

HOUSE COMMITTEE ON NATURAL RESOURCES SUBCOMMITTEE ON AGRICULTURE

February 26, 1993 Hearing Room D 1:30 p.m. Tapes 17 - 20

MEMBERS PRESENT: Rep. Liz VanLeeuwen, Chair Rep. Marilyn Dell
Rep. Sam Dominy Rep. Bill Fisher Rep. Tim Josi Rep. Dennis Luke Rep.
Bill Markham Rep. Chuck Norris

MEMBER EXCUSED: Rep. Ray Baum

STAFF PRESENT: Catherine Fitch, Committee Administrator Sue
Nichol, Committee Clerk

MEASURES CONSIDERED:

HB 2398 - Public Hearing and Work Session HB 2538 - Public Hearing HJM29
- Public Hearing HB 2848 - Public Hearing

WITNESSES: Brad Witt, AFL-CIO Daniel Stotter, Sierra Club
Ross Mickey, Northwest Forestry Association Greg Miller, Oregon Forest
Industries Council Jim Myron, Water Watch Ann Hanus, Oregon Department
of Forestry Phil Ward, Department of Agriculture Rod Ingram, Oregon
Department of Fish and Wildlife Rod Harder, Oregon Sportsmen's Defense
Fund Filbert Johnston, Dairy Farmer Rosemary Brion-Landis,
Confederated Tribes of Siletz Hunting and Fishing Committee Jerry
Kosydar

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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. [--- Unable To Translate
Graphic ---]

TAPE 17, SIDE A 005 CHAIR VanLEEUEWEN: Calls the meeting to order at
1:35. Will hear HJM 29 and HB 2848 first. Will start meetings at 1:00
on Fridays.

Opens public hearing on HJM29 and HB 2848.

PUBLIC HEARING ON HJM29 AND HB 2848

044 CATHERINE FITCH: Summarizes purpose of HJM 29 and HB 2848. HJM
29 memorializes Congress to substitute for "best available science,"
the

phrase "sound, verifiable science" in all environmental legislation. HB
2848 changes the standard which state agencies must use in their

proceedings from "best available scientific data" to "sound verifiable

scientific data." Submits hand-engrossed copy of proposed amendments to HB 2848 and fiscal analysis (Exhibits A and B).

066 BRAD WITT, AFL-CIO: Testifies in favor of HJM 29 and HB 2848. These bills would eliminate doubt about the various listings.

101 DANIEL STOTTER, Sierra Club: Testifies against HJM29 and HB 2848 as it would be unnecessary. They would be costly. Reads Exhibit C.

185 REP. DOMINY: What is "verifiable science?"

200 STOTTER: "Sound science" is what is being used by the agencies. Sound science can consist of observations made by appropriate staff, trained

in the proper procedures. This is different from science that is verified.

212 REP. DOMINY: Believes "science" should be confirmed. Do you believe it could be defined as theory?

223 STOTTER: No, verification should not be required, i.e. a pollution event cannot be verified because it is no longer polluting. Peer

review, sound science and appropriate personnel making the observations could be involved.

236 REP. DOMINY: What records are verifiable that there used to be more spotted owls?

241 STOTTER: Has no doubt that the Fish and Wildlife Departments have used professionalismand competence in documenting this information.

255 REP. JOSI: Why does verification mean a repeating of the event?

263 STOTTER: Verification means someone goes back and verifies the event that has occurred. There are other terms which could be used such as

"peer review".

275 REP. JOSI: Asks for documentation to back up that statement.

279 REP. FISHER: It seems like it would be insignificant if one couldn't go back and check out an event. 287 STOTTER: Not necessarily, a one-time occurrence of a release of a toxic event would be significant.

305 STOTTER: The difference is who the event is recorded by in determining sound science.

311 REP. JOSI: If someone saw a wolverine once, it could be verified by other evidence, right?

319 STOTTER: Some events can be verified, some can't.

325 REP. JOSI: If you can't verify it, there's no other evidence to show that it happened. And if there's no other evidence to show that

it

happened, how can you say that's good science?

