

## Response to Questions Submitted by PCFFA

October 12, 2016

### Closure Questions

- 1. Please explain your departments' working understanding of your authority to keep areas that have tested 'clean' for DA closed.**

FGC § 7715 authorizes the CDFW director to order closure of any waters or to otherwise restrict commercial fishing for any species if OEHHA and CDPH determine that any such species is likely to pose a human health risk from high levels of toxic substances. When OEHHA and CDPH determine that a health risk no longer exists, OEHHA shall notify the director and request that those waters be reopened for commercial fishing.

- 2. Has this interpretation of your authority changed since last season? If so, how and why?**

No.

- 3. In what ways do the Departments have discretion to determine whether an area remains closed, and what are the legal or other parameters that limit that discretion?**

CDPH and OEHHA evaluate the available data from the impacted areas in making their recommendations for modification of a closure. This includes the trends in analytical results from collected samples, emerging information regarding the status of the HAB in the area, proximity of other "hot zones" to the area under consideration for closure modification and the enforceability of the revised closure area boundaries. Once CDPH and OEHHA concur that the health risk has subsided and the area can safely be reopened, OEHHA communicates those facts with CDFW.

- 4. Are the Departments able to order statewide or management district-wide fishing closures when only a subset of testing sites within a district exceed the DA action level?**

No. CDPH and OEHHA, in consultation with CDFW, evaluate the available data from the impacted areas when making their recommendations regarding specific closure areas. There are no provisions to expand closures into unaffected areas to adhere to management district boundaries.

- 5. How will the Departments define "hot spots?" Put another way, how will the department demarcate between areas that exceed the DA action limit and adjacent areas that are clean?**

CDPH and CDFW have identified a number of sampling zones across the state's coastal waters where samples will be routinely collected for pre-season testing or when HAB events are occurring while the season is open. When one or more crabs or lobsters from a sample set are found to be above the action level, the area will be considered "hot". If

there is only one sample with an elevated level out of the set, a retest of the area will typically be conducted to determine if that sample was an outlier or was actually representative of what might be expected to be landed in the area. The agencies look to provide sufficient buffer zones between “hot zones” and unimpacted areas, based on a sample set from an adjacent zone being “clean” (all samples below the action level). In some cases, we may seek a “fill in the gap” sample between two sampling zones to determine where the contamination might end, and to assist in identifying where the appropriate buffer zone should be placed. Current information is that crab populations may move between 10 and 20 miles, so we try to keep this in mind along with oceanographic conditions when establishing buffer zones. The agencies will jointly review the data from the landings and the analytical results, and in consultation with CDFW’s Law Enforcement Division, will identify the boundaries that will be established for an advisory or subsequent closure.

**6. In what ways do the Departments have discretion to demarcate hot spots, and what are the legal or other parameters that limit that discretion?**

CDPH and OEHHA have full discretion to identify areas where fishery products may pose a health concern. When the two health agencies are in agreement, a notification is sent to the Director of CDFW with the recommendation to close the fishery in a specified area based on concerns with the safety of the fishery products in that area. (See response above for more details on how the areas are determined).

**7. If the Departments are unable to order statewide or management district-wide fishing closures, will the Departments consider hot spot area closures instead of area advisories?**

CDPH and OEHHA will be recommending closures based on the analytical data obtained from samples collected from the various sampling zones. If there is sufficient buffer zones between “hot” and unimpacted areas, CDPH and OEHHA will not identify those unimpacted areas in the recommended closure area, unless it is a relatively small area that is sandwiched between two hot zones, there is a lack of analytical data for that unimpacted area, or there are concerns with enforceability of the closed/open areas.

**8. If the Departments settle on hot spot area closures, how will Fair Start rules apply to those areas?**

Because hot spot closures would not be considered a delay in the opening of the Dungeness crab fishing season under either 8279.1(a) or 8279.1(b), fair start rules would not apply.

Under FGC § 8279.1(a) the 30 day fair start rule applies to each District individually, including any partial closures in that District. The earliest date that a part of the District opens is the start date for the purposes of the 30 day wait period under Section 8279.1. Assuming there was a hot spot closure in District 6, but the rest of District 6 opened on the normal season opener date, 8279.1(a) would not apply to any part of District 6 as there was no delay in the opening of the crab season in District 6. Once the hot spot was

cleared, there would not be a 30 day fair start period before a person could begin taking, possessing onboard, or landing crab in that hot spot area.

