

## **2.4 PROTECTED SPECIES**

This section of the report summarizes information on protected species interactions in fisheries managed under the Mariana 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), the Marine Mammal Protection Act (MMPA), and/or the Migratory Bird Treaty Act (MBTA). A list of protected species found in or near Mariana Archipelago 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 Interaction**

This report monitors the status of protected species interactions in the Marianas 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.

### **2.4.2 FEP Conservation Measures**

Bottomfish, precious coral, coral reef and crustacean fisheries managed under this FEP have no specific regulations 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.

#### **2.4.2.1 ESA Consultations**

ESA consultations were conducted by NMFS and the U.S. Fish and Wildlife Service (USFWS; for species under their jurisdiction) to ensure ongoing fisheries operations managed under the Marianas 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 29, 2015 that all fisheries managed under the Mariana Archipelago FEP are not likely to adversely affect the Indo-West Pacific DPS of scalloped hammerhead shark or ESA-listed reef-building corals.

**Table 1. Summary of ESA consultations for Mariana Archipelago FEP Fisheries**

<b>Fishery</b>	<b>Consultation date</b>	<b>Consultation type<sup>a</sup></b>	<b>Outcome<sup>b</sup></b>	<b>Species</b>
Bottomfish (CNMI & Guam)	3/8/2008	BiOp	NLAA	Loggerhead sea turtle
	6/3/2008	LOC	NLAA	Green sea turtle, olive ridley sea turtle, hawksbill sea turtle, leatherback sea turtle, blue whale, fin whale, humpback whale, sei whale sperm whale
	Initiated 6/5/2019	<i>Consultation ongoing</i>		Oceanic whitetip shark, giant manta ray
Coral reef ecosystem (CNMI & Guam)	3/7/2002	LOC	NLAA	Loggerhead sea turtle, leatherback sea turtle, olive ridley sea turtle, green sea turtle, hawksbill sea turtle, humpback whale, blue whale, fin whale, 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
	6/3/2008	LOC	NLAA	Green sea turtle, olive ridley sea turtle, hawksbill sea turtle, leatherback sea turtle, blue whale, fin whale, humpback whale, sei whale, sperm whale
	9/18/2018	No effect memo	No effect	Oceanic whitetip shark, giant manta ray
Crustaceans (CNMI & Guam)	9/28/2007	LOC	NLAA	Green sea turtle, loggerhead sea turtle, olive ridley sea turtle, hawksbill sea turtle, leatherback sea turtle, blue whale, humpback whale, sei whale, sperm whale
	9/18/2018	No effect memo	No effect	Oceanic whitetip shark, giant manta ray
Precious corals (CNMI & Guam)	10/4/1978	BiOp	Does not constitute threat	Sperm whale, leatherback sea turtle
	9/18/2018	No effect memo	No effect	Oceanic whitetip shark, giant manta ray
Precious corals (Guam)	12/20/2000	LOC	NLAA	Humpback whale, green sea turtle, hawksbill sea turtle
All fisheries	4/29/2015	LOC	NLAA	Reef-building corals, scalloped hammerhead shark (Indo-west Pacific DPS)

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

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

#### **2.4.2.1.1 Bottomfish Fishery**

In a Biological Opinion issued on March 8, 2002, NMFS concluded that the ongoing operation of the Western Pacific Region's bottomfish and seamount fisheries was not likely to jeopardize the continued existence of any threatened or endangered species under NMFS's jurisdiction or destroy or adversely modify any critical habitat. In an informal consultation on June 3, 2008, NMFS concluded that Mariana Archipelago bottomfish fisheries are not likely to adversely affect four sea turtle species (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 Mariana Archipelago bottomfish fisheries due to the listing of the oceanic whitetip shark and giant manta ray under the ESA. On June 6, 2019 (extended on August 11, 2020), NMFS determined that the conduct of these bottomfish fisheries during the period of consultation will not violate ESA Section 7(a)(2) and 7(d).

#### **2.4.2.1.2 Crustacean Fishery**

In an informal consultation completed on September 28, 2007, NMFS concluded that Mariana Archipelago 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 that Mariana Archipelago crustacean fisheries will have no effect on the oceanic whitetip shark and giant manta ray.

#### **2.4.2.1.3 Coral Reef Fishery**

In an informal consultation completed by NMFS on March 7, 2002, NMFS concluded that fishing activities conducted under the Coral Reef Ecosystems FMP are not likely to adversely affect endangered or threatened species or critical habitat under NMFS's jurisdiction. 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).

In an informal consultation completed in June 3, 2008, NMFS concluded that the Mariana Archipelago coral reef fisheries are not likely to adversely affect four sea turtle species (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 that Mariana Archipelago coral reef fisheries will have no effect on the oceanic whitetip shark and giant manta ray.

#### **2.4.2.1.4 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 Mariana Archipelago precious coral fisheries are not likely to adversely affect humpback whales, green turtles, or hawksbill turtles.

