asking if bill opponents feared that DSL might raise lease fees for submerged lands in response to the perception that growers have enjoyed below-market lease rates on those lands for several years.

Sen. Dick Springer (D-Portland) said he thought that Gustafson's proposal represented a good compromise and that the committee needed to address the larger questions related to the use of the state's submerged lands.

Committee chair Sen. Ron Cease (D-Portland) closed the hearing by asking Gustafson to consult with Agriculture and the growers and return to the committee with new bill language in two to three weeks.
Shellfish testing program still in limbo after hearings

April 12, 1993

Two proposals that seek to establish a stable, fee-based funding source for a shellfish toxin testing program slated for elimination from the Health Division's budget face an uncertain future after representatives from commercial shellfish growers and businesses that rent equipment to recreational harvesters opposed the measures in hearings last week.

The measures, House Bill 2331 and Senate Bill 632, would each impose license fees on recreational harvesters and commercial growers to pay for estimated program costs of $552,000 per biennium. The House version would charge residents $5 and non-residents $10 for an annual license for the recreational harvest of clams, crabs, molluscs and other shellfish, while proposed amendments to the Senate version would charge $3 and $6, respectively. Both bills would also impose a fee schedule on commercial shellfish growers, shippers and harvesters, with charges that vary depending on which activity the business engages in and, in proposed amendments to SB 632, on the size of the operation.

HB 2331

Following plaudits for the testing program's importance and effectiveness from Health Division and Department of Fish and Wildlife (ODFW) representatives at a House Water Subcommittee hearing Tuesday, Shirley and Janice Laviolette, owners of a Nehalem Bay marina which rents crabbing equipment to recreational harvesters, objected in sharply worded testimony to the imposition of a recreational harvest fee they said would shut their business down.

The marina owners told the committee that they depended on recreational crabbing to ride them over in the face of steadily declining charters and equipment rentals for fin-fishing. A fee for crabbing, Janice Laviolette said, would hit marina owners with a "double whammy" and counter state efforts to develop a viable tourist industry on the Oregon coast. Regular out-of-state customers have told her that such a fee would be "the last straw" on top of overburdening user fees and room taxes, she added.

"If fishing is going to curtail dramatically, then there shouldn't be a need for so many employees at the ODFW," Janice Laviolette said. "Don't let this become just another tax spent frivolously to keep government officials employed."

The Laviolettes' testimony prompted a rejoinder from Rep. Tim Josi (D-Bay City), who told them that an interim legislative committee had already explored many of the cost-cutting and funding options they proposed and had settled on a license fee as the only practical funding method for the program. If marina owners agreed that the testing program is necessary, Rep. Josi said, they should cooperate in finding ways to fund it.

"Am I in favor of 2331? Probably not," he said. "But I will vote for it ... Ways and Means is looking for general fund money, and if they find it I'd be delighted, but until then [the program] may need some [other] tools."

Tillamook County Commissioner Jerry Dove agreed, telling committee members in testimony as pointed as the Laviolettes' that he resented seeing recreational clammers enjoying free a resource he supports with his tax dollars, especially since he has paid license fees for hunting and fishing since his teens.

"My feeling is that if you're going to play, you've got to be willing to pay," Dove said. "Why should the taxpayers pay to have someone else play?"

Dove added that imposing a fee would discourage harvesters from wasting shellfish. He said he has seen roadways and beaches strewn with whole, uncooked crab carcasses left by careless recreational harvesters who took more than they could eat. Anytime people have free access to a resource, they will take too much of it, Dove said, whereas putting a price on the resource may make them think about how they use it. Dove also lauded the testing program, estimating the cost to the Tillamook County economy from a program shutdown in the millions of dollars.

Shellfish Industry Steering Committee representative Paul Hanneman agreed on the need for the testing program, which implements federal Food and Drug Administration (FDA) rules governing shellfish exporting and sales, but said the fee aimed at commercial shellfish growers would add a tremendous burden to operations already staggering from fees they must pay to lease state submerged lands and to receive marketing and extension services from the Department of Agriculture. He urged the committee to seek alternative funding sources, including a combination of user fees, general fund money, federal funds and other revenues.

Water Subcommittee chair Rep. Chuck Norris (R-Hermiston) delegated the task of finding an acceptable compromise on the measure to Rep. Josi, but did not indicate when, or if, the bill would return to the committee for another hearing.

SB 632

License fee proponents and opponents split in much the same way at a Senate Agriculture and Natural Resources Committee hearing on SB 632 the following morning, but a provision in the Senate bill that would transfer the testing program from the Health Division to the Department of Agriculture pushed the division—a staunch supporter of HB 2331 — into the opposing camp and led ODFW to take a cautiously neutral stance.

Sen. Joan Dukes (D-Svensen), the bill's sponsor, told committee members that while she believed the Health Division had done a creditable job with the shellfish testing program, cutbacks in the state's budget have forced the division to balance the need for the testing program against other pressing health needs. In such an equation, Sen. Dukes said, the testing program will inevitably lose when the alternative is to cut back programs that benefit sick children. But even if the Health Division received a stable source of fee money to pay for program costs, Sen. Dukes said, it would still make sense to consolidate all regulatory authority over shellfish cultivation and harvesting in one agency.

The Department of Agriculture, which now has responsibility for leasing state lands to shellfish cultivators and already handles some phases of the division's testing program, is the logical candidate, Sen. Dukes said.

But Health Division Director Michael Skeels said moving the program would be expensive and inefficient, and would mean abandoning the public-health orientation the program now has under the division's
Shellfish testing program fights for its life as legislative chambers spar over funding

June 14, 1993

Differences in House and Senate versions of a funding package for the Health Division's shellfish testing program may doom it to extinction if the two chambers can agree on a compromise measure that will tide it over until it can secure a more stable source of revenue, according to observers in both chambers.

The Senate measure, SB 632, relies on a fee assessed against commercial growers and recreational harvesters to raise revenue sufficient to fund current testing operations, which cost about $552,000 per biennium. The Senate measure has already passed out of the Senate Agriculture and Natural Resources Committee and will go before the full Senate Ways and Means Committee this Friday, where it will likely face little opposition.

The bill also proposes to transfer the entire program to the Department of Agriculture, a provision that held it up for several weeks while bill proponents negotiated for support from coastal county health departments who feared they would no longer have a place in the program when the Department of Agriculture assumes administrative responsibility for it. While opposition to the transfer has waned, questions about the relative costs of the testing program borne by recreational and commercial harvesters remain, as do questions about the actual amount of revenue the fee base will raise.

But even if the bill clears the Senate, it may run into fierce opposition in the House, where a similar measure that sought to raise shellfish license fees died after only a single hearing in the House Water Subcommittee. Rep. Tim Josi told Coastal Caucus members at a meeting in May that the House leadership has not relented in its opposition to bills that seek to raise revenue through user fees.

"My feeling is that any fee bill that comes across from the Senate is dead on arrival on this side," Rep. Josi said. "The House leadership has made its position very clear."

For its part, the House has pledged sufficient revenue from the state's general fund to fully support the program for the current biennium. The House measure retains the funds in the Health Division budget at the expense of the Division's teen pregnancy prevention program, the sort of compromise SB 632 proponents say led to the Division's slating the testing program for elimination twice in previous budgets. Moreover, general fund support this biennium does not guarantee general fund support in coming years, Senate bill proponents contend.

Senate observers, including Sen. Joan Dukes (D-Svensen), who sits on the Senate Ways and Means Committee and who is the principle sponsor of SB 632, expect that a House bill proposing general fund support for the testing program will get as much of a jaundiced eye in the Senate as that given fee bills in the House. The Senate has already
Shellfish testing program wins reprieve with House general fund appropriation

The House Appropriations committee revived the state's moribund shellfish testing program with a last-minute infusion of $500,000 in general fund money for the next biennium after the Department of Agriculture, which still leaves questions about its chances for long-term survival. The committee's action, however, left a two-tiered rate increase for the testing program against the need for funding provision in a Senate bill that would have paid for the program with funds raised from a commercial and recreational shellfish license fee.

The Senate bill, SB 632, had proposed a recreational license fee of $3 per year for residents and $6 for non-residents and sought to increase license fees on commercial shellfish producers to meet the $552,000 biennial costs of testing programs designed to detect paralytic shellfish poisoning (PSP) and domoic acid contamination, primarily in clams and mussels. But fierce opposition at a July 20 hearing from Janice and Shirley Laviolette, who own a Nehalem Bay marina, and Rhonda Hamstreet, who operates a marina in Newport, convinced House Natural Resources Committee members, after a 10-minute deliberation the following day, to strip the recreational fee out of the measure. The committee's action, however, left a two-tiered rate increase for commercial growers in place.

The committee also left intact a provision in the bill that transferred the testing program from the Health Division to the Department of Agriculture. Billsponsor Sen. Joan Dukes (D-Sweden) said she believed the transfer would better the program's chances for long-term survival because the Department of Agriculture would not have to balance the need for the testing program against the need for important public health programs. That required balancing forced the Health Division to zero-fund the program in its last two budgets, Sen. Dukes said.

But this latest resuscitation of the program still leaves questions about its future in the face of anticipated reductions in agency budgets for the 1995-97 biennium unanswered. Sen. Dukes noted SB 632's fee structure was intended to provide a stable funding source for the program that would be immune to agency budget cuts, she added.

Marina owners, however, balked at the recreational fee, which they said would put them out of business. Most of her income, Shirley Laviolette told House Natural Resources Committee members, comes from rental fees for crab rings and similar devices — by including crabs in the definition of shellfish, the state would unfairly penalize marina owners and give them no benefits in return. Department of Health officials assured her that crab meat does not suffer PSP or domoic acid contamination, Laviolette said, so the program does not affect her operations the same way or another.

Laviolette added that commercial growers, who require the type of testing the program provides in order to sell clams, oysters and mussels in interstate commerce, should bear most of the burden when user groups pay for the tests. Alternatively, dairy farmers and others whose operations contribute to the contamination of bays and estuaries where shellfish grow should be assessed the costs of detecting any contamination that results from water pollution, she said.

Up until the last two weeks of the legislative session, prospects for continuing the program past this biennium appeared dim. Both chambers had passed the Health Division and Department of Agriculture budgets with no general fund money set aside for shellfish testing. The House Appropriations committee delayed action on SB 632 until July 31, ultimately passing the version recommended by the Natural Resources Committee and adding general fund money taken from the “ending balance,” a sum legislators normally set aside to fund unforeseen or emergency expenses.
Fish and Wildlife sees bleak prospects for salmon harvest

A severe depression in wild stocks of coastal coho salmon and declining abundances of other salmon species may force substantial cutbacks in season length and catch quota for both commercial and recreational fishermen this year, Department of Fish and Wildlife (ODFW) biologists told salmon harvesters at a meeting Tuesday.

Commercial harvesters may be facing a zero catch quota on all coho south of Cape Falcon this season, while sport fishermen may have to content themselves with a total coho catch of between 80,000 and 100,000 fish — half of last year’s quota, biologists said. Other limited opportunities may exist for commercial fishing in the area between Florence and Cape Arago and in the Klamath Management Zone (KMZ) in the late summer and early fall, they added.

The somber cast to the annual Oregon Coastal Zone Management Association Salmon Users Group meeting in Newport last week was apparent in ODFW’s most optimistic predictions for this season, which called for a slightly higher commercial catch quota on chinook — slightly higher, that is, than last year’s season, which saw only 50 percent of the average historic harvest. Even this quota may change if it endangers the threatened Snake River fall chinook or if estimates of Klamath and California chinook stocks turn out to be inaccurate, biologists warned.

Concern for the accuracy of the estimates that serve as the basis for the quotas dominated much of the discussion at the meeting, as biologists noted that sampling in coastal streams revealed lower numbers of returning coho than standard index counts predicted. Preliminary estimates of abundance set the likely number of wild coho between 184,000 and 265,000, but the sampling results convinced ODFW to use the lower estimate in setting quotas, agency representative Burnie Bohn said. Together with hatchery-bred coho numbering about 484,000 and additions from Salmon and Trout Enhancement Program and California stocks, the total number of coho off the Oregon coast is probably about 677,000, or about 28,000 fewer fish than last season, Bohn said.

ODFW biologist Don McIsaac said several proposals have emerged to ensure that harvesters catch relatively fewer wild coho, including a proposal to mark all hatchery raised coho by clipping their adipose fin. This proposal, however, could disrupt hatchery management efforts all along the west coast, which rely on that mark to identify fish tagged for creel surveys, McIsaac said.

The meeting served as a prelude to this week’s meeting of the Pacific Fishery Management Council (PFMC) in San Francisco, where preliminary fishing quotas for the three west coast states will be decided. Final quotas will await an April 5-9 PFMC meeting in Portland. Oregon biologists anticipate that the PFMC might further reduce the harvest quota they set for coho out of concern for wild stocks.

In other developments, Bohn noted that Governor Barbara Roberts has submitted a $10 million budget request to the legislature for salmon restoration. The restoration program will distribute funds to nine state agencies with jurisdiction over activities in salmon habitat and will focus its initial efforts on two pilot watersheds: the Grande Ronde in the Wallowa and Union county area of eastern Oregon and the Coquille and Rogue River basins along the south coast.

As part of its role in the project, ODFW has begun drafting a “Blueprint for Restoration,” which will consist of an 18-month-long action plan for the agency, which has overall coordination responsibilities for the restoration project, and will include provisions for cooperative efforts with California and Washington.

By way of contrast, cooperative efforts between Canadian and U.S. fish managers appear distant, as negotiators from both sides remain deadlocked in treaty talks that will allocate the coho harvest between the nations. Canadian officials have insisted on an allocation of 1.8 million coho, while U.S. officials want a cutback to 1.3 million.
March 15, 1993

**Fishery groups split over salmon mass marking plan**

A pair of resolutions calling on federal, state, and provincial fisheries management agencies along the West Coast to adopt adipose fin clipping to mark all hatchery-reared salmon divided fishing advocacy groups at a House Water Subcommittee hearing Thursday.

The resolutions, House Joint Resolution 35 and House Joint Memorial 11, together ask the governors of Oregon, Washington, Alaska, California and Idaho, the premier of British Columbia and the directors of the Pacific States Marine Fisheries Commission and the National Marine Fisheries Service to "de-sequester" the adipose fin clip for use in marking hatchery fish. The fin clip now is used to track only those fish embedded with a coded wire tag that West Coast fisheries management agencies use to gather management data on hatchery fish, the resolutions say.

Both the Association of Northwest Steelheaders (ANS) and Oregon Trout, in a written submission, supported fin clip marking as an effective method for directing commercial harvesting and sport fishing away from wild — and frequently endangered — salmon stocks.

"Unless Oregon wants a total closure of all mixed stock fisheries, the marking of hatchery stocks and requiring the release of unmarked fish is the only sure method available to protect and restore depressed stocks of wild fish," Oregon Trout representative Jim Myron said.

ANS representative Jesse VanderZanden noting that only six sockeye salmon had returned to the Snake River last year, asked the committee to find a solution that would return to the Snake River last year, asking in favor of the measure, citing the Pacific Fishery Management Council's (PFMC) decision last week in San Francisco to severely curtail sport and commercial harvest of coho as a portent of future management decisions.

"PFMC will crank those numbers down until we can distinguish hatchery fish from wild ones," Rep. McTeague said.

But Salmon for All representative Bob Eaton called the marking plan "premature" and said the measure would force harvesters and sport fishers to rely on hatchery-raised fish with no guarantee that the state will adequately fund the necessary hatchery programs. Relying on fish identification also lets "those folks who cause ... habitat loss off the hook," Eaton said, when wild fish stocks need more protection from habitat loss than from harvest. A bill with an intent similar to that embodied in these measures died in committee in the Washington legislature earlier this year, Eaton said, in part because of these same concerns.

Eaton added that while Salmon for All supports efforts to take harvest pressure off of wild fish, the fin clip program should be only part of a regional policy for salmon recovery that aims at restoring salmon runs to harvestable levels. These measures, by contrast, may lead ODFW and other management agencies to focus solely on preserving wild salmon runs just healthy enough to keep the species from extinction, Eaton said, and will lock the state into a costly program for identifying fish that will compete with dollars allocated for hatchery programs.

"It's almost a death spiral we're moving into with this bill," Eaton said.

**Marking program costs**

Department of Fish and Wildlife (ODFW) representative Kay Brown, while indicating support for both measures, acknowledged that reductions in hatchery production might be required to fund the cost of mass adipose fin marking. Brown estimated that the marking program by itself would cost the state an additional $2.4 million per year, a figure that would jump to $10 million per year if the state tried to include coded wire tags in all marked fish. Most of these costs would not kick in before 1995, Brown said, and ODFW would probably seek additional federal funding to implement part of the program.

Another consequence of a mass marking program would be additional mortality among hatchery smolts, Brown said, though adipose clipping "has been proven to cause the least mortality." ODFW already marks all hatchery-bred steelhead and close to 20 percent of hatchery coho and chinook salmon, Brown said.

Dale Pearson, Rep. McTeague's legislative assistant, told committee members that ODFW's request to the Mark Committee of the Pacific States Marine Fisheries Commission asking to de-sequester the adipose clip founder primarily because of bureaucratic inertia.

"The primary reason for rejecting the proposal was that [it] would set a precedent for ... other stocks with special management needs and thus eventually compromise the coded wire tag program," Pearson said. "That's bureaucratic for 'We aren't going to change, but we can't think of a really good reason why not.'

Pearson said that adequate alternatives exist for marking fish with embedded coded wire tags and that fisheries management agencies must "recognize that reversing the continuing decline of wild stocks is far more important than keeping precise and incontrovertible records that chronicle that decline."

Dan TenUick, power manager for Reynolds Metals Co., said Reynolds supported the mass marking measures as "critical first steps" in a program to identify and protect wild fish from harvest.

Committee chair Rep. Chuck Norris (R-Hermiston) held the bill over pending a conference between Salmon for All representatives and bill proponents.
Valley legislators — Sen. Bill Dwyer (D-Ducas, an irony resulting from procedural quirks in the hearing process saw two Willamette Senate unanimously last week. Although the measures originated in the Coastal Caucus and Senate Joint Memorial 21, passed the measures in its decision and also calls for a substitute without council input.

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

In letters sent last month to Commerce Secretary Ron Brown, President Bill Clinton, White House staff aides and Oregon congressional delegation members, the Caucus called for a General Accounting Office investigation into the groundfish management decision process governed by the Magnuson Fishery Conservation and Management Act (FCMA) and the PFMC’s regional Fish Management Plan. The letters also call on Congress to hold field hearings in Oregon to review the Commerce Department’s decision-making process and to investigate the impact the department’s decision has had on the economies of coastal Oregon communities.

The Senate this week will also introduce SJM 21, a joint memorial sponsored by Sens. Bill Bradbury (D-Bandon), Stan Bunn (R-Newberg), Joan Dukes (D-Svensen) and Mae Yih (D-Albany) which asks Congress to press the department to explain the basis for its whiting decision and also calls for a GAO investigation and field hearings into the matter. Further actions in the Caucus may include drafting letters and a joint memorial to support amending the FCMA during its reauthorization hearings in Congress this month to narrow the Commerce secretary’s discretion to overturn the recommendations of its subordinate agencies. The U.S. House Committee on Merchant Marine and Fisheries has held two hearings on reauthorization already and has scheduled a third hearing for May 26 in Washington, D.C.

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

But the PFMC, noting the undeniably greater efficiency of the factory-trawler fleet, had recommended allocating the greater part of the catch to hard-pressed coastal processors because, although slower to exploit the fishery, shore-based harvesters tended to use more of what they caught, including fish species they did not set out to catch. Commerce, however, in its decision saw no justification for giving shore-based processors rights to harvest more whiting than they had historically been able to use.

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

National Marine Fisheries Service (NMFS) reports on the distribution of the whiting catch, which indicated that at-sea processing ships averaged a catch of more than 4,000 metric tons per fishing day while shore-based processors averaged 36 metric tons per day, may also have influenced the department’s decision. The decision to partially reallocate the harvest, however, still leaves questions about the role of the PFMC process and about whether next or succeeding seasons’ allocations would also favor factory trawler efficiency with an open allocation.

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

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

Two Senate joint memorials that aim at forestalling a repetition of U.S. Commerce Department decisions earlier this year on fisheries allocations that punished Oregon coast fishing interests will go before the House Natural Resources Committee early next week.

The measures, Senate Joint Memorial 5 and Senate Joint Memorial 21, passed the Senate unanimously last week. Although the measures originated in the Coastal Caucus, an irony resulting from procedural quirks in the hearing process saw two Willamette Valley legislators — Sen. Bill Dwyer (D-Springfield) and Sen. Mae Yih (D-Albany) carry the memorials on the Senate floor.

SJM 5 calls upon Congress to amend the Magnuson Fisheries Conservation and Management Act (FCMA) to limit the Secretary of Commerce’s ability to overturn the recommendations of the eight regional fishery management councils his agency oversees. Suggested FCMA amendments in the measure would, if adopted, require the Secretary to approve or disapprove by a specific date any “regulatory amendment” made by a management council to set allocations within a fishery and, if he or she disapproves, to return the regulatory amendment to the council along with specific reasons for the disapproval.

Under other suggested changes to the FCMA, management councils may also revise and re-submit their recommendations to the Secretary after a disapproval. A final proposed change would require the Secretary to base his or her decision to approve or disapprove an amendment to a Fishery Management Plan — the basic document that guides federal fishing policy for each commercially caught species in each region — solely on the record developed before a fishery management council.

The Pacific Fishery Management Council (PFMC) won the backing of the other
Salmon restoration measure migrates through Senate

The House Natural Resources Committee will consider a Senate proposal that dedicates $10 million from the state lottery fund to restore watersheds that serve as salmon habitat in a Thursday, June 24 work session after the measure cleared the Senate earlier this month with a 29-0 vote.

The unanimous Senate vote came after two members who had opposed the measure in hearings before the Senate Ways and Means Committee, Sen. Gene Timms (R-Burns) and Sen. Mae Yih (D-Albany) decided to support it when bill sponsor Sen. Bill Bradbury (D-Bandon) assured them that it contained no regulatory provisions. The sole member not voting on the measure, Sen. Stan Bunn (R-Newberg), missed the vote while on legislative business in San Francisco.

Senate Bill 1112 requires the Water Resources Department to consult with the Department of Fish and Wildlife (ODFW) in setting restoration goals and developing methods for returning depressed salmon stocks back to harvestable levels. The bill serves as enabling legislation for the Governor's Watershed Health Benchmark Proposal, which itself resulted from stream enhancement pilot projects developed by the Strategic Water Management Group. The centerpiece of the legislation assigns Water Resources the responsibility for coordinating a grant program to local agencies and non-profit groups to implement watershed restoration efforts.

Amendments adopted in a hearing before the Senate Agriculture and Natural Resources Committee April 21 linked the Water Resources' grant-making function to House Bill 2215, which provides for the creation of local watershed councils to govern management and restoration policies for watershed areas. That bill has passed the House and has had two hearings before the Senate Water Policy Committee.

The Agriculture committee at the April 21 hearing also bowed to concerns expressed by Oregon Trout representatives Jim Myron and David Moskowitz, amending the bill to widen its application to all salmonid fish, to provide for a specific consultative function for ODFW and the Restoration and Enhancement Board and to require Water Resources to consider projects that protect watersheds from further degradation in common with projects that restore damaged watersheds. Myron testified for the bill at the later Ways and Means Committee hearing.

At the subsequent hearing, the committee removed the bill's appropriation language and placed it in Senate Bill 755, the Senate's omnibus lottery appropriations bill. The committee also placed spending limitations for the measure in the Water Resource Department's budget document. SB 755 passed the Senate June 1 and will have a hearing this week in the House Appropriations-Resources committee.

The House appropriations committee, meanwhile, itself held a hearing on the governor's original budget request to fund the Watershed Health Benchmark Proposal, which is part of House Bill 5050, that chamber's omnibus lottery appropriations measure. A final determination on the funding level for the restoration program will await a work session that includes other requests for lottery funds for the coming biennium, committee chair Rep. Tony Van Vliet (R-Corvallis) said. Unlike SB 1112, the House appropriations measure contains no agency coordinating function or specific legislative policy direction.

The House appropriations committee hearing on HB 5050 also provided the first sign that SB 1112, despite its easy passage in the Senate, could face some difficulty in the House, where some members have criticized a Water Resources Department proposal drafted to implement its provisions. At that hearing former Rep. Paul Hanneman told committee members that he hoped the department's proposal would not serve as an excuse for state agencies to go out and conduct more watershed studies, rather than taking action.

"Most of the data you need for these projects is already sitting on the shelf," Hanneman said. "To make this program work you have to show some results from projects within the biennium or you're going to risk getting criticized for wasting lottery money."

The proposal foresees the creation of a supervisory task force of state agency personnel divided into three teams: one field team in each of two pilot watershed areas and a "core team" to coordinate the overall program. The teams would develop criteria for evaluating restoration project proposals, serve as liaisons among federal, state, local and private agencies and officials, and provide needed data from state geographic information databases, biological surveys and other sources, the proposal states.

Rep. Dave McTeague (D-Milwaukie) echoed Hanneman's concerns at a May 27 Coastal Caucus meeting, noting that House members have questioned whether Water Resources and the eight other state agencies charged with administering the program needed the full amount of money set aside for their expenses in SB 1112.

The bill caps state agency spending at 35 percent of the final program appropriation, and designates a further 40 percent of the total for grants and contracts to local agencies, but this ratio might not give enough money to actual projects, Rep. McTeague said. Concerns have also arisen over Water Resources' apparent lack of discretion in dispensing the funds to state agencies, which have firm funding levels for their various projects written into the proposal, he added.

"These people have got to show that there will be off-the-shelf programs ready to go," Rep. McTeague said. "This shouldn't be an excuse to feed a bunch of bureaucrats."

But Anne Squier, the governor's natural resources policy advisor, told Rep. McTeague and members of the Caucus at a meeting the following week that agency directors had always intended that the restoration project would show quick and measurable results.

"The agencies [had] an underlying recognition that if this is going to work and be successful it will have to have some measurable outcomes in a short time frame that show us that we're moving in the right direction," Squier said. "The [proposal] has not shown the urgency that we feel about this, but we do understand that we need to hit the ground as soon as we can."

Water Resources Department Director Martha Pagel agreed, noting that she may seek amendments to the bill's preamble that would refer to specific measures that the department could take to implement watershed recovery and that would require the establishment of a legislative or citizen's oversight board to evaluate project implementation.

"Our biggest problem has been in communicating our intent for this project," Pagel said. "We're in a bit of a dilemma because legislators want to know where we're going —continued next page
June 14, 1993

Questions about watershed proposal surface in House

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and where we want to be, but it's not going to be the department which will be laying out a lot of the individual projects."

Myron and Pacific Rivers Council representative Louise Bilheimer, however, cautioned against the department specifying particular projects in the bill itself. Since the science of watershed restoration is still uncertain, it would be best not to determine in advance that one set of projects will have a better cost-benefit ratio than another set, Bilheimer said. She added that the department would do better to focus its efforts on changing land use management practices in damaged watershed areas to take advantage of their natural restorative capabilities.

"We've found in the Grande Ronde that when you talk to folks one-on-one you find some very innovative ideas," Bilheimer said.

"We need to show folks that we aren't talking about putting them out of business, but are just trying to change their practices to their benefit and to the benefit of the environment."

Myron added that Oregon Trout views SB 1112's mandate to coordinate agency action on a watershed basis as the single biggest benefit in the bill, and that he would oppose any amendments that would remove from the bill any funding or authority that would aid this process.

"Local folks are frustrated with having to work with 14 different state agencies in order to get anything done," Bilheimer said. "We also view this as critical to the bill."

Opportunities for the regional coordination of restoration efforts may also be closer to reality, Sen. Bradbury told Caucus members. A San Francisco meeting of the Pacific Fisheries Legislative Task Force discussed Oregon's planned restoration efforts and may focus on the topic at a future meeting, he said. In addition to SB 1112, the Oregon Senate late in May passed SB 1075, a measure authorizing agreements between state fisheries management agencies for regional restoration efforts and, eventually, interstate compacts governing state participation in those efforts.

The Washington State legislature also passed a measure that provides approximately $6.5 million to watershed restoration projects that employ displaced timber workers and "at-risk" teenagers. Washington's program has a restoration focus similar to its Oregon counterpart and may serve as a means for cooperation between the two states in watershed areas, such as the Grande Ronde, that overlap territorial boundaries.

Witnesses tell how whiting decision affected Oregon coast

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seven fishery management councils at a recent San Francisco meeting of the council chairs for a resolution directed at Congress and containing language similar to that of SJM 5. PFMC Executive Director Larry Six later appeared before the Senate Water Policy Committee to endorse the memorial along with University of Oregon law professor Richard Hildreth, a co-director of the law school's Ocean and Coastal Law Center.

In his floor speech Sen. Dwyer, who carried the measure out of the Water Policy Committee he chairs, noted that the Magnuson Act process is supposed to vest the councils with responsibility for taking testimony, weighing the costs and benefits to the fishery and the industry and making an allocation decision, but that the Commerce Department essentially ignored that process in its Pacific whiting allocation decision earlier this year.

"This sort of high-handed and arbitrary decision making tells us in the coastal states and those in the coastal fishing industries that our opinions just don't matter," Sen. Dwyer said. "We can participate in the regional process Congress set up to take testimony ... but the Commerce Department can simply ignore this whole process and substitute its own findings. This has to stop."

Legislative ire over the whiting decision also fueled the passage of SJM 21, which takes aim squarely at the Commerce Department finding, calling for a General Accounting Office investigation into the Department's decision making methods, requesting a field hearing on the issue in Oregon by the U.S. House Merchant Marine and Fisheries Committee and asking President Clinton and Congress to demand that the Department produce an adequate explanation for overturning the PFMC recommendation.

Sen. Yih noted in her floor speech that the decision hurt more than just those engaged directly in the fishing industry. She cited as an example a whiting processing plant in her district that has had to cut back worker shifts and shorten its processing season because of reductions in available whiting carcasses.

"The people of Oregon deserve to know why this had to be," Sen. Yih said. "When the fishing industry, processors, scientists, economists and coastal communities that depend on whiting hear the PFMC say the harvest this year will be 105,000 metric tons, but the Commerce Department then says it will be only 30,000 tons, the people of Oregon deserve to know why."

Oregon congressional delegation member Rep. Mike Kopetski told a Newport audience during a June 4 field hearing of the U.S. House Subcommittee on Regulation, Business Opportunities and Technology called by fellow Oregon Rep. Ron Wyden to focus on the whiting decision that he intended to pursue the issue, which he said was "political and smells like bad fish."

Rep. Hedy Rijken (D-Newport) appeared before the panel in her home district, testifying that the whiting decision might have idled up to 800 workers and cost the Newport area — which hosts more than half of the state's whiting fleet — about $20 million, both in direct receipts from fishing and associated losses to the economy. The decision may also put added pressure on other fisheries in the area as whiting harvesters try to recoup investments made in anticipation of the PFMC's allocation.

"[N]ew processing capability added this year that would have allowed local industry to take advantage of the fruits of their labor will go to waste because the bulk of the whiting harvest [went] to a fleet ... that had no hand in the painstaking development effort that brought the whiting industry to economic viability," Rep. Rijken said. "The worst part about this decision ... is the feeling of betrayal."
Salmon restoration gets lottery ticket worth $10 million

After navigating a legislative labyrinth nearly as complex as the migratory routes of its intended beneficiaries, a $10 million proposal aimed at restoring two key Oregon watersheds survived nearly intact and will soon spawn a series of projects state officials hope will reverse a steep decline in coastal and Columbia River salmon populations.

The proposal, which started early in the session as the Governor's Watershed Health Benchmark Proposal, finished as part of an omnibus lottery budget bill that served as a focus for a protracted parliamentary battle between the House and the Senate in the closing hours before adjournment sine die on August 5. Along the way, portions of the proposal language appeared in no fewer than five separate bills, while funding levels skittered back and forth between a low of $5 million for the biennium to a high of $10.25 million.

As finally passed in Senate Bill 81, the proposal funnels about $7 million from lottery receipts through the Water Resources Department for grants to local governments, volunteer groups and other entities, including newly-authorized local watershed councils, which will contract or agree with the state to carry out watershed restoration projects in the Rogue River and the Grande Ronde basins. Water Resources will retain about $3 million for the administrative and personnel expenses of the nine state agencies which will participate in the restoration effort.

The projects envisioned in the proposal have taken on a new urgency with the filing this month of petitions to list several populations of native Oregon coho as threatened under the federal Endangered Species Act. Harvest quotas for the coho reached an historic low this season after a U.S. Commerce Department decision drastically reduced recreational fishing for the species and effectively prohibited commercial harvests. Sen. Bill Bradbury (D-Bandon) — who placed passage of the measure near the top of his list of priorities for the session — said he hoped that state funding will attract additional money and support from federal agencies and from fisheries management agencies in other west coast states. Language attached to the measure as a budget note encourages the Water Resources Department to form partnerships among public and private agencies and asks it to find ways to "leverage" additional money for cooperative restoration projects.

In addition to the restoration projects included in SB 81, the legislature granted authority in Senate Bill 1075 to Oregon fisheries management agencies to participate with their counterparts in other west coast states in a regional recovery effort. That bill followed action earlier this year by the Washington State legislature, which passed legislation that focuses on the restoration of watershed areas as a potential source of employment for at-risk minors and displaced timber workers.

Senate Bill 81 also incorporates two other measures that respond to the problem of declining salmon runs. Removing aggregate or gravel from stream areas the Division of State Lands designates as "essential indigenous anadromous salmonid habitat" will now require a permit under language siphoned from Senate Bill 192, which also appropriates $225,000 for DSL to study how gravel removal affects stream habitat. The Department of Fish and Wildlife, meanwhile, received $85,000 to administer a Developmental Fisheries Board charged with evaluating the commercial potential of under-harvested fish species. The measure, which originated as House Bill 3622, is intended as an alternative to continued fishing pressure on declining stocks.

Although it passed through the Senate with barely a ripple in its earlier incarnation as Senate Bill 1112, the watershed restoration proposal ran into a series of impediments in the House. In hearings before the House Natural Resources Committee Rep. Larry Sowa (D-Oregon City) argued successfully against an allocation formula giving state agencies 35 percent of the appropriation amount for administrative and personnel expenses, substituting instead a 25 percent allocation. Rep. Sowa also garnered an amendment opening the contracting provisions to private entities and individuals. Although supportive of the measure, Rep. Sowa said he wanted to ensure that the Water Resources Department directed most of its resources and efforts to achieving measurable improvements to stream health.

Other objections included those of Rep. Liz VanLeeuwen (R-Halsey), who said the measure unfairly penalized agricultural interests while ignoring such other potential causes for declines in salmon runs as predation by marine mammals. The committee adopted Water Resources Director Martha Page's proposed amendment to the bill's policy language to meet this concern, but a printing error dropped the amendment from the engrossed version of the bill.

The measure then languished as SB 1112-C in the House Lottery Subcommittee while legislators hard-pressed to make up shortfalls in agency budgets and satisfy the clamor to fund other projects divvied up a record pot of lottery earnings, briefly setting a $5 million allocation for salmon restoration before finally settling on a $7.5 million figure. In the midst of assembling its omnibus lottery appropriations bill, the Lottery Subcommittee pruned SB 1112 of its policy language, tabled the measure and instead inserted into SB 81 a brief grant of authority to the Water Resources Department to contract for restoration projects and supervise their implementation with the cooperation of other state resource agencies. The committee also settled on a 30 percent allocation for state agency expenses, with the remainder dedicated to grants for projects.

The bifurcation of the watershed enhancement proposal's policy language and its appropriations language had occurred earlier, when the Senate Ways and Means Committee transferred the allocation language in SB 1112 to its omnibus appropriations bill, SB 755. But the House Lottery Subcommittee, in the course of considering similar language in its original lottery appropriations bill, House Bill 5050, pulled most of SB 755's language out, transferred it to SB 81 and combined it with policy language from a number of other bills. This served as the starting point for discussions in conference committee after the Senate refused to concur to the House amended ending July 31.

Those discussions began the following day against a background of developments in other legislative arenas as the session wound toward an anticipated sine die date. Fractious partisan and inter-chamber infighting over a bill that would fund the Oregon Health Plan and delay the implementation of an "em-
August 16, 1993

Watershed projects secure funding in last hours of session

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ployer mandate" provision culminated late Tuesday in a House action to "gut" a bill that originally contained a proposal to cut legislators' pay and "stuff" it with the House-passed version of the health plan. The House then sent the altered version to the Senate for concurrence.

The Senate, after two successive, partisan votes, refused the following morning to concur in the House amendments, appointing conferees despite House Speaker Rep. Larry Campbell's (R-Eugene) threat to allow the measure to die by refusing to appoint House conferees himself.

A scheduled conference committee on SB 81 fell victim to the standoff that afternoon when Rep. Campbell recalled the House conferees on that measure, prompting committee chair Sen. Joyce Cohen (D-Lake Oswego) to adjourn in front of an overflow crowd that had anxiously awaited action on the measure in a cramped hearing room stifled by a malfunctioning Capitol air conditioner for more than two hours. Sen. Bradbury then matched the House's action on the Oregon Health Plan by convening the Senate Ways and Means and Revenue committees to consider action on two Senate "gut and stuff" measures that substituted Senate language for the health plan and lottery appropriations, with the intention of passing the revised measures to the House for concurrence.

At that point, policy language taken from SB 1112 again appeared in House Bill 5003, along with a new appropriations level of $10 million. The policy language drew protests from representatives of the Oregon Farm Bureau and Boise Cascade, who insisted on a bill shorn of SB 1112's wording, which they said changed the mission of the Water Resources Department and superseded the roles of local watershed councils outlined in HB 2215.

Discussions on the lottery appropriation then revived in SB 81's conference committee late Wednesday night, with House and Senate conferees agreeing on compromise funding levels for a number of programs and with House conferees acceding to Senate demands to fully fund the watershed restoration program. The policy language outlined in SB 1112 and pressed in the Senate version of HB 5003 moved instead to an SB 81 budget note, which conferees took pains to point out did not give it the force and effect of law, but represented instead the committee's strong recommendation to the Water Resources Department for the conduct of the program.

Final action on the measure, however, awaited a compromise on the health plan and on other divisive issues that came near 3 a.m. Thursday morning.

Oregon resolution on Magnuson Act receives brief congressional hearing

A Legislative Assembly resolution seeking specific changes in the Magnuson Fishery Conservation and Management Act received brief notice before the U.S. House Subcommittee on Fisheries Management during an August 10 field hearing held in Portland to consider the reauthorization of the 17-year-old blueprint for federal fisheries management.

Oregon Coastal Zone Management Director Jay Rasmussen, invited to testify before the committee concerning a decision by the United States Department of Commerce earlier this year to overturn Pacific Fishery Management Council (PFMC) recommendations on the allocation of Pacific whiting, appealed for changes to the Magnuson Act that would prevent a repeat of the Commerce decision. Rasmussen referred in both oral and written comments to language set forth in SJM 5, a measure passed July 14 with only two dissenting votes in the House.

A companion measure, SJM 21, took aim directly at the Commerce Department decision, asking for a General Accounting Office investigation of the department's decision-making process and for field hearings in Oregon in which coastal residents affected by the decision could express their concerns. It too passed July 14, again with only two dissenting House votes.

The whiting decision has proven to be a significant embarrassment for the department, serving as the subject for two House committee hearings and one afternoon's discussion by U.S. Sen. Bob Packwood, who recently visited the Oregon coast.

The Portland whiting hearing followed a hearing that same day directed at another Commerce Department decision that overturned a PFMC recommendation on the ocean harvest of wild coho. That decision is the target of a lawsuit filed by the Pacific Coast Federation of Fishermen's Associations, which charges the department with abusing its discretion by ignoring PFMC-developed scientific and economic data in favor of its own staff recommendations.
COASTAL CAUCUS MEETINGS

Coastal Caucus chooses Josi as new chair

February 1, 1993

Rep. Tim Josi (D-Bay City) will lead this session's coastal caucus contingent as chair after his unanimous election Jan. 26. Josi said he expects the caucus to act on a host of coastal issues, including water quality testing and administrative oversight for shellfish producers, along with the expansion of Oregon fisheries.

