

M A R Y L S E L K I R K
Collaborative Natural Resources Solutions



California Shellfish Initiative Working Group
Summary Report to the Steering Committee
on the first phase:
Outcomes & Recommendations
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Background: the California Shellfish Initiative

In cooperation with the National Oceanographic and Atmospheric Administration (NOAA) and the California Department of Fish & Wildlife (CDFW), the Pacific Coast Shellfish Growers Association (PCSGA), launched a California Shellfish Initiative in the fall of 2013 to improve the climate for the environmental review and permitting of shellfish production and native shellfish restoration in California.

The goals of the Initiative are to:

- Provide an open process to engage in science-based coastal planning for shellfish aquaculture and restoration
- Develop a comprehensive, efficient and predictable environmental review and permit process to increase coordination, conform to environmental laws and standards and demonstrate environmental stewardship.
- Support healthy coastal ecosystems that benefit multiple uses including sustainable shellfish aquaculture and restoration.

To accomplish these goals, NOAA, CDFW and the PCSGA established a California Shellfish Working Group in late summer of 2014. These three entities comprise the Steering Committee of the Shellfish Initiative. In July 2014, the Steering Committee contracted with professional public policy facilitator Mary Selkirk to help design and to facilitate the Working Group's dialogues.

Key Issues for Working Group Discussion: Issues Assessment

As part of launch of the California Shellfish Initiative Working Group, facilitator Mary Selkirk undertook a series of telephone interviews with all invited members of the Group and in some cases their alternates.* The purpose of these interviews was to identify the themes and issues of greatest concern to the Working Group members and to ensure that the proposed topics for discussion address the issues of highest priority to the Group.

Overall, invited Working Group members were united in their commitment to protecting the near-shore resource. Although they differed in their views about the impacts of shellfish aquaculture or the extent of problems with the current environmental review process, all agreed that there were steps that could be taken to significantly improve:

- Agreement on the most critical science issues to be considered when new aquaculture operations are under consideration
- Interagency direction to permit applicants
- Communication both among agencies and with the shellfish industry and permit applicants.

A number of respondents spontaneously expressed interest in creating an interagency group that could meet regularly to address all of these issues, and to provide early joint consultation to the industry.

Here is a brief summary of the assessment findings:

Vision/Context

Respondents had unanimous agreement on the overriding need to protect the near-shore environment, though few explicitly mentioned the importance of a shared value/policy among the State and Federal agencies on the threshold question of whether, or in what ways, shellfish aquaculture is a beneficial use of that habitat.

The absence of an articulated, shared vision for California aquaculture (do we want status quo? do we want less aquaculture? do we want more, and if so where? and what is our agency's role in fostering this vision?) has made it difficult for them all to agree on whether there is a problem with current environmental review or permitting, aside from the time and dollar cost to growers.

Creating a Road map

Several respondents among growers and agencies alike specifically called for development of a road map that lays out review responsibilities, permit applicant requirements, and permit milestones. Building a "road map" together in the course of these meetings would be one concrete way to illustrate each agency's understandings of their respective roles, and timing of their reviews. It could also be used as a visual platform to consider possibilities for timing review processes to be more predictable and affordable.

Relevant science and impacts

Respondents expressed differing views on whether there is established agreement on the most significant potential negative *or* positive impacts of oyster aquaculture, and when negative impacts rise to a level that requires mitigation or denial of a permit application.

Observation: Formalizing interagency collaboration

Many respondents called for the creation of some kind of interagency team that reviews all permits together, and would provide an opportunity for applicants to meet early on with one set group of staff from multiple agencies.

Communication

Respondents unanimously agreed that frequent, ongoing communication among all parties will lead to better outcomes. Several agency respondents emphasized that early consultation is a vital part of successful environmental review, but only if the outcomes of that review result in ongoing dialogue and feedback throughout the permitting process.

The findings from the Issues Assessment were used by the Steering Committee and the facilitator to design the objectives and agendas for each of the first five meetings of the Working Group. (The full report of the Issues Assessment is included in the Appendices as Appendix 1).

