

SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL

PROTECTED RESOURCES COMMITTEE

**King and Prince Hotel
St. Simons Island, Georgia**

March 3, 2015

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
Zack Bowen
Dr. Roy Crabtree

Council Staff:

Bob Mahood
Mike Collins
Dr. Kari MacLauchlin
Kim Iverson
Julie O'Dell
Dr. Brian Chevront

Gregg Waugh
John Carmichael
Amber Von Harten
Dr. Mike Errigo
Myra Brouwer
Chip Collier

Observers/Participants:

Monica Smit-Brunello
Dr. Bonnie Ponwith
Spc. Agt. Tracey Woodruff
Dr. Jack McGovern
Erika Burgess
Dr. Geroge Sedberry

Jennifer Lee
Roy Williams
Pres Pate
Barb Zoodsma
Iris Lowery

Additional Observers Attached

The Protected Resources Committee of the South Atlantic Fishery Management Council convened in the Sidney Lanier Ballroom of the King and Prince Hotel, St. Simons Island, Georgia, March 3, 2015, and was called to order at 10:45 o'clock a.m. by Chairman Wilson Laney.

DR. LANEY: We are convening the Protected Resources Committee. The first item is approval of the agenda. Are there any additional items to be added to the agenda? If there is no objection, we will presume the agenda is approved. The next item would be the approval of the December 2014 Protected Resources Committee Minutes. Are there any changes to those minutes?

Seeing none; is there any objection to the approval of those minutes? Seeing none; the minutes stand as approved. The next item would be the South Atlantic Protected Resources-Related Updates; and this is going to be done by the Southeast Regional Office Protected Resources Division staff. I believe Jennie is on the telephone with us.

MS. LEE: First is the petition to list Nassau Grouper under the ESA. NMFS published a proposed rule to list Nassau grouper as threatened under the ESA on September 2, 2014. NMFS determined listing was appropriate because spawning aggregations have been reduced in size and number due to fishing pressure and existing management measures are inadequate to protect these aggregations. We received 13 substantive comments including the South Atlantic Council's comments, so thank you. We expect to publish the final determination on whether or not to list the species. The final rule is applicable in late summer and early fall.

Atlantic Sturgeon Update: The ASMFC, in cooperation with NMFS and states, is initiating a stock assessment for Atlantic sturgeon. That is not anticipated to be completed until 2017, so just be aware. Atlantic Sturgeon Critical Habitat: We made preliminary determinations regarding Atlantic Sturgeon Critical Habitat and are working on evaluating the potential economic impacts of a critical habitat designation.

We're working with Department of Defense and U.S. Coast Guard to evaluate any national security impacts related to Atlantic Sturgeon Critical Habitat designation. I think most of you know this is stemming from a lawsuit. We've had this on the list a couple of times here, but the Southeast Region and the Greater Atlantic Region must submit proposed rules designating critical habitat to the Federal Register by November 30, 2015, per our settlement agreement that was approved on December 3, 2014.

North Atlantic Right Whale Critical Habitat: We've published the proposed rules. Barb Zoodsma with SERO Protected Resources is going to be giving a presentation so I'm not going to really read over anything written there. Corals: NMFS will finalize the recovery plan for elkhorn and staghorn corals by March 7, 2015, so that is coming up in the near future.

On January 13th we published an advanced notice of rulemaking and request for information on corals. As per the agenda, I believe Kari or someone from the South Atlantic staff is going to review that, so I'm going to skip the text here as well and go down to yellowtail damsel fish. On September 13, 2012, we had received a petition from the Center for Biological Diversity to list eight reef fish of the family *Pomacentridae* as endangered or threatened under the ESA.

There was only one petitioned species in the Atlantic/Caribbean, and that was the yellowtail damselfish. We published a negative 90-day finding on February 18, 2015. There is a link to the document if you want a lot of information about the decision-making, but basically we found the petitioned action was not warranted.

Consultations: I had hoped we'd be presenting an article for pelagics, but we do not have a biological opinion yet. It is in review and I've given you updates before on this consultation and what it entails. Again, it is in review now and it will replace the 2007 opinion. I feel confident we will be able to give you a presentation on that at the next meeting.

