

HOUSE COMMITTEE ON WATER POLICY

February 4, 1997 Hearing Room D

3:00 P.M. Tape 15 -17

MEMBERS PRESENT: Rep. Ken Messerle, Chair

Rep. Tim Josi, Vice-Chair

Rep. Jo Ann Bowman

Rep. Tony Corcoran

Rep. Steve Harper

Rep. Jeff Kruse

Rep. Jim Welsh

MEMBER EXCUSED:

VISITING MEMBERS: Rep. Bob Jenson

STAFF PRESENT: Pat Zwick, Policy Analyst

Rebecca M. Nickel, Administrative Support

MEASURE/ISSUES HEARD: Governor's Office

*** Salmon Issues**

Department of Environmental Quality

*** Information Request**

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
TAPE 15, A		
003	Chair Messerle	Calls the meeting to order at 3:06 p.m.
<u>GOVERNOR'S OFFICE</u> <u>- SALMON ISSUES</u>		
		Natural Resources Advisor, Governor's Office provides a brief

009	Paula Burgess	overview of the presentation by representatives of the Governor's Office.
024	Jim Martin	Governor's Office, presents and reviews testimony on the Coastal Salmon Restoration Initiative. (EXHIBIT A)
051	Rep. Josi	Asks if there has been collaboration with the National Marine Fishery Service (NMFS) in the drafting of the plan.
053	Martin	NMFS has been part of the Governor's salmon strategy team meetings held bi-weekly since the start.
055	Rep. Josi	Refers to the general opinion that Coho will be listed regardless of the plan, and asks if that is the case as NMFS is working with the Governor's Office on the development of the plan.
057	Martin	Can't say for sure, but the standards by which the judgment will be made will be discussed in today's meeting. Many people are skeptical that NMFS will approve any plan Oregon develops because the standards which need to be met are high, the serious decline of the salmon population, and also because of Oregon's track record of not responding as effectively as possible. The Governor's Office is trusting that NMFS will be open and will evaluate the plan objectively.
065	Rep. Josi	Asks if the plan is being developed around the standards which NMFS has set.
067	Martin	Yes.
068	Chair Messerle	Asks for clarification of Oregon's poor track record in responding to the declining salmon population. Asks if this refers to the state as a whole, or to specific areas.
070	Martin	Historically, fish and wildlife populations have declined in the last century. Specifically, this century has seen a drastic decline in fish populations. NMFS and environmental groups want to know what will be different in state programs with the implementation of the plan. They feel that if state programs were not sufficient in the past to keep the fish populations from declining to the point of near extinction in some cases, then how will new state programs accomplish this.
080	Martin	Review - Biological History
131	Martin	Review - Life History
160	Martin	Review - Timeline for Listing Decision
169	Martin	Review - Effects of a Listing
219	Martin	Review - Effects of a Listing
234	Rep. Josi	Asks for background information on potential lawsuits if the Coho were listed.
		There are legal staff that may be able to answer those questions. Uses the listing of the Umpqua Cutthroat as an

242	Martin	example for the onset of litigation. The Cutthroat was listed and NMFS determined that the Northwest Forest Plan adequately protected the habitat and focused their attention on the other factors of decline. A lawsuit was filed by an environmental group and as a result, the entire Northwest Forest Plan has to be reviewed. Even though NMFS may be comfortable with existing federal programs, other groups will use that listing as an avenue to disagree in the courts.
264	Chair Messerle	Asks if NMFS understands that a listing would have a devastating effect on fisheries and that the process could be blocked by lawsuits.
276	Martin	Not the same understanding as the attitudes of the industries, the landowners and other groups who have cooperated voluntarily. NMFS believes that they can have both voluntary cooperation and regulatory oversight. The landowners and industries are prepared to withdraw voluntary programs if NMFS takes a regulatory approach..
291	Rep. Kruse	Comments on the Umpqua Basin and the insensitivity of NMFS toward the voluntary efforts of landowners and industries.
307	Martin	William Stelle will be traveling to the area to meet with landowners and watershed councils. NMFS will evaluate the effectiveness of the plan on two criteria: * how biologically effectively it addresses factors of decline, the quality of scientific data, the amount of change the state is going to create, and * the reliability of the plan. They are skeptical of the resolve of the state to ameliorate the problem without regulatory backing.
340	Rep. Bowman	Asks about the effectiveness of the voluntary efforts. Comments on the lack of tangible improvement.
357	Martin	The voluntary efforts which are being referred to have been in place for such a short period of time, that the results have not been measurable because of the biological lag.
374	Chair Messerle	Comments on the improvements in fisheries and habitat. Counting the fish is not a reliable method for indicating improvement.
386	Rep. Harper	Asks for clarification on how success can be monitored.
393	Martin	This will be clarified later in the presentation.
397	Martin	Review - Harvest Measures
TAPE 16, A		

