HARBOR PORPOISE TAKE REDUCTION TEAM WEBINAR
FEBRUARY 13-14, 2013

KEY OUTCOMES MEMORANDUM

I. OVERVIEW

NOAA's National Marine Fisheries Service (NMFS) convened the Harbor Porpoise Take Reduction Team via webinar February 13-14, 2013. The meeting focused on the following objectives:

- Reviewing and clarifying proposals to revise the Harbor Porpoise Take Reduction Plan (TRP), as well as providing relevant Northeast Fisheries Science Center analyses
- Discussing strengths and weaknesses of the various proposals and identifying any emerging areas of possible convergence
- Determining next steps to move the team towards a unified consensus proposal.

This summary report, prepared by CONCUR Inc., provides an overview of the meeting's key outcomes. It is presented in five main sections: (1) Overview; (2) Participants; (3) Meeting Materials; (4) Key Outcomes; and, (5) Next Steps.

II. PARTICIPANTS

The webinar – convened in the afternoon of February 13 and morning of February 14 – was attended by 23 of the 39 Team members. Participating Team members for all or part of the meeting were: Regina Asmutis-Silvia, Rob Banks, Erin Burke, Kathleen Castro, Damon Gannon, Greg DiDomenico, Mike Greco, David Laist, Kristy Long, Bill Mackintosh, Rick Marks, Kim McKown, Red Munden, Alicia Nelson, Jackie Odell, Melissa Paine, Cheri Patterson, Kate Swails, Mark Swingle, Jamie Testa (for Steve Early), April Valliere, Sierra Weaver, Josh Wiersma and Sharon Young.

Dave Gouveia and K. Swails with NMFS Northeast Region (Protected Resources Division) convened the meeting. Scott McCreary with CONCUR and Bennett Brooks from the Consensus Building Institute served as the neutral facilitators. Staff from the Northeast Regional Office, Northeast Fisheries Science Center's (NEFSC) Protected Species Branch and Northeast Fisheries Observer Program, NMFS headquarters, NOAA Office of Law Enforcement (OLE), NOAA Office of General Counsel, and the U.S. Coast Guard supported the deliberations. Several other state and industry representatives, along with members of the public and one member of the news media, also attended all or parts of the meeting.

III. MEETING MATERIALS

A meeting agenda, proposals to revise the TRP (submitted in writing by TRT members) and several corresponding Science Center analyses were distributed prior to the meeting. Copies of meeting materials can be found on-line at:

http://www.nero.noaa.gov/Protected/porptrp/trt/Meetings/2013meeting.html

Documents can also be obtained by contacting K. Swails at 978-282-8481 or via email at kate.swails@noaa.gov.

IV. 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 any areas of full or emerging consensus.

A. Welcome and Introduction

D. Gouveia opened the meeting with brief welcoming comments and a review of the meeting purpose. S. McCreary briefly reviewed the agenda, and B. Brooks summarized key ground rules. K. Swails provided an update on Team membership, noting that Dr. Pinnguo He is replacing Scott Kraus (who resigned in fall 2012), and Dr. Kathleen Castro is replacing outgoing Team member Joe DeAlteris.

B. Setting the Stage

D. Gouveia provided a brief summary regarding the Agency's perspectives on the key issues needing to be engaged and resolved by the Team. His comments centered on the following:

- Recapping the latest harbor porpoise bycatch estimates developed by the Science Center, emphasizing the lower takes in recent years and the expected drop of the five-year average to below PBR in the 2013 SAR (which will encompass peer-reviewed data through 2011). At the same time, he noted that the gains are somewhat fragile (given poor compliance and lower landings), and he underscored the need for the Team to continue pursuing the longer-term zero mortality rate goal (ZMRG).

