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SUPPLEMENTARY INFORMATION: The Sanctuary Advisory Council provides the Sanctuary Superintendent with advice on the management of the Sanctuary. Members provide advice to the Superintendent on issues affecting resource protection, the Sanctuary's primary purpose. The Council, through its members, serves as liaisons to the community regarding Sanctuary issues and acts as a conduit, relaying the community's interests, concerns, and management needs to the Sanctuary. The Sanctuary Advisory Council members represent public interest groups, local industry, commercial and recreational user groups, academia, conservation groups, government agencies, and the general public. Members serve either two- or three-year terms in order to stagger Council membership and allow continuity.

Authority: 16 U.S.C. Sections 1431, *et seq.*
(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XT76

False Killer Whale Take Reduction Team Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of establishment of a False Killer Whale Take Reduction Team and meeting; request for comment.

SUMMARY: NMFS is establishing a Take Reduction Team (TRT) and convening a TRT meeting to address the incidental mortality and serious injury of the Hawaii Pelagic, Hawaii Insular, and Palmyra Atoll stocks of false killer whales (*Pseudorca crassidens*) in the Hawaii-based deep-set and shallow-set longline fisheries. The TRT will develop a Take Reduction Plan (TRP) as required in the Marine Mammal Protection Act (MMPA). NMFS will charge the TRT with developing a plan to reduce incidental mortality and serious injury

of these stocks in the Hawaii-based longline fisheries to a level less than the Potential Biological Removal (PBR) level for each stock within 6 months of implementation of the plan and to a level approaching a zero mortality and serious injury rate within 5 years of implementation of the plan.

DATES: The meeting will be held on February 17, 2010, from 1 p.m. to 5 p.m., on February 18, 2010, from 8:30 a.m. to 5 p.m., and from February 19, 2010, from 8 a.m. to 1 p.m. Comments on the inclusion within the scope of the TRT of non-strategic marine mammal stocks interacting with the Category I Hawaii-based deep-set longline fishery must be received by February 18, 2010.

ADDRESSES: The False Killer Whale TRT meeting will be held at the Sheraton Waikiki, 2255 Kalakaua Avenue, Honolulu, HI; Phone: (808) 922 4422, Fax: (808) 931 8883.

You may submit comments, information, or data, identified by the Regulation Identifier Number [RIN 0648-XT76], by any one of the following methods: (1) Electronic Submissions: Submit all electronic information via the Federal eRulemaking Portal at <http://www.regulations.gov>; (2) Mail: Assistant Regional Administrator, Protected Resources Division, National Marine Fisheries Service, Pacific Islands Regional Office, 1601 Kapiolani Boulevard Suite 1110, Honolulu, HI 96814.

Instructions: All comments received are a part of the public record and may be posted to <http://www.regulations.gov> without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Nancy Young, NMFS, Pacific Islands Region, (808) 944-2282, nancy.young@noaa.gov; or Kristy Long, NMFS, Office of Protected Resources, (301) 713-2322, kristy.long@noaa.gov.

SUPPLEMENTARY INFORMATION: Section 118(f)(1) of the Marine Mammal Protection Act (MMPA) requires NMFS to develop and implement take reduction plans designed to assist in the recovery or prevent the depletion of each strategic stock that interacts with

Category I and II fisheries. It also provides NMFS discretion to develop and implement a take reduction plan for any other marine mammal stocks that interact with a Category I fishery, which the agency determines, after notice and opportunity for public comment, has a high level of mortality and serious injury across a number of such marine mammal stocks.

The MMPA defines a strategic stock as a marine mammal stock: (1) for which the level of direct human-caused mortality exceeds the Potential Biological Removal (PBR) level; (2) which is declining and is likely to be listed under the Endangered Species Act (ESA) in the foreseeable future; or (3) which is listed as threatened or endangered under the ESA or as a depleted species under the MMPA (16 U.S.C. 1362(2)). PBR is the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. Category I or II fisheries are fisheries that, respectively, have frequent or occasional incidental mortality and serious injury of marine mammals.

