

## Southeast Regional Office (SERO), Protected Resources Division (PRD) Briefing for the June 2023 SAFMC Meeting<sup>1</sup>

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

#### *Pillar Coral Up-listing Proposed Rule Development [Updated]*

- 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 evaluated information that had become available since the last status review conducted in 2014.
- NOAA Fisheries determined that the classification for pillar coral (*Dendrogyra cylindrus*) should be considered for up-listing 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 developing 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 in July.

#### *Nassau Grouper Critical Habitat Proposed Rule [Updated]*

- 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 proposed rule and supporting information can be found here: <https://www.fisheries.noaa.gov/action/proposed-rule-designate-critical-habitat-threatened-nassau-grouper>
- The comment period was open through December 16, 2022. NOAA Fisheries received 18 comments on the proposal. Commenters who provided substantive comments included the Florida Fish and Wildlife Conservation Commission and a coalition of non-governmental organizations (NGOs) including Miami Waterkeeper, Center for Biodiversity, and WildEarth Guardians.
- 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.
- If the designation is finalized, Section 7 consultations would be required for any federal actions that may be affected. For our federal fisheries in the South Atlantic region, we anticipate most, if not all, section 7 consultations on SAFMC fisheries would be completed informally.

#### *Determination on Critical Habitat for Threatened Caribbean Corals [Updated]*

- 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

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<sup>1</sup> This report was prepared by Jennifer Lee, SERO Fishery management Liaison for PRD, and other PRD staff. Updates as of May 18, 2023

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 this summer.

***Development of a Proposed Rule to Designate Marine Critical Habitat for Six Distinct Population Segments (DPSs) of Green Sea Turtles in U.S Waters. [New]***

- NOAA Fisheries and the US Fish and Wildlife Service (USFWS) share jurisdiction of sea turtles under the Endangered Species Act. The USFWS overseeing their protection and recovery on nesting beaches, and NOAA Fisheries providing oversight in the marine environment.
- In 2016, NOAA Fisheries and the USFWS listed distinct population segments (DPSs) of green sea turtles, which triggered the requirement to designate critical habitat to the maximum extent prudent and determinable for DPSs in areas under U.S. jurisdiction.
- A court order (settlement agreement) requires NOAA Fisheries to submit the proposed rule to the Federal Register on or before June 30, 2023.
- This will be a concurrent rulemaking with USFWS.

***Petition to List the Smalltail Shark as Threatened or Endangered under the ESA [New]***

- On October 31, 2022, we received a petition from the Center for Biological Diversity to list the smalltail shark (*Carcharhinus porosus*) as an endangered or threatened species under the ESA. The petitioner also requested designation of critical habitat. The petition asserts that the smalltail shark is threatened or endangered due to four of the five ESA section 4(a)(1) factors: (1) present or threatened destruction of habitat; (2) overutilization for commercial and recreational activities; (4) inadequacy of existing regulatory mechanisms; and (5) other natural or manmade factors affecting its continued existence.
- We anticipates publishing our 90-day finding on the petitioned action in May.
- Our finding, positive or negative, is not expected to impact SAFMC fisheries management because the species generally does not occur in the South Atlantic region.

***Oceanic Whitetip Shark Draft Recovery Plan [Updated]***

- 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.
- 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>.
- NOAA Fisheries received 5 comments on the draft plan. Commenters included a coalition of NGOs and the Western Pacific Regional Fishery Management Council. The target date for completion of the plan is Fall 2023.

## ESA Section 7-Related Actions and News:

### *ESA Policy Directive 01-117: Integration of ESA Section 7 with Magnuson-Stevens Act (MSA) Processes, the Council Coordination Committee (CCC) and ESA-MSA Regional Meetings [Updated]*

- 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 worked with NMFS Office of Protected Resources and Office of Sustainable Fisheries to schedule/plan the meeting between SERO and SAFMC staff.
  - SERO and SAFMC staff met for several hours over the week of May 8<sup>th</sup> for its regional discussion.
    - Council and SERO SF and PR staff agree that our working relationship is beneficial to all. The CCC policy revisions are not concerns for SERO or the SAFMC staff; i.e., the MSA/ESA Integration Agreement developed in 2016 provides a detailed outline for how the Council can be involved in Section 7 consultations. All involved feel it would be helpful to update this document to reflect current Council practices, but overall it is still effective.
    - While the Council receives protected resources updates and every Council meeting, Section 7 consultations do not operate on the Council meeting timeline so it would be ideal to have SERO PR and Council staff meet on a more regular basis. Monthly meetings between the two groups will be scheduled and details on how staff interacts will be added into the RO once updated.
    - Providing new Council members (and others as needed) regional training on protected resources, including ESA Section 7 consultations, MMPA, and the Council's integration agreement would be beneficial [in addition to the Silver Spring all new council member training]
    - The Council has not had a significant or "high stakes" Biological Opinion [i.e., an opinion impacting fisheries management] issued since the policy directive and subsequent integration agreement were implemented.
    - It would be helpful for the Council to receive status reports on the number of observed takes in each fishery so that they could be proactive should issues arise.

