

**JOINT COMMITTEE ON STREAM RESTORATION**  
**AND SPECIES RECOVERY**

**April 5, 1999 Hearing Room 50**

**7:00 AM Tapes 74 - 75**

**MEMBERS PRESENT: Sen. Ted Ferrioli, Co-Chair**

**Rep. Ken Messerle, Co-Chair**

**Rep. Bob Jenson, Vice-Chair**

**Sen. Frank Shields**

**Sen. Veral Tarno**

**Rep. Al King**

**Rep. Jeff Kruse**

**Rep. Randy Leonard**

**Rep. Lynn Lundquist**

**Rep. Susan Morgan**

**Rep. Bruce Starr**

**Rep. Terry Thompson**

**MEMBER EXCUSED: Sen. Joan Dukes, Vice-Chair**

**Sen. David Nelson**

**STAFF PRESENT: Judith Callens, Administrator**

**Stephen Kosiewicz, Administrative Support**

**MEASURE/ISSUES HEARD: SB 973 Public Hearing**

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

--	--	--

TAPE/#	Speaker	Comments
<b>TAPE 74, A</b>		
004	Chair Messerle	Calls the committee to order at 7:09 a.m. Asks witnesses from the Coos and Coquille tribes to provide informational testimony to the committee regarding SB 862.
009	Rep. Kruse	Comments on the KATU Town Hall show on the issue of dam removal that he, Rep. Lundquist, Rep. Jenson, and Rep. Morgan attended.
017	Rep. Lundquist	Comments further on the KATU Town Hall show.
025	Ed Metcalf	Chairman, Coquille Indian Tribe. Testifies on the work the two tribes have done to reestablish a spring Chinook salmon fishery in Coos Bay.
038	Dick Clarkson	Chairman, Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians. Comments on the role of salmon in the tribes' life.
049	Rep. Thompson	Asks for clarification that the tribe is anticipating one million smolts returning, and that they are using the old aquaculture site in Coos Bay.
051	Clarkson	Responds that they are trying to work out an agreement with ODFW and the Port of Coos Bay where they could raise up to one million smolts a year.
062	Rep. Thompson	Asks what the status of the facility is.
064	Clarkson	Responds that the Port ran the facility that last two years. Notes that it was shut down in August, but the Port has gone out monthly to run the pumps.
071	Rep. Thompson	Notes that this facility runs about \$20,000 to \$25,000 a year in electricity costs. Asks who is going to pay this cost.
073	Clarkson	Responds that he saw around \$9,000 on the Port's budget for running one of the pumps.
078	Rep. Thompson	Comments on the number of pumps that would have to be run at this facility and what it will cost the tribes in electricity.
088	Chair Messerle	Explains why SB 862 was taken off today's agenda.
100	Chair Messerle	Opens the public hearing on SB 973.

**SB 973 n PUBLIC HEARING**

101	Judith Callens	Committee Administrator. Explains the provisions of SB 973.
124	Stephen Kafoury	Representing American Fisheries Society. Introduces Dr. Hiram Li. Comments on his work during the interim with DSL's Technical Advisory Committee. Comments on the issue of essential salmonid habitat.
175	Sen. Ferrioli	Asks for clarification that the workgroup agreed on definitions for essential indigenous anadromous salmonid habitat, but they did not know where these designations would be made.
182	Kafoury	Responds that this is correct.
195	Sen. Ferrioli	Notes that designations went from about 4500 stream miles to about 28,000 stream miles, and then came back down. Asks for clarification that it is Mr. Kafoury's contention that the lower Columbia and Lower Willamette are used only for transit.
203	Hiram Li	Responds that although they are used for transit, there are different species that grow on the way out. Comments on the issue of habitat and fish populations.
251	Li	Continues comments on the issue of habitat and fish populations.
271	Chair Messerle	Asks Dr. Li to expand on his comment that the federal government is not going to let the Oregon Plan work as the state intended.
274	Li	States that the committee should be aware that in other states, some state agencies have been found in criminal negligence.
308	Rep. Leonard	Asks whether any laws passed by the Legislature that are in conflict with recovery of endangered species would be null and void.
316	Li	Responds that he had some concerns about what the state was going to try with the Oregon Plan. Notes that with the listings it is not a matter of whether the state decides.
345	Rep. Leonard	Asks Dr. Li to specify what his concerns are in regard to SB 973.
351	Li	Comments that he was concerned that the bill would not protect the fish.
374	Kafoury	States that the American Fisheries Society feels there is no need for further legislation.

