

HOUSE COMMITTEE ON NATURAL RESOURCES SUBCOMMITTEE ON AGRICULTURE AND FORESTRY

April 7, 1993 Hearing Room D 3:30 p.m. Tapes 51 - 53

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

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

MEASURES CONSIDERED:

HB 2848 - Public Hearing and Work Session HB 2927 - Public Hearing and Work Session HB 2930 - Public Hearing and Work Session HB 2985 - Public Hearing and Work Session HB 3274 - Public Hearing and Work Session HJM9 - Public Hearing and Work Session HB 2924 - Public Hearing and Work Session HJM10 - Public Hearing and Work Session HB 2980 - Public Hearing and Work Session

WITNESSES: Rod Ingram, Oregon Department of Fish and Wildlife Ken Evans, Oregon Hunter's Association Brad Witt, Oregon AFL-CIO Don Leach, D.R. Johnson Lumber Company Rod Munro, Izaak Walton League of America Charles Woosley Ruby Ringsdorf, Oregon State Grange Mark Leer, Forest Conservation Council Jim Greer, Oregon Department of Fish and Wildlife

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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 51, SIDE A

005 CHAIR VanLEEUEWEN: Calls the meeting to order at 3:45.

WORK SESSION ON HB 2848, HB 2927, HB 2930, HB 2985, HB 3274, HJM9, HB 292 4, HJM10 AND HB 2980

020 REP. DOMINY: A work group on the Endangered Species Act issues has combined components of HB 's 2927, 2848, 2930, 3274 and 2985 into HB

2927. This is explained in Exhibit A. We are moving away from recommending a contested case hearing as part of the listing process and are considering an evidentiary hearing instead.

070 The work group recommends that HB 2980 and 2924 stand alone.

075 The work group recommends HJM9 and 10 be incorporated into

one document.

082 CATHERINE FITCH: HB 2848 would change language in the Endangered Species Act to read "sound, verifiable science" wherever standards are

recommended. A review process at the listing stage has been recommended. The contested case process, discussed earlier by the committee, would be very cumbersome and expensive. An evidentiary hearing would work to achieve the same review, more efficiently.

104 Explains the process of evidentiary hearing. The recommended procedure would be that the Department of Fish and Wildlife would conduct its

review of the biological data on a particular species and make a draft decision about whether or not to list. If HB 2927 is passed, they will also be looking at social and economic data as well. There would then be a public hearing on the draft listing. Any interested individuals could attend this hearing. At this point, an evidentiary hearing would be held and would include all of the parties who submitted a request to be part of it. They would all be allowed the due process of subpoena, deposition and cross-examination during that time. The Department of Fish and Wildlife Department would then determine whether or not to go ahead with the final listing.

118 REP. DOMINY: There would be a two-step process; first collecting biological data, then collecting social and economic impact data.

126 After today's hearing, I would like to talk to the rest of the members about which portions of the House Bills they strongly believe in and

whether we want to include the optional components.

145 CHAIR VanLEEUEWEN: Closes work session.

PUBLIC HEARING ON HB 'S 2848, 2927, 2930, 2985, 3274, 2924, 2980 and HJM's 9 and 10

158 ROD INGRAM, Oregon Department of Fish and Wildlife: Summarizes testimony in (Exhibit B). The legislation being considered would make

the State Endangered Species Act inconsistent with the federal act.

202 Removing the Northern Spotted Owl from the state threatened list will not affect the U.S. Fish and Wildlife listing, nor will it lift

the

federal prohibitions against taking of owl or owl habitat which will remain in effect.

207 The Department must review every listing every five years to see if the species should be reclassified or removed from the list. The Department would recommend that the decision to remove the owl, if justified, be

made through the periodic review, which will take place in November of 1993.

230 Regarding HB 2980, federal action supersedes state action. Legislation to prohibit reductions in timber harvests may not comply with Section 9 requirements against "take" of owls or owl habitat and may result in

legal action from federal agencies.

