

**SERO Protected Resources Division (PRD) Briefing
For March 2023 SAFMC Meeting**

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

Nassau Grouper Critical Habitat Proposed Rule [New]

- On October 17, 2022, NOAA Fisheries published a proposed rule to designate critical habitat for the threatened Nassau grouper pursuant to section 4 of the Endangered Species Act (ESA). Specific occupied areas proposed for designation as critical habitat contain approximately 2,353.19 sq. kilometers (908.57 sq. miles) of aquatic habitat located in waters off the coasts of southeastern Florida, Puerto Rico, Navassa, and the United States Virgin Islands.
- The comment period was open through December 16, 2022. The ESA requires NOAA Fisheries to publish a final rule within 1 year of the proposed rule. Prior to making a final determination, we will consider public comments and new information that may not have been available when we conducted our status review for the queen conch. We are currently evaluating what fisheries may require Section 7 consultations if the rule is finalized.
- The proposed rule and supporting information can be found here:
<https://www.fisheries.noaa.gov/action/proposed-rule-designate-critical-habitat-threatened-nassau-grouper>

5-Year Status Review on 7 Threatened Coral Species [Update]

- On August 10, 2022, NOAA Fisheries published a 5-year review for seven species of Caribbean coral (<https://www.fisheries.noaa.gov/resource/document/caribbean-corals-5-year-review>). A 5-year review is a periodic analysis of a species' status conducted to ensure that the listing classification of a species as threatened or endangered under the US Endangered Species Act of 1973 is accurate. The review evaluates information that has become available since the last status review conducted in 2014. NOAA Fisheries determined that the classification for staghorn (*Acropora cervicornis*), elkhorn (*Acropora palmata*), lobed star (*Orbicella annularis*), mountainous star (*Orbicella faveolata*), boulder star (*Orbicella franksi*), and rough cactus (*Mycetophyllia ferox*) corals be maintained as threatened and that the classification for pillar coral (*Dendrogyra cylindrus*) be considered for up-listing from threatened to endangered.
- NOAA Fisheries is recommending changing the status of pillar coral from threatened to endangered due to loss in the northern portion of its range, the low and declining population, the susceptibility to stony coral tissue loss disease, and the rapid spread of the disease to most areas of the Caribbean.
- We are develop a proposed rule to change the status of pillar coral from threatened to endangered, which will be open to public comment once published.
- We anticipate publication of a proposed rule in the Federal Register sometime by June.

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.
- We anticipate publishing our final determination by this summer.

Oceanic Whitetip Shark Draft Recovery Plan [New]

- On January 25th, NOAA Fisheries announced the availability of a Draft Recovery Plan for the threatened oceanic whitetip shark (*Carcharhinus longimanus*). As required by the ESA, the draft plan contains the following three components: (1) a description of site-specific management actions necessary for the conservation and survival of the species (recovery actions); (2) objective, measurable criteria that, when met, will allow the species to be removed from the endangered and threatened species list; and (3) estimates of the time and funding required to achieve the plan's goals.
- NOAA Fisheries is requesting public comments on the draft plan. The draft plan and supporting documents, including the January 2023 Recovery Status Review and the Draft Recovery Implementation Strategy are available on the NOAA Fisheries oceanic whitetip shark profile website at: <https://www.fisheries.noaa.gov/species/oceanic-whitetip-shark#conservation-management>.

ESA Section 7-Related Actions and Other ESA News:

ESA Policy Directive 01-117: Integration of Endangered Species Act Section 7 with Magnuson-Stevens Act Processes

- The CCC's Working Group addressing PD 01-117 (Integration of Endangered Species Act Section 7 with Magnuson-Stevens Act Processes) has created a redline version of PD 01-117 that addresses the main issues the Councils have regarding the policy directive.
- NOAA Fisheries is reviewing the CCC's recommendations and how we are implementing this policy directive as well as other existing policies intended to foster coordination. As part of this review, NOAA Fisheries is conducting a series of regional discussions among Protected Resources, Sustainable Fisheries and Council staff, designed to: (1) Update common understandings of existing policies and guidance material; (2) Identify Needs/Opportunities for further improvement (could range from updating communications and practices to developing additional guidance); and (3) Identify successes that could be shared as examples for other regions and Councils.
 - SERO PRD is engaged in this review and working with NMFS Office of Protected Resources and Office of Sustainable Fisheries in planning meetings between SERO and Council staff.
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Coastal Migratory Pelagic Resources (CMPR) Consultation [No Change]

