

Southeast Regional Office (SERO), Protected Resources Division (PRD)
Briefing for March 2024 SAFMC Meeting

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

Nassau Grouper Critical Habitat Final Rule [Updated]

- On January 2, 2024, NOAA Fisheries published a final rule to designate critical habitat for the threatened Nassau grouper pursuant to section 4 of the Endangered Species Act (ESA). Specific occupied areas designated as critical habitat contain approximately 2,384.67 sq. km (920.73 sq. miles) of aquatic habitat located in waters off the coasts of southeastern Florida, Puerto Rico, Navassa, and the United States Virgin Islands.
- The final rule and supporting information can be found here: <https://www.fisheries.noaa.gov/action/final-rule-designate-critical-habitat-threatened-nassau-grouper>
- Section 7 consultations would be required for any federal actions that may be affected. For our federal fisheries in the South Atlantic region, we anticipate most, if not all, section 7 consultations on SAFMC fisheries would be completed informally.

Queen Conch Proposed Rule [Update]

- On February 14, 2024, NOAA Fisheries published a final rule to list queen conch as threatened under the ESA.
- The primary threats to queen conch include overutilization through commercial and illegal fishing. Despite a multitude of fisheries management measures enacted across the species' range, populations are depleted.
- A threatened listing does not automatically impose any restrictions on trade in conch. NOAA Fisheries intends to propose protective regulations pursuant to section 4(d) of the ESA in a separate notice that will be published in the Federal Register with opportunity for public comment. At this time, we conclude that critical habitat is not yet determinable because data sufficient to perform the required analysis are lacking; any critical habitat designation would be proposed in a separate, future rulemaking.
- Additional information including the [comprehensive status review](#) and [Frequently Asked Questions](#) are available on our website at: <https://www.fisheries.noaa.gov/action/final-rule-list-queen-conch-threatened-under-endangered-species-act>

Oceanic Whitetip Shark Draft Recovery Plan [Timing Updated]

- On January 25th, NOAA Fisheries announced the availability of a Draft Recovery Plan for the threatened oceanic whitetip shark (*Carcharhinus longimanus*). As required by the ESA, the draft plan contains the following three components: (1) a description of site-specific management actions necessary for the conservation and survival of the species (recovery actions); (2) objective, measurable criteria that, when met, will allow the species to be removed from the endangered and threatened species list; and (3) estimates of the time and funding required to achieve the plan's goals.

- The draft plan and supporting documents, including the January 2023 Recovery Status Review and the Draft Recovery Implementation Strategy are available on the NOAA Fisheries oceanic whitetip shark profile website at: <https://www.fisheries.noaa.gov/species/oceanic-whitetipshark#conservation-management>.
- NOAA Fisheries received 5 comments on the draft plan. Commenters included a coalition of NGOs and the Western Pacific Regional Fishery Management Council. The target date for completion of the plan is Spring 2024.

Pillar Coral Up-listing Proposed Rule [No Change]

- On August 10, 2022, NOAA Fisheries published a 5-year review for seven species of Caribbean coral (<https://www.fisheries.noaa.gov/resource/document/caribbean-corals-5-year1-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 evaluated information that had become available since the last status review conducted in 2014.
- NOAA Fisheries determined that the classification for pillar coral (*Dendrogyra cylindrus*) should be considered for up-listing 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.
- NOAA Fisheries published a proposed rule to change the status of pillar coral from threatened to endangered under the ESA in the Federal Register on August 29, 2023
- We held a virtual public hearing on the proposed rule on September 26, 2023.
- The 90-day public comment period closed on October 31, 2023. We are currently reviewing and considering all public comments received during the public comment period. We will consider the public comments received and any new data that may have become available to make a final decision.

