# Key Outcomes Memorandum

**Harbor Porpoise Take Reduction Team**

**January 31, 2008**

*(For distribution to Harbor Porpoise Take Reduction Team members.)*

## I. OVERVIEW

In response to an increase in harbor porpoise bycatch in commercial gillnet fisheries, NOAA's National Marine Fisheries Service (NMFS) convened the Harbor Porpoise Take Reduction Team to consider revisions and updates to the current Take Reduction Plan (Plan).

The Team met initially on December 17-19, 2007, in Philadelphia, Pennsylvania. The Team made significant progress, but – due to time constraints – several issues were left unaddressed or unresolved. The Team agreed to reconvene via teleconference January 31, 2008, to focus on those items that either: (1) still lacked consensus; (2) required clarification to ensure NMFS has sufficient direction from the TRT; or (3) would benefit from a reconfirming of the approach.

This summary report, prepared by CONCUR Inc., provides an overview of the teleconference's key outcomes. It is presented in five main sections: Overview, Participants, Meeting Materials, Key Outcomes (including both options considered and consensus recommendations) and Next Steps.

## II. PARTICIPANTS

Twenty-seven of the 39 Team members participated in the teleconference. Team members in attendance were: Erik Anderson, Bill Mackintosh, Peter Inniss, Arthur Sawyer, Bill Van Druten, Earl (Sonny) Gwin, Kevin Wark (for Rick Marks), Greg DiDomenico, Ernie Bowden, David Laist, Melissa Andersen, David Gouveia, Clare McBane, Erin Burke, Terry Stockwell, April Valliere, Michael Greco, Alicia Middleton, Sharon Young, Vicki Cornish, Regina Asmutis-Silvia, Pat Fiorelli, Andy Read, Sue Barco, Bill McLellan, Ron Smolowitz and Scott Kraus.

David Gouveia and Amanda Johnson with NMFS Northeast Region (Protected Resources Division) convened the teleconference. Scott McCreary and Bennett Brooks from CONCUR, an environmental dispute resolution firm specializing in marine resource and water issues, served as the neutral facilitators. Additionally, a number of NMFS staffers also participated in the call.

## III. MEETING MATERIALS

Several documents were provided to support the group's deliberations. These materials included the following:

- Teleconference Agenda
- Key Outcomes Memorandum from December 17-19, 2007, meeting
- Supplement to the Key Outcomes, a NMFS-prepared document framing consensus and non-consensus items, as well as outstanding issues for discussion

- A proposal developed and submitted by the states of ME, MA, and NH concerning the Gulf of Maine (Massachusetts Bay and other Northeast Closure Areas); and
- List of key December 2007 meeting binder documents to have available for the call.
- Research paper – Mesh-Specific Catch Compositions and Size Distributions Occurring in Virginia's 2005 Winter-Spring Striped Bass Gill Net Fishery – submitted by Virginia state officials to support an exemption for the striped bass gillnet fishery within VA state waters.

These documents (as well as other materials developed for the December meeting) are available on the web at http://www.nero.noaa.gov/prot_res/porptrp/.

## IV. KEY OUTCOMES

Below is a brief summary of the main topics and issues discussed during the three-hour teleconference. This summary is not intended to serve as a transcript. Rather, it provides an overview of the main topics covered, the primary points and options raised in the discussion and areas of full or emerging consensus. Where consensus was not reached, the summary presents the specific options generated.

### DISCUSSION: GULF OF MAINE/CAPE COD SOUTH

The bulk of the teleconference focused on the Gulf of Maine, as the Team was unable to reach consensus on a key area – the Mid-Coast Closure Area – when it met in December. Moreover, a number of the issues under discussion in the Gulf of Maine – for example, details related to compliance and certification – also apply to other regions covered by the HPTRT.

