



Oregon Administrative Rules Oregon Department of Fish and Wildlife

PRIVATE SALMON HATCHERIES DIVISION 040 HATCHERIES – PRIVATE

635-040-0000

Definitions and Purpose

This rule describes the definitions to be used by the Oregon Fish and Wildlife Commission and the Oregon Department of Fish and Wildlife in interpreting the statutes and the rules, and provides a description of the purpose of the rules.

(1) Definitions in OAR 635-007-0501 and the following definitions apply to this Division:

- (a) "Annual production program limit" means the number of fish annually authorized by the Department to be released;
- (b) "Naturally adapted stocks" means stocks which have adapted to the local environment such that they are capable of reproducing and surviving under local conditions;
- (c) "Principal" means any person or entity owning 5% or more of a company; general partners, president, vice-president, chief executive officer and directors;
- (d) "Private salmon hatchery" means the location from which anadromous fish may be released for migration to the ocean and at which returning adult salmon are captured for processing or retention as brood stock. Such location, also known as the "release/recapture site" shall be designated in the private salmon hatchery permit;
- (e) "Release limits" means the maximum number of fish authorized to be released annually. This number, specified in a permit or in writing by the Department, does not entitle permittee to make annual releases of this number but rather functions as a ceiling on the number allowed to be released in the annual production program.

(2) The purpose of these rules is to describe policies, standards and procedures concerning:

- (a) Application for private salmon hatchery permits;
- (b) Evaluation of applications for private salmon hatchery permits;
- (c) Permitting of private salmon hatcheries;
- (d) Operation of private salmon hatcheries, including changes in operation and termination;
- (e) Transfer of private salmon hatchery permits;
- (f) Monitoring of private salmon hatchery operations.

Stat. Auth.: ORS 508.700 through 508.745

Stats. Implemented:

Hist.: FWC 5-1990, f. 1-24-90, ef. 1-26-90

635-040-0001

Private Salmon Hatchery Policy

(1) The Commission recognizes the intent of the Legislature (ORS 508.700 through 508.745) to permit the establishment and operation of private salmon hatcheries. Oregon law provides that the role of private hatcheries is to optimize the long-term contribution to Oregon's salmon resource under regulations which shall prevent the deterioration of any natural run of anadromous fish or populations of resident fish.

(2) These rules are not intended to prevent or eliminate any currently active permitted operation. Where a proposed operation has met the statutory criteria and been issued a permit, the Commission intends that the private salmon hatchery be operated in a manner consistent with Oregon law.

(3) Private salmon hatcheries shall use or develop stocks that are, to the fullest extent possible, compatible with naturally adapted stocks in accordance with OAR 635-007-0521 through 635-007-0529 and fish management plans of the Department, and as they may be amended.

(4) Private salmon hatcheries shall be limited in numbers of fish permitted to be released, based on:

- (a) The technical and financial capabilities of the permittee;
- (b) The Department's evaluation of the permittee's proposed program; and
- (c) The consistency of the proposed program with the goals and guidelines of the Land Conservation and Development Commission and fish management plans of the Department.

(5) Private salmon hatcheries shall be regularly monitored to insure compliance with ORS 508.700 through 508.745 and all applicable regulations.

Stat. Auth.: ORS 508.700 through 508.745

Stats. Implemented:

Hist.: FWC 5-1990, f. 1-24-90, ef. 1-26-90



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635-040-0007

Moratorium on Private Salmon Hatchery Permits and Revisions to Permits

This section describes the moratorium which currently exists for new permits for private salmon hatcheries, as well as for revisions to existing permits which increase release limits specified in those permits or otherwise specified by the Department.

(1) No applications for private coho, chinook, or chum salmon hatchery permits shall be accepted, nor shall any permits be issued, through December 31, 1995, by which time this rule shall be reviewed by the Commission to determine if the moratorium should be continued. In addition, no revisions shall be made through December 31, 1995, to increase limits specified in existing permits or specified by the Department subsequent to issuance of the permit.

(2) Existing permits may be transferred pursuant to OAR 635-040-0025.