Working Group Composition & Purpose

Working Group members include resource and regulatory agencies with a role in the review and permitting of California shellfish farms; shellfish growers; and agencies and non-profit organizations involved in native oyster restoration. (A complete roster of Working Group members is included in the Appendices as Appendix 2).

As agreed on by the members and memorialized in its approved Charter (see Appendix 3), the goal of the Working Group is to investigate and seek consensus on ways to improve, local, state and federal interagency coordination in California for the review of individual, local or regional permits for new or expanded use of commercial shellfish operations, as well as public shellfish habitat restoration programs.

As stated in their Charter, the objective of the Working Group is to identify, discuss and reach consensus on recommendations for improving the environmental review processes used by the multiple agencies, and strengthening collaboration across agencies and with applicants.

The Working Group focused its discussions on topics of mutual concern to all members, and worked to reach recommendations on the following issue areas:

- Opportunities for joint or integrated environmental review
- Ways to increase the early communications between permit applicants and agencies to jointly identify major issues,
- Ways to facilitate shared interpretation of relevant emergent science issues that may affect mitigation requirements, or approved cultures, species, or methods of production
- Ways to ensure transparency throughout the review process, across agencies and with permit applicants
- Ways to improve regulatory compliance among current shellfish farmers

Summary of Working Group deliberations and outcomes

The Working Group met five times over a six-month period, from October 2014 – April, 2015. Most meetings were full-day, and included a 2-day meeting in Eureka in January 2015 hosted by the Humboldt Bay Harbor District. The Eureka meeting included a field visit to the Humboldt Pre-permitting Project sites and the proposed expanded Coast Seafood sites in Humboldt Bay.

The Working Group strove for consensus on all their actions and used a Gradients of Agreement decision rule, as below:

1	2	3	4	5
Oppose support	Oppose Unless amended	Neutral	Support	Strong

In order to achieve a “consensus” on a proposal or recommendation, all Working Group

members had to declare themselves a 3, 4, or 5. The Group was successful in achieving consensus on all Working Group actions, proposals or recommendations.

Key Outcomes

- Prioritized a matrix of key issues for environmental review and provided agency-specific detail for each
- Learned in detail about each agency's respective review and/or process, as well as an applicant's recent permitting experience and obstacles
- Discussed in detail the advantages and disadvantages/constraints in developing joint application and programmatic permits
- Learned about comparable review and permitting processes in other states. (PCSGA attorney surveyed and presented a memorandum comparing permitting milestones, costs and timelines across several States.)
- Learned about how the San Francisco Bay Joint Aquatic Resources Permit Application works, and discussed its applicability to shellfish operations applications in other regions
- Agreed on the need for all agencies to commit to meaningful early consultation with applicants.
- Agreed on the criteria that would define a successful permitting process.
- Agreed on the need for a single Team to review relevant science, seek to resolve differences of scientific interpretation, and provide early, region-specific advice to permit applicants
- Agreed on the need to increase permit compliance and seek ways to support growers to come into compliance
- Jointly developed and agreed to launching a multi-agency Hot Shot Team to provide robust early consultation
- Jointly revised and agreed on a set of Guiding Principles for creating a collaborative permit process with strong emphasis on early consultation and dialogue with the applicants
- Agreed to continue to meet on a periodic basis, finalize the Guiding Principles and Vision statement, and to serve as the body to advise and oversee the Hot Shot Teams

Here is a more detailed discussion of Group deliberations, by issue:

Vision

At their kickoff meeting on October 15, 2014, Working Group members engaged in an exchange of views on their respective visions for aquaculture in California, and their perspectives on their agency's role in that vision. The purpose of this exchange was not to reach consensus in the Group at this time but to surface assumptions and interests around the table that would influence the Group's success in forging stronger links where possible between aquaculture development and environmental protection.

The Group also provided input into a draft Vision statement that accompanied the final

Principles of Agreement. However, the statement has not yet been finalized (see the Working Group's Vision & Principles of Agreement, Appendix 4). At their final meeting the Working Group directed the State and Federal Aquaculture Coordinators to refine and finalize the Vision statement.

