

## Meeting Summaries for Seven State-wide Rule Development Workshops To Obtain Public Comments on Proposed Revisions to Rule 5L-1, F.A.C.

Please note: FDACS has provided written responses to questions asked by workshop participants. Furthermore, any questions not answered at a workshop have FDACS responses contained in this summary (For ease of reading, all FDACS responses or comments are shown using indented *italics*.)

**I. Wakulla County Workshop (November 30, 2009):** Ten oyster harvesters and one Ag Law officer in attendance.

*After a discussion, the oyster harvesters felt that the best idea for on-board cooling was to use ice in a self-draining box, layering the oysters with ice.*

FDACS needs to start validating the on-board cooling process before May 1 so the harvesters can get ready for it.

Start time of 6 am isn't realistic based on the different times of sunrise.

*The official start time for harvesting is always sunrise.*

Why should the harvesters have to be the ones to pay for this? The dealers make more money so why don't they do it?

Putting the wet bags over the ice will keep the ice cooler.

Cooling oysters too fast (as on a conveyer belt at a processor with a very cold freezing system) causes them to pop open.

How will FDACS validate the oyster harvesters' cooling systems? Is FDACS going to be on the harvesters' boats to test the cooling systems out?

*Yes, FDACS will individually validate any cooling system that is proposed for use and this may not have to be done on the water. The validation process to be used will be in accordance with NSSP Guidance (provided below on page 1 and page 2), and will be conducted at the time a system is initially proposed and again under the most adverse temperature condition.*

**Specific NSSP Guide Reference:** NSSP Guide Section IV. Guidance Documents  
Chapter IV. Naturally Occurring Pathogens  
.04 Post Harvest Processing (PHP) Validation/Verification Guidance for *Vibrio vulnificus* and *Vibrio parahaemolyticus*

- .05 Guidance for Demonstrating the Effectiveness of Time to Temperature Reduction Criteria for *Vibrio vulnificus* and *Vibrio parahaemolyticus*

Time-to-Temperature Protocol

- (1) Identify the target time/temperature requirements for the specific cooling system/unit.
- (2) Demonstrate that each cooling method and unit is capable of meeting the target time/temperature by conducting a process study under worst case conditions for that unit. The following parameters should be considered and utilized in conducting the process study:
  - a. maximum load for the cooling unit
  - b. initial product temperature (studies have demonstrated that measurement of the external temperature and the internal meat temperatures are comparable and either can be used)
  - c. location of hot spot(s)
  - d. thermostat setting(s)
  - e. cooling method(s) used
  - f. method of loading the cooling unit
- (3) Include a description of the process; a record of the process study conducted; and monitoring records in a HACCP Plan.
- (4) The protocol should be applied at the first point of refrigeration

**Action by  
2009 General  
Assembly**

Adopted recommendation of 2009 Task Force II on Proposal 09-223.

Would harvesters be hassled if a harvester is working with a processor with the rapid cooling option? (Hassled by FWCC)

How much lead time will harvesters get so they can prepare for this rule amendment before it is effective? How long is the whole process of rule amendment?

*The goal is to have this rule in place by May 1, 2010 as required by the national program. The process for amending rules usually takes 6 to 7 months to complete but can take longer.*

Once this rule is in place, can the other agencies (such as FWCC) change their laws to interfere with the Department of Agriculture's rule in any way that would hurt the harvesters? In other words, once FDACS provides these options, can FWCC implement rules or regulations that prohibit them?

*FDACS and FWCC will work together to prevent conflicts between resource regulations and public health regulations.*

What if the harvesters change their boats to accommodate this new rule and one boat belonging to a crew of harvesters breaks down and they all have to get on one boat? This happens. Is FWCC going to raise the per-vessel bag limits to assist the oyster harvesters because now instead of two boats going out capable of getting 40 bags total, the crew is forced to go out on one boat but can only get a total of 20 bags? Is FWCC going to assist the oystermen by letting them get more oysters if they have to deal with the added expense to change or modify their boats or their harvest times?

