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NOTICE OF PROPOSED RULEMAKING
 INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 635
 DEPARTMENT OF FISH AND WILDLIFE

FILED

02/13/2018 11:39 AM
 ARCHIVES DIVISION
 SECRETARY OF STATE

FILING CAPTION: Record Keeping Requirements for Dungeness Crab

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 04/20/2018 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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 Salem, OR 97302

Filed By:
 April Mack
 Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 04/20/2018

TIME: 8:00 AM - 5:00 PM

OFFICER: Oregon Department of Fish
 & Wildlife Commissioners

ADDRESS: Clatsop County Fair & Expo
 Exhibit Hall
 92937 Walluski Loop
 Astoria, OR 97103

NEED FOR THE RULE(S):

This rule is needed to establish additional record keeping requirements for retail fish dealers, wholesale fish dealers, fish buyers, limited fish sellers, food fish canners, and shellfish canners who buy or sell Dungeness crab in order to improve traceability of product in the event that recall or mandatory evisceration is required by the Oregon Department of Agriculture (ODA) due to detection of biotoxins in Dungeness crab samples above thresholds established by the federal Food and Drug Administration (FDA).

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

1. Staff Report for the Oregon Fish & Wildlife Commission hearing of April 19-20, 2018
2. All documents related to the Oregon Department of Agriculture Domoic Acid 2017 Rules Advisory Committee published on this website: http://www.dfw.state.or.us/MRP/shellfish/commercial/crab/domoic_acid.asp

A copy of the rules and the other documents relied upon for this rulemaking [the above documents] 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.

FISCAL AND ECONOMIC IMPACT:

Fiscal and Economic Impact Statement for the April 19, 2018 Hearing in the Matter of Rules Relating to Commercial Crab Records Requirements

Fiscal and economic impact:

Purpose – Improve traceability of all crab product forms throughout the market chain which will enable faster more targeted responses to biotoxin issues. The availability of these types of records is a primary consideration under recently adopted (and jointly developed) rules of the Oregon Dept of Agriculture (ODA) specifying that they may recommend allowing harvest of crab under an evisceration order from a biotoxin management zone for domoic acid where crab viscera has tested above the FDA threshold (30 ppm) but crab meat has tested below the FDA threshold (20 ppm). In plain English – by adopting these record-keeping requirements, we're ensuring the information will be available to allow ODA to recommend an evisceration order (all crab from the area must be gutted, no live or whole-cooked crab) instead of a full closure in certain circumstances.

Rule description – the rule we plan to recommend has been in place via temp rule since Dec 1, 2017 (the earliest potential opening date for commercial crab season) and those documents are attached for your reference. The rule applies to wholesale dealers, distributors, and retailers and adds harvest area (12 Oregon zones, 3 statewide areas) and date(s) of landing to the currently required records for all crab bought or received ("1-back" records). The rule creates a new requirement to keep records of the same information for whom crab is sold to, up to but not including the ultimate consumer ("1-forward" records). The rule does not specify any particular form or format for records, giving industry flexibility to comply with the requirements in whatever way best fits their business plan.

Statement of Cost of Compliance

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

The proposed rules will affect state agencies, units of local government and the public, respectively, as discussed below:

a. The only state agency that would be affected by adoption of these rules are the Oregon Department of Fish and Wildlife (ODFW), Oregon State Police (OSP), and Oregon Department of Agriculture (ODA). For ODFW, the main impact will be continuing to assist businesses with compliance (e.g., answering questions about the requirements). In the future, ODFW will be working towards modifications of the fish ticket system to accommodate the new harvest areas which will have some cost, but tracking on fish tickets isn't required by the rule. OSP will have to check for these newly required records as part of the records compliance checks that they regularly conduct. ODA may be impacted in a couple ways – requiring the records should help ODA to implement a recall, embargo, or evisceration order due to biotoxins because each business in the market chain should know where and when any crab product was harvested from. On the other hand, having the rules in place puts evisceration on the table as a management option, which will add some work for ODA relative to a closure. No significant changes from the current levels of the department's operations or expenditures are expected as a result of the adoption of these rules.