Discussion at the first caucus meeting focused on the proposal in Senate Bill 6 (see related story page 2) to move jurisdiction over the leasing of state submerged lands for shellfish cultivation from the Department of Agriculture to the Division of State Lands. The caucus concluded that the existing arrangement served the interests of the small producers that make up the shellfish industry and that such a move might unnecessarily disrupt the state support the industry has traditionally enjoyed.

Rep. Veral Tarno (R-Coquille) added that the shellfish industry already faces a number of threats to its existence, including the threatened reduction or elimination of state funding for water quality testing around shellfish beds. Rep. Tarno said he believes the state should bear the responsibility for the testing program, in part because the public as a whole benefits from water quality data and also because the costs associated with water quality testing would be much too high for an industry with fewer than 30 producers to afford.

In other business, the caucus heard a proposal from Oregon Trawl Commission Administrator Joe Esley to create a state fisheries development board to encourage the creation of alternative fisheries off the Oregon coast that might offset a steep decline in the salmon fishery. OCZMA Executive Director Jay Rasmussen noted that harvesters often find themselves caught in a sort of Catch-22, where the Department of Fish and Wildlife requires sufficient biological data on the species proposed for harvest and harvesters have no way to develop such information without, in effect, conducting "experimental" fishing. The caucus agreed to support the introduction of such a measure.

Finally, the caucus set Tuesdays at noon as its regular meeting time, and Senate Caucus Room S-226 as its regular meeting place, beginning Feb. 9.

Coastal Caucus focus stays with shellfish issue

February 15, 1993

Legislation affecting shellfish cultivation remained the hot topic at the Coastal Caucus meeting Tuesday, as legislators heard updates on the progress of Senate Bill 6 and on proposals to raise recreational and commercial shellfish fees to pay for Health Division water quality testing (see related story, page 1).

Paul Hanneman, who represents the Oregon Shellfish Industry Steering Committee, summarized the Jan. 29 hearing on SB 6 and said the industry remains "unalterably opposed" to the measure, which would transfer jurisdiction over submerged lands leasing for oyster cultivation from the Department of Agriculture to the Division of State Lands. Caucus chair Rep. Tim Josi (D-Bay City) said he was confident that even should the bill pass the Senate it would probably die in the House.

Discussion also focused on House Bill 2331, which seeks to raise the fees charged to both recreational and commercial shellfish harvesters to finance the Health Division's water quality testing program. Hanneman noted that the proposed fees would raise about $1.1 million for the biennium, which is nearly double the cost to the Health Division of administering the program. Rep. Jim Whitty (D-Coos Bay) said he had some doubts about the wisdom of the fee increase and Rep. Josi said he will probably introduce an amendment to take care of Caucus members' concerns once the bill comes up for hearing.

Rep. Whitty also asked Caucus members to consider supporting him in a resolution that would ask the Legislative Assembly and the Governor to consider the impacts of a reduction in state services to struggling coastal communities, particularly impacts on community employment, when scaling back the state budget. Rep. Josi agreed, suggesting that budget reductions should be made on a basis proportional to the relief each community received from property tax reduction under Ballot Measure 5 mandates. Whitty provided committee members with a copy of his drafting request to the Legislative Counsel's office.

Also awaiting action in the Legislative Counsel's office is the proposal by the Oregon Trawl Commission to establish an Oregon fisheries enhancement board to encourage alternatives to the declining salmon fishery. Trawl Commission Administrator Joe Esley said he expects a draft from the LC before bill cutoff this week.

The Caucus also heard from Sen. Bob Kintigh (R-Springfield), who asked for support from coastal legislators for a Senate joint memorial calling on Congress to build in population control measures for California sea lions when it considers the Marine Mammal Protection Act for reauthorization later this year.

"I'm not a fisherman, but I eat fish," Kintigh said. "I keep reading about marine mammals chewing up all the fish and I wanted to do something about it."

Rep. Whitty said he favored the measure, citing the upstream migration of sea lions in some coastal rivers and their uncontrolled feeding on coastal salmon runs. Whitty said natural sea lion predators, such as killer whales, do not exist in sufficient numbers to control the sea lion population. Rep. Chuck Norris (R-Hermiston) noted that a similar measure, HJM 25, passed the House last session but died in the Senate. He provided Sen. Kintigh with a copy of the measure for reference in drafting his resolution.

Ocean Policy Advisory Council member Bob Bailey gave the committee an overview of the Council's progress on developing a management plan for the state's three-mile territorial sea. Once completed the plan will govern state agency policy on access to, use and development of the near-shore area. Bailey said the Council has met a couple of times and has held workshops with affected user groups in Gold Beach, Brookings and other coastal communities, but has substantial work remaining.
A proposal to create a Developmental Fisheries Board within the Department of Fish and Wildlife will begin wending its way through the legislative process this week as House Bill 3622, Coastal Caucus members learned at their Wednesday meeting.

Caucus chair Rep. Tim Josi (D-Bay City) drafted and introduced the measure at the request of Oregon Trawl Commission Administrator Joe Easley, who explained that the measure is aimed at helping to meet existing market demand for fish species that Oregon commercial harvesters do not yet catch.

The bill as drafted establishes a nine-member development board with powers to establish: an annual list of candidate species for harvest; commercial harvest programs; methods for obtaining needed biological data to protect the viability of the fishery; limited-entry harvest regulations for the chosen species; and a program for equipment and supply grants to harvesters interested in developing the new fishery. The bill also provides tax incentives to harvesters to offset the cost of purchasing supplies and equipment.

The bill has the backing of the full Caucus. Easley also found sponsorship for three additional proposals he hopes to introduce today, after Sen. Joan Dukes (D-Svensen) agreed to draft measures that would: require the Fish and Wildlife Commission to appoint a committee of permit holders from restricted fisheries in order to study ways to streamline and improve the permit process; make ocean scallop vessel permits freely transferrable; and freeze the ad valorem tax on food fish and shellfish at 1.09 percent.

Shellfish issues continued to occupy members’ attention as Rep. Josi explained his proposed amendment to House Bill 2331, which seeks to increase commercial and recreational harvesting fees, and Caucus members heard Division of State Lands (DSL) Director Gary Gustafson’s position on Senate Bill 6, which would transfer jurisdiction over shellfish cultivation to DSL.

Rep. Josi said he plans to amend HB 2331, when it comes up for hearing in the House Subcommittee on Water, to dedicate about $400,000 of the approximately $1.1 million expected from increased shellfish fee collection over the biennium to the Department of Fish and Wildlife’s salmon restoration and enhancement fund. Shellfish growers, among others, have sought a fee increase to pay for a Health Division program for testing water quality near shellfish beds that may fall to the budget axe this year. The Health Division’s costs amount to about $552,000 and the Department of Fish and Wildlife, which has responsibility for collecting the fee, may use 10 percent of the amount collected for administrative costs.

But Rep. Josi’s proposal might run up against a similar proposal Sen. Dukes hopes to introduce in the Senate. The Senate measure would aim at collecting just enough revenue to pay for the cost of the water quality testing program and would transfer that program, along with all other jurisdiction over shellfish cultivation, to the Department of Agriculture. Sen. Dukes said she would prefer to hear what plans the Department of Fish and Wildlife might have for any excess revenue collected from the fee increase before she would be willing to dedicate that money to the department.

The proposal to transfer jurisdiction over all oyster cultivation to the Department of Agriculture would also sit in the path of SB 6, which proposes to give that responsibility to DSL. DSL Director Gustafson summarized the Feb. 12 hearing on the bill for Caucus members, describing a compromise he negotiated with the Oregon Shellfish Industry Steering Committee that would permit DSL to study the feasibility of consolidating jurisdiction over mariculture in one agency and reporting to the next session of the legislature.

DSL does not have any vital interest in gaining jurisdiction over mariculture, Gustafson said. He added that SB 6 resulted from recommendations by the Governor’s task force on government efficiency and that he would try to get the approval of oyster growers before returning to the Senate Agriculture and Natural Resources Committee.

Presentations from Bob Eaton of Salmon for All and John Goodman, legislative aide to Rep. Josi, along with a brief discussion of a proposal to create a hatcheries management board, rounded the meeting out.

Eaton proposed an amendment to House Bill 2345, which seeks to ensure that the two Oregon members of the Northwest Power Planning Commission (NWPPC) each come from opposite sides of the Cascade Mountains. Eaton contended that expertise in power management and fisheries issues, not geography, should determine who sits on the commission. He said his amendment would require at least one Oregon commissioner to have expertise in fisheries issues and argued that if the NWPPC had access to such expertise earlier in its deliberations, it might have avoided having to deal with the consequences of drastically reduced fish runs.

Goodman relayed a proposal from Metro Trollers to eliminate a program that allows the Fish and Wildlife Commission to issue new gillnetting and salmon trolling permits if fewer than 2,400 existing permit holders fail to renew their permits in any one year. The commission had stopped issuing new permits in 1980, Goodman said, but renewals fell to 1,975 for this season. The trollers contend that existing law set the 2,400 figure when the resource was plentiful and that releasing 425 new permits this year would damage the fishery, Goodman said.

Rep. Josi closed by discussing House Bill 3621, a proposal he introduced at the request of commercial fisherman Chet Lounsbury, that would create a management board to oversee the operation of the state’s fish hatcheries. Rep. Josi asked Caucus members to review the bill and forward their comments to him so that he could incorporate their suggestions for any revisions into the bill.
Budget woes threaten Fish and Wildlife's hatcheries

March 1, 1993

Saving the Trask River and Willamette fish hatcheries from budgetary extinction this biennium would require a cash infusion of $643,000 over and above the amount the Department of Fish and Wildlife (ODFW) expects to collect from a proposed two-dollar increase in fish license fees, department director Randy Fisher told Coastal Caucus members Wednesday.

Declining returns from ad valorem taxes imposed on commercial fish landings have put the department in a half-million-dollar fiscal hole, Fisher said, that has forced it to propose cutbacks in portions of its fisheries programs. Fisher estimated the loss of fish production from the two hatcheries at about one million spring and fall chinook, two million coho and 450,000 legal trout. Anticipated cutbacks at the Fall River hatchery could reduce legal trout production by another 248,000 individuals, he added.

But the cutbacks that would be necessary if the fee increase proposal does not pass dwarf these proposals, Fisher said. Estimated losses from program reductions without the fee include the shutdown of two additional hatcheries — Fall Creek and Butte Falls — cutbacks in production at six other hatcheries, the elimination of the fish district office at Prineville and the elimination of planning and research positions for three department projects, Fisher said. He added that the drop in fish production could amount to more than 5.3 million coho, 2.8 million spring and fall chinook, 1.3 million legal trout, 1 million fingerling trout and 5,000 winter steelhead.

Part of the answer to these problems may lie in a proposed increase in shellfish harvest fees, Fisher said. An increase proposed in House Bill 2331 would collect about $1 million, he said, which would pay for the Health Division's water-quality testing program for shellfish and still leave a little less than half that amount for ODFW to use as an add-back to its fisheries budget.

But that proposed solution faces its own challenges. Rep. Tim Josi (D-Bay City) gave committee members a copy of his request to the Legislative Counsel's office to draft an amendment to HB 2331 that would dedicate the funds remaining from the fee increase to the Salmon Restoration and Enhancement Board, while a companion measure asking for fee increases in the Senate has fixed no specific amount for collection. Shellfish industry growers have also voiced some muted concern about dedicating funds collected from shellfish harvesting to programs involving finned fish.

Fisher said he intends to frame the issue of program and hatchery cutbacks as a policy choice for the joint Ways and Means Committee to make in hearings on the department's budget for the upcoming biennium.

Fisher also told Caucus members that the department's decision to close down the Columbia River gillnet fishery two weeks ago resulted from a combination of bad circumstances. National Marine Fisheries Service (NMFS) staff members failed to draft a formal biological evaluation required under the Endangered Species Act that would indicate that a 10.6 percent catch rate Oregon and Washington fisheries managers had proposed in an oral conference with NMFS before the start of the season would have no significant impact on the listed species, Fisher said. Because ODFW knew that continuing the season would inevitably have some — albeit unknown — impact on the endangered run, it had no choice but to shut the fishery down, he said.

Shutting the fishery down early might cost harvesters up to $540,000 and the state about $14,000, Fisher said.

A similar failure to have a formal biological evaluation completed before last season opened didn't raise any eyebrows, Fisher said, but this year hydro power facility operators involved in litigation with the department raised some questions. He added that the only way to prevent a similar shut-down next season is for NMFS to put in the overtime necessary to get the biological evaluation out.

In other business, the Caucus heard an explanation of a proposal to establish limited-entry regulations for Oregon's Dungeness crab fishery from Pacific States Marine Fisheries Commission member Paul Heikkila and Oregon State University marine extension agent Bob Jacobson. Heikkila told Caucus members that restricting entry to the fishery to those harvesters who held ODFW registrations between 1986 and 1991 and who landed at least 500 lbs. of crab for two seasons during this period would promote community stability and prevent degradation of the resource.

Heikkila noted that most industry members favored even more stringent restrictions, but that some members had reservations about whether the proposal would protect those harvesters who had made substantial investments in crabbing equipment or who had begun construction of boats they intended to use in crabbing operations. Jacobson noted that only two of the nine Oregon members of the Tri-State Crab Committee responsible for drafting the proposal agreed to include provisions for protecting investments.

Sen. Bill Bradbury (D-Bandon) said the Senate Agriculture and Natural Resources Committee has agreed to introduce the measure and that it has asked that it be sent to the Legislative Counsel's office for drafting.
March 8, 1993

Parks director blames upkeep costs for day-use fee hike

Increasing the day-use access fee for certain state parks does not violate Oregon law guaranteeing "free and uninterrupted" access to state beaches, as some coast residents have charged, Oregon Parks and Recreation Department Director Bob Meinen told Coastal Caucus members Wednesday.

Meinen, referring to a 1992 attorney general's opinion on the subject, said that the parks department may charge fees for access to facilities it provides or maintains, so long as the fees do not impede access to the beach itself. Meinen said the department settled on the fee increase as a way of getting day users of the parks to contribute to needed maintenance that, until now, only recreational vehicle and campground fees have paid for.

But Meinen's distinction did not completely satisfy Rep. Jim Whitty (D-Coos Bay), who criticized the department for failing to adequately explain why it is charging an access fee and what facilities the fee will cover.

"We [coastal legislators] catch hell for your decisions," he told Meinen. "We need to have answers — I don't like to give constituents an 'uhm, ah' kind of answer, which we have to do now."

Meinen acknowledged that the department has not been entirely successful in communicating the seriousness of its budgetary shortfalls to either the public or the legislature, but said that it has printed detailed brochures explaining its fee policies and is trying to meet with the public to explain its needs.

"I think the park service has done a good job in maintenance, but perhaps not as good a job at telling [the legislature] what goes on behind the scenes," Meinen said. He added that the department has deferred millions of dollars of needed maintenance for so long that it may have to shut some facilities down because the Department of Environmental Quality has declared them unsafe for people to use.

Rep. Whitty also questioned how the department could control access to its facilities if beach users, who would not pay a fee for beach access, could simply "get in through the back door," walking onto state park facilities from the beach.

Meinen said the department did not intend to restrict all access to park facilities only to those who paid a fee. Rather, he said, the fee is intended to apply primarily to motor vehicle access. In certain areas, such as the Sunset Beach park Rep. Whitty used as an example, controlling motor vehicle access may require more attention, Meinen said, but controlling access to most park areas will not be a significant problem.

Meinen added that the fee, which will apply initially to nine of 66 state park facilities, will generate about $400,000 in revenue for the department. Expanding the fee to 26 park areas around the state could generate as much as $1.5 million, he said.

The Caucus also heard a presentation from three members of the Coquille Watershed Fisheries and Timber Coalition, who explained their proposal for cooperative riparian protection along the Coquille River. The plan, which the coalition submitted to the Board of Forestry for consideration in its riparian rulemaking process (see related story, page 2), sets out a required regime for riparian protection and restoration during and after stream-side logging operations. The plan gives responsibility to the riparian landowner to abide by its requirements, but subjects the landowner to the supervision of Forestry Department forest practices officers.

Oregon State University marine extension agent Paul Heikkila told the Caucus that landowners, timber harvesters and fishery resource users had begun the plan because they thought the Forestry Department's riparian rulemaking process had grown at a chaotic pace and that it was time to look at riparian management from a non-agency perspective.

"We think this is a good proposal, particularly for south coast fisheries," Heikkila said. "With this type of activity, instead of sitting there arguing about the last fish and the last tree we can start a cooperative process in motion."

Heikkila said the heart of the proposal, embodied in House Bill 2614, is a series of tax credits targeted toward relieving the landowner of the sole burden of protecting riparian resources and a provision calling for the development of site-specific management plans for individual riparian areas.

Coos Head Lumber and Plywood Co. Chief Forester Mike Groben concurred.

"We need to look at how to enhance the stream and propose a way to finance it," Groben said. "There should be some flexibility there that isn't there under the present regulations."

Groben added that he found landowners generally enthusiastic about the plan.

"We recognize now as timber owners that we affect fisheries much more than we did 10 years ago," Groben said. "It's not out intention, in order to get the trees, to destroy the fisheries."
Illegal gravel mining prompts bill calling for limitations

A West Linn property owner angered by the loss of nearly three acres of Nehalem River riparian land told Coastal Caucus members Wednesday that both state and local officials did little to assist her efforts to stop her upstream neighbor from illegally removing gravel from the river's bed.

"It took us about two weeks of calling around to find out which [state] department we were supposed to talk to about this and another six months for the Division of State Lands (DSL) to come out and investigate," Lynne Pavur said.

When DSL did investigate it caught Pavur's neighbor removing more than 60 cubic yards of gravel from the stream bed and transporting it off the property in five successive dump-truck loads, DSL Assistant Director Earle Johnson said. State law requires anyone removing more than 50 cubic yards to obtain a gravel mining permit from the agency, Johnson added. DSL has now brought both civil and criminal actions against Pavur's neighbor, seeking in part to force the neighbor to restore a portion of the Nehalem he diverted in 1989.

Pavur said her experience with the neighbor and with the state and county officials responsible for monitoring illegal mining left her frustrated.

"I think something needs to be done to make [enforcement] work better," she said.

"There should be a solution to protect the individual, to guide us and help us become educated so we know how [the process] should work."

Her solution was to ask Sen. Joyce Cohen (D-Lake Oswego) to introduce Senate Bill 452, which would prohibit the removal of gravel from stream beds containing anadromous fish habitat without a permit from the Division of State Lands issued in consultation with the Department of Fish and Wildlife. The bill now sits in the Senate Agriculture and Natural Resources Committee and has had one public hearing to date, with support from Pavur, the Curry Guides Association and the Department of Fish and Wildlife.

But Oregon Concrete and Aggregate Producers Association representative Dick Angstrom told the committee that the bill unduly restricts legitimate aggregate producers.

"We too have strong concerns about these illegal operations," Angstrom said. "But this bill is very broad brush. There are a lot of legitimate operators out there going at this under heavy regulation."

Angstrom said gravel removal operations offer some rural areas their only resource-based industry in a tight employment market and often serve as the only supply for concrete-producing material in others.

"We need to be able to preserve those few resources we have left in some of these areas, consistent with good fisheries management," he said. "There can be a big economic impact for communities dependent on this resource."

Sen. Joan Dukes (D-Svensen), a co-sponsor of SB 452, told the Caucus that there must be a middle ground that would allow legitimate operators to continue operating but effectively penalize illegal gravel removal.

"When we spend millions of dollars on watershed enhancement it seems strange that we allow people to drive trucks into streambeds and start digging," Sen. Dukes said. "I have to believe there's a solution where we don't spend money tearing up streambeds and then go back and try to put them back together."

Rep. Tony Federici (D-St. Helens) said the problem seemed to lie more with the lax enforcement of existing law than to point to a need for a new law and asked Pavur if she had evidence that would show gravel removal is a statewide problem requiring a legislative solution.

Mary Gautreaux, Sen. Dukes' legislative assistant, said her office had received a number of complaints from around the state about illegal gravel mining operations.

In other business, Parks and Recreation Department Director Bob Meinen outlined the department's need for a fee increase and told the Caucus that the legislature needs to make a policy decision concerning the level of park service it wants to provide for the state.

"I don't want to be alarmist, but what I've found coming into the [Oregon park] system is that we have one of the best and most desirable facilities in the country, but you also have a huge capital investment and need to fund it," Meinen said. "I think if we don't address this problem we're going to be looking at a second-rate and then a third-rate system, and then soon we'll have a system that doesn't function at all."

Meinen said coastal legislators have a particular stake in adequate funding for the park system because coastal parks have both a high visitor count and high maintenance bills resulting from corrosion from sea spray and other environmental elements.

"A lot of what we have on the coast is what we call the 'rot and rust belt',' Meinen said. "I'd be misleading you if I said we didn't have some problems out there. There will come a time when we're going to have to close some of those facilities down."

The department has increased fees for day-use access at some state facilities and has introduced a bill seeking an increase in recreational vehicle fees, but House Bill 2123 is stalled in the House General Government Committee and committee chair Rep. Cedric Hayden (R-Lyons) seems unwilling to move it, Meinen said. Without the fee increase the department faces a $3.6 million shortfall this biennium while trying to fund its existing commitments, a deficit that will continue to grow wider in years to come, he said.

But even with the fee increase the department will continue to lose money in the 1995-97 biennium and will have to indefinitely shelve plans it has drafted to improve the park system, Meinen said. The deficit has resulted from steadily increasing park system expenses, he added — particularly in electricity bills and in the costs of construction and retrofitting of park facilities to comply with the mandates of the Americans with Disabilities Act.

"Our electrical growth curve is going up at a 45-degree angle," Meinen said. "We've got some recreational vehicles that have microwave ovens and three color TVs. We can't keep up with that forever."
Water concerns topped the House Natural Resources Committee agenda last week as lawmakers heard testimony on proposals to coordinate state agency management over watersheds, to clarify the allocation of water recovered from improved diversion and transmission techniques and to give state agencies authority to protect drinking water sources.

HB 2215

House Bill 2215 directs the Strategic Water Management Group (SWMG) to assess the condition of the state's watersheds and identify "high priority" areas that need special management to improve water quality or to protect existing water quality from deteriorating. The bill also authorizes local, state and federal agencies to forge cooperative agreements to manage watersheds and to form local watershed councils to implement watershed management. The measure drew praise at a Jan. 26 hearing from water users and environmentalists for its concept, but House Water subcommittee members questioned whether local watershed management councils formed under the measure would exercise any actual management authority.

Water Resources Department Director Martha Pagel noted that the bill does not vest any regulatory authority in the local councils, but that the councils might use the cooperative process the bill establishes to head off any "heavy handed" regulation by state agencies. Ann Squier, the Governor's representative to the Strategic Water Management Group (SWMG) added that the agencies that have watershed management authority — including Water Resources, the Department of Environmental Quality, the Department of Agriculture and the Department of Fish and Wildlife — participated in the year-long process that resulted in the bill with local government agencies and are sensitive to local concerns.

League of Oregon Cities representative Joni Low said local governments generally support the bill, but would like to add a more explicit definition of "local government" so that special districts would have authority to form watershed councils.

Representatives from the Pacific Rivers Council and the Oregon Water Resources Congress registered minor objections to the bill's language. The Rivers Council favored returning to an earlier draft of the bill that focused more on setting up an inter-agency coordination scheme to manage the state's water resources than on the local management councils. The Water Congress wanted a more explicit designation of a funding source to pay for the studies required in sections 10 and 13 of the bill and stronger assurances that local agencies could withdraw from management agreements if they appear unworkable.


HB 2155

Water users gave a Water Resources Department proposal to change the definition of "conservation" and shift the department's policies dealing with reclaimed water a far chillier reception at the same hearing. The bill seeks to make explicit state policy that prohibits the wasteful use of water rights by removing from the definition of "conservation" any improvements in water diversion and transmission techniques a water user undertakes to eliminate wasteful uses. The bill also grants the water user who improves his or her diversion and transmission techniques to conserve water 75 percent of the water he or she conserves, while retaining 25 percent to the state for instream uses. But the 75 percent grant applies only to stored water — water conserved in free-flowing streams would not receive explicit protection under the bill. This lack of protection and the resulting uncertainty in the amount of water a user could expect to retain after installing expensive conservation measures formed the principle objection representatives from Water for Life and the Oregon Water Resources Congress held against the bill.

OWRC representative Jan Boettcher said water users, like municipal users, should be able to determine the actual amount of their water right necessary for their beneficial use and to consider diversions beyond that amount "conservation" for purposes of Oregon law. OWRC also objected to limiting the 75 percent allocation of conserved water to stored water.

Water for Life proposed that the allocation of reclaimed water between the state and the water user be set at a strict 25 percent and 75 percent, respectively, rather than at a variable rate that now exists so that water users will have incentive to conserve. Water for Life representative David Moon said the organization will consider whether to try to amend the existing bill or whether to introduce its own measure.

Oregon Water Watch, by contrast, opposed the allocation formula set forth in the bill, contending that reclaimed water should be split 50-50 between water users and instream uses.

The bill now awaits further hearings and a possible work session Feb. 9.

HB 2149

After two lengthy hearings with capacity crowds, House Water Subcommittee Chair Rep. Chuck Norris (R-Hermiston) formed a work-group led by industry and environmental representatives to forge a compromise measure for drinking water source protection and scheduled additional hearings and work sessions for Feb. 4.

At issue is the adoption of state standards for groundwater protection at the wellhead — federal law (42 U.S.C. § 300h-7, the Safe Drinking Water Act Amendments of 1986) authorizes state agencies to establish programs and receive federal funds to pay for up to 90 percent of the costs incurred in protecting drinking water sources, provided the United States Environmental Protection Agency approves the state plan. Both proponents and opponents of HB 2149, which authorizes the Environmental Quality and Water Resources commissions and the Health Division to adopt rules to establish such a program, agree on the need for a wellhead protection program, but disagree on the proposed scope of the program and on the authority to be granted to the implementing agencies.

Bill proponents, including the Oregon
Work group to tackle wellhead protection measure

State Public Interest Group (OSPIRG), and the Oregon Environmental Council (OEC) stressed the need for preventative measures to avoid potential contamination from polluting sources and to avoid much higher remediation costs once groundwater sources become contaminated. "Even if a responsible party is found to pay cleanup costs," OEC Policy Director Jean Cameron said, "the bills are still greater by several magnitudes than the costs of preventative activities."

Opponents of the measure as drafted, including the League of Oregon Cities (LOC), focused on the potential problems that could arise from a division of responsibility for the program among three state agencies and between local government and public water suppliers. LOC representative Joni Low said the organization supports the concept of wellhead protection, but is particularly concerned about the potential fiscal impact on local governments which must already comply with several state and federal mandates for water quality without, in many cases, sufficient taxing or fee assessment authority to pay the costs of compliance. Low noted that this is of particular concern since the Oregon Tax Court ruled that the City of Roseburg's storm water fee is a tax that must abide by Ballot Measure 5.

Other opponents of the measure included farmers locked in a dispute with the City of Newberg over the city's plan to purchase portions of their land to serve as wellhead protection sites. Their concerns with the bill focused on whether it would enable the city to more easily condemn their land in order to site wells for city consumption and whether the city could restrict certain farm uses on land zoned for Exclusive Farm Use (EFU). Assistant Attorney General Michael Huston testified that the bill does nothing to either expand or restrict a city's powers of condemnation, but that the city could, depending on the provisions of the wellhead protection plan it adopts, restrict farm uses in order to protect drinking water supplies. Although state law limits the type of regulation local governments may impose on lands within an EFU zone, Huston said that the law permits exceptions where the local government regulates land uses to protect public health, safety and welfare.

Water Dept. agenda will go back for more tinkering

Water committees in both chambers sent most of the Water Resources Department's legislative starting lineup back to the showers after water users objected to measures that would expand departmental authority to grant certain exemptions from the water right permitting process, to streamline applications for new uses and to require water use reports from private users.

The department agreed to form work groups that will draft compromise measures to present to the committees later this month.

HB 2107

On the House side opposition to HB 2107, which would allow Water Resources to establish a registration process for users engaged in stream restoration projects in lieu of applying for a water right certificate, came primarily from the Oregon Water Resources Congress (OWRC), which sought assurances in the bill language that any registrations granted under the bill provisions would be subordinate to inchoate and adjudicated water rights recognized by court decision. OWRC representative Ben Lombard also told the committee that the bill should require Water Resources to account for these new registered uses in common with existing uses that divert water under a water right permit when it decides if a stream is over-appropriated.

Support for the bill came from the City of Portland, whose representative said the city would be interested in taking advantage of the proposed registration program for its water quality restoration projects along the Tualatin River, and from Rep. John Schoon (R-Rickreall), who asked the committee to not limit the uses eligible for the registration program. Schoon also suggested that local soil and water conservation districts should either issue the registration documents or have a say in the process.

Water Resources Director Martha Pagel told the committee that the bill as drafted does not reflect the department's current thinking on the subject and that it will go back to the working group that produced the draft with new language.

HB 2153

The department also went back to the drawing board to re-fashion a measure that would have exempted altogether water uses for emergency fire-fighting, diversions for stock-watering ponds and troughs, and fish by-pass structures from any requirement to register the use or to apply for a water right permit.

OWRC's Lombard, noting that salmon and trout restoration projects alone qualify for exemption from existing requirements, objected to the expansion of exempt uses, but asked that the department consider coming up with a comprehensive list of such uses if it chooses to proceed. The law governing the impoundment and use of springs that arise on one owner's land, Lombard said, is an example of how piecemeal legislation on water uses has led to unneeded complexity and confusion.

WaterWatch representative Doug Myers also objected to the bill, asking that it include some provision for public comment before the department granted an exemption. Under questioning from Rep. Bob Repine (R-Grants Pass), Myers explained that WaterWatch wanted to ensure that water uses that could interfere with fish migration channels or divert flows from intermittent streams go through the normal water permitting procedure.

Water Resources Director Pagel testified that the department wanted the bill to accomplish two objectives in addition to exempting certain uses: to establish a registration process similar to that set forth in HB 2107 for existing stock and wildlife ponds operating without water rights; and...
Work-groups form to fashion compromises

Water bills meet heavy opposition

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February 8, 1993

Commission to exempt some existing uses of groundwater that do not exceed 5,000 gallons per day and to require water rights for new uses when the Commission deems it necessary to protect groundwater resources also drew fire from Oregon Association of Realtors representative Schmidt.

But Pagel said the measure is aimed at clarifying whether groundwater uses for such projects as draining mines and agricultural land, constructing buildings and sewers and running small amounts of water in pipes to keep them from freezing need to have water right permits.

The measure also would allow the Commission to limit new uses when they threaten groundwater resources, Pagel said.

Giving the Commission rule-making authority, rather than waiting for the legislature to prohibit these uses in statute, would allow the Commission to respond to changing conditions in the aquifers, Pagel said.

Questioning from Sen. Bill Dwyer focused primarily on how the Water Resources Department proposed to gauge the cumulative effect of multiple, small groundwater withdrawals, particularly in critical groundwater areas.

"Do you know how you eat an elephant?" Dwyer asked. "One bite at a time." He explained that while each individual withdrawal by itself might not amount to much, but together they could have a severe impact on groundwater resources.

Oregon Cranberry Farmers representative Ron Yocum echoed Dwyer's point, testifying that development in the Bandon area has resulted in hundreds of small wells drilled for residential use that have taken water away from cranberry farmers who have water right permits.

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Prospects for accord on water remain dim

The struggle to shape this session's package of water legislation showed few signs of reaching resolution last week as agencies, user groups, environmentalists and local governments squared off in two-, three- and sometimes four-sided battles during committee hearings.

The lack of consensus surprised neither water committee leader — House water subcommittee chair Rep. Chuck Norris (R-Hermiston) remarked that water issues never seem to be resolved to everybody's satisfaction, while Senate Water Policy chair Sen. Bill Dwyer (D-Springfield) relied on the Mark Twain adage "whiskey is for drinking and water is for fighting" to describe the pace of negotiations on his side of the rotunda.

With only two measures before the Senate committee, attention again focused on the House subcommittee, where bills dealing with the allocation of conserved water and the formation of local watershed management councils again drew capacity crowds for their second public hearings, and where a slate of measures governing irrigation districts provoked a contentious exchange between Oregon Water Resources Congress and WaterWatch representatives.

A final Water Resources Department proposal to require water use reports from individuals in water-short areas founded in the face of pointed opposition from user groups, who objected to provisions allowing water-masters to cut off non-complying users and permitting the department to use their failure to file reports within five years as evidence in a proceeding to cancel their water right.

OWRC representative Kip Lombard called the bill's penalty provision a "sledgehammer clause" that could run afoul of constitutional restrictions on government takings.

"This type of sanction is not only overkill, it's unnecessary," Lombard said. He added that the department can assess civil penalties against users who fail to comply or can require water-masters to shut off their diversions. Cancelling a water right would be far too harsh a penalty for users who, perhaps out of mere negligence, fail to file the required report.

League of Oregon Cities representative Joni Low noted that municipalities already report their water use, but that they too could inadvertently fail to file a report and might, under this proposal, cut municipal users off from their water supplies.

Water Resources Director Pagel said the department will meet with a working group to forge a compromise on bill language.

User groups assail proposed changes in water statutes

A Water Resources Department proposal to allocate water conserved from efficiency improvements in diversion and delivery structures reappeared for its second hearing bearing scars from work-group surgery so extensive as to require a new set of typefaces to describe the changes. Resource Management Division Administrator Becky Kreag led the committee through a host of deletions and additions that boldfaced, underscored, italicized and bracketed not only existing law, but the proposed changes incorporated in HB 2155 itself.

Despite the changes, substantial disagreement remained over the allocation formula, with water users pressing for statutory recognition of a 75 percent allocation of conserved water to the water right permit holder and 25 percent to the state and with WaterWatch representatives insisting on a 50-50 split between users and the state.

WaterWatch representative Anne Perrault argued that the 50-50 split would make up for historic inefficiencies in the diversion and delivery of water that resulted in water right holders getting more water than they actually needed to apply to a beneficial use. Perrault also pointed out that water conservation measures already benefit users by reducing their pumping costs and, in many instances, improving crop yields.

But Water for Life attorney David Moon contended that the 75-25 allocation would give water users needed incentive to invest in conservation measures. Moon also objected to the bill's requirement that the state's 25 percent share of saved water be allocated to instream uses, arguing that adding conserved water to instream flows would increase instream flow rates above levels already deemed necessary to support existing instream uses.

Instead, Moon said, the conserved water should replace a like amount of water already set aside for instream uses — that way, the overall amount of water dedicated to instream uses would not change, but the water made available through conservation would have the same priority date as the original use.

Committee chair Norris closed the hearing by asking Water Resources Director Martha Pagel to provide the committee with a hand-engrossed version of the bill incorporating the work-group's changes.

Invoking fears of another land-use planning structure modeled on the Land Conservation and Development Commission (LCDC), opponents to a proposal to establish local watershed management councils blasted the measure as adding another layer to an already overbearing state bureaucracy.

"While it takes an apple pie and motherhood approach and emphasizes the concept of partnerships, the fact is [the bill] is letting the camel's nose into the tent," Oregonians in Action President Frank Nims said. He added that the bill is the first step in a process where state government "almost certainly would end up dominating local government and the interests of private property owners."

Nims objected to a bill provision allowing the Strategic Water Management Group (SWMG) to ensure compliance with guidelines governing representation on the local councils and to provisions he said placed additional burdens on state and local government without any corresponding sources of funding.

But Nims' position drew a rare rebuke from committee chair Norris, who said that water users who have called on him to simply vote no on HB 2215 are probably not familiar with its provisions.

"I think there is benefit there [in the bill]," Norris said. "The interests say this bill doesn't do much, but when I asked what's out there..."
Consensus not likely, but progress apparent on some issues

Cracks appear in water legislation dam

Water users and environmentalists continued to wrangle over a proposed allocation formula for conserved water and a bill that would allow de minimus withdrawals of water from scenic rivers in House Water Subcommittee hearings last week, but committee chair Rep. Chuck Norris (R-Hermiston), hoping to move forward, scheduled both measures for work session this week.

The conservation measure, House Bill 2155, took on its third incarnation in almost as many weeks when Water Resources Department Director Martha Pagel presented the committee with a draft shorn of its typographical complexity but little of its controversy. But despite renewed objections from Water for Life attorney David Moon, who again sought to ensure that any portion of the state's 25 percent share of conserved water would go to instream uses only if that share replaced existing instream rights, Rep. Norris appeared ready to accept the new draft as the working document for committee consideration.

"I think it's about time to run this thing through the body shop down at [the Legislative Counsel's office] and see what we come up with," Rep. Norris said.

The other measure, House Bill 2344, which would permit de minimus withdrawals of water from scenic waterways for human consumption and stock watering, garnered cautious support from the Water Resources Department. The department, however, offered amendments that would restrict withdrawals from scenic rivers to instances when the proposed human consumptive use or the proposed livestock use could not reasonably obtain water from any other source; that would limit the total amount of individual and cumulative withdrawals from the stream; and that would refuse withdrawals that significantly impair the stream's value as a scenic waterway.

The amendments pleased WaterWatch representative Doug Myers, who said WaterWatch could support the bill with the amendments, but Myers also called on the committee to "do the Bill Clinton thing" and share the consequences of reduced water flows, rather than giving strict priority to consumptive uses.

"There's a terrific imbalance in the numbers of uses allowed out of stream and those allowed in stream," Myers said. Giving priority to livestock watering and human consumption will inevitably deprive fish and wildlife of needed water, he added.

As with HB 2155, Rep. Norris agreed to use the department's draft language in work session, but asked the department to incorporate language allowing de minimus users to store the water they withdraw for later use.

The House committee rounded out the week by hearing an Oregon Water Resources Congress (OWRC) bill, HB 2341, that would allow industrial sources, in common with municipalities, to dispose of reclaimed water by offering it for use by irrigators and other users and HB 2505, a measure that would condition the exercise of instream water rights upon de minimus withdrawals for human consumption and stock watering.

Both bills drew steadfast opposition from WaterWatch, but OWRC representative Jan Boettcher took the rare step of telling the committee that it had "carte blanche" to do with the bills what it saw fit.

Water Resources took a generally favorable stance toward HB 2341, but saw problems with unclear definitions in the bill of "industrial treatment system" and the possibility that downstream users might suffer from reduced return flows if industrial users withdrew water without returning it to the stream.

WaterWatch's Myers echoed this concern and added others, including a call for public notice when a user proposes to use water reclaimed from industrial use and a proposal that the bill should require water right holders who use reclaimed water to give up their existing water rights rather than retaining them so as to ensure that...
March 1, 1993

Wellhead protection bill drowns in sea of controversy

A failure to reach consensus in the face of trenchant opposition from farming and landholding interests and eroding support from local government proponents doomed a state wellhead protection bill in a House Water Subcommittee hearing Thursday.

Committee members, with only Rep. Carl Hosticka (D-Eugene) dissenting, voted to table House Bill 2149 after a working group led by Oregon Environmental Council (OEC) Policy Director Jean Cameron and Oregon Farm Bureau representative Larry Trosi failed to reach agreement on revisions to the bill after more than three weeks of work.

"I'd hoped to pull a rabbit out of the hat," Cameron told the committee. "But there were no rabbits in the hat."

Cameron presented the committee with a reworked version of the proposal that substituted a voluntary education program for HB 2149's mandated program, but that proposal nonetheless drew unequivocal opposition from Oregonians for Food and Shelter (OFS) Executive Director Terry Witt, who argued that existing law provides adequate authority to undertake educational programs.

February 22, 1993

Signs of progress emerge from water panel hearings

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reclaimed water actually replaces diversions under existing water permits.

