

# **SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL**

## **PROTECTED RESOURCES COMMITTEE**

**Doubletree Grand Key Resort  
Key West, Florida**

**June 8, 2015**

### **SUMMARY MINUTES**

#### **Protected Resources Committee:**

Dr. Wilson Laney, Chair  
Dr. Michelle Duval  
Jessica McCawley

Anna Beckwith  
Ben Hartig

#### **Council Members:**

Robert Beal  
Zack Bowen  
Mark Brown  
Jack Cox  
Doug Haymans

Mel Bell  
Chester Brewer  
Chris Conklin  
Dr. Jack McGovern  
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Gregg Waugh  
Amber Von Harten  
Myra Brouwer  
Dr. Kari MacLauchlin  
Dr. Brian Chevront  
Mike Collins

#### **Observers/Participants:**

Rick DeVictor  
Monica Smit-Brunello  
Dr. Marcel Reichert  
Erika Burgess  
Lt. Charlotte Delorey

Dr. George Sedberry  
Dr. Luiz Barbieri  
Dr. Bonnie Ponwith  
Jennifer Lee  
Capt. David Dipre

Additional Observers Attached

The Protected Resources Committee of the South Atlantic Fishery Management Council convened in the Tortuga Ballroom, Doubletree Grand Key Resort, June 8, 2015, and was called to order at 2:05 o'clock p.m. by Chairman Wilson Laney.

DR. LANEY: Welcome to the Protected Resources Committee Meeting. The first item is approval of the agenda. Does anyone have anything to add to the agenda or additions under other business? Seeing none; does anyone have any objection to approval of the agenda? I see no objections.

The second item is the approval of the March 2015 Protected Resources Committee Minutes. Does anybody have any changes to the minutes? Seeing none; any objection to approval of the minutes? Okay, the minutes will stand approved as written and published. Item Number 3 is the South Atlantic Protected Resources Related Updates. I believe Jenny Lee is on the telephone to give us the update.

MS. LEE: Good afternoon, everyone. Our updates this time are pretty brief. You have the attached briefing document; it was part of your briefing book. I'll just run through the ones that have changes. There are some here that are identical to what you had in your last briefing book. The first petition to list Nassau grouper under the ESA; here we just have a timing update.

As you recall, NMFS published a proposed rule to list Nassau grouper as threatened under the ESA on September 2 2014. We expect to have a published final determination in the fall, so that was the only update there was just our timing of it. If you haven't looked at that prior, by all means, check out the rules which has the link in the briefing book document.

Like I said Atlantic sturgeon, Atlantic sturgeon critical habitat, and no changes there, I'm going to skip over. I will move up to North Atlantic right whale critical habitat. This was updated. On February 20, 2015, we published a proposed rule to replace critical habitat for right whales, North Atlantic, with two new areas.

There is a hot link there for the proposed rule so you can review it. The area under consideration of critical habitat contains approximately 29,945 square nautical miles of marine habitat and includes northeast feeding areas in the Gulf of Maine/Georges Bank Region and calving grounds from southern North Carolina to northern Florida.

The comment period did close on April 21, 2015, so we are now considering comments and hope to publish the final rule in early 2016. Coral, no update there except for the date of when the recovery plan published, and I do have a relatively brief presentation on the acropora recovery plan, so that is all I will say about that.

Green sea turtles, on March 23, 2015, we published a proposed rule to remove the current range-wide listing for green turtles and in its place list eight DPSs as threatened and three as endangered. Individuals for two of the DPSs, the North Atlantic and the South Atlantic, have the potential to occur in the southeast region. Both the North Atlantic and South Atlantic DPSs have large population sizes, increasing population trends, and share the same ESA designation as threatened.

It is expected that any analysis of potential impacts based on the current listing status for green turtles would apply similarly to the new DPSs if listed as proposed; therefore, no new analysis would be likely necessary upon finalizing of the DPS. When I say new analysis, I mean just with respect to your present consultations.

Getting two consultations, I am disappointed to say that we do not have the biological opinion for you, so we will have to punt that presentation until September. It is in the final review stages. It is really, really close. That opinion will replace the previous 2007 opinion. That is really all I can say there.

Moving on to marine mammal protection actions, we have an update on the Project Longline Take Reduction Team. A December 1<sup>st</sup> through 3<sup>rd</sup> 2015, in-person meeting of the Project Longline Take Reduction Team is being planned. A location is still not firmed up, but we do expect it to be in the Atlantic area.

Actually the update is that a March 30, 2015, webinar was held to prepare for the in-person meeting and provide a range of take-reduction plan-related updates. The Bottlenose Dolphin Take Reduction Plan and Team update, we're planning to convene the team for a webinar meeting this summer or fall to discuss conservation measures needed to help the Bottlenose Dolphin Take Reduction Plan meet its mandated goals.

Then finally the Atlantic Large Whale Take Reduction Plan Key Outcomes Memorandum from the last meeting are available on the web link there on June 1, 2015, so just last week. The 2014 vertical line rule, this is related to our Greater Atlantic Region, GARFO, and the rule implemented minimum number of traps per trawl requirements that went into effect.

An Atlantic Large Whale Take Reduction Plan Amendment was published just a little bit ago as well on May 28. The amendment changes the minimum number of traps per trawl to allow fishing with a single trap in certain Massachusetts and Rhode Island state waters; so again this is a GARFO rule essentially.

