



California Whale Entanglement Discussion Dungeness Crab Fishing Gear Working Group Summary of Key Themes, March 26, 2019

The California Dungeness Crab Fishing Gear Working Group (Working Group) held an in-person meeting on March 26, 2019 to refocus the Working Group's role and reaffirm their commitment to supporting the state to carry out the Risk Assessment and Mitigation Program (RAMP) and inform the Incidental Take Permit/Habitat Conservation Plan (ITP/HCP) process.

Meeting objectives included:

- Openly discuss Working Group concerns and questions related to Working Group operations, including the litigation involving the California Department of Fish and Wildlife (CDFW), Center for Biological Diversity (CBD), and Pacific Coast Federation of Fishermen's Associations (PCFFA), and work to address concerns to facilitate the Working Group moving forward with their charge.
 - Discuss the role of the Working Group and RAMP as part of the ITP/HCP process and ensure a clear understanding of the Working Group's immediate tasks in carrying out the 2018-19 RAMP and planning for the 2019-20 RAMP.
 - Confirm Working Group participant's commitment to participate in the Working Group, discuss process for selecting and on-boarding new participants, and discuss process for revisiting Working Group charter based on lessons learned.
- Review and identify priority RAMP components that require further development based on HCP requirements to address during meeting and/or develop strategy for addressing in advance of the 2019-20 season.
- Confirm internal and external communications to share information about the Working Group's progress.

The following summary captures key themes discussed by the Working Group and its advisors during the March 26, 2019 meeting; it is not to be considered a transcript. Next steps that were identified during the meeting are **highlighted in blue**. The Working Group also issued a statement following the meeting ([here](#)), highlighting their ongoing commitment to assisting the state in supporting the RAMP the ITP/HCP process and sharing details of the [March 19 RAMP assessment](#).

Feedback from fishermen, decision makers, and others on the ideas and concepts discussed during the March meeting is welcome and can be shared directly with the Working Group at info@cawhalegroup.com. Key themes summaries and other meeting outputs are designed to provide Working Group participants with information to share and discuss with their peers, as well as inform ongoing discussions within the Working Group itself. Summaries and materials also act as a source of information for those interested in this topic.

The summary, in addition to other meeting materials and products, have been made available to CDFW, the Ocean Protection Council, the National Marine Fisheries Service, the Legislature, and the California Dungeness Crab Task Force. This summary and related materials will also be shared with target audiences, including fishing leadership, the whale watch community, and other interested members of the public throughout California. Previous meeting summaries, memos, and other information about the Working Group is available at <http://www.opc.ca.gov/whale-entanglement-working-group/> and <http://www.opc.ca.gov/risk-assessment-and-mitigation-program-ramp/>.

CDFW Update, Settlement Agreement

CDFW Director Bonham announced to the Working Group that an agreement had been reached between CDFW, CBD, and PCFFA as a result of a lawsuit filed by the CDB in 2017. The lawsuit alleges that CDFW failed to protect whales from entanglements in California Dungeness crab fishing gear, as required by the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA). PCFFA intervened in the lawsuit in 2018. The federal court requested the three parties to work together to negotiate a settlement based on their similar interests in keeping the fishery open while protecting whales. Details about the settlement are available [here](#).

Director Bonham discussed the terms of the settlement with the WG including timelines, needs for an Incidental Take Permit (ITP) and state rulemaking, the role of the Working Group/RAMP, and the difference between interim management and management once the ITP is in place. In order to fulfill the requirements of the settlement, CDFW highlighted their continued commitment to working with the Working Group. Director Bonham emphasized the value of the Working Group, which is reflected by their development of the RAMP, which is a cornerstone of the settlement reached with CBD.

The Working Group discussed the settlement agreement details with Director Bonham and CDFW staff.

