

# **SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL**

## **PROTECTED RESOURCES COMMITTEE**

**The Beach House Hilton Head Island  
Hilton Head Island, South Carolina**

**September 14, 2015**

### **SUMMARY MINUTES**

#### **Committee Members:**

Dr. Wilson Laney, Chair  
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Ben Hartig

Anna Beckwith  
LTJG Tara Pray  
Jessica McCawley

#### **Council Members:**

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Zack Bowen  
Mark Brown  
Jack Cox  
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#### **Participants/Observers:**

Dr. Jack McGovern  
Andy Herndon  
Monica Smit-Brunello  
Sean Meehan

Tony DiLernia  
Dr. Bonnie Ponwith  
Roy Williams  
Erika Burgess

Additional Observers Attached

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The Protected Resources Committee of the South Atlantic Fishery Management Council convened in the ballroom of The Beach House Hilton Head Island, Hilton Head Island, South Carolina, September 14, 2015, and was called to order at 10:45 o'clock a.m. by Chairman Wilson Laney.

DR. LANEY: We'll get the Protected Resources Committee started. The first item is approval of the agenda. Does anyone have any additions to the agenda? Seeing none; we will consider the agenda approved. The second item is the approval of our June 2015 minutes. Does anyone have any corrections or comments on the minutes? Seeing none; is there any objection to approving the minutes? Seeing none; the minutes stand approved. The third item is update on protected resources; and I believe Andy Herndon of the Southeast Regional Office is with us to do that.

MR. HERNDON: I am going to go through – hopefully, you guys can see all my points here, so we're going to start off with the briefing document I think everybody has seen or it is at least in the briefing book. The first couple things up here are actually more reminders than updates. I'll go through most of them quickly.

The first one is our Nassau grouper situation. We'll still working on that. We received all of our comments. We're looking to the final rule and addressing those comments, and we're still hoping to get a final rule published later on this fall. Down here to Atlantic sturgeon, we're still working on critical habitat for that. Hopefully, also later this fall we'll have something in place.

For the North Atlantic Right Whale Critical Habitat, again no real updates since last time you heard about that. The comment period closed last April and we're still working through those comments; and then we are also hoping to have a rule out by early 2016 on that. Nothing new to give you guys on corals except something we probably should have updated you on during our last meeting; and that is that we've gone ahead and posted a recovery outline for our five newly listed species. That is on our website; you can see it there.

This is not, I want to repeat this is not a final recovery plan, but it is something that will probably help guide us when we put one together. Folks interested in that should check it out. Jumping on to green turtles, a couple updates there, the primary one being that the comment period regarding our proposed distinct population segments for green sea turtles is going to close it looks like about two weeks from now.

The link there is available if anybody wants to provide comments on that. I am also hoping for a final rule on those determinations by next spring. Then a little bit of good news for our green sea turtle nesting; and that is we've broken our nesting record in Brevard County this year with over 12,000 nests so far this season, which is obviously a pretty big deal for us. We've also had a great year in Georgia, but we haven't heard anything yet from South Carolina and North Carolina, so we're not real sure how far all that good news extends. I will move on unless we've got any other questions about any of that stuff.

DR. LANEY: Andy, yes I've got one question on the green sea turtle thing. With that kind of nesting density in Florida; did we run into any issues with turtles disrupting previously laid nests at all?

MR. HERNDON: That is a great question. I would, just based on density and because of where the shorelines are set up there, there is a good chance there may have been, but I don't know. I can sure look it up. I can check on it for you if you would like to know.

DR. LANEY: Any other questions for Andy on this part? Okay, I don't see any hands, go ahead.

MR. HERNDON: All right, so moving on next is our Section 7 stuff. Good news, we finally got our Coastal Migratory Pelagics Biological Opinion completed, and I will go into a brief presentation following my updates here on that. Something else to give you guys a heads up on is our TED Compliance Policy Document that we're working on.

Some of you may or may not be aware, but in our most recent biological opinion for the shrimp fishery a lot of our take estimates are based not actually on numbers of turtles, which is what we've kind of done historically, but actually it is more based on compliance with TED regulations.

Part of that situation was that if we got to a period of time where there wasn't enough TED compliance that we had talked about what we do, for example, time/area closures and that kind of thing to address this TED noncompliance; and so part of the biological opinion is that we were going to develop some sort of policy document describing when and how and all that kind of thing that we would implement in kind of time/area closures.

We're in the process of finalizing that document, and hopefully we will have that ready to publish soon. That is it for our Section 7 stuff of notes. Does anybody have questions on any of that stuff? All right, so the last item of note here is our Marine Mammal Protection Act items. The first one is we've got a Pelagic Longline Take Reduction Team Meeting coming up in December. That will be an in-person meeting in Virginia.