But CH2M Hill representative Mark Madison said a survey of Washington County farmers had identified the possible loss of existing water rights as the very reason many irrigators will not consider using reclaimed water. The bill should seek to allay these fears by giving farmers protection for existing water rights, Madison said.

NorPac Foods representative Jerry Butler said his firm supported expanding the use of reclaimed water in agricultural operations, noting that NorPac has used wastewater from a municipal treatment plant since 1955.

"If the state of Oregon is looking for more conserved water, it should be looking at more things like this," Butler said.

The reaction to HB 2505, however, was not nearly so upbeat. Opponents to the measure included Water Watch's Myers, who asked why Oregon should give a preference to livestock over the needs of its fish and aquatic resources; Oregon Trout and the Pacific Rivers Council, which decried provisions in the bill that it said would give preference to future domestic and livestock uses over those of existing instream rights in contravention of the doctrine of prior appropriation; and the Department of Fish and Wildlife, which objected to the bill's definition of de minimus as too inflexible to avoid impacts on smaller streams.

Water Resources Director Martha Pagel again took a cautiously favorable position, but said that existing Water Resources Commission authority already allows it to condition instream uses to provide some latitude for de minimus and emergency consumptive uses. Pagel also said the bill needed to be clear about whether it intends to give priority over instream uses to existing consumptive uses or all future consumptive uses.

Lackiamute Water Co-op representative Vess Garner; and a representative from the South Adventist Church Schools, who said the bill would represent a severe financial burden on small, rural private schools on well systems.

But hydro-geologist Jonathan Snell appeared undeterred by the lopsided testimony, reminding committee members that the price of groundwater remediation after contamination far exceeds the price of prevention. Furthermore, he added, hydro-geologists have begun to realize that the technology to clean up contaminated aquifers simply doesn't exist in many cases and that "the best we can do is contain the contamination."

"I call on this subcommittee to begin to steer our groundwater protection program, in the words of Gen. Omar Bradley, 'by the light of the stars as opposed to the light of passing ships'," Snell said, adding that the committee should pass a bill that provides some sort of wellhead protection so as to avoid a "public backlash" once the true costs of groundwater remediation emerge.

Rep. Tim Josi (D-Bay City) said he favored the concept behind the bill, but that he could not support it when he had as many concerns about its implementation as he did.

"I think what we've seen is the death of a bill," he said. "And that's too bad."
March 1, 1993

Water battle erupts again in House committee hearings

An expected stream of water legislation from the House Water Subcommittee slowed to a trickle last week after persistent opposition from WaterWatch representatives delayed action on a conservation measure and on proposals to expand the authority of irrigation districts.

But committee members voted to send House Bill 2344, a measure allowing minimum withdrawals of water from scenic rivers, to the full House Natural Resources Committee after accepting Water Resource Department amendments that placed restrictions on the amount of an allowable diversion and on the types of uses permitted. If approved by the full committee, the measure would be the first bill passed out of the House Water Subcommittee this session.

The conservation bill, House Bill 2155, will go under the legislative knife in its second work session this Thursday after three previous public hearings and one previous work session. The measure, which proposes an allocation formula for water savings resulting from improved diversion techniques, stalled Tuesday after WaterWatch representatives Anne Perrault and Tom Simmons objected to a Water for Life amendment to an allocation formula that would have replaced, acre-foot for acre-foot, existing instream water rights with the 25 percent allocation of conserved water assigned to the state under the bill’s allocation formula.

Water for Life attorney David Moon had argued that simply allocating the state's share of conserved water to instream uses would create a process for establishing instream water rights that bypasses the normal water right permitting process and its opportunity for public notice and comment. Moon also objected to adding more instream water rights on top of existing rights, arguing that instream water rights, like any other water rights, are wasteful if there are too many of them.

But Simmons said the state's water resources are already over-appropriated and that all instream rights are drawn from existing water rights.

"If we had to cut back on existing instream water rights because of waste, that would be the most delightful thing imaginable," Simmons said. "But [that situation] doesn't exist...there is no more water."

Committee chair Rep. Chuck Norris (R-Hermiston) also questioned Moon's portrayal of instream water rights, noting that in most instances they are little more than paper rights, with no actual water dedicated to flows. Rep. Carl Hosticka (D-Eugene), in turn, questioned whether the amount of water dedicated to instream flows was sufficient to meet actual instream needs and suggested that pressures from other constituent groups could cause the Water Resources Commission to set flow levels below those recommended.

HB 2346

Hearings on a bill that would declare as a high priority for the state the development of environmentally acceptable and financially feasible water storage capacity quenched some of the heat of the conservation debate, drawing only mild objections from WaterWatch's Doug Myers and enthusiastic support from water user groups.

Committee chair Rep. Norris described the measure as an attempt to keep storage from becoming "a four-letter word" in Oregon. "I just wanted this bill to say 'yea, storage'," he said.

Water Resources Director Martha Pagel told the committee that existing Water Resources Commission policy directs the department to consider storage in common with other methods for meeting instream and out-of-stream water needs and to pursue funding when the state determines that water storage will meet a future need. The policy also asks the state to encourage watershed storage through natural processes and using non-structural means such as wetland enhancement and riparian area recovery, Pagel said.

The bill drew praise from Oregon Water Resources Congress (OWRC) Executive Director Jan Boettcher, who noted that the consequences of the last eight years of drought would have been much more severe without storage capacity. The bill will send a strong message to Oregonians that the state must begin to shape its future water supply to avoid controversy over "how we continue to cut the pie into smaller pieces," Boettcher said.

Oregon Landscape Contractors Association representative Michael Snyder also approved of the measure. Snyder said his industry was "singled out by political leaders to take the brunt of the [1992] water shortage" and as a result lost millions of dollars because of restrictions on landscape irrigation. Increased storage, Snyder said, should be a "top priority" for the state.

Myers said WaterWatch would not oppose the bill, but he asked the committee to consider how many dam sites remain for storage projects in the state and how much federal and state funding exists for dam projects. The bill seems to favor engineered and structural storage solutions, Myers said, but the committee should try to emphasize natural storage processes in existing ecosystems.

HB 2340, 2342, 2343

Fireworks erupted again at a hearing Thursday after OWRC representative Kip Lombard described a plan to give irrigation districts expanded authority to provide water for non-agricultural uses, to change voting requirements for district elections and to permit district representatives to enter water users' property to make necessary repairs to the water conveyance system.

Lombard said the plan, now distilled from House Bills 2340, 2342 and 2343 into just HB 2340, allows the districts, especially in rural areas, to legally supply water to a number of users not served by municipal water corporations, including rural parks, schools, resorts, dairies and nurseries, and to a number of uses, including construction, mining, food-processing and fire-fighting. Tualatin Valley Irrigation District Manager Dan Wilson supported Lombard, telling the committee that his district had provided water, illegally, to the City of Banks to fight a fire that had exhausted the city's municipal water supply.

But the proposal raised the ire of WaterWatch representative Tom Simmons, who told the committee, "we're giving away the store with this bill." Simmons said the bill permits water districts to benefit from their own waste and inefficiency by allowing them to sell water they admit is surplus and by enabling them to avoid public scrutiny of their actions.

"Today you've heard, in my opinion, a bunch of fast talk," Simmons said. "There was not one word said to justify these changes."

Simmons noted that state water law would permit each of the users Lombard mentioned to apply for their own water right rather than obtaining their supply from the

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March 22, 1993

Bill to set 'minimum' instream flow draws sharp retorts

The sole proponent of a bill that would strictly define the reach of instream water rights under a 1987 legislation ran into an overwhelming array of opposition to the measure at a Senate Water Policy Committee hearing Thursday.

Water for Life attorney David Moon told committee members that Senate Bill 440 would clarify the 1987 standard governing how much water state agencies could ask to be set aside for instream flows by defining such flows as "the minimum seasonal quantity of water flow necessary to support the public use requested by an agency." Asking for the minimum would be equivalent to requiring no waste in consumptive uses of water, Moon said, and would prevent such agencies as the Department of Fish and Wildlife from applying for "optimum" flows.

But Moon's proposal drew unanimous opposition from state agencies, environmentalists, fisheries groups and local governments, many of whom pointed out that existing instream rights often amount to little more than "paper rights" because they are junior to more established consumptive water rights.

"Sufficient instream flows are not now available to meet scenic waterway needs for fish, wildlife and recreation under the established [City of Portland v. Diack flows]," Pacific Rivers Council representative Louise Bilheimer said. "There are currently only 542 instream water rights ... what is causing stress on our rivers and streams is the over-appropriation of water to out-of-stream uses, not instream uses."

Representatives from Oregon Trout and WaterWatch also objected to the bill's requirement that state and federal agencies conduct baseline studies and use "up-to-date methodology" before granting instream flows, noting that no such requirement exists when the state approves private, consumptive uses of water.

"This bill would tie the state's hands by not allowing [its] to protect [public] uses of the resource if it lacks the funds to use the most 'up to date' methodologies for determining flow needs," WaterWatch representative Doug Myers told the committee in written testimony. "This bill would place a greater burden on the state when requesting water for public instream uses than for private use of water."

Local government advocates from the League of Oregon Cities (LOC) and the Oregon Association of Clean Water Agencies (ACWA) joined the Department of Environmental Quality (DEQ) in objecting to a bill provision that would deny the use of

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March 1, 1993

Irrigation district bill sparks heated retort from WaterWatch

WaterWatch representatives Doug Heiken suggested that water allocated to irrigation districts but no longer needed should return to the control of the Water Resources Department for re-appropriation or reallocation according to the public interest.

Water Resources representative Bev Hayes took a generally neutral stance between the two adversaries, favoring the ability of irrigation districts to provide water to non-agricultural users, but expressing concern about whether the district could make such transfers without departmental approval.

Oregon Farm Bureau representative Larry Trosi said he supported the bill and that he had worked out most of his differences with OWRC. The only remaining concern he had was to ensure that water users had some ability to evaluate the cost of water metering devices required in the bill.

Rep. Norris concluded the hearing by scheduling the bill for work session on Mar. 9 and adding that he would like to move the bill out of committee at that time.

March 15, 1993

Water Resources seeks to expand water right negotiations with tribes

A bill that would permit federally recognized Indian tribes to negotiate with the Water Resources Department for the same allocation of water that non-tribal water rights holders receive drew unanimous support at a House Water Subcommittee hearing Tuesday.

The measure, House Bill 2109, seeks to allow tribal governments to negotiate directly with Water Resources, rather than relying on the state water rights adjudication process, which often culminates in expensive and lengthy litigation. Current Oregon law permits such negotiated settlements only with the Confederated Tribes of the Umpqua/Springs Reservation.

Confederated Tribes of the Umatilla Reservation General Council Chairman Antonio Marley told the committee that adjudication proceedings could serve to divide the tribe between the tribe and other water users in the basin. The tribe would much rather negotiate, building on the good relations forged during the development of the Umatilla Basin Project to find a "constructive and mutually satisfactory resolution of this issue," Marley said.

Representatives from the Oregon Water Resources Congress said the Umatilla tribe had been a member of one of its irrigation districts for a number of years and that they would favor a negotiated settlement over litigation in the Umatilla basin.

Committee chair Rep. Chuck Norris (R-Hermiston) said he would probably schedule a work session on Mar. 23.
March 22, 1993

Water committees pore over pond exceptions to permit process

Faced with no fewer than seven separate bills seeking in one form or another to free water users from the need to obtain a water right for small-scale diversions or storage projects, both the House and Senate water committees are pinning their hopes for consensus on a Water Resources Department-led work group scheduled to meet today.

House Water Subcommittee chair Rep. Chuck Norris (R-Hermiston) hopes to create "a pond-bill stew," concluded hearings Thursday on three of the bills — House Bills 2399, 2970 and 3273 — by referring them to the work group formed earlier this session to hash out differences among user groups, environmentalists, local governments and others over House Bills 2107 and 2153. Meanwhile, on the Senate side that same day Water Policy Committee chair Sen. Bill Dwyer (D-Springfield) appeared willing to defer consideration of Senate Bill 441 and await the passage of House legislation dealing with water storage exemptions.

"I think [HB] 2153 is a much better vehicle than this, in my opinion," Sen. Dwyer said. "This is an area we can do a lot with using what comes over from the House."

The measures all seek to exempt from or to substitute a streamlined registration or licensing procedure in lieu of the existing permit application process now required to divert water for small ponds and reservoirs, or for specific beneficial uses. But they differ in the amount of the diversion they would register or exempt, in the application requirements for registration or licensing, and in the types of uses they would allow and restrict. Most would also require some form of water use monitoring or reporting.

HB 2399

Perhaps the least controversial of the House pond bills heard last week, HB 2399 would exempt surface and groundwater diversions of less than one acre-foot when used to fill a rural fire protection district's fire prevention pond and would require annual water use reporting. Clarks Rural Fire Protection District representative Kevin Hanway told the House Water Subcommittee that it should view giving an exemption to fire prevention ponds as a life-saving measure, noting that the alternative to maintaining a pond in the Clarks district is hauling water in pump trucks over steep terrain from municipal sources in Beavercreek, Molalla or Estacada.

Department of Forestry representative Scott Wilbrecht, the only other witness to testify on the bill, said the department took no position on any of the pond exemption bills, but agreed with provisions that would minimize or exempt from regulation water use directed toward fire suppression and forest management activities, provided the use had no effect on adjacent streams.

HB 2970 and 3273

The following measures, which differed primarily in their application to, respectively, existing diversions and to existing and future diversions, drew support from Rep. Bill Markham (R-Riddle), who testified that he thought the blanket exemption granted in HB 3273 was "a good idea if we want to look out for the farm community." Rep. Markham objected to the water use reporting requirements in HB 2970 and in other measures the committee has considered, noting that engineering surveys and the installation of monitoring equipment added up to increased expense for farmers.

"I don't see that having registration, permitting and [water use reporting] will get us much," Rep. Markham said.

Oregon Farm Bureau (OFB) representative Larry Trost told the committee that OFB supported the concepts in the legislation and that the benefits of ponds exemptions would extend to other interests besides agriculture, including fire fighting and other small-scale uses. Water for Life representative David Moon echoed Trost's comments and added that small stock-watering ponds frequently serve as wetland areas for waterfowl and other wildlife and keep watering animals away from riparian areas they might otherwise damage. Moon also noted that Water for Life had introduced a Senate bill to address some additional concerns, including giving exempt stock pond users a priority date beginning on the date of their first use of the pond, which would give them some rights under Oregon's prior appropriation system.

Opposition to the measures came from Oregon Trout representative Jim Myron, who noted in written testimony that continuing to tolerate ponds that have not gone through the permitting process and its accompanying public interest review could threaten fish habitat by dewatering "seasonal water sources" during critical spawning months and by raising the temperature in some downstream reaches. Many existing ponds should also be required to provide fish passage devices, Myron added. Oregon Trout would prefer that the committee wait for the results of the work group on HB 2153 before considering further pond exemptions, he said.

Pacific Rivers Council State Conservation Coordinator Louise Bilheimer, however, said that she supported HB 2153 with "trepidation," because "no one knows how much water we are talking about. While each pond may be de minimus individually, collectively in any one watershed they may amount to a substantial amount of water." Bilheimer said she opposed both HB 2970 and 3273 because "both bills contain language that if enacted would lead to uncontrolled use of the waters of this state."

Rep. Norris, noting that LANDSAT satellite photographs exist for most of the state, asked Water Resources Department representative Bev Hayes if the department could pinpoint the location of most of the ponds that do not have water right permits. Hayes said that while the department has photographs showing most of the ponds in eastern Oregon, inclement weather and the presence of trees surrounding ponds on the west side of the Cascades makes locating ponds difficult.

SB 441

The utility of satellite photos proved to be a point of contention in the Senate hearing also, as Water for Life representative Moon, testifying in favor of a bill his organization asked to have introduced, squared off against opposition Bilheimer. Sen. Wes Cooley (R-Powell Butte) pressed Bilheimer to justify her statement that nobody knows how much water exists in small ponds when satellite data exists. But Bilheimer replied that even when satellite photos show the location of ponds, they cannot show their depth, so the volume of water they contain is still unknown.

Oregon Trout's Myron told the committee that SB 441 included too broad a mandate, exempting not just existing ponds but all future ponds from the need to apply for a water right and including in the definition of stock pond impoundments of up to 10 acre-feet, an amount Myron called "excessive."

Association of Oregon Realtors representative Jerry Schmidt, however, told the committee that he supported the bill's concept and would support any legislation that kept the state from micromanaging water resources.
Local councils may take charge of watershed planning

March 29, 1993

A compromise measure to set up a voluntary program for local watershed management under the general direction of the Strategic Water Management Group (SWMG) will go to the full House Natural Resources Committee this week after unanimous approval in the House Water Subcommittee Thursday.

House Bill 2215, substantially revised after extensive workgroup deliberations, would authorize SWMG to cooperate with the Governor's Watershed Enhancement Board (GWEB) to "focus state resources on the achievement of sustainable watershed health" using pilot projects and in accordance with a "partnership process" outlined in a SWMG report entitled Proposal: A Watershed Management Strategy for Oregon. The bill would also encourage local governments to form watershed councils using the same partnership process and would authorize SWMG to work cooperatively with any councils that do form.

The compromise shrank the bill from 14 sections of detailed statutory prose to a single page consisting mainly of policy directives. In the process, however, the work group eliminated a number of nettlesome issues in the original bill, including a requirement that SWMG approve the composition of the local councils to ensure a balanced representation from local government entities, private landowners, local industries, Indian tribes, public interest groups and the academic and scientific community.

Opponents of the bill as originally drafted also objected to the mandatory character of some of the provisions governing local watershed council responsibilities and invoked fears of an "LCDC-style" oversight commission that would use state regulation to restrict land uses in areas it identified as critical watersheds.

The new bill places the burden for watershed management on the local councils and casts state agencies in a backup role, responding to local council requests for assistance on the basis of "whether the requesting organization reflects the interests of the affected watershed and the potential to protect and enhance the quality of the watershed in question." But, like the original measure, the new language says nothing about funding management efforts, an issue that had concerned local government witnesses in earlier hearings.

In final hearing during work session Thursday, however, none of the witnesses mentioned funding as they each came before the House Water Subcommittee to voice support for the compromise. Committee members, for their part, directed their questions toward determining the composition of the councils, asking who would have ultimate authority to decide who should participate or sit on them.

Water Resources Department representative Becky Kreag said the new proposals suggested that the formation and governance of the councils should follow the recommendations for membership distribution outlined in the Watershed Management Strategy report, but that local governments would be free to decide the composition of the councils themselves, with no oversight beyond an informal SWMG review. Department director Martha Pagel added that local governments would have to negotiate amongst themselves for representation on the watershed councils when the boundaries of the watershed cross county or municipal lines.

House Water Subcommittee chair Rep. Chuck Norris (R-Hermiston), who had pushed for consensus from work group participants, told committee members he was pleased with the outcome.

"I personally thought this was a very important bill," Rep. Norris said. "I know there's been hours and hours devoted to this by people on the work group."

Although most of the work group participants who testified supported the compromise version, with varying degrees of enthusiasm, WaterWatch representative Doug Myers broke ranks with fellow environmental representatives from the Sierra Club and the Pacific Rivers Council to tell the committee that he could not. The new version contains no statewide standards for watershed management and relies on vague promises of cooperation among state agencies and local councils, Myers said. He added that WaterWatch would still prefer the original draft of the measure or additions to the current draft that would set stricter standards.

Water groups oppose proposal to set minimum instream flows

March 22, 1993

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Instream flows for pollution abatement. Mullane told committee members that Idaho already has declared in statute that pollution dilution is not a "beneficial use" of instream water. Water for Life, he added, favored reducing emissions at the source, not by "throwing more water on the problem" — a practice that could result in uncontrolled water use as state agencies and dischargers increase flows to match increases in pollution.

But DEQ representative Neil Mullane countered by noting that the department bases its requests for instream flows on what it needs to dilute treated wastewater, not untreated wastewater, and that it does not intend to substitute dilution for source reductions and treatment. The bill as drafted would in fact require the department to apply for more instream water rights than it might ordinarily, Mullane said, because its current method of calculating necessary flows is more conservative than the method the bill proposes.

ACWA representative Cathryn Collis said the bill would force local governments into needless and expensive modifications of their wastewater treatment systems to meet a standard of cleanliness now difficult to achieve.

"Such an extreme condition would result in enormous expenditures without discernible environmental benefit in streams where all beneficial uses are currently supported," Collis said.

The bill would also deprive streams of return flows from agricultural, forestry and industrial operations, LOC representative Joni Low added, which would lower stream flows available for other beneficial uses.
Fish screen tampering could close water supply gates

A measure that would cancel the water right permit of any person caught tampering with, damaging or destroying a fish screening or fish bypass device located in a water diversion or impoundment project prompted a chorus of disapproval from water users at a Senate Water Policy Committee hearing Tuesday.

Water users told committee members that the proposed penalty is too broad, unduly harsh, and might violate constitutional due process rights for water permit holders.

But Senate Majority Leader and bill author Sen. Dick Springer (D-Portland), while acknowledging that the bill might need revision, said the state’s existing enforcement and civil penalty provisions are not enough to deter intentional violations of water law that do severe damage to fishery resources.

“Some businesses just see civil penalties as a cost of doing business,” Sen. Springer said, citing an incident near Umatilla where, he said, a careless employee propped open a fish screening device just before a downstream smolt migration, killing about 44,000 of the tiny salmon. Given the expense of the state and regional effort to restore salmon runs, he added, the state should ensure that water users do not sabotage its programs, either intentionally or inadvertently.

“This bill is aimed at providing a deterrent I hope will never need to be used,” Sen. Springer said. “I feel that this is a wake-up call. I don’t know how many more times we can sound it, but we’ve gone past [need] band-aids when we’re talking about shutting down fisheries. This is the kind of sanction we need to show that we’re serious.”

Committee members, however, expressed some skepticism, noting that the bill as drafted could penalize an individual or business performing routine maintenance on screening devices. Sen. Wes Cooley (R-Powell Butte) said he agreed with Sen. Springer’s intent but that he wanted to see some flexibility in the process.

“I think there are shades of gray many times in this area,” Sen. Cooley said. “We need to have some sort of appeals process here.”

Committee chair Sen. Bill Dwyer (D- Springfield) told Sen. Springer that his bill could have unintended implications for third parties, including banks, Farmer Home Loan mortgagors and other lenders and lien holders whose secured interest in their borrowers’ lands could plummet in value with the cancellation of a water right permit. Sen. Springer said he thought adequate precedent existed in law for creditors to intervene in cancellation proceedings that would affect their interests. More important, however, the threat of permit cancellation might force lenders to closely supervise the activities of borrowers, much as they have when dealing with potential releases of hazardous waste, he said.

Sen. Springer’s position found favor with WaterWatch representative Audrey Simmons, who praised the bill’s “succinct” drafting and “teeth.” She said she watched the Water Resources Commission “cave in” during a penalty hearing where the people accused of tampering with a screening device pleaded hardship. “There’s been a cavalier attitude toward this issue,” Simmons said.

Oregon Trout representative Jim Myron said he also supported the bill’s concept, but acknowledged under questioning that the bill might need revisions to exclude instances where employees conduct maintenance or clearing operations on the screens. He said the committee should make certain to draft any exclusions it granted carefully so as not to allow genuine instances of tampering.

But the bill drew only lukewarm support from the agencies charged with enforcing existing penalties for fish screen tampering. Water Resources Department representative Bev Hayes said it would give the department an additional tool to use, but that the department would prefer to have the power to restrict a permittee’s water use or to seek additional civil penalties, thereby avoiding a “time consuming, costly and possibly unsuccessful contested case process.” Hayes said she also anticipates that the bill could prompt additional allegations of tampering, which could increase the amount of money and staff time the department spends on field investigations.

Department of Fish and Wildlife representative Jill Zamowitz said she supported the bill’s intent, but thought it might need amendments to exempt water users cleaning fish screens the department could not tend and to ensure that emergencies, such as floods, would result in no liability to water users. Zamowitz said she thought her department could benefit far more from clear civil penalty authority than from an ability to cancel a user’s water right.

Oregon Water Resources Congress attorney Kip Lombard endorsed the expansion of civil penalty authority, noting that a proposal to take away a water use permit could potentially infringe on a user’s property rights and thereby run afoul of constitutional due process concerns. A civil penalty, by contrast, would have no constitutional problems and could be adjusted to serve as a substantial deterrent to intentional violators, Lombard said.

Lombard also noted that cancelling a water right for an irrigation district or another governmental or quasi-governmental body because of an employee’s negligence would penalize innocent users who depend on the district for their water supply.

“Think the remedy is to make the civil penalties stick—to make them substantial,” Lombard said. “This would have the same hammer effect and would be much easier to enforce.”

Lombard also said he thought the bill should specify that the Department of Fish and Wildlife would have the authority to enforce whatever strictures against tampering the committee decides to adopt, as the Department of Water Resources does not have the necessary expertise in fisheries issues to make a proper determination of what constitutes tampering.

Sen. Dwyer said the bill will go to a work group to deal with concerns brought up at the hearing.

In other developments, committee members heard from a work group charged with fashioning a compromise over Senate Bill 90, which would allow the Water Resources Commission to adopt rules to exempt certain groundwater uses that do not withdraw more than 5,000 gallons per day from the need to obtain water right permits and to require such permits from users applying for certain ground water uses now exempt, if necessary to protect groundwater resources.

In part because of the latter provision, the work group reported back not with consensus, but with four versions of bill language. Work group members then lined up to testify as to which version each preferred, to the apparent annoyance of Sens. Cooley and Dwyer, who chastised the participants for stubbornness.

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Groundwater exemptions divide work group members

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Committee administrator Lisa Zavala briefed committee members on the four options, noting these differences:

• **Option 1** would permit the commission to exempt by rule any groundwater use that does not exceed 5,000 gallons per day and would permit the commission to issue a limited license, in accordance with statutory law governing surface water use, for non-exempt groundwater uses, including firefighting, stock watering, road construction and maintenance, aquifer testing, pumping for drainage during construction, and certain other purposes. The commission may also require permits for groundwater uses now exempted from permit requirements where necessary to protect the resource;

• **Option 2** would permit the commission only to issue a limited license for non-exempt uses. It would not permit the commission to either exempt new groundwater uses or require permits for now-exempt uses;

• **Option 3** would permit the commission to exercise all the authority given in option 1 except the ability to grant limited licenses for non-exempt uses;

• **Option 4**, the original bill, would allow the commission to exercise the authority given in option 1 except the ability to grant limited licenses for non-exempt uses.

Oregon Water Resources Congress representative Kip Lombard told the committee he favored option 2, noting that allowing the expansion of exempt uses could add up to a large cumulative impact that would eventually cause an administrative headache and have an impact on those with water right permits.

"We'd prefer that additional exemptions not be granted without some sort of registration process so we can keep track of the uses," Lombard said. "If we continue to expand the exempt categories we simply won't be able to manage it."

Water for Life and the Association of Oregon Realtors (AOR) backed option 2 or 3. AOR representative Jerry Schmidt told the committee that allowing the commission to require water permits for exempted groundwater uses would interfere with local land-use decisions. He cited as an example a situation where a builder might win approval from the Land Conservation and Development Commission to build on a lot, only to have that approval essentially overturned by the Water Resources Commission when it denies a water right.

But Sen. Tricia Smith (D-Salem) pressed Schmidt for a way to regulate withdrawals from already overextended aquifers.

"I'm one of those radicals that thinks that adequate water is necessary for the development of land," Sen. Smith said. "That's not how it works now—your philosophy seems to be 'let's do it [groundwater withdrawals] until we can't do it any more.'"

Schmidt replied that he might support putting some restrictions on the commission's ability to require licenses, but that he remained opposed to giving the commission unlimited authority.

Water Resources Department Director Martha Pagel told the committee that she preferred the original bill, but could support adding the limited license provisions outlined in option 1 and placing limits on the commission's ability to require permits for exempt uses.

Sen. Dwyer said he would continue to hold off on the bill pending an agreement in the work group on the specific provisions to be included in it.

March 29, 1993

Water Resources gets House committee nod on proposal to negotiate Indian water rights

The House Water Subcommittee Tuesday passed on to the full House Natural Resources Committee a measure that would permit the Water Resources Department to negotiate water right allocations with any federally recognized Indian tribe.

Committee chair Rep. Chuck Norris (R-Hermiston) called the measure, HB 2109, timely and said it would enable the state to avoid the protracted litigation that has often marked water right disputes with tribal governments, such as that involving the Klamath Tribe near the south coast.

The legislation passed over the objections of Water for Life, whose representative called the measure premature and said it does not do enough to prevent one party from circumventing the negotiation process and resorting to litigation. Because the preparation for negotiations takes at least two years, it would be better to await the outcome of pending litigation to sort out the relevant law, the representative said.

But Water Resources Department Adjudication Section head Reed Marbut told the committee that while the department can begin some preatory informal negotiations, it needs this legislation to begin formal negotiations with the Confederated Tribes of the Umatilla Reservation, who have expressed interest in the process. The Umatillas would need about two years for their own internal preparations, Marbut said, but the department already has the necessary staff and capability.

Marbut also noted that the tribes would retain the right to pull out of negotiations at any time and seek redress through the courts, at their option, no matter what the legislation said. But, he added, the state would benefit from negotiated settlements as much as the tribes do if it means avoiding litigation that would not only cost the state money, but that might lead to an adjudicated settlement giving the tribes senior water rights over existing state and private appropriators.

On the other hand, some tribal governments have said they would subordinate water rights they negotiate to existing state law, Marbut said.

Rep. Bill Markham (R-Riddle) asked Marbut if permitting the Water Resources Department to act as an agent for the state in negotiations with tribal governments would set a national precedent. Marbut replied that states commonly assign such responsibilities to administrative agencies, reserving legislative approval only for proposals not covered under existing state water law, such as the decision by the Cheyenne tribe in Wyoming to begin marketing water. The Legislative Assembly would still have to approve any proposal that would change Oregon water law, Marbut said.
Water groups blame change in rules for delay

A drought-induced jump in the number of residential appropriators eager to lock in their water use, challenges from public interest groups and a recent change in the rules governing the permit process have all contributed to a two-year average delay in issuing water right permits, Water Resources Department officials told House Water Subcommittee members at a Thursday hearing.

Of these causes, the "biggest single factor" in the backlog is the dawning realization, particularly in western Oregon, that not enough water exists to meet everybody's needs, Water Resources representative Reed Marbut said. That realization, driven home by several successive years of drought, has led to a scramble to stake claims on what water remains, Marbut added. "Browned lawns in Portland have done more for our traumas than anything before," he said.

Department Director Martha Pagel told the committee that she has made processing the backlog the department's first priority, shifting some staff and resources and seeking out volunteers to help evaluate applications. Marbut estimated the number of applications waiting departmental action at some stage of the permit process at approximately 3,800, 900 of which are applications for in-stream flow rights from other state agencies. Although the average wait for application processing comes close to two years, he added, that figure includes both highly controversial applications for natural streamflow diversions and requests to withdraw groundwater from isolated aquifers, which attract little attention or opposition.

Marbut noted that a Washington State survey in which Oregon participated found the backlog problem common among western states faced with competing demands for scarce water resources. Water allocation decisions in these states, historically based on the "first-in-time, first-in-right" prior appropriation doctrine, have begun to yield to calls for active government intervention and management, Marbut said.

In Oregon, litigation over the water right permitting process brought both by public interest groups and water users prompted Water Resources to revamp its guidelines for receiving, evaluating and granting water rights and to specify how public interest groups can participate in the process, Marbut said. The result now, he said, is a more predictable process that should result in fewer delays in application processing from last-minute challenges or court action.

But water user interest group representatives disagreed, citing the rule change itself as one of the principle causes for the backlog. Oregon Water Resources Congress Executive Director Jan Boettcher said the rules permit too long a comment period and require too little evidence from interest groups challenging permit applications. Groups such as WaterWatch, which routinely appeal every permit application with computer-generated form letters, can automatically add two months to the permit process by finding technical flaws in the applications themselves, rather than by addressing substantive issues, Boettcher said. She recommended narrowing the criteria for challenging a permit application on public interest grounds, requiring challenges to include clear and convincing evidence of injury to the public interest, and creating the rebuttable presumption that applications which comply with the department's water basin program process are in the public interest.

"We think the problem is more serious than the department can [solve] by throwing money and staff time at it," Boettcher said. "We need changes in the process."

Water for Life attorney David Moon said the department's decision to apply its new rules retroactively would unfairly penalize permit applicants who relied on earlier standards when they sought a water right. Where before the department would have routinely granted permits when it found that sufficient streamflow existed to meet demand 50 percent of the time — a "50 percent exceedence standard" — it now requires an 80 percent exceedence standard, Moon said, which means the department will deny many of the applications now pending.

Moon said he agreed with many of Boettcher's suggestions for reforming the department's permit process and would urge the legislature to require the department to drop the 80 percent exceedence standard and to evaluate pending applications according to the rules in effect at the time of application. "I would hope the backlog doesn't disappear simply by the Water Resources Department finding that no water is available," Moon said. "But I'm afraid this will happen."

Oregon Groundwater Association representative Steve Schneider added to the list of reform suggestions, calling on the department to require that fees accompany challenges to permit applications and on the legislature to change the composition of the Water Resources Commission to include more scientists and representatives from the regulated community. The fees should cover the costs of processing the challenge documents and dissuade people from protesting permit applications, Schneider said, while a change in the composition of the commission would allow water allocation decisions to be made on the basis of "science and economics instead of politics and emotion."

Schneider said allowing public interest groups to challenge water right permit grants subverts the prior appropriation doctrine, which is based on the assumption that water management agencies will routinely grant permits for beneficial uses and then rely on self-policing by permit holders to ensure the proper allocation of water resources. Where there are conflicts, the doctrine grants the full measure of their rights to senior rights holders, while those who hold water rights with later priority dates simply do without, Schneider said.

But WaterWatch representative Karen Russell told the committee that Oregon water law has required public interest determinations for water right applications since the 1950s and that backlogs in application processing have occurred many times in the state's history. The Water Resources Commission adopted its most recent rule change governing the manner in which the department must conduct such reviews at the recommendation of a committee made up of a broad range of interests, Russell said. The process is fair and the legislature should give the department time to use it to deal with the backlog, Russell said.

Russell also replied to criticism directed at WaterWatch's practice of objecting to water right permit grants and the "first-in-time, first-in-right" prior appropriation doctrine, which is based on the assumption that water management agencies will routinely grant permits for beneficial uses and then rely on self-policing by permit holders to ensure the proper allocation of water resources. Where there are conflicts, the doctrine grants the full measure of their rights to senior rights holders, while those who hold water rights with later priority dates simply do without, Schneider said.
A proposal calling on Congress to support a summit meeting to address Northwest timber issues drew nearly unanimous support from timber workers, environmentalists and legislators in a House subcommittee hearing Wednesday.

The proposal, House Joint Memorial 2, also asks the Northwest congressional delegation to push for the summit “as a means of resolving the ongoing forest management crisis.” President Clinton had suggested convening such a meeting on Oregon visits during last year’s presidential campaign.

Summit conferees should obtain input from “all interested parties,” but decisions on timber issues should be made only by Clinton Administration officials, the Northwest congressional delegation and the governors and elected officials of the affected states, the measure says. It also calls for conferees to produce legislation that would “maintain the economy of the region, maintain community stability, provide for a stable supply of timber for production, maintain a reasonable level of jobs and protect fragile forest ecosystems.”

In testimony that addressed topics ranging from timber supply problems to efforts to amend the federal Endangered Species Act, labor groups, including the International Woodworkers of America, the AFL-CIO, the Association of Western Pulp and Paper Workers and the Association of Federal, State, County and Municipal Employees, called on legislators to press for an early summit.

“I can’t emphasize how much we need this summit,” Oregon AFL-CIO President Irv Fletcher said. “Every month of delay means another mill shut down, probably permanently.”

The measure also drew support from the Oregon branch of the Sierra Club, which cautioned committee members that forestry issues have an impact outside the region and that members of Congress might not appreciate having decision-making power taken out of their hands.

U.S. Rep. Peter DeFazio weighed in with a letter to the committee saying he has asked Clinton to hold the summit in his district, since job losses from reduced timber supply will hit Douglas, Lane, Linn, Curry and Coos counties hardest.

Rep. Tim Josi (D-Bay City) voted along with the full House Natural Resources Committee to send the measure to the floor Thursday, where it will be scheduled for third reading.
March 8, 1993

Forestry board delays riparian rules

Citing a need to experiment with a proposed riparian-area protection regime before applying it to timber harvesting statewide, the Oregon Board of Forestry Wednesday decided not to adopt rules implementing the plan until September, pending a Forestry Department report on how it affects monitoring sites around the state.

State Forester Jim Brown said the board accepted the recommendation of departmental staff and Anne Squier, the governor's natural resources specialist, to look at the "real world" effects of the proposed rules on 37 sites where the department has already applied the new restrictions and to collect additional data from about a dozen more sites in eastern Oregon and the Klamath Basin. The department also plans to study the economic impact of the proposed rules on landowners during the same period, Brown said.

The delay means that existing riparian management rules will continue to govern timber harvesting on private land until the Department of Forestry assesses the effects of the proposed regime, Forest Practices Section Director Charlie Stone said.

Stone said the proposed rules would generally extend the area away from the stream bank to which existing riparian-area management restrictions apply to about 100 ft. and would require landowners to leave more wood mass and other vegetation along stream banks to improve water temperatures and turbidity.

Existing rules for Class I streams — those important for fish propagation and domestic water use — divide the area along the stream bank into two general categories: the riparian area itself, to which strict harvest regulations apply; and a riparian management area (RMA) three times the width of the stream channel in which landowners may conduct more intensive harvest activity, Stone said. The rules now require harvesters to leave all standing snags and downed wood, preserve 75 percent of the stream bank shading that existed before harvest and maintain at least a 50 percent canopy cover over the riparian area itself, Stone said. In the RMA landowners must leave only non-merchantable timber and nine trees per acre — or a total of 10 square feet of basal area — to meet existing regulations, he added.

The draft rules presented to the board last week capped a nearly two-year long effort by the department to establish a stream-protection program that would allow the restoration and enhancement of declining runs of anadromous fish species — declines some observers have blamed on stream-side logging practices.

But the draft rules do not represent a consensus among affected interest groups. Stone said some environmental and fisheries interests have held out for a management regime that would prohibit all timber harvesting in a band between 100 and 300 ft. wide along each stream bank. Stone said he believes this proposal would unfairly burden landowners and would not significantly improve fish habitat.

"Leaving the stream alone won't produce the necessary material," Stone said.

Because past logging practices left little woody debris in or along streams, he explained, there is insufficient vegetation to allow natural regeneration in riparian areas. The vegetation that does exist is generally hardwoods, he added — restoring confiers to stream banks generally requires some management activity or natural disturbances that open up sufficient habitat.

Stone said the board's delay in adopting final rules will give the various interest groups a chance to reach some agreement.

"Even if we don't get better answers to the questions we have about management alternatives, if we get people thinking about the same sites and posing questions to each other we can hopefully bring them closer together on this issue," Stone said.

Brown said the board has heard from some groups that have tried to reach some consensus on the issue, including a panel of Coquille-area fishing and timber interests, who submitted a model management plan for the Coquille River basin (see related story, page 1). Brown said the department summarized the Coquille proposal at the board meeting and that it reflected "pretty much in line with where the board was heading" on this issue.

The board will wait to hear from the department this September before taking any additional public comment or deciding on a course of action, Brown said.

March 29, 1993

Endangered species act changes prompt clash in House

In an encounter that could presage this Friday's Northwest Forest Summit Conference, antagonists in the battle over the future of Oregon's forests squared off last week on opposing sides of a slate of proposals before the House Agriculture and Forestry Subcommittee that would modify provisions of Oregon's endangered species act.