**II. Cedar Key Workshop (December 1, 2009):** Three oyster harvesters, two FWCC officers, one UF Extension Agent and one State Senator/Representative Aide in attendance.

When does FDACS have to achieve the 60% reduction?

*The 60% illness reduction goal was to be achieved by 2008. The failure of the Gulf states to reach that goal automatically triggered a requirement that each gulf state implement additional controls that will further reduce illnesses and reach the 60% goal. The additional controls need to be in place by May 1, 2010.*

There will be problems with bootleggers. Already closed in June, July and August.

How does time affect cultured oysters?

*Any new time / temperature requirements will affect both cultured and wild product.*

Why do we need name and license # in 5L-1.008(8)?

*If harvesters are going to be following different time / temperature requirements, it is important that FWCC has a way to identify fishermen.*

This is not going to work for Cedar Key. It will reduce the harvest an additional two weeks per month because in this area you have to harvest during low tide.

There will be a problem with processors receiving all the oysters at one time.

*From FWCC officers:* No enforceability on 5L-1.007, they'll have to generally guess the time of harvest for the bags. Nothing in this proposed rule states when harvesters have to write the tag. It looks like an honor system. How will FWCC tell who is approved to cool on the boat? This rule could create a bigger problem. This rule is complicated. Can this be done on a region or by county?

*From FDACS Ag Law: How will FDACS validate?*

*FDACS will validate systems on an individual basis in accordance with national guidance which has been included above under Wakulla County Workshop.*

*From UF Extension Agent: 5L-1.007 will be hard to enforce. Too complicated to implement/enforce and it leaves the risk of not meeting the percent reduction required.*

**III. Apalachicola Workshop (December 2, 2009):** Approximately forty four oyster harvesters and processors (including their families), four FDACS employees from the Apalachicola office, one County Commissioner, one local FWCC officer, one UF Extension Agent, one SEA Grant agent and one State Representative in attendance. A few reporters and journalists were also present.

You all want to regulate it (oyster harvest). Now it's not working that great.

If the oystermen have to get in to shore by 10:45 am, they can't hardly get any oysters.

Does the rule mention that at 11:00 am the oysters have to be in the cooler?

*No, the rule only requires that oysters be delivered to dealer by 10:45 am and current rules require that dealers immediately place the oysters under temperature control.*

If we catch oysters meant to be shucked, do we have to comply with the 10:45am cutoff?

*No, oysters that will be shucked or post harvest processed do not have to be delivered to dealer by 10:45.*

If we do the 5 hour thing, is FWCC going to write tickets to guys heading out to the oyster reefs before sunrise?

*FWCC response-* No tongs are allowed on the water before sunrise.

I've got to drop my kid off at school at 8am. I'm a single parent. I may not get on the water until 9am. This 10:45am won't work for me. I can't make a living doing this.

Would it be possible if we had a big barge and unloaded the oysters into the refrigerated barge? Then the guys could go back and harvest some more.

*Cooperative on board cooling could work and would allow additional harvest time.*

Who certifies the chilling/cooling equipment that harvesters and processors use?

*FDACS must sign off on use of any proposed cooling equipment or system through a validation process.*

Can you redo the start times to go month by month because of the different times of sunrise?

*Yes, this can be done using the modeling tool. Results are: May 6:45 AM to 11:30 AM, June 6:30 AM to 11:15 AM, July 6:45 AM to 11:30 AM, August 7:00 AM to 11:45 AM. September 7:15AM to 12:00 PM, and October 7:30 AM to 12:15 PM. These harvest times will require processor cooldown times will be reduced from 8 hours to 6 hours to reach illness reduction goal due to the higher air temperatures during harvest.*

If you have an on board cooling system, then get them to 55 degrees, then you haul them to the truck, they may get hot while you wait for the processor. That's bad for the product.

The 5 day work week should be changed to a 7 day work week.

Why can't we oyster at night? People shrimp at night.

