



Protected Resources Committee Meeting Summary

Wednesday, September 14, 2022

Committee Members in attendance: Chris Batsavage (Chair), Sonny Gwin (Vice-Chair), Skip Feller, Maureen Davidson, Peter Hughes, LCDR Matt Kahley, Ken Neill, Adam Nowalsky, Sara Winslow

Other attendees: Karson Cisneros (Council Staff), Mike Luisi (Council Chair), Pat Geer (Council), Mike Waine (AP Member, ASA), Greg DiDomenico (AP Member, Lund's Fisheries), Kiley Dancy (Council Staff), Colleen Coogan (NMFS), Meghan Rickard (NY DEC), Jennifer Geobel (NMFS), Kevin Wark (AP Member, NJ), Marisa Trego (NMFS), Katie Almeida (AP Member, Town Dock), Bonnie Brady (AP Member, LICFA), Kelly Whitmore (MA DMF), Niki Lisi (NMFS), Shannon Bettridge (NMFS), Meghan Gahm (NMFS)

Meeting Summary

The Council's Protected Resources Committee met via webinar on September 14, 2022, to review two issues related to North Atlantic Right Whales (NARW). They received presentations on each topic from National Marine Fisheries Service (NMFS) protected resources staff. The Committee first reviewed recent analyses to inform the Atlantic Large Whale Take Reduction Plan's (ALWTRP) next steps, which include the need to reduce the risk of entanglement to large whales in U.S. East Coast gillnet, Atlantic mixed species trap/pot, and Mid-Atlantic lobster and Jonah crab trap/pot fisheries. They discussed concerns and guidance for the Council's representation on the Atlantic Large Whale Take Reduction Team (TRT). The Committee also reviewed and provided comments on the proposed North Atlantic Right Whale (NARW) Vessel Strike Reduction Rule.

Atlantic Large Whale Take Reduction Plan

The measures developed in the ALWTRP have the potential to impact Council managed gillnet and trap/pot fisheries. The TRT is anticipated to make final recommendations for coastwide sets of measures at their November 2022 meeting. The Committee discussed the tools available to mitigate entanglement risk including reducing the number of vertical lines in the water through more traps per trawl, more gill net panels per set with single buoy lines or using weaker line. A member asked for clarification of the species included in the category of "Other Trap/Pot" from the presentation and a list was provided by NMFS staff.¹ Other members asked clarifying questions surrounding terminology and NARW population estimation.

Members of the public in attendance also asked several questions. One attendee asked whether risk reduction in the Mid-Atlantic region had to meet the new expedited deadline resulting from the recent court decision that found that NMFS violated the Endangered Species Act (ESA) and that the 2021 Biological Opinion and the 2021 Final Rule were invalid. NMFS responded that the whole coast is on the

¹Other trap/pot includes fisheries for hagfish, shrimp, conch/whelk, red crab, Jonah crab, rock crab, black sea bass, scup, tautog, cod, haddock, Pollock, redfish (ocean perch), white hake, spot, skate, catfish, stone crab, and cunner.

expedited timeline, and they need to target where the risk hotspots are, while also having some broader measures where appropriate. This includes the Mid-Atlantic region, but there is lower risk in the Mid-Atlantic compared with New England. This attendee felt that the Mid-Atlantic should not be on the expedited timeline due to this lower risk. NMFS added that they do not yet know if their proposed timeline will be accepted by the court, however they will likely know later this year.

Multiple Committee members agreed with the timeline concerns and one member described ongoing efforts to start testing out ropeless gear and making their trawls longer. They felt that more time was needed to continue pursuing these ideas and added that there are very few participants in the dogfish and monkfish gill net fisheries from Delaware south in the Mid-Atlantic region so there is likely very little risk. NMFS staff noted that the amount of risk could be analyzed for the Mid-Atlantic gillnet fisheries by month and that could help inform comments related to the timeline or proposed measures for the fishery. They added that regional caucuses have requested information on risk in certain areas to help generate ideas and measures packages. Committee members felt this information would be beneficial and the Committee recommended a data request for a monthly breakdown of risk units in the Mid-Atlantic by primary landed species and/or by mesh size.

An attendee requested retaining two buoys in the monkfish gillnet fishery, which is relatively small with 8 vessels that fish more than 100 days per year in New Jersey and very few fishing in New York as well. They said that going to one buoy as a proposed way to remove vertical lines and decrease the risk to whales would eliminate the fishery. Another attendee added that with only one buoy line, trying to retrieve the gear can be a dangerous situation. NMFS staff noted that these types of comments are helpful and some combination of weak rope, less rope and no rope in certain areas will be needed overall, however the specifics have not been recommended by the TRT yet. An attendee asked about the data used to inform whale locations and abundance and NMFS staff discussed methodology including systematic surveys, opportunistic sightings, and other data.

A Committee member asked whether there was a difference between anchored nets and tended nets in the decision support tool being used to evaluate risk and develop measures. NMFS staff clarified that they are separated out with the focus primarily on the anchored nets, and the team has talked about different requirements for tended nets.

Another attendee asked whether the vertical net height gillnets is considered in terms of the amount of risk of entanglement and added that a larger net height would be higher risk than smaller net heights. NMFS staff said that the decision support tool is taking net height into account to calculate risk and that data can be shared if the Committee is interested. The Committee agreed that this information would also be helpful and added it to the data request along with the monthly risk for the region.

