

HOUSE COMMITTEE ON
NATURAL RESOURCES

Hearing Room
Tapes 19 -21

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. Chuck Norris
Rep. Judy Uherbelau
Rep. Larry Wells
Rep. Jim Welsh
Sen. Tom Hartung
Sen Rod Johnson
Sen. Marylin Shannon

MEMBER EXCUSED: Rep. Lisa Naito

Sen. Bob Kintigh
Sen. Bill Bradbury
Sen. Bill Dwyer

STAFF PRESENT:

Mark Bauer, Committee Administrator
Gretchen Haber, Committee Assistant

MEASURES HEARD: HB 2420: Public Hearing

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

009 CHAIR TARNO: calls the meeting to order at 1:07 p.m.

010 CHAIR TARNO: Announces HCR4 will not be discussed in work session today. There will be no bills in work session because some of the people weren't able to get to the capitol this morning.

018 Opens Public Hearing on HB 2420.

Witnesses: Rep. Liz Van Leeuwen, Oregon State Representative, House

District 37.

Mike Miller, Associated Oregon Loggers
Dept. of Forestry, Jim Brown

023 SEN. ROD JOHNSON, OREGON STATE SENATOR, DISTRICT 23: Gives an overview of HB 2420.

034 REP. LIZ VanLEEuwEN, State Representative, House District 37:: Testifies in support of HB 2420. Urges committees full support.

060 JIM BROWN, OREGON DEPARTMENT OF FORESTRY. Presents written testimony EXHIBIT A. States that HB 2420 and a number of other bills that are dealing with the Endangered Species Act raise a number of deep seated policy questions.

110 BROWN: Continues to testify from EXHIBIT A.

121 REP. CORCORAN: Asks in terms of the discussion about subdivisions of state jurisdictions, what is the practice now in terms of recognizing those lands as falling under the state ESA.

125 BROWN: Currently is being applied to state owned lands only.

127 CHAIR TARNO:: Asks if they have also started the process for other state lands.

133 BROWN: States that in the case of the Elliott state forest there were nearly 60 owls on that forest, and unless they put together an application for an incidental take permit with the U.S. Fish and Wildlife they weren't going to cut any timber down there.

154 CHAIR TARNO: Asks when they put together their plan for the Elliott state forest and made their request for an incidental take was that geared to the Elliott alone as opposed to statewide.

159 BROWN: They made application solely for the Elliott.

167 CHAIR:TARNO: Asks if in the process of developing a plan for the Elliott they also had to address the Murrelet.

168 BROWN: Responds in the affirmative.

169 CHAIR TARNO: Asks if the Murrelet will also have to be addressed in the Tillamook when they put that plan together.

169 BROWN: Responds in the affirmative.

170 CHAIR TARNO: Asks if there are other species that impact the future state development plans for the Tallamook or any other state owned forest.

172 BROWN: Responds that at this time they see that the potential listing of Coho and possibly other salmon as being the species on the horizon that they're going to have to deal with.

176 CHAIR TARNO: Asks if the listing of the Coho will impact their ability to harvest timber on the Elliott as well as the Tillamook.

180 BROWN: Says that on the Elliott state forest the land board adopted a buffer zone that is slightly wider than their new forest practices rule.

The answer is yes, but not significantly.

188 CHAIR TARNO: So the Coho wouldn't really have that much impact on the Tillamook.

190 BROWN: Says that is his opinion.

192 REP. LUKE: Asks how much old growth is in the Elliott.

193 BROWN: Answers less than one per cent.

194 REP. LUKE: Less than one per cent and you have how many owls in there?

194 BROWN: "Sixty."

194 REP. LUKE: So they don't necessarily need old growth to survive?

195 BROWN: States that it is older timber 110 to 130 years old as the result of a fire in 1867.

200 CHAIR TARNO: Asks if the listing of the Murrelet on the Elliott further restrict the potential for harvest productions on the Elliott or was that already restricted by the listing of the owl.

205 BROWN: Responds there was an added restriction for Murrelet's but he doesn't now what the marginal difference is between the owl and the Murrelet.

212 MIKE MILLER, EXECUTIVE VICE-PRESIDENT, ASSOCIATED OREGON LOGGERS: testifies in support of HB 2420.

262 Feels agencies, be it the Department of Forestry or the Department of Fish & Wildlife are probably not the best qualified to make those kinds of economic decisions that may impact all of the citizens of the state of Oregon.

281 GREG MILLER, DIRECTOR OF THE STATE TIMBER PURCHASERS DIVISION, OREGON FOREST INDUSTRIES COUNCIL: Testifies in support of HB 2420.

312 REP. CORCORAN: Asks if he is saying that because of the process of listing the Murrelet (as an example) on the state ESA that it restricts the logging practices on state lands but not federal lands.