011	Martin	Review - Hatchery Measures
021	Martin	Review - Habitat Measures
032	Rep. Bowman	Asks how enforcement of current laws is going change.
034	Martin	Each agency will focus on the laws and regulations which are most related to the biology of the fish. Focus would be put on ensuring that priority enforcement is occurring.
046	Rep. Josi	Comments on voluntary compliance and the number of under-enforced laws that are currently on the books.
049	Martin	Agrees.
057	Martin	Review - Outreach and Education
068	Rep. Josi	Comments on watershed councils and their dedication.
083	Chair Messerle	Comments that three successful watershed councils will be making presentation at the February 6, 1997, committee meeting.
107	Martin	Review - Outreach and Education
115	Martin	Review - Leadership
122	Martin	Review - Funding
140	Rep. Josi	Asks for details on matched dollars from the federal government.
143	Martin	Does not know what is in President Clinton's budget, but Governor Kitzhaber and others have appealed to the President to put substantial new funds for west coast salmon in his budget.
151	Rep. Josi	Comments on the lack of clarity regarding the plan and the budget. Asks if the plan is going to be complete.
160	Martin	<p>There are many factors that will be made clear as the funding sources become known:</p> <ul style="list-style-type: none"> * level of funding from the Legislature * President Clinton's budget <p>Some funding sources are already known, there still remains a challenge in knowing where funding will come from in the future.</p>
175	Rep. Josi	Suggests that Oregon options be considered when looking for funding.
178	Martin	Need to be results oriented and the funding needs to be a level that will work.
179	Chair Messerle	Asks if there has been contact and discussion with the Natural Resources Conservation Service (NRCS) or the Environmental Protection Agency (EPA) about the fitting of some of their

		staff into the program.
184	Martin	Yes. A whole chapter on federal measures and support will be submitted to the federal government that will outline the support that federal agencies are willing to offer from current budgets. After the President's budget becomes public, it is hoped that there will be funds to help seek enhanced funding through Congress. There will also be specific commitments from federal agencies of how they will assist with the implementation and enforcement of the plan.
196	Chair Messerle	Asks when the committee will be able to review the plan.
196	Martin	End of February.
197	Chair Messerle	Comments on the limited timeframe and the need for this information to come to the committee.
201	Martin	The key obstacles to the plan are: * funding * institutional barriers * monitoring program * accountability
221	Rep. Harper	Asks if these measurements are quantifiable.
227	Martin	Yes, anticipating the ability to quantify work plans, the compliance rate, watershed analysis, the biology of the fish.
236	Rep. Bowman	Asks if it is determined what part of the plan each agency will be responsible for.
241	Martin	Yes, a team is being developed to determine the monitoring plan. Each agency will have a specific area of responsibility with the Governor's Office coordinating the final results into a report to the people of Oregon regarding the state of the salmon and their habitat.
254	Chair Messerle	Asks when that report will be issued.
256	Martin	At the end of February.
257	Chair Messerle	Comments on his understanding that the plan would be submitted to the committee prior to the end of February.
264	Burgess	Clarifies to the Chair that the draft would be submitted to the printer in mid-February. May be able to share portions of draft with committee prior to publication.
274	Chair	Concerned about the timeframe and the lack of time left for completing all the work necessary prior to the April 25 listing

