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MAR 14 2003

OPINION NO. 03-0007

11 **CRIMINAL LAW-Crime & Offenses**
16 **CONSERVATION OF NATURAL RESOURCES-Fish & Game**

La. R.S. 56:326 F (1) & (2)

Mr. Jerald Horst
Facilitating Chairman
Louisiana Seafood Industry Advisory Board
6640 Riverside Drive, # 200
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Citations for violations under La. R.S. 56:326 F (1) should be given when the dealer timely provides the required information and the enforcement officer's investigation produces probable cause to believe that the dealer's information is false or not in conformity with La. R.S. 56:326 F (2). Further, boiled crabs should not be checked for violations of this statute.

Dear Mr. Horst:

You have requested an opinion of this office with respect to two aspects of La. R.S. 56:326 F (1) which reads as follows:

Notwithstanding any provisions of law to the contrary, a wholesale or retail dealer and a commercial fisherman may be subject to the penalties provided by law for the possession of undersized crabs. If the wholesale or retail dealer can provide to wildlife and fisheries agents at the time of discovery the identity of the commercial fisherman who harvested the undersized crabs and subsequently sold such crabs to the wholesale or retail dealer, the dealer shall not be subject to the penalties. The department may check unboiled crabs for violations of the undersized crab provisions of this Section.

First, you ask if "a dealer in possession of over the allowable of undersized crabs should be cited for violation of the statute if he or she properly provides the identity of the harvesting fisherman"?

The statute and your question may appear on the surface to be the same, but they are not. The statute provides that the dealer "shall not be subject to penalties" not that the dealer may not be cited. The difference is a matter of proof. The enforcement officer may initially receive information from the dealer which would exempt the dealer from penalties. If the information given the enforcement officer at the time of discovery is truthful and in conformance with La. R.S. 56:326 F (2) the dealer should not be cited. If however, the information is not in conformance with La. R.S. 56:326 F (2) or is not truthful, the dealer may and should be cited.

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La. R.S. 56:326 F (2) reads as follows:

Commercial fishermen shall tag, mark, or otherwise identify any crabs that are sold, in a manner which will insure that such commercial fisherman can be identified as the person who harvested the crabs. The identification required herein shall include the commercial fisherman's name, license number, and date on which the crabs were harvested.

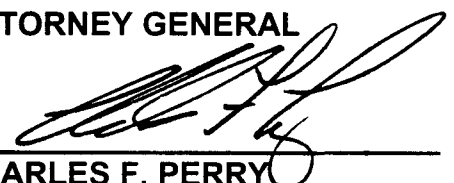
Second, you ask if the Department of Wildlife & Fisheries should check boiled crabs for undersized crab violations? The language of the statute reads as follows: "The department may check unboiled crabs for violations of the undersized crab provisions of this section". This language is clear. If the Legislature intended that boiled crabs could be checked, the statute would read; "The department may check boiled and unboiled crabs for violations." The fact that "boiled" does not appear expresses a clear legislative intent that boiled crabs should not be checked.

In summary, citations for violations under La. R.S. 56:326 F (1) should be given when the dealer timely provides the required information and the enforcement officer's investigation produces probable cause to believe that the dealer's information is false or not in conformity with La. R.S. 56:326 F (2). Further, boiled crabs should not be checked for violations of this statute.

Very truly yours,

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BY:


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RPI/CFP/tp