

## **2.4 PROTECTED SPECIES**

This section of the report summarizes information on protected species interactions in fisheries managed under the American Samoa FEP. Protected species covered in this report include sea turtles, seabirds, marine mammals, sharks, and corals. Most of these species are protected under the Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), and/or Migratory Bird Treaty Act (MBTA). A list of protected species found in or near American Samoa waters and a list of critical habitat designations in the Pacific Ocean are included in Appendix B.

### **2.4.1 Indicators for Monitoring Protected Species Interactions in the American Samoa FEP Fisheries**

This report monitors the status of protected species interactions in the American Samoa FEP fisheries using proxy indicators such as fishing effort and changes in gear types as these fisheries do not have observer coverage. Creel surveys and logbook programs are not expected to provide reliable data about protected species interactions. Discussion of protected species interactions is focused on fishing operations in federal waters and associated transit through territorial waters.

#### **2.4.1.1 FEP Conservation Measures**

Bottomfish, precious coral, coral reef and crustacean fisheries managed under this FEP have not had reported interactions with protected species, and no specific regulations are in place to mitigate protected species interactions. Destructive gear such as bottom trawls, bottom gillnets, explosives and poisons are prohibited under this FEP, and these prohibitions benefit protected species by preventing potential interactions with non-selective fishing gear.

#### **2.4.1.2 ESA Consultations**

ESA consultations were conducted by NMFS and the U.S. Fish and Wildlife Service (USFWS; for species under their jurisdiction including seabirds) to ensure ongoing fisheries operations managed under the American Samoa FEP are not jeopardizing the continued existence of any ESA-listed species or adversely modifying critical habitat. The results of these consultations conducted under section 7 of the ESA are briefly described below and summarized in Table 1.

NMFS concluded in an informal consultation dated April 9, 2015 that all fisheries managed under the American Samoa FEP are not likely to adversely affect the Indo-West Pacific distinct population segment (DPS) of scalloped hammerhead shark or ESA-listed reef-building corals.

**Table 1. Summary of ESA consultations for American Samoa FEP Fisheries**

Fishery	Consultation date	Consultation type <sup>a</sup>	Outcome <sup>b</sup>	Species
Bottomfish	3/3/2002	BiOp	NLAA	Blue whale, fin whale, green sea turtle, hawksbill sea turtle, humpback whale, leatherback sea turtle, loggerhead sea turtle, olive ridley sea turtle, sei whale, sperm whale
	Initiated 6/5/2019	<i>Consultation ongoing</i>		Oceanic whitetip shark, giant manta ray, chambered nautilus
Coral reef ecosystem	3/7/2002	LOC	NLAA	Blue whale, fin whale, green sea turtle, hawksbill sea turtle, humpback whale, leatherback sea turtle, loggerhead sea turtle, olive ridley sea turtle, sei whale, sperm whale
	5/22/2002	LOC (USFWS)	NLAA	Green, hawksbill, leatherback, loggerhead and olive ridley turtles, Newell's shearwater, short-tailed albatross, Laysan duck, Laysan finch, Nihoa finch, Nihoa millerbird, Micronesian megapode, 6 terrestrial plants.
	9/18/2018	No effect memo	No effect	Oceanic whitetip shark, giant manta ray
Crustaceans	9/28/2007	LOC	NLAA	Blue whale, fin whale, green sea turtle, hawksbill sea turtle, humpback whale, leatherback sea turtle, loggerhead sea turtle, olive ridley sea turtle, sei whale, sperm whale
	9/18/2018	No effect memo	No effect	Oceanic whitetip shark, giant manta ray
Precious corals	10/4/1978	BiOp	Does not constitute threat	Leatherback sea turtle, sperm whale
	12/20/2000	LOC	NLAA	Green sea turtle, hawksbill sea turtle, humpback whale
	9/18/2018	No effect memo	No effect	Oceanic whitetip shark, giant manta ray
All fisheries	4/9/2015	LOC	NLAA	Reef-building corals, scalloped hammerhead shark (Indo-West Pacific DPS)

<sup>a</sup> BiOp = Biological Opinion; LOC = Letter of Concurrence

<sup>b</sup> LAA = likely to adversely affect; NLAA = not likely to adversely affect.

### *Bottomfish Fishery*

In a biological opinion issued on March 3, 2002, NMFS concluded that the ongoing operation of the Western Pacific Region's bottomfish and seamount groundfish fisheries is not likely to jeopardize the continued existence of five sea turtle species (loggerhead, leatherback, olive

ridley, green and hawksbill turtles) and five marine mammal species (humpback, blue, fin, sei and sperm whales).