The Marine Mammal Protection Act Actions; we have our annual List of Fisheries that we published for the 2015 one on January 2, 2015. No major changes. You can look at the rules if you want. There is a link in the document. There is nothing to point out. Also, relative standard is the Marine Mammal Authorization Program. Every year we register vessels in Category I and Category II fisheries. We registered all of them by January 1, 2015, this year.

The Pelagic Longline Take Reduction Team is not directly applicable to you, but I did want to share that we've had some action here in terms of there was in-person meeting held – or I'm sorry, the in-person meeting is planned for December 1st through 3rd of 2015. We have a webinar planned coming up relative soon, March 30, 2015.

What we have completed was a workshop, which was held on February 18th of this year in Washington, North Carolina. The purpose was to engage fishermen and seek their input into possible changes to terminal tackle. If you're not really familiar with the Pelagic Longline Take Reduction Team, it is primarily dealing with interactions with pilot whales and Risso's dolphins.

The Bottlenose Dolphin Take Reduction Plan and Team; the final rule to amend the take-reduction plan to reduce bottlenose dolphin serious injuries and mortalities in the Virginia pound net gear published on February 9th. It will be effective March 11th. Again, there is a link there is you want more information of what it actually does. It is pertaining to, again, Virginia.

We are planning on convening a Bottlenose Dolphin Take Reduction Team Webinar in the summer of 2015 to discuss conservation measures needed to help the plan meet its mandated goals. The last item on the list is the Atlantic Large Whale Take Reduction Plan Update. The team met in Providence, Rhode Island, from January 12 through 14.

The team objectives included review, discussion and feedback on vertical line exemptions. They were provided with an overview of the upcoming Regulatory Amendment 16. The team's guidance was solicited on future direction and initiatives with a particular focus on monitoring results and team effectiveness. If you want to look at objectives and key outcomes, including Amendment 16, that is available in the document listed there. That is all for the updates that we've provided.

DR. LANEY: Thank you very much, Jennie. Questions for Jennie? Doug.

MR. HAYMANS: Thank you for the update. The Nassau listing; is it possible to see those 13 substantive comments prior to the final determination; are they available via website anywhere?

MS. LEE: Yes; I wonder if it is right in the rule itself. I haven't done rulemaking in a while, but I know they are available online through – I can't think of the name of it, if someone there can help me out; but all the s are available online and you can see the comments submitted. I can follow up with you directly. I will draw up an e-mail to staff on how you could do that.

DR. McGOVERN: I think it all should be available on FDMS.

MS. LEE: That was the acronym I couldn't think of; thank you.

DR. LANEY: Other questions for Jennifer? I don't see any see other hands raised, Jennifer. The only comment I would make is that the northeast region has drifted their proposed critical habitat and economic analysis for Atlantic sturgeon. They provided that to the ASMFC and requested at least three reviewers from the Atlantic Sturgeon Technical Committee.

Yours truly volunteered to be one of those. I finished the critical habitat review. I'm working my way through the economic analysis. I presume that one will be finalized in the not too terribly distant future. Moving on, our next items is, Kari, are you going to cover the advanced notice of rulemaking and request of information for corals.

DR. MacLAUHLIN: This under Attachment 2A. You have the Federal Register Notice and then we also have a draft comment letter that was in there, which is Attachment 2B. NMFS published a notification to agencies that they are considering regulations to protect – now there are seven coral species that are found in this region that affect us as threatened.

Those were elkhorn and staghorn, which have been listed as threatened for a while, and then we have five additional species that you guys heard about in September of last year. Then also a request for information of ongoing conservation activities; so Chip and I worked together, mostly Chip, on this and put together just a letter to outline the council's proactive approach to corals – and some of our corals are deep-water corals like the *Oculina* – just the role that the South Atlantic has played and then actions that they've already taken that could affect these.

So, the last time we had a comment letter for Nassau, you guys were able to – you can comment here and we can work on this Word Document or you can take some time and look at it. I would need any of your edits back probably by the end of this week or maybe the beginning of next week because the deadline is March 16th.

