

SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL

PROTECTED RESOURCES COMMITTEE

**Doubletree by Hilton New Bern/Riverfront
New Bern, North Carolina**

December 1, 2014

SUMMARY MINUTES

Protected Resources Committee:

Dr. Wilson Laney, Vice-Chair
Anna Beckwith
Ben Hartig

Lt. Morgan Fowler
Dr. Michelle Duval
Jessica McCawley

Council Members:

Mark Brown
Chris Conklin
Doug Haymans
Charlie Phillips
Chester Brewer

Mel Bell
Jack Cox
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Dr. Roy Crabtree

Council Staff:

Bob Mahood
Mike Collins
Dr. Kari MacLauchlin
Kim Iverson
Julie O'Dell
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Gregg Waugh
John Carmichael
Amber Von Harten
Dr. Mike Errigo
Myra Brouwer
Chip Collier

Observers/Participants:

Monica Smit-Brunello
Dr. Bonnie Ponwith
Phil Steele
Dr. Jack McGovern

Jennifer Lee
Kevin Anson
Pres Pate
Barb Zoodsma

Additional Observers Attached

The Protected Resources Committee of the South Atlantic Fishery Management Council convened in the Grand Ballroom of the Doubletree by Hilton New Bern/Riverfront, New Bern, North Carolina, December 1, 2014, and was called to order at 4:47 o'clock p.m. by Chairman Wilson Laney.

DR. LANEY: We will convene the Protected Resources Committee; and the first item is approval of the agenda. Does anybody have any additions for the agenda for the Protected Resources Committee? Seeing none; any objection to approval of the agenda as printed? Seeing none; the agenda is approved.

We have to approve the September 2014 Protected Resources Committee Minutes. Do I see any proposed changes, edits, suggestions for the minutes? Seeing none; I presume no objection to approval of the minutes. Then we go to Item Number 3, which is the report on ongoing formal consultations and other protected resources updates. I believe we have Jennifer Lee on the telephone or will have shortly.

DR. LANEY: Okay, in the interest of efficiency here, while we're waiting for Jenny to dial back in, if we can hop down to Item 6 and 7, I will give you a very quick update. With regard to the American Eel Status Review, I know of nothing new from a Fish and Wildlife Service perspective.

I will let everyone know that the IUCN did list the American eel as endangered; and I will send that document around to everyone. That happened last month, I believe. That is the only additional information that I have there.

Then with regard to the Atlantic Sturgeon Stock Assessment, I communicated with ASMFC today. Mike Waine, who is the coordinator for the Atlantic Sturgeon Stock Assessment, indicated to me that their focus right now is on gathering additional data, in particular the genetic analysis for some of the fish that have been tagged and from which tissue has been collected in the past. As far as I know there, that's the only update on Atlantic sturgeon. Any questions about eel or sturgeon? Mel.

MR. BELL: In total ignorance here, who listed it as endangered?

DR. LANEY: The IUCN, which is the International Union for the Conservation of Nature; so that primarily I think – and Monica can correct me if I'm wrong – that has CITES implications or it has import/export implications. I think the primary reason that they listed it had to do with import and export issues, but I'll defer on Monica on that point.

MS. SMIT-BRUNELLO: Actually, Wilson, I don't recall offhand, but I can get you that information.

MR. BELL: Yes, because if it does involve CITES and since a little piece of our fishery is exported, that could be rather interesting.

DR. LANEY: Yes, it could be. I received it from some of our folks in headquarters, so I'll send that around to everyone this evening so that everybody will have it and can see what they actually did. Whether or not that will have any bearing on the Fish and Wildlife Service process, I don't know at this point in time because I haven't talked to any of our core team folks about it. Okay, do we have Jenny back online yet?

MS. LEE: Yes, I am; and just to clarify, you'd like the protected species fishery consultations update; and then do you want me to go through any of the other updates?

DR. LANEY: Yes; to the extent that you're charged with going through those others; yes, just go ahead and start with the Protected Resources Division Update. Well, let's halt for questions after each one and then we will continue with the others.

MS. LEE: Okay, we did things a little different this time. You actually have a protected species briefing document as an attachment or as part of the briefing book. I'm just going to run through that; so I'll start a little different before I start with the fishery consultations. So particularly to list the Nassau Grouper under the ESA, you got a presentation on that at you last meeting; so really there is nothing new here.

The proposed rule was already out for your last meeting. There is just reviews that were in the public comment period, which ends December 31st. We're seeking information on spawning aggregations, threats to the species and conservation efforts made to protecting Nassau grouper. I know you'll talk about that later where you have your comment letter.

Petition to list queen conch under the ESA; again, actually that came out right around the last time you had a meeting. Oh, no, I'm sorry, this one was brand new; so November 5, 2014, NMFS published its determination that the species did not warrant listing at this time. Information related to the determination can be found at the website provided in the briefing document.

Atlantic sturgeon, the Atlantic States Marine Fisheries Commission, in cooperation with NMFS and states, is finishing a stock assessment for Atlantic sturgeon. We anticipate that to be completed in 2017; so we have a long ways to go there. Atlantic sturgeon critical habitat; we have made preliminary determinations regarding Atlantic sturgeon critical habitat.

We're now evaluating the potential economic impacts of a critical habitat designation. We are working with the Department of Defense and the U.S. Coast Guard to evaluate any national security impacts related to Atlantic sturgeon critical habitat designation. The National Resource Defense Council and the Delaware Riverkeeper filed a lawsuit on March 18, 2014, against NMFS for failure to designate Atlantic sturgeon critical habitat; so we're currently in discussions to finalize a settlement agreement resolve the lawsuit.

North Atlantic Right Whale Critical Habitat; NMFS is preparing a proposed rule to revise North Atlantic right whale critical habitat. The Draft Federal Register Notice is in the clearance process. Corals is what I was thinking of when I said queen conch was available at your last meeting. We finished our final rule shortly before your last meeting; but the comment period for

our Draft Recovery Plan for elkhorn and staghorn corals closed on October 20th. The Draft Recovery Plan can be found on our website. There is a link in the document. We will finalize the Recovery Plan in March 2015.