At a hearing Friday whose tone alternated between decorous respect and icy politeness — with occasional spates of ill-concealed hostility — representatives from timber organizations, fishing advocacy groups, scientific associations and the environmental community sparred with each other and with committee members over six House bills and two House joint memorials that proposed actions ranging from a thorough revamping of the Fish and Wildlife Commission's listing process for all threatened and endangered species to the de-listing of the northern spotted owl. Committee chair Rep. Liz VanLeeuwen (R-Halsey) said the bills would likely be combined into one measure, possibly House Bill 2927, after further hearings and work sessions.

Timber advocates Mike Miller of Oregon Associated Loggers and Greg Miller of the Oregon Forest Industries Council told the committee that they requested the introduction of HB 2927 after learning that the federal recovery plan for the northern spotted owl assumed that harvest restrictions on 7.5 million acres of federal forest land would be sufficient to ward off the owl's extinction, without the need for corresponding restrictions on state forest land.

"The thought that occurred to us was that if it took 7.5 million acres of federal lands to recover this species, would it not be a bit impractical to assume that ... state forest lands could play any kind of realistic role in the recovery of such a wide ranging species as the spotted owl?" Mike Miller said. "If we —continued next page
Environmentalists condemn endangered species act shifts

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locked up all the state's habitat that even came close to being owl habitat, it would likely have little effect on owl recovery].

Current Oregon law which lists the spotted owl on its own register of threatened species has substantially reduced harvest activities on state timber lands which supply half the revenue to the Common School Fund, Greg Miller added, a problem the state could avoid by adopting the federal recovery plan as its own. HB 2927 would limit the state to adopting plans that do not go beyond the mandates of federal programs, Greg Miller said.

The bill would also set a two-year deadline for the Fish and Wildlife Commission to establish recovery programs for threatened and endangered species and would subject the decision to list a species to review every five years to determine the need for reclassification or de-listing, Greg Miller said. If the commission fails to come up with a recovery plan within two years, the commission can no longer treat the species as threatened or endangered and must begin rulemaking to de-list it, he added. Similarly, if the commission does not complete a reclassification review within one year, the species is automatically de-listed, he said.

Other bill provisions would require the commission to make listing decisions that consider only the effects of human activities, as distinct from disease or predation, on a species' population decline and that minimize economic impacts on people and ecological impacts on native wildlife populations. Where a species has sufficient numbers outside Oregon to prevent its extinction, recovery actions within the state may consist of voluntary agreements only, and when the Department of Fish and Wildlife determines that an action will harm a species it may merely advise other state agencies of that fact rather than require specific actions, the bill says.

Mike Miller noted that the bill would still permit the commission to list and adopt a recovery plan for species not listed by other states or by federal agencies.

"We firmly believe we should do all that is practical to save and recover any species that is native to Oregon and that society views as a desirable part of the human experience," he said, adding that despite the changes HB 2927 brings to the process it "does not in any way, shape or form attempt to weaken the current state law on [endangered species protection]."

Shooting the messenger

But Oregon Natural Resources Council Conservation Director Andy Kerr, in testimony that served as a contentious centerpiece to the hearing, emphatically disagreed, calling the proposals "remarkably shortsighted, undoubtedly ineffective and incredibly stupid." Rather than choosing to deal with the causes of population decline among forest species, Kerr said, the legislature would prefer, with these bills, to "shoot the messenger" and pander to timber communities seeking a long-term solution to economic dislocation.

"The timber industry's supply hasn't run up against an owl, it has run up against the Pacific Ocean," Kerr said. "The fact is, there are virtually no more ancient forests left to clear cut."

Kerr's testimony, which responded to questions ranging over much of the familiar landscape of the Northwest forest debate, raised the ire of some committee members, including Rep. VanLeeuwen, who said she was "insulted" by his characterization of the aims of the measures and from Rep. Sam Dominy (D-Cottage Grove), who asked Kerr whether he could truthfully say that the environmental community has not used forest issues for its own political gain.

Rep. Ray Baum (R-LaGrande) told Kerr that frustration in timber communities stems in part from the perception that there can be no certainty in timber supplies because environmentalists never seem satisfied with their gains. Kerr replied that the environmental community has not changed its aims, but has taken advantage of new scientific knowledge to refine how it measures progress toward those aims.

"There is a frustration out there that the environmentalists keep moving the goalposts," Kerr said. "I understand this frustration, but we haven't moved the goalposts — we've always wanted functioning ecosystems that can sustain human activities."

Fishing perspective

One example of a human activity that depends on a functioning ecosystem is commercial fishing, the "number two forest-dependent industry" in the state, Pacific Coast Federation of Fishermen's Associations (PCFFA) Regional Director Glen Spain told the committee. The state must ultimately realize that its environment is the only real source of its economic wealth, Spain said, and take steps to protect that asset. As things stand, Spain said, "we're dealing with an ecosystem unraveling right before our eyes."

For that reason the PCFFA opposes any alteration of existing protections for the forest ecosystem and would prefer to see state endangered species law strengthened, a move that would protect fishing jobs in the long run, Spain said.

"If you tamper with these acts you can kiss those jobs good-bye," Spain said. "You can kiss this industry good-bye."

But Rep. Dominy questioned whether commercial harvesters would willingly pay increased prices for utility service, paper products and other forest commodities and Rep. Dennis Luke (R-Bend) asked whether commercial harvesters would forego harvesting salmon for a year to help with their recovery.

Spain noted that commercial harvesters have already taken "a substantial hit in this state" and may face another zero-catch season this year because of salmon declines. The PCFFA has done what it can to volunteer needed harvest cutbacks, he said, but most of the activity that affects salmon habitat takes place on land.

"The piper has to be paid whether it comes out of your pocket, my pocket or society's pocket," Spain said. "If saving these species means keeping jobs, our guys are willing to pay that price."

Stiffer controls needed

Private landowners, however, would rather not pay the price of species protection, according to Oregonians in Action Executive Director Larry George, who said he "applauded" the intent of the legislation but thought it did not go far enough to protect private interests. The restrictions proposed for the Fish and Wildlife Commission should apply equally to other state agencies, such as the Land Conservation and Development Commission and the Department of Forestry, which have regulatory power to restrict land use, George said. Furthermore, the state should pay compensation to or obtain a conservation easement from landowners.

March 29, 1993
May 10, 1993

Bill to alter ODFW mission gets nod in House committee

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

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

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

The latter provision remains a sticking point with bill opponents and with department Director Randy Fisher, who objected to the vagueness of the bill's standards for determining compatibility between land uses and wildlife populations and the prospect of constantly having to revise wildlife policies to account for changing land use practices.

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

Fisher added that because the bill does not provide adequate guidelines for resolving conflicts between wildlife populations and primary land uses, it fails in its attempt to clarify the department's role in the administration of the state's wildlife policy. User groups who believe they have accomplished certain aims with this measure may cry foul when they discover some time later that the commission may have a different interpretation of its duties under the law, Fisher said.

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

But Rep. Ray Baum (R-LaGrande), a

March 29, 1993

Private property lobby says measures need more teeth

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owners forced to abide by regulations devised to protect listed species, George said.

"We find [the bills'] principles laudable," George said. "Our objections are predicated on the fact that these bills don't further those principles in any concrete fashion."

The legislation also drew qualified support from Dave Schmidt, a Linn County commissioner and the vice-chair of the Council of Forest Trust Land Counties, who said he supported improvements to the process of protecting native wildlife species, but had concerns about HB 2927's two-year recovery plan deadline, which could force the Fish and Wildlife Commission to rush an ill-conceived recovery plan to completion. The Council took no position on HB 2980's mandate that no reductions in timber supply result from the listing of the spotted owl, Schmidt said.

Home rule

In a point echoed in testimony by environmental groups, Wildlife Society representative and conservation biologist David Marshall said weakening state endangered species protection could actually slow down the recovery of listed species and invite tighter federal control over land management. Section 6 of the federal Endangered Species Act provides for cooperative federal-state conservation of endangered species so long as the state has an acceptable conservation regime for such species, Marshall said. If the legislature passes the bills before it the federal government may find Oregon's endangered species protections inadequate, he said, which could force managers to deal with more restrictive federal standards rather than a state agency that understands local concerns.

"If you want to have federal control, gut the state act," Marshall said. "If you want a cooperative agreement, keep the state act."

Sierra Club representative Daniel Stotter also stressed the importance of cooperative species protection efforts between federal and state agencies, noting that much of the frustration landowners experience in dealing with government regulation comes from contradictory agency policies.

"There needs to be a greater interface between the feds and the state," Stotter said. "You need to have similar standards so you don't get a green light from the state and a red light from [federal agencies]."

State and federal consistency issues aside, Stotter said, the proposals to amend Oregon endangered species law are flawed because they would "eliminate Oregon's effective management of wildlife" and prevent the state from taking needed preventative measures against species extinctions.

"If we as a state are to maintain healthy salmon runs and migratory birds and other species, we cannot allow species extinction," Stotter said. "In some respects, the protection of threatened and endangered species is the real bottom line."

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

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

The assistant attorneys general also questioned the proposed definition of "optimum [wildlife] population," which no longer insists that wildlife species be self-sustaining and therefore could permit such practices as captive breeding and artificial feeding as methods for sustaining wildlife populations, and the relocation of language protecting "optimum public recreational benefits" from a section of the existing statute that called for compatibility with primary land uses to a section providing for "utilization" of available wildlife. The latter change, they said, would remove an existing requirement to balance wildlife population management that is compatible with primary land uses against its benefit to public recreation and instead require the weighing of public recreational benefits only where wildlife management provides for harvesting.

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

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

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

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

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

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

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

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

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

The amended version passed unanimously.
Eugene residents upset by contaminated pile get general support from costumed senator

Sen. Bill Dwyer (D-Springfield) led a charge — almost literally — to restrict the dumping of oil-contaminated soils within residential neighborhoods at a Friday hearing before the Senate Agriculture and Natural Resources Committee.

Dwyer, dressed in Civil War period costume in honor of the Oregon Trail celebration, quipped to TV cameras before the hearing that if committee members "wouldn't take me seriously as a senator, they might listen to a general."

But Dwyer's whimsical mood evaporated as he told committee members that he introduced Senate Bill 315 in response to complaints from residents of an Eugene neighborhood who "were shocked as several hundred cubic yards of oil-contaminated soils were trucked in from another part of the city and dumped in a vacant lot" near their homes. The smell from the pile "soiled the air," Dwyer said.

Dwyer said the bill, which would prohibit the storage or aeration of contaminated soils on property within an urban growth management boundary, also responds to complaints from residents in Brownsville and other Oregon cities who have had contaminated soils dumped in adjacent property. "This is happening all over the state," Dwyer said. "With an estimated 1,200 underground storage problems coming up over the next two years, the problem will only get worse."

Bill supporters, including Brownsville residents Diana Young and Richard Blakeley, also expressed frustration with the Department of Environmental Quality (DEQ), which oversees the removal and treatment of soils contaminated with hazardous wastes. "DEQ was interested in seeing dirt removed and treated, but not interested in inspecting the place where it was dumped," Young said.

Reaction to the proposal from gasoline distributors and hazardous waste treatment firms, however, was mixed.

Pacific Remediation Corp. representative Pat Turnage favored the measure, saying that aerating contaminated soils simply transfers the problem from the soil to the air. Turnage said his firm, which treats hazardous waste with a thermal process, offers a more complete solution to the problem that is as cost-effective as properly designed aeration treatment.

But other treatment firm representatives sided with petroleum marketers in opposing the measure. Environmental consultant Scott Mills, who represented the treatment consulting firm GeoEngineers, said the costs associated with removing, transporting and treating contaminated soils are already prohibitive for most gasoline distributors and retailers — restricting the use of such cost-effective methods of treatment as aeration and bio-remediation will simply encourage these landowners to dispose of contaminated soil in landfills, where it will remain indefinitely, Mills said.

Representatives from the Oregon Petroleum Marketers' Association and the Western States Petroleum Association also cited the cost of treatment methods other than aeration in opposing the measure. Western States Petroleum Association representative John Burns said restrictions proposed in SB 315 could slow industry compliance with state and federal hazardous waste laws and discourage the industry's efforts to find ways to recycle hazardous materials. Burns said he was encouraged by remarks Dwyer made that would allow on-site aeration on industrial sites within urban growth management boundaries.

"None of us wants to dump contaminated soil in residential neighborhoods," Burns said.

Committee chair Sen. Ron Cease (D-Portland) asked DEQ staff members to discuss the proposal with Dwyer and industry representatives and to come back to the committee with an amended bill.

House rules committee hears earful as public unloads on agencies

In a prelude to what promises to become a stormy series of hearings before the House Legislative Rules Subcommittee, business owners and private citizens last Monday angrily denounced state agencies ranging from the Children's Services Division to the Department of Environmental Quality for what many saw as arrogant and capricious rulemaking procedures in the service of agency "empire building."

Witnesses testifying in favor of House Joint Resolution 22 and House Bill 2262, both of which seek to subject agency rulemaking to legislative oversight, found a sympathetic audience in committee members, who listened attentively as they related instances where, they said, agencies had refused to listen to them or had acted arbitrarily to deny them their rights.

Aloha business owner Loren Parks raised perhaps the most vociferous voice of protest, calling agency heads "failures," who succeed only when they "brown-nose" their way into state government.

"Of the people who head agencies, how many would you trust with your own personal money?" Parks asked. "Not one! Then why do you trust them with Oregon's money?"

Bob Carpenter, a citizen member of the Secretary of State's Oregon Administrative Rule Advisory Committee, noted that while Oregon agencies had made more than 1,500 filings for rule changes in 18 months, postage for the Oregon Bulletin, in which agencies announce rulemaking proceedings, amounted to only $120 per month.

But attorney general special counsel Elizabeth Hushing called the House measures impractical, noting that the volume and number of rules that the legislature would have to review under the provisions of the bill would make legislative sessions unworkable. The bills make no distinction among rules which are controversial and those which are routine, Hushing said, and ignore existing mechanisms for legislative oversight of agency rulemaking, including setting guidelines in statute.

February 15, 1993

March 1, 1993
March 8, 1993

Agency rulemaking review proposal clears House panel

A House measure that would subject agency rulemaking to legislative oversight will go to the full Legislative Rules and Reorganization Committee for approval — but in a substantially revised form — despite objections from measure proponents who believe the House Rules Subcommittee blunted their intent.

A visibly upset Bob Carpenter, who served on Secretary of State Phil Keisling's Oregon Administrative Rule Advisory Committee, watched today as committee members quizzed Legislative Counsel Committee representative Dave Heynderickx about the constitutional implications of HJR 22, jumping up during the frequent recesses called during the work session on the measure to press committee members to strengthen the legislature's oversight role.

"We had a good bill here," he told another measure proponent sitting nearby. "What they're trying to decide now is whether to screw it up or whether to screw it up royally."

The revised version of the resolution would require the legislature to appoint a joint administrative rule oversight committee with the power to nullify agency rules once adopted. The measure requires a member of the legislature to request a review of an offending rule within six months of its adoption before the committee can suspend its operation. Once suspended, the rule would be ineffective unless the full legislature adopted a joint resolution approving it during the next legislative session.

In prior testimony before the House Rules Subcommittee, Carpenter told committee members that the oversight body should review rules at the behest of aggrieved individuals and businesses, not necessarily just legislators, and that the review should take place before the agency has promulgated a final rule. The original bill draft would have prohibited state agencies from implementing and enforcing their proposed rules until after they had submitted them to the committee for approval.

But Heynderickx told the committee that reviewing proposed rules would force the committee to constantly revise its legal analyses to take account of shifts in their form. Once the agency has adopted a rule, Heynderickx said, the committee would have something final to work with and could approve or reject the rule using its own criteria.

Rep. Lonnie Roberts (D-Portland) said he would favor a 90-day period before the rule could take effect so that the oversight committee could review it, but Heynderickx said that agencies generally decide when they want a rule to take effect, in part because this deadline determines when an agency must provide notice to the public and seek comment on proposed rules. The oversight committee would have the power to review a final rule immediately after its adoption, Heynderickx added, which is usually well before it takes effect.

The resolution passed over the objections of Rep. Dave McTeague (D-Milwaukie), who said he understood why agency rulemaking might benefit from some oversight, but that he thought giving the power to suspend agency rules to a small joint committee would "invite mischief."

"I'm concerned that we may be giving too much power to this secondary committee," Rep. McTeague said. "There should be a standard written into the constitution — you want to give clear constitutional direction to this body."

The legislature often faces difficult and controversial jobs to agencies, partly because they have the necessary expertise and partly because the legislature itself cannot always agree on how it should implement a policy it decides on, Rep. McTeague said. Giving the power to suspend controversial rules might in effect subvert legislative intent by stripping agencies of the ability to carry out broad legislative mandates and giving policy-making authority to a small subset of the Legislative Assembly, he added.

Rep. McTeague suggested that one remedy to this dilemma might be to require the oversight committee to review rules only to determine whether they fall within the scope and intent of the legislation that called for their promulgation. But his attempt to amend the resolution to add language restricting the extent of review failed when Rep. Cedric Hayden (R-Lyons) said the committee would probably have to rely on a referee to determine what constituted legislative intent and whether the proposed rules fell within the scope of that intent.

The committee has scheduled no further action on House Bill 2262, a measure heard in tandem with HJR 22 in recent weeks, pending later action on other measures dealing with the adoption of legislative rules.

March 22, 1993

Committee explores diking district levy to try to plug Measure 5 money leak

A proposal to allow diking districts hard-hit by Measure 5-mandated reductions in their fee base to reorganize as corporations enlisted vocal support from two House members of the Coastal Caucus at a House Water Subcommittee hearing Tuesday.

Rep. Tim Josi (D-Bay City) told committee members that House Bill 3146 is "probably the least sexy of the bills sponsored this session, but probably the most important."

The measure is necessary because of court decisions that have held diking district assessments against property owners subject to Measure 5 limitations, Rep. Josi said. These limitations now threaten the operation of flood control projects and put the districts in danger of losing emergency flood assistance if they fail to meet federal standards, he added.

"The time clock is ticking for these people and they really are in trouble," Rep. Josi said.

Diking districts differ from other taxing districts in that they assess a flat, per-acre rate and do not impose ad valorem taxes to meet their federal contractual obligations, Rep. Tony Federici (D-St. Helens) said.

"There is no real room for downsizing here," Rep. Federici said. "You either keep the water out, or you don't."

Rep. Veral Tarno (R-Coquille) also supported the measure but did not testify.
March 15, 1993

Kelp advisory panel will decide what fronds are for

Commercial harvesting of bull kelp could provide a needed economic boost to Oregon's south coast communities, but safeguards should exist to ensure that the industry remains small-scale and geared as much toward protecting the resource as toward profiting from it, members of a Division of State Lands (DSL) advisory committee agreed Wednesday.

DSL's Kelp Advisory Committee, comprised of representatives from four state agencies, the Oregon Coastal Zone Management Association, the Port of Port Orford, and the environmental and the scientific communities, met last week to begin studying how — or whether — DSL should lease offshore kelp beds to private companies seeking to make or sell kelp-derived products. The committee has until June 15 to report to the division, which has jurisdiction over all nonliving and living resources — except fisheries — in Oregon's territorial sea and must approve any resource extraction activity within three miles of the shoreline.

DSL representative Jerry Hedrick told the committee that the division has received several recent inquiries about commercial-scale leases following the completion of a project it undertook with one harvester.

"Harvesting kelp looks to be a potential embryonic industry," Hedrick said. "My perspective is positive."

Merttie Sue Carlson, a Key Industries Coordinator with the Oregon Economic Development Department (OEDD), agreed but noted that the success of the industry would depend on the creation of a market for kelp-derived products. Carlson suggested tapping the Department of Agriculture's marketing division for its expertise.

"OEDD is interested in job creation — that's our number-one focus," Carlson said.

Port districts and coastal communities share that perspective, Port of Port Orford representative Gayle Paige said. Coastal communities, she said, view kelp harvesting as a potential replacement for some of the jobs and revenue lost to declining salmon harvests and crab harvesters support harvesting as a way of controlling kelp growth that often fouls their crab pots. Paige warned that unless Oregon begins a leasing program of its own, south coast ports near California may have to depend on production from that state to supply kelp-dependent mariculture industries.

But Department of Land Conservation and Development representative Bob Bailey said the committee should not try to present kelp harvesting as a panacea for resource-dependent coastal communities.

"I have little sympathy for those who say that because our timber and fishing industries have declined that we have to go after kelp," Bailey said.

Bailey added that the committee should keep in mind the possible impacts kelp harvesting could have on other species in the vicinity.

"I think we've learned our lesson about prematurely and ignorantly harvesting a resource before we know what we're doing," Bailey said. "This isn't just a free-floating product, it's a habitat."

Oregon State University marine botanist Gayle Hansen, who specializes in the study of red algae and other seaweed species, suggested that commercial operations using proper harvesting methods — cutting the kelp blade 12 inches above the float, for instance, which leaves the plant's reproductive structures intact — might not harm the fast-growing resource significantly. Nonetheless, she said, managers need to evaluate the ecological functions of kelp beds before approving commercial operations. Washington State has already banned the commercial harvest of all seaweeds because of concerns about potential ecological impacts, she noted.

"If the harvest is not going to be a big one, I'm all for it," Hansen said. "But we have to think of the health of these plants and the animal community that depends on them."

That animal community might include humans. Hansen noted that kelp plants tend to concentrate toxic substances, such as arsenic and iodine, in their cell walls. These substances can end up in the digestive systems of people who eat kelp products if they are not chemically bound to plant tissues, Hansen said.

Environmental community representative Ellen Warring said she has not heard a lot of opposition to proposals for kelp harvesting, but that she wanted to ensure that economic interests were not the only driving force behind leasing plans. Leasing operations should remain small-scale, Warring said, and the committee should be clear about what "small-scale" means so that harvesters do not come up with grandiose plans for expansion.

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

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

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

But because Oregon law grants exclusive jurisdiction to the department to manage beach activities, cities cannot simply extend their jurisdiction over beach areas even when they are inside city limits, Meinen said. The rule the commission adopted would permit cities to draft and hold hearings on proposed rules they would then submit to the commission for approval, he said. The commission, in turn, would ensure that the proposed rules do not interfere with the Oregon Beach Bill before adopting them and allowing cities to share enforcement duties with the state, Meinen said. Once the commission adopts them, however, the rules do not bind local governments to enforce them, he said.

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

May 10, 1993

1993 Oregon Legislative Fellowship — Final Report
MINUTES AND PROCEEDINGS
COASTAL CAUCUS
1993 LEGISLATURE
OREGON LEGISLATIVE ASSEMBLY
COASTAL CAUCUS
Minutes

January 26, 1993
7:00 a.m.

Members present: Sen. Stan Bunn
                Rep. Tony Federici
                Rep. Tim Josi
                Rep. Hedy Rijken
                Rep. Veral Tarno

Members excused: Sen. Bill Bradbury
                Sen. Joan Dukes
                Rep. Jim Whitty

Staff present: Sean Brennan, Coastal Caucus staff assistant
              Nancy Tarno, office manager, Rep. Veral Tarno

Guests: Jay Rasmussen, Oregon Coastal Zone Management Association
         Joe Easley, Oregon Trawl Commission
         Paul Hanneman, Hanneman & Associates
         Mike Sims, Hanneman & Associates

These minutes contain materials which paraphrase or summarize statements made during this meeting.

Rep. Josi offered to serve as chair pro tem and called the meeting to order at 7:05 a.m.

Without objection, decision on agenda items 1 and 2 was deferred pending the arrival of other members, and
discussion proceeded to agenda item 4: discussion of coastal issues.

Agenda item 4, discussion of coastal issues:

1) Senate Bill 6 proposes to move jurisdiction over shellfish cultivation from the Department of Agricult-
culture, where it has resided since 1969, to the Division of State Lands. The Division of State Lands claims
that Oregon's constitutional and statutory scheme favors including shellfish beds within its submerged
lands jurisdiction. Rep. Josi asked Mr. Hanneman to provide the caucus with information on the
scheduled hearing for SB 6 on Friday, January 29, along with the names, addresses and phone numbers
of the shellfish producers' steering committee. Rep. Josi suggested that caucus members testify against
SB 6 at the Senate hearing. Mr. Rasmussen said he understood that the Division does not regard this
transfer as a life or death issue, but that they would like to see submerged lands jurisdiction brought
under one roof.

2) Rep. Tarno suggested that the state should bear the responsibility for continuing the water quality
testing program associated with shellfish cultivation. The industry supports continuing the program,
but may not be able to afford to pay what amounts to 25 percent of the value of the industry to con-
tinue the program. Among approximately 21 industry operators, the assessments per operator would be
too high. The growers have indicated its desire to meet with the coastal caucus on approximately Feb.
16 — Rep. Josi suggested that Mr. Hanneman arrange such a meeting.

3) Mr. Easley presented the caucus with proposed legislation to establish a fisheries development board to
courage the development of emerging fisheries. Rep. Josi said that he would sponsor a bill based on
the model given and seek support from the rest of the House portion of the coastal caucus. Mr.
Rasmussen said that one problem with the emerging fisheries program is that the Department of Fish and Wildlife will generally oppose the opening of any new fishery until sufficient information has been developed to assess the impact of harvesting on each fish species. This presents a Catch-22, Mr. Rasmussen said, since no new fishery can be developed until sufficient information has been gathered, but industry cannot develop that information without harvesting.

4) Mr. Rasmussen said the state marine board will hear a proposal on Feb. 1 to create buffers for offshore islands and rocks to reduce disturbances to marine mammals and birds. Thus far no scientific evidence exists to indicate that such disturbances have any negative effect at this time, Mr. Rasmussen said. Rep. Josi asked Mr. Rasmussen to write and submit to the caucus a short overview of the issue.

Agenda item 3, suggestions for future topics and speakers:

Rep. Josi asked Mr. Brennan to prepare agenda items and invite speakers after consulting caucus members and interested guests.

Agenda item 2, establishment of meeting time and location:

The caucus agreed to meet weekly at noon on Tuesdays. Rep. Josi asked Mr. Brennan to find and reserve an appropriate location.

Agenda item 1, election of caucus chair:

Upon nomination of Rep. Tarno and without objection, Rep. Josi was elected caucus chair by acclamation.

Rep. Josi adjourned the meeting at 7:51 a.m.
OREGON LEGISLATIVE ASSEMBLY
COASTAL CAUCUS
Minutes

February 9, 1993
12:00 noon

Members present:  Sen. Stan Bunn
                  Rep. Tony Federici
                  Rep. Tim Josi
                  Rep. Veral Tarno
                  Rep. Jim Whitty

Members excused:  Sen. Bill Bradbury
                  Sen. Joan Dukes
                  Rep. Hedy Rijken

Staff present:    Sean Brennan, Coastal Caucus staff assistant
                  Joan C. Criswell, Legislative Assistant to Rep. Hedy Rijken
                  John Goodman, Legislative Assistant to Rep. Tim Josi
                  Dick Mathews, Legislative Assistant to Sen. Bill Dwyer
                  Darrin Quillen, Legislative Assistant to Rep. Veral Tarno
                  Jon Walton, Legislative Assistant to Sen. Bill Bradbury
                  Nikki Whitty, Legislative Assistant to Rep. Jim Whitty

Guests:          Sen. Bob Kintigh
                  Rep. Chuck Norris
                  Robert Bailey, Oregon Ocean Policy Advisory Council
                  Joe Easley, Oregon Trawl Commission
                  Paul Hanneman, Hanneman & Associates
                  Mike Sims, Hanneman & Associates

These minutes contain materials which paraphrase or summarize statements made during this meeting.

Rep. Tim Josi called the meeting to order at 12:25 p.m.

Decision on agenda item 1, approval of minutes from the Jan. 26 meeting, was deferred.

Agenda item 2, old business:

1) Paul Hanneman and Joe Easley reported that their proposed measure to establish a fisheries development board to encourage emerging fisheries is still being drafted and has not yet come back from the Legislative Counsel's office.

2) Paul Hanneman summarized the hearing held on Senate Bill 6 in the Senate Agriculture and Natural Resources Committee Jan. 29, noting that questioning had focused in part on why no wild oysters exist in beds out on the coast. The bill proposes to transfer jurisdiction over oyster cultivation from the Department of Agriculture to the Division of State Lands. Hanneman reiterated that oyster growers are unalterably opposed to the bill and noted that the bill is scheduled for work session Feb. 12. Rep. Josi said that even should the bill clear the Senate, it probably would not make it through the House.

Rep. Josi noted that House Bill 2331, which raises fees for commercial raising and harvesting of shellfish in order to cover the costs of water quality testing, has been assigned to the House Water Subcommittee. Rep. Josi said he will propose an amendment to the bill, once it comes up for hearing, that will assign any revenues over and above those needed to meet the costs of the Health Division's water quality testing program to the Department of Fish and Wildlife's salmon restoration and enhancement program. Paul
Hanneman noted that the proposed fee in HB 2331 will raise approximately $1.1 million dollars over the biennium; by contrast, the biennial cost to the Health Division for water quality testing is $552,000. Rep. Jim Whitty expressed some doubts as to whether the fee increase is the best method for financing the water quality testing program.

3) Paul Hanneman said the Oregon Shellfish Industry Steering Committee would still like to meet with the Caucus and that they are available and ready to meet at any time. The two issues they wish to discuss concern the maintenance of the state's water quality testing program and their opposition to Senate Bill 6. Rep. Josi suggested that the Caucus postpone such a meeting until after the Senate Agriculture and Natural Resources committee acts on SB 6.

Agenda item 3, new business:

1) Sen. Bob Kintigh said he has introduced a joint memorial to Congress to ask that body to consider amending the Marine Mammal Protection Act while it is up for reauthorization this year to provide some measures for the population control of California sea lions or to turn responsibility for population control for sea lions over to the states. Sen. Kintigh said he is not a fisherman, but he does eat fish, and that he has read about sea lions chewing up the coastal salmon runs and wants to do something about it. The memorial has been sent back to the Legislative Counsel's office to correct some drafting mistakes, but Sen. Kintigh hopes to bring it back for reintroduction soon.

Rep. Chuck Norris noted that House Joint Memorial 25, which passed the House 51-7 last session but died in the Senate, asked for similar measures to control the sea lion population. He provided Sen. Kintigh with a copy of the memorial.

Rep. Whitty said he supported the measure. He said he has heard that sea lions are going further and further up coastal rivers in search of salmon and are eating more and more of them. He also said he has heard that part of the problem is that insufficient numbers of predators, such as killer whales, exist to control sea lion populations.

2) Bob Bailey, representing the Ocean Policy Advisory Council, gave an overview of that agency's progress on drafting a management plan for the state's three-mile territorial sea. Bailey said the Council was established by legislation during the 1991 session and is made up from representatives from the six to seven state agencies that have jurisdiction over the near-shore area, along with two representatives from commercial fishery interests; two representatives from sport fishery interests; two members from the crabbing industry; three members from the public at large; one member from the non-fishing recreational community and one member from the environmentalist community. Bailey said OPAC's mission is to draft a management plan for the state's three-mile territorial sea, with particular focus on aquaculture, mariculture, shoreline development, the protection of rocky islands and coastal rocks and on impacts from tourism in the intertidal zone. OPAC has held a couple of workshops along the south coast and intends to hold a few more in the coming weeks. OPAC's draft plan should be ready for public hearings this fall, Bailey said. It will focus on "hot" coastal problems and be concerned with public education, primarily.

Rep. Josi asked if the plan aims toward a system of land-use planning for the coastal zone. Bailey replied that the plan does not intend to zone the ocean, but that there will be specific recommendations in the plan for the management of coastal resources, including coastal islands, to try and minimize such problems as endangered species listings. These recommendations will bind state agency action related to ocean development, Bailey said. Rep. Josi asked if there will be an opportunity for legislative review of the plan. Bailey replied that nothing specific in legislation requires legislative review, but the legislature is free to oversee OPAC's functions.

Agenda item 4, discussion of other coastal issues:

Rep. Whitty said he was concerned about the cuts in services to coastal communities proposed in Gov. Barbara Roberts' budget request, noting that coastal communities have had few reductions in their property tax burdens following the enactment of Ballot Measure 5, but that they will suffer a disproportionate share of the cuts in services that will occur because of Measure 5 budget reductions. Rep. Whitty said he thinks it is bad state policy to cut services and take jobs away from a community that is already in dire straits and that he believes that the budget...
reductions should account for the effects of increased unemployment on coastal communities. He said he has sent a request to the Legislative Counsel's office to draft a resolution that calls upon the Governor and the Legislative Assembly to consider the economic situation of a community affected by a general statewide budget reduction when deciding whether to make cuts and to make findings of fact regarding the impacts of such cuts on the communities affected, with particular reference to unemployment figures. Rep. Whitty provided Caucus members with a copy of his request to the Legislative Counsel's office.

Rep. Josi said he thought there should be some proportionality in the cuts proposed, based on the relative benefits communities have received from property tax reductions under Measure 5 and that the Legislature should think about providing coastal communities with some relief from some of the effects of Measure 5 reductions.

Other business:

Rep. Josi said the Caucus should think about moving its meeting time to a time more convenient for all members. He directed Caucus staff aide Sean Brennan to poll Caucus members as to times most convenient for them and to set a meeting time based on the responses received.

Rep. Josi adjourned the meeting at 12:53 p.m.
Rep. Tim Josi called the meeting to order at 12:15 p.m.

Agenda item 1, approval of minutes from previous meetings:
Without objection, the minutes for meetings on January 26 and February 9 were approved.

Agenda item 2, old business:

1) Rep. Josi said he has introduced the Oregon Trawl Commission's proposed measure to establish a fisheries development board to encourage emerging fisheries as House Bill 3622. Oregon Trawl Commission Administrator Joe Easley explained that the bill intends to provide for the orderly development of new fisheries. Many markets now exist for species that are not currently developed as commercial fisheries, Easley said, including snails and different types of crab. This proposal would allow commercial harvesters to seek out a source for capitalization and other assistance to develop those fisheries, Easley said.

Rep. Veral Tarno asked if the proposal would cover sea urchins. Easley replied that sea urchins are already an established fishery with existing limited-entry provisions.

Easley then explained the purpose of three other bills he hoped to introduce. These include: a proposal to have the Fish and Wildlife Commission appoint a committee of permit holders from restricted fisheries which would study how to streamline and improve the permitting process and report to the legislature; a proposal to make ocean scallop vessel permits freely transferable; and a proposal to freeze the ad valorem tax on food fish and shellfish at 1.09 percent. In response to a question from Rep. Josi, Easley and Paul Hanneman explained that the Ways and Means Committee last session voted to defer
the issue of raising the ad valorem tax on fish to the emergency board and give it the authority to raise the tax to 1.25 percent. Easley said the industry is having problems now and the last thing it needs is a hike in the fees. He said he believes the Department of Fish and Wildlife supports a fee increase.

**Sen. Joan Dukes**, at the conclusion of the meeting, agreed to send the Oregon Trawl Commission proposals to the Legislative Counsel’s Office for drafting, provided that Caucus members had no objection. She instructed staff assistant Sean Brennan to poll Caucus members on their reactions to the bill package.

**Agenda item 3, new business:**

1) Rep. Josi said he will propose an amendment to House Bill 2331, which seeks to raise fees on commercial and recreational shellfish harvesting permits in order to pay for the Division of Health’s water quality testing program, when it comes up for hearing in committee. Rep. Josi said his amendment would allocate the moneys collected as a result of the fee increase as follows: approximately $550,000 over the biennium to the Health Division to pay for the costs of its water quality testing program, including a program to test for domoic acid; 10 percent of collected revenues to the Department of Fish and Wildlife to cover administrative expenses associated with collecting and processing the fee; and the remainder to the salmon restoration and enhancement fund.

Rep. Tarno asked if the Department of Environmental Quality has any role in the water quality testing program. Rep. Josi replied that DEQ has limited responsibilities that focus on sample collection and other specialized tasks the Health Division is not equipped to handle.

Rep. Tarno then asked if the shellfish industry would have any problems with Rep. Josi’s proposal. Paul Hanneman said the Oregon Shellfish Industry Steering Committee has not yet had a chance to discuss the proposal but that he would bring it up at the committee’s meeting in about two weeks. Hanneman also said he has recommended to the committee that it press for a solution to financing the Health Division’s water quality testing program that does not depend entirely on fee increases, unless they are absolutely necessary. Such a solution might draw funding from a number of sources, including license fees, general fund money, federal funds and cutbacks in non-essential program services, Hanneman said. He reported that the committee said it would support such a proposal or would support the proposal outlined in HB 2331, so long as either proposal ensures that the program continues. He added that the committee would prefer that a large portion of the fees assessed against shellfish producers not go to support fin fish programs.

Sen. Dukes said she has requested the Legislative Counsel to draft a measure similar to HB 2331 for introduction in the Senate. The Senate measure would leave the amount of the fee increase to be determined in committee, Sen. Dukes said, in part because she had some questions about what the Department of Fish and Wildlife proposes to do with the remainder of the fees generated by HB 2331’s fee increase proposal. Sen. Dukes said she might prefer that the fee increase simply pay for the costs of conducting a water-quality testing program, rather than generating a surplus. The bill will also seek to transfer the water-quality testing program, along with all other programs related to shellfish cultivation, to the Department of Agriculture, she said.

Rep. Josi said the Health Division has already earmarked the water quality testing program for termination twice and that it appeared to him that the Division had no real interest in continuing it. He said he would rather give the program to an agency that has some commitment to continuing it.

2) John Goodman, of Rep. Josi’s staff, outlined a proposal from Oregon Troll Salmon (Metro Trollers) to eliminate the existing lottery system for troll salmon and gillnet permits. Goodman explained that since 1980 the Department of Fish and Wildlife stopped issuing troll salmon and gillnet permits, which effectively requires prospective trollers and gillnetters to purchase a permit from permit holders who have renewed their permits each year since 1980. ORS 508.819 establishes a lottery system for issuing new permits if the number of renewed permits drops below 2,400, Goodman said. In 1993, renewals dropped to 1,975, Goodman said. Oregon Troll Salmon argues that the 2,400 figure was established when the resource was more plentiful and that flooding the market with 425 new permits would overburden an already struggling fishery, Goodman said.
Sen. Dukes said she would support such a measure, so long as the Legislative Counsel's Office drafted the relating clause for the bill to apply only to limited-entry salmon fishing. She said she did not want the Caucus to be the body that writes a bill that might be used to stop or eliminate gillnet fishing.

3) Gary Gustafson, Director of the Division of State Lands, explained the rationale behind Senate Bill 6, which proposes to transfer jurisdiction over oyster cultivation from the Department of Agriculture to the Division of State Lands. The measure came out of the Governor's efficiency task force last summer, Gustafson said, and is intended to increase administrative efficiency in state government by combining all functions related to mariculture and the management of the state's submerged lands in one agency: the Division of State Lands. Under existing law, oyster cultivation is the only maricultural activity not governed by DSL regulation, Gustafson said. Gustafson said that he learned about industry concerns with the bill after it was introduced. These concerns caused him to sit down with industry members and draft an agreement that would allow DSL to study the issue of combining mariculture regulation under one agency and report back to the legislature next session, Gustafson said. He added that in hearings on SB 6 last week the Senate Agriculture and Natural Resources Committee had asked him to consult with industry and the Department of Agriculture and return to the committee with amendments to the bill.

Sen. Dukes asked Gustafson why, if the industry is comfortable where it is and existing law requires the program to serve the public interest, does DSL not want to leave the program with the Department of Agriculture. Gustafson replied that he understood the shellfish industry's concerns and wanted to assure the Caucus that DSL is not trying to seek out more responsibility with this measure. He said that if DSL is not able to agree with industry representatives on a compromise proposal he would ask the committee to withdraw the bill. Sen. Dukes asked if Gustafson would convey this position to Senate Agriculture and Natural Resources committee chair Sen. Ron Cease. Gustafson said he would.

Gustafson added that he thought a lot of the opposition to the measure came from the perception that DSL would try to maximize revenues off of state lands used in oyster cultivation rather than function as good land managers. He said this might have been true in the past, but that he would try to change this perception.