387	Li	Comments that the committee would not be in a position to get good information about habitat and fish population because of its meeting schedule.
<b>TAPE 75, A</b>		
012	Chair Messerle	Notes that the Legislature meets every two years, and this committee meets monthly.
014	Li	Clarifies that SB 973 states that the Legislature will conduct a review every four years.
024	Sen. Ferrioli	Comments on the legislation that was passed last session regarding essential habitat. Asks whether there was a piece of legislation last session that considered all of the ramifications of designating essential habitat.
036	Kafoury	Responds that the removal of the 20% limitation on designating essential habitat was a negotiation to get the bill passed.
051	Sen. Ferrioli	Asks for clarification that Mr. Kafoury meant that an individual could do whatever they do pursuant to the permit that they have.
053	Kafoury	Responds that he does not remember what the details were. Clarifies that he meant there was limitation on which kinds of activities and which size of activities required permits.
057	Sen. Ferrioli	Notes that it was an exemption for mining that would allow five yards of rock to be moved within a year, without requiring a permit from DSL. Asks when essential is essential.
067	Li	Comments on when and where different species spawn. Responds that in some of the big river systems, due to different species spawning in different areas, the entire river is essential habitat.
095	Kafoury	Notes that SB 973 defines the term "essential". Comments that the decision about which waters of the state are essential to prevent depletion of a species is a scientific question, and this was answered during the interim.
107	Rep. Kruse	Comments that the essential habitat designation is putting further restrictions on a system that already has restrictions built into it, and that is the Oregon Plan.
121	Rep. Leonard	Asks Dr. Li if he would consider the area of the Lower Willamette from Willamette Falls to the confluence with the Columbia River to be essential habitat.
123	Li	Responds that at one time it probably was, but now the fish want to get through

		this area as quickly as possible. Comments that the struggle is with what to recover and trying to be realistic about it.
153	Paul Cleary	Director, Division of State Lands. Submits written material ( <b>EXHIBIT A</b> ) and testifies in opposition to SB 973.
215	Cleary	Continues testimony in opposition to SB 973.
273	Sen. Ferrioli	Referencing page 6 of the submitted material, asks what sections of the Columbia and Lower Willamette are being referred to.
288	Cleary	Responds that this is the mileage that was deleted and resulted in the drop in essential habitat designation.
307	Sen. Ferrioli	Asks what Mr. Cleary what is being referred to when he refers to the Columbia and the Lower Willamette.
311	Cleary	Responds that he is referring to the areas that are not used for spawning and rearing.
319	Sen. Ferrioli	Notes the coincidence that 75% of the state's population live in the area that Mr. Cleary mentioned.
320	Cleary	States that it is more a function of this area being one where fish do not spawn and rear.
337	Sen. Ferrioli	Comments that being realistic by providing an exemption seems tough to sell in rural communities. Suggests the committee look at essential habitat in a rural area versus an upland watershed in the Portland area.
355	Cleary	States that he will get the essential habitat maps to the committee. Notes that under the Executive Order, agencies are supposed to be setting biological and habitat goals and objectives on a basin or regional basis by January 1, 2000. Notes that DSL is required to seek the IMST's advice on whether gravel removal affects gravel and sediment deposits in a manner that adversely affects salmonids.
371	Rep. Leonard	Asks Mr. Cleary what he bases his statement that salmonids do not spawn and rear in the Lower Willamette on.
376	Cleary	Responds that DSL relies on ODFW for their information.
382	Rep. Leonard	Notes the ODFW has told DSL that the lagoon at Ross Island is a rearing area. Asks for clarification that one of the conditions of DSL's permit to Ross Island Sand and Gravel that they study this.