- Working Group participants requested clarification about the inconsistency of closing the Northern Management Area in 2019, but not in 2020 and 2021. In addition, the Working Group inquired about why there was a focus on Districts 10 and 17 and if there was a possibility of narrowing down area closures to specific, smaller-scale spots where there are known entanglement issues.
 - Director Bonham explained that he couldn't share what was requested or said by the other parties during settlement conversations, but could discuss the implications of what was included in the settlement. Until the ITP is issued, the RAMP process will inform future fishing seasons and any need for restrictions to spring fishing. If entanglement risk is low however, closures may not be implemented in Districts 10 and 17. More targeted closure options to reduce entanglements will be the goal in future seasons. There is also a possibility that feasible ropeless gear technology will be available to allow for fishing to continue in areas that would otherwise be closed. In addition, if entanglement risk is determined to be low, the Director may reopen the season.
- The Working Group discussed the timeline for the ITP and the role of other fixed gear fisheries.
 - Director Bonham noted that the litigation and settlement agreement focused on the commercial Dungeness crab fishery, and the deadline for submitting a draft Habitat Conservation Plan is May 2020. CDFW is committed to meeting the terms of the settlement for the commercial Dungeness crab fishery, and is also exploring the need to include other fixed-gear fisheries. It is unclear at this time how/if other fixed-gear fisheries may be included in the ITP. NMFS stated that the ITP process is difficult and that many of the details will have to be worked out moving forward, but emphasized that NMFS would work closely with the CDFW in developing the ITP and HCP.
 - **CDFW and NMFS will consider the opportunity to have the Working Group participate in a HCP training.**
- The Working Group discussed funding and data needed to support the RAMP and complementary projects including solar loggers, aerial surveys, gear innovations testing, and forage data.
 - CDFW's 2018-19 budget included additional funding and positions; two new positions and funding focused on expanding the Whale Safe Fisheries program. As part of the settlement agreement, the volunteer solar logger program will be moving forward, additional modeling options will be considered, and the Working Group will play a key role in implementing the RAMP during future fishing seasons.

April 15, 2019 Closure

The Dungeness crab 2018-2019 fishing season will close on April 15 statewide, all gear must be removed from the water by 11:59pm on April 15. CDFW requested guidance from the Working Group on the implementation of the April 15 statewide commercial Dungeness crab closure.

- *Gear Removal, Time Considerations:* Based on the favorable weather outlook, Working Group participants agreed that having two weeks to remove fishing gear from the water was enough time. Safety concerns, specifically under adverse weather conditions, were raised, particularly for smaller boats. The group discussed the role of waivers for fishermen unable to retrieve their gear by the April 15 deadline.
 - An emergency situation may require shorter timeframes in the future to remove gear and the Working Group suggested further investigation would be needed to determine how long it would take to pull gear in those circumstances.
 - The group also discussed the need to eliminate the illegal practice of “wet storage” (i.e., storing unbaited, open traps in the water for extended periods of time).
 - **CDFW Marine Region will work with CDFW Law Enforcement Division (LED) to discuss waivers for fishermen unable to retrieve gear by April 15 due to weather/safety issues.**
- *Communicating with the Fleet:* The Working Group discussed the need for clear communications to the fleet moving forward and the possibility of having fishermen send an email to notify CDFW that they are done fishing for the season to provide more detailed numbers on how many fishermen are still active in the fishery.
 - **CDFW to develop communications (e.g., email, FAQs, etc.) to inform fleet about the settlement details, including the April 15, 2019 closure ([here](#)).**
- *Lost Fishing Gear Recovery:* Participants inquired about whether the Department’s proposed lost fishing gear recovery program could commence sooner than mid-July now that the Dungeness crab fishing season is ending earlier. **CDFW will review the statute and regulations to determine if the lost fishing gear recovery program could begin shortly following the April 15, 2019 closure (see CDFW FAQs [here](#) for more information).**
 - CDFW noted that gear retrieval under this program cannot occur until the proposed regulations are effective later this year. The Working Group also discussed the limitation outlined in the Title 14 regulation that allows six derelict traps to be pulled at a time and the need to explore a waiver for closures that happen in short time frames.
 - CDFW is on track to complete its rulemaking for a statewide gear recovery program, which should be in place for the 2019-20 fishing season.
 - Some Working Group participants expressed concern that the waiver process for gear recovery has not been a smooth process to date. LED states that the waiver review process should take 24-48 hours. **Fishermen and LED to have an offline discussion regarding the timeliness of the waiver process.**

Evolution of the Working Group Role and RAMP

CDFW requested the Working Group continue to work with the state and its federal partners to further develop the RAMP and inform ongoing risk assessments and the development of related management recommendations. As part of this evolving role for the Working Group to assist CDFW in developing a HCP, the group discussed the need to update a number of core components to the Working Group’s form and function.