	Messerle	date.
286	Rep. Josi	Comments on the frustration because of the importance of the plan. Ways and Means is developing a budget, and when that figure is available, the plan has to be reworked around that amount. They haven't seen the plan and it is difficult to determine the amount of funds needed for implementation.
307	Burgess	Will try to provide copies of the draft.
308	Martin	Review - What's Next?
342	Chair Messerle	Ask if there has been any discussion during the development of the plan of indemnifying the users, local governments, and landowners involved in the plan. Comments on the constant threat of lawsuits.
369	Martin	The plan is an aquatic conservation strategy which should take care of all aquatic species. Believes that the plan can prove to the federal government that the state can restore system health and avoid a large number of lawsuits.
TAPE 15, B		
010	Rep. Welsh	Asks how restoration and in-stream projects can be quantified.
019	Martin	Many people ask how much this plan will cost in the long-term. The investment package is only a small portion of a five decade exercise. The \$20 million is barely a good start for this plan. There is no way of knowing what the true cost of restoring the ecosystem will be over the next fifty years.
035	Rep. Welsh	Asks how long the \$20 million will last.
038	Martin	It is a biennium plan.
040	Rep. Bowman	Asks if the environmental groups have been part of the development of this plan.
045	Martin	They have been a part since the beginning. There have been many informal meetings, and at a formal review, the advice was asked of various environmental groups on how to accomplish the objectives and goals of the plan. Their input has been, and will be, very valuable in determining if the plan will work.
056	Rep. Bowman	Comments on the forestalling of future lawsuits.
060	Chair Messerle	Comments about the appearance of environmental groups before the committee to offer their viewpoints.
063	Rep. Josi	Asks if the plan is going to be implemented through administrative rule or if it will be codified through statute.
069	Martin	It would be the implementation of various measures through administrative rule. That would be the plan. The budget

		portion of the plan will be through the bills introduced to the legislature.
078	Rep. Corcoran	Comments on the timing factor and the letter from William Stelle.
090	Chair Messerle	Points out that there are many different groups and committees that want to be part of looking at this proposal.
093	Rep. Welsh	Asks if the voluntary efforts of watershed councils will be addressed and included in the plan. The time, efforts, and contributions of those volunteers are worth something and the proper value needs to be assigned to them.
104	Martin	Unsure how to capture the value of those actions.
121	Rep. Welsh	Asks for clarification on the lack of a database on this type of information.
125	Martin	Refers to the ODFW Salmon Life Enhancement Program which formally tracks volunteer hours. This program uses the tracking of volunteer hours to match federal dollars.
134	Chair Messerle	Comments on the amount of work that could be done.
143	Martin	The watershed councils will help in tracking this information.
144	Chair Messerle	Comments on the future funding of the plan. There is not enough money in the government to fund the enforcement of this plan. Comments on the amount of effort required to get permits to make changes or improvements to the land. Because of the interfacing of federal and state laws, it is difficult to maintain lowland grazing lands.
173	Rep. Kruse	Comments on the effect of the ocean conditions on the salmon situations, improved watershed health, improved conservation programs, listing of the Umpqua Cutthroat, and the time limitations for implementation of the plan.
240	Burgess	Ken Bierly will be discussing the role of various agencies and groups in the healthy streams partnership.
247	Chair Messerle	Comments that the issues of watershed health and salmon restoration have a tendency to become confused. Asks if the major difference is the timeframe.
256	Burgess	The difference is the timeframe. The listing is expected on the coast first. Submits the executive summary of the draft plan and the draft plan to the committee. (EXHIBIT B)
269	Chair Messerle	Comments on the commitment to this issue and the information flow.
283	Rep. Corcoran	Asks if the current draft is much different from the final plan.

