



## MEMORANDUM

**Date:** November 20, 2017

**To:** Oregon Dungeness Crab Industry Members

**From:** Stephanie Page, Director  
Food Safety & Animal Health Programs

**Subject:** Final rules adopted for Dungeness Crab and Biotoxins

Enclosed is a copy of the final rule adopted by the Oregon Department of Agriculture (ODA) to address biotoxin issues in Dungeness Crab. The final rule reflects the input of the Dungeness Crab and Biotoxin Advisory Committee as well as questions and comments received by ODA during a public comment period. The rule is one of several strategies that the agencies and industry are using to improve communication, increase traceability of crab, and be better prepared for biotoxin events.

The Dungeness Crab and Biotoxin Advisory Committee recommended both short and long term strategies to prepare for and respond to biotoxin events in the future. ODA and ODFW are working on implementing these strategies as resources allow. Some, such as a robo-text and robo-email service to notify industry members of crab sampling results, will be in place by the start of the 2017-2018 season.

In addition to the ODA rule, ODFW recently adopted a companion rule to enhance traceability in crab. ODA and ODFW coordinated closely in developing our rules and will also work together on outreach efforts to industry this fall and winter.

For more information about the agencies' plans and activities this fall and winter related to Dungeness Crab and biotoxin issues, please visit the ODA web site at <http://www.oregon.gov/ODA/programs/FoodSafety/Shellfish/Pages/CrabBiotoxinInfo.aspx> and the ODFW web site at [http://www.dfw.state.or.us/MRP/shellfish/commercial/crab/domoic\\_acid.asp](http://www.dfw.state.or.us/MRP/shellfish/commercial/crab/domoic_acid.asp)

Enclosure

**Oregon Administrative Rule 603-025-0410**  
**Oregon Department of Agriculture**  
**Requirements for Dungeness Crab**

Domoic acid is a natural toxin that can accumulate in certain shellfish and fish species and cause amnesic shellfish poisoning, a serious illness, in consumers. In Oregon, a monitoring and response system for recreationally and commercially harvested shellfish and Dungeness crab is in place to protect public health and manage the risk of domoic acid contamination.

The Oregon Department of Agriculture (ODA) analyzes Dungeness crab and crab viscera samples gathered from the waters of this state and the Pacific Ocean off Oregon for domoic acid. The Oregon Department of Fish and Wildlife (ODFW) is responsible for opening and closing the crab fishery as well as requiring restrictions and reporting on crab harvest and landing.

**(1) Application.**

(a) These rules apply to commercial fishing and commercial landings regulated by ODFW pursuant to Oregon Revised Statutes (ORS) Chapter 509, to licensed food processors regulated by ODA pursuant to ORS Chapter 616, and to any person, wholesaler or food processor that purchases or receives crab taken from the waters of this state or the Pacific Ocean off Oregon.

(b) These rules were developed to address domoic acid, but other natural toxins may be addressed in a similar manner using the best available science on the measures necessary to protect public health.

**(2) Definitions.** For the purposes of these rules, unless the context requires otherwise;

(a) “Biotoxin management zone” means one or more harvest areas that, in order to protect public health from domoic acid concerns, has been either closed to crab harvest or where take of crab for commercial purposes has been prohibited unless it is in accordance with Sections 5 and 6 of these rules. Biotoxin management zones may include areas with sample results above and below biotoxin thresholds in order to provide a buffer to protect public health.

(b) “Crab sample set” means all whole crab collected for pre-season testing, routine monitoring, or during a restriction or closure, during a specific sample gathering event from multiple depths within a harvest area.

(c) “Crab” means Dungeness crab (*Cancer magister* or *Metacarcinus magister*) harvested and sold for commercial purposes from waters of this state or the Pacific Ocean off Oregon.

(d) “Eviscerate” or “Evisceration” means the common processor’s action of removing and discarding the entire intestinal tract, hepatopancreas, all associated abdominal organs.

(e) “HACCP Plan” means a hazard analysis critical control point plan as described in 21 CFR §123.6 (2016).

(f) “Harvest area” means a section of waters of this state or the Pacific Ocean off Oregon delineated for crab traceability purposes. Harvest area boundaries will be delineated on a map available from ODFW.

