

Science, Service, Stewardship



ESA Listing Process

Overview: Updates on Scalloped Hammerhead and Atlantic White Marlin petitions

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SERVICE**



Outline

- **ESA Listing Process**
- **Scalloped Hammerhead Shark petition and progress**
- **White Marlin petition and progress**
- **Questions**



Endangered Species Act Purposes

- Purposes – “...to provide a means whereby the **ecosystems** upon which endangered species and threatened species depend may be **conserved**”
- Policy – “...**all** Federal departments and agencies shall **conserve** endangered and threatened species and shall **utilize their authorities** in furtherance of the purposes of this Act.”





NMFS and the ESA

- Responsible for **78 domestic** marine and anadromous species and **9 foreign** species
 - 22 marine mammals
 - 16 marine turtles
 - 44 marine and anadromous fish
 - 4 marine invertebrates
 - 1 marine plant
- Of this number, 41 are threatened and 46 are endangered

<http://www.nmfs.noaa.gov/pr/species/>





Definitions of species, E, and T

- “Species” includes subspecies and distinct population segments (DPS) of vertebrate species that interbreed when they are mature
- Endangered species = any species in danger of extinction throughout all or a significant portion of its range;
- Threatened species = any species likely to become endangered within the foreseeable future throughout all or a significant portion of its range.



Determination of Status

- Agencies must determine whether any species is endangered or threatened because of any of the following factors:
 - The present or threatened destruction, modification, or curtailment of its habitat or range;
 - Overutilization for commercial, recreational, scientific, or educational purposes;
 - Disease or predation;
 - The inadequacy of existing regulatory mechanisms; or
 - Other natural or manmade factors affecting its continued existence.
- No quantitative definition; based on the best available scientific and commercial information



Proposed, candidates, species of concern

- 7 species are proposed for listing under the ESA
- 93 species are candidate species
 - Scalloped Hammerhead Shark
- 38 species are “Species of Concern”





ESA Listing Process

- Petition or self-initiation
- 90-day finding
- Status review
- 12-month finding
- Final determination
- Critical habitat designation





Petition or self-initiation

- Petitioned – review petition
- Self-initiated – begin review of the status of the species.
- Statutory deadlines apply when we are petitioned to list a species under the ESA.



90-day finding (Petitioned)

- If the petition presents substantial information indicating that the petitioned action may be warranted, publish a 90-day finding initiating a status review.
- If not warranted, publish a 90-day finding denying the petition.
- 90-day findings must be made, to the maximum extent practicable, within 90 days from receipt of a petition.



Status review

- A status review is a summary of the best available information on the species, including population structure, demographics, genetic diversity, life-history characteristics, threats, and an extinction risk assessment.
- Peer reviewed per the OMB Peer Review Bulletin



12-month finding

- Within 12 months of receipt of a petition to list, delist, or reclassify a species, we must make one of the following findings:
 - The petitioned action is not warranted, in which case we promptly publish the finding in the *Federal Register* and notify the petitioner;
 - The petitioned action is warranted, in which case we promptly publish a proposed regulation in the *Federal Register* to implement the action
 - The petitioned action is warranted, but precluded because of other pending proposals to list, delist, or reclassify species.



Proposed rules and notifications

- A notice of proposed rule must contain the complete text of the proposed rule and a summary of the data on which it is based, and it should show the relationship of such data to the rule proposed.
- Actual notice of the proposed rule must be given to the: states and counties where the species is believed to occur; to affected Federal agencies, local authorities, or private individuals or organizations; and to each foreign nation, inviting public comment.



Public comments

- Send proposed rules to at least 3 peer reviewers (per a 1994 joint NMFS/FWS policy)
- Solicit public comments on proposed rules
- Hold public hearings if requested 15 days before end of public comment period
- Address public comments in final rules



Final determination

- Within one year of publication of proposed rule, must publish:
 - A final rule to implement such determination;
 - A notice withdrawing the proposed rule; or
 - A notice extending such 1-year period by 6 months (maximum) because there is substantial disagreement among scientists knowledgeable about the species concerned regarding the sufficiency or accuracy of the available data relevant to the determination or revision concerned.



