

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.

HOUSE COMMITTEE ON WATER POLICY

April 9, 1991Hearing Room D 1:30 p.m.Tapes 42 - 43

MEMBERS PRESENT:Rep. Chuck Norris, Chair Rep. Bill Dwyer, Vice-Chair Rep. Bill Markham Rep. Walt Schroeder Rep. Larry Sowa

STAFF PRESENT: Beth Patrino, Committee Administrator Pat Zwick, Committee Assistant

WITNESSES:Rep. Schroeder Rep. Jackie Taylor Jeff Curtis, Oregon Department of Fish and Wildlife Robin Brown, Oregon Department of Fish and Wildlife Paul Hanneman Mike Propes, Polk County Commissioner Elmer Werth Burton Weast, Oregon Special Districts Jim Myron, Oregon Trout Don Derkhoff Dave Nelson, Oregon Water Resources Congress

MEASURES CONSIDERED:HB 3341 - Directs Environmental Quality Commission to establish fee for permit to discharge shrimp and crab by-products into Oregon estuary. - Work Session

HJM25 - Urges Congress to give states jurisdiction over California sea lions under Marine Mammal Protection Act. - Public Hearing and Work Session

HB 3373 - Declares shortage of water resources is matter of statewide concern and priority should be given to development of storage facilities in addressing the problem of insuring future water supply. - Work Session

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TAPE 42, SIDE A

010 CHAIR NORRIS: Calls the meeting to order at 1:30 p.m.

012 BETH PATRINO, COMMITTEE ADMINISTRATOR: Reviews the day's agenda.

014 CHAIR NORRIS: Opens work session on HB 3341.

WORK SESSION HB 3341

020 MOTION: REP. DWYER: Moves that HB 3341 be referred to the floor without recommendation for referral to House Environment and Energy Committee.

VOTE: Without objection, Chair Norris declares motion passed. Representatives Sowa and Markham are excused.

025 CHAIR NORRIS: Closes work session on HB 3341.

Opens public hearing on HJM25.

PUBLIC HEARING HJM25

030 REP. MARKHAM: Reads written testimony in support of HJM25 (EXHIBIT A).

122 REP. DWYER: Why does HJM25 only memorialize against sea lions?

128 REP. SCHROEDER: We hope the bill will be amended to include harbor seals. Seals are also known as sea lions.

The purpose of HJM25 is to give the state management authority over the California sea lion and possibly the harbor seal.

144 REP. JACKIE TAYLOR: Testifies in support of HJM25.

Submits Oregonian article concerning seals and sea lions (EXHIBIT B).

Asks for committee support of HJM25.

174 REP. SOWA: Is the main purpose of this memorial to keep seals and sea lions from entangling the gillnetters' nets or do you have other reasons for proposing that the state take over?

183 REP. SCHROEDER: We are not talking about nets.

188 REP. TAYLOR: My concern came from my own observations. Marine mammals are of great concern to commercial fishermen on the lower Columbia and I freely admit that interest.

200 JEFF CURTIS, OREGON DEPARTMENT OF FISH AND WILDLIFE: Submits and paraphrases written testimony in support of HJM25 (EXHIBIT C).

Seals and sea lions are not the major cause of the decline of salmon runs in the Columbia River and along the coast. They are opportunistic feeders and have an impact on some runs.

The Marine Mammal Act was last reviewed by Congress in 1988 and will be up for review again in 1993.

230 REP. DWYER: What statistics is the Department gathering on the sea lion and seal problem to have the biological support data necessary for the relaxation of the Act when it is reviewed?

250 ROBIN BROWN, OREGON DEPARTMENT OF FISH AND WILDLIFE: Reviews what the Department is doing to gather data.

277 REP. DWYER: Is there a surplus, and if so, how much surplus is

there and what size harvest would be recommended to sustain a viable population and minimize the conflict?

388 BROWN: Have not yet created a model for harvest of surplus.

National Marine Fisheries (NMFS) has used a 2% take in commercial fisheries as an allowable take for species that are taken incidental to commercial fishing operations.

298 Chair Norris and Brown discuss feeding habits of harbor seals and California sea lions.

370 REP. DWYER: Why haven't your studies been guided toward population control?

380 CURTIS: Because of the drafting of the Act. You have to show that the animal is at optimum sustainable population before you can craft a harvest regime.

TAPE 43, SIDE A

001 REP. DWYER: Recognizing there is a problem, how, except by Memorial, do we convey to Congress that there is a problem, and utilize your agency to support that and have a plan to deal with it?

010 CURTIS: First gather information that shows that these animals are at healthy sustainable populations. When we get that information it can be presented to Congress.