Then we have two webinars coming up. The first one is going to be our Bottlenose Dolphin Take Reduction Team. That will be November. We are also slated to have a webinar for the Atlantic Large Whale Take Reduction Team as well. Then two quick kinds of policy regulatory notes; we've published a proposed rule that is going to try and tweak or change some of our MMPA regulations regarding interactions with marine mammals in foreign fishing fleets and more specifically how we would export or import fisheries' products from those countries.

Some of you may be familiar with the TED regulations and the TED programs we have where we evaluate the TED compliance in other countries and when we import shrimp, for example, from countries that have similar TED programs in place. I am not sure on the specifics specifically for the MMPA stuff, but it would be the same kind of thing in practice. We've got public comments are available on that rule in November, and you can see the link there. It should be in the briefing book if anybody wants to provide comments on that.

Then finally the List of Fisheries; we're in the process of updating our List of Fisheries as we do annually, but at this time it doesn't look like we have any major changes that would affect any of

the fisheries that the council manages or needs to worry about. That is it for my updates unless we've got more questions.

DR. LANEY: Okay thank you, Andy, for that comprehensive report. Does anyone have any questions for Andy? I've got one. Do you have any idea when the BO is going to be completed for the fishery independent surveys? I know that one is still under development, I guess.

MR. HERNDON: Yes, it is. I wondered if you were going to ask about that, Wilson. Yes, the good news is I have finished writing it. It is now in review. It has gone through our first two rounds of four for review; so I am addressing comments and I hope to get that down to our attorneys in the next couple of weeks.

DR. LANEY: Okay, excellent, thank you; and let me know if you need any other information on the winter tagging cruise. Okay, if nobody has anything else for Andy, then we'll move on to the next item, which is the Coastal Migratory Pelagics Biological Opinion.

MR. HERNDON: As I mentioned; I'm with Protected Resources. I'm going to give you what I hope to be a relatively brief summary of our newest biological opinion on the coastal migratory pelagics fishery. It is interesting; this is really kind of an update from the previous biological opinion dated 2007.

It is a non-jeopardy opinion and it also has no requirements of the council in our terms and conditions or reasonable and prudent measures. I'm not going to spend a lot of time getting into the nuts and bolts of the opinion just because it doesn't necessarily apply to folks here; but if you have any questions, please go ahead and stop me and I will try and answer anything I can.

I think you guys have a copy of the biological opinion itself; and so hopefully any questions you might have would actually be in the opinion as well. Real quickly, this is kind of what we're going to go over today. I'm going to go over the Section 7 triggers – this is for all Section 7 consultations, all formal consultations – and explain why we even did a biological opinion for the coastal migratory pelagics fishery in the first place.

Then I'll touch on both the species and the critical habitat that the opinion determined were not going to get adversely affected by the fishery. Then I'll go over the species that we did think were going to be adversely affected; and those are the species we think there will be take for; kind of genetically and generally go through how we estimate a take for those species.

We'll touch briefly on the overall conclusion of the biological opinion. We'll show you guys what our actual take estimate is; and then I'll summarize kind of the reasonable and prudent measures and terms and conditions of the biological opinion. Under our ESA regulations there are four reasons that we would have to reinitiate or redo a formal consultation; and you can see those four items there.

The first one is if we have an incidental take statement that we've issued in the past that somehow gets exceeded. The other one is if we get new information that indicates there are effects occurring that we didn't look at in the previous biological opinion. The third one there is if an action has changed or something, for example, happened in the fishery that was now

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creating or causing a new effected species that we didn't look at; we would have to reevaluate those new facts in a new biological opinion.

The fourth one there, as you can see, is if we get new species listed or if there is new critical habitat designated that might be affected by the fishery. For us that was the case here when we had the Atlantic sturgeon listed, we were concerned about interactions between the gillnet portion of the coastal migratory pelagics fishery and that new species, so we needed to reinstate consultation.

Here are the species we determined were not likely to be adversely affected. On the left you can see the species, even though a column there obviously is what the actual effect determination was under the Endangered Species Act; and then the rationale is briefly provided there on the right. The general case was more of an offshore marine mammal species that we just thought were not going to overlap much with the fishery, if at all, our more coastal species of marine mammals.

There was a little more concern; but because of the regulations in place, we weren't too worried about those interactions actually occurring. Gulf sturgeon just doesn't really occur out in federal waters, so we weren't worried about impacts from the federal fishery on those guys. And then and corals, kind of the same thing; the gear was just unlikely to really contact the species that might be out there.

A similar situation with critical habitat; and none of the critical habitat units that we have down in the South Atlantic that might overlap with the fishery were anticipated to be affected. You can see here – I won't go into all of that because it is a little bit confusing, but the general point was that because of the way the fishery operates; these entities were not likely to be adversely affected by continued fishing.

Now moving into the species that we did think were going to be adversely affected; in all cases it was an entanglement with the gillnet gear is where we anticipated a take may occur or where an interaction might occur. We had all five of our species of sea turtle, smalltooth sawfish as well, and then all five of our newly listed Atlantic sturgeon DPSs we thought might become entangled in gillnet gear.

