

**HARBOR PORPOISE TAKE REDUCTION TEAM MEETING
NOVEMBER 27-30, 2012, PROVIDENCE, RHODE ISLAND**

KEY OUTCOMES MEMORANDUM

I. OVERVIEW

NOAA's National Marine Fisheries Service (NMFS) convened the Harbor Porpoise Take Reduction Team November 27-30, 2012, in Providence, Rhode Island. The meeting was originally slated to be held in late October but was postponed due to Hurricane Sandy. The meeting focused on the following primary objectives:

- Update the Team on the first two management seasons of the consequence closure strategy; consider implications for rule implementation
- Update the Team on the most recent harbor porpoise abundance, distribution, and bycatch data; consider implications of recent trends
- Review harbor porpoise-related research activities
- Consider implications of trends in abundance and bycatch, as well as research activities, for Take Reduction Plan (TRP) implementation and fulfillment of MMPA TRP goals; brainstorm potential options for future management measures and/or modifications to existing measures
- 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 four-day meeting was attended by 20 of the 39 Team members. Participating Team members for all or part of the meeting were: Joshua Wiersma, David Wiley, April Valliere, Terry Stockwell, Jackie Odell, Steve Welch, Bill Mackintosh, Robert Banks, Sharon Young, Sierra Weaver, Alicia Nelson (via teleconference), Cheri Patterson, Erin Burke, Fentress "Red" Munden, Kate Swails, Kristy Long, David Laist, Rich Seagraves, Bill McCann and Ron Smolowitz. The meeting included several new Team members¹. Overall meeting attendance was limited due to (1) the last-minute rescheduling tied to Hurricane Sandy, (2) an absence of any fishermen from the mid-Atlantic region due at least in part to a need to tend to storm damage from the hurricane; and, (3) a decision by most of the academic/scientific/research community to boycott the meeting in protest of NMFS' last-minute decision to temporarily shift the proposed Coastal Gulf of Maine consequence closure from October-November 2012 to February-March

¹ Jackie Odell for Peter Iniss; Josh Wiersma for Erik Anderson; Rob Banks for Arthur Sawyer; Sierra Weaver for Vicki Cornish; Damon Gannon (not present) for James Gilbert; and, Kim McKown (not present) for Nicole Minohvets.

2013 absent consultation with the team². (Several meeting participants expressed frustration at the boycott, suggesting Team members have an obligation either to attend meetings and engage the issues or resign.)

Dave Gouveia and K. Swails with NMFS Northeast Region (Protected Resources Division) convened the meeting; Mary Colligan, Assistant Regional Administrator for Protected Resources with NMFS Northeast Region, also attended for a portion. Scott McCreary with CONCUR and Bennett Brooks from the Consensus Building Institute served as the neutral facilitators. Staff from the Northeast Regional Office, Northeast Fisheries Science Center's (NEFSC) Protected Species Branch and Northeast Fisheries Observer Program, NOAA Office of Law Enforcement, NOAA Office of General Counsel, and the U.S. Coast Guard supported the deliberations. Several members of the public attended parts of the meeting.

III. MEETING MATERIALS

A meeting agenda, updated ground rules and nearly all background meeting materials and technical analyses were provided in advance to support the group's deliberations. Other documents and much of the presentation material were made available during the meeting itself. Copies of meeting materials can be found on-line at:

<http://www.nero.noaa.gov/Protected/porptrp/trt/Meetings/2012meeting.html>

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

IV. KEY OUTCOMES

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

A. Welcome and Introduction

D. Gouveia opened the meeting with brief welcoming comments and a review of the meeting purpose. He noted that he anticipates the Team will have a follow-on meeting – either via webinar or in-person (depending on need and travel restrictions) – in early 2013 to flesh out and finalize any Team recommendations that may emerge from the November meeting.

D. Gouveia then introduced Northeast Regional Administrator John Bullard, who offered opening remarks via teleconference. J. Bullard's comments, summarized below, centered on the Agency's recent decision to shift a proposed gillnet closure – that had been required by the TRP

² More specifically, as characterized in the scientists' letter, the boycott was driven by (a) NMFS not consulting with TRT members; and, (b) NMFS not sharing all of the data and analysis that formed the basis of the decision before taking the unilateral action.

due to high harbor porpoise bycatch rates in 2010 and 2011 – from October/November 2012 to February/March 2013. Key points included the following:

- Underscoring the importance of the Team’s work and its ongoing guidance and consensus recommendations to NMFS;
- Reiterating his rationale for shifting the timing of the consequence closure: to provide greater protection to harbor porpoises while mitigating economic impacts to Gulf of Maine fishermen;
- Noting that, while he still endorses the action he took, he regrets not consulting with the Team beforehand, appreciates the extent to which his action was perceived as undermining the Team’s earlier consensus action, and will seek to use a more inclusive process in the future;
- Stressing that this closure shift is for one year only and noting that, unless the Team puts forward new measures that are adopted by the Agency or harbor porpoise takes are approaching the Marine Mammal Protection Act (MMPA) long-term goal, the Coastal GOM fishery will continue to face an October-November closure;
- Pressing industry to do a more effective job of fostering widespread and effective pinger usage as (1) pingers are proven to be effective; (2) takes are still well above the long-term goal set out in the MMPA, and (3) compliance rates, as measured by industry pinger-usage are still too low, trends that – if not reversed – will jeopardize the long-term viability of the gillnet fleet; and,
- Underscoring the value he places on the Team’s knowledge and insight, which the agency needs going forward.
- Encouraging the Team to develop straightforward options for improving industry compliance since more complex changes will take the Agency longer to analyze and implement and that, in turn, will potentially leave the October-November closure in place for a longer time.