Is this going to limit how many times a man can go out in one day?

What if harvesters cannot afford a cooling system? We won't be able to make any money.

This is going to destroy Franklin County. How are we going to make a living?

What's the temperature of the bay in the summer? What difference does it make if the oyster gets put back in the water right after it is harvested? (wet storage of harvested oysters)

*Placing the oysters back in the bay after culling could be part of the solution if the oysters were contained in a manner that allowed them to continue feeding, but is currently not being proposed by FDACS.*

You could put baskets over the side to cool them in the water.

Back in 1959, I started oystering. The numbers of fatalities are very low and you're not going to lower that number any more.

I don't see how you are going to control lifestyles with laws and regulations. It's going to have to come down to people doing the right thing.

Is this going to concern the imports that are coming in to this county?

We can't stand too much more tightening of these regulations. Why don't we work on the education side of this more? Education of the consumer seems to be the only way to further reduce illnesses.

I think it's time to mention fishermen are talking about a shutdown. If we shut down for a few months, would that give fishermen more time to fish in the other months?

*Yes, a closure during the months of July and August would reduce illnesses enough to reach the goal. Eliminating harvest for traditional shellstock sales during any two months between May and October would achieve the goal. Eliminating harvest during the month of May and the first 3 weeks in June would also achieve the goal, however, this is the only consecutive 7 week period that would achieve the goal. In summary, there would be the same harvest times available for the months not closed. A closure is not being proposed by FDACS at this time.*

Do we know what months have the highest number of Vibrio cases?

*Vibrio vulnificus illnesses primarily occur from May to October in Florida due to elevated water temperatures during those months.*

Could you model what kind of cooling unit we'd need to cool 20 bags of oysters?

Our boats are not big enough to handle refrigeration units.

A lot of people aren't going to be able to make a living. What are people going to do?

My boss doesn't shuck oysters so this is bad for me.

Has the FDA studied any procedures to treat these oysters through any different means to cleanse the oysters?

*There are several post harvest processes that are approved and validated for vibrio vulnificus.*

Why can't the state set up checkpoints in the bay like we used to have? They could check the boats and keep the guys oystering.

Why would the government not want to invest money in keeping jobs?

Isn't this the kind of regulation that made our forefathers leave England?

What if you have a dealer that only sold oysters within the state of Florida?

The only risk involved is when people knowingly take the risk. How can we regulate that?

At some point we're going to have to strike back at the Federal government because of these regulations.

More than ever, now is the time to come together. This is not the time to show our differences.

If the oysters are consumed in Florida, can we tell the FDA to go away? I wouldn't mind selling all my oysters in Florida.

How could we put cooling systems on boats?

83% of the chicken is contaminated by Salmonella. It seems to me that this is just another screw up of FDA.

How many illnesses? How many in the state of Florida and how many from Apalachicola?

*On average, there are about 8 Vibrio vulnificus illnesses each year due to Product handled by Florida processors. About 4 of these illnesses are from product harvested in Florida and half of these illnesses (2) result in death.*

We need to ask the Commissioner of Agriculture to have Florida oysters only be sold in Florida for certain months.

Does the FDA realize how many people this is going to put out of work?

When this goes through, this is going to seriously hurt people (oystermen). They can't pay insurance.

We can't take this anymore. This is just like our school system with the unfunded mandates.

If we can get funding, we can get our designers to design a cooling system.

Is NMFS at the head of this?

NMFS imposed regulations on us and we lost our boats.

*State Representative* - I think the associations and groups have a unique opportunity to have great input. Get together and try to get behind one idea and support it. You have an opportunity to control the situation and how it turns out. Charles Bronson knows the situation you are facing. We need to look at different ideas. I'm willing to spend the time and energy to help any way I can. We don't have that much time to get unified.

Is there some way we could soften the language of these proposed rule amendments?  
How about a trial period?

*FDACS is attempting to make the rule language flexible to allow as many options as possible, however, the illness goal must be reached or we will be required to implement additional controls in the future.*

If we give up some time in August and July, can we oyster regularly for the other months?