DR. LANEY: What is the committee's pleasure on this? Are people ready to provide edits to Kari now or do you want to take a few days to look at it further? Jessica.

MS. McCAWLEY: Could we have a few days to look at it a little more?

DR. LANEY: Okay, Ben.

MR. HARTIG: In your letter it says we believe the council has taken adequate action to protect these corals. It is incorporated with everything we've done to protect corals, but those specific species, I think if we could somehow word it that what we've done for maybe – what we think we've done for staghorn and elkhorn is helping to protect these other boulder star corals is enough. I mean, somehow just not to say we have, but to define it in what we've done that specifically addresses those corals.

DR. MacLAUCHLIN: Well, in the Spiny Lobster Amendment 11, when they put those closed areas in, that was one of the criteria was that those five species were under review and possibly going to be listed as threatened, and they were part of the criteria for selecting some of the sites. Those five new species also existed in those sites. That action was specifically linked to the five new species.

MR. HARTIG: Okay, I wasn't clear on that and now I know.

MS. SMIT-BRUNELLO: Kari, I'll shoot you some comments, but under the management actions I think we also have to add in the fact that octocoral management at least in Florida I think was turned over to the state of Florida in a fairly recent amendment; so the fishery management unit for octocoral goes from Georgia up through North Carolina. I think you shortened the management unit so that Florida could manage octocoral harvest in federal waters. I'll get the exact amendment that did that with the final rule and all that and we can add that in.

DR. LANEY: Other comments or concerns? I don't see any other hands raised; just to summarize there, we will give committee members or council members until the full council session, I guess, to get any additional comments into Kari? Is that sufficient, Jessica?

MS. McCRAWLEY: We'll try. We're coordinating throughout the agency on our comments, so we'll try.

DR. LANEY: Okay, thank you. Kari, do you have a drop-dead date?

DR. MacLAUCHLIN: If you could get them absolutely to me by close of business on Wednesday, March 11, I think that would be enough time.

DR. LANEY: Thank you. Ben, your comments and your concerns were addressed by Kari's response, I believe, and then Monica will be getting us some language to address the octocoral management unit. Do you have everything you need there, Kari? I think that takes care of Item 4. We can move on to Item 5, which also Dr. MacLauchlin, to address the ESA/MSA Integration Agreement.

DR. MacLAUCHLIN: Okay, these are listed under Attachment 3A through 3C. Attached 3B is the ESA Working Group recommendations and we've reviewed those. That was a group of MAFAC and CCC members. Then also NMFS staff came together and discussed some issues in each of the regions, specifically the ESA Section 7 formal consultation process and then also on data quality.

They provided a report to the CCC and MAFAC and NMFS and then recently NMFS released this policy directive, and this is specific to the councils' involvement with formal consultations. The data quality that the ESA Working Group discussed will be addressed in a different policy directive down the road. This one is just specific to the formal consultation.

The most important part is that the directive recognizes the unique roles that the councils have in the formal consultation process; and under the authority MSA, they don't need to be designated as an applicant or an action agency to be involved in that consultation process.

It outlines the coordination and involvement starting at the very early phases of development of a formal consultation can work and then also outlines a process for creating these MSA/ESA integration agreements. We had talked about an MOU, and this is the terminology that they use in the policy direction is this integration agreement, so that is what I'm going to call it, but it is the MOU that we've been talking about to go ahead and getting started on developing something so we have it down on paper how the South Atlantic Council can be involved.

Again, some recommendations that you could do, set it up on a case-by-case basis or some kind of general process that you're going to follow when it comes to a biological opinion, and then it also outlines the timing, the resources, considerations for, for example, if the council wants to review a draft biological opinion, how that can change some kind of management action because of the timing.

I will be working with Jennie Lee on this. We have this around just a list of items that we could put in this integration agreement. In the policy directive it points out that some councils already have existing agreements or some kind of process like we have, for example, Jennie always gives us updates on biological opinions and then we have Protected Resources folks on our IPT.

We do have communication I think about what we're interested in is developing some kind of agreement where it is very clear to everybody what is feasible, how the council can be involved to be useful and then also just improving that communication during this process. We have in 3C a draft list of MOU items. Sorry, I'm going to use the integration agreement and MOU interchangeably, but I'm talking about the same thing.

