



NORTHWEST ENVIRONMENTAL DEFENSE CENTER
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July 12, 2010

Teri Kucera
Director's Office
Oregon Department of Fish and Wildlife
3406 Cherry Ave. NE
Salem, Oregon 97303

Re: Petition for Rule Making: Fish killing substance banned as bait

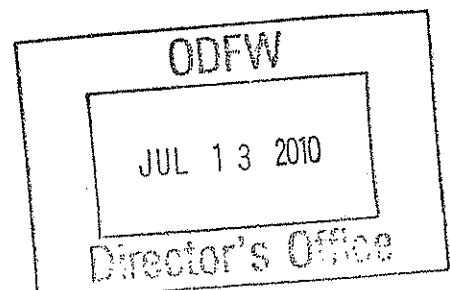
Dear Ms. Kucera:

Sodium sulfite is a substance commonly used to cure salmon eggs for sport fishing. This chemical has deleterious effects on juvenile salmon. Attached please find twelve copies of a petition for rule making to amend current sport fishing regulations in Oregon to prohibit the use of sodium sulfite.

Thank you for your attention to this petition, we look forward to your prompt response. Please feel free to contact me at (503) 768-6673 with any questions or concerns.

Sincerely,

Mark Riskedahl
NEDC Executive Director



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BEFORE THE OREGON FISH & WILDLIFE
COMMISSION & DEPARTMENT

PETITION FOR RULE MAKING
Fish killing substance banned as bait

INTRODUCTION

Pursuant to OAR 137-001-0070, Petitioners hereby petition the Oregon Department of Fish and Wildlife (ODFW) to amend an existing rule. In light of recent scientific studies indicating that cured salmon egg bait containing sodium sulfite causes mortality in juvenile salmon, we propose the Oregon Sport Fishing Regulations be amended to prohibit the use of eggs cured with sodium sulfite as fish bait. Under OAR 635-011-0050(3)(b) proposed changes received outside of the four-year review period may be considered under extenuating circumstances. A thirty percent mortality rate in juvenile salmon due to a substance commonly found in fish bait is an extenuating circumstance warranting this exception. The Administrative Procedures Act requires that the Commission either deny the petition in writing or initiate rulemaking proceedings within 90 days after receipt of a rulemaking petition. ORS 183.390(1).

RULE CHANGE REQUESTED

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2 The 2010 Oregon Sport Fishing Regulations allow the use of any type of fish egg
3 as bait. Under the Gear and Bait Restrictions, Use of Fish for Bait, number 3 states:

4 Dead fish, preserved fish, or parts of fish, *shellfish* and fish eggs may be used
5 as bait. *Goldfish* may not be used as bait or in angler's possession while
angling.(italics in original).¹

6 The proposed amendment would add language clarifying the type of "fish egg"
7 permissible (proposed new language in bold):

8 Dead fish, preserved fish, or parts of fish, *shellfish* and fish eggs **that do not**
9 **contain sodium sulfite** may be used as bait. *Goldfish* may not be used as bait or
in angler's possession while angling.

BACKGROUND

OAR 137-001-0070(1)(b) Reasons for the request

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13 Sport fishers commonly use cured fish eggs as bait in Oregon waterways.
14 Anglers target spring Chinook, fall Chinook, Coho, late winter steelhead, summer
15 steelhead and resident trout with chemically cured salmon eggs containing contain
16 powerful sulfites, formaldehydes and other toxic chemicals. Cured egg use in the spring
17 and summer coincides with the out migration of young salmon and steelhead. It also
18 coincides with increased consumption of food by all resident salmonids, driven by an
19 increase in water temperatures, post spawning metabolism, and increases in the
20 abundance of aquatic food sources. When presented a bait of chemically cured salmon
21 eggs, juveniles can be observed feeding on it aggressively.
22

23 In December of 2009, researchers from the ODFW and Oregon State University
24 completed a study on the effects of commercially manufactured cured fish eggs on
25

¹ 2010 Oregon Sport Fishing Regulations, Oregon Department of Fish and Wildlife, page 7.

1 juvenile Chinook and steelhead salmon.² The results confirmed that some of the cured
2 eggs caused mortality in juvenile salmon. The researchers identified sodium sulfite as the
3 most likely cause of mortality. Eggs cured with sodium sulfite caused a 30-35%
4 mortality rate in juvenile salmon within a ten-day period; some fish died after eating only
5 a single egg. Removing sodium sulfite eliminated mortality.

6 Although no studies have yet been conducted regarding sodium sulfite's overall
7 effect on wild salmon populations, the clear link between eggs cured with sodium sulfite
8 and mortality in juvenile salmon should not be ignored. In order to protect, preserve, and
9 promote this important species, the Sport Fishing Regulations should be amended to ban
10 this substance.