389	Cleary	Responds that there is going to be a study of this.
390	Rep. Leonard	Asks for clarification that it is not known whether salmonids spawn and rear in the Lower Willamette.
394	Cleary	Responds that based on the information DSL had when they adopted these rules, they could not determine whether this was a spawning and rearing area.
398	Rep. Leonard	States that ODFW thinks that it is.
400	Cleary	States that when DSL adopted these rules, ODFW did not think it was.
405	Rep. Leonard	Notes that Dr. Li testified that the entire Willamette system could be designated as essential habitat. Asks Mr. Cleary if he thinks that at some point, because of the listings, the federal government will come in and require permits not to be issued for gravel operations that DSL is currently issuing.
<b>TAPE 74, B</b>		
009	Cleary	Responds that this question will be addressed at the time Ross and Island Sand and Gravelis permit is scheduled for renewal in April of next year. Notes that any large gravel operations require both state and federal permits.
019	Rep. Kruse	Notes that Dr. Li considered the entire reach to be rearing habitat for Steelhead. Asks for clarification that if this area is designated, DSL will be compelled to add all of these stream miles back in.
024	Cleary	Responds that DSL went through the process and relied on the best information they had at the time.
031	Patty Snow	Land Use Coordinator, Habitat Division, Department of Fish and Wildlife. Submits written testimony ( <b>EXHIBIT B</b> ) and testifies on ODFW's concerns with SB 973.
077	Snow	Continues testimony on ODFW's concerns with SB 973.
099	Rep. Thompson	Asks why ODFW needs to have two life cycles before they felt comfortable when they have jack counts that will tell them what is going to come in advance.
104	Snow	Responds that looking at populations after two life cycles would give a better idea of whether ocean conditions or something else is affecting the fish.
107	Rep. Thompson	Comments that ocean conditions change and that once a certain number is reached they should take advantage of this fish resource.

119	Snow	Clarifies that ODFW would like to see a level of stability in the population before any delisting or removal from essential habitat occurs.
127	Rep. Kruse	Notes that there is other inventory work being done outside of ODFW, and asks if ODFW considers these valid counts.
134	Snow	Responds that they do.
140	Rep. Kruse	Asks if work done by local watershed councils would be considered valid.
144	Snow	States that she is not aware of ODFW incorporating information from watershed councils. Responds that if it were collected in an appropriate way it would be included in the stream net data.
148	Rep. Kruse	States that the data collected by state and federal agencies on Cutthroat in the Umpqua Basin was inferior to that collected by the local folks. Expresses concern if ODFW is still basing their plan on trying to avoid listings.
159	Snow	Notes that it is always ODFW's goal to avoid future listings.
164	Sen. Ferrioli	Comments that what SB 973 does is being mischaracterized.
221	Rep. Leonard	Asks Ms. Snow if she knows how much of the total amount of reserves of aggregate in the state is in streams and rivers.
224	Snow	Responds that she does not know.
230	Rep. Leonard	Asks Ms. Snow if she can conceive of the federal government coming in under the listings and prohibiting any aggregate mining in streams or rivers.
234	Snow	Responds that she could see the federal government wanting restrictions on gravel removal.
240	Rep. Leonard	Asks Ms. Snow if she thinks the Oregon Plan is going to collapse under its own weight because of discussions like this.
254	Snow	Responds that the state should be trying to manage its resources and the federal government is not needed to tell us how to do that.
277	Chair Messerle	Announces that HJM 7 and HJM 11 will not be heard today.
281	Glen Spain	Northwest Regional Director, Pacific Coast Federation of Fishermen's Associations. Submits written testimony ( <b>EXHIBIT C</b> ) and testifies in

		opposition to SB 973.
332	Spain	Continues testimony in opposition to SB 973.
390	Spain	Continues testimony in opposition to SB 973.
<b>TAPE 75, B</b>		
007	Jim Myron	Oregon Trout. Submits written testimony ( <b>EXHIBIT D</b> ) and testifies in opposition to SB 973.
023	Jeff Watkins	Representing the Oregon Chapter of the Sierra Club. Testifies in opposition to SB 973.
029	Chair Messerle	Closes the public hearing on SB 973. Adjourns the committee at 8:33 a.m.

Submitted By, Reviewed By,

Stephen Kosiewicz, Judith Callens,  
Administrative Support Administrator

#### **EXHIBIT SUMMARY**

**A ñ SB 973, written material, Paul Cleary, 12 pp.**

**B ñ SB 973, written testimony, Patty Snow, 2 pp.**

**C ñ SB 973, written testimony, Glen Spain, 5 pp.**

**D ñ SB 973, written testimony, Jim Myron, 1 p**