As required under section 118 (f)(7) of the MMPA, the TRT shall develop a draft TRP by consensus, and shall submit this draft TRP to NMFS not later than 6 months after the date of the establishment of the TRT. The Secretary of Commerce (Secretary) shall then consider the TRP, and no later than 60 days after the submission of the draft TRP, NMFS shall publish in the **Federal Register** the TRP and any implementing regulations proposed by the team for a public comment period not to exceed 90 days. Within 60 days of the close of the comment period, NMFS shall issue a final TRP and any implementing regulations.

Marine Mammal Stocks Included Within the TRT Scope

Three false killer whale stocks identified in the U.S. Pacific Marine Mammal Stock Assessment Reports (SAR) (Carretta *et al.*, 2009a) are included within the scope of the TRT:

(1) *False killer whale, Hawaii Pelagic stock.* The Hawaii Pelagic stock includes false killer whales inhabiting waters outside of the February-September longline exclusion zone around the main Hawaiian Islands. The stock has been designated as strategic because the average annual mortality and serious injury (M&SI) of false killer whales incidental to the Category I Hawaii-based deep-set longline fishery (7.4 animals per year) exceeds the

stock's PBR level (2.5 animals per year) (Carretta *et al.*, 2009b).

(2) *False killer whale, Hawaii Insular stock.* The Hawaii Insular stock includes false killer whales inhabiting waters within the February-September longline exclusion zone around the main Hawaiian Islands. The level of M&SI of this stock is not above the stock's PBR level (0.8 animals per year), and the stock is not strategic (Carretta *et al.*, 2009b). The Final 2008 SAR and Draft 2009 SAR for the Insular stock indicate no documented serious injuries or mortalities of animals incidental to Hawaii's longline fisheries. However, the Insular stock may be subject to interactions with longline fisheries: from October to January, a small subset of longline fishing effort takes place within the current stock range of the Hawaii Insular stock. Baird and Gorgone (2005) documented a high rate of dorsal fin disfigurements, which were consistent with injuries from unidentified fishing line. At the present time, it is unknown whether these injuries might have been caused by longline gear or other hook-and-line gear used around the main Hawaiian Islands.

There is overlap in the geographic ranges of the Hawaii Pelagic and Hawaii Insular stocks, and some serious injuries and mortalities that were attributed to the Pelagic stock may in fact have been from the Insular stock. Several of the observed false killer whale takes have been in sets that straddled the current stock boundary (i.e., the set start- and set end-locations were on either side of the boundary). The boundaries between the stocks will likely be revised for the Draft 2010 SAR, and takes may be reassigned from the Pelagic stock to the Insular stock. As a result, the Insular stock may also be listed as strategic in the Draft 2010 SAR. Additionally, a status review has been initiated to determine if listing of the insular population of Hawaiian false killer whales under the ESA is warranted (75 FR 316, January 5, 2010). Based on the overlap between the Insular and Pelagic stocks within the range of the Hawaii-based longline fisheries, the potential for the Insular population to be listed under the ESA in the foreseeable future, and evidence that the Insular stock is declining (Reeves *et al.*, 2009), the Hawaii Insular stock of false killer whales is included within the scope of the TRT. NMFS solicits public comments on whether to include the non-strategic Insular stock within the scope of the TRT.

(3) *False killer whale, Palmyra Atoll stock.* The Palmyra Atoll stock includes false killer whales found within the U.S.

Exclusive Economic Zone (EEZ) of Palmyra Atoll. Human-caused M&SI levels (0.3 animals per year) do not exceed this stock's PBR (6.4 animals per year), and this stock is not strategic (Carretta *et al.*, 2009b). However, NMFS is including this stock in the scope of the TRT because there are documented interactions between the Category I deep-set longline fishery and this stock. NMFS estimated the take rate of false killer whales in longline fisheries as over 4-times higher within EEZ waters of Palmyra Atoll (3.3 per 1000 sets) compared to the Hawaiian Islands EEZ (0.7 per 1000 sets) and waters outside U.S. EEZs (0.8 per 1000 sets) (Forney and Kobayashi, 2007).

