

**ATLANTIC LARGE WHALE  
TAKE REDUCTION TEAM MEETING  
PROVIDENCE, RI  
FEBRUARY 3-4, 2004**

Meeting Summary

**OVERVIEW**

NOAA Fisheries convened a meeting of the Atlantic Large Whale Take Reduction Team (ALWTRT) on February 3-4, 2004. The purposes of the meeting were to update the ALWTRT on the Take Reduction Plan (TRP) implementation activities; update ALWTRT members on whale conservation activities and research; follow up on issues from 2003 ALWTRT meeting; update ALWTRT members on the status of the proposed rule/draft EIS and the review process; and discuss options for potential changes in the organizational structure of the ALWTRT.

Prior to the meeting, NOAA Fisheries provided all of the members with a binder of material used as reference in the meeting. Key documents include the Atlantic Large Whale Take Reduction Plan and Guide, 2002 Entanglement/Stranding Report, Draft ALWTRT Enforcement Plan Brief, and the Report on the Whale-Free Buoy as a Gear Modification Option by Cliff Goudey. NOAA Fisheries also provided members with a list of additional materials available upon request. Additional meeting materials were provided to TRT members at the meeting.

[NOTE: Presentation slides are available by request by contacting Angela Agosto at 202-965-6392 or [aagosto@resolv.org](mailto:aagosto@resolv.org)]

**WELCOME AND INTRODUCTIONS**

Abby Arnold of RESOLVE, meeting facilitator, welcomed participants to the meeting. ALWTRT members, alternates, and observers then introduced themselves (*See Attachment A for a list of attendees*). Ms. Arnold listed the materials distributed to the team and reminded the team about the groundrules for the ALWTRT process adopted by the team in 2003 (*See Attachment B for a list of groundrules*). After reviewing the proposed meeting agenda, the order was slightly modified at the request of some of the TRT members. She then reviewed and received ALWTRT agreement on the agenda and objectives for the meeting.

Mary Colligan, NOAA Fisheries, thanked participants for attending and expressed that the agency hopes to continue the productive discussions initiated at the 2003 ALWTRT meeting. She noted that NOAA Fisheries faces a significant challenge in its obligations under both the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA) to use its

authorities to recover listed species and ensure actions that the agency authorizes do not jeopardize the continued existence of any listed species.

Ms. Colligan explained that the Environmental Impact Statement (EIS) scoping meetings conducted by NOAA Fisheries in recent months brought forward new ideas in the agency's analysis. NOAA Fisheries continues to work on the draft EIS, although it was unable to issue the document before this meeting as initially scheduled. After seeking feedback from ALWTRT members regarding continuing with the scheduled meeting despite the draft EIS not yet being available, the majority of team members supported holding this meeting to discuss other issues. The current anticipated schedule for the EIS is release of draft EIS for review in late May/early June 2004; public meetings during the comment period in June and July 2004; publish final EIS and rule in about February/March of 2005.

Ms. Colligan reminded the ALWTRT of two key principals agreed upon by the team at the 2003 meeting: reduce risk associated with vertical lines; and reduce profiles of all groundlines.

#### **FOLLOW-UP ON ISSUES FROM THE 2003 ALWTRT MEETING**

##### Update on ALWTRP

Diane Borggaard, NOAA Fisheries, provided an update on the Atlantic Large Whale Take Reduction Plan (ALWTRP) activities since the April 2003 ALWTRT meeting. Four ALWTRT subgroups met in 2003 to discuss issues and options for modification to the ALWTRP. However, as with the full TRT meeting, no consensus recommendations emerged from the subgroup meetings. As part of the EIS analysis activities for modifying the ALWTRP, NOAA fisheries issued a Notice of Intent (NOI) and held several public scoping meetings that provided information for the alternatives being analyzed. Ms. Borggaard also reviewed the new DAM rule amendments issued by NOAA Fisheries in 2003, summarized 2003 DAM program activities, and listed changes in the 2003 MMPA List of Fisheries. Future planned activities around the ALWTRP include upcoming modifications to the plan, discussion of ALWTRT structure, gear research, outreach, review of recommendations from this meeting, and a rulemaking process on the Zero Mortality Rate Goal (ZMRG) in 2004.

Ms. Borggaard noted that in general, NOAA Fisheries is on track with activities as outlined at the 2003 ALWTRT meeting. In response to participant questions, she explained that comments from the scoping meetings will be addressed in the draft EIS, along with all other proposals received and responses from the agency as to why they were accepted or rejected.

##### ESA Section 7 Consultation

Lynn Lankshear, NOAA Fisheries, provided a review of Section 7 of the ESA and how the provisions relate to the ALWTRP. Section 7 requires federal agencies to use their authorities to further the purposes of the ESA and ensure that agency actions are not likely to jeopardize the continued existence of ESA-listed species. Federal agencies follow these requirements by undertaking consultations with NOAA Fisheries or the Fish and Wildlife Service, depending on the species. Consultations can be informal or formal (requires preparation of a biological opinion). Ms. Lankshear outlined the jeopardy determination process and actions if the biological opinion concludes "jeopardy." Section 7 relates to the ALWTRT in several ways: three species in the ALWTRP are also ESA-listed; many of the ALWTRP fisheries are in federal waters and are subject to Section 7 consultation; and, in 2001, consultations for four fisheries

affected by the ALWTRP measures concluded that these fisheries were likely to jeopardize the continued existence of right whales. A reasonable and prudent alternative (RPA) to avoid jeopardy was provided. One of these consultations has recently been reinitiated based on information to suggest that the RPA has failed. Consultation was reinitiated on another fishery based on new information related to the applicability of the ALWTRP measures for that fishery.

In response to participant questions and comments, Ms. Lankshear clarified that time limits to complete a consultation are 135 days, but can be extended. Regarding the ongoing consultations for the lobster fishery, NOAA Fisheries staff replied that the agency has not yet reached a jeopardy conclusion. Regarding the EIS, NOAA Fisheries staff stated that it is their intent to select an alternative that meets its ESA and MMPA obligations.

#### Summary of 2003 Large Whale Entanglements and Mortalities

Dana Hartley, NOAA Fisheries, summarized large whale mortalities, the entanglements and disentanglement program, and unusual mortality events during 2003. Entangled whales are documented through the Stranding Network, NMFS, and the Center for Coastal Studies. In 2003, these organizations documented 78 total large whale mortalities (based on preliminary data), with the largest number mortalities occurring in July. Ms. Hartley also reviewed mortalities with indication of entanglements, confirmed live entanglements and outcomes for right, humpback, fin, and minke whales. She listed expected increases in disentanglement program funding and several steps the Atlantic Large Whale Disentanglement Network is taking on disentanglement resources and research. Finally, Ms. Hartley described the events and outcomes of two unusual mortality events in George's Bank and Maine. Field testing was done for evidence of human interaction and biotoxins in each case.

An ALWTRT member commented on the large number of whale mortalities that cannot be attributed to fishing. Ms. Hartley responded that many cases do exist where the condition of the whale carcass is too decomposed to make any determinations regarding cause of mortality. Ms. Hartley also discussed the preliminary results for two unusual mortality events in 2003: (1) a humpback whale mortality event in offshore waters on the north east portion of Georges Bank in July, and (2) a minke and harbor seal mortality event along the coast of southern Maine in September. The humpback whale carcasses found floating offshore in July showed evidence of exposure to domoic acid. Although this is the first time that the biotoxin (domoic acid) has been documented in deceased marine mammals on the east coast, it is unclear if this was the cause of death. The Minke whale carcasses sampled along the coast of southern Maine and northern Massachusetts in September tested negative for domoic acid and other biotoxins.

#### Summary of Large Whale Entanglement Gear – 2003

John Kenney, NOAA Fisheries, presented a preliminary analysis of 2003 gear entanglements of humpback, right, fin, and minke whales. He summarized the events from which gear was recovered or the type was known. He discussed several fishery interaction gear analyses, highlighting one right whale event, and three humpback events. In summary, of 42 events reported, there were 18 cases where gear was either identified as to type, or some of the gear was recovered. Gears identified were: gillnets, pot gear and vessel anchoring systems.

In response to questions from members, Mr. Kenney clarified that the anchor recovered with one of the vessel anchoring systems was a 22 pound Danforth style attached to a 5/8 inch anchor rode with 2 fathoms of 1/4 inch chain.

### ALWTRP Enforcement Strategy and Recent Enforcement Actions

Gregg Lamontagne, NOAA Fisheries, detailed the personnel responsible for enforcement at NOAA Fisheries and the U.S. Coast Guard (USCG). He summarized communication efforts for law enforcement partners, annual cross-agency meetings, and an article in an industry journal. He also reviewed the various regulations applicable to ALWTRP enforcement, including state regulations on fishing gear. At sea enforcement efforts included Joint Enforcement Agreement Maine marine patrol, USGC involvement in DAM actions, and Massachusetts environmental police vessels. These states also worked together on enforcement actions. He also provided a short briefing paper to members.

A member asked if any restrictions exist on the decision to haul gear or the way in which it is hauled during enforcement activities. Mr. Lamontagne responded that each state has a different legal perspective when deputized to haul federal gear, but Maine has hauled gear. Regarding the definition of compliance, Mr. Lamontagne clarified that in some cases, non-complaint gear was seized from mandatory DAM areas and that in general, less gear is found in the area when people are informed about a DAM. A state agency representative indicated that during routine boarding, a 90% compliance rate was found but gear is seized when found to be non-compliant. NOAA Fisheries staff indicated that the precise frequency of non-compliance is not available at this time and the agency will provide a more detailed update on enforcement numbers at future meetings.