015 REP. DWYER: Has that population level been reached?

018 BROWN: Information was recently analyzed and it is suggested that harbor seals are still below the maximum net productivity level. At the present time the state could not request return of management of seals.

027 CHAIR NORRIS: What are the socially redeeming features of the California sea lion and the harbor seal?

030 BROWN: They are recognized broadly as a significant component of the marine ecosystem. The esthetic component is important to a number of people.

045 CHAIR NORRIS: Do they contribute to the biological cycle and the marine environment?

047 BROWN: Yes. Believes all animal and plant forms are part of some system that creates a balance.

054 CHAIR NORRIS: Do marine mammals contribute to, or detract from, the welfare of the anadromous fish?

059 BROWN: That is hard to document.

065 CHAIR NORRIS: If this memorial succeeds, give practical specifics we should be looking at in the way of control?

070 BROWN: These animals are viewed as valuable components of marine systems and need some protection at higher levels than we might apply to other marine resources.

Because of that, federal approval for large scale bounties, hunts, or population reductions will be difficult to obtain.

We may be looking at options that are lethal for small numbers of animals or applying non-lethal harassment management activities to keep harbor seals out of certain places at certain times.

085 Representative Schroeder and Brown discuss reasons for decline of the lamprey and population make up of seals and California sea lions.

150 REP. SOWA: What is the present Commission's position on taking over management?

155 BROWN: Commission is supportive of cooperative work we are undertaking with NMFS. We have an official agreement of intent that lays out a timetable, a plan, and funding support options to collect biological data that would be required to build a management program if we choose to do that.

Primary hurdle is being able to determine that these populations are in their optimum sustainable population level. Under the federal law, the burden to demonstrate that is laid upon the states.

175 REP. SOWA: It is very important that the intention of asking that state management be returned to the state has nothing to do with protecting gillnetters from seals, but is a wildlife management issue.

Does any group have authority to harvest seals or sea lions?

189 BROWN: No. There are exemptions for commercial fisheries taking the mammals incidental to their fishing operations, but directed kills with any implication of management are not allowed at all.

Washington asked for a NMFS Council ruling on whether the state or the federal government had the authority to lethally remove some of the sea lions in Seattle. The answer from the federal government was no.

204 CURTIS: There is an exemption to directed take by Alaskan natives for subsistence and cultural purposes.

210 REP. SOWA: What can a gillnetter do if he sees a sea lion becoming entangled in his nets?

216 BROWN: If he has an exemption to the moratorium, he can shoot to kill a harbor seal or a California sea lion or use any other non-lethal methods to deter those animal from their gear.

NMFS guidelines call for using sequentially more severe methods beginning with non-lethal to lethal removal.

They are not allowed to shoot at stellar sea lions which is now a threatened species.

230 REP. SOWA: Asks for figures showing the number of seals that has been harvested by Columbia River gillnetters since this Act went into effect.

235 BROWN: Cannot give a detailed list of the numbers of seals taken by gillnetters in the Columbia River. A number of studies have documented takes over two year fishing periods.

The fisheries on the Columbia River vary greatly in length from year to year.

Probably from 150 to 300 harbor seals may be taken by the combined fisheries.

We know that the regional stock population of harbor seals is growing at six to seven percent per year, so we know that that take is negligible and does not have a negative impact on the population at this time.

255 REP. SOWA: Preservationists almost always allow land owners or commercial fishermen to be exempt from these preservationist acts. Does that seem to be the trend?

There is a bill in that would ban the take of cougar by sportsmen but would allow any land owner to take them. California had a similar moratorium for 20 years. In the Marine Mammal Protection Act we see everyone prohibited from taking them unless you have some commercial interest.

277 CURTIS: Some of the groups dealing with the Marine Mammal Protection Act would like to see no take at all. It is probably the representatives of states where the industries are located that push for small exemptions and are able, through compromise with other members of Congress, to achieve small loopholes. People who support the moratorium are able to generate a large amount of mail in a short period of time on the issue of marine mammals.

300 REP. SOWA: Are we wasting our time with this memorial?

305 CURTIS: I don't think so. Thinks there are probably ways that balance can be achieved which might involve trade-offs on habitat protection for more management flexibility. If the issues are broadened you can achieve a different balance.

318 REP. DWYER: Would we be more effective if we expanded the memorial to include the memorial going to the California delegation?

325 CURTIS: Possibly.

340 CHAIR NORRIS: Closes public hearing on HJM25.

Opens work session on HJM25.

WORK SESSION HJM25

354 REP. DWYER: This is a significant problem which goes beyond Oregon's borders. Should memorialize Congressional delegations of Washington, California, and Alaska and ask them to join us in this effort.

Thinks the Oregon delegation would appreciate any help we can give them.

