Harbor Porpoise Take Reduction Team
Teleconference Meeting: Tuesday, June 18, 2013

KEY OUTCOMES MEMORANDUM

I. OVERVIEW

The Harbor Porpoise Take Reduction Team (HPTRT) held an hour-long teleconference on Tuesday, June 18, 2013, as a follow-up to its May 2013 in-person meeting. Teleconference objectives included the following:

- Review primary outcomes of the May HPTRT meeting
- Share progress on action items for the May HPTRT meeting
- Determine steps for moving forward

This summary report, prepared by CONCUR Inc., provides an overview of the meeting's key outcomes.

II. PARTICIPANTS

The call was attended by the following Team members and/or alternates: Debra Abercrombie, Regina Asmutis-Sylvia, Rob Banks, Eric Brazer, Erin Burke, Greg DiDomenico, Steve Early, Damon Gannon, David Laist, Kristy Long, Maggie Lynott, Red Munden, Alicia Nelson, Jackie Odell, Cheri Patterson, Rich Seagraves, Kate Swails, Mark Swingle, Sarah Uhlemann, April Valliere and Sharon Young.

The call was convened by Mary Colligan, Dave Gouveia and K. Swails with NMFS, and Scott McCreary with CONCUR and Bennett Brooks with the Consensus Building Institute (CBI) facilitated the call. Staff from the Northeast Regional Office, the Northeast Fisheries Science Center, and NOAA Office of Law Enforcement also participated, as did two members of the public.

III. KEY OUTCOMES

Below is a brief summary of the main topics and issues discussed during the meeting. This summary is not intended to be a meeting 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.

- ***Welcome and Introductions.*** S. McCreary briefly reviewed the meeting purpose and reiterated the request that Team members and others refrain from taping the call (to foster a more candid discussion) or at least acknowledge publicly if the discussion is being recorded. K. Swails provided an overview of the meeting agenda, walking through the key topics. She also reviewed the list of those participating on the call.

- ***Updates***. The Agency provided two brief updates. The first related to Team membership; the second, to the Virginia Marine Resource Commission (VMRC) exemption Request.

  - ***Team composition***. K. Swails informed the team that researcher Andy Read has resigned his position on the Team. Team members were encouraged to submit candidate names for the now-vacant researcher spot. As well, they were asked to nominate alternates for their own spots (if they do not currently have any), as well as reconfirm their interest in continuing to serve on the Team.

  - ***VMRC***. K. Long with NMFS informed Team members that the Bottlenose Dolphin Take Reduction Team considered but did not support the VMRC's request – submitted and considered at the HPTRT's May meeting – that the boundary of the HPTRP for the Southern Mid-Atlantic Management Area be adjusted eastward from the Chesapeake Bay Bridge Tunnel to the COLREGS line to alleviate the burden on the state's striped bass fishery.

- ***Cooperation with Enforcement.*** D. Gouveia provided an update to Team members on Agency efforts to strengthen enforcement since the Team meeting in May. Most notably, Protected Resources Division (PRD) staff have been working closely to take the following steps:

  - Use existing Observer Program data (2008 to present) to develop four tiers of compliance. The tiers, still under discussion, are intended to support NMFS's effort to target enforcement at the most egregious violators. Based on current discussion (though subject to change based on internal deliberations and Team input), the tiers – in descending order of priority – are as follows:

    - Tier 1: Fishing in closed area and/or no pingers affixed to gillnets
    - Tier 2: Fishing with less than 50% of required pingers
    - Tier 3: Fishing with between 50% and 100% of required pingers
    - Tier 4: Fishing with required number of pingers, but with limited or no pinger functionality

    In addition to revising the tier structure, PRD staff worked with NOAA Fisheries Office of Law Enforcement and NOAA's Office of General Counsel litigation attorneys to consider penalties associated with each tier. D. Gouveia invited Team member input through the establishment of a Work Group, which is discussed further in the *Moving Forward-Longer-Term Actions* section below.

  - Assessing the Agency's current Joint Enforcement Agreements (JEAs) with the states to identify strategies to strengthen enforcement, since cases currently forwarded to General Counsel tend to be handled as lower priorities. In particular, the agency is looking to identify strategies to expand routine patrols and increase the likelihood of Federal prosecution.

- Striving to develop "special operations" in cooperation with the JEAs, Coast Guard and NMFS OLE to target those areas and times where the most serious violations and interactions are most likely to occur. Mark Minton with NMFS is currently working to develop operating protocols, and the Agency is trying to identify dedicated funds to raise the profile of PRD-driven enforcement activity. PRD staff are also working with region leadership to build support for such enforcement activities.

Team comments included the following points:

- Encouraging NMFS to incorporate pinger functionality (and not just presence) into Tier 2 or 3 to emphasize the importance of having pingers that are working.

