

**HARBOR PORPOISE TAKE REDUCTION TEAM MEETING  
MAY 13-15, 2013, PROVIDENCE, RHODE ISLAND**

**KEY OUTCOMES MEMORANDUM**

**I. OVERVIEW**

NOAA's National Marine Fisheries Service (NMFS) convened the Harbor Porpoise Take Reduction Team May 13-15, 2013, in Providence, Rhode Island. The meeting focused on the following primary objectives:

- Discuss outcome of recent Work Group meetings, highlighting areas of general agreement and options for discussion
- Build on Work Group's progress with full Team; engage outstanding issues
- Work towards providing NMFS a consensus recommendation for proposed rulemaking
- Determine next steps

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

**II. PARTICIPANTS**

The three-day meeting was attended by 22 of the 39 Team members. Participating Team members were: Joshua Wiersma, David Wiley, Jackie Odell, Steve Welch, Bill Mackintosh, Eric Brazer (for Robert Banks), Sharon Young, Cheri Patterson, Erin Burke, Fentress "Red" Munden, Kate Swails, Kristy Long, David Laist, Andy Read, Cindy Driscoll, Greg DiDomenico, Rick Marks, Mark Swingle, Debra Abercrombie (for Kim McKown), Maggie Lynott, Pinnguo He and Ron Smolowitz.

Dave Gouveia and Mary Colligan with NMFS Northeast Region (Protected Resources Division) convened the meeting. Scott McCreary with CONCUR and Bennett Brooks from the Consensus Building Institute served as the neutral facilitators. Staff from the Northeast Regional Office, the Northeast Fisheries Science Center and NOAA Office of General Counsel supported the deliberations. Three members of the public attended the meeting.

**III. MEETING MATERIALS**

A meeting agenda and several background meeting materials were provided in advance to support the group's deliberations. Copies of meeting materials can be found on-line at:

<http://www.nero.noaa.gov/protected/porptrp/trt/Meetings/2013meetingmay.html>

Documents can also be obtained by contacting K. Swails at 978-282-8481 or via email at [kate.swails@noaa.gov](mailto:kate.swails@noaa.gov).

#### **IV. KEY OUTCOMES**

Below is a brief summary of the main topics and issues discussed during the meeting. This summary is not intended to be a meeting transcript. Rather, it provides an overview of the main topics covered, the primary points and options raised in the discussion, and areas of full or emerging consensus.

##### ***A. Welcome and Introduction***

S. McCreary opened the meeting by reviewing the meeting purpose, and B. Brooks briefly reviewed key ground rules. Additionally, D. Gouveia and K. Long noted that the Agency is looking to develop consistent operating protocols across Take Reduction Teams and will, as part of that process, develop more uniform meeting ground rules by including language to address Team member appointments, as well as taping of TRT deliberations by Team member, press or the public.

M. Colligan next provided welcoming comments, emphasizing the importance of revising the bycatch rate trigger and underscoring the value of work done to-date by the Team through several Work Group discussions. She encouraged the Team to: (1) strive for consensus recommendations; (2) be mindful of the rule-making timeframe and the impending October/November closure; and, (3) be strategic on the scope and breadth of any recommendations put forward (since more complex recommendations take longer to move through the rulemaking process).

##### ***B. Background Briefings and Updates***

To inform Team discussions, the morning deliberations kicked off with two briefings:

- Chris Orphanides with the Northeast Fisheries Science Center provided a series of updates on recent data developed to support the Team's deliberations. Some of the update was a review of analyses presented at the April Work Group meeting; other information had been developed more recently and was being shared with the Team for the first time. Key points centered on: pinger-testing compliance data; compliance rates across sector and common pool vessels for the fall of 2012; observer coverage and high bycatch levels for New England vessels fishing in the Mid-Atlantic; and recent take data. (Documents summarizing these analyses can be found on the website listed earlier in this document.)

Orphanides also estimated the best-case scenario for an accelerated timeline to generate reliable annual bycatch data estimates. (He forecasted a likely timeline of 6 months for non-peer-reviewed; 9 months for SRG-reviewed data). Team member discussion on this point included the following:

- Concern by some that delays in generating annual bycatch data – while much improved from current practice – would undermine the effectiveness of any consequence action by delaying a consequence well beyond the trigger time and possibly raising concern that it was no longer timely.
  - Suggestions by some that the Agency identify strategies to further accelerate the annual bycatch analysis. C. Orphanides noted it is difficult to accelerate annual bycatch estimates without risking problematic revisions later on after longer-to-gather dealer data is analyzed and updated annual bycatch estimates are generated.
  - Interest by some members in having the Science Center provide rough mid-year take estimates to give industry and other interested parties a sense of progress relative to any agreed-upon triggers. Agency staff said such mid-year updates could be possible, though – again – subject to later revision as better data is made available. Agency staff also emphasized that they would want the analysis to be fully reviewed before it resulted in any management action.
  - Recognition by the Team that there is a tradeoff between data timeliness, accuracy and impact on fishery behavior.
- Cheri Patterson with New Hampshire Department of Fish and Game summarized results of the March and April Work Group meetings that sought to develop the outlines of a possible consensus approach to revise the Consequence Closure trigger by tying it to Potential Biological Removal (PBR) and incorporating a multi-year stepped-down path towards achieving the TRP’s long-term goal commonly referred to as the Zero Mortality Rate Goal (ZMRG). C. Patterson’s presentation of the working group’s report highlighted both areas of emerging agreement and topics needing further discussion. (See Attachment 1.)