(g) “Land”, “Landed” or “Landing” means either of the following:



(A) For fisheries where food fish were taken by use of a vessel, “land, landed or landing” means to begin transfer of food fish from a vessel. Once transfer begins, all food fish on board the vessel are counted as part of that landing.

(B) For fisheries where food fish were taken without use of any vessel, “land, landed or landing” means to begin transfer of food fish from a harvester to a wholesale fish dealer, wholesale fish bait dealer, or food fish canner, under which the following provisions apply:

(i) When the harvester and the wholesale fish dealer, wholesale fish bait dealer, or food fish canner are the same person or entity, transfer occurs when the food fish arrive at the licensed premises of the wholesale fish dealer, wholesale fish bait dealer, or food fish canner; and

(ii) Once transfer begins, all food fish from the harvest area are counted as part of that landing.

(h) “Processor” means any person engaged in commercial, custom, or institutional processing of fish or fishery products, in Oregon, in another state, or in a foreign country. A processor includes any person engaged in the production of any foods that are to be used in market or consumer tests.

(i) “Processing” means handling, storing, preparing, heading, eviscerating, freezing, changing into different market forms, manufacturing, preserving, packing, labeling, dockside unloading or holding.

(j) “Sell” includes to offer or possess for sale, barter, exchange or trade.

(k) “Wholesaler” means any person who buys crab that is subject to these rules for resale to retailers, other merchants, or industrial, institution, and commercial users for resale or business use.

### **(3) Procedures for pre-season domoic acid testing and decision making based on test results**

(a) Prior to the opening of the crab fishing season, the ODA will oversee the collection of crab sample set(s) from each harvest area or landing port and test for domoic acid.

(b) ODA will oversee the collection of viscera and meat samples from each crab in each sample set. Viscera samples will be tested first and meat samples will be held and tested if viscera levels are detected at or above 30 ppm.

(c) Opening of a harvest area at the beginning of the crab season without restrictions will require domoic acid test results below 30 ppm in the viscera for all crab in the crab sample set from that harvest area.

(d) If razor clam test results show levels of 20 ppm or higher in the respective harvest area or other indicators show a potential biotoxin concern, ODA may recommend collection of 2 consecutive crab sample sets at least 7 days apart or other frequency at ODA’s discretion. ODA will recommend unrestricted opening of the crab fishery only after test results indicate domoic acid levels below 20 ppm in the meat and 30 ppm in the viscera for all crab in each sample set.

(e) If one or more crab tests show a result of domoic acid at or above 30 ppm in the viscera and below 20 ppm in the meat, then ODA will designate one or more harvest areas as biotoxin management zones through temporary rule and recommend to ODFW to not open the biotoxin management zone(s), or to open the biotoxin management zone(s) only in accordance with provisions in Section 5 and Section 6 of these rules.



**(4) Procedures for in-season crab sampling and testing for domoic acid and decision making based on test results**

(a) ODA will oversee the collection of crab sample set(s) every 2 to 4 weeks for domoic acid testing in a harvest area during the season if domoic acid levels at or above 20 ppm are detected in razor clams or another indicator species. If no samples are obtained from a harvest area for 4 weeks during the crab fishing season, ODA may recommend to ODFW to close the fishery in the harvest area or for evisceration restrictions to be placed on crab caught from that area.

(b) Viscera and meat samples will be collected from each crab within each sample set. Viscera samples will be tested first and meat samples will be held and tested if viscera levels are detected at or above 30 ppm.

(c) If any single crab meat sample result is 20 ppm or above, ODA will designate one or more harvest areas as biotoxin management zones through temporary rule and recommend to ODFW the harvesting and landing of crab from that biotoxin management zone be prohibited starting from the date the affected crab sample was harvested. Any crab already harvested and landed from that zone starting from the harvest date of the affected crab sample will be considered adulterated and under no case may be sold or donated. ODA will only recommend prohibitions in the biotoxin management zone(s) be removed following 2 additional sample sets that show domoic acid test results from all meat at below 20 ppm. The 2 sample sets must be gathered at least 7 days from the initial sample set and also must be at least 7 days apart. A shorter time frame between sample sets may be allowed at the discretion of the agencies.