The Team's discussion focused primarily on a comprehensive package of actions proposed by the States of Maine, New Hampshire and Massachusetts to address the bycatch issue in the Gulf of Maine. The proposal, developed by the respective state representatives in consultation with industry, focused on both the unresolved Mid-Coast Closure Area and other previously discussed areas within the Gulf of Maine. Its core actions include: relying on broad pinger-only zones linked with backstop closures should harbor porpoise bycatch target rates not be met; aggressive outreach with enhanced enforcement by cooperating states, including the adoption of Harbor Porpoise TRP gear modification into respective state gear modification requirements; maintaining the Offshore Closure Area; close coordination between the states and federal agencies; and alignment of various boundaries to eliminate gaps and inconsistencies;. (See **Attachment 1** for a copy of the three states' more detailed proposal.[1])

Discussion of the proposal from the three states highlighted both broad areas of agreement and some issues that eluded full consensus. Below is a summary of the primary points of discussion:

- ***Broad support for package outlines.*** Team members broadly supported the package of actions presented by the Northeast states. The Team viewed the package as a

[1] Please note that this document has been amended slightly to correct an error in the version distributed prior to the 1/31/08 call. In that version, the proposed Eastern Boundary of the GOM consequence area was listed as 70º 00' W. The correct boundary (as was shown properly in the map distributed with the earlier version) is 70º 15' W.

comprehensive and integrated approach to solving bycatch issues in the Gulf of Maine, and many members – though not all[2] – voiced a strong willingness to replace the more piecemeal approaches developed during the December meeting with the three states' proposal.

- ***Specific areas of consensus.*** In discussing the states' proposal, the Team confirmed its consensus support for a number of specific implementation approaches that apply to both the Gulf of Maine and Cape Cod South. These approaches include the following:

    - Establish two regionally distinct bycatch rate targets. Team members strongly supported the establishment of two distinct bycatch rates: one for the Gulf of Maine by averaging bycatch rates for Massachusetts Bay, Mid-Coast and the "X" Box, and a separate updated rate for Cape Cod South based on the latest boundaries agreed to in the Team's discussions. This approach was favored as the Team was interested in applying a bycatch rate consistent with each broad area's past performance. In developing the rate, the Team stressed the importance of confirming that the new rates will result in bringing takes back below PBR and in the direction of ZMRG.

    - Apply consequences to unique geographic regions. The Team strongly recommended that consequences for exceeding targeted bycatch rates be applied in a manner that focuses on distinct geographic regions. For example, if the target bycatch rate for the Gulf of Maine is exceeded, the agreed-upon consequence (time-specific closures) applies to the Gulf of Maine consequence area. If the target bycatch rate for Cape Cod South is exceeded, the agreed-upon consequence (time-specific closures) applies to Cape Cod South consequence area. However, bycatch rate exceedance in the Gulf of Maine would not impact Cape Cod South waters and vice versa. Team members favored this approach as it imposed a serious consequence – closures over an extensive area – without impacting those in other regions not responsible for excessive takes.

    - Assess compliance with bycatch rate using two years of data. After extensive discussion, the Team agreed that NMFS should rely on two full years of data – rather than three – to assess each region's compliance with the agreed-upon bycatch rate. The Team felt this timeframe was appropriate as it balances (1) the need for timely action by NMFS to reduce takes with (2) the need for sufficient lead time for the states to work with industry to improve pinger compliance. Moreover, since past data does not indicate large swings in harbor porpoise population from year-to-year in these areas, a two-year average is expected to provide an accurate picture of take trends. As well, given the ramp up time needed to start the program and the additional months needed to collect and analyze data, it will be 3 to 3 ½ years before any consequences would be applied. The Team also agreed that this more aggressive timeline needs to be accompanied

[2] At least one member, for example, felt the states' proposal's recommendation to maintain the Offshore Closure Area – a contrast to the consensus-supported removal agreed to in Philadelphia – was not justified and suggested that further discussion is needed to more fully explore the scientific merits of maintaining a closure in that area.

by an effective outreach program to fishermen that provides seasonal updates on both bycatch and compliance rates so industry can adjust and adapt as early as practicable.

- Require pingers for Massachusetts Bay Closure Area for the month of November. The states' proposal included a recommendation that the month of November pinger requirement for the Massachusetts Bay Closure Area agreed to at the December TRT meeting not be added at this time since the Council already has a groundfish rolling closure in place for both October and November. Rather, it called for a pinger requirement to be added if and when the groundfish rolling closure is amended by future Council action. Still, the Team strongly reiterated its support for stipulating the pinger requirement for November, saying it would ensure there was no gap in coverage in the event of changing Council actions.