380 REP. SCHROEDER: Reads memorial from the Pacific Fisheries Legislative Task Force adopted in Lewiston Idaho, June 28, 1986.

400 REP. DWYER: Suggests that language be added to the end of Section 3 of HJM25 after "Oregon". Add "Washington, California, Idaho, and Alaska" before "Congressional Delegation".

434 MOVES: Rep. Dwyer moves his amendment.

TAPE 42, SIDE B

REP. SOWA: Will support HJM5 as amended. The federal Endangered Species Act has proven over the years to be a workable process. The preservationist Marine Mammal Protection Act never allows any relief. We have now found that seals and sea lions have exploded in population and are causing harm and annoyance and disturbing Oregon's fishery resource.

Supports the Endangered Species Act, but the preservationists' Acts allow certain people to harvest those animals that are preserved and not allow our wildlife management agencies to manage them so that the surplus can be harvested

021 REP. SCHROEDER: Suggests amendment be amended to include all of the members of the Pacific Fisheries Legislative Task Force.

024 REP. DWYER: Accepts Rep. Schroeder's suggestion as a friendly amendment.

027 REP. SCHROEDER: Suggests adding after the words "California sea lions" in each place in the resolution "and harbor seal numbers or harbor seals."

030 REP. DWYER: Accepts Rep. Schroeder's suggestion as a friendly amendment.

037 PAUL HANNEMAN: Believes that prior to the federal government taking over the program, it was a unanimous decision of Pacific Fisheries Legislative Task Force to develop the state's program. We have been doing population studies for many years.

Task Force believed that an imbalance was occurring at 7% per year for both harbor seals and California sea lions. Shortly after, the feds took over the program and created the exemption.

Task Force would recognize that what the feds took in the Act and created the Act from is almost impossible to withdraw from at this point. Does not see harm in passing the memorial.

075 CHAIR NORRIS: Committee Administrator will assemble suggestions for drafting by Legislative Counsel.

Closes work session on HJM25.

Opens work session on HB 3373.

WORK SESSION HB 3373

090 PATRINO: Reviews provisions of HB 3373.

090 MIKE PROPES, POLK COUNTY COMMISSIONER: Not conserving the water is the problem.

Water Resources Department's priority is regulating water and that does not solve the problem but only transfers it to another group.

Storage needs to be a high priority for Water Resources Department. They have told us we have no guidelines to identify solutions.

In favor of HB 3373 which will give the state a leadership role in solving the problems.

142 REP. DWYER: Have you identified any storage sites in Polk County?

145 PROPES: Yes. Polk, Yamhill, and Lincoln Counties are working cooperatively.

Have identified three potential storage sites. Water Resources Department tells us they have no priority or guidelines to help us work on storage issues.

We are at the point of locating sites which are logical to do an Environmental Impact Statement (EIS) on. Do not know yet if the sites are cost-effective.

175 REP. DWYER: Have you reviewed the Water Resources Department Commission's Report and the agenda on the request for approval to initiate development of a state water resources policy for water storage and allocation?

Will give Mr. Propes a copy of the report.

186 REP. SOWA: Did you discover that the only kind of possible storage is behind a dam or in a reservoir?

190 PROPES: No. Is aware of three types of storage; reservoir on stream, off-stream storage, and underground storage where water tables have dropped. Polk County has the first approved project in Oregon to try the underground storage in an area where the water table has severely dropped.

205 REP. SOWA: Most efficient water storage came from old growth forests in the past.

210 PROPES: Appears that regeneration will provide good water storage capacity. Good timber management and good rotation are good ways to store water.

216 REP. DWYER: How would you deal with saline aquifers?

227 PROPES: There is not a saline problem in the aquifer in which we are working.

Consideration of that was a condition of the project approval.

229 CHAIR NORRIS: Is this injection directly into the aquifer?

230 PROPES: Yes. It is directly into the aquifer in a well.

Not sure of treatment level. Water is treated before it goes in and tested when it comes out and treated again.

250 ELMER WERTH: Reads written testimony in support of HB 3373 (EXHIBIT D).

277 BURTON WEAST, OREGON SPECIAL DISTRICTS ASSOCIATION AND OREGON

ASSOCIATION OF WATER UTILITIES: Both organizations have passed resolutions in support of HB 3373.

290 JIM MYRON, OREGON TROUT: Presents proposed amendments to further define storage and make it more acceptable to our organization.

315 CHAIR NORRIS: How pervasive and site specific are the protected areas you speak of?

320 MYRON: They have been delineated by stream reaches but certain basins are completely protected because of environmental damage that dams could do.