- Summarizing the Agency's preference for modifications to the current TRP rather than a wholesale revamping, given that (1) the strategy appears to be working (i.e., takes are decreasing); and, (2) extensive revisions will require a more exhaustive and time-consuming analysis and rule-making process. He then outlined the elements of one possible option described in the Agency's December 20, 2012 paper, "NMFS Perspective on Moving Forward," which is limited to: changing the consequence trigger; modifying the trigger rule; and, revising the Other Special Measures provision. Finally, D. Gouveia noted that the Agency is prepared to consider moving forward with more extensive revisions if that is the Team's preference.

C. Proposal Review

A significant portion of the first afternoon was spent reviewing and confirming the elements of the proposed revisions to the TRP put forward by various Team members, as well as providing

project proponents an opportunity to highlight the underlying rationale. The proposals were developed in response to a NMFS request at the in-person November HPTRT meeting. The specific proposals presented and discussed are summarized below.

- ***Scientist and conservationist proposal.*** This proposal centers on five major elements: (1) maintaining the HPTRP status quo with regard to existing closed areas; (2) modifying the reference bycatch rate that would trigger future consequence closures to rates that would lead to bycatch exceeding ZMRG; (3) codifying under the HPTRP any fishery management closed areas adopted pursuant to the Magnuson-Stevens Act (prior to 2012) to provide additional protections to harbor porpoises; (4) expanding pinger requirements; and, (5) rescinding the "Other Special Measures" provision. Key clarifications regarding this proposal included the following:

    - Chris Orphanides with the Northeast Fisheries Science Center underscored the difficulty in assessing the likely impact of and pinger requirements called for in the proposal given the lack of recent activity and Observer Program data in those areas and the inability to accurately forecast future fishing efforts. As was reported in the Science Center's analysis (based on a series of working assumptions), the proposal could possibly result in a 28-47% reduction of the current average annual bycatch.

    - William Whitmore with NERO's Sustainable Fisheries Division provided an overview of the various commercial gillnet fishery openings being considered by the New England Fishery Management Council. Key points from his comments centered on the following: (1) sectors are allowed to seek exemptions under Framework 48 for Northeast multi-species permits only; (2) the exemptions are for mortality closures only (not essential fish habitat closures) and, if granted, would apply for only one year; (3) any proposed exemptions must undergo an extensive review by broad-based technical teams (including PRD staff); and, (4) no openings are expected before 1½ to 2 years. He further noted that Regional Administrator John Bullard has already publicly voiced strong concerns regarding any openings within the Western Gulf of Maine.

    - One proposal author noted that the conservationist/scientist proposal to codify within the HPTRP current fishery management closures (with the potential for harbor porpoise interaction) and increased pinger coverage is likely to yield important conservation benefits given existing bycatch patterns within and along the western edge of the Western Gulf of Maine. The speaker noted the measures outlined in their proposal are particularly important given the expected increase in effort for dogfish and other species – trends which could counteract expected decreases in groundfish activity.

- ***Northeast Sector-State proposal.*** This proposal centers on two core elements: (1) modifying the existing consequence closure to replace the target bycatch rate trigger with one tied to PBR; and (2) implementing an incentive-based "cooperative achievement program" intended to reward (by exemption) well-performing sectors from an area

consequence closure. Additionally, the proposal included several aspects intended to ensure any closure decisions are made using the most recent data and informed by Team deliberations; revise the definition of compliance; and require annual pinger testing and updating pinger specifications. Key clarifications regarding this proposal included the following:

- Several team members sought to better understand how the proposal would calculate and verify a PBR-based trigger and over what timeframe. Proposal sponsors said they would rely on Agency monitoring data – currently at roughly 30% (NEFOP and At-Sea combined) coverage[1] – to track takes. They also said sector management would work with the Science Center throughout the year to confirm sector estimates are consistent with NMFS data. C. Orphanides said the Science Center can access and confirm the number of observed takes quickly (within three months or so), but substantially more time is needed to gather the effort-related data needed to conduct (and peer review) a complete, fleet-wide analysis. (NMFS Science Center staff noted that they could not at this time state with certainty how long it would take to generate fleet-wide estimates.)