326 G. MILLER: States that what he is saying is that right now a federally listed species affects all non-federal land owners.

341 REP. CORCORAN: States that there is no net effect in that petition in terms of the Elliott and the Tillamook.

353 G. MILLER: States the test for the state ESA, the aspect of recovery on state lands has a higher standard than what would be required for a federal take avoidance standard.

374 REP. FISHER: Asks if any of the state ESA standards get rubbed off on the private timber owner through the medium of the State Forest Practices Act?

386 G. MILLER: Responds that yes they do.

395 M. MILLER Responds that yes, these issues will apply to private lands through the administration of the Oregon State Forest Practices Act.

420 RUDOLPH A. ROSEN, DIRECTOR, OREGON DEPARTMENT OF FISH AND WILDLIFE.: Testifies from written testimony (EXHIBIT B).

TAPE 20 -SIDE A

050 ROSEN: Continues to testify from written testimony. EXHIBIT B.

100 ROSEN: Continues to testify from written testimony. EXHIBIT B.

109 CHAIR TARNO: You mention that the administration of the ESA is a complex and lengthy process. Isn't it safe to say that it is also an expensive one?

115 ROSEN: Responds in the affirmative. As an example , working on a petition to list the Coho salmon conservatively cost \$83,000.

143 CHAIR TARNO: You've indicated \$83,000 to list..

145 ROSEN: Excuse me, to evaluate the petition and develop a decision package that goes to the commission for their consideration.

148 CHAIR TARNO: Asks about what would it cost to finally go through the whole process and list a species.

150 ROSEN: Says that is about the extent of the cost. For the Coho salmon somewhere in the neighborhood of \$100,000.

153 CHAIR:TARNO: Asks if they were going to de-list would that cost be considerably more or less.

156 ROSEN: Responds that it is likely to be equivalent to the cost of listing.

174 REP. LUKE: Asks if he heard correctly that it will only cost around \$100,000 to determine if the Coho salmon should be listed.

178 ROSEN: Responds that to properly evaluate the petition and to develop the..

180 REP. LUKE: Just answer yes or no. Did you say it's only going to cost \$100,000 or less to list the Coho salmon.

183 ROSEN: Responds that that's the amount of funding attributable to this analysis.

186 REP. LUKE: Listing the Coho will affect the dams on the Columbia, farming, irrigation, logging, stream flows; it will affect everyone up and down that river. The economic impact on those people is thousands of times that much.

194 ROSEN: It's an evaluation of the available information, that may include some research, certainly a lot of analysis, and that's a lot of staff time.

198 REP. LUKE: It costs \$100,000 to put a state trooper on the road for a year.

201 ROSEN: States that in fact the analysis may show that a species does not meet the criteria for listing. Acceptance of a petition to list simply starts the analysis, it does not provide a foregone conclusion that a listing will occur.

208 REP. LUKE: Asks how long have governments or man been involved in saving species that are endangered.

214 ROSEN: Responds that he would suggest that in terms of modern history it's a fairly old science. There are some parts of the country where the white tailed deer was virtually extinct, now they are very abundant.

223 REP. LUKE: Says he's not suggesting that they should let species become extinct, but some species became extinct because they couldn't adjust to the changing environment.

240 REP. UHERBELAU: Clarifies costs for listing. Would this bill add to existing costs? Are there economists who have looked at these proposals?

250 ROSEN: Responds "considerably, but I do not know what that expense will be, and I would say that the department does not have existing staffing that would allow for that kind of analysis."

256 REP. UHERBELAU: States that for this kind of analysis she would assume would require an economist to make some of these analysis. Asks if they have any in their department.

260 ROSEN: States they have one person who does resource economics work.

262 REP. LUKE: Says that there are numerous agencies within the state that do all kinds of different things, and sometimes they work together. Says that the employment division has quite a few economists on staff that would be able to work with their agency to figure this out.

268 ROSEN: Says he believes that's true.

270 REP. THOMPSON: Asks how often they review when they get to the process to take a species off the list.

272 ROSEN: Every five years.

297 REP. THOMPSON: Asks if he would say that possibly an ocean environment has more chances of flexibility in it than a terrestrial environment.

303 ROSEN: Asks Rep. Thompson to define what he means by flexibility.

304 REP. THOMPSON: Let's say it has more chance of variability than flexibility. An ocean environment is much more likely to change its population in dynamics because of currents, winds, etc.

309 ROSEN: Says they know the ocean environment varies, and they also know that they have little or no control over how that varies, whereas on the terrestrial environment there may be more ability to control that.

319 REP. THOMPSON: Asks if he would say then that the five year review process had some definite problems when applied to species that deal with

the ocean environment.

322 BROWN: States that to his knowledge that is a five year mandatory review, that does not prevent the commission from reviewing at any point during the interim if there's evidence that such a review is necessary.