Team members posed no questions for J. Bullard. CONCUR followed with an overview of the meeting agenda, as well as a brief review and confirmation of the Team’s updated Ground Rules. No questions were posed or changes proposed.

B. Background Briefings and Updates

Much of the first two days centered on a series of briefings and presentations intended to review activities and trends since the Team’s last in-person meeting in 2008 and subsequent teleconferences and webinars. Below is a brief summary of the topics covered and major clarifying questions posed. (Copies of all presentations are provided on-line, as noted above.)

- ***Review of 2010 HPTRP Amendment and Implementation to-date.*** Northeast Region staff provided a series of background briefings on the Harbor Porpoise TRP, the 2010 amendments that led to the establishment of the consequence closure strategy, and a review of the data and analyses that led to both the triggering of the fall Coastal GOM closure and the Agency’s subsequent decision to shift the closure to the February-March 2013 timeframe. The briefing also included a review of the Plan’s monitoring strategy, which is intended to track both effectiveness and compliance.

- ***Harbor Porpoise Abundance.*** D. Palka provide a detailed overview of the most recent harbor porpoise abundance figures and possible trends, as well as reviewing the basic model and survey techniques used to generate abundance estimates for the Marine Mammal Stock Assessment Report (SAR). D. Palka also explained the recent change in abundance estimates (and subsequently PBR) within the revised draft SAR, noting that she had mistakenly used an incorrect data set in earlier calculations of the abundance estimate. The change in the revised figure was not, she noted, due to either newly gathered data or to a change in the methodology used in the model itself. While abundance estimates have declined somewhat, the Potential Biological Removal (PBR) that was included in the revised draft SAR increased to 706 due to increased precision in the confidence values (CV).
- ***Harbor Porpoise Bycatch and Compliance.*** Science Center, Northeast Fisheries Observer Program (NEFOP) staff and Take Reduction Program staff provided a series of presentations on harbor porpoise bycatch and compliance tracking protocols, analyses and results. These included the following:
 - Amy Van Atten with the Northeast Fisheries Observer Program (NEFOP) provided an overview of the program, highlighting the extensive training and data quality programs used to track pinger compliance and bycatch, the distinctions between the At-Sea Monitoring (ASM) program and NEFOP, and the methods and equipment used to test pinger effectiveness.
 - NEFSC's Chris Orphanides' presentation on the methods used to calculate bycatch rates and estimates highlighted five main areas: (1) calculations of and alternatives to the consequence closure bycatch rates; (2) an analysis of the basis for the decision for shifting the consequence closure area; (3) a review of pinger functionality and compliance; (4) rationale for using landings as the choice of the unit of effort (a detailed analysis of alternate methods demonstrated that landings, which are the most consistently gathered data set, remain the best metric available); and (5) calculations of annual bycatch estimates.
 - D. Palka provided a scan of region-by-region data on harbor porpoise bycatch patterns associated with gillnet fisheries and compliance with HPTRP regulations (pingers, mesh size, etc.). The briefing was intended to provide an overview of the types of data and analyses available to support more in-depth Team deliberations.
 - Dr. Patricia (Trish) Clay, NOAA Fisheries Anthropologist, provided an overview of a recent NEFSC survey intended to better understand factors that drive fishermen compliance and non-compliance with fisheries regulations. Among the findings to-date from the Center's studies, which are based review of the social science literature and focus group discussions with self-selected participants, are: self-policing works best in small groups of people with similar interests; sector members are uncertain about compliance of peers; observer coverage affect compliance behavior; and targeting repeat violators can foster sense of fairness and legitimacy related to enforcement of regulations.

- K. Long provided a summary of industry compliance with pinger requirements included as part of the Pacific Offshore Cetacean Take Reduction Plan. Her presentation underscored the high compliance rate and effectiveness associated with pinger usage in the California/Oregon drift gillnet fishery, including the cohesiveness of the gillnet fishing community representation on that TRT.
- **Research Updates.** Upfront briefings included a series of presentations on recent harbor porpoise-related research efforts. These included the following: (1) a presentation by NEFSC's Henry Milliken on the impacts of varying gillnet tie-down configurations on Atlantic sturgeon and marine mammal bycatch, as well as target species, in the New Jersey monkfish fishery; (2) a presentation by NEFSC economist Tammy Murphy on a Science Center optimization model developed to project individual vessel responses to potential fishing closures; (3) a presentation by H. Milliken on the effects (none apparent) of a gillnet hanging ratio on the catch of both harbor porpoise and targeted species; (4) a presentation by Tim Werner with the Consortium for Wildlife Bycatch Reduction on past and future efforts globally to reduce marine mammal bycatch in gillnets, with a particular emphasis on acoustic deterrent effectiveness and research priorities; and, (5) a presentation by Jonathon Peros with GMRI on the FAST project, an effort (expected to be operational by spring 2013) to reduce bycatch through an industry-led, web-based approach to real-time fleet communications and marine mammal avoidance. (D. Gouveia and K. Long noted that any industry-led self-reporting system – even one that reports takes to sector managers – does not obviate the legal obligation for captains to report marine mammal takes under the NMFS MMAP.)
- **Management Updates.** Mark Grant with NMFS's Sustainable Fisheries Division provided an update on several fishery management changes, focusing in particular on the shift to sectors (a change implemented after the last in-person HPTRT meeting in December 2007) as well as the New England Fishery Management Council's consideration of rolling closure area modification and closed area exemption requests (Framework 48) in light of sharp cuts anticipated in groundfish quota. M. Grant noted that overall fishing effort has decreased in response to reduced allocations, but suggested it is too early to assess whether lower allocations will result in reduced or increased effort by industry. There was discussion that the quota for dogfish has been increased and fishing effort is shifting into targeting dogfish, monkfish and skates.