It modifies the requirement to use one endline on trawls within certain areas in Massachusetts state waters. Also this rule creates a quarter-mile buffer in waters surrounding certain islands in Maine to allow fishing with a single trap. In addition, the rule requires those fishing single traps in these select waters to uniquely mark their gear beginning July 1, 2015.

The rule also requires unique gear marking for traps and pots and gillnets in Jordan Basin and Jeffreys Ledge, two important habitats for the right whales, beginning September 1, 2015. That is all we have for PR briefing.

DR. LANEY: Do we have any questions for Jenny?

DR. DUVAL: Jenny, thanks for the updates. So those modifications to the vertical line rule that just published, you're mentioning May 28, those go from the requirement for having two to three traps per vertical line to now allowing for exemptions to have just one trap per vertical line, correct?

MS. LEE: Yes, I believe that is correct.

DR. DUVAL: Okay, so that would be an increase in the total number of vertical lines in the water. Thanks.

MS. LEE: I should add that update; if you want, I can look at it a little further. I haven't actually read that rule. I am just reporting on the information I received from a co-worker on that one.

DR. LANEY: Anybody else with any questions for Jenny Lee? Okay, I don't see any, so I think Jenny the next item is the Acropora Recover Plan update. I believe you are going to do that one as well.

MS. LEE: Yes, I am. I have a PowerPoint for that if you have it up, great. The purpose of this presentation is to brief you on the recovery plan for elkhorn and staghorn corals that was released on March 6. I often refer to it as the Acropora Recovery Plan just for convenience, but the plan applies to two Caribbean acropora species listed in 2006, and not the newly listed Indo-Pacific acropora species.

First, I just wanted to give you a quick introduction to what recovery plans are and why we do them so there aren't any misunderstandings. Recovery plans are required by the ESA for all species listed as threatened or endangered unless the recovery plan will not contribute to their conservation.

Recovery plans serve as a roadmap; they lay out where we need to go, how to best get there. Recovery plans are guidance documents; they are not regulatory. They do not require any agency or entity to implement the recovery strategy. Therefore, communication, coordination, and collaboration with a wide variety of potential stakeholders are essential to the acceptance and implementation of recovery plans.

There are several components of a recovery plan that are required by the ESA; objective measurable criteria that when met would result in a determination that the species be removed from the list; a description of site-specific management actions necessary to achieve the plans goal; and estimates of the time required and the cost to carry out those measures.

The goal of most recovery plans is to recover the species to the point they no longer need the protection of the ESA; makes sense. More specifically, the goal is to increase the abundance and protect the genetic diversity of elkhorn and staghorn coral populations throughout their geographical ranges, while sufficiently abating the threats to warrant delisting of both species.

The vision is that elkhorn and staghorn coral populations should be large enough so that successfully reproducing individuals, including thickets comprising numerous populations across the ranges and should be large enough to protect their genetic diversity and maintain their ecosystem functions.

Threats to the species and their habitat must be sufficiently abated to ensure a high probability of survival into the future. The recovery plan has ten criteria, which are targets by which to gauge recovery. Three criteria are population-based and describe what recovered species would look

like. The first criterion deals with abundance and is the only one that is different from the two species due to their differences in morphology and habitat occupation.

The criterion specifies the characteristics that should be present throughout the range and maintained for 20 years. The values were derived from data available for existing high-density stands. The criterion requires persistent high-density thicket stock to occupy a small portion of the potential core habitat with the assumption that lower-density stands would occupy additional habitat area.

The second criterion addresses genetic diversity and requires a balance between sexual and asexual recruitment across the species as a whole. It is recognized that considerable variability and genotypic diversity is expected at individual sites, but basic levels of genotypic diversity are required on the scale of species as a whole since high genotypic diversity may provide a greater ability to withstand environmental variability and disease.

The last one under population-based criteria; the recruitment criterion has two parts, both of which need to be met. The first part indicates that recruitment rates sufficient to achieve abundance in genetic diversity criteria I just mentioned they needed. The second part requires effective sexual recruitment in each species population across their geographic range.

It is recognized that asexual fragmentation is likely the major avenue of recruitment of these two species due to their propensity to fragment. Sexual recruitment is necessary for providing genetic variation important for adapting to changing environmental conditions. Now the remaining seven criteria are all threat-based and describe the conditions needed to abate threats impeding recovery.

Three of the criteria are interim, as you can see, and require more targeted information to be gathered in order to develop recovery criteria. I am not going to take the time to go through all of these. I'm only really going to touch on the one that probably most affects southeast fisheries or relates, which is the abrasion and breakage; but feel free to look at the recovery plan for more details.

Other threats, the criterion again, the abrasion-and-breakage criterion is most applicable to South Atlantic fisheries. The abrasion-and-breakage criterion require effective regulatory response, restoration and enforcement mechanisms for planned and unplanned impacts. There should be no net loss of listed corals.

For planned projects and for unplanned impact, an effective response plan should be executed. To achieve the recovery criteria, the plan again has 24 recovery actions, many with a number of sub-actions that fall into three broad categories; research and monitoring, reduction or elimination of threats, and population enhancement.

