

Options & Considerations: Operating Under Delayed Conditions (e.g. Domoic Acid)

California Dungeness Crab Task Force

Drafted to support October 16-18, 2017 DCTF Meeting

The following options are currently under consideration by the California Dungeness Crab Task Force (DCTF) for potential recommendations related to delays in the commercial fishing season as a result of domoic acid and other causes. These options have been informed by the DCTF Executive Committee (EC) and from public comments throughout 2017 and **will be discussed and are expected to be voted on during the October 16-19, 2017 DCTF meeting**. DCTF Members are responsible for sharing these options with their constituents and be ready to make final recommendations at the October 2017 DCTF meeting.

Delayed Openers, Overview

In recent years, domoic acid delays and non-traditional season openers have led the fleet to reevaluate season opener regulations. Since many commercial Dungeness crab fishery regulations are currently up for review by the legislature and must be addressed prior to January 2019 ([here](#)), the DCTF and broader industry has an opportunity to address these concerns. The DCTF EC has discussed Dungeness crab fishing regulations that could be adjusted to address issues with openers, closures, management by management areas (e.g. north or south of the Mendocino-Sonoma County line), etc. under circumstances like elevated levels of domoic acid. All ideas that have been generated by the DCTF EC and members of the public and shared with the DCTF Admin Team to-date are included below.

Options: Opening Delayed Areas

Guiding Principles: The DCTF EC discussed developing a set of guiding principles for opening in delayed areas. Guiding principles could include, but are not limited to:

- Ensure seafood caught and put on the market is safe.
- Ensure equality opportunity for all ports, vessel sizes, and production level.
- Ensure product availability in the broader market.
- Minimize negative impacts including missing marketing opportunities.

Flexibility in Opening Delayed Areas: When an area has been delayed or closed to Dungeness crab fishing due to domoic acid or any other issue, the Director of CDFW is required to reopen the area as soon as the California Department of Public Health (CDPH) and Office of Environmental Health and Hazard Assessment (OEHHA) deem the area “safe.” Any flexibility in changing the opening date/time after the area is deemed “safe” would require changes to regulations. Options developed on this topic to-date include, but are not limited to:

- Allow the Director to extend a delay after receiving the “green light” from CDPH and OEHHA based on input from the industry.
- Allow the Director to extend a delay after receiving the “green light” from CDPH and OEHHA by an additional 2-3 days before fishing is allowed.
- Other?

Size of Areas Opened: When an area has been delayed or closed to Dungeness crab fishing due to domoic acid or any other issue, the Director of the California Department of Fish and Wildlife (CDFW) is required to reopen an area as indicated by CDPH and OEHHA. Any flexibility in deciding the size of the area to open is at the discretion of CDPH and OEHHA and would require changes to regulations to allow the Director any discretion on the area's size. Options developed on this topic to-date include, but are not limited to:

- Allow the Director to open by management area until January 15. After that time, fishing will commence in as much area as possible and only the areas that are deemed "safe" by CDPH will be opened and as discussed with industry representatives.
- As areas are deemed "safe" by CDPH and OEHHA, the Director will open by district.
- As areas are deemed "safe" by CDPH and OEHHA, the Director will open by area even if they are smaller than the size of a district.
- Other?

Options: 30-Day Fair Start

CDFW has issued a number of FAQs to aid in the interpretation of Fish and Game Code 8279.1 ([November 8, 2016](#) and [December 20, 2016](#)).

Clarifications have been requested to improve the interpretation of the law and ensure it is reflective of all delays, not just quality delays. Options regarding how 30-day fair start should be applied have been developed and include, but are not limited to:

- Apply 30-day fair start to any type of delay or any size area (e.g. if the fishery is opened by areas smaller than a district, each area will be subject to the fair start)
- 30-day fair start protections should apply to the southern management area in the same ways it does for Districts 6, 7, 8, and 9.
- Other?

Options: Pre-Soak

The DCTF EC discussed adjusting the Southern Management Area's presoak period under delayed conditions to address concerns of safety once an area is deemed safe. Options include, but are not limited to:

- Change the Southern Management Area's presoak period from 18 hours to 64 hours to be consistent with Districts 6, 7, 8, and 9.
- Other?