As part of this discussion (and in response to earlier Team member questions), D. Gouveia also clarified that fishermen may, if they so choose, under Section 101(a)(4) of the MMPA, double up on pingers or deploy them voluntarily. However, if a serious injury or a mortality occurs incidental to the use of a deterrent, that serious injury or mortality would not be covered by the Marine Mammal Authorization under MMPA section 118(3). A fisherman would be subject to enforcement or litigation as a result of an unauthorized serious injury or mortality..

### ***C. Key Discussion Themes – Consequence Closure Strategy***

The Team spent the bulk of the meeting discussing possible alternatives to the current consequence closure strategy, with deliberations – both in plenary and caucus – focusing on (1) a revised consequence closure strategy using a trigger based on PBR/ZMRG, (2) several approaches based primarily on improved compliance/ enforcement, and (3) the concept of combining the consequence closure strategy and compliance/enforcement approach (to minimize the chances of triggering a consequence closure).

Though several specific aspects included in the various proposals that were put forward appeared to garner support – the small-caucus model worked well to generate options – the full Team was unable to craft a merged strategy for consequence closures and an improved compliance/ enforcement approach that could be supported by all.

The Team members still present at the end of the meeting eventually endorsed a streamlined approach put forward by the Agency, but it lacked full consensus. (A fuller discussion on this proposal is provided elsewhere in this summary report.)

Below is a review of key discussion points.

### **Revised Consequence Closure Strategy**

Building off the March and April Work Group efforts, the Team spent the first portion of the meeting fleshing out the details of a revamped consequence closure strategy. The approach centered on the following elements of a package (see ***Attachment 2*** for greater details):

- Developing a PBR-based trigger that includes a stepped-down progression toward ZMRG over a five-year period; the severity of consequences are similarly stepped down, whereby the closer bycatch is to ZMRG the less severe the consequence (i.e., consequence closure boundaries would be unchanged but the closure duration would be reduced).
- No immediate consequences would be designated for the mid-Atlantic, but – rather – would be considered in the future, as needed, to achieve bycatch target levels.
- Pinger usage would be strengthened by requiring pingers to be used seasonally for all vessels fishing with gillnets in all areas north of 40° latitude and east of 72°30' longitude and existing pinger-only management areas would be eliminated.
- Use the *Other Special Measures* provision to modify the current consequence trigger and eliminate the 2013 October/November Gulf of Maine Consequence Closure, while the full content of a more comprehensive modified Plan is being developed and approved. Then, going forward, retain the provision, but include language to assure that any future application of the provision is tied to consensus agreement among the Team.

Much of the package – PBR-based targets, stepped approach to ZMRG, expanded pinger usage, industry and agency efforts to increase compliance – was broadly supported by a diverse set of Team members. It was seen as a realistic way to move forward, propel greater adherence to pinger requirements and put the TRP on a solid path towards ZMRG. It was also seen as a straight-forward approach that could be readily enforced – both by the Coast Guard and, according to some Team members, by sectors. A number of suggestions were also put forward to strengthen the proposed package, including: (1) linking triggers to a percentage of PBR (as established in the current final SAR rather than a specific number of takes) and the previous year's bycatch estimate in order to allow for flexibility as PBR changes in future years and to be responsive to recent bycatch trends; (2) providing effective ongoing updates to keep the gillnet fishery, including common pool vessels, aware of bycatch trends; (3) instituting more active outreach to and close coordination with the NOAA Office of Law Enforcement (OLE) and the U.S. Coast Guard to foster more effective enforcement; and, (4) considering triggers other than PBR (for example, some type of compliance metric) to overcome delays associated with generating annual bycatch data. The Agency noted that greater specificity would be needed to make the proposal operational.