326 STOTTER: One looks at trends. For example, one could see a single species and make another sighting of a species, neither of those

occurrences have been verified. Nevertheless, the fact that it was sighted by an appropriately trained professional could make it scientifically significant.

334 REP. JOSI: Either you have a case of verification based on evidence, or a case of verification based on sightings so it seems your definition is spreading out.

351 STOTTER: No, in some cases a sighting by a trained professional may be enough to require an action, such as a study, to be undertaken.

360 REP. JOSI: What would the study be after? Verification!

365 STOTTER: Yes, but they couldn't even do the study under the proposed legislation.

367 REP. DOMINY: In your opinion, best available science proves bigfoot exists.

375 STOTTER: No, the professionalism is so high by the U.S. Fish and Wildlife Department that it is in a different category than those who

have seen bigfoot.

383 REP. FISHER: You have trust in these state commissions, however, when these people are advising the Forest Service and other places, all of a sudden they don't know anything, but they've been trained in the same

schools.

398 STOTTER: There's a big difference in differing with biological outcomes and questioning their integrity and professionalism.

TAPE 18, SIDE A

010 REP. FISHER: So you're saying if the Forest Service does it, we have to verify it, but we don't have to verify it if any of these other people

do it?

013 STOTTER: No.

016 REP. FISHER: It's disputed if they do it, but it's not disputed if someone else says it.

018 STOTTER: There is not a different standard with the Forest Service and with the state agencies. Sierra Club does not question the

integrity or veracity of our public servants.

023 REP. NORRIS: When a species is extinct, they're not a problem, but if a species is thought to be extinct and then one is seen, it becomes a

problem. Is that the way this works?

029 STOTTER: That was just an example. There have been instances of this happening.

035 ROSS MICKEY, Northwest Forestry Association: The data used for different purposes within the law needs to be consistent. What the

current language comes down to is that agencies have to use what's there. Submits information on the status of the marbled murrelet (Exhibit D). The listing is based on biologists stating in the 1800's that the murrelet was common at the mouth of the Columbia River. Now biologists say they're not common.

075 There is a double standard in requirements for listing and delisting species. Requirements for delisting the spotted owls must be very

accurate.

085 Critical habitat can't be determined without data on the murrelet.

113 GREG MILLER, Oregon Forest Industries Council: Supports bills. Gives example of how "best available science" versus "sound, verifiable

science" makes a difference in policy.

144 Gives the example of the Elliot Forest. By "best available science" there should be no owls or murrelets on this second growth forest. Owls have, however, been found in this managed forest.

168 REP. DOMINY: In what areas do you agree with Mr. Stotter's testimony?

174 MICKEY: Believes those taught in these areas are competent, but this training may be restricted because of how the laws were made.

200 REP. DELL: "Science" is not the same thing as data.

229 MILLER: The "science" has been colored by individuals' values.

244 REP. DELL: "Science" implies objectivity. Maybe the existing law can take this into account.

250 MICKEY: Wildlife biology is not as concrete as other sciences.

276 REP. LUKE: The burden of proof should rest with those who

make the claim that it is endangered. Those who listed the owl didn't have to

prove that it was endangered.

292 JIM MYRON, Water Watch: Testifies against HJM29 and HB 2848. Reads Exhibit E.

340 REP. LUKE: Believes the Department of Fish and Wildlife has an elk season because it's good for their budget.

349 REP. DOMINY: The bill has a purpose in being here. 364 ANN HANUS, Oregon Department of Forestry: States concerns with bill.

Recess called for 15 minutes.

Meeting called to order at 3:15.

445 HANUS: The change of language would have a broad impact on all rule making by the affected state agencies; even administrative rule making

that has nothing to do with endangered or threatened species.

TAPE 17, SIDE B

020 If the only data the Department of Forestry could consider would be sound, verifiable, scientific data, the testimony of other concerned

citizens may be left out.

