

**SERO Protected Resources Division Briefing  
For September 2022 SAFMC Meeting**

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**Endangered Species Act (ESA) Actions Related to Listing and Rulemaking:**

*Queen Conch Status Review [Updated]*

- On September 8, 2022, NOAA Fisheries published a [proposed rule](#) to list queen conch as threatened under the ESA.
- The primary threat to the queen conch is overutilization through commercial, recreational and subsistence, and illegal, unreported, and unregulated fishing. Despite a multitude of fisheries management measures enacted across the species' range, populations are depleted.
- A threatened listing does not automatically result in take prohibitions and will not impose any new or additional restrictions on trade in queen conch. However, we are considering whether protective regulations may be necessary and advisable and whether to apply take prohibitions to conserve this species if listed under the ESA. Protective regulations would be issued through a separate rulemaking.
- The public comment period is open until November 8, 2022. Any interested person can comment and provide additional information on the proposal rule during the public comment period.
- Within one year of publishing a proposed rule, we will publish a notice to finalize the proposed rule or withdraw the proposed rule. Prior to making a final determination, we will consider public comments and new information that may not have been available when we conducted our status review for the queen conch.
- Additional information including the [comprehensive status review](#) and [Frequently Asked Questions](#) are available on our website at: <https://www.fisheries.noaa.gov/species/queen-conch#overview>

*Nassau Grouper Critical Habitat Determination [No Change]*

- NOAA Fisheries entered into a settlement agreement on December 22, 2020 stipulating that NOAA Fisheries must submit a proposed determination concerning the designation of critical habitat for the Nassau grouper to the Federal Register by December 30, 2022. If NOAA Fisheries determines to propose critical habitat, NOAA Fisheries must submit for publication in the Federal Register a proposed critical habitat rule on that same date, and (if a proposed rule has been published) a final rule by December 29, 2023.
- To determine potential critical habitat areas, we are currently reviewing available data on the Nassau grouper (e.g., information that was completed in support of the ESA listing, the proposed and final listing rules for Nassau grouper, recent biological surveys and reports, and peer-reviewed literature).
- Potential critical habitat areas include the Southeast coast of Florida, areas around Puerto Rico, areas around the U.S. Virgin Islands.
- Fishery Management Councils and the public will have the opportunity to provide comments if critical habitat is proposed (i.e., a comment period will automatically be included if a rule is published).

*5-Year Status Review on 7 Threatened Coral Species [Updated]*

- On August 10, 2022, NOAA Fisheries the published a 5-year review for seven species of Caribbean coral (<https://www.fisheries.noaa.gov/resource/document/caribbean-corals-5-year-review>). A 5-year review is a periodic analysis of a species' status conducted to ensure that the listing classification of a species as threatened or endangered under the US Endangered Species Act of 1973 is accurate. The review evaluates information that has become available since the last status review conducted in 2014. NOAA Fisheries determined that the classification for staghorn (*Acropora cervicornis*), elkhorn (*Acropora palmata*), lobed star (*Orbicella annularis*),

mountainous star (*Orbicella faveolata*), boulder star (*Orbicella franksi*), and rough cactus (*Mycetophyllia ferox*) corals be maintained as threatened and that the classification for pillar coral (*Dendrogyra cylindrus*) be considered for up-listing from threatened to endangered.

- NOAA Fisheries is recommending changing the status of pillar coral from threatened to endangered due to loss in the northern portion of its range, the low and declining population, the susceptibility to stony coral tissue loss disease, and the rapid spread of the disease to most areas of the Caribbean.
- We will be develop a proposed rule to change the status of pillar coral from threatened to endangered, which will be open to public comment once published.
- We anticipate publication of a proposed rule in the Federal Register sometime mid 2023.

#### *Determination on Critical Habitat for Threatened Caribbean Corals [Timing Updated]*

- On November 27, 2020, NOAA Fisheries published a proposed rule to designate critical habitat for five ESA-listed Caribbean Corals (*Orbicella annularis*, *O. faveolata*, *O. franksi*, *Dendrogyra cylindrus*, and *Mycetophyllia ferox*) within U.S. waters of Florida, Puerto Rico, U.S. Virgin Island, Navassa Island, and Flower Garden Banks. The proposed coral critical habitat consists of substrate and water column habitat characteristics essential for the reproduction, recruitment, growth, and maturation of the listed corals.
- The Federal Register Notice and supporting information is available [here](#). General information on Critical Habitat is available [here](#).
- The public comment period closed January 26, 2021, and we received 21,108 comments
- The ESA requires that we publish our final determinations within 1 year of the proposed rules.
- We anticipate publishing our final determination by this summer.

#### **ESA Section 7-Related Actions and Other ESA News:**

##### *Dolphin Wahoo FMP Consultation [No Change]*

- SERO SFD in its role as the action agency is working to complete a draft biological assessment for the consultation on the fishery.

##### *Coastal Migratory Pelagic Resources (CMPR) Consultation [Updated]*

- SERO Protected Resources Division is working to complete its amendment to the Gulf and South Atlantic CMPR FMP biop to address oceanic whitetip sharks and giant manta ray that were listed subsequent to the completion of the 2015 biop.