In addition, data indicate that false killer whale depredation of catch and/or bait is increasing in the Hawaii-based longline fisheries. False killer whales have been observed while vessels are in transit, indicating that they may be following fishing boats. This behavior is likely to increase interactions, and in fact, for the first time, there have been multiple takes documented per set and per trip during 2008 and 2009 (NMFS Observer Program). Based on this information, NMFS is concerned that the Palmyra Atoll stock may also have an increasing potential to interact with the longline fisheries in the near future. NMFS is including the Palmyra Atoll stock of false killer whales in the scope of the TRT based on the documented high take rates of false killer whales by Hawaii-based longline fisheries operating within the Palmyra Atoll EEZ as described above, as well as the potential for increased interactions in the future. NMFS solicits public comments on including the non-strategic Palmyra Atoll stock within the scope of the TRT.

Marine Mammal Stocks Not Included Within the TRT Scope

NMFS considered additional marine mammal stocks, but determined not to include the following within the scope of the TRT:

(1) *False killer whale, American Samoa stock.* This stock is newly defined for the 2010 Draft SARs, and includes false killer whales found within the EEZ of American Samoa. No abundance estimate or PBR level is currently available for this stock. Therefore, the level of M&SI occurring incidental to commercial fisheries, particularly the American Samoa longline fishery, cannot be assessed relative to PBR. However, NMFS analysis suggests that the estimated rate of fisheries-related M&SI within the American Samoa EEZ (7.8 animals per year) exceeds the range of likely PBRs

(0.4–7.5) (NMFS, unpublished data). Additional research on the abundance of false killer whales in American Samoa is needed to resolve the stock's status. Because NMFS lacks population structure and abundance data, as well as relatively low observer coverage in the American Samoa longline fishery (as noted below), this stock will not be included in the scope of the TRT.

(2) *Other marine mammal stocks in the Pacific Islands Region.* All but one of the other marine mammal stocks in the Pacific Islands Region that interact with the fisheries under the scope of the TRT (see below) are already at or below the insignificance threshold, which has been defined in MMPA implementing regulations as 10% of PBR (50 CFR 229.2), and will not be included in the scope of the TRT.

The humpback whale (*Megaptera novaeangliae*) is listed as "endangered" under the ESA, and designated as "depleted" under the MMPA. As a result, the Central North Pacific (CNP) stock of humpback whale is classified as a strategic stock (Allen and Angliss, 2009). Total estimated M&SI of this stock is below the PBR of 20.4, but above 10% of PBR. The Draft 2009 SAR indicates no M&SI of this stock from Hawaii-based longline fisheries (Allen and Angliss 2009), but one serious injury was reported in the Hawaii-based shallow-set longline fishery during 2006, with 100% observer coverage (Forney 2009). NMFS previously conducted an analysis considering multiple quantitative and qualitative factors to identify its priorities for establishing TRTs. The CNP stock of humpback whales was considered a low priority, and only for its interactions with commercial fisheries in the Alaska Region. The stock's recovery does not appear to have been affected by interactions with commercial fisheries, as results from the 2004–2006 Structure of Populations, Levels of Abundance, and Status of Humpbacks (SPLASH) project indicate stock abundance has increased by 5.5–6.0% per year (Allen and Angliss 2009). The humpback whale will not be included in the scope of the present TRT.

Commercial Fisheries Included Within the TRT Scope

The TRT will address the following two fisheries:

(1) *Hawaii-based deep-set longline fishery.* The Category I Hawaii-based deep-set longline fishery operates both within and outside of the Hawaii EEZ (defined on the MMPA List of Fisheries (LOF) as the "HI deep-set (tuna target) longline/set line" and "Western Pacific Pelagic (Deep-set component)")

fisheries). There have been numerous M&SI of false killer whales documented in this fishery, including an estimated 7.4 animals per year from the strategic Hawaii Pelagic stock of false killer whales, 0.3 animals per year from the non-strategic Palmyra Atoll stock, and 5.4 animals per year in international waters, where no U.S. stocks are currently defined under the MMPA (Carretta *et al.*, 2009b; Forney and Kobayashi, 2007). At minimum, this fishery meets the MMPA requirement for the development of a TRP because of the level of M&SI of false killer whales belonging to the strategic Hawaii Pelagic stock.