Proposed Rule to Designate Marine Critical Habitat for Six Distinct Population Segments (DPSs) of Green Sea Turtles in U.S Waters. [No Change]

- On July 19, 2023, NOAA Fisheries published a proposed rule to designate new areas of critical habitat and modify existing critical habitat for threatened and endangered distinct population segments (DPSs) of the green sea turtle (*Chelonia mydas*), in areas under U.S. jurisdiction, pursuant to the ESA (88 FR 46572).
- In 2016, NOAA Fisheries and the USFWS listed distinct population segments (DPSs) of green sea turtles, which triggered the requirement to designate critical habitat to the maximum extent prudent and determinable for DPSs in areas under U.S. jurisdiction.
- For the green sea turtle North Atlantic DPS, we are proposing to designate marine critical habitat in: (1) nearshore waters (from the mean high water line to 20 meters depth) off the coasts of Florida, Texas, North Carolina, and Puerto Rico.; and (2) Sargassum habitat (from 10 meters depth to the U.S. Exclusive Economic Zone) in the Gulf of Mexico and Atlantic Ocean. We are also proposing to modify designated critical habitat in the coastal waters surrounding Culebra Island, Puerto Rico; however, this critical habitat designation remains in effect during this rulemaking process.

- NOAA Fisheries and the US Fish and Wildlife Service (USFWS) share jurisdiction of sea turtles under the Endangered Species Act. The USFWS overseeing their protection and recovery on nesting beaches, and NOAA Fisheries providing oversight in the marine environment.
- The U.S. Fish and Wildlife is concurrently proposing to designate terrestrial critical habitat for green sea turtle DPSs (88 FR 46376)
- NOAA Fisheries and U.S. Fish and Wildlife hosted public hearings to receive comments on these proposed designations. The public comment period closed on October 17, 2023. We will review and incorporate public comments and submit a final rule to the Federal Register by July 19, 2024.

ESA Section 7-Related Actions and Other ESA News:

Reinitiation of Section 7 Consultation on Southeast Shrimp Fisheries Managed under the MSA in the Gulf of Mexico and South Atlantic Region [Updated]

- Reinitiation of Section 7 consultation on the authorization of the southeast shrimp fisheries managed under the MSA and implementing regulations is needed to address giant manta ray unanticipated mortalities in shrimp trawls and new information on both giant manta rays and smalltooth sawfish.
- On April 26, 2021, SERO completed its last biological opinion (i.e., the 2021 Shrimp Opinion) on the implementation of the sea turtle conservation regulations under the ESA and the authorization of the southeast shrimp fisheries in federal waters under the Magnuson-Stevens Act (i.e., the proposed action). SERO determined the proposed action is not likely to jeopardize the continued existence of ESA-listed sea turtles, sturgeon, giant manta ray, and smalltooth sawfish and issued an incidental take statement (ITS) specifying the amount and extent of incidental take anticipated.
- No giant manta ray mortalities were anticipated or specified in the ITS because there were no records of lethal interactions at that time. However, recent SEFSC Observer Program data show four lethal giant manta ray takes in shrimp trawls (i.e. one in June 2021, one in November 2021, and two in April 2023).
- Lethal takes of giant manta rays so far have only been confirmed in Gulf federal waters, but take records in the Atlantic include several giant manta rays caught where the disposition was unknown. We also have new smalltooth sawfish information that is applicable to both the Gulf and South Atlantic Regions.
- No reinitiation triggers have been met yet for any of the other species analyzed in the 2021 Shrimp Opinion so reinitiation of consultation at this time is limited to addressing only giant manta rays and smalltooth sawfish species and their management under the FMPs.
- Information is still needed to complete a formal reinitiation package. In December 2023, an updated population viability model for smalltooth sawfish was published: <https://www.sciencedirect.com/science/article/pii/S2351989423003803>). This new information will be presented to the Gulf of Mexico Fishery Management Council's Shrimp Advisory Panel (AP) in March; SERO will also be presenting an update on the reinitiation to the SAFMC Shrimp APs in April. SERO is also requesting the SEFSC provide updated bycatch estimates for giant manta ray and sawfish and a giant manta ray population viability model.
- We anticipate completing the consultation by late-2024 or early 2025. We will continue to collaborate with, and keep updated, both the GMFMC and SAFMC during this development.

Dolphin Wahoo FMP Consultation [Updated]

- With assistance from Council staff, SERO SFD in the role of action agency developed a draft biological assessment for the consultation on the fishery using information from Dolphin Wahoo FMP Amendment 10.
- SERO PRD has recruited a Section 7 consultation biologist from the Greater Atlantic Regional Office who will assist with completing the Dolphin-Wahoo consultation.

Marine Mammal Protection Act (MMPA) Actions and Other MMPA News [No Major Updates to Report]