### FMP Update – Status of Management of the Atlantic Shark Gillnet Fishery

Heather Stirratt, NOAA Fisheries, described the Fishery Management Plan (FMP) for the Atlantic shark gillnet fishery and recent changes to the plan. The Highly Migratory Species (HMS) Management division manages the shark fishery in federal waters and published the FMP in April 1999. Ms. Stirratt described the basic requirements of the plan as well as changes for shark gillnet fisherman as a result of an amendment for commercial quotas, Vessel Monitoring Systems (VMS), and gillnet specifications. Future modifications or rules could address additional gear modifications, limited access, workshops, closures, and observer coverage on fishing vessels.

In response to a member question, Ms. Stirratt explained that fisherman can fish in the critical habitat in the Southeast during the winter months.

## **STATUS OF THE PROPOSED RULE/DRAFT EIS AND OVERVIEW OF RULEMAKING PROCESS**

### Overview of Rulemaking Process/EIS

Kevin Collins, NOAA Northeast Region Office of General Counsel, outlined the rulemaking requirements for TRP actions. He listed the statutes, regulations, and executive orders that govern TRP actions, including the MMPA, ESA, NEPA, and administrative procedure laws. He noted that the laws require NOAA Fisheries to protect the interests of a wide range of stakeholders, which sometimes leads to delays in implementing the rules. The ALWTRT has already been through the process of initial TRP development and is now in the stage of amending and modifying the plan. The MMPA provides for a standard TRP process for strategic stocks that interact with Category I or II fisheries, including frequency and timing of TRT meetings. NOAA Fisheries is obligated to amend the regulations as necessary to ensure that the plan is meeting the potential biological removal (PBR) goals. Amendments must go through the same

process as the initial TRP regulations, including ESA consultations, NEPA analysis, and compliance with administrative acts and executive orders.<sup>1</sup>

Mr. Collins also outlined the process for emergency rules for commercial fishery-related emergency situations with a stock or species, although the current TRP amendment process is not considered an emergency rule. Overall, as NOAA Fisheries must work with many rules, the agency moves as quickly as possible and strives to give as much advance notice as possible to get buy-in and expedite the process.

A member asked how the ongoing ESA consultations fit in with other consultations under the EIS. Mr. Collins indicated that, in addition to carrying out the EIS process, NOAA Fisheries must also analyze any proposed regulations under Section 7 of the ESA through either an informal Section 7 consultation, or a formal consultation resulting in a biological opinion.

In response to a question about where the impact on small businesses and entities is considered, Mr. Collins clarified that small business impacts are assessed under the Regulatory Flexibility Act and E.O. 12866, which require that alternatives are technologically and economically feasible. NOAA Fisheries intends to apply regulatory flexibility analysis in considering modifications to the TRP.

Another member inquired whether any law prevents the agency from announcing a proposed SAM or DAM. Mr. Collins answered that no law prohibits the announcement. Once the agency makes its official decision, an announcement is filed with the *Federal Register* and an email is sent to interested parties.

One member asked how the economic impact analysis requirements of the ESA and MMPA compared. NOAA Fisheries staff replied that the laws contain essentially the same language related to economic and technical feasibility. The member also inquired as to how the agency will expedite the rulemaking process in light of previous judgments on the length of the process. NOAA Fisheries staff answered that the agency will set out a schedule and move forward as quickly as possible, while continuing to learn more about entanglements.

### Overview of NEPA

Sarah Thompson, NOAA Fisheries, presented an overview of the National Environmental Policy Act (NEPA) and actions that the public can undertake during the rulemaking process. NEPA establishes procedures that federal agencies must follow to consider environmental factors when planning major federal actions. NEPA defines three categories of procedures for agencies to follow based on the potential for significant environmental impacts and the level of controversy surrounding the proposed federal action: categorical exclusions, environmental assessments (EA), and environmental impact statements (EIS).

Ms. Thompson detailed the steps of each procedure. For an EIS, the agency issues a notice of intent (NOI) to prepare an EIS. Following publication of an NOI, there is a public/scoping comment period of at least 30 days. This scoping period is important for identifying information

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<sup>1</sup> MMPA - Marine Mammal Protection Act; ESA -Endangered Species Act; NEPA -National Environmental Policy Act; EA -Environmental Assessment; EIS -Environmental Impact Statement; NOI- Notice of Intent; ROD -Record of Decision.

and focusing alternatives. After scoping, the agency prepares a draft EIS for a public comment period of at least 45 days, then issues the final EIS for a public comment period of at least 30 days. The final EIS addresses comments received on the draft EIS and identifies the agency-preferred alternatives. The agency then prepares a Record of Decision that identifies the adopted alternatives, identifies the factors balanced in making the decision, and discusses any mitigation measures, if applicable.

Opportunities for public participation in the NEPA review process are available at all steps, including public comment periods after publication of the NOI, issuance of the draft EIS, and issuance of the final EIS. Ms. Thompson also offered several tips on making public comments and explained the differences between public hearings and meetings. At public hearings, the agency only hears comments, while public meetings involve a dialogue format in which the agency both hears and responds to comments and questions.

Ms. Thompson urged team members to offer both verbal and written comments on the draft EIS. She clarified that ESA Section 7 consultations and the resulting biological opinion do not include a public comment element.

A member commented that NEPA requirements lead to delays in issuing permits that actually conflict with ESA Section 7 responsibilities and asked how NOAA Fisheries handles this challenge. NOAA Fisheries staff responded that application of NEPA is congressionally mandated as well as implemented within the agency under a NOAA administrative order. NEPA applies to federal actions, including the current rulemaking process, and the agency seeks stakeholder input to ensure full consideration of impacts on right whales and other environmental resources.

#### Status of Proposed Rule/Draft EIS and Anticipated Timeline

David Gouveia, NOAA Fisheries, provided additional agency perspective on the current EIS process. He emphasized that the agency must deal with many laws and executive orders and that the agency applies comments from public forums to the process. From the input and analysis, the agency seeks to create a practical balance of conservation and protection of the value of resources. He commented on the high quality of dialogue in the 2003 meetings and scoping process.

Mr. Gouveia reviewed the anticipated time for the proposed rule and draft EIS:

- January – March 2004: continue analysis and development of alternatives
- Mid -March 2004: Draft EIS submitted to agency
- March-May 2004: Internal agency review of draft EIS/ Develop proposed rule to implement EIS
- Mid-late May 2004: Publish DEIS; 45 day public comment period follows and publish Proposed Rule; 30 day public comment period
- May – June 2004: Hold public hearings during comment period
- Summer – Fall 2004: Evaluate comments and make determination
- February/March 2005: Publish Final EIS and Final Rule

Mr. Gouveia noted that the agency is continuing internal discussions on the ongoing biological opinion and determination of jeopardy.

NOAA Fisheries intends to work with the ALWTRT to put together the best suite of alternatives and seeks recommendations on locations for public hearings during the comment period. In response to a request from one team member to convene the team during the comment period, Mr. Gouveia noted that this was the agency's original intention, but delays in the schedule and resources constraints affect the ability to convene a meeting at that time.

In response a question from a member, Mr. Gouveia clarified that the final rule will contain responses to comments on the EIS and the proposed rule. Another member urged the agency to consider the timing of the fishing year in publishing the final rule.

A member asked whether the agency has requested a shortened comment period. Mr. Gouveia responded that while the agency could do this, many stakeholders would likely object to shortening the public input process. Another member inquired about flexibility with gear modifications and new methods that may develop during the EIS process. Mr. Gouveia answered that, under the law, any alternative not in the draft EIS would require NOAA Fisheries to restart the EIS process.

#### **ALWTRT ORGANIZATIONAL STRUCTURE**

Mr. Gouveia presented options for reorganization of the ALWTRT. Consideration for reorganizing the team is a result of comments from team members that the team is too large as well as strategic goals to help better facilitate marine mammal protection. NOAA Fisheries intends to work with its agency counterparts at NOAA headquarters and its legal staff on this approach. At this point, NOAA Fisheries has developed a white paper on TRT structure and has talked with the Marine Mammal Commission and the scientific review group about the options. The Protected Resources Division will share the proposal for technical review and present to senior agency management in the near future.

Mr. Gouveia noted that NOAA Fisheries is considering both a short-term and long-term strategy for reorganization. The proposed long-term approach shifts the TRT goal from a species-specific orientation to gear-specific. This approach may involve addressing all protected resources under gear-specific groups. Organizing teams by gear type could provide teams with more focus and reduce the time and burden of meetings.

Ms. Borggaard provided more detailed information on the short-term organization issues specific to the ALWTRT. She reviewed the content of the draft white paper, *2004 Atlantic Large Whale Reduction Team (ALWTRT) Process and Structure-Related Issues, Background and Questions*, which was provided to the team. She outlined the MMPA guidance provisions on TRT organization and structure, relevant ALWTRT groundrules, and a brief history of the evolving structure of the ALWTRT since it was established in 1996. She also presented two approaches for the short-term restructuring and the pros and cons of each option: 1) Regional, in which the ALWTRT would split into two regional teams (Northeast and Mid/South Atlantic); or 2) Maintain the current structure until NOAA Fisheries decides on a long-term restructuring plan. The whitepaper also contains several questions on which NOAA Fisheries seeks input on administrative issues, such as meeting dates and location, ALWTRT membership, attendance and alternates, and gear advisory groups. Finally, Ms. Borggaard reviewed several changes in ALWTRT representation for the team's information.

