1989 Oregon Legislative OCZMA-Sea Grant Fellowship

Final Report

by

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prepared for:

Oregon Coastal Zone Management Association, Inc.

Oregon State University Sea Grant Program

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I. Acknowledgments

A number of individuals have greatly contributed to the success of this year's Legislative Fellowship position. First, I'd like to thank Bill Wick of the Oregon State University Sea Grant Program for providing the match in funding necessary to make the Fellowship a truly full-time position. In addition to the financial assistance, I believe having Sea Grant as a full partner in this enterprise was an important ingredient in making the program work as well as it has.

Second, I want to express my gratitude to the members of the Coastal Caucus. They are a remarkable collection of individuals. Not only were they valiant, diligent and effective champions of their constituents interests, but they were also a lot of fun to be around. I will always fondly remember how quickly they made me feel at home in my job. I especially want to thank Senator John Brenneman for hosting me in his office in the Senate, and Representative Paul Hanneman, for letting me share in the activities of his office in the House of Representatives.

Third, I would like to express my thanks to the members of the Oregon Coastal Zone Management Association, Inc., for their strong and kind support during my tenure as Legislative Fellow. In addition, since many in the Legislature and in state government understand that OCZMA provides a responsible and balanced voice representing the entire Oregon Coast, having OCZMA as a full partner in the Legislative Fellow program made the task of looking out after the Coast's interests in the Legislature much easier than if there were no OCZMA.

And finally, I would like to acknowledge and congratulate Georgia York and Jay Rasmussen of OCZMA for the dedicated and professional and personal approach they bring to their work. Their dedication to OCZMA has been inspirational and their friendship continues to be rewarding. Even though it's difficult to measure the impact of their tremendous efforts on behalf of OCZMA and the Oregon Coast, I know future students of the history of the Oregon Coast will recognize their contribution as a lasting one.

II. Preparing for the Fellowship

Expectations and Reality

As a result of not having a great deal of time to contemplate what this fellowship program would entail (earlier I had attempted to secure a position as a "committee administrator"), I never really had the opportunity to think through what I expected to accomplish as a Legislative Fellow. However, since I did serve as a Sea Grant Fellow on Capitol Hill before I worked in the Oregon Legislature, I had hoped that my job as a Legislative Fellow in Oregon would involve the same type of research and writing activities required in D.C. In that respect, my expectations were fully met. The position of Legislative Fellow provided me with ample opportunities to research a variety of issues and to report on the details of those issues to other legislative staff, members of the Legislature, and the public.

In one respect the job greatly exceeded previous expectations. The big surprise was the positive feedback we received from our audience to *Coastal Notes,* OCZMA's weekly newsletter. As a result, producing *Coastal Notes* was personally very gratifying. However, much more importantly, the weekly effort of writing *Coastal Notes* not only facilitated keeping track of the progress of legislation but also fostered a more complete understanding of the content of those measures.

Another great advantage of *Coastal Notes* was that it not only provided me an opportunity to communicate weekly with OCZMA members, but also allowed me to explain the Coastal Caucus's agenda to key individuals in state agencies and elsewhere. As a result, if aggressively pursued and properly supervised, *Coastal Notes* can go beyond mere reporting and in a small way can influence the legislative climate in which these decisions are made.

At the very least, considering the tremendous volume of legislative business before them, there are clear advantages to having all the members of the Coastal Caucus simply reading the same weekly run-down of ocean and coastal bills. This process helps keep the members of the Coastal Caucus better informed of the Caucus's activities and promotes a more unified and organized Caucus approach to ocean and coastal issues.

Another pleasant surprise of the Legislative Fellow position was the opportunity of working directly with the members of the Legislature. Instead of having to pierce layers of committee and personal staff (as one must often do when communicating with a member of Congress in Washington D.C.), in the Oregon Legislature few individuals get in your way. Further, to an extent, the same principle operates when it comes to working with state agencies. As a Legislative Fellow or as a legislative staffer generally, it is far easier to gain the attention of agency heads and key staffers than if no legislative connection existed. Therefore, one of the elements of the Legislative Fellow position I appreciated the most was the tremendous amount of contact I experienced with both decision makers and the decision making process.

III.The Do's And Don'ts Of Selecting And Being A Legislative Fellow

OCZMA director Jay Rasmussen and I discussed whether or not a critique of the Legislative Fellow program would be useful to OCZMA members, Sea Grant and the next individual to occupy the position of Legislative Fellow. After a brief exchange we concluded that there really is no obvious way to improve the program. Access to the Legislators and the legislative process had been achieved, members of the public and other state agencies and interested individuals in the University community were being kept informed of the Legislative process, and the hosts of the program were satisfied with the working arrangement that has evolved over two legislative sessions. Therefore, since we believe our mission was accomplished, the purpose of our thoughts are to identify those factors that made the fellowship such a success so that OCZMA/Sea Grant can maintain the effectiveness of the program in future sessions.

Success "Factors" Beyond Control

There are certain features of this year's Legislative Fellowship clearly beyond the control of OCZMA and Sea Grant that promoted the success of the program. The first and most obvious of these is the composition of the Coastal Caucus itself. The Coast is blessed to have a delegation in Salem that is talented and influential. Politically, the Caucus is both Democratic and Republican which helps give coastal measures powerful advocates in both the Democratic and

Republican Caucus. Caucus deliberations prior to floor action on a bill can be crucial in determining the success or failure of a bill. Another reason the Coastal Caucus is so powerful is that there is so much seniority within the Caucus. Representative Hanneman is the "dean of the Legislature" with 25 years of experience (10 years on the Ways and Means Committee). Senator Bradbury has experience in the House; and, now as a senator he serves as Majority Leader in the Senate. Further, Senator Bradbury was appointed to the Ways and Means Committee this past session. In addition, Representative Hanlon, after only serving three terms, was also appointed to the Ways and Means Committee at the beginning of this past session. Therefore, out of a total of eight members, the Coastal Caucus was fortunate enough to have three individuals serving on the very crucial Ways and Means Committee.

In addition, it is also easy to sing the praises of other members of the Coastal Caucus. They occupy important substantive committee posts and have acted assertively on behalf of the Coast. Furthermore, among their fellow legislators the members of the Coastal Caucus are respected figures in the Legislature. The "respect factor" is enormously important. This is especially true when a Legislator is trying to overcome a lack of seniority or experience because a dedicated and charismatic newcomer can have a disproportional impact on the Assembly.

Unfortunately, future Legislative Fellows may not be fortunate enough as I was to serve such an august Coastal Caucus. Capricious behavior by voters, personal and family health, financial well-being, even greater opportunities for public office, scandal, exhaustion, old age and the emergence of a tough and well-financed opponent can all influence an individual's decision not to return or serve in the Legislature. Clearly, factors such as these are well beyond OCZMA's and Sea Grant's control.

Success "Factors" Within Control

However, there are other factors that encourage the success of the Legislative Fellow program that are clearly within Sea Grant's and OCZMA's control. These factors can be separated into two categories: (1) those decisions made in choosing a Legislative Fellow; and (2) followup guidance to the Legislative Fellow once they are on the scene.

I don't have any special recommendations for such a selection other than you will probably know in advance when you have the kind of individual that will make a successful Legislative Fellow. That person should be a "people person" (not just a hardworking scientist), they should have had some exposure to state, local, or federal government and hopefully politics before arriving in Salem. Furthermore, because the role of *Coastal Notes* is so important, the individual should have demonstrated strong writing skills (especially a talent for stating policy matters in simple terms). In fact, due to the potential role *Coastal Notes* can play, for this job I would have to rate written skills as being more important than public speaking skills even though being comfortable explaining ideas on your feet comes in handy. Ideally, of course, the ideal individual for that environment would have be excellent at both.

In addition to these personal and professional skills, a prospective Legislative Fellow must be prepared to commit a great amount of time to their work during those months they serve. I believe the job of Legislative Fellow calls for more than a casual commitment. Since there are so many issues to work with and because things move so quickly during the session, personal sacrifices should be expected of Legislative Fellows similar to those made by students during

final exams or a particularly rigorous academic program. Therefore, only those individuals willing and capable of putting in long and unpredictable hours should be considered for this job.

Helpful Hints for the next Legislative Fellow

Once an individual assumes the role of Legislative Fellow, there are a few things they should keep in mind. The first is that in most respects, the Legislative Fellow is an anomaly within the Legislative structure. There are no similar positions. Others who come before the Legislature in a similar capacity are always lobbyists. While lobbyists frequently have access to member's offices, they rarely or never achieve the insider position that a Legislative Fellow enjoys. The fact that the Legislative Fellow gets this office space and backroom access often engenders respect and envy from lobbyists. Much more dangerously, this quasi staff-lobby role can also trigger suspicion from Legislators or staff that wonder why they don't have access to staff beyond those paid for by the Legislature (in other words, staff in addition to their secretaries and legislative assistants). Therefore, if the Legislative Fellow maintains too high a profile outside the Coastal Caucus, in the name of "fairness", one or more influential members of the Legislature could conceivably lead an effort to abolish programs like the Legislative Fellow.

There is a fine line between providing information and staff assistance to the Coastal Caucus and lobbying. Again, quite unhelpfully, the most accurate observation I can offer concerning that fine line is that a sensitive Legislative Fellow should know when they are approaching it. As a general rule of thumb, however, the Legislative Fellow can avoid crossing that line by working as directly as possible with the Coastal Caucus and with Jay Rasmussen.

As a corollary of this practice is the suggestion that the Legislative Fellow should avoid unsolicited contacts on Coastal Caucus business with members of the Legislature that are not members of the Coastal Caucus. The only time a Legislative Fellow should depart from this rule is when other members have solicited such contacts, and, not until key members of the Caucus and Jay Rasmussen have authorized such contacts. There are two reasons to adhere to this policy. One is that other members of the Legislature not in the Coastal Caucus may resent being lobbied by what they perceive to be someone else's staffer. Especially early in the Session, most members of the Legislature will mistake the Legislative Fellow as being a staff member of a legislator in the Coastal Caucus. For instance, on the Senate side I was often regarded as being Senator Brenneman's assistant. Conversely, on the House side I was often mistaken for Representative Hanneman's assistant.

The second reason to limit business contacts with non-Coastal Caucus members or staff of the legislature is that they can very easily exploit the Legislative Fellow's knowledge of Coastal Caucus strategies to the detriment of the Caucus. Furthermore, it seems almost too obvious to mention (but still worth noting) that any contacts with the news media on Coastal Caucus business should be handled with an even higher standard of care.

In addition, for those that are curious (and many are) about the role of the Legislative Fellow, the Legislative Fellow should carefully explain their link to the University. Individuals seem willing to buy the argument since the Legislative Fellow position is funded and partially controlled by Oregon State University, that the Legislative Fellow is bound by the principles of academic neutrality. Clearly, while no one is entirely neutral, I think that a Legislative Fellow should make every effort to be neutral as possible. In any event, since principles of neutrality do not apply at all to legislative staffers or lobbyists, I believe there is merit in making this

distinction. In furtherance of this argument, the Legislative Fellow should maintain that their role in the Legislature is to offer facts - not opinions. Further, the Legislative Fellow should stay as far away from non-Caucus issues (such as school financing or in the next legislature, abortion) as possible. The benefits from keeping your distance on these other matters are that members of the Coastal Caucus - while they almost always agree on coastal issues - may have radically different views on these other explosive issues. Therefore, it pays to avoid discussing issues that might effect your working relations with those members. The attitude of the Legislative Fellow should be that personal opinions are of little concern to the office and the Coastal Caucus they serve.

IV. Annotated Summary of Legislation by Issue (from *Oregon Coastal Notes*).

...LAND USE...

As reported in the second to last article entitled "LCDC Read the Riot Act on the House Floor," the future of land use planning in the state of Oregon appears to be entering a period of adjustment. As the rhetoric of the floor debate clearly demonstrates, there is a growing feeling in both the Senate and the House (but much more so in the more conservative House) that Oregon's land use planning system has strayed from the Oregon Legislature's intended purposes. Therefore, if the LCDC and the new director of the DLCD continue pressing issues like the secondary lands issue, there could be trouble in the next Legislature.

It would ironic to witness a rollback of Oregon's statewide land use system at a time when other states are embracing the statewide planning approach - a system pioneered by Oregonians back in the days of Senate Bill 100. However, at least from the DLCD, there have been strong signals that the Department intends to go slow on any land use reform initiatives (I'm uncertain of LCDC's intentions) and to establish a better dialogue with the Legislature.

In the event a better understanding can be achieved between the Legislature and the LCDC/DLCD, one can still expect a certain number of land use bills to emerge next session picking up where other bills left off. See the section on wetlands for further discussion of land use issues since more state legislation and federal activity in this area are bound to have a direct bearing on land use issues. In addition, as the role of water in the future of Oregon's economic expansion and land use becomes more evident, legislators (not just those from Eastern Oregon who already clearly understand the importance of water to their region) are likely to devote more time and energy to water issues.

Oregon Coastal Notes Articles Regarding Land Use Issues

DRIVING ON THE BEACH: FUN OR FRUSTRATION? (4-14-89)

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

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

ACTION ON SECONDARY LANDS IMMINENT (4-17-89)

Final action on the Goal 3, Goal 4 and Secondary Lands proposals was due to be taken by the Land Conservation and Development Commission (LCDC) on February 22 at its meeting in Portland. Although not yet a legislative issue, it was reported by the Association of Oregon Counties (AOC) in its January 27 legislative report that legislators concerned about the heavy opposition to the proposal are considering a bill to direct LCDC to address only secondary lands and prohibit changes in Goals 3 and 4. The bill would essentially provide for the program to be optional for counties and would clarify the intent of the 1985 and 1987 legislation which directed LCDC to address secondary lands.

AOC has also indicated that it may file a lawsuit against LCDC if it adopts the program as now proposed with only a limited number of counties included on a mandatory basis. The suit would argue that such rules did not constitute a "statewide" program under the goals and was therefore discriminatory and invalid. As an additional step, AOC is compiling data from counties on projected costs of administration of the proposed changes, as a basis for legislators to request a change in LCDC's budget to cover such costs.

Although the final draft of the proposals has not yet come out through DLCD's normal distribution channels, it is likely that it will be quite close to the draft that was prepared by the "Rural" Lands Working Group and distributed under the date of January 9.

In commenting on the proposals, Vic Affolter, Tillamook County Planning Director, was quoted in the Tillamook Headlight-Herald stating, "These new zones provide very little, if any, benefit in our county; they are very costly to develop and apply; and they would renew uncertainty about how land could be used. I believe that we are much better off if we stick with our current program, concentrating our limited resources on trying to make this program work as well as possible." The program would not be mandatory in Tillamook County under the proposal.

It is interesting to note that the December 8th memo from Jim Ross, former DLCD Director, which summarized the first round of LCDC hearings statewide, also presented Department recommendations for a strictly optional program (except for changes in Goal 4 needed because of the Lane County Supreme Court decision). After both Ross and former LCDC chairman Stan Long left in mid-December, a new memo and draft proposal was issued by DLCD on December 30 which returned the probable mandatory requirements under Goal 3 for ten counties. A variety of other restrictions were reintroduced into the proposals under DLCD's December 30th draft.

The January 9th working group draft established three categories to determine whether county coverage under revised Goal 3 requirements would be mandatory or optional. These were: (1) Mandatory, based on adverse performance review of existing land use decisions within EFU zones; (2) Mandatory, based on adoption of secondary lands program linked to performance review of land use decisions within EFU zones; (3) Optional, secondary lands designation permitted with existing administration of Goal 3 lands considered satisfactory or of no danger to Goal 3 objectives.

At its November,1988; meeting in Newport, OCZMA unanimously voted on a recommendation to LCDC that the proposals currently before it be tabled and that efforts be continued to develop a proposal that can be mutually acceptable to local and state government, interest groups and private property owners. Such a consensus has not yet been reached.

HB 2484, filed by two legislators at the request of Western Display Fireworks Ltd., would allow storage of fireworks in EFU zones as a conditional use. Although the bill required mandatory language that lists "storage of fireworks" next after "destination resorts," we would hope that in any particular location, a destination resort and a fireworks storage bunker would not have to be next door neighbors. What can you really say about a bill like this: "plenty of fireworks already regarding EFU zones?"

HB 2507, filed by one legislator at the request of the Bull Run Coalition, would require the State Health

Division to identify and protect municipal watersheds of the State.

In the bill, "watershed" is defined as "the entire land area drained by a stream or system of connected streams, such that all stream flow originating in the area is discharged through a single outlet from which drinking water is supplied." The bill would give the Health Division jurisdiction over watershed areas with the ability to prohibit or restrict access to such areas for a wide variety of recreational or resource removal purposes. The Division would also have additional powers to require filtration treatment of drinking water supplied from such surface water sources. Provisions are also made for persons to be able to institute civil suits against violators of the rules and requirements established by rule by the Health Division. The bill contains a special section which states, "Any person whose drinking water supply may be adversely affected by an activity in the Bull Run or Little Sandy River watershed may bring an action..... to prevent the activity within the watershed."

While the bill appears to be generated from a particular interest group, its potentially broad scope and coverage needs to be carefully evaluated. There is no requirement for coordination with an acknowledged county comprehensive plan, yet implications for land use planning in specific areas and jurisdictions is obvious.

SB 539, filed by 12 legislators at the request of the Oregon Small Woodlands Association, would prohibit interpretation or implementation of statutes and land use goals in a way that deprives a landowner of all reasonable economic use of any portion of the landowner's property without compensation. It would also establish procedures for civil suits to determine if the landowner was deprived of such use without compensation.

As pointed out by Onno Husing, in his listing of this bill in last week's issue, the bill would, in large degree, duplicate the constitutional guarantee against the taking of property without just compensation now provided under the Fifth amendment to the U.S. Constitution. However, from the property owner's standpoint, there may be benefit in establishing a legal mechanism at the State level to pursue a "taking" allegation. Further comment on this bill and the "taking" issue will be included in a future issue.

HB 2287 filed at the request of the Joint Legislative Committee on Land Use (LCLU) for the Department of Land Conservation and Development, would require the Land Conservation and Development Commission to adopt model land use hearing procedures and procedural standards for hearings. Further it would require local governments to meet the adopted procedural standards and to demonstrate during periodic review that the adopted procedural standards were being met. LCDC is required to report to JLCLU on its progress in meeting this requirement by September 30, 1990. Finally, LCDC is given a safety valve that if DLCD has no funds available to develop model land use hearing procedures, they are not required to be adopted.

The usual "kicker" remains, however. The procedural standards for local government must be adopted by LCDC and they must be met by local government. So once again the thrust is to place the burden on local government with no financial assistance offered, while letting the State potentially "off the hook" if there are no dollars available.

HB 2288 filed at the request of JLCLU for DLCD, would establish a "raise it, waive it" standard at all levels of land use appeals, clarify the definition of a land use decision, establish procedures for post-acknowledgement enforcement orders and clarify and streamline LUBA procedures. This bill once again reflects the extensive "legalization" of Oregon's land use program. At each session voluminous bills are introduced trying to correct the problems which have shown up during the previous two years of LCDC and LUBA procedural "trial and error". In 1991 will we be faced with a 20 page bill declaring a "use it or lose it" standard?

Two brief comments for this review:

1. On page 19, lines 2-5 should be deleted from the bill. This is the escape hatch for state agencies to deny projects which have been approved in acknowledged local comprehensive plans. Unfortunately, it was added to Chapter 197 in the 1987 session. With this bill, there is a new opportunity to get it out. If state agencies believe they must deny a project that has been locally approved let them justify that action under their own laws and rules, not under Chapter 197.

2. The final new procedural requirement contained in the bill is on page 20, lines 26-28. It states, "An amendment to an acknowledged comprehensive plan or land use regulation is not acknowledged unless it has been submitted to the director as required by ORS 197.610 to 197.625".

HOUSE COMMITTEE ON ENVIRONMENT AND ENERGY HEARS LAND USE BILLS
(4-21-89)

The House Committee on Environment and Energy took a first look at a number of bills that if enacted would have a profound influence on Oregon's system of land use planning. The highest profile bill among these is HB 2283 which proposes to remove natural resource decisions away from counties and place that authority at the state level. HB 2283 is the brainchild of the 1000 Friends of Oregon (a Portland-based environmental group).

Under HB 2283, a system of 20 regional administrators would handle natural resource issues that are currently managed by counties. According to Robert Liberty of 1000 Friends, counties have a record of "poor decisions" regarding such natural resource issues. Liberty also believes that while the regional administrator scheme would cost the state 2.5 million dollars, that savings at the local level would probably offset these costs.

At the heart of Liberty's argument is the assertion that county commissioners are essentially politicians--not administrators. Therefore, according to Liberty's thinking, it would be better to remove decision making authority on these matters from what he characterized as the "old boy network". Due to these networks, Liberty contends many county land-use hearings are a "sham" because the outcomes are often pre-arranged.

Liberty documented his allegations with slides depicting these "poor decisions". For instance, there were a number of slides showing residences located in areas classified as Exclusive Farm Use (EFU) zones. Liberty claimed those residences really belong in urban growth boundaries. He further noted these residences were placed in EFU lands under the guise of being a residence connected to farming. In reality, he said, these residences often had little or no farming activity. Another motive Liberty ascribed to are those locating in EFUs are the tax advantages gained from such a classification. One compelling slide showed a house in the middle of a field in a rural location. Liberty said, "The location from which this slide was taken was within the urban growth boundary, and where that house is located is not...the taxes paid by that landowner amount to 97 dollars a year...if that house were located within the urban growth boundary the tax would be over 1,000 dollars."

Liberty also drew attention to the high "approval rate" of development applications as evidence that county administrators violate the spirit of Oregon's land use goals. For this observer, Liberty failed to mention a high approval rate can easily be a product of good staff work that screens out unacceptable projects. In addition, high approval rates can also reflect successful up-front negotiations with developers that result in conditions making projects "approvable".

In addition, Liberty noted the results of a poll he conducted among planning students at the University of Oregon in which he asked whether the students would prefer to be a "facilitator" or an "enforcer" of land use regulations. The poll showed these budding planners overwhelmingly preferred facilitation and mediation. Liberty construed the results to mean that when push comes to shove, planners are disposed to side with developers rather than the environment. Again, for this observer, this poll has its shortcomings. Having gone through a graduate program in planning, I agree most planning students would prefer to be a "facilitator". However, that hardly means those same planners would turn their back on enforcement if they were presented with a potential violation. Liberty noted that since county commissioners often get campaign contributions from developers, making county commissioners land use administrators (as the law currently provides) inherently creates a conflict of interest for commissioners. Liberty challenged the legislators to consider how tough it would be to implement the laws they made. Liberty summarized, "Let policymakers make policy, and let's not subject them to conflicts of interest."

Russ Nebon testified on behalf of the Association of Oregon Counties. Nebon strongly disagreed with the concepts found within HB 2283. Nebon argued nothing would be gained by making these decision makers remote from those they regulate. Rather, Nebon explained, a great deal would be lost because a much of the "hand holding" and "customer service" benefits resulting from "over the counter" encounters could not occur. Nebon suggested that creating regional land use administrators would only leave the county commissioners the job of "telling folks the bad news that their proposal was turned down". The bottom line of Nebon's testimony was, "that if there are enforcement problems there are tools to deal with it".

One witness following Niebon that opposed HB 2283 took an especially strong position against the notion that moving decision making authority for natural resources from the county to the state level would be more "efficient". The witness said, "Yeah, HB 2283 might be more efficient, but Hitler found dictatorship more efficient too!" In a discussion the next day with Paul Benson (OCZMA's land use specialist), Benson doubted such a system would result in cost savings. Like Nebon, Benson believes there are many advantages to "over the counter" discussions with applicants. Without such discussions, a great many more unapprovable projects would go forward and could easily clog the regional administration process proposed under HB 2283.

In other land use action before the House Environment and Energy Committee HB 2288 (a product of the Joint Interim Committee on Land Use) received first consideration. HB 2288 addressed the "raise it or waive it" problem where those wanting to stall development within an urban growth boundary raise issues on appeal of a land use decision which then requires the action to be re-heard at the lower level. Due to the number of back and forth legal actions fostered under the current system, this dilemma was called "LUBA ping pong" before the committee. One study showed that fully 37% of projects within urban growth boundaries enter this twilight zone.

Those supporting HB 2288 trundled out developers with horror stories concerning how local groups try to string out the development process until people either go broke, get disgusted, or lose their financing because market conditions change. In addition, costs escalate dramatically because of the expense of paying interest on financing and because entire construction seasons are lost due to LUBA ping pong. Developers argued that especially with subdivision approvals within urban growth boundaries, the policy decision that subdivisions are an appropriate land use have already occurred. They also note there are volumes of engineering standards in place when such subdivisions are being considered and therefore there is plenty of "control" over what will be built in a suburb.

The quintessential horror story is the frequent use of LUBA ping pong to extort money from developers when local groups have them over a barrel procedurally. In these cases it is clear to all the developer will ultimately prevail on the merits of their project. However, what still occurs is that local community groups will drop their case and allow development to proceed only after cash settlements have been paid to litigants to drop their case.

One other bill was heard before the committee that day (HB 3149) would require that LCDC commissioners be elected, not appointed. Some members of the legislature argue that LCDC commissioners are "an anonymous crowd", "detached from reality" with "no accountability". Considering the recent flap over secondary lands one wonders whether there isn't a grain of truth to these accusations. Representative Carl Hosticka, however, wondered whether making LCDC commissioners elected officials would make them any more accountable. He cited his earlier experiences with elected school officials that were entirely unaccountable to the school board due to their elected and not appointive status.

NEW DLCD DIRECTOR VISITS COASTAL CAUCUS (5-26-89)

Susan Brody, the newly appointed director of the Department of Land Conservation and Development, appeared at the weekly Coastal Caucus breakfast. Following introductions, Brody described her background (major points being her work as director of Eugene's planning program, her masters degree in planning from MIT, and her experiences in Alaska working on planning issues related to the shoreside effects of oil and gas development). Brody stated she would take the summer to travel to all parts of the state and "do a lot of listening". Brody informed the Caucus that she hopes to establish a strong working relationship with the Legislature and promised to work closely with the Joint Interim Legislative Committee on Land Use.

