April 10, 2013, HPTRT Work Group Meeting Outcomes

The National Marine Fisheries Service convened a Harbor Porpoise Take Reduction Team Work Group meeting Wednesday, April 10, to consider the work group's earlier progress, review recent information developed by the Northeast Fisheries Science Center and continue deliberations on the outlines of possible revisions to the Harbor Porpoise Take Reduction Plan.

Team members attended both in-person (at NMFS Gloucester offices) or by phone. Team members attending in-person were: David Laist, Cheri Patterson, Sharon Young, Erin Burke, Robert Banks, Joshua Wiersma, Damon Gannon and Kate Swails. Team members participating via teleconference and webinar were: Andy Read, Greg DiDomenico, Rick Marks, Alicia Nelson, Sarah Uhlemann, Kristy Long, April Valliere, Regina Asmutis-Silvia, Kim McKown, Lisa Bonacci, Jackie Odell, Jamie Testa and Cindy Driscoll. Other participants (either in-person or via teleconference) included: Mary Colligan, David Gouveia, Chris Orphanides, Debi Palka, Josh Hatch, Mike Asaro, Allison Rosner, John Higgins, John Kenney, Glenn Salvador, Kevin Collins, Kathryn Bisack and Sarah McDonald. Scott McCreary with CONCUR, Inc., and Bennett Brooks with CBI facilitated the discussions.

The meeting was divided into two parts. The morning focused on updates and discussion with (1) the Northeast Fisheries Science Center (NEFSC) on recent data developed to support the Team's deliberations, and (2) the Northeast Regional Office (NERO) on its follow-on questions regarding the preliminary framework agreement developed by the Work Group at its earlier March meeting. (Background information provided by the NEFSC and other related information can be found at *http://www.nero.noaa.gov/protected/porptrp/trt/Meetings/2013meetingapril.html*) The afternoon was a non-NMFS Team member-only caucus, where the group focused on adding more specificity to its emerging framework agreement for discussion at the in-person meeting scheduled for mid-May. The caucus was followed by a brief discussion with M. Colligan, D. Gouveia and K. Swails to present the results of the Work Group deliberations and answer any clarifying questions.

Key points from the discussion are summarized below:

- Work Group participants further refined their emerging framework agreement, though several key pieces were deliberately framed as options or for discussion at the upcoming May in-person meeting. Attached is a summary of the Work Group deliberations prepared by the Work Group itself.

- NMFS staff emphasized the imperative for the Work Group to make progress on a consensus recommendation by the May meeting, as that will facilitate the rule-making process. NMFS staff further noted that, given the steps required in the rule-making process, it is unlikely a final rule will be promulgated prior to the planned October closure and, hence, the Team may want to consider use of the Other Special Measures provision if it reaches a consensus agreement.

- Deliberations generated the following next steps and information requests:

- Work Group members are to refine and confirm the outlines of its emerging framework agreement (and outline of options for discussion) for subsequent distribution to the full team.
- Science Center staff are to develop data, as possible on the following topics:
    - Pinger compliance rates for common pool versus sector vessels; data should call out distribution of hauls per boat to determine whether non-compliance is concentrated among a smaller subset of vessels.
    - Additional clarity, as possible, on the impact of the differing practices of mid-Atlantic versus New England vessels fishing in the mid-Atlantic on harbor porpoise bycatch rates.
    - Update the bycatch rate data (since May 2012), on a monthly basis, throughout the New England region.
- D. Gouveia is to confirm the extent to which pingers can be used voluntarily in the mid-Atlantic or whether specific authorization is required under the MMPA.

HPTRT Work Group Meeting Summary
April 10, 2013: Gloucester, MA

The work group (Work Group) consists of Harbor Porpoise Take Reduction Team (HPTRT) members representing the NGO, scientific, industry, and state management stakeholder groups. The Work Group met on April 10, 2013 and reviewed with NOAA Fisheries (NMFS) questions posed regarding the 'points of general agreement' previously formulated by a subset of the Work Group in March 2013. The Work Group then proceeded to clarify NMFS's questions and provide options for discussion at the May 2013 HPTRT meeting.

Below are three 'points of general agreement' on a Potential Biological Removal-based trigger for consequence closures, pinger compliance, and "Other Special Measures" provision in the Harbor Porpoise Take Reduction Plan. Each point is followed by a summary of the Work Group's discussion, areas with divergent views and/or issues still needing further Work Group or HPTRT deliberations.

NMFS indicated a preference to have a single rulemaking action and, accordingly, NMFS staff is looking to the HPTRT to provide clear direction and recommendations; however, additional rulemaking can be undertaken if necessary.

