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# The Biological Opinion for Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region, As Amended in 2023

Gulf of Mexico Fishery Management  
Council Meeting

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# Presentation Overview

## Background:

- Section 7 Consultation
- What is a Biological Opinion
- When Must We Reinitiate

## CMPR Biological Opinion, as Amended:

- Consultation/Amendment History
- Effects and Determinations
- Jeopardy Analyses and Conclusion

## The Incidental Take Statement:

- Anticipated Take
- Reasonable and Prudent Measures and Terms and Conditions
- Conservation Recommendations

# ESA Section 7 Consultations

Under Section 7(a)(2), Federal agencies must:

- Ensure actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of listed species or destroy or adversely modify critical habitat.
- Consult with NOAA Fisheries and/or U.S. Fish and Wildlife when any action the agency carries out, funds, or authorizes may affect either a species listed as threatened or endangered species or any designated critical habitat.

NOAA Fisheries has dual responsibilities as the Action agency under MSA and the consulting agency under ESA.

- SERO Sustainable Fisheries Division (SFD) is considered the action agency
- SERO Protected Resources Division (PRD) the consulting agency.

# What is a Biological Opinion?

The analytical end product of a formal section 7 consultation that:

- Summarizes the effects of a Federal “action” on ESA-listed species and/or designated critical habitat that may be affected.
- Identified NOAA Fisheries’ conclusion of whether or not the action is likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification (DAM) of any critical habitat of such species.
- Represents the opinion of NOAA Fisheries and considers technical, legal, and policy issues relative to the proposed action.

# When Must We Reinitiate Consultation?

Reinitiation of ESA formal Section 7 consultation required if discretionary involvement or control over the action has been retained (or is authorized by law) and:

- Amount or extent of the taking is exceeded.
- New information reveals effects of the action that may affect listed species or critical habitat (when designated) in a manner or to an extent not previously considered.
- Action is modified in a manner that causes an effect to listed species or critical habitat that was not considered in the biological opinion.
- New species is listed or critical habitat designated that may be affected by the action.

# CMP Biological Opinion Timeline

June 18, 2015:

- SERO completed a comprehensive biological opinion on CMP FMP on all listed species and critical habitat.

November 18, 2017:

- SERO amended the opinion to evaluate the fishery's effects on 3 new listed species: green sea turtle North Atlantic Distinct Population Segment(DPS), green sea turtle South Atlantic DPS, and Nassau grouper.

May 1, 2023:

- SERO amended the 2015 opinion again to address 3 new listed species: endangered Rice's whales, and threatened giant manta rays and oceanic whitetip sharks.

# CMP Biological Opinion Components

Introduction	
Section 1	Consultation History
Section 2	Proposed Action and Action Area
Section 3	Status of the Species and Critical Habitat
Section 4	Environmental Baseline
Section 5	Effects of the Action
Section 6	Cumulative Effects
Section 7	Jeopardy/Destruction or Adverse Modification Analyses*
Section 8	Conclusion
Section 9	Incidental Take Statement
Section 10	Conservation Recommendations
Section 11	Reinitiation of Consultation
Section 12	Literature Cited

# Status of Species in the Action Area

## Marine Mammals

- Fin whale (E\*)
- Sei whale (E)
- Sperm (E)
- **Rice's (E)**

## Corals

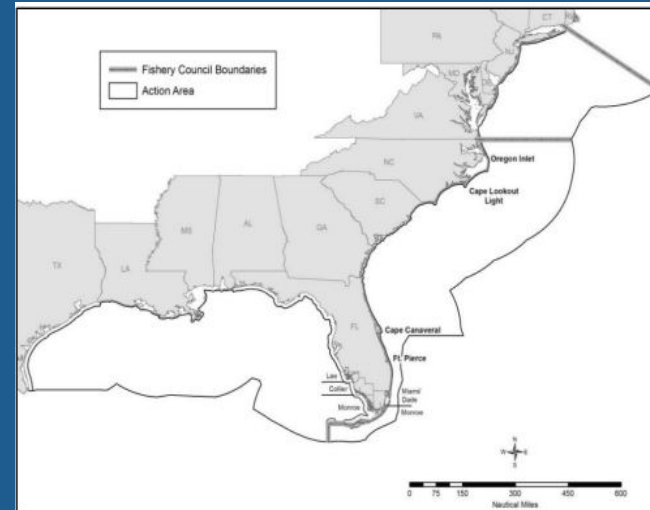
- Elkhorn (T\*\*)
- Staghorn (T)
- Rough-cactus (T)
- Pillar (T)
- Lobed Star (T)
- Mountainous star (T)
- Boulder star (T)