With respect to her policy orientation, Brody offered that in the past the Department of Land Conservation and Development (DLCD) and the Land Conservation and Development Commission (LCDC), "May have been trying to do too much." Brody thinks there is room for improvement in the area of communicating with the public. In this regard, she believes better communications could lead to greater acceptance of land-use programs and less acrimony.

Following her remarks, Brody received an earfull from the Caucus members about the current climate in which she is about to enter. One member of the Caucus stated that there is no balance on the current commission, that they were out of touch - particularly with rural areas of the state - and that the level of communication between people back home and the agency/commission was terrible. Other members of the

caucus echoed these thoughts. **Senator Brenneman** told Brody that the LCDC has "run amuck" in the last number of months, "Especially on the secondary lands issue". **Brenneman** later told me that he was particularly annoyed because the Legislature never authorized LCDC to undertake a new policy on tightening the definition of "primary lands", only that the LCDC should evaluate how more flexible usage could occur for less productive secondary lands. Therefore, **Brenneman** believes the LCDC clearly exceeded their mandate. Following this barrage, Brody smiled and said, "I'm an optimist, that's why I took this job".

Brody was accompanied by Craig Greenleaf of the Department (who had been acting director before Brody's appointment). At the request of the Caucus, Greenleaf briefed the members on the latest developments in the secondary lands issue. He stated that eight counties would undertake pilot projects as a means to evaluate the workability of a secondary lands program. According to Greenleaf, the program would be simplified by focusing on soil types rather than the overly complicated three tiered system that had been evolving under the Commission.

Another concept currently being pursued by the Department was the creation of a "mixed zoning" approach, taking into account the commingling of agriculture and forest lands - especially in finger valleys. Greenleaf stated that DLCD would pursue this approach through rulemaking. Brody offered that it would be difficult to go back to square one on the secondary lands issue, but thought that the pilot project approach would provide a more acceptable means of dealing with this complex and contentious issue.

Representative Hanlon informed Brody and Greenleaf there was a feeling in the Legislature that once the session was over (and by implication the ability of the Legislature to influence Department policy for a year and a half because the agency's budget would be in place), DLCD would "run out" and pursue aggressive rulemaking. Brody assured the Caucus that the Department had no plans to rush into rulemaking. Brody reasserted her desire to work with the Legislature. Again, she restated it was her intention of going slowly and only testing new ideas through pilot programs she described earlier.

OCZMA Director Jay Rasmussen asked Brody whether she agreed with the observation that DLCD was preoccupied with rural lands, and that the agency has not devoted the proper time and energy to addressing urban planning problems and suburban sprawl issues. Brody responded that the Department was "constrained by legislative mandates and budget restrictions." Brody agreed and indicated that urban problems such as transportation and growth management deserve greater attention. Brody also stated there was a lost opportunity in helping people see the connection between planning and economic development.

Brody was asked about a bill introduced early in the legislative session that would remove planning authority from the counties and place it in the hands of regional state administrators and whether she believed the agency had the necessary resources to undertake enforcement of land use measures. Since she is new on the job, Brody deferred to Greenleaf. Greenleaf reminded the Caucus that the Department had opposed the bill and that this policy has not changed. Greenleaf believes the enforcement issue is a related yet separate matter (in that regardless of a shift in authority, enforcement always remains an issue). Brody added she believes that the enforcement issue was best addressed by better communication. According to Brody, "Problems can be avoided if people just have a better understanding what is expected of them from the land use process."

MAJOR LAND USE BILL RECEIVES ANOTHER HEARING (5-26-89)

HB 2288, one of the two major land-use bills of the session (the other being SB 3) received yet another hearing before the House Environment and Energy Committee. Like the wetlands bill, HB 2288 has been the product of a year long "consensus process" in which representatives from a number of conflicting interest groups attempted to hammer out a bill everyone could live with. However, according to the testimony on HB 2288, consensus was not achieved even though a number of participants believe areas of wide agreement have been reached.

The major elements of the bill that remain unresolved are: (1) a new definition of a "land use decision" (which excludes subdivisions), (2) the "raise it or waive it" notice provision aimed at eliminating LUBA "ping pong" (see an earlier issue of Coastal Notes), and (3) adjustments in the enforcement provisions. Members of the HB 2288 working group presented their conflicting ideas on the impact of these measures.

The major opponent of the bill in its present form is 1000 Friends of Oregon. 1000 Friends feels the bill erodes citizen input and unnecessarily relaxes development standards.

Following a debate of the bill, Chairman Ron Cease informed those at the hearing that due to the complex nature of the legislation and the other business scheduled to be before the committee that afternoon, he would schedule another hearing and work session for early next week. This action would give committee staff the time to produce a memo summarizing arguments made before the committee and give the members time to mull over the bill. Next week *Coastal Notes* will feature a more indepth article on this complex and important legislation.

HB 2288 (LAND USE REFORM) LEAVES HOUSE ENVIRONMENT AND ENERGY COMMITTEE (6-2-89)

Representative Ron Cease, House Environment and Energy Committee chairman, opened the work session on HB 2288 with a new set of amendments to the bill. Cease offered these amendments in the spirit of compromise, trying to do what the working group on HB 2288 could not do itself in the year the group has looked at the issue. Not surprisingly, the amendments (which seemed to split the difference on a few key points in the bill) ended up not pleasing anybody. In addition, some of the members of the committee arrived that day intending to vote one way or another on the original bill. They seemed to be in no mood to digest a new set of amendments. Therefore, at the end of the work session, Cease's amendments were abandoned and the committee elected to adopt the original bill. The rationale for moving the bill (despite the lack of consensus) was that a conference committee would address any remaining policy decisions. Impatience seems to be the latest occupational disease at this point in the session. It is interesting to observe this behavior considering the painstaking review other measures received at the beginning and middle of the session.

In any event, some more illuminating testimony was received during the hearing/work session worth repeating. With respect to the elimination of subdivision approvals within urban growth boundaries (UGBs) from the category of a land-use decision, 1000 Friends of Oregon steadfastly resisted the measure. 1000 Friends of Oregon continued to assert these decisions were not "ministerial" in nature. Others (including representatives of AOC and the Homebuilders) maintained that these were only "cookbook" decisions that did not need to undergo LUBA review. AOC representatives argued that, "Compared with conditional uses, zone changes, or variances, subdivision approvals are as close as we get in this business (planning) to clear and objective decisions".

1000 Friends disagreed. "If Ed Sullivan (one of Oregon's leading land- use attorneys) were here he would tell you why," argued Neil Kagan of 1000 Friends of Oregon. Kagan believes a number of important decisions do get made in subdivision approvals including the placement of roads, sidewalks and other design issues. Moreover, 1000 Friends asserted that there was nothing wrong with the current system, arguing that the sheer lack of appeals of subdivision approvals demonstrates the system is working. In addition, 1000 Friends also alleged that the reason the Homebuilders wanted subdivisions in UGBs removed from LUBA and placed in the Court of Appeals was that this would increase the costs of launching an appeal. "The Homebuilders are counting on the increased time and expense of going to Circuit Court compared to LUBA as a means of discouraging neighboring property owners from seeking an appeal," stated Kagan.

Representative Bernie Agrons noted that it was the chilling effect of potential appeals - not the number of appeals - that is the issue. Testimony from previous hearings revealed that neighborhood associations have been successful at intimidating developers by threatening to take a developer through the appeals process. In what members of the development community likened to extortion, neighborhood groups have gained cash settlements to drop their appeals (again, avoiding actual appeals). Representative Phil Kiesling asked if the working group contemplated some kind of bonding measure to discourage frivolous lawsuits. The response from the panel was that such a proposal was discussed early on in the working group but was rejected because it would be ineffective. Panel members noted that under current law, if a frivolous suit is undertaken, attorney's fees can be awarded. The threshold for determining whether a suit is frivolous is very high. As a result, the panel argued, bonding wouldn't really add anything to the process.

Another major issue concerning 1000 Friends was whether the notice provisions in HB 2288 were adequate to inform neighbors of zoning changes. HB 2288 contemplates notice to neighbors of 100 feet of

property subject to a zoning change within an UGB and 250 feet outside of an UGB. 1000 Friends argued that the proposed notice standards to those outside an UGB was particularly unrealistic for areas such as Eastern Oregon. 1000 Friends thinks that maintaining a register at the county planning office would merely be window dressing. They believe it unreasonable to expect people in rural locations to periodically check a zoning registry without another means of notice. 1000 Friends feels strongly about this notice provision. They note the vast majority of enforcement actions concerning land-use decisions originate from neighbors and not organized environmental groups like 1000 Friends.

AOC's representative dismissed 1000 Friends arguments. Russ Nebon noted that once the word gets out by mail to adjacent neighbors, the word spreads quickly through the "grapevine". He noted that it would be costly to extend the notice provisions beyond 250 feet and would really serve no purpose since people seem to work well. At an earlier hearing 1000 Friends disagreed with these observations stating that they continually get calls from aggrieved property owners who felt they did not get adequate notice of changes in land use.

Again, the Committee fowarded HB 2288 to the House Floor.

TWO LAND USE BILLS LEAVE SENATE AGRICULTURE AND NATURAL RESOURCES COMMITTEE (6-16-89)

Compared with the lengthy negotiations and actions in the House that led to the creation of HB 2288 and HB 2287, the Senate committee acted swiftly to move those bills to the Senate floor. One of two conclusions can be drawn. Either the Senate committee acted in haste, or one can explain the minimal discussion of these bills to the fact that most of the bloodshed had already occurred with these measures and what arrived at the Senate committee were two good bills.

HB 2287 directs the Interim Joint Legislative Committee on Land Use to draw up model procedures for local land use proceedings. Under current law, communities are free to draw up their own procedures. While the model procedures would not be mandatory, proponents of the bill believe they will improve the land use planning process in many communities that have flawed procedures. Previous versions of the bill would have directed DLCD to draw up model procedures. DLCD opposed that approach arguing that they simply didn't have the staff to undertake such an effort, but did testify that model land use procedure would be constructive and supports the bill as amended.

The other bill, HB 2288 (see earlier versions of *Coastal Notes*) had a much rockier voyage. 1000 Friends offered yet another set of amendments which would expand the notice elements of section 10 of the bill. These amendments were agreed upon before the hearing with other members of the land use community (the counties and the Homebuilders). Under HB 2288, the notice provisions have been amended as follows: (1) to property owners within 100 feet of the property which is subject to notice where the subject property is wholly or in part within a urban growth boundary; (2) within 250 feet of such property outside of an UGB and not within a farm or forest zone; and (3) within 500 feet of the property where the property is within a farm or forest zone. The committee voted unanimously to send HB 2288 to the Senate floor with a do-pass recommendation.

In other action before the Committee, Senate Joint Resolution 42 was passed out of committee. SJR 42 would submit to the citizens for a vote the option of changing the Oregon constitution to allow the establishment of a special pollution fund paid for out of gas taxes. Under the constitution, gas taxes can only be used for road improvements. SJR 42 proposes to set up a special gas tax fund on gas wholesalers dedicated as a superfund to clean up leaking underground gas tanks (see an earlier version of *Coastal Notes*).

Another land use bill, Representative Gilmour's HB 2639, left the committee for the Senate floor with a do-pass recommendation. Under this bill, local governments are expressly authorized to permit 5 or few unrelated individuals to live in a residence in EFU zoned dwellings. Proponents of the bill argued that some counties considered such living arrangements as an accessory use. The bill makes legislative intent clear that the state's land use laws authorizes such activity. The bill passed the House unanimously earlier this session.

LCDC AND DLCD READ THE RIOT ACT ON THE HOUSE FLOOR (6-23-89)

Oregon's famous land use planning system remains vulnerable. As I sat and watched the House debate on the DLCD budget I came to realize just how close we are to having a legislative revolution on this issue. The budget finally passed 35-25 but not after some serious debate. **Representative Tom Hanlon** (whose Ways and Means Subcommittee handled the DLCD budget) carried the bill on the floor. **Hanlon**, made every effort to remind his fellow legislators that this was a budget bill and not a substantive bill. Therefore, argued **Hanlon** and others, this was no time to take out your frustrations on the agency. Further, the argument went, by punishing the agency with huge cutbacks in the budget would only slow the permitting process for development and could hamper growth in the state.

But many legislators would not be denied their opportunity to beat up on LCDC/DLCD. The minority leader Larry Campbell opened the attack. "There is no agency in this state government that listens less to the Legislature than DLCD and LCDC". He continued by warning DLCD not to pursue rulemaking on Goal 4 until the Legislature gets a look at it. "If LCDC ignores us, this shot across their bow will be nothing compared with the torpedo they will receive next legislative session!" As an example of LCDC's arrogance, Campbell stated that "we told them last session to look at secondary lands and all they did was turn around and make it tougher to do things on primary lands!" Campbell compared this floor action with the last step and the warning a parent gives to their child before they take their bike away (despite his misgivings, he still urged passage of the budget).

Next Representative Stan Bunn weighed in. Bunn noted that he was one of the few legislators still around from 1973 when SB 100 was enacted. "The land use process since then has gone in a direction I would have never supported", Bunn stated. He declared that the Legislature is partly to blame. "The split Legislature sends different messages to LCDC because the Legislature can't or won't make decisions on the tough issues, we let them (LCDC) decide them for us", Bunn stated. Bunn also speculated that LCDC will, "divide and conquer the agriculture and forestry lands if we let them." Accordingly, Bunn argued the budget should be voted down and that the Legislature should take a more active role in land-use planning.

Then Representative Bernie Agrons entered the fray. In a harsh tone of voice I have not previously heard from this gentleman, Agrons thundered, "I have no sense of confidence in anything that agency does! They don't come close to matching my desires or the desires of the people of this state", Agrons complained. Agrons noted that LCDC is "tearing the body politics in this state apart!" Agrons said that every time legislators get a commitment from LCDC that agreement is broken. "And since the Legislature only meets biennually, like spawning salmon then die and go away, they have taken advantage of us". As a result, like Bunn, Agrons thinks the Legislature should take over major elements of the land use planning process. Agrons urged voting no on the budget and summarized his remarks, "There are certain issues that are so central to the well being of the state that we don't trust them to agencies; examples of those areas of the law are issues such as revenue and criminal law, and now I believe land use planning should also not be trusted to bureaucrats, maybe the entire process should be done on the floor of the Legislature, I don't know of a better way to keep the system accountable."

Representative Dominy held the middle ground view. He stated that he has always been in favor of land use planning (although every speaker of the day prefaced their remarks with what seemed to be the obligatory statement, "While I support land use planning..."), Dominy thinks the process has gone too far. He hoped, however, that we would not take away money that is necessary to "plan for the future".

Next, freshman legislator Kelly Clark piled on. Noting that he does some land use as a part of his legal practice, Clark recalled that the Attorney General recently characterized the land use planning process as having become "fossilized, legalized, and trivialized". Clark thought that one group in the state had captured the land use planning system, "And that group happens to have a thousand members" (a thinly veiled reference to 1000 Friends of Oregon, a Portland-based environmental group). "Those individuals have brought an elitist perspective to land use planning", said Clark.

Clark observed that while we should recognize that LCDC and DLCD are in transition, there has evolved an, "institutional arrogance". As an example, Clark mentioned that 33 members of the Legislature wrote a four-page detailed letter to the agency and never got a response. As a further example of this arrogance, Clark said that once he had a conversation with a commissioner from LCDC and when Clark

informed the commissioner that the Legislature was contemplating rewriting Goal 4, the commissioner stated he didn't think the Legislature had the authority to do so. Clark was amazed at the remark. Since LCDC and DLCD derive their entire existence and rulemaking authority from statutes - passed by the Legislature - Clark correctly found it is absurd to think that the Legislature couldn't move on Goal 4.

That's what makes the current situation so scary. As Clark warned, if LCDC/DLCD doesn't fully understand or appreciate the Legislature's powers and do everything to reach an accommodation with the Legislature, the land use planning ball game in this state could be over. Clark also warned that certain groups in the state may use the initiative process to overturn the apple cart. Clark speculated, "If that occurs, then we will look back in a few years and say, gee, wasn't that (the statewide land use planning) an interesting experiment".

Representative Paul Hanneman argued in favor of passing the budget. **Hanneman** informed the House, "There are three ways to change the direction of an agency, first by statute, the second would be to change the commissioners (although **Hanneman** thought the Governor did not have the desire to take this step), and third, to change the Director of the Agency and to pursue a scaled down pilot program approach rather than a statewide erratic program". **Hanneman** noted that there is now a new director and that pilot programs are starting with volunteer counties. **Hanneman** stated, "But to attack the budget of the agency is nothing more than symbolism; this is not the time or place to deal with major substantive problems".

Several others echoed **Hanneman**'s sentiments saying that the Ways and Means Committee had put together the best budget package for the agency that it could and that now some members of the Legislature were "flogging a dead horse". As a counter to this argument, Representative Markham noted that everytime he tries to pass a bill that would straighten out the LCDC mess he can't get it heard before committee. Therefore, according to Markham, attacks on the budget may be the only way to send LCDC/DLCD a message.

Toward the end, Representative Ray Baum couldn't resist the opportunity. Baum stated, "The state's land use planning system is a good idea gone bad. It has run-amuck; for those outside of Portland that missed the Oregon comeback, that agency wants to make them permanently the Oregon outback!"

Hanlon skillfully closed the debate by defusing earlier arguments. Hanlon noted that there is a new director that has pledged to work closely with the Legislature, that the issue of secondary lands will be treated through voluntary pilot programs, and that LCDC has promised not to promulgate further rules until it has received the go-ahead from the Legislature (a response to Clark's earlier statements that his letter had gone unanswered).

After Thursday's debate on the House Floor, absent strong leadership and compromise, a showdown in the near future between the Legislature and LCDC/DLCD seems inevitable.

HB 2288 PASSES LEGISLATURE (7-7-89)

After a tedious run of hearings on the House side, HB 2288, the "raise it or waive it" measure had an easy time of it on the floor of the Senate and the House. On the Senate side the measure passed 27-1. Afterwards, on 6/27/89 the House voted 54-0 to concur with the Senate amendments. In other land use action relating to EFUs, the House concurred with Senate amendments and repassed HB 2682.

...FISHERIES...

The main event for fisheries last session was the enactment of HB 3336, the fisheries enhancement bill. Now, for the time being, the focus will shift to the activities of the enhancement board established under HB 3336. The success or failure of the Board's deliberations will largely determine the treatment the program receives in the next Legislature. If things go smoothly, one can expect a quiet and cooperative reauthorization of the program. If rancor and recriminations surface among interest groups, and if there is conflict between ODFW and the enhancement board concerning the the management of the program (including potential allegations that the ODFW is trying to manipulate the Board), there probably will be storm clouds in the Legislature. Time will tell.

On other fishery fronts, there could be a move in the next Legislature to adjust some of the state's fishery policies. Such an adjustment seems likely especially if the sport and recreational fisheries continue to experience the disastrous and perhaps unnecessary effects of untimely closures and other inefficient fishery practices. On a related matter, the wild fish policy controversy could mature to a point where legislative action is necessary. Action in this area may depend on the progress of river basin planning projects. These planning efforts could initiate a good deal of public discussion leading to more legislation (for example, on issues relating to in-stream water rights for fish and wildlife purposes and inter-basin transfers of water). Hopefully, as the influence of water management issues of the coast becomes more obvious, future Legislative Fellows can find the time to expand their work to include these important water bills reviewed by the House and Senate Water Policy Committee.

With respect to the illegal high seas driftnet fisheries, continued pressure will be needed to force these fisheries out of business or to render their activities more tolerable. I fully expect the issue to continue for the next several years as negotiations continue on fishing seasons, fishing areas, and enforcement issues (such as boarding arrangements).

Regarding the cormorant hazing program, the future of that issue may be determined by the enhancement board as they evaluate ODFW hatchery policies as an element of their agenda.

In addition, we are likely to see a return next session of the gillnet ban proposals for the Lower Columbia River. Again, the future of that issue could be greatly influenced by the success or failure of the enhancement board to reach agreement on issues affecting commercial and sport fishery interests. If those issues are avoided by the enhancement board, and, if a mix of projects benefiting the recreational fishery doesn't materialize before the next session, the experience over the gillnet ban issue will be revisited in the 90th Oregon Assembly.

Oregon Coastal Notes Articles Regarding Fisheries Issues

FISHERY RESTORATION BILL HAS FIRST HEARING (1-2-89)

A measure to fund a fisheries restoration and enhancement program (Senate Bill 41), was one of the first bills to be heard in committee this session. The central features of this program, introduced by the Oregon Department of Fish and Wildlife, would be to:

* repair deteriorated hatcheries and fishways
* enhance natural habitats
* gather critical information on stream environments
* expand fishing opportunities and access
* increase natural and hatchery fish production

The program is expected to last six years (three biennial budget periods) with a total price tag of $15-$20 million. The bill proposed to raise $12 million from increased recreational user fees, commercial permit changes and commercially caught salmon poundage fees. The remainder of the income is expected to come from state lottery funds and from other sources.

During the first two years of the project, the Oregon Department of Fish and Wildlife anticipates spending $4.7 million with approximately $2 million of that going to hatcheries.

The proposed changes would increase sport resident combined fees from $19 to $21 and non-resident

fees from $30 to $35 a year. Troll permits would increase form $10 to $100 annually and troll, gillnet and salmon ranching industries would have their ODFW poundage assessment doubled form $.05 a pound to $.10 a pound.

If enacted, this would represent the first angling license increase in eight years and the first commercial poundage fee increase since 1980. However, troll and gillnet salmon do have additional and existing non-ODFW poundage assessments of their own.

On Thursday afternoon, January 19, the Senate Committee on Agriculture and Natural Resources held a hearing on SB 41. Coastal legislators on that committee are **Senators Bill Bradbury** and required . Several legislators began the proceedings by testifying that they had received a great deal of feedback form their constituents both good and bad. **Senator Joan Dukes** summarized her opinion of the bill by saying that while the concept of fisheries enhancement enjoys wide support, the mechanism to fund the project user fees, should undergo more analysis before the Legislature acts on the bill. **Dukes** suggested the committee delay action on the bill for a month to give the legislators adequate time to communicate with their constituents.

Ron Phillips of the Oregon Coast Association testified that he was optimistic that a consensus on a fisheries enhancement bill will eventually be reached. However, Phillips stated that the Legislature should reach out to those most affected by the bill to evaluate what was the best way to approach the funding of these programs. In addition, he noted that an ongoing citizen committee should be formed to determine how such moneys should be spent.

A new member of the Pacific Fisheries Management Council, Frank Warrens, testified that he thought SB 41 placed too much of a financial burden on the recreational fishing community. Warrens' representing charterboat fishermen, noted that if SB 41 was passed in its present form, Oregon's fishing fees would be substantially higher than those of the State of Washington.

Several members of Oregon Trout testified that they were concerned that too much emphasis would be placed on hatcheries and not enough resources would be committed to boosting natural production. Blanchard Smith of the Association of Northwest Steelheaders indicated that the Steelheaders were supportive of the overall concept of SB 41.

In addition, among those testifying on behalf of SB 41 were the Governor's Assistant for Natural Resources, Gail Achterman, as well as Ken Jernstedt, Chairman of the Fish and Wildlife Commission, and ODFW's Chief of Fisheries, Harry Wagner.

Senator Bradbury expressed concern that the bill provides little substance as to how such monies would be spent under the SB 41 process.

By the end of the hearing it seemed clear that the Committee will hold off on any action on the measure.

SB 41-2: THE LEGISLATURE TAKES A SECOND LOOK AT FISHERIES ENHANCEMENT (2-17-89)

This past week the Oregon Legislature produced its own version of SB 41, a bill which would assess sport and commercial salmon users for a program aimed at restoring and enhancing the state's salmonid fisheries.

The old bill-- introduced by the Oregon Department of Fish and Wildlife-- would have raised money for hatchery improvements and habitat enhancement exclusively from increased license fees and poundage surcharges. The new fisheries enhancement package, SB 41-2, still proposes to raise license fees and poundage assessments but would lower the proposed increases by 25% across the board.

To make up the shortfall the lowering of fee increases would create, SB 41-2 would boost the amount of money anticipated to come from lottery dollars-- which was previously only $250,000 -- raising that figure up to $2,250,000. If successful, SB 41-2 would enhance the enhancement bill a million dollars above the original funding level sought.

Another major feature of the new SB 41-2 is the call for the establishment of a "Restoration and Enhancement Board". This board would consult with the ODFW concerning how and where the money gathered would be spent. Under this proposal, (in part a reaction to Senator Bradbury's concerns voiced at an

earlier hearing that under the old bill there was little control or direction over how monies would be spent) the ODFW could not spend any fisheries enhancement monies without the approval of the Restoration and Enhancement Board. At present SB 41-2 grants the Governor the authority to appoint the board. However, based on early reaction to the proposal the issue of appointment appears unresolved.

In addition, SB 41-2 directs the Board to "encourage projects to be implemented by the salmon and trout enhancement program and nonprofit organizations engaged in approved restoration and enhancement efforts", and, "approve projects so as to match equitably the anticipated harvest benefits of the project with the source of funds".

These provisions go a long way toward bringing together the disparate elements of the recreational and commercial fishing industries so that a consensus on such a bill can be reached. Witnesses of the earlier and protracted "fish wars" in the state and the Northwest would truly marvel at the emerging unity this new package has encouraged. If successful, then, this measure would do more than enhance fisheries-- it could very well promote more cooperation among people.

Another work session on SB 41-2 is scheduled on February 28 in the Senate Committee on Agriculture and Natural Resources. Senators Bradbury and Brenneman are members of the Committee.