Permitting Road Map

At the kickoff meeting of the Working Group, members of the Steering Committee shared a strawman permitting road map **graphic** to prime the pump for discussion. This draft road map was referred to during the course of the Group's discussions over the five meetings. At their final meeting, the Group was asked to peruse a hybrid road map developed by the NOAA Sea Grant Fellow. Work will continue on finalizing this Permit Road Map. Draft permit road map is included in the Appendices as Appendix 5.

Assessing Impacts and incorporating relevant science

Much of the discussion in the Working Group's first three meetings centered around how best to agree on the most pertinent and critical issues of environmental concern in reviewing new or amended applications. Using a matrix of relevant issues of environmental concern, the Working Group prioritized which issues were most critical for an applicant to address, and in their third meeting added additional agency-specific detail for each category, to provide more detailed guidance to applicants. This detailed matrix is included in the Appendices as Appendix 6.

Over the course of their first three meetings, the Working Group developed, refined and approved their proposal for launching an interagency technical team—called the Hot Shot Team—that would:

- convene to consider new applications in a specific region early on, prior to formal environmental review
- consider the “hot button” environmental issues and make recommendations to the applicant(s) for how to address those issues in their application
- consider issues of broad interest around which the science is not yet settled regarding the impacts (positive and negative) of shellfish farms on aquatic habitats and species and water quality

Much of the fourth meeting was devoted to revising the Hot Shot Team description, as well as incorporating input from the newest members of the Working Group representing the California Department of Public Health.

Formalizing interagency collaboration

At the kickoff meeting of the Working Group, a number of members acknowledged the need for an interagency group like the Working Group, to address review and permitting issues for shellfish aquaculture and native oyster restoration.

At their final meeting, the Working Group agreed that they should continue to meet periodically, with guidance and support from the CFDW and NOAA Aquaculture Coordinators.

The Working Group Charter Principles of Agreement lay out a proposed structure and process for the Group's ongoing role.

Communication

During the course of their meetings, Working Group members demonstrated their commitment to working more closely together. The Working Group's Principles of Agreement and their adopted Hot Shot Team model spell out their commitment and responsibilities for establishing and maintaining meaningful early communication and mutual dialogue.

Increasing Permit Compliance

Working Group members openly and frankly discussed their respective perspectives on permitting and compliance. Shellfish grower members advocated for a permitting process that is more predictable, more collaborative and ideally less costly. At the same time, regulatory agency members expressed their wish to see a much higher level of permit compliance among existing shellfish operators. At the third Working Group meeting in Eureka, a request was made that the growers in the Working Group develop a proposal for increasing operator permit compliance. At the Working Group's fifth meeting in April, a shellfish grower member laid out a proposal for bringing more operators into compliance, while making the case that improving compliance was directly connected to improving the permitting process. He invited Coastal Commission and Corps of Engineer members to visit his operations and to work together to agree on ways to shape the permitting process to accomplish their shared goals of more sustainable, legal and permitted farms.

Developing a Joint Application

Members were in general agreement about the usefulness of some kind of cross-agency application that would house all pertinent permit application information for each agency in one place and/or on one form. They were briefed on the San Francisco Bay Joint Aquatic Resources Permit Application, however time constraints prevented their being briefed on the Washington State joint application and application process.

Recommended Next Steps for the Working Group

While the Working Group succeeded in addressing most of the issues laid out at the beginning of their deliberations, major substantive work remains to be accomplished to carry out their own recommendations.

1. Finalize the Guiding Principles and Vision statement

The Group is very close to finalizing their recommendations and Principles of Agreement, as well as their shared Vision for shellfish aquaculture. They can likely complete this task at their next meeting.

2. Launching the Hot Shot Team

The Working Group made substantial progress in defining an interagency model for considering new or amended permit applications, the Hot Shot Team. Launching this Team will be critical to making progress for the Initiative.

At their final meeting, the Working Group recommended that the Hot Shot Team be launched over the summer of 2015 to undertake developing shared guidance on eelgrass mitigation to both the Humboldt Pre-permitting Project EIR and the Coast Seafood draft EIR.