242 The Department has already been surveying inventories of owls.

252 Access to private lands is a concern in performing these surveys.

260 The funding sources for the required surveys are not stable.

276 Listing of the species pertains only to state lands. It is strictly a biological listing. It has no bearing on state lands unless there is

some action that can impact the survival of the species.

345 There are instances where a sub-species population can be considered for listing, while the population, as a whole, is in relatively good

condition.

361 CHAIR VanLEEUWEN: Don't you think it would send a message if we delisted the owl on the state level, that it was not as big of a problem as it was originally made out to be?

385 INGRAM: I'm sure it would send a message. According to Jack Ward Thomas, if we held a hearing today, the northern spotted owl would still be listed. We listed it only on the biological potential of the owl.

TAPE 52, SIDE A

012 REP. LUKE: If the Federal government lists a species, would they have jurisdiction over state lands, or just federal lands?

018 INGRAM: It depends on the recovery plan.

022 REP. LUKE: Does the federal listing in Eastern Oregon have an effect on state lands?

026 INGRAM: It has an effect in terms of prohibition against "take"

of the animal or its habitat.

028 REP. LUKE: Can the federal government's listing have an impact on what I do on my private land?

033 INGRAM: Yes, the bald eagle would be an example.

053 REP. NORRIS: Is the state definition of endangered species the same as the federal definition?

052 INGRAM: I believe it is the same.

059 REP. NORRIS: The only exception to the federal definition of a potential threatened or endangered species is an insect classified as a pest that is a threat to man. Can we limit the species that can be

considered as threatened or endangered?

071 INGRAM: We look at every petition to see if a hearing should be held. Almost anything can be petitioned. The California bighorn sheep is a

candidate species and could be petitioned even though it has been brought back to substantial levels.

086 REP. NORRIS: I'm concerned about the definition that anything can be petitioned as an endangered species.

100 REP. LUKE: You are allowing the bighorn sheep to be hunted when it could be listed as threatened or endangered?

107 INGRAM: The bighorn sheep is on a list that says it should be studied. The bighorn sheep has been successfully reintroduced from a population

of about zero in the 1940's to about 1200 to 1300 in the state. The bighorn sheep has been reintroduced into 60-70% of its former range.

116 REP. FISHER: This bighorn sheep that has been brought back is not an Oregon subspecies because that has gone extinct and we have not solved

the problem.

133 INGRAM: You have a good point, because the subspecies we have here is from British Columbia.

147 KEN EVANS, Oregon Hunter's Association: Advocates taking preventative actions. Reads testimony contained in (Exhibit C).

212 REP. NORRIS: Aren't you most concerned about species that are not hunted?

217 EVANS: We're concerned with non-game species as well.

223 REP. NORRIS: Generally, all of the currently listed species are non-game species?

225 EVANS: I'm not sure. Coho are on the list.

231 REP. FISHER: Are hunters under the same restrictions as loggers are? Can you hunt within 1/2 mile of an owl's nest?

234 EVANS: I can't answer that.

239 REP. FISHER: If this was allowed to progress so that the economic impact is not valued at all, soon the sporting value will not be

considered either and all uses of the forest will be prohibited.

254 INGRAM: Hunters may have some restrictions with certain species at certain times.

292 BRAD WITT, Secretary-Treasurer, Oregon AFL-CIO: Speaks in support of HJM9, HB 2930, HB 2985 and HB 3274 (Exhibit D). 300 President Clinton visited Oregon last week to help us sort out one of our endangered species problems, a direct offshoot of that, namely timber supply.

312 There are over 270 species either listed or having the potential to be listed, federally, in the State of Oregon.

325 On the state level, the listings and the potential listings are nearly 50 pages. The result of that number of potential species being listed

would lead to complete and total paralysis in this state and many others. The only way we could prevent any kind of "taking" or interruption of a threatened or endangered species would be for the human species to fold our tents and go away.