Points of General Agreement of the Work Group:

1) Support for developing and implementing a Potential Biological Removal (PBR)-based trigger for the Harbor Porpoise Take Reduction Plan's (Plan) Consequence Closure Strategy in New England that could be a stepped-down progression toward Zero Mortality Rate Goal (ZMRG) over a 3-5 year period. ZMRG is 10% of the PBR (PBR is currently 706 making ZMRG 71)

Bycatch Rates vs. PBR:

The Work Group was in favor of having a trigger for a consequence directly tied to the PBR metric against which the Plan's goals are measured (i.e. estimated bycatch levels) rather than the bycatch rate now used. The Work Group felt that due to the inconsistency of variables relating to landings or fishing effort such as fishing practices, regulations, various fish stock sizes and location, environmental changes, and fishing fleet changes that bycatch rates may not be reflective of current fishing practices and actual harbor porpoise interactions that may or may not result in the exceedance of PBR.

The suggestion within the Work Group that PBR be coastwide and not apportioned between New England and the Mid-Atlantic was met with concern with the members of the Work Group from the Mid-Atlantic. If PBR was not apportioned between New England and the Mid-Atlantic Regions then the HPTRT may need to formulate new consequence strategies that do not currently exist under the Plan in the mid-Atlantic. The Mid-Atlantic gillnet fishing community has successfully managed harbor porpoise take reduction through gear modifications and seasonal closures. Mid-Atlantic representatives don't want to be obligated to conform to new regulations if New England-based vessels fishing in the Mid-Atlantic are the cause of PBR exceedance.

The Work Group did agree that if a consequence closure is triggered based on an agreed HPTRT established PBR-based trigger the three current New England Region consequence closures should remain the same as outlined within the current Plan. However, the Marine Mammal Protection Act requires that the Plan reduce harbor porpoise incidental catch (takes) to below the stock's PBR level within 6 months of the Plan's implementation and to a rate approaching a zero mortality and serious injury rate (ZMRG) within 5 years of the Plan's implementation[1].

The Work Group discussed developing a stepped-down approach whereby the consequence trigger would be reduced through a progression of years from PBR to ZMRG. Additionally, it noted consideration could be given to varying consequence measures based on the magnitude of porpoise mortality in excess of the trigger level at each step of the agreed stepped-down schedule; as well as when the consequence(s) are lifted.

An outline of options is provided below as a point for the HPTRT to start discussions. Key decisions would involve the number of years to step-down the trigger level for each year (e.g., 3 vs. 5), the consequences at each level, and how the consequences might be lifted. Table 1 is an outline the Work Group started and is only meant to initiate discussion and foster agreement.

Table 1.

Year 1 (or any year) = not to exceed the most recent year's Marine Mammal Stock Assessment Report's derived PBR (SAR PBR).
• **Consequences** – If SAR PBR is exceeded then the most severe of consequences occurs (e.g. all consequence closures as defined in the Plan). These consequences can be regional or coastwide.
• **Lifting consequences** - If consequence closure(s) are triggered, then one or two year(s) of mortality below the SAR PBR trigger could be required to remove consequence(s)?
Interim Years = some percent of SAR PBR towards ZMRG
• **Consequences** – If the stepped-down level of PBR is exceeded for that year, but still below SAR PBR, then some level of reduced consequence closures are in effect.
• **Lifting Consequences** - If consequence closure(s) are triggered, then one or two year(s) below that year's PBR trigger to remove reduced level of consequence(s)?

[1] The MMPA states, "The immediate goal of a TRP is to reduce, within six months of implementation, the mortality and serious injury of strategic stocks incidentally taken in the course of U.S. commercial fishing operations to below the PBR levels established for such stocks. The long-term goal of a TRP is to reduce, within five years of its implementation, the incidental mortality and serious injury of strategic stocks taken in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate (known as the zero mortality rate goal, or ZMRG) taking into account the economics of the fishery or fisheries, the availability of existing technology, and existing State or Regional fishery management plans. NMFS has defined ZMRG as 10% of a marine mammal stock's PBR level (69 FR 43338, July 20, 2004)."

Final Year = ZMRG or close target to ZMRG
• **Consequences** – If ZMRG is not met but exceeded by only a small amount? If ZMRG is not met by a large amount? Perhaps different consequences depending on degree of excess.
• **Lifting Consequences** – Same as step above.