- One Team member sought to understand the logic of the proposal's call for a trigger based on two consecutive years of exceeding PBR when the Marine Mammal Protection Act (MMPA) calls for reducing takes to below PBR within 6 months. Proposal sponsors said the two-year time-step was intended to be consistent with the approach used in the current TRP (the bycatch trigger rate is tied to a running two-year average).

- Proposal proponents clarified that the intended requirement to convene the TRT before implementing or removing a consequence closure is intended to ensure a thoughtful dialogue and transparency in decision making. TRT *approval* is not needed to execute a triggered closure, they said; rather, the consequence is the default action.

- Several Team members sought to understand whether the "incentive program" aspect of the proposal requires apportioning PBR. Proponents said they did not believe this was necessary nor intended; rather, they envision developing a target for each sector that ensures the fleet is below PBR.

- ***Shore-based pinger inspection proposal.*** This proposal, put forward by D. Laist, R. Smolowitz and B. Mackintosh, centers on establishing a shore-based pinger inspection program to improve compliance. Key aspects include: (1) expanding areas requiring pinger usage; (2) requiring sectors to play a key role in outfitting vessels with functional pingers; (3) putting in place an annual, shore-side pinger inspection program; and (4) developing a gillnet-specific vessel trip report (VTR) form. The proposal further calls for the planned October-November 2013 closure to be shifted to February-March 2014 if such a plan were implemented. Conversely, if the program does not work, the proposal

[1] One team member noted that non-groundfish are covered only by NEFOP and have an approximately 8% coverage rate, according to the Science Center.

calls for broad-based closures as outlined in the conservationist proposal. Key clarifications regarding this proposal included the following:

- D. Gouveia noted that the Northeast Region, based on feedback from the November 2012 Team meeting, is already working with its counterparts at OLE and General Counsel to launch a more targeted enforcement effort based on past Observer Program data. The effort is intended to improve industry compliance with pinger requirements. (One Team member strongly recommended that enforcement operations target the more serious violators – those vessels using zero pingers or fishing in closed areas – and not prioritize those that might have less than the full complement of fully functioning pingers.)

- Logan Gregory with OLE voiced concerns that certificates of inspection for pingers (as called for in the proposal) would be limited in effectiveness as there would be no way to correlate a certificate with actual behavior once the vessel is on the water (i.e., is the gear actually being used). He also noted that if pingers are checked on land, the likelihood they would be checked at sea is minimal. He voiced his strong preference for pulse operations (as described by D. Gouveia) to address compliance, particularly given enforcement staffing limitations. He also noted that broad geographic pinger requirements (as called for in the proposal) foster more effective enforcement.

- Proposal proponents acknowledged the challenges of implementing a shore-based program, but reiterated their concern that "pulse" operations focused on only the most egregious violators are problematic given that Observer Program data shows more than half of the vessels are not fully compliant at some point over the course of a year. They also reiterated their belief that shore-based inspections would be more cost effective than at-sea enforcement for ensuring compliance with pinger requirements.

- Jim St. Cyr with the Northeast Region noted that the data currently collected on the VTR form is highly consistent with the data called for in the proposal, and he underscored the administrative challenges in getting new government-reporting requirements in place. Further discussion among participants suggested the problem with existing VTR data for commercial gillnet vessels may be tied more to field descriptions on the form that are not relevant for (or confusing to) gillnetters. J. St. Cyr is to work with C. Orphanides and others to consider possible actions (rewritten field descriptors, outreach/education) to improve VTR effectiveness.

D. Key Discussion Themes

Discussion of the three stakeholder proposals and the option put forward by the Agency did not yield any clear consensus or emerging approaches. This could have been a result of the webinar format, given the number and complexity of issues to be engaged and the inability to conduct any meaningful sidebars with other Team members. Still, the deliberations highlighted some

important themes for the Team to consider in its next round of discussions (expected in April). These themes are summarized below.

