

## PROPOSAL

### IMPROVEMENTS TO THE NEW ENGLAND PORTION OF THE HARBOR PORPOISE TAKE REDUCTION PLAN

JANUARY 11, 2013

#### **Rationale:**

The intent of this proposal is to utilize the most recent scientific knowledge and analyses presented to the Harbor Porpoise Take Reduction Team (TRT) during the November 2012 meeting to update and modernize the measures contained in the Harbor Porpoise Take Reduction Plan (TRP) as amended in 2010.

In summary, this proposal is aimed at improving the current New England gillnet consequence closure area strategy while also introducing an incentive-based program to minimize harbor porpoise bycatch.

The current New England area consequence closure strategy lacks a clear correlation between the health of the harbor porpoise resource (biomass), interactions of harbor porpoise with commercial fisheries (mortality), and the triggering of area consequence closures (regulations). Furthermore, the strategy does not adequately utilize real-time information for management purposes. Finally, the existing TRP lacks the tools to effectively implement accountability measures at the individual level.

The recommendations below are aimed at improving the existing regulatory aspect of the TRP by implementing measures directly tied to harbor porpoise (HP) mortality outcomes. Additionally, through the use of existing cooperative models already in place in much of New England ("Sector Management"), this proposal proposes an incentive-based program to reduce harbor porpoise takes and improve regulatory compliance rates. In exchange for demonstrating adherence to stringent performance and adoption of voluntary measures to increase accountability and compliance, these cooperatives would be provided an opportunity to be exempted from a consequence closure. Such a "Cooperative Achievement Program" based on performance and incentives will benefit vessels fishing with gillnets operating across the northeast by lowering PBR for the entire gillnet fishery.

#### **Measures:**

##### **(1) Modify Existing TRP Measures**

###### **1. Consequence Closure Area Strategy:**

1. Modify the Trigger for Area Consequence Closure(s):
  - Eliminate the current trigger which is based on a target bycatch rate.
  - Establish a new trigger that is based on two consecutive years of the fleet exceeding the most recent harbor porpoise Potential Biological Removal level (PBR) established by the harbor porpoise stock assessment report.

2. Modify the Removal of an Area Consequence Closure(s)
  - If an area consequence closure becomes enacted then the closure should be removed once the harbor porpoise bycatch has been below PBR for two consecutive years.
3. Modify the Process to Implement and Remove Area Consequence Closure(s)
  - Additional steps should be added to the TRP process.
  - First, the TRT should be convened, or at least informed, yearly by NOAA Fisheries on where the fishery stands in relation to PBR.
  - Second, an area consequence closure should not be triggered or removed by NOAA Fisheries until the TRT has been convened to discuss the data under review by NOAA Fisheries that is the basis for considering a closure(s).
4. Allow for Modifications to be Made to Area Consequence Closure (s)
  - The TRP should define a process that allows for the current consequence closure areas to be updated reflecting the best and most current data/realities of the interaction between the HP population and the gillnet fishery.
  - The TRP should consider amending the existing area consequence closure strategy by allowing for the size and duration of a closure to be commensurate with the level to which PBR was exceeded. The formula should include consideration of pinger compliance rates with higher rates positively effecting (minimizing) the size and/or duration of an area consequence closure.
  - If within a pinger management area there are closure areas that have had no harbor porpoise takes for two consecutive years, then that closure area should not be included with a consequence closure. For example, the Eastern Cape Cod Closure Area within the Southern New England Management Area.
5. Modify the Pinger Compliance Rate
  - Although it is understood that PBR is the primary focus, the evaluation currently used to deem a net/string compliant or non-compliant has caused great concern. It appears many involved with the process have been leery of the reliability of existing methods and technology used to test the functionality of pingers.
  - Therefore, compliance should be evaluated based on the number of pingers used relative to the number of gillnets used.
  - Vessels should be required to carry onboard a minimum number of additional working pingers (10%).
  - A net/string will be considered compliant if it has the correct number of pingers attached as the gear is being set. A vessel will be considered wholly compliant if it is carrying the correct number of additional working pingers when it leaves the dock.

- Once the methodology for functionality is reliable and dependable, the evaluation of compliance should be subdivided into two categories - functional compliance and deployed compliance.