#### **Marine Mammal Protection Act (MMPA) Actions and Other MMPA News:**

##### *Atlantic Large Whale Take Reduction Team [Updated]*

- Since the last virtual full team meeting in May 2022, the Team has met several times in preparation for the Sept 2022 full team (virtual) meeting. Links to any available recordings can be found on the [ALWTRT webpage](#).
  - Phase 1 Update (Aug 18, 2022)
  - Coastwide Baseline DST Fishery Updates (Aug 25, 2022)
  - Southeast Caucus meeting (Sept 1, 2022)
  - Updated DST Analyses from May 2022 Measure Packages (Sept 8, 2022)
- The Sept full team (virtual) meeting will be held on the 19, 22 & 23 from 1-5 p.m. Additional information regarding that meeting is available on the [ALWTRT webpage](#).

##### *Scoping Period for next phase of Atlantic Large Whale Take Reduction Plan*

- NOAA Fisheries is asking for ideas and suggestions for measures for all U.S. commercial fisheries (now including Northeast lobster and Jonah crab) regulated by the ALWTRP that would

reach a 90% risk reduction. Due to the continued decline of the North Atlantic right whale population, the ongoing Unusual Mortality Event, as well as a recent court decision that held the 2021 rule invalid, modifications to the Plan including all U.S. Atlantic commercial fisheries are necessary.

- The Notice of Intent in the Federal Register can be found [here](#). The comment period for scoping is open for 30 days from September 9, 2022 to October 11, 2022.

#### *Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule [Updated]*

- NOAA Fisheries is [proposing changes to the North Atlantic right whale vessel speed regulations](#) to further reduce the likelihood of mortalities and serious injuries to endangered right whales from vessel collisions, which are a leading cause of the species' decline and a primary factor in an ongoing Unusual Mortality Event.
- The proposed rule would:
  - 1) modify the spatial and temporal boundaries of current speed restriction areas, currently referred to as Seasonal Management Areas (SMAs),
  - 2) include most vessels greater than or equal to 35 ft (10.7 m) and less than 65 ft (19.8 m) in length in the vessel size class subject to speed restriction,
  - 3) create a Dynamic Speed Zone framework to implement mandatory speed restrictions when whales are known to be present outside active SMAs, and
  - 4) update the speed rule's safety deviation provision.
- Changes to the speed regulations are proposed to reduce vessel strike risk based on a coast wide collision mortality risk assessment and updated information on right whale distribution, vessel traffic patterns, and vessel strike mortality and serious injury events.
- On September 15, 2022, NOAA Fisheries announced an extension of the comment period on this proposal for an additional 30 days, ending October 31, 2022. The Federal Register Notice for this action is available at <https://www.federalregister.gov/public-inspection/2022-20058/north-atlantic-right-whale-vessel-strike-reduction-rule>.

#### *North Atlantic Right Whale Unusual Mortality Event (UME) [Updated]*

- Elevated North Atlantic right whale mortalities began in 2017, primarily in Canada, and triggered the declaration of an Unusual Mortality Event. From 2017- Aug 2022, there were 34 mortalities and 19 serious injuries. The leading category for the cause of death for this UME is "human interaction," specifically from entanglements or vessel strikes. More information can be found at: <https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2021-north-atlantic-right-whale-unusual-mortality-event>.

#### *Pelagic Longline Take Reduction Plan Proposed Rule Development [No Change]*

- NMFS published a proposed rule to amend the PLTRP which included removing the CHSRA and associated requirements, implementation of terminal gear in the NEC, MAB, SAB, and FEC Pelagic Longline fishing areas as well as changes to mainline length requirements in the MAB. NMFS is preparing the final rule.

#### *Bottlenose Dolphin Take Reduction Plan [No Change]*

#### *Report to Congress Regarding Interactions Between Bottlenose Dolphins and Sharks and Commercial, For-Hire, and Private Recreational Fisheries in the Gulf of Mexico and South Atlantic [Updated]*

- Congress requested this report in the Joint Explanatory Statement accompanying the Consolidated Appropriations Act, 2021 (Public Law 116-260).
- The report was informed by consultations with the Marine Mammal Commission, the Gulf of Mexico Fishery Management Council, the South Atlantic Fishery Management Council, the Atlantic Highly Migratory Species Advisory Panel, and public comment.

- The report is now available here: <https://www.fisheries.noaa.gov/resource/document/report-congress-interactions-between-bottlenose-dolphins-and-sharks-and>

*Proposed Rule for the Marine Mammal Protection Act (MMPA) List of Fisheries for 2023.*

- The MMPA requires NOAA Fisheries to publish an annual list of commercial fisheries and classify each fishery based on whether it has frequent (Category I), occasional (Category II), or remote likelihood (Category III) of incidental mortality and serious injury of marine mammals.
- The proposed rule for 2023 can be found here: <https://www.fisheries.noaa.gov/action/mmpa-list-fisheries-2023>. There are no major changes to commercial fishery classifications
- We are accepting comments on the 2023 proposed List of Fisheries through October 11, 2022.

*National Deterrents Meeting--[Updated]*

- The Alaska Regional Office hosted a National Deterrents Meeting open to all regions and fishermen on June 1 and 2.
  - A final report is now available from this meeting. Please contact [Jessica.Powell@noaa.gov](mailto:Jessica.Powell@noaa.gov) to request a copy.