

**Oregon Department of Agriculture and Oregon Department of Fish and Wildlife
Dungeness crab and biotoxin Rules Advisory Committee**

**August 15, 2017 – Meeting Notes
Newport, Oregon & via conference call**

RAC members present

Joshua Beer
John Corbin
Justin Yager
Cari Brandberg
Brian Nolte
Dave Wright

Staff present

Caren Braby
Stephanie Page
Frank Barcellos
Hugh Link
Kelly Corbett
Alex Manderson
Judy Dowell
Troy Buell

Others present

Heather Van Meter, Oregon State Police

Committee members and staff introduced themselves.

Follow-up on documents from RAC meeting #2

Stephanie Page reviewed the draft ODA rule (Handout A) and the Tools table (Handout B) document. She explained that both are very similar to the versions shared at the last meeting but have incorporated the changes suggested by the RAC.

Caren Braby reviewed a summary of the RAC recommendations (Handout H) that was prepared following the last meeting. It is a short, concise summary that could be shared with policymakers. She encouraged the committee to read it very carefully and make sure they are comfortable with it, because this document is meant to represent their recommendations.

The first recommendation related to ODA's adoption of rules (which is the document Stephanie already reviewed). The second recommendation relates to improving communications with industry and lays out a timeline to do that. The third recommendation is to finalize a map of harvest areas which would be used to designate biotoxin management zones, and having a public process to vet those. Stephanie explained that there will be an information session prior to the public hearing that will include an opportunity to comment on the harvest areas.

The fourth recommendation is that ODFW seek an expansion of record keeping requirements for Dungeness crab and describe the elements of that. The draft that would currently do that is Handout H. The fifth recommendation is that ODFW track harvest areas on fish tickets. As we've discussed, this is a longer term objective because of technical constraints on our fish ticket system. The sixth recommendation is requiring of electronic fish tickets for crab landings. This recommendation is related to improving the real-time accessibility of crab landings and in particular, harvest areas for crab landings. The seventh recommendation is the long term development of electronic log books for the crab fishery. The eighth recommendation is that ODA seek improvements in statutory authority to access buyer and seller records (the records that would be required in ODFW rule). Caren Braby asked the committee to reflect on the recommendations and to please let staff know if they have any concerns about the recommendations or the wording. This will be a very important communications tool with legislators, commissioners, and the public.

Justin Yager - question re: electronic log books - if we are closing off areas, is there a way to get access through NOAA's Vessel Monitoring System (VMS) or can we make sure that people understand there are other ways to currently track if someone is in violation of the rule? Caren stated that we currently have the ability to track through other methods to help ensure compliance such as VMS and logbooks but both have their limitations. Not all crab vessels are required to carry VMS and logbook data is not currently available in a timely manner. We can add to the rationale that e-logs could help strengthen the enforcement of closed BMZs.

ODFW rules - Troy Buell explained that based on the recommendations from the last meeting, ODFW drafted record requirements that support the traceability discussed in the ODA draft rule. Section 1 adds the date of landing and the harvest area (from the map that we are still settling on) to what already has to be kept along with the other required records in existing rule (one back). The rule does not specify form or format per RAC recommendation from July. Section 2 establishes what we have been calling the "one forward" requirement (who you sell the crab to)- if you are a wholesale dealer and sell to a retail dealer, have to track several required elements. Section 3 speaks to the authority to inspect those records by the Director, authorized agent or State Police and requires records to be maintained for 3 years.

Alex Manderson asked what the language related to restaurants meant and Troy Buell clarified that the language means restaurants must keep the required records. By excluding restaurants from “ultimate consumer” it means that restaurants must keep the records.

Kelly Corbett presented the updated harvest area options and explained that a fourth option has been added as the RAC-preferred option from the July meeting. She explained that the agencies would like to get a final recommendation today on the harvest area map in terms of a 12 area approach. Definitely want input from the group on micro-siting the boundary lines and sampling stations now and in the next couple of weeks. Kelly stated that ODFW had contacted Tri-State Advisors and they agreed with the RAC preferred option for biotoxin management zones and sampling stations. They also thought using the new biotoxin sampling stations for preseason testing made sense. Once the RAC recommends a final harvest area option, the next step is to really micro-site these and then provide information through an industry mailing and at the public hearing informational session.

Justin noted that the zones are not exactly the same size and Kelly explained that another consideration was avoiding putting lines in bad places and using lines that would make sense in those areas where lines have been established for other purposes. Justin said it makes sense to do it this way. Kelly noted that this is the same number of sampling stations as before, but they are spread out to be more equally distributed along the coast. Judy noted there will be 6 crab from each harvest area.