These are just some ideas that have either come up at committee meetings or staff. We've put together some items that we would like to be able to put into this integration agreement and really kind of spell out how this work so everybody is very clear on this. The first one would be council involvement in formal consultations; how that would work preliminarily.

Would it be something that the council could opt out of anytime where they say at the beginning their level of involvement in a formal consultation. We need to lay that out and then during the consultation we get at the council meetings on the process. One thing that the council may be interested in is some way that they could have input on when they're developing these reasonable and prudent alternatives and measures those items that actually could turn into a council action; having some input on those beforehand, during the consultation and development of it; and then also council or SSC review of data that is used in a formal consultation; some kind of mechanism for that.

Then when it comes to the biological opinion, a review of the draft opinion, and I think we've already discussed that the council will be able to review a Draft Snapper Grouper Biological Opinion when it comes down the road here; and then how would do that? Would they need to do that upon request before it starts down the road or is it just always going to happen anytime there is a formal consultation? I don't know if you want to stop in between or just go through the whole thing and then discuss.

DR. LANEY: What is the committee's pleasure on that; do you want to go through the whole thing first? Okay, I see some heads nodding so just go ahead and finish, Kari, and then we will take comments and questions at the end.

DR. MacLAUCHLIN: Next is the role of the PR staff and the IPT process. This is already basically set up and we're just getting everything kind of out there. They continue that involvement of the PR staff on the IPTs and IPT calls and they provide input on the alternatives in the early stages of development.

We can set up, if PR staff are involved, writing assignments, how that works with the amendments and the deadlines for those. You can get those moving through. Then we have our PR staff involvement at committee and council meetings, which we have with Jennie, who is either on the phone or in person, and gives us updates on all the PR-related issues.

And then also some kind of contact on the PR staff, and Jennie plays that role mostly for us, but who is a specific person for the council staff to get in touch with and get updates from and items like that. These are just things that we feel like that if they're spelled out a little more clearly, then everybody just knows what their job is and what is expected and what is doable. A lot of times it is kind of fuzzy and I think it is because we've never had that discussion and we don't have this process and expectations kind of laid out.

DR. LANEY: Thank you, Kari, and I take this is a very important thing for the council and staff to do, and I think it is only going to become more important in the future since the likelihood is we'll be dealing with more species being listed. I'll be the optimist and say hopefully some will get recovered and unlisted as well. We've down-listed or de-listed a few so hopefully that will happen. Do we comments, questions, considerations? Jessica.

MS. McCAWLEY: What is the timeline for the development of this?

DR. MacLAUCHLIN: There is none at this point. I mean, it is really I guess up to how we move this through. The policy directive that just came out recently and there is no timeline for that.

DR. DUVAL: I think it would probably be helpful if maybe by the end of this council year there can at least be some draft agreement that is hammered out. This is a preliminary list of items, but I would that would hopefully be sufficient time to fill it in. I just had a question on the policy directive, and this is probably just a clarification of terminology. Maybe Monica can help me out with this, but it sounds like for a lot of the things that we would be dealing with, NOAA Fisheries is both the consulting agency and the action agency.

MS. SMIT-BRUNELLO: On biological opinions for fishery matters and those sorts of things, yes.

DR. DUVAL: Okay, I just wanted to make sure I was reading things clearly. There is also the policy – I mean, just because the council may request to review a draft biological opinion, it does not necessarily mean that we're going to get to do so at least according to this policy?

MS. SMIT-BRUNELLO: I will confess that I need to read the policy even a little closer than I have to answer that question in a meaningful way, so I will do that, because I'm not sure..

DR. CRABTREE: I think if you asked to see a draft biological opinion; that you will get to see one. You'd probably want to be judicious with doing that, though, because that will slow the whole thing down a fair amount. Before we issue a draft biological opinion, we have to finish it and then it has to be cleared by the attorneys and it is ready for signature.

Given the time in the council meetings and depending on what you want to do with it, it will add several months to review, and then we'll have to deal with all the comments that come in on it. I would guess if you asked for a draft biological opinion that is focused on a council action, we would agree to provide it to you.