We are also preparing an advance notice for proposed rulemaking and requesting information to evaluate what, if any, protected regulations are needed for the conservation of the five newly listed Caribbean coral reef species. Again, you can keep an eye on the website; and we'll give the council an update when that becomes available.

The Section 7 FMP Consultation; we have one that has been underway for quite some time now. It was initiated to address the listing of five DPSs of Atlantic sturgeon under ESA Atlantic sturgeon listing. The new opinion is currently under development and will address all ESA-listed species that may be affected and will replace the previous 2007 opinion.

This is why I was just sharing a little information with you because of the timing of this. It may come out prior to your next meeting. I'm not really sure, but we are making good headway on that consultation. The gillnet gear is the gear we believe has adverse effects on the listed species. We have updated the sea turtle analyses using observer data.

For the last opinion for the fishery off Florida, we were relying on stranding data. We have some new observer data, but overall we don't anticipate any major changes in terms of the magnitude of anticipated captures and effects on sea turtles and smalltooth sawfish. The Atlantic sturgeon, of course, is now. Again, though, I think I've said in previous updates we're not looking at a large impact. At least we don't anticipate that.

Really, in terms of needing input from the council on any type of potential or prudent measure or determine condition, I know that's something that you want feedback on or wanted an opportunity to provide input on; but at this stage and relative to the scope of the consultation, I don't have anything that I really need to ask for feedback on.

Other than that consultation, depending on what happens with Snapper Amendment 16, we may be reinitiating on the snapper grouper fishery. We have concluded a couple informal consultations with respect to the new corals. We did one for snapper grouper and dolphin wahoo; and we will continue to do more analyses related to that. That's it for consultations.

Getting back to the briefing document, the Marine Mammal Protection Act actions; the 2015 List of Fisheries was published on August 25, 2014. No major changes are proposed. The Marine Mammal Authorization Program, all Category I and II fisheries will be registered by January 1, 2015. Nothing really new there other than announcements.

The Pelagic Longline Take Reduction Team; I guess the next step is an in-person meeting sometime late winter or early spring 2015. The Bottlenose Dolphin Reduction Plan and Team; the proposed rule to amend the plan to reduce bottlenose serious injuries and mortalities in Virginia pound net gear published April 17, 2014. The comment period closed and we have a draft rule. The draft for the final rule is being reviewed now.

We are planning to convene the team for a webinar in the spring or summer of 2015; but nothing of interest to point out there. Then the last one on the briefing document is the Atlantic Large Whale Take Reduction Plan. On June 27, 2014, NMFS issued the final rule to amend the Atlantic Large Whale Take Reduction Plan. You actually are going to have a presentation from Barb on the plan; so I'm not going to sit here and read the update. Regulations applicable in the southeast became effective on November 1, 2014; so you can hear about all of that when Barb presents.

DR. LANEY: Do we have questions for Jenny for on any of these items?

MS. LEE: That's all I have for updates.

DR. LANEY: I know we're going to hear from Barb on the right whale. Any questions from anyone?

MR. HARTIG: Jenny, thank you very much for that update. I think this will be helpful going forward to have these on a regular time frame when we meet; and I appreciate that. We'll send some comments on Nassau. In your petition to list Nassau, there are some things that I wish NMFS would look at as far as Nassau goes.

I think there has been some work done on the old historical pictures from, I guess, some headboat catches. I know it was done for Goliath grouper. There has been some speculation about many Nassau groupers were around back in time; and knowing that the population has not responded to no harvest for over 20 years, that is kind of tough for us to deal with.

The other thing is that if you can go back and look at that pictorial and get some kind of a groundtruthing of how much Nassau was in the catches of the early history of the fishery, I think that would be helpful to groundtruth those types of observations because basically the groupers were all combined early on; and we did not know who was who for most of the time series when Nassau was in question.

The other thing I'd say is that Florida has never had any spawning aggregations that have been verified. Florida may just be a repository for animals that come from the Caribbean; and maybe the reason why we haven't seen an increase in the Nassau grouper population in the Keys in particular may be because of those aggregations having been extirpated in some of those other areas and we're not getting the recruitment that we once did. There are a number of working parts to this. We'll put them in our letter to you. I just wanted to give you a heads-up about what I was thinking about, anyway.

DR. LANEY: Are there other comments? Okay, we'll move on then, I guess, to Item 4, which is the Nassau Proposed Rule and council comment. Jenny, were you going to review the proposed rule for us?

DR. MacLAUHLIN: Actually, we did that the last time you had presentation; and so what we are doing –

DR. LANEY: Okay, is going over our draft letter, which, Kari, why don't you address the changes that were made to that letter since we last looked at.

DR. MacLAUCHLIN: Well, we added some language based on some input we got from Ben about some additional studies on the population. The letter kind of outlined some additional information that NMFS may want to consider other studies; then, also, all of the South Atlantic Council actions that have been taken for protection of Nassau grouper.

DR. LANEY: All right, Ben, have you have looked at that and do you have additional things you would like to see added to that letter.

MR. HARTIG: Yes, I have looked at it; and I was going to wait until we got done this with this council meeting. We have to the end of December to submit the letter. I was going to work with staff; and there is a couple of other things that I'd like to have them put in there. One is the release mortality issue.

Nassau grouper are fairly shallow water animals; and you would expect that the release mortality would be relatively low for this animal. Maybe even a recommendation for people fishing in the area where Nassau grouper occurs; that they absolutely have to have a descending device to send this animal back down to the bottom. That is something that we could suggest or actually do as a council.

DR. LANEY: Other comments on the draft? Roy.

DR. CRABTREE: Remember that the listing decision is separate from what sorts of management measures or changes may ultimately be recommended. Remember, too, that the listing is based on throughout its range; so what we have done here in the Keys and down in Puerto Rico is just a very small portion of the range of the whole animal. That's what we really had to focus on; because to come to a not-warranted decision, we would have to have concluded that it is not threatened or endangered in a significant portion of its range.

DR. LANEY: Thank you for that clarification, Roy. Dr. Duval.

