

HOUSE COMMITTEE ON
NATURAL RESOURCES

Hearing Room
Tapes - 18

MEMBERS PRESENT:

Rep. Veral Tarno, Chair
Rep. Terry Thompson, Vice-Chair
Rep. Tony Corcoran
Rep. Bill Fisher
Rep. Tim Josi
Rep. Leslie Lewis
Rep. Dennis Luke
Rep. Lisa Naito
Rep. Chuck Norris
Rep. Judy Uherbelau
Rep. Larry Wells
Rep. Jim Welsh

MEMBERS EXCUSED:

STAFF PRESENT:

Mark Bauer, Committee Administrator
Paula Hird, Committee Assistant

MEASURES HEARD:

HCR4 Public Hearing and Work Session
HJM4 Work Session

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

TAPE , SIDE A

003 CHAIR TARNO opens the meeting.

004 MARK BAUER, COMMITTEE ADMINISTRATOR: Explains that there will be an informational meeting with a state department of forestry member who will be speaking briefly on matters related to the endangered species act, followed by a public hearing on HCR4, with a possible work session on HCR 4, followed by a work session on HJM4.

Opens the INFORMATIONAL HEARING on the Federal and State Endangered Species Acts.

Witnesses: Jill Bowling

014 JILL BOWLING, STATE LANDS PROGRAM DIRECTOR, OREGON DEPARTMENT OF FORESTRY: Gives an overview of how the state Endangered Species Act has affected their program operations. Submits written testimony, EXHIBIT A.

051 In the absence of conservation programs, action agencies, and the Oregon Department of Forestry, default to an action by action review. The process requires action agencies to determine whether their actions "appreciably reduce the likelihood of survival or recovery of the species.

069 REP. NORRIS: Are we supposed to be able to follow her on what we have here or not?

070 REP. LUKE: No, because she isn't reading off that.

071 BOWLING: For brevity sake I'm going through most of the main points here, but skipping some of the paragraphs.

073 CHAIR TARNO: We will be coming back to HB 2120 at a different time.

075 BOWLING: Would you like me to get to the questions REP. FISHER asked and just deal with those as a block.

076 CHAIR TARNO: Why don't we do that for the sake of brevity.

078 BOWLING: We were asked three questions by REP. FISHER and the first questions is what standards does Oregon Department of Forestry use to satisfy the Federal Endangered Species Act and the Oregon Endangered Species Act.

082 States that the state and federal endangered species act have two different standards.

113 Federal endangered species act and state endangered species act are

different in the West Oregon district. Currently no owls, but there are owl sites on adjacent federal lands to the North and South of our district.

Believe this district has an important role to play in the recovery of the owl.

129 REP. FISHER asked how we can streamline our processes to make them more efficient, and how do we insure that we manage to meet the primary purpose of the land, and satisfy the state endangered species act.

135 The federal endangered species act provides a mechanism for protecting threatened and endangered species by using take avoidance.

174 How would the department go about ensuring that good science is used in the listing process. The ODFW statutes currently provide that listing shall be based on "documented and verifiable scientific information."

207 CHAIR TARNO: Let's talk for a moment about the Elliott. There are some 73,000 acres.

209 BOWLING: About 93,000 yes.

210 CHAIR TARNO: The Elliott state forest plan essentially says that if approved by ODFW they can harvest up to 28 million board feet.

213 BOWLING: Correct.

214 CHAIR TARNO: What was the average yield five years ago?

215 BOWLING: About 50 million board feet from that forest.

216 CHAIR TARNO: Was that called a sustained yield program?

217 BOWLING: Correct, that was a sustained yield program.

218 CHAIR TARNO: So the Elliott could rotate through as crop harvest every year 50 million board feet without a problem.

219 BOWLING: Correct.

220 CHAIR TARNO: Is the Elliott second growth or old growth timber?

221 BOWLING: It's a second growth forest.

221 CHAIR TARNO: When the state forester was conducting the survey of the Elliott in order to create a conservation plan where there checks made of owls and a count taken?

225 BOWLING: We have surveyed the Elliott now since 1990 and during that time we found a lot of owls on the forest. Over 60 owls there and a number of Marbeled Murrelet sites.

