

TILLAMOOK COUNTY OYSTER LANDS

Introduction

The purpose of this report is to review: (1) the current oyster regulations in Tillamook County; (2) problems associated with these regulations; and (3) amount of grounds claimed for oyster production in Tillamook County and claimants.

Current Regulations

Current regulations governing oyster culture in Tillamook County are found in O.R.S. 511.625, 511.640, 511.645, 511.650, 511.655, and 511.660, pages 130 and 132-33.

The six statutes applying to oyster culture in Tillamook County are as follows:

- (1) O.R.S. 511.625 Natural and artificial oyster beds in Netarts Bay. That portion of Netarts Bay, in Tillamook County, lying south of the quarter section line running east and west through the center of section 19, in township 2 south, range 10 west of the Willamette Meridian, is designated as natural oyster beds. That portion of Netarts Bay lying north of such quarter section line is designated and set apart for artificial plantations of oysters, the sizes of which shall be fixed by the local regulations of any oystermen's association on Netarts Bay, not exceeding two acres in any one plantation. Every person holding a claim for the cultivation of oysters on Netarts Bay shall in all respects comply with the local regulations applicable thereto. No person, firm, corporation or association shall be entitled to locate more than one such claim.
- (2) O.R.S. 511.640 Oyster beds in Tillamook Bay; prior claims set aside for artificial oyster claims. All the tidelands and lands under the waters of Tillamook Bay in Tillamook County lying west of the old ship channel which, prior to July 16, 1949, were located as oyster claims as provided by law, are withdrawn from the lands of this state which may be sold or leased, are designated as oyster lands, and are set aside for the location of artificial oyster claims.
- (3) O.R.S. 511.645 Locating claims in Tillamook Bay oyster lands; notice. Any citizen of this state, including any Oregon corporation, may locate on oyster lands mentioned in ORS 511.640 an oyster claim or claims, the aggregate acreage of which does not exceed 50 acres, by marking the boundaries of each claim by means which will not obstruct navigation and by recording, within 30 days thereafter, with the county clerk of Tillamook County, a notice of location, signed and acknowledged by him, which notice shall contain:
 - (1) A description of each oyster claim so marked.
 - (2) A statement that each claim is marked, and is claimed as an oyster claim.

- (4) O.R.S. 511.650 Requisites for retaining claims in Tillamook Bay oyster lands. The locators of oyster claims under prior laws or ORS 511.640 to 511.660, and the heirs, successors, assignees and lessees thereof, are entitled to continued possession of such claims if they, or some one on their behalf:

- (1) Keep the boundaries of each such oyster claim reasonably marked.
- (2) Biennially after the recording of notice of location, or July 16, 1949, in case of claims previously located, somewhere on such claims, either:
 - (a) Plant at least four-tenths of a bushel of oyster seed; or
 - (b) Transplant at least five bushels of oysters; or
 - (c) Harvest at least eight bushels of oysters, for each acre, or fraction thereof, of each claim.
- (3) Make and record with the county clerk of Tillamook County, on or before June 30, 1951, and on or before June 30 of each odd numbered year thereafter, an affidavit stating:
 - (a) The description and acreage of each such claim.
 - (b) The period for which the affidavit is filed.
 - (c) That the planting, transplanting or harvesting and marking provisions of subsection (2) of this section have been complied with.

- (5) O.R.S. 511.655 Evidentiary value of claim affidavit. The recorded affidavit mentioned in subsection (3) of ORS 511.650 is prima facie evidence of the facts therein stated, and it, or a duly certified copy thereof, shall be received as such evidence in all courts.

- (6) O.R.S. 511.660 Loss of claim by noncompliance with ORS 511.650. In event of the failure by any claimant to comply with any of the provisions of ORS 511.650 all his rights to the possession and use of each oyster claim held by him shall cease, and thereafter it is lawful to relocate such claim.

O.R.S. 511.625 describes how oyster cultivation will be conducted in Netarts Bay and sets aside about 300 acres of land designated as natural oyster beds and, presumably, under state control. The problem in this regulation is found in the sentence pertaining to artificial plantations, "the sizes of which shall be fixed by the local regulations of any oystermen's association on Netarts Bay, not exceeding two acres in any one plantation". The problem exists in that there is no oystermen's association on Netarts Bay and, in effect, the industry is unregulated. As a consequence a few people have acquired, by one means or

another, numerous claims and hold large acreages of land. In the case of one man these lands are being held but not cultivated and is effectively preventing any new growers from going into business.

