

Ocean Law Memo

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SALMON RANCHING IN OREGON: LEGISLATION AND REGULATIONS

The Legislation

In 1971, the Oregon legislature passed a law which created a new Oregon industry: the ocean ranching of salmon. The law allows individuals and companies to apply for permits to operate their own hatcheries, raise young salmon from eggs, and then turn them out into the ocean from coastal facilities. The basic concept of ocean ranching seems simple and ingenious. The young fish are released to graze and fatten in the Pacific Ocean, the "open range," and then to return by instinct to their point of release: the salmon rancher's release-and-recapture facility. There, some of the returning fish will be separated and used for propagation, as seed stock from which the next generation of fish will be spawned. The remainder are killed and marketed.

The 1971 law only authorized permits for chum salmon hatcheries. It was amended in 1973 to allow chinook and coho permits. Most recently, the 1979 legislature expanded the authorizations to pink salmon as well. To date, twenty-two permits have been granted for fourteen separate sites along the Oregon coast. These permits authorize private hatcheries to release up to 190 million fish, roughly two and one-half times the number released from public hatcheries. Due to a current shortage of eggs, private hatcheries have released far fewer fish than their permits allow.

Most of the fish an ocean rancher releases will not return. Many will fall prey to larger aquatic predators, and others to the fishing effort of sports and commercial fisheries. While they are at sea, privately-raised salmon, even those carrying a hatchery mark or tag, are considered wild animals and are fair game for fishermen. The Oregon Department of Fish and Wildlife estimates that commercial and recreational fishermen will catch four out of every five of the adult salmon that would otherwise return to the ranch.

Nevertheless, an ocean rancher may receive a viable investment return if only one to five percent of his fish return to the recapture facility.

The Regulations

Although the basic concept of ocean ranching seems simple, the process of actually becoming a salmon rancher is more complex. Private salmon hatcheries interact with several public resources: public stocks of anadromous and resident fish; fresh water streams and groundwater; and estuarine, coastal, and ocean resources. Consequently, there are a variety of legitimate - though often confusing - regulations and administrative procedures with which a would-be ocean rancher must comply.

An ocean ranch operation requires permits or authorization from local zoning boards, the Oregon departments of Fish and Wildlife, Water Resources, and Environmental Quality, the state Division of Lands, and the U.S. Army Corps of Engineers. The ocean ranch may also be affected by regulations of the federal Environmental Protection Agency, Department of Agriculture, and Food and Drug Administration. The balance of this Ocean Law Memo outlines some of the more important of these regulations.

The Private Salmon Hatchery Permit

A commercial salmon ranch must have a private salmon hatchery permit for each species of salmon it releases. These permits are under the jurisdiction of the Oregon Department of Fish and Wildlife and are the most demanding of all the permits for which an ocean rancher must apply. The Department requires a minimum of six months for review and evaluation, and public hearings are required by law.



The Department reviews only fully completed applications, and no application is evaluated until the applicant is within two years of receiving eggs. The current shortage of salmon eggs is the single most limiting factor facing present applications. Additionally, an applicant must have selected a site for his operation in which he can demonstrate sufficient property rights. These property rights may be shown by a lease, option, easement, or similar instrument.

The Department evaluates completed applications by two different types of standards: resource considerations and land-use considerations. Although these standards often overlap, they have developed from two different bodies of law. From a resource standpoint, each application is examined in terms of its effect on the overall public fisheries of the state, the state's management of these fisheries, and the economic benefit to the state. In particular, ORS 508.710 requires that permit applications be denied if any of five conditions exist:

1. If the private hatchery would tend to deplete any natural run of anadromous fish (salmon or steelhead) or any population of resident game fish.
2. If the private hatchery might result in waste or deterioration of fish.
3. If the operation would be located on the same stream or river (or on one of its tributaries) on which a state or federal fish hatchery is established or planned.
4. If the operation would not be consistent with sound resource management or would not be located in close proximity to the ocean.
5. If the applicant does not have the financial capability to successfully construct and operate the hatchery or may not properly conduct the operation. (The Oregon Attorney General issued a 1975 Opinion in which he stated that this condition allowed the Fish and Wildlife Commission to require a bond or public liability insurance from a permit holder).

In addition to these resource considerations, the Department must also analyze each application for its consistency with all applicable statewide planning goals. Statewide planning goals are formulated by the Land Conservation and Development Commission (LCDC) and have the force of law. In its evaluation of proposed private hatchery permits, the Department gives particular attention to four of these goals: Open Spaces (Goal 5); Estuarine Resources (Goal 16); Coastal Shorelands (Goal 17); and Ocean Resources (Goal 19).

Following its evaluation, the Department issues preliminary and final reports. Then, a formal public hearing is held in which members of the public, representing potentially-affected interests, may intervene. Finally, the Oregon Fish and Wildlife Commission issues a final order, either granting or denying the permit, consistent with the record of the hearing.