*Yes, a closure during the months of July and August would reduce illnesses enough to reach the goal. Eliminating harvest for traditional shellstock sales during any two months between May and October would achieve the goal. Eliminating harvest during the month of May and the first 3 weeks in June would also achieve the goal, however, this is the only consecutive 7 week period that would achieve the goal. In summary, there would be the same harvest times available for the months not closed. A closure is not being proposed by FDACS at this time.*

Could we do relays when the bay was closed?

*Yes, as long as funds are available.*

Could we have a bag tax or something that could be collected and then redistributed back to the oystermen during the time they're closed?

*If established as a state tax, this would require legislation. .*

In actuality, when the number of deaths doesn't fit the model after doing this regulation, aren't we going to be right back in the same spot?

*Yes, it is possible that we could implement the new regulations and still not reach the goal.*

Would we be better off to focus our energies on the political front?

Why would you not be able to just sell within the state?

*Participation in the National Shellfish Sanitation Program (NSSP) is required for interstate shipment of shellfish. If Florida chose not to participate and comply with the NSSP we could continue to sell shellfish in Florida.*

How can we unite with all the other Gulf States if we decide to close for a period of time during the summer?

*Gulf states representatives previously discussed this option and chose to pursue time / temperature controls rather than uniform gulf closures.*

Who's modeling these refrigeration units on the boats?

*We do not have a model for the refrigeration units on the boats.*

21 illnesses has to be reduced down to 9?

*Yes.*

Mr. Bronson knows the FDA is going to do something drastic, but what if we now tell everyone the oysters are clean (after complying with these regulations)? Aren't a lot of people going to start eating more oysters? Won't this hurt us?

If we come up with a closure, can we make it state wide?

*Yes it would be statewide.*

Can we try to prohibit other states from shipping to us during this time of closure?

*We could not prevent product that is legally harvested or produced in another state to be sold in Florida. Product entering Florida from other states must meet equivalent standards.*

It seems like there are 20 different ideas on cooling. We need to develop a prototype and test it.

The coolers (electrical) won't last long on the water.

Would 5L-1.008(10) affect customers who come in for a cooler full of oysters? Maybe it needs to be specified in the rule that it is for wholesale.

*This language was intended to affect wholesale product leaving a certified dealer only. Language to clarify that point will be added if necessary.*

The dealers would be better off having a 7 day season.

Running in the dark may be putting more people at risk.

**IV. Milton/Pensacola Workshop (December 3, 2009):** Five oyster harvesters (two of which also were processors) and one extension agent in attendance.

The harvester tag needs to have the correct harvest time and it needs to be filled out when the bag is filled.

FWCC's definition of "harvest" and FDACS' definition of "harvest" are not consistent. Harvest by FWCC rule means when you actually bag or containerize the product. Harvest by FDACS rule means when you pull the product out of the water.

Cooling system will be difficult and may be cost prohibitive.

There is some confusion between PHP and depuration.

Could the oyster harvesters use a bag or rack system to keep the oysters submerged?

*This option has been discussed statewide. It is our belief that it may be a viable method, so long as the oysters could clearly be shown to be actively feeding. This may be accomplished by not stacking them on top of each other, not bouncing them from the boat, etc. This is not currently being proposed by FDACS at this time.*

How could oysters be chilled best with a conveyor or by using a brine solution?

*This is an excellent question. Perhaps the University of Florida could answer this.*

Would a refrigerated barge located near the harvesters be OK?

*Yes.*

Money will be needed to help harvesters and dealers to implement all these changes.

Participants asked for more information on all PHP processes that are validated.

The 10:45 AM time doesn't work well if the harvesters have to take their boats very far.

A closure in the summer is preferable to these options.

If there is a closure in the summer, would a lease operator be able to harvest and use on-board cooling?