(2) *Hawaii-based shallow-set longline fishery*. The Category II Hawaii-based shallow-set longline fishery operates both within and outside of the Hawaii EEZ (defined on the MMPA LOF as the "HI shallow-set (swordfish target) longline/set line" and "Western Pacific Pelagic (Shallow-set component) fisheries). No documented interactions with false killer whales have been reported in the Final 2008 SAR or Draft 2009 SAR (Carretta *et al.* 2009a, 2009b). However, there was an observed interaction with a false killer whale from the Hawaii Pelagic stock in 2008 that was determined to be a non-serious injury, and another observed interaction that resulted in a serious injury of either a false killer whale or a short-finned pilot whale, outside of U.S. EEZs (Forney 2009). Another false killer whale interaction was documented in 2009 just outside of the longline exclusion boundary (and thus likely from the strategic Pelagic stock), but the determination regarding the severity of the injury (i.e., serious versus not serious) has not yet been made. Due to the concern over the rapid increase in the number of false killer whale takes that are occurring in the deep-set longline fishery, and the shallow-set fishery's recent interactions with false killer whales (potentially with a strategic stock), this fishery will be included in the scope of the TRT.

Commercial Fisheries Not Included Within the TRT Scope

The following fisheries were considered, but are not included in the scope of the TRT:

(1) *American Samoa longline fishery*. This Category II fishery differs from the Hawaii-based longline fisheries in terms of gear and fishing practices, target species, and geographical area of operation. Observer coverage has been less than 10% since a mandatory observer program began in 2006. As stated above, there is very little information on the level of interactions

with false killer whales. Two false killer whales were observed killed or seriously injured by the fishery in 2008 (Oleson 2009), but it is unknown whether this level is unsustainable because an abundance estimate and calculation of PBR for the newly-defined American Samoa stock of false killer whales are not available. Because NMFS lacks information about the impact this fishery is having on the poorly understood American Samoa stock of false killer whales, and because the differences between this fishery and the two Hawaii-based longline fisheries would likely detract from the focus of the TRT, this fishery is not being included within the scope of the TRT.

(2) *Hawaii shortline fishery*. This fishery was added to the 2010 LOF as a Category II fishery, classified by analogy (50 CFR 229.2, definition of "Category II fishery") to the two Hawaii-based longline fisheries, based on the similarities between the gear used, areas fished, and target species in the three fisheries, and anecdotal reports of interactions with marine mammals off the north side of the island of Maui. These reports have not been confirmed, and thus the species involved and extent of the interactions are unknown. The Western Pacific Fishery Management Council (Council) is considering management of the fishery. Information gathered by Council staff indicates that the shortline fishery is very small, with few participants and low levels of landings. There is also a small amount of data available and no observer coverage. Data confidentiality would likely be an issue, making an understanding of the fishery and its potential impacts on false killer whale stocks difficult. This fishery will not be considered part of the scope of the TRT. However, if the shortline fishery is documented to interact with a strategic stock in the future, NMFS will consider bringing it under the scope of the TRT at a later time.

List of Invited Participants

MMPA section 118 (f)(6)(C) requires that members of TRTs have expertise regarding the conservation or biology of the marine mammal species that the TRP will address, or the fishing practices that result in the incidental mortality or serious injury of such species. The MMPA further specifies that TRTs shall, to the maximum extent practicable, consist of an equitable balance among representatives of resource user and non-user interests.

