

Humboldt Working Group

Permitting Authority Subcommittee Meeting Humboldt Bay Aquatic Center Eureka, CA

March 18, 2010

Meeting Summary

Overview

Roundtable introductions and overview were led by Anna West, Kearns & West (K&W), facilitator

Ian Caliendo, PG&E, reiterated the discussion on the last Humboldt Working Group (HWG) Conference Call that Bill Toman is no longer with PG&E, but he will most likely continue working on the project as a consultant. Robert Blair is the interim PG&E project manager for WaveConnect while PG&E redefines staff roles. Robert has been overseeing and working closely with Bill Toman on the project over the past several months and is fully committed to the project and its success.

The following items were discussed and clarifications were made about the project in general:

- PG&E shared that they are evaluating the economics of the project to decide whether to pursue a five or 10-year pilot license in the Final Pilot License Application (FPLA). It appears as though five years is not enough time to amortize the cost of the project to ratepayers. PG&E is leaning towards extending the duration of the pilot project, however more information is needed to make this decision. The key piece of information needed is the cost to ratepayers that the California Public Utility Commission (CPUC) will accept.
- It was clarified that a Federal Energy Regulatory Commission (FERC) pilot license permits the term (duration) of the project including construction, operation, and decommissioning. Although the proposed operation of the Wave Energy Converters (WECs) is five years, the “term” of the pilot project license is approximately eight years: two years construction, five years operation, one year decommissioning. It was recommended that PG&E clarify that the proposed pilot project is for either an eight-year term (with two years construction, five years operation, and one year decommissioning) or a 13-year term (with two years construction, 10 years operation, and one year decommissioning).
- It was clarified that if the term of the license changes, then more in-depth environmental information may be needed by the agencies. If this change in term of license occurs after the FPLA is filed with FERC and after formal consultation is initiated, then formal consultation would have to be reinitiated. It was generally agreed that this subcommittee should define what information is needed by the agencies for an eight-year term verses a 13-year term.

- The term of the license will be determined before the FPLA is submitted to FERC.
- Formal agency consultation begins when FERC submits a complete Biological Assessment (BA) and formal letter and the agencies have deemed it complete.
- The National Marine Fisheries Service (NMFS) clarified that to begin formal consultation a complete project description is needed. They are aware that all environmental impacts will not be completely known when formal consultation is initiated. On pg. 4-13, the term “formal consultation” should be changed to “technical assistance” to accurately use Endangered Species Act (ESA) terminology. This change should be made throughout the DPLA.
- On the fishing community/PG&E agreement topic, PG&E clarified that they prematurely raised an expectation that an agreement could have been produced by now. They are still working on fleshing out a proposal for the fishermen.
- California Department of Fish & Game (CDFG) suggested that in Exhibit E, p.ES-2, the language be clarified to say that the project site was chosen to “reduce” potential conflicts with crabbing operations instead of “avoid”.
- CDFG clarified that if the requested “Area to be Avoided” designation (Exhibit A, p.A-5) will be enforced by the U.S. Coast Guard (USCG) this will effectively create a fishing closure. If a fishing closure were created in an area that is already a fishing ground, the California Fish and Game Commission would have to approve this because the CDFG would be involved in enforcement.
- PG&E clarified that the requested “Area to be Avoided” would not involve a commercial fishing closure, and therefore, would not require California Fish and Game Commission approval.
- It was clarified that if the WECs become Fish Aggregating Devices (FADs), the project area will potentially be attractive to both recreational and commercial fishermen to fish near the WECs. This could create safety issues and the designation of “Area to be Avoided” may change if this occurs.
- It was clarified that oil platforms have USCG designated “safety zones.” The USCG uses outreach and education to make people aware of the risks of transiting the area. Outreach and education are the responsibility of the custodian owner. The USCG does not enforce/patrol the safety zone because there are not enough resources to do so. USCG imagines use of similar methods for this “Area to be Avoided” designation. The designation would be printed on NOAA navigation charts.
- NMFS and others clarified that they did not have enough time to review the Monitoring and Adaptive Management Plans (M&). They will review the plans and prepare more detailed comments for the April 7 meeting.

Action Item Follow-up

Outstanding action items from previous HWG Permitting Authority Subcommittee meetings were addressed as follows (these are also updated in the Action Items tracking documents):

- There are two HSU contracts that have been signed with PG&E. Ian will email them to the group.
- Sharon will be meeting with Pacific Northwest National Laboratory (PNNL) at a conference next week and will give an update at the April 7 meeting.
- Michael Slater, SAIC, shared that Oregon Wave Energy Trust (OWET) electric and magnetic field studies should be available within the next 60 days.

