

**TITLE 14. DEPARTMENT OF FISH AND WILDLIFE
NOTICE OF PROPOSED CHANGES IN REGULATION**

April 5, 2024

NOTICE IS HEREBY GIVEN that the Department of Fish and Wildlife (Department), proposes amendments to Section 132.8 to Title 14, California Code of Regulations (CCR), for the Risk Assessment Mitigation Program (RAMP) 2024 program revision affecting the commercial Dungeness crab fishery.

RAMP is a dynamic management framework that assesses and manages marine life entanglement risk associated with the Dungeness crab fishery. The program specifically provides for delegation to the Department’s Director informed management responses to reduce and mitigate entanglement risk for humpback whales, blue whales, and Pacific leatherback sea turtles (collectively “Actionable Species”). This proposal modifies the RAMP regulations that originally went into effect November 1, 2020 based on four seasons’ worth of implementation experience, as well as feedback from the California Dungeness Crab Fishing Gear Working Group (Working Group) and other stakeholders, and updated guidance from the National Marine Fisheries Service (NMFS).

FGC Section 8276.1 provides the Department with the authority to adopt and implement RAMP, and empowers the Director of the Department (Director) to restrict the Dungeness crab fishery under RAMP.

The proposed RAMP amendments contain the following summarized changes:

1. Adjust definition of Confirmed Entanglement through removal of Impact Score, and how it is calculated,
2. Clarify management areas under RAMP,
3. Adjust decision making considerations and timing for Management Actions,
4. Clarify reporting requirements and requirements for electronic monitoring,
5. Provide specifications for Dungeness crab fishing gear identification, and
6. Clarify types of limitations or conditions in authorizing Alternative Gear

After consideration of all public comments, objections, and recommendations regarding the proposed action, the Department may adopt the proposed regulations.

PUBLIC HEARING

A virtual public hearing is scheduled by as follows:

Date: Tuesday, May 21, 2024
Time: 10 a.m. to 12 p.m. (meeting details will be made available on the Whale Safe Fisheries Page: wildlife.ca.gov/Conservation/Marine/Whale-Safe-Fisheries)
Location: Teleconference and Webinar

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments on the proposed action to the Department. All written comments must be received by the Department via mail, or e-mail, no later than **Tuesday, May 21, 2024**, to the contact as follows:

California Department of Fish and Wildlife
Regulations Unit
Attn: Chelle Temple-King, Sr. Environmental Scientist
P.O. Box 944209
Sacramento, CA 94244-2090
Email: Regulations@wildlife.ca.gov

AUTHORITY AND REFERENCE:

Authority: Section 8276.1, Fish and Game Code.

Reference: Sections 8276, 8276.1, 8276.5, 9002.5, 9008, Fish and Game Code.

Informative Digest/ Policy Statement Overview

Unless otherwise specified, all section and subsection references in this document are to Title 14 of the California Code of Regulations (CCR). Furthermore, unless otherwise specified, “Dungeness crab fishery” refers to the California commercial Dungeness crab fishery.

The California Department of Fish and Wildlife (Department) adopted the Risk Assessment and Management Plan (RAMP) regulation in 2020 to reduce and mitigate the entanglement risk for humpback whales, blue whales, and Pacific leatherback sea turtles (Actionable Species) posed by the Dungeness crab fishery. Under RAMP, management responses will trigger whenever a confirmed entanglement of Actionable Species occurs, or the observed number of an Actionable Species reaches specific thresholds within any of the seven prescribed management area (Fishing Zone) along the state’s coast. The Director of the Department (Director) will also take management actions whenever the number of confirmed entanglements for an Actionable Species reaches specific statewide thresholds. Under several of these conditions, the Director is required to delay the fishery or close it early. Once the Dungeness crab fishery is closed within a Fishing Zone, only specific fishing gear designed to reduce entanglement risk that have been approved by the Department (Alternative Gear) may be used in such zones.

It has been over three years since the RAMP regulation, codified as Section 132.8, first went into effect, and it has since been implemented for three fishing seasons for the Dungeness crab fishery. The amendments proposed here are based on the Department’s experience implementing Section 132.8 as well as feedback from stakeholders and federal counterparts.