DR. DUVAL: Mr. Chairman, I just will get up with Kari. I just had a few minor grammatical suggestions or wording changes that I don't want to waste the committee's time with here, but just clarification.

DR. LANEY: Yes, I think you reminded us of that the last time; and I think some of those may have already been incorporated; but I'll get up with Kari on whether those have been already incorporated or whether you have additional editorial changes. I'm hearing that at least two members, Mr. Hartig and Dr. Duval, will get up, Kari, with you with additional editorial suggestions for that letter. I presume that we can finalize that for transmittal prior to December 31st.

DR. MacLAUCHLIN: I can get the input that folks want; and we will make those changes. We can send it around to the council members with a deadline that will be kind of tight. If you have

something that you want to add or change or comment on, be looking for that e-mail and turn that around so we can get it in.

DR. LANEY: Okay, anything else on Nassau grouper? Seeing nothing else; then we will move to Item 5, which is the Atlantic Large Whale Take Reduction Plan Requirements.

DR. MacLAUCHLIN: And, also, I think Mike Collins sent that around to everybody; so you have that presentation, also, in your e-mail.

MS. ZOODSMA: Thank you for having me here. I have been tasked with talking to you a little about the Atlantic Large Whale Take Reduction Plan. You'll notice on my title slide I have some other co-authors that are on the phone and can help me answer questions if those come up. We have Jessica Powell and Laura Engleby as reinforcements back in St. Petersburg.

What I'm going to talk to you about is first I'm going to lay out a little bit about the Marine Mammal Protection Act. I'm not going to get too far into the weeds with that; but it is an important sort of lead-in to what do with the take reduction plan; mention a little bit about the take reduction team and the plan in general and the process involved there and then specifically talk about the 2014 Atlantic Large Whale Take Reduction Plan Amendment; why the amendment was necessary; how the amendment was developed and some of the requirements that came into play after that was put in place.

First of all, the Marine Mammal Protection Act – and there is a lot of information on this slide; and I'm not to get into everything. In fact, if you want to just take this home and study it or look up the Marine Mammal Protection Act, that would probably be best. Like I said, it sort of is the driver for all of the goals of the take reduction plan; not only the Large Whale Take Reduction Plan but all take reduction plans. It is an important Act to keep in mind.

The bottom line, I think the most important take-home message with this is that for North Atlantic right whales; the PBR is set to 0.9 per year; so all of our efforts with the Large Whale Take Reduction Plan is to try to get serious injury and mortalities to right whales and other endangered large whales like fin whales and humpback whales; but I'm going to be talking about right whales.

The goal is to get the serious injury and mortality of right whales down to 0.9 or less per year; so that's the real important point to remember from this slide. The Marine Mammal Protection Act also specifies that for those endangered marine mammal species that are above PBR and also interacting with Category I or II fisheries need to have a take reduction plan in place.

That is where we are with right whales and fin and humpback whales where they are endangered, they're interacting with Category I and II fisheries, and so we have a take reduction plan. Take reduction plans are developed with input from a take reduction team. Section 118 of the Marine Mammal Protection Act specifies who should be on a take reduction team.

We need to include experts in the stock that is being affected, as well as the fisheries that are involved; and also it specifies certain agencies and organizations that need to be included on the

take reduction team; for instance, federal agency representatives, fishery representatives, environmental groups, academics, that sort of thing.

Now, as far as take reduction plans; once we've decided we need to have a take reduction plan in place, what is the goal? Again, this goes back to something that is specified by the MMPA; we need to reduce the serious injury and mortality rates to below PBR within six months of the plan being developed.

Again, that is kind of an important point; so I just want to kind of pause and note that here as opposed to just flying over it. Then a longer-term goal is to reduce the serious injury and mortality rate to insignificant levels within five years, which is 10 percent, so in our case it would be less than a whale, less than 10 percent of a whale a year.

The process with involved with developing these take reduction plans is we look at information, both from the species and from the fisheries; we convene a take reduction team. The take reduction team gets together, discusses the various data sources before them, and then develops some consensus recommendations and submits those to us, the National Marine Fisheries Service.

Then we initiate the rule-making process that you're all familiar with. Then once the take reduction plan is put in place, we monitor that. If it meets the MMPA goals, we're good; and if not, then we start back from Square One again where we convene the take reduction team. The Large Whale Take Reduction Plan was first implemented and effective in 1997.

It was amended on a number of occasions, all the way through this year, 2014. Unfortunately, none of these measures allowed us to achieve the MMPA goal of getting serious injury and mortalities to right whales from commercial fisheries below PBR or below that 0.9 annual threshold; but we have been trying and trying a number of things to do that.

As I mentioned, despite several amendments and several attempts, we have yet to achieve PBR; and for that reason – well, let me get to the second bullet there just so you'll know. From 2007 to 2011 the minimum number – so the known serious injury and mortalities the North Atlantic right whales that we knew from commercial fishery interactions was 3.25 a year; and we need to get to 0.9.

Despite all of our best efforts with the large whale reduction plan, we have failed to achieve that goal; and so thus we needed to put out another amendment, which is what we just did in 2014. What was the process involved in developing the 2014 amendment? We refer to that as the Vertical Line Rule.

Well, it dates back to 2003 when the large whale take reduction team agreed to tackle the threat of entanglements to endangered large whales from two sources; and those were ground lines and also vertical lines; so ground lines that were between gillnets and perhaps their anchors or the ground lines between traps; so the horizontal lines that were near the substrate or floating up off the substrate.

That was first addressed by the take reduction team; and the take reduction plan was amended in 2009 by what we call the sinking ground line rule. Then per the take reduction team's agreement, we launched into an effort to address the threat of vertical lines to endangered large whales; and thus ended up the 2014 amendments to the Large Whale Take Reduction Plan; and that one is basically called the vertical line rule.

The objective of the vertical line rule is very, very – well, it is being driven, like I mentioned, by the MMPA; and is to reduce the serious injury and mortality to below PBR within six months; and again for right whales that is 0.9 a year; and then also reduce serious injury and mortality from commercial fisheries to insignificant levels within five years.