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

#### **2.4.2.2 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 Guam and CNMI bottomfish fisheries operating under the Marianas FEP are classified as Category III fisheries (i.e., a remote likelihood of or no known incidental mortality and serious injury of marine mammals).

### **2.4.3 Status of Protected Species Interactions in the Marianas FEP Fisheries**

#### **2.4.3.1 Bottomfish Fisheries**

##### **2.4.3.1.1 Sea Turtle, Marine Mammal, and Seabird Interactions**

There are no observer data available for the Guam and CNMI bottomfish fisheries. However, based on current ESA consultations, these fisheries are not expected to interact with any ESA-listed sea turtle, marine mammal, or seabird species in federal waters around Guam or CNMI. NMFS has also concluded that the Mariana Archipelago commercial bottomfish fisheries will not affect marine mammals in any manner not considered or authorized under the MMPA.

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 sea turtle, marine mammal, or seabird species from this fishery have changed in recent years.

##### **2.4.3.1.2 Elasmobranch Interactions**

As indicated in Section 2.4.2.1, ESA consultation for newly listed elasmobranch species is ongoing. Available information on elasmobranch interactions in the Guam and CNMI bottomfish fishery are included here, based on the Biological Evaluation (BE) initiating ESA Section 7 consultation for the fishery (NMFS, 2019).

There is limited data on fishery interactions with oceanic white tip sharks in Pacific Island bottomfish fisheries. Where data exists, some datasets identified oceanic whitetip shark captures to the species level, while others categorized oceanic whitetip sharks and whitetip reef sharks as “whitetip shark.”

Guam and CNMI bottomfish boat-based creel surveys indicate that fishermen catch whitetip reef sharks more frequently than oceanic whitetip sharks. From 1982 to 2017, Guam DAWR recorded 39 whitetip reef sharks and 3 oceanic whitetip sharks in the Guam boat-based creel survey (NMFS, 2019). There have been no records of oceanic whitetip sharks in the CNMI boat-based creel surveys administered by CNMI DFW since the start of the dataset in 2000.

While bottomfish fishing surveys in the main Hawaiian Islands (PIFSC unpublished survey) and Guam (Kendall Enterprise Inc. 2014) show records of whitetip reef shark captures, there have not been any oceanic whitetip sharks recorded in bottomfish surveys or other PIFSC research activities. In addition to the bottomfish surveys, PIFSC researchers have conducted limited bottomfish fishing in the Pacific Islands region for life history research purposes since 2007. They typically fish once to twice a year and land a maximum of 1,200 kg of bottomfish each

time they fish. In the last five years (2013-2018), there was one trip each to Johnston Atoll, the CNMI, Guam, and American Samoa, and Samoa. There are no records of researchers catching oceanic whitetip sharks while conducting these activities. There was one record in Guam of an oceanic whitetip shark depredating hooked fish, but did not become hooked or entangled on the line (NMFS, 2019).

The federal commercial bottomfish logbook form in the CNMI has a write-in space for recording catch by species under the shark category. Between 2009, when logbooks were implemented, and 2017, fishermen recorded 33 sharks as “whitetip shark”, which may be whitetip reef sharks or oceanic whitetip sharks. Based on catch composition associated with the whitetip shark captures, most records were associated with shallow-water fish species captures, which are more likely to be whitetip reef sharks. Twelve of the 33 whitetip shark captures were associated with deep-water bottomfish species, which could potentially be oceanic whitetip sharks (NMFS, 2019).

#### **2.4.3.2 Coral Reef Fisheries**

There are no observer data available for the Guam and CNMI coral reef fisheries. However, based on current ESA consultations, these fisheries are not expected to interact with any ESA-listed species in federal waters around Guam or CNMI. NMFS has also concluded that the Mariana Archipelago commercial coral reef fisheries will not affect marine mammals in any manner not considered or authorized under the MMPA.

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.

#### **2.4.3.3 Crustacean and Precious Coral Fisheries**

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

#### **2.4.4 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
Oceanic whitetip shark	<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, 1/30/18)	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.
Giant manta ray	<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, 1/22/18)	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
Corals	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.
Cauliflower coral	<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
Giant Clams	<i>Hippopus</i> , <i>H. porcellanus</i> , <i>Tridacna costata</i> , <i>T. derasa</i> , <i>T. gigas</i> , <i>T. Squamosa</i> , and <i>T. tevoroa</i>	Positive (82 FR 28946, 06/26/2017)	TBA (status review ongoing)	TBA	N/A	N/A
Green sea turtle	<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
Leatherback sea turtle	<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
Humpback whale	<i>Megaptera novaeangliae</i>	Positive 90-day finding on petition to classify the North Pacific population as DPS and delist the DPS (78 FR 53391, 8/29/2013)	Revision of species-wide listing and listing of four DPSs as threatened or endangered (80 FR 22304)	Revision of species wide listing; Western North Pacific DPS listed as endangered (81 FR 62259, 9/8/2016)	Proposed; no critical habitat proposed for waters around the Mariana Archipelago (84 FR 54354, 10/9/2019); final rule TBA	TBA

#### **2.4.5 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.