

CALIFORNIA FISH AND GAME COMMISSION
STATEMENT OF PROPOSED EMERGENCY REGULATORY ACTION

Emergency Action to
Amend Section 29.85,
Title 14, California Code of Regulations
Re: Emergency Closure of Recreational Dungeness and Rock Crab
Fisheries Due to Elevated Levels of Domoic Acid

I. Statement of Facts Constituting the Need for Emergency Regulatory Action

The recreational crab fishery is a multi-million dollar business with thousands of participants each year fishing from personal boats, charter vessel operations, and public piers and docks. Under existing law, crab may be taken for recreational purposes with a sport fishing license subject to regulations prescribed by the Fish and Game Commission (Commission).

Current regulations for recreational take of crab specify seasons, size limits, bag and possession limits, closed fishing areas, and gear restrictions. The Dungeness crab season is scheduled to open on Saturday, November 7, 2015. The rock crab season is currently open year-round.

A massive toxic bloom of the marine diatom *Pseudo-nitzschia* has been detected resulting in significant impacts to coastal resources and marine life. Some *Pseudo-nitzschia* species produce a potent neurotoxin, known as domoic acid, which can accumulate in shellfish, other invertebrates, and sometimes fish, leading to illness and death in a variety of birds and mammals. Recent test results have shown persistently high levels of domoic acid in Dungeness crab and rock crab, which have been caught along the California coastline.

Symptoms of domoic acid poisoning can occur within 30 minutes to 24 hours after eating toxic seafood. In mild cases, symptoms may include vomiting, diarrhea, abdominal cramps, headache and dizziness. These symptoms disappear within several days. In severe cases, the victim may experience trouble breathing, confusion, disorientation, cardiovascular instability, seizures, excessive bronchial secretions, permanent loss of short-term memory, coma, or death.

Domoic acid levels detected in recent samples have exceeded the State's action level for the crabs' body meat as well as the viscera, commonly referred to as crab butter, and therefore pose a significant risk to the public if they are consumed, as determined by the California Department of Public Health (CDPH). As a result, the Office of Environmental Health Hazard Assessment (OEHHA), in consultation with CDPH, has recommended the fisheries be closed. The Department, CDPH, OEHHA, and the Ocean Protection Council are coordinating

efforts to monitor toxicity levels and ensure public safety. This emergency situation clearly poses such an immediate, serious harm that delaying action to allow for public comment and notice requirements, pursuant to Section 11346.1 of the Government Code, would be inconsistent with the public interest.

Identification of Reports or Documents Supporting Factual Emergency

- California Department of Public Health, “CDPH Issues Warning about Dungeness and Rock Crabs Caught in Waters Along Central and Northern California Coast,” News Release, November 3, 2015.
- California Office of Environmental Health Hazard Assessment, “Domoic Acid Threat to Public Safety,” Memo, November 3, 2015.

Regulatory Proposal

The proposed regulation would prohibit recreational take and possession of Dungeness crab and all rock crab from ocean waters, including bays and estuaries, north of the Ventura/Santa Barbara county line. Closure of the fisheries shall remain in effect until the Director of OEHHA, in consultation with the Director of CDPH, determines that domoic acid levels in Dungeness crab no longer pose a significant risk to public health and no longer recommends the fishery be closed.

The Department shall maintain a list of closed ocean waters of the state and update that list on Wednesday of each week by 1:00 pm. It shall be the responsibility of any person taking Dungeness crab to call the Department’s hotline or visit the Department’s website to obtain the current status of any ocean water.

II. Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

- (a) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

- (b) Nondiscretionary Costs/Savings to Local Agencies:

None.

- (c) Programs Mandated on Local Agencies or School Districts:

None.

- (d) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code:

None.

- (e) Effect on Housing Costs:

None.

III. Authority and Reference

The Fish and Game Commission proposes this emergency action pursuant to the authority vested by sections 200, 202, 205, 220, and 240, of the Fish and Game Code and to implement, interpret, or make specific sections 200, 202, 205, 206, 220, and 240, of said Code.

IV. Section 240 Finding

Pursuant to Section 240 of the Fish and Game Code, the Commission finds that the adoption of this regulation is necessary for the immediate protection of public health that may result from elevated levels of domoic acid detected in samples of Dungeness and rock crab.

Informative Digest (Plain English Overview)

Current regulations for recreational take of crab specify seasons, size limits, bag and possession limits, closed fishing areas, and gear restrictions. The Dungeness crab season is scheduled to open on Saturday, November 7, 2015. The rock crab season is currently open year-round.

Proposed Regulatory Action: The proposed regulation would prohibit recreational take and possession of Dungeness crab and rock crab from ocean waters, including bays and estuaries, north of the Ventura/Santa Barbara county line. Closure of the fisheries shall remain in effect until the Director of the Office of Environmental Health Hazard Assessment, in consultation with the Director of the California Department of Public Health, determines that domoic acid levels in Dungeness crab no longer pose a significant risk to public health and no longer recommends the fishery be closed.

The Department shall maintain a list of closed ocean waters of the state and update that list on Wednesday of each week by 1:00 pm. It shall be the responsibility of any person taking Dungeness crab to call the Department's hotline or visit to the Department's website to obtain the current status of any ocean water.

Benefits: The proposed regulation will protect public health by prohibiting possession of crab containing elevated levels of domoic acid.

The proposed regulations are neither inconsistent nor incompatible with existing state regulations. The Legislature has delegated authority to the Commission to promulgate sport fishing regulations (sections 200, 202, 205, 220, and 240, Fish and Game Code).