

JOINT COMMITTEE ON STREAM RESTORATION
AND SPECIES RECOVERY

March 22, 1999 Hearing Room 50

7:00 AM Tapes 58 - 59

MEMBERS PRESENT: Sen. Ted Ferrioli, Co-Chair

Rep. Ken Messerle, Co-Chair

Sen. Joan Dukes, Vice-Chair

Rep. Bob Jenson, Vice-Chair

Sen. David Nelson

Sen. Veral Tarno

Rep. Al King

Rep. Jeff Kruse

Rep. Randy Leonard

Rep. Lynn Lundquist

Rep. Susan Morgan

Rep. Bruce Starr

Rep. Terry Thompson

MEMBERS EXCUSED: Sen. Frank Shields

STAFF PRESENT: Judith Callens, Administrator

Stephen Kosiewicz, Administrative Support

**MEASURE/ISSUES HEARD: National Marine Fisheries Service ñ New ESA
Species Listing and**

4(d) Rule Update

TAPE/#	Speaker	Comments
TAPE 58, A		
004	Chair Messerle	Calls the committee to order at 7:13 a.m.
<u>NATIONAL MARINE FISHERIES SERVICE n NEW ESA SPECIES LISTING AND 4(D) RULE UPDATE</u>		
013	Garth Griffin	National Marine Fisheries Service. Begins testimony by reviewing the new ESA species listings.
058	Griffin	Comments on new litigation NMFS is facing.
070	Griffin	Continues testimony by updating the committee on the status of the 4(d) rule.
099	Griffin	Comments on NMFSí work with the Willamette Restoration Initiative in regard to conservation planning.
112	Griffin	Continues testimony by discussing NMFSí recovery planning.
160	Griffin	Continues discussing NMFSí recovery planning.
204	Griffin	Continues discussing NMFSí recovery planning.
255	Griffin	Continues discussing NMFSí recovery planning.
274	Griffin	Continues testimony by discussing the issue of federal fiscal resources.
320	Griffin	Continues testimony by discussing the Globec ocean research program.
374	Griffin	Continues testimony by discussing NMFSí report to Congress on pinniped predation.
TAPE 59, A		
010	Chair Messerle	Asks what role the state has in the recovery planning.
017	Griffin	Responds that the state fits into the process starting now.
029	Chair Messerle	Asks Mr. Griffin to comment on the status of NMFSí request for enforcement

		funding in Oregon.
034	Griffin	Responds that he does not know the status of NMFSi budget request for enforcement. States that he does not expect NMFS to role out any enforcement strategy that would conflict with the state's view of how to do ESA enforcement.
052	Chair Messerle	Asks whether NMFSi proposed Forest Practices Act for Washington would be incorporated into the 4(d) rule for Oregon.
058	Griffin	Comments on the status of the proposed Forest Practices Act in Washington. Responds that he does not see this happening in a 4(d) rule in Oregon.
078	Chair Messerle	Asks if this includes a shared ESU.
079	Griffin	Responds that there could be a situation where on the Washington side of the ESU there would be no take prohibition for activities and the Oregon side could have a take prohibition in place.
084	Chair Messerle	Asks if there has been any discussion of compensation for that degree of product being taken off the market or being unharvestable.
087	Griffin	Responds that he has not been involved in those negotiations in Washington. Notes that this appears to be voluntary measures adopted by the timber industries in Washington.
099	Chair Messerle	Notes that this issue is of interest to the committee.
105	Rep. King	Asks what ocean studies and planning are anticipated over what area, and is there going to be strong federal leadership in this area.
109	Griffin	Notes that the federal government has made financing available for marine mammal predation studies. Notes the Coho research that is going on.
116	Rep. King	States that this is an area that would be a great part of the partnership to see stronger. Asks how NMFS will address predators in recovery planning.
130	Griffin	Responds that he is curious to see what Congress does with NMFSi report.
138	Rep. King	Asks for clarification that NMFSi report is done and they are hoping that it works.
140	Griffin	Responds that this is correct.

