



December 30, 2015

## Commercial Dungeness Crab Fishery 'Fair Start' - Frequently Asked Questions

**Q: Does the current delay in the opening of the commercial Dungeness crab season due to the health risk from domoic acid qualify as a delay under Fish and Game Code section 8279.1?**

A: Yes. The current delay qualifies as “delayed” under Fish and Game Code section 8279.1. Section 8279.1 is triggered by any delay that occurs “pursuant to state law in California.” (Fish & G. Code, § 8279.1, subd. (b); *see also id.*, subd. (d).) This emergency closure for elevated domoic acid levels occurred pursuant to Fish and Game Code section 7715. Furthermore, Department regulations state “[t]his emergency closure constitutes a delay pursuant to state law in the opening of the season for the purposes of Fish and Game Code Section 8279.1.” (Cal. Code Regs., tit. 14, § 131, subd. (e).) In addition, any crabs lawfully taken or possessed onboard in Oregon or Washington during this delay in California cannot be landed in California during the 30 day fair start period.

**Q: If the fair start provisions of Fish and Game Code section 8279.1 are in effect due to a delay in the opening of the California season, can a person act as a crewmember on a vessel in either Washington or Oregon, and then get another job as a crewmember on a vessel in the California fishery when the season opens?**

A: If the crewmember does not hold a Dungeness crab vessel permit, there would be no prohibitions against his/her taking a job as a crewmember on different vessels in both Washington or Oregon and California. If the crewmember holds a Dungeness crab vessel permit and takes, possesses onboard, or lands Dungeness crab in both states in violation of Fish and Game Code section 8279.1, his/her Dungeness crab vessel permit would be revoked. (Fish & G. Code, § 8279.1, subd. (e).)

**Q: For a person who owns more than one vessel – if one vessel takes, possesses onboard, or lands Dungeness crab in Oregon or Washington can the second vessel immediately deploy in California as soon as the season opens?**

A: No. If the second vessel is immediately deployed in California, it would be in violation of Fish and Game Code section 8279.1. Section 8279.1, subdivision (b) states that “a person shall not take, possess onboard, or land Dungeness crab for commercial purposes from **any vessel** in ocean waters south of the border between Oregon and California . . .” (emphasis added). If a person owns more than one vessel, and takes, possesses onboard, or lands Dungeness crab with any vessel in Oregon or Washington, the 30 day fair start provisions of section 8279.1 would apply to any fishing activity in California.

**Q: Does the January 15 mandatory season opener in Fish and Game Code section 8276.2, subdivision (c) apply to this emergency delay?**

A: No. There is no requirement that the commercial season open by January 15 when a fishery closure has been implemented due to a public health risk. Delays proscribed by Fish and Game Code section 8276.2, subdivision (c) are in effect when results from quality testing indicate that crabs are soft-shelled or of low quality. This emergency delay was implemented under Fish and Game Code section 7715 and is due to high levels of domoic acid in Dungeness crab that pose a significant risk to public health as determined by the Director of the Office of Environmental Health Hazard Assessment (OEHHA), in consultation with the Director of the California Department of Public Health (CDPH). (See Fish & G. Code, § 7715, subd. (a); Cal. Code Regs., tit. 14, § 131, subd. (a).) In accordance with the Fish and Game Code and the emergency regulations, the commercial season will open when the Director of OEHHA, in consultation with the Director of CDPH, determines that a health risk no longer exists and notifies the Director of Fish and Wildlife with a request to reopen the commercial fishery. (See Fish & G. Code, § 7715, subd. (b); Cal. Code Regs., tit. 14, § 131, subd. (b).)

**Q: When the California season opens, will there be an 18 hour or 64 hour gear setting period in effect?**

A: Pursuant to Fish and Game Code section 8283, crab traps may be set and baited 64 hours in advance of the opening date of the season in Fish and Game Districts 6, 7, 8, and 9; and 18 hours in advance of the season in all other districts. No other attempt to take or possess Dungeness crab may be made during this time.

**Q: Can a person use a vessel to deploy traps in Washington or Oregon, and then use that same vessel to take, possess onboard, or land Dungeness crab in California immediately upon the season opening?**

A: No. A person who possesses a Dungeness crab vessel permit and deploys traps in Washington or Oregon would be considered to have taken crab, and therefore the 30 day fair start provisions of section 8279.1 would apply to any fishing activity in California. Fish and Game Code section 8280.7 describes the arrangement in which a person who has a Dungeness crab permitted vessel may contract with another vessel for help in deploying traps. A vessel may be contracted to deploy traps if (1) the vessel is registered pursuant to Fish and Game Code section 7881; (2) the vessel does not have a Dungeness crab vessel permit; (3) the vessel does not have any Dungeness crab trap retrieval equipment on board; and (4) the vessel shall not at any time have Dungeness crab on board. (Fish & G. Code, § 8270.7.)