

WHALE SAFE FALL HARVEST VIA MODIFIED COMMERCIAL CRAB GEAR

(AKA The Scoop Pot)

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OVERVIEW

On October 3rd, 2017, a complaint was filed by the Center for Biological Diversity against the California Department of Fish and Wildlife concerning unsafe harvest methods of California Commercial Dungeness Crab and the interaction the harvest methods/seasons have on ESA listed animals. Case no. 3:17-cv-05685-MMC that was brought before Hon. Maxine Chesney in the US District Court for the Northern District of California, was ultimately settled on March 26, 2019. In Exhibit A of that settlement agreement, Section A.III.e.ii clearly states the following:

“The Department will amend existing regulations or finalize new regulations by November 1, 2020, that allow alternate gear, including ropeless gear, that meets the enforcement criteria to be used in any area closed to commercial Dungeness crab fishing to protect whales or sea turtles.”

To date of this proposal, 10-12-2022, there have been zero authorized amendments of any regulation by the Department to provide opportunity to harvest for our commercial crab fleet.

The settlement goes on to state the following:

“Once risk factors no longer indicate to the Director an elevated entanglement risk, or if the Director determines that the management actions are not appropriate or protective of marine life, the Director, with consultation with the Working Group, shall remove any management restriction.”

With respect to the above portions of the settlement agreement, we are requesting that the Department immediately consider the proposal outlined in this document. The information and method of safe harvest outlined in this document is meant for **“alternative”** method of harvest **ONLY** during periods that RAMP triggers and Director discretion would otherwise keep the traditional gear season closed. Once those triggers are no longer met, the expectation is that the traditional gear season would commence, and the alternative method of harvest outlined in this proposal would cease immediately.

The Objective of Our Proposal

- Provide opportunity for fall harvest in some capacity for a fleet that would otherwise be kept off the water
- Identify methods of harvest that represent a substantially reduced threat of entanglement
- Identify methods of safe harvest that appeal to a vast number of permit holders
- Identify practical means of enforcement in alternative harvest methods
- Create opportunity without a taxing demand of expensive and unproven equipment

OUR PROPOSAL (THE COMMERCIAL SCOOP POT)

We believe that we can execute a lucrative and appealing method of fall harvest while virtually eliminating the risk of Humpback entanglements with a very simple modification

to our existing crab gear. Every crab trap with a top cross bar contains two panels of woven stainless steel wire. One panel represents a hinged lid for dumping the contents of the pot, and the other panel is a fixed lid that completes the enclosure and makes the device a trap where crab can't escape once they enter through the tunnels and triggers. If we remove the fixed lid from the trap, the crab are free to escape and the device is no longer a trap. The lid panel will remain opposite the bridle and will create a "scoop" with a collection effect as the device leaves the bottom and begins its ascent to the surface. Any actively feeding crabs will be tipped into the "collection basket" of the Scoop Pot when it is pulled up from the surface.

Unlike a new gear type (pop up, hoop nets, long line, etc), we believe that the Director alone has the discretion to adopt the aforementioned amendments to existing gear when RAMP trigger are met without the burden of pursuing legislative alternatives.

Why Not an EFP?

The idea of an EFP has a place and time. In this fishery, that time is in the spring after most of the boats have stacked out and quit crabbing for the season. We cannot execute an EFP fishery that precedes the traditional crab season because it gives an unfair advantage of harvest to the few while keeping the many sidelined from participating in the harvest of a virgin biomass. Once the traditional crab season has ended, the interest in an EFP will be small enough that every interested party should be able to sign on to the EFP. The method outlined in this proposal is small scale harvesting and works only on a virgin biomass. It would not be lucrative enough for participants to engage in after the traditional gear season has completed.

The Proposed Strategy To Execute a Fall Scoop Pot Fishery

Every permit holder will be able to apply for a distinct set of tags identifying participation in the amended gear fishery while waiting for the closure of traditional gear to be lifted. Allocation of tags will be as follows:

- Tier 6-7: 40 tags
- Tier 4-5: 50 tags
- Tier 1-3: 60 tags

Because the fleet is modifying their existing trap gear, the size of the Scoop Pot will be limited to 42" in diameter. 1 half of the top diameter of the pot will have to be left free and clear of mesh. The other half of the top diameter will be allowed to have a mesh closure to create the scoop. This mesh closure can be fixed or hinged to act as a door since the pot will break the surface with the crab being collected in the basket of the

scoop. Escape rings will be allowed since they are currently mandatory on existing gear, but the advantages of these escape rings are moot as even the smallest pot (36") will have 509 square inches of open escapement from the pot.