032 Questions how "sound, verifiable scientific data" would be defined.

037 REP. JOSI: Would we be preventing people from testifying about a rule based on economic data?

046 HANUS: That may be the case.

049 REP. DOMINY: How could this be defined so the goal could be grasped?

053 HANUS: I'm not sure how that could be done.

059 CHAIR VanLEEUEWEN: Just says decisions must be based on verifiable science, it doesn't say you can't take testimony from anyone.

062 HANUS: If the board is limited to sound, verifiable science, other considerations would not be able to take into account.

077 CHAIR VanLEEUEWEN: What could be included in the rule-making?

082 HANUS: We would like to consider factors brought up by landowners and others that may not be "sound, verifiable science". This would affect

more than just our endangered species actions.

093 CHAIR VanLEEUWEN: You'll still be basing your decisions on sound information.

094 REP. LUKE: You want to be able to take testimony from people and make decisions without verifying that information, is that correct?

105 HANUS: There may be other types of information that may need to be considered, for example, public input on designation of scenic

corridors.

117 REP. DOMINY: It seems the agencies have had deaf ears to landowners because nothing has been done. Most of the testimony from landowners is verifiable. Isn't that the case? Couldn't you still take that

information?

132 HANUS: Needs clarification on what is meant by verifiable.

141 REP. JOSI: Does the language speak only of endangered species?

146 HANUS: Section 5, page 3, line 25 is the section that sets rule-making authority for the entire forest practices area.

156 PHIL WARD, Department of Agriculture: This is dropped into our general rule-making authority.

183 REP. LUKE: Would you quarantine something that was not verified to need quarantine?

189 WARD: No, but it depends on how you define sound, verifiable science.

197 ROD INGRAM, Oregon Department of Fish and Wildlife: States concerns about the bills. Concerned with Section 2 regarding general rule-making authority. We adopt rules that are not based on scientific data, such

as administrative rules. Summarizes testimony in Exhibit F.

229 A rule against poaching could be challenged. Hunting practices, such as the institution of seasons, could be challenged. California has been

challenged for their seasons.

251 The court will define "verifiable" if the legislature doesn't.

262 REP. DELL: How is science defined now?

293 INGRAM: One of the criteria is peer review. Suggests that a scientist define the word.

338 "Verifiable" should be defined in legislation.

345 HANUS: That's the concern I raised in testimony.

354 REP. FISHER: There is no definition of "best available" either.

364 HANUS: Defines science as an objective methodology to try to come up with a logical answer to a problem. The question comes down to, is the

data sound, or is the data being used with an advocacy approach?

389 REP. FISHER: There's some that believe that people have skirted the requirement to find sound data, in order to advocate their position.

TAPE 18, SIDE B

012 REP. LUKE: Wants the departments to prove they're right instead of others having to prove they're wrong.

023 ROD HARDER, Oregon Sportsmen's Defense Fund: Testifies that he would like the language limited to endangered species, not general rule-making authority.

045 REP. MARKHAM: Was that an act of the California legislature, or was it an initiative?

040 HARDER: Neither, the California legislature set the requirement for the environmental documents. Then the animal rights groups challenged those documents when the seasons were being set, took them to court and shut

them down.

070 CHAIR VanLEEUEWEN: Closes public hearing on HB 2848 and HJM29.

PUBLIC HEARING ON HB 2538

076 FITCH: Gives summary of HB 2538. HB 2859 has been filed and is similar. HB 2538 directs the Department of Agriculture to conduct a

wildlife damage survey. The amount allocated for the survey is \$25,000.

098 REP. MARKHAM: How much has Fish and Wildlife spent on surveying wildlife damage in the last ten years?

099 ROD INGRAM, Department of Fish and Wildlife: I don't have a figure on economic damages.

107 FILBERT JOHNSTON, Dairy Farmer, Tillamook County: Testifies of elk damage on his property. Has suffered losses in pasture, silage

production, creek banks and ditches, and faith in the state system of managing this wildlife entity.

151 REP. NORRIS: Where should we go after the report is submitted?

158 JOHNSTON: The problem is they don't know what damage is done when they plant elk in an area where they haven't been for awhile.