The DCTF will discuss goals of these options and new options and ideas may be generated and voted on during the October 16-18, 2017 DCTF meeting.

Additional Background: Fish and Game Code 8276.3- Delays in Districts 6-9 and 64-hour gear setting period

(a) If there is any delay ordered by the director pursuant to Section 8276.2 in the opening of the Dungeness crab fishery in Fish and Game Districts 6, 7, 8, and 9, a vessel shall not take or land crab within Districts 6, 7, 8, and 9 during any closure.

(b) If there is any delay in the opening of the Dungeness crab season pursuant to Section 8276.2, the opening date in Fish and Game Districts 6, 7, 8, and 9 shall be preceded by a 64-hour gear setting period, as ordered by the director.

(c) This section shall become inoperative on April 1, 2019, and, as of January 1, 2020, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2020, deletes or extends the dates on which it becomes inoperative and is repealed.

(Amended by Stats. 2013, Ch. 233, Sec. 6. Effective January 1, 2014. Inoperative April 1, 2019. Repealed as of January 1, 2020, by its own provisions.)

Fish and Game Code 8279.1 – Fair Start Provision for Districts 6-9

(a) A person shall not take, possess onboard, or land Dungeness crab for commercial purposes from a vessel in ocean waters in District 6, 7, 8, or 9 for 30 days after the opening of the Dungeness crab fishing season in California, if both of the following events have occurred:

- (1) The opening of the season has been delayed pursuant to state law in California.
- (2) The same vessel was used to take, possess onboard, or land Dungeness crab for commercial purposes, from ocean waters outside of District 6, 7, 8, or 9, prior to the opening of the season in those districts.

(b) A person shall not take, possess onboard, or land Dungeness crab for commercial purposes from a vessel in ocean waters south of the border between Oregon and California for 30 days after the opening of the Dungeness crab fishing season in California, if both of the following events have occurred:

- (1) The opening of the season has been delayed pursuant to state law in California.
- (2) The same vessel was used to take, possess onboard, or land Dungeness crab for commercial purposes in Oregon or Washington prior to the opening of the season in California.

(c) A person shall not take, possess onboard, or land Dungeness crab for commercial purposes from a vessel in ocean waters north of the border between Oregon and California for 30 days after the opening of the Dungeness crab fishing season in Oregon or Washington, if both of the following events have occurred:

- (1) The opening of the season has been delayed in Oregon or Washington.
- (2) The same vessel was used to take, possess onboard, or land Dungeness crab for commercial purposes in California prior to the opening of the season in ocean waters off Oregon or Washington.

(d) A person shall not take, possess onboard, or land Dungeness crab for commercial purposes from a vessel in ocean waters off Washington, Oregon, or California for 30 days after the opening of the Dungeness crab fishing season in California, Oregon, or Washington, if both of the following events have occurred:

- (1) The opening of the season has been delayed in Washington, Oregon, or California.
- (2) The same vessel was used to take, possess onboard, or land Dungeness crab for commercial purposes in either of the two other states prior to the delayed opening in the ocean waters off any one of the three states.

(e) A violation of this section does not constitute a misdemeanor. Pursuant to Section 7857, the commission shall revoke the Dungeness crab vessel permit that was issued for use on the vessel that was used in violation of this section.

(f) This section shall become inoperative on April 1, 2019, and, as of January 1, 2020, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2020, deletes or extends the dates on which it becomes inoperative and is repealed.

(Amended by Stats. 2016, Ch. 542, Sec. 5. Effective January 1, 2017. Inoperative April 1, 2019. Repealed as of January 1, 2020, by its own provisions.)

Fish and Game Code 8283 – Presoak Periods

(a) Crab traps may be set and baited 64 hours prior to the opening date of the Dungeness crab season in Fish and Game Districts 6, 7, 8, and 9. Crab traps may be set and baited in advance of that opening date in those districts if no other attempt is made to take or possess Dungeness crab in those districts.