I'm going to go through in the next couple of slides how we estimated our take, and you can see these on the far right column. This is where the data came from when we came up with these estimates. Real quickly, for sea turtles, the first three i essentially a three-step process. The first one was to estimate the total number of sea turtle captures in a given year.

The next was to break down those captures by species; and then finally we were trying to estimate whether or not any of those interactions might result in mortality. Once we got takes broken down by species, we applied our post-release mortality estimate to those numbers to come up with potential lethal interactions. Actually I should point out at the end of this presentation – I think you guys got it – I've provided the actual numbers for each one of these estimates; so you can actually see and you can actually walk through how the numbers were arrived at.

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I am not going to go into it here; but if you do want to look at the actual calculations, they are at the back of this presentation as well as in the biological opinion itself. But just real quickly as you can see here, the general idea was to first come up with the CPUE for the fishery – I'm sorry, just the general effort estimate for the fishery.

That was done using Southeast Fishery Science Center trip data. Based on the data we had available; we also then calculated a sea turtle CPUE for coastal migratory pelagic gillnets. The third step for us to make total captures then was to just multiply that CPUE for sea turtles by our estimated coastal migratory pelagics gillnet effort; and that is how we arrived at a total number of sea turtle captures.

Using that number of total sea turtle captures, we then looked at our sea turtle stranding and salvage data to try and estimate just overall species; composition and which species were most likely to be in the area and therefore which species were most likely to be affected by the fishery. That gave us our breakdown of take by species.

Then finally, as I mentioned, once we had that number, we applied the post-release mortality estimate that we had from a different gillnet fishery – not coastal migratory pelagics, but some of the published literature gave us a post-release mortality estimate for sea turtles in gillnet gear. We applied that rate actually to our estimated captures by species to get species' takes and which of those would be lethal.

Moving on, we did almost the exact same thing with Atlantic sturgeon. However, based on where we think the species occur, where we think the fishery operates and the way the fishery operates, we didn't anticipate any mortalities of Atlantic sturgeon in this particular case. The biological opinion really just went through two steps; and that was to estimate the total number of captures and then to break down those captures by DPS, which is essentially the same as estimating total number of takes by species.

As you can see here, we went through the same process as with sea turtles. We estimated the total North Carolina sink gillnet effort; and that is again because of where we think the species occur, we didn't anticipate the fishery in Florida was going to have much overlap with the species, so we only focused on Carolina.

As well because these are obviously benthic species, we were focusing on the sink gillnet gear and not runaround gillnets. Like I said, the same thing as before; we estimated the total amount of effort we thought we would see in a year. We also had some data available to come up with Atlantic sturgeon CPUE, which is what you can see there.

There were a couple different datasets and we ended up using what we thought was the most representative of fishing. I should point out that the interaction rate we used actually came from all Mid-Atlantic sink gillnets; and this is not specific to coastal migratory pelagics, so the CPUE that we used was from all of that – or the CPUE is based on interaction rates with the entire North Atlantic sink gillnet fishery that we had available; data we had available.

And then finally just as we did again with sea turtles, we multiplied our CPUE of Atlantic sturgeon by our sink gillnet effort in North Carolina to estimate the number of Atlantic sturgeon

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captures we anticipated getting. Then captures by DPS; again very similar – we obviously didn't use sea turtle stranding data for this, but we do have a mixed stock analysis paper that our Northeast Fisheries Science Center has put together for us with the breakdown by DPS, and so we have percentages that you will see coming up later on; that we then multiplied our total number of Atlantic sturgeon takes by those composition breakdowns to get us takes by DPS.

Then smalltooth sawfish was kind of the easiest of them all. We have one record of a smalltooth sawfish interaction with the coastal migratory gillnet fishery. That record actually comes to us from even before our 2007 opinion was completed. Since then we've had no additional records of it.

To be conservative towards this, we went ahead and estimated that it is possible that one non-lethal smalltooth sawfish capture could occur in the coastal migratory gillnet fishery over three years. This actually leads me to a point that I want to make; and that is that in the opinion itself all take is originally calculated on a one-year cycle, but the incidental take statement, as you'll see, is actually issuing take over three-year blocks of time.

That is generally because of the highly variable rate of interactions with protected species given one-year incidental take statements is largely impractical, because it can fluctuate wildly from year to year. By three years, it helps smooth out some of that randomness. The actual take statement, as you guys can see there, is over three years, and this is obviously the breakdown by species.

We had not really any lethal takes anticipated; and again, as I mentioned, none in the Atlantic sturgeon world. I don't know if you guys can see my mouse or not; but over here, these are the compositions that the Northeast Fisheries Science Center has estimated; and these are based on basically overall number of animals we think are in each DPS.

The way the actual take for Atlantic sturgeon is calculated is by multiplying the largest percentage here by the total number that we anticipated over three years. The biological opinion essentially said that there will be no more than 12 Atlantic sturgeons captured over three years; and then it breaks those down by DPS.