O.R.S. 511.640 was enacted in the 1949 legislature and withdrew from the State of Oregon certain lands within Tillamook Bay for oyster culture. These lands may not be leased or sold by the state.

O.R.S. 511.645 simply states which and how individuals may claim oyster lands in Tillamook Bay and, in effect, put control in the hands of the county.

O.R.S. 511.650 describes how these lands may be held. The problem in this regulation arises in the sentence ending, "and the heirs, successors, assignees and lessees thereof, are entitled to continued possession of such claims if they, or someone on their behalf:" then continues to list the minimal requirements for holding leases. This wording has allowed a few individuals by claim and assignment to virtually monopolize the oyster industry within Tillamook Bay. The requirements for holding these lands are extremely minimal and require only the filing of an affidavit by the grower stating that he is complying with the statutes. No provision is made for investigation of the affidavits.

O.R.S. 511.655 and 511.660 relate to the affidavits as evidence and loss of claims by non compliance with provisions of the statute.

The basic problem in these regulations is the lack of control by the state. At the present time the basic control of the oyster lands in Tillamook County is in the hands of the county which does not seem overly concerned with how this industry is controlled or regulated. If the growers wish to import seed from diseased or pest infested areas they can, and the state has no control over their decisions.

The fact that pests can be introduced and will survive is a well established fact. The Japanese oyster drill (Tritonalia japonica) was introduced into Netarts

Bay and has become a major oyster pest in that area. There are two accounts of how this pest was brought into Netarts. Sam Hayes claims that a former Fish Commissioner, who had oyster lands in Netarts, introduced the drills in Japanese seed. On the other hand Roger Tollefson (former O.F.C. Shellfish project leader) says that Vern Hayes told him the early seed they planted in Netarts all contained drills and that these animals could not survive then in numbers great enough to be pests. According to Mike Hoy, (phone conversation) years ago a family named Plancich grew oysters on Netarts Bay. Mike was unsure of the connection, however, a Dr. Thomas W. Ross who either formerly or was at the time a Fish Commissioner was interested in the operation. The Fish Commission was informed that these people had received drill infested seed. Mike then sent Dr. Willis H. Rich to check the seed. Dr. Rich found drills and had the infested portion of the seed condemned and destroyed. This is probably the origin of the Hayes' story which is quite contrary to his brother Vern's.

No matter how the drills got there, they are surviving and have become a major predator of oysters, littleneck and cockle clams in Netarts Bay.

Tillamook County Oyster Claims

Tillamook County has two oyster-producing areas and is producing about 80-85% of Oregon's oyster crop. This production is produced primarily by one plant. The following information and figures were taken from plot maps and county records. Because of the difficulty in extracting the information from somewhat confusing records, the following acreages and locations of claims are presented only as reasonable approximations.

Netarts Bay

Within Netarts Bay there are approximately 476 2-acre oyster plots and about

300 acres of state controlled oyster reserve. The state lands are located in the extreme south end of the bay in what appears to be lands that are less than desirable for oyster production, (Figure 1).

Mr. Ed Ferry, the only active oysterman on Netarts Bay, has about 30 claims (60 acres). With only 3-4 2-acre exceptions, Sam Hayes has the rest of the bay under claim. Lands owned by Hayes have some old oysters in them that are being sold to Mr. Cecil Harris on Tillamook Bay for processing into stew.

Tillamook Bay

Within Tillamook Bay there are about 2,500 acres of oyster land of which about 1,300 acres are prime grounds. Of this total, Mr. Ed Robosky has 50 acres, Mr. Cecil Harris 150 acres, Mr. Earl Olson 500 acres and Messers Sam and Linn Hayes between 1,250 and 1,500 acres (actual record checks in 1954, 1,450 acres) under claim. (Figure 2).

Although the affidavits indicate these lands are being utilized as required by statute, it is not possible to verify this by visual observation in the case of every oyster grower.

Summary and Conclusions

Current oyster statutes places the majority of oyster lands in Tillamook County under the control of the county. Requirements for holding the lands are minimal and have allowed a few people to virtually monopolize the industry. The lack of state control and an absence of county concern could result in the introduction of disease or pests. The lack of an oysterman's association on Netarts Bay allows growers to operate as they see fit and much useable ground (ignoring the drill problem) to lay idle.