- Ken Hogan, FERC, clarified that FERC will not be requiring post removal monitoring of the project site. However, if someone justifies why FERC should require post removal monitoring of the project then FERC will reconsider.
- CDFG clarified that a take permit is required for the contractor doing the sampling or monitoring. If there is take of a listed species a scientific collecting permit is required. It is still unclear whether the department will issue a take permit for gill netting purposes. NMFS also has concerns with adult salmonids being captured in gillnets.
- CDFG clarified that trawling for the sampling benthic fish and crabs may be an issue because of the potential for take of listed longfin smelt. A permit for this will be required and can be obtained through a different process of the fisheries branch of CDFG.

FERC/California State Lands Commission (CSLC) Coordination Update:

FERC explained that the FERC/CSLC Letter of Understanding (LOU) is in the hands of CSLC for their review. FERC has not yet received feedback on the changes CSLC would like to see made. CSLC shared that interviews for a CEQA consultant have been completed and a preferred candidate has been identified. A formal notification that a candidate has been selected should be coming shortly. CSLC did not have an update on the LOU at this time. FERC and CSLC clarified that regardless of the LOU, they do plan to hold the June public meeting for the DPLA jointly.

Review of the DPLA M& for Marine Mammals

The following items were discussed and clarified regarding the DPLA Monitoring and Adaptive Management Plan for Marine Mammals:

- NMFS noted that a Letter of Authorization (LOA) under the Marine Mammal Protection Act (MMPA) may be needed, instead of an Incidental Harassment Authorization (IHA) due to language in the DPLA indicating injury or mortality may occur. Consider removing injury/mortality language if appropriate; otherwise a LOA will need to be obtained. This could affect the monitoring plans. NMFS will have more information at the next meeting.
- NMFS noted that a scientific research permit might be the best way to go about getting approval to monitor for potential impacts.
- It was clarified that the acoustic area will be described in the monitoring plans once the noise outputs of the WECs are known. It is anticipated that Level A injury acoustic effects of the WECs will not occur since it is anticipated that WEC noise levels will be low, but this will be clarified with more information. Acoustic effects of installation will be considered in the plans as well.
- The NMFS marine acoustic threshold is being revised from 180 decibels (db) to 230 db. The monitoring plans will be revised to reflect the current regulation of 180 db, and a footnote will note that this could be increasing to 230 db.
- Sea turtles are not addressed in the monitoring plans because feedback from experts is that sea turtles will not be found in the project area. This is addressed in the DPLA in the threatened and endangered species p.5.3.6-54.
- It was suggested that HT Harvey look at the stranding records to see how many sea turtle stranding events have occurred in the area, especially during El Niño years.

Review of the DPLA M& for Fish and Invertebrates

The following items were discussed and clarified regarding the DPLA M& for Fish and Invertebrates:

- Gill nets proposed for monitoring will be of a mesh size that would not catch juvenile longfin smelt, juvenile salmon, or juvenile rockfish. It was agreed that a continued conversation between CDFG, NMFS, USFWS, PG&E and HT Harvey is needed regarding gill nets as a monitoring technique.
- CDFG clarified that the monitoring outlined for FADs on p.13, section 2.2.2, should be done for more than one year after WECs are installed. The gathering of recreational fishing boats around the WECs will be an indicator of a FAD effect. There was general agreement that monitoring could occur once in the first year of WEC operation, once in the third year of operation, and then a trigger would be set to determine if more monitoring is needed, but not more than two monitoring events would be conducted.
- The proposed late summer/early fall timing for the short-term telemetry experiment (p.27) was discussed. This timing was proposed because it avoids interference with commercial fishing activity, which could interfere with the results.
- The attraction of Dungeness crab to the WECs was discussed (in reference to p.27-28). It was generally agreed that crabs migrate to food sources. For this reason they will probably be attracted to the WECs, but they will also be attracted to baited crab pots.
- The monitoring of tagged elasmobranchs was discussed (in reference to p.28, section 5). It was agreed that the number of actively tagged elasmobranchs should be evaluated before monitoring begins. If there are not many tagged, then consider tagging more elasmobranchs before monitoring begins. A trigger for the number of tagged elasmobranchs desired should be set. The criteria for setting a trigger need to be further discussed at the next meeting.
- The monitoring of biofouling was discussed (in relation to issue 6 in the plan). CDFG suggested including that in addition to the shell mounds, the structures themselves provide habitat for non-native invasive species (p.33). CDFG also suggested that biofouling be monitored throughout the water column. HT Harvey will look into evaluating if biofouling species change with depth by looking at the USCG navigation buoys. The USCG will try to obtain more information on biofouling on buoys.
- CDFG suggested the sediment grab samples to be taken from the top 4 cm, instead of the top 2 cm. This will allow for detection of both surface paint residues and deeper dioxin contaminants.
- Bottom trawling was discussed (in reference to p.39). It was clarified that trawling can be done on the seafloor and on the surface, but not in the water column due to interference by the shape of the catenary mooring lines. Surface trawls can be done, but are not effective because they catch only small fish.
- On p.41, the second paragraph was discussed. It was agreed that an effect is only significant if can be detected at 50%, however a 30% significance level is the greatest amount that can be detected by the method proposed.