327 REP. DWYER: Hard to make a decision on the basis of a lack of information. Amendment is not specific enough.

337 MYRON: Does not have copy of protected areas plan cited.

347 REP. SCHROEDER: How do you define "environmentally acceptable"?

350 MYRON: As it is currently defined in the hydro laws.

380 REP. SCHROEDER: Asks questions relative to environmentally unacceptable factors.

390 REP. DWYER: How many species of fish other than salmon and steelhead do you anticipate filing on as threatened or endangered?

398 MYRON: Considering bull trout as a possible future filing. Do not have plans beyond that. Five different salmon species have been filed on to date.

TAPE 43, SIDE B

REP. DWYER: Hydro is different than storing water and not generating electricity.

Do you have any trouble with areas beyond the passage of fish where the benefits may outweigh the other aspects?

007 MYRON: They would have to be reviewed on a site specific basis.

Oregon Trout would not support blanket approval.

020 REP. MARKHAM: What would be a financially non-feasible multi-purpose dam that someone would build?

025 MYRON: Most storage facilities which would be built today would have to have funding from several sources. When BLM looks at a site, they determine if the cost-benefit ratio is adequate enough to make it financially feasible. That is what our proposed language is based on.

033 CHAIR NORRIS: What if there was an impoundment that, because it was properly done, judiciously released, and benefitted a stream that had been dry. Should the fisheries be able to sustain some of the costs?

039 MYRON: Yes.

050 DON DERKHOFF, SOIL AND WATER CONSERVATION: Believes that this issue should have one of the highest priorities in the water area because many

of the actions currently under development by the Water Resources Commission and Department might not need to be addressed in such detail as they are, or be as restrictive as they are if we can determine that we can provide appropriate storage to meet needs.

Believes many areas are available.

Many ponds do not have permits because agriculture has been encouraged to create these ponds. The procedure to obtain a permit is lengthy and costly.

Hopes Water Commission and Department will be encouraged to give the issue the highest priority before proceeding with additional restrictions.

090 DAVE NELSON, OREGON WATER RESOURCES CONGRESS: We think the policy issue

should remain clean and the Oregon Trout amendments not be accepted.

The terms "environmentally acceptable" and "financially feasible" are not defined and there are various standards for those terms.

Section 2 is inappropriate in this policy statement.

Opposes adoption of amendments.

115 REP. SCHROEDER: Do you think there is enough state law to take care of concerns about the environment, anadromous fish runs, etc. outside of this bill?

117 NELSON: Believes so. Other issues were discussed in the development of HB 3373, but it was felt best to keep the bill clean and simple.

129 REP. SCHROEDER: Wants a clean bill but also wants to see that anadromous fish and other things that we value are protected.

135 BURTON WEAST: Was concerned about the expression "multipurpose" in the bill because an impoundment might be for domestic water which would not necessarily be multipurpose.

140 CHAIR NORRIS: One consideration is to build the broadest base of support for HB 3373.

142 REP. SCHROEDER: I contacted Bill Young of Water Resources Department in 1988 on water impoundments sites. Reads portion of the information received.

160 MOTION: REP. MARKHAM: Moves HB 3373 to the floor with a do pass recommendation.

165 REP. DWYER: Speaks in opposition to the motion.

187 REP. SCHROEDER: Would it be acceptable to say that consideration be given to the environmental concerns rather than say environmentally acceptable?

190 REP. DWYER: Those considerations will have to be given. To completely omit it is not acceptable to me.

200 REP. MARKHAM: Withdraws his motion.

210 REP. SCHROEDER: Asks for language to say that consideration be given to the environmental concerns.

212 NELSON: Suggests: on line 14, after the word "facility", add "water storage facilities that comply with environmental and land use laws."

245 MOTION: REP. SCHROEDER: Moves to amend HB 3373 on line 14. After the word "facilities", add "that comply with environment and land use laws".

254 REP. SOWA: Objects to the motion. Wants amendments drafted by Legislative Counsel before being voted on by the committee.

263 REP. SCHROEDER: Am moving the amendment in concept. Adds to the motion: "that the amendment be submitted to Legislative Counsel for the legal jargon and brought back to us at the next meeting".

270 VOTE: There being no objection, motion passes. All members are present.

273 REP. SOWA: Prefers language brought to us by Oregon Trout, but willing to look at what Legislative Counsel drafts.

277 CHAIR NORRIS: We will have a work session on HB 3373 on Thursday.

Closes work session on HB 3373.

Adjourns meeting at 3:15 p.m.

Submitted by: Reviewed by:

Pat Zwick, Beth Patrino, Assistant Administrator

EXHIBIT LOG:

A - HJM25 Testimony - Rep. Schroeder - 4 pages B - HJM25
Exhibit - Rep. Taylor - 1 pages C - HJM25 Testimony - Jeff Curtis
- 1 pages D-HB 3373 Testimony - Elmer Werth - 1 page