Additional discussion points to be incorporated in the outline of options:

- One PBR-based trigger could be set for the Atlantic coast; if exceeded, all vessels would face consequences defined under the Plan. If this option is considered, there may be a need to develop Mid-Atlantic consequence alternatives. Alternatively, if the PBR-based trigger is exceeded and, if the vessels causing mortality in the mid-Atlantic are home-ported outside of the mid-Atlantic, then the allocation(s) of consequences might be assigned only to the vessels home-ported outside of the region. This last option may resolve the concern of Mid-Atlantic HPTRT members that New England-based vessels fishing in the Mid-Atlantic have been accounting for a majority of the Mid-Atlantic harbor porpoise takes. Essentially, with no consequence strategy defined in the Mid-Atlantic, the choices are: 1) determine who is taking animals and make those taking the harbor porpoise bear the consequences, or 2) develop a consequence strategy for the Mid-Atlantic Region.
- Consider another type of regionally developed consequence if a coastwide PBR is triggered.
- Convene HPTRT to address drastic shift(s) (effort, etc.) in the Mid-Atlantic before a consequence is triggered or making any change to Plan. This may be lengthy and not address issues quickly.
- Another option would be to apportion PBR among regions (e.g., New England and the Mid-Atlantic) and, if a regional trigger is exceeded, then apply consequences regionally through current consequences for New England and new consequences for the Mid-Atlantic Region.

These options assume that NMFS will be able to provide bycatch estimates on a timely basis, at least annually (understanding there may be a five to six month lag period after the end of a fishing year to assure that bycatch estimates are reliable and consequence closures are implemented in a timely manner.

2) Support for improving pinger compliance among the industry and possible expansion of pinger use management areas including New England-based vessels fishing in the Mid-Atlantic.

Pinger usage and compliance:

The Work Group recognized the importance of effectively measuring pinger functionality **AND** the correct deployment of pingers on gillnets. The emphasis on compliance in meeting both metrics relies on thorough, effective reporting by observers and action being taken by law enforcement, etc. Additionally the sample size needs to be reported to help understand confidence levels in the fleet's compliance with the required pinger usage in the defined regions of the Plan. Law enforcement can help in increasing compliance with improved pinger testing technology. As well as, the fishing industry can help by using improved LED pinger technology to immediately and visually confirm the devices are operating correctly.

The Work Group discussed the possibility of establishing a requirement that pingers be seasonally required for all vessels fishing with gillnets north of 40° latitude and east of 72°30' longitude (this area is not meant to be inclusive of the current open area around Long Island/Sound). For a reference see Figure 1 for the current HPTRP Management Areas for New England. The months for pinger use might be uniform throughout New England or they might differ somewhat between the Gulf of Maine and waters south of Cape Cod to account for differences in peak bycatch periods in those areas. The Work Group asked NMFS to provide monthly harbor porpoise take data since May 2012 to inform team discussions of appropriate pinger usage months (month by month bycatch data prior to from 2007 to May 2012 is already included in the paper on bycatch patterns provided by Palka at the Fall 2012 meeting). See attachment Harbor Porpoise Bycatch Patterns_palka_2012.pdf for reference.

Additionally, NMFS was asked to provide information on steps that would be required to authorize New England-based vessels to use pingers while fishing in the Mid-Atlantic Region. The thought was that pingers would still be required in addition to the requirements by the Plan in the Mid-Atlantic, and that this may reduce the harbor porpoise takes in the Mid-Atlantic by New England-based vessels that don't use the same local fishing practices as the Mid-Atlantic fishing fleet (e.g. varying soak times, etc.). The Work Group was also interested in NMFS's opinion on whether it is allowable to increase the number of pingers on gillnet strings to assure of overlapping functionality if a pinger becomes defective while actively fishing.

While the Work Group discussed industry incentive-based strategies to reward individuals in the fishing fleet that conduct their fishing practices in full accordance with the law and demonstrate behavior that assures no or very few harbor porpoise takes, no specific options were put forward for HPTRT consideration other than possibly including an incentives category for each year outlined in Table 1. It was suggested that fleet-wide compliance would be improved through the incentives/consequences built into the new Plan, but no additional details on how this might be done were put forward. In general, the idea was that if industry segments (Sector and Common Pool vessels) could demonstrate successfully achieving the goals of PBR and ZMRG through self-governing processes, then an Incentives and Consequences Program proposed by the industry relative to compliance may be considered by the HPTRT through future rulemaking.

3) Support for removing the 2013 October/November Gulf of Maine Consequence Closure under the "Other Special Measures" provisions of the Plan, provided that other metrics are trending in a positive direction (e.g., bycatch below PBR in 2012 and positive performance to date in 2013) for the New England fishing fleet within the Gulf of Maine.