NMFS has asked the following individuals to serve as members of the TRT, which is tasked with developing recommendations to reduce mortalities

and serious injuries of three false killer whale stocks incidental to Hawaii-based longline fisheries: William Aila, Hui Malama I Kohola; Robin Baird, Cascadia Research Collective; Hannah Bernard, Hawaii Wildlife Fund; Steven Beverly, Secretariat of the Pacific Community; Brendan Cummings, Center for Biological Diversity; Paul Dalzell, Western Pacific Fishery Management Council; Roger Dang, Pacific Fishing & Supply, Inc.; Clint Funderburg, Fishing Vessels Rachel and Golden Sable; John Hall, Fishing Vessel Zephyr; Kristy Long, NMFS Office of Protected Resources; Kristine Lynch, Marine Mammal Commission; Paul Nachtigall, Hawaii Institute of Marine Biology; David Nichols, State of Hawaii; Victoria O'Connell, Coastal Marine Research; Jerry Ray, Fishing Vessel Katy Mary; Andrew Read, Duke University; Lance Smith, NMFS Pacific Islands Regional Office; Ryan Steen, Stoel Rives LLP; and Sharon Young, The Humane Society of the United States.

Other individuals from NMFS and state and Federal agencies may be present as observers or for their scientific expertise. Members of TRTs serve without compensation, but may be reimbursed by NMFS, upon request, for allowable travel costs and expenses incurred in performing their duties as members of the team. The TRT will hold its first meeting from February 17–19, 2010 in Honolulu, Hawaii (see **DATES** and **ADDRESSES**).

NMFS fully intends to conduct the TRT process in a way that provides for national consistency yet accommodates the unique regional characteristics of the fishery and marine mammal stocks involved. Take Reduction Teams are not subject to the Federal Advisory Committee Act (5 App. U.S.C.).

Meetings are open to the public.

Public Comments Solicited

Comments are solicited on the inclusion within the scope of the TRT of the non-strategic Hawaii Insular and Palmyra Atoll stocks of false killer whales.

References

- Allen, B.M. and R.P. Angliss. 2009. Draft Alaska Marine Mammal Stock Assessments 2009. NOAA Technical Memorandum NOAA-TM-NMFS-AFSC-xxx, 172 p.
- Baird, R.W., and A.M. Gorgone. 2005. False killer whale dorsal fin disfigurements as a possible indicator of longline fishery interactions in Hawaiian waters. *Pacific Science* 59:593–601.
- Carretta J.V., K.A. Forney, M.S. Lowry, J. Barlow, J. Baker, D. Johnston,

B. Hanson, and M.M. Muto. 2009a U.S. Pacific marine mammal stock assessments: 2008. NOAA Technical Memorandum NMFS-SWFSC-434. 340p.

Carretta, J.V., K.A. Forney, M.S. Lowry, J. Barlow, J. Baker, D. Johnston, B. Hanson, R.L. Brownell Jr., J. Robbins, D.K. Mattila, K. Ralls, M.M. Muto, D. Lynch, and L. Carswell. 2009b. Draft U.S. Pacific Marine Mammal Stock Assessments: 2009. Available from SWFSC, 8604 La Jolla Shores Drive, La Jolla, CA 92037.

Forney, K.A. 2009. Serious injury determinations for cetaceans caught in Hawaii longline fisheries during 1994–2008. Draft document, October 19, 2009. PSRG–2009–16.

Forney, K.A. and D.R. Kobayashi. 2007. Updated estimates of mortality and injury of cetaceans in the Hawaii-based longline fishery, 1994–2005. NOAA Tech. Memo. NOAA-TM-NMFS-SWFSC-412, 30p.

Oleson, E.M. 2009. Characteristics of the American Samoa Longline Fishery and Estimates of Cetacean Take, 2006–2008. PSRG–2009–14.

Reeves, R.R., S. Leatherwood, and R.W. Baird. 2009. Evidence of a Possible Decline since 1989 in False Killer Wales (*Pseudorca crassidens*) around the Main Hawaiian Islands. *Pacific Science* 63: 253–261.

Dated: January 13, 2010.