On June 5, 2019, NMFS reinitiated consultation for the American Samoa bottomfish fisheries due to the listing of the oceanic whitetip shark, giant manta ray, and chambered nautilus under the ESA. On June 6, 2019 (extended on August 11, 2020), NMFS determined that the conduct of the American Samoa bottomfish fisheries during the period of consultation will not violate ESA Section 7(a)(2) and 7(d).

#### *Crustacean Fishery*

In an informal consultation completed on September 28, 2007, NMFS concluded that American Samoa crustacean fisheries are not likely to adversely affect five sea turtle species (loggerhead, leatherback, olive ridley, green and hawksbill turtles) and five marine mammal species (humpback, blue, fin, sei and sperm whales).

On September 18, 2018, NMFS concluded the American Samoa crustacean fisheries will have no effect on the oceanic whitetip shark and giant manta ray.

#### *Coral Reef Ecosystem Fishery*

In an informal consultation completed on March 7, 2002, NMFS concluded that the American Samoa coral reef ecosystem fisheries are not likely to adversely affect five sea turtle species (loggerhead, leatherback, olive ridley, green and hawksbill turtles) and five marine mammal species (humpback, blue, fin, sei and sperm whales).

On May 22, 2002, the USFWS concurred with the determination of NMFS that the activities conducted under the Coral Reef Ecosystems FMP are not likely to adversely affect listed species under USFWS's exclusive jurisdiction (i.e., seabirds) and listed species shared with NMFS (i.e., sea turtles).

On September 18, 2018, NMFS concluded the American Samoa coral reef ecosystem fisheries will have no effect on the oceanic whitetip shark and giant manta ray.

#### *Precious Coral Fishery*

In a biological opinion issued on October 4, 1978, NMFS concluded that the ongoing operation of the Western Pacific Region's precious coral fisheries was not likely to jeopardize the continued existence of any threatened or endangered species under NMFS's jurisdiction or destroy or adversely modify critical habitat. In an informal consultation completed on December 20, 2000, NMFS concluded that American Samoa precious coral fisheries are not likely to adversely affect humpback whales, green turtles or hawksbill turtles.

On September 18, 2018, NMFS concluded the American Samoa precious coral fisheries will have no effect on the oceanic whitetip shark and giant manta ray.

### **2.4.1.3 Non-ESA Marine Mammals**

The MMPA requires NMFS to annually publish a List of Fisheries (LOF) that classifies commercial fisheries in one of three categories based on the level of mortality and serious injury of marine mammals associated with that fishery. According to the 2021 LOF (86 FR 3028, January 14, 2021), the American Samoa bottomfish fishery is classified as a Category III fishery (i.e. a remote likelihood of or no known incidental mortality and serious injury of marine mammals).

## **2.4.2 Status of Protected Species Interactions in the American Samoa FEP Fisheries**

### *Bottomfish and Coral Reef Fisheries*

There are no observer data available for the American Samoa bottomfish or coral reef fisheries. However, based on the information in the 2002 BiOp for fisheries operating under the American Samoa FEP, bottomfish fisheries are not expected to interact with any ESA-listed species in federal waters around American Samoa. Based on current ESA consultations, coral reef fisheries are not expected to interact with any ESA-listed species in federal waters around American Samoa. NMFS has also concluded that the American Samoa bottomfish and coral reef commercial fisheries will not affect marine mammals in any manner not considered or authorized under the MMPA.

As described in Section 2.4.1.2, ESA consultation for newly listed elasmobranch species in the American Samoa bottomfish fishery is ongoing. There are no known interactions with oceanic whitetip shark or giant manta rays in this fishery.

Based on fishing effort and other characteristics described in Chapter 1 of this report, no notable changes have been observed in the fishery. There is no other information to indicate that impacts to protected species from this fishery have changed in recent years.

### *Crustacean and Precious Coral Fisheries*

There are currently no crustacean or precious coral fisheries operating in federal waters around American Samoa. However, based on current ESA consultations, crustacean fisheries are not expected to interact with any ESA-listed species in federal waters around American Samoa. NMFS has also concluded that the American Samoa crustacean and precious coral commercial fisheries will not affect marine mammals in any manner not considered or authorized under the MMPA.

## **2.4.3 Identification of Emerging Issues**

Table 2 summarizes current candidate ESA species, recent listing status, and post-listing activity (critical habitat designation and recovery plan development). Impacts from FEP-managed fisheries on any new listings and critical habitat designations will be considered in future versions of this report.