230 CHAIR TARNO: Would that be 60 pairs?

231 BOWLING: Yes.

232 CHAIR TARNO: One of the objectives of the Elliott state forest plan was to reduce those so called circles the unit habitat for the owls into a more focused area, thereby being able to harvest more timber. Is that correct?

236 BOWLING: Correct.

236 CHAIR TARNO: Is there anything in the works to do a similar plan for the Tillamook?

238 BOWLING: We're currently doing a long range planning effort that is going to encompass all of the Northwest; the Tillamook, Clatsop, Santiam, plus West Oregon and Western Lane forests.

243 CHAIR TARNO: In your opinion has the forestry done any kind of work to determine the counts of the Spotted Owls in the state of Oregon?

245 BOWLING: For the last four or five years we have been doing the most intensive surveys outside of the federal lands, and we now have a very good idea where the owls are on our state lands.

254 CHAIR TARNO: How many owls are estimated to be in the state forests in Oregon?

255 BOWLING: In the state forests last year we had a total of 52 sites across all of our lands, and we had a total of 193 sites that affect those lands, so there are actually some sites outside of our forests that the protection circles around the owls affect our state lands.

263 CHAIR TARNO: By sites you mean pairs?

264 BOWLING: Most of those sites are pairs, some of them are also single birds.

266 REP. FISHER: Did I hear correctly, you have identified 60 pairs on the Elliott state forest.

269 BOWLING: Correct., and those birds are on the forest or on the periphery of the forest, with those circles overlapping on the forest. A

lot of our owls on the state lands are concentrated in the Elliott forest.

272 REP. FISHER: About a year ago the amount of owls that were professed to be on the Elliott state forest were 60 owls total; about 20 pairs and 19 singles.

277 BOWLING: We're probably talking about the difference in sites and pairs.

280 REP. FISHER: Would like to bring to the record that the average off the Elliott state forest before the Spotted Owl problem arose was about 50 million board feet average, at that same time the state forestry department was going around putting on workshops and saying that they saw no reason that within the next 50 years that couldn't be increased to 75 million board feet, sustainable. So it was not on a declining but an improving basis.

295 BOWLING: These are second growth areas and we've been finding owls where we didn't think we'd find owls. We've been finding them in 40 and 50 year old stands. The situation is that the more we have surveyed the more owls we've found, and found them in unlikely sorts of habitat.

303 REP. FISHER: According to my knowledge the owl circle for that area was determined to be about 4,000 acres.

307 BOWLING: It's a circle that's 1.5 miles.

309 REP. FISHER: If you take the 93,000 acres of the Elliott state forest, that forest can't possibly sustain under your circle theory, that many owls. But they're there. These things are hard for the average person to understand.

325 REP. UHERBELAU: What information are you seeking in the retrospective study?

330 BOWLING: We are seeking information on the numbers of owls that we have on state lands, and looking at the habitat those owls are using. Trying to answer the question of why we have so many owls on second growth forests.

350 REP. UHERBELAU: Does part of the study include the idea of possibly taking the owl off of the state endangered species act. Could this be a recommendation from your study?

355 BOWLING: We haven't been looking at that question as part of our study.

360 REP. UHERBELAU: Is anyone addressing the issue of whether it should still be on there. Any state agency

362 BOWLING: I believe we have some representatives here from the Oregon Department of Fish and Wildlife that would be in a better position to answer that question.

367 REP. UHERBELAU: Why did you choose five years. Do you feel like you need five years to get a good idea of what is really going on in those areas?

370 BOWLING: We wanted to get some survey information on where the owls really were. We needed a number of years because the owls were moving around and we wanted to get a good base of information.

385 REP. WELSH: Don't we have a lot of historical data on the Elliott state forest.

400 BOWLING: We do have a lot of that information, however what we didn't have was information on where the owls were and where they were moving and how successful they were in their reproduction.

422 REP. WELSH: Couldn't we conceivably double that 28 million board foot harvest level off that Elliott state forest and still continue with these studies without harming the habitat of the owl pairs.

429 BOWLING: The last few years the Elliott harvest has been way down. We're currently working on an interim plan that satisfies the federal and state endangered species act requirements.

