SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL

PROTECTED RESOURCES COMMITTEE

Hutchinson Island Marriott
Stuart, FL

June 13, 2013

SUMMARY MINUTES

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Dr. Bonnie Ponwith
John Sanchez
Lt. Morgan Fowler
Jennifer Lee

Additional Observers Attached

The Protected Resources Committee of the South Atlantic Fishery Management Council convened in the Plantation Room of the Hutchinson Island Marriott, June 13, 2013, and was called to order at 2:20 o'clock p.m. by Chairman David Cupka.

MR. CUPKA: We're going to go ahead and call the Protected Resources Committee to order. The first order of business is approval of our agenda. Are there any changes to the agenda? Seeing none; then our agenda is approved. Next is approval of the December 7, 2009, Protected Resources Committee Meeting Minutes.

I am not sure how many of us are here the last time we held a committee meeting. Anyway, are there any changed, corrections, or additions to the minutes of the last meeting? Seeing none; then those minutes are approved. Next is an update from the Southeast Regional Office Protected Resources Division on a number of species in protected resources, and I am going to turn it over to Jennifer to make that presentation.

MS. LEE: Yes, it has definitely been a while. For those of you who don't know me, I work in the Protected Resources Division in the Southeast Regional Office. I've worked there for close to 15 years now. Because it has been so long, I thought I would go ahead and provide a brief overview of the protected species and critical habitats in your region; talk a little bit about the Endangered Species Act and Fisheries and Marine Mammal Protection Act and how issues are addressed and managed; and then go into the requested updates you had.

I am going to keep them brief. The Atlantic sturgeon; I looked back at the old agenda from that 2009 meeting and Atlantic sturgeon was on there and so was corals. That was the start of when those were petitioned, so it has been a long time, but it's kind of interesting those were still topics back then.

There are 40 species protected by federal law that may occur in the EEZ of the Southeast Region. Here they are; and if feel like a little reading, if you look in Section 3 of any of your amendments, there is always a protected species section which provides some information on the status and other life history information about these species.

You have six listed whales; all of them are listed as endangered. We have five sea turtles, three fish, two corals and even a plant; so a lot of diversity in the species that are within your region. Under the MMPA we have a whole bunch of species; but primarily when it comes to management, you hear mainly about bottlenose dolphins or pilot whales.

In addition, you have critical habitat in the South Atlantic Region. You have critical habitat for acropora and then you also have critical habitat for right whales. How do fisheries impact marine mammals, how are fisheries addressed under the MMPA and what as fisheries managers do you need to know? The main issues, when it comes to marine mammals, we're looking at entanglement in nets and lines. The other issue is dolphin depredation and predation.

In terms of how we work on these issues; we have management through our list of fisheries and then the Marine Mammal Authorization Program and Take Reduction Plans. The MMPA was amended in 1994 to establish the regime to govern the taking of marine mammals. The MMPA

mandates that each fishery must be classified according to whether it has frequent, occasional or known likelihood of or no known incidental mortality or serious injury to marine mammals.

I'm talking there about the list of fisheries. NOAA Fisheries may develop and implement take reduction plans for any Category 1 or Category 2 fisheries. It is always good to know what category your fisheries are. Take Reduction Plans must include, among other things, recommended regulatory or voluntary measures for the reduction of incidental mortality and serious injury and dates for achieving the specific objectives.

Again, within your region, you have three take reduction plans, but really the Atlantic Large Whale Take Reduction Plan most impacts you through – the black sea bass pot fishery is managed under that plan as well as the coastal migratory pelagic resource gill net fishery. The Bottlenose Take Reduction Plan is more within state waters, and obviously it is managed separately.

ESA in fisheries; the main threat is hooking and entanglement of the Endangered Species Act listed species and fishing gear. We manage that issue through our Section 7 Consultations and Section 10A1B permits. The ESA provides ways basically that take can be authorized. As I think you all know, take is prohibited under the Endangered Species Act for endangered species and most threatened species.

Anytime there is a federal action that may affect endangered or threatened species, we have to do a consultation. The Section 10A1B Permit is how we deal with incidental take in basically non-federal activities. We also can write special rules under ESA Section 4D, addressing threats to threatened species.

I hope you are familiar with Section 7, but just in case I wanted to just review its mandates. Basically there is an affirmative conservation mandate. What that says in simple terms is just federal agencies shall do good things to protect endangered and threatened species. The 7A2 duty to avoid jeopardy; in that case in simple terms federal agencies must ensure that any action they authorize, fund or carry out is not likely to jeopardize the continued existence of any threatened or endangered species. In other words, we certainly should be making things worse.

Section B3 is basically describing the requirement for a biological opinion. Monica mentioned that there are triggers for re-initiating consultations, so I thought I might want to review that real quick. Basically, the triggers can be the amount or extent the incidental take is exceeded, so we have an existing biological opinion and we have exceeded the incidental take.

It can also be the result of new information revealing the effects of the agency action that may affect threatened or endangered species or critical habitat in a manner to the extent not previously considered. The third one refers to the agency action, and that is really where a lot of times we're looking at the plan amendments and the actions that you're taking. Anytime the action is modified and it causes an effect to listed endangered and threatened species not previously considered, that is a trigger for consultation.

Then we have also had a fair amount of consultations re-initiated for a new species listed, such as when acropora were listed. I just wanted to go over with you what opinions you do have. There are biological opinions for the spiny lobster, stone crab, coastal pelagics, snapper grouper, shrimp and dolphin and wahoo; so the vast majority of your plans have governing biological opinions.

I have put the date there of when they were completed, and you can see we have two ongoing. We have a coastal migratory pelagic resources opinion. It was reinitiated to address Atlantic sturgeon, but that is a comprehensive consultation. We also reinitiated on a shrimp opinion. You can see that one we competed pretty recently.