Research is needed on elkhorn and staghorn coral biology including genetics, immunity, physiology and biochemistry, determinants of reproduction and recruitment success, and host symbiotic relationships. To monitor the status of the species, mapping and inventory products are needed, including remote sensing tools and a genotype and species inventory database. We need to monitor the species and their environments. We need a range-wide monitoring program

geared towards protection of these species and periodic monitoring of water qualities throughout the range.

We also need evaluation of robust reference populations particularly to develop final recovery criteria for those three interim criteria that I mentioned. The two biggest threats to acropora recovery are climate change and disease. Actions to respond to and minimize effects of disease include protecting apparently resistant or resilient populations, developing the capacity to respond to disease events, and implementing effective mitigation approaches.

For climate change, the most important action is to reduce atmospheric carbon dioxide concentrations, but additionally there is a need to research and develop mechanisms to enhance adaptation or acclimation to increase climate stress, particularly given the current climate trajectory we're on.

The final category of recovery actions is to conduct active population enhancement through stabilization and reattachment of loose fragments, nursery propagations and larval culture. A comprehensive population enhancement plan is needed to guide efforts. Other actions include developing ex situ conservation, enhancing genotypic diversity in depauperate populations and enhancing survival of recruits.

To abate the threat of abrasion and breakage, again I am highlighting this one only because it is relevant to the fisheries, not in the plan list that it is not like it is the top recovery action category. But to abate the threat of abrasion and breakage, there are three recovery actions with sub-actions under each.

The acropora recovery team considered a response to 50 percent of known physical disturbance events to be a reasonable number from both an ecological as well as a feasibility standpoint. For unplanned physical disturbances like hurricanes, vessel grounding and anchor damage and marine debris; to develop and implement response mechanisms such as coral fragment stabilization or reattachments and removal or stabilization of rubble and debris. That includes derelict vessels or fishing gear.

For planned physical disturbance such as marine constructions, there should be no net loss of listed coral. This can be achieved through coral transplantation after avoidance and minimization efforts have been exhausted. In addition to developing a coral transplant program, the recovery plan calls for development of local guidelines for stabilization of orphan acropora colonies dislodged or broken from their unknown human impact.

Then protective and preventative measures include reducing impacts for fishing gear and techniques, improving management of salvage operations from vessel grounding, improving nautical charts and aids and installing marker and mooring buoys. Finally, the last component of the recovery plan is the time required and the cost for achieving recovery.

Removal from a list of threatened and endangered species can only occur if the species are recovered throughout their ranges. The estimated cost is in excess of \$255 million for actions in U.S. jurisdictions. However, this is also a severe underestimate due to actions needed in foreign countries and the undeterminable cost of some actions. It is estimated that recovery will take

400 years – sorry, I don’t think any of us will be there – to achieve based on the substantial mitigative actions identified in the plan.

That leaves us with next steps on the following slide. Now that we do have the recovery plan, what are the next steps? We’ll likely assemble a recovery implementation team, which will prioritize actions and identify entities and funding forces to carry out those actions. If you are interested, let me know or let Roy know because I’m sure getting some representation from this council would be excellent.

Because most of the species’ range falls outside U.S. jurisdiction, international collaboration will be very important to achieving acropora recovery; and finally we need to track recovery actions in progress, as I mentioned. Communication, coordination, and collaboration with a variety of stakeholders is paramount to acceptance and the success of the recovery plan.

With that, I just want to give you a couple sources for more information; our website of course, and then our two protected resources coral experts, Alison Moulding and Jennifer Moore. If there is anything I guess I can help that relates to coral recovery, I think actually I’m just going to say thank you. I tried to go really fast. Hopefully, you could understand me; but I know a lot of this is just more general information.

DR. LANEY: Do we have any questions for Jennifer on the acropora recovery process?

MR. HARTIG: In the nursery propagation, how are you guys addressing your genetic diversity issue in the way that coral is being used? If you can’t answer, it, that’s quite all right. That is kind of a “gee whiz” question and I understand that.

MS. LEE: Okay, I’ll be happy to do any follow up on questions, but I don’t have a really good answer right off the bat on that one; I apologize. That is why I wanted to be clear also that Jenn Moore and Alison Moulding are your excellent sources for information. I am not a coral expert at this point and just sort of wanted to make sure that you were familiar with the plan and the basics.

DR. LANEY: Ben, I think that is being addressed. If I remember correctly, and Pat may help me remember, but we had a presentation on the acropora nursery area that was associated with some of the mitigation being done for, was, it the Port Canaveral Project I think, Pat. I believe they are trying to at least make sure that when they collect the animals for propagation, they are trying to get material from appropriate sites. I think if I remember correctly – Pat is nodding his head in assent – I think they are trying to address the genetic issue.

MR. CONKLIN: I’m not on your committee, but I just wanted to take this opportunity to ask Jennifer what the biological range of these corals is. How far north do they head up the coast?

MS. LEE: I am going to be a very poor responder to your questions right now, I’m sorry. I should know the answer off the bat, but I do not know that off the bat. I know we have a lot of coral experts usually in the room if someone wants to help and jump in. Otherwise, I am going to have to probably punt a lot of questions and just respond back and get the answers out to you.

DR. LANEY: Does anybody want to take a shot at answering that question, Dr. Sedberry, maybe? I don't think acropora ranges very far up the east coast, I don't believe. Maybe West Palm Beach, George is saying. I don't think it is off South Carolina and North Carolina.