Ms. Borggaard asked for feedback from members on the pros and cons of the structure options and thoughts on restructuring. Ms. Arnold noted that in a survey sent to ALWTRT members, none of the members who responded stated an objection to splitting the team. Key comments from ALWTRT members on structure and organization included:

#### *General Approach*

- Consistency among gear types is important to avoid regulators needing to enforce a patchwork of rules.
- Ensure that the methods chosen reduce incidental take.
- Members would like input into a longer-term strategy.
- Need to get more coastal states involved on the team.
- Block out meeting dates in advance.

#### *Regional Approach/Splitting Team*

- With one stock of whales, if the teams are split up, there is danger of regions making different and potentially inconsistent recommendations.
- The team will have more productive gear and fishery management recommendations if it approaches them on a regional level, with the agency having the responsibility to assure consistency between the two regions.
- Other TRTs do meet by region.
- Regional meetings may increase participation at the regional level with more state involvement and more opportunity for substantive discussion.
- More fisherman will likely get involved at the regional level.
- A regional focus on different ideas and approaches will help the teams get to goals faster.
- Fisheries are different up and down the coast.

#### *Regional Approach with Some Full Team Interaction*

- The foundation of all the ALWTRT's work is based on conservation and science issues. Groups should be provided with the same foundation information then breakout if necessary.
- Need a coordinating body, but need to solve problems regionally.
- Split into regions and then meet as a full group occasionally (e.g., every two years)
- Each region sends representatives to a TRT-wide coordinating meeting to minimize the number of participants.
- Some members want to have direct input and participation, not send delegates to larger meetings.
- Fisheries are more similar within regions than within gear-types across regions.
- Recognize national laws, themes and priorities while fine tuning solutions at the regional level.

#### *Maintain Current Full Team Structure*

- Need to approach entanglements as complete group, while taking regional needs into consideration.
- Splitting the team will lead to too many meetings.
- Use subgroups more during full team meetings.
- Reduces burden on those who would want to participant on both regional teams (e.g., scientists, academics, conservationists).



- Some members were not supportive of gear approach because changes fishery regulations lead to continual changes in participation in specific fisheries.

Hearing these comments, NOAA Fisheries staff clarified that a gear-approach would not be implemented within a year, so the team does have time to consider and recommend another approach before a permanent decision is made. If the team were to split by region, the workload of managing the teams may be divided between the Northeast and Southeast regional NOAA Fisheries offices.

Ms. Arnold summarized the major principals expressed by members during the discussion of ALWTRT structure:

- NOAA Fisheries needs to work within several laws and maximize agency resources.
- The ALWTRT should meet the needs of all members to ensure their attendance and reduce burden of involvement in team meetings.
- There is a need for consistent application of rules along the coast.
- Need reductions in whale takes.
- Need coordination/exchange across the team.

A member inquired about the process for filling empty slots on the ALWTRT. NOAA Fisheries answered that the agency goes through a selection and appointment process to fill the slots. Team members can suggest replacements for consideration. Ms. Arnold announced that members should forward other suggestions on ALWTRT protocols to RESOLVE staff, who will work with NOAA Fisheries to incorporate suggestions.

## **GEAR RESEARCH REPORT AND DISCUSSION**

Mr. Gouveia introduced the topic of gear research. He noted that NOAA Fisheries has been aggressive in approaching the groundline issues and has made significant progress in looking at reducing the profile of groundline. The agency also understands the priority of addressing vertical line issues.

Ms. Borggaard directed participants to a paper that summarizes the suggestions and comments from the ALWTRT and the EIS scoping process on vertical lines.

### Gear Research Update

Glenn Salvador, NOAA Fisheries, presented information on various gear research projects and grant programs. In-house projects focus on collecting fisheries data, gear marking, weak links, gear analysis, and video work. He reviewed the first two rounds on mini-grants funded as well as the round three mini-grants, challenge grants, and quick response funding available for 2004. He noted that projects addressing vertical line issues are funded for this year. Projects outside of NMFS on snag-free buoy, line friction, and line color are ongoing. Mr. Salvador also showed a video of testing on different types of lines on lobster traps.

Amy Knowlton with the Edgerton Research Laboratory at the New England Aquarium updated the team on a project to synthesize information related to gear modification and fishing practice proposals. She provided background on what is known about right whale entanglements, including that entanglements appear to begin at the mouth and that wrapping of gear is frequent but it is unclear when the wrapping occurs. She described a matrix of gear modifications that

divides gear into three components: bottom gear, vertical line, and surface buoy system. The matrix also indicates the objective of the modification (reduction of line in water column; reduction in line breaking strength; or changes in line/gear parameters) and several columns for other elements describing the modification. A testing matrix is planned to establish certain questions about vertical line components that should be answered when tests are conducted. Other next steps for the project are to finish the report with matrix tables, seek input from gear specialists and industry, and provide recommendations on testing needs and a process for reviewing gear modifications.

Member comments included an emphasis on the value of getting detailed reactions to the findings, to include bad weather conditions when testing, and to examine mobile versus stationary gear in research.

#### Massachusetts Division of Marine Fisheries State Conservation Plan

Ed Lyman, Massachusetts Division of Marine Fisheries (MADMF), provided an overview of the Commonwealth's gear research initiatives. These initiatives included a cooperative effort with the Atlantic Offshore Lobstermen's Association to find an optimal non-buoyant groundline for use by trap fishermen in offshore waters, a survey of trap fisherman on groundlines and gear configurations, working with cordage companies, as well as lab testing of groundline in order to reduce the entanglement threat for endangered marine mammals. The lab work involves the simulation of the abrasive nature typical of offshore environments to get an idea of feasibility of use of non buoyant lines in the offshore lobster industry. Mr. Lyman outlined the lab testing protocols and showed a short video of the line testing equipment. MADMF will follow up lab testing with field- testing with the assistance of fishermen. MADMF has also modeled buoylines and groundlines to compare and investigate their profiles to better understand the potential entanglement threat they pose. Mr. Lyman described the results of the comparisons.

A member commented that it is very important to identify and monitor the correct average strain on hauling gear in the offshore lobster industry. Another member noted that there is a meeting of offshore lobsterman planned for the spring to discuss the testing. A member also suggested that the tests should include variation of sea conditions. Mr. Lyman and other members responded that the purpose of the lab testing is to compare relative performance rather than project the absolute longevity of the lines under different environmental factors. The hope is that the subsequent field-testing will provide additional information on various non buoyant lines' capability to withstand coming in contact with the sea floor.

#### Maine Department of Marine Resources Gear Research

Terry Stockwell, Maine Department of Marine Resources, presented a summary video of field research on the underwater profiles of lobster gear groundlines in Maine waters. The purpose of the research was to document the actual gear fished, particularly floating groundlines in rocky and tidal areas, and to allow for collaboration with the lobster industry to develop profile-reducing measures that can be field-tested in 2004. The video documented many different groundline profiles and bottom habitats. The Department has not yet drawn specific conclusions from the research and intends to conduct further studies and analyses.

## **DAY 2**

### **AGENDA REVIEW**

Ms. Arnold reviewed the ALWTRT discussions from Day 1 and outlined the revised agenda for Day 2.

#### *Next Steps on ALWTRT Reorganization*

The next day, Ms. Colligan reported on NOAA Fisheries thinking on ALWTRT structure. She recommended that for the next ALWTRT meeting be held with the full team. The agenda would be developed with active team involvement and will include significant portions of the meeting for smaller working groups, such as region, gear type, or other topics. The whole team would convene briefly at the start of the meeting to hear a NOAA Fisheries report on the state of ALWTRT activities and key issues and again during the meeting to provide feedback as a team to the agency.

Most members supported reserving the first week of February 2005 for the next ALWTRT meeting (this is not the recommended team meeting on the draft EIS). Members requested that if the schedule for the rulemaking changes, that NOAA Fisheries notify the team and consider moving the meeting date. -Members also requested that if two ALWTRT meetings are scheduled for subgroups, that they do not overlap because some team members may need to go to both and that Council and Commission meeting schedules be considered.

### **ALWTRT SMALL GROUP PROPOSAL**

Scott Kraus presented a proposal drafted by several ALWTRT members (Scott Kraus, Pat Fiorelli, and Stormy Mayo) to address concerns with the current focus of ALWTRT activities (*See Attachment C for this document*). Authors noted concern that the ALWTRP pays too little attention to the current scientific understanding of the status of right whale entanglements in fishing gear. Citing known data on right whale mortalities and entanglements, these members believe that the number of right whale deaths is several times larger than the level of mortality addressed under the ALWTRP or acknowledged at ALWTRT meetings. The proposal also describes concerns that the NEPA process does not allow for timely changes in the take reduction plan and has delayed activities that might have saved right whales. Additional concerns with the proposed rule include that it is not likely to reduce right whale mortality to PBR or address the vertical line issue. The proposal included several recommendations:

- The proposed rule should contain measures that will reduce right whale mortality to zero.
- Proposed measures should permit maximum flexibility, so that management innovations and new modifications are considered, and impacts to fishing and effectiveness on reducing risk to large whales is considered in a timely manner.
- Alternatives allow maximum experimentation on gear modification research/projects to address horizontal and vertical lines issues.
- The ongoing process should include regular evaluations of the success of the plan (possibly by an independent peer review group), including specific assessments of gear modifications, an annual scarring analysis from the catalog, and gear analysis from disentanglements.