- *Working Group Form:* The Working Group explored the need for updating their Charter ([here](#)) to better reflect the group’s evolving role. There was discussion about how to have the Charter continue focusing on the Working Group’s charge and shared goal—to support thriving whale populations and a thriving

Dungeness crab fishery—while making updates to be responsive the CDFW’s request to support the ITP/HCP process. **The Working Group agreed that Strategic Earth and CDFW could make draft revisions to the Charter to share with the Working Group for input and feedback, with the goal of having it ready to share when recruiting new participants in May.**

- *Working Group Composition:* The Working Group discussed the need for soliciting and on-boarding new participants. Overall, participants expressed their continued commitment to the Working Group and supporting the RAMP. Several participants acknowledged they would need to step down at some point in the nearer-term and would like to work with CDFW to find suitable replacements. The Working Group discussed the challenge of recruiting new participants with the group’s intensive meeting schedule. Potential solutions that were considered included creating a “job description” providing details of what it entails to be a Working Group participant, acquiring additional funding to reimburse participants for their time, staggering how current participants step down to retain historical knowledge, and ensuring there are suitable replacements for participants before they step down. New participant suggestions included a PCFFA representative, a processor, and one representative each from Santa Cruz, Avila/Port San Luis, and Trinidad/Eureka. The Working Group recommended updating past nomination forms to share with prospective participants. The Working Group also recommended using new technology to make remote meeting participation easier.
 - **Agencies to finalize 2019 nomination materials to solicit for new Working Group participants, with the goal to have nomination requests out to the fleet by April 30. Consider the need for CDFW to attend port meetings to help with nomination process for fishing representatives .**
- *Meeting Design:* The group discussed the benefits and challenges of having closed meetings and/or making Working Group meetings open to the public. Some participants thought public meetings would increase transparency and openness, while others expressed an appreciation for closed meetings which can lend to more open and honest discussions. There was continued support for making all Working Group meeting summaries and related materials publicly available. The group discussed the idea of having certain meetings public (e.g., HCP review meetings, Working Group updates) and other meetings be closed sessions (e.g., interim brainstorm discussions on RAMP development). Moving forward, the Working Group agreed to continue discussing how best to create a balance between transparency and support open lines of communication amongst Working Group participants.
- **RAMP Development and Function:** CDFW confirmed the RAMP as a core component of the settlement, and the HCP. The Title 14 rulemaking to formalize the RAMP is also scheduled to be completed by November 2020. To support these complementary processes, the group discussed the need for more objective and quantitative evaluation criteria to be developed for each risk assessment factor. The Working Group restated the need for better data to inform the RAMP, which could be made available through a variety of sources including ship-based surveys, aerial surveys, forage and ocean conditions datasets, and data gathered via solar loggers.
 - *Risk Evaluations:* The group discussed the process in which the risk factors are evaluated and risk levels identified (green, yellow, red), including the role of the Working Group in the assessment process (i.e., when convened as an Evaluation Team). A Working Group participant suggested that it would be more efficient if, when coming into Evaluation Team discussions, the agencies developed a straw proposal of risk across all four factors based on best available information for the Working Group to review and respond to.
 - CDFW highlighted Appendix A in the settlement agreement, which outlines the need for the RAMP to include a decision matrix across the four factors that would identify certain

triggers that would in turn result in a management response. The Working Group is considering how to incorporate this concept into the RAMP. **The Working Group will review Appendix A in greater detail and a meeting will be scheduled to initiate a focused discussion on Appendix A concepts.**