HIGH SEAS SLAUGHTER (2-24-89)

Each night of the year a nightmare of staggering dimensions takes place on the high seas of the Pacific. Within the past ten years the Japanese, Koreans and Taiwanese have sponsored high seas driftnet/gillnet fisheries that place in the ocean approximately 20,000 miles of gillnet EACH DAY! Enough net to cross the continental U.S. four times! These barely visible nets are part of an insidious fishery aimed ostensibly at squid. However, these curtains of death indiscriminately entangle everything and anything unfortunate enough to swim into them. Their victims include whales, porpoises, bill fish, sea birds, marine mammals of all kinds, and Oregon's salmon and steelhead.

They all fall prey to these new monsters of the deep. The effect on Oregon and the Northwest is becoming clearer. Not only are our salmon and steelhead intercepted at sea, but those illegally taken fish are sold on the world market and compete with legally taken fish from our fishermen. That means lower prices, reduced market possibilities, and less fish!

The evidence is incontrovertible. Within the last few years there have been "mysterious" declines in some salmon runs. Pirated salmon is appearing in overseas markets. In addition, those few fish lucky enough to survive an encounter with these high seas drift nets returning to the Northwest are showing ugly scars from their struggle to free themselves. It is believed these scars also result from squid-- that in their own struggle to free themselves from these nets attach themselves to salmon and steelhead and rake these fish with their beaks. Before the extent of these high seas fisheries were discovered, many attributed these scars to encounters with seals and sea lions. Due to this new information, fishery biologists now have to re-evaluate their previously held beliefs that the decline in salmon populations result exclusively from seals, sea birds raiding hatcheries, overfishing, and habitat deterioration.

In addition, while it is easy to get worked up about murdering friendly dolphins, awe-inspiring whales, and our own anadromous fish, we should all be equally concerned about the effect such activity has on the high seas squid populations. These squid constitute a major link in the food chain. If this unbridled fishery is allowed to continue, the bottom could really fall out of the food chain causing irreversible impacts.

What's being done to stop this unconscionable activity? Right now not nearly enough. However, a ray of hope has emerged with the formation of a group called "SEACOPS" based in Ketchikan, Alaska. SEACOPS is devoted to exposing this murderous behavior with the intention of halting this deadly business once and for all BEFORE the Pacific is swept clean of life.

The obstacles to stopping this are formidable. Congress did act in 1987 when it passed a driftnet bill which requires the State Department to enter into negotiations with the Koreans, Taiwanese, and the Japanese. These negotiations are supposed to force these nations to accept observers aboard their vessels and share information about their high seas gillnet fisheries. In addition, the legislation requires: (1) the State Department to enter cooperative enforcement agreements with other Pacific nations (especially Canada), and (2) the Commerce Department to produce a high seas driftnet impact report. So far, however, these negotiations have been fruitless. In fact, these fisheries are expanding in scope (new vessels are

currently being built)-- not declining!

There are several other tools available to put pressure on these nations. Among these include the "Pelly" amendments of the Fishermen's Protection Act of 1967. The Pelly amendments authorize the President of the United States to "certify" foreign nations that harm American fisheries. This highly discretionary certification process allows the President to place an embargo on the importation of fishery and other aquatic products from offending nations. The problem has been that since the Pelly amendments have been in force, Presidents have been highly reluctant to use this tool because they fear they will start a trade war.

Another means to stop this activity is the Magnuson Act which permits the executive branch to put a stop to foreign fishing within our nation's exclusive economic zone. The problem with this measure is that since we have phased out foreign fishing from our waters, this leverage has evaporated.

So where do we go from here? Join SEACOPS. Write and call your U.S. Congressmen and Senators. Put pressure on them. Tell them not to worry about offending these countries because we are interested in their investing in Oregon. If it is profitable for these countries to do business in Oregon, they will come here anyway. Write and call the White House. Consider boycotting goods from Japan, Taiwan, and Korea. We have to act now. If half of what SEACOPS and others say is true, on this one, time is really of the essence.

On a more optimistic note, the Pacific Fisheries Legislative Task Force recently passed a resolution condemning this activity. As a result, similar resolutions are expected to appear before the Alaska, Washington, Oregon and California legislatures. Reportedly, Washington has already passed their measure and there is a Joint Memorial before the Oregon Legislature exhorting the Congress to get tough on this issue.

Please note that the opinions expressed above are those of the author, they do not necessarily reflect the views of Sea Grant, OCZMA, or any office in the Oregon Legislature. (the address for SEACOPS is SEACOPS, 700 Water Street-Upper, Ketchikan, Alaska, 99901. Telephone 907-225-8004)

SB 671 (3-3-89)

SB 671(sponsored by Senators **Dukes, Bradbury, Brenneman**, Brockman, Cease, Houck, Kennemer, Kerans, Kintigh, McCoy, Otto, Timms; Representatives **Hanlon, Hanneman, Rijken, Schroeder, Whitty**-- at the request of the Oregon Charterboat Association, Columbia River Sport Fishing Association) prescribes a licensing system for vessels used to carry passengers for hire for recreational purposes in certain waters of the Pacific Ocean.

HIGH SEAS UPDATE: SEACOPS (3-3-89)

This week copies of a brochure from SEACOPS and a copy of my editorial on highseas driftnets from last week's *Coastal Notes* were placed on each Legislator's floor desk.

In addition, **Senator Brenneman** brought up the issue on the Senate floor and **Representative Paul Hanneman** did the same on the House floor. **Representative Hanneman** also requested that I write a Joint Memorial for the Oregon Legislature that exhorts the United States Congress to enact a host of powerful sanctions against these nations if they continue those unregulated high seas fisheries. The draft is now at the Legislative Counsel's office and copies will be available soon. We are getting strong and positive feedback.

The Northwest Steelheaders organization is ordering videotapes that graphically show this deadly business at work. The Steelheaders are also promising to start a public awareness campaign. East Coast chapters of SEACOPS are on the drawing board. Other editorials are planned. Things are happening.

I have been reminded, however, that these high seas DRIFTNET fisheries are NOT the functional equivalent of some of our own local and highly regulated gillnet fisheries. I agree. These local gillnet operations are carefully controlled and should not be confused with the high seas driftnet business that was the target of my editorial.

HB 2986 (3-3-89)

HB 2986 (sponsored by **Representative Hanlon, Senator Dukes**) requires the marking of salmon or

sturgeon that have not been taken lawfully by commercial fishing activities and prohibits the sale of marked fish.

HB 2985 (3-3-89)

HB 2985(sponsored by **Representative Hanlon**) prohibits the taking of sturgeon eggs for artificial propagation without a permit from the State Fish and Wildlife Commission and requires the commission to issue permits only for educational and scientific purposes.

HB 2984 (3-3-89)

HB 2984 (sponsored by **Representative Hanlon**) prohibits operation of a hatchery for sturgeon without a permit issued by the State Fish and Wildlife Commission and prohibits the commission from issuing a permit unless the hatchery will be operated only for scientific and educational purposes.

FISH WARS REVISITED: SB 41 RIDES AGAIN (3-3-89)

The time crept near on the work session for Senate Bill 41 before the Senate Agriculture and Natural Resources Committee. Countless phone calls, meetings, briefings, rendezvous and circulating draft amendments had been initiated. In addition, direct talks among people that rarely negotiate preceded this highly anticipated event.

Would a fisheries enhancement package emerge and go to the Ways and Means Committee that could balance what are often conflicting interests and foster a new era of cooperation? Or, would the enhancement package go down in flames for the time being because old, deep-seated mistrusts simply couldn't be overcome? It was a beautiful sunny day that afternoon as everyone congregated in and outside Hearing Room C. The hearing started a little late, which added to the mounting tension. Then the hearing began. What happened in the hearing for recreational and commercial fishermen, and others was like open heart surgery without anesthesia in public as some senators tore into representatives of those groups. For two or three hours efforts to open old wounds came under the heading of "primal scream" therapy. My rose colored glasses quickly fell off.

What I also saw were some stirring profiles in courage, as representatives of different interest groups truly acted like statesmen in the name of compromise. These individuals took enormous risks at alienating their own organizations and friends on behalf of the resource. The outcome? The 41 package limped out of committee and is on its way to the Ways and Means Committee. The vote? Yes votes: **Bill Bradbury (D, Bandon), John Brenneman (R, Newport)**, Jim Bunn (R, Dayton), and Bob Kintigh (R, Springfield) and Dick Springer (D, Portland), Chair. No votes: Wayne Fawbush (D, Hood River) and Grattan Kerans (D, Eugene). In addition to the final vote there were two other "sub votes" prior to action on the overall package. The first vote dealt with an amendment proposing to exclude private aquaculture from contributing fees. That measure was defeated. The second vote concerned whether the proposed enhancement board would operate on a simple majority or on a "super-majority" basis. The amendment supported having a simple majority and that amendment passed.

This second vote on the composition and voting structure of the enhancement board dominated the hearing. The issue provided an opportunity for some to capitalize on the mistrust existing between the user groups. At the center of this controversy is the preference of the commercial fishermen preferring a "super majority vote", a five out of seven voting arrangement before the enhancement board could approve enhancement projects. Representatives from the commercial fishing industry believed such a measure would alleviate some of their fears that they would get steamrolled on the enhancement board.

On the other hand, representatives of the recreational fishery generally preferred a simple majority vote of four out of seven. They favored this proposal because they feared the commercial folks could stall any projects if a "super-majority" vote process prevailed. "Gridlock" became the operative phrase of the day.

These different points of view on this subject seem to reflect either the pessimistic or optimistic nature

of the holder. The optimists believed sports and commercial fishing representatives would be crazy to engage in gridlock because the pressure to come to terms and get projects underway would be enormous. Conversely, representing the pessimistic view, Senator Grattan Kerans stated, "I don't know, I've been around here long enough to know that in some cases, some would let their own house burn down just so long as their neighbor's house burned down with it".

As mentioned previously, the simple majority won the day. The optimists swallowed their pride because they continued to believe that it would be political suicide for anyone to sit on the money in blind pursuit of principle. On the other hand, pessimists left the hearing feeling somewhat relieved thinking they reduced the potential for gridlock by adjusting the voting structure.

As a result of this preoccupation with the voting structure of the enhancement board, the standards found elsewhere in SB 41 that would govern the discretion of the board and therefore place the voting procedure of the board in its full context were overshadowed. Those standards would attempt to confine the board's latitude by directing the board to apportion the projects based on the economic contribution of the user groups. This means simply that if recreational fishermen put in 80%, then 80% of the money spent has to go to projects which meet the needs of the recreational fishery. Easier said then done? Maybe. The hearing also was sprinkled with plenty of lofty remonstrances about the perils of decentralized government reminiscent of old battles over STEP. In the end there was plenty of shell shock to go around. Since the hearing, however, I've heard a great many people say they are still committed to getting a fisheries enhancement bill.

HIGH SEAS SLAUGHTER UPDATE: NMFS STING OPERATION NETS RESULTS (3-17-89)

On January 28, 1989 the National Marine Fisheries Service (NMFS) enforcement division conducted a sting operation in Seattle. According to NMFS, two individuals, a Japanese national and an American, tried to sell 24 MILLION POUNDS of immature salmon caught during high seas squid driftnet fisheries to undercover agents. That's worth an estimated 46 MILLION DOLLARS! In addition, many other cases are pending in Seattle and in California. Like all law enforcement, those caught in such activity usually only represent a fraction of the actual violations. However, even if this effort does not represent the tip of the iceberg, the scale of the tip is appalling! In addition, recently a Taiwanese high seas driftnet vessel was found floating in the Pacific by the Coast Guard about 450 miles off the coast of Oregon. Apparently there had been a fire on board. The Coast Guard estimates the vessel had been floating out there for about eight months. On board they found one dead fisherman. In the hold they found approximately 2,000 badly decomposed immature salmon. Again, these are the deadly by- products of the high seas squid fishery. Efforts to get the Taiwanese government to respond to this "incident" have met with silence.

HIGH SEAS DRIFTNET MEMORIAL HEARING SCHEDULED (3-24-89)

House Joint Memorial 12—sponsored by Representatives **Hanneman**, Agrons, **Hanlon, Rijken, Schroeder, Whitty** and Senators **Bradbury, Brenneman, Dukes** and Springer—urges the Congress to take three strong steps toward forcing curtailment of the high seas driftnets.

First, it calls for increasing the penalities for commercial fishing and knowingly receiving, shipping, processing and marketing illegally harvested fish. Second, HJM 12 asks for a "statutory presumption" that fishing is taking place when a vessel is fishing in prohibited areas delineated by international fishing agreements and gives the Coast Guard authority to board such vessels. Third, Congress is urged to extend the "Pelly" import sanctions to include the embargo of imports other than fish or aquatic products.

This memorial along with a similar effort, House Joint Memorial 8, will be heard before the House Water Policy Committee on March 28th at 5:00 p.m. in Hearing Room E of the Capitol. Further, Representatives **Hanneman** and McTeague (HJM 8) are scheduled to hold a joint press conference on this subject at 9:30 a.m. on the same date in the press room of the Capitol.

HIGH SEAS SLAUGHTER UPDATE: CANADA TO INCREASE ENFORCEMENT (3-24-89)

Our Canadian friends to the North are getting serious about high seas driftnet fisheries. Reportedly, once the high seas fisheries start back up in full force, the Canadians are planning to "beef-up" fisheries enforcement at sea. Luckily, the Canadians have the tools to do the job. As a result, even if the United States government drags its feet, thanks to the Canadians we will have a very competent force out in the Pacific.

In addition, the media is starting to pick up on this issue. This week's *New York Times* featured a two full page story on the high seas driftnets. I have not seen the article yet. However, I have been informed that according to the article, those nation's have flatly denied the allegations made about the fishery! Other articles and editorials are also starting to appear in a variety of newspapers and magazines. The Coastal Caucus in the Oregon Legislature is also sponsoring an effort to alert media in the state and elsewhere. Now that House Joint Memorial 12 has been printed, this effort can begin in earnest (see related article).

There is an organizational meeting tonight (3/24/89) in Tualatin of the Northwest Steelheaders to plan the grassroots campaign against the driftnets. A major media event is planned for Portland on April 5. Full details about the meeting will be available in next week's *Coastal Notes*.

We are beginning to hear some rumblings from Capitol Hill. Apparently, the Merchant Marine and Fisheries Committee of the House of Representatives will hold a hearing soon. More on Congressional strategies next week.

IT AIN'T OVER TILL IT'S OVER: A NEW ENHANCEMENT BILL PROPOSED (3-24-89)

Most individuals interested in coastal affairs and fisheries were either stunned, upset or amused last Thursday (3/16/89) when a new version of SB 41 was initiated during hearings held before the House Water Policy Committee.

This intriguing ploy occurred during a hearing dedicated to the evaluation of a few anti-commercial fishing bills and anti-private hatchery bills. Representative Larry Sowa (known as being closely affiliated with recreational fishery interests) entered a series of amendments to a rather innocuous salmon bill entitled HB 3336. Only a couple of lines long, the original HB 3336 merely proposed to direct the Fish and Wildlife Commission to require state salmon hatcheries to make one-half of all surplus salmon available free of charge to state residents. The "new" HB 3336, however, adopts most of the language from the amended SB 41-- with several important changes--and grafts these amendments onto the previously modest HB 3336.

While not unheard of, this action is considered unorthodox. Usually, once a substantive committee-- in this case, the Senate Agriculture and Natural Resources Committee-- moves a bill to the Ways and Means Committee, that usually marks the end of deliberations until Ways and Means acts. That does not rule out the possibility of another committee moving comparable legislation and forwarding it to Ways and Means as well. However, this practice is discouraged because it is important to focus debate at the committee level. Surprise amendments to other remotely related subjects after the bill introduction deadlines are perceived as an end-run around customary legislative practices.

The danger of such a strategy, called "gut and stuff" in legislative language, is that if a substantial number of bills are handled this way, the legislature could grind to a halt. In addition, citizens effected by the legislation would never know if their concerns had been finally addressed or if the issue would suddenly reappear in some other remotely related bill. Besides the confusion, the public also suffers because they are forced to waste their time and resources travelling to Salem to speak to the same issue over again. Furthermore, if a legislative climate emerges where substantive committee work is routinely undermined, committees will be increasingly unable to encourage competing interest groups to make difficult compromises. As a result, the Ways and Means process would be forced to evaluate policy matters (instead of funding) as they deliberate competing bills before them. The other worse case scenario is that such bills would be sent directly to the House and Senate floor. This would surely invite confusion and acrimony.

Returning to the substance of HB 3336, the changes to SB 41 can be summarized as the following: (1) under Section 6, HB 3336 would increase the poundage fee for salmon from 3.75 cents a pound to 5 cents a pound, (2) under Section 8, HB 3336 would separate hatchery fees from the rest of moneys and devote such funds to studying the effects of private hatcheries on the "public fishery", (3) under Section 9, HB 3336 would move the appointment power for the enhancement board from the governor to the Fish and Wildlife Commission, (4) also under Section 9, HB 3336 proposes to remove the Department of Agriculture's role of recommending the commercial fishing representatives and give that power to the director of ODFW, (5) instead of a member of the public as the seventh member of the enhancement board, HB 3336 would install a member of a "conservation organization" into that key seventh tie-breaking seat, and (6) under Section 10, instead of a "joint approval" procedure in which the enhancement board AND the Fish and Wildlife Commission would have to approve projects, *HB 3336 would place such power solely in the hands of the Commission.* In a hearing in the House Water Policy Committee on Tuesday, March 21 (just a few days after HB 3336 surreptitiously emerged) the Committee voted to send HB 3336 to the Ways and Means Committee. Now, therefore, there are two SB 41 measures before Ways and Means. The only safe prediction at this stage is to say things are unpredictable!

HIGH SEAS SLAUGHTER UPDATE: HOUSE JOINT MEMORIAL 12 GETS THROUGH COMMITTEE (3-30-89)

House Joint Memorial 12 (HJM 12), which seeks restrictions on high seas driftnets, made it through the House Water Policy Committee on March 28, 1989 with only one minor amendment (that amendment calls for the inclusion of albacore tuna as one of Oregon's commercial and sport fisheries affected by high seas driftnets).

House Joint Memorial 12 had to compete with House Joint Memorial 8, an earlier bill proposed by Representative McTeague. The outcome of the hearing was very much in doubt. Members of the Coastal Caucus contended that HJM 12 be the message sent to Congress due to the tough enforcement measures and trade sanctions called for in HJM 12. As **Senator John Brenneman** stated during his testimony, "In order to minimize confusion at home, in the Congress and in foreign governments, I believe the Joint Memorial before the Oregon Legislature should be worded in as explicit and direct terms as possible".

A related argument for HJM 12 was that both the California and Washington state legislatures are both moving to adopt the language of Oregon's HJM 12 for their own memorials to Congress. Now that the decks are clear, unless HJM 12 is re-referred to committee once it hits the Oregon House and the Senate (which is highly unlikely), it appears the West Coast will be able to send a relatively uniform message to the Congress concerning the scope and content of action to be taken.

The importance of sending a clear statement to Congress cannot be overstated. Those in Congress that fear starting a trade war or that are uninterested in environmental or ocean affairs may be reluctant to enact tough federal legislation on driftnets. The danger is that once the issue comes before Congress, some members of that body (and agencies such as the State Department and the Department of Defense) may argue that a mere extension of the 1987 Driftnet Monitoring and Assessment Act is all that is needed.

Under that law, the National Marine Fisheries Service (NMFS) has conducted a study and will soon report the results of that work to Congress. The only thing the NMFS report said affirmatively is that "the implications are serious".

NMFS is re-working the report. However, this is no time to beat up on NMFS because Congress did not give them the resources to do much under the 1987 act. Further, without the cooperation of the Japanese, Koreans and Taiwanese in allowing observers or providing information it would take NMFS tens of millions of dollars and more time to get reliable data. And what would more information tell us? Only what we already know, these fisheries must be curtailed.

It is essential that U.S. Congress gets the message from Oregonians and other Americans that the time to pursue diplomacy and scientific research without the threat of enforcement or trade sanctions has passed. Your letters and phone calls to Washington D.C. and the HJM 12 are essential ingredients in this effort. Please, write and call!

A large press conference will be held at the Columbia River Red Lion (Portland) on April 5 at 7 PM

sponsored by the Northwest Steelheaders and the Pacific Marine Fisheries Commission (PMFC) concerning this issue.

CORMORANT HAZING LEGISLATION (4-7-89)

HB 3185 directs the Fish and Wildlife Commission to issue three permits a year (in 1989 and 1990) for hazing cormorants for three of Oregon's Coastal rivers. Apparently, due to the policies of ODFW, when hatchery smolts are released in Oregon's rivers they are let go virtually all at once. Therefore, as these smolts travel down the rivers in large schools cormorants concentrate their feeding on these smolts. Another hatchery practice that exacerbates bird predation is that while in the hatchery, these smolts are fed from above. As a result, unlike their wild counterparts, once released into the wild, hatchery smolts have been conditioned to congregate at the surface in search of food. At 48 cents a piece to produce winter steelhead, for many on the coast and in the legislature this loss of the resource is unacceptable. Some have suggested a study of the efficacy of hazing would be an appropriate safeguard for such hazing. STATUS: HB 3185 will be heard in the House Agriculture, Forestry and Natural Resources Committee on April 13.

HOUSE JOINT RESOLUTION 50 (4-7-89)

House Joint Resolution 50 proposed to recognize the historic importance of salmon sport fisheries and urges government agencies to recognize the importance of natural salmon production and restricted fishing seasons and bag limits. STATUS: the House Water Policy Committee will hold a hearing on HJR 50 on April 18.

HB 3213 (4-7-89)

HB 3213 would limit the number of ocean troll salmon permits that may be applied to a vessel in one year. Therefore, when a permit is transferred away from a vessel, another permit may NOT be applied to the vessel until one year after the date of transfer. STATUS: The House Agriculture, Forestry and Natural Resources Committee will hold a hearing on 3213 on April 11.

THE OREGON HOUSE PASSES HOUSE JOINT MEMORIAL 12 (4-7-89)

This week, **Representative Paul Hanneman** (R-Cloverdale) carried House Joint Memorial 12 which requests Congress to act to the House Floor. Arguing that House Joint Memorial 12 was "not just another memorial", **Hanneman** forcefully described impact of the Japanese, Korean, and Taiwanese driftnet fisheries on the ecosystem of the Pacific and Oregon's commercial and recreational fisheries and how House Joint Memorial 12 would attack that problem. The vote was 57-0 in favor. Not wanting to be left out, the good- natured complaints came from members wanting their names to be entered as co-sponsors. House Joint Memorial 12 now moves over to a Senate Committee and then on the floor of the Senate. Observers predict the Oregon Senate will also provide a lopsided affirmative vote on HJM 12.

RECREATIONAL FISHERMEN SEEK BAN ON GILLNETTING IN THE COLUMBIA (4-7-89)

During the television show "Ask the Governor" (4/2/89), a caller said, "Governor, there is a bill before a House Committee on Thursday that would go a long way toward improving the fisheries in this state". The Governor asked which bill the caller was referring to. Unable to answer with any precision, the caller said it was a bill sponsored by Representatives McTeague and Sowa. The Governor suppressed a frown and said he was unsure which measure the caller wanted his support on. He then said, "However, I am very unimpressed with any legislation or other attempts to knock people off our rivers". In addition, he said "We've had too much of that in the past", and expressed concern for the consumer in Oregon who wants to be able to buy Oregon salmon. The Governor concluded his remarks stating his support for proposals currently before the

Oregon Legislature designed to restore and enhance the fisheries for everyone.

Of course, the measure the caller and the Governor spoke of that Sunday night was HB 3219. This bill seeks to establish a state policy that "recreational angling is the highest and best use of the fishery resource of this state" and that fish allocations must reflect that policy. (A similar bill was just defeated in the Washington legislature.) In addition, the bill prohibits the commercial taking of the spring chinook by gillnetters.

Curiously, in an attempt to be even handed, the bill directs the ODFW to operate selective fish traps to catch salmon in the Willamette River System for sale to the consumer. Under their proposal, to offset the tremendous economic impact the closure of the spring chinook fishery would have on the Clatsop County economy, citizens of that county are to be provided a preference when it comes to buying such salmon. Using a system, HB 3219 proposes to sell these fish through a bidding procedure in which Clatsop County residents would be awarded the bid if the bid was "essentially equal" to other bids. Apart from the grave constitutional problems presented by such a preferred bidding system (the privileges and immunities clause) few seem capable of understanding how such an imprecise measure would be administered even if the bill survived a legal challenge based on constitutional issues.

The House Water Policy Committee held a hearing on Thursday, April 6, 1989 on HB 3219. Hundreds of gillnetters and recreational fishermen descended on the Capitol. The result was a repeat of last session's attempt to ban gillnetting. Emotions ran high. Controlled friction was evident. Plenty of uniformed and plainclothes state police kept a close watch on the proceedings. Since it was impossible to squeeze everyone into the hearing room, a number of other hearing rooms were equipped with close circuit television so people could view the hearing from elsewhere in the Capitol.

The testimony from each side was stirring. Recreational interests argued the state was loosing millions of dollars in tourism due to gillnetting. In addition, these groups also pointed to the number of people employed in the manufacture and sale of sport fishing equipment. One recreational proponent said, "Once a fish touches the mouth of the river God has delivered them to recreational fishermen". Another spokesman not only wanted to ban gillnetting, but argued that all commercial fishermen-- even those operating in the ocean-- should be banned.

Commercial interests also used emotional appeals. The committee heard a lot of "You want to take away our way of life", "What would we do without these commercial dollars coming into our county" and testimony that 33% of Clatsop County's income comes from commercial fishing. Those against HB 3219 provided a lot of technical data about the strength of the chinook populations, noting that a great percentage of these fish do return to the rivers and hatcheries due to restrictions on gillnetting. They also argued that the trap fisheries called for under the bill would still put them out of business. In addition, it was argued that such fish are of inferior quality later in the run

After several hours of exhausting and bruising testimony the hearing finally came to a close. **Representative Tom Hanlon** (from Astoria, his district would be hurt by a ban on gillnetting) echoed the Governor's statements on this issue that it would be better to enhance and restore the fisheries for everybody than kick gillnetters off the Columbia. **Hanlon** also hoped these fisheries would continue to co-exist in a less acrimonious fashion.

