

## SERO Protected Resources Division Briefing Document December 2021 SAFMC Council Meeting

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

#### *Determination on Critical Habitat for Threatened Caribbean Corals [No Change]*

- 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, so the Final Rules should be published by November 27, 2021

#### *5-Year Status Review on 7 Threatened Coral Species {Updated}*

- In January 2021, NOAA Fisheries announced a [5-year review](#) of staghorn coral (*Acropora cervicornis*), elkhorn coral (*Acropora palmata*), pillar coral (*Dendrogyra cylindrus*), rough cactus coral (*Mycetophyllia ferox*), lobed star coral (*Orbicella annularis*), mountainous star coral (*Orbicella faveolata*), and boulder star coral (*Orbicella franksi*) under the Endangered Species Act of 1973 (ESA).
- The 60-day public comment period for the status review closed March 8, 2021.
- The status review is projected to be completed in early 2022.
- If a change in status is recommended for any of the 7 threatened coral species through the review process, there would be a separate rule-making process with opportunity for public comment.

#### *Nassau Grouper Critical Habitat [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 (to the extent 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 east coast of Florida, areas around Puerto Rico, areas around the U.S. Virgin Islands.
- The Council 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).

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

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

- 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 [New]*

- SERO Protected Resources Division is working on an amendment to the CMPR FMP to address oceanic whitetip sharks and giant manta ray.

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

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

- Phase 1:
  - The [LMA 1 Restricted Area closure](#) is now in effect.
  - On October 16, 2021, Maine Federal District Court Judge Lance E. Walker issued an Order on Motion for Temporary Restraining Order and Preliminary Injunction initially preventing the roughly 967-square-mile LMA 1 Restricted Area, established by the 2021 amendments to the Atlantic Large Whale Take Reduction Plan, from going into effect. However, on November 16, 2021, the United States Court of Appeals for the First Circuit stayed the preliminary injunction issued by the lower court.
  - Lobster and Jonah crab trap/pot fishermen fishing in the LMA 1 Restricted Area had to remove all trap/pot gear from this area, and may not reset trawls being actively fished, or set new trawls in this area. The area will remain closed through January 31, 2022.
  - The gear modifications required by the rule are effective May 1, 2022, which is the start of the American lobster/Jonah crab fishing year.
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- Phase 2:
  - The scoping period for input on efforts to reduce the risk of entanglement to right, humpback and fin whales in the U.S. East Coast gillnet, Atlantic mixed species trap/pot, and Mid-Atlantic lobster and Jonah crab trap/pot fisheries closed on October 21, 2021.
  - On November 2, there was a team webinar which provided an updated population estimate and new risk reduction target of ~90% for Phase 2 rulemaking.
  - The [next team meeting](#), which will include discussion of scoping results was initially scheduled for December 1-2, 2021, but has been postponed to January 11-13, 2021.

### *Right Whale Calving Season [New]*

- Aerial surveys off SC and NC (USACE-funded), GA (NOAA-funded), and FL (Navy, Coast Guard, and USACE-funded) all in operation. Two mom/calf pairs have been detected so far this calving season:

- #1245 “Slalom” and calf were sighted approximately 17nm east of Pawleys Island, SC on November 24, 2021. Catalog #1245 is 40 years old and this is her sixth documented calf. #1245 has survived six fishing gear entanglements.
- #3560 “Snow Cone” and calf were sighted approximately 10 nm east of Cumberland Island, GA on December 2, 2021. Catalog #3560 is 17 years old and this is her second documented calf. #3560 and her 2020 calf ventured into the Gulf of Mexico during the 2020 calving season. They were harassed by several boaters and a para-sail. The 2020 calf was struck and killed by a vessel off New Jersey as mom and calf were migrating northward in 2020 from the calving area.
- #3560 was first observed entangled on March 10, 2021 off Plymouth Harbor, MA. She has been the subject of multiple disentanglement attempts. Currently, she has two trailing lines from the left mouth that are short of the peduncle.. There are no plans to attempt buoy attachment.

*North Atlantic Right Whale Unusual Mortality Event (UME) [No Change]*

- Elevated North Atlantic right whale mortalities began in 2017, primarily in Canada, and triggered the declaration of an Unusual Mortality Event. From 2017-2021, there were 34 mortalities and 16 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 and plans to have it available before Spring 2022.

*Bottlenose Dolphin Take Reduction Plan [No Change]*

*MMPA List of Fisheries – 2020 [Updated]*

- Comment period closed on September 8, 2021 for the 2022 Proposed List of Fisheries.
- The final 2022 List of Fisheries is anticipated to be published in early 2022.