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Bottlenose Dolphin Take Reduction Team

A Summary of the Seventh Meeting

Sheraton Oceanfront Hotel

Virginia Beach, Virginia

January 13 – 14, 2005

**Prepared by
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Facilitators**

February 8, 2005

Table of Contents

Introduction	3
Participants	3
Purpose of the Meeting	4
Consensus Recommendations	5
• North Carolina beach seines	5
• Gear marking requirements	5
• Virginia striped bass requirements	7
• Social and economic impacts	7
• Observer coverage, enforcement and assessments	8
Post-Session Consensus Recommendation	8
• North Carolina beach seines	8
Meeting Narrative	10
• North Carolina beach seines	13
• Gear marking requirements	17
• Virginia striped bass requirements	19
• Social and economic impacts	21
• Observer coverage, enforcement and assessments	22
• Planning, education and outreach	24
• The expiration date for the medium mesh requirement	24
• Definition of the regulated area	24
• Session on Non-Regulatory Elements of the Proposed Rule	24
Evaluation	26
Appendix 1: List of Take Reduction Team Members and Alternates	
Appendix 2: Evaluation Results	

Introduction

The seventh meeting of the Bottlenose Dolphin Take Reduction Team (BDTRT) was held at the Sheraton Oceanfront Hotel in Virginia Beach, Virginia on January 13 and 14, 2005. The meeting started with a welcome and introductions, followed by presentations on the Proposed Rule as published in the *Federal Register* (Vol. 69, No. 217, pages 65127 – 65142; Wednesday, November 10, 2004). After a question and answer session, the BDTRT identified ten categories of issues that they wanted to address during the meeting. These issues were:

- North Carolina beach seines (the 300 foot requirement)
- Gear marking requirements
- Virginia striped bass requirements
- Social and economic impacts
- Observer coverage
- Assessments
- Enforcement
- Planning, education and outreach
- The expiration date for the medium mesh requirement
- Definition of the regulated area

The team broke into working groups to begin to address these issues. The first day's work concluded with an official public hearing on the Proposed Rule and a presentation on the non-regulatory elements of the Proposed Rule.

The following day, the working groups presented progress reports to the entire team to get their reactions and comments. The working groups then continued to refine their recommendations, which were presented in a final plenary session. The BDTRT reached consensus on most of the issues. Consensus was not reached on several issues. For some of the identified issues, time limitations prevented the team from discussing them in any detail.

The meeting ended at 1:00 PM on January 14. However, a number of team members agreed to stay on afterwards to try to resolve the North Carolina beach seine issue. They were able to reach consensus on the issue. The BDTRT did not have an opportunity to review the result.

This report summarizes the work of the BDTRT and highlights the consensus recommendations.

Participants

TRT Members and Alternates

TRT members attending the seventh meeting were: David Beresoff, Paul Biermann, Vicki Cornish, Joseph DeAlteris, Tanya Dobrzynski, Lewis Gillingham, Mike Greco,

Elizabeth Griffin, Bruce Halgran, Chris Hickman, Charlotte Hudson, Rick Marks, Red Munden, Margaret Murphy, Larry Pieper, Tim Ragen, Andrew Read, Mark Swingle, Leonard Voss, Chris Walker, Robert West, David Woolman, Nina Young and Sharon Young.

Alternates attending the meeting were: Bill Evans (alternate for Mike Peele), Doug Haymans (A.G. Woodward), Shannon Lyons (Richard Seagraves), Jeff Oden (Doug Guthrie), Joe Speight (Jerry Schill) and Dave Swanner (Mike Peele).

For a complete list of TRT members, alternates and contact information, see Appendix 1.

Presenters and Facilitators

Presenters included David Bernhart, Stacey Carlson, Vicki Cornish, Marjorie Rossman, Leslie Burdett, and Mike Tork. The meeting facilitators were Jim Feldt and Hans Neuhauser.

Observers

Observers who registered included: Gene Ballance, Doug Beckmann, Erin Burke, Beth Burns, Barbie Byrd, Kristin Ealy, Jeff Gearhart, Shepherd Grimes, Christian Hager, Stephen Holiman, Bryan Hopper, Erin LaBrecque, Juan Levesque, Parks Lewis, Kristy Long, Katie Moore, Debi Palka, Cindi Perry, Ann H. Pierce, David Potter, Glenn Salvador, David Schofield, David Walker, Danielle Waples, Jonathan White and Amy Wtz-Sexton.

Purpose of the Meeting

David Bernhart, Chief of the Protected Resources Division, Southeast Regional Office, NOAA Fisheries, called the meeting to order, welcomed team members and alternates and introduced members of the NOAA Fisheries staff. He then explained the purpose and objective for this meeting: This meeting is at your request, but it occurs in a different context from previous BDTRT meetings. This is a forum to provide comments on the proposed rule and on the non-regulatory actions—to arrive at one set of comments that are official team comments to the agency. Your comments are bound by the same rules as other comments that we receive during the comment period—we will respond to your comments and to the other comments before issuing a final rule. You TRT members still have the right to submit individual comment. What happens next? There are several options: (1) issue a final rule as is; (2) make some minor revisions and issue the rule; (3) if we were to make substantial changes, go through a new proposal process; or (4) decide not to propose the rule and go about proposing an entirely new rule. It is likely that we will proceed to issue a rule 60 days after the end of the comment period.

Comments on the Proposed Rule must be received by 5 pm (ET) on February 8, 2005. Submit comments identified with RIN 0648-AR39 via:

- E-mail to: 0648-AR39.proposed@noaa.gov with the ID # in the subject line
- Mail to: Chief, Protected Resources Division, NMFS, 9721 Executive Center Drive North, Suite 102, St. Petersburg, FL 33702-2431
- Fax to 727-570-5517 to the attention of Chief, Protected Resources Division, NMFS

Consensus Recommendations

The BDTRT members and alternates agreed by consensus that they could live with the following recommendations:

North Carolina beach seines

See the Post-Session Consensus Recommendation on the NC beach seine issue starting on page 7 of this report for proposed modifications to these consensus recommendations.