The committee took no action on HB 3219.

SJM 22 (4-14-89)

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

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

CORMORANT HAZING BILL RECEIVES HEARING (4-14-89)

HB 3185, sponsored by **Representative Paul Hanneman**, seeks to provide a limited number of permits

(3) to allow the "hazing" of cormorants during key periods when hatchery smolts are released into Oregon's coastal rivers. Many observers of the state's hatchery system have complained for some time that cormorants have become accustomed to feeding on these fish when they are making their way to the ocean. While natural predation and mortality is expected, these birds are thought to take an unusual amount of fish. As Blanchard Smith of the Northwest Steelheaders Association told the committee, "This is not a can we harass Oregon wildlife issue, this is a protect the resource issue". Smith called for a study of the cormorant hazing issue to accompany the issuance of three permits to evaluate fully the efficacy of the hazing procedure and to determine where cormorants go to feed once they have been discouraged from feeding on hatchery smolts. Another hearing will be scheduled.

HOUSE COMMITTEE LOOKS AT SALMON LICENSE BROKERING AND ILLEGAL COMMERCIAL SALES OF RECREATIONALLY CAUGHT FISH (4-14-89)

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

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

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

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

RECREATIONAL FISHING INTERESTS SEEK A BAN ON COMMERCIAL STURGEON FISHERY (4-14-89)

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

As a result the hearing room was packed by gillnetters that fish for both salmon and sturgeon. The only person testifying on behalf of HB 3215 was representative Larry Sowa. **Representative Tom Hanlon** asked Representative Sowa a series of questions. These included: "Isn't it true that recreational fishermen catch 85% of the harvested sturgeon?", and therefore inquired **Hanlon**, "If we genuinely have a problem with the

resource, doesn't it make sense that we ask the recreational fishermen to help solve the problem?" Representative Sowa paused, looked reflectively up at the Committee and said, "Mr. Chairman, I guess it's a matter of philosophy, in the past there used to be plenty of wildlife and the state finally had to put an end to commercial harvest of wildlife".

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

One individual skillfully used a scene from the movie *Casablanca* to characterize these efforts to put gillnetters out of business. The scene was the end of the movie when Rick (the movie's protagonist) shot the Nazi commanding officer. The French officer-- who by then was working with Rick and knew that Rick was responsible for the shooting-- told his men to "Round up the usual suspects". In this case he likened HB 3219 and HB 3215 as measures to "Round up the usual suspects-- the gillnetters!" The comparison met with applause and laughter. The House Water Policy Committee took no action on HB 3215. The prospects for success for either proposal are bleak.

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

FISHERIES ENHANCEMENT BILL AMENDED IN WAYS AND MEANS (4-14-89)

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

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

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

The following are the latest amendments to HB 3336. Please note these amendments and the entire bill are still subject to change: Under section 10(3) the ODFW is instructed not to assess its personnel costs in the administration of the 1989 Act against monies collected under the fisheries enhancement bill; Under section 11(3) the tie breaking member of the enhancement board is to "represent the public" (reference to a conservation organization was removed); There is now a timetable set up to prod the enhancement board using 120 day intervals for action; The department and the board (not just the department) must report to the Legislature; All revenues are to be used exclusively for fishery enhancement projects. (None of the money can be used for ODFW salaries or any project not directly related to fish production or enhancement); The bill raises most fishing license fees by $2, adds a 5 cents a pound to tax commercially caught salmon, and raises boat permits to $65; The bill provides 2 million dollars per biennium from lottery dollars; and New regional citizen advisory boards will be created to suggest projects to the enhancement board for consideration.

In addition, it should be noted that SB 41 did not die. Rather, SB 41 is now the means to authorize the ODFW to establish an interest bearing account from monies left over from their last operating budget (called

an "ending balance"). The interest from these monies are to be used for making up for deferred maintenance of vehicles and buildings and other infrastructure not directly related to fisheries enhancement.

COAST GUARD BOARD TAIWANESE DRIFTNETTER (4-21-89)

A new high seas drama emerged this week when a U.S. Coast Guard cutter (the Jarvis operating out of Hawaii) spotted a Taiwanese driftnetter operating south of the Aleutian Islands. Reportedly, the vessel was operating anywhere from 180 to 300 miles north of the "squid fishing line". As previous articles in *Coastal Notes* have explained, driftnets operating above the squid line catch tremendous numbers of the Northwest's salmon and steelhead. Once the driftnetter figured out it was the U.S. Coast Guard they let go of their net and began to head back to Taiwan. The Jarvis steamed after them in hot pursuit while diplomatic talks at the highest circles between the U.S. and Taiwan occurred in Washington D.C..

After strong U.S. pressure and a seven hundred mile chase, the Taiwanese agreed to let the Coast Guard board the vessel to search for illegally taken salmon and steelhead. According to this morning's news report in the Statesman Journal, no fish were found. Many believe, however, that if there were any fish on board there was ample opportunity for the driftnetters to unload their cargo during the chase. This situation underscores the need to provide a statutory presumption (called for under House Joint Memorial 12) so that boarding can occur immediately so such chases don't have to occur. A statutory presumption would eliminate the need to get permission to board. The Statesman Journal also reported that the Coast Guard spotted seven other Taiwanese driftnetters plying these waters in addition to the one they chased and boarded. *Coastal Notes* applauds the Coast Guard and the State Department for their efforts!

CORMORANT HAZING BILL APPROVED BY HOUSE COMMITTEE (4-21-89)

This week the House Agriculture, Natural Resources, and Agriculture Committee approved HB 3185 which authorizes hazing of cormorants in order to protect hatchery smolt releases (see last week's *Coastal Notes*). HB 3185 was amended to provide a "hazing period" limiting the time such hazing could occur to a period between the release of the hatchery smolts and June 30 on rivers flowing into the Nehalem and Tillamook bays. In addition, the hazing project will be monitored by the ODFW and the results of the study will be presented to the 1991 Oregon Legislature.

PRIVATE SALMON HATCHERY MARKING BILL HEARD IN COMMITTEE (4-28-89)

Another bill sponsored by Representative McTeague was heard in the House Water Policy Committee last week. This measure (HB 2735) originally called for a 100% marking of privately-reared hatchery smolts. Upon hearing testimony on the bill, McTeague amended the proposal to provide for a 25% marking rate. Testimony before the committee demonstrated that geneticists-- like economists-- fall into a number of different "camps" when it comes to the central tenets of their discipline. The committee is reviewing this divergent testimony and has yet to decide what to do with the bill.

GILLNET BAN RECEIVES EDITORIAL SUPPORT (4-28-89)

Last week the Statesman Journal of Salem endorsed banning the spring chinook gillnet fishery on the Lower Columbia River. To those seeking a balance between sport and commercial fisheries the editorial demonstrates just how prone this issue is to misinformation and misunderstanding. According to the editorial, which was placed on the floor desks of every member of the legislature the morning it came out, "The bill has one goal: Let the people who are paying for the first class tickets sit in the front of the train".

The central flaw of this argument is the contention that Oregon recreational licenses pay for the spring chinook run. Their argument is akin to adding all fees and licenses from commercial fishing—crab, trawl, troll, gillnet, distant water, etc.—and claiming that commercial fishing pays for the spring chinook run. The editorial suggests these gillnetters could lease the fish traps from the state to catch these fish. What would these individuals do about their boats lying idle and losing value (although payments would still have to be made)? Could all of these fishermen use such traps? Is such a scheme even constitutional? (see a previous

article in *Coastal Notes*) Further, it is hard to imagine how they could derive as much income from trap fishing because these fish decline in quality as they proceed up the river. And what about the logistics of leaving Clatsop County and travelling to the Willamette Valley to run fish traps? And what about tourists who travel to enjoy the charm of "fishing communities" and working waterfronts?

In addition, the editorial asserts gillnetters only make a "fraction" of their income from the spring chinook run. That's simply untrue. In reality, for many, the spring chinook run constitutes 25% of their livelihoods. (OK, let's be fair, 1/4 is a "fraction", but it's doubtful if that's quite what they had in mind). In addition, this income comes at a time of the year when these fishermen have been unable to fish since November. As a result this cash goes directly to car payments, mortgage payments, and other essential items.

Representative Larry Sowa's assistant is quoted in the editorial, "I think they (the gillnetters) just don't think about it; they oppose it because they've always opposed to anything that affects them...They're just angry about any change". For this observer, it seems the editorial staff of the Statesman Journal and a few representatives of the recreational fishing interests are the ones that haven't thought this one through. (Thankfully, some representatives of the recreational fishing community have registered their dismay over these draconian proposals).

I hope recreational and commercial fishery interests can work together in the future to expand opportunities for both industries. They both have a lot more in common (such as environmental protection, banning high seas fish piracy, fisheries enhancement, fishery by-passes for dams on the Columbia River, better fisheries data-management techniques at the regional council level, etc.) than some believe.

CHARTERBOAT LEGISLATION: SB 671 (4-28-89)

SB 671 calling for charterboat operators to require liability insurance has been amended with the insurance requirement dropped from $1 million to $300,000. The bill is now on its way to the Senate floor to be voted on. SB 392 which contains a list of requirements for charterboat has been incorporated into SB 671.

FOLLOW THE BOUNCING BALL: HOUSE JOINT RESOLUTION 50 (4-28-89)

Tuesday evening of this last week the House Water Policy Committee conducted a work session on HJR 50 (see last week's *Coastal Notes*). HJR 50 seeks to establish a state "preference" for sport fishing (presumably at the expense of commercial fishery interests). This measure is part of a movement by some recreational fishing interests (see editorial in this issue). After little or no discussion, HJR 50 was voted out of the committee with a "do- pass" recommendation to the House Floor. The vote was 4-1. However, by the afternoon of the following day, the Committee chairman notified the Coastal Caucus he would re-open the HJR 50 issue and consider other measures that would balance recreational fishing interests with commercial fishing interests and seek expansion and enhancement of all of the state's fisheries. Among these measures include HJR 19 and HJR 42. Stay tuned for more details.

SALMON LICENSE BROKERING BILL PASSES HOUSE UNANIMOUSLY (5-5-89)

Representative Walt Schroeder carried the salmon brokering bill (HB3213) before the House floor this week. With no discussion the House voted 60-0 in favor of the bill. As an earlier discussion in *Coastal Notes* revealed, individuals who have taken advantage of the system are reaping large profits by brokering commercial salmon permits. In some cases these permits have changed hands as much as 7-10 times a year. The dilemma is that each time a permit is transferred, the new owners of the permit are allowed to increase the size of the vessel 5 feet. Therefore, as the permit changes hands, the size of the vessel often increases. Such a phenomenon has important implications for fisheries management due to the increase in effort associated with larger vessels. The bill would restrict the number of times such a permit can be transferred to once a year.

CORMORANT HAZING BILL FLIES THROUGH HOUSE (5-5-89)

This week **Representative Paul Hanneman's** cormorant hazing bill easily passed the House of Representatives. The purpose of the legislation is to protect hatchery smolts from bird predation as they make their way down three coastal rivers. After some good natured banter, HB 3185 received a 56-4 vote. Representative Tony Van Vliet of Corvallis (who is also a professor at Oregon State University) asked **Representative Hanneman** if he could explain the nature of cormorant "hazing". **Hanneman** assured Representative Van Vliet that the hazing process wasn't nearly as severe as the type of fraternity hazing so prevalent on college campuses these days.

NEGOTIATIONS WITH JAPANESE ON DRIFTNETS PROVE DISAPPOINTING (5-5-89)

National press reports of the outcome of State Department negotiations with the Japanese on high sea driftnets underscore the need for continuous pressure to be applied to the U.S. Congress on this issue. According to the Associated Press the following agreement was reached:

* 32 observers will be stationed aboard the Japanese fleet (out of 400 vessels);
* an increase from four to five Japanese patrol boats will operate in the Northern Pacific to monitor their fleet;
* stiffer Japanese penalties for their ships illegally driftnet fishing (going above the "squid line");
* marking of nets so the owners of the nets can be identified;
* a ban on the high-seas transfer of fish between Japanese trawlers and freighters, which carry the fish back to port.

The press report stated the Japanese government flatly refused to allow transponders (satellite tracking devices) on their vessels. According to AP the Japanese response was "take it or leave it".

Late last week I drafted a letter on behalf of the Coastal Caucus to Secretary of State James Baker urging that such transponders be the central demand in our negotiations with the Japanese. The use of this cost efficient and effective technology seems to be the best way, for the time being, to control illegal fishing. The letter also suggested monitoring should only constitute an interim step on the way to a total prohibition on these fisheries. After the AP report on Thursday, however, modification of our message was clearly needed. Early next week, a revised letter expressing the Coastal Caucus views will be sent to Secretary Baker. Copies of the letter (and House Joint Memorial 12) will also be sent to the Governor, key members of Congress, the Oregon Congressional Delegation and others. Please continue to be active!

HB 3336 PASSES SENATE FLOOR 48-12 (5-26-89)

Readers of *Coastal Notes* who are following the fisheries enhancement legislation may be pleased to hear that HB 3336 (formerly SB 41) finally passed the Oregon House on May 18, 1989. The bill was carried on the House floor by **Representative Paul Hanneman** and supported by Representative Larry Sowa, a key player in this bill process. The final vote was 48 in favor and 12 opposed.

The bill underwent a crucial change when it was before the Ways and Means Committee. HB 3336 was transformed from a six-year program to a two year program. There are pros and cons to this development. The good news is that ODFW will have to really get things moving before the next legislature because future appropriations to the bill will be contingent on their progress. The bad news is that HB 3336 will have to be re-argued during the next legislative session.

The major problem with a two-year program is that two years does not really provide the amount of time necessary to evaluate the program. Even under the best of circumstances, the fish will still be out at sea when the Legislature reconvenes. By then the only thing legislators may be able to remember is the flack they received from increased user fees. In addition, since the Legislature is loathe to raise taxes, there is a trend toward utilizing user fees. One can expect some citizen or user backlash from these fees.

No matter how many assurances folks are given that fee increases will be used strictly for fishery

enhancement purposes, there are a number of people that believe the fees will go toward buying ODFW a building in Portland and other empire-building acts. This widespread suspicion underscores the fact that ODFW has their work cut out for them if they are ever going to improve public opinion of the agency's work.

HOUSE WATER POLICY REVIEWS STURGEON BILLS (5-26-89)

On Thursday evening, May 25th, the House Water Policy reviewed several bills, two of which were related to sturgeon (HB 2984 & HB 2985), and one to private salmon hatcheries (HB 2735). Of major consequence, a last minute effort to re-insert statutory sturgeon moratorium language was defeated in Committee. See next week's *Coastal Notes* for a more detailed report on this subject.

HB 3336 LEAVES SENATE COMMITTEE UNCHANGED (5-26-89)

In one of the more interesting work sessions yet this year (HB 3336 seems to attract this kind of behavior), HB 3336 - the fisheries enhancement program - left the Senate Agriculture and Natural Resources Committee program. Like the salmon, the new program is meant to enhance. HB 3336 - which was spawned in the Senate Agriculture and Natural Resources Committee in the first place under the name SB 41 - returned to tthe Senate Agriculture and Natural Resources Committee after a long upstream journey in the House and the Ways and Means Committee.

The committee members were aware of the bloodbath that resulted during the first Senate Agriculture and Natural Resources Committee hearing on the bill (see an earlier *Coastal Notes*). Despite these unpleasant memories, some old wounds were reopened again. Senator Fawbush (D- Hood River) wanted to know why the bill had been changed from a six-year program to a two-year program. After receiving what he must have considered to be an unsatisfactory explanation, Fawbush started a movement in committee to change HB 3336 back to a six-year program.

The trouble with returning to a six-year program is that it had been determined in Ways and Means that lottery monies would not be committed for six years, only two. Therefore, supporters of the bill did not want to boost user fees for six years without the financial partnership that state lottery dollars represent. Moreover, it became apparent to the original supporters of HB 3336 that a two-year program would provide incentive to the enhancement board, ODFW and the Fish and Wildlife Commission to get the program off the ground and keep internal bickering to a minimum.

Senator Fawbush insisted on changing the program back to a six-year program. Fawbush kept saying that lottery monies had nothing to do with HB 3336. While technically correct, in reality one of the major features of the HB 3336 process was the "partnership" that would be formed among commercial and recreational fishermen (who would pay the increase fees) and the people of the state of Oregon (who would devote a share of lottery fees toward fisheries enhancement).

Some members of the Committee followed Fawbush perhaps believing that if two-years is good then six years must be better. The committee voted 5-2 to do so. Only **Senators Bradbury** and **Brenneman** voted no! Fawbush said, "What's the matter with you coastal people?", "I'm doing this for you," he explained. **Senator Bradbury** threw up his hands and hastily went for more coffee. **Brenneman** looked up in disbelief.

At this critical moment **Representative Hanneman** (who had been monitoring the hearing in his office) came down to the hearing room. The committee requested **Hanneman's** insights into the matter since **Hanneman** had played one of the major roles on this bill in Ways and Means. **Hanneman** explained the situation in great detail. Following his remarks, the committee quickly reversed their position and voted 7-0 to return to a two-year program.

Senator Kerans (D-Eugene) wonderously asked **Hanneman**, "How was it **Representative Hanneman**, that you were able to appear at that crucial moment?" **Hanneman** smiled and informed the committee that due to the wonders of technology, he had been listening to the committee upstairs in his office on the monitor. As the laughter subsided Chairman Springer likened Paul's appearance to that of the "Supreme Being". More lengthy and pronounced laughter followed and Springer gaveled the work session closed.

For technical reasons, HB 3336 now goes back to Ways and Means and will be quickly sent to the Senate Floor for vote. Following what is expected to be a positive vote of the bill in the Senate, HB 3336 would then go to Governor Goldschmidt for signature. Since this was the Governor's bill in the first place, we

all may have finally got a fisheries enhancement program. But, based on the history of this bill, this observer wants to see the ink dry on the Governor's signature before he really believes it.

FISHERY BILLS UPDATED (6-9-89)

HB 3336, the Fisheries Restoration and Enhancement Program passed the Senate floor by a 20-8 vote on Friday, June 9th.

HB 2735, the salmon hatchery marking bill, passed the House floor easily with no debate on Friday, June 9th.

HOUSE WATER POLICY ACTS ON STURGEON AND AQUACULTURE BILLS(6-2-89)

As promised in last week's *Coastal Notes*, the following describes actions taken late last week by the House Water Policy.

With respect to HB 2735 (the hatchery salmon marking bill), in the face of enormous scientific uncertainty, the Committee finally gave up trying to find the proper level at which salmon should be marked (to determine stray rates). Instead, the Committee agreed to defer to ODFW and let them settle the issue by rulemaking.

With the other bill relating to sturgeon, HB 2985, the Committee decided to provide a moratorium on the issuance of sturgeon hatchery permits but approved the continued operation of present permit holders (however, the Oregon Fish and Wildlife Commission can issue a permit if the purpose of the hatchery would be purely for scientific or educational purposes). In addition, the bill now requires the Fish and Wildlife Commission to monitor the operation of privately operated sturgeon hatcheries and the general condition of the sturgeon resource and to submit a status report to the next Legislative Assembly.

ANOTHER ATTEMPT TO BAN GILLNETTING IN THE LOWER COLUMBIA? (6-9-89)

Rumors began to circulate late this week that another attempt to ban gillnetting in the Columbia River might be underway. As discussed last week in *Coastal Notes*, the end of the session is upon us. Therefore, all bets are off except one - expected the unexpected! The Legislature isn't much fun this time of the year. Gutting and stuffing bills becomes the rule rather than the exception. Everyone is on an "hour" notice that a work session could be started up and action could be taken on a bill. As a result, it is all too easy to miss something vital to your interests as a result. In fact, in the House there is even a "half hour" notice.

As a symptom of the increased tension, yesterday on the Senate Floor one senator tried some fancy parliamentary strategy to free a bill from a committee to the Senate floor for a vote without support from the committee. Based on Oregon's strong committee system, this is a highly unorthodox thing to do and entirely runs counter to standard operating procedures. Reportedly, one senator tipped off President Kitzhaber and the strategy was defeated. During the exchange on the floor things got really hot. This is highly unusual since the Senate is usually sedate. After a tirade by the one senator trying to move the bill a very influential senator requested that the Sergeant of Arms seize and remove the Senator! Unbelievable!

This is not the same institution it was even a week or two ago.

HB 3219 (SPRING GILLNET BAN) PASSES HOUSE WATER POLICY COMMITTEE (6-16-89)

This week I observed just how unpredictable the state legislative process can be during the last weeks of the session. On Monday, June 12, 1989, when House Water Policy was reactivated, Representative McTeague tried once again to eliminate the spring chinook gillnet fishery from the lower Columbia River. McTeague, who has dedicated himself to removing gillnetters off the Columbia River, joined with Representative Dix and Representative Dwyer (chair of the House Water Policy Committee) in passing the "ban the gillnetter bill" out of Committee. Only Representatives Pickard and Norris (both Republicans from Eastern Oregon) voted against the measure and have initiated a minority report. (See "Quote of the Week"

for **Representative Hanlon**'s response.)

Minority reports are often issued when there is strong disagreement in committee over the content of legislation. The purpose of a minority report is to provide an alternative to the original bill. Once a minority report is issued, the original bill becomes the "majority report". Minority reports range from being entirely different from the majority report to being nearly identical with the majority report. Minority reports accompany the majority report to the floor and are debated and acted upon sequentially.

In this case, Representatives Norris and Pickard proposed to use SB 896 (see earlier issues of *Coastal Notes*) as the minority report. Under SB 896 (which has already passed the Senate), the issue of Columbia River gillnet fisheries would be analyzed along with other fisheries issues involving Washington and Oregon by a Joint Interim Legislative Committee. Supporters of the SB 896 process have maintained all session long that getting state legislators up to speed on these complicated regional issues and industries during the interim (when they can focus their energies) would provide the most effective means to resolve these complicated resource policy issues. Therefore, with the minority report, once the HB 3219 gets to the House floor, the legislators will have the option of choosing between a study of the issue versus a potential ban of a commerical fishing industry.

As the work session proceeded, Representative Dix asked McTeague why he wouldn't accept SB 896 as an alternative to the ban called for under HB 3219. McTeague angrily responded, "We've studied this issue to death", and argued that the time was right to get those boats off the river. McTeague was not going to be denied. He was going to push for HB 3219 and those in the Committee would have to go on the record as opposing or supporting the ban. Dix tried to reason with McTeague explaining to McTeague that under HB 3219, without the state of Washington adopting the same policy, Oregon fishermen would be put out of work while Washington fishermen continued their gillnet fishery.

McTeague offered several amendments to HB 3219 at an attempt at compromise. McTeague proposed that gillnetters be removed from the river every other year instead of a complete ban on the fishery. In addition, to lower the fiscal impact of the bill (thereby keeping it away from the unsupportive Ways and Means Committee that might keep the bill from reaching the House floor) McTeague dropped the section of the bill that would have authorized ODFW to trap spring chinook for commercial sale. Perhaps it also occurred to McTeague that creating a commerical fishing arm of ODFW would create some problems? McTeague amended the bill so that ODFW would only lease fish traps to the highest bidder (the preference for Clatsop County residents was dropped).

Further, and very importantly, HB 3219 also seeks to establish a legislative policy that favors recreational fishing - presumably at the expense of commercial fishing. This was a battle McTeague already lost once before this session when his attempt to push for the adoption of HJR 50 instead of HJR 19 (see a previous issue of *Coastal Notes*) was stalled.

McTeague asked for a vote on HB 3219 and his amendments. Only McTeague voted for them. Immediately following the vote, Dix offered his own amendment to HB 3219 that would prohibit the bill from becoming law until the Washington State Legislature passed "similar" legislation. Again, only Pickard and Norris voted against the proposal.

During the work session Representative Dix played a critical role. Dix, who at the age of 32 has already achieved the status of House majority leader and has successfully cultivated a reputation for being a politically sophisticate, appears to have wanted it both ways. First, by supporting HB 3219, Dix could send a message to some of the more partisan elements of the recreational fishing community that yes, it might be time to re-evaluate the use of gillnets on the Columbia River. Many believe Dix ultimately plans to run for statewide office. Perhaps it occurred to Dix that he should support the recreational fishing community.

However, Dix may not fully appreciate the fact that the recreational fishing community is highly diverse. Many moderates in that community believe much more good can be accomplished on behalf of the resource if commerical and sports fisheries join forces - not go to war with each other. The spirit of the recently passed HB 3336 (the fisheries enhancement bill) illustrates this more positive approach.

You could tell that while he wanted to make hay with sportsfishing, he didn't seem to want to anger other powerful interests in the state including the entire North Coast. Therefore, when McTeague denied Dix the opportunity of taking the SB 896 route, Dix chose to go along with McTeague but offer the Washington Legislature provision as a means to water down the political fallout from such a bill. This past winter the Washington Legislature went through this bruising debate and efforts to establish a recreational fishing

priority failed. It is difficult to predict the future success of such a bill. It's hard enough to get a handle on what's going on around here.

Again, for this observer, this skirmish is a classic case of imprecise drafting done on the run. "Similar" to future Washington state legislation? How similar? Does similar mean identical? Does similar mean a little alike? Does similar include the other sections in the bill including the year-on year-off language and the preference for sport fishermen? All of these questions and more were left dangling.

We may have an ugly floor fight to look forward to. In any event, it appears there is not much support for HB 3219 in the Senate and the Governor opposes the bill.

CORMORANT HAZING BILL STALLED IN SENATE COMMITTEE (6-9-89)

The cormorant hazing bill (HB 3185) is one of those pieces of legislation that is very easy to misunderstand. Without an adequate explanation about the bill's limited scope and the scientific study that accompanies it, the bill sounds bad (frightening birds). In fact, the mail that has been arriving at a number of legislative offices has been decidedly against the bill. As a result, given this lopsided reaction based on an incomplete understanding of the bill, the safe thing for a few politicians here is to oppose the bill. After all, just saying no to a measure to harass wildlife is far easier than explaining the details of the bill.