4) Bob Eaton of Salmon for All explained his organization's proposed amendment to House Bill 2345, which proposes to change the composition of the Oregon membership on the Northwest Power Planning Commission (NWPPC) to include members from both eastern and western Oregon. Rather than a split in membership based on geography, Eaton said, Salmon for All would rather see a split based on relative expertise in power generation and fisheries protection. The Commission is established by federal law and is driven by politics, Eaton said, adding that if the Commission had committed itself to fisheries concerns earlier it would not have its present difficulty trying to balance fisheries needs against power generation needs. Eaton said Salmon for All would like to change the criteria for selecting Oregon's representatives to the commission and might then press for federal legislation that makes similar changes mandatory in other states.

Paul Hanneman asked Eaton if he has approached Montana and Idaho to ask for similar changes in the selection criteria for its membership on the commission. Eaton said he has asked only Oregon, which he said has done the best job in carrying out its responsibilities on the commission, in the hopes that it would set an example for the other states.

Sen. Dukes said she was concerned that the NWPPC already exercises more responsibility than federal law actually gives it. The commission is supposed to deal with fisheries only in the context of dealing with power planning issues, she said, and it is out of its depth when it tries to deal with fisheries enhancement, the barging of smolts downstream and other similar responsibilities. Eaton said federal law charges the commission with both power generation and fishery protection responsibilities and that it has already reorganized itself into subcommittees to deal with some fisheries issues.

Agenda item 4, discussion of other coastal issues:

Rep. Josi said he has assisted commercial fisherman Chet Lounsbury in introducing House Bill 3621, a proposal to create a hatcheries management board under the jurisdiction of the Department of Fish and Wildlife, but that he had some concerns about the possible effects of the bill. These concerns included the possibility that the new board might have overlapping jurisdiction with the department itself and that the board might be
dominated by fisheries interests when it should have balanced representation. Rep. Josi asked Caucus members to look the bill over and convey any concerns they might have about it to him so that he can work on the bill with Lounsbury.

Paul Hanneman said he has talked to Lounsbury about the bill and would also be happy to convey any concerns the Caucus might have to him.

Rep. Josi adjourned the meeting at 1:07 p.m.
February 24, 1993
12:00 noon

State Capitol Room 454
Salem, Oregon

OREGON LEGISLATIVE ASSEMBLY
COASTAL CAUCUS
Minutes


Guests: Randy Fisher, Director, Department of Fish and Wildlife Paul Hanneman, Hanneman & Associates Paul Heikkila, Pacific States Marine Fisheries Commission Bob Jacobson, Oregon State University Sea Grant Marine Extension Chet Lounsbury, Metro Trollers Gene Magee, Oregon Coast Association Jay Rasmussen, Oregon Coastal Zone Management Association Mike Sims, Hanneman & Associates

These minutes contain materials which paraphrase or summarize statements made during this meeting.

Rep. Tim Josi called the meeting to order at 12:15 p.m.

Agenda item 1, approval of minutes from previous meetings:

Without objection, the minutes for the meeting on February 17 were approved.

Agenda item 2, old business:

1) Rep. Josi introduced Chet Lounsbury of Metro Trollers, who gave some background on the need for HB 2631. Lounsbury said this bill is intended as a measure to try and make the fishing business economical again, now that it is no longer even economical to own a boat. The bill would provide for responsible management of hatcheries as a supplement to declining natural stocks of fish.

Agenda item 3, new business:

1) Randy Fisher, Director of the Oregon Department of Fish and Wildlife, told the Caucus that hearings in the Ways and Means committee on the department's budget will end Feb. 25. The department has proposed a $2 increase in fish licensing fees and is backing the fee increases proposed in House Bill 2331 in order to make up for projected shortfalls in departmental revenue, Fisher said. Even with these fee increases, Fisher said, the department is looking at closing the Trask and Willamette hatcheries unless the department can find the approximately $643,000 necessary to keep them open. Of this amount, Fisher said, the department would need about $356,000 to keep the Trask River hatchery open and...
another $287,000 to keep the Willamette hatchery open. Should these hatcheries close, Fisher added, the loss of fish production from the Trask River facility would amount to about one million chinook (750,000 from the spring run and 450,000 from the fall run) and 2 million coho; production losses from the Willamette hatchery would be about 450,000 legal trout; and additional losses at the Fall River hatchery would amount to 248,000 legal trout.

Without the proposed fee increases, Fisher said, the cuts in departmental programs will be much deeper. The department would have to close down two more hatcheries: Fall Creek and Butte Falls; and would have to reduce production at six other hatcheries: Salmon River; Klamath; Wizard Falls; Nehalem; Cedar Creek; and Clackamas. The total loss of production should these hatcheries shut down or reduce production would be — in addition to the losses from the Trask and Willamette hatcheries: 5,370,000 coho; 1.5 million spring chinook; 1.3 million fall chinook; 5,000 winter steelhead; 1.3 million legal trout and 1 million fingerling trout, Fisher said. Additional program reductions the department has proposed in the absence of a fee increase include closing down the Prineville fish district office; eliminating a basin planner’s position at Central Point; eliminating one of three warm-weather fish project leader positions at Bend; and eliminating a research position for the Portland Harbor study and the Columbia River sturgeon study.

Fisher said he intends to frame the issue before the Ways and Means committee as a policy decision for the committee to make — whether it wants to keep hatcheries open and continue the department’s fisheries programs or not.

In response to a question from Darrin Quillen, Fisher said the proposed shellfish licensing fee increase will likely bring in a little more than $1 million, of which approximately half would go to the Health Division to pay for its water-quality testing program. Fisher said the department would like to use the remaining money from the fee increase as an add-back to its budget so it could continue normal departmental programs, including hatcheries.

Rep. Josi asked Fisher if it was true, as a legislator pointed out in House floor remonstrances, that the department’s budget had increased over the biennium from about $130 million to $158 million. Fisher said that was probably accurate, but that most of that increase had come from federal grants to the department for such programs as squaw fish control, mitigation for fisheries impacts from Columbia River hydro projects and similar programs that tended to benefit all fish harvesting.

In response to a question from Bob Jacobson, Fisher also noted that shutting down the hatcheries will also reduce employment among those who operate the hatcheries and related programs. Employment losses within the department, even with the fee increase, will amount to 58 positions; without the fee increase, the department will eliminate 74 positions.

Fisher also gave an outline of the department’s role in the shutdown of the Columbia River gillnet fishery, noting that the department had sat down with its counterpart from Washington, under the interstate compact process that governs the joint Oregon-Washington management of the Columbia River fishery, and had set a quota permitting the harvesting of 10.6 percent of the run. This figure then was supposed to go to the National Marine Fisheries Service, where it would conduct a biological evaluation required under the Endangered Species Act for listed fish species and determine if the designated level would significantly impact the species’ viability. Fisher said the compact members and NMFS came to an oral understanding that the designated quota would have no significant impact on the fishery, but NMFS did not make the formal finding required to legally permit the fishing season to open because, the agency said, it was too busy. As a result, knowing that continuing the fishing season would have an inevitable impact on the fishery and would be illegal, the departments in Washington and Oregon had no choice but to shut the fishery down, Fisher said.

Fisher said the decisions on which harvest seasons to shut down and when to shut them down were based on the department’s projections of the likelihood of each segment of the harvesting community catching a listed fish. He said the department has calculated the loss of income to harvesters and to the state as follows:
Losses to Harvesters

Actual catch, Feb. 16-19: 560 fish
Projected catch without closing the fishery: 5,100 fish
Harvest loss with closure: 4,540 fish
Poundage loss (based on estimated average weight of fish of 20 lbs.) 90,800 lbs.
Value of lost fish to harvesters (based on a price of $3.00 to $3.50 per lb.) $272,000 to $317,000
Impact on personal incomes as a result of closure (based on a price of $5.95 per lb.) $540,260

Losses to the Department of Fish and Wildlife and the general fund:

Expected revenue from the Restoration and Enhancement surcharge (based on 90,800 lbs. @ .05/lb.): $4,540
Expected revenue from the ad valorem tax (based on projected harvester revenue of $317,800 multiplied by the rate of 3.15 percent): $10,010.70

Fisher said he doesn’t know when NMFS will complete its biological evaluation, but that he expects it within the next couple of days or a week. NMFS will probably conclude that the season presents no significant impact on the fishery, based on their oral understanding with the two state departments, Fisher said. Rep. Federici said he learned from Sen. Dukes’ office that NMFS has completed the biological evaluation and has forwarded it to its Washington, D.C. office for approval. He also said that Oregon-Washington compact officials have called a meeting for Friday at 1 p.m. to consider whether to reopen and perhaps extend the season.

Fisher noted that the department has been able to open the fishery in past seasons without having a formal biological evaluation prepared, but that this time hydroelectric facility operators involved in litigation with the department forced the department to take action. Dam operators claim in their suit that commercial harvesting of the threatened species has the most significant impact on it, and that they can continue normal operations at their facilities if the commercial fishery was shut down. The potential outcome of the suit, Fisher said, is that the dam operators could force the entire salmon fishery — from the Gulf of Alaska on down south and in all river areas — to shut down completely.

Jacobson noted that the dam operators also claim in their suit that allowing any harvest of endangered salmon species is a violation of the Endangered Species Act, which prohibits the sale of endangered species or of certain species that look like the endangered species. Fisher also noted that thus far the hydro operators have declined to involve the various Tribes along the river in the litigation, presumably because they would stand on their treaty rights to a viable fishery for subsistence harvesting. Fisher said the department has tried to join the Tribes in the suit.

Paul Heikkila presented the committee with a draft proposal to establish limited-entry regulations for the state’s Dungeness crab fishery. The proposal resulted from the nearly two-year-long efforts of the Pacific States Marine Fisheries Commission’s Tri-State Dungeness Crab Committee, Heikkila said, and is a straightforward attempt to establish limited-entry regulations to govern who can harvest from the crab fishery. The purpose of the proposal is to freeze the crabbing industry at its existing level, Heikkila said. There is a perception that the Oregon crab fishery is one of the few remaining open fisheries, he added. This perception could lead to over-harvesting which, in the long run, reduced community stability and a reduced viability for the resource, Heikkila said. The proposed regulations require license applicants to have been registered for at least two of the years between December 1, 1986 and August 14, 1991 and to have landed at least 500 lbs. of Dungeness crab during two crabbing seasons during this period. With these qualifications, Heikkila said, the Fish and Wildlife Commission would probably license about 370 harvesters. Historically the Commission has licensed as many as 420 harvesters for the ocean crab fishery.

Heikkila said there is general industry support for this measure and that, in fact, most existing harvesters wanted to significantly tighten the entry qualifications. The only real point of controversy, Heikkila said, was over the degree to which the investments of those harvesters who had purchased crabbing gear or had begun construction on vessels they intended to use in the crabbing fishery would be protected.
Bob Jacobson said that he disagreed slightly with Heikkila's interpretation of how controversial the bill was, noting that some harvesters are upset because they had made equipment and other investments, but had failed to meet the time qualifications to be granted entry to the fishery. Jacobson noted that only two out of the nine Oregon members of the Tri-State Crab Committee had supported allowing entry to those who had made investments or begun construction on boats for crabbing.

Sen. Bradbury asked Heikkila to estimate how many harvesters would oppose the bill's limited entry provisions. Heikkila said the number of opponents could vary from 20 to 50 people, depending on whether the bill made some provisions to protect equipment and construction investments.

Sen. Bradbury said the Senate Agriculture and Natural Resources committee has sent the proposal to the Legislative Counsel's office for drafting.

3) Scott Boley, who was scheduled to appear to discuss progress on negotiations over the Board of Forestry's proposed riparian protection rules, did not appear.

Agenda item 4, discussion of other coastal issues:

Jay Rasmussen offered to put together a panel to discuss riparian protection issues for the next Caucus meeting and to coordinate the preparation of an agenda with the Caucus' staff assistant.

Rep. Josi adjourned the meeting at 1:03 p.m.
March 3, 1993
12:00 noon

Members present: Sen. Bill Bradbury
Rep. Tony Federici
Rep. Tim Josi
Rep. Hedy Rijken
Rep. Veral Tarno
Rep. Jim Whitty

Members excused: Sen. Stan Bunn
Sen. Joan Dukes

Staff present: Sean Brennan, Coastal Caucus staff assistant
John Goodman, Legislative Assistant to Rep. Tim Josi
Darrin Quillen, Legislative Assistant to Rep. Veral Tarno
Jon Walton, Legislative Assistant to Sen. Bill Bradbury
Nikki Whitty, Legislative Assistant to Rep. Jim Whitty

Guests: Joe Easley, Oregon Trawl Commission
Mike Groben, Coos Head Lumber & Plywood Co.
Paul Heikkila, Pacific States Marine Fisheries Commission
Bob Meinen, Director, Oregon Department of Parks and Recreation
Rep. Chuck Norris
Fred Robinson, Deputy Director, Oregon Department of Forestry
Mike Sims, Hanneman & Associates
Keith Wilkinson, Klamath River Management Council

These minutes contain materials which paraphrase or summarize statements made during this meeting.

Rep. Tim Josi called the meeting to order at 12:22 p.m.

Agenda item 1, approval of minutes from previous meetings:

Without objection, the minutes for the meeting on February 24 were approved.

Agenda item 2, old business:

No old business.

Agenda item 3, new business:

1) Paul Heikkila explained to the Caucus that a plan proposed by the Coquille Watershed Fisheries and Timber Coalition to govern riparian area protection resulted from an attempt by coalition members to find alternative ways of looking at riparian protection from a non-agency perspective. Coalition members have presented the plan to the Board of Forestry in the hope that its suggestions will be incorporated in the riparian protection rules now under consideration by the Board, Heikkila said. Heikkila said the plan started with the perspective embodied in the Oregon Forest Practices Act and is intended to operate under the following principles:

- Planning must take a watershed perspective
- Planning must set specific goals and be accountable to those goals
• Landowners must be active and willing to look at watershed enhancement, which should be required in the plan.

Heikkila also noted that the coalition has sponsored a measure, HB 2614, to give tax relief to landowners who abide by the Board of Forestry's proposed riparian rules or by the guidelines proposed in the coalition plan. Heikkila said the measure is necessary to ensure that landowners do not bear the brunt of costs that they should be allowed to share with the people of Oregon.

Keith Wilkinson explained that the plan is meant as a good model and a first step to deal with the problems the state faces, particularly with new listings of fish under the Endangered Species Act. He added that he believes other interests should be brought into the process later, including agribusiness interests and others.

Mike Groben said that most of the people he knows in the timber industry are concerned about being good land stewards and recognize now, more than they did ten years ago, that logging operations affect fisheries. This plan, he said, has generated a lot of enthusiasm and appeals to the landowners' interest in getting something done if it needs doing. Groben added that the plan needs to look not just at the types of stream enhancements necessary in an area but also how to go about financing the improvements proposed and how to give landowners the flexibility they need to carry them out.

Fred Robinson told the Caucus that the plan proposed by the coalition is completely compatible with the process the Board of Forestry has undertaken. Two of the elements of the plan — the proposal for tax credits for riparian protection and the proposal for site-specific riparian regulation — may require legislative action, Robinson said, but the department could probably incorporate most of the rest of the plan into its ongoing administrative rulemaking process.

Robinson said he talked to the Governor's assistant for natural resources, Anne Squier, and asked her where the administration stood on the question of tax-based incentives to landowners for riparian protection. Squier said the administration would prefer incentives to landowners over a regulatory approach, but that there was a substantial disagreement over the amount of tax credits landowners should receive, Robinson said. Squier told the Board of Forestry that estimates of costs to landowners for riparian protection range all the way from $10 million to $500 million, Robinson said.

Robinson also explained that the Board of Forestry began a riparian monitoring program before last legislative session and had developed a project plan with the input of interest groups by December of 1991. From there, the department held a series of technical sessions with interest groups that culminated in the Waters of the State report in April of 1992. The department then began a regional series of committee meetings before establishing a public forum and comment period on the Waters of the State report and drafting its protection and classification guidelines in June of that year. These guidelines in turn served as a base for departmental rulemaking that resulted in draft rules by August 31. After analyzing public input and comment received at subsequent regional committee meetings and public work sessions, the department released a second draft of the rules on December 15, 1992. Public comment on this draft continued until January of this year.

Robinson said the December 15 rules, along with other proposals for alternative action, will go before the Board of Forestry for approval today. The Board has three options for action, Robinson said. They are:

• Take further public testimony and comment on the proposed draft rules;
• Do a markup on the proposed rules based on public input received; or
• Direct the department to "pause and catch its breath." This means, Robinson said, that the department would take the draft rules and the list of alternative options, including the plan proposed by the Coquille coalition, and go out and apply them on the ground so that the Board would be able to first understand the benefits and impacts of the draft rules to the forest ecosystem, to the fishery resource and on the landowner before it approved final riparian rules. Once the Board understands the physical impacts of the proposed rules, it can then undertake an economic analysis to understand the impact of the proposed rules on landowners, Robinson said.
Mike Groben said that the coalition selected the Coquille River area in part because the Department of Environmental Quality has identified the watershed as “water quality limited” based on an analysis of a Total Maximum Daily Loading report and has recommended the area for a comprehensive pilot project to improve water quality and enhance fisheries. (See A Proposed Alternate Riparian Management Plan for the Coquille River Watershed, copy attached).

Agenda item 4, discussion of other coastal issues:

Rep. Jim Whitty questioned the necessity for a Department of Parks and Recreation day-use fee of $3.00, citing a letter from a constituent in the Coos Bay World that pointed out the Oregon law guarantees free access to state beaches. Rep. Whitty said he has talked to other constituents who are upset about the department’s proposals and has researched Oregon law on the subject. ORS 390.610 guarantees the right of the public to “free and uninterrupted” access to state beaches, Rep. Whitty said, and appears to make the department’s charges illegal.

Bob Meinen explained that according to an attorney general’s opinion on this question (see Parks Day Use Fee, DOJ File No. 734-100-NR023-90, dated June 23, 1992, copy attached), Oregon law does forbid charging for access to the beaches themselves, but does not prohibit fees for access to facilities the department provides or maintains. Because the department owns and maintains areas above the tidelands area, it may charge an entry fee that goes toward the maintenance of facilities in these areas, Meinen said.

Rep. Whitty asked how the department could make sure that it collects the fee if beach users could simply walk in from the beach, where they don’t have to pay a fee, and onto department facilities. Meinen said that for the most part the fee applies to motor vehicle access to park facilities and is collected at the vehicle entrance to the park — the department did not intend to charge those users who enter park facilities from the beach, on foot or by other means. Controlling motor vehicle access to most parks is generally not a problem, he added, but the Sunset Beach area Rep. Whitty used as an example may be a special case requiring more attention. Rep. Whitty suggested that the department needs to explain clearly to the public what its charges are for and where they apply so that the public doesn’t misunderstand the department’s policy and look for a legislative solution to the problem. Meinen said the department has produced a pamphlet explaining the changes in park fees and has tried to meet with the public to explain the department’s policy. The day use fee will apply to only 9 of 66 park areas, Meinen said — access to the majority of coastal parks will still be free.

Meinen then explained that the future of park fees and the availability of park facilities is a policy question for the legislature to decide. The department has done a good job in maintenance, but not as good a job in telling the legislature about its budgetary needs, Meinen said. He noted that the department has deferred millions of dollars in materials and labor for park facilities and that it might have to shut certain facilities down because the Department of Environmental Quality has declared them unsafe for public access. Meinen said the initial fee increase will probably generate about $400,000. If the department expands the fee program to 26 other park areas, it could generate about $1.5 million, he said. Meinen said the department has decided as a matter of policy that the 40 million day users of park facilities should also contribute to the costs of park maintenance — the majority of departmental expenses have been borne by campground and recreational vehicle users. Meinen offered to return to the Caucus at a later date to explain what benefits the department provides and how it finances its facilities. Rep. Josi said he would welcome such a presentation.

Rep. Josi adjourned the meeting at 1:00 p.m.
OREGON LEGISLATIVE ASSEMBLY
COASTAL CAUCUS
Minutes
March 10, 1993
12:00 noon State Capitol Room 454
Salem, Oregon

Members present:
 Sen. Joan Dukes
 Rep. Tony Federici
 Rep. Tim Josi
 Rep. Hedy Rijken

Members excused:
 Sen. Bill Bradbury
 Sen. Stan Bunn
 Rep. Veral Tarno
 Rep. Jim Whitty

Staff present:
 Sean Brennan, Coastal Caucus staff assistant
 Mary Gautreaux, Legislative Assistant to Sen. Joan Dukes
 John Goodman, Legislative Assistant to Rep. Tim Josi
 Darrin Quillen, Legislative Assistant to Rep. Veral Tarno
 Kirsten Todorovich, Legislative Assistant to Sen. Stan Bunn
 Jon Walton, Legislative Assistant to Sen. Bill Bradbury

Guests:
 Dick Angstrom, Oregon Concrete and Aggregate Producers Association
 Earle Johnson, Division of State Lands
 Bob Meinen, Director, Oregon Department of Parks and Recreation
 Lynne Pavur, landowner, Columbia County
 Mike Sims, Hanneman & Associates

These minutes contain materials which paraphrase or summarize statements made during this meeting.

Rep. Tim Josi called the meeting to order at 12:21 p.m.

Agenda item 1, approval of minutes from previous meetings:

Without objection, the minutes for the meeting on March 3 were approved.

Agenda item 2, old business:

Bob Meinen, noting that it might at first be difficult to understand why the Department of Parks and Recreation has decided to implement fee increases for park access, told the Caucus that the level of park service the department can provide is in part a matter of legislative policy. He said the department can provide services at three levels, depending on the degree to which either fee increases or other state funding is available. He distributed materials to the Caucus outlining these levels, which are:

- **Existing services.** The department can continue to try to provide the existing level of services, as mandated in the governor's budget, but departmental expenses have begun to rise above revenue, beginning with the 1991-93 biennium, and will continue to do so for the foreseeable future without an increase in appropriations or fees. In response to a question from Darrin Quillen, Meinen said the biggest portion of the system's expenses are ongoing program expenses. He gave two examples: (1) an electricity consumption curve that "is going [up] at a 45-degree angle" at campgrounds because of the popularity of appliances such as microwave ovens and televisions in recreational vehicles; and (2) construction and retrofitting required under the mandates of the Americans with Disabilities Act. The projected gap between expenses and revenue, without any fee increase or increase in appropriations and assuming a six percent rate of inflation, will be $3.6 million for the 1993-95 biennium, $8.6 million
for the 1995-97 biennium and $13.4 million for the 1997-99 biennium, according to the materials Meinen supplied to the Caucus. The department has sought increases in fees for both day-use vehicle access to certain parks and for recreational vehicle hookups. If the department implements both fees, it will have a $1.4 million surplus in the 1993-95 biennium, but will have a $1.8 million deficit in the 1995-97 biennium and a $5.7 million deficit in the 1997-99 biennium. Implementing the increase in recreational vehicle hookup fees requires legislative action, Meinen said, but the department's bill to do so, House Bill 2123, is stalled in the House General Government Committee and committee chair Rep. Cedric Hayden appears unwilling to move the bill. The department has already implemented the day-use fee increase on a pilot basis, Meinen said.

- **Enhanced services.** The department, after designating a task force and producing a report projecting park use up to 2010, drafted a six-year plan that identifies a number of program improvements and acquisitions it believes would substantially enhance the value of the park system. Implementing the six-year plan would require a substantial capital investment in the park system, Meinen said. Even with planned and anticipated fee increases, expenses related to the enhancements envisioned in the plan would far outstrip current departmental revenues. Shortfalls for the 1993-95 biennium amount to $38.5 million with fee increases and $33.5 million without increases; for 1995-97, the shortfalls amount to $62.3 million with fee increases and $69.1 million without increases; and for 1997-99, $52.6 million with fee increases and $60.3 million without increases.

- **Reduced services.** This level of service may result by default if the department has no access to revenue necessary to meet ongoing expenses, Meinen said. If the department cannot make necessary investments, Meinen said, the park system will degenerate into a second-rate system, then into a third-rate system until finally it becomes a system that does not function at all. Without more revenue the department will have to begin closing facilities down, he added. A lot of the necessary investments should go toward the maintenance of coastal park facilities — to those areas that department staffers refer to as the "rust and rot belt" of the park system because they suffer from continuous salt, wind and other environmental damage, Meinen said.

Meinen said he does not want to be alarmist, but added that he would be misleading legislators if he did not say that the department has some serious problems. He said he thought the state has one of the best and most desirable park systems in the country, but that it requires a huge capital investment to fund it properly. He pointed out that the system ranks fourth in the country for its number of day-use visits and 11th in the country for the number of its overnight stays, but also has the next-to-last ranking in the country for its per-visitor operating budget.

Rep. Josi asked Meinen to meet with Rep. Hayden again to see if he could persuade the representative to hear HB 2123 in committee. Meinen said he would do so. Rep. Federici said he has sent a letter to Rep. Hayden urging support of the bill.

**Agenda item 3, new business:**

Lynne Pavur, a property owner from West Linn in Columbia County, told Caucus members why she requested the introduction of Senate Bill 452, which seeks to prevent the removal of gravel or aggregate from streams containing anadromous fish spawning habitat without a permit from the Division of State Lands. Pavur said she and her husband have lost nearly three acres of their land as a result of illegal gravel mining along the Nehalem River by one of her neighbors. She said it took about two weeks of phone calls to state and county agencies before she could find out to whom she should complain, and then another six months before the Division of State Lands came out to her property to investigate.

Rep. Federici asked Pavur if she had talked to county officials and, if so, what response they had given her. He said that, barring evidence showing that this problem occurs state-wide, the issue should probably be handled at the county level rather than by seeking a legislative solution. He added that this issue seems to involve more a matter of lax enforcement of existing laws rather than a need for a new law.

Pavur said she contacted the Columbia County sheriff's office who, she said, were uncooperative, leaving her to collect evidence, decide whether her neighbor had violated the law and write a letter of complaint. She said she believed something needed to be done to improve the way the system works so that individual landowners know where to go for protection — whether this bill is the solution or not.
Mary Gautreaux said the problem did indeed exist statewide and that Sen. Joan Dukes' office has heard several complaints regarding illegal gravel removal.

Earle Johnson told the Caucus how DSL responded to the Pavurs' complaint, noting that the division documented the removal of more than 50 cubic yards of gravel and has since sought both civil and criminal penalties against the neighbor. The civil action will seek penalties and an agreement to restore the stream channel to its previous state, Johnson said.

Dick Angstrom said he sympathized with Pavur's complaint and agreed that illegal gravel mining operations similar to that she described should be curtailed, since they give the entire gravel mining industry a bad reputation. He added that he supported authority for DSL to seek civil penalties against violators and would support efforts to improve communication and notice procedures between the division and private individuals. But, Angstrom said, the Oregon Concrete and Aggregate Producers Association cannot support SB 452 because it unduly restricts the operations of legitimate gravel mining companies. Restrictions such as those proposed in the bill would create a hardship for those companies, Angstrom added, that would in turn be felt in communities whose main or sole industry involves the mining of certain grades of gravel for concrete production. He said the industry needs to maintain the gravel resource with as few restrictions as are necessary and are consistent with good fisheries management, rather than creating a situation that could potentially shut down concrete production in the state. Rather than the procedure outlined in the bill, Angstrom said, he would prefer to rely on agreements the mining industry negotiates with landowners and government agencies to restrict activities in sensitive stream beds.

Sen. Dukes said it made no sense to her that the state spends millions of dollars and proposes to spend millions more on watershed enhancement and salmon recovery and yet allows gravel miners to drive heavy equipment into streams that serve as spawning grounds for anadromous fish. She said she has no problem with negotiated agreements, but that such agreements do not address the operations of those small-scale operators who do damage to the stream with impunity. State law should not allow unregulated removal of gravel at all, she added, where there is potential for damage — applying regulations to operators who remove more than 50 cubic yards of gravel has no effect on small-scale operators who nobody pays attention to and who, in combination, can do a lot of damage to streams. Sen. Dukes asked Johnson why DSL has not come forward with a bill to regulate such small operations so as to prevent stream damage. Johnson said he could not speak for the department on that question but that he guessed that the department did not want to undertake a new area of regulation when it is already scrambling to try to keep up with the permitting activity under existing law.

Angstrom said he supported having some sort of regulation for small-scale producers, in part because he is tired of having to defend the activities of farmers and others who want to undertake damaging activities on their land.

Rep. Josi asked if Senate Agriculture and Natural Resources committee chair Sen. Ron Cease intended to hold further hearings on SB 452. Caucus staff assistant Sean Brennan said he would try to find out and update Caucus members.

Agenda item 4, discussion of other coastal issues:

Darrin Quillen announced that a House joint memorials and a joint resolution calling for the mass marking of anadromous fish through the use of adipose fin clipping will be heard in the House Water Subcommittee March 11 at 1:00 p.m.

Rep. Josi adjourned the meeting at 1:06 p.m.
OREGON LEGISLATIVE ASSEMBLY
COASTAL CAUCUS
Minutes
April 15, 1993
7:00 a.m.

Members present:
Sen. Bill Bradbury
Rep. Tony Federici
Rep. Tim Josi
Rep. Veral Tarno
Rep. Jim Whitty
Sen. Stan Bunn
Sen. Joan Dukes
Rep. Hedy Rijken

Members excused:

Staff present:
Sean Brennan, Coastal Caucus staff assistant
Ted Sturdevant, Legislative Assistant to Rep. Tony Federici
Jon Walton, Legislative Assistant to Sen. Bill Bradbury

Guests:
Bruce Andrews, Department of Agriculture
Lloyd Athearn, Health Division
Kay Brown, Department of Fish and Wildlife
Deborah Cannon, Health Division
Doug Creasy, oyster grower
John Faudskar, Extension Agent, Oregon State University Sea Grant Program
Rod Ingram, Department of Fish and Wildlife
Bob Mercer, oyster grower
Rep. Chuck Norris
Mike Sims, Hanneman & Associates
Mike Skeels, Health Division
Phil Ward, Department of Agriculture

These minutes contain materials which paraphrase or summarize statements made during this meeting.

Rep. Tim Josi called the meeting to order at 7:04 a.m.

Agenda item 1, approval of minutes from previous meetings:
Without objection, the minutes for the meeting on March 10 were approved.

Agenda item 2, old business:
No old business.

Agenda item 3, new business:

1) Sen. Bradbury told the Caucus that Senate Bill 1112 emerged from the governor's salmon restoration initiative during the interim after agencies with jurisdictions that affected salmon habitat indicated an interest in doing restoration work on a watershed basis. He said he convened a small work group to steer that effort toward the protection of salmon, while still preserving the $10 million allocation set forth in the governor's initiative and the agency focus on intensive restoration efforts in a few areas around the state. The Secretary of the Interior, during his visit to the Northwest for the Forest Conference earlier this month, called the conflict over the use of forest resources occasioned by the listing of the Northern Spotted Owl a "train wreck," Sen. Bradbury said, but a similar conflict brewing over the potential listing of salmon stocks...
could make the train wreck look like a fender-bender. He added that he believes the state could see some significant federal participation in this effort and that federal funding for the process could eventually follow, on a coast-wide basis. Other states, including California, have already indicated some interest in this effort, he said. In the legislature there have been some encouraging expressions of support for the idea, Sen. Bradbury said, including interest from Rep. Chuck Norris, the chair of the House Water Subcommittee, who participated in some of the early efforts to draft language for the bill.

Rep. Norris noted that the House has struggled with House Bill 2215, a measure that would encourage the creation of voluntary local watershed councils statewide, and has finally come up with bill language that all members of the work-group assigned to the bill agree on, with the exception of WaterWatch of Oregon. The bill must still go to the House Appropriations Committee because it includes a provision for one full-time equivalent (FTE) position, but it stands a good chance of making it through the process, Rep. Norris said. HB 2215 should serve as the legislature's focus for watershed enhancement programs undertaken by local watershed councils, especially since the bill has been through a valuable consensus-building effort away from the legislative process, he said. He added that he hoped that SB 1112 will not end up swallowing HB 2215's effort to craft a balance among the interests which participated in the work-group.

Sen. Bradbury said there is no conflict between SB 1112 and HB 2215 and that, in fact, he tried to ensure that the two measures would work harmoniously together. SB 1112 would build on HB 2215's attempt to make the local watershed councils play a key role in the watershed restoration process by establishing a grant-making program for restoration projects, he said.

Rep. Josi asked Rep. Norris if he would prefer to see the two bills consolidated, but Rep. Norris said they have different aims and should remain separate measures. Rep. Josi then asked Sen. Bradbury whether he has approached Rep. John Minnis, the chair of the House Appropriations Committee, and House Speaker Rep. Larry Campbell to see how favorably they would view a $10 million request from the lottery fund. Sen. Bradbury replied that he has not because they told him clearly that they have not yet begun to make any decisions on lottery money. Rep. Jim Whitty noted that some hearings regarding the Economic Development Department's budget have taken place, so they have already begun some consideration of lottery matters.

Rep. Josi asked Sen. Bradbury if he would like the Caucus to sign a letter of support for SB 1112 to be delivered to Reps. Campbell and Minnis. Sen. Bradbury said he would appreciate such a showing of support.

Rep. Whitty moved for Caucus staff to draft a letter of support for SB 1112 and obtain the signatures of Caucus members. The motion carried without objection.


2) Rep. Josi told the Caucus that the House Water Subcommittee heard HB 2331, a bill to establish a fee-based fund for the continuation of the Health Division's shellfish testing program, last week and that the hearing did not go well. He said he has heard that the House leadership intends to try to find some general fund money to support the testing program, but that it may agree to fund the program with only $200,000 to $300,000 for the coming biennium, well below existing program costs of $552,000. He added that he did not know how Appropriations Committee members arrived at this figure, or how much of a commitment they have to finding general fund money for the program.

Rep. Whitty said he has heard that the state lottery fund has collected approximately $50 million more this year than revenue projections predicted. He said he does not object to HB 2331's fee schedule, but wanted the Caucus to remember that a fee-based program will have an impact on small businesses that cater to the tourist market. Where there is a good return in lottery receipts, the Caucus and the legislature should consider funding the testing program with lottery funds, since programs that support small businesses and the tourist trade would certainly qualify as a type of economic development the lottery should fund, Rep. Whitty said.
But Sen. Bradbury said that lottery receipts are not certain, even this year, because of litigation over video poker and because the Capitol Building may be facing a $39 million repair bill that the general fund will not pay for. When the state is short of cash as it is now, people are tempted to fund a lot of programs with lottery dollars, which is often too easy a solution for the complexity of the problem.

Rep. Whitty said the repair of the Capitol would not qualify as economic development anywhere near as much as would the testing program and that, furthermore, the general fund option that may provide only $200,000 is not a realistic solution.

Rep. Federici said he supported an effort to fund the program with lottery money, but that he has received letters of support for a fee-based program from some of his constituents. Rep. Veral Tarno, however, said his constituents do not support a fee bill and view license fees as a tax.

Rep. Josi said he did not think it was a good idea to try to fund a program historically supported by general fund revenue with lottery fees because it would set the program along a course it couldn't readily reverse in the future. The proposal would be more acceptable if legislators knew that sufficient lottery receipts would always be there. But Rep. Whitty said general fund support has proved to be just as unstable — and perhaps more unstable — than lottery fund support might be.

Rep. Josi concluded that the situation is still fluid and that it would be prudent to pursue actively all three potential revenue sources — general fund revenue, lottery receipts and license fees — and see which shows the most promise for passage.

Rep. Whitty asked Health Division Director Michael Skeels to detail how the division would carry out the testing program if it did not get all the funding it needed for the existing program. Skeels replied that he has prepared a breakdown of four different levels of service the division could provide, depending on the amount of funding it receives. This breakdown includes the following elements:

- **FDA operational.** This is the program the division now administers under the direction of the federal Food and Drug Administration (FDA) at a total cost of $552,000 per biennium. This program includes: program management and emergency response through 16 samplings for paralytic shellfish poisoning (PSP) 39 weeks out of the year; twenty-one samplings for domoic acid (DA) year-long; and monthly sampling for bacterial contamination of shore waters in seven areas along the coast. The division's inspection program consists of inspections of shellfish meat twice per year for all shellfish producers; quarterly inspections of shellfish producer and shellfish shipper facilities; three intensive water quality studies in selected areas each year; and three shoreline surveys and updates per year.

- **FDA minimum/short term.** This program would meet FDA standards for a period of perhaps two years, but would entail more frequent testing eventually. This program would cost $424,500 per biennium and would cut the existing program's thrice-annual water quality testing regime and reduce shellfish meat inspections to once per year per shellfish producer. This program would also reduce the number of shoreline surveys and updates from three annually to one annually.

- **Oregon approved.** This program would support only the level of inspection and certification mandated by Oregon law, which could potentially prevent shellfish producers from shipping out of state. This program would cost $311,500 per biennium and would cut the FDA minimum program further by: reducing the monthly sampling for bacterial contamination to a quarterly program and sharing responsibility with the Department of Environmental Quality; reducing inspections of shellfish producers to half-yearly and inspections of shellfish shippers and growers to once per year. The program would include no shoreline surveys and updates.

- **Minimum public health.** This program would eliminate all existing program components except PSP and DA sampling. These programs would be reduced to 11 samplings for PSP 39 weeks out of the year and 13 samplings per month each year. This would be the minimum program suitable for maintaining some level of recreational shellfish harvest.
Skeels said the Health Division did not want to cut the testing program out of its budget this biennium, but had to balance its program needs with the funding it could expect. He said the division would like to find another funding source for the program, especially one more closely linked to the service the division supplies. Most program expenses now support recreational harvesting by ensuring the safety of uncultivated shellfish, Skeels said, but the division does have a role in supporting the commercial shellfish industry by providing FDA certification necessary for growers to ship out of state. The economic benefit of the recreational harvest certainly outstrips that of the commercial harvest, which amounts to about $1.8 million per year, Skeels said. He also noted that the public health aspect of the division's testing program has an impact on both sectors — a death from paralytic shellfish poisoning would have as devastating an effect on the tourist market as it would on commercial shellfish sales. Rep. Whitty noted that the market for shellfish exports, particularly to Japan and Canada, has grown steadily, which makes the need for FDA certification even more apparent.

Health Division shellfish program specialist Deborah Cannon explained how the division conducts its sampling and what contaminants it looks for. She noted that the division has expanded the number of areas in which it now conducts testing. This has enabled the division to obtain more accurate data and has led to the lifting of harvest and cultivation restrictions in the Coos Bay area after the division noted an improvement in water quality.

Rep. Josi asked Sen. Bradbury to explain why he favored a provision in Senate Bill 632 that would transfer the shellfish testing program from the Health Division to the Department of Agriculture. Sen. Bradbury said he has heard no complaints about the way the division conducts the program, but that the division is forced each year to consider eliminating the program in response to budget reductions. The division staff would be the first to admit that the testing program will lose when balanced against the need for a program such as prenatal care, he said. The transfer to the Department of Agriculture seemed natural because the department has a traditional involvement with food processor inspections and would not have to make the sorts of program comparisons that the division does, he said. Rep. Josi asked whether giving the division a dedicated fund would take care of Sen. Bradbury's concerns. Sen. Bradbury said he had no doubt that the division would continue to do an excellent job if it had a dedicated fund. Rep. Josi asked Sen. Bradbury how much support he thought SB 632 had in the Senate, noting that he believed it would have little support in the House at this point. Sen. Bradbury said he believed it would get out of the Senate Agriculture and Natural Resources committee, but that it would have to go to the Senate Appropriations Committee, where he could not predict how it would be received.

Skeels said that the Health Division brings to the administration of the program the advantage of having a primary focus on public health and that he was surprised that the legislature seemed to believe that any agency would be equally capable of carrying out a public health mission. Where there is a conflict between the needs of commercial industry and the public health and safety, the division would always favor the public health, Skeels said. He added that he did not mean to imply that the Department of Agriculture would not strike a balance in favor of public health, but that the division has already struck this balance and set the necessary priorities.