- **Issues more fully framed and new considerations pinpointed.** Discussion of the various proposals helped frame the issues to be engaged in any possible TRP revisions and Team members' various perspectives. Key issues discussed included the following:

    - ***Mixed support for shifting to a PBR-based trigger.*** A number of Team members supported shifting the consequence trigger from the current bycatch rate to one tied more closely to PBR. Proponents, which included industry, state representatives, and some researchers, saw the shift as an important step to ensuring any future consequence closures are firmly linked to excessive takes and not inadvertently triggered due to changes in fishing effort. Conservationists were not supportive of the shift for two primary reasons: (1) the potential for a two-year lag (that is the time currently required to gather, analyze and peer review the relevant data and publish a draft and final SAR) between takes and the imposition of any actual consequence; and, (2) PBR as a target ignores the MMPA's explicit long-term goal of achieving ZMRG, which was to have been met within five years of TRP implementation. (Conservationists were eager to avoid the situation – just played out in the last consequence closure – where the data underpinning the closure decision was considered by some to be "out-of-date" and, therefore, not appropriate to use. Conservationists also noted that 15 years after the first TRP, ZMRG has only been approached in a single year.) They, instead, prefer to rely on a more readily calculated bycatch rate tied to ZMRG. Ideas floated to help bridge the divergent views included: (1) developing a trigger that drops from PBR towards ZMRG over time; (2) considering a trigger between PBR and ZMRG; and, (3) exploring opportunities to cut the time needed to analyze industry's compliance with the trigger (including the possibility of using draft data).

      The discussion also highlighted several implementation-related implications tied to a PBR-driven target. These include:

        - Determining whether PBR is apportioned regionally or aggregated across all regions (and implications for associated consequence closure areas and rules);
        - Developing a method to account for mid-Atlantic takes attributed to Northeast vessels (particularly salient if PBR is apportioned regionally);
        - Assessing the potential for (and implications of) an accelerated Science Center process for tracking bycatch against a PBR-related trigger; and,
        - Determining implications for observer coverage (e.g., levels necessary for reliable estimates).

    - ***Pinger compliance incentive structure intriguing to some, but challenging to implement.*** Some Team members voiced support for the concept of a selective exemption process (as included in the Northeast sector-state proposal) to

incentivize industry to step up compliance with pinger requirements. Such an incentive program was seen by some as an effective way to keep takes on a downward trend and spark aggressive pinger implementation. The discussion, however, pointed out the challenges in effectively implementing such an approach - some team members' strong reservations with the concept. Most critically, Team members noted that sectors only account for a portion of the commercial gillnet activity and suggested that any incentive mechanism would need to be more universal in nature, taking into account and incentivizing common pool vessels as well. Questions were also raised regarding the data sources, monitoring, and verification mechanism needed to credibly implement such an incentive program.

- ***Need to account properly for Northeast vessel bycatch in the mid-Atlantic.*** Team members broadly agreed that any changes to the current TRP approach need to properly account for Northeast vessel bycatch in the mid-Atlantic. This is particularly important if the Team were to support a shift to a PBR-based trigger. (According to data provided by C. Orphanides, Northeast vessels account for 92% of mid-Atlantic bycatch even though they represent only 31% of the effort. This disparity is believed largely due to Northeast vessels' significantly higher soak time.) Northeast Sector participants on the Team agreed and suggested that a sector-based incentive program would be an effective mechanism to alter the behavior of vessels from their sector. Others on the Team reiterated that not all Northeast vessels fishing in the Mid-Atlantic are members of the sectors or bound by sector management.

- ***Some sustained interest in shore-based pinger certification.*** Some members of the Team continued to voice support for retaining some element of a shore-based inspection program going forward, suggesting that such an approach is warranted given (1) the limited resources available to pursue aggressive pinger enforcement beyond just the most serious repeat offender; and (2) its potential to put forward meaningful and consistent requirements for sector and common pool vessels. It was also cited by some as a creative alternative to OLE staffing limitations.