Neutral buoyancy line will be required on the top 15 fathoms of the vertical line at a minimum. Floating line may be used underneath the 15 fathoms of top shot, but no line weight will be allowed. ***We believe that line weights create pinch points that could result in possible entanglement and should be eliminated from the fishery all together.***

Every vertical line will be marked with a single buoy of any color scheme the fisherman chooses and will include no more than 1 fathom (six feet) of trailer rope that will be connected to a small bright yellow egg float indicating that it is Scoop Pot gear. The main buoy must have the L# clearly marked and one or the other buoys must include the vessel name. The uniformity in surface gear structure will make identification possible in the event of an entanglement.

All gear must be tended to within 4 hours of deployment and the licensed fisherman must remain with the gear while it is soaking. If the fisherman wants to anchor up, drift for more than 4 hours, or return to port, they must do so with their full allotment of gear on the boat.

Boats will be limited to the amount of gear that they can safely put on deck regardless of tier allotment. No gear can remain unattended at any time, so setting a partial allotment and returning to port for the balance would be a violation of the rule requiring the fisherman to remain with the gear.

How Does the Scoop Pot Lower the Risk of Entanglement?

The risk of entanglement is a complicated formula between current Humpback abundance on the fishing grounds and the number of vertical lines that any given animal is likely to come across. We cannot change the abundance factor of the equation, but we can change the number of vertical lines available for interaction. We'd like the Department to consider the idea of what we call ***Vertical Line Hours*** (VLH). According to data collected by the Department via bi-weekly reporting in 2022, it was observed that 90 permits reported actively fishing in Zone 3 during the first 6 weeks of the 2021-2022 season. Those 90 permits deployed a reported 34,239 crab traps on opening day. Those traps remained in the water for 24 hours each day during that 6 week period. Those 34,239 traps represented **821,736 Vertical Line Hours (VLH) each day.**

In the execution of the Scoop Pot fishery outlined above, those same 90 boats would receive an allotment of around 4500 tags. Even if every permit participated, and did so

every day (weather would say otherwise), they would only be able to have gear in the water for around 12 hours of the day as they would need to move gear, sleep, refuel, unload, etc. 4500 Scoop Pots with vertical line time of 12 hours per day calculates out to **54,000 line hours per day**. This is just 6.57% of the VLH of the current traditional crab fishery. **This equates to a 93.43% reduction in opportunity for a whale to become entangled!**

We must point out that our assessment of VLH reduction is grossly conservative. We know that not every boat is going to participate in the amended gear portion of the season. We also know that weather plays a vital factor in fishing opportunity and that fishing every day is not realistic in the actual calculations of reduction. For that reason, the actual number of reduced VLH is in excess of 95+%.

Preventing Effort Shift

What we don't want to see is an active effort shift from one area into another, especially if we are trying to execute a safe version of a fishery around whale abundance. It is for this reason, that while any active permit holder can apply for the Scoop Pot tags, any participation in the Scoop Pot fishery will only allow you to fish traditional gear in that same District when it opens. You will be allowed to fish another district with traditional gear, but only after 30 days of the official start of that district's traditional gear opener.

What Prevents Dishonest Fisherman From "Long Soaking" the Scoop Pots?

The biggest advantage of the Scoop Pot is that the modification of the pot will police itself. When crab enter a trap, they have two types of bait available to them. The first is what we call "hanging bait". This is open bait that can be consumed by the crab. It gets devoured in quick fashion. The other bait is "jarred bait" and is placed to allow the trap to keep fishing after the hanging bait is gone. This is bait that is in jars with tiny slits or holes. They can smell the bait, but they can't get to it. The crabs come into the trap, but they are quickly frustrated with their inability to access the bait. Fortunately for us, traditional gear traps the crab and keeps it from moving on to pursue other options for food. In the Scoop Pot scenario, there is no trapping mechanism. Just a 509+ square inch hole for them to get frustrated and walk away through. The only way the fisherman is going to be able to catch the crab, is to pull the Scoop Pot while the crabs are actively feeding in it. If a dishonest fisherman tried to cheat the system and "long soak" the Scoop Pot, they would return to find that the money that they invested in bait and time setting the pot, was all for naught. They now must forgo the money they paid for the bait, spend time to pick up all of their empty Scoop Pots, rebait every pot and redeploy them so they can start actively fishing again. They Scoop Pots police themselves!