141	Rep. King	Expresses concern about increasing enforcement before working on recovery planning.
148	Griffin	Comments that NMFS has been trying to get additional resources for recovery and conservation planning, as well as enforcement.
167	Rep. King	Expresses concern that the state might be doing one set of funding and priorities and the federal government might be doing another. Questions whether there would be an advantage to broader funding on both fronts, versus concentrating funds in each of the separate areas.
180	Griffin	States that he does not have a reaction to this. Notes that the WRI has strong representation across the board.
189	Rep. Thompson	Asks how NMFS is going to communicate better with scientists in Oregon who are already doing research work.
196	Griffin	Responds that he does not know.
199	Rep. Thompson	Asks for clarification on what Mr. Griffin means by increased presence.
215	Griffin	Responds that he is referring to an increased presence by NMFS in the planning activities that are occurring.
233	Rep. Thompson	Asks why NMFS or the federal government has not gone back to the table to try and deal with the Pacific Salmon Treaty.
242	Griffin	Responds that he does not have an answer.
244	Rep. Thompson	Asks when the \$100 million from the federal government is expected to hit the ground in Oregon.
247	Griffin	Responds that he does not know.
252	Sen. Nelson	Asks if NMFS only thinks about fish, or do they consider the social and economic impacts of the things that they do.
260	Griffin	Responds that they do consider these things.
268	Sen. Nelson	Comments that in his area of the state there is not a lot of public trust in NMFS. States that enforcement should be left to OSP.
277	Griffin	Agrees with Sen. Nelson's comments. Notes that if enforcement is not done

		correctly, it can be a horrible tact to take.
280	Sen. Nelson	Asks if tribal treaties overrule the Endangered Species Act.
286	Griffin	Responds that he does not know. Notes that NMFS carries both of them out and hope they do not conflict.
298	Sen. Nelson	Notes that allowing the tribes to do what they want does not build a lot of public trust. Asks Mr. Griffin if he knows the recovery status of the Spotted Owl or what standards are being used in this delisting process.
310	Griffin	Responds that he does not know the specifics of this.
312	Sen. Tarno	Asks if there is a connection between NMFS and For the Sake of Salmon, and if so, what is that connection.
315	Griffin	Responds that NMFS was one of the sponsors of For the Sake of Salmon getting started initially, and has provided equal share of funding since it has been in existence.
318	Sen. Tarno	Asks if For the Sake of Salmon is still involved in restoration programs.
321	Griffin	Responds that they are.
333	Sen. Tarno	Asks if For the Sake of Salmon is funded directly through NOAA, and if so, does Mr. Griffin have access to a copy of their budget.
336	Griffin	Responds that NOAA provides a portion of their funding. States that he can get a copy of For the Sake of Salmon's budget.
340	Chair Messerle	Asks if For the Sake of Salmon is being funded for the upcoming biennium.
344	Griffin	Responds that he is only aware of their funding up to this point. Notes that future funding will depend on whether or not it is beneficial.
359	Chair Messerle	Asks whether there was a shortfall in For the Sake of Salmon's federal funding this past biennium.
363	Griffin	Responds that he does not know.
365	Rep. Morgan	Asks Mr. Griffin where he sees the ESA, the Clean Water Act, and the Oregon Plan overlapping, and where they are not compatible.

381	Griffin	Comments that it is important to figure out a way to mesh these three programs together. Notes that the federal recovery planning process is a mechanism that would ultimately bind these pieces together.
407	Rep. Morgan	Asks where some of the disparities between them might be.
TAPE 58, B		
001	Griffin	Responds that some of the problems will be those that NMFS has already indicatedóconcern about certain land management actions.
009	Rep. Morgan	Notes that recovery planning must lead to sustainable populations. Asks where the sustainability is measured for a fish species that spends part of its life in the uplands, part in the estuaries, and part in the ocean.
016	Griffin	Responds that this is a question he would like to see answered through the scientific process.
039	Rep. Morgan	Asks what NFMSí orientation is to the social and economic costs the listings and recovery plans will have on communities in Oregon.
044	Griffin	Responds that in going through the recovery planning process, NMFS would be looking at the least expensive and impactful ways to achieve recovery.
059	Rep. Morgan	Notes the confusion in her district about whether NMFS or OSP is in charge in terms of enforcement. Notes the committee has heard testimony that the relationship between NMFS enforcement personnel and OSP is not what it could be.
069	Griffin	States that he has not heard concern expressed about not knowing who is in charge. Notes that he has heard that the relationship with the NMFS enforcement agent in the Umpqua Basin was going well. Comments on improving the relationship between NMFS and OSP.
086	Sen. Ferrioli	Notes that there are some cost-share parameters in the ESA that lay out roles for state and federal agencies. Asks Mr. Griffin to review these for the committee.
093	Griffin	Responds that there are a number of mechanisms that, if federal funds are available, they can be delivered through the ESA.
103	Sen. Ferrioli	Notes that the language in the ESA regarding funding states "shall" not "may".
105	Griffin	States that he believes the language is "may". Notes that there is no funding source that comes with a listing.