336 We need to end the gridlock that has been perpetuated by the overly zealous preservationists and move towards the middle ground. We want to see protection, not only for flora, fauna, air, water, and soil, but we also want the human species, and its society considered in this as well.

340 That's why we are here today in support of HJM9 and HB 's 2930, 2985 and 3274.

346 Andy Kerr, in the hearings that the President conducted, was the only individual that said there was no compromise to be made.

346 REP. NORRIS: What has your national body done with respect to re-authorization of the National Endangered Species Act?

356 WITT: We have taken the position that human impacts should be considered by the Endangered Species Act.

365 REP. NORRIS: Is that an on-going and strident position that you're pushing with the congressional representatives who would be required to deal with this?

369 WITT: Very strident, and as an indication of that, the number two person in the National AFL-CIO, Tom Donahue, came out to Oregon last

week prepared to present our case. It's taken extremely seriously at our national level and we have received the full backing of our national office.

380 REP. NORRIS: During the last election cycle, I noticed the AFL-CIO endorsed a candidate who was not inclined to do anything with respect to the Act, and rejected a candidate who was committed to amendment of the Act to consider socio-economic consequences. Now, post-election are we

taking a different look at it then?

389 WITT: At the presidential level?

390 REP. NORRIS: No, this was at the state level.

392 WITT: We're not a one-issue organization.

TAPE 51, SIDE B

005 REP. MARKHAM: How many representatives did you have at the table Friday?

007 WITT: The Oregon AFL-CIO had one, Irv Fletcher. Our affiliates had seats as well.

013 REP. MARKHAM: Do you feel the State Fish & Wildlife Department should be involved as well as the Federal government?

020 WITT: For a number of our members, their families and their communities have suffered tremendously and have lost a great deal. There is not a

common sense approach here. There is an overzealous attempt to virtually lock up the world.

029 REP. MARKHAM: Do you think dual restrictions are better or not?

033 WITT: We would admit that there are some species that need special consideration on the state level. I think it needs to be done on a case by case basis and in every case, the human side of the quotient needs to be considered. There may be need to have State listings as well. But,

I think that nearly 50 pages has gone a little bit overboard.

040 REP. LUKE: Is there a lot of overlap of endangered species from state to state?

045 WITT: Yes, because those numbers are strictly on a state to state basis.

046 REP. LUKE: Are plants included?

047 WITT: Yes.

056 DON LEACH, D.R. Johnson Lumber Company: Testifies in support of the bills. Biologists at the recovery team meeting last fall didn't know if the owls were actually in decline or not. They did know that 2,200

pairs of owls would be enough for sufficient, viable owl population.

They had 2800 pairs of owls and another 1000 individuals after a survey of one-third of the land available to them. The two greatest

concentrations of owls were in Northern California and the Elliott State Forest, neither of which have a single old growth tree on them.

172 It would be difficult for the Department of Fish and Wildlife to give a proper assessment of economic and social impact.

191 We would support requiring legislative approval prior to listing.

198 REP. FISHER: Do you think if the federal government delisted the owl, that the state would immediately delist?

214 LEACH: I think they can move quickly when it's in their best interest. The reality is that the Feds won't delist.

282 REP. MARKHAM: It would take the Feds four or five years to unravel the owl in the west side before you could move on timber sales, is that

correct?

286 LEACH: Yes, I believe that would be the fact because of the past history that we've faced.

326 In order to stay viable, we're having to cut trees 10, 15 or 20 years before we normally would. This is taking a whole cycle of trees out of

their intended and planned use down the road. We, as a state, will feel that impact down the road.

379 ROD MUNRO, Izaak Walton League of America: Testifies against HB 284 8.

TAPE 52, SIDE B

026 REP. NORRIS: Can you cite an instance where this body has set size or catch limits?

030 MUNRO: No, not specifically.

129 CHAIR VanLEEuwEN: Are you saying that the people who depend upon our renewable resources should not be considered?

135 MUNRO: We believe they are important also. Listing should be solely on biological considerations and not social or economic considerations.