Lastly, the Committee discussed outreach and the need to get the word out to stakeholders. There is a scoping comment period for these coastwide measures discussed that is open through October 11th, 2022. This scoping period announcement has been shared to the Council page and Committee members should distribute the information through their networks so that stakeholders can weigh in. They also discussed next steps and Council staff noted that once the data request results are received, they can be distributed and discussed either at the Council meeting or at another Committee meeting as needed.

Proposed North Atlantic Right Whale Vessel Strike Reduction Rule²

A Committee member asked why there aren't efforts to attach pingers on the whales since there are a few hundred right whales, whereas there are thousands of vessels to monitor. At what point is it necessary to take this drastic measure so that the whales show up on radar? NMFS staff said that this has been explored but has currently proven to be infeasible to tag each of them. The tags have not stayed on for very long, however they are looking into other tagging technologies on the southern right whale.

The Committee also discussed large cargo ships and whether they would prefer to move on demand when a whale is present rather than the mandatory speed rule. NMFS staff responded that when dynamic areas were proposed to be mandatory in previous rulemaking, there was a lot of pushback from the large shipping companies because they wanted to be able to plan ahead and have predictability. Another member asked whether the shipping companies have said this would impact consumer pricing. NMFS staff responded that this is not expected to, and some larger vessels are already slowing down.

A Committee member said that from Northern New Jersey down to North Carolina, the speed zone is 20 miles offshore and now it is proposed to go 50 or 60 miles offshore. The Committee member is also concerned about the timing because there is still a huge amount of fishing effort occurring. They added that the proposed speed zone goes until the end of May, including Memorial Day weekend. They run a whale watching boat out of Virginia Beach and have seen a handful of right whales, however they are 20 miles offshore and are gone by the end of April. Boats that fish out of Ocean City and Cape May will often fish up and down the beach, not offshore, and now will not be able to operate. This Committee member suggested a buffer that goes out a few miles in state waters from New York or New Jersey south and have the speed zone end on April 30th. This buffer would be in a place where they never see right whales. A committee member asked how shifting the timing to a few weeks earlier in May would impact the overall risk and added that they think the zone should only be in effect through April. NMFS staff said that this can be calculated but that information was not available at the time of the meeting.

Another Committee member who is a representative from the Coast Guard discussed that the current regulations are challenging to enforce, and their primary tool is currently through the Automatic Identification System (AIS) on vessels. They asked whether NMFS was considering expanding the AIS requirements, and NMFS responded that they are considering several options and talking with NOAA's Office of Law Enforcement on alternative ways to monitor and enforce the rule. They added that they are trying to be proactive about not creating a rule that can't be enforced and so far about a third of the vessels in the 35-65 ft length category are already carrying AIS. They noted that they are looking into water and land-based approaches as well as extensive outreach to educate the public about the rule. The Committee discussed the enforcement burden as a concern given the limited resources available to the Coast Guard, the timing and area of the zones, and the volume of the recreational and charter fleets, especially in May.

A member of the public asked questions about the proposed rule process and when and how the public was consulted throughout the development of the rule. They asked whether there was a similar process to the ALWTRT where stakeholders provide input in the development of the measures. Lastly, they asked how NMFS would address the comments and suggestions received in the current open comment period. NMFS responded that this rule is under a different section of the MMPA than the ALWTRT process and a team is not formed in the same way. Stakeholder involvement is being encouraged now through the comment period and comments will be addressed through the proposed rule process.

² The Federal Register Notice for this action is available [here](#).

A Committee member added that another consideration is the impacts to boat manufacturers, where these boats are originally designed to go 30 knots instead of 10 knots. Travel times for charter captains are another concern and there are already long runs when fishing for species like tuna.

The Committee agreed that there needed to be clearly defined exceptions to the rule in emergency situations. This should include a speed zone exception if a private vessel is aiding another vessel in an emergency before the Coast Guard or others arrive to help. Furthermore, because this rule addresses smaller vessels that may not have cabins, they need to use their speed to outrun thunderstorms and other weather events. The rule currently addresses gale warnings, but this may not be sufficient.

One member asked what steps would need to be taken if the measures in this rule do not prevent vessel strikes and whether there is a specific percentage reduction needed like the ALWTRT process. NMFS staff responded that they do not authorize vessel transportation, so it is a different management situation. However, their models do show that the speed rules are very effective. The key is to implement the zones in the right areas at the right time.

An attendee commented that further evaluation of the impacts to the specific recreational fisheries that are managed by the Council needs to be done for the proposed rule. Another attendee added that HMS impacts needed to be evaluated as well.

The Protected Resources Committee recommended that the Council send a comment letter on this proposed rule. The comment letter should include the following points that were discussed during the meeting:

- Consideration of adjustments to the time and area speed zones and further consider the impacts to recreational fisheries that balance risk reduction and fishing opportunity. For example, is there a large increase in risk by removing the month of May or the last two weeks in May from the speed rule or adding a nearshore corridor exemption where there may not be whales in that space and time.
- Consideration of the enforceability of this rule in state and federal waters.
- Inclusion of clearly defined speed zone exceptions for safety under a variety of emergency situations.

At the meeting, NMFS staff said that there was a possibility for an extension of the comment period which was scheduled to close on September 30th. The day after the PR Committee Meeting, the Committee and Council staff were notified that the proposed rule comment period was extended to October 31, 2022. Because of this extension, the Council will have the opportunity to discuss whether comments should be submitted and if so, add to the above bulleted list during the Committee Reports section of the October 4-6 Council Meeting before the comment letter is drafted.