The goal of this particular rule was to develop measures that would reduce the risk of entanglements to large whales from vertical lines. The way we approached that was we identified areas where vertical lines and large whales, particularly right whales, overlapped. We used that overlapping information or co-occurrence data as a proxy for entanglement risk.

Now, we understand that a lot of things contribute to entanglement risk. For instance, there could be a whole lot of gear and very few whales and yet we're still getting whales entangled. Now, it could come down to life history; it could be juveniles that are just curious. We've seen that on a number of occasions where juveniles will approach boats, objects or whatever just because they're curious.

That is not uncommon with manatees either where it is the juvenile animals that tend to get entangled. We know are more complicating factors that lead into this; but this was the best approach that we could think of. What this approach allowed us to do is focus on these high-priority areas and customize our management measures to fit those areas.

We not only looked at gear density but also whale density and how those two interacted. We also looked at whale life history. For instance, right whale calves that we have down here in the southeast are much weaker swimmers than are the larger adults; and so they would be able to carry a lot less gear and survive that. That was a factor for us down in the southeast.

Now, I want to pause here because I understand that there is some interest in the South Atlantic Black Sea Bass Pot Fishery here; and so there are bound to be some questions about how is this fishery fitting in with the Atlantic Large Whale Take Reduction Plan. Well, the data that was used to formulate that model that we used to tackle the vertical line rule did not include South Atlantic Black Sea Bass Pot Fishery Data.

The areas and locations that black sea bass fishermen from North Carolina – well, in the South Atlantic Fishery Management Council's jurisdiction where these fishermen might fish, because they were not fishing in the winter; that data was not included in that model, so it basically fell off the radar screen.

The South Atlantic Black Sea Bass Pot Fishery basically fell off the radar screen of the large whale take reduction team and protected resources staff; and so basically we didn't consider the

black sea bass fishery. At that time it was closed and we considered that the best available take reduction measures, so we felt no need to address that.

Now, what are some of the measures that were put in place through this 2014 amendment? First I'm going to talk about measures that are in place from North Carolina to Florida; and then I understand there have been some interest in what is going on with the lobster fishery up in the northeast so I'll touch on that a little bit as well.

First of all, again, North Carolina to Florida; all of the take reduction plan measurements varied by geographic area, so you'll see here in the South Atlantic Fishery Management Council's jurisdiction there are a number of management areas; and these have different names and different requirements.

I will leave those for a few slides down the road here, but basically you can see the geographic layout of that. Throughout all of these areas the 2014 Take Reduction Plan Amendment increases the size and the frequency of gear marking; and so basically NMFS is really making a concerted effort to learn more about the entanglements that we're seeing on these large whales and making a concerted effort to mark the gear so we can learn more about that.

The amendment also establishes a new southeast restricted north area. That is indicated there in blue. There are various requirements in play in that area; and those are included here in this table. Throughout the restricted area, I mentioned the gear marking already; but we're also specifying that there can be a maximum of one trap per vertical line. Now, up in the northeast, they've implemented a minimum number of traps per trawl; and so they're trying to reduce the number of vertical lines in the water.

That works for up there but not for down here, because (a) we have live bottom concerns down here; and (b), we also have these right whale calves that are newborn swimmers and not very strong swimmers; and so we didn't think they'd be able to lift a multiple number of traps. In Florida state waters, the trap/pot fishermen must use weak links that are equal to 200 pounds breaking strength.

Again, that reflects the fact that they're fishing in areas where newborn calves may be found. The vertical line breaking strength is required to be less than or equal to 1,500 pounds. In South Carolina/Georgia state waters, weak links of less than or equal to 600 pounds with a vertical line breaking strength of less than or equal to 2,200 pounds.

In federal waters we're requiring weak links of less than or equal to 600 pounds. Again, I just want to specify this is for the southeast restricted area north area. So within that area in federal waters, we're requiring vertical line breaking strength of less than or equal to 2,200 pounds; and trap/pot gear must be brought back to shore at the conclusion of each trip.

What this essentially does is it eliminates long-soak trap/pot fishing from federal waters out there. Now, in the northeast relative to trap/pot fisheries, again I thought might be of interest to you because I have heard people have some questions about this. As I mentioned previously, the 2014 amendment specify a minimum number of traps per trawl.

Again, the goal there is just to reduce the number of vertical lines in the water. They also are increasing the size and the frequency of gear marking. In this large polygon, the blue area, it is a restricted area; and from January to April 30, the area is closed to trap/pot fishing; so the trap/pot fishing in that area is prohibited.

The lobster fishery was most affected economically by this 2014 amendment to the tune of 1.5 to 3.6 million dollars is the estimate for the effects on that fishery. Now, this proposed – it is actually not proposed; it is this area, the Massachusetts restricted area. There are changes proposed for that. That is why I have that little asterisk about that; and I will get into that in this next slide.

One the take reduction plan was amended in 2014, we received six proposals to modify the take reduction plan. Five of these proposals are going to be discussed during the next take reduction team meeting in January. One of the proposals was already considered by the take reduction team via a webinar and is in the proposed rule stage.

Each of these proposals, before they're considered by the take reduction team, they go by the agency; and the proposals have to outline how their proposal is conservationally equivalent to what they're proposing to modify. In other words, the proposal cannot increase entanglement risk to large whales. It has to maintain or increase the level of protection. As an example of that, the proposal that was put forth to the team; it was a proposal to modify the restricted period of the Massachusetts restricted area.

Right now the restricted area is closed from January 1 to April 30. I think the modification was to move that from January 1 to February, a couple weeks one way or the other; but the interesting thing is the way they proposed the conservation equivalence was not only were they moving the time period in which the closure would take place, but they were also proposing to expand the closed area. So through a combination of changing the temporal boundaries as well as the spatial boundaries, they suggested that it maintained the equal amount of conservation protection to right and other endangered large whales. That was put before the team; and I think the team pretty much agreed with that and it went forward and is in the proposed rule stage now.