Multi-fiber or multi-filament webbing deployed from or fished or landed on the beach shall be constructed of webbing that is four inches or less stretched mesh. (This is consistent with the proposed rule.)

Beach seines fished north of Cape Lookout, NC during the Atlantic Ocean striped bass beach seine fishery established by the NC Division of Marine Fisheries by proclamation, shall be constructed of only multi-filament or multi-fiber webbing with a maximum mesh size less than seven inches stretched mesh.

Beach seines and stop nets fished south of Cape Lookout, NC during the roe mullet stop net fishery established by the NC Division of Marine Fisheries by proclamation, shall be constructed of only multi-filament or multi-fiber webbing with a maximum mesh size of four inches or less stretched mesh for the entire seine net and the inshore 300 feet portion of the stop net.

Gear marking

1. In regard to Page 65134 Table—"Gear requirements apply to all regulated and exempted waters" and page 65141 subpart (d) regulatory language concurs with Table, the group's recommendation: Gear marking requirements should apply in regulated waters only.

To require gear marking requirements in non-regulated waters would create two significant problems:

There would be cost considerations to fishers in inland waters which were not accounted for in the EA.

The areas to be regulated were established early in the Take Reduction Plan (TRP) process. Fishers outside of the regulated waters were not kept informed of any potential regulatory impact and therefore had no input into the TRP process.

2. In regard to regulatory language on page 65141 subpart (d) should read:

“these identification tags made of plastic or metal or other material shall be ...” The preamble should be drafted to indicate a suite of possible alternatives.

Language should be included in the background section on page 65141 subpart (d) regarding gear marking requirements to establish that “tags made of plastic, metal, or other material” is generally construed to include heat shrink tubing, rings, or other such methods of marking floatlines.

3. Delete the requirement for tags to contain a fisherman’s name and mesh size on page 65141 subpart (d).

4. Tags will contain a vessel identification number (state or federal documentation number or state commercial license number).

A specific requirement to include the fishermen’s full name is redundant. The required state or federal license or documentation number is sufficient to identify gear ownership. The mesh requirement on a tag would require a fisher to purchase many different tags. A separate tag type would be necessary for each mesh size used; this would greatly increase the cost of purchasing manufactured tags.

5. Working group recommended a one-year delay in implementation of the tag requirement every 300 feet to determine the most effective alternative. (A grant is pending with Virginia Sea Grant for start of March 2005 to examine tag types.)

- 6. For page 65141 subpart (2) regarding the end flag/ball system, the working group recommends using the current language or the existing state requirements as long as that state system includes a vessel identification number and an eight-inch minimum diameter ball or flag, marked with at least two stripes of reflective material at least two inches in width and visible for 360 degrees.**

The requirement for specific gear marking requirements without allowing the option of using existing state gear marking systems will impact all states to modify their gear marking regulatory requirements. This would also create either a dual marking program (regulated and exempted waters) or require gear marking modifications to fishers in exempted waters.

Virginia striped bass fishery

No consensus reached. The Team forwards the information and the revised proposal developed in consultation with the fishermen.

Social and economic issues

Part 1: Economic impact in North Carolina EA versus EIS

The issue was that the restrictions within the proposed rule for the beach haul seine fishery in North Carolina will significantly adversely affect an unintended group of fishers (mullet, spot, croaker, etc.) and that these impacts have not been analyzed in the EA. Further, discussion revealed that the harvests by these fishers may not be adequately documented in the trip ticket system and, therefore, quantification of the economic impact of this measure on these fishers may not be possible.

Part 2: Time to allow for gear to comply with the rule

The agency should take into account the time needed to acquire new gear when finalizing the rule and to delay components of the rule as necessary based upon that need to acquire new gear.

Observer coverage, enforcement and assessments

While observer coverage is addressed in the non-regulatory section of the plan, it is critical. We need to recommend as strongly as possible that observer coverage be enhanced.

In order to monitor the effectiveness of the plan, we have to have a statistically significant amount of observe coverage. In particular, we recommend:

- 1. Improved cooperation between the federal government and the states.**
- 2. Improved cooperation between the southeast and the northeast.**
- 3. Develop a good estimate of how many fishermen are in the different fisheries, the gear used, where etc. so that we can have good coverage.**
- 4. Create a prioritization of fisheries that need coverage.**
 - a) Identifying specific areas: southern NC gillnets, inshore gillnets, near shore gillnets.**
 - b) Identifying holes in data needed to use for assessments.**

In order to ensure that the plan accomplish the objectives of reducing bottlenose dolphin takes, it is imperative that the measures recommended in the plan be enforced.

Post-Session Consensus Recommendation on the NC beach seine (300 foot) Issue

The BDTRT meeting ended at 1:00 PM on January 14. However, a number of team members from the different stakeholder groups present (fishermen, scientists, conservationists, Federal and state agencies) agreed to stay on afterwards to try to resolve the North Carolina beach seine issue. They were able to reach consensus on the issue. The BDTRT did not have an opportunity to review the result as a team in a plenary session. Thus, the following recommendations come from a broad spectrum of members of the team but not from the entire BDTRT. However, the BDTRT was provided two opportunities to review Alternative #5 via e-mail and there were no comments received on the issue.

Alternative #5 for the NC beach based fisheries:

The 300 ft exemption was never the intention of the BDTRT and was not a consensus recommendation. The intention was to address takes in the monofilament beach seine for

striped bass in NC. In place of the 300 ft exemption, the TRT recommends the following:

All monofilament gear deployed from, fished from, or landed on the beach must be small mesh (less than five inches). Such gear must be attended at all times, be actively fished, and the body and both ends of the net be landed on the beach. This prohibition does not apply to vessels launched from the beach that set their gear more than 100 yards from the beach.

Yes, there was consensus from the subgroup on this. (The BDTRT reviewed the language not underlined and was not able to reach consensus. The subgroup added the underlined language and reached consensus on the issue.)

However, there was concern about unattended gillnets in near-shore waters and their potential impacts on bottlenose dolphins. The TRT should revisit this issue in 2 years.