We would anticipate no more than two of those would come from the Gulf of Maine, which is what GM stands for, from the Gulf of Maine DPS. No more than four would come from the New York Bight DPS. No more than three would come from the Chesapeake Bay DPS. No more than four would come from the Carolina DPS; and no more than ten would come from the South Atlantic DPS.

Obviously, if you add all of those numbers up, it adds up to well above 12, but the idea here is that those are the maximum number of animals we would expect from each DPS and the total number of captures to never exceed 12 regardless of the combination. The conclusion, as I mentioned earlier on, is that this is not a jeopardy opinion; therefore, the continued authorization of the fishery is not likely to jeopardize the continued existence of any sea turtle species, the smalltooth sawfish or any of our DPSs of Atlantic sturgeon. Again as I mentioned earlier because it is a non-jeopardy opinion, we have to develop reasonable and prudent measures.

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Reasonable and prudent measures are kind of broad, generalized ideas of how we're going to monitor take over time and how we're going to make sure that we minimize the impacts of that take. Again, none of these actions require anything from the council at this time, so this is more just kind of an FYI for you guys to know what we're going to be working on with respect to coastal migratory pelagics.

You can see there the first thing we've got to do is working on minimizing stress to these animals. Again, we're going to be working on making sure we can monitor the impacts of those takes. Again, a summary so you guys are aware, NMFS is going to work with permit holders to give them information on how to handle these animals if they do incidentally capture them.

We are also going to work to make sure that the current data we're getting on the coastal migratory pelagics fishery remains in place; and that is the SDDP, which is the Supplementary Discard Data Program. We're also going to work to make sure our observer data is used to monitor as well as the best available science is used to monitor incidental take.

We are going to again continue to monitor the gillnet fishery to make sure that what we anticipate the affects from the fishery to these species will be is actually correct. I won't go through all of this, but this is kind of some of the reporting that we're going to work with the Science Center on to make sure we get this sort of information so that we can again monitor the fishery over time.

I should also point out again at the end of this presentation, beyond the take estimates there is also the terms and conditions and reasonable and prudent measures in their entirety verbatim out of the opinion in case anybody wants to look and see what the actual specifics are, because these are just summarized RPMs in terms and conditions here. That is it for me unless you guys have any other questions for me.

MR. HARTIG: I'm not on your committee, Wilson, I don't think, but I went through this document looking for the conclusions. That is a hell of a lot of work; the amount of information you guys put together was incredible. But what I would like to see, though, for us is that the conclusion is put somewhere in an executive summary that I could get to a little bit easier than I did by going through the entire document. Now, I may have missed it somewhere, but it would be helpful to have that somewhere that is accessible in the beginning of the document.

DR. LANEY: I agree with that comment, Andy; I didn't find it very readily either.

DR. DUVAL: Thanks, Andy, for that presentation. In going through the document, under Section 4.2.1 where you were going through the different fisheries, I noticed that in mentioning North Carolina's gillnet fisheries, our inshore gillnet fisheries; we actually have an incidental take permit that was issued in September of 2013. I think the text in there states that North Carolina is now in the process of applying for a Section 10 permit for all inshore gillnetting.

Just a note to you guys that we actually have that permit and we do actually have a state incidental take permit for Atlantic sturgeon; and that was issued last year, about a year and a half ago, I think in April. I just wanted to point that out that it was – I don't know if you have the



ability to actually update the text in that section just to indicate that North Carolina does indeed have its turtle ITP.

MR. HERNDON: That's a good point.

MR. BELL: Mr. Chairman, I'm not on your committee. Maybe not a question for Andy; maybe it is just a general question out of my ignorance. I've been asked this by fishermen over and over again is as we're successful in conservation efforts to rebuild populations of some of these animals, and there are then therefore potentially increasing probabilities of takes, because we're successful; how does the system sort of adjust?

I guess my answer is I guess there has to be a stock assessment or some assessment and then a recalculation of allowable takes, but I'm not sure how long that process takes and if it is one in which fisheries could find themselves in jeopardy of closures or things because the takes are increasing; but the takes are increasing because the animals really are rebuilding. How does the whole system work to allow that? Can it be done in a timely manner where we're not overstressing the fishery or punishing the fishery because of success in another area? I get that question occasionally from different folks.

MR. HERNDON: I'm actually glad you brought that up, because that is really a critical piece for us. It is hard for someone like myself in my ivory tower to get that word out, because it is very confusing or it can be and particularly with the language that is kind of opaque in regulations and stuff like that that can be hard to really decipher what that means.

To answer your question is, yes, we consider that good news. The more we have to reinitiate consultations because populations are increasing is great news. We are absolutely aware that you guys, you being the fishery and fishermen in general, have nothing to do with that. If you haven't changed how you're operating and nothing else is going on and there are just more animals out there, just sheer statistics would tell you that you would likely have more interactions.