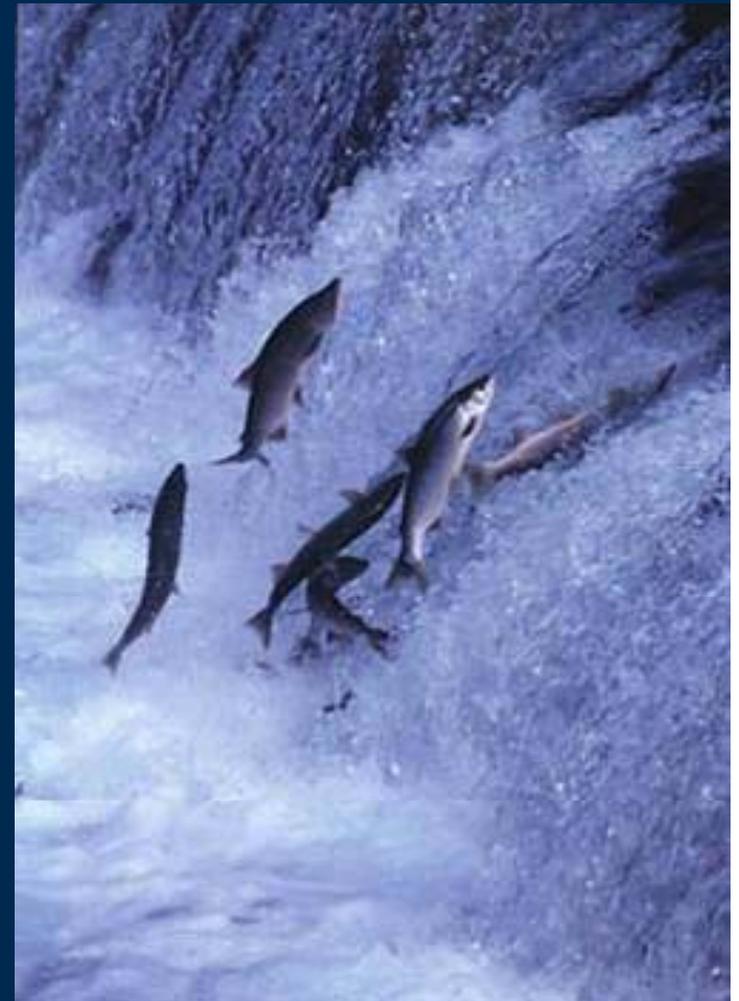
Critical Habitat Designation

- Must be designated at the time of listing if prudent and determinable; if not determinable at the time of listing, can be extended by one-year period.
- Specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection; and specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species.



Review : ESA Listing Process

- Petition or self-initiation
- 90-day finding
- Status review
- 12-month finding
- Final determination
- Critical habitat designation





ESA Prohibitions

When a species is listed as endangered, it is illegal for any person subject to the jurisdiction of the United States to:

- Import it into or export it out of the U.S.;
- Take the species within the U.S., the territorial sea of the U.S., or upon the high seas;
- Possess, sell, deliver, carry, transport, or ship the species in interstate or foreign commerce
- Sell or offer the species for sale



Recovery

- Goal of ESA is to recover species so that they are no longer at risk of extinction
- To do this, NMFS develops and implements Recovery Plans, conducts interagency consultations, and coordinates and provides grants to states





Recovery and Delisting

- Once a species is listed, we are required to review them every 5 years to ensure they are listed appropriately.
- If we determine a species has recovered to the point at which the measures provided in the ESA are no longer necessary, we may propose a rule to delist it.
- After delisting -- we are required to monitor it for at least 5 years (includes activities undertaken to verify that a species delisted due to recovery remains secure from risk of extinction).



RECENT PETITIONS

- Scalloped hammerhead shark
(petitioned August 14, 2011)
- White Marlin
(petitioned February 9, 2012)





Scalloped Hammerhead Shark

Biological Characteristics

- Circumglobal Species
- Max Size (TL): 365-420cm
- Max Age: 31.5 yr
- Maturity (TL): 200-250cm (F), 140-180cm (M)
- Litter Size: 15-30 pups
- April 28, 2011 – NMFS determined that the northwestern Atlantic scalloped hammerhead shark stock was “overfished” and that “overfishing is occurring” (76 FR 23794)



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Petition: Scalloped Hammerhead Shark (August 14, 2011)

- Petitioned to list scalloped hammerhead shark (*Sphyrna lewini*) as T or E throughout its entire range, or, as an alternative, to delineate the species into 5 DPSs (Eastern Central and Southeast Pacific, Eastern Central Atlantic, Northwest and Western Central Atlantic, Southwest Atlantic, and Western Indian Ocean).
- Petitioned by: WildEarth Guardians and Friends of Animals



Petition: Scalloped Hammerhead Shark

ESA Factors:

- Overutilization for commercial, recreational, scientific, or educational purposes
- Inadequacy of existing regulatory mechanisms
- Other natural or manmade factors affecting its continued existence.

Primary threat to the scalloped hammerhead shark is exploitation by fishing, with the ongoing practice of “finning” or particular concern.



