

MARINE MAMMAL BEHAVIORAL DISTURBANCE WORKING GROUP
Perot Systems Government Services Conference Facility
Scituate, MA
9:00am to 4:30pm
12 February 2004

MEETING SUMMARY

ACTION: Upcoming Meetings

March 2, 2004 (Presentation by Chris Clark, Acoustician, Cornell University; Presentation by Jooke Robbins, Center for Coastal Studies; Presentation on Tuna Spotting, Speaker TBD)

April 27, 2004 (Presentation by Darlene Ketten, WHOI)

ACTION: Altitude of Tuna Spotter Planes

Donald Hourihan will contact tuna spotters and determine the average altitude at which spotter planes normally fly.

ACTION: Presentation on Tuna Spotting

Hourihan will invite a tuna spotter to speak at the March 2 meeting.

ACTION: Preparation for March 2 Meeting Involving Acoustics and Noise

Working Group (WG) members will prepare develop questions regarding marine acoustics for Chris Clark prior to the March 2 meeting.

ACTION: Compilation and Delivery of Acoustic and Noise Working Group Question

All questions developed by WG members regarding marine acoustics and noise should be emailed to Peter Scheifele no later than 20 February. Scheifele will develop specific technical questions to present to Clark; however, these questions should be stated in "plain terms" to facilitate whole-group understanding. Scheifele will be responsible for compiling and sending all group and technical questions to both Clark and WG members before the March 2 meeting.

ACTION: Citation for NOAA Whale Watching Guidelines

Brian Hopper will provide the correct citation for the NOAA Whale Watching Guidelines. These guidelines are referred to in the WG's Whale Watching Action Plan, Strategy Section WW-1.

ACTION: Definition of Personal Water Crafts

It was recommended that the WG contact the town of Marshfield, MA regarding the definition of personal water craft (PWC). Marshfield recently developed a definition of personal water craft for inclusion in the town's new revised **Beach Recreation Guidelines?**

ACTION: Whale Watching Action Plan Language Regarding the Use of Personal Water Crafts

Asmutis will modify the personal watercraft language presented in "Emerging Issues" and include it in Section 1.2 of the Whale Watching Action Plan.

ACTION: Feasibility of a Two-Tiered Whale Watching Regulatory Program

Young will investigate the feasibility of establishing a two-tiered whale watching regulatory program and establish appropriate language for inclusion in Section 1.4 of the Whale Watching Action Plan. This material should be sent to Ward by February 20, 2004.

ACTION: Opposition to the Two-Tiered Whale Watching Regulatory Program

Jack Kent and Donald Hourihan will develop an opposing rationale for the WG's proposed Two-Tiered Whale Watching Regulatory Program. Hourihan will finalize the rationale for inclusion in Section 1.4 of the Whale Watching Action Plan. These materials should be sent to Ward by February 20, 2004.

ACTION: Enforcement Language for the Whale Watching Action Plan

Asmutis will obtain more specific language for the Enforcement Strategy Section WW-2 of the Whale Watching Action Plan.

ACTION: New Zealand Whale Watching Regulations

Heskett will determine the fees (if any) associated with New Zealand's whale watching regulations.

ACTION: Documentation on New Zealand Whale Watching Regulations

Heskett will email to the WG a copy of the "1992 Marine Mammal Protection Regulations for New Zealand."

ACTION: Outreach and Education Certification Program

Young and Asmutis will develop a for a Certification Program that would help promote responsible whale watching in the SBNMS. This rationale will be included in Section 3.2 of the Whale Watching Action Plan.

ACTION: Hawaii Outreach and Education

Hopper will investigate the types of outreach and education regulations used to govern whale watching in Hawaii.

ACTION: Effectiveness of Whale Watching Regulation Programs

Heskett will investigate the effectiveness New Zealand's education and outreach whale watch programs.

ACTION: Language Regarding Baseline Sampling of Ambient Noise

Scheifele will write a rationale for baseline sampling to establish ambient noise levels both inside and outside the SBNMS, and serve as rationale for the Noise Action Plan. To ensure reader clarity, Hourihan and Young will provide comments on the draft rationale.