**Table 2. Status of candidate ESA species, recent ESA listing processes, and post-listing activities**

Species		Listing Process			Post-Listing Activity	
Common Name	Scientific Name	90-Day Finding	12-Month Finding / Proposed Rule	Final Rule	Critical Habitat	Recovery Plan
<b>Oceanic whitetip shark</b>	<i>Carcharhinus longimanus</i>	Positive (81 FR 1376, 1/12/2016)	Positive, threatened (81 FR 96304, 12/29/2016)	Listed as threatened (83 FR 4153, 1/30/2018)	Designation not prudent; no areas within US jurisdiction that meet definition of critical habitat (85 FR 12898, 3/5/2020)	In development; recovery planning workshops convened in 2019.
<b>Chambered nautilus</b>	<i>Nautilus pompilius</i>	Positive (81 FR 58895, 8/26/2016)	Positive, threatened (82 FR 48948, 10/23/2017)	Listed as threatened (83 FR 48876, 9/28/2018)	Designation not prudent; no areas within US jurisdiction that meet definition of critical habitat (85 FR 5197, 01/29/2020)	TBA
<b>Giant manta ray</b>	<i>Manta birostris</i>	Positive (81 FR 8874, 2/23/2016)	Positive, threatened (82 FR 3694, 1/12/2017)	Listed as threatened (83 FR 2916, 1/22/2018)	Designation not prudent; no areas within US jurisdiction that meet definition of critical habitat (84 FR 66652, 12/5/2019)	Recovery outline published 12/4/19 to serve as interim guidance until full recovery plan is developed; recovery planning workshop planned for 2021.
<b>Corals</b>	N/A	Positive for 82 species (75 FR 6616, 2/10/2010)	Positive for 66 species (77 FR 73219, 12/7/2012)	20 species listed as threatened (79 FR 53851, 9/10/2014)	Critical habitat proposed (85 FR 76262, 11/27/2021), comment period extended through 5/26/2021 (86 FR 16325)	In development, interim recovery outline in place; recovery workshops convened in May 2021.
<b>Cauliflower coral</b>	<i>Pocillopora meandrina</i>	Positive (83 FR 47592, 9/20/2018)	Not warranted (85 FR 40480, 7/6/20)	N/A	N/A	N/A

Species		Listing Process			Post-Listing Activity	
Common Name	Scientific Name	90-Day Finding	12-Month Finding / Proposed Rule	Final Rule	Critical Habitat	Recovery Plan
<b>Giant clams</b>	<i>Hippopus, H. porcellanus, Tridacna costata, T. derasa, T. gigas, T. Squamosa, and T. tevoroa</i>	Positive (82 FR 28946, 06/26/2017)	TBA (status review ongoing)	TBA	N/A	N/A
<b>Green sea turtle</b>	<i>Chelonia mydas</i>	Positive (77 FR 45571, 8/1/2012)	Identification of 11 DPSs, endangered and threatened (80 FR 15271, 3/23/2015)	11 DPSs listed as endangered and threatened (81 FR 20057, 4/6/2016)	In development, proposal expected TBA	TBA
<b>Leatherback sea turtle</b>	<i>Dermochelys coriacea</i>	Positive 90-day finding on a petition to identify the Northwest Atlantic leatherback turtle as a DPS (82 FR 57565, 12/06/2017)	7 populations qualify as DPS, but DPS listing not warranted due to all populations meeting existing endangered classification; no changes proposed to existing global listing (85 FR 48332, 8/10/20)	N/A	N/A	N/A

<sup>a</sup> NMFS and USFWS have been tasked with higher priorities regarding sea turtle listings under the ESA, and do not anticipate proposing green turtle critical habitat designations in the immediate future.

#### 2.4.4 Identification of Research, Data, and Assessment Needs

[THIS SECTION MAY BE UPDATED FOLLOWING THE PLAN TEAM MEETING]

The following research, data, and assessment needs for insular fisheries were identified by the Council's Plan Team:

- Improve species identification of commercial and non-commercial fisheries data (e.g., outreach, use FAO species codes) to improve understanding of potential protected species impacts.

- Define and evaluate innovative approaches to derive robust estimates of protected species interactions in insular fisheries.
- Conduct genetic and telemetry research to improve understanding of population structure and movement patterns for listed elasmobranchs.
- Estimates of post release survival for incidental protected species.

DRAFT

DRAFT