Multi-fiber or multi-filament webbing deployed from or fished or landed on the beach shall be constructed of webbing that is four inches or less stretched mesh. (This is consistent with the proposed rule.) *Yes consensus*

Beach seines fished north of Cape Lookout, NC during the Atlantic Ocean striped bass beach seine fishery established by the NC Division of Marine Fisheries by proclamation, shall be constructed of only multi-filament or multi-fiber webbing with a maximum mesh size less than seven inches stretched mesh, and shall be actively fished.

Yes, consensus from entire TRT except the underlined language, which was added by the subgroup.

Beach seines and stop nets fished south of Cape Lookout, NC during the roe mullet stop net fishery established by the NC Division of Marine Fisheries by proclamation, shall be constructed of only multi-filament or multi-fiber webbing with a maximum mesh size of four inches or less stretched mesh for the entire seine net and the inshore 300 feet portion of the stop net, except the seine net shall be actively fished.

Yes, consensus from entire TRT except the underlined language, which was added by the subgroup.

Meeting Narrative

The opening presentation on the Proposed Rule by David Bernhart and Stacey Carlson included information on the issues that were identified by participants in the public hearing held on January 5, 2005 in Morehead City, NC. The concerns expressed fell into two categories:

1-Proposed beach gear operating requirements:

- Unintentionally restricting
- Stop net inclusion potentially recreates conflict with pier owners
- Small mesh size potentially increases other by-catch
- Proposed use of multi-fiber nylon is not realistic
- Specific question if poly-twine can be used instead of multi-fiber nylon

2-Proposed gear marking requirements:

- Shallow waters may mean that flags may not stay upright
- Small boats cannot accommodate the nets and all of the flags
- ID tags along float line may tear nets

Question and Answer Session

A question and answer session followed the presentations on the Proposed Rule. The session also stimulated several comments.

Question: Is NMFS locked into issuing a rule 60 days after the end of the comment period?

Answer: The MMPA says that we have to do it in 60 days. We have not always done so, but we hope to.

Question: If the rule is published, will there be some delay in the implementation date?

Answer: Usually, the rule goes into effect 30 days after implementation, but we could delay. It might be good to hear from you during this meeting if you see a need for a delay.

Comment: For beach haul seines, if we are required to use new netting, we will need more time.

Question: If you delay the effective date of the rule, is it for the whole rule or could it be for each measure or management unit?

Answer: We have latitude in how we proceed and how the delay would work.

Question: Where in plan does it define the fisheries? Where in the *Federal Register* does it spell out the gill nets that are affected? Georgia's inshore shad fishery is exempt, but it does not appear to be listed as being exempt in the proposed rule.

Answer: We discussed that issue and the fishery is exempt. We assumed that the fishery was being phased out.

Question: Concern is with the inland shad fishery, not the ocean shad fishery. The inland shad fishery is in the EA and I am concerned by the failure to list it as exempt from the bottlenose dolphin rule.

Answer: Waters inland from the COLREG lines are excluded. This would exclude the inland shad fishery. Maybe we need to clarify what is excluded.

Question: Where you have the words “state waters,” could you replace with the term “state ocean waters?”

Answer: Yes, we could do so. If there is confusion in the terms, we would be willing to use whatever term helps to clarify what we mean.

Comment: “State waters” and “state ocean waters” are two different things. You need to be clear.

Question: Concerning the tags, net reels will rip off the tags, while cork would come through the reels okay. And the information required to be on the tags should list primary and secondary boats, since we sometimes have to retrieve our nets with a different boat.

Question: Pamlico Sound inclusion?

Answer: [?]

Comment: The 100-yards from the beach rule is a big mistake—now you have affected all the fisheries and not just the one that you meant to address.

Question: Want to make everyone aware, in the sea turtle rule it used to define large mesh as 8 inches or larger. Now you redefine large to be 7 inches or larger and at the same time you move the regulations into the state ocean waters. Is that correct?

Answer: Yes.

Question: In VA that means that we would restrict striped bass fishery to just February and March. But we fish for striped bass in the autumn. In VA the current fishing practice is different from what is specified in the exemption. You will end up with lots of by-catch that the fisherman cannot keep. Recognize that the exemption provided for striped bass will not help in VA.

Answer: The characterization of the proposed rule is correct. We hope to hear from you on what might be done to make it workable.

Question: In regard to gear marking, specifically tags, this Team has had couple of gear workshops and has noted that the tags get ripped off and end up damaging the nets. What is acceptable as a “tag?”

Answer: Plastic or metal tags is all we called for. We purposely left it generic and to give room for new ideas, like metal bands, or use of heat shrink plastic. We solicited input and did not get anything. Anything that you could suggest during this meeting would help.

Question: In NJ we proposed use of a ring. Could the rule call for buoys to be marked or call for “tags or rings” so that the door is open wider?

Answer: Could a ring be a problem in the reels?

Comment: Probably not. But please allow for crimp-ons and give us other flexibility in marking the nets.

Question: The turtle regulation restriction dates roll both forward and backward in time according to temperature of the waters. Are you aware of this impact on VA?

Answer: The rationale for specifying dates is the average sea surface temperatures. The rule puts forward specific dates, rather than with rolling dates based on actual

temperature. In VA, according to the sea turtle rules, in January and February the waters are open except for TRT rules. Currently, in the fall, in VA striped bass is exempted if they follow the restrictions.

Comment: Can you take net stipulations off? As a monk fish fisherman, I have found that the turtles have moved south by the time that we are talking about.

Question: You seem to be willing to amend the tag requirement. Can we assume that you will do so?

Answer: No. You need to hear your comments. We need the input; we need to get the comments from you.

Comment: On the point about using “state ocean water,” that term is more confusing than the wording that is already used in the rule

Question: Was there a cost analysis on the nylon net?

Answer: Yes

Question: Could you interface with Sea Grant on gear compliance? The tag issue has to be researched to figure out how to make it work.

Answer: Please come to tonight’s session and hear about what is being done on gear related research for the TRT. We are working with Sea Grant.

Question: On beach haul seine, within the 100 yards of shore, you can’t use mono. But could you use it outside of that? Does it mean that you could not haul that mono net to shore?

Answer: Yes. You could not haul it to the shore.

Question: Why say no to the use of monofilament?

Answer: That is what the team told us to do.