(b) Except in Fish and Game Districts 6, 7, 8, and 9, crab traps may be set and baited 18 hours in advance of the opening date of the Dungeness crab season, if no other attempt is made to take or possess Dungeness crab.

(Amended by Stats. 2013, Ch. 233, Sec. 7. Effective January 1, 2014.)

The following draft proposal has been submitted to the Dungeness Crab Task Force (DCTF) by Mike Cunningham, DCTF Member, for review and consideration.

MANAGEMENT PROPOSAL

PROPOSAL:

The following describes a management proposal for the Dungeness crab (D. crab) fishery under a delay scenario in Districts 6 & 7. There are three elements to this proposal:

1) In the event of a delayed opening for any reason in the D. crab season in District 6 or 7, these Districts will be considered as one management zone. Any delay will continue until the cause of delay is resolved or until January 15, whichever comes first. Fishing will commence on January 16 in as much area as possible as determined by the Director of the California Department of Fish and Wildlife (CDFW), after consultation with industry representatives. 2) Initially the entire management zone will be afforded effort shift protection for thirty (30) days from any person or vessel that has previously fished D. crab during the current season in any other waters of California, Oregon or Washington. Furthermore, any area that remains delayed after January 15 will be afforded effort shift protection for thirty (30) days after that area(s) opens. Effort shift protection will expire thirty (30) days after the opening date of fishing in any delayed area(s), respectively. 3) Upon opening of any area, normal preset times will be afforded in advance of any opening date for that area.

Background: During the past two seasons (2015-16 and 2016-17), the opening of the commercial D. crab season has been delayed due to elevated levels of domoic acid (DA) detected in crab viscera. Resource managers and public health officials have faced the unprecedented task of protecting the public health during these circumstances while attempting to provide for a viable commercial and sport fishery. Existing fishing regulations have often lacked the clarity needed by managers, resulting in confusion and frustration for industry and consumers alike. This Proposal offers a clear definition to managing delayed season openings in District 6 and 7. It is modeled after the Tri State Crab Committee protocol for preseason quality testing which has been an accepted managerial tool for more than two decades. The Proposal offers a broader application of Tri State protocol to events such as DA. This is intended to apply only to Districts 6 and 7 and would have no negative impact on the District 10 fishery. If suitable, features of this Proposal could be further adapted to the District 10 fishery.

Commentary: During the Executive Committee (EC) conference call of March 14, one EC member suggested that a "...simple solution..." would be to move the District 7 line south to Cape Mendocino. This would be neither "simple", as the process to make that adjustment is unclear, nor would it be a "solution" except possibly in a very narrowly defined incident. For any broader application, moving the District 7 line could prove futile. In the 2015-16 season, for example, the northern management zone opening was delayed until May 9, 2016 because of a DA problem near Trinidad. A District 7 line at Cape Mendocino would have provided no remedy for that incident and may have further complicated it. Future DA events that CDFW and the California Department of Public Health (CDPH) may have to address might occur near Ft. Bragg, Eel River, Trinidad, Crescent City or in Oregon state waters of Pelican Bay. Moving the District 7 line to Cape Mendocino would likewise offer no "solution" in any of these cases.

As evidenced during the past two seasons, the location where lines are drawn depends: 1) first priority is safety of the public health as determined by CDPH, 2) CDFW management considerations, including enforceability and fleet fishing patterns and 3) industry concerns. During the 2016-17 season, several lines have been drawn along the CA coast taking the aforementioned considerations into account. Almost without exception, these lines have not corresponded to district lines. It's reasonable to expect that if these circumstances continue into the future that shifting district lines is not the cure.

Adapting the Tri State protocol to delays other than soft shell issues will effectively clarify the managerial process throughout the northern management zone, provide clear and predictable direction to industry, and reestablish confidence in the marketplace. A return to some sense of normalcy, less chaos, reduced concentration of crab pots in small areas, dispersion of the fleet over a wider area and more stability for fishers, processors, consumers and managers are all achievable results by adopting this proposal.