- TRT agenda set by TRT members as well as NOAA Fisheries staff.

#### *Flexibility with Options to be Included in the Final Rule*

NOAA Fisheries staff provided clarifications to some of the recommendations. Regarding flexibility for management innovations, while the agency supports maximum flexibility, the staff noted that fishery council plans are not flexible and require an EIS or EA to change. The staff added that not all actions trigger an EIS and are evaluated on a case-by-case basis. NOAA Fisheries has some flexibility in the area of weak links, but little flexibility in other areas. The agency's intent is to implement management plans as quickly as possible with full consideration of impacts, risk/benefit, and cost to fisherman.

Other ALWTRT members offered reactions to the flexibility recommendation and relation to the fishery management process. Several members expressed interest in proposing measures in the plan that provide for as much flexibility as possible so that innovations are allowed. Another member stated that an EIS is not required for all gear modifications through experiments and EAs are done in the fishery management process through framework adjustment. A concern raised by other members focused on the ability to accelerate change in expensive gear innovations without flexibility for proper research and fisherman testing. Specifically, a member suggested that experimental gear modifications should be tested for a year in open water before any mandatory implementation to avoid mistakes made with past modifications. A member added that, without flexibility, the proposed rule will not lead to the PBR goal. Other members cautioned that even with maximum flexibility, industry cannot implement changes immediately. A member commented that agencies follow NEPA procedures to ensure that mistakes are not made during the process. An author of the small-group proposal emphasized that right whales are dying even with weak links, which shows the need for greater scientific scrutiny of research and testing.

NOAA Fisheries staff offered to revisit the issue of how to offer maximum flexibility within the legal requirements.

#### *Expert Review*

Related to the recommendation to conduct a peer review of the plan, some members noted concerns that an annual review will extend the already lengthy implementation time, that the agency already reviews the plan periodically, and that the best experts to review the plan are already on the team.

NOAA Fisheries staff proposed to provide the team with a clear briefing document that provides an overview of the agency's current knowledge of gear, disentanglements, scarring analysis, and the implications of the information in terms of the plan's effectiveness. NOAA Fisheries requested team member involvement in developing the questions addressed in that brief (5 page) document provided in advance of ALWTRT meetings and discussed at the meetings. Jack Finn, Pat Fiorelli, Stormy Mayo, Kate Sardi, Terry Stockwell, Pat White, Sharon Young, and Nina Young (via alternate) volunteered to assist in developing the set of questions to be address in the brief. Members also suggested that the list of questions and the white paper be provided to all members well in advance of the meeting so they can comment on the draft.

### *ALWTRT Agendas*

ALWTRT members requested that members be more involved in developing agendas in advance of the meeting. Activities suggested included identifying issues to be addressed, e-mail exchange of agendas and conducting a conference call of a small group of member to help plan the agenda. Members present who volunteered to work on agendas included Pat White, Stormy Mayo, Mason Weinrich, Terry Stockwell, April Valliere, Jooke Robbins, Rick Marks, Mark Swingle, Nina Young/Sierra Weaver, David Bruce, Erin Heskitt/Josh Pike, Bill Adler, Bonnie Spinazzola, Buddy Powell/Cynthia Taylor, and Dan McKiernan.

### *Gear Modification Research*

ALWTRT members requested that NOAA Fisheries continue to encourage research on gear modifications.

### *Conclusion*

The ALWTRT did not reach a formal conclusion on the proposal offered by the small group of members.

## **CURRENT ALWTRP GEAR MODIFICATION UPDATE AND PROPOSAL FOR ADDITION OF GEAR MODIFICATION OPTION**

Ms. Colligan presented a protocol to consider gear modifications under the ALWTRP. The purpose of the protocol is to evaluate products using clear questions to determine which ideas should be considered by the ALWTRT. The protocol begins with a preliminary screen to assess the potential of the proposal on gear components and reduction of risk. Several categories of questions to be considered include: product description, feasibility, risk reduction; and relationship with current requirements of ALWTRP. The proposal also suggests several possible recommendations that would come from the ALWTRT after the evaluation. Ms. Colligan asked members to comment on the need for the protocol, the roles of the team and NOAA Fisheries, whether the questions are appropriate, and if the team wants to set any thresholds for product evaluation.

Several members responded that the ALWTRT Gear Advisory Groups (GAGs) are the appropriate group to manage the gear evaluation process. Members emphasized the need to meet in smaller GAGs to improve the effectiveness and speed of the group's work. One member suggested that the GAG make recommendations to the entire team for final advice to the Agency for implementation. Other members cautioned against setting standards that might exclude useful products. NOAA Fisheries staff responded that the process as envisioned would be designed with low pre-proposal standards and would not set quantitative criteria.

Other suggestions included keeping ALWTRT members informed of new gear modification proposals via email and/or websites. NOAA Fisheries staff noted that other agencies are involved in managing proposals and funding. A member commented that the applicant should be responsible for providing responses to questions under "Project Description" and questions 1, 2 and the first part of questions 3 under "Feasibility". The member also suggested that the newly formed GAG be responsible for addressing the second part of question 3 related to application/attachment ease.

One member suggested an addition to the questions in the protocol regarding the relationship with the current requirements of the ALWTRP that would ask whether the proposed gear is offered as an addition or an alternative to existing regulations.

Several ALWTRT members volunteered to work with NOAA Fisheries to work on reconvening the GAGs. From the Northeast: Bill Adler, Leroy Bridges, Peter Brodeur, Peter Cooke, Scott Kraus, Bill Macintosh, Dan McKiernan., Terry Stockwell, Bonnie Spinazzola, Stuart Tolley, Pat White, and Sharon Young. From the Southeast/Mid-Atlantic: David Bruce, Jody Gay, Sonny Gwin, Chris Hickman, Rusty Hudson, Rick Marks, Margaret Murphy, Buddy Powell, Jamison Smith, and Mark Swingle.

#### Proposal for Addition of Gear Modification Option

Cliff Goudey, Center for Fisheries Engineering Research, MIT Sea Grant College Program, presented an option for a whale-free buoy gear modification. He described the process and results of operational buoy tests conducted aboard boats, specifically focused on how certain features of the buoy performed. Efficacy tests were also conducted to determine whether the modification reduces the risk of entanglement. Mr. Goudey displayed video of typical encounters with several types of conventional buoys as well as three sizes of whale-free buoy in different configurations. The findings of the studies included that the whale-free buoys typically released with loads less than 80 pounds, the smaller versions released at less than 40 pounds, no conventional buoy released at less than 40 pounds, a few conventional buoys released at 80 pounds, and many of the conventional buoys tested would not release. Mr. Goudey offered several conclusions, including that the buoy is compatible with a significant sector of the fishing industry and that it significantly decreases the frequency of experimental snagging.

In response to questions from members, Mr. Goudey clarified the relative performance of various standard buoy configurations using sponges floats. He pointed out that in general, the shorter the stick the more effective, due to less resistance. He also indicated that in his efficacy tests, no swivels were used. He added that the whale-free buoy would probably be more expensive than regular buoys, but that the ultimate cost would depend on manufacturing methods used to produce them.

ALWTRT members requested that this option be put forward to the GAG, but noted that the modification does not fit the current criteria and is non-compliant under current regulations. Several members noted that the concept has value and could be used for other potential applications.

#### Vertical Line and Horizontal Line Discussion

Ms. Borggaard referred ALWTRT members to a discussion paper prepared for the meeting on reducing risk associated with vertical lines and reducing profiles of groundlines. She reminded the team of two ALWTRP principles agreed to by the team in 2003 to reduce risk associated with vertical lines and reduce profiles of all groundlines. She also summarized the list of ideas presented to NOAA Fisheries regarding ways to reduce the risk associated with vertical lines, but noted that the team has not reached a consensus definition of "reduce."

A member asked how feedback on vertical lines issues will fit into the draft EIS under development. NOAA Fisheries staff responded that the alternatives are currently being

developed and analyzed, which may or may not include endlines. The agency will consider suggestions on how to improve the alternatives being developed.

One member commented that much still needs to be addressed on the issue of groundlines. Another member added that the most of the rope in the water is groundlines and many of the problems with entanglements are associated with groundlines, adding that NOAA Fisheries is moving in the proper direction. Members also discussed ways to reduce groundline profile, such as fishing methods, specific gravity of the lines, and alternatives to neutrally buoyant line. Another specific issue is designing groundlines for rocky bottoms.

Other members commented that vertical lines still pose a large percentage of the risk and research and projects should continue to move forward on this issue.

A member expressed support for the general concept of reducing profile, but had concerns about setting standard heights for groundline profile. The member added that NOAA Fisheries should include alternatives that are technologically and economically feasible in the rule. Other members cautioned that reducing the height of the line in the water can increase threat to whales in some cases due to animal feeding patterns.