#### 6. Mandatory Annual Pinger Testing

- Prior to the start of each fishing season, each operating vessel will be required to have a yearly inspection of their pingers functionality to carry onboard a verification of this inspection. These inspections should be designed and carried out by NOAA Fisheries in coordination and conjunction with State partners and/or others as deemed appropriate.

#### 7. Update Pinger Specifications

- Many gillnet harvesters are currently upgrading their existing pingers with new technology, LED pingers to better discern functionality.
- As necessary, TRP pinger specifications should ensure to include the latest technology.

#### 8. Enforcement of Current TRP measures

- 100% use of the required set (number) of pingers per string is an essential requirement of the TRP. This requirement should be enforced by NOAA Fisheries and State partners under the Joint Enforcement Agreement with NOAA Fisheries.

### **2. Other Special Measure(s) Provision [ 50 CFR §229.33(f) ] of the TRP:**

- Retain the special measures provision.
- This is the only measure that provides NOAA Fisheries with the flexibility to modify the TRP based on most recent scientific information and analyses in a timely fashion.
- The TRP should be modified to establish a process for which NOAA Fisheries notifies the TRT on either external and/or internal requests to NOAA Fisheries where deliberations are considered to utilize this provision.

### **(2) IMPLEMENTATION OF A “COOPERATIVE ACHIEVEMENT PROGRAM”**

As noted above, this proposed provision would modify the existing TRP to create an incentive-based program where an exemption from an area consequence closure could be granted to a Sector based on performance. It is believed that such a program will create a far more effective incentive for individual harvesters to reduce harbor porpoise bycatch, which will have positive impacts for the entire gillnet fishery. These measures are intended to use the sector management program in a positive, incentive-based (not punitive), manner.

#### **Core Elements:**

- Modify the TRP to include an option for a “Cooperative Achievement Program”, which allows a NOAA approved “Sector” operating in the northeast groundfish fishery

the opportunity to be removed from area consequence closures based on performance.

- A bycatch rate metric will be the key metric used to evaluate performance:
  - a. A sector-specific bycatch rate (Intra-Sector Monitoring Rate) will be developed for each sector based on the ratio of observed HP takes<sub>sector i</sub> / Observed Landings<sub>sector i</sub>
  - b. NOAA Fisheries will calculate an in-season sector-specific rate, for each management season.
  - c. Sectors will continuously calculate their own rate and check accuracy with NOAA Fisheries quarterly.
  - d. Sectors will report their bycatch rate methodology as well as their estimated bycatch rates in their annual reports.
  - e. If the gillnet fishing fleet exceeds PBR for two consecutive years, and an area consequence closure is triggered, the reported sector bycatch rates for those two consecutive years would be used as performance criteria to determine sector-specific exemptions.
  - f. The following includes three separate options *for discussion purposes* under which a sector-specific exemption would be granted:
    - i. The intra-sector monitoring rate is significantly different (measured via statistical hypothesis tests) than the target bycatch rate.
      1. The target bycatch rate is the bycatch rate that yields PBR
        - a.  $\text{Observed HP takes}_{\text{PBR}} / \text{Observed Landings}_{\text{FLEET}}$
    - ii. The intra-sector monitoring rate is equal to or less than the target bycatch rate.
    - iii. The intra-sector monitoring rate is 75% of the target bycatch rate.

#### **Additional Elements:**

Sectors' can voluntarily opt to introduce additional management measures into their operations to achieve the performance necessary to be considered for an exemption. The following are examples of voluntary measures a sector may adopt through the use of their governing documents (Operations Plans) and/or existing reporting requirements to NOAA Fisheries.

- The adoption of a comprehensive pinger program to be carried out by a sector. Such a program could include but is not limited to distribution, replacement and regular testing of pingers.
- Sectors may either use current reporting requirements (annual reports, sector manager trip issue reports) to NOAA Fisheries or can recommend additional reports to be submitted to NOAA Fisheries.
- Sectors may utilize their current schedule of penalties in the Operations Plans which go through rulemaking, available for public comment, each year.
- Participation in the GMRI FAST bycatch reporting project to track harbor porpoise takes near real time.