Under FGC § 8279.1(b), a similar rationale would apply. Assuming the crab season opens in California on the normal season opener date, except for a few hot spot closures, there would not have been a delay in the opening of the Dungeness crab season in California. Once the hot spot was cleared, there would not be a 30 day fair start period before a person could begin taking, possessing onboard, or landing crab in that hot spot area.

- 9. How will the Departments deal with crab testing given that additional species, such as lobster, will now be regularly tested for DA? What are the Departments doing to ensure that all commercial fisheries/DA testing sites will be assessed in a timely manner and to avoid undue impacts on the fishing industry?**

Having sufficient resources will be an ongoing challenge. The agencies are currently discussing a variety of options within the administration in an effort to ensure sufficient funding and manpower resources are available to complete testing to effectively oversee the safety of fishery product in this changing environment. We are currently looking at developing sampling schedules for pre-season testing that will ensure we can get the data we need to make informed decisions in a timely manner. At the present time, and into the immediately foreseeable future, we will also depend partially on the impacted fishing industry to help collect samples so that we have data available to inform decision making.

### **Advisory Questions**

- 1. How many seafood processors in California carry the necessary HACCP plan that would allow them to process crab under an advisory with an evisceration order?**

There are over 200 seafood processors in the state and virtually all operate under a HACCP plan. HACCP plans are specific to each operator in the sense that the plan only needs to address the specific commodities that the processor is handling/processing. Any of these processors could modify their HACCP plans to be able to handle other seafood commodities (ie. Dungeness crabs), with no additional CDPH licensing requirements beyond what they currently have. We do not electronically track the types of seafood products listed on each processor's HACCP plan so we are unable to give you a definitive number of processors that currently have plans in place specifically for Dungeness crab.

- 2. In an advisory situation, would crabbers or buyers be allowed to truck crabs harvested from an area under an advisory to a processor in a harbor not associated with an advisory?**

Yes, provided that the product was shipped to a CDPH registered processor and documentation was maintained that would allow traceability of the product from the processor, back through the carrier (trucker) to the crabber or buyer. Tracking the quantity of product, its source, and the date and location it was caught would be important to ensure that no products caught in Advisory areas were diverted away from processing.

**3. How will the Departments publicize advisory notifications and area boundaries?**

CDPH publicizes advisories via the media, through email distribution groups, and on the Department's website. Having learned from the 2015 event, CDPH and CDFW also make an effort to ensure that the advisory is distributed to impacted fishermen, Harbor Masters, fishermen's associations, and other interested individuals that are impacted by the advisory. Area boundaries are highlighted in the Advisory and are established in consultation with CDFW to ensure that the boundaries selected, provide a sufficient buffer zone between "hot zones" and unaffected areas, and that the boundaries that are established can be effectively enforced.

**4. What are the processes for modifying or ending advisory notifications, and how will the Departments publicize changes?**

Once an advisory is in place, CDPH generally requires two samples sets collected at least 7 days apart with all samples falling below the action level, before an advisory will be modified or lifted. When an area of sufficient size has been determined once again to be safe to fish, and realistic boundaries which provide for buffer zones between the "clean" area and adjacent "hot zones" can be established, CDPH communicates with OEHHA and CDFW to review the data and discuss potential boundaries for modification of the advisory. Once input is received from CDFW's Law Enforcement Division on the boundaries, CDPH will issue a press release either lifting or modifying the advisory. This press release will be distributed to the media, posted on the CDPH webpage, and with the assistance of CDFW, will be disseminated to the appropriate fishermen's associations, Harbor Masters, etc..

**5. What are the Departments' advisory/evisceration order enforcement resources, and are they sufficient to ensure that no crab harvested from an advisory area escapes evisceration?**

CDPH has Investigators and Environmental Scientists stationed at District Offices throughout the state. We do not have staff available to be at every harbor every time crab is landed or to spend their entire day at processors while they process. However, it is relatively straight forward to review records of landings, compare that information to the quantity of product received by the processor, and verify that product was not diverted away from processing. Controls would have to be established to (1) ensure accurate landing data was collected, (2) that transfer documentation would link the landing information to the delivery of product to the processor, and (3) that bins or containers of crabs from impacted areas were clearly marked with tags that indicate they are intended for evisceration or processing only. CDPH has existing statutory authority to review all records, and would use that authority to conduct an accounting of product being landed from the impacted area under an advisory and ultimately received and processed by CDPH registered processors. This review is similar to how organic agricultural commodities are currently handled side by side with conventional products.