

# SERO Protected Resources Division Briefing Document

## March 2021 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](#).
- 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

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

#### *Update on the Ongoing Section 7 Consultation on Federal Shrimp Fisheries [No Change]*

- 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.

### *GARFO Biological Opinion relevant to Right Whale Conservation*

- A draft biological opinion was released by the Greater Atlantic Regional Fisheries Office on the New England Fisheries Management Council's Omnibus Essential Fish Habitat Amendment 2. As part of this consultation under the Endangered Species Act, NOAA Fisheries identified that mortality and serious injury of North Atlantic right whales in federal fisheries managed by the Greater Atlantic Regional Fisheries Office needs to be further reduced. Therefore, NOAA Fisheries developed and is committed to implementing the North Atlantic Right Whale Conservation Framework for Federal Fisheries in the Greater Atlantic Region to further reduce entanglements and mortality and serious injury of North Atlantic right whales. The Framework outlines NOAA Fisheries' commitment to implement measures that are necessary for the recovery of right whales, while providing a phased approach and flexibility to the fishing industry. More information can be found here: <https://www.fisheries.noaa.gov/bulletin/draft-biological-opinion-10-fishery-management-plans-released>.

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

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

- A draft environmental impact statement and proposed rule to modify the Atlantic Large Whale Take Reduction Plan is now available for public input. Comments are due on the DEIS and proposed rule by March 1, 2021. More information can be found here: <https://www.fisheries.noaa.gov/new-england-mid-atlantic/marine-mammal-protection/atlantic-large-whale-take-reduction-plan>.
- Proposed changes to the Plan are only relevant to the Northeast lobster and Jonah crab fisheries and would:
  - Modify gear marking to introduce state-specific colors for gear marks and increase the number of gear markings and areas requiring marked lines.
  - Modify gear configurations to reduce the number of vertical lines by requiring more traps between buoy lines.
  - Introducing weak insertions or weak rope into buoy lines.
  - Modify existing seasonal restricted areas to allow ropeless fishing
  - Add one or two new seasonal restricted areas that are closed to buoy lines but allow ropeless fishing.
- An additional round of public scoping in summer 2021 will address any potential risk from Mid-Atlantic or Southeast fisheries.

### *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 2017-2021, there were 32 mortalities and 14 serious injuries. 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 [Updated]*

- 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.
- There will be a Team webinar on February 10, 2021 and the public comment period will close on February 16, 2021. The key outcomes memo from the webinar is expected to be posted in March 2021.

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

#### *MMPA List of Fisheries – 2021 [Updated]*

- Fishermen are normally mailed a new Marine Mammal Authorization Certificate automatically each January to remain in compliance with the Marine Mammal Protection Act's Marine Mammal Authorization Program. This year, NMFS is continuing the authorization from 2020 into 2021 due to the COVID 19 Pandemic. Fishermen will *not* receive a new certificate. Please retain the 2020 certificate to maintain compliance with the MMAP program. Registration will be automatically carried over into the new calendar year. Additional certificates can be printed here: <https://www.fisheries.noaa.gov/webdam/download/83804232>.
- The 2021 List of Fisheries published in January 2021. However, the 2021 LOF is currently under a regulatory freeze pending review from the new administration. The effective date will be extended as a result.