

# **SERO, Protected Resources Division's Briefing Document for the September 14, 2015 SAFMC Protected Resources Committee Meeting**

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## **Endangered Species Act (ESA) Listing Actions**

### *Petition to List Nassau Grouper Under the ESA [Updated timeline]*

- 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](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](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 [Updated Court order deadline]*

- 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 to include final rule settlement deadline]*

- On February 20, 2015 (80 FR 9314), NMFS published a proposed rule to replace critical habitat for right whales in the North Atlantic with two new areas. The proposed rule can be found here: <https://www.federalregister.gov/articles/2015/02/20/2015-03389/endangered-and-threatened-species-critical-habitat-for-endangered-north-atlantic-right-whale>.
- The areas under consideration as critical habitat contain approximately 29,945 square nautical miles of marine habitat, and include northeast feeding areas in the Gulf of Maine/Georges Bank region and calving grounds from southern North Carolina to northern Florida.
- The comment period closed on April 21, 2015 and NMFS is considering comments.
- NMFS committed in a settlement agreement to publishing a final rule on or before February 16, 2016.

*Green Sea Turtle DPS Rule [No change from September except comment period closed]*

- 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 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.

### **Sea Turtle Nesting Update**

*2015 Florida State Index Beach Numbers [New]*

- The Florida Fish and Wildlife Conservation Commission has updated its Florida Index Nesting Beach Survey website information to include final 2015 nesting numbers: <http://myfwc.com/research/wildlife/sea-turtles/nesting/beach-survey-totals/>
- The Florida Index Nesting Beach Survey records sea turtle nest counts on a standardized set of index beaches. Researchers use the annual survey to determine nesting trends.

### **ESA Section 7 FMP Consultations and Opinions**

*Southeastern Shrimp Fisheries Biological Opinion and Draft TED Compliance Policy [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 also posted online at: [http://sero.nmfs.noaa.gov/protected\\_resources/sea\\_turtle\\_protection\\_and\\_shrimp\\_fisheries/documents/ted\\_compliance\\_policy.pdf](http://sero.nmfs.noaa.gov/protected_resources/sea_turtle_protection_and_shrimp_fisheries/documents/ted_compliance_policy.pdf)
- SERO has responded to the comments received and is in the process of finalizing the TED compliance policy; the revised draft will be sent to states' POCs for a final feedback opportunity.
- SERO expects to finalize the policy, post it on the SERO website and present it officially to the states, councils, commissions, and industry prior to March 1.

### **National ESA Rulemaking/Policy [New]**

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

- NMFS, Office of Protected Resources anticipates publishing the subject final rule in the Federal Register before the end of this year.
- The ESA Section 7(a)(2) regulatory definition of "destruction or adverse modification," was invalidated in in 2001 and 2004 by the courts for including "both survival and recovery."

- The final rule would codify the current policy and practice of NOAA Fisheries and the Fish and Wildlife Service which focus on conservation.

*Final Rule Implementing Changes to the Regulations for Designating Critical Habitat*

- NMFS, Office of Protected Resources anticipates publishing a final rule in the Federal Register before the end of the year that would amend portions of part 424 (50 CFR) that clarify procedures for designating and revising critical habitat.
- The proposed amendments would make minor edits to the scope and purpose, add and remove some definitions, and clarify the criteria for designating critical habitat.

*Final Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act*

- NMFS, Office of Protected Resources anticipates the subject policy being published before the end of the year. The policy will provide the Fish and Wildlife and NOAA Fisheries Services' position on how we 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.
- 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 is meeting December 1-3, 2015 in Norfolk, VA. The primary purpose of this meeting is to identify measures to reduce bycatch of short finned pilot whales in the Atlantic Pelagic Longline Fishery. Specific objectives are:
  - Provide updates on pilot whale abundance, distribution, genetics and mortality data
  - Take stock of recent and upcoming Take Reduction Plan (TRP)-related research activities
  - Provide updates on TRP implementation to-date, highlighting compliance with current measures, plan effectiveness and any relevant constraints; consider other relevant programs and policies
  - Consider implications of recent data, research results and TRP implementation for attainment of Marine Mammal Protection Act (MMPA) TRP goals; identify additional bycatch reduction measures (both regulatory or non-regulatory)
  - Provide opportunities to develop and refine new options
  - Identify next steps

*Atlantic Large Whale Take Reduction Plan (ALWTRP) [Updated]*

- An ALWTRT webinar was held on November 19 to provide updates to the Team. NMFS provided a brief update on the status of SAFMC Regulatory Amendment 16. The following comment was provided by a team member in regards to Regulatory Amendment 16: Given that (1) the public comment period for Regulatory Amendment 16 closes on December 7 and (2) the Council is convening from December 7-11 to consider public comment and potentially make Alternative 11 final, how is there adequate time to compile, read through, process, and consider all public comments, especially the more substantive, detailed comments that may be submitted on Dec 7?

*MMPA Regulations [No change except comment period closed]*

- On August 22, 2015, NMFS published a proposed rule (80 FR 28172) to revise regulations implementing provisions of the MMPA by reducing marine mammal bycatch associated with

foreign commercial fishing operations. The proposed regulations would establish conditions for evaluating a harvesting nation's regulatory program for reducing marine mammal incidental mortality and serious injury in fisheries that export fish and fish products to the United States.

- Public comments were accepted through November 9, 2015.
- Federal Register Link: <https://www.federalregister.gov/articles/2015/08/11/2015-19231/fish-and-fish-product-import-provisions-of-the-marine-mammal-protection-act>

*List of Fisheries [Updated]*

- The 2016 proposed List of Fisheries published on September 29, 2015. No major changes for the Southeastern United States are proposed.
- Federal Register Link: <https://www.federalregister.gov/articles/2015/09/29/2015-24638/list-of-fisheries-for-2016>