b. Local governments (e.g., port authorities) may be indirectly impacted in that adopting the rule may change the timing of commercial crab season (e.g., opening under an evisceration order vs. an extended biotoxin closure). However, no

significant changes from the current levels of any local agencies' operations or expenditures are expected as a result of the adoption of these rules.

c. The public could be affected by the adoption of these rules. The rules should provide incremental benefits to human health and food safety in that recalls or embargoes of adulterated crab product will presumably be faster and more effective. The rules will affect crab fisherman, buyers, and retailers in that there will be an additional management option (evisceration order) which could allow crab to be harvested from biotoxin management areas in some circumstances. This should decrease disruption of the fishery due to biotoxin events.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

All retail fish dealers, wholesale fish dealers, buyers, limited fish sellers, food fish canners, and shellfish canners that buy or sell crab will be subject to the rule. The number of those business that have fewer than 50 employees cannot be determined with the data available to the Department

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

Fish dealer and purveyors of crab that are small businesses are required to maintain records available for inspection. Many businesses that called us with questions reported that their existing systems could accommodate the new requirements with little modification. An estimate of this additional cost burden cannot be determined at this time.

c. Equipment, supplies, labor and increased administration required for compliance:

Some administrative costs to modify systems and train employees, however the cost cannot be quantified at this time.

The rule is believed to be fully compatible with legislative direction on the goals of wildlife management in Oregon.

We do not believe that a less intrusive or less costly alternative adaptation to only small business is consistent with the purpose of the rule.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

See Fiscal Impact Statement

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

See Fiscal Impact Statement

ADOPT: 635-006-0201

RULE SUMMARY: This rule establishes additional record keeping requirements for retail fish dealers, wholesale fish dealers, fish buyers, limited fish sellers, food fish canners, and shellfish canners who buy or sell Dungeness crab. The additional requirements include records of date of landing and harvest area for all crab received, and date of sale, date of landing, amount of pounds, harvest area, and contact information of persons or businesses to whom crab are sold for all crab sold to any person or business other than the ultimate consumer. Ultimate consumer does not include restaurants for the purposes of these record keeping requirements.

CHANGES TO RULE:

635-006-0201

Record Keeping Requirements for Dungeness Crab

PLEASE NOTICE THE PROPOSED TEXT BELOW IS PRELIMINARY AND SUBJECT TO CHANGE. UP TO DATE VERSIONS OF THIS DRAFT RULE ARE AVAILABLE UPON REQUEST TO THE DEPARTMENT AND WILL BE POSTED ON THE COMMISSION WEBSITE DAYS PRIOR TO THE COMMISSION MEETING.

(1) For all Dungeness crab received, the records required by OAR 635-006-0200 shall include the following additional information:

(a) Date(s) of landing; and

(b) Harvest area(s) as defined by the Department.

(2) All retail fish dealers, wholesale fish dealers, buyers, limited fish sellers, food fish canners, and shellfish canners shall keep a record of all Dungeness crab sold to any person or business other than the ultimate consumer. For the purposes of this rule, ultimate consumer does not include restaurants. This record shall include:

(a) Date of sale;

(b) Date(s) of landing;

(c) Amount of pounds;

(d) The name and phone number of the persons or businesses to whom Dungeness crab were sold; and

(e) Harvest area(s) as defined by the Department.

(3) Harvest areas are defined by latitudinal boundaries found on the Dungeness Crab Harvest Area Map located at http://www.dfw.state.or.us/MRP/shellfish/commercial/crab/commercial_crab_harvest_areas.asp, and that document is hereby incorporated into this rule by reference.

(4) The records required in this rule shall be:

(a) Subject to inspection by the Director, the Director's authorized agent, or the Oregon State Police;

(b) Prepared and available at the time Dungeness crab are transferred to the premises of the buyer, regardless of whether sold or not;

(c) Retained for a period not less than three years, at a location within Oregon where the record is to be available for inspection as designated in section (3)(a) of this rule. Notice of the physical location is to be provided to the Department.

(d) Written in the English language.

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

Statutory/Other Authority: ORS 506.109, 506.119, 506.129, 508.406, 508.530, 508.535

Statutes/Other Implemented: ORS 506.109, 506.119, 506.129, 508.406, 508.530, 508.535