You may recall we decided not to move forward with requiring TEDs in skimmer trawls; so as a result that was something that we had included in our proposed action section of the biological opinion, so we need to revisit that without that action. We're also looking at additional information that we've collected on compliance over last year.

All those are online and if you are working on an FMP action and want to see what the impacts are, it is definitely a good place to go. Atlantic sturgeon; effective April 6, 2012, we have five distinct population segments that are listed. I have them listed here. The main thing I want to point out is that within the marine range, all DPSs mingle with each other.

Therefore, all DPSs in the South Atlantic Region exists; so when we are looking at your fisheries and the impacts, we're not just looking at the South Atlantic and the Carolina DPS. We still do consider the other ones. What have we been doing since Atlantic sturgeon has been listed? Well, we did complete our first consultation on Atlantic sturgeon's effects with respect to South Atlantic shrimp fisheries.

We do have a coastal migratory pelagic resources consultation, as I mentioned is ongoing. Bycatch estimates; we're basically using our Southeast Center Observed Capture and Effort Data, so basically observer information and total fishing effort to extrapolate out the number of captures and mortalities.

We are also working with – we worked with Georgia DNR on their state fisheries and issued a Section 10 Permit to them. We are now working with the states of North Carolina and South Carolina. Since the coastal migratory pelagic consultation has been going on for a while, I just thought I would share a little information as far as the effects.

Since 2002 the Shark Gill Net Observer Program observed only two Atlantic sturgeon captures in the mackerel fishery. Both were in 2011 and released alive. That concluded the capture right there. Looking at the 2011 fishery data, approximately 76 percent of all reported Spanish mackerel landings and 85 percent of all reported king mackerel landings occurred in the area south of the known range of Atlantic sturgeon. When we looked at the 900 mackerel gill net trips, really we presumed only 225 were within the Atlantic sturgeon range, so all this boils down to an estimate of six captures.

Then using the mixed stock analysis that the Northeast Region has done, you can see the breakout of the various DPSs. That gives you I guess sort of the effects of the gill net fishery on Atlantic sturgeon. I think when I talked to David, he suggested or we thought maybe we would take questions on each little topic you asked and then move forward. Does anyone have questions?

MR. CUPKA: Are there any questions on the sturgeon portion of the presentation?

DR. LANEY: I would give Jennifer a heads-up on my question, and that is I know the Northeast Fisheries Science Center did an analysis that estimated the coastal population of Atlantic sturgeon from Maine through Cape Hatteras; and I was wondering if Protected Resources or the Southeast Fisheries Science Center thought that they might have the data available to do that same kind of analysis for the South Atlantic portion.

MS. LEE: I did look into that. Right now the Southeast Center is not conducting any new population estimate work. The northeast is going forward with looking at some new population estimates. As far as the southeast is concerned right now, our status review document and existing population estimates that we have are current, and so we're not working on anything new there.

In the northeast they have a lot more Atlantic sturgeon bycatch issues, so they're working I think with some Atlantic States data. In our region right now we are focused on just using our observer data and we really just have the coastal migratory pelagic resource gill net as our fishery that we need to look at. We might have others at some point, but it is not the same level. In the northeast they're working on batch consultations because they just have so many fisheries that are being interacted with.

DR. LANEY: I just mention that the Service does maintain that coast-wide Atlantic sturgeon tagging database for the ASMFC. I know the Northeast Fisheries Science Center used that I think as one source of data for their estimation. At some point if the Southeast Fisheries Science Center decides they might be interested in taking a look to see what utility that dataset might have, it is certainly available to the Center to use.

It does cover the whole east coast pretty much, and I believe that all of the South Atlantic states – I'm not sure about Florida, Martha, but I know North Carolina and South Carolina and Georgia have all participated in that coastal program. The Service has provided pit tags and tag readers and conventional T-bar type tags to all the state partners that have been participating in that program with us.

DR. DUVAL: There was a presentation to ASMFC with regard to the draft batched opinion that was released for the northeast, and I was just wondering – I mean, it looks like you have already completed the opinion for the shrimp fishery, but would it be possible to get a draft of the opinion for the coastal migratory pelagic fishery that you are currently working on I think in terms of ensuring that any RPMs that are suggested would be able to be implemented by the fishermen.

MS. LEE: Even though this consultation has been ongoing for a while, we don't have a draft biological opinion at this point that is at a stage that can be shared. Also, we generally provide information to the council in terms of what we consider a consultation update. We talk to you about the status of species. We give you information like I did on the take estimates and sort of what the general impacts are.

Certainly, we can discuss these are the types of requirements and things we're thinking of in terms of minimizing take. I didn't include that here because, again, at this point I don't have that information available. We generally don't share biological opinions. I see Monica looking like she wants to say something.

MS. SMIT-BRUNELLO: No, I think you have covered it. I think that has been the advice that NOAA General Counsel has given to the Protected Resources and the Fisheries Service is that at that point they don't share the biological opinions. I am kind of working off of memory, and I haven't looked at that for a long time, so I will try to get you additional information if you would like.

MS. LEE: I think we can certainly provide you the information that you are seeking without outright handing you a biological opinion. Particularly given the time it takes us to complete these biological opinions, any draft would be a reviewed draft through general counsel, so that would actually make – that would make the process much longer. It is just something to think about.

DR. DUVAL: I guess just to follow up, it seems just a little inconsistent in the regions to – you know, for one region to issue a draft biological opinion to allow – I believe that was requested by the New England Council, I think, to review that draft batched opinion versus not releasing one down here, and I'm just wondering is there some overarching policy within Protected Resources that would speak to that.

It seems like once an opinion is issued, it is just there and you're kind of stuck with it. Just in terms of working collaboratively together, it would be nice to be able to see a draft in case there are some RPMs that could be problematic just in terms of conserving the resources that are supposed to be protected.