ACTION: Language Regarding Species Recognition and Individual ID Studies

Asmutis will develop a rationale for species recognition and individual ID studies. This rationale will be used in Section 4.2 of the Whale Watching Action Plan.

ACTION: Airship Disturbance

Heskett will ask Carole Carlson to develop a paragraph on airship disturbance for inclusion in the Overflight Action Plan. In addition, Ward will ask David Wiley to provide supporting information and possible citations for the airship disturbance write-up.

ACTION: Language on Fishing Activity

Heskett will develop a statement regarding how the WG will be handling the public scoping problem of fishing activity. This material should be sent to Ward by February 20, 2004.

ACTION: Technical Advisor

Brain Hopper will contact biologist Richard Merrick and invite him to participate in the March 2 meeting as a Technical Advisor on the public scoping issue of fishing activity.

MMBD WORKING GROUP: ATTENDEES (February 12, 2004)

Name	WG Seat / Affiliation	Attendance
Regina Asmutis-Silvia	WG Chair – SAC	Present
Nathalie Ward	WG Team Lead – SBNMS	Present
Dave Slocum	Whale Watching – NEAq	Present
Scott McNeil	Commercial Shipping	Present
Henry (Buster) McCarthy*	Tuna Fishing	Not-Present
Donald Hourihan*	Tuna Fishing	Present
Sharon Young	Conservation – HSUS	Present
Carole Carlson	Conservation – IFAW	Non-Present
Erin Heskett (Alternate)	Conservation – IFAW	Present
Jack Kent	Recreational Boating – MMTA	Present
Dana Hartley	NMFS	Nont-Present
Brian Hopper	NMFS/NER	Present
Kim Amaral	Academic – WHOI	Non-present
Peter Scheifele	Academic – UCONN	Present
Darlene Ketten	Technical Advisor	

* Henry McCarthy will no longer participate as a member of the MMBD WG. Donald Hourihan replaced McCarthy as the Tuna Fishing Representative during 12 February meeting. Don Hourihan may be reached via email at nipper@gis.net or by phone at 781-834-7598.

WELCOME, INTRODUCTIONS, AND ADOPTION OF AGENDA

Regina Asmutis introduced new WG member Donald Hourihan (Tuna Fisheries Representative) and Jennifer Ghiloni (Rappatuer). Asmutis requested approval of 21 January Meeting Summary; motion was made to accept the summary without further revision.

OLD BUSINESS AND ACTION ITEMS

Nathalie Ward and Asmutis reviewed the action items identified during the last meeting. WG members were asked to provide input as necessary.

User Fees

User fees within the SBNMS are restricted as a “special use” category. SBNMS would only institute “user” fees as request of the industry (e.g. head tax on whale watch boats by request of whale watch industry.) Ward will continue to review how user fees are collected by other federal agencies.

Rational for Regulations and Guidelines in Other Sanctuaries

In order to determine the rationale for the overflight regulation of 1000 feet, Ward researched overflight regulation guidelines in other sanctuary areas. Ward discovered that the overflight regulation used at the Olympic Coast is 2000 feet. This regulation was established based on the nation park system overflight standard that protects this coastline. Ward notes that the Olympic coast sanctuary overflight rule was challenged by the FAA on the grounds that the FAA did not feel a sanctuary had the right to control airspace. In consultation with other NMS’s, Ward was unable to locate a definitive rationale for the 1000 foot overflight regulation; however the matter is still being investigated.

Personal Water Craft Restrictions in Other Sanctuaries

Ward investigated personal water craft (PWC) restrictions in other sanctuaries. The only regulation found restricts jet-skis from maneuvering around whales during the months of December through April in Hawaii.

Rationale for FAA Overflight of 1000 feet

Hopper approached the General Council regarding the FAA overflight regulation of 1000 feet. General Council was unable to determine where this requirement came from and believes it was originally put in as a guideline. It was suggested that the reference to the FAA be removed when referring to this guideline within the Action Plan.