Department of Agriculture Director Bruce Andrews told the Caucus that his agency has a marketing focus and has traditionally taken care of inspecting all food processing facilities along the coast, but it gives a high priority to food safety. He added that Agriculture has no particular interest in raiding the Health Division for the testing program, but that he gets "hot under the collar" when he hears legislators and others say that the department does not have the capability to conduct needed testing. He noted that the department already tests for domoic acid, often in cooperation with the division.

Rep. Josi asked both agency directors whether they could continue to cooperate with county-level health agencies should either retain the program. Cannon said the division has a good working relationship with 34 regional health departments and that it uses the county departments primarily to spread news of harvest area closures and, in some cases, to collect and process samples. Skeels noted that moving the program entirely away from county health departments could result in the loss of some of these departments' capability for general health testing. Andrews said he did not know exactly how the county departments fit into the testing program, but that he got the impression that the program could not function without their cooperation. He added that the department's interest is in seeing that the program works and that he would do what is necessary to ensure that it does, but that he could not predict how closely the department would work with the county departments until it knew more about the funding picture.
Sen. Bradbury said it is important to note that the legislature has created this rivalry between departments, not the departments themselves. The proposal to transfer the program should not be construed as a criticism of either department's ability to conduct testing properly, he added.

Fish and Wildlife Department Deputy Director Rod Ingram told the Caucus that a lot of questions had emerged concerning the amount of revenue likely to result from a shellfish license fee proposal, especially in view of uncertainty about how many recreational harvesters would pay for licenses when the resource has always been free. He offered to supply Caucus members with a packet detailing how the department estimated fee revenue.

Agenda item 4, discussion of other coastal issues:

No discussion of other coastal issues.

Rep. Josi adjourned the meeting at 7:53 a.m.
April 22, 1993
7:00 a.m.

Members present: Sen. Bill Bradbury
Rep. Tony Federici
Rep. Tim Josi
Rep. Chuck Norris
Rep. Hedy Rijken
Rep. Veral Tarno

Members excused: Sen. Stan Bunn
Sen. Joan Dukes
Rep. Jim Whitty

Staff present: Sean Brennan, Coastal Caucus staff assistant
Darrin Quillen, Legislative Assistant to Rep. Veral Tarno
Kirsten Todorovich, Legislative Assistant to Sen. Stan Bunn

Guests: Mike Sims, Hanneman & Associates

These minutes contain materials which paraphrase or summarize statements made during this meeting.

Rep. Tim Josi called the meeting to order at 7:08 a.m.

Agenda item 1, approval of minutes from previous meetings:

Without objection, the minutes for the meeting on April 15 were approved.

Agenda item 2, old business:

No old business.

Agenda item 3, new business:

1) Rep. Josi directed the attention of Caucus members to the draft letters to Rep. Larry Campbell, House Speaker, and Rep. Tony Van Vliet, House Appropriations Committee Chair, in support of Senate Bill 1112 and a draft letter concerning the recent U.S. Department of Commerce decision on the allocation of Pacific whiting to be sent to President Clinton, Commerce Secretary Ron Brown, members of the Oregon congressional delegation and to Governor Barbara Roberts. Sen. Bill Bradbury suggested that the whiting letter also be sent to the White House's Western Region Political Director and to Chris Dorval, a former staff member of Governor Roberts' who now works in the U.S. Department of the Interior.

Rep. Josi, noting that several Oregon newspapers have run editorials condemning the Commerce Department's decision, said the story has attracted the attention of some major media outlets. The issue is important for coastal communities — when you think about the ramifications of the decision on coastal communities it is a very surprising and disappointing decision, Rep. Josi said. He asked Sen. Bradbury if he could suggest another course of action the Caucus could take to affect the outcome of the decision. Sen. Bradbury said that unless the President or the Commerce Secretary agrees to reconsider the decision, it is final. He suggested that the Caucus could support the introduction of a Senate joint memorial conveying the concerns of the Oregon Legislative Assembly to the president and the Congress. This would take some time to go through the legislative process, but he would look into trying to fast-track such a measure, Sen. Bradbury said. He agreed to draft a measure for introduction in the Senate.
Coastal Caucus staff indicated that copies of the letters concerning whiting and SB 1112 would be available for Caucus members' signatures later in the day.

2) Darrin Quillen said Rep. Dave McTeague has introduced three House measures respecting the use of adipose fin clipping to mark all hatchery-reared salmon, steelhead and trout. House Joint Memorial 11 asks the governments of the Pacific Coast states, along with Idaho and British Columbia to agree to mark all hatchery fish by clipping the adipose fin and to discontinue the use of this mark solely to identify fish embedded with coded wire tags. House Joint Resolution 35 requires the Oregon Department of Fish and Wildlife (ODFW) to implement the adipose fin mass-marking plan and report to the legislature on its success and encourages the governor to foster intergovernmental agreements to implement such a plan. House Bill 2986 requires ODFW to remove the adipose fin from all hatchery-reared salmon, steelhead and trout after July 1, 1997. The thrust behind these measures, Quillen said, is to implement a catch-and-release program for wild stocks of salmon, steelhead and trout that will favor the harvest of hatchery fish and enable the recovery of wild fish stocks.

Quillen said there are several problems with Rep. McTeague's proposals. One problem is technical: fisheries agencies that use the adipose fin clip in their coded wire tag program do not yet have a satisfactory marking method they can use to replace the adipose clip, Quillen said. Laser marking does not work because the fish tend to regenerate their skin and cover the mark, while other proposed methods have a high rate of mortality for hatchery smolts, he added. Quillen noted in written testimony he distributed to the Caucus that ODFW made a strong plea for increased research to develop an effective alternative marking at a recent meeting of the Pacific States Marine Fisheries Commission. A representative from the Bonneville Power Administration (BPA) responded that BPA has done some research on the question in two or three different areas, but that an effective solution is at least three to five years away.

The proposals also have other problems apart from the technical difficulties, Quillen said. These problems include:

- **The catch and release program is no guarantee that wild fish mortality will decline.** Mortality among fish hooked and released ranges between 5 percent and 45 percent and increases exponentially each time the fish is caught, Quillen said. Fish do not learn to avoid hooking, he added, so they have as great a chance, once caught, of being caught again. Sen. Bradbury said that while the mortality rate might be high in a catch and release program, the restrictions now in place to try to protect the wild fish stocks have almost shut down the fishery entirely. If the mortality rate is somewhere around 30 percent, that still might allow enough wild fish back into the river to provide a fishery, he added.

- **Adipose fin clipping is subject to error.** A Washington Department of Fisheries study found that about 10 percent of the fish required to have the adipose fin clipped — those with embedded coded wire tags — did not. The rate remained constant after repetitions of the study, Quillen said. Sen. Bradbury asked Quillen if the study found the reason for the discrepancy — whether it resulted from mistakes in fin clipping or the regeneration of the adipose fin after clipping. Quillen replied that the study did not say, specifically, but that he believed the department attributed the difference to mistakes in clipping. Rep. Josi said he understood from studying the procedures at an Oregon salmon hatchery that the adipose fin must be clipped to its base in order to prevent regeneration.

- **Clipping increases mortality in the hatchery.** Clipping the adipose fin results in smolt mortality between four and six percent, Quillen said. Should hatchery managers clip another fin to accommodate the needs of the coded wire tag program, he added, the mortality rate may go up to between 10 and 40 percent.

- **Costs for mass marking are prohibitive.** The cost of marking all hatchery-reared fish would be about $2.4 million per year, up from the current $938,000 per year to mark all hatchery steelhead, Quillen said. The program would also require start-up costs of about $250,000, he added. If ODFW proposes to embed a coded wire tag in all hatchery fish, the program costs will top $10 million per year. One concern with these costs is the source of the funding — ODFW representative Kay Brown told the House Water Committee in recent testimony that paying for the fin clipping program could entail shutting down some ODFW hatcheries, Quillen said. Rep. Federici said that closing hatcheries as a way to pay for the program "flies in the face of what we're trying to do." Rep. Chuck Norris said he heard Brown's testimony and noted that he let himself be convinced of the need for the marking, but that if
the program entails a substantial fiscal impact that could kill the proposal. He added that he would not support the plan if it required shutting down hatcheries. Rep. Josi said that on balance he thinks the proposal to mass mark hatchery fish is a good idea, but that the state needs to establish a dedicated fund to meet the costs of the hatchery program.

Quillen noted also that the joint memorial calling on other governments to begin mass-marking using the adipose fin would place Oregon in an awkward position if it makes such a request but is unable to come up with the funding necessary to implement the program.

Sen. Bradbury said the issue boils down to what the state can do to ensure the health of the wild stock fishery. With a mixed-stock fishery, the ODFW must require the under-harvesting of the hatchery stock in order to protect the wild stock, he said, which means that the state produces a lot of hatchery fish that “come back as dog food” until it can recover the wild stock. Although there is a high mortality rate for adipose clipped fish, the alternative when harvesters cannot tell hatchery fish from wild fish is to let the wild stocks dwindle and let the provisions of the Endangered Species Act kick in, Sen. Bradbury said. This is what is happening now, he added, and it has come to the point where “we’re about to lose our fleet.” He said he believes the state must have a hatchery program if it wants to have any sort of viable commercial fishery — knowing what to do about the fin clip program is a difficult decision, but the state needs to do something to prevent further declines in wild stocks. Rep. Tarno said that in any event he could not support the proposed adipose fin-clip program.

Rep. Josi said that the legislature has been working on this issue for some time, but that it hasn’t always had the full cooperation of ODFW. ODFW would just as soon as phase out the Salmon and Trout Restoration Program (STEP), from what he’s seen, Rep. Josi said. Sen. Bradbury said he thought the STEP program along the south coast is effective, despite some conflicts, and has worked on some good restoration projects along the Coos River and at Green Acres.

Rep. Josi said that the Caucus needs to discuss the state’s wild fish policy and formulate a Caucus position on the whole question of where hatcheries fit into the state’s wild fish policy, whether it’s strictly for use as a short-term stop-gap or whether hatcheries will continue to be necessary for the long term. He said he is working now with Salmon for All Director Bob Eaton on a management policy for state hatcheries and will be looking into drafting a policy that calls for ODFW to not fund the adipose fin clipping program by closing down hatcheries. Sen. Bradbury suggested that OCZMA Executive Director Jay Rasmussen and former Representative Paul Hanneman would be good resources to give a presentation on the wild fish question and that the suggestion for a state hatchery policy could best be incorporated into an ODFW budget note.

Agenda item 4, discussion of other coastal issues:

No discussion of other coastal issues.

Rep. Josi adjourned the meeting at 7:43 a.m.
Rep. Tim Josi called the meeting to order at 7:08 a.m.

Agenda item 1, approval of minutes from previous meetings:

Without objection, the minutes for the meeting on April 22 were approved.

Agenda item 2, old business:

No old business.

Agenda item 3, new business:

1) Randy Fisher outlined the Department of Fish and Wildlife's upcoming regulations for the summer and fall coho harvest. For the summer months, July and August, estuarine fisheries will have the same number of season days, the same bag limit and the same allowable size as the comparable ocean fishery. Salmon caught in the estuarine and river fishery, furthermore, will count against the fisher's ocean quota, Fisher said. Beginning September 1, all estuarine and river fisheries will be closed to coho harvest, except where hatchery fish are present, Fisher said. Areas that will remain open include:

- Nehalem Bay and the North Fork of the Nehalem River
- Tillamook Bay Area, Trask River only
- Salmon River
- Siletz Bay and River
- Alsea Bay and River; Fall Creek
- Umpqua Bay and River; Lower North Fork
- Coos Bay and Isthmus Slough
- Ten Mile and Eel Lakes and Ten Mile Creek
- Coquille Bay and River
- Rogue Bay and River — marked fish only
The specific regulations applicable to each fishery are:

**Summer: July 1 - August 31**

Fishery open from Sunday through Tuesday, provided adjacent ocean fishery remains open. The regulations apply to all bay areas seaward of Highway 101 bridges. Where there is no bridge over the bay, the regulations apply to the entire bay, except in the following cases:

- In Nehalem Bay, the regulations apply seaward of a line from Fishery Point to the Nehalem State Park Boat Ramp
- In Tillamook Bay, the regulations apply seaward of a line from Kincheloe Point to Green Hill

Catch limits are: 2 adult coho and/or chinook salmon per day, 2 for each 7 consecutive days, 10 per year.

Gear allowed: barbed hooks, per Sport Fishing Regulation Book

**Fall: Generally September 1 to November 15, with local variations**

Catch limits are: 2 adult chinook salmon per day (except in the specific areas listed above, where the limit allows 2 adult coho and/or chinook per day), or 6 in any 7-day consecutive period.

Gear allowed: no change.

Rep. Josi told Fisher that one of the problems ODFW has is a public relations problem — when hatchery fish return in large numbers after the department has closed the fishery, coastal harvesters begin questioning ODFW's management strategies. He asked Fisher if he had a strategy for public relations. Fisher replied that the department has a number of meetings planned to talk about the regulations in each county, and will be advertising the regulations extensively. Rep. Josi asked that Fisher make sure that the advertising and meetings occur before the fish begin returning during their respective spawning seasons.

Fisher noted that the decision on the closure went through the customary Pacific Fishery Management Council management process. The ODFW decision was a compromise between those who called for a complete shutdown of the coho fishery and those who wanted less stringent steps taken, Fisher said.

2) Rep. Veral Tarno told the Caucus that he would like to convince Senate Transportation Committee chair Sen. Joan Dukes to support Senate Bill 98, which seeks to transfer the ATV Allotment Committee from the Department of Transportation to the Department of Parks and Recreation. Rep. Tarno said he believes the parks department's mission, its anticipated direction for the program and its access to federal funds for trail enhancements and other improvements necessary to operate a successful ATV program makes it a good location for the committee. The biggest amount of money used to go federal lands for ATV programs, but now that the National Park Service is considering shutting down the Oregon Dunes National Recreation Area to ATV use, this money probably should go to the Oregon parks department, Rep. Tarno said.


**Agenda item 4, discussion of other coastal issues:**

Rep. Josi asked Sen. Bill Bradbury if he had heard any reply to his efforts to call White House and other Clinton Administration officials to ask about an explanation for the recent Commerce Department decision on whiting allocation. Sen. Bradbury said he sent a fax and made a phone call, but has not yet heard from the person he wanted to contact.

Caucus staff provided members with an update on the harvest figures for whiting, courtesy of Jay Rasmussen, Oregon Coastal Zone Management Association. Observers expect the whiting season to close May 6.

Rep. Josi adjourned the meeting at 7:29 a.m.
Rep. Tim Josi called the meeting to order at 7:26 a.m.

Agenda item 1, approval of minutes from previous meetings:

Item deferred.

Agenda item 2, old business:

No old business.

Agenda item 3, new business:

1) June Carlson told the Caucus that the Department of Transportation has arrived at a midpoint in its two-year Oregon Coast Highway Corridor Study, a planning process designed to chart the future needs and required improvements to U.S. 101. The department has completed, with public input, a Vision Statement, a series of goals, objectives and evaluation criteria that look toward how the highway will meet transportation needs and preserve or improve adjoining scenic resources for the coming 40 years, Carlson said. The next step the department will work on is to begin developing a master plan for the Highway 101 corridor that takes account of the specific needs of each community. To do that, the department will use various combinations of a set of strategies it calls a “toolbox” to mix and match appropriate projects, improvements or changes to meet specific needs and problems in coastal communities and along the corridor.

Rep. Josi asked whether the contractors conducting the study involved the public in the preliminary steps. Carlson said they did, but not to the extent that some members of the public would have liked. These members would have preferred that the department's contractors had consulted a citizen's advisory committee (CAC) in the formulation of even general, preliminary goals, but the department thought it would be irresponsible to appoint a committee of about 15 people to represent communities, tourists and business interests along 360 miles of coast, Carlson said. She added that the department thought CACs would be much more useful at the project level, to give advice about how to meet the specific transportation and scenic preservation needs of their individual communities. They would aid in the study of the options given in the master plan, assist in a cost/benefit analysis and an environmental assessment and recommend the best solution, she said. The scope of their responsibilities would vary with the scope of the project, she
said. Rep. Josi said he wanted to be sure that the CACs would not be brought in at the end of a long process and simply used to sell an already-defined set of options to the public at large. Carlson said she and the department had no intention of restricting the role of the CACs in this manner.

The corridor plan fits into Oregon’s overall transportation scheme by setting an overall strategy for the Highway 101 corridor that agrees with the goals of the state’s transportation plan and with other regional and corridor plans, Carlson said. The 101 corridor plan will not be complete and workable until it is incorporated into the state’s comprehensive transportation plan, she added. Once complete, however, the corridor plan will guide the implementation of specific projects, she said.

Public meetings on the plan so far have been well-attended, Carlson said, with about 20 to 40 people coming to most meetings and about 90 attending a meeting in Manzanita that made up for an earlier meeting canceled because of inclement weather. As the planning process becomes more controversial, attendance will likely increase, she said. The department will soon begin a new round of six public meetings to introduce the “toolbox” options and to report progress on the plan to date, she said.

The corridor study has attracted a fair amount of federal funding, Carlson said, including $1.2 million for the corridor study — 80 percent of which comes from the federal government’s Highway Planning and Research Fund and 20 percent of which comes from Oregon’s regular highway fund appropriations — and an additional $162,000 for a Highway 101 feasibility study, which comes from an allocation given to the three west coast states. These states also share in a $10 million grant to fund improvements to scenic byways under the Intermodal Surface Transportation Efficiency Act (ISTEA), she added. The latter provision has caused some problems because it is conditioned on the states agreeing to ban the construction of additional billboards along any scenic byway covered under the grant, she said. Oregon law technically violates this requirement because, although it is among the most restrictive billboard regulations in the nation, it does allow billboards to move 10 miles from one site to another and not be considered “new,” while the ISTEA granting agency defines such a move as the siting of a new billboard. The Oregon Department of Transportation has tried to argue that the move does not constitute a new billboard, but to no avail, Carlson said. As a result, the department supported the introduction of House Bill 3382, which would allow it to ban the erection or relocation of billboards along the Highway 101 corridor. This bill has passed the House and is on its way to the Senate Transportation Committee, Carlson said.

Carlson added that she would like to be available to legislators for consultation during the interim after session and would like to know if the Caucus plans to meet during the interim. Rep. Josi said the Caucus would probably meet, but that he would like to see about whether either chamber would give the Caucus the status of an interim committee so that members could get reimbursed for their expenses. Sen. Bradbury said giving the Caucus status as an interim committee could be a problem, since many caucuses with different interests could then claim this status also, but there might be a way for the legislature to compensate members for expenses during the interim.

2) Gene McGee said he wanted to appeal to the Caucus to support the Oregon Trail celebration, since the promotional efforts so far have paid off. The celebration is now a nationwide phenomenon, McGee said, which has resulted in 90,000 new requests for the Oregon Guidebook — a 110 percent increase. Although not everybody who requests a guidebook will visit Oregon this year, surveys have shown that 75 percent of the inquiries are from people who have never visited Oregon before, so there may be a lot of interest in years to come, McGee said. Also, the distribution of interest is from across the country this year, as opposed to the usual inquiries from neighboring states — 70 percent of the inquiries are from all over the country and only 30 percent come from California, Washington, Idaho and other neighbors, McGee said. Rep. Josi asked what McGee would like the Caucus to do. Sen. Bradbury noted that the state already spends a great deal of money from lottery funds and from the governor’s budget for tourism-related development and promotion, but that the governor did not dedicate any money specifically for the Oregon Trail celebration. McGee said the Caucus and the legislature need to support specific funding for the celebration — authorizing the issuance of an Oregon Trail commemorative license plate, for example — since it is a golden promotional opportunity. Rep. Josi asked McGee to call his office with updates on his efforts to secure funding and said he will bring McGee’s requests to the Caucus’ attention.

Agenda item 4, discussion of other coastal issues: none

Rep. Josi adjourned the meeting at 7:59 a.m.
Rep. Tim Josi called the meeting to order at 7:06 a.m.

Agenda item 1, approval of minutes from previous meetings:

Without objection, the minutes for the meetings on April 29 and May 6 were approved.

Agenda item 2, old business:

No old business.

Agenda item 3, new business:

1) Rep. Dave McTeague presented to the Caucus a report written by Association of Northwest Steelheaders member Kelly O'Neill concerning the efforts of the Steelheaders and other fisheries organizations to influence the course of the reauthorization hearings on the Magnuson Fisheries Conservation Act (FCMA), which will continue in the House Merchant Marine and Fisheries Committee in Washington, D.C. this month. In the report, O'Neill describes the proceedings of a March 8-10, 1993 conference in New Orleans, Louisiana entitled Conserving America's Fisheries: A National Symposium on the Magnuson Act. The conference proceedings O'Neill described focused on the failure of the Magnuson Act to successfully protect coastal stocks from overfishing, especially in the area under the jurisdiction of the North Pacific Fishery Management Council, and on remedial measures needed to force the federal agencies with fisheries jurisdiction to comply with their legal mandates and to encourage commercial harvesters to abide by fishing limits, avoid or reduce excessive by-catch and contribute toward the conservation of the fishery.

Specific complaints detailed in the report included: conflicts of interest among regional council members and the domination of the North Pacific Fishery Management Council by "corporate fishing" interests; the lack of adequate data on which to base many regional Council decisions; a lack of measures for protecting
fishery resources before depletion and eventual limits on harvest levels; a lack of adequate enforcement of limiting quotas, which allows the practice of “high-grading,” or tossing dead fish back into the ocean so that the harvester can continue to fish for better grades of fish; a preference for gear controls to artificially introduce inefficiency into harvesting, which conference participants said did not benefit society; a lack of job alternatives for commercial fishers suffering from reduced or limited fisheries; and a Commerce department practice of blocking Council initiatives that has proven detrimental to the resource and the health of the fishing industry.

Some solutions suggested in the report included: shifting the burden for showing the overfishing of a fishery from under-funded resource agencies to harvesters; concentrating on “risk-averse” management by resolving allocation errors in favor of protecting the fishery and by making the prevention of overfishing the primary goal of the FCMA; removing financial conflicts of interest among Council members; increase enforcement of fishing limitations by using “high-tech” methods; keep the requirements imposed on harvesters simple and practical; amend the FCMA to define “conservation”; coordinate Council actions with other agencies with overlapping jurisdictions, such as the U.S. Fish and Wildlife Service; require the Councils to rebuild fishing stocks in a timely fashion, to offer a range of management alternatives similar to those required for compliance with the National Environmental Policy Act, to require a smaller by-catch from harvesters and to consider the effects of habitat destruction on fishery stocks.

At Rep. Josi’s request, Jay Rasmussen summarized the Council and Commerce department proceedings that led to last month’s whiting allocation decision. The Pacific Fishery Management Council (PFMC), which made the original whiting recommendation, has 13 members, three of which — Scott Boley, Frank Warrens and Jim Martin of the Oregon Department of Fish and Wildlife — represent Oregon, Rasmussen said. The PFMC developed a series of Fishery Management Plans (FMPs) to manage most, but not all, fishery resources off the Oregon coast, including groundfish and salmon. The FMPs guide the Council in its annual or seasonal decision-making on fish allocation, Rasmussen said. Once the PFMC decides on an appropriate allocation, it passes its recommendation to the National Marine Fisheries Service (NMFS), which must concur with the Council’s determination and which then passes the recommendation to the National Oceanic and Atmospheric Administration (NOAA), which in turn passes it to the Department of Commerce, Rasmussen said. He also noted that until last month’s whiting decision, the Commerce Department has refrained from making major changes to the PFMC’s recommendation — in this case, however, the Department made its own independent judgment on the proper allocation without consulting with the PFMC and after the whiting fishery had been open for 16 hours.

Before Commerce made its own decision, NOAA had fashioned an allocation rule different from the PFMC recommendation — with which NMFS agreed — but containing elements of the PFMC approach, Rasmussen said. He added that Commerce apparently based its decision in part on an assumption that the shore-based harvesting fleet could catch about 12,000 metric tons of whiting during the first couple days of the open fishery, when in fact the onshore fleet’s capacity is substantially less. After some lobbying, Commerce closed the whiting fishery to at-sea factory trawlers once they had harvested 100,000 metric tons, and thereby freed another 12,000 metric tons for harvest by the on-shore fleet, which amounts to one month of additional processing where onshore processors had hoped to continue harvesting well into August and September, Rasmussen said.

Rep. Josi asked Rasmussen what he thought had really prompted the Department of Commerce’s decision. Rasmussen replied that he thought the decision was so different from the PFMC recommendation that political considerations must have played a part in it — a lobbying effort he dubbed “chickengate” because of rumored connections between Arkansas chicken producer Chuck Tyson, who owns a substantial interest in one of the factory trawler firms that benefited from the allocation, and Clinton administration officials. Glen Spain noted that the Pacific Coast Federation of Fishermen’s Associations has begun preparing a lawsuit against the Department of Commerce for exceeding its authority in its whiting allocation decision. Spain said he would provide the Caucus copies of the suit documents once the PCFFA files them.

Rasmussen noted that one of the fallouts from the Department’s decision is that coastal whiting processors have suspended operations because the whiting are spawning now and because they believed that the season would open to them in May. Because the fish are now spawning, they are of poor quality for processors’ needs, Rasmussen said. This has led to a reduction in the quality and numbers of fish caught, which has in turn led to a higher discard rate among the at-sea trawlers, he added. Rep. Josi asked when the on-shore processors expected the at-sea processors to enter into the fishery. Rasmussen said that the PFMC
recommendation had anticipated the trawlers starting somewhat later and taking about 40,000 metric tons from the fishery. The PFMC based its recommendation on the fact that the whiting biomass in the Northwest is the largest such biomass in the nation and on a policy consideration that favored allowing at-sea processors to take a percentage of this biomass until coastal processors had acquired sufficient capacity to harvest to their potential, Rasmussen said. He added that he believed that the at-sea processing fleet saw the writing on the wall and, believing that they would eventually be phased out of the fishery altogether, decided to try to reverse the PFMC recommendation by going over the Council's head.

Sean Brennan said information he heard from a legislative fellow working for the U.S. House Merchant Marine and Fisheries Committee indicates that the Fisheries Subcommittee will hold hearings this month on the reauthorization of the Magnuson Fisheries Conservation and Management Act, the governing authority for the Pacific Fishery Management Council. The Subcommittee has held two hearings on reauthorization to date and will probably schedule additional hearings this summer, Brennan said. Brennan added that discussions with Sen. Bill Dwyer, chair of the Senate Water Policy Committee, and Sen. Ron Cease, the chief sponsor of Senate Joint Memorial 5, resulted in an agreement that SJM 5 would be amended to incorporate language asking Congress to limit the discretion of the Secretary of Commerce to overturn the recommendations of the PFMC. Brennan said he would try to complete drafting on the amendment within the next week or so, along with letters on the subject to the members of the House Fisheries Subcommittee.

2) Gary Gustafson gave an overview of the efforts of the Division of State Lands and its Kelp Advisory Committee to encourage the growth of a kelp harvesting industry off the Oregon coast. He noted that the industry is in its infancy in British Columbia and California and amounts to a cottage industry in Oregon and Washington. Oregon law provides for leases of kelp beds for harvesting, but includes a requirement that lessees harvest a minimum of 1,000 tons of kelp during any one year of their lease term, a requirement that the Division's sole lessee to date could not meet after four years of harvesting and processing, Gustafson said. He noted that the first lessee ran a family operation, which might have affected its ability to meet the statutory harvest requirement, but that the Division will most likely seek to sign leases with small harvesters of this sort once the Kelp Advisory Committee reports back on June 15 of this year with a recommendation for a harvest level.

Gustafson noted that the mandatory harvest level — the only such requirement for any living resource set forth in statute, rather than by administrative rule or commission recommendation — is unrealistic and could damage the resource. At the time the legislature made the initial requirement it had very little scientific information about the size of the resource, which studies have shown tends to fluctuate over time. He said the Division would like to find a way of eliminating the harvest requirement, preferably this session, so that it could begin leasing some kelp beds with an eye toward conservation of the resource. Rasmussen, who sits on the Kelp Advisory Committee, added that the minimum harvest requirement is both a conservation and a business issue, since potential lessees would like to depend on the stability of the resource and to plan for a gradual buildup to a harvest level of about 2,000 to 3,000 tons, perhaps over a span of 10 or more years.

Rep. Tarno asked Gustafson if he intended to put out some leases if the legislature eliminates the minimum harvest requirement or if lessees try to harvest the minimum in good faith. Gustafson said he intends to act on the Kelp Advisory Committee's recommendation when it comes back to him.

Brennan indicated that House Bill 2139 has a relating clause that might serve as a proper vehicle for eliminating the minimum harvest amount. Rep. Josi asked that Rep. Chuck Norris be asked to agree to amend HB 2139, which is now in his House Transportation Subcommittee.

3) Glen Spain introduced himself and the organization he represents, the Pacific Coast Federation of Fishermen's Associations (PCFFA), to the Caucus, noting that the PCFFA is the largest fishermen's association on the West Coast. It comprises 25 fishermen's associations that engage in a number of fisheries, including those for salmon, crab, pink shrimp, albacore, rockfish, shark, halibut, swordfish, abalone, sea urchin, squid and herring, Spain said. He added that the PCFFA is headquartered in California but now represents a lot of Oregon and Washington associations and is interested in getting a handle on problems unique to the Northwest region. Spain urged the Caucus to support measures that deal with such problems on a regional basis, reducing fragmentation of responsibility among states and state agencies. One issue of particular note, Spain said, is the loss of onshore habitat — including estuaries, forests and wetlands —
which particularly affects anadromous fish species. He said he sees a misguided, shotgun approach to the issues that affect anadromous fish population decline in legislation this session, rather than the forward-looking, preventative measures needed. Rather than disconnecting the warning lights on population decline, as bills like the House endangered species act bills do, the legislature needs to get ahead of the causes of fish population decline, Spain said. He added that he hopes to participate in Caucus sessions to the degree his schedule permits. Rep. Josi said he would encourage Spain to participate and to visit legislators individually and make himself available to testify on the issues that concern him. He suggested that Spain might start with appointments with himself and Rep. McTeague.

4) Sen. Stan Bunn told the Caucus that he and Sen. Bradbury have introduced three bills calling for restoration activities related to salmon. Two of the bills, SB 1112 and SJR 42, have already had hearings in the Senate Agriculture and Natural Resources Committee. The third, SB 1075, seeks to authorize Oregon to enter into interstate compacts with other states to coordinate salmon restoration efforts on a regional basis, Sen. Bunn said. Originally, when he and his staff worked with the Legislative Counsel's office he thought it would be a good idea to revive the old Columbia River Compact with Washington State, but after further discussions, everybody decided that the compact process was too long and involved to be immediately effective, Sen. Bunn said. Instead, he said, everybody agreed that a useful amendment to the bill would allow the state to coordinate its efforts with other states through interagency and interstate agreements that would eventually lead to interstate compacts.

Rep. Josi asked Sen. Bunn how he expects the effort outlined in this bill to dovetail with Pacific Fisheries Legislative Task Force (PFLTF) efforts to coordinate a regional restoration process. Sen. Bunn replied that he will attend the PFLTF meeting with Sen. Bradbury next month in San Francisco and will bring this bill, along with SJR 42 to the task force's attention. Rep. Josi moved that the Caucus support Sen. Bunn's bill as amended. Without objection, the motion carried. Rep. Josi asked Caucus staff to draft a letter of support for the bill from the Caucus.

Agenda item 4, discussion of other coastal issues:

Rep. McTeague said he would like to discuss SB 192, a bill requiring a permit for the removal of gravel or aggregate from streams essential to anadromous fish habitat at next week's meeting.

Rep. Josi adjourned the meeting at 7:47 a.m.
OREGON LEGISLATIVE ASSEMBLY
COASTAL CAUCUS
Minutes
May 20, 1993
7:00 a.m.

Members present: Rep. Tim Josi
Rep. Hedy Rijken
Rep. Veral Tarno

Members excused: Sen. Bill Bradbury
Sen. Stan Bunn
Sen. Joan Dukes
Rep. Tony Federici
Rep. Chuck Norris
Rep. Jim Whitty

Staff present: Sean Brennan, Coastal Caucus staff assistant
Kirsten Todorovich, Legislative Assistant to Sen. Stan Bunn

Guests: Dick Angstrom, Oregon Concrete and Aggregate Producers Association
Ken Bierly, Division of State Lands
Paul Heikkila, Oregon State University Marine Extension Service
Rep. Dave McTeague
Jim Myron, Oregon Trout
Dale Pearson, Legislative Assistant to Rep. Dave McTeague
Mike Sims, Hanneman & Associates
Glen Spain, Pacific Coast Federation of Fishermen’s Associations

These minutes contain materials which paraphrase or summarize statements made during this meeting.

Rep. Tim Josi called the meeting to order at 7:08 a.m.

Agenda item 1, approval of minutes from previous meetings:

Without objection, the minutes for the meeting on May 13, as amended, were approved.

Corrections to the May 13 minutes are as follows:
On page 2 of the minutes, line 2 of the last partial paragraph should read: "processors have suspended operations because the whiting have just finished spawning and because they".

On page 3, line 7 of the second full paragraph, the word "Policuy" should read "Policy".

On page 3, line 9 of the fourth full paragraph should read: "would like to depend on the stability of the resource and to plan for a gradual buildup to an annual harvest".

Agenda item 2, old business:

No old business.

Agenda item 3, new business:

1) Dale Pearson gave an overview of the three measures before the House related to using the adipose fin clip to mark all hatchery reared salmon, steelhead and trout. The House Water Subcommittee has already heard and made amendments to House Joint Resolution 35, which calls on the governor to encourage intergovernmental cooperation with other state fisheries management agencies and directs the Department of Fish
and Wildlife (ODFW) to begin marking all hatchery fish with a fin clip, along with House Joint Memorial 11, which calls on the governments of Alaska, California, Washington, Idaho and British Columbia to release the use of the fin clip from use in their coded-wire tag programs and allow its use for mass hatchery fish marking, Pearson said. Another measure, House Bill 2986, would require ODFW to remove the adipose fin from all hatchery-reared salmon, steelhead and trout after July 1, 1997, a provision that would show the governments of neighboring states that Oregon is serious about this issue, Pearson said. He added that HB 2986 delays implementing the fin clip measure because hatchery managers have not yet found a reliable substitute for the adipose fin clip to mark fish for the coded-wire tag program. To date, Pearson said, the most promising alternative is the injection of a bright orange polymer dye into the adipose (fatty) tissue immediately under the eye of the smolt. The principle requirements for the mark are that it be cheap, readily available and easily recognized by the most untrained of fishermen, and initial tests with the orange dye mark show promise. One remaining question is the degree of mortality the dye injection causes, so scientists must await the return of a four-year spawning cycle to determine the effectiveness of the mark. Other proposed alternatives, including a spaghetti clip through a dorsal fin, a pit tag or the clipping of other fins aside from the adipose, show far less promise and much higher evidence of mortality. Dick Angstrom asked if anybody has thought of splitting one of the dorsal fins as a mark. Pearson said he has not heard of any research in this direction, but would look into it.

Rep. Josi asked if there would be any objection to having the Coastal Caucus endorse these measures. Glen Spain said that Salmon for All, a member association of the Pacific Coast Federation of Fishermen's Associations (PCFFA), has caused some debate within the PCFFA on this issue and that he would like to have the Caucus consider some of Salmon for All's concerns. One such concern, Spain said, is that these measures force harvesters to rely entirely on a hatchery-bred fish run, but don't include a guarantee that the state will continue to support funding for hatcheries. Another such concern, he added, is that the measures do nothing to address the fundamental causes of fish population decline — principally, habitat loss. The state needs to make a commitment to restore wild fish stocks, not simply to protect them from harvest while in fact restoring hatchery stocks, Spain said.

Rep. Josi said he shared some of Spain's concerns, but his main concern is that ODFW not close down hatcheries to pay the bill for mass marking. A lot of hatchery fish already go unharvested each year, essentially going to waste, which is a public relations disaster for ODFW when the coho return to Tillamook County each year, Rep. Josi said. The adipose fin clip measures can take care of part of the causes for population decline, he added, but the problem of paying for hatcheries and doing habitat restoration always runs into the legislature's fiscal problems. Spain said he thought the PCFFA membership, though divided, would fully support hatchery funding if the state decided on an all hatchery-bred fish run and if the state coupled adequate hatchery funding with adequate wild stock restoration efforts. He added that this is a regional problem — part of the reason for declines in fish populations off the Oregon coast is habitat loss in California. The California legislature has cooperated with the PCFFA to get a great deal done to remedy this problem recently, Spain said, but problems with state agency fragmentation still exist. Spain said he hopes to work with both the California and the Oregon legislatures to try to find regional solutions to what is a regional problem. Pearson said HJR 35 now includes language that calls for the restoration of wild stocks where possible. Similar language could be inserted where appropriate in HJM 11 also, he said. Rep. Josi said it would probably not be wise to have the Caucus take an official position on the measures yet.

2) Rep. McTeague told the Caucus that Senate Bill 192 has come over to the House with lottery funding attached and that he wanted to try to coordinate this bill with amendments he has developed for House Bill 3116, a similar measure still awaiting a hearing in the House. Pearson said the gravel removal issue is one of the most difficult resource issues facing the House because a lot of sentiment for and against gravel removal exists. It's an Oregon tradition to drive right into a stream and remove gravel when needed, Pearson said, and while Oregon law allows some restrictions, it does not allow regulation of the removal of less than 50 cubic meters of gravel. Rep. McTeague's proposed amendments to HB 3116 would allow some regulation of removal activities in areas designated "critical spawning areas," requiring the Division of State Lands to issue permits only so long as it sets conditions on when removal can occur and ensures that removal occurs for beneficial uses. Pearson said he and Dick Angstrom, in drafting the amendments, agreed that it was not necessary to protect every inch of every stream; rather, the amendments anticipate that certain stream reaches would be specifically identified and gravel removal restricted in these areas. Such restrictions are critical for protecting salmon habitat, Pearson said, but have the potential to upset a lot of coastal constituents.
Rep. Josi said his family does some gravel removal, but never takes gravel only from gravel bars, not from the stream itself. If the bill seeks to regulate only gravel taken out of a stream, he said, he could support this without reservation. Otherwise, the bill could harm those who have a legitimate need for the resource and who do little harm to the stream itself, he said. Paul Heikkila asked Pearson how he proposes to define “stream” and account for variations in the availability of gravel. Pearson said the regulations could be very specific and based on the recommendations of biologists. Myron said the Division should also consult hydrologists, since even if those digging gravel are not digging from streams, they could still be eliminating gravel recruitment from the area in which they dig.

Dick Angstrom said that while this bill would not directly affect the large aggregate producers he represents, he sees a lot of benefit to the river systems when producers must abide by the terms of a permit. This bill would govern gravel removal by small producers and prevent non-beneficial uses, such as when a landowner moves gravel to put up walls for flood irrigation or other purposes which cause a substantial modification to the stream, Angstrom said. Such removals or modifications can cause a very negative impact on fish habitat — it does not make sense for anybody in Oregon to be able to take gravel out of a spawning riffle and cause the loss of a lot of fish eggs, he said. Since federal agencies proposing to list fish species that spawn in gravel beds have tried to make their regulations relatively broad, it would be wise for the state to have in place regulations for gravel removal so the state would have a chance to retain some control over the necessary regulation rather than simply having to defer to federal regulation, he added.

Rep. Josi asked how the bill proposed to define “beneficial use.” Angstrom said the bill does not define it, but it is understood to mean the sorts of beneficial uses for which gravel would normally be used. An easier way to define such a use might be to give an example of a use which would not be beneficial, he added — using gravel to fill in a wetland might be such a use. Ken Bierly said the bill resulted in part from the experiences of Lynne Pavur, who appeared before the Caucus on March 10, with a gravel removal operation upstream from her property. Rep. Josi said he did not have a real problem with the bills, but would like to see an amendment that would allow a landowner to remove gravel for personal, noncommercial use. Rep. Tarno said he approves of the bill, but would like to make sure that the rulemaking to implement the definition of “essential habitat” include public involvement and not become just an ODFW show. Angstrom agreed, noting that it is important to come to some consensus on the definition of essential habitat before the Division’s regulations kick in.