MS. SMIT-BRUNELLO: I agree with all those things and I agree that the Fisheries Service should be consistent on how it deals with these issues with councils and biological opinions. I will find out some more information and maybe by Full Council I can get back with you with that information.

MR. JOLLEY: I'm curious; you had some information on a couple of catches in that, and both of those were released alive. Then you had some hypothetical stuff about what the fishery would incur, six maybe captures. I know how variable these things can be. Do we have any really good statistics on what these fisheries might encounter and what the survival rates are of the sturgeon when they do get caught? They're a pretty hardy fish; aren't they, Wilson?

MS. LEE: I can add a little bit to that. I do know that soak times over 24 hours and the use of tie-downs are two of the primary factors linked to mortality of Atlantic sturgeon and gill nets. Neither of those characteristics is in your coastal pelagic fishery; so that certainly suggests that the majority of your take would be non-lethal. I can share that with you. In terms of the numbers that I shared with you, this is typically how we do our bycatch estimates, which we basically take an observed catch-per-unit effort and then extrapolate that out to the total effort in the fishery.

That is where that six captures estimate from annually. From my perspective, that is not a large amount of bycatch. As I said, both of those were released alive. Certainly, if the consultation isn't complete, we can certainly share information at the next council meeting on some – we can print measures that we're thinking of to give the council a chance to consider that. In terms of biological opinions, I don't foresee this being very controversial is I guess what I'm trying to say for this one. Based on the information that I've seen, we're not looking at major impacts.

DR. LANEY: I remembered another source of data that may be of interest to you. You may already have it, but myself and Roger Rulifson, who have been maintaining that acoustic array southeast of Cape Hatteras, have detected a lot of sturgeon traffic in that 12 kilometer array which extends offshore.

To the extent that information is useful, it is available to you as well. I think there are probably other acoustic arrays that are also detecting sturgeon; one of them in fact at Grays Reef National Marine Sanctuary. Dr. Sedberry and I have discussed that one from time to time and I think his total sturgeon count now is up to at least 12 different individuals that have visited Grays Reef, which is considerably further offshore than we're used to catching them off the Outer Banks of North Carolina during the wintertime.

Then to John's question about how resilient sturgeon are; in my experience they're very resilient, but remember that my experience is very spacio-temporally constrained to North Carolina and Virginia during the wintertime when the water temperatures are very low, the water is cold and well oxygenated and we're making very short tow times.

Our tow times are 30 minutes or less. I have talked to Gary Shepherd with the Northeast Fisheries Science Center about using our dataset to generate some estimates of the probability of trawl encounters with Atlantic sturgeon in winter fisheries off North Carolina. We could certainly use it for that, but it is not comparable to the commercial fisheries because our tow times are so different than the commercial tow times are.

We have caught, John, in the neighborhood of 262 or so thus far during the course of that 25-year time series; and to my knowledge, we haven't killed any of them. I think I have reported in the past that I'll just reiterate for the record that of that total number, about 252 of them were tagged with conventional tags. We have got ten returns on those fish.

Of the 14 that we tagged with acoustic tags, we have gotten a hundred percent detection rate on those. All of those fish have been subsequently detected in somebody's array somewhere along the coast. As Jenny noted, all those DPSs do mix off the coast. If you catch a sturgeon off the

coast of any of the South Atlantic states, there is a good possibility that it is not from the Carolina DPS. It could be from one of the DPSs as well.

MR. PHILLIPS: Jenny, did I hear you say that you didn't have anymore population studies done for the southeast; and if you don't, how are you going to account for changes in the amount of takes that, say, my shad fishermen see up the Altamaha, because they tell they're seeing more and more fish, smaller fish. If they're seeing more, they're going to have more takes; but if you do a population study, how are you going to correlate what is really going on?

MS. LEE: I have to clarify that I'm not saying that there aren't any population studies ongoing. I'm just saying that in terms of the specific reference to what is being done in the northeast right now; we're not doing something similar in the southeast right now. You can see in your briefing book they put that presentation from the northeast, which gets into all the complicate stuff that they have got going on with respect to the batch consultations and the population numbers.

We did just list the species. In terms of the information that we're working with right now, that is considered our best available and that doesn't mean that there isn't always new information out there being worked on and gathered. I can send out an e-mail and get back to you. I can talk to our Atlantic sturgeon coordinator and get a little more detail on what specific work is going on.

MR. CUPKA: Okay, Jennifer, do you want to continue? I guess coral is next.

MS. LEE: Right now we have a proposed rule to list a slew of corals. Within the South Atlantic Region, there are five new proposed endangered corals. The proposal came out on December 7, 2012. As you can see, twelve corals were proposed for endangered but only five within your region.

We're also proposing to reclassify elkhorn and staghorn coral from threatened to endangered. There are 54 corals that are being proposed as threatened. Of interest to you, there are two that are being proposed as proposed. The 90-day comment period closed on April 6th, and the final listing decision is due in December.

I think I pointed out or I wanted to point out your Coral AP received a full, very detailed and excellent presentation from Jen Moore on the listing proposal and all of the details in terms of how the listing decision was made. There was also a workshop that the Gulf Council just put on that also Jen Moore presented at.

There are really three main documents for the proposal. The report on the left is the status of the coral species and the threats to them. The one on the right is the management of corals and coral reefs. These documents are online. I could spend a lot of time going through the details of that decision, but I figured you would probably want me to just keep it to an update.

There is also a supplemental information report. All this information is online if you want to get the details of the life history and whereabouts are the species that are being proposed within your

region, and then the threats to them as well as we've looked at the various ways that those threats are being managed and outcome.

In terms of the implications if they're listed, we would have increased protection from impacts with federal activities, restrictions on removal, harm, transport/sale, development of recovery plans, and then potential funding for state, territorial and commonwealth fisheries and agencies. What you are probably most interested in is within the South Atlantic Region if new and revised listings occur, reinitiation of formal Section 7 Consultation is expected on the spiny lobster fishery.