However, after extensive discussions, several key concerns emerged among a handful of Team members. The leading concerns centered on the following:

- Predetermined consequence closure areas may not result in reduced risks to harbor porpoise in future years given shifts in both fisheries and harbor porpoise distribution from year-to-year. A better approach, these Team members said, would be to adjust the time or location of the consequences based on the most recent bycatch data.
- Consequence closures punish all fishermen for the failings of a handful of “free-rider” vessels who continue to ignore pinger and other gear requirements. Better to strengthen enforcement and other compliance improvement measures targeted at “problem” operators, several Team members said.
- Delays in calculating annual bycatch rates would either make it difficult to impose a consequence closure in a timely manner (thereby making it less likely a closure would actually occur) or alternatively, provide insufficient notice to the fishery prior to a closure.
- With no established closures or consequences in the mid-Atlantic region and most bycatch in that region attributed to a small group of New England-based fishermen, the proposal does not adequately address the potential for New England fishermen to shift effort to the Mid-Atlantic and trigger New England closures as a result of increased takes in the Mid-Atlantic and potentially exceed a range-wide PBR. (This would unfairly punish fishermen not responsible for excessive bycatch, several participants said.) An increase in takes could also be tied to other changes in the fishery or fishery management.
- Enforcement has been inadequate in the past and given limited resources and what some Team members see as implementation challenges, it seemed unlikely that enforcement alone would ensure adequate compliance.
- Without adequate enforcement and compliance, a consequence closure will be ineffective and “bad actors” will continue to ignore regulations. Accordingly, some participants said the TRP should focus instead on putting in place actions that strengthen enforcement and compliance.
- Requiring full Team consensus for exercising the *Other Special Measures* provision in the future is a high bar that effectively hands off veto power to any single Team member.
- Whereas sector managers might inspect or otherwise help assure pinger usage by many fishermen, there needs to be a mechanism to reliably reach common pool and non-groundfish vessels not covered by sector-led oversight.

Based on the discussion, the Team agreed to try and develop an alternative approach rooted more firmly in improved compliance and targeted enforcement.

### **Improved Compliance/Enforcement**

The Team spent substantial time developing and considering proposals centered primarily on strengthening compliance and enforcement. The first two proposals considered by the Team were generated during caucuses on the second day. A third was an attempt to meld the two proposals together. Below is a quick synopsis of each proposal and then a review of primary discussion points.

- **Proposal A (cross-caucus work product, presented by A. Read<sup>1</sup>).** This proposal centered on a handful of elements intended to lessen the potential for harbor porpoise interactions, strengthen industry compliance, and streamline and improve enforcement. These included:
  - Year-round pinger usage in all areas north of 40°N and east of 72° 30' and elimination of all existing seasonal management areas requiring pinger use
  - Requirement that vessels declare a maximum number of nets to be fished and have a pinger affixed to each net, as well as carry on board extra functional pingers
  - Require annual certification to confirm compliance with pinger requirements; this is not intended to be an enforcement measure
  - Require LED pingers fleetwide by a future date to be determined (but as soon as practicable)
  - Maintain current system of Magnuson-Stevens Act (MSA) permanent closures for gillnet vessels under the TRP (including Western Gulf of Maine habitat closure), even if lifted by the New England Fishery Management Council
  - Require New England vessels fishing in the mid-Atlantic to use pingers; local vessels may continue to use prevailing local practice
  - Increased enforcement, including dockside inspection and an elevated number of boarding inspections

Further discussions were needed within the caucus on two additional provisions: (1) dockside and at-sea enforcement and associated penalties, and (2) the need for and nature of a fallback provision (i.e., consequence closures or some other mechanism) if the compliance/enforcement track proves insufficient.

- **Proposal B (cross-caucus work product, presented by J. Odell).** This proposal was intended to: (1) build on the recent trend towards lower takes; (2) put “teeth in the plan;” and (3) reprioritize Agency compliance and enforcement. This proposal, as drafted, was seen as a replacement for the consequence closure strategy. Key aspects of the proposal included the following:
  - Strengthen at-sea monitoring by the New England Fisheries Observer Program by (1) collecting data on pinger usage (number and functionality); (2) providing pinger usage data to OLE and sector managers; and (3) transitioning the fishery to LED pingers within a 2-3 year period.
  - Put in place dockside monitoring with the following components: (1) require vessels to carry onboard a number of additional working pingers; (2) tie compliance to correct pinger usage (number of pingers per net and/or extra on-board storage) both at sea and dockside; (3) require some form of pre-season inspection/certification (through sector management, enforcement and other mechanisms) to confirm consistency with pinger usage; (4) link issuance of marine mammal authorization (by the Agency under MMPA 118(c)) with favorable results from dockside monitoring; and (5) improve outreach and communications (target sector and common pool) to improve compliance with TRP requirements.

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<sup>1</sup> The name of the proposal presenter is included to help participants recall and distinguish between the two initial enforcement/compliance proposals discussed.