## Sea Turtles

- Loggerhead NWA DPS\*\*\* (T)
- Green, NA and SA DPSs (T)
- Hawksbill (E)
- Kemp's ridley (E)
- Leatherback (E)

## Fish:

- Atlantic Sturgeon
- Gulf sturgeon
- **Giant Manta Ray (T)**
- Nassau grouper (T)
- **Oceanic whitetip shark (T)**



\*E=Endangered

\*\*T=Threatened

\*\*\*DPS= Distinct Population Segments

**Consulted on via 2023 Amendment**



# Species Not Likely To be Adversely Affected

Species	Rationale
Blue, Sperm, and Sei whales	Species are generally found deeper than where fishery occurs
North Atlantic right, Fin whales	Run-around gillnet are constantly tended; existing Atlantic Large Whale Take Reduction Plan prohibits gillnet use during times of year whales most likely to be in SE (Nov 15 – Apr 15)
Rice's whales	Not expected to be present in or even near areas where most CMP fishing occurs (e.g., no overlap with gillnet, very limited overlap with hook-and-line; baleen whale so hooking and depredation not a concern), no records of interactions
Nassau grouper	Bottom-dwelling species so little spatial overlap, no catch or bycatch records
Gulf sturgeon	Species is inshore of where fishery occurs
Corals	Gillnet used outside species' ranges; HL unlikely to contact bottom

# Critical Habitat in The Action Area: All Not Likely to Adversely Affect or Have No Effect

Critical Habitat	Unit	Rationale
North Atlantic Right whales	N/A	No Effect: No impact on the physical and biological features needed for conservation
Elkhorn and Staghorn Coral	Florida Unit	Unlikely to have an effect on the physical and biological features needed for conservation
NW Atlantic Loggerhead DPS	Nearshore Reproductive Habitat; Winter Concentration Habitat; Concentrated Breeding Habitat	No Effect: No impact on the physical and biological features needed for conservation
	Constricted Migratory Corridor Habitat; Sargassum Habitat	Unlikely to have a meaningful effect on the physical and biological features needed for conservation

# Effects Determinations By Gear Type

- Cast nets, spear gun and “run-around” (strike) gillnets:
  - All listed species determined not likely to be adversely affected.
    - Relatively small net area; fishers can detect and avoid incidental capture.
- Sink gillnets
  - May adversely affect sea turtles, smalltooth sawfish, Atlantic sturgeon, **and giant manta rays.**
    - 1 observed entanglement in gillnet targeting Spanish mackerel
    - No data to support oceanic whitetip shark interactions with gillnets.
- Hook-and-line:
  - Sea turtles, smalltooth sawfish, and Atlantic sturgeon are not likely to be adversely affected by CMP hook-and-line fishing.
    - Extremely unlikely to catch these species mainly due to the trolling method being most common; no documented interactions in available data.
  - **Oceanic whitetip sharks and giant manta ray may be adversely affected by CMP hook-and-line fishing**
    - Small # of commercial and recreational captures documented

# Oceanic Whitetip Effects Analyses

## Estimating Hook-and Line Captures and Mortalities

- Used 2010-2020 data as best predictor of future lands (i.e. post ACLs)
- Data Sources include discard logbook program, Marine Recreational Information Program (MRIP), Southeast Region Headboat Survey (SRHS)
- Commercial:
  - 6 discard records over the 10 year period (all in 2019 and the GOM); only 20% coverage so estimate 30 over ten years or 3 per year average.
  - 20% post-release mortality estimated based on Musyl and Gilman (2019) apex predator proxy=6 mortalities every ten years.
- Recreational:
  - 2 records in SRHS (1 in 2014, 1 in 2019, both in GOM, both lethal); 2 more estimated in MRIP based on similarity, so 4 over ten years; all assumed lethal.