Actually one of the first two slides I alluded to is that reinitiation idea; and what that means is just that we have to – if, for example, this ITS that I provide you guys, if it turns out that we're having a great year with greens and all of a sudden we've gone over the number of greens we anticipated being captured is greater than what we authorized under the biological opinion; that is a sign to us that something in the calculation was off.

We would be required under the regulations to reinitiate consultation. All that really means is that we have to reevaluate what we looked at the first time. The idea obviously is that we want to make sure we didn't miss something. If what we end up missing was that the population since three years ago has gone through the roof, then we need to reevaluate that and make sure that those interactions isn't jeopardizing the species.

That is ultimately what our job is, to make sure that something isn't jeopardizing the existence of a species. So long as the population goes up enough – and obviously we're aware of a lot of this stuff going on – our calculation would essentially readjust as you mentioned. It is not

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necessarily an issue. It just means that we're having more interactions than we thought and we have to determine why that is.

If it ultimately turns out that the population is getting much better, fisheries are interacting with them more because there are just more animals out there; then when we do our jeopardy analysis, which is what the ultimate concern is for us, we would say, no, this isn't a big deal; the fishery can continue to operate just as it is because these guys are having interactions not because they're using gear that somehow has a higher entanglement rate because of how it is strung or where it sat; but it is just a matter of fact that these animals are recovering, which is also part of our job over here.

As a result there is just more of them in the water and that's a good thing. If that were the case and we came to those conclusions, then we would do another biological opinion and we would reissue an incidental take statement with a greater number of incidental captures based on the best available information we had.

We would go through possibly something similar to what I just kind of laid out to try and re-estimate the number of interactions and then can kind of go from there. We all recognize particularly over here that if we are doing our jobs correctly, we should need to reinitiate our consultations more and more frequently, because there should be more and more animals out there.

That was a little longwinded, but I guess the point is that I wouldn't be concerned about it so long as it truly is just an increase in population, because the system is equipped to handle that and to make sure that you guys aren't penalized for doing anything that way.

MR. BELL: That is what I think eventually the goal is more and more and more animals so the probability of encounters is greater. You had mentioned South Carolina. South Carolina's nest numbers were not quite at the 2013 level, which I guess was a record; but apparently Cape Romaine exceeded their record this year, so you should be getting good numbers from South Carolina.

MR. HERNDON: Excellent, thank you.

DR. DUVAL: Andy, just one more question. You mentioned in your response to Mel that if you see something it might indicate that there is something amiss with the calculations; and just in terms of the method that you use to estimate calculations looking at total interactions divided by observed hauls; how do you determine what method you are going to use to estimate interactions?

I guess I am just thinking back to North Carolina's experience in applying for our sea turtle ITP. There was some pretty significant modeling that was done in that approach, so I was just curious. Does the Service rely on some academic review outside or how do you all determine the best method?

MR. HELPERN: You raise a lot of good questions. The answer is, as I'm sure you would expect, our answer is it depends, right. We're required to use the best available science and

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information, and so it really does depend. For example, the CPUE that I talked about – actually I think I can even find it; maybe it is even in here. No, I didn't have it in there.

When they estimated these length, search and capture rate, I think they looked at three datasets. We had three datasets available to us regarding captures of Atlantic sturgeons in gillnets. Basically it comes down to in this particular case and often in cases that we will be presented with under the different datasets; the best thing you can do is to go through each one, evaluate each one and determine which dataset we think most represents the fishery, which dataset really has the longest time period, which maybe it is in an area that we think is very indicative of where we think interactions might occur and those kinds of things.

Essentially it is our best opinion on what it is that we think is the most appropriate for estimating takes. We often also use – because we're conservative over here toward listed species; we'll lean often towards – if, for example, we have two computer datasets and we think both are equal and correct and there is no reason we would throw one out versus another, we will often err on the side of the species and estimate or use a rate that would estimate higher rates of interaction.

Again, that is just because we take the precautionary approach over here. But as you point out, this can vary, though, because we have some big projects over here where modeling is a big part of it. As you guys mentioned – I wasn't part of that ITP, but in your case if the data is available and the time and the resources are available; there is definitely kind of a hierarchy of how we would prefer to do things, and so it is just kind of a matter of trying to balance all that stuff together. That is kind of the general approach, and I don't know if that answered your question to your satisfaction, but that is generally how it's done.

DR. DUVAL: Thanks for taking the time to kind of explain the process you go through. I appreciate it.

DR. LANEY: Other questions for Andy? Andy, I think if I heard you correctly, you said as long as the numbers are going up and you all have to do a reinitiation of consultation, as long as the fishery hasn't changed significantly, that is generally a good thing. It has been a while since – I know there is no recovery plan yet for Atlantic sturgeon.

It has been a while since I looked at any of the recovery plans for the sea turtles; but is there some criterion in terms of population density or encounter density in the fishery or nesting density on the beach that is established in the recovery plan that would be kind of a trigger for delisting or down-listing?