- Improve enforcement by more closely tracking vessel activities and initiating warning and penalties accordingly. Penalties should increase in severity with the number of “strikes” (i.e., increase from warning to fine to severe penalty). Initial enforcement focus should center on number of pingers; functionality should be tracked and phased into compliance considerations at a later date (as LED or other easily monitored pingers are used widely).
  - Expand the pinger usage requirements to encompass all areas north of 40°N and east of 72° 30’, but maintain the time periods for usage as required in the current TRP.
  - Consider requiring pre-trip notification (48 hours) for any gillnet vessel intending to fish, land, sell or possess monkfish, dogfish, skates and/or groundfish in the Mid-Atlantic. This requirement is intended to increase observer coverage and compliance for New England vessels fishing in the Mid-Atlantic. (The group discussed, but did not incorporate, a requirement that New England vessels declare into the Mid-Atlantic fishery for six months at a time.)
- ***Blended proposal.*** Given the overlap on many aspects of the two proposals put forward, a subset of the full Team met after the Plenary session on Day Two seeking to blend the two compliance and enforcement proposals into one integrated package. The resulting revised proposal focused on the following provisions:
    - **Compliance-related.** Improving compliance within the New England Region by expanding pinger usage to all areas north of 40°N and east of 72° 30’ on a seasonal or year-round basis; requiring vessels to declare a maximum number of nets and have pingers affixed to each net, as well as carry a certain number of extra pingers on board; put in place annual certification (carried out in non-enforcement mode) to confirm compliance with pinger requirement; and require LED pingers fleet-wide. In the Mid-Atlantic, the proposal centered on requiring all gillnet vessels to have annual certification to ensure gear is in compliance with TRP requirements for that area.
    - **Enforcement-related.** Increasing enforcement efforts, including dockside inspecting and elevated boardings of gillnet vessels, as well as using Observer Program data and VMS to notify vessel owners of serious TRP violations. The proposal also identified egregious violations as (1) insufficient number of pingers on nets or replacements on board; (2) failure to have letter of certification; and (3) fishing in closed areas.
    - **Other.** Caucus participants did not reach agreement on this point, but included – for further discussion – aspects of Proposal A to maintain the current system of permanent closures for gillnet vessels under the TRP. Further, there was additional discussion concerning codifying the current MSA closures (particularly the Western Gulf of Maine closure) under the MMPA, should the closures be lifted under the MSA.

As was noted by participants during Team deliberations, there was broad support for many common elements across the various proposals put forward and discussed. These included:

- Incorporating a certification program to provide an annual mechanism to confirm vessel compliance with pinger and other gear requirements. Such a program would not be implemented by NOAA's Office of Law Enforcement.
- Expanding pinger usage to all areas north of 40°N and east of 72° 30' on a seasonal basis, to make enforcement easier and reduce the risk of harbor porpoise interactions. (The Team did not reach agreement on the exact timeframe for expanded usage.)
- Redoubling efforts to step up enforcement, whether through dockside and/or at-sea measures, improved coordination with OLE and the Coast Guard, more extensive and aggressive use of Observer Program data and/or stepped up Joint Enforcement Agreements (JEAs) with the states.
- Enhanced pinger carrying requirements (both per-net and back-up replacements), as well as a push towards use of LED pingers to better confirm functionality.
- More aggressive penalties to provide greater incentives for vessels to comply with TRP requirements.
- Strategies to deal with the potential for New England vessels to shift effort to the Mid-Atlantic (and thereby potentially increase takes there) in the event of consequence closures in the north or other changes in the fishery.

The discussion also generated numerous additional suggestions from Team members that might be incorporated into any refined compliance/enforcement approach. These recommendations – discussed but not formally incorporated into any proposal – included: requiring New England vessels to formally declare their intent to fish in the Mid-Atlantic fishery for six months at a time, and/or observe a 48-hour call-in requirement; instituting targeted enforcement in the Mid-Atlantic in February; calling on sectors to institute a zero tolerance program for harassing observers; providing the Coast Guard with additional pinger training to improve enforcement; seeking fishermen's cooperation and willingness (either through sectors or direct to common pool vessels) to sign waivers allowing the use of Observer Program data by enforcement; using sectors or other mechanism to certify common pool vessels and test pinger functionality; and instituting more aggressive outreach to fishermen regarding both take data and close-to-real-time TRP violations as a means of encouraging compliance.

Though there was some agreement among Team members on the outlines of an approach, there were several important barriers to full Team endorsement of a compliance/enforcement approach. Among the more important issues, Team members considered several approaches but fell short in finding common ground on the following:

- ***Nature of Mid-Atlantic consequences.*** Team members had varied views on a strategy to address the potential for effort shift to the Mid-Atlantic, but were unable to coalesce around a single approach. (In addition to call-in requirements and declaring intent to participate in the fishery, other ideas mentioned included: universal pinger requirements; pinger requirements and/or mandatory observer coverage for New England vessels only; and a gear certification program.) Nor were they able to agree on whether consequence areas in the mid-Atlantic needed to be identified and hard-wired into a revised TRP or could be deferred for subsequent Team deliberations.