Stat. Auth.: ORS 508.700 through 508.745

Stats. Implemented:

Hist.: FWC 127-1990, f. 12-24-90, ef. 1-1-91

635-040-0009

Application Requirements and Hearing Procedures for New Permits to Construct and Operate Private Salmon Hatcheries

This rule describes the information which shall be contained in permit applications, as well as the process which the Department shall use in processing applications.

(1) Applications for new private salmon hatchery permits shall be processed in accordance with the Attorney General's Model Rules of Procedure adopted by the Department as OAR 635-001-0005, and as these rules may be subsequently revised.

(2) The hearing on the proposed issuance of a new private salmon hatchery permit shall be conducted as a contested case hearing. However, the Commission or hearings officer may allow members of the public to testify at the hearing.

(3) Applications for new private salmon hatchery permits shall contain the following information, at a minimum:

(a) Name of applicant(s);

(b) Address and telephone number;

(c) Name, address and telephone number of the person designated by applicant to receive service of documents during the course of the proceedings;

(d) A description of the location of the operation;

(e) A clear and concise statement of the operation proposed by applicant;

(f) A clear and concise statement of why the applicant believes that none of the grounds for denial of a permit set forth in ORS 508.710 are relevant to the application;

(g) An assessment of the impact of the proposed operation on natural runs of anadromous fish, including potential competition problems; and

(h) An assessment of the economic benefit to the State of Oregon of the proposed operation.

(4) All applications shall contain, as exhibits, the following:

(a) All reports, technical documents, articles and data or information of any kind on which applicant intends to rely at the hearing;

(b) A copy of all leases, options, easements, or other instruments by which applicant purports to have sufficient property rights in the proposed site to conduct the proposed operation;

(c) A map of the proposed private salmon hatchery site or release site, indicating the geographic relationship of the hatchery and the release site to the surrounding area;

(d) Information documenting the private salmon hatchery's compliance with the Statewide Planning Goals and compatibility with the applicable acknowledged {comprehensive plan(s) and land use regulations. Such documentation shall include one of the following:

(A) Information affirming that the private salmon hatchery has received specific land use approval from the affected city or county; or

(B) Information demonstrating that the private salmon hatchery is permitted under the city or county's acknowledged comprehensive plan, but does not require specific land use approval by the jurisdiction; or



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(C) Written declaration by the permit applicant acknowledging that final Department approval of the private salmon hatchery shall not be issued until the permit applicant provides the Department with the appropriate land use compatibility information as described in either subsection (4)(d)(A) or (B) of this rule.

(e) Where more than one unit of local government has land use approval authority over the site of the proposed private salmon hatchery, documentation shall be submitted to the Department in the manner described in subsection (4)(d) of this rule demonstrating land use compatibility with each of the affected jurisdiction's comprehensive plans.

(5) The meaning of the land use terms used in this rule shall be the same as defined in OAR 635-405-0005.

(6) The applicant shall file ten copies of the application and all supporting information and exhibits with the Department, and shall submit such additional copies as may be required by the Department or hearings officer.

(7) A separate application is required for each fish species proposed to be propagated, including a \$100 fee for processing of each application.

(8) The Department shall begin processing of an application when it is deemed complete. An application shall be deemed complete only when the information required under sections (3) and (4) of this rule is completed in full; and the application is signed by the applicant or the applicant's legally authorized representative, and is accompanied by all required exhibits and fee.

(9) If the Department determines that additional information is needed, it shall promptly request the needed information from the applicant. The application shall not be considered complete for processing until the requested information is received. The application shall be considered to be withdrawn if the applicant fails to submit the requested information within 90 days of the request.

(10) When an application is deemed complete, the applicant shall be so notified. Processing of the application may require a minimum of six months from the date on which an application is deemed complete.

(11) Applications shall not be considered by the Commission unless the Department has determined that adequate seed stock from sources approved by the Department will be available within two years of approval of permits by the Commission. The Department, in its discretion, shall determine which seed stock is acceptable for use at a particular site.