How Will the CDFW Enforcement Team Monitor the Practices

Enforcement officers will have a much easier time monitoring the amended Scoop Pot fishery than that of traditional gear. This in part is because the fisherman must be within the general area of any actively deployed gear. Enforcement can pull up to any buoy and get the vessel name off the yellow trailing egg float. Since the fleet is required to always monitor Ch. 16, they can get the name of the boat and hail them on the radio. If the gear is in the water, the vessel is nearby. Citations can be issued to any fisherman who isn't present when the Warden checks the gear. Enforcement officers can also do dockside checks as the amended pot in the Scoop Pot scenario can easily be verified while in port (remember, if the boat is there, so is the gear).

If there is a question about a marked Scoop Pot tag potentially having a traditional trap attached, the Warden already has the ability to bring the pot to the surface and check for compliancy. With 4500 available tags compared to the 35,000 normally deployed, spot checking becomes a much easier task.

Additional Available Enforcement Considerations (Although we don't believe them to be necessary)

- Require solar loggers for all actively fishing pots
- Require AIS vessel transmit for all active participants so that enforcement can see the boat's proximity to the actively fishing gear

Why Not Just Move to Hoop Nets?

If the proposal outlined above sounds a lot like the way the sport sector fishes hoop nets, that's because it is. Hoop nets have already been approved for use by the sport sector, but there is a real hesitancy among the fleet to use a commercial version of them. Decades of science, trial and error, and experience has led to the modern day crab trap. The angle of the tunnel, material of the pot, width of the triggers, etc. have all been developed to appeal to the Dungeness crab. These crab have been conditioned since they were the size of a quarter to seek food in these pots. For years of their life cycle, they've gone into the traps and out of the escape rings until they were finally too big to fit out them. The crab seek out these pots. Unlike most gear restrictions that are adopted to limit the exploitation of the target species, our gear modification is only in effort to mitigate the entanglement of whales. We don't have a resource problem when it comes the effectiveness of a crab trap. What we have down on the bottom works and it works well. We simply need to change the way we use them so that we keep the whales out of harm's way.

Can the Scoop Pot be Economically Viable to the Fleet?

Absolutely. For the foreseeable future, the fleet has nothing else to do but sit on the sideline and wait for the whales to leave. Historically, the fleet would go out and catch 40+ pounds per trap on their traditional opener. In this proposed fishery, this isn't going to happen. But what will happen is 2 or 3 crabs per Scoop Pot every time it gets ran. If a fisherman has 50 of them, they can realistically set them, run them, and return to port (or the anchorage) with the pots after running them 300 or more times. This translates to a potential 1500 pounds or more of crab. The limited harvest and availability during the high demand of the fall market could mean as much as \$10,000 or more for every day they are able to fish safely around the whale abundance in the fall. This represents a much needed opportunity for this devastated fleet.

The fact that every fisherman currently possesses virtually all of the equipment to make this modification makes it a very low cost investment and turn it into an alternative gear scenario and opportunity.

Management Opportunities Created by the Scoop Net

One of the biggest opportunities created by the Scoop Pot fishery is the ability to manage the fleet in real time as it pertains to unforeseen threats of entanglement. Over the years, we have seen that getting the gear out of the water because of an impending threat can take weeks to happen. This just isn't conducive to limiting our numbers of whale interactions. The Director and WWG possess the ability to call for an immediate removal of all gear within the same day. This is only possible because every boat with gear in the water is also on the grounds and capable of bringing their full allotment of gear to the dock immediately. We can go from full blown fishing to a complete stack out within hours. This is an unprecedented management tool with regards to a proactive approach in minimizing entanglement. Channel 16 can be used for notification to remove the gear, but a simple database of permit holders phone numbers can also provide a fleetwide broadcast text.

****As an added safety mechanism, we would also like to see the option for a boat to return to port with another boats gear. The traditional season does not allow for this, but an exemption to this rule in the Scoop Pot fishery would ensure that a boat with a mechanical break down could still get their pots of harm's way and avoid a citation. A simple declaration made to somebody like Christy Juhasz who manages the bi weekly reporting, can be made prior to collecting the disabled boats Scoop Pots.***

CONCLUSION

There are no parties greater than those of us that make up the commercial crab fleet that want to see resolution in the number of whale entanglements. We need this fishery to survive and are willing to adapt to make that happen. It is apparent in the settlement agreement between the Department and CBD, that the Department has been charged with finding opportunity for this fleet to harvest the resource. We have the expectation that you honor that agreement. Not only does the Department owe it to us, but they owe the availability of the state's resource to the people of California. We make our living by providing these crabs to the people who have made them a mainstay in their holiday traditions and wholeheartedly feel that this proposal brings that tradition back to the people and keeps this fleet alive. We hope that this proposal will be seriously considered and look forward to answering any questions, comments, or concerns that you may have.

Thank you for your consideration,

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