I know you have already had a consultation on that with respect to acropora, so that gives you some idea of the process and what might be involved. A reinitiation of a formal consultation may be necessary on coastal migratory pelagic resources as well. Are there any questions on how the coral listing might impact you?

MR. CUPKA: Are there any questions for Jenny on coral? Seeing none; then I guess we can move ahead, Jennifer.

MS. LEE: Right whales and black sea pots is the next issue. I would like to start with providing you just a little information about right whale entanglements. Not all large whale carcasses are recovered or detected so the cause of death is typically unknown. For recovered carcasses with known causes of death, fishing gear is responsible for over half of right whale mortalities.

Over time there has been an increasing trend in entanglement rates. Entangling gear is often not assigned to a particular fishery or location because there is not enough detail from the gear. Often there are only scraps of gear that are found. For example, from 1997 to 2008, gear marking led to identifying fishery location and date of entanglement in only 10 percent of cases.

One thing that might surprise you, rope from trap pot gear was more frequently found on entangled right whales than rope associated with gill nets when gear was entangled as far as the entanglements which we could identify. When the gear type was identified, pot gear and gill net gear represented 71 percent and 14 percent of entanglements; so 71 percent were pot gear; 14 percent were gill net.

Buoy lines were involved in 51 percent of entanglements and suggests that entanglement risk is elevated by any line that rises into the water column. How do we address this problem under Marine Mammal Protection Act? We do this through the Atlantic Large Whale Take Reduction Plan. This is a plan to reduce the risk of serious injury to or mortality of large whales due to incidental entanglements in U.S. commercial fishing gear.

It is an evolving plan so the plan has changed over the years as NMFS and the team learn more about right whales become entangled and how fishing practices might be modified to reduce the risk of entanglement. Several components are listed on this slide. Under the MMPA, each plan must be developed so that bycatch rates are below the stock's potential biological removal level within six months, and then bycatch is reduced in significant levels approaching zero serious injury and mortality within five years.

This slide gives you an idea of how the plan has changed over the years. The initial focus was on gear modifications or weak links. The vertical line surface systems tend to reduce the risk of entanglement and/or the severity of an entanglement during surface-feeding activity and seasonal and dynamic gear modifications.

To acknowledge that further action was needed to address entanglements in both ground line and vertical line, in 2003 the ground line strategy was initiated. In 2009 the sinking ground line rule was implemented. The current priority now is to reduce the risk of large whale entanglements in vertical lines and trap pot gear. Over the last two years, the team has been evaluating risk of vertical lines based on co-occurrence models, which overlays large whale sightings with trap pot gear.

During the team's consideration, I want to point out that the southeast black sea bass showed up as zero effort in the model because the seasons have been closed prior to right whale season, so there was no overlap in the model. They were using data from 2010 and 2011. There is rulemaking underway, which we anticipate later this year.

In evaluating the vertical line entanglement risks, I thought I would point out how we do this. There are certain assumptions that have to be made. Vertical line entanglement is influenced by the density of whales and the density of vertical lines, so both may independently affect the encounter rate. Density of whales and density of lines contribute equally to risk.

The behavior of whales influences the likelihood of interaction and severity of an interaction. The age and size of whales influence the whale's ability to break free of the gear, which, of course, is particularly important in our region. In fact, this information is especially important for us because there are a greater number of calves and juveniles concentrated since females migrate here.

I'm often asked why one fishery is treated differently than another in terms of different vertical line fisheries, so I want to touch on just how vertical line entanglement risk is considered. When we're looking at risk, different factors include the line length, how many feet of line is in the water, the line breaking strength, the weight of the trap, distance from shore and again the age classes present.

Calves and juveniles can become entangled more than adults. They're also more likely to suffer deep wounds or entanglement. There was a recent paper, Knowlton et al, 2022, that studied ropes that were removed from entangled right whales dead and alive. It suggested that a whale's ability to break free of entangling gear is related to its age; so breaking strength of rope also influences a whale's ability to break free of entangling gear.

Adults appear to be able to break free of ropes with a breaking strength of less than 3,300 pounds, but calves and juveniles cannot and they're more prone to drowning, so something to think about. What about your fishery? The black sea bass pot fishery is considered as part of the Southeast Mixed Pot Fishery.

It has been regulated under the plan since the black sea bass fishery was elevated to a Category 2 on the list of fisheries. I think that was in 2002. As a result, black sea bass pots must be in compliance with the take reduction plan regulations. Now, from 2009 to 2012, the black sea bass pot fishery has typically been closed in the southeast during the November 1 through April 30th timeframe.

However, due to the combination of endorsement reduction through Amendment 18 and other limiting measures such as limiting the number of pots and, of course, the proposed increase in the black sea bass ACL; the black sea bass pot trap fishery has a greater probability of now extending into the timeframe when large whales migrate into and inhabit southeast waters.

The proposed November 1 through April 30th black sea bass pot gear closure in Snapper Grouper Amendment 19 will protect large endangered whales during their migration in the calving season; so that particular proposed regulation is definitely the single-handed best measure in terms of protecting right whales within the region.

Skipping back for a second what was on the screen, I wanted to note – and I kind of alluded to this already, but the black sea bass fishery was not fully considered by the Atlantic Large Whale Take Reduction Team in the sense that during the vertical line and whale co-occurrence model development, the black sea bass fishery was not co-occurring with large whales; so the fishery was not represented in the model used to develop the team's vertical risk reduction strategy.

What happens if the council proposes to remove the closure? Well, large whales and black sea bass pots will co-occur and there is a high risk of entanglement. We've talked a little bit in the committee about the biological opinion and the need to reinitiate if that proposed measure were to be removed.