- ***Agency commitment to improved enforcement.*** Several Team members were hesitant to endorse a compliance/enforcement-only option absent a strong signal from the Agency that it would be able to aggressively pursue a revamped compliance/enforcement program. Team members voiced frustration at Agency staff comments during the meeting that the agency felt that proposed elements such as a pinger certification and inspection program, while intriguing, might prove difficult or time-consuming for the agency to implement. Agency staff assured Team members that they were not attempting to discourage Team development of a compliance/enforcement approach, but – rather – were trying to be transparent by flagging potential implementation barriers and considerations (e.g., OLE comments, provided during the February 2013 webinar, regarding the difficulty of dockside enforcement).
- ***Need for fallback provisions.*** In the end, Team members had varied views on the need for fallback provisions (e.g., consequence closures) as a backstop to a compliance/enforcement approach. Many Team members representing a cross-section of participants felt it was essential, as it would provide industry with both a target and an incentive to abide by TRP requirements. Others agreed to support the approach so long as industry was generally supportive, and still other Team members were not supportive of this approach for the reasons outlined earlier (e.g., punishes law-abiding fishermen, etc.). One member emphasized that if additional closures were promulgated under the HPTRP, a full analysis of the appropriate locations and times would have to be undertaken. There were also differing views on the recommendation that the current system of seasonal and year-round closures under the MSA should be adopted for gillnet vessels under the MMPA as part of the TRP.

Other areas lacking broad agreement and/or constraining some Team members' confidence in a compliance/enforcement approach included the following:

- The need for greater definition and certainty of meaningful penalties for egregious violators of TRP regulatory requirements;
- Perceived lack of effective strategies for fostering common pool vessel compliance with TRP requirements;
- Timing for expanded pinger requirements;
- Specifics related to pinger requirements (should pingers be required for all nets on board or only for the number of nets declared for fishing);
- Lack of detail regarding the operation of a certification program: who certifies, how long would it take to develop and implement a certification program, frequency of a program (annual or multi-year), etc.; and,
- Use of New England Fisheries Observer Program (NEFOP) data as part of a more aggressive enforcement effort.

### ***Combined Approach (Consequence Closure Strategy plus Improved Enforcement/ Compliance)***

The final morning of Team deliberations centered on exploring the potential for a combined package of measures that melded a revamped consequence closure approach with improved enforcement/compliance.

Team members floated various strategies for stitching the two approaches together. There was insufficient time to discuss each idea in detail, but a listing of the various proposals put forward is summarized below.

The strategies mentioned included:

- Move forward with an enforcement/compliance strategy now, and rely on a refined consequence closure strategy as an automatic backstop, if needed
- Move forward with an enforcement/compliance strategy now, and develop a conceptual consequence process that lays out the process the Team will use if a trigger is met
- Use the Other Special Measures provision to remove the October/November consequence closure and replace the current consequence closure strategy with an enforcement/compliance-based approach
- Use the Other Special Measures provision to remove the October/November consequence closure, and develop at a future time a longer-term and expanded enforcement/compliance-based approach
- Move forward with an enforcement/compliance strategy now, but lift the October/November closure only for those vessels that are certified under a pinger/gear certification program. (Under this scenario, the burden of proof would be on the fleet to demonstrate compliance, in exchange for access during October/November).
- Keep the now-mandated consequence closures in place until new rules can be developed
- Remove the consequence closure strategy now and then revisit it in Year 3 based on the effectiveness of other measures (enforcement, pinger expansions, etc.) to be implemented
- Reframe the multi-year ZMRG step-down table as a monitoring tool (rather than being a regulatory requirement) to give industry a target and provide a framework for tracking progress
- Build/refine a complete package now rather than adding pieces over time.
- Use the consequence closure strategy as backstop, with PBR as the trigger (but not ZMRG in step-down fashion); in the near-term, focus on compliance/enforcement, use the Other Special Measures provision to lift the October/November closure and modify the language to assure that it cannot be used unless consensus-based in the future

No one unified approach garnered unanimous support among Team members nor was the Team able to overcome the lack of full consensus support for either of the approaches (consequence closure and enforcement/compliance) discussed earlier in the meeting.

### **Agency Proposal**

Given the lack of apparent consensus for any single approach put forward, the Agency proposed a two-step process intended to bridge many of the ideas discussed and provide a platform for moving forward. The Agency's approach, presented late in the morning of Day Three by M. Colligan, centered on the following:

- **Phase One:** Use the current Other Special Measures provision to remove the consequence strategy, including the upcoming October/November closure and any subsequent closures, and work internally to step up enforcement immediately. Such an approach, M. Colligan

said, would enable the Agency to remove the closure tied to a trigger that team members acknowledge is analytically broken (bycatch rate), while moving forward on near-term measures to improve enforcement.

- **Phase Two:** Further refine the hybrid enforcement/compliance proposals and consequence closure/process. This future discussion would provide an opportunity for more thoughtful consideration and integration of several specific concepts under discussion, including: pinger expansion, an annual certification program, a consequence strategy (including an appropriate trigger), and further use of the Other Special Measures provision. These ideas, M. Colligan said, could be further developed by the Team through work groups and/or teleconferences/webinars. Should the Team recommend action, NMFS would consider such an action at a later time.

Following a brief discussion, CONCUR polled Team members to gauge the level of consensus. Of the Team members still in attendance, the agency's proposed approach was broadly supported, but it was not a unanimous consensus recommendation. The dissent concerned a desire to have the Agency lift the October/November closure for only those fishermen who are certified to be in compliance with pinger and other gear requirements. There were no conservationists present during this part of the discussion.