DR. DUVAL: And I was just reading the sentence that is like on Page 9 of the document that says, "It is expected that NMFS will generally grant a council's request for involvement in an ESA Section 7 process. However, NMFS may deny the request in circumstances that include NMFS' determination that the council's requested level of involvement would violate federal law or the order of a court in ongoing litigation or when existing deadlines do not provide sufficient time for the level of involvement requested."

DR. CRABTREE: Yes; in a number of cases we are engaged in a settlement agreement to produce a biological opinion by a date certain. If meeting the court-ordered timeline didn't allow us to issue a draft biological opinion, then we would have to adhere to the court deadline.

DR. LANEY: Okay, other comments or questions or guidance to Kari? Notice there are several "other" with question marks after them under Items 2 and 3 there; so I presume staff would be looking for any additions under those two headings in the draft.

DR. MacLAUHLIN: The way that council staff were thinking about this is that it is similar to our follow-up, which is basically the NEPA/Council _____document where staff basically knows what is expected of us and the timeline and what we're supposed to be writing and how it is supposed to work.

Of course, there are things that change and people's shifting responsibilities and workload, but that is kind of what we were imagining this to be is this process, everybody gets it, understands how it is supposed to work, everybody agrees on that and we can move forward and improve communication and make use of the expertise on this council in formal consultations.

DR. LANEY: Thank you for that clarification. Any other comments or questions at this point in time? I don't see anything. I believe we can move on to the next item; and that would be Dr. Zoodsma, "Proposed modification to North Atlantic Right Whale Critical Habitat".

DR. MacLAUCHLIN: Mike Collins sent this presentation around to you guys right before we started.

DR. ZOODSMA: I was asked to talk about critical habitat. I know you guys are running a little behind on your agenda, so I'm just going to move through this fairly quickly. To start out, I'm not going to be talking about habitat-related actions in the North Pacific. That's not too germane to us, so I thought I'd leave that off. I'm also not going to talk a whole lot, but I will touch upon critical habitat in the northeast for the same reason. I will focus on critical habitat down here in the southeast region, which in our proposed rule is referred to as Unit 2.

What I'm going to talk about is where the existing critical habitat is, why we visited right whale critical habitat, the process that we went through in identifying the area that was appropriate for critical habitat revision/designation, the proposed area that we're using or that we're proposing for critical habitat, what may affect the critical habitat and then some place where you can go to get some additional information.

The existing critical habitat in the North Atlantic was established for northern right whales back in 1994, and these areas were identified as being important for feeding, nursery and calving habitat for northern right whales. Keep in mind that this was established back in 1994, so that was over 20 years ago. It was based primarily on opportunistic sightings at the time.

There were in the southeast very few, if any, dedicated aerial surveys for right whales. In fact, I was in graduate school at the time studying manatees and I remember researchers coming down into the area in '89 and '88, and they were on the hunt searching for the right whale calving area. It was back in the late eighties that the area was rediscovered as a calving area for right whales; so five years later than critical habitat was established.

You can imagine that there was not a lot of information that was going into this. Subsequent to northern right whale critical habitat being established, in 2006 NMFS completed a status review of right whales and consequently listed the endangered northern right whale into two species; the North Atlantic right whale and the North Pacific right whale.

Why I bring that up is because the Endangered Species Act requires us to establish or designate critical habitat upon issuance of a final listing. In 2008 we had to list in determination; so that was one of the things that required us to look at critical habitat. Also, NMFS found that a 2009 petition to revise critical habitat presented substantial information, new information, that we should consider and that a revision might be warranted.

The Endangered Species Act defines critical habitat – and I'm not to read all of this; I will let you all enjoy that some other time. I will just say that within the geographical area occupied, critical habitat consists of specific areas on which are found those physical or biological features

essential to the conservation of the species and that may require special management consideration or protection. There are kind of two prongs there.

Given that the area off the Southeastern U.S. is the only known calving ground for North Atlantic right whales and the most biologically valuable portion of the species' population is utilizing this habitat, we concluded that facilitating successful calving by protecting the species' calving area is a key conservation concern.