In addition to a new biological opinion, I should also bring up that the Atlantic Large Whale Take Reduction Team would be certainly briefed on this change and could result in some reconsideration by the team. Obviously, NMFS is working right now on the proposed rule, so that is sort of already in motion, but certainly the team would be briefed.

During the public comment on that rule, it is very likely that this issue would come up to be looked at. Then also the Right Whale Recovery Plan Implementation Teams – because these are a listed species, we do have a recovery plan for right whales. Just like there is a take reduction team, there is also an implementation team and they would be briefed as well and perhaps would want to take action.

I just wanted to raise that because I know we have been talking a lot about the biological opinion; but in addition to the biological opinion, we do manage this threat through these other plans, and so there might be additional action.

MR. CUPKA: I was going to say I suspect there will be a number of comments or questions on this one, so let's start on this side of the room with John.

MR. JOLLEY: Thank you for the presentation. I noticed that the expected risk of entanglement if we did away with the pot closure was a high risk, and you didn't mention what the other risk categories were for possible entanglement. I was wondering aren't most of the pots are used in pretty shallow water from where these whales are most of the time; and I just wondered how you get to the high-risk designation.

MS. LEE: Well, I should definitely clarify the high-risk term was my term, so that is not a specific criteria. I realize a lot of our words have legal meanings, et cetera. I was just saying that it would certainly raise the likelihood, because really the team – and I should point out that David Cupka is on the team and so is Tom.

They have been really focused on dealing with the vertical line issue and looking at the co-occurrence, which you raised by asking about sort of the question of where the whales are versus the fishing. My understanding is that there definitely would be overlap within black sea bass pots, where they're fished and where right whales occur.

MR. BELL: This may be a little redundant, but the high risk caught my attention. I was just wondering based on the co-occurrence model; is there a number for actual probability of occurrence and how would that compare with, let's say, the New England Lobster Pot Fishery in terms of a number? Is there an actual number out of that model that we're using? Okay, we don't have to call it high. Whatever it is; what is the probability of occurrence?

MS. LEE: I don't know the answer to that question. Actually, I'm curious if anyone on the team can elaborate at all about the co-occurrence model. I can certainly find that out. I'm sorry; right offhand I don't really know the answer.

MR. HAYMANS: That was essentially my question, looking at the density of traps to right whales and could we get an idea of maybe sifting back through the e-mail chain at what constitutes the varying levels of risk; you know, what is the density of pots? We're talking about 1,100 pots over I don't know how many thousand square miles compared to what you find a very tight area in New England. I'd just like to see a comparison of that.

MS. LEE: Perhaps I misspoke by using that term, but my understanding really is that the risk – I don't know so much about the model, but I do know that if you have gear and you have right whales co-occurring, that the risk is there. I don't know that is so dependent if it is on the gear. I have someone helping me out here. As I was saying, it is the age and the size that matters and not so much the density in the model. I was focusing on the fact that if you have the younger animals, it is more of what right whales and age classes are present they're more focused on.

MR. AMICK: I was just curious – again along the lines of risk – if you compared the fishing gear risk to whales compared to the risk coming from the shipping industry, which one poses the most threat and what has been the loss of whales to either sector, shipping or fishing gear?

MS. LEE: I'm going to see if I can find the answer to your question; but really when we're addressing these two threats, we're addressing them separately, and that is why the focus here has all been on fishery impacts. The ship strike issue is deal with separately.

MR. CUPKA: I will say that ship strikes is a significant source of mortality, and that is why they enacted these rules that ships have to slow down their speed in certain areas at certain times. However, I will also say that the number of right whales that are estimated to be left, that any loss of a whale is a significant event whether it comes from a ship strike or gear entanglement.

MS. LEE: Yes, when we're talking about PBI here, fisheries is 1.8 animals.

MR. BURGESS: David, I'm not a member of your committee, but I appreciate you recognizing me. Jennifer, I'm glad that you recognized the effort controls that were put in place recently by the council to reduce traps down to 35 traps. All traps will not be left in the water when the boat comes in; the boat returns with the pots, so no traps will be left in the water; and also limited to 32 endorsement holders.

We're talking about a thousand pots in the whole South Atlantic. I think Doug touched on that a little bit about density versus a threat to whales – density of whales and a threat to them. It is recognized throughout the Large Whale Take Reduction Team that these younger whales are susceptible.

But when we're talking about Florida, we're also talking about two individuals with approximately 25 traps apiece that return to port with them. I still think that the density of whales and traps does come into play here to some degree; and a large one, if I may. I think that the team is making great efforts to reduce the injury to whales. In one of those documented parts of that is that I think when the team started out or the plan was developed, that were 180 to 220 right whales.

Now we're up close to 500, I understand, and so that is a big jump in the population, and it seems like things are working and going in the right direction. I hope you can understand my frustrations about not being able to fish this year, but, of course, I won't touch on that too much. I have a question about will the biological opinion reflect the reduction in effort in the black sea bass fishery with all those effort controls?

MS. LEE: You have said so many things that I kept trying to – well, I want to get to one, I guess; one, the importance of the Southeast Region as the calving and migratory area; so I really think it is not comparing the same things when we're looking at what is going on off of Massachusetts versus what we've got going on here.

Also, the thing is right now this fishery for a while has been operating such that it is not overlapping with that time period. Those measures that you talked about were put in place for various reasons; and through the amendments they have discussed their potential impacts and how they could be helpful on right whales, but they haven't really been the focus of those actions.

Really in terms of impacts on right whales, what has been really helping whales is the fact that we haven't had that overlap at least for quite a while. I think now with the ACL increasing and effort increasing, it is more of an issue; and so when we're considering the impacts on whales,

we're looking at this as something new that will be – it is a new change to the Southeast Region that is going in sort of the wrong direction in terms of protecting right whales.

For the last, I don't know how many years, we really haven't had that interaction, and now we're talking about bringing on something that is going to make things worse off potentially. That is one thing to think about. I'm trying to think of some of the other things that I wanted – oh, you had talked about the biological opinion.