- SERO PRD is working to complete its amendment to the Gulf and South Atlantic CMPR FMP biop to address oceanic whitetip sharks and giant manta ray that were listed subsequent to the completion of the 2015 biop.
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Dolphin Wahoo FMP Consultation [No Change]

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

Marine Mammal Protection Act (MMPA) Actions and Other MMPA News:

Atlantic Large Whale Take Reduction Team [Updated]

- Completed the latest round of Atlantic Large Whale Take Reduction Team meetings in November and December 2022 that aimed to get recommendations that would reduce right whale mortality by 88 to 93 percent total, which is an additional 41 to 46 percent on top of the rule published in 2021. The Team provided a large suite of measures for NMFS to consider during the next round of Plan modifications.

- On December 29, 2022, Congress passed the Consolidated Appropriations Act 2023, which noted that the 2021 rule “shall be deemed sufficient to ensure that the continued Federal and State authorizations of the American lobster and Jonah crab fisheries are in full compliance” with the MMPA and ESA until December 31, 2028. This Act will impact the timeline of rulemaking and implementation for the next set of modifications to the Plan as discussed at the 2022 Team meetings.
- While the new provisions of law have changed the trajectory, we are still considering the recent TRT input and recommendations and plan to shift our energy into developing the next set of rules, as opposed to convening and managing the Team.
- Decision Support Tool Peer Review occurred Jan. 30-Feb 1, 2023. Additional information can be found [here](#).

Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule [Updated]

- NOAA Fisheries [proposed changes to the North Atlantic right whale vessel speed regulations](#) to further reduce the likelihood of mortalities and serious injuries to endangered right whales from vessel collisions, which are a leading cause of the species’ decline and a primary factor in an ongoing Unusual Mortality Event.
- The proposed rule would:
 - 1) modify the spatial and temporal boundaries of current speed restriction areas, currently referred to as Seasonal Management Areas (SMAs),
 - 2) include most vessels greater than or equal to 35 ft (10.7 m) and less than 65 ft (19.8 m) in length in the vessel size class subject to speed restriction,
 - 3) create a Dynamic Speed Zone framework to implement mandatory speed restrictions when whales are known to be present outside active SMAs, and
 - 4) update the speed rule’s safety deviation provision.
- The 90-day public comment period on the proposed North Atlantic Right Whale Vessel Strike Reduction Rule closed on October 31, 2022. We are currently reviewing and considering all public comments received during the public comment period. NOAA Fisheries anticipates releasing a final rule in 2023.

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 to date, there have been 97 documented dead, serious, or sublethal injuries or illnesses. 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>.

Humpback Whale Unusual Mortality Event (UME) [New]

- Since January 2016, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida. As of February 16, 2023, 184 whales have stranded. Partial or full necropsy examinations were conducted on approximately half of the whales. Of the whales examined, about 40 percent had evidence of human interaction, either ship strike or entanglement. More information can be found at:
 - <https://www.fisheries.noaa.gov/national/marine-life-distress/2016-2023-humpback-whale-unusual-mortality-event-along-atlantic-coast>
 - <https://www.fisheries.noaa.gov/new-england-mid-atlantic/marine-life-distress/frequent-questions-offshore-wind-and-whales>

- <https://www.fisheries.noaa.gov/national/marine-life-distress/frequent-questions-2016-2023-humpback-whale-atlantic-coast-unusual#what-are-the-findings-in-stranded-humpback-whales>

Pelagic Longline Take Reduction Plan Proposed Rule Development [No Change]

Bottlenose Dolphin Take Reduction Plan [No Change]

MMPA List of Fisheries – [No Change]

- The proposed [2023 List of Fisheries](#) published on September 9, 2023.
 - There are no major changes for fisheries in the Southeast United States.

Marine Mammal Stock Assessment Reports [New]

- The draft 2022 marine mammal Stock Assessment Reports were published. The public comment period will close on April 24, 2023.