289	Burgess	No, but four or five sections will be re-written, a monitoring program will be expanded, the vision statement broadened, and more voluntary measures will be included in the final plan.
311	Rep. Corcoran	Asks if the specific bills involved will be changed.
313	Burgess	There are no proposals for changes. Proposing four bills to provide funding for the plan.
327	Rep. Corcoran	Asks if the bills would originate in Ways and Means.
329	Burgess	Three have been referred to Ways and Means and the fourth has been referred to Water Policy.
337	Chair Messerle	Comments on the need to consult Leadership.
351	Rep. Corcoran	Clarifies the intent of his question to Chair Messerle.
360	Chair Messerle	Asks if the new positions will be detailed in the draft plan.
371	Burgess	Corrects earlier statement regarding referral; two are in Environment and Energy, one is in Water Policy, and one is in Ways and Means. Comments on the four bills.
400	Chair Messerle	Comments on the need for the committee to be able to go into the details of the plan.
TAPE 16, B		
009	Ken Bierly	Manager, Governor's Watershed Enhancement Board (GWEB), discusses the staff positions included in the Governor's plan.
017	Rep. Josi	Asks if this can be backed up by a document.
019	Bierly	It is available in the budget package for ODFW, and in the Governor's memo budget for this program. Can provide this information on Thursday.
022	Bierly	<p><u>Coastal Salmon Restoration Initiative</u></p> <ul style="list-style-type: none"> * 14 positions in ODFW - district fishery biologists * 6 positions in the Department of Forestry - service foresters assisting in restoration * 4 positions in the Water Resources Department - currently GWEB staff * 1 position in the Department of Land Conservation and

		<p>Development - to support the federal non point source pollution program</p> <p><u>Statewide Water Quality Issues</u></p> <p>* 19 positions in the Department of Agriculture</p> <p>* 19 positions in the Department of Environmental Quality</p>
054	Rep. Josi	Requests an outline of this information.
056	Bierly	Will provide it.
058	Rep. Kruse	Asks for clarification on the necessity of the ODFW positions.
062	Bierly	The district biologists would be assigned to assist local landowner efforts. These positions were deleted previously due to lack of revenue.
070	Rep. Kruse	Comments on the loss of positions.
074	Martin	The number of habitat biologists lost will be made up by this program. The substantial addition to ODFW's budget is the monitoring positions. The primary component is to be the coordinator and synthesizer for all the other monitoring efforts and the secondary component is to help landowners and watershed councils with their habitat projects.
084	Chair Messerle	Comments on the complexity of the budget and the documentation of the positions. Asks for more detail on these positions.
096	Rep. Josi	Comments on the lack of understanding in regards to the needs of the committee.
103	Rep. Kruse	Asks for more information on the monitoring portion and the level of credibility needed.
111	Martin	The water quality and agriculture measures are in the first part of the plan and those are the heart of the budget. What is new in relation to the budget, is the expansion of the monitoring program. Currently working out the details of the program.
127	Rep. Corcoran	Comments about the people who are interested in the success of this plan. People need to put their questions out on the table so that the entire issue can be looked at from all sides.
142	Chair Messerle	Comments on the lack of cooperation of the agencies. Asks how much of the \$20 million grant funds is expected to return to backfill projects through grant projects.
154	Burgess	Refers to the watershed investment fund proposal that is an outgrowth of the healthy streams partnership process. The agreement among the people involved was to not be explicit on the specific distribution, but to make funds available in GWEB

		for a variety of purposes. Traditionally, one-third of the funds in GWEB have gone to soil and water conservation districts.
176	Bierly	Needs will change over time, and as projects get implemented staff needs and the allocation of funds will shift.
203	Rep. Josi	Suggests a monitoring process be developed for the watershed investment fund to ensure that there will be sufficient oversight and review.
211	Bierly	Committed to oversight and review.
215	Burgess	Reporting requirement is an interesting concept.
221	Bierly	The working group did not want a "use it or lose it" fund. There is a desire to maintain an investment in high quality and that is why it was constructed as a continuous appropriation.
<u>DEPARTMENT OF ENVIRONMENTAL QUALITY - RESPONSE TO INQUIRY</u>		
238	Langdon Marsh	Director, Department of Environmental Quality (DEQ) submits and reviews a memo from Carolyn Young responding to information requests. (EXHIBIT C)
252	Marsh	Review - Information Requests
284	Chair Messerle	Asks if the substantial difference between the 303(d) List and the report by Division of State Lands (DSL) and ODFW is the temperature standard.
292	Marsh	Not entirely sure of the basis of the DSL map, may have been developed with the advice of ODFW to determine particular habitats which are at risk from activities regulated by DSL, such as gravel removal or mining. Because of the different purpose, there would not be a congruence. DEQ would consider this information in their prioritization process.
320	Chair Messerle	Comments of the reports and refers to the title.
326	Marsh	Will attempt to clarify further.
328	Chair Messerle	Comments on the discrepancies on what is considered critical habitat.
334	Marsh	Review - Information Request
TAPE 17, A		
009	Chair Messerle	Asks how much the completion of the Columbia Slough project will reduce the flow of storm and sewage runoff.
012	Marsh	Will have to return with those figures. Review - Information Request