453 REP. NAITO: Does the commission review each listing every five years?

459 BOWLING: Again I'll probably defer to the Oregon Department of Fish and Wildlife for the state listing.

483 REP. LUKE: Did they spend five years of tagging and doing counts of owls and watching their habitat before they listed the Spotted Owl?

495 BOWLING: Not sure how much study the U.S. Fish and Wildlife Service did before the listing process.

TAPE 17, SIDE A

038 REP. LUKE: So under the state endangered species act there wasn't a study done on the owl on the state forest lands, they we're grandfathered

in because of the federal listing.

041 BOWLING: That's correct.

042 REP. FISHER: The ODFW reviewed all of the state endangered species approximately a year ago, and left them listed as they were. They did that on the basis they said that there was no scientific evidence that they owl was increasing.

047 REP. JOSI: Did I understand you to say that the federal government has yet to develop a federal recovery plan for the Spotted Owl.

050 BOWLING: Yes.

051 REP. JOSE: Are they developing one, or do they have a game plan?

052 BOWLING: There was an owl recovery team put together in 1989 or 1990 and they took several years developing a plan which came out in draft form but was never made final. Now we have the Clinton plan and Option 9 as a basis for planning on federal lands.

061 REP. JOSI: One of your recommendations is greater efficiency would be achieved if action agencies were to assume the responsibility for developing conservation programs for the land the owner managed. Are you referring to the federal government primarily?

064 BOWLING: No, I was referring to the department of forestry

081 REP. JOSI: How close are you to working these efficiency arrangements.

084 BOWLING: Informally I think the process worked extremely on the Elliott.

097 REP. JOSI: You also stated that our recommendation would be for the board of forestry to approve these plans and for the fish and wildlife commission to review them prior to approval. Did you have a chance to review that recommendation? If so, what were their comments?

103 BOWLING: We talked about that just briefly this morning and both of us agreed this is something we'd like to do more work on.

110 REP. CORCORAN: You mentioned earlier an interim plan for the Elliott.

113 BOWLING: We had an interim plan currently in process with developed with ODFW.

115 REP. CORCORAN: The net effect of this would be to open up ostensibly more cutting in the Elliott. Give us a sense of how long that process takes.

122 BOWLING: We're lining up three processes. Forestry management processes, state endangered species act processes, and the federal endangered species act processes. We have taken two years intensive work to produce this habitat conservation plan.

151 REP. CORCORAN: Is there a third round of hearings?

153 BOWLING: No

154 REP. CORCORAN: Is it at the conclusion of the second round of hearings that some determination is made, and if so by whom?

155 BOWLING: In the case of this habitat conservation plan, we're entering into an agreement with U. S. Fish & Wildlife Service that we are going to take owls and murrellets and to mitigate that take we're actually providing habitat.

169 REP. CORCORAN: That will be before we're bucking hay in Pendleton?

172 CHAIR TARNO: Miss Bowling, the plan has been approved by all state agencies, is that correct?

173 BOWLING: That's correct.

174 CHAIR TARNO: The only hang-up now is U.S. Fish and Wildlife.

175 BOWLING: It has been approved, yes.

175 CHAIR TARNO: How long has it been hung-up by U.S. Fish and Wildlife?

175 BOWLING: We're looking at a 60 year permit for this plan.

179 CHAIR TARNO: You submitted that plan to U.S. Fish and Wildlife how long ago?

179 BOWLING: We submitted that plan informally about the middle of last year and formally about Christmas time last year.

182 CHAIR TARNO: And that plan included the taking of Spotted Owls.

183 BOWLING: This plan is for Spotted Owls and Marbled Murrellet.

Closes the INFORMATIONAL HEARING.

Opens the PUBLIC HEARING on HCR4.

Witnesses: Sen. Rod Johnson
Ross Mickey

Liz Frenkel

194 SEN. ROD JOHNSON, OREGON STATE SENATOR: Cites a quote from one of the preservationists that went something like "If the Spotted Owl hadn't have been there we would have had to invent it." That summarizes what's gone on here.