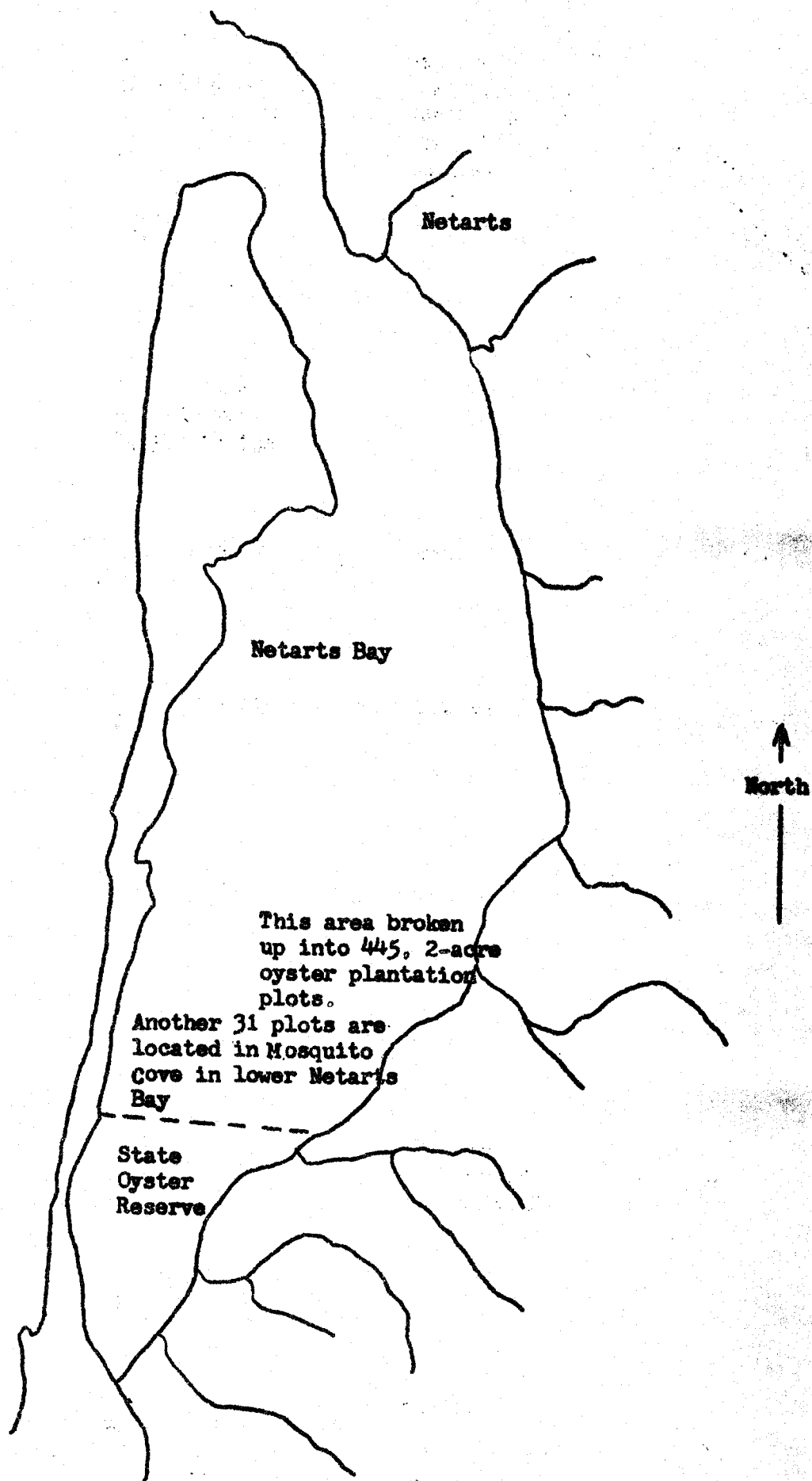


Figure 1. Map of Netarts Bay Showing the Location of the State Oyster Reserve and Tillamook County Lands Under Claim.