To identify the specific areas that may meet the definition of critical habitat, we focused first on specifically defining what constitutes a calving area for North Atlantic right whales; that is, what are the functions that this area provides that promotes successful calving and rearing. We then examined these functions and next identified those physical or biological features that are essential to the conservation of a species because they provide calving area functions to the species in these areas. You can see this was a very fun process.

The physical features of right whale calving habitat essential to the conservation of the North Atlantic right whale are calm sea-surface conditions of Force 4 or less, water temperatures of 7 to 17 degrees Celsius and water that is 6 to 28 meters deep and where these features occur simultaneously over a contiguous area of greater than 231 kilometers square and for the months of November through April. Those are the essential features that we identified.

The way we identified these areas, we used two sources of information; and it appears to be three sources, but it is really two. Garrison 2007 is a science center tech memo, and that work was subsequently published by Keller et al, and Garrison is one of the et als, in 2012, so that is one modeling effort that was used; and then Good et al was also used in 2008.

I'm not going to get into the details of those reports and those modeling exercises. I've presented on those previously and they're pretty detailed, but I'll just leave that to you to look at later. Proposed calving area critical habitat in the Southeast U.S. extends from Cape Fear, North Carolina, to 29 degrees north latitude, which is approximately 43 miles north of Cape Canaveral.

It goes from the shoreline out to these waypoints that are designated or specified within the proposed rule. This area extends roughly 22 to 25 nautical miles off the South Carolina/North Carolina area, about 35 nautical miles off Hilton Head, 35 to 40 nautical miles off Georgia, and then that point there where it comes in pretty close to the Georgia/Florida Border there is about 25 nautical miles off the St. Johns River, just to give you some idea of the distance offshore.

A similar process was gone through up in the northeast to identifying foraging habitat, and I'll not get into those essential features other than they looked at some specific oceanographic conditions and flow velocities and also the copepods that right whales feed on. The area that we are proposing for critical habitat greatly expands the previous designation, as you can see.

I just want to remind you that the key benefit of designating critical habitat is that other federal agencies are put on notice that they need to consult with us if they intend to authorize, fund or carry out any activities that may affect critical habitat. Critical habitat, again just to loop you back, is go back to those essential features that I mentioned.

We looked at past consultations to consider and assess what types of categories might we anticipate to be affected by this critical habitat designation. Some of those include the NPDES permitting process, oil spill response, dredging and spoil disposal, marine construction permitting and construction and operation of energy facilities.

We also considered some new things that are going on that we haven't encountered in the past over history, and some of those new categories that we anticipate might affect critical habitat include oil and gas exploration and development, offshore alternative energy development, directed copepod fisheries and marine aquaculture.

Here is some additional information that is available that you might want to consult. The Biological Source Document goes into detail on how we identified the physical and biological features. The ESA Section 4(b) (2) Report goes into our consideration and analysis of economic impacts, impacts on national security and other impacts that we might expect from this designation.

Finally, you can go to regulations.gov. It is actually a fairly useful website; I go there myself quite a bit. You search for the Docket ID of NOAA-NMFS-2014.0085. This will pop up and you can get the Draft 4(b) (2) Report. You can also get the source document that supports this rulemaking. The comments are due April 21st. I think eventually you will also be able to see comments that are submitted on this rulemaking. That is all I have, and I hope I was able to get you back on course here.

DR. LANEY: Okay, I see lots of hands up here. Dr. Duval.

DR. DUVAL: This is a really ignorant question, and I freely confess that. Directed copepod fisheries; where – I mean, what gear type and where is that being prosecuted. I just haven't heard.

DR. ZOODSMA: I'm going to have to defer you to our Northeast Regional Office. I don't know about copepod fisheries either.

MR. COLLIER: The directed copepod fisheries are going up I think in the Gulf of Maine, and it is mainly for food for aquaculture.

DR. DUVAL: What gear type?

MR. COLLIER: It is a trawl.

DR. LANEY: A very fine-mesh trawl, I would imagine; somewhere on the order of maybe 500 microns or so. Lt. Fowler.