3) Glen Spain told the Caucus that the Pacific Coast Federation of Fishermen’s Associations has joined in the filing of a petition calling for the establishment of riparian stream regulations. The petition should cause quite a stir, Spain said, since it is scientifically credible — having undergone peer review by the most prominent scientists in the field — and calls for fairly extensive regulations. He provided copies of the petition to Caucus members, noting that he has provided the document for the information of Caucus members. The PCFFA is serious about salmon habitat protection and will “take this to the mat,” Spain said.

4) Rep. Josi gave the Caucus an overview of House Bill 3622, which proposes to establish a commission to encourage developmental fisheries by allowing the issuance of experimental fishing permits for underutilized fish species with commercial potential and by providing tax credits to fishermen who acquire equipment or otherwise prepare themselves to develop such a fishery. The most controversial aspect of the bill is the tax credit provisions, Rep. Josi said, since they cost the state money. House Water Subcommittee chair Rep. Chuck Norris agreed to hear the bill only with the proviso that bill sponsors agree to remove those credits, he added. Rep. Josi said the point of the bill is to provide both some encouragement for fisheries still in a developmental state — the scallop fishery, for example — and to allow for some regulation of the taking in these fisheries so as to prevent the sort of serious over-exploitation of the resource that occurred with the scallop fishery, which was nearly wiped out a couple of years ago. Jim Myron asked which species the bill would apply to and whether developing fisheries for such species would provide long-term economic benefits. Rep. Josi said that the long-term harvest of such species is a key element of the bill — the state can no longer afford to allow unrestricted fishing to wipe out a species when the possibility of continued fishing on a sustained basis exists. Paul Heikkila told Myron that he could provide him with a list of the proposed species. He noted that the bill resulted from discussions among a whole series of fishing interests, all of which agreed that it is essential to avoid repeating the type of overfishing that occurred with the scallop fishery. Most harvesters, moreover, will be reluctant to spend money on fishing gear and on developing a fishing method, only to have others take advantage of their knowledge to exploit a fishery at a lower capital cost, Heikkila said. This bill would enable these harvesters to develop fisheries on a cooperative basis and reduce the risk to themselves. Myron asked what “general fish management purposes” meant
with regard to the bill’s tax credit provisions. Heikkila said that if the state’s landing tax provisions shift, the shift would dedicate 75 percent of the landing receipts to the management of fishery programs and 25 percent to the state general fund.

S) Sean Brennan directed Caucus members’ attention to proposed revisions to Senate Joint Memorial 5 attached to last week’s minutes. He noted that the proposed revisions would call on Congress to limit the discretion of the Secretary of Commerce to overturn the recommendations of his subordinate agencies on fishery allocation issues during its hearings on the reauthorization of the Magnuson Fisheries Conservation and Management Act. The Department of Commerce’s decision to overturn the recommendations of the Pacific Fishery Management Council (PFMC) on the allocation of Pacific whiting and ocean salmon for this season prompted the memorial, but the PFMC got wide support among the other fishery management councils for a proposed change, Brennan added. The amended memorial will incorporate the language the PFMC proposed, and the other fishery management councils adopted, at a San Francisco meeting earlier in the week, along with proposed language taken from an NOAA recommendation in a 1986 report on federal fisheries management. Both Sen. Ron Cease, who sponsored the original version of SJM 5, and Sen. Bill Dwyer, who chairs the Senate Water Policy Committee where SJM 5 now sits, agreed to allow the substitution of this language, Brennan said. Sen. Dwyer also said he might hold a hearing on the amendments as early as next Thursday, May 27, he added. Brennan said he will also draft letters to the members of the U.S. House Fisheries Subcommittee, which is hearing the FCMA reauthorization, but that these need not reach the committee by May 26 since a hearing scheduled for that date has been cancelled.

Agenda item 4, discussion of other coastal issues:

- Heikkila asked Spain how the PCFFA’s lawsuit against the Department of Commerce over the whiting decision is proceeding. Spain replied that the suit is still in research and preparation and that the PCFFA is still gathering money for the coming legal battle.

- Rep. Rijken noted that the House Appropriations Committee decided to fully fund the Health Division’s shellfish testing program from the state general fund, appropriating $552,000 for the biennium. She asked about the status of Senate Bill 632, which proposes a license fee to pay for the same program and transfers it to the Department of Agriculture. Brennan noted that SB 632 is scheduled for hearing Friday morning in the Senate Agriculture and Natural Resources committee and that negotiations among the bill’s sponsors and its opponents have nearly resulted in a consensus. Three sticking points still remain, Brennan said — the Oregon State Police requested $250,000 for the biennium to take care of enforcement, but they will probably revise that request substantially and use cadets for enforcement, rather than regular officers; the Lincoln and Tillamook County health departments originally opposed the bill’s proposed transfer of the program to Agriculture, but have now essentially agreed not to oppose it; and some uncertainty remains about what volume of harvest would be necessary to distinguish a large shellfish producer from a small producer for the purpose of setting commercial license fees. These issues will likely be resolved either before or during the hearing, Brennan said.

Rep. Josi said that the future of the testing program may still be in doubt, since the majority leadership in the House will essentially “deep-six” the bill when it crosses over. With the breakup of the joint appropriations committee process earlier in the session, he added, the opportunity to negotiate for a level of support for the testing program may have been lost. Although general fund support for the program is good, Rep. Josi said, the testing program may still go under and the coast still has a problem.

Rep. Josi adjourned the meeting at 7:47 a.m.
May 27, 1993
7:00 a.m.

Members present: Sen. Bill Bradbury
Rep. Tim Josi
Rep. Chuck Norris
Rep. Veral Tarno

Members excused: Sen. Stan Bunn
Sen. Joan Dukes
Rep. Tony Federici
Rep. Hedy Rijken
Rep. Jim Whitty

Staff present: Sean Brennan, Coastal Caucus staff assistant
Ted Sturdevant, Legislative Assistant to Rep. Tony Federici

Guests: Doug DeHart, Department of Fish and Wildlife
Larry Hill, Oregon Guides and Packers/Northwest Sportfishing Industry Ass'n
Gene McGee, Oregon Coast Association
Rep. Dave McTeague
Bob Meinen, Department of Parks and Recreation
Jim Myron, Oregon Trout
Kathleen Simpson Myron, Oregon Wildlife Federation
Dale Pearson, Legislative Assistant to Rep. Dave McTeague
Jay Rasmussen, Oregon Coastal Zone Management Association
Mike Sims, Hanneman & Associates
Glen Spain, Pacific Coast Federation of Fishermen’s Associations

These minutes contain materials which paraphrase or summarize statements made during this meeting.

Rep. Tim Josi called the meeting to order at 7:10 a.m.

Agenda item 1, approval of minutes from previous meetings:

Without objection, the minutes for the meeting on May 20, as amended, were approved.

Corrections to the May 20 minutes are as follows:

On page 3 of the minutes, line 1 of the first paragraph should read: “Rep. Josi said his family does some gravel removal, but takes gravel only from gravel bars, not”.

Agenda item 2, old business:

No old business.

Agenda item 3, new business:

1) Jay Rasmussen distributed copies of a memo he prepared to outline the state's wild fish policy. The memo discusses the origins of the state's wild fish policy, Rasmussen said, and gives definitions taken from the Department of Fish and Wildlife's administrative rules. The state codified its policy for the restoration of native stocks back in 1981 and defined “native stocks” to mean “those anadromous fish that naturally propagate in a given watershed,” he added. In the last five or six years, the state has moved to clarify its
management policies for wild fish, and has included most of its important policies and definitions in ODFW's administrative rules, Rasmussen said. With the adoption of the administrative rules, however, the term "native" no longer has a definition — the closest approximation would probably be "indigenous" now, he said.

The overriding goal of the wild fish policy is to "prevent the serious depletion of any indigenous fish species through the protection of native ecological communities, the conservation of genetic resources, and the control of consumptive uses such that fish production is sustainable over the long term," Rasmussen said. All other goals for wild fish must conform to this specific policy, Rasmussen said, but the administrative rules are not as specific about setting production and harvest goals for wild fish as they are for their protection. This has caused some confusion about the direction and goals of the wild fish policy in some coastal communities, Rasmussen said.

The principle questions that arise about the policy revolve around the following issues, Rasmussen said:

• **What is the role of the Salmon and Trout Enhancement Program (STEP) under the wild fish policy?** This needs some clarification, since the existing STEP guidelines emphasize restoration and rehabilitation, but not population supplementation. This raises some questions about appropriate activities for the STEP program.

• **Can an adequate harvestable surplus be achieved for wild coho under the state's wild fish policy?** The Coho Plan has assumed that with an adequate number of spawning fish the harvest rate could be close to 69 percent, but a 50 percent harvest rate now seems remarkable. There have been some overestimates of the number of naturally occurring coho and overestimates of their natural productivity under the plan, which have led to some errors in policy.

• **Does the state have well-defined production and harvest goals and programs to meet user needs?** The state is increasingly silent about what, aside for the wild fish policy, its goals are for production and harvest. State policy for wild fish preservation and enhancement is specific, but its policy for hatchery production and harvesting targets is not. There are some fishery plans that have fairly specific goals, but these are more basin plans than plans aimed at particular species.

• **Will harvest restrictions for anadromous fish become a de facto solution for salmon recovery?** There is a fear among coastal harvesters that this will become the easiest and most readily available solution for recovery strategies — the coho harvest, for example, seems to be continually ratcheting downward.

• **Is the state committed to aggressive rehabilitation, enhancement and supplementation projects?** Some species of coastal salmon are in excellent condition, but other species may need an emergency response mechanism to handle their decline. Coho decline is not uniform on the coast — on the North Coast, however, the decline is particularly bad. These declines have continued despite the Fish and Wildlife Department's best efforts. The intent of the Governor's Coastal Salmon Restoration Initiative and the program envisioned under Senate Bill 1112 are a step towards addressing this problem and to begin some required emergency management measures.

• **Can the state deal with the problems of salmon decline over time?** The wild fish policy is not the Endangered Species Act (ESA), but when the state talks about exempting a species from the wild fish policy, this almost guarantees an immediate ESA petition. As wild stocks decline in numbers, the opportunities for the state to enhance and supplement their populations may also decline, along with harvest opportunities. Reductions in hatchery funding may go hand-in-hand with these declines.

The issue ultimately is not so much the shape of the wild fish policy as whether the state is meeting its preservation goals, Rasmussen said. Glen Spain said that the state must ultimately bite the bullet and acknowledge in its restoration and enhancement efforts the role that habitat loss plays in species decline. Some studies have shown that salmon habitat has declined to about two percent of its former extent, he added. Rasmussen agreed, noting that policy mis-steps and mistakes result from assuming that only one cause contributes to salmon population decline. Without determining the habitat requirements for each species, managers simply cannot tell whether to use hatchboxes or other means of enhancement or supplementation. **Rep. Veral Tarno** asked Spain where he got the two percent figure. Spain said he had a packet
of information he would supply to the Caucus that outlined how salmon habitat has declined. ODFW surveys of 12 streams around the state have shown that an average of two percent of the prime over-wintering habitat remains for coho, Spain said. The decline in habitat is directly linked to losses in woody debris instream and to urbanization and forest practices in riparian areas, he said. These declines have already prompted the filing of a number of Endangered Species Act petitions for coho — environmental groups seem almost to be in race to file — that could drastically affect harvest opportunities, he added.

Rep. Chuck Norris asked Rasmussen if population declines resulting from changes in ocean habitat are a cyclical phenomenon. Rasmussen replied that in certain areas ocean conditions have not been favorable for some salmon species, but that declines have been uneven. Salmon populations in the Gulf of Alaska are at record levels, while populations of Oregon salmon that usually migrate northward are at record low production levels, he added. Where the population is already declining, it does not take much of a production loss to have a serious effect on salmon populations, Rasmussen said. Dale Pearson said the ocean environment appears to be extremely inhospitable to salmon — about 97 percent of each run gets eaten. Under these conditions, Pearson said, a run that loses only 95 percent of its production is considered fairly successful. Spain said the problem stems from the cumulative effects of habitat loss, hydroelectric development and other human causes, all of which weaken salmon stocks before they reach the ocean habitat. Since we cannot do much about natural predation on salmon in the ocean environment, we need to concentrate on taking care of the problems we create ourselves, Spain said. Rep. Tarno said some of the predation occurs from an overabundance of seals and other marine mammals which do damage to salmon stocks and which can be controlled with human intervention. Spain replied that the problem is not the seals themselves, but the fact that we have too many seals eating too few fish. The seals and the salmon evolved together in the Northwest environment and coexisted for many years before human intervention, Spain added, so we really cannot blame them for our current problems. Rep. Tarno said the perception certainly exists among fishermen that the seals are a real problem.

Pearson said that people tend to perceive the wild fish policy as somehow hostile to hatchery production. As far as he's concerned, the policy simply recognizes that fishery managers must build on the wild population, supplementing it as necessary with hatchery fish, Pearson said. ODFW needs to try to erase this perception before it has a lot of public support for its wild fish policy, he added. Doug DeHart agreed, noting that ODFW has long recognized that it cannot have a successful hatchery program without a successful wild fish policy. Studies have shown that every time we've begun a hatchery program we eventually see returning fish runs decline, DeHart said. The wild fish population goal is to create sustainable populations — that's its whole reason for existing, and it has as much to do with creating harvestable fish populations as it does with keeping federal fisheries managers out of the state's backyard, DeHart said. The policy has had some successes so far, DeHart said — the state has a healthy chinook population that may even exceed the population that existed in 1900 — but ODFW's efforts have been subject to some pitfalls and some cyclical declines in population. The STEP program itself is geared specifically toward rebuilding wild fish populations, DeHart added, with guidelines that call for the use of hatchboxes only to supplement wild fish where they have declined and where there is habitat suitable for restoring the wild stock. The hatchbox program is not simply to feed the recreational and commercial harvest, since the return rates usually are not sufficient, so there is no conflict between wild fish population restoration and hatchery programs, he said. He added that he cannot think of a single instance where a hatchbox program has shut down because of a conflict with the wild fish policy. Other problems, usually a lack of eggs, have done more to shut down hatchery programs, DeHart said.

Spain said the Caucus must keep in mind the economic benefits of Oregon's fishing industry. A California study projected that merely doubling the existing salmon population could create about 40,000 jobs, generate $150 million in revenue to harvesters, and contribute to an overall economic benefit to the state's economy of about $1 billion.

2) Rep. Tarno asked Sen. Bradbury whether he had any update on the progress of Senate Bill 1112. Sen. Bradbury replied that the bill's chances look very good in the Senate and that there appears to be some support in the House. He added that he has talked to Rep. Tony Van Vliet about the bill and about the lottery appropriations contained in the Governor's Watershed Health Benchmark Proposal. He said it has helped to link SB 1112 to the local watershed council process envisioned in House Bill 2215 and that unified support from the Governor's office, the various agencies that will assist in implementing the proposal and from such organizations as Oregon Trout has helped the bill along. Rep. Norris noted that HB 2215 is out of the House Appropriations Committee and is headed for the House floor. Rep. Josi said he
has heard some concerns from House members about the amount of money from SB 1112 that will end up going to on-the-ground projects, rather than additional studies or data gathering. Sen. Bradbury said similar concerns had occurred to him and that he will be meeting with representatives from the Water Resources Department to go over their proposal for implementing the bill. Rep. McTeague said he has also heard concerns in the House about the Watershed Benchmark Program. The agencies tried to bring this proposal to the House piece by piece and have now decided to make the Water Resources Department the lead agency, but this arrangement seems to be falling apart, Rep. McTeague said. He added that he asked Water Resources whether it would have complete authority to decide how the $10 million earmarked for the program would be spent, but heard that most of the money was already committed to existing state agency programs. This raises some concerns, he said — the agencies must demonstrate that they will have off-the-shelf programs ready to go that will show concrete results, not that they will continue to do more studies and feed a bunch of bureaucrats. Rep. Josi asked Rep. McTeague to keep an eye on House reaction to the bill and to report back to the Caucus on how it is faring.

3) Bob Meinen said he wanted to warn the Caucus that the Department of Parks and Recreation has had to present a number of options to the House Appropriations committee to try to close a gap of about $2 million in its parks budget. Some of these options involve closing down state parks, many of which are coastal day-use parks, Meinen said. The projected closures could idle about 20 to 25 parks, 60 percent of which are in coastal areas, he added. The committee has stalled on the issue of increasing the recreational vehicle fee to make up the difference in the department’s budget, and he is not optimistic about House Bill 2123’s chances of making it out of the House, Meinen said. The department still has a commitment to try to provide a quality park system that is not in a deteriorated condition, but budget cuts may force it to provide a quality system consisting of fewer parks. Rep. McTeague asked Meinen what the department can trade off in its budget to avoid closures. Meinen said the only other area that could potentially be cut would be the department’s capital replacement program, but the department has already taken a $600,000 cut in this area so he would have a difficult time justifying further cuts. Rep. McTeague asked if the department has looked into trying to get bonding authority for state parks. Meinen replied that the voters rejected an initiative during the last general election that would have given the department bonding authority. In place of that authority the department has relied on day-use fees at some state parks, he said. Given that there has never been a fee at state parks, reaction has been relatively positive, with only a 38 percent drop in park use. Rep. Josi noted that this amounts to about a third less wear and tear on park facilities. Meinen replied that this is a positive way to look at the situation.

Agenda item 4, discussion of other coastal issues:

Sean Brennan noted on behalf of Rep. Shiprack’s office that U.S. Rep. Ron Wyden will be holding hearings with his Small Business subcommittee in Newport next Friday to take testimony regarding the impact of the U.S. Commerce Department decision on the allocation of Pacific whiting this past season. Brennan asked those interested in attending to contact Jay Rasmussen regarding scheduling.

Rep. Josi adjourned the meeting at 7:56 a.m.
Rep. Tim Josi called the meeting to order at 7:05 a.m.

Agenda item 1, approval of minutes from previous meetings:

Without objection, the minutes for the meeting on May 27 were approved.

Agenda item 2, old business:

Rep. Josi said he would like to ask the Caucus whether it wants to formulate a position on the state wild fish policy or whether this is something that should probably be shelved, given the limited remaining time in the session and the amount of work it might take to develop a position statement. He noted that some residents along the coast believe the wild fish policy, though not a bad policy, is being used to eliminate the fishing industry. Glen Spain said he was not sure why coastal residents would believe this, since the wild fish policy is compatible with the basic economics of the industry and with the state's hatchery program. He added that the Caucus and the state may need to worry less about the policy and more about trying to clear up this misperception. Jim Myron agreed and asked what the Caucus' proposed position might be, if not in favor of the wild fish policy. He said the Department of Fish and Wildlife should think about a public education campaign about the contents and the benefits of the wild fish policy. Rep. Josi said he thought the Caucus should, if it chooses to take a position on the policy, adopt a statement that supports the viability of the coastal fishing industry. Rep. Chuck Norris noted that the state's policy has interstate implications. He added that he will attend a meeting of the Pacific Fisheries Legislative Task Force in San Francisco this weekend and would be happy to carry anything the Caucus might want to present to the task force with him. Rep. Josi said he would contact Rep. Norris later that day to discuss this possibility.
Agenda item 3, new business:

1) Anne Squier said the members of the state agencies involved in the formulation of the Governor's Watershed Health Benchmark Proposal realized during their discussions that if their proposal were to work and be successful, it must show some measurable outcomes in a short time frame to indicate that the watershed restoration effort was heading in the right direction. The Water Resources Department proposal to implement Senate Bill 1112, which the Senate has designated as enabling legislation for the Benchmark Proposal, may not reflect the urgency the department directors felt about this need, Squier said, but the directors certainly included it as an underlying assumption in their discussions. Rep. Josi asked if the Water Resources proposal included provisions for legislative oversight of the watershed restoration effort and said that he hoped Squier or others involved in the project would see the need to report progress to coastal legislators and the interim staff as often as necessary.

Martha Pagel said she put together some proposed amendments to the bill after meeting with Rep. Dave McTeague the night before that address the need for legislative oversight and the need to capitalize on volunteer and private efforts in watershed restoration. She supplied copies of the proposed amendments to Caucus members and said she intended this language to respond to most of the points brought up in a meeting the previous Friday with Sen. Bill Bradbury, Rep. Josi, Squier and others. During that meeting, Pagel said, those present discussed a dilemma facing Water Resources: legislators want to know where the department is heading with the program, but the department and other state agencies involved in the effort will not be the only entities responsible for laying out the program. The department must try to involve local efforts without specifying particular projects, since the content of those projects should be the province of the local entities and would require interest and input from them for any project to succeed. Anne Squier added that because the departments have deferred any definition of what they intend to do with the contract money so they can wait to see what local restoration proposals look like, the Water Resources implementation proposal reads as though it has to do only with agency allocations of resources. The department directors wanted to specify how they would prioritize their own allocations of funds in this document, Squier said, which turned out to be a deficiency that legislators picked up on. Myron noted that the science of watershed restoration is still evolving, so it would probably be inadvisable to lock the legislature or the departments into specific projects at this stage.

Pagel noted that when she and Squier had met with Rep. McTeague the previous night he suggested that the proposal should include the establishment of an oversight body. She said she thought this was a good idea and asked for comments from Caucus members and guests. Spain said he thought that if the oversight body included fishermen, that would almost guarantee a good restoration project because they have an interest in the outcome of the project and they frequently have a lot of ingenuity and insight about how to design and implement restoration projects. But Jim Myron objected, noting that to represent all the various fishing interests the oversight committee would probably have to include about 40 members and that would be far too unwieldy and ineffective.

Rep. Josi said he thought the intent of an oversight committee was to give legislators some power to oversee the project. Rep. McTeague said he thought the legislature and the public would have a better idea of how the project worked with a citizen oversight committee. He noted that the state has had some positive experiences with the Governor's Watershed Enhancement Board (GWEB), the state Restoration and Enhancement Board and the fish screening task force. When agencies or the legislature pull people into the process, they get involved, Rep. McTeague said. Conversely, if there is no public involvement in the oversight process the agencies will encounter a lot of public suspicion, he added. At a minimum, the grants and project proposals should have some oversight before the state agrees to them, he said. That oversight could come from GWEB, which includes the heads of all the state natural resource agencies, or it could come from local watershed councils, as House Natural Resources Committee Chair Rep. Ray Baum suggested, Rep. McTeague said. Either way, the process should include some citizen involvement, he added.

Squier said there are two potential ways to have oversight: on a state-wide basis, or as a formalization of local participation in the local basin in each of the two pilot watersheds. The Water Resources proposal emphasizes coordination in the local basin, she said. Rep. Josi said he liked the local coordination idea better, noting that it could come from a short-term group that would form and disband when its job is done. That way, he said, the state would not have to worry about another series of commissions and boards at a time when the governor has proposed eliminating many of them. Rep. Norris said he will be carrying
House Bill 2215 on the floor of the House later in the day. Water Resources should take advantage of the local watershed councils mentioned in HB 2215 for on-the-ground implementation of the projects mentioned in the Water Resources proposal or his effort to get HB 2215 through the House would be wasted, he said. Squier replied that the department assumed when it wrote its proposal that the local councils would be the primary mechanism for implementation of the projects, but that the department did not want to link the two bills in case one did not pass.

Becky Kreag said the degree to which Water Resources could take advantage of the local watershed council process would be contingent on whether local groups actually form. The department cannot force the groups to form, Kreag said, and a lot of necessary restoration projects may not attract the local support needed to form a group. Rep. Josi said that groups will form as long as there is money there to finance restoration projects. Pagel said she believes some groups have already begun forming on the south coast. She added that there must be a blending between local efforts and state efforts, or else there will be conflicts and overlapping jurisdiction. The oversight board would probably be the best way to coordinate this blending, she added. Myron said Oregon Trout sees the potential for coordinating state agency watershed restoration efforts — which do not now have any such coordination — as the principle benefit from this bill. He added that Oregon Trout would not support any amendments to the bill that reduce this benefit. Louise Bilheimer agreed, noting that local residents are frustrated with having to work with 14 different state agencies to do any watershed restoration.

Bilheimer also said she had some concerns about Pagel’s proposed amendments to SB 1112, particularly where the amendments specify that watershed restoration efforts should include some projects but do not specify that they should include other projects. If adopted, the amendments might force the department to determine before the fact that certain projects, such as fish screening, would have a high cost/benefit ratio and might not look to other equally deserving projects, Bilheimer said. She added that she might agree that fish screening probably has a good cost/benefit ratio, but that the department would have to make sure that the screens are properly maintained, which may result in most of the department’s funds going down into a black hole of spending. The Pacific Rivers Council has brought in several scientific groups to investigate the best methods of watershed restoration and they all agreed that the best way is to build a restoration effort out from areas that have not yet been degraded, Bilheimer said. Traditionally, the state has spent money on the most degraded watersheds, which usually ends up as another spending black hole as the state tries, often in vain, to restore degraded areas, only to have areas that were not degraded become degraded, she said.

Another component of the restoration effort must include an emphasis on land management practices, Bilheimer said. Nature will allow a lot of recovery to take place if we give it a chance to, she said, so the first phase of a restoration effort should consist of doing nothing but concentrating on land management and on changing the behavior of landowners and land managers. Kreag said Water Resources has tried to emphasize giving landowners some hands-on assistance to change the way they work and do business so that they understand how these changes benefit them, rather than simply coming down on them with regulations. The proposal again includes a forest practices management component and other components such as rangeland management and water conservation, Kreag said. Individual landowners will buy into the restoration effort when they recognize how they fit into the watershed, she said. But this is not always easy and may require some amount of financial assistance to landowners to help them meet the initial costs of changing their practices.

Bilheimer said she has found in the Grande Ronde that talking to landowners can yield some innovative ideas, such as switching to rice cultivation on lands that fall within flood plains to take advantage of regular flooding, rather than simply building dams to control a natural cycle. Other examples of innovation include using different crops adapted to existing natural systems and fencing off certain wetlands to serve as watering holes for cattle, Bilheimer said. In the latter instance the landowner was able to keep his cattle away from riparian areas by fencing only the area around the wetland area rather than all along the stream, she added, and therefore had sufficient water for stock watering all year round. The agencies need to show landowners that they do not want to put them out of business, but rather just change their practices so that they will benefit both the landowner and the environment. Rep. McTeague said Bilheimer is doing a lot of work that is exciting, but that she needs to talk to legislators and convince them this can work. There is not a lot of political support out there for this type of “new age” thinking, so she has to work to build it, Rep. McTeague said.
Myron said the irony of the state’s restoration efforts to date is that the agencies put a lot of money, planning and effort into the process, but the fish runs are still declining. This effort may show more promise if the agencies can demonstrate that they can get on-the-ground results. Squier said the fact that the agencies have put so much effort into restoration with so few results is why they must come together with this effort and coordinate their practices on a watershed basis. Pagel said Water Resources' biggest problem so far with SB 1112 has been trying to communicate its intent. She said she would appreciate the Caucus giving her some feedback on how to get the department's intent across.

2) Glen Spain said he hoped that Caucus members would read the document he handed out that discussed the economic benefit to the state of the fishing industry. He also said he has an update on the Pacific Coast Federation of Fishermen's Association's lawsuit against the Department of Commerce for arbitrarily overturning the recommendations of the Pacific Fishery Management Council on this season's Pacific whiting allocation. Spain said Commerce's action may have cost the fishing industry between $10 million and $20 million. The PCFFA has invited the Oregon Salmon Commission and the State of Oregon to join the suit as plaintiffs. He said he would supply Coastal Caucus staff with a copy of the complaint for distribution.

Agenda item 4, discussion of other coastal issues:

none

Rep. Josi adjourned the meeting at 7:45 a.m.
OREGON LEGISLATIVE ASSEMBLY
COASTAL CAUCUS
Minutes
June 10, 1993
7:00 a.m.

Members present:  
Sen. Bill Bradbury
Rep. Tony Federici
Rep. Tim Josi
Rep. Chuck Norris
Rep. Veral Tarno

Members excused:  
Sen. Stan Bunn
Sen. Joan Dukes
Rep. Hedy Rijken
Rep. Jim Whitty

Staff present:  
Sean Brennan, Coastal Caucus staff assistant
Darrin Quillan, Legislative Assistant to Rep. Veral Tarno
Ted Sturdevant, Legislative Assistant to Rep. Tony Federici

Guests:  
Richard Bohton, crab fisherman
Kay Brown, Department of Fish and Wildlife
Ron Gaither, Oregon Trout
Bob Jacobson, Oregon State University/Sea Grant Marine Extension
Jim Myron, Oregon Trout
Mike Pettis, crab fisherman
Jay Rasmussen, Oregon Coastal Zone Management Association
Tom Robinson, Oregon Salmon Commission
Mike Sims, Hanneman & Associates
Rep. Larry Sowa
Glen Spain, Pacific Coast Federation of Fishermen’s Associations

These minutes contain materials which paraphrase or summarize statements made during this meeting.

Rep. Tim Josi called the meeting to order at 7:03 a.m.

Agenda item 1, approval of minutes from previous meetings:

Without objection, the minutes for the meeting on June 3, as corrected, were approved.

Corrections for the minutes for the June 3 meeting are as follows:

On page 4, line 5 of the paragraph designated 2) should read as follows:
“Council on this season’s allocation for ocean salmon. Spain said Commerce’s action may have cost the”

Agenda item 2, old business:

Tom Robinson provided the Caucus with a draft position statement concerning the state’s wild fish policy and said it would help Oregon’s fishing industry if the Caucus were to take a position on the policy. He said he has testified in favor of the wild fish policy and for the state’s genetic conservation policy with the understanding that the state had a long-term commitment to both. The genetic conservation policy is important because many salmon traits that govern stock sizes, disease resistance and migratory patterns are all carried in the genetic material of the wild salmon stocks, Robinson said. The one danger with the policy as it now exists, Robinson said, is that it overemphasizes the preservation of habitat and the need for natural propagation and therefore loses sight of the fishing industry’s need for hatchery supplementation for the short-term. Robinson
said it would be helpful for the Caucus to tell state agencies and other fisheries managers that while provisions exist in state law for hatchery propagation, the state needs to keep active in the area and provide the necessary funding, rather than expend its effort merely in maintaining "museum piece" salmon runs. He added that existing law recognizes that the twin goals of wild run restoration and hatchery supplementation are compatible — the Salmon Commission's proposed position statement merely tries to restore balance to the state's implementation of the wild fish policy. Right now only 10 to 15 percent of the state's coho population is wild, Robinson said. The state cannot maintain a coho stock with this small a wild population, he said. At the same time, he added, the fishing industry cannot survive on the existing salmon harvest rate of about 26 percent of the stock. Historically the harvest rate has been as high as 90 percent, Robinson said, so the draft position statement's goal of 50 percent is reasonable.

Rep. Veral Tarno asked Robinson what position his organization takes on the House proposals to mark all hatchery-reared salmon by clipping the adipose fin. Robinson replied that while there may be some benefits to the stocks in the short run, the Oregon Salmon Commission has concerns about the cost of the proposals and the potential for fish mortality in a mass-marking effort. The proposals also may distract the state from the need to preserve wild fish stocks, he said. In general, the Commission does not believe that mass marking will break any new ground in fisheries management or contribute anything new to the effort to restore declining stocks, Robinson said. Rep. Chuck Norris said that the existing House measures do not actually direct the state to begin adipose clipping, but rather call on other states to give up using the fin clip for their coded wire tag program.

Sen. Bradbury said the Caucus and just about everybody in the industry and in fisheries management understands the need for hatchery stocks, but that hatchery stocks will not solve the state's problems with declining fisheries. Part of the problem is that because the wild runs are so low, the whole industry is subject to harvest restrictions, even on hatchery fish, Sen. Bradbury said. While the majority of the Commission's draft policy makes sense, the idea that the state's hatchery facilities must be upgraded should await action until after the state sees some benefit from the money it now invests in them, he said. Robinson said he agreed that the state needs to concentrate on restoring salmon root stocks, but that it must also do something to clear up the perception that hatchery fish are somehow inferior to wild fish. The Commission wants to ensure that the discussion about hatcheries involves not just hatchery funding but upgrading the management of the hatcheries themselves, Robinson said.

Rep. Josi asked Robinson to come back with an amended position statement that addresses the wild fish policy directly and that says that the Caucus supports the policy with some conditions, one of which should be that the state should not use the wild fish policy to drive the commercial fishing industry out of business. If the state does not have hatcheries, it does not have a fishing industry, Rep. Josi said, and if the state does not have money, it does not have hatcheries. Glen Spain said the Pacific Coast Federation of Fishermen's Associations generally agrees with the Salmon Commission's work and its position on this issue. Spain added that it is important that the state give emphasis to both habitat restoration and hatchery supplementation. Jim Myron said Oregon Trout generally agrees with the Salmon Commission statement, but might dispute the statement that the state focuses on natural salmon production. A look at the Department of Fish and Wildlife's budget shows that hatchery programs receive most of the department's funding and attention, Myron said. Robinson said that while that may be true overall, in coastal fisheries, the department concentrates on natural production. Rep. Josi said it is important for the Caucus to come together on this issue and to avoid polarization so that the Caucus can ensure that other legislators respect the needs of coastal residents and of the fishing industry.

Agenda item 3, new business:

1) Jay Rasmussen described a June 1 tour in the Coquille watershed conducted by two coalitions of timber and fish harvesting interests aimed at showing how riparian restoration efforts might be conducted. Rep. Tarno attended, as did Bob Jacobson, some agency representatives and members of the state board of forestry, Rasmussen said. The tour also generated some publicity in the local media and from The Oregonian, Rasmussen said.

More recently, Rasmussen said, a U.S. House Subcommittee on Regulation, Business Opportunities and Technology hearing in Newport took a look at the U.S. Department of Commerce's allocation decision on Pacific whiting. The hearing panel included Oregon Representatives Mike Kopetski and Ron Wyden, and
2) Richard Bohtan, a crab fisherman from Newport, told the Caucus that he did not think the limited-entry provisions for Dungeness crab set out in Senate Bill 911 were needed and that he was thoroughly against the bill. Limited entry would work only to create wealth for a limited number of people in the form of crab fishing permits and would also create a whole new bureaucracy for monitoring compliance, Bohtan said. The resource itself is in no danger, since fishermen catch only male crabs, and the industry is not under stress, Bohtan said. He added that he thought survey results that show support for limited entry among coastal fishermen resulted from loaded questions. While a few fishermen, those who really want limited entry, have pushed the idea, most fishermen are against it, Bohtan said. Mike Pettis agreed, noting that limited entry in the crab fishery could eventually cause a lot of fishermen to go out of business. He cited his father, who lost his boat when the salmon industry went to a limited-entry harvest, as an example.

Rep. Tarno asked Pettis if he was concerned about commercial crab operations coming in from out of state. Pettis said he thought the state would be wrong to deny entry to a fisherman from Washington State if he needed to harvest crabs to make a living. SB 911 has provisions for reciprocal agreements with those states which also have limited-entry crab fisheries, but it is still a “greed factor” that is driving the bill, Pettis said. Rep. Tony Federici asked Pettis if he knew what limited-entry arrangements other states had for their crab fisheries. Pettis said he heard that Washington has defeated a proposal to close its crab fishery and that California has imposed a moratorium on outside crab harvests, but has not yet gone to a formal limited-entry fishery.

Rep. Josi asked Rasmussen if he thought the hearings had produced any real benefits. Rasmussen said he thought they did bring a lot of focus to the issue and pointed out the Commerce Department’s inability to properly or adequately explain the decision. Rep. Josi asked if the panel took any action to “slap the department’s hands” over the issue. Rasmussen said that the panel might, if one were a strictly impartial observer of the hearing, have seemed to do too good a job of taking the department to task. Because the two Oregon representatives faced a home-town crowd the hearings were a win-win situation for them, Rasmussen said, and Rep. Wyden in particular found it a good forum for contrasting the tactics and the needs of large businesses (the factory trawlers) versus the needs of small businesses (the Oregon coast processors). Spain said the hearings also did a lot to show how much more efficient the shore-based processors were in the utilization of the whiting resource and the by-catch than the at-sea fleet. The Beltway economists making the decisions in Washington, D.C. ignored this, but this is in fact the economic “bottom line,” Spain said. Rep. Josi asked Rasmussen if he thought the hearings made it unlikely that the Commerce Department would pull something like its last-minute decision this year again next year. Rasmussen said he thought that the hearing, along with some of the other actions the legislature and other groups have taken, including the support they have shown for amending the Magnuson Act, would act to discourage the department from taking similar action.

The hearing itself got big play from the Newport News-Times and limited coverage elsewhere. Because it was in front of a supportive, home-state crowd the panel gave Jay Johnson, the Commerce Department’s representative, a rough time, Rasmussen said. But Johnson could not really defend the Department’s decision under the best of circumstances, Rasmussen said. Johnson gave an explanation for the allocation that supposedly took into account the market price for surimi products and seemed to result in part from the department’s fear of a lawsuit over its decision, Rasmussen said. But the panel noted that a decline in surimi prices would affect the fortunes of at-sea processors in the same manner as it would those of shore-based processors, Rasmussen said, and panel members seemed unimpressed with the Department’s concern about potential lawsuits over its decisions. Rasmussen said the panel commented that the decision seemed to have been prompted by the influence of some faceless and nameless inside-the-Beltway economists who did not consult with the Pacific Fishery Management Council and seemed to know little about how their decisions would affect coastal residents. Joe Blum, who represented the Seattle-based factory trawler fleet, admitted under questioning from the panel that representatives from factory trawler interests had been able to gain access to decision makers in the National Oceanic and Atmospheric Administration (NOAA) to press their case for an increased allocation, but denied that they had exercised improper political influence in the process, Rasmussen said. Rep. Kopetski said that it was ironic that Blum’s colleagues had been able to talk to NOAA during the whiting decision-making process, while he could not get his calls to the agency returned during that same period, Rasmussen said.

Rasmussen said he thought the hearings had produced any real benefits. Rasmussen said he thought they did bring a lot of focus to the issue and pointed out the Commerce Department’s inability to properly or adequately explain the decision. Rep. Josi asked if the panel took any action to “slap the department’s hands” over the issue. Rasmussen said that the panel might, if one were a strictly impartial observer of the hearing, have seemed to do too good a job of taking the department to task. Because the two Oregon representatives faced a home-town crowd the hearings were a win-win situation for them, Rasmussen said, and Rep. Wyden in particular found it a good forum for contrasting the tactics and the needs of large businesses (the factory trawlers) versus the needs of small businesses (the Oregon coast processors). Spain said the hearings also did a lot to show how much more efficient the shore-based processors were in the utilization of the whiting resource and the by-catch than the at-sea fleet. The Beltway economists making the decisions in Washington, D.C. ignored this, but this is in fact the economic “bottom line,” Spain said. Rep. Josi asked Rasmussen if he thought the hearings made it unlikely that the Commerce Department would pull something like its last-minute decision this year again next year. Rasmussen said he thought that the hearing, along with some of the other actions the legislature and other groups have taken, including the support they have shown for amending the Magnuson Act, would act to discourage the department from taking similar action.

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Darrin Quillen said SB 911 was to be a foundation for a coast-wide limited entry fishery for crab, with Oregon taking the initiative to set the process in motion. Bob Jacobson said the proposal resulted from discussions among members of the Tri-State Crab Commission, which originally formed to discuss the appearance of soft-shell crabs before the opening of the season. The discussions later focused on creating a limited entry crab fishery once the Tri-State representatives — about eight crab boat operators — had reached consensus on the need for one. Naturally the Commission will not represent the interests or the opinions of all owners of the 400 or so boats in the fishery, Jacobson said, but most fishermen the Commission contacted and surveyed do support limited entry. Washington almost had a limited entry proposal in place, but at the last minute a bunch of crab fishermen showed up to protest and the proposal went down, Jacobson said. California’s moratorium, however, is in place and functioning, he said.

