

Summary of February 10, 2023 Harbor Porpoise Take Reduction Team Meeting

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1. Overview



The Harbor Porpoise Take Reduction Team (HPTRT or Team) met virtually on February 10, 2023, for its annual meeting. The objectives of the meeting were to monitor the implementation of the Harbor Porpoise Take Reduction Plan (HPTRP or Plan), including reviewing 2019-2021 abundance, bycatch, and compliance numbers, as well as to discuss a potential amendment to the research provision in the HPTRP that allows the authorization of research (see Appendix 1 for the meeting’s agenda).

Mortality and serious injury to the harbor porpoise stock incidental to commercial fisheries regulated by NMFS is currently below the potential biological removal¹ (PBR) level, meaning the plan complies with the Marine Mammal Protection Act (MMPA). However, the MMPA directs the Team to provide continued guidance to reduce serious injury and mortality to insignificant levels approaching a zero rate, the zero-mortality rate goal (ZMRG), which is defined as less than 10 percent of PBR.

¹ “Potential biological removal level” means the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population.

Participants

Participating were 25 of 37 Team members or their alternates (in parentheses): Regina Asmutis-Silvia, Ernest Bowden, Erin Burke, Barbie Byrd, Karson Cisneros, Alexander Costidis (Alt), Tara Cox, Jane Davenport, Robin Frede, Michael Greco, Sonny Gwin, Pingguo He, Dennis Heinemann, Kristen Monsell, Jackie Odell, Scott Olszewski, Cheri Patterson, Christopher Rainone (Alt), Meghan Rickard, Somers Smott, Caitlin Starks (Alt), Stacy VanMorter, Erin Wilkinson, David Wiley, and Angel Willey.

2. Harbor Porpoise Abundance, Trends, and Bycatch Updates

Dr. Debi Palka and Dr. Kristin Precoda of the Northeast Fisheries Science Center presented updates on monitoring of harbor porpoise under the Plan. The 2021 preliminary abundance estimate for the stock is 85,765 (CV=0.53). PBR for 2021 for the stock is 649. The rolling five-year bycatch rate is 145. ZMRG is 65.

Dr. Precoda also shared observations of levels of compliance with the Plan's pinger use and gear modification requirements as well as monitoring changes. For the period 2018-2021, approximately 70% of trips under the Plan had all required pingers present (functionality was not tested). This represents a relatively steady rate in the Northeast. In the Mid-Atlantic, about 63% of hauls were fully compliant with Plan requirements over 2018-2021; from 2018-2020, there may have been a small downward drift in annual adherence.

Summary Findings

Harbor Porpoise Distribution:

- Summer concentrated off Maine and Nova Scotia
- Rest of year spread out from North Carolina northward, with the smallest numbers of animals in U.S. waters in the winter
- Distribution trending to shift from mid-Atlantic to Gulf of Maine and Canadian waters, especially in winter

Harbor Porpoise Abundance:

- Particularly in U.S. waters, interannual variability of summer abundance is high.
- Abundance appears to have decreased in U.S. waters from 2010 to 2017 and may have increased slightly since 2017. This trend appears to be correlated to environmental changes.

Harbor Porpoise Bycatch:

- Bycatch estimates are low relative to estimates since 1994
- Most bycatch occurred in the winter
- New England gillnet landings have generally decreased since 2008
 - Winter landings fell less from 2020 to 2021 than summer/fall
- Mid-Atlantic bycatch was very low
- Not much trend in pinger use
 - Southern New England pinger use has been low: 52%

- Adherence to gear modifications in the Mid-Atlantic might be drifting lower
- Low and unrepresentative human observer coverage has added a new kind of uncertainty from 2020 onwards

Detailed presentations including sources of data, spatial distributions of abundance and bycatch, methods for calculating the rates, and ongoing work to finalize analysis is available under the Team section of the [Harbor Porpoise Take Reduction Plan web page](#).

