



## 15 Day Continuation Notice of California Notice Register 2020, No. z2020-0505-11

### Re: Risk Assessment and Mitigation Program (RAMP): Commercial Dungeness Crab Fishery

July 17, 2020

The California Department of Fish and Wildlife (Department) has published the Notice of Proposed Action to add Section 132.8 to Title 14, California Code of Regulations (CCR). The Office of Administrative Law (OAL) published the draft proposed regulations in the California Regulatory Notice Register on May 15, 2020, No. 20-Z: File No. z2020-0505-11, and were available for a 45-day public comment period through June 29, 2020 (the “Original Proposed Package”). A public hearing was held on June 29, 2020. This letter provides notice of a 15-day comment period on changes to the Original Proposed Package.

**This 15-day comment period allows for public comments only on the Amended Initial Statement of Reasons (ISOR), as indicated by bolded double strikeout and bolded double underline to the Original Proposed Package, not on the aspects of the package that were already noticed during the initial 45-day period.** The comments and respective responses from the 45-day period, and comments with responses from the 15-day period, will be published with the Final Statement of Reasons (FSOR), around the time the Department would adopt the revised regulations, and before the planned effective date of November 1, 2020.

The following changes to the Original Proposed Package address public comments and concern related to how the RAMP would be implemented. The changes for the Section 132.8 regulatory text and Amended ISOR are described as follows (for every change to the regulatory text, the Amended ISOR has been updated with language justifying the change):

- 1) Include a reference to the Ocean Protection Council’s Strategic Plan for 2020-2025 on page 5 of the Amended ISOR under the discussion for subsection 132.8(a)(1).
- 2) Revise subsection (a)(4)(A) language by removing, “or identifiable by the department by clearly visible gear markings” to rely solely on National Oceanic Atmospheric Administration (NOAA) confirmation process for entanglements, and not the Department.
- 3) Revise subsection (a)(4)(C) language by changing “any additional data” to “relevant fishery information.”
- 4) Add new subsection (a)(4)(D) that reads: “An entanglement determined, either at time first reported or through NOAA final determination of injury or mortality

(pursuant to subsection (a)(9) below), to have occurred after the death of the Actionable Species will not be deemed a Confirmed Entanglement.”

- 5) Add new subsection (a)(4)(E) that reads: “In the event a Confirmed Entanglement involves gear from multiple fisheries, and NOAA identifies the fishing gear resulting in the initial entanglement, the entanglement will be attributed to that fishery. If the fishery resulting in the initial entanglement cannot be determined, the entanglement will be attributed equally among the fisheries.”
- 6) Revise subsection (a)(5) to add new language, “The 100-fathom contour is defined by approximating a particular depth contour by connecting the appropriate set of waypoints adopted in Federal regulations and published in Title 50, Code of Federal Regulations Part 660, Section 660.73 (Revised December 12, 2018), incorporated by reference herein.”
- 7) Revise subsection (a)(6) to remove “November 15 through July 15,” and add “any period of time in which it is lawful to deploy California Commercial Dungeness Crab gear.”
- 8) Revise subsection (a)(7)(A) Fishing Zone 1 southern boundary from Horse Mountain (40° 05' N. latitude) to Cape Mendocino (40° 10' N. latitude).
- 9) Revise subsection (a)(7)(B) Fishing Zone 2 northern boundary from Horse Mountain to Cape Mendocino.
- 10) Revise subsection (a)(7)(E) Fishing Zone 5 southern boundary from the U.S./Mexico border to Point Conception (34° 27' N. latitude).
- 11) Add new subsection (a)(7)(F) Fishing Zone 6: From Point Conception to the U.S./Mexico Border.
- 12) Revise subsection (a)(7) lettering and Fishing Zone numbering (changing former F to G), and replace Figure 1 Map of Fishing Zones with an updated map.
- 13) Revise subsection (a)(9) by changing the sentence from reading “The Impact Score is determined by evaluation of evidence available to the department and is subject to revision after NOAA’s final determination of injury or mortality” to reading “The Impact Score is determined by evaluation of evidence available to the department and will be revised if NOAA provides a final determination of injury or mortality pursuant to NMFS Policy Directive 02-238-01 -Process for Injury Determinations (Issued January 27, 2012, renewed July 2014), incorporated by reference herein.”
- 14) Revise subsection (a)(10) to add new language after the three Actionable Species “...within Fishing Grounds between Point Conception and the California/Oregon Border.”