Stat. Auth.: ORS 508.700 through 508.745

Stats. Implemented:

Hist.: FWC 5-1990, f. 1-24-90, ef. 1-26-90

635-040-0012

Release Limits

Each permit shall specify release limits. If limits were not specified in permits already issued, the Department has specified, in writing, applicable release limits for those permits, and any transferee is bound by those specified limits.

Stat. Auth.: ORS 508.700 through 508.745

Stats. Implemented:

Hist.: FWC 5-1990, f. 1-24-90, ef. 1-26-90

635-040-0014

Permits, Licenses and Reports Required of Private Salmon Hatchery Operators

This section cross-references and lists other permits, licenses, and reports required of private salmon hatchery operators. Private salmon hatchery operators shall obtain the following permits and provide the following reports:

(1) Wholesale Fish Dealer License. Each private salmon hatchery operator who harvests salmon pursuant to permits issued under ORS 508.700 shall first obtain a wholesale fish dealer license. Monthly reports and payment of poundage fees are required as provided in OAR 635-006-0200 through 635-006-0220 on all fish harvested upon return to the private hatchery. No poundage fees are required for those returning fish which are released alive in waters of the state.

(2) Fish Propagation License. Fish propagation licenses are required for private hatcheries and support facilities which propagate, rear for sale, or sell live fish which are not released. Regulations governing fish propagation licenses are found at OAR 635-007-0650 through 635-007-0670. A fish propagation license is not required for incubation and rearing for release of permitted species at the authorized private salmon hatchery site.

(3) Fish Transport Permit. Fish transport permits are required as provided in OAR 635-007-0600.



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- (4) Release Permits. Separate release permits are required for each group or period in which fish are released from the release-recapture sites. It is expected that such period shall generally be on a two-week basis.
- (5) Reports of Disease Examinations. Reports of disease examinations, indicating disease status, are required prior to release, in accordance with ORS 508.715(2). Disease examinations conducted within six weeks prior to release meet the requirements of this section.
- (6) Monthly Reports. Reports of all fish released are required. Such reports shall include: species, number, number marked, tag loss, size, and dates of release. Each operator shall verify the data contained in monthly reports as shown in the annual Department summary report of all releases.
- (7) Biological Data. The Department may require reports showing biological data from salmon returning to private hatchery facilities for the monitoring and evaluation of hatchery operations. The mark recovery information from these reports shall be provided to the regional Mark Processing Center by the Department.
- (8) Monthly Reports of Fish on Hand. Monthly reports of fish on hand at each facility, whether operated by the permittee or by a contractor on the permittee's behalf, shall be submitted to the Department.
- (9) Fish Loss Report. A report of any fish loss which exceeds 0.1% per week in any one pond shall be immediately made to Fish Propagation Section of the Department by telephone and by written report as provided in OAR 635-007-0580.

Stat. Auth.: ORS 508.700 through 508.745

Stats. Implemented:

Hist.: FWC 5-1990, f. 1-24-90, ef. 1-26-90

635-040-0015

Purchase of Salmon Eggs from the Department

This section describes salmon eggs, fry or fingerlings which may be made available by the state to private hatchery permittees, as well as the Department's priority list for purchase of eggs, fry and fingerlings.

- (1) Chinook, chum, or coho (silver) salmon eggs, fry or fingerlings which are surplus to the needs of the state and the STEP program may be made available for sale to private salmon hatchery permittees through state fish culture facilities, based on the criteria set forth in OAR 635-007-0825.
- (2) Upon written request, a permittee shall be placed on a list, in order of priority based on OAR 635-007-0830, to purchase salmon eggs, fry and fingerlings. Salmon eggs, fry, or fingerlings shall be made available for purchase based on the priority set forth in OAR 635-007-0830.
- (3) Refusal to pick up eggs when offered shall result in a permittee being moved to the bottom of the priority list, and behind other private salmon hatchery permittees.
- (4) In determining a reasonable fee for salmon eggs as provided in ORS 508.730, the Department shall consider all costs in providing such eggs and the market value of viable salmon eggs and carcasses. Payment in full at the time of order shall be required if fish shall be held for maturation for a period longer than 30 days.