As a result, Senator Springer, chairman of the Senate Agriculture Committee, has delayed any action on the measure. Several others on the committee have also expressed their reservations. With some probing, however, it seems that those opposing the bill are really not aware of the full scope of the bill. Therefore, those supporting the bill hope that with a little timely education, there may be an opportunity to at least hear the bill in the Senate Agriculture Committee.

In defense of those holding up the bill in the Senate, there is so much going on at this point in the session that it is hard to focus very much attention on new bills (although it's done all the time). In addition, there was so much attention paid to getting the bill through the House that more of the mail in favor of the bill should have been directed at key Senators - like Springer. Instead, there was a flood of mail in support of the bill going to **Representative Paul Hanneman** (the chief sponsor). Copies of some of that favorable mail has been forwarded to Springer's office. Even so, the Senate is a very different body than the House. As a result, just because the bill sailed through the House, the more liberal Senate might resist the bill even if it gets out of committee. More next week on this issue.

HOUSE PREPARES FOR BLOODY FLOOR FIGHT OVER GILLNET BAN (6-23-89)

Last week was all quiet on the gillnet ban front (HB 3219). The "conceptual amendments" offered during the previous work session on the bill (see last week's *Coastal Notes*) linking the bill to further action by Washington State, were issued. However, in last minute wrangling, it appears that the House Water Policy will have to re-open to formally adopt those amendments. Presumably, that will happen early next week. Once formally adopted, the bill will probably move to the House floor for consideration.

Therefore, until the amendments hit the floor, participants in this war are in the eye of the hurricane - it was stormy when HB 3219 was brought back from the grave, its quiet now, and the storm will rage again when the bill hits the floor. Behind the scenes phones are ringing of the hook in various House members offices, campaigns have been initiated, "vote counts" by lobbyists continue (each side trying to narrow the number of uncommitted voters down and then to pressure them) and other subtle and overt means to pressure legislators are underway.

CORMORANT BILL WATERED DOWN BY SENATE RULES COMMITTEE (6-23-89)

The salmon marking bill (HB 2735) inched its way to the Senate Floor last week in the Senate Rules Committee. (Senate Rules, you might ask? It went to that committee because it was one of the only committees open). Since there were several Senators in that committee that did not appreciate the idea of harassing cormorants, the cormorant hazing program was reduced to a hatchery study program.

The bill now merely asks ODFW to review a number of their hatchery practices to see how the survival

rate for smolts could be improved. No additional budget was appropriated for the study. Even though ODFW received a large budget this session, there are no guarantees that ODFW will really do anything substantive in this area. They have been accused of dragging their feet for years and this bill appears to be another invitation to delay. There may be other means to push them, however, especially under HB 3336. It can be expected that hatchery practices may be a major concern of the enhancement board established under the bill.

The other part of the original bill - the salmon marking provisions - also was subject to a protracted debate (rare at this stage of the session) on the substance of the state's hatchery policy. The discussion centered on whether private hatcheries should be on "an equal footing" with state hatcheries and STEP projects, or whether the state should exert special control over private hatcheries. A compromise was fashioned based on some technical considerations of the differences in brood stock used in private versus public hatcheries. Therefore, with respect to those key differences, the committee approved more stringent controls over private hatchery practices.

In other action before the Senate Rules Committee, the Sturgeon bill, HB 2985, was moved to the Senate Floor with a do-pass recommendation.

FISH FIGHT ON THE HOUSE FLOOR: GILLNET BAN SOUNDLY DEFEATED(7-7-89)

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

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

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

At the heart of the argument against banning gillnets is the proposition that there is no immediate environmental emergency that would compel the Legislature to act hastily on the issue. The salmon runs for the Willamette are in good shape and improving. Therefore, opponents of HB 3219 felt that it was premature to take such action especially since there were so many lingering scientific uncertainties affecting those industries.

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

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

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

Discussions continued how or whether to block consideration of the bill. One possibility was there could

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

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

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

Representative Norris, the carrier of the minority report, argued against a gillnet ban. Norris said that he had spent a long time looking at this subject and concluded that both sides have a lot of good arguments. Therefore, Norris reasoned, the best approach would be to adopt the minority report with its study to separate fact from fiction in this issue.

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

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

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

The votes and process are described below, the numbers of major steps are provided to help track the action: (1) The motion to suspend the rules and to substitute the minority report for the committee report; 41 Ayes, 18 Nayes. Next, (2) the vote on the substitution itself; 51 Ayes, 8 Nayes. Then, (3) since the minority report had advanced to the first reading, it needed an immediate second and third reading to officially pass the House floor. On voice vote the minority report went to third reading. Then, (4) Representative Larry Sowa moved that the minority report be moved to Ways and Means, which meant a sure death for the proposal! That motion failed. Then (5) McTeague moved to table the bill. That motion failed. And then, (6) with all parliamentary options exhausted, the vote mercifully ended the debate. Like a long prize fight that had finally come to a close, the House adopted the minority report study concept by a 47 to 5 margin.

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

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

In the end, since there was a certain amount of confusion following the floor debate, the decision was

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

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

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

HB 2986: SURVIVES CLOSE CALL AT THE END OF THE SESSION (7-7-89)

HB 2986 had a number of transformations during the session. The bill started out early as a means to require additional marking of recreationally caught fish. Then criminal sanctions were stuffed in (a friendly stuff) to provide for vandalizing STEP projects. Then, even later, a license lottery system for several fisheries including gillnets was added.

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

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

HB 3336: GOVERNOR HOLDS SIGNING CEREMONY AND PRESS CONFERENCE
(7-7-89)

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

...OFFSHORE...

One can expect some legislative initiatives on state ocean planning activities taking place under SB 630 after the Oregon Ocean Resources Management Task Force completes its plan. In particular, the areas of offshore exploration permitting or development moratoria and the creation of special management areas could become subjects of legislative action. Considering the confusion over a ban of exploration and development in the closing weeks of the 1989 session and federal initiatives taken by the Department of Interior, these issues are likely to receive attention during the next session. In addition, because the SB 630 process sunsets, some re-evaluation of the role of an ocean planning task force will be inevitable.

With respect to oil spill prevention and cleanup legislation, one can anticipate more action on that front next session even though there were several oil spill bills enacted in the last session. There are two reasons further work on necessary oil spill legislation can be expected: (1) existing legislation will almost certainly need to be fine tuned, and (2) adjustments will be needed in state law to bring state law into conformity with new federal legislation currently being fashioned in the U.S. Congress. In addition, the Coastal Caucus should continue to take an active role in promoting the adoption of a credible state and national cleanup response program.

There may be additional legislation next session if the prospect for federal offshore development continues to inch closer. These issues are, however, federal in nature and therefore the Oregon Legislature's ability to influence these federal policies is understandably limited.

Oregon Coastal Notes Articles Regarding Offshore Development Issues

A STRONG AND CLEAR ROLE FOR LOCAL GOVERNMENTS IN DECISIONS ON OCEAN RESOURCE POLICIES AND PROJECTS (3-3-89)

Staff of the Ocean Resources Management Task Force have recently released a paper on the subject of *Ocean Governance and Resource Management*—one of the first plan elements to be considered by the Task Force. OCZMA is a statutory and active member of the Task Force.

SB 630 requires the Task Force to prepare recommendations for a permanent ocean resources planning and management process that includes options for an advisory body to succeed the Task Force, advisory committees, the roles of the Governor, state and federal agencies, local governments, citizens and other interested parties.

The findings and plan policies, approved in concept by the Task Force at its recent meeting in Coos Bay, calls for the creation of an Ocean Policy Advisory Council administered from the Office of the Governor. The Council would provide a discussion and resolution forum, advise the Governor on ocean policy issues, advise the State Land Board and state agencies, establish project review panels and committees, and coordinate with adjacent states.

One cited plan policy states: "Local governments shall have a strong and clear role in state decisions on ocean resource use policies and projects." Suggested needed actions to accomplish this policy include:

•local government representation on the proposed Ocean Policy Advisory Council by the Oregon Coastal Zone Management Association, Inc., a county commissioner or elected city official from a coastal jurisdiction, and a representative of a coastal port district.

•participation of affected coastal communities in specific project review through membership on the appropriate Project Review Panel.

•by legislation that creates the Advisory Council, creation of a special local government consultation procedure that requires the Governor to formally request the views, recommendations, and comments of local governments on specific policies and projects which are likely to have onshore or nearshore effects. Coordinated counties and cities responses to the request require a formal response from the Governor. And if the Governor or a state agency rejects the recommendation of the local government it must provide a written justification to the local government before a decision is officially adopted.

The Task Force is scheduled to meet in Newport on March 10 and consider, among other items, the management of living marine resources. *Oregon's coastal local governments are fundamental participants in the Oregon Ocean Resources Management Program. New and better mechanisms are required to ensure their full participation.*

SB 896: THE LEGISLATURE CONSIDERS FORMING A JOINT INTERIM FISHERIES COMMITTEE (3-30-89)

A hearing was held this week in a subcommittee of the Senate Agriculture Committee on a bill sponsored by **Senator Jeannette Hamby** (Hillsboro) that proposes to form a joint Legislative Committee on Fisheries. Like most interim committees, the Joint Legislative Committee on Fisheries would conduct its business during the interim between the end of this session of the Legislature and the start of the next session. The Joint Legislative Committee on Fisheries would be made up of five members of the House and four members of the Senate and would also be assisted by an advisory committee comprised of non-legislators.

The goal of the Joint Legislative Committee on Fisheries would be to evaluate how state policies regarding food fish management policies can be modified to promote how both commercial and recreational fisheries benefited. SB 896 directs that the following issues be addressed by the Joint Legislative Committee:

(1) evaluate the economic contribution of the recreational and commercial fishing industries to the state of Oregon; (2) evaluate public and private food fish enhancement programs; (3) recommend how the states of Oregon and Washington can work together to improve commercial and recreational fisheries; (4) evaluate the present and future importance of aquaculture; (5) evaluate the importance of the preservation of the lower Columbia River gillnet fishery; (6) evaluate the economic, cultural, nutritional, and aesthetic importance as a means to protect the interest of the fish-consuming public; (7) evaluate the methods to boost public participation in fisheries management; and, (8) evaluate mechanisms that would promote an ongoing rapport among state legislatures in the Northwest.

Sound like a good idea that's long overdue? Not according to the initial testimony from Harry Wagner of the Oregon Department of Fish and Wildlife (ODFW) and Ken Jernstedt of the Oregon Fish and Wildlife Commission. Among other things, both individuals were concerned about the "scope" of such studies. They also felt that there was plenty of information and studies already available. They also stated their relations with the State of Washington were just fine and that the fisheries are in good shape.

Then **Senators Hamby, Brenneman** and **Bradbury** hit the roof. "What do you mean? You don't want us lumbering around in your fisheries?", asked **Senator Brenneman.** "What could possibly be wrong with some key legislators learning more about fisheries and making better informed suggestions to the next Legislature?" inquired **Senator Bradbury**. Then, in her closing remarks **Senator Hamby** forcefully echoed Brenneman's and Bradbury's sentiments.

Watching the show one couldn't help get the impression that even if the members of the Committee had opposed SB 896 before the hearing (which they didn't), after the hearing they would support it out of principle. The next day informal communications from ODFW were apologetic in tone.

OIL SPILL LEGISLATION (4-7-89)

With the tragic oil spill in Prince William Sound and the possible repair of the Exxon Valdez in Portland, the issue of oil spill legislation took on a renewed sense of urgency. Two complementary bills are before the legislature, SB 1038 and 1039. SB 1038 requires those transporting oil or hazardous material to establish evidence of financial assurance in the event of spills. Under SB 1038 a ship over 300 gross tons must have at least $1 million dollars or, $150 per gross ton of the ship. Funds are to be used for actual costs for removal of spills of oil or hazardous material; civil penalties and fines imposed in connection with a spill; and reimbursing the state for damages to natural resources. This bill would also direct DEQ to notify port authorities when a carrier does not comply with these bonding procedures. Once a Port is notified the Port is required to suspend the privilege of operation of the ship in the waters of the state. Finally, SB 1038 established a schedule of civil penalties for those held to be in violation of the act.

SB 1038's companion measure , SB 1039, directs DEQ to develop an interagency response plan and strategy of oil and hazardous waste spills. Such a plan must include a compilation of maps (including DEW computer mapping technologies); and index of relevant oil spill federal and state agencies and contractors that provide clean up services; a responds strategy and provisions for documenting the costs of cleanup: and

proposal to foster inter-state cooperation including joint coastal and ocean information systems with adjacent states. Much of this planning and scientific data gathering activity would blend nicely with current efforts to fashion a state ocean plan. STATUS: The committee took no action on SB 1038 and 1039. Further negotiations and information gathering is taking place. Committee staff believes further hearings on these proposals will be scheduled following these negotiations.

OCEAN RESOURCES (4-7-89)

There are tow bills that would have an impact on Oregon's ocean planning effort. First, SB 882 would remove the rulemaking requirement of LCDC under Goal 19. This provision is one of two "housekeeping" amendments to SB 630 passed in the last session. The effect of this measure is that a deadline for rulemaking (which turned out to be too ambitious) is removed. Therefore, rulemaking would occur after the ocean management plan was finished instead of at a pre-determined date. SB 1152 proposes that Oregon's state agencies coordinate their activities with the state of Washington to the maximum extent practicable. An element of the act is the provision which directs state agencies to develop a common computerized mapping system with Washington. Some have noted such a project could cost up to half a million dollars. It is interesting to note that despite SB 1152's potential fiscal impact, at this time the measure does not have a referral to the Ways and Means Committee. STATUS: Both bills will be heard before the Senate Agriculture and Natural Resources Committee on April 10, 1989.

SB 896 AMENDED IN SENATE AGRICULTURAL AND NATURAL RESOURCES COMMITTEE (4-28-89)

The Senate Agriculture and Natural Resources Committee acted on SB 896 this week. The original version of SB 896 proposed to establish a joint interim committee on fisheries. The new version only creates a joint interim legislative task force. This difference affects the number of staff to be hired and the number of meetings the group would undertake (less staff/less hearings). The scope of the task force's activities would still be quite broad. However, in the amended version of SB 896, additional emphasis has been placed on the review of inter-state fisheries issues.

When the hearing began, amendments were proposed that would have installed a representative from the Governor's office on the task force. When Senator Jeannette Hamby (the chief sponsor of this bill) heard of this change, she requested the subcommittee reconvene on SB 896. The committee agreed and reopened the work session on the bill.

What followed was a good-natured discussion of SB 896's original intent that the task force or the committee be exclusively legislative in nature. **Senators Bradbury, Brenneman** and Springer respected her wishes and re-amended the amendments to take the Governor's representative off the task force. Further action on SB 896 is scheduled to occur in the full Senate Agriculture and Natural Resources Committee next week on Tuesday.

OIL AND GAS DEVELOPMENT MORATORIUM LEGISLATION TO BE ANNOUNCED NEXT WEEK (5-19-89)

After the Exxon Valdez incident and the Washington state Legislature passed their own oil and gas moratorium legislation, a number of members of the Oregon Legislature have begun a scramble to initiate an Oregon version. The content of the bill is yet to be determined but the overall purpose is to prohibit oil and gas development in state waters.

In a sense, the bill may be either premature or unnecessary, because under SB 630 passed last session, any such development could not proceed before a comprehensive ocean plan is completed. While far from completing this very complicated plan, the Oregon Ocean Resources Management Task Force has adopted a draft policy statement that "Oregon will not permit oil and gas exploration and development within the state territorial sea." However, a legislative moratorium does provide a new wrinkle to the process. A press conference on the bill is scheduled for May 22, 1989 at 9:30 a.m. in the Capitol.

STATE-FEDERAL PLACER TASK FORCE MEETS (5-19-89)

The second meeting of the newly formed State-Federal Placer Task Force will be held at the Inn at Otter Crest, Otter Rock, Oregon, on May 24-25, 1989. OCZMA is providing the hors d'oeuvres for the May 24th no-host ice-breaker.

The Task Force was formed to evaluate the possible economic and strategic importance of the black sand placer resources which contain chromium, titanium, and gold and examine environmental aspects of development. The Task Force first met in October 1988. Black sand placer resources are nearshore deposits of heavy minerals that have been concentrated by wave and current action. The meeting is open to the public and all are welcome.

There is a strong State-Federal partnership on the Task Force. Oregon Task Force members are Don Hull, Portland, state geologist, and Task Force co-chairperson; Jeff Kroft, Salem, marine minerals manager for the Division of State Lands; Don Oswalt, Salem, coastal plan analyst for the Department of Land Conservation and Development; **Jay Rasmussen, Newport, Executive Director of the Oregon Coastal Zone Management Association**; and Richard Starr, Newport, fisheries biologist for the Department of Fish and Wildlife.

Federal members of the group are Lisle Reed, Los Angeles, regional director of Minerals Management Service and Task Force co-chairperson; Ed Clifton, Menlo Park, geologist with U.S. Geological Survey; Tom Hillman, Spokane, geologist with U.S. Bureau of Mines; Brad Laubach, Herndon, Virginia, geologist with Minerals Management Service; and Russ Peterson, Portland, field supervisor with the Fish and Wildlife Service.

SENATE BILL 1038 (Oil Spill Cleanup Legislation) LEAVES SENATE AGRICULTURAL COMMITTEE (5-19-89)

Early in the legislative session and well before the Exxon Valdez catastrophe, the Senate Agriculture and Natural Resources Committee introduced two companion bills relating to oil spills — Senate Bills 1038 and 1039.

Of the two companion bills, SB 1039 emerged from the Committee first and seeks to establish oil spill cleanup plans for the entire Oregon coast. As hearings on SB 1039 and discussions concerning bringing the stricken Exxon Valdez to Portland revealed, the Department of Environmental Quality only has oil spill recovery plans for the Columbia River, Yaquina Bay, and Coos Bay. This fact is remarkable considering the volume of tanker traffic off Oregon's coast. Until SB 1039 goes into effect, therefore, there are no oil spill recovery plans for the rest of the Oregon Coast. Apparently, Oregon has been terribly lucky.

As Gail Achterman (Governor's Assistant for Natural Resources) told OCZMA members at our meeting last Friday in Salem, when there was a minor spill in Yaquina Bay, the spill was successfully contained largely due to the Yaquina Bay plan. Despite the fact that the plan had not been practiced, according to Achterman, local officials were still able to pull the plan off the shelf, contact the right people, and quickly get things moving. Events like the Exxon Valdez and the Yaquina Bay oil spills underscore the need to have a plan that centralizes authority and maps out a course of action.

The other bill — SB 1038 — has had a much more rocky road through Committee. SB 1038's policy is quite simple: to require those transporting hazardous cargoes in state waters to provide up-front assurances that those carriers will be able to provide for cleanup costs and other costs related to compensating the state for lost natural resources in the event of a spill. Federal law on this subject is woefully inadequate. As such, SB 1038 proposes to increase financial security requirements to $1 million dollars.

In fairness to the bill's critics, earlier versions of the bill were flawed. Clearly, more up-front consultations may have avoided the need to keep re-scheduling hearings (but legislative committee staffs have a lot of business to attend to). Criticisms focused largely on unclear statutory definitions such as what constitutes "hazardous waste". As critics of the bill argued, any commodity over a certain volume constitutes a hazard (the bill was later narrowed to include only oil in bulk and not bunker oil used to operate the vessel). Another major problem with the original bill were ambiguities concerning how such a bill would have been implemented; in other words, the original SB 1038 was unclear on which state agency and

individuals would have enforcement responsibilities.

However, resistance by some lobbyists to SB 1038 took on a very unflattering tone as the senators and committee staff struggled with the bill. A fleet of shipping operators, pilot representatives, and port officials expressed their anxiety over the bill. Playing on the inherent complexities of admiralty law and their industry, they portrayed the bill as unworkable. It seemed their primary motives were to maintain competitive advantages with other ports to avoid taking responsibility in these matters.

As I sat through these hearings and heard their public commentary I believe I came to understand the mentality that led to the Exxon Valdez disaster. I was particularly galled by an indiscreet comment made one row behind me in the audience by a lobbyist who turned to his colleagues and said, "We'll just have to kill this bill over in the House"! Considering the events in recent months and that a nearly identical legislation recently passed the Washington State Legislature unanimously, I believe the remark was not only mean-spirited but politically naive.

In the end SB 1038 left the Committee for the Senate floor with the following elements: the bill closely matches the state of Washington's bill; the maritime pilots of these vessels will bear the responsibility for checking to see that a standard form certifying insurance coverage is on board the ship; DEQ will be responsible for conducting follow-up investigations once a maritime pilot notifies DEQ of the lack of such certification; and DEQ will undertake rulemaking to clarify these investigatory procedures.

GOVERNOR AND LAWMAKERS SUPPORT OIL AND GAS DEVELOPMENT BAN FOR STATE WATERS (5-26-89)

On Monday morning before a packed press conference at the Capitol, Governor Goldschmidt, Representative Ron Cease (chairman of the House Environment and Energy Committee), House Majority Leader David Dix and Senate Majority Leader Bill Bradbury announced new legislation that would ban oil and gas development and exploration in state waters.

Governor Goldschmidt stated that it was, "Nothing new for Oregonians to stand up and be counted on protecting the Oregon Coast" and reminded the audience of earlier coastal conservation measures undertaken by his predecessors. The Governor restated the Oregon priority for renewable resources (found expressly in Goal 19) and asserted this new legislation takes this policy a step farther by framing it in statute. This way, argued Goldschmidt, the State Land Board will not have the discretion to evaluate oil and gas exploration and development plans for the territorial sea (Oregon's 0-3 mile share of the outer continental shelf).

Governor Goldschmidt informed the crowd that Oregon's prohibition of exploration and development in the territorial sea is part of a broader initiative undertaken with Washington Governor Gardner to influence the Department of Interior and their plans to open the Northwest to offshore oil and gas development. "I signed a letter yesterday asking for an indefinite delay of Interior's plans to develop the offshore region of the Northwest", stated Goldschmidt. "As a result of the work of our Ocean Resources Management Task Force, we have identified highly sensitive areas of the continental shelf that we feel should be deleted from development plans" he stated and continued by saying, "At every turn Interior has ignored our recommendations". The Governor also noted that Oregon took Interior to federal court and lost and tried other consultations and those talks failed to budge Interior's hard line.

The Governor drew attention to the fact that almost all of California and Florida's offshore areas have been temporarily removed from Interior's development agenda. The Governor stated there must be something "peculiar" about these areas because somehow they were set aside but the Northwest is still up for development. Goldschmidt angrily asserted, "This stinks of the worst kind of political deal!" The Governor hopes he can convince the Secretary of Interior to come out to Oregon and see the coast for himself before he makes up his mind. In this regard, the Governor also noted that the new director of the Minerals Management Service (a key office in Interior that guides scientific studies relating to OCS development) is an ex-oil executive from Midland, Texas. Goldschmidt expects the director to realize eventually that Oregonians and other Americans may have a different view of OCS development.

A member of the press asked about the practical effect of this new legislation, "In the event this legislation didn't come along, Governor, would you and and other members of the State Land Board approve oil and gas development in state waters?" Goldschmidt appeared to choose his words carefully in saying,

"We would have been disinclined to act positively on such a plan". He reiterated his view that this new legislation removes potential for such a decision out of the State Land Board's hands. At that point Goldschmidt shifted gears and remarked that if it came down to having a role in an Interior decision to lease 6-10 miles off the Oregon coast, "I'd rather sit down with the Feds and negotiate to make sure such development does not take place in a sensitive area than not participate and have them drill in a sensitive area."

Another question came from the press, "Does the Oregon Congressional Delegation have the clout to get the Northwest removed from development in the way California did?" Goldschmidt responded he would never make the mistake of underestimating the influence and abilities of our delegation. **Senator Bradbury** responded by informing the press that it was Congressman Les AuCoin - with his control of Interior's budget - who played a pivotal role in removing California from Interior's development agenda. Therefore, said **Bradbury**, he was optimistic that AuCoin could do for Oregon what he did for California. At that point Goldschmidt strongly interjected that, "Until this man who keeps saying he is an environmental president (President Bush) starts acting like it, we cannot rely on trust in these matters!"

On a lighter note, someone asked the Governor, "From a political science perspective, hasn't the rest of the country always treated Oregon like a colony by using the state as a source of raw material, and realistically, can we expect that relationship to change?" The Governor smiled, bashfully looked down at the floor and said, "Well, I don't know, I'm just a shoe salesman". After the laughter subsided the Governor responded more seriously by explaining that due to certain provisions in the U.S. constitution regarding navigational provisions (which bear on the Columbia River) and the amount of federal forest land in the state, "Clearly, we are not Nebraska". Goldschmidt stated that the Northwest Outer Continental Shelf and other areas of the state contain valuable national resources - not just state resources - and that many of these natural resource issues (like old growth) must be resolved at the federal level in the context of a national debate.

Senator Bradbury aptly remarked that enacting a state oil development and exploration moratorium legislation is "the easy part,". **Bradbury** (the sponsor of the last session's landmark ocean planning legislation SB 630) further stated that the real action is the effort to turn around the Department of Interior (which controls the outer continental shelf from three miles out to 200 and in specialized cases beyond 200 miles). **Bradbury** explained the institutional forces driving the federal government to lease were nearly overwhelming since offshore oil and gas revenues constitute the second largest contribution to the federal treasury after personal income taxes.

Representative Dix noted that federal offshore oil development would only create 60 jobs in the state. Dix compared that figure with the $241 million and 12,000 jobs fisheries create in the state. Dix also noted that from a national security perspective, best estimates indicate that off the Northwest there is only enough oil to supply the United States for several days.

