

Michelle Tate

From: Elizabeth Bingold <EBingold@pacseafood.com>
Sent: Friday, April 20, 2018 7:21 AM
To: michelle.l.tate@state.or.us; Caren Braby
Subject: Pacific Seafood's Public Comment re Record Keeping Requirements for Dungeness Crab
Attachments: Pacific Seafood Public Comment re Crab Traceability.docx

Attached please find Pacific Seafood's public comment re: Record Keeping Requirements for Dungeness Crab.

Thank you,

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April 19, 2018

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2040 SE Marine Science Dr.
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Troy Buell
State Fishery Manager
Oregon Department of Fish and Wildlife
4034 Fairview Industrial Dr., SE
Salem, OR 97302

Re: Public Comment on Record Keeping Requirements for Dungeness Crab

Dear Ms. Brady and Mr. Buell,

Pacific Seafood Group (“Pacific”) appreciates the opportunity to submit comments on the Oregon Department of Fish and Wildlife’s (“ODFW” or the “Department”) Notice of Proposed Rulemaking concerning Record Keeping Requirements for Dungeness Crab (the “Proposed Rule” or “the Rule”).

Pacific’s comments with regards to further revision are narrowly focused. The Proposed Rule should be modified to require sellers to maintain an “effective traceability system” as opposed to simply “keep a record of” Dungeness crab.

A. Pacific Seafood Group

Pacific is one of the leading seafood processors in Oregon, with nearly 3,000 employees at facility locations including Astoria/Warrenton, Tillamook, Newport, Charleston/Coos Bay, and Clackamas. We have been distributing Oregon-caught Dungeness crab for more than 75 years and we have developed one of the most sophisticated electronic seafood traceability systems in the industry. Pacific strongly supports rules and policies that promote reliable, safe, and sustainable Dungeness crab fishing in Oregon. We appreciate the great work that ODFW, ODA and Oregon State Police have done to protect and promote the seafood industry and we support the Proposed Rule, with only one modification:¹

¹ Pacific expressed concern at a meeting with ODFW, ODA, and OSP on March 22, 2018, that the Proposed Rule, as drafted, seemed to apply to “sectioned” or “eviscerated” crab, even though these product forms are not at risk of being adulterated with domoic acid. We understand that the Department intends to modify the Proposed Rule to apply only to whole-cooked and live crab (i.e. uneviscerated crab), which satisfies that concern.

B. The Proposed Rule should be modified to require sellers to maintain an “effective traceability system,” rather than to “keep a record of” Dungeness crab.

The Proposed Rule should be specifically modified as follows:

SECTION (2): All retail fish dealers, wholesale fish dealers, buyers, limited fish sellers, food fish canners, and shellfish canners shall ~~keep a record of~~ maintain an effective traceability system tracking all Dungeness crab sold to any person or business other than the ultimate consumer. For the purposes of this rule, ultimate consumer does not include restaurants.

There are several reasons for this necessary modification:

First, current FDA regulations provide for the same or greater level of public safety than the Proposed Rule. Under current FDA regulations, food processors and distributors must be able to promptly trace all food products upon notice that the product is possibly adulterated. The FDA created detailed rules concerning which party in a distribution channel must issue a recall notice, how the traceability and recall of those products is to be effectuated, and who is responsible. For example, in the event of a biotoxin event affecting Dungeness crab – where domoic acid levels reach dangerously high levels that could adversely impact the public health – seafood producers are notified about the biotoxin event and begin the process of reviewing their records in order to quickly notify their various retailers about the implementation of the recall, embargo, or evisceration order. Under the current FDA regulations, Pacific’s system allows us to provide our customers, regulatory authorities, and our entire supply chain the ability to trace our seafood and shellfish, from the point of harvest to the final point of commerce, within 24 hours. So long as a seller “maintains an effective traceability system” the public is protected. Nothing is gained by requiring downstream retailers to retain records that are already being held at the production level.

Second, the Proposed Rule is inconsistent with existing federal law, is inefficient, and creates undue burden. Because the FDA does not require the level of record keeping in the Proposed Rule, the rule creates “two systems” for food traceability—companies like Pacific would have to put in place new systems separate from the existing FDA system to comply with the new Oregon rule. This adds administrative cost, burden, and accounting—with no added benefit or protection to the public that is not already in place with our traceability systems.

Third, the Proposed Rule might actually make recalls slower and less effective. When compared to FDA standards, the Proposed Rule places an extreme level of reliance on records held in the custody of

retailers. The FDA allows for rapid “downstream” communication from producers to sellers, brokers, and buyers—so that potentially adulterated products are recalled from the source, identifying all the locations where the adulterated product went. Conversely, by focusing on the point of sale rather than on the point of origin, the Proposed Rule creates a “tunnel vision” effect that could limit the scope and increase the response time of a product recall. By starting at the source and going “downstream,” all possible affected product can be addressed through a centralized entity.

Fourth, the Proposed Rule is incompatible with modern, complex, decentralized food supply chains. The Proposed Rule appears to be written for a world where Dungeness crab is put in a box and delivered straight to a local seafood store, placed on the shelf, and sold to the consumer. That is simply not how the system works. In the modern era, crab is harvested, consolidated, shipped to centralized locations for cooking and processing, shipped from there to large cold storage or aggregating facilities (usually outside the state of Oregon), often aggregated again with crab from other vendors, then distributed from there to other cold storages across the country, including some in Oregon, and from there trucked to individual stores. Computer systems used by the processor, trucking companies, cold storage companies, and retailers are used to track the product, and can be used to track potentially adulterated product through the supply chain in a matter of hours. Most of this is done with computer barcodes or serial numbers. The Proposed Rule contemplates a paper record accommodating the crab on every step of this supply chain, which is incompatible with modern computerized code tracking.

Finally, the Proposed Rule could disadvantage the Oregon Dungeness crab industry. Dungeness crab are harvested by boats that can deliver to Washington, Oregon or California as they see fit. That is why typical rules governing Dungeness crab harvesting are done through the TriState Commission to ensure uniformity across all three jurisdictions. By issuing the Proposed Rule and mandating onerous record keeping requirement that do not apply to crab landed in Washington or California, it is possible that processors might simply have crab delivered to Washington or California plants—which would harm Oregon employment and drop landing tax and other revenues collected by ODFW.

In conclusion, Pacific Seafood appreciates the opportunity to submit comments on the Proposed Rule and we urge the Department to allow existing effective traceability systems to satisfy the rule, rather than adding unnecessary record keeping requirements to retailers.

Sincerely,

Elizabeth Bingold
Pacific Seafood, Corporate Counsel