MS. LEE: Give me one moment and I'll look at the exact just so I don't say anything wrong.

DR. LANEY: Okay, while Jenny is looking that up, she noted that she's looking for members to serve on the recovery implementation team. Is there any interest on the part of any council members or I suppose staff as well who would be interested in serving on that? If so, just contact Jenny. I'm sure she would welcome representation from either the council staff or council members if anybody has an interest in serving in that capacity.

MR. HARTIG: Wilson, I don't think it is a question of interest; I think it is more a question of time.

DR. LANEY: Yes, I'm sure.

MR. HARTIG: The interest is there, believe me.

DR. LANEY: Any other comments for Jenny while she is looking that up? Do you have an answer for us on that?

MS. LEE: Yes; it is about West Palm Beach in Florida.

DR. LANEY: Okay, other comments or questions on the Acropora Recovery Plan?

MR. BELL: I've got to ask the 400 years to rebuild; what do you get for 400 years? These things don't grow that slow, do they? I'm used to watching oculina grow or the shallow-water stuff we have. I just wondered what you get for 400 years.

MR. HAYMANS: I was actually going to ask if there was flexibility in that.

MS. LEE: Well, you'll get a copy of all the criteria that I mentioned. I could look at the plan, but that is just sort of how they – I don't know the specifics of how they came up with that number, but certainly the plan has a lot of different actions involved and a lot of that involves foreign parties and outside of our own agency and collaboration.

MR. BELL: I wasn't trying to put you on the spot; 400 years just seemed like an awful long time.

MS. LEE: I agree.

MR. DeVICTOR: I'll just quickly point out Figure 3 of the recovery plan, Attachment 2, has a nice map there showing the range of the species.

DR. LANEY: Thank you, Rick. Did everybody hear that; Figure 3 of the Recovery Plan for the distribution map. Okay, any other questions or comments? I'll just note with regard to the rebuild time, you start talking about long-lived, slow-growing organisms, and that is the kind of



timeframes you've got to start thinking about. Okay, if there is nothing else on acropora, we're skipping Item 5, I think, because that is not ready yet. We will skip to Item 6, which is the ESA/MSA integration agreement. Chip, are you going to start on that one or is Kari going to start us out on that?

MR. COLLIER: I can start us out.

MS. LEE: Can I interrupt for one minute? I just realized that getting back to – I felt bad that I didn't answer this well; but getting back to the traps question, the traps per trawl requirement was meant to reduce the number of traps by requiring more traps per trawl. I just wanted to throw that in really quick.

DR. LANEY: I guess I'm a little confused given that you said the provision would allow one trap per trawl, which sounds like – I'm with Dr. Duval on that – it sounds like there would be more vertical lines in the water instead of fewer vertical lines in the water.

DR. DUVAL: That is the effect. You're going from like three or two traps per line to a single trap per line.

DR. LANEY: Are we interpreting that correctly, Jenny?

MS. LEE: I don't think so. I'll send you guys a follow up e-mail if that will help. The requirement is to require more traps per trawl, but it is not overall traps. Sorry, I thought maybe I could follow up quickly here. I'll do better; I'll send you an e-mail to clarify.

DR. LANEY: Kari, did you have a comment on that?

DR. MacLAUHLIN: Well, I was looking at the FEIS for that and it does say the analysis of the Massachusetts DMF proposals and Rhode Island proposal indicate a 0.2 annual increase of co-occurrence. Then it kind of goes into the take reduction team talking about this. The team felt there was little increase in overall entanglement risk with improved safety economics and operational considerations for the smaller vessels.

Then there were concerns about the conservation implications of any increase in lines, so therefore the proposals triggered extensive discussions about the need for distinctive unique gear markings to improve NMFS' ability to identify the likely source of entanglements if an increase in lines were to occur as a result of the proposals.

DR. LANEY: That, Jenny, certainly sounds like they are interpreting it the way we thought we were interpreting it to mean that there will be an increase in lines in the water under this proposal.

MR. COX: I may be wrong, but it seems like I remember hearing some talk in Rhode Island about if there were less traps per line, it would be easier for an entanglement to get shed of the trap rather than carrying two or three traps trying to deal with it.

DR. LANEY: Maybe that is the rationale behind it; I don't know. Certainly some additional clarification from you, Jenny, at some point in time would be welcomed by the council.

MS. LEE: Absolutely; I'll follow up real soon.

DR. LANEY: Now we'll move on to Item 6.

MR. COLLIER: Kari and I have been working – mostly Kari has been working on an integration agreement; and I am going to let her take it over. What we wanted to do was first develop it for the council. Then after we have the council's okay with it, then we're going to take it to NMFS and negotiate exactly an integration agreement and then come back to you guys hopefully in the near future with a more finalized version of it.

DR. MacLAUCHLIN: Okay, some meetings prior to this and then at the last meeting – so Chip is the new Protected Resources lead if you guys haven't sorted that – talking to the other regions who are interested in also developing these agreements, this is the first one that has come out. At the last meeting I provided a list of items.

These are just either a list of items to include – these were mostly council involvement in the formal consultations, which we have talked about and which was also in the policy directive from NMFS; and that had some direction on how the council can be involved and then kind of the role of PR staff and the IPT process and then PR staff involvement.