156 CHARLES WOOSLEY: I'm glad the contested case hearing is no longer being considered. A balance should be made as much as possible.

190 Substituting "sound, verifiable" science may be unreasonable. If it was defined in the bill, it might be more workable so the extreme

environmentalists can't use it in court to tie up everything.

214 REP. FISHER: It bothers me that a species can be listed without anything verifiable, but it can't be taken off without verifiable

extreme information. Does it strike you that some of this may be unfair?

230 WOOSLEY: Yes, I feel there is some unfairness in there, and I feel it is by the extremist movement.

232 REP. FISHER: The problem is that the extremists' say-so is taken as gospel.

234 WOOSLEY: I think the information that should be used is to rely upon the very competent, professional people that the state has in the field.

264 RUBY RINGSORF, Oregon State Grange: Speaks in favor of the bills (Exhibit E).

363 MARK LEER, Forest Conservation Council: There are three advantages of having a state Endangered Species Act.

1. It allows for flexibility. 2. A state recovery plan will instill confidence. 3. It allows funding to be made by the federal government.

423 REP. FISHER: How many times has the state listed something that has preempted federal listing?

434 LEER: I'm not sure on the number of cases. I can provide the research.

442 REP. FISHER: What do you consider a sustainable basis on the Elliott Forest?

455 LEER: The Endangered Species Act would make the argument that it's not sustainable to cut 52 million board feet.

457 REP. FISHER: But the State Forester has said it is sustainable.

466 LEER: It's not sustainable with the spotted owl.

TAPE 53, SIDE A

038 REP. LUKE: What kind of membership do you have?

041 LEER: A lot of the work we do is communication between different agencies.

047 REP. LUKE: Do you work for state government?

049 LEER: No. State government has used our maps. Our membership is over 500 and less than 1,000.

066 REP. NORRIS: How much are we involved with the federal government in getting assistance through the Federal Endangered Species Act?

073 JIM GREER, Oregon Department of Fish and Wildlife: We do have an annual agreement with them.

078 REP. NORRIS: Do they provide us with financial assistance in our Endangered Species program? Do you have any idea how much it is?

079 GREER: Yes, I think that last year it was \$150,000 on the wildlife side.

088 REP. NORRIS: So if we would delist the owl, we would lose a certain amount of federal money?

089 GREER: It's a potential. It depends on their analysis of our programs.

090 INGRAM: The owl isn't the only one listed.

093 REP. MARKHAM: Who is the agreement with on the federal level?

097 GREER: The Endangered Species Coordination Officer with the U.S. Fish and Wildlife Service.

097 REP. MARKHAM: Does the U.S. Department of Forestry have agreements also with the State Department of Forestry?

101 INGRAM: We use some of those dollars for some of our inventories that we do on state forestry lands.

105 REP. LUKE: What is the relationship between state agencies and the Forest Conservation Council?

108 GREER: I'm not sure what the relationship is. I'm not aware that the maps we're using right now have been provided by them.

115 REP. LUKE: You rely upon other organizations for some of your information?

116 GREER: Yes.

117 CHAIR VanLEEuwEN: How often do use information from other groups?

123 GREER: I don't know that we have used information from other groups as fact. We may be asked to consult with groups.

127 REP. FISHER: Has the state act ever preempted action by the federal government?

137 INGRAM: I'd have to research that. I'm not aware of an instance of that.

148 CHAIR VanLEEuwEN: Closes public hearing.

Meeting is adjourned at 5:45.

Submitted by:

Reviewed by:

Sue Nichol
Administrator

Catherine Fitch Clerk

EXHIBIT LOG:

A - All bills - Outline of Proposed Legislation - Catherine
Fitch - 1 page B - Testimony - Rod Ingram - 8 pages C -
Testimony - Ken Evans - 1 page D - Testimony - Brad Witt - 3
pages E - Testimony - Ruby Ringsdorf - 1 page