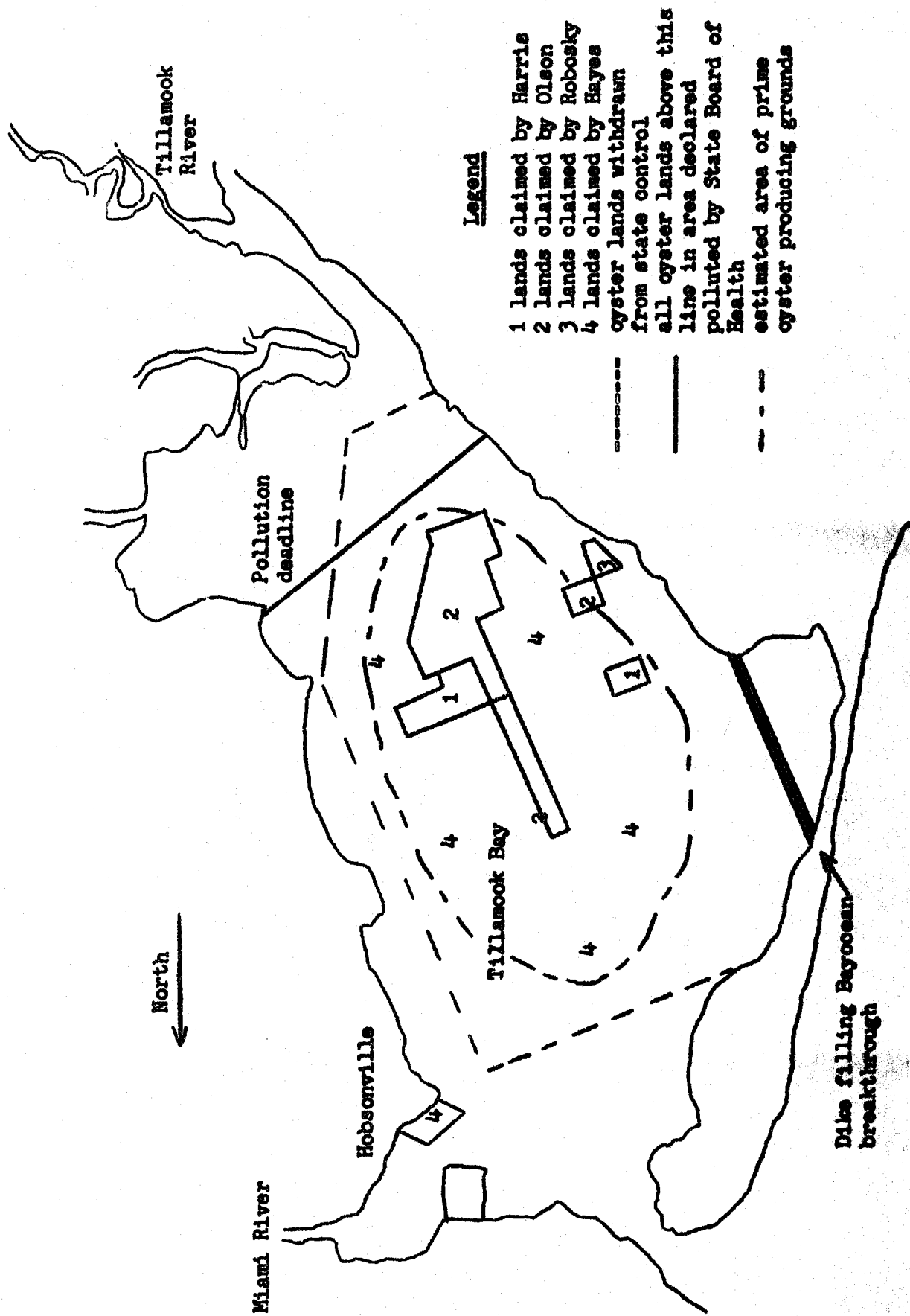


Figure 2. Map of Tillamook Bay Showing Area Withdrawn from State Control, Pollution Areas and Approximate Location of Oyster Claims.

We do not have the authority at the present time to provide the necessary management of oyster lands in Tillamook County. We are extremely concerned over the small amount of land under cultivation and the laxness of controls, which could result in the introduction of destructive pests. It is our recommendation that we seek legislative help in returning authority for control of lands in Tillamook County to the Fish Commission to administer in accordance with responsibilities delegated to us in ORS 509.425 through 509.500 for bays other than Netarts and Tillamook. Until such time as the necessary controls are established, we will continue to work with oystermen in Tillamook County in whatever way possible to help solve their problems.

C. Dale Snow
Shellfish Investigations
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