The presentations triggered numerous clarifying questions. More substantive comments and discussion are captured in the key themes section below.

Following the presentations, D. Gouveia provided a succinct summary of key takeaway points important for the Team to keep in mind as it considers possible revisions to existing management strategies. His primary points focused on the following:

- There is increased confidence (due to a lower CV) in the abundance estimates included in the most recent revised 2012 draft SAR. The 2011 SAR had a maximum estimate of 89,054 porpoises and the most recent revised 2012 draft SAR estimated 79,883. This represents a decrease of 9,000 porpoises. At the same time, due to greater precision in the CV, the

minimum population estimate in the 2011 SAR was 60,970 and this increased to 61,415 in the revised 2012 draft SAR for an increase of approximately 450 porpoises.

- Trend in PBR is stable to increasing at approximately 700 animals, and the bycatch trend has decreased to below PBR. (Annual takes have been below PBR in 2010 and 2011, and appear likely to be below PBR again in 2012). However, the five-year average in the current revised draft SAR remains above PBR.
- Although the data suggest progress toward consistently achieving PBR, poor compliance and the fluctuation of compliance rates since initial Plan adoption, suggests these recent gains could be short-lived. Moreover, much more substantial progress is required to achieve the long-term goal of reducing takes to insignificant levels (i.e., less than 10 percent of PBR).

Based on his review of the data and current trends, D. Gouveia suggested the Team focus its deliberations on addressing the following key issues: (1) strengthening enforcement; (2) improving poor compliance; (3) evaluating the adequacy of the existing consequence strategy and trigger (and, more specifically, whether there is a need to eliminate or modify the existing approach); and, (4) considering the appropriateness of the Other Special Measures provision that enabled the Agency to shift in timing of the consequence closure.

C. Key Discussion Themes

Team deliberations centered on a number of key themes, as summarized below. The deliberations also generated discussion of several proposals to replace or modify the existing management actions. (These proposals are discussed in Section D.)

- ***Merits of October-November closure shift considered.*** A portion of the meeting was spent understanding and discussing the rationale for shifting the consequence closure from October-November 2012 to February-March 2013. Team members generally agreed that the process – a decision undertaken at the last-minute by the Agency without prior consultation with the full Team and based on input from only a subset of industry – was problematic, and they strongly recommended that the Agency consult the full Team before making any future changes. (Industry members noted that the approach used, while not their preferred choice, was the only option afforded via the TRP to recommend a modification to the closure months given the Agency’s decision not to convene the Team earlier in the year. Conservation members of the TRT had earlier noted that the nature of the agency’s decision to shift the closure was a sharp departure from the TRT’s history of full team deliberation on management measures.) Team members differed, however, on the relative merits of the substance of the decision itself. Some suggested that the decision was appropriate, given the analysis that showed slightly higher takes and lower economic impact in February-March. Other Team members suggested that the data were equivocal and the weight given to economic impact to industry was not appropriate under the MMPA.
- ***Elements of existing strategy for the New England component of the HPTRP are potentially effective.*** Team members broadly agreed that pingers – when fully deployed and kept in working order – are an effective strategy for reducing bycatch in the gillnet fishery.

(Studies suggest mortality can be reduced 92-93% when properly used.) Moreover, recent advances in pinger technology, such as LED lights (confirming the pinger is operating) are expected to improve pinger compliance even further, as both fishermen and enforcement personnel can more easily confirm whether pingers are functional. Additionally, several Team members noted that the impending consequence closure was effective in heightening industry attention to and concern with harbor porpoise bycatch and motivating it to take action. Several participants also noted that PBR has been reduced in recent years and, though bycatch is still well above ZMRG, recent trends suggest to them that pinger usage is working. Other Team members, however, suggested that recent downward shifts in bycatch may be driven more by falling catch limits and not more effective pinger usage. And several Team members suggested the NMFS decision to shift the consequence closure time period has eroded confidence that the Agency would implement the consequence strategy. As well, several members noted that discerning the mere presence of pingers on nets, as documented in observer records, cannot support a definitive assertion that pingers work.

- ***Current bycatch rate is flawed as consequence closure trigger.*** Team members spent substantial time discussing the appropriateness of the current target bycatch rate used to trigger the consequence closure. Team members broadly agreed that the current target rate calculation no longer appears valid given shifts in industry fishing patterns and decreased landings. [The two biggest critiques were that (1) the target rate is an average of a fleet whose operations and fishing methods have changed dynamically since the target rate was defined (the rate was based on 1999-2007 data); and (2) the target rate is calculated as a function of landings, since they are the best available and most reliable proxy or metric of fishing effort.] At a minimum, some Team members said, the target rate should be updated using data more representative of current fishing patterns. Specific suggestions included the following:
 - Update the data time series used to compute the current target bycatch rate. Several Team members suggested updating the current rates using more representative data. Possible time series recommended for calculating the updated target bycatch rate included: a 1999-2012 time series (to capture a longer timeframe); a 2010-2012 only time series (to capture the most recent changes within the fishery); and both a 1999-2007 and 2010-2012 time series (to enable a compare-and-contrast analysis). Team deliberations highlighted the analytical tradeoffs between using only the most recent data (which captures more recent fishing patterns) vs. using a longer time series (which is more likely to capture actual fluctuations of effort and bycatch.) To deal with this tradeoff, it was also suggested that a target rate might be calculated based on a shorter series of years that spans both the new and old management regimes (i.e., something like a 2007-2012 time series).
 - Develop a trigger tied to pinger-usage compliance. Some Team members suggested shifting to a pinger-usage compliance rate trigger given the critical linkage between pinger usage and gillnet bycatch. Such a rate, participants said, would help compel greater compliance. Others recommended against using such a rate, suggesting instead that it is more appropriate to deal with compliance through enforcement and focus on a consequence closure trigger more directly tied to bycatch. Some also

questioned whether such a rate could be accurately and effectively tracked given low levels of observer coverage.