I also wanted to touch on the fact that the entanglement rate apparently is increasing; so, yes, in terms of I think when I started working, I heard that there were around 300 right whales or so. I think now in the SARS it talks about 444. It is about 400 and change I believe is the recent population estimate, but entanglements have been increasing, so that is something else to think about – the entanglement rate I should clarify.

MR. BURGESS: Yes. Well, as far as the entanglement rate goes; there have only been four reported entanglements in the first six months of this year? That is what I heard; and I'd say that a tremendous drop in entanglements compared to what has happened in the past. I think we're going in the right direction. I think the number of whales, when this first started, was about, as I said, 150 is what is mentioned at our last meeting that David was at and that at that time we were 300 and now we're up above 400, so it seems to be going in the right direction.

MS. LEE: Well, I think what is really hard with right whales is just because we're talking about such – I mean, when we talk about sea turtles, we have biological opinions that kill hundreds of sea turtles, and we've concluded it is not likely to jeopardize. It is just hard with right whales because the potential biological removal level is so low and you're at the level where one is a big deal still. It is definitely a tough problem.

Certainly, in terms of going in the right direction, and, yes, I think the proposed closure is excellent. The fact that we haven't had that overlap in the black sea bass pot fishery has been great. When the Large Whale Take Reduction Team was together, like I said, they weren't looking at this problem because they didn't see this as – you know, it wasn't on the radar for that model.

MR. BURGESS: Okay. Well, let me see, I'm trying to go about this in a factual way. We never had a documented take with a black sea bass trap, ever. As far as the co-occurrence model whereas because it hasn't been in the past three years we haven't fished in that timeframe, we have been fishing in the wintertime for the past thirty years.

It has been that way when I have been fishing for 20 years; it was just the past three years where we haven't been fishing in the winter. You make me feel a little uncomfortable, if I may, when you say the risk is high. I think of a phrase that was used when we describe things like this; and that would be what are the chances of entanglement? Is it certain, probable or possible?

I think mentioning the things that I have said about the reduction in traps and all of the other measures, without going through them, I would think it would be closer to the possible range rather than certain or probable due to the decrease in vertical lines in the South Atlantic. One

thing that comes to mind when we're speaking of this and a risk to whales, I think of the blue crab fishery that is occurring off of Florida.

We have a fishery that is operating within the calving grounds with hundreds and hundreds of traps, if not thousands, that is operating in the wintertime daily with a 24-hour soak time, and they continue to work amongst the whales. I'm 500 miles from the calving grounds with my 35 traps. I understand we're going through a biological opinion, and that's fine, because that is where we are at. I was wondering if you could explain that to me about. I hope you can understand my position.

MS. LEE: I definitely can. No, I appreciate that. Actually I put this slide back up because I was trying to sort of hit on that as far as the entanglement risk factors, and it really comes down to the gear characteristics as well as these other factors mentioned. My understanding is that the Florida blue crab gear is different in these characteristics.

The team, however, in their co-occurrence model did look at that fishery. I know that they made some recommendations for some type of measure related to that fishery. I can't recall what specifically that is, but they also discussed these factors. I apologize, I forgot to bring the notes that I had taken down on the various specifics of how the gear differs.

I do know in terms of the weight of the trap, and I think there is a lot more line on the black sea bass than there is on the crab pot, so some things like that. The team definitely looked at that fishery. It definitely came up when they were looking at the co-occurrence, and then they looked at the gear characteristics and worked from there.

MR. BURGESS: Well, the weight of the trap isn't that much different because a crab pot and a sea bass pot without the iron on it is very similar in weight, and the iron is what tends to the bottom. Now, for those men to be working in the ocean, they're going to have to have the same iron that we have. The length of line in the blue crab fishery might be 40 feet where my line is 150; so there is a difference there, and I won't deny that. I just feel uncomfortable with it, if I may.

MS. LEE: I certainly understand that. I have a couple of things that I can also add as far as the weaker the line and weaker hog rings in the blue crab fishery; and then also in terms of where they fish, a lot of that effort is really, really inshore, like I think John maybe was sort of asking how – you know, are they too inshore where the right whales – maybe it was the other way around, I apologize, so that is another factor that was looked into and compared when looking at those two fisheries.

MR. BURGESS: Well, speaking of inshore, I know that down there in Florida; wasn't there a whale that was actually in the St. Johns River sighted?

MS. LEE: That sounds vaguely familiar. I'm a Jack of all Trades here; so I don't know all of the detailed information here about the strandings.

MR. BURGESS: Right; and there also is what is called the Palm Coast Sector Volunteer Team who observe from the beach in Florida and they observe whales. There was something on the internet just the other day about a whale sighting off of Marineland and a lot of people looking at it, so I think that the whales are amongst the traps and it is pretty well documented.

I am anxious to see the biological opinion and the things that are in that to reflect the changes in the industry, the continued work with the whale take reduction team. I would like to say we never ever want to catch a whale. I mean that most sincerely and we do take all seriousness in that. I want you to know I mean that most sincerely.

MS. LEE: I absolutely do.

MR. BURGESS: As far as this biological opinion, it sure would be nice at some time – you know, so many things that we do in the council are subject to review. The SEDAR Process is peer reviewed and so many things that come before the council are reviewed. Research; I have been involved and it is peer reviewed before it is suitable for management and publication. I won't go any farther; I won't take up anymore time, but thank you for coming.

MS. LEE: Thank you. I should clarify a couple of things. Right now we have not yet reinitiated a consultation. We have talked about if the council were to I guess reverse what is already moving forward in the proposed rule of Amendment 19, if at some point down the road if the council decided or had a preferred alternative that they did want to remove that closure; that would certainly be a trigger for a consultation.