Unfortunately, no matter how compelling these arguments against developing the Northwest may be, they are identical to those used back east in New England in the late 1970s and early 1980s when Interior put Georges Bank up for grabs (Georges Bank is undeniably one of the most productive fishing grounds in the world). Despite the marginal returns and the high risks associated with developing Georges Bank, Interior proceeded and leased that extremely productive and sensitive area. What spared New England from oil and gas development was that once exploration was underway, the results were disappointing to the oil companies (not the fishermen and coastal communities). The oil companies discontinued their efforts to develop Georges Bank only after it was clear there was not enough oil to justify the expense. Similar battles are currently being fought concerning Bristol Bay off the coast of Alaska and the Alaskan National Wildlife Refuge (although, in fairness to Interior, unlike New England and the Northwest these two areas potentially contain huge oil reserves).

Toward the end of the press conference a member of the press asked the Governor, "Aren't you by your actions today possibly overlooking an important source of revenue for the state?" "I hope so", Goldschmidt responded. Representative Cease (whose committee will introduce the measure) picked up where the Governor left off. Cease commented that, "Surely there will be costs, everytime we move to protect valuable resources as we have seen in the timber debates and other circumstances, it costs us something." Cease further explained, "That's why we have committees in the legislature to sift through all the arguments and make these tough decisions".

Later that day the Environment and Energy Committee amended SB 1152 to include the oil and gas development and exploration moratorium. Before its recent augmentation, SB 1152 merely established a directive to state agencies to pursue joint ocean management efforts with adjacent coastal states. However, because of SB 1152's appropriate relating clause, the bill was the best vehicle for the moratorium amendments.

Gail Achterman (the Governor's assistant on natural resources) testified that the legislative moratorium follows a similar recommendation by the Oregon Ocean Resources Management Task Force made two weeks ago. According to Achterman (who has been very active in the Task Force and demonstrated strong leadership on these issues since the Task Force began meeting in December of 1987), the Task Force has determined that the entire territorial sea is a highly sensitive area due to the amount of marine life, the volume of vessel traffic and the visual impact of such development. After Representative Cease questioned whether or not the moratorium (which he supports) was merely a political gesture taken as a result of the new climate against oil and gas development, Achterman responded, "This action is consistent with the policies established under the SB 630 process and Goal 19. This was not a black and white no, this determination was made only after careful deliberation by the Task Force following scientific efforts to evaluate the benefits and risks of development".

Achterman also argued that the oil development moratorium makes sense. "Since the determination was made by the Task Force that the nearshore area is just too sensitive to lease, why have procedures in statutes inviting people to apply for such leases?" Achterman explained, "Such statutes only takes up staff time and further, we believe it would be misleading to have these statutes remain in place if the state does not intend to consider such development". The committee acted unanimously to adopt the amendments and now the entire package is on its way to the House Floor.

OIL SPILL INSURANCE BILL (SB 1038) RECEIVES UNANIMOUS APPROVAL IN THE SENATE
(5-26-89)

The Senate voted 29-0 (one member excused) on SB 1038 this week following the Washington State Legislature's lead on their equivalent legislation. SB 1038 requires up-front proof of insurance coverage for those transporting oil on state waters. The measure still needs to be heard before a House Committee and on the House Floor but substantial support seems to be building for the measure (see last week's Coastal Notes). Lobbyists continue to maintain that the bill is flawed and that, if enacted as is, in the end we will all discover that SB 1083 is unworkable. Evidence of such unworkability will be that shipping operators won't be able to get insurance. I'm sure there will be plenty of opportunities to make these arguments when the bill goes to a House committee.

OIL AND GAS BAN FOR STATE WATERS WINS APPROVAL ON HOUSE FLOOR
(6-2-89)

In the Capitol these days there is a real sense that things are coming to a close. Committees are shutting down. One can see announcements pasted to bulletin boards concerning end-of-the-session parties. People talk regularly about their plans for after the session, and tempers seem to operate on a shorter fuse these days.

SB 1152 entered the House floor shrouded in this new climate. On its face, SB 1152 seems like a simple idea -- just say no to oil and gas development in Oregon's territorial sea. But considering the much more serious impact of federal OCS decisions and the unlikelihood that Oregon would have pursued oil and gas development in state waters anyway, some observers couldn't help but see a purely political side of the measure.

When SB 1152 came up for consideration on the House Floor it was the end of a long day. There had been the customary late morning floor session, but lately the House has been meeting with increasing regularity in the late afternoon as well. SB 1152 was the last bill on the day's agenda.

Representative David Dix (the House majority leader) carried the bill on the floor. Instead of a passionate explanation of the bill (his usual style), Dix hurriedly read a prepared statement with little

feeling as if to expedite the process so the House could break as early as possible. Dix unemotionally read his litany of reasons why he supports an oil and gas ban (the environmental risks and the lack of jobs such development would provide Oregonians).

After he was through **Representative Paul Hanneman** rose in opposition to the bill. Unlike most speeches on the House floor where members conduct other business on the floor and one almost has to shout to be heard, for this one you could hear a pin drop. As I sat next to **Hanneman** I'm sure I knew what they were thinking, "Why in the world is **Hanneman**-- a coastal representative, boatbuilder and commercial fisherman opposing this bill"?!! Under no illusion that he would be able to defeat the bill, **Hanneman** started by saying that while he is not in favor of state oil and gas development in the territorial sea, he opposed SB 1152. His principal reason was because the Legislature had already addressed these issues last session when they enacted SB 630. Further, **Hanneman** asserted that the hastily created oil and gas ban was more a political knee-jerk reaction to the Exxon Valdez situation than a well thought out response to these complex issues. **Hanneman** alluded that members of the House more routinely concerned with coastal matters would understand his position. **Hanneman** explained the SB 630 process to the other members of the House and asserted that the House may be undercutting the work of the Task Force.

Representative Tom Hanlon followed **Hanneman's** remarks and stated the other set of arguments (see Gail Achterman's comments in *Coastal Notes* last week) that the Task Force had recently voted on a similar ban of offshore oil and gas development. Hanlon explained his vote in favor of SB 1152 would be issued with the belief that SB 1152 and the SB 630 process were complementary -- not contradictory. **Hanlon** noted that while there were serious technical flaws in the bill, these could be worked out in a conference committee. Representative Cease (chairman of the Environment and Energy committee which issued the amendments of SB 1152) echoed Hanlon's thoughts and added that he was well aware of the fine work of the Task Force and the importance of SB 630.

Then things started to get ragged. Representative Bill Markham (a crusty well-liked veteran of the House and warrior on behalf of the state's timber interests) stated in angry terms that he thought the bill was "ridiculous". "I don't know why we don't stop here, let's ban timber and field burning while we're at it!" Markham expounded. "Why in the heck are we only allowing scientific research out there, what good is research when you can't do anything with those resources?" Markham finished by saying that SB 1152 was incredibly "anti-business".

Representative David Dix (who earlier had been so casual) responded to Markham's attacks. "This is not just a response to the Valdez!!!" "We know that rigs create pollution", Dix explained. Dix recounted the horrible state of the environment off the Gulf of Mexico (where oil and gas development has been underway for decades) and other rig-related disasters. As he spoke, the tone and volume of Dix's rhetoric rose. "Anti-business you say", countered Dix, "As former Governor Tom McCall stated, "We don't have to chase every smokestack to establish an economy in Oregon" (As an aside, I have noticed during my tenure at the Capitol that when in doubt, politicians quote McCall. A similar phenomenon exists at the federal level where when in doubt, politicians quote Jefferson).

The firey Dix continued, "Are fishing and tourism not businesses"? "Have we forgotten how much of the state's resources are being devoted to tourism"? Dix asked, "Are tourists going to come to Oregon to look out their hotel rooms at drilling rigs?"

Markham responded to Dix's high volume oratory by asking the Speaker of the House whether the Legislature should abandon microphones in the House and just issue megaphones. After nervous laughter subsided Speaker Katz cautioned the House that there were still many days left to go in the session and that "we all have to keep our cool".

The vote was 38-15 in support of SB 1152. All of the coastal representatives except for **Hanneman** voted for the bill.

It appears that some federal agencies have already acted strongly against the theme of SB 1152. At the Placer Minerals Task Force meeting the previous week on the coast (when the word that a ban was being issued), reportedly, federal officials had an "I told you so attitude". They felt that SB 630 was in effect being repealed. This confirmed their paranoia that Oregon was never serious in the first place when they enacted the bill. In addition, serious problems exist regarding the minerals section of SB 1152. An impossible threshold for mineral development may have been innocently worked into the bill. Again, the conference committee will have the opportunity of correcting these flaws.

However, as **Hanneman** warned the House, SB 1152 will have its costs. If the Legislature is not careful, it could worsen relations with the feds and cost us research money desperately needed to pursue environmental studies.

OCEAN TASK FORCE WORKS ON SPECIAL MANAGEMENT AREAS

Legislative Action on Offshore Oil & Gas Stirs Discussion (6-9-89)

While the concepts of Oregon's ocean stewardship area and special management areas were the main items of discussion at the June 8 meeting of the Ocean Resources Management Task Force in Salem, earlier Task Force action on oil and gas and the subsequent fall-out occupied some Task Force interest.

Oil and Gas Revisited

Task Force chairperson Gail Achterman noted that Paul Vogel and several other Task Force members had brought to her attention the problem of how actions of the group are perceived. The Task Force's preliminary adoption of a policy against offshore oil and gas exploration and development in the state's Territorial Sea, had been seized upon by some legislators to establish an oil and gas moratorium in bill form (SB 1152) that quickly passed the House (see last week's *Coastal Notes* report on floor debate on SB 1152). Vogel expressed concern that not only was the legislature and others jumping to conclusions but that Task Force members must recognize and distinguish their representative roles from that of the Task Force in general.

The concern of legislative preemption of SB 630 and the Task Force was echoed by Neal Maine of Clatsop County, a Task Force member and public school teacher. Maine expressed his district's concern that they were supporting his participation—to the tune of $3,000—as a policymaker while decisions were being made by others, i.e., the Legislature.

Achterman acknowledged that, in testimony for her boss—the Governor—on SB 1152 she had erred in not making the distinction clear between her role in expressing the Governor's views and her role as Task Force chairperson. One could easily mistake the two and asked for Task Force understanding. Secondly, she cautioned, all members and staff must be careful in explaining Task Force activities. And finally, that the Task Force would be making its final recommendations after all areas had been considered, the entire package reviewed, discussed and adopted by the Task Force for public hearings, and, after subsequent hearings and further deliberations, adoption of the plan. Then the final recommendations will be forwarded to the Land Conservation and Development Commission for adoption.

With an expressed feeling that the last of the legislative preemptions on ocean management issues was passed —with the Legislature near adjournment— the Task Force moved on from this "shot across their bow." But not before instructing staff to clearly identify all generated materials as representing preliminary draft material — subject to change.

In a carry-over from a previous Task Force meeting on oil and gas, the Task Force also agreed to include, for consideration when adopting final policies for public review, the following so-called "minority" report:

Oregon will not permit oil and gas development or exploration that significantly adversely affects the ecological integrity and beneficial uses of marine waters within the state Territorial Sea. Research for the public domain would not be excluded by this policy.

This will be considered against the existing and much publicized policy statement that reads: "Oregon will not permit oil and gas exploration and development within the state Territorial Sea."

Defining Special Management Areas

While the concept of special management areas was generally endorsed, there was considerable debate and wonderment over exactly what they were, how they would be drawn and what they would accomplish. Are they exclusion zones? Do they include identified mineral development areas? Since management abhors a vacuum, are they precursors to further management by another agency? Task Force staff had identified five specific management area types:

•ocean research natural areas;
•marine parks;
•rocks, island and reef protective areas;
•Heceta-Stonewall Banks; and, the
•Gorda Ridge National Research Reserve.

After considerable deliberation, staff was asked to rework this section. There was a very strong consensus that, whatever special management areas are designated, the Task Force wants to review the corresponding mapping before making a final decision.

OREGON CONGRESSMAN FAVORS OIL AND GAS DEVELOPMENT IN THE NORTHWEST (6-9-89)

The current issue of Sea Technology Magazine (a monthly publication devoted to offshore technology development, especially offshore industries such as oil and gas and defense contractors based in Northern Virginia) reported this month that Congressman Denny Smith (a Republican from District 5, which includes a large portion of Benton, Clackamas, Linn, and Polk counties) is in favor of oil and gas development in federal waters off the Northwest. Denny Smith made his remarks in a luncheon speech before the National Ocean Industries Association (NOIA) in Washington D.C. NOIA is the major lobby group for ocean industries in the country representing well over 100 large corporations (and smaller outfits). The American Petroleum Institute is a major player in this organization.

According to Sea Technology, Smith told his NOIA audience that there would be a great deal of confusion about the issue due to the Exxon Vadez disaster and Northwest oil and gas development on the federal outer continental shelf (noting that the Alaska calamity was a tanker spill, not a blowout from a production platform). Given the current climate in the state that generally opposes offshore oil and gas development, Smith's position appears unique for a political figure in the state. I am unaware of any other politician that publically favors such development. Since Congressman Smith does not have any coastal constituents, Smith might not be familiar with the heated opposition such development has engendered.

SB 1039, OIL SPILL RESPONSE PLANNING PASSES HOUSE AND SENATE UNANIMOUSLY (7-7-89)

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

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

SB 1152: OIL DEVELOPMENT MORATORIUM BILL FINDS ROUGH GOING IN THE END (7-7-89)

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

Oil company lobbyists exercised damage control through the entire process. Their aim was to limit the scope of the moratorium. First, they sought to have the Oregon ban sunset or expire in 6 years like the bill recently passed by the Washington Legislature. The oil companies also wanted exploration to proceed because it was economical to do so when those efforts were being conducted in the region. Industry officials tried to convince the conference committee that many exploration methods do not have any substantive

negative effects to the environment. One lobbyist warned, "How can I turn around and go to my people (the oil companies) and try to convince them to have work done in the Portland shipyard or act upon other opportunities in Oregon when you are sending them such a negative signal?"

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

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

HB 3493: OIL BILL PASSES HOUSE AND SENATE FLOOR UNANIMOUSLY (7-7-89)

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

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

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

...WETLANDS...

Senate Bill 3 can safely be called landmark legislation. However, SB 3 only represents a first step towards wetlands reform and management. The next important step will be the rulemaking process conducted by the Division of State Lands (DSL) under SB 3. Following rulemaking, the logical progression would be a "Son of SB 3". That is, unlike SB 3 (most of which only deals with procedural elements of the law), the son of SB 3 could seek to extend the geographic scope of wetlands protection beyond what are currently categorized as wetlands. Under such a scenario, wetlands protection would encompass land and land use practices in upland areas that merely have an effect on wetlands.

This new legislative initiative may undertake the long overdue burden of spelling out in statutory terms what constitutes compliance with Goal 5 (Goal 5 is the goal calling for natural resources inventories). At present, to a large extent, counties and municipalities have been left on their own to address Goal 5 requirements. The result has been that different communities have taken entirely different approaches to the Goal with varied results. Some have taken the Goal seriously. Other communities have proceeded with comprehensive planning paying little or no attention to Goal 5. Since an overhaul of Goal 5 would entail re-thinking major substantive natural resource policies in the state, consensus on such legislation might be much more difficult

to achieve than it was to agree on the content of SB 3 - and SB 3 was no picnic!

In addition, a real wild card in the wetlands issue is what the Federal Government plans to do with wetland issues in the next year or two. Under the Bush Administration, clear signs of a tough new federal approach to wetlands have emerged. As recently as five years ago it would have been hard to believe that the federal government would embark on such a tough environmental program with such far reaching consequences. However, President Bush has declared there will be "no net loss" of wetlands in the United States. It is difficult to imagine how this policy can be applied evenhandedly across the remarkably diverse geographic regions of the United States. For instance, special circumstances exist in the state of Louisiana where 40 square miles of wetlands vanish each year due to a variety of reasons related and unrelated to development in wetlands. Surely, these types of unique geographic conditions will challenge the ingenuity of state and federal officials charged with the responsibility of implementing the "no net loss" policy.

At this point in time only several observations can be made with any certainty: (1) an aggressive federal approach to wetlands protection and restoration (yes, even retroactive application of "no net loss" back to the late 1970's has been pursued and continues to be an option for the federal government) could cost Oregon millions of dollars by making development in the state more difficult and costly; (2) there would be advantages to establishing "mitigation banking" systems for areas that haven't undertaken such an initiative to provide a means for local and county governments to face these new tough wetlands issues; and (3) one way or another, federal regulatory activities should have a profound impact on future state legislative and state agency wetlands initiatives.

Oregon Coastal Notes Articles Regarding Wetlands Management Issues

STATE WETLANDS MANAGEMENT: CHANGES BEING CONSIDERED (2-10-89)

Botts Marsh. Sound familiar? No, Botts Marsh is not the latest Stephen King thriller. Rather, Botts Marsh is the leading test case that has come to symbolize the state of Oregon's wetlands management system. As such, due to the importance of wetlands to the coastal environment and the headaches development in wetlands present to local and state officials, *Coastal Notes* will feature a series of articles on this complex subject. This first article briefly describes the history of wetlands protection. Next week's article will take a first cut at looking at how the current system operates (the laws and the state and federal agencies involved). A future article will focus on the content of reform measures as well as the prospects for new state wetlands legislation.

To some degree Oregon has been in the business of regulating wetlands since 1961 when concern over removal of gravel from Oregon's rivers sparked the passage of the Fish Spawning Gravel Act. The act was broadened in 1967 to include removal of fill generally and the Division of State Lands was placed in control of the program (previously the Fish Commission and the Game Commission jointly ran the program). Then, in 1972, the Oregon Legislature further amended the act to include the regulation of fill in estuaries. It is interesting to note that both these state measures predated federal initiatives in this area.

Enter the Feds. In 1972, Congress enacted the Federal Water Pollution Control Act, or, as it is more commonly known, the Clean Water Act (CWA). Like all federal statutes, since the CWA focuses on the same problems addressed by these two state statutes, the CWA preempted these two Oregon statutes and therefore Oregon must follow federal law. A principal feature of the CWA is Section 404, which directs the Army Corps of Engineers to establish a permit program to regulate dredging and filling activities for the nation's waters.

For the first five years of the program the Corps largely ignored section 404 by narrowly applying section

404 only to "navigable waters"-- which as a practical matter means only the nation's rivers and bays. The Corps' reluctance to undertake the 404 program is understandable. After all, for most of their history, the Corps had been responsible for maintaining the nation's waterways and building and running large hydroelectric projects. Then, suddenly, in 1972 with the 404 program, Congress casted the Corps in the highly unaccustomed role of being an environmental watchdog!

The Corps' reluctance to assume this new role led to litigation in 1975 and further Congressional action in 1977 to amend the CWA. As a result, with the 1977 amendments to the CWA, Congress clearly established that wetlands protection is an integral part of the 404 permit program-- whether the Corps liked it or not.

At this stage things become more complicated. First, under the CWA, Congress divided the authority to regulate dredge and fill activities between the Corps and the Environmental Protection Agency (EPA). Again, under the act the Corps has the responsibility to issue permits and to enforce the program. However, the CWA also directs EPA to develop guidelines-- called 404(b)(1) guidelines-- that determine the standards for selecting WHERE dredge and fill materials will be placed in the waters of the United States.

In addition, the U.S. Attorney General ruled in 1979 that EPA has responsibility for construing the term "navigable waters" and for making interpretations of the scope of the 404(f) exemptions under the act. Included among these exemptions are: "normal" agriculture, forestry, or ranching, the maintenance of dikes, dams, breakwaters, causeways, and some other activities. Furthermore, in addition to these siting guidelines, the EPA also has the authority to veto Corps permit decisions if the EPA determines the use of a particular site to dispose of dredge material has an "unacceptable" impact on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreation areas.

As if that were not enough oversight, under the CWA, the Congress also requires several other "resource agencies" (such as the Fish and Wildlife Service and the National Marine Fisheries Service) to provide the Corps with feedback on how a proposed activity affects their agency's interests. This feedback and comments from interested parties, state government and other sources constitute part of a "public interest review" process. Under this system the Corps is directed to balance the benefits of a proposal against the reasonably foreseeable costs of a proposal. The upshot of this system is that when making such determinations, the Corps must rely on highly subjective cost/benefit analyses and what is very often self serving commentary from interested parties.

The goal of this public interest review process is clear-- to bring as much information from effected interests and agencies to bear on 404 permit decisions and to try to ensure that federal agencies don't work at cross purposes. While in theory that makes a lot of sense, one effect of this process is that the Corps must always look over its shoulder to ensure its actions are in line with EPA and other agencies. As a result, the Corps looses flexibility. From a state's perspective, then, at times the Corps may appear to bully state and local governments.

Next week we will take a closer look at the Botts Marsh case to ascertain if, under the current system, developers in Oregon enter a twilight zone of uncertainty when they apply for a permit to develop on or near a wetland. Therefore, for those pushing for reform of the state's wetlands policy, this overwhelming sense of unpredictability constitutes the major flaw of the system-- not necessarily the concern that the program is too tough or lax.

BOGGING DOWN IN OREGON: THE TWILIGHT ZONE OF WETLANDS MANAGEMENT (2-17-89)

This article is the second in a series of articles devoted to wetlands management in Oregon. Last week's piece concluded that the sheer number of different federal agencies and statutes dealing with wetlands has promoted a system often criticized for its capricious process and uncertain results. To illustrate how this phenomenon manifests itself at the state and local level,we will briefly explore the Botts Marsh case.

Botts Marsh is located in the Nehalem estuary on the north side of the City of Wheeler. The project's applicant proposed to build a marina-hotel complex providing space for commercial fishing boats, sport fishing boats, pleasure boats and some year-round moorage space. In association with these facilities, the applicant anticipates building a boat storage parking area, a gazebo, an R-V park, a parking lot, a picnic area and a camping area. In addition to the marina, other pile-supported structures would include a

restaurant, public dock and a commercial fishery facility.

To achieve their goal, the developers propose to dredge approximately 270,000 cubic yards of material from Botts Marsh thereby creating a channel depth of 14 feet. To control erosion, the project would entail using 13,000 yards of rock riprap. The length of the proposed marina would be 2,660 linear feet of river frontage running north to south. As a consequence of this development, an estimated 23.1 acres of salt water marsh would be altered — the remnants of a defunct log pond. In order to mitigate the impact of the project, the applicant proposed to convert a nearby freshwater wetland of comparable dimensions into a saltwater marsh.

The applicant was successful in gaining approval of the project at the local level, through a rigorous "exceptions" process for Goal 16, Estuarine Resources. In addition, LCDC reacted positively to the proposal by acknowledging Tillamook County's comprehensive plan relating to the marina development. Litigation followed these actions and in early 1987, the Oregon Supreme Court gave its blessing to a lower court's decision backing LCDC's actions on the project.

Common sense would dictate that once an applicant got by the county planners, LCDC, the Oregon Court of Appeals and then finally the Oregon Supreme Court-- they would be in business. This, however, was not the case due to the federal 404 process (see last week's issue of *Coastal Notes*) which ultimately controls state action on wetlands.

During the period of time the Botts Marsh case was working its way through Oregon's legal and regulatory system the Corps had already advised the applicant they could not support the project unless the project was "substantially revised". Oregon's Division of State Lands (DSL) also expressed its reservations over the proposed development at Botts Marsh. For the DSL there are six "critical issues" facing development in an estuary stemming from a 404 review: (1) the public need/purpose of the project, (2) the extent of dredging and filling in a wetland, (3) whether there exists practicable on-site or off-site alternatives, (4) whether the project is "water-dependent", (5) whether any endangered species are found at the site, and (6) mitigation measures. By the time the project was denied by the DSL, Botts Marsh only passed one of these tests-- the public need test and that only because of considerable work by state agencies, the Governor's office and OCZMA.

Given this regulatory context, for Botts Marsh and for other projects considered by DSL the central challenge confronting the agency is to identify, those elements of a project that are: "permittable" by the State (which means permittable according to the Corps' 404 program and the EPA's 401 program), economically feasible, minimizes impacts, and that is acceptable to the owner.

Again, the Botts Marsh case typifies the regulatory difficulty when it comes to development in estuaries. In addition to those problems, a new set of problems are created for individuals striving to develop in freshwater wetlands. Principal among these issues are the elementary questions of what constitutes a wetland, and, how will an applicant know if their property is classified as a wetland. With respect to estuaries, this problem of identification is uncontroversial because it is usually apparent whether or not a piece of property borders an estuary. However, with a freshwater wetland--for instance, those wetlands behind the dike-- the issue of whether or not a wetland exists is far from clear. For the coast this problem is particularly nettlesome because a substantial number of coastal farms comprise or include acreage that was formerly a fresh water wetland or an estuary. The trickiest issue arises when a dike is breached (through a storm or neglect or on purpose) and a parcel of previously improved farmland quickly re-assumes the characteristics of a fresh or a saltwater wetland.

Those responsible for wetlands management are acutely aware of these problems and a great deal of the recent efforts at reform are aimed at establishing the means to compile an inventory of the state's wetlands. Such an inventory would take a lot of the guesswork out of current system which currently runs essentially on an ad hoc basis. Next week we will explore how such an inventory would operate and examine other changes proposed for wetlands management.

WETLANDS MANAGEMENT REFORM (3-3-89)

This third article on wetlands focuses on current efforts to create comprehensive wetlands legislation. Due to the number of substantive issues under consideration only a portion of the package will be reviewed

in this issue of *Coastal Notes*. An informational hearing on wetlands is scheduled for Monday, March 6 at 1:30 pm before a joint meeting of House Water Policy and the Environment and Energy Committees.

With respect to wetlands, the Division of State Lands (DSL) stands at the center of the Oregon's bureaucratic structure. DSL's mission is to assist the State Land Board which is made up of the Governor, the Secretary of State, and the State Treasurer. This unique arrangement in Oregon state government was established under the Oregon Constitution. The State Land Board's Constitutional mandate is twofold: (1) manage the state lands in a manner that best represents the state's interests, and (2) make as much money as possible for the state's common school fund. For the management of private wetlands, however, this twin objective provides little direction to the State Land Board and DSL. Rather, the Removal and Fill Act-- the state's version of the federal 404 program-- establishes the ground rules for state action on wetlands.