A member suggested that discussions of ways to reduce risk associated with vertical lines should be shifted to the GAGs to determine practicality and effectiveness. This process would help avoid the loss of industry participation by ensuring that techniques are evaluated well before implementation. Another member added that individuals who can assess risk reduction need to be involved in the discussion. Members identified additional whale-related research questions that could be examined through the GAG on topics such as: whale behavior in the water column, distribution of whales, and food distribution over hard bottoms and risk to whales. One key question identified is what are definitions of groundline a profile in different habitats? Several members suggested that members with scientific expertise prepare a document with viewpoints on potential solutions and approaches for reducing risk. The GAG would then report to the ALWTRT with findings, status of research, and additional questions to explore. A member requested that humpback behavior and risk be included in research activities.

One member emphasized that the safest vertical line is none at all, which has been implemented in some areas. A member noted that elimination is not really an option for vertical lines, so work should focus on modifications.

In response to questions, NOAA Fisheries responded that several types of the vertical lines have met testing requirements and while no long-term studies have been conducted on the gear modifications listed in the discussion paper, some projects have been conducted on several of the modifications.

On other issues, a member cautioned the agency against spending much energy perfecting weak links, because lines are still posing a problem even when weak links are present. A member also encouraged the agency to look at the evidence of several entanglements involving a Danforth anchor and chain.

Another member requested that fisherman and state agencies conduct research and report to others on what techniques and modifications work to identify options based on performance.

The ALWTRT/GAG could provide them with specific questions. A member cautioned that incomplete research should not lead to elimination of alternatives that might be less economically harmful.

#### **ALWTRT REPRESENTATION**

Ms. Borggaard asked the ALWTRT for feedback on specific questions regarding other sources of interaction between mammals and lines to examine if other commercial or recreational fisheries or activities need to be brought into the TRT process. To the questions of adding recreational gillnet and trap fisheries, members responded that more members do not need to be added to the team and that if they cannot be regulated, then they do not need to participate. Others suggested that state representatives be responsible for representing recreational fisheries within their boundaries, which states regulate. Another member commented that NOAA Fisheries look at recreational fisheries on a regional level to get more information on interactions to make decisions on representation. TRT members deferred to the MMPA List of Fisheries process to determine if other commercial fisheries should be brought into the ALWTRT process.

#### **CONTINUATION OF FOLLOW-UP FROM PREVIOUS ALWTRT MEETING**

Mr. Gouveia introduced a continuation of presentations on follow-up items from the 2003 ALWTRT meeting by stating that in public meetings and scoping meetings, NOAA Fisheries heard a desire for greater attention to the cumulative effects of fishery management plans and included overviews of the critical management actions in this meeting.

#### FMP Update – Atlantic States

Paul Perra and Bob Ross, NOAA Fisheries, provided an overview of the management situation in the Atlantic coastal states. Bob Ross discussed recent changes in the State-Federal management of the lobster fishery. Beginning in 1983 when the Federal government adopted the New England Council (NEFMC) lobster Fishery Management Plan, the NEFMC managed lobster in federal waters. However, despite a federal plan, uniformity of state and federal regulations remained a problem in the lobster fishery during the 1990's. This changed in 1999 when primary interstate management was transferred from NOAA Fisheries to the ASMFC State process. Interstate regulations under the ASMFC process now regulate the management for lobster fisheries in state waters, and also provide recommendations for complementary regulations in Federal waters under the authority of NOAA Fisheries. Currently, a federal rule is being implemented in three lobster management areas that will restrict future access and trap allocations to a limited number of vessels based upon documentary proof of their prior historic participation and prior lobster trap effort levels.

Mr. Perra then reviewed the vessels, management, and level of effort status for several federal fisheries, including multispecies, red crab, monkfish, bluefish, and black sea bass. He also summarized the situation for hagfish and whelk, which are non-FMP fisheries. He concluded that most fish stocks are stable or coming back and are well-controlled with plans and other management mechanisms. State regulations, however, limit entry and minimize opportunities for growth in many fisheries.

A member commented that last year, the ALWTRT requested a plan for hagfish from the Council, but it was superseded by other priorities. Two members asked for the justification for



reducing days at sea for monkfish fisheries when the quota was double last year and the species is no longer overfished. Mr. Perra responded that one component of the stock may be doing better than others. Another member commented on the collection of lobster data in the absence of mandatory reporting requirements. A member noted that in Rhode Island, which requires lobster reporting, a huge decline in pots has been seen. Other members commented that quantification of reduction in effort is difficult and theoretical, and that they would like reports on actual effort reduction in previous years. Mr. Perra answered that this would require a large amount of information gathering and preparation of reports, but would be a valuable undertaking.

#### FMP Update – South Atlantic Fishery Management Council

Margaret Murphy, South Atlantic Fishery Management Council, presented a status report for black sea bass pot and mackerel South Atlantic fisheries. She reviewed the season, gear, location, depth, and level of effort for the fisheries. She also outlined the SAFMC amendments covering the management of the fisheries and additional measures under consideration. In response to questions, Ms. Murphy answered that the dates for a proposed closure of the black sea bass pot fishery are still under consideration by the SAFMC. A member encouraged the SAFMC to rethink flexibility for Spanish mackerel for fisherman with multispecies permits while trying to gather information on the fishery.

#### Update on Ship Strike Strategy

Greg Silber, NOAA Fisheries, updated the ALWTRT on the agency's Draft Strategic Plan to Address Ship Strikes to Right Whales. He reviewed the objective on the long-term comprehensive plan and described the approach taken within the agency to develop the strategy. Key elements of the ship strike reduction strategy include continuation of ongoing ship strike reduction measures, education and outreach, ESA Section 7 consultations, and new operational measures for the commercial shipping industry. NOAA Fisheries requested comments from several other federal agencies on the strategy. The agency also plans to initiate a NEPA analysis and economic analysis. Within a few weeks of this meeting, the agency plans to publish the strategy in the *Federal Register* for public comment and hold scoping meetings.

Bonnie Spinazzola offered to draft a letter to members of Congress urging them to support NMFS work on a strategy for ship strikes. She will circulate the letter to members for comment and members can choose to sign the letter as individuals. Other members noted that the relevant Coast Guard bill is moving too quickly for the team to comment. NOAA Fisheries staff reminded the team that as a member of the ALWTRT, the agency cannot comment to Congress on legislation.

A member asked about how NOAA Fisheries considers PBR when two different causes of mortality to right whales exist. NOAA Fisheries staff responded that the agency is responsible for reducing mortalities to PBR regardless of what other entities do. Another member noted that in other TRTs, the team is given a PBR with associated percentages of mortality reductions.

#### Gear Marking

John Higgins, NOAA Fisheries, summarized recent NOAA Fisheries efforts on gear marking in a questionnaire the agency sent to all TRT members. Questions addressed what is needed in a gear marking system, such as fishery, area, and line. Mr. Higgins reviewed the responses. Key messages included identification of fishery and area fished, that identification of gear is more

important than geographic area, identify buoy and groundlines with specific colors to distinguish between them, mark neutrally buoyant line, and expand marking requirements currently in the plan. Other possible marking methods mentioned were electronic scanner tags that carry specific information, id bracelets for gear, and standardized marking of surface buoys for state and federal waters/fisheries. Mr. Higgins suggested that the survey results be brought to the GAG for further discussion.

In response to a question about the range of electronic scanner tags, Mr. Higgins stated that the agency is still investigating the distance from which tags can be detected. A member commented that talking with individual fisherman yields better information. Mr. Higgins agreed the best data collection in the past regarding gear recovery from an entangled animal has been when the gear marking identifies the fishermen allowing an interview to be conducted with the owner of this gear.

#### Update on Stellwagen Bank National Marine Sanctuary (SBNMS)

Mr. Gouveia explained that the Stellwagen Bank management plan is under development. Issues were identified through the SBNMS scoping process, including marine mammal interaction, vessel interaction, and habitat. Working groups are meeting through May to develop plan ideas and strategies to deal with these issues within the sanctuary. Two of the working groups are chaired by ALWTRT members and NOAA Fisheries sits on the working groups, which provides mechanisms of interaction among the sanctuary, the agency, and the ALWTRT. He encouraged members to talk to Mason Weinrich or Dave Wiley for additional information.

#### Update on Critical Habitat

Brian Hopper, NOAA Fisheries, provided an overview of right whale critical habitat issues since the 2003 ALWTRT meeting. After briefly reviewing the statutory and regulatory background for designating critical habitat, he described a 2002 petition to expand the critical habitat for right whales. NOAA Fisheries responded by publishing a 90 day notice in 2002 and a final determination in 2003. The determination stated that the requested revision was not warranted at this time and that the agency would continue analysis of features essential to right whale conservation. Next steps for NOAA Fisheries include continued analysis of certain characteristics of right whale distribution in the Southeast and Northeast, as well as assessment of whether other physical or biological features are essential to the conservation of right whales and evaluation of economic and other relevant impacts including any particular area in the designation of critical habitat.

### **REPORT OUT FROM BREAKOUT SESSIONS**

Two breakout groups, comprised of Northeast ALWTRT members and Southeast/Mid-Atlantic ALWTRT members, reported on the outcomes of their session on Day 1:

#### *Public Hearing Locations*

The Northeast members recommended:

- Maine: Machias, Ellsworth, Portland, Rockland
- New Hampshire: Portsmouth
- Massachusetts: Gloucester, Plymouth, New Bedford
- Rhode Island: Narragansett (URI Campus).

The Southeast/Mid-Atlantic members recommended:

- New Jersey: Barnegat Light
- Maryland: Ocean City
- Virginia: Norfolk
- North Carolina: Wilmington
- Florida: Jacksonville, Cape Canaveral (if 6<sup>th</sup> location feasible)

NOAA Fisheries will work with the subgroups to identify locations that may need to be reduced, if the schedule and resources requires limiting the meetings.