- Develop a rate mathematically tied directly to PBR. Several Team members suggested the consequence closure trigger should be directly tied to observed mortalities or PBR. Such an approach, they said, could be structured to reduce bycatch over time to levels approaching ZMRG and give industry flexibility on how it meets the targets. Others suggested the approach, while appealing, could prove difficult to put into practice due to practical time lags between data collection, analysis, quality assurance/quality control (QA/QC) procedures, and derivation of definitive and updated PBR figures.
- Develop a two-pronged trigger linked to both bycatch rate and PBR. C. Orphanides with the Science Center suggested the Team consider the merits of a two-pronged trigger: a consequence closure that would be triggered only if both an updated target bycatch rate was exceeded and the 5-year average target bycatch rate estimate were above PBR. In other words, two “tests” would have to be met in order for the consequence to be triggered. Such a two-pronged trigger could also be tied to compliance rather than a target bycatch rate if the Team preferred.

Some industry representatives raised the concept of devising and implementing a sector-specific component of a target bycatch rate to enable more localized and selective imposition of sanctions. Agency representatives indicated, however, that such approach would not likely be considered viable, as it would be akin to partitioning PBR.

Regardless of the eventual approach taken, several Team members underscored the importance of avoiding “cherry-picking” data to generate a favorable bycatch rate. Any agreed-upon approach must also outline specific analytical protocols regarding the metrics, data sources and collection methods, time lags, etc.

- ***Poor compliance and enforcement undermine TRP effectiveness.*** Team members broadly agreed that pinger enforcement, and its coupled concept of compliance, has been weak, thereby undermining Plan effectiveness. Data presented by the Science Center suggests the lack of industry compliance is both widespread (roughly 50% of vessels had hauls with less than 50% of the correct number of pingers when observed from April 1, 2010 to May 31, 2012) and a somewhat limited problem (9 vessels appear to be particularly egregious repeat violators, or violators who have more expansive patterns of non-compliance). This problem was also evident in the mid-Atlantic, where 92% of porpoise mortality was attributed to vessels home ported in New England and where non-compliance was also a major factor in bycatch mortality. At the same time, enforcement was highlighted by many as equally if not more problematic, given the limited resources dedicated to the both identifying and then prosecuting violators. Specific comments related to the topic included the following:
 - Monitoring, documentation and quantification of compliance have all been problematic. Monitoring of compliance is a function of only that slice of effort covered by observers. NEFOP observer coverage is generally around 8% and ASM

observations are often no more than 20% (though one industry representative indicated that 40% of his trips have been observed). Additionally, compliance is often reported through a metric of simple presence of pingers on a net, rather than presence of working pingers. This is due to the varying focus of observer trips and what is required of the observer on each trip (i.e., limited vs. complete trip). Observers on a limited trip are dedicated to marine mammal bycatch and, therefore, these trips test for pinger functionality using a pinger gun tester. Pingers are powered by batteries, which wear out, and typically have a life of less than one year. Dockside monitoring has largely been deemed impractical due to the need to unload and test each and every pinger on all nets.

- Several Team members suggested that any discussion of and focus on compliance and bycatch rates is merely an inefficient proxy for good enforcement. Fixing the enforcement problem, they said, is the simplest solution to improving compliance and reducing bycatch. It also targets consequences to the “bad actors” rather than penalizing the entire fishery through consequence closures.

Team members broadly endorsed closer coordination among the Northeast Region, the Office of Law Enforcement and NOAA General Counsel to more consistently identify, warn and, as needed, prosecute repeat violators. It was noted that a similar effort was recommended to the Southeast Region by the Pelagic Longline Take Reduction Team. NMFS will work with its Office of Law Enforcement and K. Moore with the U.S. Coast Guard to ensure coordination if a similar initiative occurs in the Northeast.

- Team members proposed numerous options for addressing compliance concerns, including: identifying a larger role for sectors to play in enforcing compliance among their members; fostering more aggressive and ongoing enforcement by NMFS; using Observer Program data to identify repeat violators and in turn trigger enforcement actions; shifting the burden of proof to industry to police itself and prove they are in compliance (to reduce the burden on enforcement); maintaining a certain percentage of working replacement pingers on-board; and developing a land-based enforcement strategy with annual pinger testing and an annual certification program (given the unlikelihood of an extensive at-sea enforcement program). No single approach garnered broad consensus, and each was seen as having limitations.
- A number of Team members expressed concern that the definition and use of the word “compliance” by the Agency paints a bleaker picture than is warranted and masks important nuances. This concern stems from both the tools to measure pinger effectiveness and the procedures used to calculate and report compliance. Some Team members, for example, voiced concern that current tools for measuring compliance may not be sufficiently accurate, though A. Van Atten with the Observer Program noted the pinger testers have been proven to be highly reliable. There were also concerns that Observer Program data related to pinger compliance may not be an accurate reflection of fleet-wide behavior due to low sampling rates. At least one Team member suggested that it is unfair to characterize vessels as being out of

compliance even if only one pinger is not working. (Others noted that one non-functioning pinger can be highly problematic as it may signal an “opening” to harbor porpoises.) Finally, there were suggestions that the Agency use different terms to distinguish between pinger compliance (i.e., are they physically present on the nets) versus pinger functionality (i.e., are they working), as fishermen may not always be aware that pingers are malfunctioning.