James H. Lecky,
Director, Office of Protected Resources,
National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XS98

Atlantic Highly Migratory Species; Advisory Panel

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: NMFS solicits nominations for the Advisory Panel (AP) for Atlantic Highly Migratory Species (HMS) Southeast Data, Assessment, and Review (SEDAR) Workshops (this AP is also called the “SEDAR Pool”). The SEDAR Pool is comprised of a group from which individuals will be selected to review and/or provide the data and analyses and advise NMFS regarding the scientific information, including but not

limited to data, analyses, and models, used in stock assessments for sharks in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. Nominations are being sought for a three-year appointment. Individuals with definable interests in the recreational and commercial fishing and related industries, environmental community, academia, and non-governmental organizations will be considered for membership on the SEDAR Pool.

DATES: Nominations must be received on or before February 18, 2010.

ADDRESSES: You may submit nominations and request the SEDAR Pool Statement of Organization, Practices, and Procedures by any of the following methods:

- Email: SEDAR.pool@noaa.gov.
- Mail: Karyl Brewster-Geisz, Highly Migratory Species Management Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Include on the envelope the following identifier: “SEDAR Pool Nomination.”
- Fax: 301–713–1917.

Additional information on SEDAR and the SEDAR guidelines can be found at <http://www.sefsc.noaa.gov/sedar/>.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz, (301) 713–2347, ext. 111.

SUPPLEMENTARY INFORMATION:

Introduction

Section 302(g)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, states that each Council shall establish such advisory panels as are necessary or appropriate to assist it in carrying out its functions under the Act. For the purposes of this section, NMFS considers the above provisions to be applicable to the HMS Management Division. As such, NMFS is establishing the SEDAR Pool under this section. The SEDAR Pool will be a group from which individuals will be selected to review and/or provide the data and analyses and advise NMFS regarding the scientific information, including but not limited to data, analyses, and models, used in stock assessments for sharks in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. While the SEDAR Pool is being created specifically for Atlantic sharks, it may be expanded to include other HMS, as needed. Under section 302(i)(1), the Federal Advisory Committee Act (FACA) shall not apply to advisory panels established under section 302(g).

The primary purpose of the individuals in the SEDAR Pool is to review and/or provide, at SEDAR

workshops, the scientific information, including but not limited to data, analyses, and models, used in stock assessments that are used to advise NMFS, as a delegate to the Secretary of Commerce (Secretary), about the conservation and management of the Atlantic HMS, specifically but not limited to, Atlantic sharks. Individuals in the SEDAR Pool may be selected to participate in the various data, assessment, and review workshops during the SEDAR process of any HMS stock assessment. Individuals that participated in a data and/or assessment workshop for a particular stock assessment may also be asked to attend and/or provide information during the review workshop to ensure that any questions the reviewers may have can be answered quickly and accurately. To ensure that the peer review is unbiased, individuals who participate in a data and/or assessment workshop for a particular stock assessment will not be asked to participate in the review workshop.

Members of the SEDAR Pool may serve as members of other APs concurrent with or following their service on the SEDAR Pool, except that members of the SEDAR Pool that were invited to participate in the data and/or assessment workshops for any particular species during a specific stock assessment may not participate in the relevant review workshop for that stock assessment.

Procedures and Guidelines

A. Participants

The SEDAR Pool will be comprised of representatives of: commercial and recreational fisheries for Atlantic HMS, the environmental community active in the conservation and management of Atlantic HMS, and the academic community that have relevant research either with sharks or shark-like species and/or stock assessment methodologies for any marine fish species. Members of the SEDAR Pool must have demonstrated experience in the fisheries, related industries, research, teaching, writing, conservation, or management of marine organisms. The distribution of representation among the interested parties is not defined and the number of members in the SEDAR Pool is not limited.

Additional members of the SEDAR Pool may also include representatives from each of the five Atlantic Regional Fishery Management Councils, each of the 18 constituent states, both the U.S. Virgin Islands and Puerto Rico, and each of the constituent interstate commissions: the Atlantic States Marine