*Full ALWTRT Meeting During EIS Comment Period*

The Northeast members recommended:

- The ALWTRT meet in regional subgroups during the comment period.

The Southeast/Mid-Atlantic members recommended:

- The full ALWTRT meet together during that period
- Meet in the Baltimore/Washington area

Both groups suggested that the team meet after the public meetings but before the comment period closes to gain an understanding of and respond to ideas raised at the meetings. The Northeast members also recommended that NOAA Fisheries hold educational briefings within states early on in the process to better inform interested parties of the content of the draft EIS. Both groups urged NOAA Fisheries to consider other schedules such as fishing season, Council meetings, and ASMFC meetings when timing the public comment period and public meetings. The Southeast/Mid-Atlantic members recommended that the meetings convene for one and a half days to allow time for comments and discussion. That group also requested that NOAA Fisheries consider extending the public comment period for the draft EIS to 60 days.

Members in support of meeting as a full team during the comment period noted that it is important to meet together before breaking down into regional meetings and that the groups have enough in common to meet together. Southeast/Mid-Atlantic members commented that general agreement arose in their group for moving to regional meetings in the long term. Members who preferred meeting within regional groups commented that the group is too large and the issues too extensive to be able to accomplish the goals as a full team and the more could be accomplished if the team split at this point.

Regarding the suggestion of a 60-day comment period, NOAA Fisheries staff responded that if that period were extended, each piece in the process also gets extended and will ultimately delay finalizing the rule.

**GROUNDLINE PROPOSAL FROM A GROUP OF ALWTRT MEMBERS**

ALWTRT member Stormy Mayo presented a comment and proposal on the management of groundlines on behalf of a group of scientists on the ALWTRT (*See Attachment D for this document*). Mr. Mayo explained that entanglements in the mouth are thought to be the prime cause of severe entanglement. A document distributed at the meeting contains additional background on the whale behaviors and other data related to the proposal. The proposal presented by the group suggests that “to reduce the risk of entanglement from groundlines such

lines should be made of sinking material such that the line lies again to bottom when fished.” Mr. Mayo acknowledged that practicality issues must still be dealt with. He listed four questions in need of further study to more completely address the issue of entanglement in groundlines.

In reaction to the proposal, some ALWTRT members suggested that the language “as low as possible” be used instead of “against the bottom”. Others expressed concern that the proposal may preclude groundlines in the ultra dense layer or lead to closed areas. Some members noted that a lack of working knowledge of whale feeding prevented them from reacting to the specific proposal. Researching differences between rocky habitat and other habitats was also noted as a concern. A member also suggested that the GAG take the comments and proposal as advice.

Members commented on the challenges with the use of certain sinking rope in rocky bottoms that could get caught, particularly in offshore rocky areas.<sup>2</sup> Fisherman expressed concern about the potential to lose gear in these areas. Some noted that rocky bottoms may not preclude the use of sinking or neutrally buoyant rope. A member expressed a concern with reducing the profile of lines in the bottom layer where whales skim for food, and that additional information on whale behavior is needed to better guide any requirements for lowering the profile of groundlines to reduce entanglements. Other members suggested that the effectiveness could vary between sandy and rocky bottoms and that use should be area-specific.

NOAA Fisheries staff stated that open questions still exist as far as alternatives to neutrally buoyant or sinking line and how and where to reduce profile. Members expressed a need for additional information on whale biology to understand whale behavior and locations. This information will assist industry in knowing where to lower groundlines.

One member commented that at the 2003 ALWTRT meeting, a group offered a working definition of low-profile of 2 feet to avoid the mouth position. Some members noted that entanglements are related to times when whales have their mouths open for long periods, while others added that much is unknown about whale feeding behavior. Another member noted that data is being collected on whale distribution and sightings to help evaluate risk areas and risk relative to the bottom, and practical depths for lines. Other members responded that 2 feet could cause fisherman to lose gear in storm conditions. Another member urged researches to consider humpback behavior and concentration in sandy bottoms when evaluating low profile line.

NOAA Fisheries agreed to work with several scientists on the team to further explore the questions and issues raised about groundlines, particularly in areas with tidal or rocky habitat.

The ALWTRT did not reach consensus on the proposal. Mr. Mayo offered to refine the document to clarify that it is the opinion of a small group of members.

#### Other Discussions

A member inquired about the status of an intent to sue action on the DAM rule. NOAA Fisheries staff responded that the lawsuit was filed and the agency will file the information in the administrative record in April.

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<sup>2</sup> Members’ comments on groundlines offered during related discussions on Day 1 of the meeting are reflected in this section of the summary.

At the conclusion of the meeting discussion, NOAA Fisheries staff thanked members for their feedback and encouraged members to continue the dialogue on the ALWTRP.

## **PUBLIC COMMENT**

No individuals provided public comment at the meeting.

## **SUMMARY OF PROPOSED ALWTRT NEXT STEPS**

### **Gear Advisory Groups**

1. Reconvene Gear Advisory Groups: The TRT requested that NMFS reconvene Gear Advisory Groups (GAGs) for both the Northeast and Southeast/Mid-Atlantic. It was proposed that the groups could review research projects, determine which merit consideration by the ALWTRT and the additional questions to be addressed, and bring the concepts to the ALWTRT. The members who volunteered to help organize the GAG meetings will identify meeting dates.
2. Vertical Lines to GAGs: The TRT requested that the GAGs review the list of vertical line reduction options, evaluate the list, and report out to the ALWTRT on which options to pursue and associated questions that need to be answered.

### **White Papers and Research**

3. NMFS White Papers: The ALWTRT requested that, in the future, NMFS prepare a summary update of TRP activities, entanglements and other key issues for each ALWTRT meeting. ALWTRT members will provide input on the questions to be addressed in the white paper. The white paper information would be presented to the team in a 1-1.5 hour summary presentation, which would replace numerous presentations by individuals on NMFS staff.
4. Gear Modification Research: The ALWTRT requested that NMFS continue research on gear modifications.
5. Whale Research: NMFS and whale biologists will work to gather data on whale behavior and distribution, particularly on feeding, and present the information to the ALWTRT at the next meeting.
6. Ship Strike Letter: Bonnie Spinazzola will draft a letter to members of Congress urging them to support NMFS work on a strategy for ship strikes. She will circulate the letter to members for comment and members can choose to sign the letter as individuals.

### **NMFS EIS Process**

1. NMFS EIS Process- NMFS staff identified the following expected steps for this process:
  - a) Draft EIS and proposed rule tentatively published in late May/early June 2004, with a public comment period of 45 days for the DEIS and 30 days for the draft rule.
  - b) Public hearings are held during June and July 2004.
  - c) NMFS addresses public comment.
  - d) Final EIS and the final rule anticipated to be published in February/March 2005.

2. Public Meeting Locations:
  - a) The Northeast members recommended the following locations:
    - Maine: Machias, Ellsworth, Portland, Rockland
    - New Hampshire: Portsmouth
    - Massachusetts: Gloucester, Plymouth, New Bedford
    - Rhode Island: Narragansett (URI Campus)
  - b) The Southeast/Mid-Atlantic members recommended the following locations:
    - New Jersey: Barnegat Light
    - Maryland: Ocean City
    - Virginia: Norfolk
    - North Carolina: Wilmington
    - Florida: Jacksonville, Cape Canaveral (if 6<sup>th</sup> location feasible)
3. Reconvene ALWTRT, Northeast and Mid-Atlantic/Southeast Subgroups during DEIS Comment Period: The TRT requested that NMFS reconvene the full team or subgroups during the EIS process.
  - a) The Northeast members recommended that a regional meeting be held during the comment period.
  - b) The Southeast/Mid-Atlantic members recommended that the full team meet during the comment period in the Baltimore/Washington area near BWI airport. A 60-day comment period was also requested.

### **ALWTRT Structure and Process**

1. ALWTRT Structure- At this time, the team did not develop a consensus recommendation decision on formally dividing the TRT into separate teams by region or other affiliation. NMFS proposed that the ALWTRT continue to meet as a full team, but spend most of the meeting time in smaller groups according to region, gear type, or other affiliation.
2. Fishery Representation: State resource management agency representations on the ALWTRT will represent the interests of recreational fisherman and other fisheries they manage within state waters that do not have individual representation on the ALWTRT.
3. ALWTRT Protocols: ALWTRT members will send RESOLVE remaining comments on ALWTRP process and structure-related issues by March 1, 2004.

### **Upcoming Meetings**

1. Gear Advisory Groups: The TRT requested that dates and locations of GAG meetings be determined after consulting with interested parties. The TRT requested that members be informed of details through email.
2. February, 2005: Possible ALWTRT meeting. NMFS will confirm in the fall of 2004 whether it is possible to hold a two day meeting during the first week in February, 2005, taking into consideration any changes in the EIS schedule and other meetings (e.g. Council, ASMFC, etc.).
3. Meeting Agendas: NMFS and RESOLVE will continue to work with ALWTRT members in the meeting agenda development process. This could include additional conversations or communications with members, as well as holding a conference call on the agenda topics and meeting design with a selection of members who volunteer prior to the meeting. Some members volunteered for an agenda subcommittee.