Sen. Bradbury said that from conversations he has had with the chair of the Senate Agriculture and Natural Resources Committee it appears to him that SB 911 is dead. Because of a legislative deadline calling for action on all measures by the end of this month, those bills that are not moving now, unless they are high-numbered measures introduced later, will probably not make it out of committee, Sen. Bradbury said. Rep. Josi said that information pretty much puts an end to the discussion.

Agenda item 4, discussion of other coastal issues:

Sen. Bradbury told the Caucus that the San Francisco meeting of the Pacific Fisheries Legislative Task Force discussed the need to design a regional restoration effort for salmon fisheries to meet the common problem all states in the region have with endangered fish species. He said he discussed Oregon’s restoration proposal, outlined in Senate Bill 1112, which proved timely because SB 1112 passed the Senate unanimously the day before the meeting took place. A future meeting of the task force will focus specifically on the restoration effort, since the member states realize they have to do much of the restoration groundwork themselves, rather than waiting for “federal manna from heaven,” Sen. Bradbury said. Rep. Norris said the task force also heard a presentation from Hugh Barrett of a group called Health to the Salmon, which formed partially at the behest of the federal Bureau of Land Management. The Health to the Salmon presentation seemed to tie in pretty closely with Oregon’s restoration efforts and with its efforts to delegate much of that work to local watershed councils, as in House Bill 221S, Rep. Norris said. The task force also heard from a National Marine Fisheries Service representative from the agency’s La Jolla lab that the El Niño phenomenon may have returned, which may mean that Oregon’s restoration efforts all may go for naught if there’s nothing for the fish to eat out at sea, Rep. Norris said. He also supplied the Caucus with a handout from the task force meeting describing the myths and the facts surrounding the loss of salmon catches to marine mammals.

Rep. Josi adjourned the meeting at 7:47 a.m.
OREGON LEGISLATIVE ASSEMBLY
COASTAL CAUCUS
Minutes
June 17, 1993
7:00 a.m. State Capitol Room 454
Salem, Oregon

Members present: Rep. Tim Josi
Rep. Chuck Norris
Rep. Hedy Rijken
Rep. Veral Tarno

Members excused: Sen. Bill Bradbury
Sen. Stan Bunn
Sen. Joan Dukes
Rep. Tony Federici
Rep. Jim Whitty

Staff present: Sean Brennan, Coastal Caucus staff assistant
Kirsten Todorovich, Legislative Assistant to Sen. Stan Bunn

Guests: Paul Heikkila, Oregon State University Marine Extension Office
Rep. Dave McTeague
Dale Pearson, Legislative Assistant to Rep. Dave McTeague
Tom Robinson, Oregon Salmon Commission
Gordon Ross, Coos County Commissioner
Mike Sims, Hanneman & Associates

These minutes contain materials which paraphrase or summarize statements made during this meeting.

Rep. Tim Josi called the meeting to order at 7:11 a.m.

Agenda item 1, approval of minutes from previous meetings:

Without objection, the minutes for the meeting on June 10 were approved.

Agenda item 2, old business:

Rep. Josi said he would like to strike out a few items in the revised draft position statement on the state wild fish policy proposed by Tom Robinson. Specifically, he said, he wanted to amend the sentence reading “Whereas the Caucus can continue to support the Wild Fish Policy only if it meets both the short- and long-term needs of the state’s public fisheries and not if managers will continue harvest restrictions in those fisheries;” to remove the second “and” and the language following until the semi-colon. Retaining this language is needlessly confrontational, Rep. Josi said, and puts the Caucus in the position of opposing the wild fish policy if fisheries managers use harvest restrictions for whatever reasons. The clause also makes the assumption that fisheries managers rely primarily on harvest restrictions, he said. Gordon Ross said he thought a Caucus position statement should address how the Department of Fish and Wildlife (ODFW) counts wild fish and how it uses those numbers to justify hatchery restrictions — the department’s Salmon and Trout Restoration Program, for example, takes eggs from wild fish, rears the smolts in a hatchery and then says these fish are no longer wild. ODFW imposes harvest restrictions based on the numbers they see, but many of these numbers result from lost opportunities in the hatcheries, Ross said. Rep. Josi said Ross had a valid point, but that the Caucus could make that point elsewhere. He added that he might consider adding another section to the position statement that addresses this point, if the Caucus agrees.

Dale Pearson said that he would suggest that the Caucus consider changing the sentence reading “Whereas a driving force behind these dwindling harvests is a management emphasis on the protection of naturally spawning salmon populations under Oregon’s Wild Fish Policy without a corresponding emphasis on the production...
of salmon for coastal fisheries and in spite of specific provisions in that Policy which direct fisheries managers to avoid using harvest constraints as the primary tool with which to accomplish that protection; to recognize that it is primarily dwindling habitat for salmon species that has led fisheries managers to emphasize the production of naturally spawning salmon. The draft position statement seems to imply that an infinite pot of money exists for the state to spend on hatchery propagation and habitat protection, but in fact spending for one program frequently takes away spending from the other, Pearson said. The position statement should advocate a balance between the programs, rather than emphasizing one over the other, he added.

Ross said that the position statement needs to recognize the difference between short- and long-term restoration goals. ODFW must zero in on hatchery production in the short term, Ross said, while it works on developing methods for restoring natural production. The department can't just plant a tree and wait 150 years for it to provide suitable riparian habitat, Ross said. Paul Heikkila said he agreed with Pearson's statement that the state has a limited amount of money to spend, but he thought the use of harvest restrictions alone would result in an ever-shrinking pool of harvestable fish. The wild fish policy is basically weak-stock management, Heikkila said, which means that a balance between natural and hatchery propagation might be difficult.

Rep. Veral Tarno suggested that the Caucus adopt in place of the clause Rep. Josi planned to delete from the statement language that supports the use of harvest restrictions so long as fisheries managers try to ensure that they will restrict harvests of salmon originating in specific streams or tributaries. That way, if a particular salmon run is in trouble along a portion of the coast, fisheries managers can restrict harvests in those streams but leave the rest of the harvest unrestricted, Rep. Tarno said. Rep. Josi said he had no objection to the suggestion. Rep. Tarno then moved to amend the draft statement to reflect the changes proposed by Pearson, Rep. Josi and himself in Caucus discussion and to present the revised statement as a resolution to the members of the Legislative Assembly and to state fisheries managers. Rep. Hedy Rijken seconded the motion and without objection, the conceptual amendments were accepted. Tom Robinson suggested that the Caucus send copies of the resolution to the Pacific Fishery Management Council, and other fisheries management agencies.

Agenda item 3, new business:

Ross told the Caucus that a Coquille-area coalition of timber and fisheries interests have moved into a demonstration phase of its proposed alternative riparian management plan, which Coalition members hope will serve as a model for the rest of the state's riparian management efforts. The basic idea behind the plan is to create habitat by leaving trees during logging operations, rather than waiting for trees to fall into the right place sometime later, Ross said. He added that the Coalition sponsored a recent tour in the Coquille watershed that showed State Forester Jim Brown and ODFW Director Randy Fisher, among others, how the program works on the ground. The structures to begin alternative riparian management are in place already, Ross said, but the coalition believes landowners would require incentives from the legislature to make the plan work. An example would be a series of tax incentives that would allow landowners to take the value of harvestable trees left on their land for riparian restoration purposes off of their western Oregon timber tax assessments, Ross said.

Paul Heikkila said the Timber/Fisheries Coalition is an ad hoc group that organized and sat down to address the state Board of Forestry's riparian rules "log jam" that has caused problems in habitat restoration projects. The Coalition deliberately did not involve state agency personnel in the belief that people of good will could come together to devise a suitable set of riparian rules and solve existing restoration problems, he added. The group decided, Heikkila said, to operate under a set of principles that ensures that: riparian management needs to approach problems on a watershed basis and apply solutions on a site-specific basis; management must aim at meeting a "future desired condition," that managers must define by applying appropriate scientific study to existing watershed conditions for salmon; the approach must apply to both public and private lands; and managers apply active management to riparian zones to reach future desired conditions because coastal watersheds have already undergone human development impacts for more than 100 years. The Coalition has already set out attributes it believes should guide the development of future desired watershed conditions, Heikkila said. These are:

- Adequate water quality, measured by temperature, sediment loads and nutrient loads;
- Maintenance or restoration of stream channel integrity and channel processes;
- Maintenance or restoration of instream flows or the natural elevation of water tables;
- Maintenance or restoration of native and desired non-native plant communities;
- Maintenance or restoration of riparian vegetation to provide for future recruitment of large woody debris;
Heikkila said that once the future desired conditions have been specified and the management techniques identified, the question that still remains unanswered is who will pay to implement the new strategy. The Coalition believes that the private landowner should contribute to some of the costs, but if the landowner must invest in longer-term habitat structures, he or she should be able to share some of the costs of doing so, Heikkila said. The state can be hard-nosed and try to regulate to achieve future desired conditions, but the reality remains that habitat will continue to degrade until the state involves the landowner in voluntary cooperation, Heikkila said. Rep. Chuck Norris asked Heikkila if any of the money set aside for the south coast pilot project area in the Governor's Watershed Health Benchmark Proposal would be appropriately directed to the Coalition's projects. Heikkila replied that it seems a bit nebulous at this stage how the Water Resources Department plans to use the money allocated under the proposal. The Coalition has all the elements of its program in place and ready to go, but it is not sure how the proposal will be implemented — how much money will go into project contracts versus how much for administration, for example. Ross added that he understood it would be inappropriate to presume anything until Water Resources has had a chance to lay its plans out and put its people in place. Rep. Norris said he liked that the Coalition has gone ahead and tried to do something in any case, even without guarantees of state support. Heikkila said that even without the money in the governor's proposal, the Coalition's planning process has gone a long way toward planning for the restoration of fish runs and gaining the cooperation of landowners, which is a benefit in itself.

Rep. Tarno said the Coalition needs to aim also at getting the cooperation of farmers and some of the large corporate landowners in the area. The Coalition should think about approaching the Oregon Farm Bureau and other representative organizations to show them its plan, Rep. Tarno said. Rep. Josi asked if the Coalition has encountered any reluctance from large landowners or farmers to adopt its suggestions. Heikkila said no, everybody it has approached has generally agreed with the plan. Ross said the alternative plan addresses what will happen at the time of harvest and that it does not leave farmers out, since they might have trees they want to harvest. Pearson said he has found from working with the fish screening task force that many private landowners are reluctant to sign on to government-sponsored programs for fear of having their decisions dictated by a bunch of people from Portland or Salem. What the Coalition has to do, he said, is find willing volunteers and build on their cooperation. He cited an example of a Klamath Falls farmer who screened his diversions voluntarily and refused state support from the Restoration and Enhancement Board, in part because he wanted to see his neighbor upstream do the same thing. His neighbor, Pearson said, would not have done any screening if he thought it involved a government program. Pearson said he went to check on the landowner two years later and sure enough, his neighbor had installed fish screens. The lesson is that you have to allow people to do things at their own pace, rather than shoving programs down their throats, Pearson said.

Rep. Norris said the idea of watershed-wide management is one that has really caught fire. In addition to state level initiatives, including Senate Bill 1112's pilot programs and House Bill 2215's provisions for local watershed councils, watershed management is becoming a regional issue, Rep. Norris said. He cited the meeting of the Pacific Fisheries Legislative Task Force in San Francisco, where this was an important topic of discussion. He added that he thought HB 2215's approach to watershed management — one that encouraged voluntary cooperation rather than put the hammer down — would fit in well with the Coalition's plans. A lot of counties have already begun moving forward with the local watershed council approach, Rep. Norris said. Ross said this has happened in Coos County, partially because the Department of Environmental Quality has listed the Coquille basin as water quality limited. Rep. Josi said he hopes there will be money available for projects such as the Coalition's when session finishes, but that in the meantime the Coalition should keep in close contact with Anne Squier of the Governor's Office and Martha Pagel of the Water Resources Department. He also encouraged Heikkila and Ross to call him if he had any difficulties getting consideration for funding.

Agenda item 4, discussion of other coastal issues:

Rep. McTeague said he still has a few concerns about the provisions in SB 1112 for legislative oversight and would like to see tighter oversight provisions. He also said the ODFW budget is coming up for consideration in House Appropriations and may need a lot of support for its proposed fee increase. Rep. Josi said that budget decision involves a lot of politics — there is reality and there is political reality, which are two different things.
Heikkila said he would like to see an ODFW policy direction for the developmental fisheries bill that passed out of the House Natural Resources Committee recently. Although he supports the bill, Heikkila said, he thought the department's request for a Biologist 3 position was premature, given that the implementation of the program is two years away.

Rep. Josi adjourned the meeting at 7:56 a.m.
June 24, 1993
7:00 a.m.

OREGON LEGISLATIVE ASSEMBLY
COASTAL CAUCUS
Minutes
State Capitol Room 454
Salem, Oregon

Members present:  Rep. Tony Federici
                  Rep. Tim Josi
                  Rep. Chuck Norris
                  Rep. Veral Tarno

Members excused:  Sen. Bill Bradbury
                  Sen. Stan Bunn
                  Sen. Joan Dukes
                  Rep. Hedy Rijken
                  Rep. Jim Whitty

Staff present:    Sean Brennan, Coastal Caucus staff assistant
                  Ted Sturdevant, Legislative Assistant to Rep. Tony Federici
                  Kirsten Todorovich, Legislative Assistant to Sen. Stan Bunn

Guests:          Jim Good, Oregon Sea Grant/Coastal Natural Hazards Policy Working Group
                  Gary Gustafson, Division of State Lands
                  Dale Pearson, Legislative Assistant to Rep. Dave McTeague
                  Mike Sims, Hanneman & Associates

These minutes contain materials which paraphrase or summarize statements made during this meeting.

Rep. Tim Josi called the meeting to order at 7:09 a.m.

Agenda item 1, approval of minutes from previous meetings:

Without objection, the minutes for the meeting on June 17, as amended, were approved.

Corrections to the minutes are as follows:

On page 3, the second full paragraph, beginning on line 11 of that paragraph, should read:

"He cited an example of a Klamath Falls farmer who voluntarily erected fences to keep his cattle away from riparian areas and who refused state support from the Restoration and Enhancement Board, in part because he wanted to see his neighbor upstream do the same thing. His neighbor, Pearson said, would not have done any fencing if he thought it involved a government program. Pearson said he went to check on the landowner two years later and sure enough, his neighbor had installed fences. The lesson is that you have to allow people to do things at their own pace, rather than shoving programs down their throats, Pearson said."

Agenda item 2, old business:

none

Agenda item 3, new business:


2) Gary Gustafson told the Caucus that bull kelp, rather than a nuisance, has come to be viewed as a significant resource. Most of the state's kelp fields grow off the south Oregon coast, Gustafson said, and there is a
great deal of interest developing among south coast residents to market the resource. Some existing uses for kelp are: feeding abalone in abalone farms; use as a food additive in such foods as ice cream; and potential use as a meat substitute, Gustafson said. With the new interest in kelp harvesting comes some conflicts with the state's existing fishing industry, as some harvestable fish species rely on kelp beds for habitat, he said. The challenge is to ensure that the state's promotion of one industry does not come at the expense of another industry, he added. In addition, Land Conservation and Development Commission Goal 19 requires that the Division of State Lands develop scientific information concerning the likely effects of kelp harvesting and ensure that harvesting operations will not harm the resource, Gustafson said.

The Division has leased one area for kelp harvesting to date, a 40-mile-long strip of coastline let to Ken and Tammy Fanning, Gustafson said. That lease was not renewed this past year, he said, because it did not contain adequate safeguards to ensure the protection of the resource and because the Fannings did not meet the statutory minimum harvest requirement of 1,000 metric tons of kelp per year. The lease did not contain adequate safeguards because the Division did not know enough about the resource to put them in, Gustafson said, but the harvest requirement has existed in statute at least since 1987. A bill to repeal the minimum harvest requirement, House Bill 2139, has already passed the House and has just come out of the Senate Agriculture and Natural Resources Committee, he said. Gustafson said he appointed a kelp advisory committee to take care of the other concern — to review the scientific evidence and make recommendations for a sustainable level of harvest. Rep. Josi asked if the 1,000-ton minimum harvest requirement was too high. Gustafson replied that it seemed to be arbitrary and was established without sound scientific evidence. There are also practical barriers, he added, noting that the Fannings did not come close to harvesting 1,000 tons of kelp during the entire four-year term of their lease, let alone during any one year. Since the expiration of that lease, no commercial kelp harvest operations have occurred off the Oregon coast, Gustafson said. Rep. Tarno asked how commercial operators harvest the kelp. Gustafson explained that harvesters can take kelp that has washed up on the beach or broken away from kelp beds or kelp that lies outside the state's territorial sea without the Division's permission, but that most commercial kelp harvesters prefer to harvest growing plants. Bull kelp consists of a long stalk, a float and blades — under the terms of the harvest plan he will consider, commercial harvesters would be allowed to harvest the blades of the plants, above the reproductive organs, so that the beds regenerate, Gustafson said, which will minimize the impact on the resource and on its function as fish habitat.

The kelp advisory committee consisted of 10 members, representing a number of state agencies and members of the scientific community. These members were: Jerry Hedrick of the Division of State Lands, who served as the advisory committee's chair; Jim Golden of the Department of Fish and Wildlife; Dr. Gayle Hansen of the Hatfield Marine Science Center; Dr. Steve Rumrill of the South Slough National Estuarine Research Reserve; Ellen Warring of the Ocean Policy Advisory Council, who served as the committee's environmental representative; Gayle Paige, Port Manager of the Port of Port Orford; MerrieSue Carlson of the Oregon Economic Development Department; Jerry Larson of the Department of Agriculture; Jay Rasmussen of the Oregon Coastal Zone Management Association; and Bob Bailey of the Department of Land Conservation and Development. Rep. Tarno asked if the Division gave any thought to including a representative from those interested in leasing kelp beds for harvest. Gustafson said the committee thought it inappropriate to have representatives on the committee who stood to gain from its decision and that at least three of the committee members — Gayle Paige, MerrieSue Carlson and Jay Rasmussen — had some interest in seeing the leases go forward and so could adequately represent the interests of potential lessees. He added that environmental groups probably had less representation on the committee than they probably thought necessary.

After five meetings, two of which were public scoping meetings to determine the level of potential interest in commercial harvesting operations, the committee delivered its final report this month, Gustafson said. The recommendations were in line with what he expected, Gustafson said, and answered the questions he sought to have answered. Those questions included whether the Division should go ahead with small- or large-scale harvesting operations, he said. Rep. Josi asked how the Division differentiates between small- and large-scale operations. Gustafson replied that there is no definite break-point, but that in any case Goal 19 prohibits the Division from going directly to large-scale leasing without first establishing pilot projects to gather information on the resource. Once the Division has the necessary information it can then decide whether that information warrants proceeding with larger operations, Gustafson said.

A second question the kelp advisory committee considered was what level of interest exists in beginning commercial harvest operations, Gustafson said. The committee found interest from as far away as Califor-
nia and British Columbia, he said. Kelp harvesting operations are quite active in British Columbia already, Gustafson said — much more so than in California and Washington, both of which do have some operations. The committee did a survey of kelp harvesting operations all along the coast to gather more information for the Division on the success of the operations and on impacts to the resource. The final recommendations of the committee are that the Division go forward with five-year leases in each of four large kelp beds off the coast, Gustafson said. Within each of the four beds, the Division would lease three rectangular areas measuring 100 feet by 300 feet and allow a total harvest of 250 tons, he said. Rep. Tarno asked if Gustafson planned to lease 40-mile-long coastal strips, as before. Gustafson said the initial leases would consist only of the study plots — at some point in the future, a large-scale operation might allow a harvest of up to 6,000 tons, depending on how abundant the resource is from year-to-year. The harvest areas would be delineated with marker buoys, he added, which would assist the Division in obtaining the information it needs on the impact of harvest from aerial photographs. The Division would also require harvesters to use different harvest methods, clear-cutting or spot harvesting, for example, to determine the impact of harvest methods, Gustafson said. Finally, the Division will set up “control” plots where no harvest occurs to compare the rates of blade regeneration between these areas and the harvested areas, Gustafson said.

Rep. Chuck Norris asked at what depth harvesters normally cut the kelp. Gustafson replied that harvesters typically cut at a depth of about four feet, enough to remove the kelp blades but to leave the float and reproductive organs and enough to allow blade regeneration. Rep. Josi asked if harvesters use mechanical harvest methods. Gustafson said that while the technology for mechanical harvesting exists, most harvesters work by hand. Rep. Norris asked whether fish depend on the kelp blades or on other parts of the plant and whether abalone use the blades. Gustafson said fish generally use the blades for cover, though they might have other uses for both the blades and other parts of the plant. He added that he did not know what parts abalone eat, but that he did not believe that abalone climb up the stalks of the plant.

Rep. Tarno asked why the Division chose to go with five-year leases. Gustafson said that the committee chose five years because it believed it would give enough certainty to potential lessees for them to make plans and necessary investments while at the same time giving the Division more information about the resource and adequate time to decide, after compiling that information, whether to proceed with large-scale harvesting. There are still gaps in the Division’s knowledge about kelp ecology, Gustafson said — it appears in any case that not all kelp beds are equal, since some might recover from harvest operations more readily than others.

Gustafson said he wanted to brief the Caucus before he makes a formal announcement to the Ocean Policy Advisory Committee (OPAC) tomorrow that he will accept the committee’s report and most of its recommendations. OPAC is an oversight body appointed by the governor and has a role in this process that, while not amounting to veto power, does carry some weight. What he will tell OPAC is that he accepts most of the report’s recommendations, but that two areas trouble him, Gustafson said. One he disagrees with is the committee’s recommendation that the first leases be royalty-free — this may not be consistent with the Division’s fiduciary responsibility to the state’s Common School Fund, Gustafson said, and has prompted him to seek an opinion on the matter from the Attorney General’s office. Although the committee recommended that the lessees pay for the expenses of collecting the needed scientific information about the kelp beds, Gustafson said he would like to also see some way in which the state can recapture the costs of administering the program. He will work with the Executive Department to see if there might be a way for the state to capture some of the sale proceeds from kelp or if there might be another way to pay for the Division’s expenses. The second area of concern is that the committee has recommended that potential harvesters supply the Division with information that would aid it in determining how much kelp they need to be economically viable, Gustafson said. The Division may already have most of this information, he said.

Gustafson added that if everything goes according to plan, the Division could begin to offer leases by the end of August. Rep. Josi said he was pleased with the committee’s recommendations and Gustafson’s decision, which addressed some concerns he had, particularly about the possibility of over-harvest. He added that he is glad to see that the Division will look at this program conservatively.

3) Jim Good told the Caucus that concern about natural hazards has heightened since the “spring break quake” and that Oregon residents have come to realize that Oregon is earthquake country. Despite the damage, this recent earthquake was a relatively minor crustal plate quake — the Coastal Natural Hazards Policy Working Group is much more worried about a potential subduction earthquake in the Cascadia
region, Good said. Research based on sedimentary dating has shown that such quakes occur roughly every 300 to 400 years and are quite severe — on the order of 8.9 or 9.0 magnitude, or comparable to the 1964 Alaska earthquake, Good said. A quake this severe along a major fault line could cause major landslides, tsunamis, the liquefaction of the ground, major shaking and other damage for which the Oregon coastline is completely unprepared, Good said. A tsunami, for example, could occur as soon as 30 minutes after the earthquake, Good said, which is a very scary scenario. Rep. Josi asked how big a tsunami would likely be. Good said the size of the wave would depend on the geography of the seabed, the size and shape of the bay into which the wave enters, what sand deposits exist along the shore, and other factors, but generally speaking the wave could be about 25 to 35 feet in size. The cities of Seaside and Cannon Beach have done studies on the potential impact tsunamis would have on their cities, Good said, but the state still has a large information deficit. The state does not know, for example, which schools and public facilities would be at risk, but the Department of Geology and Mineral Industries has begun developing hazard maps to alert residents as to where damage would likely occur and where safe ground is, Good said. Over the long term, the state is concerned that no new critical facilities be located in hazard areas, he added. Rep. Norris asked if the subduction zone, and possible epicenter for a subduction quake, isn’t in fact about 50 miles offshore. Good replied that the subduction zone is about 50 miles offshore, but the likely epicenter for a subduction quake would be about 10 or 20 miles shoreward of the zone.

Good said one of the problems the working group has uncovered is the level of duplication among state and local government agencies with jurisdiction over coastal areas. Both the Division of State Lands and the Parks and Recreation Department have permit requirements for the construction of sea walls, for example, Good said. The working group recommended that only one agency actually issue the permit, possibly with consultation by the other agency, Good said. Rep. Tarno asked if the Federal Emergency Management Agency (FEMA) had a role in the working group’s deliberations. Good replied that FEMA had representatives at the working group’s meetings, but is concentrating its efforts on earthquake education. The state Office of Emergency Management has also been involved, he said.

Another continuing problem in hazard planning the working group found is that local governments and private developers along the coast do not routinely incorporate the potential for catastrophic hazards, such as earthquakes, into their decision-making, Good said. Although most people would probably rather not build where there is a potential that their home or school might be inundated by a tsunami, their planning rarely reflects that concern, he said. He added that the working group hopes to change that and will develop some recommendations for planning measures it hopes to release in draft form by early fall, when it will seek input from coastal residents and decide on its final recommendations. These recommendations might be implemented with agency rulemaking or just with educational programs targeted at lenders, developers and insurers, Good said, but some of the recommendations might require legislation for implementation. He asked the Caucus whether the legislature would prefer that the working group submit suggested legislation on an issue-by-issue basis or in a consolidated package. Rep. Tarno suggested that Good bring issue-by-issue legislation that the legislature could enact piece-by-piece if necessary. He said the fate of the coastal warning system, an idea that has been kicked around for years but never implemented, should serve as an example. Rep. Josi said he did not yet have an opinion, but could see some advantages of efficiency in a consolidated package. He asked Good to contact the Caucus when the working group gets closer to putting a legislative package together. Rep. Norris asked if the working group included representatives from the insurance industry. Good said the working group did not include any insurance agents, but did include representatives from real estate interests, who kept bringing up insurance issues. Two of the policy issues the working group is considering have to do with insurance questions, one of which is the question of whether the state should require the insurance industry to issue all-hazard policies or whether the state should step in and eliminate private hazard insurance coverage altogether, Good said. It is not an option to leave coastal residents entirely without hazard insurance, he added.

Aside from concerns about catastrophic hazards, the working group has considered making recommendations concerning some relatively minor but chronic coastal hazards, such as soil erosion on beach fronts, Good said. The working group formed in response to the threat from catastrophic hazards, but ended up considering about 25 major issues and a host of minor ones over the course of 10 workshops, Good said. The group has also found a number of ways to deal with some of these hazards, both catastrophic and chronic, including educational, regulatory and non-regulatory methods. The working group intends to make its recommendations to state, federal and local governments and private entities — anybody with the wherewithal to implement the recommendations, Good said. Sea Grant has published a report summarizing the working group’s conference on coastal hazards, which is now available, he added.
Agenda item 4, discussion of other coastal issues:

Rep. Josi said that he believed the Caucus should discontinue its regular weekly meetings now that the session has begun to wind down. Without objection, he said, he would like to schedule Caucus meetings only if important issues require Caucus attention. Rep. Tarno said he agreed, but would like to schedule one meeting where Caucus staff could summarize the Caucus' accomplishments for this session, perhaps in conjunction with a meeting called to discuss another significant issue.

Caucus staff gave a brief overview of the status of coastal legislation, including Senate Bill 1112, the state’s salmon and watershed restoration effort, which the House Natural Resources Committee will consider Monday, June 28 in conjunction with SJM 5 and SJM 21, memorials concerned with the Department of Commerce allocation decision on Pacific whiting. Meanwhile, Senate Bill 632, a funding package for the state’s shellfish testing program, has passed the Senate on a 22-6 vote. Senate Bill 1075, which calls for interagency agreements among the west coast states for regional salmon restoration efforts, has not seen any action yet. House Bill 2139, which eliminates the 1,000-ton minimum harvest requirement for kelp bed leasing, passed out of the Senate Agriculture and Natural Resources Committee and will now go to the Senate floor.

Rep. Josi adjourned the meeting at 7:53 a.m.
July 8, 1993
7:00 a.m.

OREGON LEGISLATIVE ASSEMBLY
COASTAL CAUCUS
Minutes

State Capitol Room 454
Salem, Oregon

Members present: Rep. Tim Josi
Rep. Chuck Norris
Rep. Hedy Rijken

Members excused: Sen. Bill Bradbury
Sen. Stan Bunn
Sen. Joan Dukes
Rep. Tony Federici
Rep. Veral Tarno
Rep. Jim Whitty

Staff present: Sean Brennan, Coastal Caucus staff assistant
Kirsten Todorovich, Legislative Assistant to Sen. Stan Bunn

Guests: Bill Bakke, Oregon Trout
Louise Bilheimer, Pacific Rivers Council
Kay Brown, Department of Fish and Wildlife
Bruce DeYoung, Oregon Sea Grant
Joe Easley, Oregon Trawl Commission
Ken Evans, Association of Northwest Steelheaders
Randi Fisher, Department of Fish and Wildlife
Paul Hanneman, Hanneman & Associates
Rod Ingram, Department of Fish and Wildlife
Dale Pearson, Legislative Assistant to Rep. Dave McTeague
Jim Martin, Department of Fish and Wildlife
David Moskowitz, Oregon Trout
Jim Myron, Oregon Trout
Jay Rasmussen, Oregon Coastal Zone Management Association
Mike Sims, Hanneman & Associates

These minutes contain materials which paraphrase or summarize statements made during this meeting.

Rep. Tim Josi called the meeting to order at 7:05 a.m.

Agenda item 1, approval of minutes from previous meetings:
Item deferred.

Agenda item 2, old business: none

Agenda item 3, new business:

1) Bill Bakke, Conservation Director for Oregon Trout, told the Caucus that his group and other conservation organizations plan to petition the United States Fish and Wildlife Service (USF&W) about July 20 or, at the latest, by August 2 to list several populations of Oregon wild coho salmon as threatened or endangered under the federal Endangered Species Act (ESA). The poor condition of Oregon wild coho populations prompted the decision to petition for listing, Bakke said. Only 10 of 134 existing Oregon wild coho populations are healthy enough to meet Department of Fish and Wildlife standards set under the state's wild fish policy, Bakke said, while 39 populations are "depressed" or at extreme risk. It is these 39 populations that Oregon Trout seeks to list, Bakke said.
Wild fish policy standards specify that a healthy population must contain more than 300 breeding adults, must not be made up of more than 50 percent hatchery stock where the hatchery stock is genetically similar to the naturally spawning stock, and must be made up of no more than 10 percent hatchery stock where the hatchery stock is not genetically similar to the naturally spawning stock, Bakke said. The health of wild populations depends on a sufficient number of fish returning to spawn, high quality freshwater habitat for rearing young fish, a favorable ocean environment, and management practices that maintain the genetic identity of each population so that each can continue to evolve in its natal habitat, he said.

Oregon has failed in its attempts to preserve or provide nearly all of these necessary elements, Bakke said. The state has not achieved its escapement goals for salmon spawners since 1986, has overestimated salmon population numbers by as much as 500 percent and has consistently advocated a 50 percent harvest rate, problems which have led to over-harvesting, he said. In addition, wild coho habitat has declined in productivity with the loss of stream structure, side channel rearing areas, and over-wintering habitat, together with low stream flows, drought and unfavorable oceanic conditions, he said. Coho productivity has declined, as a result, to between 10 and 20 percent of historic levels, using 1900 as a baseline year, he noted. The state's management strategy, moreover, has favored commodity production over habitat restoration, spending in hatchery-related expenses a per-fish average of $24.71 when per-fish market value yields amount to about $4 to $5, Bakke said. Spending on hatchery operations has amounted to $36 million in the last two years while spending for natural production efforts amounted to $2.6 million, at a time when habitat restoration should be the state's first priority. Hatchery programs have also been implicated in the decline of west coast salmon populations — evaluations have shown that hatchery coho replaced, rather than supplemented, wild coho populations in under-seeded streams, Bakke said.

Proper habitat restoration efforts are expensive, experimental and may fail, Bakke said. Such efforts have not been helped by the inability of private landowners, federal and state agencies to cooperate in making them, and by the fact that restoration needs may require more knowledge than scientists now have, he said. Improving woody structure in streams for quality coho habitat may take about 300 years, for example — which is a pretty deep debt for us to have dug for ourselves, Bakke said. Rep. Chuck Norris commented that at that rate restoration efforts should culminate at about the time the legislature adjourns this session sine die.

On top of these human-caused and preventable problems, coho have faced poor ocean conditions and drought in the last several years, Bakke said. As a result, several populations of coho are going extinct and should be listed under the ESA. Dale Pearson asked what effect filing the petition to list will have. Bakke replied that the National Marine Fisheries Service (NMFS) will have 90 days to consider the petition and decide whether it has merit — the listing process and the development of a recovery plan should coho be listed could take a year or more thereafter. Bakke added that even with an ESA listing he did not expect that commercial and sport fishing would come to a screeching halt, since the ESA permits some "incidental take" of protected species and fishing continues on such listed species as upriver spring chinook. Sport fishing in particular, with a value to the Oregon economy three to six times higher than that of commercial fisheries, will probably continue during coho recovery efforts, he said. Since the catching power of sport fisheries is less than that of commercial fisheries, salmon in short supply can be more effectively allocated to sport fishers, who don't necessarily see a fish-less day as a failure, Bakke said.

The response of Oregon Trout and other environmental groups to the decline in coho is to press for a listing with two petitions, Bakke said. The first petition asks for a species-wide listing of coho — this is important because a number of California populations are in deep trouble, Bakke said. Also, while Oregon has the best time-series database on coho populations and has done a good job of assessing its management programs, most of the information needed for coho recovery in California still needs to be collected, he said. The second petition, Bakke said, will list the 39 specific Oregon coho populations that are in the worst shape and which fall into five general groups known as Evolutionarily Significant Units (ESUs): a group that spawns in the area north of the Umpqua and south of the Columbia River; and a group that spawns in the Columbia River up to its juncture with the Clackamas River. The petition will not include the population in the Hood River area, since inadequate sampling data exists for an informed judgment about population levels, Bakke said. Rep. Josi said that with regard to Columbia River populations, recovery may not even be possible without addressing the problems created by hydroelectric and irrigation dams. Bakke said that if the Columbia River did not have any dams coho populations there would still face some of the same problems that coastal coho now face, particularly habitat loss. The dams on the Columbia add to
these other problems, but are not the sole cause, Bakke said. Evaluations of anadromous fish populations in North America, 58 of which were in Oregon, show that serious decline is occurring coast-wide, regardless of the presence of dams. Rep. Norris asked Bakke if he is satisfied that there is truly a difference between a wild fish and a hatchery fish. Bakke said the distinction between wild fish and hatchery fish is not the issue — the issue is the ability of a population to be productive in its natural environment. Studies show, Bakke said, that hatchery fish are not as productive as their wild cousins and therefore cannot serve as a one-to-one replacement for wild fish. Furthermore, the state is held accountable for wild populations, not hatchery populations, under both its own wild fish policy and the Endangered Species Act.

Rep. Norris asked what remedies would be applied to coastal watersheds if NMFS accepts Oregon Trout’s petition. Bakke said that Forest Service, Bureau of Land Management, private and public landowners and managers would all have to cooperate in watershed recovery efforts. This has never been done before, Bakke said, and will require some new approaches, such as the sort of local participation programs the Pacific River Council has been encouraging. Restoration efforts would need to concentrate on getting the proper seed for each watershed site, restoring spawning, over-wintering and inland habitat and getting sufficient returns of adult fish, Bakke said. Rep. Norris asked Bakke if he was familiar with legislative efforts in this area this session — Senate Bill 1112’s restoration program and House Bill 2215’s local watershed council program, for example — and whether any recovery effort can correct for such poor ocean conditions as those resulting from the El Niño phenomenon. Bakke said he was familiar with the legislative measures and added that it was impossible to correct for El Niño. Instead, managers have to create productive watershed conditions so that fish populations can deal with the added stress of poor ocean conditions, Bakke said. What has happened lately, what was bound to happen, is that all the stars have lined up — drought, poor ocean conditions and other natural phenomena have combined with human-caused stresses to severely impact fish populations, he said.

Rep. Josi said he heard from an Oregon State University professor during recent House Natural Resource Committee hearings that salmon populations as we now know them did not exist 10,000 years ago during the last ice age. This professor contended, Rep. Josi added, that salmon can adapt rapidly to environmental changes because they have fairly elastic genetic codes. That might seem to indicate that hatchery fish could adapt and become viable under current conditions, he said. Bakke replied that the ice age did not reach the Oregon coast, where fish populations have undergone continuous evolution for more than six million years. There is some evidence that salmon populations in the Yukon are elastic enough to have recovered since the ice age, but that does not mean that hatchery fish would be able to do the same, Bakke said. Studies of the Yukon stock have concluded that populations made up of cross-bred wild and hatchery stocks fared better than stocks bred entirely out of hatchery populations, so theoretically managers could put hatchery fish into a natural environment and expect them to be viable after two generations or so, Bakke said. But current management practices do not allow for this — managers do not leave the fish alone long enough for re-colonization to occur, he said. Furthermore, some scientists contend that it is the wild fish who help hatchery fish to survive, not the other way around, Bakke said.

In the face of all these problems, where recovery efforts may take 300 years or more, the situation would seem to be almost futile, Rep. Josi said. Bakke said that we do not need to wait 300 years for some of the benefits of restoration efforts to show — there are many steps managers can take that will improve some conditions right away. David Moskowitz said an example of that would be the prohibitions against gravel removal from streams with essential anadromous fish habitat contained in Senate Bill 192. Jim Martin agreed, noting that many of the problems confronting coastal coho populations are addressable and that coastal stocks are eminently recoverable. Nobody should assume that man has made his mark on these watersheds and it’s all over, Martin said — the problem has been that federal management in affected watersheds has been limited. The hammer will come down on activities on federal lands and on fish harvests in general, but no incentives or forcing mechanisms exist either at the state or federal level to induce or compel private landowners to undertake restoration activities, Martin said. Regulation on federal lands is stringent and will become more stringent, regulation on state lands is somewhat less stringent, and regulation on private lands, at least along some coastal streams, is essentially non-existent, he said. This does not help managers to deal with degradations that have occurred over 50 years and have resulted in the same three problems: lack of cool stream temperatures, too much sediment, and not enough coniferous structure in riparian areas. On the Columbia, by contrast, despite serious institutional problems built in concrete and sitting in the middle of the river, there are a lot of federal decision-makers and more than $3 billion in revenue from hydroelectricity generation, which helps to deal with some of the problems.
Jim Myron said this discussion should point out the need to use SB 1112 and HB 2215 to begin the cooperative efforts necessary to undertake proper restoration. Louise Bilheimer said that Oregon should see some money from President Clinton's Forest Plan proposal that will be targeted toward watershed restoration — about $70 million to $90 million will be coming into the region as a whole, but Oregon should get the bulk of it because it is hardest hit under the plan. Bilheimer added that Oregon's restoration efforts could go a long way toward staving off federal management of Oregon watersheds, since the Endangered Species Act permits NMFS to defer to a state recovery plan if one exists and meets the agency's standards. The Pacific Rivers Council will be working to develop guidelines for such a recovery plan, Bilheimer said. Bakke said he would like to see the legislature address salmon recovery even if NMFS does not list the coho, since the species is still in trouble. He added that he would recommend that the legislature appoint an interim committee to address the issue and to press for a coordinated, cooperative and coast-wide recovery program.

Rep. Norris noted that coastal streams have very few dams, and suggested that perhaps managers needed to rethink the idea that the dams on the Columbia River are the biggest problem salmon species face. Bakke said that that could be true.

Agenda item 4, discussion of other coastal issues:

none

Rep. Josi adjourned the meeting at 7:52 a.m.