- ***Some interest in stepped approach to revising the TRP.*** Some participants suggested the Team consider a stepped approach to revising the TRP, moving (for example) to alter the consequence closure trigger and Other Special Measures (OSM) provision in the immediate future (as a near-term strategy for addressing the impending October-November 2013 closure) and then launching more ambitious aspects (an incentive program, for example) either through pilots or follow-on Team deliberations.

- ***Sharper definition of consequence areas required.*** Any changes to the current bycatch rate trigger necessitate further discussion on the consequence area. If, for example, the TRP shifted to a PBR-based trigger and that trigger were exceeded, Team members expressed mixed views as to whether the consequence should result in closures of all consequence areas or be region-specific.

- **New concept proposals put forward.** In addition to discussing the three proposals submitted prior to the webinar, the deliberations yielded two new options for the Team's consideration. Neither concept proposal was fully fleshed out or discussed, but the elements of each – along with key Team commentary – are summarized below.

    - One proposal, put forward by C. Patterson, called for a stepped approach: moving forward in the near-term with a consequence closure strategy tied to PBR rather than the current bycatch rate, testing as a pilot program possible exemption program concepts and then, based on pilot program results, reconvening the Team in a year or so to consider opportunities for more substantial TRP revisions. NMFS could also work with OLE to refine its strategy for measuring and communicating compliance data. The advantage of this approach, C. Patterson said, is to have a streamlined change now that can ideally be implemented prior to the planned October-November closure, yet create an opportunity and a commitment to pursue more extensive and potentially beneficial program revisions later on.

    - A second concept, put forward by D. Laist, suggested setting an initial bycatch target rate at 80% of PBR, with consequence closures triggered if the rate is exceeded. Additionally, D. Laist suggested a willingness to leave the consequence closure in the February-March timeframe pending a closer look at take data. This approach is intended to recognize the importance of moving towards ZMRG, but not requiring industry to make ZMRG a trigger rate from the outset. Other TRT members also noted the concept of ratcheting down the target rate.

Ongoing concerns related to compliance rate reporting. There was strong continued interest among some industry participants to reframe the way compliance is portrayed. Two alternate views were put forward on the most appropriate way to convey compliance. Several industry members recommended that NMFS report compliance in two parts: (1) presence (i.e., the number/rate of pingers deployed); and, (2) functionality (i.e., the number/rate of working pingers). This is important, proponents said, since (1) there is not yet a reliable and widely deployed mechanism to confirm functionality (i.e., LED lights); and (2) a combined rate portrays a false and damaging perception that industry is insensitive to harbor porpoise deaths. Other team members noted that it would be useful to report (1) presence; (2) functionality; and (3) the integrated rate combining the presence and functionality. D. Gouveia acknowledged the concern, but said a combined compliance rate paints the most accurate picture of effective compliance.

- **Additional information outlined.** The discussion identified several important information needs moving forward. These included the following:

    - Provide a more detailed assessment of the time needed for the Center to mobilize data to inform a PBR-related target and opportunities to streamline. This should also take into account peer review needs.

- Develop possible methodologies for assigning PBR-based bycatch rates to different sectors and/or regions. This needs to account for takes in the mid-Atlantic that are attributed to Northeast vessels.
- Clarify how observers are assigned relative to the structure of sectors.
- Clarify what percentage of the overall fleet is a participant in sectors.
- Consider possible strategies and designs for an exemption process that would apply fleetwide and not just to the sectors.
- Consider options for measuring and reporting three distinct aspects of pinger compliance: presence, functionality, and a combined integrated rate.

Other discussion points included the following:

- C. Orphanides, in response to a team member question, noted that there were 11 takes in the Gulf of Maine Consequence Closure area in October-November 2012 (the initial time frame targeted for closure). That compares with 2 takes in 2011 and 13 in 2010 (based on combined NEFOP and ASM data).

- Team members reiterated broad support for convening the TRT before any revisions to the TRP are made, but the Team spent little time discussing retention of the Other Special Measures provision that was used to shift the timing of the fall 2012 closure.