Due to the bycatch rate trigger exceedance in 2012 and the shift of the mandated fall closure to February-March 2013, the New England gillnet fishing fleet faces a consequence closure in the Coastal Gulf of Maine Closure Area for four months in 2013 (February, March, October, and November). The Work Group discussed several options for the HPTRT to consider that would keep the Coastal Gulf of Maine Consequence Closure open for October and November 2013.

Option 1: The HPTRT could agree to modify the Plan and use the "Other Special Measures" one last time to allow for no closure during October and November of 2013 and then sunset the "Other Special Measures" clause of the Plan.

Option 2: The HPTRT could retain the "Other Special Measures" clause in the new Plan with additional language to assure that any future application of this provision is used only after consultation with the HPTRT.
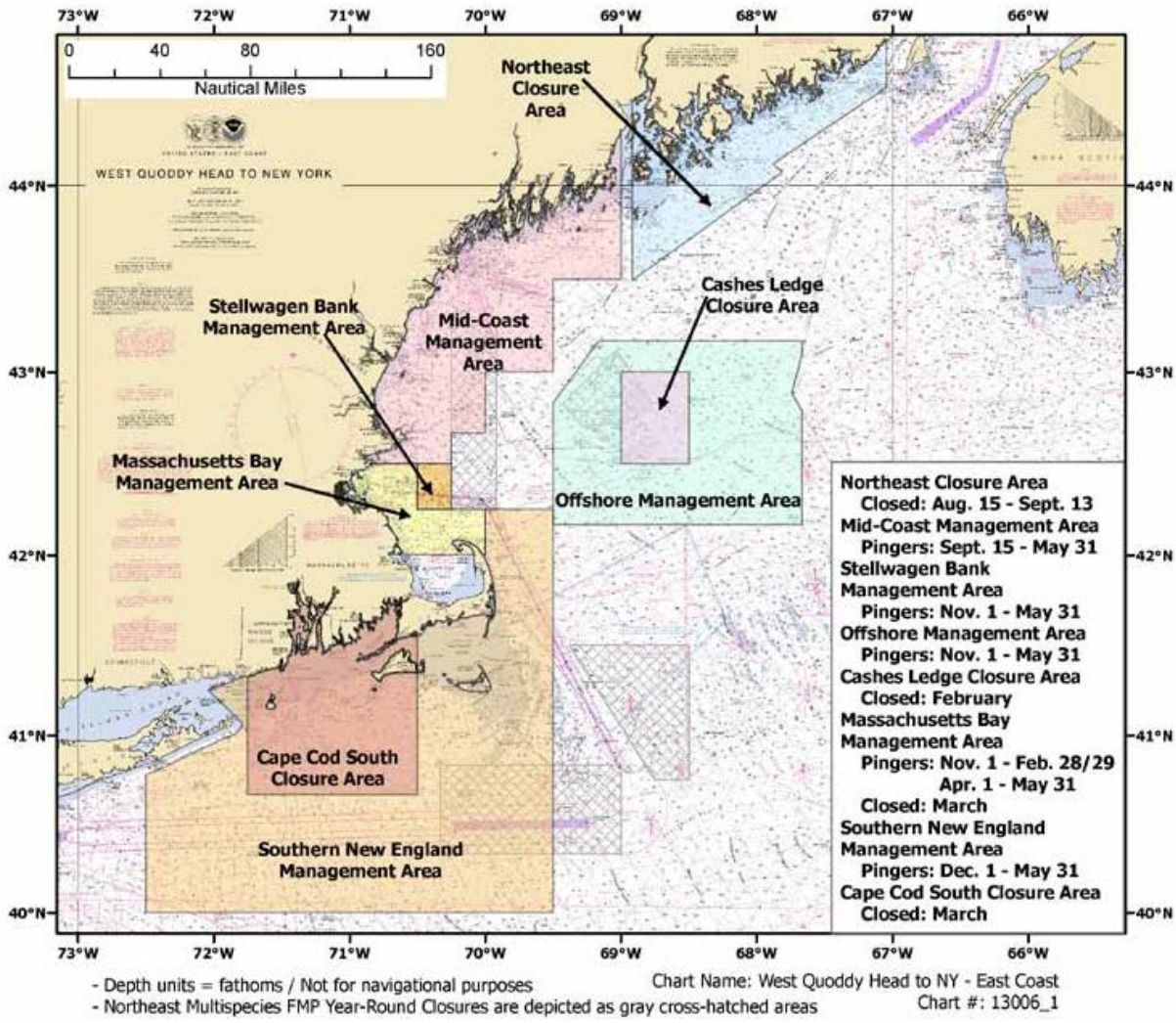
Figure 1. HPTRP Management Areas for New England.