- Use nomenclature keyed to management tools to name areas appropriately. Team members asked that NMFS rename different areas to more accurately reflect the fishing requirements stipulated in the TRP. For example, the area now referred to as the "Offshore Closure Area" in the Gulf of Maine is, in fact, a pinger zone. Team members recommended that NMFS use names such as "Management Area" to avoid confusion.

- ***Areas lacking full consensus.*** While the Team supported both the broad outlines of the states' proposal and many of the specifics outlined above, there were some important elements that did not garner full consensus or were not fully resolved. Below is a brief summary of those topics.

  - Determining compliance with bycatch rate. The Team considered several options for determining compliance with bycatch rates. The main options discussed included the following:

    - *Take stock of the two-year average to assess compliance with the bycatch rate.* This approach, put forward by NMFS, would determine the average bycatch rate over a two-year period for each region and measure that against the associated target bycatch rate. This approach is intended to ensure fishermen are moving as quickly as possible to meet bycatch rates.

    - *Phase in more stringent bycatch rate over two years.* This approach recommends that NMFS phase in compliance with the more restrictive bycatch rate over time as a way to allow fishermen to get up-to-speed. Two different strategies were offered for providing more lead time: (1) put forward separate bycatch rates for years 1 and 2, with year 1 being a less aggressive rate; and (2) focus exclusively on year 2 to determine compliance with the bycatch rate.

  Despite extensive discussion, no full consensus was reached. Most Team members who weighed in on this topic spoke in favor of the two-year average

recommended by NMFS, suggesting in their comments that industry has already had and will have additional time to come into compliance. Proponents also suggested that the current high bycatch rates necessitated quick action to protect harbor porpoise. Those uncomfortable with the recommended approach remained unconvinced that fishermen would have sufficient time to prepare for an aggressive bycatch target in year 1.

- Certification program focus and frequency. Team members broadly endorsed the need for a certification program tied to the expanded pinger requirements in both the Gulf of Maine and Cape Cod South. However, there were divergent views regarding the frequency and focus of such an effort. Below is a brief synopsis of the primary views expressed.

  - *Program focus.* Team members discussed the relative merits of focusing a periodic certification program on gear versus fishermen. A number of Team members made the case for fishermen-centric program, suggesting that such an approach is most appropriate given (1) the limited resources available for states to maintain an effective gear inspection program; and (2) the need to provide ongoing training to individuals new to Harbor Porpoise TRP-related fisheries and regulations. Others recommended a gear-focused effort, as (1) NMFS already provides a one-time pinger training/certification program for new vessel operators as required by the current HPTRP regulations; (2) research suggests non-functioning or improper use of gear modifications (e.g., pingers) is a key factor in increased takes; and (3) there is no current effort focused on ensuring that gear is in proper working order.

  - *Program frequency*. Participant views on program frequency were closely tied to program focus. If the program is to focus on gear, many Team members suggested that annual or seasonal inspections are necessary to make sure pingers are routinely being used and in good working condition. If the program is to focus on fishermen, Team members generally felt that bi-annual certification would be sufficient.

  The Team's discussion on these points was not resolved and no clear consensus or preference emerged.

- Closing provision. Team members considered strategies for measuring ongoing compliance with stipulated average bycatch rates beyond the initial two-year period. NMFS put forward a suggested approach that encompassed the following elements:

  - If in compliance: Continue calculating average bycatch rates based on a rolling two-year bycatch rate for each area.
  - If out of compliance: Maintain stipulated consequences until achievement of the conservation goals mandated under the MMPA. The conservation

goals mandated under the MMPA was identified as the MMPA's Zero Mortality Rate Goal (ZMRG), which is defined as 10% of PBR.

Team members broadly endorsed the concept of a rolling two-year average if bycatch rates are in compliance. There was, however, a divergence of views regarding the appropriate out-of-compliance strategy. One Team member felt the consequences should be relaxed once the average bycatch rate fell back below PBR and demonstrated movement towards ZMRG. A second voiced concern that ZMRG was an inappropriate target to use since that rate is calculated region-wide and a more area-specific target should be developed. Others, however, suggested the ZMRG was the appropriate benchmark given (1) legal requirements in the MMPA; and (2) the need for more severe restrictions given the failure of a PBR-driven target.