# Giant Manta Ray Effects Analyses

## Estimating Hook-and Line Captures and Mortalities

- Same data years and sources as for oceanic whitetip sharks.
- Commercial:
  - Only 1 discard record (2017, SA, released alive) over the 10 year period; only 20% coverage so estimated 5 over ten years
- Recreational:
  - Only records of discards from MRIP (released alive); expanded estimate=2,348 over ten years, averaging 235 per year (PSE >100= HIGHLY UNCERTAIN);
  - 8.5 % post-release mortality based on NMFS (2022) analysis.

## Estimating Gillnet Entanglements and Mortalities

- 2 observed giant manta rays captures (2018, targeting Spanish mackerel) extrapolated to 17 giant manta rays estimated to be taken in a 10 year period or an average of 1.7 animals per year.
- 35.9% post-release mortality based on NMFS (2022) analysis

# Jeopardy Analyses & Conclusion

- Assessed each species' population-level response to the effects of the action and whether those effects of the proposed action, when considered in the context of the status of the species (Section 3), the environmental baseline (Section 4), and the cumulative effects (Section 6), are likely to jeopardize their continued existence in the wild
- 
- Concluded the proposed action is **not likely to jeopardize** the continued existence of loggerhead (the NWA DPS) or the green (North Atlantic DPS or South Atlantic DPS), Kemp's ridley, hawksbill, or leatherback sea turtles, Atlantic sturgeon (GM, NYB, CB, Carolina, or SA DPSs), smalltooth sawfish (U.S. DPS), **oceanic whitetip sharks, or giant manta rays**

# Incidental Take Statements (ITS)

- Specifies the amount or extent of take
- Defines reasonable and prudent measures (RPMs)
  - Actions necessary to minimize the impacts of incidental take and comply with the RPMs
  - Cannot require major modifications to project design
- Defines terms and conditions (T/Cs) for their implementation

Complying with the terms and conditions of an ITS exempts the Federal agency from take prohibitions.

### Summary of Anticipated 3-Year Take and Mortality Estimates\*

Species	Take	Total
Green sea turtle North Atlantic DPS	Total	30
	Lethal	9
Green sea turtle South Atlantic DPS	Total	2
	Lethal	1
Loggerhead sea turtle NWA DPS	Total	27
	Lethal	7
Kemp's ridley sea turtle	Total	8
	Lethal	2
Hawksbill sea turtle	Total	1
	Lethal	1
Leatherback sea turtle	Total	1
	Lethal	1
Smalltooth sawfish	Total	1
	Lethal	0
Atlantic sturgeon GM DPS	Total	2 (12)
	Lethal	0
Atlantic sturgeon NYB DPS	Total	4 (12)
	Lethal	0
Atlantic sturgeon CB DPS	Total	3 (12)
	Lethal	0
Atlantic sturgeon Carolina DPS	Total	4 (12)
	Lethal	0
Atlantic sturgeon SA DPS	Total	10 (12)
	Lethal	0
Oceanic whitetip shark	Total	11
	Lethal	3
Giant manta ray	Total	714
	Lethal	63

\*post-release mortality is expected but will not be observed; lethal take is tracked by estimated total  
 Total takes will be estimated annually based on observed takes recorded in the fisheries and applying  
 information.



# Incidental Take Statement Requirements

RPM 1: NMFS must ensure that any **listed species** are handled in such a way as to minimize stress to the animal and increase its survival rate.

## T/Cs Implementing RPM 1 (#1-2):

- Specify how SERO SFD must work with other SERO Divisions and SEFSC to maintain, distribute, and update when needed, handling and/or resuscitation and release procedures /requirements / guidelines for fishers and observers and online.

# Incidental Take Statement Requirements

RPM 2: NMFS must ensure monitoring and reporting of **listed species** detects any adverse effects resulting from federal CMP fisheries; assesses actual incidental take relative to anticipated incidental take detects when anticipated take is exceeded; collects improved data from individual encounters.

T/ Cs Implementing RPM #2 (n=11):

- Specify how SERO SFD, collaborating with SEFSC, must:
  - maintain and use current data sources (e.g. SDDP, Gillnet Observer Program).
  - observer data collection protocols for each listed species.
  - carcass retrieval, presearcation, and transportation.
  - and annual reporting details.

# Conservation Measures

- Discretionary Action Agency activities to:
  - Further minimize or avoid adverse effects of a proposed action on listed species or critical habitat.
  - Help implement recovery plans.
  - Improve available information through research etc.
- Amended 2015 Opinion adds 7 additional recommendations specific to developing better giant manta rays and oceanic whitetips sharks data.