Some of these things exist already and we're just putting them down on paper. We used the information from the policy directive or input from other council staff that work with PR. I think what we're going to do, if this is okay with everybody, is kind of go through this and go through each section and see if you have any feedback that you want to talk about now. If you can just talk about them and we'll use that as we're revising and coming up with a draft.

This is the very, very first draft that could end up being completely different from what this is. There may be additional things; there may be things that you don't want in there and things that you want a little more explanation on. I think it is sort of short and sweet and lays out a possible way that we could do this, where it is very clear of the expectations of how communication will work and the involvement.

If that is okay, I am just going to kind of walk through each section and stop; and if somebody has a comment, we can comment on it; and if not, we'll move on. Then I guess you can also, if you want to, take a little more time to look over it and send in some comments. The first part is the agreement. It talks about the council involvement in formal consultation.

This is something that in the past in general the councils have not been involved in that. But the policy directive, after the working group discussed this a lot, that the councils actually had a unique role that they could play in formal consultations. The first item is an agreement of the procedure.

This is just some ideas that we are bouncing around about as soon as a need for a formal or informal consultation is identified, then Sustainable Fisheries will notify the council by the next council meeting. We were also trying to put some times in there so everybody knows when to expect this. Sometimes we are expecting something at the next council meeting and then it doesn't come until several council meetings away. We would know as soon as possible, then when the consultation is initiated, when that actually starts.

This is something we get updates from Jenny on all the formal consultations, but they are not involvement of the council necessarily, and they don't necessarily need to be, but just kind of status updates. Then once the council knows what is going on, we just kind of came up with these three different ways.

Not every consultation the council will need or want to be involved in; but it should be that you guys may want to be always up to date on what is going on and notified that there is a consultation for even a new listing or something like that and then decide what level of involvement you would like to request.

We have one, two, and three; and basically each one just adds on. Level one is what we are right now with our updates from Jenny, just to get status updates like the CMP biological opinion. The Level 2 is a little more involvement of getting updates. The Protected Resources can request information from the council.

I don't know if that is something that has ever been done, but the council may have some information they can provide from industry or from the states. The council can review the draft reasonable and prudent actions or reasonable and prudent measures and provide input. Those would be provided to the council ahead of time at a council meeting.

The council can comment on those and provide additional recommendations or comment on how they are set up, what is clear, what is not clear; and then those can go back and be included as part of the biological opinion. There would be agreement on the expected timeline and delivery of those draft RPAs and RPMs.

Level 3 is kind of the next level. All of those things, including the council reviewing the draft RPAs and RPMs, we put in there the council and the SSC reviewing a draft biological opinion and providing input; and, of course, the agreement on the expected timeline and delivery of the draft biological opinion so that we can notify the public.

The council knows when they are going to be expected to review the biological opinion. Then also you may want to consider allowing enough time for the SSC to review a biological opinion since they are your scientific advisors, and they could provide their scientific expertise. The next is the council involvement during the consultation; and this breaks down each of those items that fits under which level of involvement that you select to have.

We have some in there, status updates; mostly that is what we're getting now. Is there anything additional that you would like? Pulling in information from the council for the effects' analysis, there may be knowledge, expertise, access to additional data that people on the council have that they could provide for any kind of biological opinion or analysis, the review of those RPAs and RPMs.

Our council staff may also request that council staff be provided those RPAs and RPMs. You may just request that council staff review those instead of the full council; just an idea. Then the next, the council and SSC review. This is going to take time. It could slow down an amendment having to get that all in there, so these are all things that when you are considering the level of involvement, you probably want to discuss and make a decision about. I will stop with that one.

I don't know if folks like that, if they want to provide e-mail comments to us or you just want to discuss it.

MR. BELL: I can appreciate the value that this brings, and I like the tiered approach. One of the things you are going to need to do is determine what the costs are in terms of we'll call it mission creep for the council/council staff/SSC; what all would that involve in terms of managing whichever tier you decide on; but that is just a real world consideration in kind of which way we go with that. Some analysis would have to be done on what the cost actually is in terms of man-hours and involvement and all. I think you are thinking that way, so that is good.

DR. LANEY: Other comments or questions for Kari at this stage of the game?

DR. DUVAL: I think you guys have done a great job outlining sort of from the most minimal level of involvement or I guess maybe information receipt that we would want to the greatest level of information receipt we will want. It is just sort of dividing things up from there. You could have – what, we have three levels now – maybe you can make it four, who knows? I think Mel's points are well taken about mission creep and cost of increased involvement in each of these levels.

MS. SMIT-BRUNELLO: Kari, the header is “council involvement in formal consultations”, but the first sentence under A, Agreement of the Procedure says, “As soon as a need for a formal or informal consultation is identified.” I was wondering why informal consultation was in there. A formal consultation is one that would result in a biological opinion; most likely.

An informal consultation basically is when the agency looks at the action and then determines that the planned action may affect but is not likely to adversely affect a listed species or their critical habitat and thus a biological opinion is not generated. I'm thinking that you may want to just strike the “informal”, because I don't know that the council would be that interested in informal consultations.

