



TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

DFW 151-2020
CHAPTER 635
DEPARTMENT OF FISH AND WILDLIFE

FILED
12/09/2020 8:07 AM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Commercial Dungeness Crab Season Opening South of Cape Falcon

EFFECTIVE DATE: 12/09/2020 THROUGH 02/15/2021

AGENCY APPROVED DATE: 12/09/2020

CONTACT: Lisa Kingsley
503-947-6233
Lisa.M.Kingsley@state.or.us

4034 Fairview Industrial Dr SE
Salem, OR 97302

Filed By:
Lisa Kingsley
Rules Coordinator

NEED FOR THE RULE(S):

A rule is needed to open the Oregon commercial Dungeness crab fishery in the Pacific Ocean and from Cape Falcon southward to the California border. The commercial Dungeness crab fishery will remain closed in the Pacific Ocean and Columbia River from Cape Falcon northward to the Washington border in order to coordinate an orderly start with the Washington coastal Dungeness crab fishery. Results from recent domoic acid testing of crab conducted by the state of Washington exceeded federally established thresholds for human health, and therefore Washington is delaying the coastal fishery until further testing is conducted.

JUSTIFICATION OF TEMPORARY FILING:

Under the Tri-State Memorandum-of-Understanding Regarding Management of the Pacific Coast Dungeness Crab Fishery, the Directors of California, Oregon, and Washington Fish and Wildlife agencies agree to take mutually supportive actions to maximize the sound economic and biological utilization of crab. After consultation with industry advisors, representatives of the agency Directors met on December 8, 2020 and determined that continuing to delay the fishery north of Cape Falcon until the state of Washington conducts further domoic testing is likely to be the optimal utilization of the resource because it will ensure an orderly start to the fishery and protect the public from potential domoic acid exposure.

This rule also implements a "fair start" provision that prohibits vessels that take crab from the area south of Cape Falcon before the area north of Cape Falcon opens from taking crab north of Cape Falcon until the northern area has been open for at least 30 days, in accordance with the policy of all three states when delays are related to domoic acid. The "fair start" policy does not apply to delays related to marine life concentrations in California.

There is not adequate time to go through normal rulemaking proceedings prior to the December 16, 2020 opening for the commercial season south of Cape Falcon. Failure to modify this rule would cause serious prejudice to the public interest and parties concerned because absent modification by temporary rule the state of Oregon would violate its

agreement with the states of Washington and California, conflicts could arise without an orderly opening to the fishery, and public health and consumer confidence would be negatively impacted by allowing the fishery to commence north of Cape Falcon without further testing to ensure that all Dungeness crab brought to market are safe to consume.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

1. Memorandum of Understanding Regarding Management of the Pacific Coast Dungeness Crab Fishery (2007; see https://www.dfw.state.or.us/MRP/shellfish/commercial/crab/docs/2018/Pre-Season%20Testing%20Protocols%202018_FINAL.pdf Appendix A)

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

SUSPEND: Temporary 635-005-0465 from DFW 148-2020

RULE TITLE: Closed Season in Pacific Ocean and Columbia River

RULE SUMMARY: This amended rule sets the opening date and related management measures for the 2020-2021 ocean commercial Dungeness crab fishery from Cape Falcon (45° 46' 00" N. Lat.) southward to the California border (42° 00' 00" N. Lat.) on December 16, 2020. The commercial Dungeness crab fishery will remain closed from Cape Falcon (45° 46' 00" N. Lat.) northward to the Washington border (46° 15' 00" N. Lat.).

RULE TEXT:

(1) It is unlawful to take, land or possess Dungeness crab for commercial purposes from the Pacific Ocean or Columbia River:

(a) In the area from Cape Falcon (45° 46' 00" N. Lat.) northward to the Oregon/Washington border (42° 15' 00" N. Lat.)

(b) In the area from Cape Falcon (45° 46' 00" N. Lat.) southward to the Oregon/California border (42° 00' 00" N. Lat.) from August 15, 2020 through December 16, 2020 at 08:59 AM.

(2) 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 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 (May 2020) 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. As used in the Tri-State Protocol "fishing" means any operation of Dungeness crab fishing gear to take, possess on board, or land Dungeness crab for commercial purposes, except setting Dungeness crab gear for another vessel as allowed per OAR 635-005-0405(1). 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.

(3) 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.

(4) 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.

(5) A vessel used to take Dungeness crab for commercial purposes in the area from Cape Falcon (45° 46' 00" N. Lat.) southward to Point Arena, California on or after December 16, 2020 and prior to the opening of the area from Cape Falcon northward to the United States/Canada border shall not be used to take crab for commercial purposes in the northern area until the northern area has been open for at least 30 days. The fisher must declare on the hold inspection certificate required by section (3) of this rule the zone in which the vessel will start fishing.

[Publications: Publications referenced are available from the Department.]

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

STATUTES/OTHER IMPLEMENTED: ORS 506.109, ORS 506.129