Review of the DPLA M& for Seabirds

The following items were discussed and clarified regarding the DPLA Monitoring and Adaptive Management Plan for Seabirds:

- The monitoring plans will further define that gill nets will not be used in areas where seabirds are present.
- For the beach survey monitoring plans, USFWS suggested that the consultants look into the monitoring resources available at a couple of beach monitoring organizations: Beach Combers based in Monterey and Beach Watch based in the Gulf of the Farallones.
- Concerns were raised that the premise of the monitoring plan for Issue 1 focuses on meeting USCG regulations, not on potential project effects. The group decided to revise the plan to reference that WECs will meet USCG regulations. The diagram for Issue 1 will be modified to start with monitoring question 2.
- It was clarified that phase 1 of the monitoring plan for Issue 1 is a pilot study to evaluate potential method(s) for the monitoring proposed in Phase 2. The results from Phase 1 will inform what monitoring method(s) are used in Phase 2. Phase 2 will use the best monitoring method(s) from phase 1 to monitor the effects of lighting on seabirds. The information gained from Phase 2 will then be evaluated to determine if monitoring should continue. The decision making diagram will be revised to clarify these distinctions.
- It was clarified that radars that compensate for motion (i.e. can be used on a WEC) are very expensive.
- It was clarified that for Phase 1 of the monitoring plan for issue 1, monitoring should be done for up to three nights in spring/summer. For Phase 2, it was generally agreed that monitoring should be conducted once in the spring, once in the summer, and once in the fall over the course of one year to capture the seasonality and species (residents vs. migrants) components.
- It was clarified that the amount of lighting on the WECs will meet, but not exceed the Coast Guard requirements, no more if possible. This lighting requirement needs to be vetted internally with PG&E. Once the amount of lighting is known, the monitoring plans will reflect monitoring for risks associated with this amount of lighting.
- It was clarified that the amount of lighting that will be required by the U.S. Coast Guard is still unknown. It is possible that WECs will have different lighting regimes due to differences in size and shape of the structures.
- USFWS clarified that if there are different lighting regimes for each type of WEC, monitoring of each lighting regime should be conducted separately and effects compared to one another.
- For the monitoring plan for Issue 1, it was agreed that carcass surveying is a good technique for addressing this question. It was suggested that the carcasses should be radio tagged to track movement and/or beach surveys should be done more frequently than the plan proposes. It was also agreed that more investigation and float tests should be done to identify the appropriate carcass species for the study (i.e. baby murre, quail or other).
- USFWS clarified that a threshold for “take” of seabirds will not be defined at this point. However, in the formal consultation period a threshold will be set. If during operation a threshold is exceeded, this would require formal consultation to be reinitiated.

- It was pointed out that ideally the M&s would incorporate numbers and triggers/actions that align with what is anticipated in the B.O.s.
- Stillwater Sciences will provide a revision of the seabird monitoring plans to the HWG Permitting Authority Subcommittee by April 1.
- Filing of a revised Monitoring and Adaptive Management Plan for Seabirds with FERC prior to April 30 was discussed.
- USFWS will provide more detailed comments at a later date.

Permitting Process Clarifications

The following clarifications were made on the permitting process:

- The timing of the Biological Assessment (B.A.) was reviewed. The B.A. will be prepared soon, in conjunction with the preparation of the FPLA.
- It was clarified that the ESA consultation should be tied to the FPLA.
- If the USFWS is issuing a take permit on the BA, then CDFG will be looking at dually listed species at that time. If a species is not dually listed there will be a longer process for a take permit through CDFG.
- It was suggested that there be a meeting specifically to address CESA/ESA processes to make sure they are aligned; The group agreed to address this topic at the April 7 HWG Permitting Authority Subcommittee meeting.

Action Items

M&AM Plan	Action Item	Who	When
1. All	1. Convene a meeting with CDFG, USFWS, NMFS, PG&E and HT Harvey to continue discussions regarding use of gill nets as a monitoring technique.	1. Ian Caliendo, PG&E	1. ASAP, before April 7 meeting.
2. All	2. Email the two PG&E/HSU contracts that have been signed to the subcommittee.	2. Ian Caliendo, PG&E	2. ASAP
3. All	3. Agenda Item – subcommittee to define agency info needs for an 8yr term verses a 13yr term.	3. K&W	3. Put on April 7 Agenda
4. All	4. Agenda Item - Discuss thresholds for listed species	4. K&W	4. Put on April 7 Agenda
5. All	5. Agenda Item – Review Integrated Agency Timeline. Identify CESA/ESA differences and clarify roles.	5. K&W	5. Put on April 7 Agenda
6. All	6. Email subcommittee about the importance of	6. K&W	6. ASAP, before