117	Sen. Ferrioli	Comments on NMFS's proposed Forest Practices Act in Oregon. Asks if the 4(d) rule will be delivered to people in the community for comment in draft form, on a pre-decisional basis.
131	Griffin	Responds that the 4(d) rules will be proposed rules, so they will get comments on them before doing any rulemaking.
140	Sen. Ferrioli	Asks if the Northwest Forest Plan will be recognized in the 4(d) rule as the recovery strategy for the State of Oregon.
154	Griffin	Responds that it will not. Notes that it will be recognized in terms of activities on federal lands.
171	Sen. Ferrioli	Expresses concern that recovery plans from local municipalities would be included in the 4(d) rule, but not the President's Northwest Forest Plan.
174	Griffin	States the ESA requires that federal agencies always consult, and putting a 4(d) rule in place does not remove this obligation.
179	Sen. Ferrioli	Notes that the committee needs to be aware of the prospect that the President's Northwest Forest Plan could be overruled by a 4(d) rule. Asks how NMFS is coordinating the tribal hatchery policies with its wild fish objectives.
185	Griffin	Responds that NMFS is working through a number of forums on this issue.
199	Sen. Ferrioli	Asks what the court of competent jurisdiction was in that case.
202	Griffin	Responds that he is not talking about specific cases. Notes that there is a <u>U.S. v. Oregon</u> case that includes all of the state and tribal hatchery programs, and he does not know where this will go.
209	Sen. Ferrioli	Asks how NMFS is reconciling the fact that there is no closure on the tribal hatchery/wild fish objectives with the information and direction they may be giving states about hatchery programs.
216	Griffin	Responds that it is the same direction.
231	Sen. Ferrioli	Asks if it is NMFS's intent to treat different entities differently.
236	Griffin	Responds that they should be interested in a consistent application, whether it is tribal interests or state interests.
263	Chair Messerle	Notes that the committee would like more in-depth responses to some of the questions asked members. Suggests Mr. Griffin come back to the committee as

		soon as possible with these responses.
283	Rep. Leonard	Asks what NMFS would do to curb activities in an urban area to improve streams in that area.
294	Griffin	Comments on having an inventory of what salmonids are in an urban setting and where are important areas for them. Gives example of doing construction in such a way that it does not cut off migration corridors and it has a minimum impact on water quality and quantity.
314	Rep. Leonard	Asks if activities like pesticide application would be restricted.
315	Griffin	Responds that those activities that are detrimental to the species would be restricted.
332	Rep. Leonard	Asks about activities like culvert replacement.
333	Griffin	Responds that this is something that can provide huge benefits for salmonids.
340	Rep. Leonard	Clarifies that his question was whether NMFS would order work like culvert replacement being done.
341	Griffin	Responds that NMFS would not order that this be done. Comments on how NMFS would get involved in consultation on activities.
354	Chair Messerle	Notes the uncertainty about what impact these listings have on communities. Announces that tomorrow's meeting will be held in Portland and that transportation is available for members. Suggests Mr. Griffin attend this meeting.
388	Chair Messerle	Adjourns the committee at 8:34 a.m.

Submitted By, Reviewed By,

Stephen Kosiewicz, Judith Callens,
Administrative Support Administrator

EXHIBIT SUMMARY

No exhibits submitted