026	Chair Messerle	Asks that if even though 80% of the volume is storm water, once it is mixed with contaminated water must it be decontaminated first.
031	Marsh	Correct.
035	Chair Messerle	Asks if it is acceptable to EPA.
036	Marsh	Assumes it is as EPA has not questioned it.
038	Rep. Kruse	Asks for clarification on the event concept and why the standard is not based on 24-hour rain fall.
048	Marsh	Because it is a volume-related standard. The capacity of the interceptor system has been calculated to limit the number of events to the standard that is set in the order.
056	Rep. Kruse	Asks if DEQ has based these calculations on historical events (such as flooding).
060	Marsh	Correct.
061	Rep. Kruse	It is based on volume and not an arbitrary number.
063	Marsh	Review - Information Request
079	Chair Messerle	Asks about the time frame on compliance of other cities.
083	Marsh	Will provide this information.
084	Chair Messerle	Asks how many of the nineteen DEQ positions are going to be involved in the urban runoff and sewer projects.
089	Marsh	None. The nineteen will be working on the development of total maximum daily loads (TMDLs), water quality management plans, monitoring, and other technical assistance.
093	Chair Messerle	Asks for clarification on the number that was mentioned previously that would be working with urban runoff. Would they in fact be helping with TMDL.
095	Marsh	Correct, a portion of their time would be spend dealing with various portions of the plan and putting it into a basin plan including urban storm water, municipal and industrial discharge, agricultural and forestry non point source runoff and others.
102	Rep. Harper	Asks Chair Messerle for clarification about the measurement of success in the Salmon Restoration Plan. Comments on the lack of ability to measure the end result.
112	Chair Messerle	Can't answer that at this time. Mr. Stelle will be able to elaborate on what will be required.
123	Rep. Harper	Wants it on the record that this is a question that must be ultimately answered.
124	Rep.	Asks if there is a geographic pattern in the location of listed

	Bowman	waterbodies.
132	Marsh	There are listings in almost every sub-basin in the state. Some areas are more impacted depending on the parameters, such as temperature and bacterial concentration. The information can be analyzed geographically, but the effort is to provide a watershed or sub-basin approach to comprehensively deal with all the problems.
147	Chair Messerle	Asks for further clarification on the time frame for the Willamette River.
154	Marsh	The order is for 2011, a great deal of work will be done every year on the Willamette starting in 1999. Certain portions of the work will be completed prior to 2011.
171	Chair Messerle	Asks what the percentage of compliance is for the Columbia Slough project and the Willamette River at this time.
175	Marsh	The City of Portland is meeting their milestones in the consent order for the slough and their other projects. Environmental improvements will not be obvious until completion of the project.
190	Chair Messerle	Asks for the percentage of completion on the Columbia Slough and Willamette River projects at this time.
193	Marsh	Imagines it is a very low percentage at this time as construction has only recently began. Will try to get the most recent figures from the City of Portland.
198	Chair Messerle	Adjourns the meeting at 5:08 p.m.

Submitted By, Reviewed By,

Rebecca M. Nickel, Pat Zwick,

Administrative Support Policy Analyst

EXHIBIT SUMMARY

A - Coastal Salmon Restoration Initiative, Written Testimony, Jim Martin, 36 pp.

B - Coastal Salmon Restoration Initiative, Paula Burgess, 212 pp.

C - Water Quality, Written Testimony, Langdon Marsh, 7 pp.