In conclusion, the Marine Mammal Protection Act, like the Endangered Species Act, has set a pretty high bar for us to meet. The Large Whale Take Reduction Plan goal is to achieve the mandates specified by the Marine Mammal Protection Act. North Atlantic right whale incidental bycatch in commercial fisheries has been exceeding the levels established by the MMPA; and again that is a high bar.

We're supposed to get serious injury and mortalities to right and other endangered whales below PBR; and for right whales that is 0.9 a year. The Large Whale Take Reduction Plan requirements vary by time and space. We've now put the 2014 amendments in place; and what we'll do now is monitor to see what the effects of that will be on large whales.

For additional information, I have the website there and you'll have that in the handouts you get or the electronic copies you get; but there are some very nice guides available that pretty much

consolidate all of the requirements from the take reduction plan. Those are very useful. That's all I have.

MR. HAYMANS: Barb, you probably said this and I missed it; but those 3.25 per year, were those human interactions, fishing interactions; what was were that 3.25?

MS. ZOODSMA: I probably didn't say it, Doug, so it is probably good you asked the question. Those are from commercial fishery interactions, 3.25.

MR. HAYMANS: How about ship strikes; how many of those per year?

MS. ZOODSMA: The ship speed rule is proving to be an advantageous thing for right whales. They're at about 1point something; yes.

MR. HAYMANS: And just two other quick questions about mortality; do you know what the natural mortality on the right whales is?

MS. ZOODSMA: The national mortality?

MR. HAYMANS: Natural mortality; what is their death rate?

MS. GOODMA: So when we talk about serious injury and mortalities, what we know is by far a minimum estimate. We know that a lot of animals, right whales in particular – let me back up, Doug. Right whales in particular; we basically have a census of them through the photo ID catalog that you're aware of. Through that we have come to know that after seven years if you don't sight a right whale, chances are it is gone. We call those presumed mortalities. We know we're only learning about a fraction of those injuries and mortalities. So now you're asking me what the natural mortality rate is?

MR. HAYMANS: Right; you have an estimation for population; you have an estimation for what human-related mortality events are; I would think we would have something on natural mortality.

MS. ZOODSMA: Well, serious and mortalities from fishing and from ship strikes is 4 point something a year. Those are the known; that's minimum. That is kind of why I was trying to get into the background, which I was apparently failing to do; but I was trying to outline that is just the minimum known mortality rate that we know about.

We do know that some calves disappear; but it is also important to know say if we have population level right now at 450 animals and we have 20 calves born, we don't all of a sudden get 450 and 20 into the population. They're not added in until they're adults. We know with right whales in particular that there seems to be a lower number of juveniles than we would expect in a healthy population; so somehow somewhere we're losing a lot of animals before they get recruited into the population and begin to reproduce.

MR. BELL: Mr. Chairman, I'm not on your committee. If I could, I'd just like to ask a couple of clarifying questions for me. The definition of OSP; the number of animals that results in max productivity; so what defines max productivity? It seems like the more the merrier, I guess.

MS. ZOODSMA: Yes; PBR is – and if Laura is there, she can jump in; but PBR is set by 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 level. That number, PBR, is calculated by looking at the size of the population. They're also assigned some sort of – Laura, are they called recovery rates. If they're endangered, they –

DR. MacLAUHLIN: What we would need you to do, Laura and Jess, if you're on the line, is first of all you'll have to mute the sound coming out of your computer so we don't get the feedback here; and then, if possible, you would need to either get on a phone or get a microphone. The speaker phone gives us a lot of feedback and we can't understand as well.

We have you unmuted and up to a speaker. Hold on just a second; because we won't be able to understand. If you guys could get on – you may have to disconnect from the microphone on your computer and call in on the line on the webinar. We can't understand when you just speak into the microphone on your computer or speaker phone.

DR. CRABTREE: Could I suggest if Barb can't answer the questions, if you give her the questions, then she can hook up with those guys and get answers for you at full council or the Snapper Grouper Committee.

MR. BELL: Yes, I was just going to suggest I could just put that one off; and I've got a couple more, if I might, that Barb might be able to answer.

DR. LANEY: Thanks, Roy, that sounds like a good way to proceed. Go ahead, Mel.

MR. BELL: The other one related to Slide Number 8 in the presentation; and I understand your explanation of how the sea bass fishery kind of dropped through the cracks because it didn't exist when you were looking. But if I'm understanding this slide, if this was during the vertical line consideration, it says at the bottom "also considered young calves, reproducing females, and live bottom habitat in the southeast". If live bottom habitat was considered, that is where the sea bass fishery is; therefore, it seemed like the sea bass fishery would have been in effect considered. Do you where I'm saying at the bottom of that?

MS. ZOODSMA: Yes; so basically the way the live bottom was considered was we thought about how would we reduce vertical lines, right? The northeast took the opportunity of reducing vertical lines by using trawls. If we used trawls, that could mess up the live bottom down here. That was one thing we thought about that would not be a feasible thing for us down here. We would destroy essential fish habitat, basically. The other thing was we were considering calves. That is what we were thinking about and not the black sea bass fishery.

MR. BELL: So it was not the presence of live bottom habitat as we just won't go there; you –

MS. ZOODSMA: It was the presence of live bottom habitat that we were contemplating; and that was discouraging us from contemplating trawls. When I say we didn't consider the black sea bass fishery, what I meant was that the fishery did not appear. It didn't light up in the co-occurrence model because the traps weren't out there.

MR. BELL: Okay, those particular vertical lines didn't exist –

MS. ZOODSMA: Exactly.

MR. BELL: – as far as you were concerned at that time?

MS. ZOODSMA: Exactly, thank you, yes.

MR. BELL: Okay, and then real quickly Slide 13; I understand this is what we've said – and if you flip back to 12, the blue box, that's the southeast U.S. restricted area north; but in that blue box we're saying, back to 13, that the crab fishery let's say can exist off of Georgia or South Carolina meeting these certain criteria of state waters or federal waters; but a crab trap is basically a black sea bass trap. They look effectively the same in terms of it is a single small trap with a line. If those criteria are good enough for a crab trap; why not a sea bass trap?