MR. HERNDON: Yes, that is exactly right; that is how it works. I don't remember the numbers off the top of my head, but that is exactly how it works for some of our sea turtle species, particularly like, for example, our endangered sea turtle species like Kemps. They have a nesting threshold; and if they meet X amount of nests over X amount of years – and obviously the recovery plan is pretty involved, so it is a couple hundred pages of issues.

But essentially if all is going well – and there are metrics in there for just that; that if you had X amount of nests over X number of years; that they would be a candidate for down-listing in the case of endangered species; and that would be a listing from endangered to threatened. Then if

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they are a threatened species and they are meeting their down-listing criteria or delisting criteria, then they would be considered for removal off the list entirely.

By law we have to review species every five years. That is exactly part of the review process is to go through those listing criteria, those down-listing and those delisting criteria and determine if any of them have changed, if they're on track or if they've met a significant number of those delisting or down-listing criterion, and whether or not they would be eligible or need to move down. Yes; that is the kind of thing that is laid out in a recovery plan for these species.

DR. LANEY: Is it a fair presumption to assume the same sort of thing will happen with the Atlantic sturgeon recovery plan?

MR. HERNDON: I believe so; I'm not sure what kind of criteria they would use. Obviously, sea turtles nesting is a pretty easy one to do, because you can go out and count how many there are and that kind of thing. I am not familiar enough with sturgeon to know what kind of items they would use, but, yes, in theory that is what they would do is they would establish a number of criteria for when we think the species is ready to be down-listed and then delisted entirely.

MR. HAYMANS: Just to clarify, you said every five years a recovery plan is evaluated?

MR. HERNDON: It is supposed to be, yes.

MR. HAYMANS: Okay. In a similar manner to listing; can outside groups or agencies petition for delisting?

MR. HERNDON: That is a good question. I don't know the answers to that. My personal gut opinion and not speaking for NOAA is yes; but I don't know what the process is for that.

MR. PHILLIPS: Could you give us an idea on where things like loggerhead and leatherbacks are; are they getting up towards their nesting levels that you want them to be or do you know?

MR. HERNDON: They are certainly getting there. The hard part is a lot of the criteria are over – for example, I forget which species it was, but it is something like over 10,000 nests in Florida for a period of 10 or 15 years. We're averaging over 10,000 nests during that period of time. We've had a couple of really good years, which give us a lot of hope; and then we've had a couple of bad years particularly since the Deepwater Horizon Spill that brought nesting numbers back down and it is unclear what that means.

But, yes, we're making great progress. But unfortunately, like I said, the time frames on these things are usually long term, 10, 20 years. Unfortunately, you can't have just one or two good years in a row, you have to string them together, but we're getting there.

DR. LANEY: A follow-up to Charlie's question, Andy; with loggerheads, for example, where there was a recent proposal to break out DPSs; when DPSs are designated, does that mean you have to go back in and look at the criteria and then you have individual criteria for each DPS as opposed to the whole population?

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MR. HERNDON: Yes, that is a good point. Yes, that is my understanding. Probably the easiest way to think about a DPS – at least that is what’s helped me – is that for all intents and purposes a DPS is considered a separate species. It is all kind of the same animal but in terms of how we view it under the Act is that it is a separate species.

For any time we do a biological opinion, we would have to evaluate the impacts of each DPS of an animal separately. We would also have to look at the recovery potential for each DPS separately; and because there are some different species, they would have – they may be close enough as they are that you would have a recovery plan that would apply to all of them, but in theory you could also break out each DPS and have very specific criteria for individual DPSs.

DR. LANEY: Thank you; and just as a reminder to all of us for sea turtles; then I think that means for loggerheads, we’ll have I believe two or three, I can’t remember, DPSs for loggerheads in the South Atlantic Council’s jurisdiction. For Atlantic sturgeon, we will have at least two different DPSs in the South Atlantic Council’s jurisdiction; although for all practical purposes, we’ve had a lot of discussion at ASMFC that those really need to be managed on a river-by-river basis. It complicates things quite a bit when you have to look at all these as individual species.

MR. HERNDON: Just real quickly, one correction, Wilson. With our loggerheads, they’ve already split them out into nine DPSs, if I remember correctly. But because of the way they’ve broken out, there is really one DBS that really occurs in U.S. waters, so it is now called the Northwest Atlantic DPS of loggerhead sea turtles.

We only have one, but there are nine worldwide now; whereas before there was just one species worldwide. Just as a point that you’ve made in terms of Atlantic sturgeon; for our marine fisheries, the information we have is that because of the extensive mixing of all five DPSs in marine waters, we consider anything – you know, basically anything in federal waters. we would consider all five DPSs potentially occurring there.