#### ***D. Key Discussion Themes – Striped Bass Fishery Proposed Revision***

The Team considered a request from the Virginia Marine Resource Commission that the boundary of the HPTRP for the striped bass fishery be adjusted eastward from the Chesapeake Bay Bridge Tunnel to the COLREGS line to alleviate the burden on the state's striped bass fishery. Below is a summary of Team member comments:

- Some Team members voiced concerns regarding the proposed change, noting that the area targeted for expansion is of concern for bottlenose dolphins, Atlantic large whales and other species. Expanding the fishery, these Team members said, would increase the potential for entanglements.
- Some Team members spoke in support of the proposal, given the lack of past interactions in the area and the current high observer coverage levels in the fishery.
- Team members had mixed views on whether to refer the proposal to other Take Reduction Teams for their subsequent consideration. Some Team members recommended the proposal not be considered by other teams given its potential negative conservation impacts. Others suggested the proposal at least be forwarded to the Bottlenose Dolphin and Large Whale Teams for their review and consideration.

NMFS staff noted their intent to forward the VMRC request on to the Bottlenose and Large Whale teams for their discussion and consideration. In doing so, Agency staff will convey the HPTRT's lack of consensus on this proposal.

## **V. NEXT STEPS**

Based on the discussions, the meeting generated the following next steps:

- Related to the consequence closure discussions:
  - NERO is to hold a teleconference in mid-June with the full Team to discuss its proposed approach for moving forward.
  - NERO will work with OLE, the Observer Programs, the Coast Guard and state partners to identify near-term strategies to improve enforcement, as well as develop longer-term approaches.
  - NERO will work with the TRT to establish work groups and other mechanisms (other than Agency-supported face-to-face meetings) to continue deliberations around pinger certification, strategies for addressing potential effort shift to the Mid-Atlantic; future enforcement improvements, and other topics as needed.
- Related to the Virginia Marine Resource Commission request:
  - NERO will forward to the Bottlenose Team the VMRC request to adjust the striped bass fishery boundary, as well as a summary of the Team's deliberations and recommendations related to the exemption request.
- General
  - CONCUR is to develop and circulate for Team comment a draft Key Outcomes Memorandum summarizing primary meeting discussion points.

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

**ATTACHMENT 1****HPTRT Work Group Meeting Summary  
April 10, 2013: Gloucester, MA**

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

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

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

**Points of General Agreement of the Work Group:**

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

**Bycatch Rates vs. PBR:**

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

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

The Work Group did agree that if a consequence closure is triggered based on an agreed HPTRT established PBR-based trigger the three current New England Region consequence

closures should remain the same as outlined within the current Plan. However, the Marine Mammal Protection Act requires that the Plan reduce harbor porpoise incidental catch (takes) to below the stock’s PBR level within 6 months of the Plan’s implementation and to a rate approaching a zero mortality and serious injury rate (ZMRG) within 5 years of the Plan’s implementation<sup>2</sup>.

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

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

Table 1.

<b>Year 1</b> (or any year) = not to exceed the most recent year’s Marine Mammal Stock Assessment Report’s derived PBR (SAR PBR).
<ul style="list-style-type: none"> <li>• <b>Consequences</b> – If SAR PBR is exceeded then the most severe of consequences occurs (e.g. all consequence closures as defined in the Plan). These consequences can be regional or coastwide.</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Lifting consequences</b> - If consequence closure(s) are triggered, then one or two year(s) of mortality below the SAR PBR trigger could be required to remove consequence(s)?</li> </ul>
<b>Interim Years</b> = some percent of SAR PBR towards ZMRG
<ul style="list-style-type: none"> <li>• <b>Consequences</b> – If the stepped-down level of PBR is exceeded for that year, but still below SAR PBR, then some level of reduced consequence closures are in effect.</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Lifting Consequences</b> - If consequence closure(s) are triggered, then one or two year(s) below that year’s PBR trigger to remove reduced level of consequence(s)?</li> </ul>
<b>Final Year</b> = ZMRG or close target to ZMRG
<ul style="list-style-type: none"> <li>• <b>Consequences</b> – If ZMRG is not met but exceeded by only a small amount? If ZMRG is not met by a large amount? Perhaps different consequences depending on degree of excess.</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Lifting Consequences</b> – Same as step above.</li> </ul>

<sup>2</sup> The MMPA states, “The immediate goal of a TRP is to reduce, within six months of implementation, the mortality and serious injury of strategic stocks incidentally taken in the course of U.S. commercial fishing operations to below the PBR levels established for such stocks. The long-term goal of a TRP is to reduce, within five years of its implementation, the incidental mortality and serious injury of strategic stocks taken in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate (known as the zero mortality rate goal, or ZMRG) taking into account the economics of the fishery or fisheries, the availability of existing technology, and existing State or Regional fishery management plans. NMFS has defined ZMRG as 10% of a marine mammal stock’s PBR level (69 FR 43338, July 20, 2004).”