Launching this team will require commitment from all relevant agencies to devote the staff time necessary. It will also require the relevant agencies to jointly review the emergent science and to strive for joint recommendations to the applicants. This is a high bar to achieve, but the Working Group members were aware of this when they made this recommendation. By recommending that the Team tackle one of the most difficult issues facing new shellfish permit applicants, the Working Group demonstrated its desire to elevate interagency collaboration and information sharing to a higher level.

3. Finalizing a Permitting Guide

The Working Group made progress in commenting on the draft permitting road map developed by the Aquaculture Coordinators. However, significant work remains to be completed to develop the road map into a useful Permitting Guide. CDFW Aquaculture Coordinator Randy Lovell briefed the Working Group at their April meeting on how they could assist his office in completing this Permitting Guide. Completion of this Guide will require ongoing assistance and staff time from all agencies involved in environmental review and permitting.

4. Maintaining the momentum

Every agency represented on the Working Group is faced with competing demands on its limited staff resources. Maintaining ongoing commitment to the Working Group by all the relevant State and Federal agencies will be paramount to the success of the Shellfish Initiative. This commitment needs to take the form of staff who are enabled and dedicated to participate in the Hot Shot Team, and to seeking ways to routinely share their recommendations, practices and knowledge with all other relevant agencies, thereby reducing redundant agency review as well as transaction costs and time for applicants.

California currently imports 90% of the shellfish that Californians consume. It has the capacity to produce much more, and to do so according to the highest environmental standards in the country. Other states around the country have made strong commitments to promote and support their own shellfish operations, and to reduce imports from foreign producers, whose environmental standards are often questionable, and whose carbon footprints are unacceptably high. The Resources Agency and the Governor's office are in a position to elevate California's commitment to the same level as their sister states. The State legislature, for their part, has so far been supportive of expanding sustainable shellfish aquaculture. A joint effort from the Governor's office, the Resources Agency and the legislature could result in major progress on the Shellfish Initiative.

To date, the Fish and Game Commission has provided strong leadership on the Working Group. Continued involvement of the Commission, as well as the CDFW, remains critical to the success of this effort. The Fish and Game Commission is in a good position to

encourage the direct participation of the Ocean Protection Council and its Ocean Science Trust in supporting the proposed Hot Shot Team, as well as promoting sustainable shellfish aquaculture as a promising industry and economic engine for coastal communities.

State Aquaculture Coordinator Randy Lovell has made consistent efforts to include the Governor's Office of Business Development (GoBiz) on the Working Group. While the GoBiz representatives did not participate in this first phase of the Working Group, their involvement and leadership in the next phase will be a vital counterpoint to the participation of both the Fish and Game Commission and the Department of Fish and Wildlife.

For their part, current and prospective shellfish growers should continue to raise awareness among state and local elected to make the case for shellfish operations as an important component in coastal economy revitalization and diversification.

5. On-line resources

The Working Group also discussed the feasibility of developing some kind of "one-stop" permit, to enable applicants to have all of their permit requirements assembled on one application.

Randy Lovell has been working diligently to create on-line resources and tools for permit applicants, as well as for the general public. Developing an on-line application form, or on-line resources for applicants, will be an important step toward co-locating permit application information, and may be the first step in developing a joint application.

6. Regional Thresholds analysis

Group members learned about the Humboldt Bay Pre-permitting project in great detail at their meeting in Eureka. The Group discussed in depth the possibility of expanding on the thresholds analysis utilized in Humboldt to other locales.

The Hot Shot Team would be a logical host for a workshop on threshold analysis. This type of investigation could yield valuable progress in establishing region-specific acceptable impacts.

7. Incorporate Southern California operators and potential operators

Given the opportunities for expansion of shellfish aquaculture and other aquaculture in Southern California, and given interest already expressed, the Working Group should be expanded to include growers and interested parties from Morro Bay. In addition, the Group may want to consider expanding its mission to include off-shore aquaculture.