We're not there yet. Right now we haven't reinitiated a consultation on the snapper grouper fishery; and if we did, we talked about how that would be a comprehensive opinion. I do want to clarify that. In the case of the biological opinion, it is different from an amendment. It is true that some have been released as draft.

Under the ESA, there is applicant status; and so if there was a legal opinion on that where the council doesn't have applicant status, but that doesn't mean that the agency hasn't, you know, for various reasons at times thought that it was important to release a draft opinion. It is the agency's opinion.

It is a document that is based on the best available science, but it is a policy document as well. I hope that through this informal process we can give you an opportunity to have as much input as possible. I do know that is something that we have I think been doing a better job of, and certainly we can continue to do a better job.

I know when we have issues where it has been – you know, there have been impacts where we're looking at some management needs and things to minimize take, we have certainly come to the council and given what I'm referring to as a consultation assessment, so we're telling you the details of how we're analyzing things and what our estimates are, what we have for status information.

We can share a lot of information with you and sort of get it so that you do have a voice without sort of – in my opinion the sort of laborious aspect of the process – what am I trying to say here; but I guess making the process longer and adding to the – I just cannot think of the word I'm trying to say; sorry.

MR. BURGESS: Well, just to finish up, if I may, however this turns out, industry will always be ready to come back to the table and work with you to address your concerns in good faith.

MR. CUPKA: Thank you, Tom. Wilson, do you have something short and sweet because we've got about 20 minutes left and four more species to go.

DR. LANEY: Yes, Mr. Chairman, it is very short and sweet. Understandably, the conversation is focused on right whales since there are so few of them; but I did just want to note that in Jenny's presentation and based on my observations off the coast of North Carolina and Virginia, there are a lot of other whales out there, especially a lot of humpbacks.

Based on our conversation with the Virginia Aquarium folks after this year's cruise, there are lots more young humpbacks and maybe middle-aged humpbacks spending the wintertime off North Carolina, anyway, and we certainly observed that. They were observed bubble feeding for the first time I think this year. It isn't just right whales. I wanted to ask Jenny if humpbacks, because of those long pectoral fins, are anymore susceptible to entanglement than right whales are with their little stubby pectoral fins. It seems to me that whale body shape may enter into the probability of entanglement as well.

MS. LEE: That is a very good question. I certainly know they have the same risk and that is why they're managed together. The very detailed question you asked; I don't know the answer. I know that there is a recent paper I think I can forward to you that talks about some real specifics, but I don't think there is any evidence of that.

MR. CUPKA: Yes, and right whales are plankton feeders so they spend a lot of time going through the water with their mouth open, and a lot of the entanglements are where they pick ground lines and whatnot. We need to move along here, though. Michelle.

DR. DUVAL: Mr. Chairman, I think Tom covered most of what I wanted to say. I will just touch on what appears from where I sit I think inconsistencies. When I hear that loss of even one whale from the population is important; but then on the other hand I hear that it is really the age and the size that matters most, and that is why the southeast is so much more critical even with only 1,100 pots in the water, that compared to the orders of magnitude more pots that are being fished up in the northeast, that is difficult where we sit to understand and reconcile those things.

I guess I would encourage the Protected Resources Section to communicate clearly and frequently with the council as we move forward down this path, particularly if we do move forward with an action to consider removing the pot closure. I think all of us are interested in hearing more information about the co-occurrence model that you mentioned and how should the council move forward and this new information be incorporated into that model.

I agree with Tom in terms of review, and I think that is probably an agency-wide kind of thing with regard to a biological opinion. Are there instances where it goes out for external peer review, and I think that might be useful in that regard. I'll just stop there.

MR. CUPKA: Jennifer, do you want to continue. I think Nassau grouper would be next.

MS. LEE: This last part of the presentation, the two updates you requested are really brief. We just wanted to inform you that in response to a petition from Wildlife Earth Guardians, NMFS published a positive 90-day finding and this committed us to a status review. I'm not sure if you're familiar with the petition process.

In the southeast we have been petitioned a lot, but essentially there is an initial 90-day period in which we review the petition. If we find that there is substantial information to warrant that, we move forward and conduct a status review.

Those can be conducted in a number of different ways. Then one year from the date of the petition, there is something referred to as a 12-month finding in which we make the decision on the petitioned action.

At that point, it is not a done deal because then, of course, we still have rulemaking; so at the 12-month stage we decide that, yes, it is warranted, we then go out with a proposed rule. Then there is comment on the proposed rule; and then finally get down to the final rule stage. In terms of Nassau grouper, we did have a positive 90-day finding.

Public comments were taken through December 10, 2012. In this case, as I said, status reviews we can do in a number of different ways. For this one our science center is conducting a biological – well, our science center is actually conducting a biological assessment for Nassau grouper, and that is what we're going to use to inform the ESA status review.

The 12-month determination is anticipated this fall. Again, the possible decisions are either we go forward with a proposal for listing or we say it is not warranted. There would be a 60-day comment period if we do propose, and we may have public hearings as well. That is just sort of an update on where that is within the process.

MR. CUPKA: Jenny, why don't you go ahead and do river herring.

MS. LEE: This is very similar. Our river herring update; this is actually being handled through our northeast region. On August 5, 2011, the Natural Resource Defense Council petitioned alewife and the blueback herring; each as threatened under the ESA. I think they go on to specify they wanted – they broke it out into certain DPSs.

We published a positive 90-day finding; so saying that the petitioned action may be warranted. The Atlantic States Marine Fisheries Commission completed a comprehensive benchmark stock assessment for river herring in May of 2012. We're using that stock assessment as a critical component of the status review.

There were workshops held last summer to address the gaps between what is in the stock assessment and what is needed to make the ESA listing. These workshops focused on stock structure, extinction risk, climate change. Reports from the workshop were prepared; externally peer reviewed; and now NMFS is currently working on completing the actual status review and listing determination.