- *NOAA Surveys*: The group expressed some confusion regarding language in the settlement requiring 'NOAA surveys' and agreed there was a need for more clarity on what this refers to. Some ideas brainstormed included those surveys that NOAA participates in and/or endorses, including aerial and vessel surveys, development of ocean indices, etc. Once this term is defined by the agencies, the group discussed the opportunity to provide more detail and clarity about 'NOAA surveys' as part of the RAMP rulemaking.
- *Whale Data*: The Working Group agreed the Whale Project Team should determine how to combine, integrate, and organize other whale-related data streams to inform the RAMP. Referencing the [Working Group's 2018-19 Recommendations Memo](#), the group agreed that the Whales Project Team should also identify where funding was needed to move this data integration and synthesis forward. The group also discussed the need for whale sighting information to be more specific (e.g., whales observed via an aerial or vessel survey must also include location and timing details). A participant suggested sail drones be considered as an innovative, low-cost alternative to collect on-the-water information.
 - The group acknowledged there is continued interest in gaining a better understanding of how data and information that informs the RAMP is evaluated and assessed, such as whale and gear concentration data gathered via aerial surveys. Learning about survey methods and how data and extrapolated is a priority for the group moving forward.
 - **CDFW to consider developing user guides for RAMP data collection methods. Additionally, Strategic Earth to coordinate a Working Group call to talk through aerial survey methods, specifically.**
 - **Kathi George, California Whale Rescue and Working Group participant, will work with the Whales Project Team to consider which available whales datasets could be constituted as 'NOAA surveys'.**
- *Gear Innovations and Other Management Measures*: The Working Group briefly discussed the need to revisit the RAMP's [Management Measures Toolbox \(MMT\)](#) to build out a fuller suite of management options for consideration. This includes the development of gear innovations, including, but not limited to, ropeless gear technology. CDFW shared that if gear innovations such as ropeless gear are ready for use during this interim phase (i.e., before May 2020) the settlement agreement does include provisions for fishermen to use ropeless gear if an area is closed. CDFW would like to have a fully developed MMT to include in the RAMP rulemaking (November 2020), which would allow for increased flexibility when considering management measures for future fishing seasons.
- **RAMP Funding**: The Working Group brainstormed potential funding options to increase the available data to support the RAMP, including Section 6 funding, the General Funds via OPC, and continued funding support for Working Group operations that has been provided by TNC. As the main funders of the Working Group, it was suggested that OPC and TNC work with CDFW and NMFS to consider what funding is needed in the short-term and to prioritize next steps, keeping in mind that the current OPC/TNC funding agreement expires in July 2019.
 - **OPC, CDFW, NMFS, and TNC to convene a meeting to discuss funding priorities and related next steps.**
- **External Communications**: The Working Group discussed the trade-offs of having CDFW act as the primary source of RAMP related communications to the fleet.

- CDFW shared they would like to reduce the burden on the Working Group of conveying information about RAMP outputs (i.e., risk assessments), as well as details about the settlement. To help achieve this, CDFW will set up a website page specifically about the settlement agreement and ITP/HCP process.
- The Working Group clarified that while CDFW should be the source of communications on the ITP/HCP, it will still be important for the Working Group to have its own voice and convey its role in the ITP/HCP process directly with peers and key contacts. The group discussed the importance of developing a communications product as an output for the March 26 meeting to convey that, while the Working Group did not have a direct role in the lawsuit or settlement agreement, the group remains committed to developing the RAMP and supporting the state during the ITP/HCP process.
 - **The Working Group will develop a joint statement ([here](#)) highlighting their ongoing commitment to assisting the state in supporting the RAMP the ITP/HCP process. This statement will also provide details about the outputs from an Evaluation Team meeting on March 19, 2019 during which a risk assessment was conducted ([here](#)).**

Award Presentation

Director Bonham and Tom Wesloh, Joint Committee on Fisheries and Aquaculture, presented the Working Group with a resolution, which is the highest level of recognition awarded by both the California State Senate and Assembly. The resolution, which was signed by all the members of the Joint Committee on Fisheries and Aquaculture, commends the Working Group for their steadfast commitment to protecting whales and supporting fishermen whose livelihoods depend on the Dungeness crab fishery.

2018-19 Working Group Schedule and Next Steps

The Working Group worked with CDFW to begin mapping out a timeline and related schedule to track meetings, key milestones, and deadlines through November 15, 2019.

- **CDFW will continue to develop a draft calendar/schedule for the Working Group's review and confirmation. This information will also set expectations regarding participation needs as CDFW onboards new Working Group participants.**

The group discussed a number of additional items that need to be followed-up on and/or tracked over the coming weeks, including finalizing the blue whale Risk Assessment Framework (RAF) for May/June and taking steps to include the leatherback turtle into the RAMP, starting with an orientation presentation in April.

- **A key themes summary highlighting the Working Group's discussion and next steps will be developed following the March 26 meeting and posted on Working Group's webpage via the OPC website.**

All meeting materials and products developed by the Working Group are available at

<http://www.opc.ca.gov/whale-entanglement-working-group/> and

<http://www.opc.ca.gov/risk-assessment-and-mitigation-program-ramp/>. Please send direct communications to the Working Group, including ideas, questions or concerns, to info@cawhalegroup.com.