**Meeting Summary**

1. RESOLVE will prepare a draft summary of the February 3-4, 2004 ALWTRT meeting within the next few weeks. The draft will be distributed to TRT members for their review and comment. RESOLVE will then incorporate this feedback and distribute a final meeting summary to the TRT. At that time, the final meeting summary can be distributed outside the TRT membership.

**ATTACHMENT A**

**List of Attendees  
Atlantic Large Whale Take Reduction Team  
February 3-4, 2004**

**TRT Members and Alternates\***

Bill Adler, Massachusetts Lobstermen's Association  
 Peter Brodeur, Rhode Island Lobsterman's Association\*  
 Diane Borggaard, NOAA Fisheries  
 Leroy Bridges, Downeast Lobstermen's Association  
 David Bruce, Delaware Division of Fish and Wildlife  
 Peter Cooke (red crab)  
 David Cupka, South Carolina Dept. of Natural Resources  
 Jack Finn, University of Massachusetts  
 Pat Fiorelli, New England Fishery Management Council  
 Sonny Gwin (lobster, black sea bass, and conch)  
 Chris Hickman (black sea bass)  
 Robert (Bob) Kenney, URI, Graduate School of Oceanography  
 Scott Kraus, Edgerton Research Laboratory, New England Aquarium  
 Bill Mackintosh (lobster, black sea bass, and scup)  
 Rick Marks, Garden State Seafood Association  
 Stormy Mayo, Center for Coastal Studies  
 Dan McKiernan, Massachusetts Division of Marine Fisheries  
 Red Munden, North Carolina Division of Marine Fisheries  
 Margaret Murphy, South Atlantic Fishery Management Council  
 Steve Nippert (hagfish)  
 Bob Nudd (lobster)  
 Joshua Pike, International Fund for Animal Welfare/Suer and Blackwell\*  
 Jooke Robbins\*  
 Kate Sardi\*  
 Rich Seagraves, Mid-Atlantic Council  
 Greg Silber, NOAA Fisheries  
 Jamison Smith, Florida Fish and Wildlife Conservation Commission  
 Bonnie Spinazzola, Atlantic Offshore Lobstermen's Assn.  
 Terry Stockwell, Maine Dept. of Marine Resources  
 Mark Swingle, Virginia Marine Science Museum  
 Cynthia Taylor, Wildlife Trust\*  
 Stuart Tolley, Cape Cod Gillnet Association\*  
 April Valliere, Rhode Island Div of Fish & Wildlife  
 Sierra Weaver, The Ocean Conservancy \*  
 Mason Weinrich, The Whale Center of New England  
 Patten "Pat" White, Maine Lobstermen's Association  
 Sharon Young, The Humane Society of the U.S.

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\* Indicates Alternate



**Observers**

Ben Brickett, Blue Water Concepts

Tom Fetherston, US Navy

Tom Flynn, New Bedford Whaling Museum

Cliff Goudey, Center for Fisheries Engineering Research

Greg Hitchens, US Coast Guard

Amy Knowlton, Edgerton Research Laboratory, New England Aquarium

Ed Lyman, Massachusetts Division of Marine Fisheries

Scott Moffat, Kittery Animal Hospital

Michael Moore, Woods Hole Oceanographic Institute

David Morin, Center for Coastal Studies

**NOAA Fisheries**

Jack Batchelder

Mary Colligan

Kevin Collins

Bill Foster

Kellie Foster

David Gouveia

Dana Hartley

John Higgins

Wayne Hoggard

Brian Hopper

Dan Hytrek

John Kenney

Amanda Kozuck

Greg Lamontagne

Lynn Lankshear

Peter Lawsing

Juan Levesque

Chip Lynch

Richard Merrick

Katie Moore

Paul Perra

Bob Ross

Glenn Salvador

Heather Stiratt

Sarah Thompson

Carolyn Woodhead

Deirdre Casey

**RESOLVE**

Abby Arnold

Angela Agosto

Paula Moreno

**ATTACHMENT B****Atlantic Large Whale Take Reduction Team***Proposed Ground Rules for Use at February 3-4, 2004 ALWTRT Meeting*

1. **Decision-Making:** The Atlantic Large Whale Take Reduction Team (TRT) will seek to develop consensus recommendations where possible. In this context, “consensus” means that the recommendation in question is supported by all TRT members present at the meeting; this does not necessarily mean that each TRT member likes everything about the recommendation, but that each member is willing to accept it. Where consensus cannot be reached on a particular issue in the time available for developing a recommendation on that issue, the range of possibilities considered by the TRT will be presented, including the views of both the majority and minority.
2. **Membership:** Membership will reflect a balance or representation by interest, region, and sector. Members are encouraged to reflect their own viewpoints and the viewpoints of their constituencies.
3. **Attendance:** Team members are encouraged to attend all TRT meetings. Team members can designate one alternate to attend in their absence. It is the responsibility of the Team member to keep their alternate informed and prepared for meetings. A Team member who needs to send an alternate is requested to notify NMFS that an alternate will attend for them, and who that person is, at least one week in advance of the meeting.
4. **Meeting Agendas:** Draft meeting agendas are circulated to Team members prior to each TRT meeting and finalized by the Team during the first portion of the meetings.
5. **Meeting Summaries:** Meeting summaries will be drafted by the facilitation team, and then circulated to TRT members for review and comment. The facilitation team will revise accordingly, and then mail the final summary to Team members. Members of the team are encouraged to circulate meeting summaries to their respective constituencies once they are finalized. Summaries will not attribute comments or suggestions.
6. **Media Contact:** Media inquiries concerning the TRT will be referred to the NMFS Public Affairs Officer, who will share the TRT roster upon request. Media representatives inquiring about the TRT process will be referred to approved meeting summaries. Team members may talk to media representatives concerning their own views about the issues being discussed by the Team. However:
  - A. TRT members agree not to attribute particular comments to particular individuals, nor to characterize others’ views;
  - B. TRT members agree not to portray ideas as consensus before the TRT has explicitly agreed on them.
7. **Public Comment:** Members of the public are encouraged to direct comments through TRT members or speak at designated times on the meeting agenda.

**ATTACHMENT C**  
**PROPOSAL FROM GROUP OF ALWTRT MEMBERS**

- Approximately 6 entangled right whales have been observed over the last two years that are believed to be lethally entangled and have not been resighted.
- One known mortality from entanglement in the last two years.
- One right whale disentanglement was judged to be fatally injured in 2003.

Therefore, the number of right whale deaths is several times larger than the level of mortality addressed under the TRT Plan, and presumably, the proposed rule. These mortalities occurred despite requirements during some of this period for SAMs and DAMs, including weak links, and rope modifications.

- The NEPA process does not allow for timely changes to the take reduction plan, and has delayed actions that would save right whales.
- The proposed rule (as much as we know of it) is not like to reduce right whale mortality to PBR.

Therefore, we make the following recommendations:

- The proposed rule should contain measures that will reduce right whale mortality to zero.
- Proposed measures should permit maximum flexibility, so that management innovations and new modifications are considered, and impacts to fishing and effectiveness on reducing risk to large whales is considered in a timely manner.
- Alternatives allow maximum experimentation on gear modification research/projects to address horizontal and vertical lines issues.
- The ongoing process should include regular evaluations of the success of the plan (possibly by an independent peer review group), including specific assessments of gear modifications, an annual scarring analysis from the catalog, and gear analysis from disentanglements.
- Agenda set by TRT members

**ATTACHMENT D**  
**PROPOSAL ON GROUND LINES FROM GROUP OF ALWTRT MEMBERS**

A Comment on Management of Ground Lines and the Potential for Entanglement  
During Right Whale Feeding

Introduction

The effort to reduce entanglement in ground lines is clearly a valuable addition to the Take Reduction Plan. This measure is aimed at reducing the amount of line in the water column and is particularly valuable in decreasing the most obvious (and probably most common) type of entanglement, that in the mouth of right whales. Entanglements in the mouth are thought to be the prime cause of severe entanglement (Knowlton, 2004; this meeting) as whales encounter lines in the water column or at the sea surface while feeding.

Background

Foraging related behaviors are thought to dominate the life of right whales and the act of feeding may be one of the most common activities in which right whales engage. Whales in many of the habitats where they are found in the North Atlantic (with the exception of their calving grounds off Florida and Georgia) are known to seek and orient to the high density layers of plankton, probably maximizing their food intake by focusing their mouth open “skimming” activities for many hours on end on the most dense micro-layers of plankton. Hence, during such times, the whales are vulnerable to entanglement in locations where fishing gear (specifically with lines that are parallel to the mouth plane of the feeding whale) is located at the depth of the most dense part of zooplankton layer. Pitch and roll Dtag data suggest that all orientations along the body axis may be seen during feeding.

The distribution of zooplankton within the water column that dictates the depth of the risky, mouth-open behavior is not well understood. However, in Cape Cod Bay, where food sampling and whale observations have been used to describe the act of feeding, it has been shown that zooplankton concentrates at physical/oceanographic interfaces – the sea-bottom interface, the thermocline, and the sea surface. Particularly high concentrations of zooplankton may occur at the surface and bottom. Small-scale sampling of the water column in the waters of Cape Cod Bay with associated observations of whale behavior demonstrate that whales feed for hours on end at the bottom of the water-column. In this case the whales are likely maximizing food intake by focusing their skimming activities on ultra dense microlayers that have been documented as forming within 30 cm of the bottom.