- 15) Revise subsection (a)(12) by changing the definition of “Risk Assessment” from reading “...potential entanglement of Actionable Species with commercial Dungeness crab fishing gear by the Director and Working Group” to reading “...potential entanglement of Actionable Species with California commercial Dungeness crab gear by the Director.”
- 16) Add clarification of Working Group role on page 14 of the Amended ISOR under the discussion for subsection 132.8(b).
- 17) Revise subsection(b)(2) language to add “a minimum” before “48 hours-notice” and add the language “The notification will also provide all non-confidential data under consideration by the Department.”
- 18) Revise subsection (b)(3) to clarify the role of the Working Group in the RAMP process, and amend language by removing “of the Working Group assessing entanglement risk and management response.”
- 19) Delete references to the Department determining fishery origin of gear, consistent with changes to subsection (a)(4)(A) on page 17 of the Amended ISOR under the discussion for subsection 132.8(c)(1).
- 20) Update Impact Scores based on a new Document Supporting Regulation Change (NMFS West Coast Region Protected Resources Division; NMFS 2020)
  - a. Revise subsection (c)(1)(A)(1)(a) Impact Score from 0.70 to 0.75
  - b. Revise subsection (c)(1)(A)(1)(b) Impact Score from 0.35 to 0.38
- 21) Revise subsection (c)(1)(A)(2)(a) to add “California” before “commercial Dungeness crab fishing gear” to clarify how non-California commercial Dungeness crab gear is to be considered.
- 22) Revise subsection (c)(1)(B)(1), (2), and (3) to remove “minimum of a” before “Fishing Zone closure” to clarify that closures are by default linked to defined Fishing Zones.
- 23) Revise subsection (c)(1)(C)(1), (2), and (3) by changing “the Direct will consider” with “the Director shall implement” to provide assurance of measures to be taken.
- 24) Revise subsection (c)(2) to add “for the purposes of determining Marine Life Concentrations in this subsection (c)(2)” and “Surveys shall be conducted systematically across a full range of Fishing Zone depths when weather and visibility conditions enable accurate detection of Actionable Species. A survey is only current through the first Risk Assessment immediately following the survey.” Revisions also add capitalization to Marine Life Concentrations.
- 25) Revise subsection (c)(2)(A)(4)(a) to change Fishing Zone exclusion from 6 to 7 and replace “Fishing Zone closure” with “Fishing Season delay.”

- 26) Revise subsection (c)(2)(A)(4)(b) revise Fishing Zone exclusion from 6 to 7, remove “minimum” and replace “Fishing Zone closure” with “Fishing Season delay.”
- 27) Revise subsection (c)(2)(B)(1) by removing “the Fishing Season shall close April 1 statewide and remain closed for the remainder of the normally scheduled season” and replace with “for each Fishing Zone, the Director shall implement a management action as described in subsection (e) for the Zone(s).”
- 28) Revise subsection (c)(2)(B)(2)(a), (b), and (c) by removing “minimum of a” prior to “Fishing Zone” and update the Fishing Zone exclusion from 6 to 7 for c)(2)(B)(2)(a) and (b).
- 29) Revise subsection (d) by removing “based on statistically valid data” in response to public comment due to lack of clarity of level of significance, focusing on best available science made available to the Department.
- 30) Revise subsection (d)(1) by changing the language from “Working Group recommendation based on its independent Risk Assessment of the factors described in subsection (c) as well as best available science related to considerations identified in this subsection” to “Working Group management action recommendation and best available science made available to the department related to considerations identified in this subsection.”
- 31) Revise subsection (d)(7) to correct capitalization of ‘dynamics.’
- 32) Revise subsection (d)(9) by removing “such as” and adding “including but not limited to” as well as adding “La Niña” to clarify the listed factors of examples of ocean conditions.
- 33) Revise subsection (d)(11) with capitalization of “Marine Life Concentrations” and adding “over the course of the current Fishing Season” to clarify Director’s use of most recent survey data.
- 34) Revise subsection (e) by replacing “the Director may” with “the Director shall” implement a certain measure.
- 35) Revise subsection (e)(1) to replace “encourage volunteer efforts” with “employ voluntary efforts and/or measures to reduce the risk of entanglements (i.e. best fishing practices) and...”
- 36) Revise subsection (e)(2) to change “660.74” to “660.73” to reflect incorporation by reference of the correct maximum fishing depths needed for this regulation.
- 37) Revise subsection (e)(3) to change the language from “The Director may decrease the number of vertical lines or amount of gear (e.g., number or percentage of traps) an individual permit holder can use based on fishing activity reported pursuant to (g)(1), statewide, or within any or all Fishing Zone(s)” to

“The Director may decrease the number of vertical lines or amount of gear (e.g., number or percentage of traps) an individual permit holder can use such that there will be a reduction in the total number of lines in use. The Director will determine the reduction amount based on the most recent information provided pursuant to subsection (g). Gear reduction may occur statewide, or within any or all Fishing Zone(s).”