MS. ZOODSMA: Can the black sea bass fishery fish with weak links less than or equal to 600 pounds and a vertical line breaking strength of less than or equal to 2,200 pounds?

MR. BELL: I would defer to Jack on that.

MR. COX: Yes, absolutely, we can. I have been fishing sea bass pots for 12 years; and I can tell you that we can do that. That was one of my questions with the weak links. When we put those weak links in, I was wondering then why – you know, I had several questions about them but why we weren't using something with a lesser strength. Not to take the mike from you, but can I ask her a few other questions? Well, while I've got you and time is limited at this point in the day; how many folks are on that whale take team?

MS. ZOODSMA: Oh, my goodness, 60 or so, a lot.

MR. COX: Are they all aware of all the measures that this council has taken to lessen the effects of interactions?

MS. ZOODSMA: The people that are most important to you are aware of that; yes.

MR. COX: Because we have done a lot.

MS. ZOODSMA: And I'm not trying to be snotty when I say that. Quite frankly, some guy fishing off Maine doesn't really care what is going on down here, right, so that is why I'm saying maybe not everybody on the team is aware because their focus is someplace else; but the people with their focus down here, I think they're aware of it. I know I'm certainly aware of it.

MR. COX: Well, I mean, we've decreased the fleet by a lot and we have decreased –

MS. ZOODSMA: Yes; and let me just take this moment to say that nobody is saying that the South Atlantic Fishery Management Council has not done anything. I think the South Atlantic Fishery Management Council has a pretty good reputation for being very conservation-minded.

MR. COX: I just want to say one other thing, though. It always comes back to education; and these things that you do – when we were required to put the weak links on and all the protective measures; not one time did we ever have somebody that would work with the fishermen and to look at their gear, to make sure that their gear was what it should be and to try to educate the fishermen on why we're doing what we're doing; and the habitat, the critical habitat is. I've learned so much since I've been on the council; but a lot of things come back to education. When you educate these fishermen on what is going on and what we're trying to do, I promise you they will do everything at their means to try to come to the table and bring solutions.

MS. ZOODSMA: I think you're right. I think some fishermen – I'll just be very candid with you and everybody who may be on the phone and everything; but I was talking to one black sea bass fisherman on the take reduction team; and I said, "Man" – because I will agree that there are things out there that are more riskier to right whales and other endangered large whales. But yet when I was like, well, let's put our money where our mouth is, let's mark this gear so we can show people; I got resistance from that person. I do think there are people out there that want to do right, but I think there are others, too.

DR. LANEY: Okay, I had Michelle and then Anna; and then, Mel, do we need to come back to you again?

MR. BELL: Well, I think that went in the right direction. The question I originally had, we can wait on that, the OSP; because where I was going with that was that 0.9 percent of PBR; that is effectively zero. I mean, you can't have 0.9 –

MS. ZOODSMA: No, PBR is set at 0.9; so it less than one.

MR. BELL: Less than one?

MS. ZOODSMA: Less than one right whale per year.

MR. BELL: Right, so you can't have less than – I mean, less than one right whale is no right whale.

MS. ZOODSMA: You're absolutely right; you can't take a flipper and – you're absolutely right.

MR. BELL: My point was that is effectively zero; you can't have less than one whale.

MS. ZOODSMA: Yes, you're absolutely right; it is very low.

DR. DUVAL: I have a lot of questions, actually. How many participants are there in the lobster trap fishery; do you know?

MS. ZOOSMA: I don't know.

DR. DUVAL: Do you know how many entanglements have been documented with the lobster trap fishery; and of those, how many have been lethal?

MS. ZOOSMA: Yes; but I have this information for tomorrow. Let me pull it up for you here. Sorry, I had this all compartmentalized, what was being talked about when. That is under my new information for tomorrow.

DR. DUVAL: That's okay; if you want to skip that, I have other questions. If you're going to talk about that tomorrow, that's fine.

MS. ZOOSMA: Yes; that would work out.

DR. DUVAL: I was reading through some of the responses to the comments from the vertical line rule that was just published here in 2014. I know you said that the sea bass pot fishery kind of fell off the radar when you all were building the model for the vertical line rule; but some of the responses state that the agency didn't propose a trap or pot closure in the southeast critical habitat or restricted area north because these areas didn't exhibit the extensive pot fishing when compared to the volume of effort in Cape Cod Bay.

I'm trying not to bleed into tomorrow, but I think some of the confusion and maybe the frustration here is that the council was not provided with any choice in terms of the existing six-month EEZ-wide closure that we have right now in order for us to be able to increase the sea bass ACL when the stock rebuilt.

We had to implement this closure; but that doesn't seem to mesh with the response to the comments for the Large Whale Take Reduction Plan Rule that was just put into place. I guess my question is why wasn't this – if it is such a concern, why wasn't this ever considered during any of the take reduction team's deliberation?

MS. ZOOSMA: I think there were a lot of questions in there; so let's start with the one about the comment about area being closed. I think what you were alluding to was, well, if the take reduction team didn't consider it, how are you commenting on that? Was that kind of the gist of that?

DR. DUVAL: Well, it was just a response to comments that people made with regard closed areas in the southeast.

MS. ZOOSMA: Okay, so I know exactly which comment you're talking about; that somebody asked us to mirror the South Atlantic Fishery Management Council's closure. The problem with that comment was it was suggested after the proposed rule had been out. I don't know if that's a

problem; but the way we responded – the reason why we responded the way we did was that the proposed rule had already come out; so we already gave everybody an opportunity to comment.

We didn't propose a closure and we didn't propose to mirror the South Atlantic Fishery Management Council's closure. What we said was we understand that the council is now considering revisiting that closure; and so we're going to work with the council. Thus, I'm here and have been attending some of these meetings in an effort to work with them on that particular management requirement. That is why it was; the closure was not discussed or deliberated or considered by the take reduction team.

DR. DUVAL: Okay, I'll probably talk more about that tomorrow when we talk about Regulation 16. One of my other questions was really about the list of fisheries that is published every year.

