



NOAA
FISHERIES

Southeast
Region

Endangered Species Act (ESA) Section 7, Policy 01-117 and Reinitiation of the 2021 Shrimp Biological Opinion

Presentation to South Atlantic Fishery Management Council's Shrimp Working Group

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Presentation Overview

- ESA Overview
- Section 7 Requirements
- Biological Opinions & Jeopardy Analyses
- NOAA Fisheries' ESA MSA Integration Policy
- Reinitiation of the Shrimp Biological Opinion

ESA Authority and Purposes

- Gives joint authority to the National Marine Fisheries Service and the U.S. Fish and Wildlife Service to implement the Act
- Provides a means whereby the **ecosystems** upon which endangered species and threatened species depend may be conserved; a program for the **conservation** of E/T species; and a means to take steps appropriate to achieve certain treaty/convention purposes

How We Implement the ESA

- List Species/Designate Critical Habitat (ESA Section 4)
- Develop protective regulations for threatened species (ESA Section 4(d) rules)
- Develop/implement recovery plans (ESA Section 4(f))
- Land Acquisition and Cooperation with States (ESA Sections 5 and 6)
- **Consult on Federal actions (ESA Section 7)**
- International Cooperation (ESA Section 8)
- Investigate/enforce ESA prohibited acts (ESA Sections 9 and 11)
- Issue permits/develop Habitat Conservation Plans (ESA Section 10)

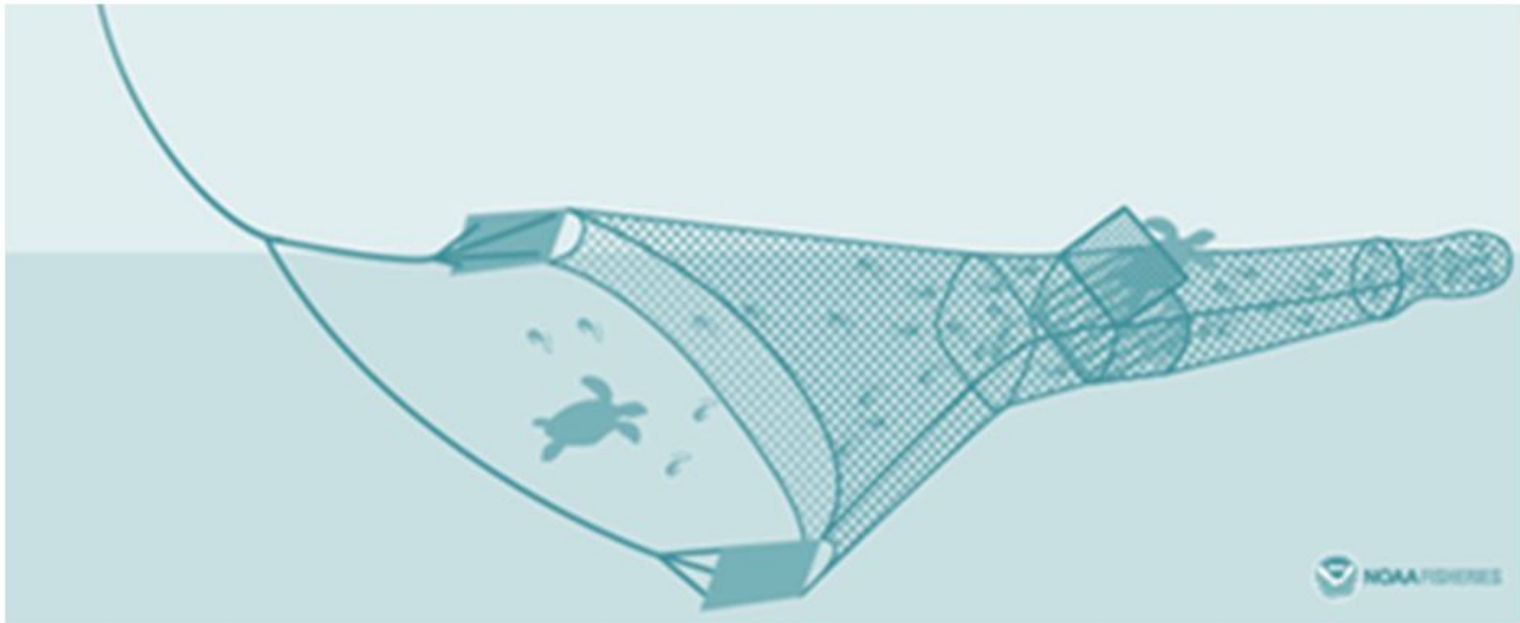
ESA Section 7 Interagency Cooperation



Section 7- Interagency Cooperation

Affirmative Conservation Mandate

- Section 7(a)(1): Federal agencies shall use their authorities to carry out their programs for the conservation of endangered and threatened species



Section 7- Interagency Cooperation

Duty to Avoid Jeopardy and Destruction or Adverse Modification (DAM)

- Section 7(a)(2) – Federal agency shall, in consultation with the Secretary, **insure** that any action authorized, funded, or carried out by such agency is **not likely to jeopardize** the continued existence of any endangered species or threatened species **or result in the destruction or adverse modification (DAM) of critical habitat.**

Duty to Consult Trigger

- Section 7(a)(3) - Federal agencies must **consult** on proposed actions if any **listed** species or critical habitat **may be affected.**

Section 7- Interagency Cooperation

Conferences

- Section 7(a)(4): requires Federal agencies to **confer** with the Service on any action that is **likely to jeopardize** the continued existence of **proposed** species or destroy or adversely modify proposed critical habitat.