205 CHAIR TARNO: Do you want me to give you the exact language of that quote? This came from Mr. Andy Stall, Resource Analyst for the Sierra Club

"The Northern Spotted Owls is the wildlife species of choice to act as a surrogate for old growth protection and I've often thought that thank goodness the Spotted Owl evolved in the Northwest or we would have had to genetically engineer it."

213 SEN. JOHNSON: This whole Spotted Owl thing has been a farce. A tool used by people who have a different goal, which is to get people out of the forest and leave it to the animals.

263 People count too. We have to take care of this planet because we have to live on it, but we also have to live off it.

285 ROSS MICKEY, WESTERN OREGON MANAGER, NORTHWEST FORESTRY ASSN: Submits EXHIBIT B and testifies in support of HCR4

335 One paragraph out of the federal register which actually listed the Spotted Owl in 1990, states the dependence of Northern Spotted Owls on older forests, the low probability that significant amounts of suitable habitat will persist outside of preserved areas, and the ability of the protected areas to support a viable population, all indicate the Northern Spotted Owl is likely to become endangered within the foreseeable future.

385 Cites the first page of a research study that's been going on since 1987, conducted by the Bureau of Land Management in conjunction with the National Council of Land Management.

403 The notion of what is Spotted Owl habitat is not what it was when the owl was listed and it's not where we're actually finding the owls.

453 There is an 85 per cent chance of the Spotted Owl living over the next 100 years on these lands alone without any contribution of any other lands, state, private, or tribal.

471 Verified Spotted Owl sightings, Washington, Oregon and California. When listed in 1988 there were 1500 pairs known to exist in all three states. Known verified sightings went up to 2,000 pairs in 1990, 3,461 pairs in 1992, 3,602 pairs in 1993.

481 CHAIR TARNO: You say verified, these are actual counts?

482 MICKEY: These are actual counts.

491 REP. THOMPSON: Are you sure there's no double sightings in this?

TAPE 16, SIDE B

031 MICKEY: If the Spotted Owl needs the home ranges they say they need, from 3,000 to 14,000 acres apiece, there's a very low probability you're going to find two pairs, that you could hear, within that acreage.

045 CHAIR TARNO: On your chart "Verified Spotted Owls in Washington, California and Oregon" the number 3,602, are those single owls, or could they possibly be pairs, or they assumed to be pairs?

047 MICKEY: They're assumed to be pairs. What they call them is pairs or territorial singles.

054 CHAIR TARNO: Has any study been done to determine what kind of comparison you would have with single owls compared to pairs?

055 MICKEY: The estimates we have in 1992 were that you have for every four owls that are in pairs you have another one that is single.

075 REP. NAITO: Are you saying it's your belief that the Spotted Owl is no longer threatened now or perhaps never was.

078 MICKEY: What I'm saying now is data that I've collected. I haven't drawn any conclusions up to this point.

082 REP. NAITO: You haven't formed an opinion based on the data of whether or not the owl is threatened any longer?

090 MICKEY: Presenting data on why the owl was listed, let's look at those reasons today and see if they still exist.

092 REP. NAITO: It's your statement that what you've copied here from the federal register was the only reason the owl was listed?

94 MICKEY: That's the essence of the listing.

106 REP. FISHER: Asks about how they determine the number of singles.

121 MICKEY: You have to look at juvenile mortality, adult mortality, how long they live, how often they successfully breed.

129 REP. NORRIS: What predators are there that are a threat to the owl?

130 MICKEY: The biggest is the Great Horned Owl.

135 REP. NORRIS: The Spotted Owl is not at the top of the food chain?

136 MICKEY: No.

137 REP. UHERBELAU: Not sure why he has included in his packet of material the 1991 progress report which merely has one paragraph. It said that there was a mosaic of forest, it doesn't tell you what the extent of the forest that was surveyed.

154 MICKEY: I have a copy of the report if you would like one.

181 REP. UHERBELAU: Asks for a copy of the study. Asks if he was working for the U.S. Forestry.

184 MICKEY: Worked for the U.S. Forest Service for 10 years, and as part of that did some owl surveys and was working with timber sales where they had to take into consideration Spotted Owls.