MR. COLLIER: The reason I put it in there was maybe thinking trying to avoid a formal consultation and going the informal route of just speaking freely and trying to have to avoid going into a formal consultation and maybe getting an action that might be listed or an alternative that might be listed as an action item; get that removed prior to a biological opinion even being needed.

MS. SMIT-BRUNELLO: Okay, I'll think about it further; and I know this is just in the early phase of this. Okay, we can just continue to talk.

MR. BELL: I guess an example of maybe this thing going with an informal consultation would be let's say the council had an interest in the use of artificial reefs in our area; and due to the re-designation of critical habitat for right whales all of a sudden perhaps the permitting of an artificial reef might require an informal consultation – remember that example? That is an example of where that could come up and we might be asked to enter into that process based on does the artificial reef present an issue associated with right whales or something. That is the example that popped in my mind.

DR. LANEY: Monica, does that seem reasonable?

MS. SMIT-BRUNELLO: Maybe; and maybe ultimately what you will all want to do is identify certain kinds of informal consultations; in which you would want it brought back to you all. I'm just thinking that every time you do an amendment, whether it is regulatory or an FMP amendment, there is an ESA component to that.

We have to look at all other applicable law besides the Magnuson Act to determine whether the action in the amendment or the actions in the amendment meet all other applicable law; that they are not inconsistent with one. We'll look at the ESA and say, okay, do we need to do a consultation?

Usually it is not a formal consultation. Usually it is, no, we don't think this is likely to adversely affect. Every once in a while a new species will get listed or critical habitat will get designated, and you already have an amendment that you've taken final action on and submitted it to the Fisheries Service.

In the time the Fisheries Service is processing it, for example, the Coral Listing Rule last September, there is a final rule. That then would trigger, all right, we need to go through the process, and do we need to reinitiate consultation, because one of the reinitiation triggers is a new species getting listed or a new critical habitat getting designated.

Anyway, I guess the reason I am bringing this up is because I would hate for then – and we deal with all that. We do memorandum back and forth in consultation. They look at whether a formal biological opinion needs to be initiated and all that. Frequently it turns out or it has turned out in the past that a lot of these kinds of ESA listings or critical habitat getting designated and those sorts of things.

The fishery can continue like the snapper grouper fishery can continue to be prosecuted. You might not need a biological opinion. Anyway, the way this is set out is that for informal consultations we would need to stop the process a little bit and notify the council at the next council meeting so the council can have further involvement.

I guess what I'm saying in a very in-artful way is we'll continue to talk about this, because there is a great many things for which you would have no interest in having the processing of a fishery amendment delayed until the next council meeting so that you could look at something for which there really wouldn't need to be any further involvement by the council. Anyway that is in-artful, longwinded; we'll all work together and try to refine this a little bit more so that you get the actions in front of you that you really want to see, the biological opinions and maybe the informals that you just identified regarding the artificial reefs; I don't know.

MR. BELL: Yes, I think your point, it might actually slow things down I guess; and I appreciate that. That is thinking ahead.

MS. SMIT-BRUNELLO: But in some ways you want it to slow it down potentially, so you could look at the formal consultations and all that. It is kind of a balancing act, I guess; but we can look at that.

DR. LANEY: What I'm hearing out of this discussion, I think is that it would probably be possible for you, in consultation with staff, to come up with maybe some sort of a suite of criteria

that would say, okay, if it involves such and such a species or such and such an activity, then it is something the council would be interested in; but if it doesn't, it probably wouldn't.

MS. SMIT-BRUNELLO: That sounds very logical. I am sure Jenny Lee and others in Protected Resources back at the Regional Office for the Fisheries Service would have a lot more knowledge and could help out, too, in maybe refining the kind of criteria and those sorts of things.

DR. LANEY: Okay, other comments on this aspect of the draft? I don't see any hands, so, Kari, do you want to continue?

DR. MacLAUCHLIN: The next one is more of the role of PR staff on the IPT process and amendment development. A lot of this is already kind of existing, just getting it on paper and talking about how PR staff are involved in the IPT process; particularly when we're developing alternatives, which alternatives could be a problem as far as ESA or MMPA compliant.

Then when PR staff is involved with analysis, the expectations for the timeline for that is to not slow down the amendment process; and then others we could put in there. It is more I think of maybe something that is more between the staffs, because we are the ones on the IPT.

DR. LANEY: Okay, any comments on that section?

MS. BURGESS: Thank you for recognizing me. In the introduction, the last sentence says that this document will also include some MMPA issues that interact with the council process. I think that this section of the IPT, how staffs are expected to behave is where you would want to address this.

From discussions with staff going through the amendment process, it seems like here is where you want to lay out the ground rules for how everyone is going to behave when you need things back from all the IPT members. The MMPA portion, which could be affected in the biological analysis section of the amendments, is only mentioned once.

Do you think as staff that this covers everything that you need to lay out, so that everyone can move forward working on the same page. Giving consideration to PR staff's time and the council's staff's time; can you work well and move forward in a timely manner with how it is laid out here?

DR. MacLAUCHLIN: I think so. These are things that we've discussed internally and kind of fit in with the IPT process as it is now. There always will need to be flexibility in everything, because you just never know what is going to change priority-wise and folk's time and resources. Then as far as the MMPA, we tried more to focus on ESA since that was kind of the focus of the working group and the directive and everything.