That is again where those percentages kind of come in useful, because obviously we wouldn’t anticipate animals from our Carolina DPS and our South Atlantic DPS to be more prevalent, but we certainly believe that there is the chance that Gulf of Maine fish and New York Bight fish and Chesapeake Bay fish could be down here as well. That is something to keep in mind, which is why if you look at the biological opinion, even though it is a North Carolina/Florida predominant fishery, we still think we could have animals from the Gulf of Maine potentially getting entangled.

DR. LANEY: Yes, we know we do from the winter tagging cruise, anyway, that there are individuals from all five DPSs offshore North Carolina and Virginia, for sure. Are there any other questions for Andy; and thank you for the clarification on the loggerhead thing? Are there questions for Andy?

MR. HARTIG: I was reading through implementing terms and conditions. When you talk about strandings, how many different animals are involved in information collected on strandings?

MR. HERNDON: I’m sorry, can you say that again, I missed it.

MR. HARTIG: Yes, like in strandings you think of marine mammals and turtles being normal, but are there other animals as you look out, say, for a sawfish that washed up on the beach inadvertently.

MR. HERNDON: Exactly, sure, that happens. We certainly don't view strandings of species – like, for instance, Atlantic sturgeons or any more sturgeon species, for that matter, smalltooth sawfish; those occasionally we'll get reports about them having washed up some place. But in terms of strandings' data, we don't generally look at those as animals that we feel comfortable looking at strandings' data for.

I guess my point is those are a more rare event, and so it would definitely be something we would take note of; but in terms of trying to use that data for anything, it is already hard enough to use the sea turtle stranding data that we have. That is relatively robust; but we're still not 100 percent comfortable with using it, but it is the best available we have in many cases. To go to even rarer events like the sturgeons and the smalltooth sawfish and stuff, it is more of a data point than any sort of dataset that we would use. Does that make sense?

MR. HARTIG: Yes, thank you, I appreciate that.

DR. LANEY: Andy, I'll just make the point to tag onto the sturgeon comment there that NMFS does try and track the sturgeon strandings; and there are some areas, Ben, in particular such as the James River in Virginia and the Delaware River where ship strikes are an issue and where the fish that are showing up in the strandings there tend to be large, mature fish; in a lot of cases large, mature females.

I think everybody does try and pay attention to those in those particular areas, for sure. NMFS has put out the information on to whom those stranding reports should be sent, and there is a form I believe, Andy – I think I've got it on my hard drive that Kim or Kelly had provided to me in the past.

We do try and encourage people to report them, but like Andy said generally it is a rare event. It is kind of hard to assess what that means in terms of the overall population unless there is something like ship striking going on within an individual spawning population. Other questions for Andy? Okay, I don't see any more. Andy, thanks for the excellent report and for good answers to all the questions. The next item we have is our ESA/MSA integration agreement, and I think Chip is going to discuss that for us.

MR. COLLIER: Attachment 3A is the integration agreement or Attachment 3 is the integration agreement as it was prior to the first briefing book; and then in between the first briefing book and the second briefing book Andy and Jenny were able to give us some comments on it and some very good, constructive criticism.

We're working together to put this all together. You guys can look through the integration agreement. It looks like they slaughtered it, but I think it is all good comments. We're going to work through this to develop a much better document in the end; and hopefully it is going to be ready by December.

One of our goals at least as council staff is to keep direct lines of communication and make sure we know exactly who to communicate with. We're going to try to keep it as specific as possible for who we're communicating with and also for timelines as well, because that is important for some of our meetings, especially if we're going to be establishing an SSC meeting to discuss biological opinions.

We're going to have to have that time frame in there to make sure they get those documents on time. Other than that, I think these are really great comments. Then the one final thing that we probably need at the end of this integration agreement is who is actually agreeing to it? Our thoughts as far as council staff would be the Executive Director and then for SERO maybe Roy. Would that be appropriate, Roy, or who would be signing off on this integration agreement?

DR. CRABTREE: I think it would be me and either the Council Executive Director or the Chairman.

MR. COLLIER: I just didn't want you to be surprised at the end that got thrown in there. Are there any questions or comments about the comments or the actual integration agreement; any suggestions?

MS. McCAWLEY: I just wanted to say that I looked over the document and I thought that they were really good comments; and it looked like our discussions from previous meetings had been integrated. I thought it looked good.

DR. LANEY: Other questions for Chip or questions or comments on the comments?

DR. DUVAL: I agree with Jessica; I think it's shaping up really well and lots of good comments on the draft; and hopefully by December it will be all cleaned up and everybody will be satisfied with where that is.

DR. LANEY: I just had a question for the committee members and the council members in general on Jennifer's comment one about whether or not we want the policy to outline procedures specific to MMPA as well. It seems to me it would be a good idea to just go ahead and integrate that in there if it doesn't cause too much consternation or additional work on it.

Does anybody else have any thoughts on about rolling the MMPA into the document along with the ESA and MSA; good idea, bad idea, neutral? Generally let staff decide if that is a good idea or not; I'm seeing some shoulder shrugs and yes, no, maybe kind of thing. I like efficiency; so if you can roll it all into one as opposed to doing something separate, I would usually prefer that route.