*No, a closure for public health purposes would apply to wild harvest and cultured product harvested from a lease. However, lease holders who are allowed to harvest during current regional wild resource related closed periods would be allowed to continue harvesting during the public health closed period but only for shucking or post harvest processing.*

The economic impact would be severe from this proposed rule amendment. People want traditional raw oysters. Harvesters, dealers, markets and restaurants will all be hurt if they have to sell some other product.

Lifting the 20 bag limit per vessel would allow faster fishing.

Why is shucked product safer?

*The vast majority of shucked product is not consumed raw.*

This rule is way too much and too impractical to save a few at-risk individuals who should protect themselves.

Could the proposed rules allow more than one fishing trip per day?

*Bag limits are daily limits, so going back out for a second harvest after a limit has been reached is not legal. Also, afternoon air temperatures during the summer are very high and would allow very little fishing time.*

Why don't we have a statewide closure during the months of July and August if that would reach the illness goal?

*Yes, a closure during the months of July and August would reduce illnesses enough to reach the goal. Eliminating harvest for traditional shellstock sales during any two months between May and October would achieve the goal. Eliminating harvest during the month of May and the first 3 weeks in June would also achieve the goal, however, this is the only consecutive 7 week period that would achieve the goal. In summary, there would be the same harvest times available for the months not closed. A closure is not being proposed by FDACS at this time.*

**V. Oak Hill Workshop (December 8, 2009):** Two FWCC officers in attendance. No oyster harvesters or processors in attendance.

FWCC has historically considered the time of harvest to be the time harvest is completed. The concept of requiring the time recorded on the tag to be the time harvest was initiated

for a container or bag is good, and the tag should be completed when the product is placed into the container.

East coast oyster harvesters simply wade and pick up oysters during low tide. They do not tong from the deck of the boat and shellfish handling is very different on this coast. Harvested oysters are generally bagged and kept in water until the harvester leaves the area.

As written, the rule would not have much of impact for harvesters on the East Coast which is closed June-August. For May, June and October air and water temperatures are not as high as they are in the Gulf, and most harvesters do not begin their seasonal harvest until November anyway.

Can oysters sit directly on ice or does that impact shelf life?

*That would need to be determined but generally, cooling them too rapidly does negatively impact shelf life.*

How can FWCC officers determine who is partial on-board cooling and who is supposed to be doing complete on-board cooling?

*This would be part of the dealer's HAACP plan and the names of the authorized individuals plus their harvester license numbers would be listed there. Harvesters may need to carry the dealers HACCP Plan.*

If a statewide closure during July and August could allow Florida to meet the illness reduction goal, this would be the easiest to enforce and would only affect one region of the state.

**VI. Ponte Vedra Workshop (December 9, 2009):** One oyster processor, one FWCC officer and three FDACS employees present.

The 10:45 AM time does not work at all due to tides. There's only 3 to 4 hours when it is low tide and that is the only time we can harvest. This rule would reduce harvest by 75 percent.

During May, June and October about 80% of product is shucked and about 20% is sold as shellstock. Of the 20% that is sold as shellstock approximately 90% of that gets cooked at the restaurants.

This rule will hurt small harvesters and dealers on the East Coast of Florida.

The Department of Agriculture should not include the East Coast in the new time / temperature rules.

*Vibrio vulnificus* is primarily a Gulf Coast problem, and the East Coast industry should not have to follow new rules when this coast is not causing illnesses.

Many of the illnesses are caused by poor handling and temperature abuse at the restaurants.

A Summer closure in Apalachicola makes more sense than crafting new restrictions for the whole state.

A big problem that we have is not enforcing the rules we have now.

**VII. Panama City Workshop (December 10, 2009):** Seven oyster harvesters and one Ag Law officer in attendance.

How many *Vibrio vulnificus* illnesses have we had this year?

*Florida has investigated 12 potential Vibrio vulnificus illnesses in 2009. Not all of these are confirmed to be related to oyster consumption and not all of these illnesses involved product harvested in Florida.*

Can you use coolers and ice to cool the oysters?