90 Day Finding: Scalloped Hammerhead Shark

- Announced a positive 90 day finding in the FR (76 FR 72891; November 28, 2011). The petitioned action of listing the scalloped hammerhead shark as T or E may be warranted.
- Initiation of status review and request for information.
- Public comment period ended January 27, 2012.



Where are we now?

Status Review: Scalloped Hammerhead Shark

- Currently in the process of collecting and synthesizing the best available information on the species, including population structure, demographics, genetic diversity, life-history characteristics, threats, and extinction risk.
- Will consider ongoing conservation efforts but will NOT consider economic impacts – listings are based on biological information only.
- 12 month finding on whether to propose a listing as T or E will be based on this status review (statutory deadline: August 14, 2012).



RECENT PETITIONS

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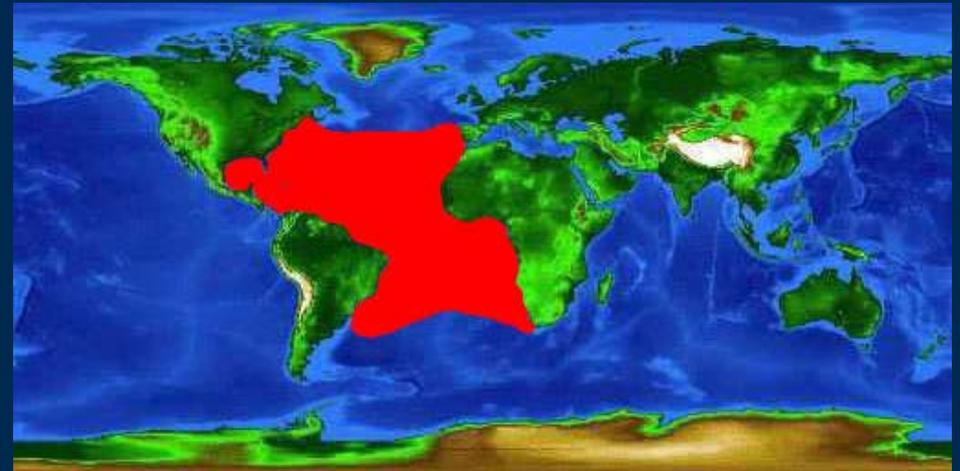




White Marlin

Biological Characteristics

- Max Size (TL): > 280cm
- Max Age: 18 yr
- Maturity (TL): 130cm (F)
- Spawn during the spring (in NW Atlantic)
- Recognized as a single species throughout the Atlantic Ocean



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- Found in tropical and temperate waters of the Atlantic Ocean and adjacent seas



History of the White Marlin in ESA listing process

- September 2001 - Petitioned by the Biodiversity Legal Foundation and James R. Chambers to list the Atlantic white marlin (*Tetrapturus albidus*) as T or E throughout its known range under the ESA.
- December 2001 (66 FR 65676) – NMFS announced positive 90 day finding and initiated a status review.
- 2002 Status Review - Concluded that white marlin stock had not declined to levels that warrant ESA protection but could if fishing mortality was not reduced significantly and quickly.



History of the White Marlin in ESA listing process

- September 2002 (67 FR 57204) – NMFS announced a 12-month finding that listing Atlantic white marlin is not warranted at this time. Adds species to its candidate list (and moved to “Species of Concern” list in 2004) with plans to reevaluate its status in 2007.
- CBD and Turtle Island Restoration Network (TIRN) filed a complaint in the DC district court challenging the listing decision. Settlement agreement was reached where NMFS would revisit the status of the stock following the 2006 ICCAT stock assessment.



History of the White Marlin in ESA listing process

- December 2006 (71 FR 76639) – NMFS announced initiation of new status review and solicited information regarding the status of and threats to the species.
- January 2008 (73 FR 843) – NMFS announced the finding that listing the Atlantic white marlin as E or T under the ESA is not warranted.
- May 2008 – Removal of Atlantic white marlin from “Species of Concern” list



Where are we now?

Petition: Atlantic White Marlin (February 10, 2012)

- February 2012 – Petitioned by James R. Chambers to reconsider listing the Atlantic White Marlin as T or E under the ESA given new information (2011 ICCAT stock assessment).
- **Currently** reviewing the petition to determine whether it presents substantial scientific or commercial information indicating that the petitioned action may be warranted.
- Will publish 90 day finding (to the maximum extent practicable) within 90 days of receipt of the petition.

Questions?



For further information:

Scalloped Hammerhead Shark

<http://www.nmfs.noaa.gov/pr/species/fish/scallopedhammerheadshark.htm/>

Atlantic White Marlin

[http://sero.nmfs.noaa.gov/pr/endangered%20species/marlin/atlantic white marlin.htm](http://sero.nmfs.noaa.gov/pr/endangered%20species/marlin/atlantic_white_marlin.htm)