MS. ZOODSMA: That is a Jess question.

DR. DUVAL: Okay, I'm going to ask it and then maybe we can get an answer tomorrow or something.

MS. ZOODSMA: This is good, yes. If you could ask that and, Jess, I know you're hearing so this is for you and could you give me the answer tomorrow?

DR. DUVAL: In just looking at the list of fisheries, I know that the lobster fishery is a Category I fishery; so there is definitely documented interactions there. In that list of fisheries, there is always an estimated number of vessels or persons. I see Northeast/Mid-Atlantic Lobster Trap/Pot and the estimated number of vessels or persons participating is like 11,600; and then the sea bass pot fishery, which is Category II, which has been lumped into the Atlantic Mixed Species Trap/Pot Fishery has only 3,400 potential participants.

We know that there is only 32 pot endorsement holders here. Then we consider that there is only a relatively small closure up in the northeast for 11,000 participants in the lobster trap fishery that are allowed to have, if the trap reduction program works, maybe 600 pots each, maybe 800 pots each; you know, just a discrepancy between the existing closed area situation that we have now versus that when we're looking at the list of fisheries.

I'm wondering why the sea bass pot fishery is even of concern I guess when I consider those numbers. Then the second question I had about that was really if you look at that list of fisheries, Atlantic Mixed Species Trap/Pot, the two species that are listed as incidentally killed or injured are fin and humpback whales.

I looked back as far as I could find, and there is no mention of North Atlantic right whales in there. I guess maybe that's something that Jessica can provide an answer to tomorrow; so if there is such a concern, I'm wondering why it is not in there. I'll shut up now because I know other people probably have questions, but I have a few more. Thanks.

MS. BECKWITH: To clarify; did I understand right, if they were able to prosecute the fishery using weak links of under 200 pounds and the vertical breaking line of 2,200 pounds; would they be allowed to prosecute that fishery during that time period; from November 15th to April 15th?

MS. ZOODSMA: I can't say that it would be allowed because I'm not the whole agency; but that to me, from my perspective, seems like it would be more favorable than having very strong breaking strength lines out there and weak links with high breaking strength. Anything that could be done to reduce serious injury and mortalities – and NMFS believes that weak links work and that lines with lower breaking strengths are better than lines with higher breaking strengths would be a good thing to consider.

Could I get back to your question about why black sea bass trap gear is a concern? And, yes, we'll have to wait for Jess on the list of fisheries; but we also know that trap/pot gear is a threat to large endangered whales. We've pulled trap/pot gear off whales. I don't mean to be flippant here at all; but if you could sort of envision yourself being any endangered large whale, it is not like they swim around and see a lobster trap and go, oh, I'm going into that gear; and then they see black sea bass and they go, oh, that's black sea bass, I'm not going into that gear.

They don't discern. It is just that if there is a vertical line that is in the water that they happen to be swimming by, it doesn't matter what it is. I know where you're going to go. You're going to say, yes, but if there is a higher density of lines versus very few lines; I agree, but nevertheless for right whales in particular the chance of a ship striking a right whale is incremental. It is just off-the-charts small; but yet it still happens. The same thing with entangling a right whale; the chances of any gear entangling a right whale is very small, but yet it happens.

DR. DUVAL: And I think really it is just that I don't have any illusions that one vertical line is the same as another with regard to a right whale. It is just that with the density of lines in one particular area and we're dealing with one population throughout its range on the Atlantic Coast there is a lack of parity in how the fisheries have been treated from our perspective given that there are definitely documented interactions in the peer-reviewed literature that have been cited in the information that we have from NMFS with regard to lobster trap fisheries.

We don't have that for the black sea bass pot fishery at all. I think we're bleeding into tomorrow; but we're just looking for some parity or explanation for why an EEZ-wide closure whereas it is only now that there is going to be a four-month closure up off Massachusetts.

MS. ZOODSMA: That sounds like a really good conversation to continue tomorrow.

DR. LANEY: I believe Doug had a comment in response to one of Barb's points.

MR. HAYMANS: Well, it's just this, Barb; and I know that you don't like the fact that this was put in the 2006 opinion; but from the documents that we've been provided, the 2006 opinion states, "That though spatial and temporal overlap may occur, the best available information indicates there are no documented entanglements or other interactions between black sea bass pot gear and right whales."

It continues, “The lack of evidence suggesting interactions between black sea bass pots and marine mammals and the proposed provisions under the amendment to the Atlantic Large Whale Take Reduction Plan lead us to conclude that any adverse effects resulting from the continued authorization of the South Atlantic Snapper Grouper Fishery are extremely unlikely to occur and are discountable.” I haven’t heard any new evidence from black sea bass pots that changes that. I’ve heard you comment in the past that you don’t like that the statement is in there, but yet somebody thought it through and in ’06 to put it in there.

MS. ZOODSMA: You’re right; I don’t like that statement. This is more stuff we can discuss tomorrow. I’d do it right now – you know, I’d have the conversation right now, but it really fits in real well with the conversation tomorrow. There was a little bit of a take reduction plan nugget that you said that I feel is appropriate to talk about right here; and that is that the information that I presented that the take reduction plan has never achieved the goals of the MMPA. What we assumed the take reduction plan would do never fleshed out for us. The rest I look forward to discussing tomorrow.

MR. PHILLIPS: The issue obviously seems to be vertical lines. What about sinking lines on the bottom for a fishery that does not have a buoy attached? I see you’ve made a comment about you were worried about you didn’t want trawls because of hard bottom interaction, which almost says that somebody made a judgment call that they’d rather – hard bottom interactions was weighed against a vertical line at the other end or something; but what about a fishery with not that you grappled up and was just sinking line – I mean, just a sinking line fishery of any kind.

MS. ZOODSMA: So a fishery that doesn’t have a vertical line; is that what you’re asking about?

MR. PHILLIPS: Yes.

MS. ZOODSMA: I think that would be the most awesome thing. I mean, think about it; that whole risk from vertical lines would be non-existent.