Comment: In the trout and sea mullet fisheries, we use nylon net with monofilament elements; the restriction will drive most folks out of the fisheries.

Identifying the issues and concerns

The facilitators explained the process that would be used to identify the issues that the team wanted to address.

- We will start this process by listing on green sheets the issues that you feel need to be addressed.
- Then working in pairs and triads, “headline” the issues on tan sheets.
- These headlines are then posted to the wall.
- Volunteers from the team then sort the headlines into categories that make sense.
- Titles are added to the categories.
- Members and observers then self-select into work groups to (1) clarify the issue and (2) draft recommendations on what would be acceptable.

The Issues

Initially, the team identified ten clusters of issues. Later, three of the issues (observer coverage, assessments and enforcement) were combined into one. The resulting issues were:

- North Carolina beach seines
- Gear marking requirements
- Virginia striped bass requirements
- Social and economic impacts
- Observer coverage, assessments and enforcement
- Planning, education and outreach
- The expiration date for the medium mesh requirement
- Definition of the regulated area

Participants, including both team members and observers who wished to participate, self-selected into working groups to clarify the issues and find acceptable solutions to them.

After the first set of working group sessions, a preliminary report was given to the entire team and comments solicited. The working groups then reconvened to refine their recommendations based on the comments of the team. Each working group made a second presentation to the team and additional comments were discussed. At the conclusion of these discussions, the facilitators asked whether or not the BDTRT could agree to the recommendations by consensus.

The following narrative follows each issue from its initial headlines to the preliminary report and comments on it, followed by the revised recommendations and comments on them. The end result of consensus or no consensus concludes the narrative on each issue.

North Carolina beach seines

Issue headlines: 300-foot rule/100-yard restriction from the beach. Why?/300-foot exclusion/Delete nylon in 300-foot zone/300-foot and mono prohibition? Does it make sense? What are unintended consequences?/Monofilament gill nets/Beach seine prohibition—benefit of switching to nylon? Timing?/Mono in surf zone/Mono versus nylon/North Carolina beach seine and 100-yard issue/Stop nets.

Preliminary report: The issue is that the prohibition of monofilament webbing within 100 yards of the beach will end up affecting fisheries that the Team did not intend to restrict.

Alternative #1 for the beach seine and stop net fisheries:

No person may fish with beach seine gear in the Atlantic Ocean unless the gear is deployed from the beach, actively fished, and attended at all times; and the body and both ends of the net are landed on the beach.

Beach seines fished north of Cape Lookout, NC during the Atlantic Ocean striped bass beach seine fishery established by the NC Division of Marine Fisheries by proclamation, shall be constructed of only twisted multi-fiber nylon webbing with a maximum mesh

size less than seven inches stretched mesh. (This could be reduced to four inches or less stretched mesh.)

Beach seines and stop nets fished south of Cape Lookout, NC during the row mullet stop net fishery established by the NC Division of Marine Fisheries by proclamation, shall be constructed of only twisted multi-fiber nylon webbing with a maximum mesh size of four inches or less stretched mesh.

Alternative #2 for the beach seine fishery:

Year round, beach seines must be set from the beach, retrieved from the beach, be actively fished, and be attended at all times. Use of monofilament nets will be okay for the beach seine fishery except as noted below.

During the striped bass beach seine season as established by NC Division of Marine Fisheries, nets must be constructed of multi-fiber nylon webbing with a maximum mesh size less than seven inches stretched mesh. These seines must be set from the beach, retrieved from the beach, be actively fished, and be attended at all times.

Comments and discussion of the Preliminary Report:

- Could NOAA fisheries implement a certain change—could not say yes or no definitively—nothing is truly impossible, but we might have to re-propose the rule if the change is larger in scope. A change of mesh size may not be as large—these are great alternatives and are clear. Can you tell us the desirable aspects of the change, e.g., reduces dolphin take.
 - NMFS said last night that some of these changes might be considered major changes by the attorneys—tell the attorneys that it is not a big change but is merely trying to clarify the original intent ... that it is a clarification.
 - “Actively fished” may still be a problem—might want to use language about setting the net and retrieving within some specified amount of time.
 - RE the lawyers: the analysis that was done may not contemplate the impacts on the other fisheries (beyond what had been intended).
 - It is a procedural issue, the agency can make large scale changes, we just have to go back and issue a new rule.
 - The economic impacts that might not have been considered, the analysis would have to be completed. This is a separate inquiry.
 - First paragraph of Alternate #1 mentions the Atlantic Ocean—I want to be sure that this applies only to NC and does not include GA where there is also a beach seine fishery.
 - Procedural question: How will the team agree to language by 12:30 today? It is clear that the 300 foot rule has unintended consequences and that the Team is unhappy with it. I do not care what it takes for the agency to make this correct. What do you need from us to get it right?
- How much detail does NMFS need to get from the team? First ID the issues, which we have done. It helps us to know what the specific problem is. We need to have

that down. Second, give us a general “we think that you should go in this general direction which we think will reduce dolphin take, etc.” Third, do more detailed word-smithing.

- It would be good to have the groups articulate the specific problem with the rule—the language that is the problem. We need to state what the problem is.
- We need to indicate the positive and negative impacts of the rule and of what we are proposing. These modifications should have no/few negative consequences while they would reduce the dolphin by-catch.
- Could you not go ahead with an interim final rule and note the changes to be made?
- We have options about how we proceed—we could issue an interim rule and then propose changes to some portions of the rule.
- You could segment the parts of the rule that you are willing to go forward on—the APA still requires procedures be followed for the other segments of the rule.
- To bring up the importance of the Observer Coverage—in regard to the spot fishery and in others in every trip it specifies the length of the nets and how they are set—why didn’t you use the data? It is all there and is accessible.
- Consider and clarify—if there is a need to restrict what has morphed into a gillnet fishery, will the proposed rule language address that?
- Define “actively fished.”
- Question of NMFS—did you intend to address the beach seine problem or a gillnet fishery?
- We intended to address the beach seine but we have to be sure to restrict the entire suite of beach seine and morphed gillnet fishing.

