

SERO Protected Resources Division Briefing For the August 2022 CFMC Meeting

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

Queen Conch Status Review

- In December 2019, NOAA Fisheries initiated a status review of queen conch to determine whether listing the species as endangered or threatened under the Endangered Species Act (ESA) is warranted and opened a 60 day public comment period (December 6, 2019; 84 FR 66885).
- We anticipate publishing our ESA listing determination in the Federal Register this summer (i.e., sometime soon!). We will distribute notice widely once the determination is published.
- If after considering the Status Review and ongoing conservation efforts, NOAA Fisheries determines that the petitioned request (i.e., listing the queen conch under the ESA):
 - Is not warranted, we publish a negative 12-month finding in the Federal Register.
 - Is warranted, we:
 - Publish a 12-month finding/Proposed Rule in the Federal Register and request public comments on the proposal to list (as threatened or endangered). One or more public hearings may be held on the proposal.
 - Within one year of publishing a proposed rule, we then publish a notice to finalize the proposed rule or withdraw the proposed rule.

Nassau Grouper Critical Habitat Determination

- 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 (if 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 Southeast coast of Florida, areas around Puerto Rico, areas around the U.S. Virgin Islands.
- Fishery Management Councils and the public 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).

5-Year Status Review on 7 Threatened Coral Species

- 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.
- Any change in status would be achieved through a separate rule-making process and include a public comment period.

Determination on Critical Habitat for Threatened Caribbean Corals

- 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 in late spring or early summer.

ESA Section 7 Consultations on CFMC FMPs

Section 7 Consultation for the Island-Based FMPs and proposed implementing regulations

- On September 21, 2020, NOAA Fisheries completed an ESA Section 7 Consultation on the authorization and management of the Puerto Rico fishery under the Puerto Rico Fishery Management Plan (FMP), the St. Thomas/St. John fishery under the St. Thomas/St. John FMP, and the St. Croix fishery under the St. Croix FMP. This opinion considered the effects of approving the proposed Puerto Rico Fishery Management Plan (FMP), the St. Thomas/St. John FMP, and the St. Croix FMP (evaluation of the 3 actions is batched in one Opinion).
- NMFS concluded the proposed actions are not likely to jeopardize the continued existence of the NA DPS green sea turtle, SA DPS green sea turtle, hawksbill sea turtle, Nassau grouper, oceanic whitetip shark, the Central and Southwest Atlantic DPS of scalloped hammerhead shark, elkhorn coral, staghorn coral, rough cactus coral, pillar coral, lobed star coral, mountainous star coral, or boulder star coral, or result in the destruction or adverse modification of designated *Acropora* critical habitat.