

Dear; L.C.D.R. - Emily Suddow
The Washington Dungeness Crab Fishermen's
Association "W.D.C.F.A." is submitting
Larry Thevik's written testimony as W.D.C.F.A.'s
official position on this proposal of
regulations

14 W.D.C.F.A. Board members were polled
Today - April 15th 2009 "5 board members
were not available". This was done by myself
"Ray Toste" via Phone and E-mail. All the
votes were UNANIMOUSLY in favor of
Larry Thevik's letter of position becoming
W.D.C.F.A.'s official position

Respectfully Submitted by

Ray Toste - President and general manager

W.D.C.F.A.

Ray Toste

WASHINGTON DUNGENESS CRAB	
President/General Man: Ray Toste Phone: 360-268-1515 Fax: 360-268-1513 Cell: 360-581-5383 rtoste@aol.com	Board Member _____ Phone: Fax: Cell: E-mail:


FISHERMEN'S ASS'N.
P.O. Box 2678, Westport, WA 98595

April 12, 2009

Docket Management Facility (M-30)
Department of Transportation
West Building Ground Floor, Room 12-140
1200 New Jersey Av. SE
Washington DC, 20590-001
RE: USCG-2008-1017 Bar Closures

My name is Larry L. Thevik. I am 61 years old and a lifetime resident of Washington State. I have been a commercial fisher over 38 years. I am a member of the State appointed Washington Coastal Crab Advisory Board, a Washington State industry representative to Pacific States Marine Fish Commission Crab Committee (tri-State), and a board member of the Washington Dungeness Crab Fishermen's Association (WDFCA). I presently own and operate the F/V Midnight Star a 42 foot fiberglass combination commercial crab, troll, and long-line vessel. I have owned and/or operated vessels ranging from 36 to 63 feet in length from Morro Bay, California to Cordova, Alaska. I have crossed numerous bars from Eureka, California, to Strawberry Bar in the Copper River Delta area of Alaska.

My primary area of operation is Grays Harbor, Washington. During my fishing career I have crossed the Gray Harbor Bar literally thousands of times, (I estimate over 7,000 times in 38 years). From January 12th 2009 (the opening of our crab season) to the date of this letter I have already crossed the Grays Harbor bar over 80 times so far this year alone. As is the case for most commercial fishermen who fish out of Grays Harbor, I know as much about crossing the Grays Harbor bar as anyone.

In my opinion the proposed rule changes regarding Bar closures ref: 33CFR Part 165 Docket no. (USCG-2008-1017) do little to increase the safe crossing of our Northwest bars while greatly increasing the complications of our fishing operations and hindering our ability to make a living on the sea. To be sure our Northwest bars can be treacherous places to navigate and have claimed a great many lives. No one is more interested or more aware of the dangers of making it home from work than a commercial fisher especially a Dungeness crab fisher in the dead of winter. As treacherous as the bars can be I would be curious to know how many bar crossings by small vessels both commercial and recreational have occurred under the existing safety rules over the past two decades without incidents or fatalities.

While I appreciate the Coast Guard's attempt to make bar crossings safer, to expect to make the Ocean "safe" by "dumbing down" the rules or using this "broad brush" approach to marine safety without recognizing that it will have a significant impact on the traditional small boat fishing fleet is unreasonable as well as counter-productive. While the Coast Guard claims this rule will have no significant economic impact on small entities -- I disagree. A day's loss of fishing time especially during the peak of our crab season due to an unnecessary or ill-conceived rule means thousands of dollars lost to an individual vessel and hundreds of thousands of dollars lost to our coastal fishing communities.

SOME SPECIFIC QUESTIONS AND OBJECTIONS TO THE PROPOSED RULE:

1. The areas of compliance far exceed the recognized areas of hazardous sea conditions unique to Northwest bars.

The Grays Harbor RNA, (Regulated Navigation Area), exceeds 40 square miles in area and includes a significant portion of the treaty and non-treaty commercial crab fishery and, recreational, and sport

/charter fishing areas. Although I speak specifically to the Grays Harbor RNA I suspect other area descriptions for other RNA's also exceed the historic areas of hazardous bar conditions. Why would new regulations specific to hazardous bar conditions be enforced over such a broad area? Based on my experience I estimate upwards of 75-80-% of the RNA is outside historic rough bar areas. The Grays Harbor RNA area represents 70% of my traditional crab fishing grounds. While the bar may be rough the ocean can be relatively calm outside of strong tidal influence areas, (just outside the rip). The proposed rule states "When a bar is closed, the operation of any vessel in the RNA established in paragraph (a) of this section in which the closed bar is located is prohibited....." I could be excluded from a traditional fishing area while the bar is closed even though more favorable conditions exist "outside" of the bar area. Conversely, I could be prohibited from positioning my vessel close enough to the bar to observe conditions as they improve in order to bring my vessel and crew safely home. The Grays Harbor RNA is 8 miles South to North. The rough bar area varies depending upon conditions from 1.5-3.25 miles South to North. If special regulations are necessary for hazardous bar conditions a much smaller and more specific area needs to be identified for such new requirements.