3. Assessment of an Alternate Frequency Pinger to Mitigate Seal Interaction in the Northeast Sink Gillnet Fishery

Tara McClintock, Cornell University Cooperative Extension of Suffolk County (CCE) Marine Program, presented a proposed research project to trial higher frequency pingers that can't be heard by seals but still deter harbor porpoises. Seal bycatch and depredation is a problem. Seals are able to hear the low-frequency pingers required by the Plan, and there is concern that gray seals, particularly, may associate or be alerted to pingered nets with food. Alternate frequency pingers may provide continued high levels of harbor porpoise bycatch reduction while reducing seal-fishing gear interactions and associated seal mortality and depredation. Detailed information on the proposed research design is available in the presentation slides under the Team section of the [HPTRP web page](#).

This research project has been funded by NOAA through a Saltonstall-Kennedy Grant but cannot currently be executed, because there is no available process for applying for a research exemption permit.

4. Presentation and Discussion on Amending Research Provision in the Plan Regulations

Background

Jennifer Goebel, NMFS's HPTRT Coordinator, presented to the Team background on the concept of a research provision in the HPTRP. This issue was identified as a Team priority in 2007. Discussions within NMFS concluded that the Plan needed a provision that would allow researchers to test gear modifications (such as pinger modifications, as in the situation above) that would continue to reduce harbor porpoise bycatch while also reducing bycatch of other protected species. Adding a research provision was a consensus recommendation from the Team, and the 2010 Final Rule included the research provision.

The Plan states that "A scientific research permit must be acquired through NMFS's existing permit application process, administered by NMFS." However, because there is no "existing permit process" under the MMPA that allows research from a commercial fishing vessel while fishing, this process has not been implementable.

Ms. Goebel provided examples of how this issue is addressed in other take reduction plans and laid out possible paths forward under the Plan, if the Team were to seek to recommend an amendment to this regulation.

Team Discussion on the Proposal

Team members were given an opportunity to discuss whether and how to amend the research provision component of the Plan regulation before proposals were put forward to test for agreement. Team members reacted to the following proposal:

- Set up an exception for research that:
 - **Advances the long-term goal of reducing mortalities and serious injuries** of harbor porpoises in gillnet fisheries to insignificant levels approaching a zero mortality and serious injury rate, and/or
 - **Reduces the bycatch of other listed or protected species in gillnet fisheries** while not increasing the mortalities and serious injuries of harbor porpoises in gillnet fisheries.
- And would:
 - Meet scientific standards (likely to be published in a scientific journal or be conducted according to methodologies generally accepted as appropriate for scientific research)
 - Be conducted in a way that protects marine life and the marine environment

Overall, the group was supportive of amending the regulation to make it possible for a research exception to the Plan requirements. Comments and considerations raised by Team members, who qualified or accompanied their support and provided advice to NMFS in drafting a proposed rule, included the following (*direct responses from NMFS staff are in italics*):

- What is the appropriate role for the TRT in reviewing or approving applications? Could the Team receive updates as different steps are achieved, including results of research prior to publication? Perhaps the Team could help troubleshoot issues as well.
 - *Applications would go through the Greater Atlantic Regional Fisheries Office (GARFO), but the office would notify the Team, which would have the opportunity to comment. If these applications come in infrequently, we could just share them as they arise and get volunteers to review.*
- Monitoring and opportunity to mitigate unintended consequences of allowing research should be considered. Of particular concern would be impacts on right whales through additional lines in the water that would affect the Atlantic Large Whale Take Reduction Team (ALWTRT) requirements. Will there be some checking with other Take Reduction Plan requirements?
 - *All National Environmental Policy Act (NEPA) and Endangered Species Act (ESA) reviews would be required, as with other experimental fishing permits (EFPs) and Letters of Authorization (LOAs). Some kind of monitoring could be included but we would need to establish what that trigger would be. For example, we would want takes above normal of any protected species to trigger a stop to the research.*

