

Proposal from Scientific and Conservation Representatives of the HPTRT

This proposal is being put forward by all scientists and conservation representatives appointed to the Harbor Porpoise Take Reduction Team regarding amendments to the Harbor Porpoise Take Reduction Plan (HPTRP). The proposal is comprised of five major elements:

1. Maintaining the HPTRP status quo with regard to existing closed areas, including the Coastal Gulf of Maine “consequence closure” that was triggered in 2012 when the reference bycatch rate set for the management area was exceeded;
2. Modifying the reference bycatch rates that would trigger future consequence closures to rates that would lead to bycatch exceeding ZMRG;
3. Codifying under the HPTRT any fishery management closed areas that were adopted pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, prior to April 2012, and which provide important protection to porpoises;
4. Expanding pinger requirements; and
5. Rescinding the “Other Special Measures” provision of the HPTRP, 50 C.F.R. § 229.33(f)(2), that was used to shift the “consequence closure” scheduled for October and November 2012 to February and March 2013.

1. Maintaining Status Quo Measures in the HPTRP

The current HPTRP measures were chosen based on extensive analysis of seasonal and spatial variation in porpoise bycatch and reflect the times and areas in which porpoises are most likely to be at risk of entanglement in the waters of the mid-Atlantic and the Northeast. Despite inter-annual variability, these times and areas are still those in which porpoises are at greatest risk of bycatch. As an incentive to compliance, as suggested by states and industry in our 2007-2008 meetings, larger area closures are triggered in the event that bycatch rates exceed pre-determined levels. This occurred in 2012, and pursuant to the existing regulations, this consequence closure is to stay in place as a recurring seasonal closure until bycatch levels are reduced to ZMRG. *See* 50 C.F.R. § 229.33(d)(4).

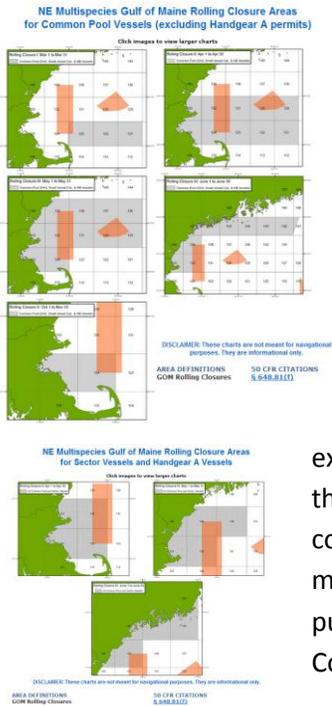
2. Target Mortality Rates

In addition to the consequence closure that was already triggered, NMFS should reassess the reference bycatch rates that would trigger future consequence closures and realign them to meet the ZMRG. The MMPA provides that “[t]he immediate goal of a take reduction plan for a strategic stock shall be to reduce, within 6 months of its implementation, the incidental mortality or serious injury of marine mammals incidentally taken in the course of commercial fishing operations” to below that stock’s PBR. 16 U.S.C. § 1387(f)(2). That provision goes on to state that the “long-term goal of the plan shall be to reduce, within 5-years of its implementation” to reduce that serious injury and mortality rate to “insignificant levels approaching a zero mortality and serious injury rate, taking into account the

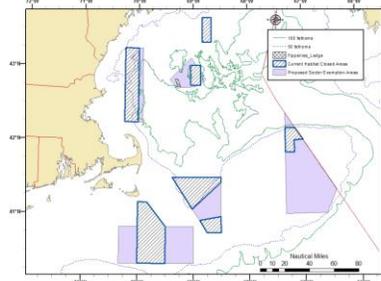
economics of the fishery, the availability of existing technology, and existing State or regional fishery management plans.” *Id.*

Since the Take Reduction Plan for this species was first developed more than 14 years ago, the total U.S. fishery-related mortality and serious injury for this stock has never been less than 10% of the calculated PBR and, therefore, cannot be considered to be insignificant and approaching zero mortality and serious injury rate. This is despite the fact a technological solution (acoustic alarms) is readily available that could achieve this result, as demonstrated in several fishery trials, past experience in the commercial fishery (e.g. the low by-catch experienced in 2001), and repeated attestations from industry. Thus, we believe the triggers should be linked to bycatch rates that, if exceeded, are likely to result in mortality exceeding 10% of the Potential Biological Removal (PBR) level. We request that NMFS calculate the most appropriate trigger rates for the Southern New England consequence closure, based on recent effort and mortality data.

3. Codifying Current Fishery Management Closures in the HPTRP



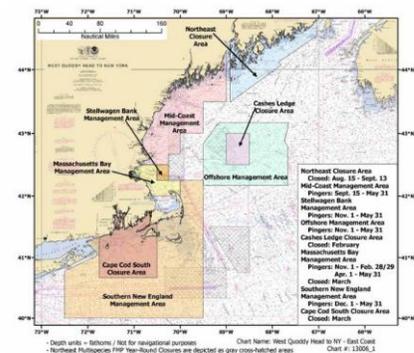
Selected NE Multi-Species Rolling Closed Areas for Sector and/or Common Pool Vessels where Rolling Closure V occurs from October 1-November 30 in the vicinity of Mass Bay and/or overlaps the Western Gulf of Maine. Although these rolling closures were put in to conserve fish and fish habitat, harbor porpoises have clearly benefitted from them. As can be seen in Palka (2012), porpoise bycatch occurs up to the line of the Western Gulf of Maine closed area and, even though it is closed year round, almost 15% of the mortality of porpoises actually occurs within the closed area. As areas, particularly the Western Gulf of Maine, are opened for fishing either under Amendment 48 or the Omnibus Fishery Management plan amendment that is being considered, we expect that mortality of porpoises will spike in these closed areas. We would like NMFS to codify, under the HPTRT current fishery management closed areas that were adopted pursuant to the Magnuson-Stevens Fishery Conservation and Management Act.



Furthermore, gillnet fishing is not permitted in the Western Gulf of Maine Closed Area and permits should be revoked if takes occur in that or any other closed area.

4. Expanding pinger requirements

Pingers should be required in the mid-coast area year round. According to Palka (2012), 36% of takes in the mid-coast area occurred in June through August, a time that pingers are not currently required.



Pingers should be required in the Southern New England area year round and closed from December through February. According to Palka (2012) takes in this area during that time alone exceeded the total annual number of takes in the mid-coast area. The Cape Cod South Area closure for March should remain.

5. Rescinding the “Other Special Measures” Provision of the Regulations

Many of us have served on the harbor porpoise take reduction team since its inception. When the HPTRP was first published in the 1990’s, there was a hope that pingers would reduce bycatch to levels similar to those documented in controlled experiments, but this level of bycatch reduction has never been achieved. The “other special measures” provision was unique to this TRP because, unlike other TRPs, the gear modification and technology on which projections of bycatch reduction were predicated were new. The “other special measures” language was intended to allow the NMFS flexibility to impose other measures in the event that the reliance on pingers was unfounded. The wording in this section of the regulations that repeatedly references concern over pinger efficacy and mentions closures in that context (i.e., closures were in place in smaller areas than those requiring pingers) supports the notion that this section was intended to be used to provide additional protection to porpoises. We are concerned that the economic rationale behind its recent use is fundamentally inconsistent with this purpose.

Reference:

Palka, D. 2012. New England Management Areas: Harbor Porpoise Bycatch Patterns during 1 January 2007 to 31 May 2012.

(http://www.nero.noaa.gov/Protected/porptrp/trt/Meetings/2012day2/b7_palka_2012.pdf)