LT. FOWLER: This also might be kind of a dumb question, but does that make the entire critical habitat a no-discharge zone?

DR. ZOODSMA: What was that; does it make it what?

LT. FOWLER: A no-discharge zone.

DR. ZOODSMA: Do you mean a no-discharge zone?

LT. FOWLER: Right.

DR. ZOODSMA: No; you're talking discharge zone?

LR. FOWLER: For sewage and oily water.

DR. ZOODSMA: Okay, no; if you will look at the 4(b)(2) report, it goes into a discussion on what the types of things are that we expect will be affected by critical habitat and that is not included in there, I don't believe.

MR. BELL: Does critical habitat have the speed reduction requirement throughout the whole thing or is that just port-specific?

DR. ZOODSMA: The speed restrictions on vessels is independent of this. This is just habitat; that is to protect the animals themselves.

MR. BELL: Okay, and then the parameters you're using to identify critical habitat, sea state, water depth, water temperature, time; if those have been in place for a while, why now? Why are we adding this on now? If those were the parameters originally, wasn't that whole area designated originally, I guess?

DR. ZOODSMA: Remember I said that critical habitat for northern right whales was originally designated in 1994, and they were just opportunistic sightings. It was very a data-sparse time. What we know now has been greatly improved upon based on all of the aerial surveys that we've been flying and all the extra data we've been collecting and modeling; and so we were able to make a much firmer linkage between those things now than we were back then.

MR. BELL: But it is not necessarily backed up with sighting information. It is just dealing with the physical parameters. Those are the parameters where you do see them, I guess, or have seen them so the assumption would be that, well, they might be in there then, right?

DR. ZOODSMA: The modeling work was based on sighting information. What the modelers were doing was linking the right whale sightings to what were the environmental features that we could use to predict their distribution. That information was not – you know, we weren't able to do that prediction back in 1994.

MR. HAYMANS: First a comment, I guess, and then a question to the council. That regulation.gov website that was up there, the search part was simply Nassau grouper search and a little bit of digging got me to all the comments there. I guess any of those petitions, anything is there.

Sort of in the same vein as Lieutenant Fowler's question; regarding the dredging disposal sites, all of our southeast offshore sites are in within critical whale habitat now. One of the restrictions on dredging is wintertime dredging because of summertime turtles. Now we've got a protected species that is limiting the time of dredging in the summer and a critical habitat that is probably going to limit – how does Protected Resources sort of debate which of those species are more important when it comes to things like dredging? What is the process there?

DR. ZOODSMA: Whoever has seniority wins! No, that is a good point that there is a conflict between what turtles require and what right whales require. Yes, it is trying to find a balance to make everything work. I don't have a solid answer for you on that. It is just trying to work it out when the projects come up.

MR. COX: As I was looking at the critical habitat area, I was looking through some old pictures the other night, and I came across some where there were some sharks – I think a couple of them might have been great whites, but they were eating a whale. Do you guys take into account the increased sightings of the great whites in the critical habitat and how there may be some take on the calves? I don't never hear much talk about that.

DR. ZOODSMA: Your question isn't really related to critical habitat. It is just have we seen great white sharks taking right whales?

MR. COX: Well, it is related to critical habitat and the fact with the tagging program on the great whites now; that is where we've seen an increase abundance of the great whites in the same area that the whales are traveling in.

DR. LANEY: I think Jack is coming at it from the perspective of predation being one of the – you know, maybe an increase in predation being one of the threat factors you would look at.

DR. ZOODSMA: The point I was trying to make, Jack, is depredation from sharks is a right whale take. White sharks aren't doing anything to affect critical habitat, right? They're not doing anything to affect water temperature or water bathymetry. Do you see where I'm coming from? They are affecting right whales. Now, have we seen and do we consider white sharks taking right whales? It is a natural process and we're aware of it. We often have to compete with the white sharks to tow carcasses in.

MR. COX: I appreciate that. As we talk about eco-based management, I just continue to bring up how sharks are interacting with species that we're trying to protect all the time.

