

Gene
ICS
Ant

FISH COMMISSION POLICY ON REQUIREMENTS FOR
MAINTAINING OYSTER LEASE PLATS

Problem

Oregon statutes and administrative rules, as applied to oystering, do not define the term "production." As a consequence, people can hold oyster claims for extended periods of time without reporting meaningful planting or production. Thus an individual can lease an unlimited amount of oyster land and continue his or her lease rights by reporting production of less than a gallon of oysters. This has opened the door to holding land for speculation purposes rather than for oyster production.

Background

Oregon Revised Statutes 509.439 reads as follows:

"Withdrawal of unproductive lands from oyster cultivation. (1) If, for a period of three years after the filing of a plat under chapter 675, Oregon Laws 1969, more than one-half the lands claimed under chapter 675, Oregon Laws 1969, are unproductive, the commission may withdraw from a claimant and consider abandoned that portion of the unproductive lands that are in excess of one-half the lands claimed by such claimant. However, the reason for such unproductiveness shall not include restrictions by governmental health authorities, the unavailability of seed or infestation by pest or disease".

The problem with this statute is that production is not defined and is open to various interpretations. Some people holding two-acre oyster claims have reported and paid tax on only one gallon of oysters. Presumably they consider this to be production. There have been at least two instances where leaseholders have sold their leases to other parties at a profit without

investing much if anything in the lease. In one case the individual had an investment of no more than \$50 and sold his claim for between \$200-\$500. In another case the lease sold for \$3,000. In this case the individuals may have expended \$500 in attorney fees, lease fees, and equipment to demonstrate that the grounds would grow oysters. There are several other leases that are not producing oysters and probably are being held for no other reason than to sell to someone.

Discussion

The concept of a definition for oyster production was discussed with two oyster growers, Sam Hayes and Lou Wachsmuth. Both agreed that something was needed to keep people from holding oyster lands out of oyster production for reasons other than those specified in the law. Sam Hayes agreed with the idea that oyster claims should produce a minimum gallonage provided that some leeway could be included whereby the grower would not lose his claim if a natural disaster or other unforeseen problem stopped him from meeting the requirement. He further recommended that growers be required annually to file an affidavit stating the amount of seed planted and the seed source. Lou Wachsmuth concurred with this.

The minimum gallonage discussed was 500 and both Sam and Lou felt that this was realistic, and achievable on as little as one acre of land. Good to very good oyster land, planted at the rate of 50 cases per acre, should produce 800-1,400 gallons of Pacific oysters per acre. A harvest of only 400 gallons per acre was considered poor and was the break even point in 1969. At that time oystermen were receiving only \$3.00 per gallon for oysters. The current market price for oysters is \$10.40 to \$11.60 per

gallon in Seattle. The growers are receiving about \$8.50 per gallon. Thus 500 gallons of oysters would gross the grower \$4,250. This is a meaningful amount of money and the production level is low enough that anyone serious about growing oysters would be able to comply with the regulation.

Recommendation

In view of the foregoing, the staff recommends that the commission ~~subscribe to a policy which would call for leaseholders to plant at least~~ 30 standard cases of oysters per acre on one-half of their holdings by the end of the third year of leasing and to produce 500 gallons per year on these holdings by the sixth year of leasing and thereafter.

Oyster plats which did not comply with these criteria would be considered to be unproductive in terms of ORS 509.439 and would fall under the provisions of that statute.

If the commission approves of this approach, we will proceed to develop an Administrative Rule with the above provisions and will circulate it to the principal oyster growers for comment prior to having it considered for final adoption.

Fish Commission of Oregon

June 16, 1975