187 REP. UHERBELAU: Are you a biologist

187 MICKEY: No, I'm a forester.

188 REP. UHERBELAU: Makes reference to one of the handouts about Eric Forestman.

199 MICKEY: He was the first one who went out and studied Spotted Owls. He is still considered the eminent Spotted Owl biologist in the Northwest.

216 REP. FISHER: There's something no one has been able to answer for me. Why is the base never increasing of it's own accord with regard to old growth forests given natural disasters 200 years or more ago?

238 MICKEY: The federal agencies have tended to ignore that. They haven't ever looked at the lands that they have set aside to see what old growth will be coming on line in the future. You're correct in saying that people have not taken that into account.

269 REP. FISHER: Judging by the amount of owls on the 40 to 80 year old second growth, it would appear that the sooner we can get to the 40 to 80 year second the better off we'll be regarding the owl.

275 MICKEY: To me it shows that if people are interested in maintaining owls indefinitely, that there are ways in which we can manage our forests to provide suitable habitat within 40 to 80 years.

291 CHAIR TARNO: Refers to the chart and asks if that is all the land in the states of Washington, California and Oregon, or is it federally owned property.

295 MICKEY: This is everywhere they've been verified. It's all lands.

307 REP. WELSH: In your opinion do we have enough sound verifiable scientific evidence to identify and make a decision on, viable population, and viable habitat for the owl in Oregon?

318 MICKEY: I think we have enough information to determine what habitation characteristics owls are being found in. In terms of numbers, the ODFW should determine what size the population needs to be in order to be self sufficient. They've always been unwilling to do that. They say it has to do with habitat not numbers.

368 On the Olympic peninsula they feel that 320 pairs is large enough to maintain a viable population forever.

378 REP. WELSH: I'm not sure that I have his personal opinion on the number required to maintain a viable population.

386 MICKEY: I think that there is enough data available that a group of people could sit down and use that data to come up with those numbers. I think we could do that.

390 REP. WELSH: Do we have enough sound verifiable scientific evidence at hand that somewhere, somebody could make the decision to delist the owl.

394 MICKEY: I believe so. If the same standards are used to delist the population as were used to list the population, we definitely have enough.

421 REP. THOMPSON: Expresses concern that on one of the graphs in the Anderson analysis, it looks like from our best scientific data available, they will decline and yet you're saying that this bird is going to survive.

In the Bard analysis it looks like there's a possibility it will survive.

Can you explain that?

433 MICKEY: Would like to set some background before he gets to the graph.

If we can't use numbers to determine whether the owl is going up or down, what do we use? People have tended to look at computer models.

483 Continues to explain Anderson-Burnam report didn't do was they didn't

take into account the singles in the population. Doesn't think they can use models to tell them anything about owls.

TAPE 17, SIDE B

046 REP. THOMPSON: Was informed the other day on the floor that in fisheries he had to use models to verify the science involving fisheries, but you're telling us that models aren't verifiable

054 MICKEY: That's why the National Council hired Dr. Boyce, one of the eminent modelers, to try to put together a model that does not have these inherent inaccuracies in it. What that model relies on is habitat, and carrying capacity.

078 REP. CORCORAN: Wants to raise the issue that REP. THOMPSON raises and that is that people are going to get hung on their own petard, and I'm talking about the pro timber folks, if they start relying on sound verifiable science to make the decision to delist the owl because the idea to include economic factors in environmental law is bad science. This discussion is not about science
it's about economics.

091 MICKEY: The rest of my charts go through different data that is available to you, with references, so you can go back and check it out for yourself.

123 Gives references as to where the committee can find information on sub-speciation.

148 REP. FISHER: Takes exception with REP. CORCORAN, thinks this is some of the best prepared technical knowledge the committee has received in any of the testimony received in two sessions.

163 LIZ FRENKEL, OREGON CHAPTER OF THE SIERRA CLUB: Testifies in opposition to HCR4.

187 Clarifies that the Sierra Club and the Sierra Club Legal Defense Fund are two entirely separate organizations, except that on occasion the Sierra Club are clients of the Sierra Club Legal Defense Fund.

237 Closes the PUBLIC HEARING on HCR4.

Opens the WORK SESSION on HCR4.