Section 7(o)(2): Provides action agencies an exemption from the Section 9 “take” prohibitions if they comply with certain biological opinion requirements.

- Take - broadly defined under the ESA to include harm and harassment, as well as pursuing, killing, hunting, or capturing.

What is a Biological Opinion?

An analytical document that:

- summarizes the effects of a Federal action on ESA-listed species and/or designated critical habitat.
- identifies whether or not the action is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat.
- represents the opinion of NOAA Fisheries and considers technical, legal, and policy issues relative to the proposed action.
- is the product of the [formal consultation](#) process.

Defining The Scope of Fishery Consultations

For FMP actions, the action subject to section 7 consultation is: “the authorization of a fishery (or fisheries) through approval of an FMP (or FMPs if applicable) and promulgation of regulations implementing the plan (or plans), as amended to date and the [identify action that potentially triggers reinitiation or necessitates a new consultation (e.g., approval of and promulgation of regulations implementing the Amendment)]”

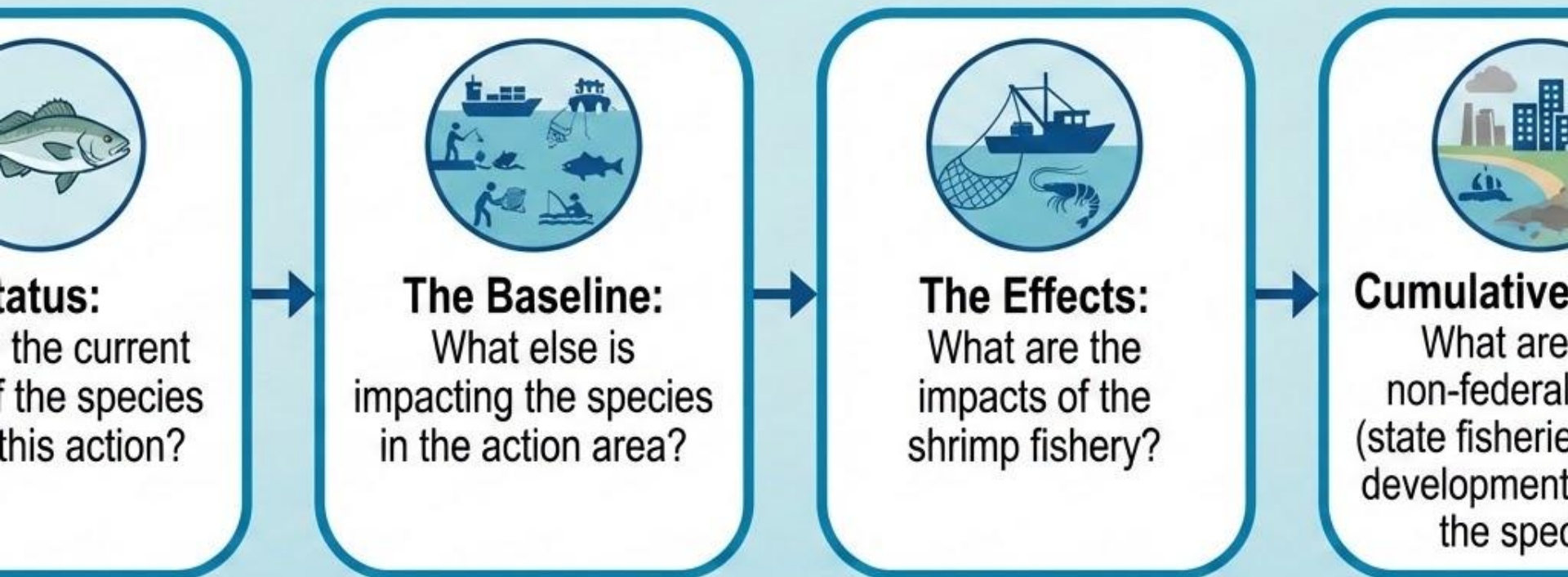
What's In a Complete Initiation Package

Described in detailed regulations: § 402.14 (c) and (d)

- A description of the action, the area affected by the action, the E/T species and/or critical habitat that may be affected, how the action will affect E /T species and/or critical habitat
- Analysis of any cumulative effects (future non-federal activities reasonable certain to occur)
- Any relevant reports, studies, or available information (e.g., survey data, past monitoring reports)
- May be in the form of biological assessment or evaluation and/or NEPA Document if meets initiation info needs

The action agency must provide the best available scientific and commercial data available

How We Evaluate Jeopardy Standard



Status + Baseline + Effects + Cumulative Effects
Does this 'jeopardize' the species' survival and recovery?