Brian Nolte said he likes the idea and thinks it is simple and way better. He asked what we should do if California or Washington have DA concerns near the border - how should it affect harvest areas? Caren Braby said we will append this to the Tri-state protocol (if the committee concurs). The new areas and sampling stations would represent what ODA is comfortable with in terms of sampling locations. Kelly asked if Brian is asking, what happens if CA or WA delay opening for biotoxins or other reasons? ODFW would still retain the flexibility for season opening negotiations with Tri-State even with changing the harvest areas and sampling stations. Brian clarified that this is for biotoxin, not for quality. Justin said he thinks that Kelly’s answer to Brian’s question is yes. Caren said that if we have a test at our southernmost site that is clean, and there is a concern 4 miles south of the border in CA, we still might close or require evisceration in our southernmost harvest area because of the issue in CA which would be consistent with the buffer policy that has been discussed to use within the state. Judy Dowell said she concurs with that. Brian said it would avoid a lot of problems to address it this way.

Justin asked what would be the most likely scenario - would it just be one area? Judy said it just depends on the results are, but we could certainly consider an evisceration order in that zone as opposed to closing it. Troy said there still might be some misconception about the quality vs the biotoxin sampling and the purpose of the green

and red. The green triangles on the map represent the proposed new sampling sites and would replace the red dots moving forward.

Caren explained that the next steps include an industry mailing, public hearing and discussion at upcoming crab commission meeting. Hugh said the next face to face commission meeting is early October. No date set but happy to share whatever the agencies would like to have shared. Caren also asked the RAC members please reach out to Port associations or any place that you think is good to get additional feedback for micro-siting the boundary lines and sampling stations.

Making Closure & Evisceration Events work better for everyone

Kelly Corbett presented some “worst case” scenario slides to start the conversation on this topic. The first slide was a scenario where domoic acid is found above 20 ppm in the meat and ODA designates a biotoxin management area and recommends closing the area.

Hugh Link asked about the time frame for opening and unbaiting gear – don’t we need a weather window? I.e., if we give a window of 7 days and 5 of those days are bad weather, that is not very helpful.

Caren said that one way we might need to talk about this is, how many decent weather days would you need. The way we would be implementing this is through temporary rule.

Justin noted that bad weather can be very arbitrary – i.e. 15 knots can be bad weather depending on the boat. Need to have a time frame on it.

On opening and unbaiting gear – Kelly asked if it would make sense to have different time frames for opening gear and the removal of gear from an area.

Brian Nolte noted that if DA were in the meat and people go in there and get some crab and someone gets sick that would be very detrimental to the industry and we need to avoid that. He thinks these requirements need to be pretty strict. Brian suggested that instead of focusing on timeframe, we should talk about something like pre-season hold inspections where the state would verify that no crab are onboard a vessel before and after they deal with gear in a hot zone.

Troy Buell said that we could add if you are running gear in the area you wouldn’t be able to have any crab on board. That would provide better confidence. Justin said that he agrees with that. Brian said if we have a hot result, and we already know the crab in the gear is dirty, does that mean people can still go in and harvest? Kelly said no – if it has been tested in the meat we would have to say no more crab could be landed. Justin said the regulations need to be very strict and clear in the event DA is in the

meat. Brian said we have to make sure no crab go to the dock. Justin suggested no crab transit through that area. As far as the timeline, should be able to see something like this coming. You're already going to be fishing under an evisceration order before this happens.

Caren mentioned the need to balance safety with the need to motivate people to get out their gear and take care of it. Justin mentioned the 7 to 10 day time frame and then have flexibility if the weather is really bad. Flexibility could be provided through a formal declaration process or OSP discretion which is often used with weather issues.

Judy suggested some language requiring removal or unbaiting unless ODFW declares the weather too hazardous for that activity. Caren stated that ODFW avoids writing rules with arbitrary discretion regarding weather which also would diminish the strength of the closure, thus would be a less conservative approach.

Brian Nolte noted that we really need to focus on preventing crab harvested from the area of concern from being landed.

John Corbin noted that it is likely we would be seeing very high levels in the viscera prior to a detection above 20 ppm in the meat and processors would probably be thinking seriously about whether to buy crab from affected regions at all.

Justin – think if you give people 10 days to get their gear out of there, that should be plenty.

Caren noted that we don't want gear to be out there unattended, but the primary goal should be making it impossible for people to land crab from the biotoxin zone. Caren said I'm thinking of a scenario where someone has gear above & below the line.

Brian noted that anyone in the area should not be able to land crab. It is important to make sure that people cannot move around. Even if people are opening lids they should have no crab on the boat and no deliveries.

Justin said that would depend on where the closure area was – last year, there were people that had a portion of gear in the closed area and people that had gear above. Brian said you will need to tell people that you cannot haul crab until all of your gear is out of the zone of concern. Doesn't feel there would be any other way to track it.