Revised recommendations:

Alternative #3 for the NC beach fisheries:

All gear deployed from, fished from, or landed on the beach must be small mesh (less than five inches). Such gear must be attended at all times, be actively fished, and the body and both ends of the net be landed on the beach.

Beach seines fished north of Cape Lookout, NC during the Atlantic Ocean striped bass beach seine fishery established by the NC Division of Marine Fisheries by proclamation, shall be constructed of only twisted multi-fiber nylon webbing with a maximum mesh size less than seven inches stretched mesh. (This could be reduced to four inches or less stretched mesh.)

Beach seines and stop nets fished south of Cape Lookout, NC during the roe mullet stop net fishery established by the NC Division of Marine Fisheries by proclamation, shall be constructed of only twisted multi-fiber nylon webbing with a maximum mesh size of four inches or less stretched mesh.

Alternative # 4 for the NC beach fisheries:

Recommended changes to the proposed rule by the working group commercial representatives:

Monofilament gillnet gear that is fished in the surf zone (within 300 feet of the beach) and that is deployed from or landed on the beach shall be small mesh (less than five inches). Such gear must be attended at all times and actively fished. (This focuses on the strike net fishery which was never an issue with dolphin by-catch. This deviates from the proposed rule.) **No consensus**

The issue is that a monofilament gillnet was used improperly as a seine and a dolphin was killed. Those of us who use this gear properly are all being lumped together and being restricted.

Do we have consensus on:

- The 300 foot exclusion was an error and that part of rule should be eliminated. **No consensus**
- Ask the Agency to take other comments under advisement.
- Multi-fiber or multi-filament webbing deployed from or fished or landed on the shore shall be constructed of webbing that is four inches or less stretched mesh. (This is consistent with the proposed rule. It is currently allowed and just not done by the fishermen.) **Yes, consensus**
- Beach seines fished north of Cape Lookout, NC during the Atlantic Ocean striped bass beach seine fishery established by the NC Division of Marine Fisheries by proclamation, shall be constructed of only multi-filament or multi-fiber webbing with a maximum mesh size less than seven inches stretched mesh. **Yes, consensus**
- Beach seines and stop nets fished south of Cape Lookout, NC during the roe mullet stop net fishery established by the NC Division of Marine Fisheries by proclamation, shall be constructed of only multi-filament or multi-fiber webbing with a maximum mesh size of four inches or less stretched mesh for the entire seine net and the inshore 300 feet portion of the stop net. **Yes, consensus**

Comments and discussion of the revised recommendations:

- We had talked about a number of options—in the last three you only went to material and mesh size and dropped the actively fishing and tending. What happened to that?
- We made mono a strike fishing.
- We need soak time to make money with the multi-fiber nylon

- If we are going to be consistent all of the way through, the southern area (south of Cape Lookout) should be exempt from the 300 foot requirement since the take occurred in the northern area.
- Could a small group/subset of people work on this beach seine issue and try to reach resolution?
- The comment period remains open until Feb. 8 and you can give us your individual comments or a group could work and send in comments until Feb. 8.
- What is the substantive issue that leads some to think that the 300 foot rule is not a mistake?
- We have to be clearer and consistent.
- It is a mistake from what the Team had proposed.
- A small group is willing to stay and work on this.

Result: Consensus was reached on some issues but not on others. However, see the Post-Session Consensus Recommendations starting on page 7 of this report.

Gear marking

Issue headlines: Gear markings in Pamlico Sound/Gear marking/Marking nets/Gear marking/Gillnet marking/Pamlico Sound gear markings/Gear marking/Floatline gear marking/Floatline gear marking.

Preliminary report:

In regard to Page 65134 Table—"Gear requirements apply to all regulated and exempted waters" and page 65141 subpart (d) regulatory language concurs with Table, the group's recommendation: Gear marking requirements should apply in regulated waters only.

In regard to regulatory language on page 65141 subpart (d) should read: "these identification tags made of plastic or metal or other material shall be" The preamble should be drafted to indicate a suite of possible alternatives.

Delete the requirement for tags to contain a fisherman's name and mesh size on page 65141 subpart (d).

Tags will contain a vessel identification number (state or USCG).

Working group recommended a one-year delay in implementation of the tag requirement every 300 feet to determine the most effective alternative. (A grant is pending for start of March 2005 to examine tag types.)

For page 65141 subpart (2) regarding the end flag/ball system, the working group recommends using the current language or the existing state requirements as long as that state system includes a vessel identification number and an eight-inch minimum diameter ball or flag, marked with at least two stripes of reflective material at least two inches in width and visible for 360 degrees.

Comments and discussion of the Preliminary Report:

- Instead of specifying how they are marked, we should be able to say that the nets are marked so that we can determine the ownership.
- You are correct. We were concerned with the wording that had been used.
- These taters appear to be mashed.

Revised recommendations:

Gear marking

1. In regard to Page 65134 Table—“Gear requirements apply to all regulated and exempted waters” and page 65141 subpart (d) regulatory language concurs with Table, the group’s recommendation: Gear marking requirements should apply in regulated waters only.

To require gear marking requirements in non-regulated waters would create two significant problems:

There would be cost considerations to fishers in inland waters which were not accounted for in the EA.

The areas to be regulated were established early in the Take Reduction Plan (TRP) process. Fishers outside of the regulated waters were not kept informed of any potential regulatory impact and therefore had no input into the TRP process.

2. In regard to regulatory language on page 65141 subpart (d) should read: “these identification tags made of plastic or metal or other material shall be” The preamble should be drafted to indicate a suite of possible alternatives.

Language should be included in the background section on page 65141 subpart (d) regarding gear marking requirements to establish that “tags made of plastic, metal, or other material” is generally construed to include heat shrink tubing, rings, or other such methods of marking floatlines.

- 3. Delete the requirement for tags to contain a fisherman’s name and mesh size on page 65141 subpart (d).**
- 4. Tags will contain a vessel identification number (state or federal documentation number or state commercial license number).**

A specific requirement to include the fishermen's full name is redundant. The required state or federal license or documentation number is sufficient to identify gear ownership. The mesh requirement on a tag would require a fisher to purchase many different tags. A separate tag type would be necessary for each mesh size used; this would greatly increase the cost of purchasing manufactured tags.