(d) If one or more crab tests show a result of domoic acid at or above 30 ppm in the viscera and below 20 ppm in the meat:

(i) ODA will designate one or more harvest areas as biotoxin management zones through temporary rule and recommend to ODFW to either prohibit take of crab for commercial purposes in the biotoxin management zone(s) or to prohibit take of crab for commercial purposes in the biotoxin management zone(s) that is not in accordance with Section 5 and Section 6.

(ii) ODA will lift the biotoxin management zone(s) designation and recommend the ODFW harvest restrictions be removed only after 2 additional sample sets show domoic acid test results from all viscera at below 30 ppm. The 2 sample sets must be gathered at least 7 days from the initial sample set and also must be at least 7 days apart. A shorter time frame between sample sets may be allowed at the discretion of the agencies.

**(5) Considerations for minimizing public exposure to elevated levels of domoic acid in Dungeness crab.** If 1 or more crab tests show a result of domoic acid at or above 30 ppm in the viscera and below 20 ppm in the meat, ODA will consider the following factors in its recommendation to ODFW to close biotoxin management zone(s) or to constrain sales of crab harvested from the biotoxin management zone(s).

(a) Whether all crab landed from the biotoxin management zone prior to the date of the sample results are traceable through a mechanism that specifies the harvest area(s) in which the crab were taken, the amount of crab landed, the date the crab were landed, and the amount sold to and contact information for each entity that purchased the crab.



(b) The extent of traceability of live crab by harvest area from the first point of sale until the final seller who sells the product to the consumer.

**(6) Prohibition on uneviscerated crab sales** to consumers. If pre-season or in-season testing conducted as described in Sections 3 and 4 of these rules detects domoic acid at or above 30 ppm in crab viscera but below 20 ppm in the meat in 1 or more harvest areas, and the conditions in Section 5 are met and ODA recommends the biotoxin management zone(s) open or remain open with prohibitions on uneviscerated crab sales, no person, processor, or wholesaler shall donate, hold, offer for sale or sell Dungeness crab from the biotoxin management zone unless the following conditions are met.

(a) The crab is conveyed or sold to a food processing establishment licensed by ODA or to a licensed food processor that eviscerates and processes crab consistent with subsection (6)(e).

(b) The crab is conveyed or sold to a wholesaler that in turn sells all crab subject to these rules to a food processor that is licensed by ODA or to a licensed processor.

(c) In no case may uneviscerated crab be conveyed, sold or donated to retailers or directly to consumers unless it is processed as described in subsection (6)(d).

(d) Food processors or wholesalers are prohibited from selling or offering for sale to retailers or to consumers crab as described in this section unless:

(i) The licensed processor conducts its activities consistent with a seafood HACCP plan; and

(ii) The crab is eviscerated.

(e) If any of the landed crab in a landing from a fishing vessel came from a biotoxin management zone, the entire landing shall be subject to the requirements of this section. Landings for which the harvest area is unspecified shall be subject to the requirements of this section. Failure of a producer or wholesaler to notify processors that crab originated from a biotoxin management zone and so must be processed consistent with this section before it is donated, held, offered for sale or sold to consumers will be considered a violation of ORS 616.215(1).

**(7) Penalties.** Whenever it is found that any crab as described in subsection (6) is sold, offered for sale, or donated to any person in a manner that is inconsistent with these rules, the crab is considered adulterated food, and the holding, or offering for sale of crab is prohibited as provided in ORS 616.215(1). If any person violates these rules, ODA may proceed with any lawful remedy including:

(a) Seeking the district attorney to institute proceedings in the proper courts to be prosecuted in the manner required by law;

(b) Enjoining violations of law in a summary proceeding;

(c) Embargo, seizure or detention consistent with the provisions of ORS 561.605 – 630;

(d) Civil penalties up to \$10,000 for each violation as provided in ORS 616.997.

Statutory authority: ORS 616.215; ORS 616.225; ORS 616.235; ORS 561.190

Stats. Implemented: ORS 616.215 & 616.235

