

1 | HANDOUT A

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3 | **DISCUSSION DRAFT FOR CRAB AND DOMOIC ACID ADVISORY COMMITTEE**

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5 | **DRAFT OREGON ADMINISTRATIVE RULES (OAR)**

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7 | **DRAFT Requirements for Dungeness Crab**

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9 | **OAR 603-025-XXXX**

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11 | Domoic acid is a natural toxin that can accumulate in certain shellfish and fish species

12 | and cause amnesic shellfish poisoning, a serious illness, in consumers. In Oregon, a

13 | monitoring and response system for recreationally and commercially harvested shellfish

14 | and Dungeness Crab is in place to protect public health and manage the risk of domoic

15 | acid contamination.

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17 | The Oregon Department of Agriculture (ODA) analyzes Dungeness crab and crab viscera

18 | samples gathered from the waters of this state and the Pacific Ocean off Oregon for

19 | domoic acid. The Oregon Department of Fish and Wildlife (ODFW) is responsible for

20 | opening and closing the crab fishery as well as requiring restrictions and reporting on

21 | crab harvest and landing.

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23 | (1) **Application.** These rules apply to commercial fishing and commercial landings

24 | regulated by ODFW pursuant to Oregon Revised Statutes (ORS) Chapter 509, to licensed

25 | food processors regulated by ODA pursuant to ORS Chapter 616, and to any person,

26 | wholesaler or food processor that purchases or receives crab taken from the waters of this

27 | state or the Pacific Ocean off Oregon.

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

30 | (a) “Biotoxin zone” means a section of waters of this state or the Pacific Ocean

31 | off Oregon. Biotoxin zones are identified on the map available at [insert reference when

32 | available]

33 | (b) “Crab sample set” means all whole crab collected for pre-season testing,

34 | routine monitoring, or during a restriction or closure, during a specific sample gathering

35 | event from multiple depths at 2 or more latitudes within a biotoxin zone.

36 | (c) “Crab” means Dungeness crab (*Cancer magister*) harvested and sold for

37 | commercial purposes from waters of this state or the Pacific Ocean off Oregon.

38 | (d) “Eviscerate” or “Evisceration” means the common processor’s action of

39 | removing and discarding the entire intestinal tract, hepatopancreas, all associated

40 | abdominal organs.

41 | (e) “HACCP Plan” means a hazard analysis critical control point plan as

42 | described in 21 CFR §123.6 (2016).

43 | (f) “Land”, “Landed” or “Landing” means either of the following:

44 | (A) For fisheries where food fish were taken by use of a vessel, “land,

45 | landed or landing” means to begin transfer of food fish from a vessel. Once transfer

46 | begins, all food fish on board the vessel are counted as part of that landing.



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

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

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

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

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

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

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

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23 **(3) Procedures for Pre-Season domoic acid testing and decision making based on**
24 **test results**

25 (a) Prior to the opening of the crab fishing season, the ODA will collect crab
26 sample set(s) from each biotoxin zone or landing port and test for domoic acid.

27 (b) ODA will collect viscera and meat samples from each crab in each sample set.
28 Viscera samples will be tested first and meat samples will be held and tested if viscera
29 levels are detected at or above 30 ppm.

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

33 (d) If razor clam test results show levels of 20 ppm or higher in the respective
34 biotoxin zone or other indicators show a potential biotoxin concern, ODA will consider
35 requiring 2 consecutive crab sample sets to be collected at least 7 days apart or other
36 frequency at ODA's discretion. Test results must indicate domoic acid levels below 30
37 ppm in the viscera for all crab in each sample set prior to the crab fishery opening
38 without restrictions.

39 (e) If one or more crab tests show a result of domoic acid at or above 30 ppm in
40 the viscera and below 20 ppm in the meat, then ODA will recommend to ODFW to not
41 open the affected biotoxin zone(s), or to open the affected biotoxin zone(s) only in
42 accordance with provisions in Section 5 and Section 6 of these rules.



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

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

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

13 (c) If any single crab meat sample result is 20 ppm or above, the harvesting and
14 landing of crab from that zone will be prohibited starting from the date the affected crab
15 sample was harvested. Any crab already harvested and landed from that zone starting
16 from the harvest date of the affected crab sample will be considered adulterated and
17 under no case may be sold or donated. The prohibitions in the affected biotoxin zone(s)
18 will only be removed following 2 additional sample sets that show domoic acid test
19 results from all meat at below 20 ppm. The 2 sample sets must be gathered at least 7
20 days from the initial sample set and also must be at least 7 days apart. A shorter time
21 frame between sample sets may be allowed at the discretion of the agencies.

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

24 (i) ODA will recommend to ODFW to either prohibit take of crab for
25 commercial purposes in the affected biotoxin zone(s) or to prohibit take of crab
26 for commercial purposes in the affected biotoxin zone(s) that is not in accordance
27 with Section 5 and Section 6.

28 (ii) The prohibitions in the affected biotoxin zone(s) will only be removed
29 following 2 additional sample sets that show domoic acid test results from all
30 viscera at below 30 ppm. The 2 sample sets must be gathered at least 7 days from
31 the initial sample set and also must be at least 7 days apart. A shorter time frame
32 between sample sets may be allowed at the discretion of the agencies.

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

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

43 (b) The extent of traceability of live crab by zone from the first point of sale until
44 the final seller who sells the product to the consumer.
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1 (6) **Prohibition on uneviscerated crab sales.** If pre-season or in-season testing
2 conducted as described in Sections 3 and 4 of these rules detects domoic acid at or above
3 30 ppm in crab viscera but below 20 ppm in the meat in 1 or more biotoxin zones, and the
4 conditions in Section 5 are met and ODA recommends the affected biotoxin zone(s) open
5 or remain open with prohibitions on uneviscerated crab sales, no person, processor, or
6 wholesaler shall sell Dungeness crab from the affected area(s) unless the following
7 conditions are met.

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

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

13 (c) In no case may uneviscerated crab be sold or donated to retailers or directly to
14 the public unless it is processed as described in subsection (6)(e).

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

17 (i) The licensed processor conducts its activities consistent with an
18 approved seafood HACCP plan; and

19 (ii) The crab is eviscerated.

20 (e) If any of the landed crab in a landing from a fishing vessel came from an
21 affected biotoxin zone, the entire landing shall be subject to the requirements of this
22 section. Landings for which the location is unspecified shall be subject to the
23 requirements of this section.

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25 (7) Whenever it is found that any crab as described in subsection (6) is sold, offered for
26 sale, or donated to any person in a manner that is inconsistent with these rules, ODA may
27 proceed with any lawful remedy including:

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

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

31 (c) Embargo, seizure or detention consistent with the provisions of ORS 561.605

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