MR. PHILLIPS: And I guess I’m looking for any options for compromise anywhere, what they might possibly be, or other fisheries – you know, other than black sea bass because we’re always – hungry fishermen are always looking for something. I’m just trying to figure out where the boundaries are.

MS. ZOODSMA: I think if there is a way to fish black sea bass trap/pots without a vertical line; rock on!

MR. COX: I just wanted to say at any one time our 32 boats only have 1,100 traps in the water. The guys that fish with me in the Morehead area; we only fish 18 to 20 traps; so we’re not even doing an analysis on that. But, man, we have done – we really, Charlie, don’t need to be looking for other things at this point, because, my God, we’ve done so many things already. I think it is just time for our guys to get back to work, Barb. I mean, it really is.

DR. DUVAL: I think again we’re bleeding into the discussion that we’re probably going to have tomorrow during Regulation 16; but I did have one question. I thought I saw in one of the gear

guides – maybe it was the gillnet guide that just came out in conjunction with the new vertical line rule – that nets couldn't be set within three nautical miles of a whale sighting.

Does that sound familiar? I'm just wondering how that works; so is there a number or a sighting network or something that these gillnet fishermen – is there a repository of where whales are that gillnet fishermen somehow have access to where they know not to set their nets within three nautical miles?

MS. ZOOSMA: No; there is not. The one that you're referring to is – I believe it comes with the shark gillnet strike net deal. When they were strike netting for sharks, they actually had a spotter plane that was flying overhead.

I'm kind of being a little funny right now because I've been out on the water quite a bit. I probably shouldn't say this stuff; but I've been out on the water quite a bit and we go out and we try to find whales. We've been told where they are; and when we go out there, sometimes you just can't find them. I guess that's why I'm being a little funny with that question.

DR. DUVAL: And, again, I was just curious how would that work because it seems like you would have to have some kind of almost like a bycatch-avoidance response type of thing in order for that to work.

DR. LANEY: Okay, other questions for Barb? I don't see any other hands so I presume that we had some questions that were asked on the record and some allusions to tomorrow's further discussion in the Snapper Grouper Committee. I'm going to presume at this point in the day we have exhausted all the questions we want to ask at this time and the rest will be deferred until tomorrow. I see Dr. Duval's hand popping up; so I guess there is a least one more.

DR. DUVAL: This is actually more of an other business item. I actually wanted to offer up a motion that – and this is in regards to the Council Coordinating Committee Report that came out, I guess, maybe at the beginning of year that pertain to how the councils – the process for how the councils are involved in the consultation process with the Protected Resources Division staff.

A recommendation in that report was that each of the regions would develop an MOU that informed how that process worked. **I wanted to offer a motion to direct staff to work with the Protected Resources Division to develop a draft MOU as per that CCC Report regarding the council's involvement in the consultation process for review in March.**

DR. LANEY: Thank you for that motion; second by Anna Beckwith. Any discussion on the motion? Dr. Duval.

DR. DUVAL: I just say that because I think it would give us a better – having that kind of MOU would provide the council a better understanding of sort of what is the type of process that we would follow, what is the council's role and any of this – you know, given the whole black sea bass pot fishery issue. It would also provide guidelines for the Protected Resources Division staff as well.

DR. LANEY: Thank you for that further clarification. Any other comments? **If not, is there any objection to the motion? Seeing none; the motion carries.** Dr. Duval.

DR. DUVAL: And then just one more thing. I know that former Chairman Cupka was I think the council's representative on the take reduction team. I think my question was really the council no longer has a representative on the take reduction team; so what is – I guess it is both a question and then ask what is the process for a replacement like that? Does the Northeast Protected Resources Division ask the council to send a replacement? I think they sort of run the large whale take reduction team. How does that work; and I see Bob at the table.

MR. MAHOOD: Yes; all we have to do is send them the person we'd like to represent the council. I think they would be accepted. Most of the councils participate.

DR. LANEY: So is that something, Bob, that we need to make a recommendation to – I recognize Monica to address that point.

MS. SMIT-BRUNELLO: I don't think you'd make a recommendation to me; but I had a question. I think Tom Burgess was also a member of that team, if I'm not wrong, and I believe that was when he was a council member; but I don't know if he was also representing the council while he was on there or he was representing as a member of the fishery. Michelle is nodding her head that, yes, he was a member of the fishery when he was on the council and not a council member.

DR. CRABTREE: Wilson, I'm sure if a council member or two want to be on the take reduction team and we get those names; that we can make that happen.

DR. LANEY: Okay, so from a process standpoint; does this committee just need to recommend that to full council, then?

DR. DUVAL: I'm not recommending anybody right now. I just wanted to know what the process was. I think Bob has outlined that for us; so that is just something that we need to discuss and the chairman can solicit interested council members.

DR. LANEY: Okay; and I neglected to ask one question earlier when we were talking about Nassau grouper; and that is whether or not there was any sentiment for the council to actually take any position relative to the listing or not? I didn't hear any sentiment for that. I had some discussions with staff earlier that indicated I should at least ask the question. I'm seeing no hands raised; so I presume the answer to the question is, no, we don't.

MR. HARTIG: I don't know yet.

DR. LANEY: Ben is saying, "I don't know."

MR. HARTIG: Let's see what we get for the letter and see if it is pointed enough to actually have a position. It may not have to be.

DR. LANEY: All right, so we'll just defer that until that draft is revised and sent out for further review by the committee and council. Okay, I don't have any other business. Anyone else have any other business? Seeing none, Mr. Chairman, we will adjourn at 6:09 p.m.; and I would note that is 39 minutes, I believe, over our allotted time.

(Whereupon, the meeting was adjourned at 6:09 o'clock p.m., December 1, 2014.)

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PLEASE SIGN IN

In order to have a record of your attendance at each meeting and your name included in the minutes, we ask that you sign this sheet for the meeting shown below.

South Atlantic Fishery Management Council
Protected Resources Committee Meeting
Monday, December 1, 2014

NAME & SECTOR/ORGANIZATION: **AREA CODE & PHONE NUMBER:** **EMAIL ADDRESS:** **MAILING ADDRESS:**

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