**DISCUSSION: MID-ATLANTIC**

The last portion of the meeting focused on a verbal proposal to exempt striped bass gillnet fishermen from the current February 15 to March 15 closure for large-mesh gear in the Virginia state waters portion of the Southern Mid-Atlantic Waters. The proposal, put forward by Team members from Virginia, was rooted in the following: (1) the negative socioeconomic impacts of the current closure on striped bass fishermen; (2) the increase in non-targeted fishery bycatch due to the smaller mesh requirement; and (3) the lack of significant takes by striped bass fishermen in the area. They also noted that it was a small fishery (roughly half of the 38 fishermen with quotas are actively fishing) with strong observer coverage.

The proposal generated extensive discussion. A number of speakers endorsed the concept of relaxing the restrictions, particularly if it could be done in a way that ensured no increase in harbor porpoise takes or set problematic precedents in other managed areas. There was also interest from at least one speaker to see whether a similar approach might be adopted for North Carolina fishermen.

Others, however, voiced strong objections. Chief among the concerns: (1) there is insufficient data to understand the potential for increased takes with a larger mesh size; (2) fishery-specific exemptions are difficult to enforce and inconsistent with past NMFS direction regarding TRPs; and (3) the potential exemption could create inconsistencies with and impact on the Bottlenose Dolphin Take Reduction Plan.

The proposal generated a handful of different approaches to meet industry's request for relaxed restrictions. Among the proposals considered: (1) full exemption for striped bass gillnet fishermen from the current February 15 to March 15 closure for large-mesh gear in the Southern Mid-Atlantic Waters; (2) full exemption in exchange for pinger usage; (3) full exemption with consequences if an agreed-upon level of takes is exceeded; (4) a shift in fishing boundaries to exempt closer-in waters; and (5) a change to the definition of large mesh whereby the 7-inch mesh would fall into the small mesh category rather than large mesh, thus exempting all gillnet mesh sized less than 8 inches from this closure.

No proposal emerged with consensus or even majority support. NMFS agreed to pull together a work team to put an option in writing for subsequent consideration (likely via email) by the Team.

### DISCUSSION: OTHER ISSUES

The discussion on Gulf of Maine/Cape Cod South touched on a handful of other issues that merit discussion.

- *Potential to move below PBR.* Some Team members emphasized the need for NMFS to undertake – and disseminate to the Team – an analysis that confirms the potential for compliance with agreed upon target bycatch rates to reduce takes below PBR and moving towards ZMRG. NMFS agreed to look more closely at this issue and provide additional information to the Team post-meeting.

- *Outer Cape Consequence Area.* Team members discussed the need for NMFS to create an Outer Cape Consequence Area to hold fishermen in this area accountable for harbor porpoise takes occurring in the Cape Cod South Area. NMFS is to disseminate the suggested area to Team members for their review and comment via e-mail.

## V. NEXT STEPS

Based on the discussion, the Team agreed to the three next steps:

- As with the summary from the Philadelphia meeting, CONCUR will prepare a Key Outcomes Memorandum for the January 31, 2008, call for subsequent distribution to the Team. The summary will emphasize key discussion points, options considered by the group, areas of consensus, and areas of divergence. CONCUR anticipates distributing the summary to the Team in February. (This document completes this step.)

- NMFS convenors and staff are to work with Team members to refine several proposals and distribute them to the full Team for consideration and comment. The concept is to develop short documents to elicit focused feedback from Team members.

- Below is a list of the specific areas to be addressed:

    - Updated proposed bycatch rates for GOM and Cape Cod South.

    - Suggested approach for calculating compliance with bycatch rates in GOM and Cape Cod South.

    - Confirmation that compliance with bycatch rates is projected to bring takes below PBR and moving towards ZMRG.

    - Definition of Outer Cape Cod consequence area.

  - Virginia striped bass gillnet fishermen request for relief from current mesh size regulations.

- NMFS does not currently anticipate reconvening the Team in-person or via teleconference to reconsider approach, as the Team has had substantial input into the various topics under discussion and the various perspectives have been well framed. Rather, NMFS will seek targeted input via email on the handful of outstanding issues noted above. Additionally, NMFS anticipates follow-on email communication by the end of March to summarize Plan status.

Questions or comments regarding this Key Outcomes Memorandum should be directed to Scott McCreary or Bennett Brooks with CONCUR. Scott can be reached at 510-649-8008. Bennett can be reached at 646-761-0652.