170 REP. NORRIS: What should be done with the survey results?

174 JOHNSTON: We would support small herds of elk, we can't support large herds of elk.

179 CHAIR VanLEEuwEN: Isn't the agency taking your word for the amount of damage that is being done?

185 JOHNSTON: I don't think they've looked at the damage closely.

189 REP. LUKE: Do you open your land to hunters?

190 JOHNSTON: Yes.

192 REP. LUKE: Are there special hunts in your area?

194 JOHNSTON: Yes, one is going on right now.

195 REP. LUKE: And it's still not keeping the herd size down?

196 JOHNSTON: No.

197 REP. JOSI: Has the Department of Fish and Wildlife done an accurate study on the amount of economic damage on your land?

204 JOHNSTON: We have had one representative on our land. His purpose was to establish adequate reason to begin an emergency hunt. This was about a year and three months ago.

211 REP. JOSI: Do you think it would be possible to develop a plan if they don't have a proper assessment of the damage?

218 JOHNSTON: I don't think so.

221 REP. JOSI: Do you think an agency besides the Department of Fish and Wildlife would do a better job of assessing the damage?

226 JOHNSTON: Yes, I have faith in the Soil and Conservation Service.

230 REP. JOSI: Do you think the Department of Fish and Wildlife fully understands the amount of damage that is out there today?

235 JOHNSTON: My inclination is in a broad sense, no. In a personal sense, they have helped us tremendously.

250 CHAIR VanLEEuwEN: Couldn't other study results be used?

254 ROD INGRAM, Department of Fish and Wildlife: That was the Damage Task Force that surveyed goose damage. That report includes procedures we

use in addressing damage.

281 REP. LUKE: Was Klamath Falls included in the survey for goose damage?

288 INGRAM: We did not do a survey of damage. The task force went and visited various areas and talked to landowners about damage and how the Department was responding to damage. We toured Eastern Oregon and

Western Oregon. The key in Western Oregon was goose damage. Elk damage on the North coast was looked at. We did not go to the Klamath Falls area.

301 REP. LUKE: Goose damage is substantial there.

304 INGRAM: The goose damage in Klamath is different than what we have here in the valley. There we can go to the limit in terms of seasons and bag limits.

333 REP. MARKHAM: What is the green forage program?

336 INGRAM: It provided money for seed and fertilizer so landowners could increase production. Or, another crop is planted in forests so they

feed on the crop and not trees.

368 REP. MARKHAM: Is the funding for that program from general funds?

370 INGRAM: They are all license dollars.

372 REP. MARKHAM: Has any of it gone to Mr. Johnston's area?

373 JOHNSTON: None of that money has gone to my area.

387 Believes his land is used by everyone else without remuneration.

393 CHAIR VanLEEUEWEN: To get the green grass for the birds, they had to field burn on the refuge. They did that without a permit.

TAPE 19, SIDE A

009 REP. FISHER: Do you have problems with bull elks digging up the turf in fields?

014 JOHNSTON: Has not experienced that; it would be the least of my problems.

They do that to shed their horns.

024 CHAIR VanLEEUEWEN: Would you rather have the study or a resolution to the problem?

027 JOHNSTON: Would rather resolve the problem and feel the study is a method to begin the resolution.

033 REP. DELL: Have you seen the federal ADC study?

035 INGRAM: No.

039 REP. DELL: Reviews information contained in federal study. Would the study we do give different information?

042 INGRAM: Not sure how ADC study was compiled. Losses are

difficult to determine. Not all losses are reported on the ADC report.

069 CHAIR VanLEEUEWEN: TEMPORARILY CLOSES HEARING ON HB 2538.

RE-OPENS PUBLIC HEARING ON HB 2848 AND HJM29

PUBLIC HEARING HB 2848 AND HJM29

076 CHAIR VanLEEUEWEN: I ask that agency people work with Greg Miller of OFIC and me early next week to come to resolution on the language in

those bills. It is my determination that the concept, as far as endangered species, is going to come out of this committee.