- Expanded pinger areas, discussed in two of three proposals put forward prior to the meeting, appeared to garner support of some Team participants, with several noting the advantage to law enforcement officers seeking to enforce a more universal policy. Others, however, suggested such an expansion was an unnecessary expense for vessels in certain areas.

- One researcher called on the Science Center to use consistent harbor porpoise abundance survey methodologies from year-to-year (as is done with fish stocks) to enable the analysis of long-term population trends.

E. Emerging Agreements

The Team did not reach consensus on any issues under discussion during the webinar. Team members did, however, agree to participate in a follow-up meeting in April, and there was recognition of the need for cross-caucus discussions (prior to April) to explore the potential for melding aspects of the various proposals into a unified approach.

To support such discussions, several Team members asked that the Agency put forward a white paper/discussion synthesizing where there is convergence and divergence among the various proposals under discussion and, as possible, highlighting the Agency's perspective on key areas for further discussion and possible consensus building.

F. Public Comment

There were only two statements during the public comment portion of the webinar. One commenter, Katie Moore with the U.S. Coast Guard, emphasized that universal requirements (i.e., geographically broader pinger requirements) are easier to enforce. She also said the shore-based pinger certification put forward in the Laist, et. al. proposal was a creative approach given current constraints on enforcement resources. NEFSC resource economist Kathryn Bisack underscored the importance of addressing common pool vessels, as well as sectors, in any TRP revision. She further noted that a shore-based certification program, like the one proposed, is intriguing in its equal applicability to all gillnetters.

V. NEXT STEPS

Based on the discussion, the meeting yielded a handful of next steps:

Related to the February webinar:

- K. Swails is to distribute to Team members a list of all webinar participants. She also is to provide the Team with data presented on the call by C. Orphanides enumerating the number of takes in the Coastal Gulf of the Maine Closure Area in the October-November 2012 timeframe, comparing it to previous years.[2]

- The facilitation team will prepare a Key Outcomes Memorandum summarizing key discussion points, information needs, consensus recommendations and next steps. A near-final summary will be distributed to Team members for a "red-flag" review to any identify substantive errors or omissions.

Related to the April Team meeting:

- The Northeast Region will work to schedule a follow-on meeting in April to continue Team deliberations related to possible Plan amendments. The Agency will again strive to receive the necessary approvals to convene an in-person meeting. The facilitation team is to solicit Team members availability to meet during the April timeframe.

- Building on the CONCUR Key Outcomes Memo, the Northeast Region is to prepare a brief paper (perhaps as simple as a table) capturing its view of the main topics to be addressed in any plan revision, synthesizing where there is convergence (if any) and divergence among the various proposals under discussion and, as possible, highlighting key areas for further discussion and possible consensus building.

- Team members were strongly encouraged to schedule and engage in cross-interest group conversations – ideally in person – over the next two months to identify opportunities for consensus recommendations. C. Patterson is to work with S. Young and D. Laist to foster such a conversation among proposal proponents.

[2] Kate Swails emailed this data to TRT members during the webinar.

- Team members are asked to submit information requests to the Agency (K. Swails) by February 25, 2013 so that the Science Center (and any other appropriate entities) can prepare the necessary data to support the Team's ongoing deliberations. Information requests already raised during the webinar include:

    - Provide a more detailed assessment of the time needed for the Center to mobilize data to inform a PBR-related target. This should also take into account peer review needs.
    - Develop possible methodologies for assigning PBR to different regions. This needs to account for takes in the mid-Atlantic that are attributed to Northeast vessels.
    - Consider possible strategies and designs for an exemption process that would apply fleetwide and not just to the sectors.

Related to Other HPTRP activities:

- J. St. Cyr is to follow with C. Orphanides, R. Smolowitz and others, as appropriate, to identify strategies to address gaps or shortcomings in the current VTR form (either in design or outreach to industry).

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