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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

DFW 57-2019

CHAPTER 635
DEPARTMENT OF FISH AND WILDLIFE

FILED

05/10/2019 1:53 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Commercial Dungeness Crab Evisceration South of Cape Blanco

EFFECTIVE DATE: 07/23/2019 THROUGH 08/15/2019

AGENCY APPROVED DATE: 05/10/2019

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Filed By:
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NEED FOR THE RULE(S):

This amended rule is needed in coordination with Oregon Department of Agriculture (ODA) temporary rules to modify requirements for harvesting crab in the ocean commercial Dungeness crab fishery from a biotoxin management zone from Cape Blanco (42° 50' N. Lat.) southward to the Oregon/California border (42° 00' N. Lat.) due to detection of elevated levels of domoic acid in crab viscera in that specified area. These rules require that Dungeness crab is sold, offered for sale or donated to the public only after it is processed (eviscerated) consistent with ODA rules. These rules prohibit the sale of live crab caught in the affected areas and prohibit the sale of any crab that is not processed consistent with these rules.

JUSTIFICATION OF TEMPORARY FILING:

Testing for the biotoxin domoic acid in Dungeness crab samples taken May 8, 2019 was recently completed, and detected elevated biotoxin levels (above alert levels) in the viscera of crab in the area between from Port Orford (42° 50' N. Lat.) southward to the Oregon/California border (42° 00' N. Lat.). Based on these results and consistent with OAR 603-025-0410, this temporary rule establishes evisceration requirements for crab harvested from the biotoxin management zone. These rules require that Dungeness crab is sold, offered for sale or donated to the public only after it is eviscerated consistent with ODA rule. These rules prohibit the sale of live crab caught in the biotoxin management zone, and prohibit the sale of any crab that is not processed consistent with ODA temporary rule OAR 603-025-0423 until further notice. These restrictions and procedures are necessary to carry out the Commercial Fishing laws. It has been determined that a prohibition on landing crab from the affected area would not permit an optimum and equitable utilization of available food fish because ODA has determined that such crab is safe for public consumption once eviscerated and a full closure absent such an exception would incur a substantial waste of Dungeness crab and costs to industry. This rule maintains access to the food fish resources of the state while preventing harm to the industry that would be caused by public exposure to domoic acid. This rule minimizes waste of food fish resources so as to preserve the economic contribution of this fishery without compromise to food safety or public benefits. There is not adequate time to go through normal rulemaking proceedings to protect public health and carry out Commercial Fishing laws as described above. Failure to act immediately in this regard will result in serious prejudice to the public interest because there is a substantial likelihood that persons consuming unprocessed crab will become ill with amnesiac shellfish

poisoning.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

1. Oregon Department of Agriculture domoic acid test results(<https://www.oregon.gov/ODA/shared/Documents/Publications/FoodSafety/CurrentCrabBiotoxinData.pdf>)
2. Oregon Department of Agriculture temporary rule filing documents for OAR 603-025-0423

A copy of the rules and the other documents relied upon for this rulemaking [the above document(s)] are available from the Oregon Department of Fish and Wildlife, Fish Division, Second Floor, 4034 Fairview Industrial Drive SE, Salem, Oregon 97302-1142, between the hours of 8:00 a.m. and 4:00 p.m., on normal working days, Monday through Friday.

AMEND: 635-005-0465

RULE TITLE: Closed Season in Pacific Ocean and Columbia River

RULE SUMMARY: In coordination with Oregon Department of Agriculture (ODA) temporary rule making (see OAR 635-025-0423), this amended rule implements a biotoxin management zone for the ocean commercial Dungeness crab fishery from Cape Blanco (42° 50' N. Lat.) southward to the Oregon/California border (42° 00' N. Lat.) due to detection of elevated levels of domoic acid in crab viscera in the specified area. In combination, this rule and ODA rule require that all Dungeness crab taken from the biotoxin management area zone after 12:01 AM May 10, 2019 be sold to a licensed food processor that eviscerates the crab consistent with the ODA rule. In addition, crab harvested from a line just north of Gold Beach (42° 26' N. Lat.) to the Oregon/California border (42° 00' N. Lat.) after 12:01 AM May 8, 2019 will be subject to recall for evisceration. These rules prohibit the sale of live or whole crab caught from the biotoxin management zone, and prohibit the sale of any crab that is not processed consistent with these rules.

RULE TEXT:

- (1) It is unlawful to take, land or possess Dungeness crab for commercial purposes from the Pacific Ocean or Columbia River:
- (2) Take, landing, or possession of Dungeness crab from the area from Cape Blanco (42° 50' N. Lat.) southward to to the Oregon/California border (42° 00' N. Lat.) is allowed only as consistent with OAR 603-025-0423. Take, landing, or possession of Dungeness crab from the area south of the Oregon/California (42° 00' N. Lat.) border is allowed only as consistent with OAR 603-025-0422.
- (3) The season opening for the commercial Ocean Dungeness crab fishery may be delayed in one or more fishing zones based on the results of crab quality or biotoxin testing. The Pre-season Testing Protocol for the Tri-State Coastal Dungeness crab Commercial Fishery (hereafter, "Tri-State Protocol") specifies the process for establishing fishing zones (section VI) and coordinating the opening of the fishery in Washington, Oregon, and California north of Point Arena (sections IV and V). Therefore, the following sections of the Tri-State Protocol (Revised July 2014) are hereby incorporated into Oregon Administrative Rule by reference:
 - (a) Section IV – Season Opening Criteria.
 - (b) Section V – Test Fishing and Process for Setting the Season Opening Date.
 - (c) Section VI – Procedure for Establishing Fishing Zones. In the event that crab quality tests do not meet the criteria for opening the season on December 1, the Director shall adopt temporary rules delaying the season in accordance with the

Tri-State Protocol.

(4) It is unlawful to land, receive or buy, Dungeness crab in the first thirty days of the ocean Dungeness crab fishery from a vessel that has not been certified by officials of the State of Oregon, Washington, or California to have been free of Dungeness crab before fishing in the ocean Dungeness crab fishery. In the event the area between Gray's Harbor, Washington and Point Arena, California is divided into zones with different season opening dates, the ocean Dungeness crab fishery refers to the fishery in that zone for the purposes of this rule.

(5) In the event the area between Gray's Harbor, Washington and Point Arena, California is divided into zones with different season opening dates, the transfer of a permit from one vessel to another is suspended from the earliest season opening date through thirty days after the latest season opening date, except in the event a vessel is unintentionally destroyed due to fire, capsizing, sinking, or other event.

(6) Upon a determination by the Department that catch in Oregon's ocean Dungeness crab fishery after May 31 is greater than ten percent of the catch in the previous December 1 through May 31 period, the Director shall adopt a temporary rule closing the commercial season until the following December 1.

STATUTORY/OTHER AUTHORITY: ORS 506.036, ORS 506.109, ORS 506.119, ORS 506.129

STATUTES/OTHER IMPLEMENTED: ORS 506.109, ORS 506.129