Stat. Auth.: ORS 508.700 through 508.745

Stats. Implemented: Hist.: FWC 5-1990, f. 1-24-90, ef. 1-26-90

635-040-0018

Use of Wild Salmon for Private Salmon Hatchery Seed Stock

This section describes the prohibition on the taking of wild chinook or coho as seed stock by private salmon hatchery permittees, as well as the circumstances in which wild chum salmon seed stock may be authorized to be taken by private hatchery permittees.

- (1) Wild chinook or coho shall not be taken as a source of seed stock by a private salmon hatchery permittee. Wild chinook, coho, or chum may be taken by the Department to establish a seed stock at any hatchery, whether public or private, provided that sufficient fish are returned to the donor stream to compensate fully for native smolts which might have resulted from eggs removed from the donor stock in accordance with ORS 496.455.
- (2) Upon request, the Department may authorize a private salmon hatchery permittee to take wild chum salmon as a source of initial seed stock. The Department shall approve such request only if the quantity of chum salmon to be removed from a stream shall not adversely affect natural chum salmon production in such stream and the requirements of ORS 496.455 are met. The terms and conditions under which such native chum salmon may be taken from a stream and the fee to be charged for such chum shall be included in and made a part of the permit granted by the Commission pursuant to ORS 508.700 through 508.745.



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(3) Salmon eggs may also be collected by the Department and provided to a permittee in accordance with ORS 496.455 to meet specific Department management objectives.

Stat. Auth.: ORS 508.700 through 508.745

Stats. Implemented:

Hist.: FWC 5-1990, f. 1-24-90, ef. 1-26-90

635-040-0020

Areas Closed to Private Salmon Hatchery Release and Recapture Sites

This rule describes the streams and locations which are closed for siting of private salmon hatcheries facilities.

(1) No permits shall be issued for any private salmon hatchery to be located above the head of tidewater, except sites may be located a short distance above the mouth of small direct tributaries to the ocean. Sites shall not be located in the freshwater portion (above tidewater) of any stream which has the potential for natural production of significant numbers of anadromous fish.

(2) The following streams, their tributaries and included tidal reaches are closed to siting of private salmon hatcheries:

(a) Major streams:

(A) Columbia:

(i) Columbia system above Tongue Point;

(ii) Youngs River including Klaskanine River above Battle Creek Slough;

(iii) Lewis and Clark River above Johnson Slough;

(iv) Skipanon River above Taylor Lake outlet.

(B) Necanicum River above Neawanna Creek;

(C) Elk Creek and estuary;

(D) Nehalem:

(i) Nehalem system above Foley Creek;

(ii) North Fork Nehalem River above Anderson Creek.

(E) Tillamook:

(i) Miami River above Illingsworth Creek;

(ii) Kilchis River above Neilson Slough;

(iii) Wilson River above Hall Slough;

(iv) Trask River above its confluence with Tillamook River;

(v) Tillamook River above Fagan Creek.

(F) Netarts - Netarts Bay and its entire drainage;

(G) Nestucca:

(i) Nestucca system above Cannery Point;

(ii) Little Nestucca River above Meda bridge.

(H) Neskowin Creek in its entirety;

(I) Salmon River System and estuary;

(J) Siletz:

(i) Schooner Creek in its entirety;

(ii) Drift Creek in its entirety;

(iii) Siletz River above Skunk Creek.

(K) Yaquina River system above Babcock Creek;

(L) Alsea River system and estuary;

(M) Yachats River system and estuary;

(N) Big Creek (Lane County system);

(O) Siuslaw:

(i) Siuslaw system above Hadsall Creek;

(ii) North Fork Siuslaw River above Lindsley Creek.

(P) Siltcoos system;

(Q) Tahkenitch Creek system;

(R) Umpqua:

(i) Smith system above Noel Creek;

(ii) Umpqua system above Mill Creek.