Overflight Exemptions for Fisheries

Hopper approached the General Council on the topic of overflight exemptions for fisheries. Currently, the only exemption that exists is for interactions with right whales. This regulation states that aircraft are exempt from the overflight restriction of 1000 feet if they are not engaging in whale watching activities. It was noted however, that there currently does not exist a good working definition of “whale watching activities.”

Filtering for Pop-up Buoys

Heskett reported on the deployment of pop-up buoys in Great South Channel. Based on his research, it was determined that pop-up buoys have been able to detect noise ranges between 1000 – 2000 hertz and have successfully detected noise from humpbacks, bow heads, right, and blue whales. The range of noise detection for each buoy is approximately 20km; however, this range varies significantly with both marine condition and strength of call. In addition, while buoys can pick-up whale noise, a single buoy does not have the ability to pin-point the location of the whale call. It may be possible, however to use buoy data to pinpoint whale locations by comparing seasonal whale sightings with the array of sounds recorded by the buoy.

Asmutis obtained further information on pop-up buoys along Cape Cod from the Boston Aquarium. Information from the Aquarium indicates that the buoys along Cape Cod have been specifically designed to pick up right whales and therefore may not be appropriate for investigating vessel noise. This discovery brings to light another issue regarding the ability of pop-up buoys to investigate noise impacts to marine mammals. Currently pop-ups are designed to pick up low-frequency sounds (nothing below 1000 hertz), but it is unclear how well the buoys are able to distinguish whale noise from vessel noise. The ability for buoys to distinguish between the two noises is determined by the signal to noise ratio at which the pop-ups work (i.e., how smart the buoy software is).

New Zealand Regulation/Certification

Heskett obtained a copy of the “1992 Marine Mammal Protection Regulations for New Zealand.” Under New Zealand whale watching regulations all vessels, planes, and shore-based whale watching operations have to satisfy specific requirements before they are qualified to receive a whale watching permit (These requirements are described in detail in the New Zealand 1992 Marine Mammal Protection Regulations under the section on permitting. Heskett is to provide the WG with this document for review). In addition, permits are only issued to individual operators, not a company or organization.

ACTION PLAN REVIEW

Revised Action Plan drafts (Whale Watching, Overflight and Noise), and Appendix C: Emerging Issues were provided to each WG member. Members were asked to openly discuss, comment, and modify Action Plan text as necessary. Green writing represented new/added information based on discussions

from the last meeting. Blue writing indicates modifications made during the meeting. Red writing indicates questions that WG members need to answer and/or discuss.

Issues raised during the review session are noted below.

Whale Watching Action Plan

A revised version of the Whale Watching Action Plan has been included as Appendix A.

Issue 1: Strategy WW-1

WG members were unclear as to how regulations are governed within the Sanctuary, as well as between agencies and other partnerships.

Comment: Baselines for all regulations are set by Federal law. State agencies have to set regulations that either match or are more stringent than those set by the Feds. Within the waters of the SBNM, the more restrictive laws will apply. In addition, due to SBNMS's policy, Sanctuary regulations should always compliment NMFS and other agencies; however, SBNMS can proceed with regulations within the Sanctuary on their own timeline if other agency regulation processes are not in sync with the Sanctuary's timetable.

Issue 2: Activity 1.4

The WG was in debate over the feasibility of developing a two-tiered regulatory program. This program would certify vessel operators to approach whales at 100 feet and restrict uncertified operators to a distance of 300 feet.

Discussion: Representatives of the commercial and recreational fishing industries felt that a regulation of this nature would be too costly and unenforceable. In addition, it was felt that a regulation of this nature could inadvertently cause a mandate for commercial whale watching vessels. Several industry representatives suggested that this strategy would be more effective as an educational program. Developing this as an educational program would help eliminate cost and enforcement issues.

Issue 3: Strategy WW-3: Outreach/Education

Several WG members felt the outreach and education strategy presented in WW-3 would be an acceptable alternative to the two-tiered regulatory program.

Discussion: It was established by the WG Chair that the outreach and education strategy presented in Section WW-3 of the Whale Watching Action Plan is solely to teach boaters how to interact with whales. Unlike the proposed Regulatory Program, completion of this program would not allow vessels to move closer to the whales. Completion of this program would simply allow commercial operators and vessels to advertise proof of course completion and whale friendly whale watching methods (i.e, bragging rights).