MS. BURGESS: In reading the Notice for Proposed Rulemaking, in the social and economic analysis section I noticed that there was comment regarding the northeast critical habitat designation that stated that designation or expansion of the critical habitat in the northeast would not impact any fisheries' operations beyond the copepod fisheries, potentially. But there is no similar statement for the southeast region, and I was wondering why a comment was made about the northeast and not the southeast. That is pertinent to us as a council.

DR. ZOODSMA: I don't know why it was made for the northeast and not for the southeast, but I think it is fair to assume the same statement would apply in the southeast.

DR. LANEY: Erika, did you have something specific in mind?

DR. ZOODSMA: The only thing that is mentioned in the 4(b)(2) report – again, I'll draw you back to that report as an analysis of what potential impacts there might be from this critical habitat designation is aquaculture. If there are a lot of pens that are established that would prevent right whales from moving around in the large calving area, something like that may need to be assessed.

MS. SMIT-BRUNELLO: To Erika's question, too, that would be a great comment perhaps that you could make to the proposed rule that is out. You could ask the Fisheries Service that and then they would answer that in the response to comments in any final rule that was issued.

DR. MacLAUHLIN: In your briefing book you have Attachment 4A, and it is a PDF portfolio. It has two sets of PDFs in there. One is the full Federal Register Notice; and then the other one just says, "Protected Resources Committee, PDT"; and if you open that one, I have in there the draft biological source document link.

That is something that Barb was talking about, and that is what has all the information about the models and everything. The Draft ESA Section 4(b) (2) report that also talks about the social and economic impact and the link to that. That is what we were referring to. I just want to make sure that everybody knows how to get there if you want to check it out.

DR. LANEY: Thank you, Kari, for pointing that out to all of us. Are there other comments or questions regarding northern right whale critical habitat at this point in time? Seeing none; then I think we'll need to take Monica's comment about the fact that the council may want to comment with posing Erika's question as part of our response. If that are no others; then that moves us to Item 7, other business. Do we have any other business? Monica.

MS. SMIT-BRUNELLO: I don't know if is other business, but it is in answer to Chris' question yesterday. After the BOEM presentation, he asked a question about why couldn't commercial fishermen apply for an incidental harassment authorization? I should have thought about this yesterday and I didn't.

These incidental harassment permits, so to speak, are issued for things like military and sonar training exercises, oil and gas development, geophysical surveys, all those kinds of things that BOEM was talking about. They're not issued for commercial fishing operations because that is covered under the Marine Mammal Authorization Program.

In Jennie Lee's presentation, she mentioned I think the List of Fisheries for 2015 just came out on January 2nd. Every commercial fishery is categorized or it is put into Category I, II or III. I believe black sea bass pots I think are the only Category II fishery that you manage. In the Mammal Authorization Program, that is how they deal with the incidental take of any marine mammals.

If you fall within a Category I or II, I think that you're required to get a Marine Mammal Authorization Certificate and then you have reporting requirements and all those sorts of things. The Fisheries Service handles commercial fisheries separately than they do some of those other categories of activities like BOEM was bringing up.

MR. CONKLIN: That is the answer to the question, so thank you.

DR. LANEY: According to my clock, we have six minutes left in our time allocation of one hour; so I'll give a quick update on American eel so we don't have to do on Friday. The Service has completed its review of that species. It has a recommendation drafted. It finalized the species biological report as a result of the peer review, and that document has been finalized. It hasn't been released yet.

My understanding is it will be released when the Federal Register Notice comes out. Any supplemental information that is provided on American eel – and we do have some coming in from some of my USGS colleagues and U.S. Forest Service colleagues who are doing some work with American eels in Puerto Rico will be included in the Federal Register Notice because the staff wanted to be able to go ahead and finalize the species biological report.

The core team has been briefed; the regions have been briefed; and I guess we're in the stage now where the staff is preparing the formal recommendation package that would go forward to headquarters. I hope to be able to report something to the council before the September 30, 2015, deadline, which we are under to complete that process. That is all I can say at this point. Mr. Chairman, that concludes our business, and I'm yielding five minutes to the Chair.

(Whereupon, the meeting was adjourned at 11:40 o'clock a.m., March 3, 2015.)

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