

# SERO Protected Resources Division Briefing Document

## December 2020 SAFMC Webinar

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### Endangered Species Act (ESA) Listing and Rulemaking

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

- On November 27, 2020, NMFS 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.
- Critical habitat is proposed for most of the geographic area occupied by the threatened corals in U.S. Southeast and Caribbean waters, including a total of 28, mostly overlapping, specific areas, based on where each species occurs. The proposed designations include waters from 0 – 90 m, depending on the particular depth distribution for each of the corals. The proposed critical habitat designations are mostly overlapping with the existing critical habitat for elkhorn and staghorn corals. Harbors, navigation channels, other managed areas (e.g. boat ramps, etc.), or artificial substrates (e.g., seawalls, Aids to Navigation, etc.) are not included.
- NMFS is prohibited from designating critical habitat in areas where a DOD Integrated Natural Resources Management Plan (INRMP) provides a benefit to the species for which critical habitat is being proposed so is proposing to not include the areas subject to the 2014 Naval Air Station Key West INRMP. NMFS is also proposing to exclude the Navy's South Florida Ocean Measuring Facility on the basis of national security impacts.
- A final designation of critical habitat would create a second obligation under section 7 of the ESA for Federal agencies to ensure that activities that they carry out, authorize, or fund will not result in destruction or adverse modification of critical habitat. Activities that do not have a Federal connection are not subject to these consultations.
- Because critical habitat is a management tool directed at Federal activities, non-federal activities are not directly affected by critical habitat designation. However, activities that receive Federal funding or require a Federal permit could be affected indirectly if critical habitat is designated, as the Federal agency that provides the funding or issues the permit would have to consult to ensure that the action would not adversely modify critical habitat.
- The Federal Register Notice and supporting information is available [here](#). General information on Critical Habitat is available [here](#).

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

#### *Update on the Ongoing Section 7 Consultation on Federal Shrimp Fisheries [Updated]*

- The DC District Court ruled against us in Oceana's challenge to the 2014 shrimp biological opinion. The Court granted Plaintiffs' motion for summary judgment in part and remanded the 2014 opinion without vacatur. We had already reinitiated Section 7 consultation for multiple reasons prior to the decision. The Court has ordered NMFS to have an opinion completed on or before April 30, 2021.

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

- SERO SFD in its role as the action agency is continuing to gather data on the fishery via the developing Amendment and preparing a draft biological assessment.

#### *NOAA Action Plan on Coral Interventions [New]*

- The [NOAA Action Plan on Coral Interventions](#) is a new plan recently released that will guide how NOAA approaches coral interventions in the next one to three years. The plan encompasses four actions for NOAA: (1) research and test priority interventions, (2) develop local or regional structured decision support, (3) review policy implications of coral interventions, and (4) invest in infrastructure, research, and coordination.

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

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

- NMFS has drafted a proposed rule to modify the Atlantic Large Whale Take Reduction Plan and associated Draft Environmental Impact Statement (DEIS). The documents are under review at the Office of Management and Budget Office of Information and Regulatory Affairs. When the rule is filed and the Notice of Availability of the DEIS is published, we anticipate a 45 to 60 day public comment period. Staff are planning accessible remote opportunities to present the rule and DEIS to stakeholders.

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

- This year's preliminary estimate is 366 right whales alive in January 2019. If sustained through peer review, this number would represent a decrease from the estimate reported last year, of 412 right whales alive in January 2018. This estimate is preliminary and will undergo further analysis and a robust peer review process before being finalized in the *2021 North Atlantic Right Whale Stock Assessment Report*. A continued population decline that began in 2011, coinciding with an oceanographic regime shift and redistribution of whales, was anticipated. However, this preliminary number is lower than expected.
- Elevated North Atlantic right whale mortalities began in 2017, primarily in Canada, and triggered the declaration of an Unusual Mortality Event. From 2017-2019, there were 30 mortalities and 10 serious injuries. In 2020, there have been 1 mortality of a calf by a vessel strike off New Jersey and 4 serious injuries, one notable case caused by a vessel strike to a calf in the SE.

### *Pelagic Longline Take Reduction Plan Proposed Rule Development [Updated]*

- NMFS has drafted a proposed rule and associated EA to implement the Team's recommendations from December 2015 and October 2016 Team meetings (details in the December 2015 and October 2016 Key Outcome Memos). The Team's consensus recommendation 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.
- The proposed rule amending the PLTRP is currently in clearance and publication is expected in the near future. There will be a webinar meeting of the PLTRT during the public comment period.

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

### *Marine Mammal Deterrents Proposed Rule [New]*

- The proposed rule to implement guidelines for non-lethal deterring of marine mammals from damaging fishing gear/catch and property published on August 31, 2020. The public comment period closed on October 30, 2020. We presented the proposed rule and information on dolphin depredation at the October GMFMC meeting (see presentation copy in briefing document).
- While the guidelines and specific measures are not mandatory, the MMPA provides protection from liability under the MMPA for take resulting from such deterrence measures by specifying that any actions taken to deter marine mammals that are consistent with the guidelines or specific

measures are not a violation of the act. NMFS has not evaluated these deterrents for effectiveness. This rulemaking also includes prohibitions on certain deterrent methods that NMFS has determined, using the best available scientific information, would have a significant adverse effect on marine mammals.

- A summary of the rule, the rule itself, and supplementary information including a helpful fact sheet is available online at <https://www.fisheries.noaa.gov/action/guidelines-safely-deterring-marine-mammals>