- ***Potential for Sector role considered.*** A significant focus of Team discussions centered on better understanding sector mechanics and the potential for sectors to play a more active and constructive role in fostering and assuring improved pinger compliance. Sector representatives and some others on the Team suggested that the sectors offer a unique opportunity to promote improved pinger usage, compliance and enforcement. For one, they are already taking steps to provide pingers to members through bulk purchase and loan programs. Moreover, sector managers said, sectors can foster greater compliance through pinger usage requirements incorporated into their annual operational plans – plans that are submitted to and approved by NMFS and agreed to by all sector members. Some Team members were broadly supportive of a larger role for sectors; others, while possibly interested in exploring the potential, felt they needed to better understand the mechanics of sector operations before they could adequately assess the potential role. Since poor compliance is a fleet-wide problem that affects boats outside of sectors as well, some Team members also mentioned that, even if sectors become more active in attempting to reduce harbor porpoise mortality, relying on sectors to increase compliance would be limited and unable to affect boats unassociated with a sector.
- ***Need for effective/reliable assurances.*** A number of Team members suggested the need for improved assurances from NMFS that plans will be implemented (and corresponding trust-building among team members) in any revised management strategy put forward. The issue surfaced in several ways. For conservationists, the shift of the agreed-upon consequence closure has eroded confidence in the viability of the existing consequence package, and they suggest the “Other Special Measures” provision included in the current TRP should be eliminated. Team members also discussed the need for confidence in the efficacy of a proposed larger sector role in any new management scheme. Specifically, Team members sought to understand (1) sector tools available to sanction vessels not in compliance with sectors’ operational plan, and (2) the potential for the TRT and NMFS to track sector actions (i.e., violations cited, actions taken, etc.). Sector members noted they have the purview to fine, issue “Stop Fishing Orders,” reduce quotas and even remove sector members violating aspects of the operational plan. They also noted that any actions taken are included in their annual report.
- ***Uncertain impact of possible upcoming fishery management changes.*** Team deliberations considered the potential impact of future fishery management changes on harbor porpoise bycatch and, accordingly, the need for TRP revisions. Conservationists voiced concerns that anticipated actions by the New England Fisheries Management Council (possible exemptions under Framework 48 and a potential relaxation of rolling groundfish closures, as well as an upcoming omnibus habitat amendment to fishery management plans) could lead to an increase in effort in risk-prone areas and a commensurate increase in harbor porpoise

bycatch. Others suggested it is tough to predict impacts, as few boats appear interested in exemptions and any increases in fishing effort will likely be offset by reduced groundfish catch limits. D. Gouveia also emphasized that the NMFS Protected Resources Division is part of a “tiger team” (i.e., work group) that is intended to assess potential impacts of any exemption request. Team members did broadly agree, however, that pingers should be required in newly opened areas at times likely to result in harbor porpoise takes. Conservationists requested that NMFS Sustainable Fisheries Division keep the TRT apprised of exemption requests and subsequent decisions by the Agency to open additional areas.

- ***Concerns with closures triggered by stale data and with takes below PBR.*** A number of industry Team members voiced concerns that the current GOM closure – and possible future closures in Southern New England – are illogical (and difficult to explain and justify to the fleet) as the consequences are grounded in what they see as outdated target bycatch rates. Moreover, given that harbor porpoise mortality is below PBR, these Team members said, the closures are exacting an unwarranted and unintended financial hit on industry. Several Team members called on NMFS to (1) measure industry compliance against an updated target bycatch rate, and (2) again exercise the Other Special Measures (OSM) provision to prevent industry from facing four months of closures in 2013 (the February-March closure that was shifted from 2012 and an October-November 2013 closure assuming new measures are not yet in place.) Conservation representatives were generally opposed to deferring the October-November closure, but one representative expressed an interest in having future TRT deliberation about a deferment linked to explicit evidence and a commitment to improving pinger compliance as part of an effective package of compliance verification and assurances. D. Gouveia reiterated his perspective that the best way for industry to avoid an October-November 2013 closure is for the Team to propose straightforward revisions to the current management scheme that would be easy and quick to analyze and implement. He also clarified that the process for seeking exemptions from provisions of the plan required rule-making and was itself a complex process.
- ***More timely data and consistent outreach to Team needed.*** Team members broadly called on NMFS to foster more timely sharing of data, as well relevant correspondence and proposals for shifting Plan implementation with Team members. (One Team member suggested the Council’s practice of distributing a compendium of correspondence as a possible model.) Additionally, industry members asked that the Agency provide quicker access to preliminary take and interaction data to enable the sectors to proactively manage their vessels and minimize the likelihood of additional bycatch. Most critically, Team members strongly recommended that NMFS consult the Team if and when it receives proposals to deviate from the TRP.
- ***Mixed views on the “Other Special Measures” provision.*** A variety of views were presented on the “Other Special Measures” provision. While all Team members agreed that the Agency should consult with the Team prior to executing the OSM provision, participants had differing views on the merits of retaining the provision at all. Some Team members pressed to have the measure dropped or tied exclusively to conservation-benefit-driven changes (as opposed to industry economics). Others called for the provision remain in place, suggesting the Agency needs to retain the current discretion.