1. Definition and calculation for Confirmed Entanglement:
 - a. Clarify that an Actionable Species entanglement involving California commercial Dungeness crab gear observed anywhere will be considered as a Confirmed Entanglement (subsection (a))
 - b. Clarify that an Actionable Species entanglement in Unknown Fishing Gear will count as a Confirmed Entanglement only if it is reported from a Fishing Zone off California (subsection (a))
 - c. Clarify that Confirmed Entanglements will be assigned based on information provided by the NMFS, and will be made when sufficient data are available, but no longer than on a quarterly basis (subsection (a))
 - d. Remove provision pertaining to Confirmed Entanglements involving multiple fisheries (subsection (a))
 - e. Simplify Confirmed Entanglement’s calculation by repealing the concept of Impact Score (subsections (a) & (c))
 - f. An unidentifiable gear will be considered as Unknown Fishing Gear unless the

gear in question is entirely inconsistent with a Dungeness crab trap (subsection (a))

- g. Phase out assignment of Confirmed Entanglements in Unknown Fishing Gear to the Dungeness crab fishery based on a new line marking requirement (subsection (c) & (h))

2. Management areas under RAMP:

- a. Specify that Fishing Zones extend to all “Ocean Waters” within the specified area (subsection (a))
- b. Remove the concept of “Fishing Grounds” and apply the 100-fathom boundary to only the Marine Life Concentration surveys (subsections (a), (c), and (d))
- c. Defines “Ocean Waters” (subsection (a))
- d. Remove Fishing Zones 6 & 7 (subsection (a))

3. Management Actions:

- a. Move the start time of risk assessments from November 1 to October 15 and discontinue assessment once a Fishing Zone has been closed for the rest of the season (subsection (b))
- b. Clarify that a management action will remain in effect until it is revoked (subsection (b))
- c. If a Fishing Zone is closed for the season, only approved Alternative Gear can be used in that zone for the rest of the season (subsections (b) & (e))
- d. Institute revised Confirmed Entanglement thresholds to align with ESA and anticipated requirements under an ITP (subsection (c))
- e. The validity of a survey for risk assessment no longer expires after a specified period of time (subsection (c))
- f. Elevate a management action’s effectiveness at minimizing entanglement to its primary goal (subsection (d))
- g. Consolidate the spatial data on the Actionable Species under one subsection and explicitly allow the consideration of data in areas adjacent to Fishing Zones (subsection (d))
- h. Extend consideration of entanglement pattern from only the ongoing calendar year and Fishing Season to prior years and seasons as well while crafting management actions (subsection (d))
- i. Remove Fleet Advisory as a management action (subsection (e))
- j. Add restrictions to the amount of surface gear and mandatory active tending of crab gear as a possible management actions (subsection (e))
- k. Update fishery closure requirements by clarifying that all fishing gear must be

removed from a closed Fishing Zone by the effective date of the fishery closure; crabs from delayed or closed zones cannot be taken, possessed, sold, or landed, with special stipulations for crabs taken from these zone(s) right before closure (subsection (e))

4. Reporting

- a. Further clarify that all Dungeness crab permit holders, whether they are using traditional or Alternative Gear, must submit the biweekly report when they have gear in any Fishing Zone(s); reports are due on the first and sixteenth of each month, and may be submitted through a Department provided form in addition to email or text (subsection (g))
- b. Biweekly report now includes the due dates and number of newly lost traps known to each permit holders (subsection (g))
- c. Requiring an end-of-season report due two weeks following the submission of each permit holder's last biweekly report of a Fishing Season documenting the traps lost during that season and their associated buoy tags (subsection (g))
- d. Update requirements for electronic monitoring systems by commercial Dungeness crab vessels when RAMP management measures are in place; monitoring systems must be able to track vessel accurately without interruption; tampering is prohibited, and any interruption must be reported and corrected before fishing can resume (subsection (g))

5. Dungeness crab fishing gear identification

- a. Each main buoy must be legibly marked to identify the fishery and the operator (subsection (h))
- b. Requiring trap line marking to identify the gear belonging to the Dungeness crab fishery (subsection (h))

6. Alternative Gear

- a. Further stipulate the types of limitations or conditions that may be attached to the authorization of an Alternative Gear (subsection (i))

Benefits of the Proposed Regulations

This proposal clarifies existing RAMP language, particularly those pertaining to Confirmed Entanglements, and improves the program's enforceability. The proposal also promotes compliance with ESA, simplifies the geographic aspect of the program, improves the efficiency and predictability of the risk assessments, improves program flexibility by introducing two new management tools, improves data collection by updating the biweekly reporting requirement, implements new marking requirements to improve information quality and help phase out the use of Unknown Fishing Gear, improves the integrity of the electronic monitoring program, and finally to build out the conditions for Alternative Gear authorization and use.

Consistency and Compatibility with Existing Regulations

The Legislature has delegated authority to the Department to adopt regulations establishing criteria and protocols to evaluate and respond to risk of marine life entanglement in the commercial Dungeness crab fishery (Section 8276.1 of the Fish and Game Code). The Department has reviewed existing regulations in Title 14, CCR and finds that the proposed regulations are neither inconsistent nor incompatible with existing State regulation. Department staff have searched the CCR and has found that other than Section 132.8, no other State regulations implement measures to reduce marine life entanglement in commercial Dungeness crab fishing gear.