353 REP. UHERBELAU: Asks if it is not correct that using experts in other agencies is only possible if they're not involved in doing whatever they do for their own agency.

358 ROSEN: Says he cannot speak for what type staffing requirements would be needed and what type allocation could be provided from other agencies, but there are also private firms that could be subcontracted for this kind of work.

365 REP. UHERBELAU: Says the other question has to do with the five year process. What does your review process entail. It seems to her that if you don't have some sort of standard for the review then the review won't always take place in the same fashion, and may be haphazard. Is everybody following the same process, and if so, how can the committee find out what that process is.

383 ROSEN: States the legislation provides the criteria that they evaluate the information with.

394 JIM GREER, ASSISTANT DIRECTOR FOR WILDLIFE, OREGON DEPARTMENT OF FISH AND WILDLIFE: States that the five year review is a requirement that the agency must follow. They would look then, using the criteria that's in the act, and rules that they have passed to support the Act, for the guidance on how they are going to review each of those species. If there is new information or new analysis that needs to be done, that would take place at that time. There are plenty of opportunities within the five year period for review of listing or de-listing.

416 REP. UHERBELAU: Says those guidelines are pretty general maybe they need to be more specific. Asks if they have you ever de-listed a species.?

419 GREER: Says they have not de-listed a species but are extremely close on a number of species.

423 REP. FISHER: Asks if when they work toward listing a species if they utilize the same information, or the same basic pattern, that the federal government uses.

430 GREER: Says they don't work toward listing, they work toward analyzing the data, drawing conclusions, and evaluating those relative to the criteria.

Tape 19-Side B

004 ROSEN: our guidelines are much more stringent at the state level. We do not have the flexibility allowed to the federal government. We need to look at immediate population numbers of species. Our criteria are based on the immediate; federal criteria allow a broad approach.

027 ROSEN: it is nearly impossible for the state to list a species as not endangered if the federal government has listed that species as

endangered.

036 REP. THOMPSON: if the grey whale has been delisted by the federal government, why hasn't the state done the same?

042 REP. THOMPSON: if there is no method for evaluation at the state level, how can it be listed by the state?

053 ROSEN: it was the legislature that listed the species. Our agency is now evaluating what we can do to evaluate.

059 REP. THOMPSON: you can understand my concern; if the Coho Salmon is listed without the resources needed for evaluation.

072 SEN. JOHNSON: wants to commend Director Rosen for his work. His work is highly spoken of around the state. Yet, I need to comment that I find your statement to be patronizing to the legislature. That may be indicative of the general sense pervading the area.

089 SEN. JOHNSON: this is why we need to have you here; to provide information for us. I don't believe these concerns are black and white; conflicting scientific data has just been discovered, with regards to the spotted owl, for example.

104 SEN. JOHNSON: it is critical that we evaluate the economic as well as the environmental impacts. It is also critical that we have representatives from the public interest as well. The legislature represents the people. Agencies work for the people; for the legislature.

119 SEN. JOHNSON: this bill is all about a fundamental difference in attitude. I hope that your agency will embrace the new policy.

130 ROSEN: the consequence of the decision could mean the extinction of the species.

135 SEN. JOHNSON: the determination as to whether a species is threatened or not is not a black and white issue.

143 ROSEN: economic evaluations are very appropriate. The crisis mode of action, which kicks in when a species is listed, is sometimes inappropriate. Discusses distinctions between threatened and endangered status.

160 CHAIR: I believe there is a meeting in late February with regards to the Coho Salmon? When is the evaluation of the data occurring?

171 CHAIR: will the staff make recommendations as to whether or not to list the Coho Salmon as an endangered species?

178 REP. NORRIS: extinction carries a clear biological determination. Refers to definitions in Oregon Revised Statutes for the term "extinction".

I am troubled by the current definition of extinction. We should look at species as a whole, rather than the Webster's, or common man's, definition of extinction.

208 REP. NORRIS: I am aware that there is very broad language in the ESA. Are we using that same language?

213 ROSEN: it depends upon whose definition is under review. In some

cases, one can definitely say a species is distinct. Other times, the lines are grey as we look at the significance of the particular strain of species, for example.

233 REP. CORCORAN: as a person who supports much of the language of looking at the social and economic interests, I do appreciate Mr. Rosen's candidness. I think it important that he points out the black and white nature of species. Legislators are not biologists; economics is a much muddier science than biology.

257 REP. CORCORAN: Mr. Rosen did note the need to be careful when listing species, which is a point often made by conservative thinkers.

267 CHAIR: we continually here about listing. We want to hear about recovery; about success stories that are initiated by human programs. If we are going to list a species, we should look to see if that species will be recovered.