(S) Tenmile Creek system (Tenmile Lakes);



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(T) Coos:

- (i) Coos system above the Millicoma (the Forks);
- (ii) Millicoma system above South Coos (the Forks).

(U) Coquille:

- (i) Ferry Creek in its entirety;
- (ii) Coquille system above Beaver Slough.

(V) Floras Creek/New River system;

(W) Sixes River system and estuary;

(X) Elk River system and estuary;

(Y) Euchre Creek system and estuary;

(Z) Rogue River system and estuary;

(AA) Hunter Creek system and estuary;

(BB) Pistol River system and estuary;

(CC) Chetco River system and estuary;

(DD) Winchuck River system and estuary.

(b) Miscellaneous small streams as may be specified by the Department which enter the ocean through tourist facilities such as state parks and waysides or are contiguous to wild, scenic, or wilderness areas.

Stat. Auth.: ORS 508.700 through 508.745

Stats. Implemented:

Hist.: FWC 5-1990, f. 1-24-90, ef. 1-26-90

635-040-0022

Annual Production Program Review

This rule describes the requirement of an annual general plan for fish releases, and the criteria by which the Department shall review and approve or disapprove the plan. This rule also describes the requirement of an annual detailed salmon production program.

(1) An annual general plan for fish proposed to be released during the calendar year showing species, stock and numbers of each shall be submitted to the Department prior to collection of broodstock, or by July 20 of the preceding year, whichever is the earlier date. The Department shall review and approve or disapprove the plan in accordance with the criteria set forth in OAR 635-007-0810 et seq. In the event that the Department disapproves the plan, the Department and the permittee shall consult on changes to be made to the plan in order to satisfy the Department that the criteria have been met, based on consideration of the financial and technical capability of the permittee and on estimated biological impacts of such releases.

(2) A detailed salmon production program, including proposed fin marking and release size and time, shall be submitted to the Department in January of each year, to be applicable to that year. The Department shall review and approve or disapprove the program in accordance with the criteria set forth in OAR 635-007-0810 et seq. In the event that the Department disapproves the program, the Department and the permittee shall consult on changes to be made to the program in order to satisfy the Department that the criteria have been met.

Stat. Auth.: ORS 508.700 through 508.745

Stats. Implemented:

Hist.: FWC 5-1990, f. 1-24-90, ef. 1-26-90

635-040-0025

Changes in Operation or Ownership

This rule describes the requirements for notification and/or requests for approval for changes in operation or ownership of a private salmon hatchery. This rule provides that while all of the decisions shall normally be made in the first instance by the Department, a permittee may request review of the Department's decision by the Commission and, in addition, the Commission may choose to consider a request for a change in the first instance.

(1) Permittees shall advise the Department in writing within two weeks of any change in address. In addition, in the event of a change in any of the following persons or entities the Department shall be notified in writing within two weeks and provided with names and addresses:

(a) Principals of the permittee, operating company, parent company or any other entity active in operations of the permittee under the permit;