*Yes, but the system will have to be validated by FDACS to determine its capability.*

We like the idea of using coolers and transporting the oysters in coolers on the pickup truck to the processor.

Right now we already put the correct time on the tag.

From area #06 it will not be feasible to get product to the processor by 10:45am.

Why is 10:45am the cut off?

*It provides the necessary reduction in harvest time in order to reduce the number of cases, according to the calculator. Air temperatures are too high later in the day. The only way to increase the hours for harvest and reach the illness reduction goal would be to further reduce the cooldown time for processors.*

We could use on-board boxes to hold the oysters with ice.

How would you move the oysters from the boat to a cooler on the truck?

Could the harvesters tong and deliver to a refrigerated truck on the shore? Is that considered a dealer?

*Yes, dealers can establish a remote buying location to make their refrigerated truck part of the dealer. The cooling system on the truck would also need to be validated to make sure it is capable of cooling product at the rate that is required.*

Could the harvesters deliver some oysters to the refrigerated truck on the shore, then go back out and get some more oysters to reduce the time oysters are out of refrigeration?

*Yes, although daily bag limits would have to be followed.*

Air flow in a wire bag would help the cool down time even in a reefer truck.

55 degrees F will work for my processing plan.

Why 8 hours to cool to 55 degrees? Seems like a long time.

*The time / temperature regime submitted to the ISSC by Florida provides for 5 hours of early morning harvest time and product cooldown to 55 degrees F within 8 hours by the processor.*

People use baskets for fish now. What about baskets of oysters and keeping them in the water, then taking them to the refrigerated truck? This seems like the cheapest option.

*This is possible, if the oysters continue to feed while submerged. Testing to determine that will have to be performed, and we believe that the containment system will have to keep oysters in a thin layer and not compressed to allow active feeding. This is not an option FDACS is proposing at this time.*

The boats may be overweight and pulling up a basket would be a problem.

Why don't we close it (state wide) in the summertime like in the old days?

*This comment had universal support in this workshop.*

If it was closed, then boats would not use up all the oysters. If it was closed, you would catch more in the months it was open.

Apalachicola is open right now? How is that?

*Good sample results - data trumps management plan predictions.*

Wind direction influences Apalachicola.

In Apalachicola bay, are the summer areas contaminated in the winter?

*Not at all times, but these areas would not meet fecal coliform standards for much of the time during the winter months.*

15 bags would work for the cooler system.

Are there any other options for other types of cooling equipment?

*At this point, ice, refrigeration units, and other similar ideas are being discussed.*

The Apalachicola summer areas get used up in 1.5 months.

Is 10:45 AM local time? The tags reflect the local time zone.

*The 10:45 AM time is a time limit. The specific amount of time is what is important. Regarding these proposed rule amendments, if you harvest from a particular start time (let's pick 7:00am CST) during the months from May through October and don't have on board full or partial cooling nor do you work with a processor who can cool the oysters down rapidly enough to meet the time temperature requirements, your oysters must be delivered to a processor by 10:45am CST which is of course 11:45am EST. Don't get caught up in the time zone differences. It is the total time out of the water and out of refrigeration that is important.*

I think the problem is restaurant versus home illness rates. Your department is responsible for restaurant inspection. I guarantee you I had 10 tickets in a season and now all of the county would be lucky to write 10 tickets in a season.

Changing tags happens. The retail man may keep the oysters until he makes his money.

We used to use plain cloths officers to inspect the retail end.

Will "Post Harvest Processing" go on the tag?

*Product that is not delivered to the dealer by 10:45 AM will have to be shucked or labeled by the dealer "for shucking or post harvest processing".*

Are most of the Vibrio illnesses related to restaurants or individuals buying oysters at a retail market?

*Illnesses are most commonly from restaurant consumption; however, illnesses do occur from retail purchases as well. Most illnesses are related to the consumption of product sold as shellstock as opposed to shucked product simply because the vast majority of shucked product is cooked prior to consumption which kills bacteria.*

Oysters often sit on the dock for a long time waiting to be processed.