- Clarifying (1) the extent to which the JEAs are allowed to operated in federal waters; and, (2) whether the Agency has specific goals or scales to compare levels of future enforcement versus past enforcement efforts. (D. Gouveia noted that state enforcement vessels are allowed to operate in federal waters, but vessel size can be a limiting factor. He also said that, given its limited resources, the Agency does not currently have specific enforcement target levels for increased enforcement activities, but said any increase will be an important improvement given the current baseline of PRD-related enforcement activity.)

- Underscoring the importance of targeting increased JEA patrols and, in particular, special operations, at those times and areas where there is the greatest need.

- Clarifying the extent to which the Agency's use of Observer Program data (1) represents a change in policy at the national level, and/or (2) has the potential to put observers at greater risk. D. Gouveia underscored that observers will not serve in an enforcement capacity. Observers will continue to record routine trip and catch data as well as collect other biological information.so there is no change in their current status as trained fisheries observers. K. Long also emphasized that other regions already use such data for enforcement purposes and thus the actions by the Northeast Region do not constitute any policy change.

- ***Moving Forward – Short-Term Actions.*** M. Colligan reiterated the Agency's intention to use the *Other Special Measures* provision to remove the planned October/November closure and not have any additional closures tied to the faulty bycatch trigger. She noted that senior leadership within the Region has been briefed and is supportive of the move. The Agency is preparing a Federal Register Notice and hopes to have it in place well in advance of the planned fall closure. Team member comments and questions on this topic centered on the following:

  - Seeking clarification on the extent to which the Agency's action is intended to remove the October/November closure only or affect all future consequence closures tied to the bycatch rate trigger. M. Colligan explained that the action is intended to remove the consequence closure provision entirely given the faulty bycatch trigger and a number of

Team members concerns with the approach, but noted that the Agency will be looking to the team to develop new approaches and strategies through subsequent Team and work group deliberations.

- One Team member sought clarification from the Agency as to how removing the consequence closure strategy using the Other Special Measures provision can be considered "beneficial" for harbor porpoise conservation. D. Gouveia clarified that the provision can be exercised if (1) pingers are seen to be ineffective (pinger operating effectiveness in the commercial gillnet fishery is inadequate to reduce bycatch below the stock's PBR level); and/or (2) the area or conservation action is deemed inappropriate (the boundary or timing of a closed area is inappropriate, or that gear modifications, including pingers, are not reducing bycatch to below the PBR level). The agency, he said, would be relying on the second factor in exercising the provision.

- One Team member sought to clarify whether the Agency was seeking Team endorsement of the strategy. M. Colligan said no action by the Team was needed or sought, given the Agency's ability to draw on the extensive discussions to-date.

- One participant acknowledged that Team members voiced frustration with the consequence closure approach at the May TRT meeting, but he noted that – at the same time – many on the Team still felt the strategy had validity and served as an important backstop. Accordingly, he said, a consequence strategy should still have a "viable place" in Team discussions.

- ***Moving Forward – Longer-Term Actions.*** M. Colligan laid out a longer-term implementation approach that relies on future Team deliberations, as well as the Agency's ongoing push at enforcement and monitoring. More specifically, she called out the following possible options for moving forward:

  - Continue Agency efforts to strengthen enforcement (as outlined above) and integrate these efforts and results into an updated monitoring strategy.

  - Establish Enforcement and Monitoring Work Groups to provide ongoing advice (every two months or so) to the Agency as it seeks to strengthen its efforts in both areas. (For example, D. Gouveia said an Enforcement Work Group can help the Agency define the tiers of compliance, data to be collected through JEAs, etc.) In response to a Team member question, M. Colligan noted that Work Groups could meet via webinar or in-person at NMFS offices in Gloucester (though the Agency does not have additional funds to support Team member travel in the foreseeable future.)

Establish a Consequence Strategy Work Group to further ideas discussed over recent meetings or defer the establishment of such a group until the enforcement and monitoring effort generates more data to inform such deliberations. M. Colligan expressed her preference for focusing on the enforcement/monitoring effort first (and then use the data and insights generated through that effort to inform, as needed, a follow-on consequence process or strategy),

IV. NEXT STEPS

Based on the Team's deliberations, the teleconference generated the following next steps:

- Team members are to submit to K. Swails candidate names for the vacant researcher spot. They are also asked to reconfirm their interest in serving on the Team and provide, as needed, candidate alternates for their spots.

- Team members are asked to submit to K. Swails their interest in serving on an Enforcement Work Group, a Monitoring Work Group or both.

- K. Swails is to arrange follow-on Work Group calls (Enforcement in August and Monitoring in October/November) based on canvassing participant availability. The schedule for Work Group calls will be provided to all Team members, who are welcome to participate if desired. The Agency will provide a webinar hook-up and, as needed, meeting space at its Gloucester office. No travel funds can be provided to support Work Group deliberations.

Questions or comments regarding this meeting summary should be directed to S. McCreary, B. Brooks or K. Swails. S. McCreary and B. Brooks can be reached at 510-649-8008 and 212-678-0078, respectively; Kate, at 978-282-8481.