However, as previous articles in *Coastal Notes* demonstrated, the current management regime under the Removal/Fill Law has led to a number of acrimonious encounters among developers, local planners, and state agencies. The one thing everyone can agree on is that we don't need anymore Botts Marshes. How to accomplish that goal in a manner which makes developers, environmentalists, local government, state government, and different federal agencies happy is another matter. However, thanks to the herculean efforts of a number of individuals participating in a Wetlands Working Group sponsored by DSL, the state may be inching closer to (although some may interpret this as lurching toward) taming this unruly beast.

Perhaps the most important and elementary measure receiving wide support is the proposal to establish a statewide wetlands inventory. The inventory, which builds upon the national wetlands inventory, would provide a means to take a first crack at identifying wetlands BEFORE development proposals are initiated. The way things operate now wetlands are identified on an ad hoc basis following a request that bubbles up from the local level.

Therefore, the benefit of a state wetlands inventory is that it provides an early warning system to developers and planners. They can consult the wetlands inventory map and see if the property contains or constitutes what the state tentatively considers wetlands. There will be "red flags" all over the inventory map letting people know that the map is not conclusive. Keep in mind that just because their property is not classified as a wetland on the map doesn't mean they are home free. However, with the wetlands inventory the applicant at least will have an up front indication of where they stand. Presumably, this will lessen uncertainty for developers and planners.

Building a credible wetlands inventory will take some additional state resources. Fortunately, the Governor's office has indicated that they are solidly behind this effort and therefore individuals are feeling confident that the right people will be on the job to undertake this sensitive task.

What are some of the benefits gained from such an inventory? Developers benefit by reducing uncertainty in the development process. Local government is helped by knowing what areas of their community are problematic. As such, they can plan more realistically and efficiently in advance of conflict. In addition, the environmental community gains by having a systematic process where important wetlands are identified instead of a procedure that relies principally on government taking enforcement actions on an ad hoc basis.

Another central feature of the draft wetlands bill is the "general authorization" section. This measure proposes to streamline the development process by eliminating the need for lengthy review of certain "minor" projects. What constitutes a minor project would be determined later by rule by DSL. Under such an arrangement, those projects qualifying for the "general authorization" will not have to undergo the "individual permit" process. Hopefully, this measure will make the system more efficient and will allow scarce governmental resources to be diverted to more pressing needs.

Next week *Coastal Notes* will take on some of the issues in the comprehensive wetlands draft bill that remain unresolved. Among these include:

- What kind of agricultural exemption provision will emerge;
- What kind of review will DSL undertake for LCDC acknowledged estuary plans; and,
- What kind of notice provision will be used to ensure appropriate and timely review by DSL of locally-generated development proposals that effect wetlands.

WETLANDS BILL RECEIVES TITLE: SB 3 (3-17-89)

Introduced by Senator John Kitzhaber at the request of the Division of State Lands (DSL), this bill is the results of the Working Group's efforts captured before the latest changes ... changes that reflect the evolving nature of this subject.

The following is a description of those parts of the wetlands bill that are fairly uncontroversial:

STATE WETLANDS INVENTOR: The DSL will adopt by rule a State Wetlands Inventory. The inventory will be used to identify and delineate wetlands in consultation with city and county planning officials and affected state agencies. The inventory will utilize the National Wetlands Inventory developed by the U.S. Fish and Wildlife Service as a basis. The inventory provides an early warning system for property owners that their land may be a wetland or contain a wetland. Under the current system a great many wetlands are identified on an ad hoc basis as development requests are made. The wetlands inventory will be constantly subject to change as information concerning wetlands becomes available.

LOCAL GOVERNMENT COORDINATION: Under this section cities and counties are required to provide DSL notice of certain land use actions within wetland areas and the DSL is required to respond within 30 days. Local government will have to delay or condition approval of an application until an applicant: (1) gets a permit from DSL, (2) gets notice from DSL that a permit is not required, or, (3) receives notice that subsequent activities may require a permit.

WETLANDS CONSERVATION PLAN (WCP): Once a WCP has been adopted DSL will be required to rely on land use "needs" spelled out in the acknowledged plan. The WCP will be required to include local measures for "related adjacent uplands" particularly for riparian areas and development sites. In addition, the WCP will be presumed to satisfy Goals 5 and 17 for areas and activities covered by the plan. Under the new wetlands legislation Goal 16 remains the standard for estuary plans and amendments. With respect to WCP approval, appeals, and amendments, WCP planning will be triggered by a local government request to DSL. DSL approval conditioned on adoption of local measures and such measures are to be adopted through the plan amendment process. Under the plan locals are required to notify DSL of post-acknowledgment amendments and DSL may revoke or modify approval if comprehensive plan changes are made.

GOAL COMPLIANCE: Goal 5 (the natural resources goal) remains in force. Wetland Plans are "deemed to comply" with Goals 5/17 for those "areas, uses, and activities" regulated by the plan. Therefore, the opportunity remains to challenge a WCP due to the failure to comply with Goal 5 for conflicting uses not addressed by the WCP. In addition, coastal shorelands are not considered part of the estuary plans except for shoreland parts of estuary development sites. Goal 16 remains the standard for plan amendments.

The remaining details of the wetlands package include the agricultural exemption and the section of the bill that treats acknowledged estuary plans. **A hearing is scheduled for March 28th although the final details on a package of amendments has yet to be agreed upon by the Working Group.** Hopefully, in next week's *Coastal Notes* we will be able to outline some near final areas of this extremely important issue.

WETLANDS EDGING CLOSER: OCZMA TO REVIEW FINAL AMENDMENTS (3-24-89)

The hearing on SB 3, the long-awaited wetlands bill, has been rescheduled for Thursday, April 13th before the Senate Water Policy Committee, at 8:00 a.m. in Hearing Room C of the State Capitol.

As previously mentioned in *Coastal Notes*, a package of amendments to SB 3 is still to be finalized. The printed SB 3 is an earlier version by the Division of State Lands' Working Group that was introduced to meet a filing deadline with an understanding that every effort would be made to ready a substitute package for consideration by the Legislature.

Recognizing that some changes may be in the making and anticipating an OCZMA worksession on this matter before the above mentioned hearing, we are highlighting some policy and definitions language cited in the March 17, 1989 draft. It reflects a partial snapshot; language on wetland inventory provisions, local government coordination, general authorization, wetland conservation plans, estuary plan review, agricultural exemption and on other areas is not included at this time in *Coastal Notes*.

Findings, Policy and Definitions

FINDINGS: [additions to SB 3]
(6) Wetlands provide significant opportunities for environmental and ecological research and education and provide scenic diversity and aesthetic value as open space and areas of visual enjoyment.
(9) There is disagreement over the uses of wetland sites.
(10)Uncoordinated regulation of wetlands by local, state and federal agencies cause confusion, frustration and unreasonable delay and uncertainty for the general public.

POLICY
In addition to ORS 541.610 it is the policy of the State of Oregon to:
(1) Promote the protection, conservation and best use of wetland functions and values through the integration and close coordination of statewide planning goals, local comprehensive plans, and state and federal regulatory programs.
(2) Use a single definition of "wetland" for the purposes of the state Removal-Fill law and statewide planning goals, and a single, uniform methodology of delineating wetland boundaries.
(3) Develop a statewide inventory of wetlands, based on uniform identification standards and criteria and at a scale practicable for planning and regulatory purposes, and to make such inventory available to state agencies and local government to facilitate better management of wetland resources and closer coordination of local, state and federal wetland programs.
(4) Create a stable and eventually increasing resource base of wetlands through the mitigation of losses of wetland resources and the adoption of the procedural mitigation standard used by federal agencies.
(5) Reduce the delays and uncertainty which characterize the current wetland planning and regulatory framework through improved coordination of the state Removal-Fill Law with local land use planning and regulation, and by providing mechanisms for expedited permit review consistent with the protection and conservation of wetland resources.
(6) Consider the relative values of uses that diminish or conflict with the natural functions and values of wetlands.
(7) Continue to meet the requirements of federal law in the protection and management of wetland resources, while asserting the interests of this state, in concert with those of local governments, in urging the federal resource and regulatory agencies to develop a uniform wetlands policy and more consistent, cohesive standards to implement Section 404 of the Clean Water Act.
(8) Develop and provide information to the general public concerning the functions, values and distribution of wetlands of the state to raise public awareness of these resources.
(9) Promote the protection of wetland values on private lands by developing and using public recognition programs, incentives and other non-regulatory actions.

ADDITIONS/CHANGES TO EXISTING DEFINITIONS:
1. ADDITIONS TO ORS 541.605
(_) "General authorization" means a rule adopted by the division authorizing a category of removal or fill or both activities without a permit from the division on a statewide or other geographic basis.
(_) "Mitigation" means the reduction of adverse effects of a proposed project by considering in the following order:
(A) avoiding the impact altogether by not taking a certain action or parts of an action;
(B) minimizing impacts by limiting the degree or magnitude of the action and its implementation;
(C) rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
(D) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action through monitoring and taking appropriate corrective measures; and
(E) compensating for the impact by replacing or providing substitute wetlands or water resources.
(_) "Waters of this State" amended to include "wetlands".
(_) "Wetland Conservation Plan" means a written plan providing for wetland management containing a detailed and comprehensive statement of policies, standards and criteria to guide public and private uses and

protection of wetlands, waters and related adjacent uplands which has specific implementing measures that apply to designated geographic areas of the State of Oregon.
(_) "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Postscript

Still to be added, at the request of OCZMA, is language that clearly holds-harmless any removal/fill permit request in an area not covered—for whatever reason—by a wetlands plan. The agricultural exemption provisions are still much debated and work may be needed on wetlands delineation. Wilbur Ternyik has accurately pointed up problems associated with the types and numbers of certain species of plants that are often considered indicators of a wetlands.

LAND USE LEGISLATIVE ISSUES (3-30-89)

In his articles on wetlands management, Onno Husing has given *Coastal Notes* readers a comprehensive background for developing an understanding of SB 3 and the important amendments to that proposal which will be presented by the Division of State Lands at the Senate Water Policy Committee hearing scheduled for 8 a.m. on April 13 at the State Capitol. The bill and amendments are the products of a lengthy series of working discussions between DSL staff and a select advisory committee off persons representing groups having important stakes in the future of wetlands management in the State of Oregon.

There are important issues for land use planning involved in this bill. Although DLCD has been ably represented in the DSL advisory committee discussions, and constructive bill improvements have resulted from DLCD suggestions, the impression remains that once again the State's land use planning program is being over-shadowed by the exigencies of regulatory responsibility.

Wetlands Management -- Regulation or Planning?

In crafting Oregon's response to the ever-increasing Federal presence in wetlands protection (Section 404 of the Clean Water Act), it would seem essential to give close attention and full consideration to the requirements and potentials of at least statewide land use planning Goals 3 (agricultural lands) , 4 (forest lands), 5 (natural resources), 9 (economic development), 16 (estuarine resources) and 17 (shorelands). It would also be important to consider the extensive and costly procedural requirements for adoption, acknowledgment, amendment and periodic review of local comprehensive land use plans.

Provisions in SB 3 and its amendments show some recognition of the need to closely coordinate wetlands regulation with land use planning in order to achieve fair and effective wetlands management objectives. However, the bulk of the provisions still show an excessive weighting toward the State's regulatory responsibilities as an adjunct to the weighty Federal interest.

Caught in the middle, as usual, is local government. Directly on the firing line at the zoning counter, yet lacking the financial resources to cope with the need for information and expertise, local jurisdictions experience ever-more difficult problems in attempting to respond to local property owner wetlands concerns.

Given the heavy emphasis on the importance of the statewide land use planning program, it would seem that a joint effort with equal responsibility between DLCD and DSL would provide an improved approach to the development of wetlands management legislation. This type of joint approach could also serve as a working model of the type of state agency coordination which is envisioned as the intent of the state agency consistency/coordination provisions of Chapter 197.

Yet another Land Use Bill

HB3384, sponsored by 10 Senators, and 28 Representatives, at the request of the Association of Oregon Counties, would require the Land Conservation and Development Commission to provide for any cost required to accomplish the changes necessary to local comprehensive plans and land use regulations if those changes are required as a result of the amendment of any statewide planning goal or rule adopted under a goal. While part of the continuing effort to reduce the fiscal impact of the statewide land use planning program on county government, this proposal would not appear to be very effective. In addition to goal and

rule changes, extensive changes in Chapter 197 itself since its original adoption in 1973 have piled substantial costs on local government as well. The question of the true costs and benefits of the State's land use program needs to be carefully and objectively research and reported.

OCZMA WETLANDS MEETING SET (4-7-89)

An enormous amount of work has gone into proposed legislation dealing with a number of difficult and often perplexing issues revolving around wetlands values and protection and their interactions with planning requirements and with other resource values and uses—including agriculture. An April 5, 1989 draft has been mailed by OCZMA to Association members as well as coastal county and city planning directors.

An Association worksession on this matter is scheduled for April 11, 1989 at 10 a.m. until 1 p.m. (with a working lunch) at the Hotel Newport (formerly the Hilton) in Newport. Ken Bierly of the Division as well as Vic Affolter of Tillamook County and Bob Cortright of the Department of Land Conservation and Development, members of the Division's Working Group, will be present to help explain the bill. Recommended time limits have been established in order that worksession participants can move efficiently through the bill.

The worksession will allow the Association to review that effort. Hopefully, after reviewing the language and after comparing what the legislation would accomplish to the situations that exist today, the Association can support this package. This issue will be before the Senate Water Policy Committee on Thursday morning, April 13, 1989.

On the subject of wetlands, a seminar entitled "Wetlands Determination and Delineation" has been announced for May 16, 1989 in Portland co-sponsored by the Oregon Division of State Lands and the Portland District of the Corps of Engineers.

According to the announcement, the purpose of the seminar is "to present training for wetland identification and delineation for regulatory purposes. The course will introduce the recently released Federal Manual for Identification and Delineation of Jurisdictional Wetlands." The announcement continues: "The seminar will address the criteria and procedures for wetland determination and delineation. Guidance for reporting determinations to the state and federal regulatory agencies made by consultants will be provided." Local government planners, consultants, agency officials, developers and real estate agents are elements of the targeted audience. The meeting will be held at Montgomery Park, 2800 NW Vaughn Street, in Portland and a registration fee of $3 is required.

SENATE WATER POLICY COMMITTEE HOLDS FIRST HEARING ON WETLANDS LEGISLATION (4-14-89)

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

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

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

WETLANDS OBSTACLES ARISE (4-21-89)

Hopes for a comprehensive wetlands bill this session continue despite difficulties in working out details through a consensus process.

The working group on amendments to the omnibus wetlands bill—Senate Bill 3—met this week in what proved to be a grueling session on detail and concepts. While it might be argued that some parties—the environmental community, in particular—brought new or substantially changed issues to the table when the process was seemingly moving towards closure, the bottom line is there is some faltering on major segments of the bill. Wetland conservation plans, estuary plan review and agricultural exemption are the principal unresolved sections.

Another meeting of the working group is slated for Monday afternoon, April 24 under the shadow of a scheduled second hearing on the bill before the Senate Water Policy Committee for the following morning. Of course, that hearing may be postponed.

The threat exists that after so much time and energy spent in getting the amendments to their present form, serious disagreements at this late date could lead to an unraveling of the concerted effort.

BOTTS MARSH ACTION RESUMES (4-21-89)

The Circuit Court judge in Tillamook County has ruled that the Division of State Lands (DSL) must issue an unconditioned fill and removal permit for the Botts Marsh marina harbor project at Wheeler on Nehalem Bay as requested by Vern Scovell, the project applicant. Scovell's project was included in the Tillamook County comprehensive plan, acknowledged by LCDC and upheld by the State Supreme Court on appeal. Indications are that the DSL will, for a variety of reasons, appeal the ruling. Should the state issue the permit, that action could be appealed by other parties.

Meanwhile, negotiations have resumed among Representative Paul Hanneman, the Governor's office, DSL, OCZMA and Scovell and his attorney, for the conduct of the second phase of the project design alternatives study which might allow the DSL to determine the outline of a project that is permittable. That outline would then be reviewed by the applicant and if acceptable, make moot further court action. The second phase would be organized and managed by the Portland consulting firm of Cogan-Sharpe-Cogan, which completed the Phase I study design for OCZMA last year.

Highlights of the Decision: The Court concluded that the DSL had failed to demonstrate that the requirements of the State's planning laws had been met. In summary the Court found that the position taken by the DSL is inconsistent with the requirement of coordination; the evidence established that DSL has failed to comply, both procedurally and substantively, with the goals; and the manner in which DSL wishes to proceed does not constitute compatibility with an acknowledged comprehensive plan as intended by ORS Chapter 197.

The ever-persistent issue of state agency consistency and compatibility occupied a portion of the decision. Part of the ruling was the judge's examination of ORS Section 197.180 (10) which was originally adopted as part of LCDC's rule on State agency coordination and then included in Chapter 197 by the 1987 Legislature. That section states in part, "a state agency may apply statutes and rules which the agency is required by law to apply in order to deny, condition or further restrict an action of the state agency or of any applicant before the state agency provided it applies those statutes and rules to the uses planned for in the acknowledged comprehensive plan."

DSL contended that this section allows it to apply the removal/fill law and rules absolutely and without restriction. However, the court emphasized that the provision require that the DSL's action be applied to the uses contained in the acknowledged comprehensive plan and that in this case those uses were included as a very detailed, site specific exception. The Court stated, "In light of the importance of the comprehensive plan, it is unlikely that the Legislature intended the proviso (provision?) in subsection (10) to permit an agency to proceed as the Division contends in meeting its compatibility requirement."

State Agency Coordination Status: Although the 1987 Legislature passed a bill requiring that all state agencies have their land use coordination programs prepared and approved by the Land Conservation and Development Commission by December 31, 1990, none of the major agencies have as yet submitted a program for DLDC review. That means that only 20 months remain for review of programs which must be

submitted by the agencies behind the acronyms: DEQ, ODFW, DOGAMI, EDD, DSL, DWR, DOT, DOE, DOF, DOA and others. It is hoped that these will begin to show up soon after the 1989 Legislature adjourns.

WETLANDS BILL RECEIVES SECOND HEARING (4-28-89)

The Senate Water Policy Committee reviewed SB 3 for the second time last week. Like the first hearing, the atmosphere of the hearing was entirely positive. A great deal of the time was devoted to a "walk through" of the bill for the committee by Ken Bierly of the Division of the State Lands (DSL). After Bierly's appearance, a number of others testified on the bill. Paul Ketchum (senior planner for 1000 Friends) opened up a few issues that had been resolved during the wetlands working group. Ketchum argued, "if the estuary plans are as good as people say, then those supporting them shouldn't mind them being subject to review". However, the working group had concluded that for coastal communities, it is important these elaborate estuary plans function as wetland conservation plans without protracted reviews. In addition, Ketchum also thought the DSL should not be bound by a local plan's expression of "public need" because there may be larger state public needs not addressed in local plans. The consensus approach, with the support of the Division had agreed that "need" was established by the local plan.

Several respresentatives from other counties (especially Benton county) were supportive of SB 3 but thought the bill does not go far enough because lingering uncertainties exist concerning the implementation of Goal 5 (the natural resources goal).

Concern was also expressed that local and county governments would be "saddled" with additional costs and there may not be the available expertise to comply with SB 3. In this regard, these individuals thought SB 3 wouldn't be a problem for cities like Portland and Eugene, but accommodations for other parts of the state could be necessary. Amendments were offered seeking to promote the aggregate industry creation of wetlands by making sure mining sites can proceed to be mined even though they begin to take on the characteristics of a wetland.

Directly after the hearing the wetland working group convened at the DSL offices for the last, final, final meeting. The loose ends of SB 3 were finally tied. The group agreed to maintain the high standards for review of the estuary plans. In return, coastal interests agreed with the establishment of a public information process in which an informational meeting would be held regarding these estuary plans. The results of these meetings would not be binding on DSL, but all agreed these meetings would be a useful means to raise important issues early in the development process.

The other crucial issue for the coast was the final agreement on the agricultural exemption provision. The issue of "intensification" of farm land use (in contrast with earlier discussions on "conversion" of wetlands to farm lands) was nailed down. It was agreed the definition of "intensification" of farm uses would be drawn from the Food Security Act which provides direction to the Soil and Water Conservation Districts. This provision would promote greater predictability for farmers and DSL on this important issue.

The next hearing for SB 3 is set for Tuesday, May 2, 8 AM in the Senate Water Policy Committee.

REPRIEVE ALLOWS FOR LAST MINUTE CONSENSUS: SB 3 LEAVES SENATE WATER POLICY AND HEADS FOR WAYS AND MEANS (5-19-89)

The word came down Monday afternoon that Senate President Kitzhaber (chairman of the Senate Water Policy and chief sponsor of the SB 3) was sick with the flu. Therefore, those gearing up on Monday and Tuesday morning at Coastal Caucus for the promised "last hearing" and work session on the wetlands legislation knew that the last hearing would probably not be the last hearing. Without Kitzhaber, sponsor of SB3, it was difficult to imagine how the bill could leave the committee.

As expected, on Tuesday morning at 8 a.m. when the Senate Water Policy convened, President Kitzhaber was home in bed. As a result, the committee could only run through a few more proposed amendments and chat about them. Senator Phillips offered the amusing observation that there had been 27 amendments offered during the hearings to this so-called "consensus bill". DSL Director Martha Pagel responded that it was a good thing SB 3 was a consensus bill, "Think how many amendments there would

have been if it wasn't". Phillips retorted, "I'm not being critical, I'll save that for later".

Those attending the hearing came away with the empty feeling of those who attend a rain-out of a big game. However, since most of the members of the Wetlands Working Group, including OCZMA director Jay Rasmussen, had come to the Tuesday morning hearing, DSL Director Martha Pagel requested that the group stick around the hearing room to attempt one last effort to achieve consensus. This tact seemed preferable to leaving it up to the Committee to pick and choose among the remaining proposed amendments (the remaining dispute centered upon elements of the wetland conservation plans and some provisions in the agricultural exemption). Believe it or not, after an hour and a half of intense negotiations, near consensus was reached! The final hang up was resolved the following day. Therefore, Kitzhaber's absence turned out to be fortuitous after all.

One of the key new ingredients is a change to section 11 7(b)(a) of the bill dealing with wetland conservation plans (WCPs). Based on the previous language, those formulating WCPs would have been in the position of determining which wetlands were of marginal value or of minimum value. Polarization over this issue occurred because environmentalists believed that such a determination would always be made in favor of development. Conversely, those interested in development and planning concerns generally saw this provision as a definitional nightmare in which fights over what constitutes a marginal wetland would never end. It was agreed that a more neutral and practical evaluation aimed at assessing the value of a wetland as it relates to the entire planning area — rather than an evaluation of whether a particular wetland is marginal or not— could resolve this impasse.

A part of this compromise package was the addition of a sub (8) to section 11 called the "recapture provision". It was agreed that DSL should still retain the authority to intervene in the development process if DSL determines that local governments are not living up to their end of the bargain in following through on conditioning permits. That why the term "re-capture"—not "capture". The other new agreement concerns the agricultural exemption section. The new language clarifies the meaning of the provision dealing with stock pond maintenance. Construction of farm and stock ponds have been deleted from the exemption. Maintenance and drainage of farm and stock ponds, however, remain exempted under the new amendments.

The Senate Water Policy Committee reconvened Thursday morning at 8 AM with the same crowd in the audience and with a smiling and obviously healthy Kitzhaber at the helm. He greeted everyone and told us how pleased he was that consensus had been achieved.

After a quick run-down of the new amendments the Senate Water Policy Committee voted 4-0 to move SB 3 to the President of the Senate's desk with the recommendation of a subsequent referral to the Ways and Means Committee. Ways and Means would have the opportunity to provide a supplemental appropriation to DSL to carry out the bill (assuming it passes the House). Due to the stratagem of moving SB 3 to Ways and Means, the leadership could elect to avoid sending the bill over to a House committee and have the bill go directly to the House floor.

For those who labored through these painstaking negotiations, these developments are occurring at a breathtaking pace.

SENATE BILL 3 STILL WAITING SENATE FLOOR ACTION (6-23-89)

In what can figuratively be referred to as a traffic jam, SB 3 (the state wetlands reform bill) is still languishing in the Ways and Means Committee where it is stalled along with a number of other bills. All indications are that the bill is not in trouble. SB 3 watchers just have to be patient. The Ways and Means Committee is continuing to digest all the legislation that must pass through that committee on the way to the floor of the Senate and the House.

While things wind down in other parts of the Capitol, the atmosphere in the corridor between the Ways and Means hearing rooms and offices has intensified. It's remarkable to do a daily accounting of what the committee spent. During the closing days of the session it's not unusual for the committee to appropriate several hundred million dollars a day with budgets like capital construction. Those who try to estimate when the session will end all watch Ways and Means closely because if things bog down there, the session will almost certainly drag on.

In addition, if budgets start failing on the floor of either the House or the Senate—as did the Justice Department's budget this week—that also pushes the date of the end of the session back.

PRESIDENT BUSH RESTATES HIS WETLANDS POLICY (6-23-89)

In a news report this week President Bush reiterated his "no net loss" policy for the nation's wetlands. In a speech before "Ducks Unlimited", the news report stated that Bush will be signing additional wetlands legislation. OCZMA will be following this issue carefully and will try to find out precisely what if any effect new legislation would have on wetlands issues in Oregon (since we are bound by federal law there will be some effect). Heavy handed federal enforcement in this region of the country has already marked the Bush Administration's approach. The best example of this new approach is the requirement that retroactive mitigation or restoration occur for fills that occurred in the late 1970's and early 1980's when the federal ground rules for wetlands were murky.

