

# SERO Protected Resources Division Briefing Document

## June 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*

- 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 by the end of June.
- 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*

- 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).

#### *Skimmer Trawl Rule Delayed Effective Date*

- On March 31, 2021, NOAA Fisheries published a [Final Rule](#) delaying the effective date of the December 20, 2019, final rule requiring the use of TEDs designed to exclude small sea turtles in their nets in skimmer trawls 40 feet in length and greater in the Southeastern U.S. shrimp fisheries until August 1, 2021.

- Safety and travel restrictions due to the COVID-19 pandemic limited our Gear Monitoring Team’s ability to complete the in-person workshops and training sessions on the final rule that we had anticipated and communicated to the public.
- The delay in the effective date is to allow NOAA Fisheries additional time for training fishermen, ensuring TEDs are built and installed properly, and for responding to installation and maintenance problems when the regulations go in effect.
- NOAA Fisheries outreach strategy is use social media, targeted virtual meetings and dockside workshops, instructional videos, digital media, and the establishment of a role-based social media and email account ([ted.info@noaa.gov](mailto:ted.info@noaa.gov)).

*Advanced Notice of Proposed Rulemaking Federal Register Notice*

- On April 20, 2021, NOAA Fisheries published an [advance notice of proposed rulemaking](#) to solicit comments on the possibility of modifying the turtle excluder device (TED) related requirements for skimmer trawl vessels less than 40 feet (12.2 meters) in length operating in the southeast U.S. shrimp fisheries.
- The comment period on this potential action closed on May 20, 2021.

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

*New Shrimp Opinion Completed*

- On April 26, 2021, SERO completed its reinitiation of ESA section 7 consultation and issued a new [biological opinion](#) on the implementation of the sea turtle conservation regulations under the ESA and the authorization of Southeast U.S. Shrimp Fisheries in federal waters under the MSA.
- Since the 2014 Opinion, we had developed new bycatch information to better analyze the effects of the shrimp fisheries on sea turtle populations; issued a final rule requiring TEDs for a portion of the skimmer trawl fisheries; and listed new species under the ESA (i.e., Bryde’s whale, giant manta ray, green sea turtle DPSs, and Nassau grouper).
- In the 2021 Opinion, we concluded that the proposed action may adversely affect but is not likely to jeopardize the continued existence of Kemp’s ridley, green, loggerhead, leatherback, and hawksbill sea turtles; Atlantic and Gulf sturgeon; giant manta ray, and smalltooth sawfish.
- The new opinion does not rely on TED compliance as a surrogate metric for sea turtle incidental take as was done in the 2014 Opinion. Instead, we employed available shrimp trawl fishery observer and effort data in a Bayesian modeling approach, which resulted in bycatch estimates as documented in Babcock et al. (2018), in estimating the total effect of the shrimp fisheries on sea turtle populations. We then also apply calculated post-interaction mortality for each species as for try net and standard nets, respectively, to determine total bycatch mortality.
- We also determined that the proposed action is not likely to adversely affect sei, blue, fin, North Atlantic right, sperm, humpback, or Bryde’s whales; shortnose sturgeon, Nassau grouper, oceanic whitetip or scalloped hammerhead shark, corals, or designated critical habitats for Gulf sturgeon and corals, and will have no effect on Johnson seagrass and designated critical habitats for North Atlantic right whale, smalltooth sawfish, and Johnson’s seagrass.

*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 [No Update]*

- 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 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/Rulemaking [Updated]*

- Northeast Lobster and Crab Rule (Rulemaking #1):
  - The comment period for the Northeast lobster and crab rule closed on March 1, 2021 and received over 170k public comments that we are reviewing in preparation for our final rule and associated NEPA analyses.
  - NOAA Fisheries expects the current rule to be finalized in Summer 2021.
- Trap/Pot and Gillnet Rulemaking (Rulemaking #2):
  - This rulemaking would focus on the remaining fisheries (trap/pot and gillnet) coast-wide.
    - From April 21-30, the team met in smaller groups to learn about and suggest improvements to a decision support tool. The decision support tool was developed to model estimated risk from various fishing gear in areas where right whales occur (the tool is based on Farmer et al. 2016).
    - On May 10, the ALWTRT met virtually to discuss risk reduction ideas to run through the decision support tool.
      - SE Atlantic black sea bass fishermen discussed the potential for ropeless exemptions for black sea bass trap pot fishing in areas of existing SAFMC closures.
  - June/early July: A second ALWTRT meeting will take place.
  - Late summer/early fall: Scoping meetings will be conducted along the east coast to present and receive feedback on potential solutions to reduce risk to right whales from commercial fishing gear. Meetings will likely be virtual.
    - We will coordinate with the Council on the possibility to conduct a ALWTRP scoping meeting in concurrence with SAFMC September meeting.
  - Fall 2021: ALWTRT will meet to discuss the results of scoping and make recommendations on new measures. NOAA Fisheries will likely release the next proposed rule sometime in 2022

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

- 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 15 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]*

- NOAA Fisheries 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. A full team tele-meeting was held in early-February and a Key Outcomes Memo is expected to be available in the near future. The public comment period ended on February 16, 2021, and NOAA Fisheries is in the process of finalizing the rule.

*Bottlenose Dolphin Take Reduction Plan [No Updates]*

*MMPA List of Fisheries – 2020 [Updated]*

- We are currently drafting the List of Fisheries for 2022. We will keep the council informed if we expect any changes.