Cari said that if people are transiting through an area, no way to be sure they are not harvesting crab from the area if you allowed crab onboard. If you close an area it should be closed.

Dave Wright said if you are going to retrieve the pots from a closed area, you should not have any crab on the boat when that starts. If you have crab, you cannot go through there or have to declare to somebody first.

Justin said you could say anybody fishing in the area has X amount of time to get gear out of the water and you cannot land any crab until you get your gear out of the water.

John Corbin said he agrees with Dave on the declaration. Anyone working gear in a closed area needs to declare their intentions, whether that is to get gear or move it to another area. Needs to be a declaration line where they can declare their intentions.

Alex mentioned that in practice there might be only one week separating the time frame for removal and the time frame when gear could go back out, if we get two clean tests in a row after a test with the meat above 20 ppm. Does this seem like enough time for if DA is in the meat, would industry and the agencies really be considering reopening? And if so, wouldn't this be a disincentive for gear removal?

Brian Nolte said it would likely be after weeks of high levels in the viscera, and that it is probably good to hold off on reopening a while and not open it right back up if we have it over 20 ppm in the meat.

Alex said he agrees with that but just wants everyone to know that is how it might play out. ODA would be reluctant to reopen after a detection above 20 ppm in the meat. Dave said that public safety has to be the top consideration. Too sporadic and need to be very careful after a meat related closure which is very different than it just being elevated in the viscera. Brian said he totally agrees. Have we ever had a test above 20 ppm in Oregon? No. We are talking about the worst case scenario and it would be a big mistake to fire it back up after 7 days following a meat detection result is published above 20 ppm. Justin said we should consider at least a month. Dave said we need to monitor to understand how quickly it can come and go and consider 3 or 4 tests.

Troy mentioned a way to address this is in the draft ODA rule. Hugh asked if there would be a mechanism to leave some of the gear in the area so that we could continue testing. Kelly said she believes ODFW had the authority to permit vessels specifically for testing purposes.

John Corbin recommended requiring something like four clean tests before reopening an area.

There was further discussion that we believe ODA has the authority now to recommend a longer closure if DA is elevated above 20ppm in the meat, but that it might be beneficial for transparency to industry to put some of this language into the rule.

Stephanie Page explained that she would want to check with DOJ on whether we would need to have a second public comment period if we change that language in the rule – it may not be needed, but she at least would like to check. She said her preference is to take that extra time to really get the language right, if that is what the committee recommends.

More discussion recommended testing 14 days apart which would be more practical if there are poor weather conditions. Caren noted it would be beneficial to say “ODA may...” vs “ODA must...”

Cari Brandberg noted that the industry has supported a delay in the season opening before due to biotoxin and believes that fisherman want to protect public health because they know it protects the industry. Caren said that if the current language gives us the ability to keep an area closed due to biotoxin concerns for more than that minimum window, we need to really be careful before revising that language – we don’t want to tie ourselves down too much.

Caren said that she is hearing that everybody wants the language to be very strict and very clear. Troy said everyone seems to agree on the general principles of extending the timeframe for reopening when biotoxin is in the meat by requiring more tests, longer timeframes between tests, or specifying a minimum time to reopen and the agencies can follow up on the specific language.

Kelly moved on to the next slide which addresses crab in pots, crab waiting to be landed, etc. Discussion that crab harvested from a biotoxin zone should be returned to a biotoxin zone, to avoid wastage but also to avoid contaminating the crab in another area.

Justin noted that crab already offloaded from the boat from a biotoxin zone should probably be destroyed. The only thing would be the ones that are on the boat – people could go to the center of the biotoxin zone and dump the crab there. It’s either that or have all the crab destroyed.

There was general discussion about the most responsible action being to return crab from a biotoxin zone to that zone and release the crab. Justin noted that this might present another opportunity for people to break the rules, but also noted that is what everyone would want – for crab to be returned.

Caren and Kelly noted that temporary rules would likely be needed to suspend a requirement that prohibits returning of crab.

Judy asked if there would be some prohibition on returning toxic crab to the ocean; Caren noted it has to do with the crab being potentially contaminated with other diseases (that could affect crab populations) but not biotoxin. Caren said, what if you

have ¾ of your hold filled and you hear on the radio that the area is closed? Justin said most people he knows have the ability to empty their holds at sea if weather conditions are decent. Cari asked, does it have to be one option or another? Judy stated any crab with toxic meat would be embargoed by ODA once it hit the dock. Then it would be destroyed, most likely with OSP or ODA witnessing.

Troy noted that there seems to be a lot of support for an inspection process in a closure scenario; i.e. if we were to put in a time frame that was pretty strict (7-10 days) heard support for one-time waivers, and general support for not allowing transit in this situation. If you line this up with harvest areas on the map might be tough for some ports and harvest areas. Maybe you only allow transit after gear is out of the water. Dave Wright noted there needs to be some kind of declaration when somebody says they are going to cross through that area. You could have bad weather and safety also needs to be a consideration. You need to call in and be monitored and it should be fine but there needs to be a mechanism to do that. No transit with crab on board unless there is a declaration process.