I think we're expected to publish the findings some time soon. I didn't really give you a lot of details; but if you go to that webpage there, you can find out more than you ever wanted to know. It has all the workshop summaries and background documents, the petition itself and things like that.

MR. CUPKA: Okay, are there any quick questions for Jennifer on either Nassau or river herring? Seeing none; we appreciate the presentation, Jennifer. As you would guess, the most interest centered around the snapper grouper plan. I think the take-home message here is that if this council moves ahead, as I suspect they will, and it does trigger a biological opinion, that the council would like to be kept updated on that and involved in it in any way they can and have input into that.

MS. LEE: Yes; if you do move forward, I encourage you to go ahead – and like you mentioned, you wanted more information on the co-occurrence model. If you're going to be considering this in an amendment, then certainly we can have a right whale specialist come and give you all the details.

MR. CUPKA: Wilson, do you want to go ahead and go over material?

DR. LANEY: Yes, sir. All of you should have in your electronic inboxes a copy of a briefing statement that I provided to everyone earlier today. I am just going to hit the highlights from that, Mr. Chairman, in order to save time. The details are in the briefing statement. If you have questions, I will be more than happy to try and answer those.

This just covers what the Service has done or is doing on American eel and the Northwest Atlantic Loggerhead Sea Turtle Population. For American eel, the Service was approached by the Species Survival Network and the World Wildlife Fund a year or so ago recommending that the U.S. propose the American eel and all other anguilla species that hadn't previously been included in the appendices under CITES for inclusion in Appendix 2.

We did consider taking that forward, but we ultimately did not take a proposal forward to the 16th conference of the parties which occurred in March of this year. The proposal probably will come to the Service again maybe from the same two entities. In the meantime, the ASMFC I think most of you are aware had undertook a stock assessment for American eel, and that was approved for management use in May of 2012.

It determined that the species was depleted in U.S. waters. They did some additional modeling, which suggested that it was overfished, but that wasn't a very robust determination. The ASMFC did not indicate that it was overfished, and that is why they went with the depleted determination.

The American Eel Status Review; a settlement was reached. You all have a copy of that settlement agreement in your briefing book materials. The Northeast Region has the lead for that species. They are in the process of conducting the status review, and it has to be completed by September 30th of 2015, I believe it is.

You have the points of contact for both the CITES activity, which is Dr. Rosemarie Gnam in our Office of Scientific Authority, and then Martin Miller in the Northeast Region has the lead for American eel.

Then with regard to the loggerhead sea turtle, we issued a Federal Register Notice in March of this year proposing to designate critical habit for the Northwest Atlantic distinct population of loggerhead. Under that proposal, critical habitat would be designated on approximately 740 miles of shoreline in six different states.

The comment deadline was back in May. If you're interested in seeing the comments that we received, I have provided the information in that briefing statement so you can click on it and go straight that website that has all of the comments listed. There is also some very useful frequently asked questions and answers information at the other link that I've provided for you in the briefing statement.

The bottom line on that one is that there is a draft economic statement or analysis that is under preparation, and that is going to be published some time in July. Also, I understand the National Marine Fisheries Service is looking at critical habitat for marine habitat, and NMFS can comment on where that is. My understanding from our staff was it was expected in July as well. That concludes my briefing on those two species, Mr. Chairman. If there are any questions, I'll be happy to try and answer them.

MR. CUPKA: Thank you, Wilson. Any questions for Wilson? Seeing none; then that will bring us down to other business. Is there any other business to come before the committee? Seeing none; then we will go ahead and adjourn.

(Whereupon, the committee was adjourned at 3:35 o'clock p.m., June 13, 2013.)

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Protected Resources Committee

Thursday, June 13, 2013
1:30 P.M. to 3:00 P.M.

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62	Bresnen, Anthony	anthony.bresnen@myfwc.com…	255 min
56	DeLancey, Larry	delanceyl@dnr.sc.gov	135 min
56	Malinowski, Rich	rich.malinowski@noaa.gov	172 min
53	Mehta, Nikhil	nikhil.mehta@noaa.gov	323 min
53	MacLauchlin, Bill	billmac@charter.net	146 min
49	raine, karen	karen.raine@noaa.gov	424 min
49	holiman, stephen	stephen.holiman@noaa.gov	312 min
43	gerhart, susan	susan.gerhart@noaa.gov	35 min
41	brennan, kenneth	kenneth.brennan@noaa.gov	287 min
40	steele, phil	phil.steele@noaa.gov	200 min
37	Powell, Jessica	jessy.r.powell@gmail.com	136 min
34	Clemens, Anik	anik.clemens@noaa.gov	451 min
33	Helies, Frank	fchelies@verizon.net	111 min
31	Buckson, Bruce	bruce.buckson@noaa.gov	400 min
31	DeVictor, Rick	rick.devictor@noaa.gov	357 min
31	Byrd, Julia	julia.byrd@safmc.net	448 min
30	c, m	mec181@yahoo.com	436 min
30	pugliese, roger	roger.pugliese@safmc.net	264 min
29	sandorf, scott	scott.sandorf@noaa.gov	328 min
29	Neer, Julie	julie.neer@safmc.net	333 min
29	Eich, Anne	annemarie.eich@noaa.gov	261 min
27	McCoy, Sherri	sherrim@wildoceanmarket.c…	332 min
27	michie, kate	kate.michie@noaa.gov	33 min
27	holland, jack	jack.holland@ncdenr.gov	29 min
27	Gore, Karla	karla.gore@noaa.gov	325 min
26	Mahood, Robert	robert.mahood@safmc.net	26 min
25	Stump, Ken	magpiewdc@gmail.com	205 min
24	Herndon, Andy	andrew.herndon@noaa.gov	150 min

23	g, a	andrea.grabman@safmc.net	151 min
21	FARMER, NICK	nick.farmer@noaa.gov	31 min