If a permit is granted, actual releases of fish still remain subject to Departmental discretion. The Department may inspect an operation at any time and the ocean rancher must pay for departmental time spent in doing so. If the Department determines that a private hatchery operation has adversely affected other anadromous or resident game fish populations, the hatchery operator is responsible for the expense of restoring these populations. Finally, should an operation be found to be deleterious to the public interest, the permit may be subject to termination proceedings.

Dredge and Fill Permits

If a salmon ranch operation must remove or fill more than fifty cubic yards of material from or on the beds and banks of state waters, a dredge and fill permit is required from the Division of State Lands. This requirement will almost always apply to either riverine or estuarine sites in which the salmon ranch must place its water intake and outfall pipes, release-and-recapture facility, and any protection or reclamation devices for bank or beach stabilization such as riprap, seawalls, or even vegetation.

The general policy governing this permit is the "protection, conservation, and best use" of Oregon's water resources. A state dredge and fill permit, however, does not excuse an applicant from also obtaining a federal dredge and fill permit from the U.S. Army Corps of Engineers.

The Corps of Engineers requires federal permits for all structures, work, and dredge and fill activities in "the waters of the United States." These waters are those subject to tidal influence as well as any waters that have been, are, or might be used to transport interstate commerce. Generally, a permit is not granted unless it would be in the public interest. The public interest is determined by balancing factors such as conservation, economics, aesthetics, general environmental concerns, energy needs, food production, and fish and wildlife values.

Water Rights

The rearing of young salmon demands a reliable source of fresh water. To the extent a salmon ranch raises its own fish, it will require a steady flow of water for incubating eggs and rearing fingerlings. Especially in the hot summer months, an assured flow of clean water is vital for temperature, dissolved oxygen, and the removal of metabolic wastes requirements of the growing fish.

Whether a salmon rancher utilizes surface water or digs a well to tap ground water, legally recognized water rights must be obtained from the Oregon Department of Water Resources. This process is begun by filing an application for a permit with the Director of Water Resources. An informal hearing may be held but is not required. If a permit is granted, work must begin within one year to appropriate the water or the permit will lapse.

Water Discharge Permit

At the other end of a hatchery's water works is the outfall pipe. In Oregon, water quality standards are the responsibility of the Department of Environmental Quality. The Department issues National Pollutant Discharge Elimination System (NPDES) permits, which were created by the Federal Water Pollution Control Act of 1972.

NPDES permits are required before wastes may be discharged from a commercial facility (which includes fish hatching and rearing facilities above a certain capacity). "Wastes" include anything that tends to be detrimental to public health, wildlife, fish, or to other legitimate and beneficial uses of water. Such changes may include changes in temperature, pH, dissolved or settleable solids, and dissolved oxygen content, all of which a fish hatchery is capable of inducing.

Salmon hatcheries which produce less than 20,000 pounds of salmon annually and whose input of feed is less than 5,000 pounds during its month of maximum feeding are exempt from the NPDES permit requirement. This may be particularly applicable to chum salmon operations due to the short rearing period and relatively small poundage of fry produced. In any case, a statement of exemption must be filed with the Department of Environmental Quality.

Fishing Licenses

Although ocean ranching may appear an innovative way to catch fish, it is a way to catch fish nonetheless and an operator must have a wholesale dealer's and commercial fishing license. Additionally, landing and poundage fees must be paid on the fish taken. Commercial fishing licenses are obtained from the Department of Fish and Wildlife in accordance with a legislated fee schedule. A separate license is required for each employee who takes or assists in the taking of salmon at the facility.

Processing and Marketing Regulations

To the extent an ocean ranch becomes involved in the marketing of its harvest, processing and marketing regulations must be followed. The state Department of Agriculture's regulations for sanitary conditions for food processing establishments would apply to the processing of salmon. Furthermore, fresh fish and seafood products are subject to the Department's packing date labeling requirements. The Department's Food Storage Sanitation standards may also apply.

Because salmon harvested in Oregon may be consumed anywhere in the United States, regulations of the U.S. Food and Drug Administration and of the Department of Agriculture are relevant to the salmon rancher. FDA regulations on animal drugs, pursuant to the Federal Food, Drug, and Cosmetic Act, and USDA regulations on fish vaccines, pursuant to the Federal Serum-Toxin Act, should be consulted by private hatchery personnel in the development of their hatchery procedures.

For More Information

The best source of current information on private salmon hatcheries in Oregon is the Oregon Department of Fish and Wildlife, P.O. Box 3503, Portland, Oregon, 97208.

A more detailed treatment of the regulations discussed in this Memo may be found in Salmon Ranching in Oregon: State and Federal Regulations, published through the Ocean Resources Law Program, University of Oregon Law School, Eugene, Oregon, 97403.

Additional information on Oregon's permit procedure in general is available from the Permit Coordination Center, 306 State Library Bldg., Salem, Oregon, 97310.

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