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

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

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

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

#### **Pinger usage and compliance:**

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

The Work Group discussed the possibility of establishing a requirement that pingers be seasonally required for all vessels fishing with gillnets north of 40° latitude and east of 72°30'

longitude (this area is not meant to be inclusive of the current open area around Long Island/Sound). For a reference see Figure 1 for the current HPTRP Management Areas for New England. The months for pinger use might be uniform throughout New England or they might differ somewhat between the Gulf of Maine and waters south of Cape Cod to account for differences in peak bycatch periods in those areas. The Work Group asked NMFS to provide monthly harbor porpoise take data since May 2012 to inform team discussions of appropriate pinger usage months (month by month bycatch data prior to from 2007 to May 2012 is already included in the paper on bycatch patterns provided by Palka at the Fall 2012 meeting). See attachment Harbor Porpoise Bycatch Patterns\_palka\_2012.pdf for reference.

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

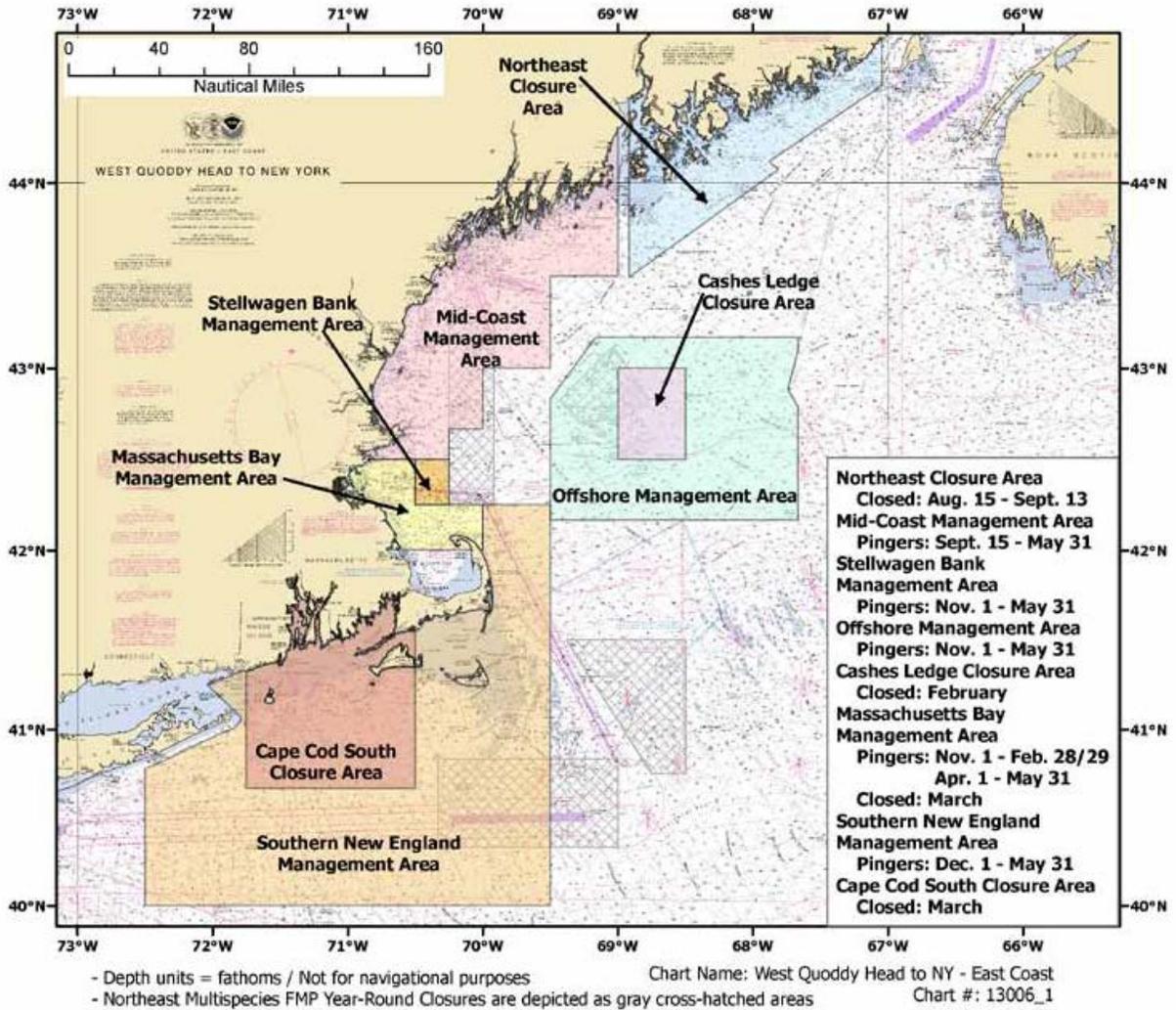
While the Work Group discussed industry incentive-based strategies to reward individuals in the fishing fleet that conduct their fishing practices in full accordance with the law and demonstrate behavior that assures no or very few harbor porpoise takes, no specific options were put forward for HPTRT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

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

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

- Option 1: The HPTRT could agree to modify the Plan and use the "Other Special Measures" one last time to allow for no closure during October and November of 2013 and then sunset the "Other Special Measures" clause of the Plan.
- Option 2: The HPTRT could retain the "Other Special Measures" clause in the new Plan with additional language to assure that any future application of this provision is used only after consultation with the HPTRT.