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- (b) The individual(s) designated by the permittee as the contact person for the Department.
- (2) The Department shall be promptly notified in writing of any change in the personnel listed in subsections (2)(a) through (d) of this rule. In addition, permittee shall provide to the Department information as to the credentials of such personnel:
- (a) General manager, production manager, and/or operations manager of the operating company;
 - (b) Technical fisheries consultant(s);
 - (c) Operations manager or supervisor at each rearing and release site;
 - (d) Pathologist(s).
- (3) The Department shall be notified in writing prior to any proposed change in operating methods and/or releases within the number specified in the permit and as shown in the annual production program. The Department shall approve or deny a request for a change based on the Department's assessment of potential biological impacts.
- (4)(a) The Department shall be notified of any proposed acquisition of a controlling interest in the hatchery and/or permit, regardless of method of acquisition. Such notification shall be provided in writing by the current permittee and confirmed in writing by the entity proposing to acquire a controlling interest in the operation of the private salmon hatchery;
- (b) The Department shall be provided, at the time of such notification, with information sufficient in the judgment of the Department to enable the Department to assess:
 - (A) The financial and technical capability of the proposed new entity to successfully construct or operate the hatchery; and
 - (B) The biological impact and economic benefit to the State of Oregon of any proposed changes in operating methods.
 - (c) The Department shall also be provided with ten copies of the proposed general production plan, including species and stocks; expected release size and times; and numbers to be produced;
 - (d) The Department shall approve or disapprove the proposed change in controlling interest based on the criteria set forth in subsection (b) of this section, and shall notify both the current permittee and the proposed new entity, in writing, of its decision. Such notification shall be made within 60 days from the date on which complete information as set forth in subsection (b) of this section is provided to the Department.
- (5) Any permittee, or in the case of a proposed change in controlling interest, any proposed new entity, whose request for a change under sections (3) or (4) of this rule has been disapproved by the Department may petition the Commission for review of the decision. Such petition shall be in writing and shall set forth the reasons why the petitioner believes that the decision should be reviewed. The Commission shall, within 60 days of receipt of such petition, schedule the matter for the next regularly scheduled Commission meeting, and shall consider the request for a change under sections (3) or (4) of this rule de novo (as though it had not been heard before). The Commission shall hear the matter in a contested case proceeding.
- (6) The Department and/or the Commission may determine that the Commission should consider a request for a change under sections (3) or (4) of this rule in the first instance. In that event, the matter shall be placed on the agenda of the next regularly scheduled Commission meeting at which time is available, and shall be heard in a proceeding other than a contested case. Both the permittee (and/or proposed new entity) and the public shall be invited to testify on the matter. The Commission shall advise the permittee of its decision, including any decision on whether to proceed with a contested case hearing on the matter, within 30 days after the meeting at which the matter is considered.

Stat. Auth.: ORS 508.700 through 508.745
Stats. Implemented:
Hist.: FWC 5-1990, f. 1-24-90, ef. 1-26-90

635-040-0030

Alteration or Termination of Permits

This rule describes certain circumstances in which the Commission may alter or terminate a permit. This rule also describes the consequences of: failure to comply with statute, regulations, any term or condition of a permit; or any unauthorized change in operation; or the removal of facilities.

- (1) If the Commission finds that a private hatchery operation is not in the best public interest, it shall alter the conditions of the permit to mitigate such adverse effects or may terminate the permit. Proceedings to cause such alteration or termination shall be conducted in accordance with ORS 183.310 to 183.550. In addition, if the Commission finds the operation has caused deterioration of the natural run of anadromous fish or any population of resident game fish in the waters covered by the permit, it may require the permittee to return the fish



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populations to the same condition that existed prior to issuance of the permit. If the permittee fails to take appropriate action, the Commission shall take such action and the permittee shall bear any cost incurred by the Commission.

(2) Failure to comply with statute, these regulations, or any term or condition of a permit; or making any unauthorized change in the operation; or removal of facilities shall be grounds for the Department to require changes in operating methods or for the Department to alter the terms of a permit or to terminate a permit. In the event that any such action becomes necessary, the Department shall so notify the permittee by registered or certified mail of its intent to require changes in operating methods or to alter or terminate the permit. Notification shall include the proposed action and the reasons for the proposed action. Such action shall become effective 30 days from the date of mailing such notice unless within that time the permittee requests a hearing before the Commission. A request for a hearing shall be made in writing to the Director and shall state the grounds for the request. Any hearing held shall be in accordance with ORS Chapter 183.

(3) Abandonment of a permit shall be grounds for termination of a permit. A permittee shall be presumed to have voluntarily abandoned a permit where no fish releases have occurred at the private hatchery for a period of five years. In the event that termination based on abandonment becomes necessary, the Department shall notify the permittee by registered or certified mail of its intent to terminate the permit. Such termination shall become effective 30 days from the date of mailing such notice unless within that time the permittee requests a hearing before the Commission or the mailed notice is not accepted. In the latter situation, the Department shall cause notice to be published in a newspaper of general circulation in the location of the permitted site once a week for a period of four weeks, advising permittee of its intent to terminate the permit and of permittee's right to request a hearing. Such termination shall, in that case, become effective at the close of the four-week publication period. A request for a hearing shall be made in writing to the Director and shall state the grounds for the request. Any hearing held shall be in accordance with ORS Chapter 183.