Summary of RAC feedback on closures for Scenario 1:

- Gear: heard lots of support for not specifying a strict timeframe but having a declaration process in place; support for retrieval/barging waivers, not allowing transiting unless registered.
- Crab: support requiring dumping crab still in pots at the rail; support for option to return crab to middle of the BMZ or be destroyed. Troy stated the agency likely wouldn't be able to require people to return crab to sea.

Recommendation for crab in pots in a zone – need to be released. For the other 3 categories – already on board, in process of offloading, or already offloaded to live dealer – need to provide flexibility in those situations. The further down in the harvesting/selling process, the more likely it is that it will be very difficult to return them to the biotoxin zone.

Brian Nolte asked if there is any way that we would not have a lot of information leading up to a closure event, and Caren Braby said it is really hard to know due to the unpredictability. It is very unlikely though.

Joshua noted that if we are seeing levels above 200 ppm in viscera, we are very unlikely to be buying crab from that area. Brian said I know we have to have a plan, but if we get into a situation where we are trying to figure out what to do with crab on the boat, we need to do a whole new round of meetings because we have missed what we were supposed to be doing. How will we be perceived by the public if we let it get to that point?

Caren suggested that we move to the scenario that Brian is talking about – this is when industry chooses to be more conservative than FDA standards required. We are fishing

under an evisceration order but things are moving in a direction that makes everybody uncomfortable, and we collectively decide to close harvest. Judy suggested we consider closing the fishery preventatively at 10 ppm. This would allow the gear to be collected and those crab to be harvested for evisceration but it would begin moving the vessels out of the zone and would prevent a recall since none of the meat tested at 20 ppm or above yet.

Justin – I think we could be more cautious but I would be careful about lowering the threshold to 10. Increase the chances of causing mayhem. Caren doesn't think we should lower it right now since we don't want to box ourselves in to any situation and we have built flexibility into the rule purposively; it is more based on trends and then discussion with the industry about what we should do. It doesn't have to do with DA levels being 10, 11 or 12 ppm; but much more to do with a discussion about whether we should be continuing harvest.

Dave – agree; FDA has set the bar to a certain level. Judy stated this is not changing the FDA's limit of 20 ppm. This is just taking a preventive approach at a lower level to ensure we don't get crab with meat testing at or above 20 ppm. If you can prevent a recall you can prevent illnesses and prevent the industry from getting a bad reputation. Cari also stated there will likely be pushback from across industry if decrease threshold levels, since we all heard a lot of that in Feb during the in-season event. There was more discussion about how to handle detections below the threshold but where a trend appears to be increasing. Stephanie Page and Caren Braby recommended not lowering the threshold in the actual rule, but noted that ODA may recommend closure and ODFW may close at lower levels if the agencies and/or industry are concerned about trends.

Discussion on closures for Scenario 2:

Cari stated she thinks it's too hard to recommend anything because of all the uncertainty and those decisions would just have to be made during an event on a case by case basis through on-going discussions with the fleet. Dave Wright agreed and thinks flexibility will have to be the key since things will continue to change; standards, research and industry input.

Caren asked for ideas on how to circulate the RACs feedback on closures, possibly by drafting a temp rule with the options discussed. Troy suggested possibly as part of the RAC recommendation summary instead to be more easily digestible.

There was discussion about whether the draft rule removes the flexibility to preemptively close or require evisceration if ODA and ODFW are seeing trends of concern. The general interpretation is that the draft ODA rule does not limit these preemptive actions, it simply describes the options when the FDA-established thresholds are reached.

Brian Nolte asked about the tri-state process – Caren explained that each state’s laws govern the process that it follows.

Justin said it is important to recognize the value of starting early and often if we are working on an evisceration order. As long as it is not widespread, it shouldn’t be too harmful as long as there is access to other resources in the live market.

Caren said there is a lot of uncertainty about whether evisceration will be allowed in CA or WA. How tri-state agreements play into what we are talking about are unclear. It is possible that Oregon is acting on its own without complementary decision-making. Brian Nolte said he thought that is how it has worked recently. There are things that each state can and can’t do. Kelly said that if it is working here and there is a mechanism that is working, the other states may pursue this eventually.

Next steps

Caren Braby thanked everyone for participating on the RAC and noted that the agencies may be calling on RAC members in the future. The final task will be reviewing notes and the RAC recommendation summary from this meeting and communicating with community members about our discussions in the RAC. Stephanie Page thanked everyone and said we may circle back if we receive public comments that are strongly recommending a major change to the rule.