For us, our main MMPA issue is also an ESA issue, which is the right whales. They kind of will dovetail, because we don't have that many MMPA issues that the council deals with directly except for right whale here. That is why it is in there just to cover it. I don't know if we could explain a little more about how the council has been interacting with MMPA issues as well in there.

MS. BURGESS: The thought being as your staff that participates in the IPT, I think we would want to make sure that you are best served by this document and you can answer what needs to be there better than maybe what we could put forward.

DR. MacLAUHLIN: I would say I think on behalf of the staff that this is something that is ideal and would work for the IPT process.

DR. LANEY: Okay other comments, questions for Kari? I don't see any. You've gotten some feedback from us. Are you looking for any additional feedback at this point in time?

DR. MacLAUHLIN: I have one more. One more section and this is just how everything is set up right now just on paper, which is the PR staff involvement at the committee/council meetings. We have our updates from Jenny Lee and the documents, and that includes any ESA consultations, proposed regulations, recovery plans; all that information that she puts in there that you guys might be interested in and then keeps it updated.

Then also the SERO Protected Resources point of contact, so we have Jennifer Lee and Chip Collier. That is status quo. I don't know if there is anything else that you would like to add for PR staff involvement at the council meetings.

DR. LANEY: Does anybody have anything else? I don't see any other hands raised, so it sounds to me like you've done a pretty good job of covering everything. Okay, so that takes us down to me, I think; which is update on American eel status review and red knot listing. This is going to be very short.

For the red knot, I know that our staff are still working on the critical habitat designation. I know nothing about what the timeline is for that or when we can expect to see something on that. If I hear anything, I will circulate a note on it. With regard to the American eel status review, that process is still continuing.

I am assured that we will meet the September 30, 2015, deadline. I think it is moving along. I will note that I did send a paper out to some folks, and this is in the realm of new scientific information. If everybody wants to see it, I will be happy to circulate it. It is a paper by Scott Pavey Et Al, the title of which is RAD Sequencing Highlights, Polygenic Discrimination of Habitat Ecotypes in the Panmictic American Eel.

To interpret that for you, my read of this is that basically this genetic work that they did determined that there seemed to be two, I guess, habitat ecotypes is what they call them, but there is a genetic basis for these. What that means is that within the panmictic American eel population, there are two different variants; one that tends to seek out inland freshwater habitats; the other that is able to live and grow to maturity in brackish or marine habitats, which certainly seems to have some fairly significant implications for management of that species from a fishery perspective and also I think from a habitat perspective.

Given that if this holds up, it would seem that those animals that are predisposed to try and seek out inland freshwater habitats have been much more affected by the construction of dams and access blockage than the ones that are predisposed to seek residence in marine or brackish water habitats once they recruit to estuaries.

I've already been asked the question as to whether or not this will have any implications for the listing determination or not; and my answer is I have no clue. Our Northeast Region folks have the lead for it. They have the information; I provided it to them. I am waiting to hear back from them whether they think it has any implications or not.

But if people are interested, I will just circulate the paper to the whole council, just so you can see what that looks like. That is it as far as any update from the Service goes with regard to American eel and red knot at this stage of the game. Bob Beal.

MR. BEAL: One question for each of these critters real quick. For the American eel listing, as you know there was a negotiated date of September of this year to make the final decision for eels; and the Fish and Wildlife Service is obligated to do that through that legal negotiation. If new information becomes available such as what you just said, can that 2015 timeline – can we go back to the folks involved with that agreement and then potentially get an extension; do you know?

DR. LANEY: I don't know the answer to that either, Bob, but I'll find out. I should have an answer later today. I'll pose the question. Yes, that is a good question; I don't know.

MR. BEAL: On the red knot, not to turn this into an AMSFC meeting, but as you know red knots migrating north rely on horseshoe crab eggs as part of their main diet source to refuel and keep heading north. The main population survey for horseshoe crabs has been discontinued due to lack of funding. Now that red knots are listed, would that provide any access to the folks that want to do that horseshoe crab survey? Is there any money available due to this ESA listing; I guess is the short way of asking that.

DR. LANEY: I will stress the fact that I am very ignorant with regard to what can qualify for Section 6 funding; but it would seem to me that it could very well qualify for Section 6. I guess the way that works is that some state with a Section 6 agreement with the Fish and Wildlife Service would have to submit a proposal under Section 6.

I will defer to anybody around the table that has more knowledge than me of how the ESA works and that whole process works. But it would seem to me, Bob, that it probably would given that interrelationship between the two species and the need of red knots to refuel using the horseshoe crab eggs. But, again, I can look into that as well. I know Dr. Mallard is our resident expert on that; so that is a question I can pose to him.

MR. BEAL: I can reach out to Dr. Mallard as well and see what we can figure out.

DR. LANEY: I will definitely send this paper around to everybody, and I will ask my Region 5 colleagues that question. Nobody had any other business under other business. Dr. McGovern.

DR. McGOVERN: I just want to ask Chip what the next steps were for the ESA/MSA Agreement. What is going to be done next with that?

MR. COLLIER: The next steps are to send this to Protected Resources staff and have them review it and then kind of do e-mail discussions with it and maybe form a little team to get together to make sure that we are seeing eye-to-eye; everybody is getting what they want. Then



bring it back to the council afterwards. Right now there is an open comment period for reviewing the information that is included in listing or delisting documents for protected resources.