Other themes raised during the Team's deliberations included the following:

- While there is strong interest in the concept of a tiered, collaborative approach to monitoring and enforcement, the Team has not yet been able to define the roles of each of the players in detail. Individual team members suggested that State fishery managers have a role to play, observer data should be more directly reported to and acted upon by Enforcement staff, and that Sector certification programs can play a role in enhanced enforcement. State/federal JEAs were also seen to be an important tool.
- Recognition of the tension between mobilizing near-real time data to inform management and securing adequate QA/QC. TRT members acknowledged the tension between the need for QA/QC and the need for more timely data access, and several suggested the selection of an alternative trigger consequence pairing should be informed by a realistic assessment of data availability and accuracy.
- Concerns voiced by conservationists that (1) the Other Special Measures (OSM) provision of the TRP (utilized by the Agency to justify the shift) was intended as a backstop for conservation needs and to address strategies that may not be working to reduce mortality, not for industry economic health; and (2) the failure to allow public review and comment on the consequence closure shift may have violated the federal Administrative Procedures Act (APA). In response, D. Gouveia reminded the Team that the primary intent of the temporary shift was to provide additional protection to harbor porpoises. Further, he noted that although there was also a lesser adverse economic impact that resulted from the shift to February/March, the economic impacts that February/March are still significant.
- A recommendation that the Vessel Trip Report (VTR) form be updated to be more consistent with gillnet fishing practices (and perhaps required as part of the Harbor Porpoise TRP). Such a change, several Team members said, would allow the Agency to calculate bycatch rates based on effort rather than landings. (VTR data is currently not considered reliable for assessing effort given extensive reporting gaps and errors.) In response, the Agency reiterated that the content of the VTR form is decided upon by the Fisheries Data Service Division (FDSD); Protected Resources continues to work closely with (FDSD) to ensure appropriate fields are on the forms.
- TRT members as a whole sought greater clarity about the relationship between documented pinger-usage infractions in relation to sectors and vessel home ports. Initial data scans indicate that non-compliance is fairly widely dispersed, though there are two or three ports with multiple habitual offenders.
- Any shift to a new management approach must be careful not to result in longer soak times, as soak times are positively correlated with increased bycatch.
- One Team member noted that public comment is needed on the revised draft SAR figures that were presented in this meeting as the basis for calculating PBR and assessing trends in

abundance. D. Gouveia noted the Agency intends to seek comment on the updated figures in the very near future.

D. Proposals Considered

During the course of the Team's deliberations, two proposals were put forward to replace or amend the current consequence closure strategy. One proposal was put forward by the Northeast fisheries sectors/states; a second by the conservation community.

Much of the Team's deliberations on the two draft proposals centered on the industry proposal, as participants sought to better understand implementation specifics related to sector operations, as well as consider possible strategies to strengthen/address Team member concerns. Below is a quick summary of the two proposals.

- ***Northeast Sector/State proposal.*** The Northeast Sector/State caucus presented a concept proposal to address the compliance gap and in some cases supercede and augment elements of the current Take Reduction Plan. (A copy of the Northeast Sector/State concept proposal is included as **Attachment 1**.) The NE Sector/State proposal is characterized as a “tiered approach” and identifies explicit data sharing, enforcement, and monitoring responsibilities for Sectors, NMFS, and states. The proposal has the following aspects:
 - Maintains and in some cases expands closures mandated under the Consequence strategy, and in other cases proposes deferring regulatory closures. Specifically, the concept Proposal presents alternatives to consequence closures for both the Southern NE and the Gulf of Maine Consequence Area, including deferring the now-mandated October closure in 2013.
 - Makes use of Pilot Programs that shift some significant responsibility for implementation to sectors through “Accountability Measures” backed up by Sector operational plans. The Concept proposal steps out a Pilot Program for testing the implementation of Performance Measures. These measures include a target level of compliance at a rate of 100% pinger usage and a goal of 93% pinger effectiveness.
 - Incorporates both common requirements (pinger compliance requirements, for example, in all areas off New England and mandatory skipper training and annual pinger testing) and varying aspects (i.e., accountability measures) for Sector vessels and Common Pool vessels.
 - Calls for basing any consequence closures on most recent years' data only, such as observer take information, to assure the areas and times chosen are appropriate to current trends.
 - Suggests retaining the Other Special Measure Provision to allow the Agency to make modifications if necessary, as well as establishing a process to ensure the TRT is informed and engaged in data processing and outcome.

Proposal proponents said the approach is intended to address several key aspects raised in Team deliberations: (1) the unlikelihood of expanded federal/state enforcement; (2) the opportunity to utilize sector requirements and sanctions to propel and assure greater compliance; (3) the need to test and confirm the adequacy of new approaches through one-year pilot programs; and (4) the need for adequate backstops in the event the pilots are unsuccessful. The proposal was developed by Northeast industry and state representatives during the meeting and further revisions are expected based on Team deliberations and further industry discussions.

Key concerns raised during Team discussions focused on the following: (1) current observer program coverage is insufficient to effectively track compliance and bycatch on a timely basis; (2) insufficient assurances that pinger usage will improve and/or consequences to individual vessels will be applied; (3) a heightened focus on compliance – particularly if decisions on consequence closures are tied to Observer Program data – could increase risks and resistance to observers; (4) the need for clear and consistent compliance thresholds and associated consequences across sectors; (5) complexities associated with reconciling differing within-sector and common pool implementation and compliance approaches; (6) the need to better understand sector operations and their ability to effectively implement any recommended program; and, (7) the need for a backstop to prevent non-compliant vessels from shifting sectors as a way to avoid consequences. D. Gouveia also voiced concerns that the proposal is quite complex, suggesting it would require a lengthy evaluation by the Agency. He further suggested that certain aspects of the program could be undertaken by the sector independent of any NMFS rule-making (i.e., as voluntary industry actions).

Proposal representatives expressed a willingness to consider Team feedback and develop a refined proposal for the Team's subsequent consideration. They also noted the need to have broader discussions within industry on the proposed approach. Industry representatives remain confident that sectors can have a positive impact on bycatch reduction, given the strong leverage Sectors managers have over their members' ability to fish and the strong incentive that implies on the part of individual fishermen.