282 REP. CORCORAN: it is a different discussion. Here, we need to look at sound and verifiable science.

294 SEN. JOHNSON: we expect and demand our witness to be candid. In the last paragraph of Mr. Rosen's statement, it asks what the public will conclude for listing particular species. That concern is one for the legislature. Determining and handling public perception is the duty of the legislature, not the agency.

320 SEN. JOHNSON: often times, the public is expected to take the biologists word and to model public policy. That is what this bill is about.

333 ROSEN: we do not have clear guidance from the legislature as to what constitutes "recovery?" If we reach certain goals, what can the public expect in terms of a lack of restrictions? We are working with Rep. Fisher to answer some of these questions, and with the federal government to facilitate cooperation.

355 REP. WELSCH: could your agency organize a broad study as to the implications of these issues?

371 ROSEN: we'd need to bring in at least one consultant. As we stand, not very well.

379 JIM MYRAN, Representing Oregon Trout. Speaks against HB 2420. Presents written testimony (EXHIBIT A).

Tape 2-Side B

004 MYRAN: we would be interested in the economic implications. We oppose the idea of having the legislature make the final decision as to the listing of species. We believe that decision to be a biological one, not a political one.

014 CHAIR: would it be Oregon Trout's position that any species needing protection be listed? Is there some acceptable level at which the societal costs are too high?

023 MYRAN: I believe the agencies have a clear enough direction in current statute to make that determination.

038 REP. WELSCH: don't you believe that, if our industries were thriving, that the agencies would be concerned with hatcheries?

050 MYRAN: the hatcheries would always need to be considered. Our organization is concerned with endangered species.

062 REP. JOHNSON: we can't develop a major hatchery program, at the private level, because of the ESA and the preservation of the Coho stock. We cannot spark interest to hatch in the ocean. The money is not allocated here, unlike in Alaska.

077 MYRAN: we certainly have not closed any hatcheries.

080 REP. JOHNSON: the commercial industries will not invest in hatcheries, because we cannot let those species go into the ocean. This is the central problem.

090 REP. FISHER: if one cannot tell the difference between a native stock, and a hatchery stock, then what would be the difference?

094 MYRAN: my organization does not research those issues.

104 REP. FISHER: qualified personnel indicate they cannot tell the difference.

108 REP. TOSI: the difference lies in the species schedules for spawning. There may be an interbreeding between the two strains.

115 REP. JOHNSON: we could write off a particular species, and then recreate similar strains through hatcheries.

122 DAVID B. MARSHALL, Consulting Wildlife Biologist, Testifies against HB 2420. Provides written testimony (EXHIBIT G).

169 MARSHALL: we need to look carefully; as stated before, extinction is irreversable. Maintaining wildlife carries positive economic impacts as well.

181 MARSHALL: what is done after the species is listed, is where the economic concerns interplay. There are a variety of options there.

200 MARSHALL: endangered species are not going to go away. Rather than taking a reactive strategy, our organization would be very happy to work with the legislature to take a proactive approach. Refers to spotted owl and societal impact. We should address these issues before they reach a crisis state.

217 MARSHALL: conservation statements, currently prepared by the Dept. of Fish and Wildlife, are not properly utilized.

227 MARSHALL: we do need to have species addressed at the state level. This level of oversight is critical. I have worked on environmental impact statements for the federal government for years.

250 MARSHALL: the decision to list a species has quite a bit more to

consider, than simply the population levels. The bald eagle was recovered, due to human intervention.

264 REP. LEWIS: I don't want to see species become extinct either. Can you tell me what the percentage is, of the number of species that have become extinct?

275 MARSHALL: we are losing species at a very high rate now, whereas species are created extremely slowly.

286 REP. JOHNSON: what is the total cost to the state to administer the ESA?

294 (first man) we have one full-time ESA staff person. All of our biologists provide some input.

304 REP. NORRIS: would you be able to provide a fiscal impact statement with regards to the ESA?

312 CHAIR: how many staff work for the Dept. of Fish and Wildlife?

321 REP. WELSCH: I'd like to see the dollar amounts spent on species, and it's relationship to recovery.

343 CHAIR: I would suppose there is not an easy answer

349 (tan jacket) we can pull some information together as to the spotted owl. Th

372 we'll need time to pull that information together, but are happy to provide that for the committee.

384 REP. WELSCH: we are now faced with the salmon issue, which will affect thousands of citizens across the state.

395 REP. FISHER: why have we not had immediate restrictions when the white tailed deer became extinct?

400 (tan) the deer all seem to be along the river, and I am not sure yet how the deer will affect logging practices.

Tape 3 Side A

021 REP. FISHER: in Roseburg, there are large areas of land which can be untouched now. Asks about situation in Roseburg with regards to the deer.

030 (tan) we are short of the number of deer needed to indicate that that species is a healthy one. I see no reason to hamper economic activity if the deer is determined secure.

044 CHAIR adjourns meeting at 3:03 p.m.