### *Amendment to the Biological Opinion for Coastal Migratory Pelagic Resources (CMPR) FMP in the Gulf of Mexico and Atlantic Region [Updated]*

- On June 18, 2015, NMFS completed a Biological Opinion on the operation of the CMPR fishery, as managed by the subject FMP pursuant to the MSA. On November 18, 2017, NMFS amended the 2015 Opinion to evaluate the fishery's effects on green sea turtle North Atlantic and South Atlantic Distinct Population Segments (DPSs), and Nassau grouper. The 2015 Opinion, as amended in 2017, concluded that the operation and management of the fishery is not likely to jeopardize any ESA-listed sea turtle, Atlantic sturgeon, or the U.S. DPS of smalltooth sawfish. The amended 2015 Opinion also concluded that the proposed action is not likely to adversely affect any other ESA-listed species or critical habitat.
- On May 1, 2023 we completed another amendment to the Gulf and South Atlantic CMPR Biological Opinion, including its incidental take statement, this time addressing oceanic whitetip

sharks and giant manta ray that were listed subsequent to the completion of the amended CMPR Biological Opinion and may be affected.

- In the most recent amendment, we concluded that the operation and management of the CMPR fishery is not likely to jeopardize the continued existence of oceanic whitetip sharks and giant manta rays, and we issued an incidental take statement. The amendments to the incidental take statement do not contain any requirements that require SAFMC or SAFMC staff action nor do the unchanged requirements of the opinion.
- The amendment to the biological opinion is included in the briefing book. We are happy to provide a brief summary of the amendment and also the full opinion as a refresher at the request of the Council.

#### *Dolphin Wahoo FMP Consultation [Updated]*

- With assistance from Council staff, SERO SFD in the role as the action agency developed a draft biological assessment for the consultation on the fishery using information from Dolphin Wahoo FMP Amendment 10. SERO PRD staff have not had the capacity among other priorities to assist in its finalization consequently completion of the biological assessment remains stalled.

### **Other ESA News Highlights**

#### *New Funding Source for Sea Turtle Stranding Response and Rehabilitation (500K) [New].*

- New federal funds will be available through the National Fish and Wildlife Foundation for organizations involved in sea turtle stranding response and rehabilitation.
- NOAA Fisheries Office of Protected Resources (Silver Spring, MD) plans to work through a cooperative agreement with the National Fish and Wildlife Foundation to administer these funds. The Foundation expects to release a request for proposals to include this stranding response and rehabilitation priority under their Sea Turtles Program later this summer, for awards in spring 2024.
- See the full story here: <https://www.fisheries.noaa.gov/news/500000-available-support-sea-turtle-stranding-response-and-rehabilitation>

#### *The Endangered Species Act: 50 Years of Conserving Species [New]*

- On May 19th NOAA Fisheries announced it will be celebrating the 50th anniversary of the Endangered Species Act from May 19 to December 28, 2023!
- During this monumental commemoration of 50 years, we will be highlighting our science, conservation, partnerships, and people who implement the ESA through the features and videos below.
- See the full story here, including planned events so far here: <https://www.fisheries.noaa.gov/feature-story/endangered-species-act-50-years-conserving-species>

#### *World Sea Turtle Day – June 16 [New]*

- World Sea Turtle Day, June 16th, is a day used to honor and highlight the importance of sea turtles.
- World Sea Turtle Day is celebrated on June 16<sup>th</sup>, to honor the birthday of Dr. Archie Carr, a renowned sea turtle conservationist. Dr. Carr also founded the Sea Turtle Conservancy in Gainesville, Florida.

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

#### *Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule [No Substantive Change]*

- 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 Seasonal Speed Zones (SSZs) in designated Atlantic Ocean waters,
  - 2) require 10-knot speed restrictions for most vessels greater than or equal to 35 ft (10.7 m) operating in active SSZs (vessels less than 35 ft in length would not be regulated by the rule),
  - 3) create a Dynamic Speed Zone framework to implement mandatory speed restrictions for vessels 35 ft and greater when whales are known to be present outside active SSZs, 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 98 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) [Updated]*

- Since January 2016, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida. As of May 17, 2023, 191 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>

*Bottlenose Dolphin Take Reduction Plan [Updated]*

- Jessica Powell is now the coordinator and point of contact for the Bottlenose Dolphin Take Reduction Team.
- An update webinar is planned for summer 2023, but has not yet been scheduled.

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

*Atlantic Large Whale Take Reduction Team [No Change]*

*MMPA List of Fisheries – [No Change]*

*Marine Mammal Stock Assessment Reports [No Change]*