- ***Conservationist proposal.*** A draft proposal on behalf of the conservation community that relies exclusively on a series of expanded permanent seasonal closures to reduce harbor porpoise bycatch. Specifically, the proposal – drawn from an option considered during the Team's 2007 deliberations – calls for augmenting the existing Plan by expanding the following existing closures: (1) Massachusetts Bay and Stellwagen Bank Management Areas closure to include the months of February and March; (2) Coastal Gulf of Maine Closure Area to include October and November; and, (3) Cape Cod South Expansion Closure Area to include February through April. As well, current fishery management closures (including the Western Gulf of Maine Closure) that coincide with harbor porpoise distribution should be adopted as seasonal closures under the MMPA. Current pinger requirements would remain in place and, if any groundfish areas are reopened, those same pinger requirements would be extended to those newly opened areas at times when harbor porpoise are present and pingers are required in adjacent areas.

One conservationist suggested the closures are necessary given (1) industry's current and historic lack of compliance with existing pinger regulations; (2) NMFS's recent track record showing an inability or unwillingness to put in place effective enforcement; (3) lack of certainty in consequences given the Agency's willingness to shift the Coastal GOM closure; (4) insufficient observer coverage to monitor the sort of industry compliance with pinger requirements put forward by industry in its proposal; and (5) the potential for increased takes in now-closed areas that are being considered for opening by the Council regulations through regulatory changes made under the Magnusson-Stevens Act.

Team deliberations on the conservationists' proposal was limited, but concerns centered on two primary points: (1) the significant economic impact associated with widespread, ongoing seasonal closures; and (2) the unfair economic impact to fishermen complying with pinger requirements resulting from the poor compliance of vessel captains who are acting as "free riders." Some also suggested that large-scale closures are a blunt tool that could impede collection of meaningful data. Additionally, several speakers questioned the need for additional closures when the bycatch trend is below PBR and heading downward³, and they recommended the Team instead focus on taking advantage of the new sector structure to foster greater compliance.

Conservationists suggested an openness to consider modifications to the proposal that might, for example, provide access to closed areas for those fishermen proven to be in compliance – a scenario that would reverse the sequence of steps for closure and reopening and shift the burden of proof to the fleet.

In addition, the Team's discussions touched on the implications of maintaining the status quo (i.e., maintaining the current consequence-closure strategy with the current or revised bycatch trigger), as well as considering possible hybrids. It was also noted that industry representatives from the Mid-Atlantic region are expected to submit a proposal for later consideration.

E. Emerging Agreements

The Team did not reach any formal consensus agreements during the meeting nor were any straw votes taken to test such potential agreements. There were, however, several areas of emerging agreement based on the Team's deliberations. These included the following:

- ***Aggressive enforcement/effective compliance.*** Team members broadly agreed that effective pinger usage (i.e., a full complement in working order) will result in decreased harbor porpoise takes. To that end, Team members strongly recommended that the Northeast Region work with OLE to see that violators, and especially repeat violators, are identified, targeted, warned and, as needed, prosecuted for failing to comply with pinger requirements. To the extent possible, the Region should take advantage of Observer Program data to facilitate such actions. (In doing so, the Region and others should be careful to not compromise observer safety.) Similarly, several Team members said, that sectors and other industry groups should press internally for effective and ongoing compliance.

³ Conservationists disputed that there is a reliable trend shown in recent declines, given historic fluctuations in porpoise bycatch.

- ***Expanded pinger usage for any newly opened areas.*** Team members broadly agreed that mandatory pinger usage should be expanded to any now-closed areas likely to be opened through near-term Council actions now under consideration (i.e., lifting of rolling closure areas, exemptions under Framework 48). Team members further suggested that such requirements should be focused on those areas and times where Science Center data suggests a higher likelihood of harbor porpoise interactions.
- ***Devise a more appropriate trigger for consequence closures.*** Though some expressed concerns with reliance on a consequence strategy (in light of the Agency’s recent decision to shift the timing of the consequence closure), to the extent that the take reduction strategy continues to rely on a trigger-consequence strategy, Team members broadly agreed that the TRP should be revised to include a more effective trigger than the current target bycatch rate. The current rate is seen to be flawed given PBR and changing patterns in industry landings under the sector program. No specific trigger was identified, but conversations centered on a PBR-based trigger, a compliance-based trigger or some combination of the two. The Science Center is to develop candidate triggers for the Team’s subsequent consideration.
- ***Improved consultation on “Other Special Measures” process.*** Team members generally supported a potential revision to the Other Special Measures provision by modifying the language associated with the provision to require meaningful consultation with the full Team prior to the Agency invoking the “Other Special Measures” provision to make further changes in the current Plan. Such consultation is seen as critical to ensure that the Agency’s actions are well informed and to acknowledge the importance and value of the take reduction process.

F. Public Comment

There were two public commenters during the course of the meeting. One, Vito Giacalone with the Gloucester Fishing Community Preservation Fund, provided greater detail regarding Sector 3’s pinger leasing program. In particular, V. Giacalone emphasized the non-profit Fund’s efforts to increase compliance by swapping out old pingers with the new LED pingers (begun as a pilot program in late November), as well as to find financial partners to reduce the financial burden to fishermen replacing pingers. The second speaker, James Turner of Future Oceans, commented on the potential of advanced-generation pinger usage, highlighting in particular the future technological advances expected to vastly improve pinger functionality and effectiveness. He also urged the Team to have confidence in the industry’s ability to reduce harbor porpoise bycatch through effective pinger deployment and use.

There was no other public comment.