MR. COLLIER: Andy, you're still un-muted if you want to say anything in regards to that or have any other comments.

MR. HERNDON: No; just saying that we're looking forward to working with everybody and getting this thing moved along.

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DR. LANEY: Okay, it looked to me like you did a very thorough job in reviewing it and providing comments. We look forward to seeing a revised version. Are there any other comments on this particular item? Seeing none; then I think the next item was other business. Do we have any other business?

MR. COLLIER: Actually the next item is your update.

DR. LANEY: That's right; the next item is my update. I'm not looking at my agenda here. Let me get that up in front of me. My understanding from our ESA folks is that the American eel findings should be coming out either the week of September the 21st or the week of September the 28th. We'll look forward to that appearing. I have nothing new on the red knot. Bob, I'll look to you, but my latest conversation with regard to the Atlantic sturgeon stock assessment is that we're making forward progress on that. I talked to Dr. Pollock at NC State; and he had been contacted about the tagging workgroup, I think, was having a conference call or meeting. That sounds like it is moving forward; but do you want to elaborate at all on the sturgeon stock assessment?

MR. BEAL: We're working on two things. The ultimate goal is to get a new benchmark assessment done by 2017, so that is what we're working toward. There are two pieces we're working on right now. One is genetics work with Dr. Tim King, and that is a pretty long drawn-out process.

The goal there is to define or verify the distinct population segments that are in the listing right now. There are five of them up and down the coast, and we're trying to make sure all those lines are in the right places and separating the population segments. That's going to take a while. The other thing that is taking some time is there is a lot of telemetry data.

A number of sturgeons have been tagged with telemetry tags and the receiving stations are scattered up and down the coast and a lot in the Mid-Atlantic region in particular. There are not a lot of folks that are familiar with those datasets, know how to use those datasets. Apparently the receivers get turned off from time to time; so if a fish wanders through there, it doesn't mean the fish wasn't there.

It just means there was no receiver there to recognize the fish. There are some folks that are working to pick apart that data and try to figure out where there is an absence of fish or an absence of listening for fish, and those are two different things. Those two elements are taking more time than we thought, but we're still pushing for a 2017 peer review with that benchmark assessment.

Then the hope is that the National Marine Fisheries Service has indicated they will then go back and look at the results of that benchmark assessment and look at the listing. Most of the coast as everyone knows is listed as endangered. The Gulf of Maine is threatened, so that either will be verified or can be relooked at in 2017.

DR. LANEY: Thank you, Bob. I've been working with Ike Wirgen to make sure that all the sturgeon that we've captured on the cruise has been genetically analyzed, and so trying to track



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down all those fish. The only other thing I wanted to mention was that we have now had fall spawning documented in a number of different river systems.

In some rivers we have fall and spring spawning aggregations. On the Roanoke it appears, as far as we know we only have a fall spawning aggregation there as opposed to spring; although historically we were sure that there were both probably in that system. Okay, the last species of Fish and Wildlife Service responsibility are red knots; and I don't have anything new on red knots. I know we're supposed to be working on critical habitat, but I haven't heard anything new on that point. Unless someone else has other business at this point; Mel.

MR. BELL: Just something interesting. Bob had mentioned the acoustic receivers, and so we have a pretty nice array of receivers both for sturgeon and for turtles. One of the interesting side results from that is we also now know that we have seasonal great white sharks hanging around in places that we never though great white sharks hung around in before like our artificial reefs. Just an interesting little side note of you can learn – these receivers are great, because they pick up all these different animals that are wearing them; but that was interesting.

DR. LANEY: It is truly fascinating how much information you can glean from one animal with an acoustic transmitter in it. It is incredible. As Bob said as long as the receivers are out there and they are functioning, you can pick up tens of thousands of data points from a single fish. A relatively new paper by Callahan and Hightower and Harris about the large striped bass that were acoustically tagged in the Roanoke River and where those fish went and what they did; it is just very fascinating reading.

It confirms a lot of things that we thought were the case, such as homing back to the Roanoke. It also documented some things that we were uncertain about such as whether or not striped bass spawn annually. At least on the Roanoke it appears they do. Just a tremendous amount of information; and with regard to great whites, Mel, I think it was Mary Lee that made an incursion into Pamlico Sound, which was kind of surprising.

We were unaware that we had great white sharks swimming around in Pamlico Sound. It gives you pause about where you thought you could waterski safely or not. Any other comments? Any other business? Okay, hearing none; Mr. Chairman, I think that concludes our business and we're done at 11:40.

(Whereupon, the meeting was adjourned at 11:40 o'clock a.m., September 14, 2015.)

Certified By: \_\_\_\_\_ Date: \_\_\_\_\_

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October 2015

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**South Atlantic Fishery Management Council –  
September 2015 Council Meeting  
Hilton Head Island, SC**

**Date:** Monday, September 14, 2015

**Committee:** Protected Resources

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