- How will adherence to scientific standards be measured?
 - *Team input is welcome. Language like that provided in the proposal above is used in other cases, e.g., letters of authorization, but this could be adapted.*
- What requirements or caveats will apply to granting permits? Will there be an assessment to determine if applicants have or will receive the associated permits, as well as screening to see if the research is likely to be funded or approved?
 - *Applicants would still be required to get EFPs and other authorizations. A research exception to the Plan would not affect other grant or permit processes, but would make it clear what can and cannot be authorized under the Plan.*
- Consider aligning the application process with that for EFPs and LOAs from the Sustainable Fisheries Division.

Testing for Agreement

Twenty-four Team members responded to a poll testing for support of the recommendation above, including the considerations and advice raised by the Team in discussion. No members opposed the recommendation. Responses were:

- 20 supported the recommendation
- Three abstained (neutral or unable to support but don't want to block consensus)
- One supported with reservations. The concern cited in this case was the need to ensure that research being conducted is practical to the issue(s) at stake and will be scientifically rigorous.

5. Other updates and emerging issues

Pinger Use

Ms. Goebel shared NMFS' considerations and planned next steps to work to increase pinger compliance. In general, it seems there are enough pingers available for purchase to meet the needs of the fisheries. For the past few years, NMFS has been more heavily focused on right whales and has done less outreach to fishermen regarding harbor porpoise take reduction. NMFS plans to increase outreach and compliance support, directly and via partners, to help ensure fishermen know pinger requirements, including seasonal requirements, how to configure nets, and reminders to check batteries. With increased adherence to the regulations, it may be possible to reach ZMRG.

Questions and comments on pinger compliance included the following (*direct responses from NMFS staff are in italics.*):

- How is pinger function (not just presence) checked?
 - *The NOAA Office of Law Enforcement (OLE) can check to see if pingers are working, but observers generally do not report on whether pingers are working or not.*
- What was the expectation for compliance rate when the plan was set up to reduce takes below acceptable levels? Is 60% compliance considered acceptable?

- *Compliance was not assumed to be 100%, but it was not expected that compliance could be at 60% and still reach PBR. NMFS has had limited capacity and has been prioritizing right whales, but we are now planning to increase outreach and enforcement to improve pinger compliance. We expect some lag in seeing changes, but we will monitor it and discuss what the results of increased outreach and enforcement are with the Team next year.*

Electronic Monitoring

Several Team members expressed interest in learning more about how electronic monitoring (EM) works and what data can be gleaned from EM. Some Team members felt that more information should be available from EM and questioned the policy that NOAA has limited access to EM data. NMFS agreed to hold a follow-up meeting to explain in more detail to the Team how policies surrounding EM have evolved and how these fit into the context of the broader observer policy, including review of the At-Sea Monitoring (ASM) and the Northeast Fisheries Observer Program (NEFOP) programs.

6. Next steps

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- NMFS will convene a webinar to discuss Electronic Monitoring policy in the context of observer programs.
- NMFS will work on a proposed rule to allow scientific research under the Plan. Steps will include:
 - Develop proposed rule based on recommendations from the Team
 - Open a 30-day public comment period
 - Publish final rule and any NEPA documentation
 - Update website and compliance guides with new information

7. Appendices

Appendix A: Meeting Agenda

- 11 AM Welcome, Attendance, and Agenda Review
- 11:10 AM Current Harbor Porpoise Abundance and Trends (Palka, NEFSC)
- 11:35 AM Bycatch Updates (Precoda and Orphanides, NEFSC)
- 12:05 PM Alternative Pinger Research Presentation (T. McClintock, Cornell Cooperative Extension)
- 12:30 PM Break
- 12:45 PM Presentation and Discussion on Research Provision in the HPTRP Regulations
- 1:35 PM Other Updates, Emerging Issues
- 1:45 PM Public Comment, wrap up, and adjourn
- 2 PM Adjourn