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13 **OAR 137-001-0070(2)(a) Options for achieving the existing rule's substantive goals
while reducing the negative economic impact on businesses**

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15 The substantive goal of the Sport Fishing Regulations is to conserve and enhance
16 Oregon fisheries, and to maintain and improve fishing opportunities throughout the state.
17 Limiting the types of bait permissible for sport fishing in Oregon is one component of
18 that goal. By adding language that prohibits the use of cured salmon eggs containing
19 sodium sulfite, the Commission furthers the goal of conserving and enhancing the
20 fisheries. Although the limit will produce some negative economic impact, businesses
21 that produce and sell fish bait will be incentivized to discontinue using sodium sulfite as a
22 curing agent and thus further the substantive goal of conserving Oregon's fisheries.

23
24 ² Shaun Clements, Rob Chitwood & Carl B. Schreck, Effect of Commercially Available Egg
25 http://www.dfw.state.or.us/fish/docs/2009_study_summary_the_effect_of_cured_eggs_on_juvenile_salmon_BAM.pdf.

1 Amending the rule to prohibit sodium sulfite in fish egg bait directly addresses the
2 source of the issue, and is more efficient than outreach efforts to educate anglers about
3 harmful effects. As long as bait manufacturers offer cured fish eggs containing sodium
4 sulfite and anglers believe this to be a superior bait, the use of sodium sulfite in Oregon's
5 waters will continue.

6
7 **OAR 137-001-0070(2)(b) Continued need for the existing rule**

8 The existing rule specifies permissible fish bait for sport fishing in Oregon, and
9 continues to be necessary to further ODFW's goals of protecting and preserving all fishes
10 in Oregon. The proposed amendment prohibits specific fish bait to better achieve the
11 goal of protecting and preserving all fishes in Oregon.
12

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14 **OAR 137-001-0070(2)(c) Complexity of the existing rule**

15 The existing rule is straightforward yet inadequate. Adopting the proposed
16 language creates the specificity required to address the unforeseen consequence of
17 increased fish mortality rates due to sodium sulfite.
18

19 **OAR 137-001-0070(2)(d) Extent to which the existing rule overlaps, duplicates, or**
20 **conflicts with other state or federal rules and with local government regulations**

21 The authorization of fish eggs containing sodium sulfite as fish bait under current
22 Sport Fishing Regulations conflicts with the duties of the Commission. ORS 506.036
23 imposes upon the Commission the duty of "protection, preservation, propagation,
24 cultivation, development and promotion of all fishes." Existing Sport Fishing
25

1 Regulations allow the use of a toxin that is known to kill juvenile salmon, which directly
2 counteracts the Commission's duty.

3 The current Sport Fishing Regulations allow activity otherwise prohibited by state
4 regulations. Oregon prohibits pollution of any waters of the state and the discharge of
5 wastes that reduce water quality below water quality standards established by the
6 Commission. ORS 468B.025(1)(a) and (1)(b). The EPA designates sodium sulfite as a
7 toxic substance, regulated under the Toxic Substance Control Act. The use of fish bait
8 containing sodium sulfite directly conflicts with Oregon's prohibitions against pollution
9 or discharges of wastes that reduce water quality of any waters of the state.

10 Jane Hickman, legal analyst for the DEQ Water Quality Division, stated that
11 "technically, an angler using these eggs has violated" both of these rules, which normally
12 are assessed civil penalties of \$625 to \$2,500. But, because anglers have no reason to
13 know of the toxic impacts caused by the bait, they can purchase the bait legally and use it
14 for its intended purpose. Amending the Sport Fishing Regulations to prohibit this type of
15 bait will put the anglers on notice. The amendment will resolve the conflict between the
16 goals of the Commission, federal recognition of sodium sulfite as a toxic substance, and
17 other state regulations controlling water pollution.
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20 **OAR 137-001-0070(2)(e) Degree to which technology, economic conditions, or other**
21 **factors have changed in the subject area affected by the existing rule, since the**
agency adopted the rule

22 The primary factor that has changed in the area of sport fishing bait regulations is
23 the study results showing increased fish mortality due to cured fish eggs containing
24 sodium sulfite.
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CONCLUSION

Ultimately, ODFW and DEQ should work together with manufacturers to phase out the use of sodium sulfite in the curing process. But prohibiting the use of this bait in the Sport Fishing Regulations is an important first step in protecting juvenile salmon from this toxin, as well as raising awareness about the issue among recreational fishers. Please take action on this issue by modifying the regulations, moving us closer towards waterways that promote a healthy population of salmon.

Name and address of Petitioner and others interested in the rule

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