BOTTS MARSH PROGRESS MADE (7-7-89)

Efforts at resolving the Botts Marsh issue on Nehalem Bay continue at what seems to be glacial speed. Following numerous discussions with DSL and with the applicant and his legal counsel, the OCZMA director, Jay L. Rasmussen, has met with Martha Pagel of the Division and Diane Spies, the applicant's attorney with the following excerpts from the announcement stating where we are and where OCZMA's effort is going:

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

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

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

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

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

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

According to Scovell's attorney, Diane Spies of Lake Oswego, Scovell is willing to cooperate with the effort toward securing an economically feasible project at Botts Marsh for the developer and satisfying for the state, without compromising either party's legal standing. Garibaldi-area consultant Paul Benson will

work with Scovell in assisting Cogan Sharpe Cogan, OCZMA, and the state toward selecting engineering, hydrological and other special subcontractors.

...OTHER ISSUES...

PORTS

My only advice to those interested in port issues is that the coastal ports should get organized prior to the session - not during the session. Ideally then, the various ports would arrive in Salem next session with a pre-arranged consensus on how lottery monies and other state dollars dedicated for ports should be spent. For maximum effect, this consensus should include a regional port strategy designed to convince legislators that the state is not duplicating port facilities.

Further, ports and port communities must involve themselves early and directly in the current Economic Development Department (EDD) process of determining a future economic strategy for the state of Oregon. Decisions made during this process (which are scheduled to occur in the interim) are likely to have an impact on the Coast for years to come. The first draft of EDD's "Futures" report demonstrates the agency's disturbing lack of commitment to expanding Oregon's coastal facilities.

Oregon Coastal Notes Articles Regarding Other Issues

JUST INTRODUCED: PORT DREDGING FUND PROPOSED (3-17-89)

At the request of the International Port of Coos Bay, Senate Bill 1064 has been introduced. The bill would establish a general fund supported port dredging account and appropriates $10 million for "paying the state or local share of dredging costs in the deepwater ports of this state when payment of such a state or local share is required by federal law or regulation."

The bill limits the state funds to dredging activities that are carried out in the harbors and channels of the Ports of Astoria, Coos Bay, Newport and Portland. Further, when those funds are used, the Economic Development Commission can impose a user fee on the port or on the private terminal operator within the port that benefit directly or operationally from the dredging.

RECREATIONAL BOATING SAFETY: NEW STANDARDS OF LIABILITY? (3-17-89)

ORS 30.115 is known as the "guest passenger statute". For guests on recreational boats (and, incidentally airplanes), this statute means that in the event of injury or death aboard a boat, a guest can only recover damages from their host IF they can prove that the host was "grossly negligent" or that the injury was intentional. This "grossly negligent" standard of proof goes way beyond the normal "negligence" standard for most civil suits. Under the regular negligence doctrine, the "reasonable person under the circumstances" test is applied. In contrast, to pursue a claim under the "grossly negligent" standard requires the plaintiff to demonstrate showing of clearly outrageous behavior. This standard rules out compensation in a great number of boating accidents. The Senate Judiciary Committee is currently re-evaluating the "guest passenger" statute. The Committee is contemplating whether to change the standard from "gross" negligence or intoxication to simple negligence. Like many hearings on this subject matter, young widows are trotted out to tell gruesome tales of un-compensation and scoundrels getting off scot-free. Their plight is compelling. However, this debate (like all discussions involving the role of litigation in our society) goes beyond the suffering of particular individuals and encompasses broader social themes of whether all injuries or problems can or should be resolved in court. Would such a change lead to a proliferation of frivolous lawsuits? Would leaving the guest passenger statute intact deny well deserved

victims just compensation? Or, should some other resolution to the issue be pursued such as a compensation board that would remove these disputes from court (those disputes that don't entail gross negligence or intoxication) be more appropriate? Stay tuned for updates.

OCZMA OPPOSES I-5 RELOCATION, TRANSPORTATION COMMISSION RESPONDS
(3-24-89)

The attached resolution opposing the use of state and federal highway funds for the relocation of I-5 east of the Willamette River in Portland was unanimously passed by the Oregon Coastal Zone Management Association, Inc. (OCZMA) at its March 10th meeting in Salem. The signed resolution has been sent to members of the Oregon Transportation Commission and to the Governor.

NOW BEFORE THE Oregon Coastal Zone Management Association, Inc. (OCZMA), a voluntary association of coastal local governments sitting in regular session on the 10th day of March, 1989, is the matter of adoption of a resolution pertaining to the relocation of the I-5 Freeway in Portland;

AND IT APPEARING to the Oregon Coastal Zone Management Association that highway transportation is of vital concern to the Oregon coast; and,

WHEREAS consideration is being given to the relocation of a segment of the Interstate Freeway along the east bank of the Willamette River in Portland; and,

WHEREAS up to $132 million may be required from already limited transportation funding resources unless funded locally by the community that directly benefits; and

WHEREAS the relocation of the Freeway is intended not to provide increased transportation benefits as required by the Federal Highway Administration but to provide additional land along the Willamette for parks and housing; and,

WHEREAS considerable segments of the state's primary and secondary roads are in critical need of improvements including establishment of adequate passing lanes, reduction of difficult curves and other safety hazards, and increasing the efficiency of through-traffic; and,

WHEREAS the lack of adequate highway transportation has been and continues to be a major impediment to the economic development of non-metropolitan areas of the state; and,

WHEREAS significant sections of coastal Highway 101 and east-west laterals from the coast to the rest of the state are sub-standard and needing basic improvements; and,

WHEREAS the Oregon Coast's tourist, timber and other industries as well as ports are heavily dependent on these highways for their livelihood and for the safety of those who use those roads; and

WHEREAS the Oregon Coast has limited rail and airline transportation facilities and must depend on highways; and,

WHEREAS basic transportation needs of the state ought to be met before an expensive cosmetic relocation is made to the Interstate Freeway in the Portland area; and,

NOW, THEREFORE BE IT RESOLVED that the Oregon Coastal Zone Management Association, Inc. (OCZMA) opposes spending Oregon's federal or state highway funds for a freeway realignment in Portland; and

FURTHER BE IT RESOLVED that the State of Oregon vigorously promote the transfer of interstate funds to non-interstate uses including Highway 101 in a national program of scenic highways.

On March 20th, the Association received a response from Michael P. Hollern, Chairman of the Oregon Transportation Commission stating "We agree with you that we should not use scarce transportation funds for a land use and development project without significant transportation benefits." Further, "On March 16, 1989, I testified before the Portland City Council that we in the Oregon Department of Transportation believed the issue had been studied sufficiently to make a decision, that we did not believe a reasonable funding strategy to move the freeway using money from parties benefitting from the relocation could be developed and that we supported construction of Alternative A, our original funded project. I also said that if the Portland City Council elected to study the issue some more, we were not interested in participating in any additional studies, nor would we pursue federal funding of a demonstration project."

THE EXXON VALDEZ IN THE COLUMBIA RIVER!? (4-21-89)

In wake of the calamity in Prince William Sound, a new potential threat to Oregon's territorial sea and the Columbia River is being faced due to Exxon's desire to have the Exxon Valdez repaired at Swan Island. The Coastal Caucus has been in touch with Fred Hansen, Director of the Department of Environmental Quality (DEQ) in an attempt to make sure that DEQ asks the tough questions about this proposal. The economic benefits from such a repair job are obvious-- hundreds of jobs for the Portland shipyard. However, the risks attached to the proposal are less evident.

Initial reaction by members of the Coastal Caucus has been they believe the Governor has acted responsibly in this matter. Governor Goldschmidt and his spokesmen have made it abundantly clear that before the project would proceed, assurances that "NO ENVIRONMENTAL DAMAGE" must occur. This is a very high threshold for such a project to take place. If members of the Caucus had heard the words "we will balance the risks versus the benefits of such a project", alarm bells would have sounded and the Caucus would have registered strong opposition to the idea. However, for the time being, the Coastal Caucus is taking a wait-and-see approach to the project and will reserve its judgment until more information is available. Fred Hansen of DEQ has assured the Caucus that idle promises from Exxon will not do.

Hansen has explained to us the decision to proceed with the repair would be based purely on technical considerations on whether the "no environmental damage" threshold could be met. Therefore, according to Hansen, there will be no opportunity for public comment on this issue. Again, the Coastal Caucus will monitor this situation very closely and ask the tough questions necessary to ensure this standard is met. However, Hansen agreed with **Representative Tom Hanlon** that it would be a good idea to "consult" with local and county governments along the Columbia River concerning this issue. Thankfully, there are means available to the State of Oregon to stop this project dead in its tracks. Principal among these would be simply to pressure the Port of Portland to reject the project. More next week on this and other oil-related issues.

COASTAL CAUCUS URGES CONGRESS TO REQUIRE NEW OIL SPILL TECHNOLOGIES (5-5-89)

During a recent meeting of the Coastal Caucus I briefed the Caucus on the availability of oil spill technologies developed in the Netherlands. These technologies were developed following two major tanker disasters in Europe, the latest occurring in 1978 (the Amaco Cadiz which fouled the beaches of Northern France). After the accident, nations bordering the North Sea agreed to assume responsibility for oil spill cleanup adjacent to their coastline. As a result, the European approach is to have their large harbor dredge vessels capable of quick conversion to oil spill recovery vessels. Once an oil spill is reported, these vessels drop their dredge load and steam to the site of the accident. In the meantime oil spill recovery experts and equipment are flown to the site to meet the vessel. The central feature of this technology is the oil sweeping arms that extend on either side of the vessel. As the dredge sweeps through the spill, the oil is gathered by these arms which contain submersible pumps. The oil is then pumped through these arms into the cargo hold. Empty tankers are kept nearby to transfer the oil to shore so the vessel(s) can continue to work on the spill

without having to go to shore to unload.

According to the Dutch company that builds dredges and this oil spill equipment, they offered to make this equipment available to the U.S. Army Corps of Engineers. The Corps used to be responsible for most of the nation's dredge fleet. However, since the 1970's, the Corps has "privatized" their operations. Therefore, most of the nation's dredges are no longer run by the Corps. Reportedly, when this company approached the Corps, the Corps had expressed interest. It seems, however, that the Coast Guard (which has final authority over oil spills in this country) determined such technology was unnecessary. Unlike the United States, European governments do not split the responsibility for oil spill recovery and dredging. Rather, these nations keep these duties within the same agency.

According to estimates furnished by this Dutch Company (which I have had confirmed by other independent sources), had these technologies been in place, the Corps dredge Essayons could have left the Columbia River, been converted to an oil spill recovery vessel, and would have been on the scene working on the Alaskan spill within 130 hours. Further estimates reveal the spill could have been contained and probably cleaned up within two weeks with minor environmental damage compared with what has happened.

Another amazing feature of this sad story is how cost effective this technology is. Because the vessel can operate year round as a dredge, the dredge can pay for itself by performing routine dredging. The ability to convert the vessel quickly eliminates the need of purchasing a vessel that would sit idle most of the time.

Therefore, for as little as $5-$10 million dollars, it appears this nation could have on hand several sets of this oil spill equipment located strategically in several regions which could be flown to an oil spill site for these emergencies. There are several oil spill cleanup bills currently before the Oregon Legislature this session. Coastal Notes will report on the progress and substance of these bills.

In addition, next week the Coastal Caucus will send letters to the Oregon Congressional Delegation, and other key members of Congress explaining our findings. The Coastal Caucus will request that tough questions be asked of these agencies and the oil companies as to why we did not have these technologies.

EXXON BOYCOTT PROPOSALS SPLIT LEGISLATURE (5-5-89)

Last week a spirited press conference was held in the Capitol in which a number of members of the Legislature cut up their Exxon cards and called for a boycott of Exxon. **Representative Paul Hanneman** and **Senator Bill Bradbury** of the Coastal Caucus participated in the press conference. **Hanneman** drew attention to the increase in oil prices that occurred immediately following the spill and called for an investigation of price fixing. **Bradbury** echoed the sentiments of many legislators in voicing his frustration over the progress of the cleanup. **Bradbury** also informed the press of the availability of oil spill cleanup technologies (see article in this issue of *Coastal Notes*). **Bradbury** explained how such technology needs to be worked into comprehensive state oil spill cleanup and liability legislation as well as federal legislation.

Later that week Representative Bernie Agrons angrily spoke against the boycott on the House floor. He reminded the legislature that gas station owners and employees end up being innocent victims of such a boycott. "They are your friends and neighbors, they fix your car when it needs it and they pump your gas, they were in no way responsible for corporate decisions". Agrons fervently labelled such calls for boycotts as "irresponsible" and wished his fellow legislators would think before they acted.

WAYS AND MEANS COMMITTEE BUDGETS TWO MILLION FOR DREDGING AT TONGUE POINT (5-19-89)

After years of teasing Clatsop County with schemes to fully utilize the state's facility at Tongue Point, it appears that something may finally be in the works. North Coast residents' frustration over the string of lost opportunities over Tongue Point was best expressed recently in the press when Representative Hanlon was asked about yet another development proposal and he stated, "Show me, Show me"! Well, the Ways and Means Committee appears to have met Hanlon's challenge by appropriating $2 million dollars to match the Army Corps of Engineers $8 million pledge to provide monies to dredge the Tongue Point facility.

The long-talked about car-unloading facility is the project slated for Tongue Point. As Martha Pagel of

the DSL explained to the members of the subcommittee, there will be a two stage lease for the property. Even if the car facility does not materialize, it appears timely for the state to get the dredging done now while the Corps is in the mood to provide the $8 million. I'm sure there are plenty of people in Clatsop County that are still saying, "Show me, Show me"! We'll all believe it after the dredge pulls up and starts its work.

PORTS AND TOURISM SUBJECTS IN COASTAL CAUCUS (6-9-89)

Tuesday morning's Coastal Caucus breakfast featured Dave Lohman of the Economic Development Department (EDD) and Deborah Kennedy, the state's director of tourism. By arrangement, Kennedy arrived late in the breakfast giving the Caucus a chance to talk ports with Dave Lohman. Late last week a new preliminary report emerged from EDD on regional economic strategies for the state. The report had little to say about ports, but what it did say was disturbing. According to the report (which was drawn up by 13 subcommittees and one overall policy committee) Oregon should not expect to undertake any new major port initiatives in the near future. Rather, the report urged that the state concentrate on "niches" or projects the state can afford. Such a policy means Oregon should concentrate on providing port services for pre-existing industries. For instance, Lohman explained, the findings of the EDD report suggests the state should not undertake to build a new container port in Coos Bay in the near future.

The reason for such limited ambitions, Lohman stated before the Caucus, was that, "The costs are just too high; it would take 150 million dollars to get a container port built there, and at this point we are having trouble just getting the dredging for normal port activities". According to Lohman, the state of Oregon made the mistake twenty years ago in not pursuing port development. At that time, he explained, Seattle and Tacoma pursued an extensive ports program. "They are so far out in front of us that we can't realistically catch up considering the cost of such an effort".

Lohman stressed that the report was just "a first cut". The purpose of the document is to organize some proposed economic strategies for the state and then, "to take it out to the people, get feedback, and ask for a mid-course correction." Lohman noted there was a board to oversee the implementation of the report. Then, in two years, another document referred to as a "progress report" would be made to the next Legislative session. In the meantime, Lohman promised he would furnish the Coastal Caucus some of the background documentation that led EDD to conclude that Oregon should limit its port initiatives.

Representative Hanlon asked about some reports that the Ports Division at EDD was going to be abolished. Lohman noted that it would be a great mistake for EDD to try to do everything given the limitations on staff. Lohman clarified his remarks in saying that "a distinction should be made between issues related to shipping and issues related to transportation". He pointed out that EDD does not know too much about "intermodal connections" (a transportation term for connecting points between rail/highways/ports/airports). However, EDD does know something about dredging. Therefore, Lohman believes that the ports division at EDD should concentrate its energies on "water-related" activities and rely on other Department's areas of expertise where appropriate.

When Deborah Kennedy arrived the subject quickly changed to tourism. The Caucus has been concerned in recent months that the Department was not working as effectively as it could with private organizations that promote tourism. Two examples given by the group was the financially strapped Oregon Coast Association (OCA) (which has been in existence for over 50 years) and the *Oregon Coast Magazine*. With respect to OCA, Kennedy was told that OCA was getting a great number of information requests regarding tourism but that they did not have the funds to respond to them. Kennedy said that this problem was not unusual, stating that there were a number of private groups around the state that wanted state money but that the Department only has a limited budget. She noted that OCA representatives did participate in a tourism conference in March and that she was aware of their concerns.

With respect to the *Oregon Coast Magazine*, she responded that the magazine was largely delivered "in-state". As a result, any future work with that magazine would be most effective during the winter months. Kennedy explained that tourism interests have reported to her that they are doing well in the summer, but that more tourists in the winter would make a great contribution to that industry. According to Kennedy, "winter tourists" are much more likely to come from in-state rather than from California or elsewhere. Kennedy showed some of the latest tourist adds directed at promoting winter tourism including a "storm-

watching" ad. Kennedy spoke about the Tourism Division's use of magazine ads in California. She noted they were getting a lot of positive feedback from these ads and a high rate of information requests. Once individuals request information, she said, they are quite likely to come to Oregon. Therefore, she expects this campaign to continue. When asked whether the Department was going to pursue television as a means to sell Oregon, Kennedy stated that TV was a very expensive but potentially lucrative device. She noted there are efforts currently underway to film such an ad. The Department will try the ad in a pilot program first to test its effectiveness. Kennedy was asked about the arguments made against trying to promote tourism in the state — especially in the context of providing a transition from logging to tourism that tourism only creates low income jobs. A participant in the Caucus asked, "Are we just going to turn people in the state into bus boys"? . Kennedy responded that a recent study on this issue has revealed that tourism in Oregon does not produce only low income jobs. She stated that according to the study, it was demonstrated that fully 70% of Oregon's tourist businesses were owner-operated. She elaborated that the average income for these individuals was $32,000 a year. Further, Kennedy told the Caucus that only 10% of tourism employees were at the minimum wage, and, that most of these employees benefited by tips. Therefore, according to Kennedy, in real terms their wages were often substantially above the minimum wage.

Representative Schroeder asked about whether the Tourism Department would attempt to have more ads that featured coastal scenes from the South Coast. Kennedy stated that when people made decisions to come to the Oregon Coast it really didn't matter precisely where the picture was taken, only that it was a good picture. She joked (I think), "I don't care if the shot was taken on another planet, as long as it works". Kennedy informed Schroeder that fully 60% of the tourists going to Oregon come to see the Coast and that a lot of the state's tourism budget is spent on the Coast. She also mentioned that interest groups from around the state have complained to her that the coast gets too much publicity. Therefore, she summarized, she believes the coast was getting more than its fair share of the budget. Further, she understands that some areas of the coast may feel left out but that people should recognize that advertisements featuring one part of the coast work for all of the coast and to a certain extent for the entire state.

Late in the meeting I asked Kennedy if there was any difference between selling soap and selling the state of Oregon. While she didn't say yes or no, Kennedy did offer that one of the best things about promoting Oregon was that unlike many other states it was possible to have a double message. One being a statewide promotion theme and another sub-theme directed at particular aspects of the state (such as the coast or destination resorts).

OCEAN SCIENCE NEWS FEATURES NEW OIL SPILL TECHNOLOGIES (6-9-89)

Previous issues of *Coastal Notes* have discussed oil spill technologies that could have been used to clean up after the Exxon Valdez oil spill. In addition, we reported earlier that the Coastal Caucus sent a staff briefing document and a letter to our Congressional Delegation requesting an inquiry into why these technologies were not utilized, with copies to *Sea Technology Magazine* and *Ocean Science News*. This week's edition of *Ocean Science News* has devoted a large article to the Coastal Caucus letter and support for its points. For those trying to push for these technologies, this is particularly good news since *Ocean Science News* is one of the most widely read newsletters in the marine community. It is hard to find a University program or state agency interested in marine affairs that does not subscribe to Ocean Science News. In addition, a great number of federal agency officials also receive this influential publication - and they actually read it! Such coverage will make it increasingly difficult for federal agencies and the oil industry to ignore these technologies.

COASTAL CAUCUS TALKS ECONOMICS WITH EDD (6-16-89)

Last Tuesday the Coastal Caucus breakfast program was fortunate to have as guest the director of the Economic Developement Department (EDD), Bob Buchanan and Duncan Wyse, manager of the Strategic Planning and Policy Unit of EDD. The conversation was sweeping in its scope. From the complexities of Chinese politics (and its effect on international trade) to the intricacies of making small business work in Oregon, Buchanan discussed the challenges facing the Oregon economy in the years ahead. Early mention

was made of the "Oregon Shines: An Economic Strategy for the Pacific Century", EDD report. As the principal document embodying EDD's views of regional economic strategies, Buchanan was optimistic that the report would be influential in hammering out some goals for the Oregon economy. With a lot of give and take, Buchanan noted, the report should provide a good basis to evaluate EDD's role in promoting development. In that regard, Buchanan believes the report will be a good "legislative tool" for the next session when EDD's budget comes up for consideration.

Having previously run the Department of Agriculture, Buchanan informed the Caucus that he hoped to use some of the same successful approaches employed by the agricultural commodity commissions to promote such high tech industries such as computer software. "For instance", explained Buchanan, "By forming some of these partnerships, we can begin to ask such industries the right kinds of questions, like what kind of academic capacity do they need to encourage investment?"

Buchanan admitted that he simply doesn't have the resources at EDD to do any major port activity. "With our budget, even if we turned over all of our regional strategies money it would only buy us a slip or two", said Buchanan. He hoped that the upcoming regional strategies reports would find some answers to port development. Buchanan speculated, "By clarifying our goals, I think we will see the various port constituencies line up". **Representative Hanneman** asked if there was anything left to be done this session on ports. Buchanan responded that only some of the smaller port projects could realistically be contemplated at this time. Buchanan stated that in the future, the state will have to think about some kind of bonding program on a large scale if Oregon intends to undertake major port improvements such as container facilities.

Members of the Coastal Caucus alerted Buchanan to the problems the "job requirements" provisions built into the Special Public Works Fund presents to port development. Under the current system, it is difficult to point directly to a particular job being created by such infrastructure financing. Many times these infrastructure projects save jobs, not just create them. Buchanan said he would look into the matter.

Representative Hanlon asked, "How does the fishing industry fit into the state's economic picture". Hanlon noted that the EDD report does not discuss fisheries. Buchanan and Wyse regretted the absence of a discussion on fisheries and stated that they would correct this oversight. Buchanan said that "fish are real important, we saw that in the early 1980's when the fishing community suffered, so did everyone on the Coast". Buchanan said it was important to foster some shoreside processing facilities and talked about some of the legal difficulties under federal law of promoting these industries.

Buchanan said that for development on the Coast and elsewhere in the state, it is "really important to focus on fundamentals". Buchanan elaborated by saying this meant, "Goods schools, a better tax climate, resolving problems with the workers compensation system and a functioning unemployment insurance system, without these we will push people offshore or at least away from Oregon".

Representative Schroeder asked about what Oregon has going for it in economic development terms. Buchanan said EDD has a reputation for being a "problem solving" agency that can work successfully with business without sacrificing environmental standards. In addition,the quality of life features of the state and the high quality work force (although Buchanan warned that this element is always subject to change especially if the quality of schools are not maintained) are also recognized economic factors for Oregon.

Asked about the effect of LCDC on the economy, Buchanan thought that the argument that Oregon's statewide land use planning program pushes people into the state of Washington was not at all accurate. Buchanan noted that land use planning provides a measure of certainty for future industries. Buchanan also pointed to the unplanned growth of Seattle and Tacoma and the tremendous problems those communities are beginning to face. Buchanan predicted that many Washington communities will push for no-growth policies which can have a powerful impact on sustained economic growth. To summarize, Buchanan noted that there have been problems with land use planning in Oregon, but overall, its been a big plus.

In terms of environmental regulations, Buchanan stated that the greatest threat to development in Oregon (especially the Coast) comes from the federal government in how they regulate wetlands. "These mitigation procedures and activities are so expensive, just the study phase runs into thousands of dollars and we end up paying $30,000-$40,000 for a project that just a postage stamp in size", Buchanan noted. He continued, "And when we talk major development issues such as in the Portland areas we are talking about millions of dollars".

Buchanan explained that it is difficult to imagine how the United States can continue to compete in a

global economy when we attach so many costs to development. "It would be one thing if we only had to compete internally where we could just build these costs into products, but we are not an island and when we enter the world market we put ourselves at a disadvantage". Buchanan didn't advocate a reversal in environmental policies, only that the economic impact of these proposals be understood. Buchanan thought it was especially unfair to require industries to retroactively mitigate for projects they undertook in the late 1970's and the early 1980's when the ground rules for the 404 program were incomplete. Buchanan noted the Spectra-Physics as a worst case scenario.

Buchanan offered the suggestion that the Special Public Works Fund might be used in the future as a means to help with mitigation costs. "But with costs of one to two million a whack", stated Buchanan, the reach of such a program would be short. Buchanan hoped that more cost effective means to mitigate such as mitigation site banking (consolidating small mitigation activities into single or concentrated sites) and other creative approaches offered the best means to address these problems - not just money.

OIL COMPANIES ANNOUNCE NATIONWIDE OIL SPILL RECOVERY RESPONSE SYSTEM (6-23-89)

Last week *Coastal Notes* reported substantial progress has been achieved on alerting some of the key people in Washington D.C. of the availability of European oil spill recovery technologies (also, see earlier issues of *Coastal Notes* for a full description of the Coastal Caucus's findings). This week it was front page news that the oil companies have voluntarily moved to adopt these technologies on their own! It appears from the news stories that the oil companies plans are nearly identical to the ones proposed at the suggestion of the European equipment suppliers. There will be five major sites where oil spill recovery teams will be prepared round the clock to react to a spill. In addition, there will be other support or "staging areas". Most importantly, the companies have called for centralized authority to handle oil spills be placed in one agency - the Coast Guard. Again, this approach is identical to the system established in Europe and that we reported on earlier.

The plan may cost the oil companies somewhere in the neighborhood of $75 million (for the entire system). Some environmentalists have responded critically stating that the oil companies were merely heading off Congressional action that could place even further demands on the companies. While the Congress will certainly evaluate the effectiveness of these plans, we are pleased that progress in this matter is so evident.

SB 1064 - PORTS DREDGING ACCOUNT PASSES HOUSE AND SENATE (7-7-89)

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