A lot of it has to do with the timing and also information that is provided in there. One of the requirements or questions is to have information for a potential listing or application for a listing is to have state agencies review it prior to it going to the U.S. Fish and Wildlife. I don't believe that is the case for National Marine Fisheries Service. The question is do you want staff to review that and potentially provide comments or are you guys good with the way the Federal Register is written or should we provide comments?

DR. LANEY: What is the pleasure of the committee on that point; any thoughts?

DR. DUVAL: I know that I saw the notice for this. I haven't actually looked at it. I just want to clarify what the change would be, which is that if this proposed change went forward, it would be that the state agencies would be asked to review any potential information that is being submitted as part of a public petition to U.S. Fish and Wildlife?

MR. COLLIER: I believe that is – it is getting a little gray in my head now with all the other information – but I believe that is that case. It is not that they would have to review it. They would be given a chance to provide additional information, and they would have the chance to say, yes, we have provided additional information, or they could say we did not provide any additional information at this time. It doesn't mean that you don't have it; you just didn't provide it at that time.

DR. LANEY: Michelle, this is kind of the way we did American eel. American eel is kind of caught in the transition before this notice came out in the Federal Register, but basically we're doing these – the name keeps changing – Species Status Reports now would be kind of Step 1 of a petition response.

Recall that with the American eel, we sent it to the ASMFC American Eel Technical Committee for review basically for two reasons. One, to sort of verify the validity of the information, but also to provide the states with an opportunity for submitting any additional information they wanted the agency to consider as it was making that decision.

My understanding is that is going to be standard operating procedure I guess from now on. At least that is what is proposed in the notice for the Fish and Wildlife Services is that these species status reviews would go to all the affected states, all the states within the range of the species that is being reviewed. The states would have an opportunity then to provide input. To me, it helps to make the process more transparent and provides input at an earlier stage of the game, and should improve things all the way around.

DR. DUVAL: Just a follow-up, so then similar changes are not being proposed for the NOAA Fisheries side of the house, so things would just remain the same? Okay.

MR. HARTIG: Basically I thought if the states saw value in that – and that is why I let Michelle go ahead first – that, yes, I think we should respond based on what the states want to do.

DR. LANEY: Okay, so I think we've got feedback to staff to provide a draft of proposed comments on that and you just circulate it for review to the council.

MR. COLLIER: Would they want a similar process to what U.S. Fish and Wildlife is having for NOAA? Is that one of the considerations for that, because that is going to change how I write it. I need a little bit of guidance on that. Speaking of workload, it could be a large workload for division staff to work on that.

DR. LANEY: Well, it certainly adds an additional step, for sure. My sense is that the information would be compiled, anyway. What it adds would be that extra review step in there where the material would be routed to the states for their review and input and possible supplementation if they had additional information that they felt wasn't reflected in the material that the agency had compiled.

DR. DUVAL: I definitely see the value in having that extra step in there. Chip is right in that it is potentially extra workload, although I guess you have the option of saying we may have additional information at this time, we are uncertain of that. We have been provided the opportunity to provide it, but we have not provided anything or will not be able to provide anything within the timeframe allotted; or something like that. I certainly think it would be useful.

MR. HARTIG: Well, as an analogy – and it is probably not a very good one – if we do this, I see a value in going to the sanctuary process and adding another tier of review in that process. That is what I was trying to get at going through that if the states saw value in doing it. I don't know if that is appropriate or not, but it just seems to me that is something that we could do.

DR. DUVAL: I agree with Ben. I think that is probably a good example of where you try to keep your finger in every pie that is in the oven, but you can't always do it. That is certainly an example of where you would have the heads-up that there is something coming out for which you might have additional information.

DR. LANEY: Okay, Chip, did that give you sufficient guidance there as to what we need to do?

MR. COLLIER: I think I'm clear, yes.

DR. LANEY: Okay, thank you for your comments and for your input. Mr. Chairman, I think that concludes our business.

(Whereupon, the meeting was adjourned at 3:10 o'clock p.m., June 8, 2015.)

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Signature

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Date

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**South Atlantic Fishery Management Council -  
June 2015 Council Meeting  
Key West, FL**

**Date: Monday, June 8, 2015      Committee: Protected Resources**

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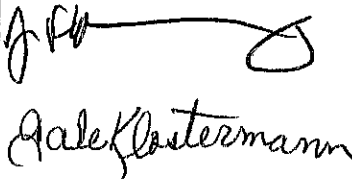


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		Charter/For-hire <input type="checkbox"/>	Other _____ <i>Describe</i>
	<input type="checkbox"/> On File	Commercial <input type="checkbox"/>	NGO <input type="checkbox"/>
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		Charter/For-hire <input type="checkbox"/>	Other _____ <i>Describe</i>
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	<input type="checkbox"/> On File	Commercial <input type="checkbox"/>	NGO <input type="checkbox"/>
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## General Information

Webinar Name	SAFMC Council Meeting - Day 1 of 5 (Monday)	Webinar ID	119-747-595
Scheduled Start Date	Jun 8, 2015	Registered	
Scheduled Start Time	8:30 AM EDT	Opened Invitation	33
Scheduled Duration (minutes)	540	Clicked Registration Link	63

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