	coming prepared with comments to the next meeting, especially with comments on the revised plans.		April 7 meeting
7. Marine Mammals	7. Use the acoustic threshold of 180db and include a footnote that this threshold could change.	7. HT Harvey	7. ASAP
8. Marine Mammals	8. Send an email that appendix E5.3.4 is missing in some of the DPLAs.	8. K&W	8. ASAP
9. Marine Mammals	9. NMFS to determine what type of MMPA permit will be required.	9. Dave White and Monica DeAngelis, NMFS	9. April 7
10. Fish & Invertebrates	10. USCG to get in touch with who does maintenance on the navigation buoys and coordinate with Sharon Kramer, HT Harvey to evaluate biofouling of anchor lines.	10. Tom Haug, USCG	10. ASAP
11. Fish & Invertebrates	11. Find and distribute Humboldt Open Ocean Dredge Site (HOODS) 2009 EPA Monitoring Study.	11. Vicki Frey, CDFG	11. ASAP
12. Fish & Invertebrates	12. Agenda Item – discuss criteria for setting a trigger for the number of elasmobranchs to be tagged for fish and invertebrate M&.	12. K&W	12. Put on April 7 Agenda
13. Fish & Invertebrates	13. Propose a trigger for the number of elasmobranchs that should be tagged before monitoring begins.	13. Sharon Kramer, HT Harvey, and Ed Cheslak and Gina Morimoto, PG&E	13. April 7
14. Fish & Invertebrates	14. Propose a trigger for FAD effects to determine if more/less/no monitoring is needed.	14. Sharon Kramer, HT Harvey, and Ed Cheslak and Gina Morimoto, PG&E	14. April 7
15. Fish & Invertebrates	15. P.39, change monitoring plan to take grab samples of the top 4cm	15. Sharon Kramer, HT Harvey	15. ASAP

	for evaluation of contaminants.		
16. Fish & Invertebrates	16. P.41, Clarify that monitoring method is able to detect at 30%, but 50% is the significance level.	16. Sharon Kramer, HT Harvey	16. ASAP
17. Fish & Invertebrates	17. Agenda Item – Sharon Kramer to give an overview of the OWET Ocean Crab Study.	17. K&W	17. Put on April 7 Agenda
18. Fish & Invertebrates	18. P.27, Section 2.4.2, Vicki to check with CDFG about seasonal timing of telemetry experiment.	18. Vicky Frey, CDFG	18. April 7
19. Seabirds	19. USFWS & CDFG to give Stillwater Sciences a call to discuss additional comments on seabird monitoring plans.	19. Bill McIver, USFWS and Michael Van Hattem, CDFG	19. ASAP, before April 7 meeting
20. Seabirds	20. Identify appropriate birds to use in carcass monitoring study.	20. Jeff Jacobsen, HT Harvey	20. Before Phase 1 of study.
21. Action List	21. Revise the complete action list, review for ongoing actions that are complete.	21. Kearns & West	21. ASAP
22. General	22. Change Vicky Frey's title to Senior Environmental Scientist.	22. Kearns & West	22. ASAP

Attendees

Agencies:

- Vicki Frey, California Department of Fish & Game
- Michael Van Hattem, California Department of Fish & Game
- John Dye, California State Lands Commission (*by phone*)
- Steve Mindt, California State Lands Commission (*by phone*)
- Ken Hogan, Federal Energy Regulatory Commission (*by phone*)
- Lesley Kordella, Federal Energy Regulatory Commission (*by phone*)
- Carolyn Kempton, Federal Energy Regulatory Commission (*by phone*)
- Shawna Murray, Federal Energy Regulatory Commission (*by phone*)
- Monica Deangelis, National Marine Fisheries Service (*by phone*)
- Dave White, National Marine Fisheries Service (*by phone*)
- Bill McIver, U.S. Fish and Wildlife Service

HWG Members:

- Aaron Newman, Humboldt Bay Fishermen's Marketing Association, Commercial Fisherman

PG&E:

- Ian Caliendo, PG&E
- Ed Cheslak, PG&E
- Mike Gunby, PG&E
- Gina Morimoto, PG&E

PG&E Consultants:

- Doug Davy, CH2M HILL
- Jeff Jacobsen, H.T. Harvey
- Sharon Kramer, H.T. Harvey
- Michael Slater, SAIC (*by phone*)
- Rick Williams, SAIC
- Christine Champe, Stillwater Sciences (*by phone*)
- Emily King Teraoka, Stillwater Sciences
- John Whittaker, Winston & Strawn LLC (*by phone*)

Facilitators:

- Anna West, Kearns & West
- Briana Moseley, Kearns & West