- 38) Revise subsection (f) by adding a new subsection (D) Duration of management action, and re-letter the previous subsection (D) to (E).
- 39) Revise subsection (g)(1) from “all members of the Fleet” to “vessels”, and correct capitalization of Department.
- 40) Revise subsection (g)(2) by splitting the section into two parts (A), changing “members of the Fleet” to “all vessels” and adding a new subsection (B). New subsection (g)(2)(B) expands the existing proposed requirement for electronic reporting in subsection 132.8(g)(2)(A) for depth constraint or other management action, and applies it to the rest of the fleet. “By the 2023-24 Fishing Season, all vessels will be required to carry an electronic monitoring device that is capable of tracking and recording vessel location using GPS coordinates at a frequency of no less than once a minute during fishing operations when participating in the California commercial Dungeness crab fishery. Data shall be made available to the Department within 72-hours of request.”
- 41) Adding a new subsection to (g)(4), “(4) All information collected pursuant to this subsection (g) shall remain confidential to the extent permitted by law. Insofar as possible, the information shall be compiled or published as summaries, so as not to disclose the individual record or business of any person.”
- 42) Revise subsection (h)(1)(B)(1) to add new language, “If “ropeless,” the gear must be used with software that enables Department law enforcement and other fishing vessels within ¼ mile of the gear to identify the location of the gear at all times when it is deployed.”
- 43) Revise subsection (h)(1)(B)(2) to change the language from “Retrievability: means of retrieval, including description of release mechanism, equipment and any specialized training needed to deploy and/or retrieve Alternative Gear, mechanism to address equipment malfunction, safeguards to prevent gear loss number of successful deployments and retrievals of not less than 90%. to “Retrievability: means of retrieval, including description of release mechanism, equipment and any specialized training needed to deploy and/or retrieve Alternative Gear, description of safeguards and procedures to-minimize gear loss and ghost gear, with gear loss rates of no more than 10%. Gear must include a back-up release capability so it will surface in the event of an equipment failure and must include a gear recovery plan if the gear does not rise to the surface.”

- 44) Revise subsection (h)(1)(B)(3) to change the language from “Ability to Identify: means of Alternative Gear identification, including description of mechanism for the department to identify Alternative Gear to permit holder both remotely when submerged, and at the surface” to “Ability to Identify: means of Alternative Gear identification, including the method or description of the mechanism required for the department to identify Alternative Gear to permit holder both remotely when submerged, and at the surface.”
- 45) Revise subsection (h)(1)(B)(5) to add new language “department law enforcement must be able to retrieve and redeploy the gear.”
- 46) Revise subsection (h)(1)(C)(3) removing “number of successful deployments and retrievals of not less than 90%” and replacing with “gear loss rates of no more than 10%.”
- 47) Revise subsection (h)(1)(C)(6) for capitalization and remove “Division.”
- 48) Revise subsection (h)(1)(D)(5) by replacing “or” with “and.”
- 49) Revise subsection (h)(2) by adding capitalization to “Fishing Season” and replacing “state waters” with “Fishing Grounds.”

Further, response to comments received from the Department of Finance (DOF), the Department has updated the Economic and Fiscal Impact Statement (form STD 399) and Addendum to the STD 399. The comments focused primarily on expansions from the Standardized Regulatory Impact Assessment (SRIA) and comments from DOF review of the Supplement to the SRIA (Appendix B to the Original ISOR). The changes center on the Department’s judgement of the most likely Scenario (as outlined in the SRIA), disclosing assumptions behind range of costs and benefits with different triggers and mitigation actions, as well as clarifying statewide costs/ total economic impact. The Department also proposes expanding the new electronic reporting requirement under subsection 132.8(g)(2)(B) to be phased in for all vessels for 2023-2024 fishing season, therefore those costs are estimated and presented in the amended STD 399 and Addendum.

Any interested person, or his or her authorized representative, may submit written comments on the changes to the Original Proposed Package to the Department. All written comments must be received by the Department via e-mail or mail, no later than **11:59 p.m. on Monday, August 3, 2020**, to the contact as follows:

California Department of Fish and Wildlife, Marine Region  
Attn: Ryan Bartling, Sr. Environmental Scientist  
3637 Westwind Blvd, Santa Rosa, CA  
Email: [WhaleSafeFisheries@wildlife.ca.gov](mailto:WhaleSafeFisheries@wildlife.ca.gov)

**A public discussion of the proposed amendments will be held at 10:00 a.m. on**

Risk Assessment Mitigation Program (RAMP) 15-day Continuation Notice

July 17, 2020

Page 7

**August 3, 2020 via teleconference.** Meeting details will be made available on the Whale Safe Fisheries Page: <https://wildlife.ca.gov/Conservation/Marine/Whale-Safe-Fisheries>

**Please direct all questions on the substance of the proposed changes to the Original Proposed Package to the contact person listed above.**

Additional information and all associated documents may be found on the Department of Fish and Wildlife website at: <https://wildlife.ca.gov/Notices/Regulations/RAMP>.