DOCUMENTS INCORPORATED BY REFERENCE

Title 50, Code of Federal Regulations (CFR) Part 660, sections 660.71 through 660.73:

Section 660.71, CFR (last revised March 1, 2023)- Latitude/longitude coordinates defining the 10-fm (18-m) through 40-fm (73-m) depth contours, available from:

https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=8fe553043a533fe4f08397bdb91bef85&mc=true&r=PART&n=pt50.13.660#se50.13.660_171

Section 660.72, CFR (last revised December 1, 2023)-- Latitude/longitude coordinates defining the 50 fm (91 m) through 75 fm (137 m) depth contours, available from:

https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=8fe553043a533fe4f08397bdb91bef85&mc=true&r=PART&n=pt50.13.660#se50.13.660_172

Section 660.73, CFR (last revised December 1, 2023)- Latitude/longitude coordinates defining the 100 fm (183 m) through 150 fm (274 m) depth contours, available from:

https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=8fe553043a533fe4f08397bdb91bef85&mc=true&r=PART&n=pt50.13.660#se50.13.660_173

IMPACT OF THE REGULATORY ACTION/RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The Department does not anticipate that the proposed action will have significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states because west coast states with commercial Dungeness crab fisheries are developing or have similar mitigation programs in effect. The proposed changes provide improved enforceability and clarification of existing regulations that aid in the continued preservation of marine resources, while endeavoring to minimize interruptions to commercial harvest opportunities and thus, the prevention of adverse economic impacts.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Department does not anticipate adverse impacts on the creation or elimination of jobs within the state given that the proposed amendments are to the existing RAMP program, with improvements that include consideration of other

management actions as options. The Department does not anticipate adverse impacts on the creation of new business, the elimination of existing businesses or the expansion of businesses in California. The proposed changes are to provide improved enforceability and clarification of existing regulations that are not anticipated to change the annual level of harvest activity, and thus the demand for goods and services related to marine resource harvest that could impact the demand for labor, nor induce the creation of new businesses, the elimination, nor the expansion of businesses in California. The Department does not anticipate any benefits to the health and welfare of California residents or to worker safety. The Department anticipates benefits to the State's environment indirectly through improved accuracy in information collected for the betterment of marine resources management, which improves fish stocks and the marine ecosystems.

(c) Cost Impacts on a Representative Private Person or Business:

The Department is aware of cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Dungeness crab permit holders are anticipated to have some additional gear-marking and EM costs, and some increases in reporting time (see STD399 and Addendum).

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

(e) Nondiscretionary Costs/Savings to Local Agencies: None.

(f) Programs Mandated on Local Agencies or School Districts: None.

(g) 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

(h) Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

The proposed regulation may affect small business. It is reasonable to presume that the permit holders and a large share of businesses that support the Dungeness crab fleet harvest and distribution are small businesses. New compliance requirements and other changes to the regulations would increase the success of RAMP to achieve its goal in trying to avoid entanglement by Actionable Species. In light of the available evidence, Department staff could not identify reasonable alternatives that would lessen adverse impact on small business and still achieve the goals of this proposal.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.”

AVAILABILITY OF RULEMAKING DOCUMENTS AND CONTACT PERSONS

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout format can be accessed through the Department website at <https://wildlife.ca.gov/notices/regulations/>.

The proposed text (the “express terms”) of the regulations, as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review at 715 P Street, Sacramento, CA 95814 (17th floor). The rulemaking file will be available electronically upon request by contacting the Department at Regulations@wildlife.ca.gov. Inquiries concerning the regulatory process or requests for documents should be directed to:

California Department of Fish and Wildlife, Regulations
Attn: Chelle Tempe-King, Sr. Environmental Scientist
P.O. Box 944209
Sacramento, CA 94244-2090
916-902-9223
Email: Regulations@wildlife.ca.gov

Inquiries concerning the subject matter or substance of the proposed action should be directed to:

California Department of Fish and Wildlife, Marine Region
Attn: Ryan Bartling, Sr. Environmental Scientist Supervisor
3637 Westwind Blvd
Santa Rosa, CA 95403
Phone: (415) 761-1843
Email: Whalesafefisheries@wildlife.ca.gov

As of the date this notice is published, the rulemaking file consists of:

1. STD Form 400: Notice of Proposed Action
2. Initial Statement of Reasons
3. Proposed Text of the Regulation: Amendment of Section 132.8, Title 14, CCR and Documents Incorporated by reference
4. Economic and Fiscal Impact Assessment (Form STD 399) and addendum
5. Documents or Reports Supporting the Proposed Regulation Change:

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The rulemaking file is available online at:

<https://wildlife.ca.gov/notices/regulations/ramp2024>

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received by the Department, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Chelle Temple-King (see above for further contact information). The Department would accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by checking the website at the link provided above or contacting Chelle Temple-King (see above for further contact information).