Comment: It is important that the WG not "re-invent the wheel" in terms of developing an educational program. Existing programs should be assessed to see how they can be applied. In addition, the assessment, funding, and development of an educational program should not rest solely on SBMNS. Partnerships should be actively sought out and maintained.

Issue 4: Strategy WW-4: Research

Concern was raised over the wording of "tagging research" suggested in Section WW-4 of the Whale Watching Action Plan.

Comment: Some tagging methods have proven to be very stressful to marine mammals. WG members feel acoustic tagging is a useful method to track and assess behavioral activities. It was recommended that non-invasive tagging methods be investigated. Asmutis will develop a supporting rationale for this proposed tagging and ID research strategy.

Overflight Action Plan

A revised version of the Overflight Action Plan has been included as Appendix B.

Issue 1: Strategy OV-1: Outreach

The title of OV-1 was modified from “Develop Outreach Guidelines” to “Develop Outreach Advisories.” The intent of this strategy is to develop a pilot advisory program; not flight guidelines.

Noise Action Plan

The Noise Action Plan was not edited or discussed during the meeting due to the absence of Technical Advisor, Darlene Ketten. A motion was taken to move the editing and discussion of the Plan to March 2.

Emerging Issues

Appendix C: Emerging Issues was accepted by the WG with minor modifications and text deletions. A revised version of the Emerging Issues is included as Appendix C.

NEW BUSINESS

Fishing Activity

Behavioral disturbance due to fishing activities was highlighted as a public scoping concern. Based on discussions, the WG determined that this issue is more appropriately associated with entanglement and vessel strikes, and that the behavioral issues associated with fishing activities and noise were adequately addressed in the WG’s Noise Action Plan (Heskett offered to develop a rationale for the groups reasoning). However, despite this majority opinion some members of the WG felt a final decision should not be made until a Technical Advisor was consulted. Brian Hopper recommended that Dr. Richard Merrick (NMFS) address the issue during the March 2 meeting.

Outlaw Fishing for Herring

Public scoping comments also highlighted fishing for herring as a concern. WG members agreed that this is a management issue and beyond the purview of this WG.

Recreational Fishing in Combination with Whale Watching

There is a potential for recreational fishing activities to overlap whale watching activities (e.g. tuna fishing). By law, those holding tuna fishing permits are exempt from all whale watching restrictions. The group has suggested that before this issue be addressed the sanctuary should attempt to assess potential behavioral impacts of recreational tuna fishing by first quantifying the number of tuna permits issued per season.

Other recreational fishing issues such as recreational trolling were also addressed. Recreational trolling through bubble nets is of particular concern. The group agreed that this issue would be covered in the outreach and educational sections of the Whale Watching Action Plan.

FINAL COMMENTS

Meeting adjourned at 4:00 pm.



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Sanctuary System
Stellwagen Bank National Marine Sanctuary
175 Edward Foster Rd.
Scituate, MA 02055
(781) 545-8026 FAX: (781) 545-8036

MBD.AG.4

Marine Mammal Behavioral Disturbance
Management Plan Review Working Group
12 February 004
9 A.M. to 4:30 P.M.

AGENDA

9:00 – 9:15	Welcome, Adoption of Agenda and Minutes
9:15– 9:30	Old Business: Action Items
9:30 – 9:45	Review: DRAFT Overflight Action Plan
9:45 – 10:30	Review: DRAFT Whale Watch Action Plan
10:30 – 10:45	<i>Break</i>
10:45 – 11:00	Review: Emerging Issues
11:00 – 12:00	Fishing Issues
12:00 – 12:30	<i>Lunch</i>
12:30 – 1:30	Noise Disturbance: Darlene Ketten, Technical Advisor
1:30 – 3:00	Noise Disturbance Action Plan: Discussion
3:00	<i>Break</i>
3:15 – 4:00	Discussion Continued
4:00 – 4:30	Next Steps and Summary
4:30	Adjourn

APPENDIX A

APPENDIX B

APPENDIX C