Figure 1. HPTRP Management Areas for New England.



**ATTACHMENT 2**

*The below proposal was developed by a cross-interest caucus during the HPTRT's in-person May 13-15, 2013, meeting. This proposal built off the work undertaken by the March and April Work groups and was drafted as a possible replacement to the current consequence closure strategy.*

**PROPOSAL**

1. Support for developing and implementing a Potential Biological Removal (PBR)-based trigger for the Harbor Porpoise Take Reduction Plan's (Plan) Consequence Closure Strategy in New England that could be a stepped-down progression toward Zero Mortality Rate Goal (ZMRG) over a 3-5 year period.
  - Supports a coastwide PBR-based bycatch target (not separated by region).
  - The following table outlines a 5-year stepped-down process for achieving a harbor porpoise take level approaching ZMRG.

YEAR	BYCATCH TARGET	CONSEQUENCES	LIFTING OF CONSEQUENCES
1	100% (706)	<ul style="list-style-type: none"> <li>• Current Consequence closures defined in HPTRP</li> <li>• (GOM: Oct and Nov Closure)/(SNE: Feb, March, and April)</li> </ul>	Mirror—one year under PBR
2	77.5% (547)	<ul style="list-style-type: none"> <li>• If exceeds PBR = Current Consequence closures defined in HPTRP</li> <li>• If less than PBR but over Year 2 trigger = ½ time for each closure (GOM: Oct <b>or</b> Nov)/(SNE: 45 consecutive days during Feb - April)</li> </ul>	Mirror—one year under Year 2 trigger
3	55% (385)	<ul style="list-style-type: none"> <li>• If exceeds PBR = Current Consequence closures defined in HPTRP</li> <li>• If exceeds Year 3 trigger but under Year 2 trigger = 15</li> </ul>	Mirror—one year under Year 3 trigger

		<p>consecutive day closure in GOM during Oct - Nov; 30 consecutive day closure in SNE during Feb - April.</p> <ul style="list-style-type: none"> <li>• If exceeds Year 2 trigger but below PBR = Consequences described for Year 2</li> </ul>	
4	32.5% (229)	<ul style="list-style-type: none"> <li>• If exceeds PBR = Current Consequence closures defined in HPTRP</li> <li>• If exceeds Year 4 trigger but under Year 3 trigger = 15 consecutive days closure during Feb - March in GOM; 15 consecutive days closure during Feb - April in SNE</li> <li>• If exceeds Year 3 trigger but under Year 2 trigger = Consequences described for Year 3</li> <li>• If exceeds Year 2 trigger but below PBR = Consequences described for Year 2</li> </ul>	Mirror—one year under Year 4 trigger
5	10% (71)	<ul style="list-style-type: none"> <li>• If exceeds PBR = Current Consequence closures defined in HPTRP</li> <li>• If exceeds Year 5 trigger but under Year 4 trigger = 10 consecutive days closure in Feb or March in GOM; 10 consecutive days closure in Feb, March, or April in SNE</li> <li>• If exceeds Year 4 trigger but under Year 3 trigger = Consequences as described for Year 4</li> <li>• If exceeds Year 3 trigger but under Year 2 trigger = Consequences described for Year 3</li> <li>• If exceeds Year 2 trigger but below PBR = Consequences described for Year 2</li> </ul>	Mirror—one year under Year 5 trigger

- Based upon results of coastwide bycatch analysis, the HPTRT may consider further consequence closure scenarios, including for the Mid-Atlantic, in order to achieve bycatch target levels.

- 2) Support for improving pinger compliance among the industry and possible expansion of pinger use management areas including New England-based vessels fishing in the Mid-Atlantic.
  - Have NMFS develop approved list of harbor porpoise avoidance technology the fishing industry can use along the Atlantic coast. E.g., to allow northern home-ported vessels to use pingers in the mid-Atlantic.
  - Establish a requirement that pingers be seasonally required for all vessels fishing with gillnets north of 40° latitude and east of 72°30' longitude.
  
- 3) Support for removing the 2013 October/November Gulf of Maine Consequence Closure under the “Other Special Measures” provisions of the Plan, provided that other metrics are trending in a positive direction (e.g., bycatch below PBR in 2012 and positive performance to date in 2013) for the New England fishing fleet within the Gulf of Maine.
  - Retain the “Other Special Measures” clause in the new Plan with language to assure that any future application of this provision is used only after consensus with the HPTRT. Utilize the current “Other Special Measures” provision to modify the current Plan to eliminate the 2013 October/November Consequence Closure while the revisions of a modified Plan are being developed and approved.