240 MOTION: REP. FISHER: Moves HCR4 to the floor with a DO PASS recommendation.

246 REP. NORRIS: Refers to a copy of the Federal Endangered Species Act he's had for several years. Feels that if there going to approach this, rather than just memorialize and urge, they should petition the Secretary of Interior and the Secretary of Commerce to remove the Northern Spotted Owl from the list. If they receive a petition they have 90 days to indicate whether or not they will consider it.

269 REP. UHERBELAU: Has come concern about the motion at this point. They've only heard one side of the story. It may be that there wasn't enough public notice that this bill was coming up for a public hearing, feels they are moving too fast.

280 CHAIR TARNO: So noted.

281 REP. FISHER: In regard to REP. NORRIS' suggestion can a Concurrent Resolution be made in the form of a petition.

284 REP. NORRIS: We may be about to find out.

286 REP. FISHER: Would consider that a friendly amendment.

287 CHAIR TARNO: Is that in the form of an amendment REP. NORRIS?

288 REP. NORRIS: Would be prepared to present that if they want to check with Legislative Counsel as to whether or not we could make this a petition. If on line 16 we would say the Secretary of the Interior and the

Secretary of Commerce, as may be appropriate, (and we could cite a section in the endangered species act) are urged and hereby petitioned to remove the Northern Spotted Owl, indicating a substantially larger species population and reproductive success than was previously believed to exist.

Feels that they would have put this in the form of a petition.

313 CHAIR TARNO: Adjourns the meeting until the issue can be resolved.

330 RECONVENES the meeting.

335 Asks if REP. FISHER is willing to withdraw his motion.

336 REP. FISHER: WITHDRAWS HIS MOTION.

337 CHAIR TARNO: REP. NORRIS raised a concern about looking at an amendment

to HCR4. During the break they discussed the feasibility of doing so. They are going to check with Legislative Counsel to see what can be done to

amend the language. REP. NORRIS will bring that information back to the Committee for it's Wednesday meeting.

347 REP. NORRIS: Didn't mean to grandstand or blind side anyone, was looking for language that mentioned delisting.

357 CHAIR TARNO: Asks for any further comments on HCR4.

HEARING NONE:

Closes the WORK SESSION on HCR4.

361 Opens the WORK SESSION on HJM4.

364 MARK BAUER, COMMITTEE ADMINISTRATOR, summarizes HJM4.

381 MOTION: REP. THOMPSON: Moves HJM4 to the floor with a DO PASS recommendation.

384 CHAIR TARNO: REP. THOMPSON moves HJM4, as amended, to the floor with a DO PASS recommendation. Further discussion?

388 REP. NAITO: Thanks REP. THOMPSON for working on the bill. States that they all want to be sure that some of the endangered mammals are protected,

and now that the bill has been re-drafted to specify California Sea Lions and Harbor Seals, feels that it greatly improves the memorial

403 REP. WELLS: What is this hand engrossed thing in the handout?

406 MARK BAUER: What you have there is the engrossment that staff did to show all of the changes incorporated by the two amendments to this memorial. States that the subcommittee substantially amended the memorial.

432 CHAIR TARNO: REP. THOMPSON actually moves HJM4 with the dash two amendments.
Any further questions from the committee. HEARING NONE, calls for a roll call vote.

439 VOTE: 11-0

Ayes: Corcoran, Fisher, Josi, Lewis, Naito, Norris, Uherbelau, Wells, Welsh, Thompson, Tarno.

Excused: Luke

456 CHAIR TARNO: HJM4 is passed to the floor . CARRIER will be REP. THOMPSON.

483 ADJOURNS the full committee meeting.

Submitted by,

Reviewed by,

Sandy Ceballos for
Paula Hird
Committee Assistant

Mark Bauer
Committee Administrator

EXHIBIT SUMMARY:

A -- Testimony on the Endangered Species Act -- Jill Bowling, State Lands Program Director, Oregon Department of Forestry -- 5 pages

B -- Testimony in support of HCR4 -- Ross Mickey, Western Oregon Manager, Northwest Forestry Assn -- 14 pages

Submitted For the Record:

AA - Letter in Opposition of HCR4-- Audubon Society of Portland -- 1 page