Stat. Auth.: ORS 508.700 through 508.745

Stats. Implemented:

Hist.: FWC 5-1990, f. 1-24-90, ef. 1-26-90

635-040-0101

Marking Requirements and Stray Rates

(1) This rule applies to private salmon hatcheries that release coho or chinook salmon. The following terms are used in this rule:

(a) "Mark" means a removed fin and/or characteristic scale pattern; in some cases, a coded-wire tag imbedded in the fish in addition to a removed adipose fin; or some other less stressful method of marking approved by the Department for the purpose of identifying the origin of the fish;

(b) "Critical Stray Prevalence" means the percentage of the total number of naturally spawning fish that may originate from a private salmon hatchery.

(2) It is *unlawful* for any private salmon hatchery to release coho or chinook salmon that have been marked at a rate less than that required in Tables 1 through 3 of this rule.

(3) Each private salmon hatchery permittee shall submit to the Department for approval, a sampling plan for examining for marks those adult salmon returning to the locations listed in the private salmon hatchery's respective table. Each sampling plan shall be designed such that if the prevalence of strays were to reach the critical level listed in Tables 1 through 3, then the plan would result in an expected recovery of at least three marked fish. The Department shall approve a sampling plan if, in its judgment, the plan would result in recovery of at least three marked fish if the number of strays reaches critical stray prevalence.

(4) Each private salmon hatchery permittee shall fund and implement its approved sampling plan in accordance with section (5) below. The Department may require any permittee to execute a security agreement in accordance with ORS Chapter 79 covering agreed upon collateral, including fish and eggs, to fully cover estimated costs of such marking and sampling plan.

(5) The following requirements apply, by hatchery:

(a) Anadromous, Inc.:

(A) Beginning in 1993, if Anadromous, Inc., exceeds the critical stray prevalence listed in Table 1, lines A or C, in two years out of five, Anadromous, Inc., shall advance the latest date of broodstock selection and spawning to a date approved by the Department in order to achieve greater reproductive isolation between their spring chinook salmon and the local fall chinook salmon;



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(B) Beginning in 1993, if Anadromous, Inc., exceeds the critical stray prevalence listed in Table 1, lines B, D, or E, in two years out of five, Anadromous, Inc., shall reduce the number of spring chinook salmon released in the next subsequent brood year to a level determined by the Department to meet the critical stray prevalence, until such time as it is feasible, in the judgment of the Department, to achieve a reduction in straying rate through alteration of rearing or release practices;

(C) Beginning in 1990, if Anadromous, Inc., exceeds the critical stray prevalence listed in Table 1, lines F or G, in two years out of five, Anadromous, Inc., shall reduce the number of coho salmon released in the next subsequent brood year to a level determined by the Department to meet the critical stray prevalence, until such time as it is feasible, in the judgment of the Department, to achieve a reduction in straying rate through alteration of rearing or release practices.

(b) OreAqua, Inc.:

(A) Beginning in 1993, if OreAqua, Inc., exceeds the critical stray prevalence listed in Table 2, lines A or C, in two years out of five, OreAqua, Inc., shall advance the latest date of broodstock selection and spawning to a date approved by the Department in order to achieve greater reproductive isolation between their spring chinook salmon and the local fall chinook salmon;

(B) Beginning in 1993, if OreAqua, Inc., exceeds the critical stray prevalence listed in Table 2, lines B, D, or E, in two years out of five, OreAqua, Inc., shall reduce the number of spring chinook salmon released in the next subsequent brood year to a level determined by the Department to meet the critical stray prevalence, until such time as it is feasible, in the judgment of the Department, to achieve a reduction in straying rate through alteration of rearing or release practices;

(C) Beginning in 1990, if OreAqua, Inc., exceeds the critical stray prevalence listed in Table 2, lines F or G, in two years out of five, OreAqua, Inc., shall reduce the number of coho salmon released in the next subsequent brood year to a level determined by the Department to meet the critical stray prevalence, until such time as it is feasible, in the judgment of the Department, to achieve a reduction in straying rate through alteration of rearing or release practices.