2. Need for clarification of the difference between a Regulated Navigation Area (RNA) and the Bar area referred to within the RNA.

The proposed rule is unclear as to the meaning of "the bar" and "crossing the bar". References are made to vessels operating within the RNA that are subject to specific rules before they "cross the bar": radio call ins, donning of immersion suits, prohibition, etc.. At what point in time and place is a vessel "crossing the bar"? Is a vessel that transits North to South through the RNA considered "crossing the bar"? Is a vessel fishing inside the RNA close to the "bar", (within one-half mile for example), considered as "crossing the bar"?

3. Sunset to sunrise VHF radio call- in requirement before crossing the bar.

During the peak of the crab season (winter months) my vessel fishes day and night when conditions are favorable. Under the proposed rule during periods of darkness, regardless of conditions, I would have to report by radio on Channel 16 before my vessel "crosses the bar". On its face this seems a rather innocuous requirement. But, how does this requirement benefit the commercial fishing fleet or improve the safety of a bar crossing? How will a single Coast Guard radio operator handle 70-80 radio calls on one frequency when the entire crab fleet may leave the docks at the same time at Westport at night on the opening of the Crab season, (as they did New Years eve of 2008)? The sheer volume of calls generated by this requirement during the early part of the winter crab season may in fact increase safety risk by "clogging" the VHF emergency channel.

4. Procedure for re-opening closed bars:

Very little language in the proposed rule addresses the re-opening of a closed bar and reauthorization of activity within the RNA. Bar conditions can and do change hourly. Previous experience with bar closures include slow Captain of the Port and Coast Guard response to improving bar conditions and thus unwarranted restriction on local fishing fleets access to fishing grounds. This slow response can have a large negative economic impact on fishing vessels and communities. Such slow response erodes Coast Guard credibility with local mariners and can place experienced mariners at odds with emergency rules still in place when the emergency no longer exists. In January 2008 The Captain of the Port closed the Grays Harbor bar during the first week of our crab season. While the closure may have been

warranted (the seas approached 24 feet) – overnight, conditions improved. Although wave heights diminished to less than 12 feet the bar was still closed. A Flood tide, a favorable swell, and yet the fleet was told they still could not go. Most went anyway. To any experienced mariner it was obviously safe to cross the bar. I went. Had I not gone I would have missed the chance to catch and deliver over \$17,000 dollars worth of crab that day.

5. Definitions (12) “Unsafe condition”:

Prior to this proposed rule “unsafe conditions” as described by the formula $L/10+F=W$ was used only under rules specific to recreational vessels and uninspected passenger vessels (33 CFR part 177.07). Although I question the validity and origin of this “unsafe” definition within the present context, that aside, I am extremely concerned about including this definition within the much broader context of the proposed rule. This reference is a very troubling part of the proposed rule. Great care must be taken by the Coast Guard to ensure that no new or unintended connection is made between the present definitions of 33 CFR part 177 “Unsafe Conditions” which applies specifically to recreational and uninspected passenger vessels with the larger group of vessels included within the proposed rule. The proposed rule includes Commercial fishing vessels, fish tenders, fish processing vessels, and Small inspected vessels. In fact under the “Bar closures” the rules apply to all vessels. If continued reference to this “unsafe” definition is included within the revised rules under Part 165 a specific exemption to vessels other than recreational and uninspected vessels must be made very clear and the present reference in 33 CFR Part 177.07 to “Unsafe conditions” only applying to recreational and uninspected vessels must be maintained within the changes proposed to part 165.

If the Coast Guard does intend to use this definition of “Unsafe conditions” on the larger class of vessels included in this rule, then more scrutiny of this definition is warranted. I have spoken to marine architects on the East Coast and the West Coast, and the Commander of Marine Safety in Washington D.C. and none of them had even heard of let alone understood the basis for this definition. As the owner and operator of a 42 foot commercial fishing vessel by this formula it would be “unsafe” for my vessel in any sea greater than 5 feet 9 inches. Based on 38 years of fishing experience I can tell you over 50% of the time my operation would have been deemed “Unsafe” Had I fished only when “Safe” I would have gone broke decades ago.

Conclusion:

Some conditions in this world cannot be codified. The sea cannot be made safe by rule. The loss of life on and around our Northwest bars is regrettable. But the only way “to ensure the safety of the persons and vessels operating in those areas” (stated under “Background and Purpose” in the proposed rule), is to not allow vessel activity in those areas at all.

Before we tamper with existing rules and present practice I believe it would be helpful to take a closer look at the number of safe bar crossings and productive activities occurring without incident within the RNA’s since 1992.

We all want to improve safety at sea. Perhaps the best way to improve the safety of bar crossings is to provide more real time sea condition data. One of the most helpful things the Coast Guard could do is to advocate for more at sea wave and weather buoys and to continue to do what they do best -- to provide well trained crews and well maintained vessels to help mariners when the rules cannot.