- 5. Working group recommended a one-year delay in implementation of the tag requirement every 300 feet to determine the most effective alternative. (A grant is pending with Virginia Sea Grant for start of March 2005 to examine tag types.)**
- 6. For page 65141 subpart (2) regarding the end flag/ball system, the working group recommends using the current language or the existing state requirements as long as that state system includes a vessel identification number and an eight-inch minimum diameter ball or flag, marked with at least two stripes of reflective material at least two inches in width and visible for 360 degrees.**

The requirement for specific gear marking requirements without allowing the option of using existing state gear marking systems will impact all states to modify their gear marking regulatory requirements. This would also create either a dual marking program (regulated and exempted waters) or require gear marking modifications to fishers in exempted waters.

Comments and discussion of the revised recommendations:

None.

Result: Consensus reached on the Revised Recommendations.

Virginia Striped Bass fishery

Issue headlines: Virginia bass fishery/Striped bass fishery in Virginia in November and December

Preliminary report: The purpose is to avoid a shift in effort to unregulated medium mesh which would result in increased striped bass, dogfish, and perhaps dolphin by-catch.

The exemption for VA striped bass with large mesh:

- Two nets up to 1200 feet.
- Fishermen remain within 0.5 nautical miles.
- No night sets.

Comments and discussion of the Preliminary Report:

- Need more time in the group to work on this.
- Not clear on what the group came up with.
- We are not done. That was one proposal from yesterday.
- One problem with this is that in the *Federal Register* the change from 8 inch to 7 inch mesh was for the turtle rule—the plan that we worked on and reached consensus on was for dolphins and we looked at that data. We did not look at the turtle data and do not know what will happen with the shift from 8 to 7 inches. The change to 7 inch mesh will eliminate the ocean striped bass fishery.
- In addition, requiring fishermen to use smaller mesh will force them into mesh that may inadvertently raise the discard rate of other important and presently protected stocks, such as American shad. Such increases in regulatory discards should be considered.

Revised recommendations:

The proposed rule extended the federal large mesh closure to protect sea turtles into state waters in response to an effort shift in the NC monk fish fishery. This change has unintended consequences for ocean Striped Bass fishermen in VA. The proposed rule provides an exemption that is tailored to fishing in NC and does not acknowledge differences in fishing practices between NC and VA and it thus overly restrictive for VA fishermen.

The proposed rule will result in a shift in effort to unregulated medium mesh which would result in increased striped bass, dogfish, and perhaps dolphin bycatch. To avoid this problem we propose modifying the exemption for VA striped bass fishery as follows:

- Two strings of nets of up to 1200 feet each (four 300 foot panels tied together). (This is the length limit established by Virginia.)
- No night sets.

In addition we request that NMFS evaluate the thermal basis for the regulation—which was based on water temperatures in federal waters—to determine whether that should alter the closed period in state waters.

Also we request that NMFS review stranding and bycatch data that are available to determine the level of sea turtle interactions with the Striped Bass fishery in VA.

Comments and discussion of the revised recommendations:

- Can we let NMFS follow-up on this through comments and not have the Team try to agree on a consensus comment on this?
- As you move into state waters we use the state terminology. In VA some fishermen use a continuous length of net 1200 feet long.
- This proposal has the least amount of gear that the striped bass fishermen could set and still viably fish. They could work with this.
- NMFS knows that there is a need for this fishery in VA.
- We heard from the fishermen on their needs. As a Team, we cannot sign off on this without data or time to examine.
- There should be few turtles in the water at the time of the year and the agency could check for this.
- The gear tending requirement (fishermen remain within 0.5 nmi) was dropped because the fishermen indicated that they would be unable to make a day's work with just two nets in the water on some days. During these times, they would set other gear of lesser mesh (not restricted) but could only do so if they could leave the striped bass nets soaking. This was justified by the fact that fishermen have a finite amount of tags (striped bass quota) and when their quota is filled the gear would no longer be deployed. The gear would not be left over night.

Result: This is not a Team consensus comment. The Team forwards the information and the revised proposal developed in consultation with the fishermen.

Social and economic impacts

Issue headlines: Economic impact in North Carolina—EA versus EIS/Unintended impact to large mesh fisheries/Gear modification—expand time to implement after the rule is approved.

Preliminary report:

Part 1: Economic impact in North Carolina EA versus EIS

The issue was that the restrictions within the proposed rule for the beach haul seine fishery in North Carolina will significantly adversely affect an unintended group of fishers (mullet, spot, croaker, etc.) and that these impacts have not been analyzed in the EA. Further, discussion revealed that the harvests by these fishers may not be adequately documented in the trip ticket system and, therefore, quantification of the economic impact of this measure on these fishers may not be possible.

- Note that this applies to the beach seine fishery.
- What is not in the analysis is anything about the species that were hauled.

Part 2: Time to allow for gear to comply with the rule

Due to the uncertainty of availability of new gear, implementation of the plan should occur no sooner than one year after the plan is finalized.

Comments and discussion of the Preliminary Report:

- Does this mean the entire plan or only that portion of the plan that requires the acquisition of new gear? Some parts of the plan could go forward with no delay.
- Mashed.

Revised recommendations:

Part 2, revised: The agency should take into account the time needed to acquire new gear when finalizing the rule and to delay components of the rule as necessary based upon that need to acquire new gear.

Comments and discussion of the revised recommendations:

None.

Result: Consensus reached.

Observer program, enforcement and assessments

Issue headlines: Observer coverage/Improved observer coverage/Observer coverage/Defining stock structure/Responsiveness to changes in by-catch, abundance, and stock structure/Future plans for population survey/Strandings update/Dolphin by-catch mortality estimates/Enforcement.

Preliminary report:

While observer coverage is addressed in the non-regulatory section of the plan, it is critical. We need to recommend as strongly as possible that observer coverage be enhanced.

In order to monitor the effectiveness of the plan, we have to have a statistically significant amount of observer coverage between the federal government and the states.

