

SERO, Protected Resources Division's Briefing Document for the March 7, 2016 SAFMC Protected Resources Committee Meeting

Endangered Species Act (ESA) Listing Actions

Petition to List Nassau Grouper Under the ESA [No Update]

- NMFS published a proposed rule to list Nassau grouper as a threatened species under the ESA on September 2, 2014 (79 FR 51929). The proposed rule can be found here: http://sero.nmfs.noaa.gov/protected_resources/listing_petitions/documents/79_fr_51929_nassau_grouper_12-month_finding.pdf
- NMFS determined listing was appropriate because spawning aggregations have been reduced in size and number due to historical fishing pressure and existing management measures are inadequate to protect these aggregations. The status report informing these determinations can be found here: http://sero.nmfs.noaa.gov/protected_resources/listing_petitions/documents/biological_report.pdf
- The 120-day comment period ended on December 31, 2014. During the comment period NMFS sought information on spawning aggregations, threats to the species, and conservation efforts aimed at protecting Nassau grouper.
- We received 13 substantive comments (17 total), including the SAFMC's comments.
- We expect to publish a final determination in early 2016.

Atlantic Sturgeon Critical Habitat [No update]

- NOAA Fisheries listed 5 distinct population segments (DPSs) of Atlantic sturgeon along the east coast of the United States in February 2012. The agency has been developing critical habitat designations for each of the 5 DPSs and is preparing to issue two proposed rules: one for the three DPSs within the Greater Atlantic Region (Gulf of Maine, New York Bight, and Chesapeake Bay DPSs), and another for the two DPSs in the Southeast Region (Carolina and South Atlantic DPSs). SERO's rule will encompass aquatic habitat in multiple river ecosystems in coastal states from North Carolina to Georgia.
- The Natural Resources Defense Council (NRDC) and the Delaware Riverkeeper Network filed a lawsuit on March 18, 2014, against NMFS for failure to designate Atlantic sturgeon critical habitat. The Southeast Region and the Greater Atlantic Region must submit proposed rules designating critical habitat to the Federal Register by May 27, 2016, per an updated court order. Final rules must be submitted to the Federal Register within 12 months of publication of the proposed rules.

North Atlantic Right Whale Critical Habitat [Updated]

- On January 27, 2016, NMFS published a final rule to replace critical habitat for right whales in the North Atlantic with two new areas. The final rule can be found here: <http://www.greateratlantic.fisheries.noaa.gov/regs/2016/January/16NARWCHFinalRule.html>.
- The final rule expands critical habitat for endangered North Atlantic right whales to cover approximately 29,763 square nautical miles of marine habitat, including its northeast feeding areas in the Gulf of Maine/Georges Bank region and southeast calving grounds from North Carolina to Florida.

Green Sea Turtle DPS Rule [No change]

- On March 23, 2015 NMFS published a proposed rule to remove the current range-wide listing for green turtles and, in its place, list eight DPSs as threatened and three as endangered (80 FR

15271). Individuals from two of the proposed DPSs, the North Atlantic (NA) and South Atlantic (SA), have the potential to occur in the Southeast Region. Both the NA and SA DPS have large populations sizes, increasing population trends, and share the same ESA designation of “threatened.” It is expected that any analysis of potential impacts based on the current listing status for green turtles would apply similarly to the new DPSs if listed as proposed. Therefore, no new analysis would likely be necessary upon finalization of the DPS listing.

- The comment period on the proposed rule has been extended through September 25, 2015. <https://www.federalregister.gov/articles/2015/08/26/2015-21150/endangered-and-threatened-species-identification-and-proposed-listing-of-eleven-distinct-population>
- NMFS expects to publish the final rule by late spring.

ESA Section 7 FMP Consultations and Opinions

South Atlantic Snapper Grouper Fishery ESA Section 7 Consultation

- On February 11, 2016, SERO Sustainable Fisheries Division requested reinitiation under Section 7(a)(2) of the ESA on the FMP for the Snapper-Grouper Fishery. In the request, Sustainable Fisheries Division noted that an electronic copy of the final Regulatory Amendment 16 would be forwarded once available to serve as the biological assessment.
- On February 18, 2016, SF provided PRD with an updated description of the fishery as it currently is conducted.

Southeastern Shrimp Fisheries Biological Opinion, the Draft TED Compliance Policy, and Recent Compliance Analyses [Updated]

- The April 18, 2014, biological opinion for the southeastern shrimp fisheries required NMFS to develop a policy specifying data requirements or minimum data standards for taking various actions (e.g., time area closures) to address non-compliance with federal turtle excluder device (TED) requirements.
- SERO drafted a TED compliance policy and submitted it to Gulf and Atlantic state representatives for comment. The draft policy was posted online at: http://sero.nmfs.noaa.gov/protected_resources/sea_turtle_protection_and_shrimp_fisheries/documents/ted_compliance_policy.pdf
- SERO responded to the submitted comments and incorporated changes to produce a final draft of the policy, which was posted online at: http://sero.nmfs.noaa.gov/protected_resources/sea_turtle_protection_and_shrimp_fisheries/index.html
- SERO is currently distributing the policy to the states, councils, and commissions.
- Sea turtle captures rates and TED effectiveness in the Southeast shrimp otter trawl fleet are also posted online at: http://sero.nmfs.noaa.gov/protected_resources/sea_turtle_protection_and_shrimp_fisheries/documents/0216_southeastern_shrimp_otter_ted_inspections_compliance_sea_turtle_capture_rates_and_ted_effectiveness_april_2014-december_2015.pdf

National ESA Rulemaking/Policy

Final Rule to Amend the Definition of Destruction or Adverse Modification in the Endangered Species Act Section 7 Regulations [Updated]

- NMFS, Office of Protected Resources published a final rule amending the definition of destruction or adverse modification in the Endangered Species Act Section 7 regulations (81 FR 7413). The rule is posted at:
<https://federalregister.gov/a/2016-02680>
- The ESA Section 7(a)(2) regulatory definition of "destruction or adverse modification," was invalidated in 2001 and 2004 by the courts for including "both survival and recovery."
- The final rule codifies the current policy and practice of NOAA Fisheries and the Fish and Wildlife Service which focuses on conservation.

Final Rule Implementing Changes to the Regulations for Designating Critical Habitat [Updated]

- NMFS, Office of Protected Resources published a final rule in the Federal Register ((81 FR 8663; February 22, 2016) amending portions of part 424 (50 CFR) that clarify procedures for designating and revising critical habitat. The rule is posted at:
<https://federalregister.gov/a/2016-02677>
- The final rule made minor edits to the scope and purpose, added and removed some definitions, and clarified the criteria for designating critical habitat.

Final Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act [Updated]

- NMFS, Office of Protected Resources published a policy on how the Fish and Wildlife and NOAA Fisheries Services' consider partnerships and conservation plans, conservation plans permitted under section 10 of the Act, tribal lands, military lands, Federal lands, national security and homeland security impacts, and economic impacts in the exclusion process
<https://federalregister.gov/a/2016-02677>
- The policy is intended to complement the amendments to our regulations regarding impact analyses of critical habitat designations and to clarify expectations regarding critical habitat and provide for a credible, predictable, and simplified critical habitat exclusion process.

Marine Mammal Protection Act Actions

Pelagic Longline Take Reduction Team (PLTRT) [Updated]

- The PLTRT met December 1-3, 2015 in Norfolk, VA. The primary purpose of this meeting was to identify measures to reduce bycatch of short finned pilot whales in the Atlantic Pelagic Longline Fishery. The Team reached consensus on 5 measures, some of them regulatory.