

## SERO Protected Resources Division Briefing Document September 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 [Update]*

- 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 this fall.
- 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 [Update]*

- SERO SFD in its role as the action agency is working to complete a draft biological assessment for the consultation on the fisher.

### *GARFO Biological Opinion*

- On May 21, 2021, the Greater Atlantic Regional Fisheries Office completed and released the new biological opinion on 10 Fishery Management Plans in the Greater Atlantic Region and the New England Fishery Management Council's Omnibus Habitat Amendment. They also released 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 resulting from entanglement in the federal fisheries. The Conservation Framework outlines commitment to implement measures that are necessary for the recovery of right whales, while providing a phased approach and flexibility to the fishing industry. We are releasing the Biological Opinion and Conservation Framework. More information can be found here: <https://www.fisheries.noaa.gov/resource/document/biological-opinion-10-fishery-management-plans>

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

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

- PHASE 1: Northeast lobster and Jonah crab trap/pot fishery
  - FINAL ENVIRONMENTAL IMPACT STATEMENT
    - A [Notice of Availability](#) of the Final Environmental Impact Statement (FEIS) analyzing alternative modifications to the Atlantic Large Whale Take Reduction Plan was published in the *Federal Register* on July 2, 2021. The FEIS ([Volume I](#), [Volume II](#), [Volume III](#)) is available for viewing and download.
    - Alternative 2 in the FEIS is the preferred alternative and NMFS is engaging in a rulemaking to determine whether to implement it. NMFS will issue the Record of Decision as to our determination at a later date.
  - The comment period for the Northeast lobster and crab rule closed on March 1, 2021 and received over 170k public comments that NMFS is reviewing in preparation for our final rule and associated NEPA analyses.
  - NMFS expects the current rule to be finalized in 2021.
- PHASE 2: Focuses on the remaining fisheries (trap/pot and gillnet) coast-wide.
  - A [Notice of Intent](#) to prepare an environmental impact statement and request for comments published in the *Federal Register* on August 11, 2021.
  - NMFS is holding scoping meetings to collect input on efforts to reduce the risk of entanglement to right, humpback, and fin whales in U.S. East Coast gillnet,

Atlantic mixed species trap/pot, and Mid-Atlantic lobster and Jonah crab trap/pot fisheries. **The scoping period extends through October 21, 2021.**

- Ways to participate in scoping:
  - Public Scoping Meetings
    - Southeast specific webinar will be held on October 5, 2021
  - Call-In Days
  - Submit your input to this email address:  
nmfs.gar.ALWTRT2021@noaa.gov.
- Early 2022: ALWTRT will meet to discuss the results of scoping and make recommendations on new measures. NMFS will likely release the next proposed rule 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 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 [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. The public comment period ended on February 16, 2021. NMFS is preparing the final rule and plans to have it available by the end of year.

*Bottlenose Dolphin Take Reduction Plan [No Updates]*

*MMPA List of Fisheries – 2020 [Updated]*

- The 2022 proposed List of Fisheries published on Aug 9, 2021. Public comments will be accepted until September 8, 2021.