1. Improved cooperation between the federal government and the states.
2. Improved cooperation between the southeast and the northeast.
3. Develop a good estimate of how many fishermen are in the different fisheries, the gear used, where etc. so that we can have good coverage.
4. Create a prioritization of fisheries that need coverage.
 - a) Identifying specific areas: southern NC gillnets, inshore gillnets, near shore gillnets.
 - b) Identifying holes in data needed to use for assessments.

In order to ensure that the plan accomplishes the objective of reducing bottlenose dolphin takes, it is imperative that the measures recommended in the plan be enforced.

Comments and discussion of the Preliminary Report:

- I agree and would add that we need to ensure that there are standards for coverage. Add a fifth point to develop standards for the level of coverage
- In regard to number 3—in order to assess the number of fishers in a given fishery, you should define that fishery according to gear. Currently, in the Marine Mammal Protection Act we have grouped fisheries, such as the VA haul seine fishery with the offending mono beach seine fishery on NC. These fisheries use fundamentally different gear and thus require separate observation programs.
 - You can know the number of gill-netters pretty accurately but you can't get real detailed on mesh size, etc. since that changes so quickly.
 - The NMFS list of fisheries is open for comment and is separate from this—comment period is open till March 4.
 - We need to be explicit about what we are trying to reach—tell them what statistical power we are trying to reach.
 - Look at using other observer programs (mentioned last night)—cross-train the other observers so that they can observe for marine mammals.
 - The group needs to do a little more tweaking.
 - We are pushing quickly on time—we do not have enough time. How can we effectively comment?
 - These are complex issues that the agency has struggled with for many fisheries—be clear about the need for diverse groups to work on these issues with enough time to hash them out.
 - The process from this meeting—the facilitators will draft what you have to say. We will send you a draft no later than Jan. 21 and provide comments back by Jan. 28. We will fix the draft and append the comments. We will send the notes and comments to NMFS by their deadline.
 - Some specific issues like the statistical power of observer coverage—it is wrong to try to do that here—the Team could designate a sub-set to work on that language.
 - The facilitators try to distinguish between the “team’s comments” and those that were written by individuals or small working groups, since the team will not have seen that.
 - The team can agree on a direction and ask for a technical detail to be worked out. We will note how that was addressed. This needs further discussion.
 - Is that meant to be “enforceable” or “enforced?”
 - While the measures need to be enforceable, we need to make sure that they are enforced.
 - We need to set standards or some level of enforcement. It expresses a vague intent. What follow-up to give this meaning.
 - We have had enforcement in other plans, such as harbor porpoise. It is hard to say what the enforcement level should be without knowing the need. Other than saying

that more officers are needed or saying that it should be linked to observer coverage, we cannot say what the effort should be.

- We could state a compliance level that we want to achieve and use the observer coverage to assess the level of compliance that is reached.
- You could give some specifications though they are difficult to work out. A group could work out what we mean be effective enforcement.

Revised recommendations:

None.

Comments and discussion of the revised recommendations:

None.

Result: Consensus reached.

Planning, Education, and Outreach

Issue headlines: Education and outreach on gear modification/Future team meetings.

Result: Due to time constraints, the team did not have an opportunity to develop recommendations on this issue.

Expiration of medium mesh regulation

Issue headline: Expiration of medium (?) mesh in December 2007.

Result: Due to time constraints, the team did not have an opportunity to develop recommendations on this issue.

Definition of the regulated area

Issue headline: Definition of the regulated area

Result: Due to time constraints, the team did not have an opportunity to develop recommendations on this issue.

Session on Non-Regulatory Elements of the Proposed Rule

Presentations made by (person) on (topic):

- Stacey Carlson on research on the bottlenose dolphins (stock structure, abundance, etc.) and on gear

- We heard updates on gear research from: Rick Marks and Glenn Salvador on twine stiffness; Mark Swingle on pound net lead line modifications; Barbie Byrd on dolphin interactions with gillnets; Andy Read on behavior around Spanish mackerel gillnets (there was a lot of interest in and follow up questions to Andy on his research); Doug Haymans on research on three designs of crab pots in Georgia coastal waters (Doug is working with Carl Poppell); and Leslie Burdette on dolphin interactions using strandings data from SC to assess likely fisheries interacting with dolphins.
- Marjorie Rossman on mortality
- Vickie Cornish on the observer program—where are the holes in the coverage
 - I am discouraged by Marjorie's presentation—the lack of statistical power makes it unlikely that we will be able to assess the effects of the rule.
 - Didn't we talk about using other observers than marine mammal observers—is there any way to use these other observers? Is it possible to request that data?
 - If you could use the information that is recorded and collected—can you use the data that is collected for other purposes?
 - Data in NC on sea turtle by-catch, data from Andy Read
 - If it's the gear that we are talking about and they record no interaction, then that is useful information.
 - Question to Marjorie on observer coverage—we have slightly better observer coverage in other areas and coverage is the lowest in NC.
 - Marjorie: Our comment is for 2001 and 2002
 - You say that the low estimated by-catch is confounded by the low observation—that can work to the advantage or disadvantage of the fishers.
 - The issue with the coverage of state waters, is that the issue of putting observers on small boats in NC and Delaware? Yes.
 - I have carried many observers in Dare County and I have learned about how the extrapolations to get the numbers affect the fisheries. We need to have many more observers. If this is a target issue, why can't the observers stay for weeks at a time? Let them target an area and stay with it. Is it a funding issue?
 - In NC we have had an issue with finding full-time observers. We have had tremendous turnover of observers. We are getting better at getting a stable set of observers. It has been a real problem. It has been an issue of having good observers and having the quality coordinators to support the observers.
 - How many observers in 2001? Only 12 in whole program at that time.
 - In 2001 and 2002 data... We now have 130 observers. We have been running to keep with the growth in the number of observers.
 - The mid-Atlantic took major hits on observers in 2001 and 2002. After 2002 the program exploded in growth. The newest time period will show greater coverage and will have gone back to status quo at about 1.5% coverage in state waters. We want to get even better than the status quo level of coverage.