Tools For Evaluating Jeopardy

- Regulatory criteria/framework: effects on numbers, reproduction, or distribution; appreciable reduction in survival or recovery
- Status reviews, stock assessments, and recovery plans
- Population viability analyses (specific quantitative modeling, extinction risk expressed as probabilities)
- Qualitative/semi-qualitative frameworks
- Expert Opinion

Biological Opinion Outcomes

- If jeopardy is concluded, the consulting agency proposes “Reasonable and Prudent Alternatives” (RPAs) to avoid jeopardy
- The action agency must then modify the proposed action to comply with the ESA or not take the action.
- Opinions also include an “**incidental take statement**” (ITS) that specifies the number of individuals, or extent of a population, of a listed species that will be “taken” incidental to the planned action, and exempts take from any ESA section 9 prohibitions on take so long as reasonable and prudent measures and their implementing terms and conditions are complied with.

Reinitiation of Section 7 Consultations

Reinitiation of formal consultation is necessary when:

- The amount or extent of taking specified in the Incidental Take Statement is exceeded
- New information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered
- action is modified causing effect not considered
- New species listed or critical habitat designated that may be affected

NOAA Fisheries ESA MSA Integration Policy

- [ESA MSA Integration Policy Directive](#) (PD):
 - Outlines how Councils can participate in the Section 7 process,
 - Emphasizes the importance of early collaboration by NMFS (SF and PR) and the Councils **prior to initiation of consultation** for reducing the likelihood that a preferred fishery management alternative will result in a jeopardy or “DAM” finding.
- Ways that Councils can be involved in Section 7 consultations:
 - Describing the proposed action for purposes of initiating Consultation
 - Identifying feasible alternatives to status quo
 - Providing Council views as to the “**best scientific information available**” on fisheries management practices and potential effects of the proposed action on listed or proposed listings of species and designated or proposed designations of critical habitat
 - Assisting in preparing draft biological assessments, biological evaluations, and other ESA section 7 consultation initiation documents

Source: myfwc.com

NOAA Fisheries ESA MSA Integration Policy

- **Mechanisms for Fostering Council Involvement in the Section 7 Consultations**
 - PRD Council liaisons and involvement in Council Committee and Advisory Panels
 - Engaging PRD in reviewing and providing appropriate information for sections of MSA- and NEPA-related analyses via the IPT process on fishery management actions.
 - Forming **IPTs** For Considering ESA actions (e.g. Gulf Reef Fish Amendment 31 IPT)
 - Establishing an **Ad hoc committee or working group** to review ESA data and explore alternative for changes to the FMP to address ESA-related concerns (e.g. Groundfish ESA Working Group).

Source: myfwc.com

Shrimp Reinitiation Background

April 2021: SERO issued [ESA biological opinion and incidental take statement](#) on the implementation of the sea turtle conservation regulations (TED regs) under the ESA and the authorization of the southeast U.S. shrimp fisheries in federal waters under the Magnuson Stevens Fishery Management and Conservation Act.

- June 2023: SERO, Sustainable Fisheries Division (SFD) requested SERO Protected Resources Division (PRD) reinitiate Section 7 consultation on southeast U.S. shrimp fisheries to address unanticipated observed lethal incidental take of giant manta rays and new information revealing effects of these fisheries on smalltooth sawfish and giant manta rays not considered in the 2021 Shrimp Opinion.
- Since identifying the need to reinitiate, SERO, in collaboration with the SEFSC, has been working to develop the information needed to formally reinitiate consultation (see [§ 402.14\(c\) and \(d\)](#)).

Preliminary Effects Summary Based on Reinitiation Data Assembled Thus Far



- Smalltooth sawfish population abundance data and trends.
 - Growing evidence the population is small
 - Evidence of declining abundance trend in juvenile smalltooth sawfish
- The 2024/25 sawfish mortality events had a major impact on the population.
- Shrimp trawl bycatch is the largest ongoing long-term source of mortality for large juveniles and adult mortalities.
- Giant manta ray are also highly susceptible to mortality in trawls.
- More actions may be needed to minimize shrimping impacts in light of above conclusions

What Can We Possibly Do to Reduce Impacts from Shrimp Trawls?

How can we address current data limitations?

- How can we improve bycatch monitoring in primary bycatch areas?
- How can sawfish and giant manta ray bycatch and mortality be reduced in the fishery?
- How can we improve and raise awareness of and compliance with safe handling and release guidance?

Initiation Roadmap (Simplified)

Phase	Action	Status
Pre-Consultation	Technical assistance, best available data gathering, and defining the action	Current Phase
Initiation	NMFS (SFD) submits the formal "Action" package	 Pending Council Policy Action Consideration Best Available Data
Drafting of the New Biological Opinion	NMFS (PRD) writes the analysis	 TBD (135 days after initiation unless extended)

Questions?

The background of the slide features a light blue gradient with a subtle pattern of waves. In the lower half, there is a faint, circular graphic containing a compass rose with a central needle pointing upwards. Surrounding the compass rose is a school of fish, with many fish swimming in a circular path around the center.