Closes PUBLIC HEARING ON HB 2848 AND HJM29.

Reopens PUBLIC HEARING ON HB 2538.

PUBLIC HEARING HB 2538

097 Joe Dalla Bona's written testimony is submitted for the record (EXHIBIT G).

118 ROSEMARY BRION-LANDIS, Confederated Tribes of Siletz Hunting and Fishing Committee: Would like committee to consider providing tags to the

Siletz tribe for special hunts for animal control in the 11 Siletz service areas.

133 JERRY KOSYDAR: Testifies in favor of HB 2538. Reviews uncompensated elk damage on property and effect on income.

Reviews findings of meetings to determine what was needed to document damage.

306 CHAIR VanLEEUEWEN: When were the elk moved into the area?

312 KOSYDAR: Thirty elk were planted in the mid-1970s and a recent survey estimated 244 head within the drainage area.

329 REP. NORRIS: HB 2538 would only direct the Department of Agriculture to conduct a survey and report to the next session of the legislature. The Department of Fish and Wildlife could coordinate with that report. What is the next step?

342 KOSYDAR: If the public is educated on the amount of damage, believes hunters will be more sympathetic.

Relocation of elk and compensation would be needed. Assumes laws will not be changed without this data.

425 CHAIR VanLEEUEWEN: Closes public hearing on HB 2538.

Opens public hearing on HB 2398.

PUBLIC HEARING HB 2398

438 CATHERINE FITCH: Reviews provisions of HB 2398 which would create crimes of unauthorized use of livestock and interference with livestock production; prior hearing; and HB 2398-2 (EXHIBIT H) amendments to

require the courts to order restitution for damages.

480 CHAIR VanLEEuwEN: Closes public hearing on HB 2398.

Opens work session on HB 2398.

TAPE 20, SIDE A

WORK SESSION HB 2398

015 MOTION: REP. LUKE: MOVES TO AMEND HB 2398 BY INSERTING THE TEXT FROM HB 2398-2 (LC 1728 DATED 2/25/93) (EXHIBIT H).

017 CHAIR VanLEEuwEN: Restates motion.

Calls for discussion.

VOTE: WITHOUT OBJECTION, CHAIR VanLEEuwEN DECLARES AMENDMENT ADOPTED.

020 MOTION: REP. JOSI: MOVES HB 2398 AS AMENDED TO THE FULL COMMITTEE WITH A DO PASS RECOMMENDATION.

025 CHAIR VanLEEuwEN: Restates motion.

029 VOTE: ON A ROLL CALL VOTE, REPRESENTATIVES DELL, FISHER, JOSI, LUKE, NORRIS, VanLEEuwEN VOTE AYE. REPRESENTATIVES BAUM, DOMINY, AND

MARKHAM ARE EXCUSED.

038 CHAIR VanLEEuwEN: HB 2398 having received a unanimous vote is passed to the full committee.

Rep. Josi will carry the bill.

Reviews agenda for March 3.

Adjourns meeting at 4:45.

Also submitted for the record: - Testimony against HB 2538 in letter written by Harold R. Sturgis Jr. (Exhibit I).

Submitted by:

Reviewed by:

Sue Nichol
Administrator

Catherine Fitch Clerk

EXHIBIT LOG:

A - HB 2848 - Hand Engrossed Proposed Amendments - Staff - 7
pages B - HB 2848 - Fiscal Analysis - Staff - 1 page C -
HB 2848 and HJM29 - Testimony - Daniel Stotter - 2 pages D - HB
2848 and HJM29 - Information - Ross Mickey - 6 pages E - HB 2848
- Testimony - Jim Myron - 1 page F - HB 2848 - Testimony - Rod
Ingram - 2 pages G - HB 2538 - Testimony - Joe Dalla Bona - 2
pages H - HB 2398 - Hand Engrossed Amendments HB 2398-2 - Staff
- 2 pages I - HB 2538 - Testimony - Harold Sturgis Jr. - 1 page