V. NEXT STEPS

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

- The Team is expected to hold a follow-on meeting in February 2013 (most likely during the week of February 11) to further discuss proposals and develop a consensus recommendation for Agency consideration. There was also interest in better understanding (1) sector operations, and (2) the ability for the Agency to use Observer Program data to target the most egregious pinger-use violators. Meeting format (in-person or webinar) will depend on the Agency's ability to secure a travel cap waiver for Team member participation. The agency will provide an update on those emerging details.
- Team members were asked to refine proposals to replace or amend the current consequence closure strategy. Team members were asked to submit proposals by January 11 to ensure Science Center staff would have sufficient time to analyze the impact of any proposed measures on harbor porpoise takes. Team members also were encouraged to solicit input from cross-interest group Team members to foster more integrated proposals.
- Science Center staff are to undertake several different analyses in the very near term to inform the Team's February deliberations. These include the following:
 - Develop several distinct candidate measures to potentially replace or revise the current target bycatch rate. Based on the Team's discussions, these measures will center on a PBR-based or –linked approach, along with strategies to track compliance rates.
 - Update the current target bycatch rate using more recent data and then reassess whether recent data, if used, would trigger the TRP's closure strategy.
 - Analyze Gulf of Maine landings from 1999-2007 and 2010-2012 to inform consideration of updated target bycatch rates.
- The Northeast Region will work with the appropriate enforcement groups to identify strategies to strengthen enforcement of the Plan's regulations.
- Northeast Seafood Coalition Team members were asked and agreed to provide at the February Team meeting data on fleet pinger usage and bycatch in the October-December 2012 timeframe. This data is seen to be an early indicator of the potential impact on bycatch of aggressive sector management.
- The facilitation team will prepare a Key Outcomes Memorandum summarizing key discussion points, information needs, consensus recommendations and next steps. A near-final summary will be distributed to Team members for a "red-flag" review to any identify substantive errors or omissions.

- NMFS staff are to post all November meeting materials and presentations on the Team website. Additionally, D. Gouveia is to provide, in writing to C. Patterson, a synopsis of the concerns he voiced regarding the Northeast fisheries sector proposal. As well, Northeast Region staff is to provide more frequent updates on TRP-relevant requests and proposals to improve transparency and the opportunity for Team feedback.
- New Team members were asked to provide feedback to D. Gouveia on Team deliberations, particularly as contrasted with Council process and protocols.

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

ATTACHMENT 1

Northeast Sector/State Caucus Concept Proposal

(The concept proposal below was presented and discussed at the HPTRT November 27-30, 2012, Team meeting. This proposal should not be confused with any new proposals submitted for discussion at the planned February 2013 webinar.)

General Options:

- All consequence closures should be based on most recent years' data, such as observer take information to assure the areas and time is appropriate to current trends.
- NMFS should establish a process to assure the TRT is informed and engaged in data processing and outcome.

Pilots:

Pilot programs are scheduled for at least one year. After one year the information should be reviewed for its effectiveness and meeting its performance standards by the TRT. If the TRT is unable to convene then pilot programs will continue until TRT meets to make modifications if necessary.

Sectors: Instead of Consequence Closures

Southern NE Area:

- Keep Cape Cod South Closure Area for March
- Add smaller closure area within (see map) Cape Cod South Closure Area for February in lieu of consequence closures (that currently includes both Cape Cod closures).
- 100 % Mandatory pinger use for all gill nets September 15 through June 30 (state and federal waters) within pinger-use areas.
- Follow the GOM measures outlined below.
-

Gulf of Maine Consequence Area:

- After Feb/Mar closure, the GOM Con Area will be deferred for one year with the following conditions.
 - Sector Vessel: Stated and signed by individual sector member within the Operational Plan.
 - Mandatory 100% pinger compliance and 100% operational pingers.
 - All gill nets must have pingers tested annually prior to fishing.
 - Mandatory one-time skipper workshop.
 - Must participate in the FAST bycatch reporting project.
 - All must have pingers installed from September 1 through May 31.

- 10% pinger replacement on board with vessels fishing.
 - Sectors will purchase pinger tester.
 - Accountability Measures:
 - Can withhold fishing rights (letter of authorization) for the next year.
 - Can build language within Schedule of Penalties to address egregious infractions within the year. Such as, monetary penalties, Stop Fishing Order, Quota reductions, etc.
 - Potential to have an audit process for those that have a HP take which allows BOD to impose penalties.
- Common Pool vessels:
 - States will need to put in complimentary rules to address Common Pool Vessels.
 1. NE Common Pool:
 - Vessels fishing in GOM the Consequence Closure in 2013 will remain in effect.
 2. SNE Common Pool:
 - Mandatory 100% pinger compliance and 100% operational pingers.
 - All gill nets must have pingers tested annually prior to fishing.
 - Mandatory one-time skipper workshop.
 - All must have pingers installed from September 15 through June 30.
 - 10% pinger replacement on board with vessels fishing.
 - Add smaller closure area within (see map) Cape Cod South Closure Area for February in lieu of consequence closures.
 - Accountability Measures:
 - If fails then reverts back to original consequence closure area.

Pilot Program Performance Measures:

- Show level of compliance at a rate of 100% pinger usage and a goal of 93% effectiveness.

Tier	Description	Responsibility
NMFS-OLE/JEA	Provide all JEA partners with an appropriate number of pinger testers.	Sector
NMFS-OLE/GC	NE state and TRT members strongly recommend that OLE immediately implement effective protected resources enforcement and timely General Council follow through.	
OBSERVER	Have observer preliminary data immediately available for Sector Managers through SIMM.	
OBSERVER	24 hour requirement for any observer information that documents non-compliance with pingers and/or take to be provided to Sector managers.	

NMFS	Increase funding for JEA to address marine mammal issues and measures.	
NMFS	To decimate (sp) and clearly explain the previously published compliance rate of 41%.	

Tier	Description	Responsibility
States	Implement needed complimentary rules and regulations	States
States	Continue with JEA enforcement agreements	States/NMFS

Special Measure Provisions:

Keep special measure provisions to allow the Agency to make modifications if necessary.