The existing data and our understanding of the ways that whales entangle in the mouth permit the tuning of the Take reduction Plan to lower the profile of ground lines to reduce the potential for entanglement while avoiding placement of lines at the high zooplankton density layer where risk is greatest. The plan could thus focus on reducing the risk of entanglement from lines in the water column by avoiding the placement of ground lines in the bottom ultra dense layer where such a placement would present an increased risk of entanglement.

## Proposal

To reduce the risk of entanglement from ground lines such lines should be made of sinking material such that the line lies against the bottom when fished. This proposal is based on the precautionary principal . Thus this proposal is intended to strictly address the entanglement issue and is not intended to address the issue of practicality. It is recognized that practical application of this proposal may require modification based on the differences in bottom type and yet-to-be determined geographic differences in near-bottom zooplankton distribution.

## Questions

Present knowledge of whale behavior can give guidance to the management of ground lines to reduce entanglement, however some questions need further study with the goal of more completely addressing the issue of entanglement in ground lines. They are:

- \* what is the near-bottom profile (0-200 CM off the bottom)of the food resource in the habitats where right whales are known to feed?
- \* how does the zooplankton distribution and concentration change in various current energies between rocky and sandy habitats and do right whales feed in the very near bottom environment
- \* how does the distribution of whales map over the various bottom types that are actively worked by fixed-gear
- \* do changes in orientation of whales during feeding presents particular risks of entanglement (Dtag data should be analyzed in the context of this question)

**ATTACHMENT E\***

MEMORANDUM FOR: ALWTRT Members and Participants of the  
February 3-4, 2004 ALWTRT Meeting

FROM: Mary Colligan, NMFS

SUBJECT: Response to Next Steps Memo of February 19, 2004

I would like to thank you all for your participation and contribution to the recent meeting of the Atlantic Large Whale Take Reduction Team (ALWTRT). The challenge before this team is a large one given the status of right whales and we have a much greater chance of finding solutions if we are able to keep working collaboratively and maintain an open dialogue. We look forward to working with ALWTRT members to improve the efficiency and effectiveness of the take reduction team process and to further the protection and recovery of large whales.

We have reviewed the next steps recommendations from the ALWTRT from its recent meeting. In light of other commitments and budget obligations, we have devised a plan for activity over the next year. The intention of this memorandum is to share our plan with the ALWTRT and some of the thought process that resulted in identification of these specific actions.

As we discussed at the ALWTRT meeting, there are a number of actions NMFS must undertake over the course of the coming year. Over the next few months we will be finalizing the Draft Environmental Impact Statement (DEIS), drafting the proposed rule, and preparing both for publication. We will need to prepare a summary of the DEIS as well as schedule and make arrangements for public hearings. During the comment period we will be responding to requests for information and clarification, conducting public hearings, and convening a TRT meeting. After the comment period we will be reviewing and responding to public comments and preparing the final EIS and implementing rule. In addition, as was noted during the TRT meeting, we are in the process of preparing an administrative record on the Dynamic Area Management (DAM) program in response to litigation. We are also in the process of working with the Marine Mammal Commission to plan a Gear Workshop, continuing to work with our Science Centers on redefining critical habitat, and, of course, are continuing our gear modification research. You will hear more about the proposed gear workshop as more details become available. These obligations were fully considered when we evaluated the additional recommendations made by the ALWTRT.

**Gear Advisory Groups**

The ALWTRT recommended that NMFS convene Gear Advisory Groups (GAGs) for both the Northeast and Mid-Atlantic/Southeast. Specific functions identified for the GAGs include conducting a pre-screen of gear research findings before these were brought to the full ALWTRT, as well as to review and evaluate the list of vertical line reduction options and report to the ALWTRT which options to pursue and what questions to answer.

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\* This memorandum was distributed to ALWTRT members after the February 4-5 meeting in response to the Next Steps identified at the meeting.

We have discussed this recommendation and the potential role GAGs could play in further refinement of the Atlantic Large Whale Take Reduction Plan (ALWTRP). After reviewing the list of ALWTRT members who requested to be part of the GAG, we realized that the proposed GAG and accompanying objectives much more closely resembles a subgroup of the ALWTRT rather than a GAG. If we were to convene a GAG, we believe that in order to make it functional we would need to restrict it to only technical experts which would mean excluding a large number of the individuals who expressed interest. We recognize the interest and potential contribution of all of those individuals who have requested to be members of the new GAGs and believe the high level of interest is indicative of the fact that the vast majority of the issues the ALWTRT deals with are gear related. Scientists and conservation organization representatives are interested in these discussions in order to offer feedback on the risk reduction benefit to large whales of alternative gear modifications. State agency representatives are also interested as they are involved in and financially supporting gear research and have actively involved their constituents in their gear research. These interests are all legitimate and are in addition to the core gear expertise that would be brought to the table by the fishermen.

Given the high level and diversity of interest and the relevance of gear research to the entire ALWTRT, we believe holding Regional Subgroup Working Groups of the ALWTRT is more appropriate than a GAG meeting. These Regional Subgroup meetings that we held prior to and after the April 2003 ALWTRT meeting were very effective in bringing together ALWTRT members in a small group which facilitated interactive discussion. The outcome of these Subgroup discussions was very helpful in framing and fleshing out issues that NMFS was able to use in preparation for the full ALWTRT meeting held in April as well as in further developing proposals for modifying the ALWTRP after the ALWTRT meeting.

ALWTRT members suggested holding the GAG meetings as soon as possible. For the most part, Team members were not comfortable or prepared to discuss vertical line issues until they were aware of all of the alternatives in the DEIS. Given that the majority of issues that we would like to solicit feedback from Team members on are related to vertical line, we believe that the more appropriate timing would place these discussions after the completion of the comment period on the DEIS. Therefore, the ALWTRT Regional Subgroup Working Groups discussions focusing on vertical lines will be held in the fall of 2004 in order to be more effective. Summaries of the Regional Subgroup Working Groups will be distributed to the full ALWTRT and will serve as the basis for the core discussions at the February 2005 ALWTRT meeting. However, if state agencies or organizations would like to hold independent gear related meetings prior to the fall Working Group meetings NMFS staff can be made available for assistance. Any information ascertained from these independent meetings will be distributed to the full Working Groups in the fall.

With regard to using the GAG to conduct pre-screening of gear research proposals and evaluating completed research, we believe the process NMFS presented at the ALWTRT meeting accomplishes the intent of this function in a more streamlined fashion. Therefore, NMFS intends to follow the protocol for evaluating gear modification results as provided to the ALWTRT at the February meeting. As discussed at the meeting, this protocol allows for maximum ALWTRT input on the disposition of completed gear research. Pre-screening of research proposals will continue to be conducted by review panels and NMFS can provide a summary of appropriate information at the Regional Working Group meetings. Additionally, ALWTRT members can keep updated on research funded by NMFS through future ALWTRP

webpage links. As noted above, having the GAG pre-review completed research is not viewed as a simplistic approach because of the make-up of the proposed GAG. The membership of the GAG, as requested by ALWTRT members, encompasses many ALWTRT members and a working group structure would better serve NMFS and the ALWTRT.

### **NMFS EIS Process**

The ALWTRT requested that NMFS hold fifteen public hearings during the comment period on the DEIS. Although no final decision has been made, at this time we believe we can hold no more than ten public hearings and will consider the recommended locations from the ALWTRT when scheduling these hearings. NMFS will consult with its state partners and some ALWTRT members to solidify these locations. This reduction in the number of hearings is necessary to given existing budget and workload constraints.

### **Future TRT Meetings**

The ALWTRT recommended that NMFS reconvene the ALWTRT during the comment period either as a full team or in two separate working group meetings, the Northeast and Southeast/Mid-Atlantic subgroups. The primary purpose of an ALWTRT meeting during the comment period is to provide the Team with an opportunity to discuss the alternatives as a group and, ideally, make consensus recommendations on a preferred alternative. We believe that one full Team meeting can be as effective as two separate meetings and it reduces resource costs. For these reasons, we intend to hold one full Team meeting during the comment period and are tentatively considering the Baltimore area as suggested by the ALWTRT. As discussed at the February meeting, NMFS plans to convene the full ALWTRT, which will include regional working groups when the Final EIS is made available (tentatively scheduled for February 2005).

### **NMFS ALWTRT Tentative Plan for 2004 – 2005**

May- June: Issue DEIS with 45-60 day comment period

(Note: some members of the team recommended a 60 day comment period, but no decision has been made yet)

45 Day Comment Period  
Days 16-30 public hearings  
Day 35-38 ALWTRT meeting

60 Day Comment Period  
Days 16–35 public hearings  
Day 40-45 ALWTRT meeting

July/August – ALWTRT Meeting

September/October/November – Regional Subgroup Working Group Meetings

NMFS will confirm whether FEIS is on track for publication in January, prior to proposed February 2005 ALWTRT meeting (no later than November)

November/December/January

- Input from Regional Subgroup Meetings provided to ALWTRT along with TRT meeting material preparation
- Publish Final EIS



#### February

- ALWTRT Meeting
- NOTE: It is important to note that under this proposed schedule the FEIS will be published prior to the February 2005 ALWTRT meeting, but the final rule would not be published until after the meeting. Also, this meeting date may be adjusted if NMFS extends the public comment period of the DEIS to 60 days.

#### March

- Final Rule Published (at least 30 days after FEIS)
- NOTE: This may be adjusted if public comment period is extended, as noted above.