(c) Oregon Pacific Salmon Ranch, Inc.: Beginning in 1993, if Oregon Pacific Salmon Ranch, Inc., exceeds the critical stray prevalence listed in Table 3 in two years out of five, Oregon Pacific Salmon Ranch, Inc., shall reduce the number of spring chinook salmon released in the next subsequent brood year to a level determined by the Department to meet the critical stray prevalence, until such time as it is feasible, in the judgment of the Department, to achieve a reduction in straying rate through alteration of rearing or release practices.

Stat. Auth.: ORS 508.700 through 508.745

Stats. Implemented:

Hist.: FWC 3-1991, f. & ef. 1-18-91

635-040-0107

Hatchery Operational Plans

(1) The hatchery operational plans listed in section (2) of this rule have been adopted by the Oregon Fish and Wildlife Commission on the dates specified and are incorporated here by reference. Copies are available from the office of the Oregon Department of Fish and Wildlife.

(2) The hatchery operational plans referenced in section (1) of this rule are for the following:

(a) Anadromous, Inc., adopted January 19, 1990, as amended on April 17, 1991, by the Commission;

(b) Oregon Pacific Salmon Ranch adopted September 19, 1990;

(c) OreAqua, Inc., adopted March 6, 1991.

Stat. Auth.: ORS 508.700 through 508.745

Stats. Implemented:

Hist.: FWC 45-1991, f. 5-1-91, ef. 5-6-91



Oregon Administrative Rules Oregon Department of Fish and Wildlife

Fish Production Facilities and Areas Net Pens

635-040-0200

Definitions

For the purpose of OAR 635-007-0200 through 635-007-0210:

- (1) "Net pens" means facilities constructed of floats and nets for the purpose of holding fish for propagation in open water areas of waterways.
- (2) "Cage-culture" means the use of enclosed containers suspended in the water column for the purpose of containing fish for propagation.

Stat. Auth.: ORS 508.700 through 508.745

Stats. Implemented:

Hist.: FWC 5-1990, f. 1-24-90, ef. 1-26-90

635-040-0202

Purpose

The purpose of these rules is to:

- (1) Provide for the orderly development of fish production in suitable areas of waterways and in quantities acceptable for those areas.
- (2) Recognize that limited suitability of Oregon's small, shallow estuaries for extensive net pen culture or cage culture will prevent extensive production with net pens.

Stat. Auth.: ORS 508.700 through 508.745

Stats. Implemented:

Hist.: FWC 5-1990, f. 1-24-90, ef. 1-26-90

635-040-0205

Policy

It is the policy of the Oregon Fish and Wildlife Commission to provide for the development of fish production in net pens where such operations meet the standards set by the Department of Fish and Wildlife for fish propagation and fish transfer; by the Department of Environmental Quality for waste discharge; and by the Division of State Lands for siting and use of surface area and installation of facilities.

Stat. Auth.: ORS 508.700 through 508.745

Stats. Implemented:

Hist.: FWC 5-1990, f. 1-24-90, ef. 1-26-90

635-040-0210

Areas of Department Concern

The Department of Fish and Wildlife may comment on applications for net pen facilities to other state, county, and federal agencies. In determining whether to grant permits and in commenting on permit applications to other state, county, and federal agencies, the Department shall consider, but not be limited to:

- (1) Protection of natural fish production in surrounding waters and nearby submerged areas.
- (2) Continued availability of recreational areas of state waters for public use.
- (3) Compatibility with state and local land use plans and documented in accordance with OAR 635-040-0009(4)(d).
- (4) Control of fish introduction, fish health and general operations through the fish propagation license, fish transport permits and other applicable regulations.

Stat. Auth.: ORS 508.700 through 508.745

Stats. Implemented:

Hist.: FWC 5-1990, f. 1-24-90, ef. 1-26-90