- We have observers who are watching by-catch of other species. Could we train these other observers to observe for marine mammals? Give money to the states so that we can train these other observers.
- It is a great idea and we need to make sure that what they do is consistent.
- I do not like the alternative platform that the observers use—I prefer having the observer on board my vessel.
- The SC boats that fish in our waters never seem to have an observer.
- The observer program is mandatory. Some captains refuse to take an observer or they will say not today.
- We need to spread the observations across the boats that are doing the fishing.
- Stacey Carlson on stranding network.
- Stacey Carlson on outreach and training.
- Mike Tork on efforts to improve training of observers—with the ten-fold increase in observers it was clear that we had to do this. Training was lengthened from one to three weeks; brought in an adult education specialist to evaluate our training; dedicated training staff (that includes observers); enhanced our certification to require four training trips; developed training curriculum; looking at a center for training.
- Stacey Carlson on crab trap/pot fishery.

Evaluation

At the end of the meeting, participants were asked to evaluate the BDTRT process by responding to three questions: (1) What did you like about the BDTRT process? (2) What did you not like about the BDTRT process? And (3) what would you do differently? Eleven forms were received. The responses can be grouped into several categories:

1. Time: the duration of the TRT process and the shortness of the final meeting
2. Participation: all stakeholders were at the table and could voice their concerns
3. Data: availability and use of data (including turtle data and advance availability)
4. NMFS roles in the process
5. Other

The complete responses to the evaluation questions are presented in Appendix 2.

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Appendix 2: Evaluation Results

At the end of the meeting, participants were asked to evaluate the BDTRT process by responding to three questions. The responses are presented below. Within each question, the comments are in random order. Words added by the editor are in brackets [] and are for clarification purposes only. Emphasis (i.e., underlining) was in the original.

What did you like about the BDTRT process?

- The ability to voice concerns relative to fishing practices in your state.
- It brought all the players to the table.
- The use of facilitators was very helpful.
- The TRT was composed of a good mix of all the interested parties.
- The 2003 TRT meeting was very beneficial. This meeting allowed the TRT to be involved in clarifying some of the questions the NMFS had regarding the definitions of gear types, areas, night and other regulatory ambiguities.
- The TRT meeting during the comment period was also beneficial. This allowed the TRT to develop consensus comments on the proposed regulations.
- Final meeting during the comment period.
- Access to NMFS staff including legal counsel.
- I think that the BDTRT process was very successful. The best TRT process so far, specifically because of the good use of observer data and cooperation between all constituents.
- Things stayed friendly this time.
- I like the fact that the Team was made up of representatives of all parties to be affected. This allowed for input from sources that others may not be privy to.
- I was able to express my opinion and try to make people understand my concerns.
- It was good to see some scientists and NMFS employees get a better insight on my fisheries and gear usage. I feel like before the TRT, they knew a lot less than they do know. As a commercial fisherman, it was also nice to be able to voice my concerns about regulations coming down on my livelihood!
- All TRT members had equal opportunity to provide input on issues.
- Consensus building process was great, thanks to the facilitators.

What did you not like about the BDTRT process?

- The ability of NMFS to write the rules without consensus. I.E., requiring tag marking in exempted waters.
- There should have been a little more time at the beginning to flush out the topics for comments.
- There should have been people here with the data used to make the turtle regulations.
- There was not enough time to address all the issues in adequate detail.

- Scientific documents to be used at TRT meetings were frequently not available for review prior to the meetings. This significantly delayed or slowed progress at each meeting while TRT members quickly tried to review data.
- NMFS failed to bring all their questions or confusion regarding gear definitions to the 2003 TRT meeting. This caused the inadvertent inclusion of a mono filament gill net prohibition within 300 feet of the beach. To aggravate this situation, the NMFS personnel were uncooperative to the effort to correct the mistake they made, even though their confusion would cause an economic disruption to fisheries beyond the intended beach seine and stop net fisheries.
- Lack of data and data availability.
- Final meeting was rushed – not a good situation.
- NMFS addition of “300 foot rule” for NC fisheries in the PR [proposed rule] rather than during our earlier discussions.
- Need to force NMFS to use updated assessment information.
- I am concerned about the duration of the process, and worse that the proposed rule appears to restrict fishing practices that were not intended by the TRT consensus report, and may result in unintended consequences in terms of by-catch of protected species and regulated fish species.
- I really felt that the Team should have been permitted to evaluate and discuss the 2001-2002 data post-dogfish plan and discuss its import for the need for a TRP especially in light of proposed wide time/area closures for turtles.
- Not enough time generally to break into groups and then discuss and go back to small groups and formulate group comments.
- Although the small “breakout” groups allowed for more topics to be examined, they seem to drag matters out as we then had to discuss with the entire Team. This always seems to put things at square one.
- To explain a fishery to a person who does not understand it but can change your way of fishing.
- The fact that it started out with a six month time frame but lasted three years and then was rushed hastily near the end in Jan without really getting all areas covered properly.
- The time it takes to get your [travel reimbursement] money back to you. It is a real hardship on the fisherman.
- TRT was probably too large, could have accomplished the same thing with 25 to 30 members.

What would you do differently?

- Encourage legal counsel to help small working groups with advice on what can and cannot be changed with rules as proposed.
- Don’t schedule a session so late at night. It gave the impression that the non-regulatory portions of the Plan weren’t important.
- Not let the whole TRT process take so long.
- Look at how the TRT may relate to other regulations (like turtles) earlier in the process.

- Establish a requirement to have all documentation to TRT members at least one week prior to meetings.
- Hold the pre-publication meeting (in this case, the 2003 meeting) closer to the time of publishing the proposed rule so these types of mistakes [reference to bullet #6 in the “did not like” section above] can be addressed before causing unintended economic consequences on the fishing community.
- Final meeting as a full meeting.
- Finally, in the final rule, turtle conservation measures have been incorporated in the BND measures – while I agree with this, there has been no previous discussion or presentations of data to support the turtle conservation measures. This is both unfortunate and problematic.
- Give more than one day ($\frac{1}{2} + \frac{1}{2}$) of meeting time – two full days would be better.
- To make sure a person from each affected fishery is here to explain their fishery and how it would be affected.
- I would as far as marine mammals and NMFS goes, make sure that things aren’t rushed just because the threat of a lawsuit by special interest groups.
- Nothing.