

Southeast Regional Office (SERO), Protected Resources Division (PRD)
Briefing for December 2023 SAFMC Meeting

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

Pillar Coral Up-listing Proposed Rule [Updated]

- 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.

Nassau Grouper Critical Habitat Proposed Rule [Updated]

- On October 17, 2022, NOAA Fisheries published a proposed rule to designate critical habitat for the threatened Nassau grouper pursuant to section 4 of the Endangered Species Act (ESA). Specific occupied areas proposed for designation as critical habitat contain approximately 2,353.19 sq. kilometers (908.57 sq. miles) of aquatic habitat located in waters off the coasts of southeastern Florida, Puerto Rico, Navassa, and the United States Virgin Islands.
- The proposed rule and supporting information can be found here: <https://www.fisheries.noaa.gov/action/proposed-rule-designate-critical-habitat-threatened-nassaugrouper>
- The comment period was open through December 16, 2022. NOAA Fisheries received 18 comments on the proposal. Commenters who provided substantive comments included the Florida Fish and Wildlife Conservation Commission and a coalition of non-governmental organizations (NGOs), including Miami Waterkeeper, Center for Biodiversity, and WildEarth Guardians.
- The ESA requires NOAA Fisheries to publish a final rule within 1 year of 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.

- If the designation is finalized, 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 [Updated]

- On September 8, 2022, NOAA Fisheries published a proposed rule to list queen conch as threatened under the ESA (<https://www.fisheries.noaa.gov/action/proposed-rule-list-queen-conch-threatened-under-endangered-species-act>)
- 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. Any protective regulations determined to be necessary and advisable for the conservation of the queen conch under ESA would be proposed in a subsequent Federal Register announcement.
- The public comment period closed on December 15, 2022.
- Within one year of publishing a proposed rule, 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/queenconch#overview>
- NOAA Fisheries is currently reviewing and responding to public comments received during the public comment period. We anticipate a final determination in several months. If a final determination is to proceed with listing as threatened, we don't anticipate any direct effects to SA fisheries management.

Oceanic Whitetip Shark Draft Recovery Plan [No Change]

- 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 winter 2023.

Proposed Rule to Designate Marine Critical Habitat for Six Distinct Population Segments (DPSs) of Green Sea Turtles in U.S Waters. [Update]

- 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 oversees their protection and recovery on nesting beaches, and NOAA Fisheries provides 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 [No Change]

- 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 will be needed to complete a formal reinitiation package and we won't have all the information we need to conduct the consultation until April 2024. As a result, we anticipate completing the consultation by late-2024 or early 2025. We will collaborate with, and keep updated, both the GMFMC and SAFMC during this development.

Dolphin Wahoo FMP Consultation [No Change]

- With assistance from Council staff, SERO SFD in the role as the action agency developed a draft biological assessment for the consultation on the fishery using information from Dolphin Wahoo FMP Amendment 10. SERO PRD staff have not had the capacity among other priorities to assist in its finalization consequently completion of the biological assessment (and consultation) remains stalled.

The Endangered Species Act: 50 Years of Conserving Species [No change]

- On May 19th NOAA Fisheries announced it will be celebrating the 50th anniversary of the Endangered Species Act from May 19 to December 28, 2023.
- During this monumental commemoration of 50 years, we will be highlighting our science, conservation, partnerships, and people who implement the ESA through the features and videos below.
- See the full story here, including planned events so far here:
<https://www.fisheries.noaa.gov/feature-story/endangered-species-act-50-years-conserving-species>

Marine Mammal Protection Act (MMPA) Actions and Other MMPA News

Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule [No Change]

- NOAA Fisheries [proposed 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.
- We are currently reviewing and considering all public comments received during the public comment period. NOAA Fisheries anticipates releasing a final rule in 2023.

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

- Elevated North Atlantic right whale mortalities began in 2017 and triggered the declaration of an Unusual Mortality Event. From 2017 to date, there have been 121 documented dead, serious, or sublethal injuries or illnesses. 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/2017-2023-north-atlantic-right-whale-unusual-mortality-event>

Atlantic Large Whale Take Reduction Team [Updated]

- Team webinar was held on 6 November, 2023: North Atlantic Right Whale Population Viability Analysis and Population Estimate. Additional details can be found [here](#).

Bottlenose Dolphin Take Reduction Plan [Updated]

- The Key Outcomes Memo from the July 11, 2023 webinar has been finalized and will be available on the [BDTRT website](#)

On-Demand Fishing [No Updates]

- On-Demand Interoperability Workshop:
 - NOAA Fisheries is hosting an interoperability workshop November 28-30, 2023 to explore the development of standards for acoustic communications and data specifications for implementing an interoperable on-demand fishing system in a regulatory program to avoid gear conflicts across fisheries (i.e., mobile and fixed-gear vessels) and support management needs across jurisdictions (e.g., Northeast vs. Mid-Atlantic).
 - The workshop will include fishing gear manufacturers, acoustic communications experts, fishermen, and other stakeholders to evaluate key technical components for deploying, tracking, and retrieving ropeless fishing gear on days 1 and 2, while day 3 is for state and federal fishery managers to discuss different approaches to implementing interoperability standards.
 - Virtual meeting participation is in development and will be posted closer to the date of the workshop.

MMPA List of Fisheries – [Updated]

- Marine Mammal Authorization Program certificates for 2024 will be sent to all Category I and II fishermen in early 2024. More information is available [here](#).

Pelagic Longline Take Reduction Plan [No updates]

Marine Mammal Stock Assessment Reports [No updates]