



## Southern Shrimp Alliance

P.O. Box 1577 Tarpon Springs, FL 34688  
955 E. MLK Dr. Suite D Tarpon Springs, FL 34689  
727-934-5090 Fax 727-934-5362

[www.shrimpalliance.com](http://www.shrimpalliance.com)

October 11, 2023

TO: Jennifer Schultz  
Endangered Species Division,  
Office of Protected Resources,  
National Marine Fisheries Service,  
1315 East-West Highway (SSMC3),  
Silver Spring, Maryland 20910

RE: Proposed Rule to Designate Critical Habitat for Threatened Green Sea Turtles, RIN 0648–BL82, 88 FR 46572, July 19, 2023

---

The Southern Shrimp Alliance (SSA) appreciates the opportunity to provide comments on this Proposed Rule. In preparing these comments, SSA carefully reviewed the Proposed Rule (“Proposed Rule”)<sup>1</sup>, Draft Biological Report (“Biological Report”)<sup>2</sup>, Draft Economic Impact Analysis (“Economic Report”)<sup>3</sup>, the Draft Sections 4(a)(3) and 4(b)(2) Report (“Section 4 Report”)<sup>4</sup>, and the current April 26, 2021 Biological Opinion for the Southeast U.S. Shrimp Fisheries (“2021 BiOp”)<sup>5</sup>.

Founded in 2002, SSA’s membership is comprised of many small, family-owned shrimp fishing businesses and associated shoreside enterprises that are at the core of the economies and cultures of coastal communities in all eight warm-water shrimp producing states from North Carolina to Texas. As explained in these comments, important components of the Gulf shrimp fishery could be significantly adversely impacted by this action and future actions taken that are based on this action. Specifically, the proposed draft critical habitat areas overlap with valuable traditional shrimp fishing grounds off the coasts of Texas, Florida, and North Carolina.

<sup>1</sup> <https://www.federalregister.gov/documents/2023/07/19/2023-14109/endangered-and-threatened-wildlife-and-plants-proposed-rule-to-designate-marine-critical-habitat-for>

<sup>2</sup> <https://www.fisheries.noaa.gov/s3/2023-07/DraftGreenTurtleCH-BiologicalReport-June2023.pdf>

<sup>3</sup> <https://www.fisheries.noaa.gov/s3/2023-07/DraftGreenTurtleCH-EconomicReport-June2023.pdf>

<sup>4</sup> <https://www.fisheries.noaa.gov/s3/2023-07/DraftGreenTurtleCH-4a3-4b2Report-June2023.pdf>

<sup>5</sup> <https://media.fisheries.noaa.gov/2021-04/2021%20SHRIMP%20OPINION.pdf?null>

Since its founding, SSA has demonstrated its unwavering commitment through both its words and actions to minimize any adverse impact of U.S. shrimp fisheries on endangered or threatened species including green sea turtles and their habitats consistent with the Endangered Species Act (ESA). SSA has partnered with NOAA on many successful science-based initiatives to collect and analyze data and to develop and ensure compliance with fishing methods and gear requirements to minimize incidental takes and mortalities of sea turtles that, among other measures, renders our U.S. shrimp fisheries the most sustainable of their kind in the world. We are proud of that record and look forward to working with the agency to ensure it achieves in this proposed action an appropriate balance between science-based conservation objectives and the viability of this iconic U.S. fishery and the many communities that depend on it.

One only needs to look at the clear evidence documenting the successful performance of the shrimp fisheries in achieving green sea turtle conservation objectives through the numerous measures to reduce incidental takes and mortalities taken at great cost to the industry.

First, as discussed below, this Proposed Rule and associated documents along with the 2021 BiOp conclude that continued authorization of the southeast U.S. shrimp fisheries pursuant to future ESA section 7 consultations would not result in the destruction or adverse modification of green sea turtle critical habitat.

Second, that same BiOp concludes that the southeast U.S. shrimp fisheries are not expected to cause an appreciable reduction in the likelihood of either the survival or recovery of the North Atlantic Discrete Population Segment (DPS) of green sea turtles in the wild, and further, are not likely to jeopardize the continued existence of this North Atlantic DPS.

Finally, we can clearly see the remarkable success of green sea turtle recovery displayed in Figure 1 of these comments depicting the growth of the populations inferred from the 80-fold increase in nesting activity during the time that our fishery has instituted those highly effective sea turtle conservation measures.

### **Effects of Critical Habitat Designations**

As noted in the Proposed Rule, the listing of green sea turtle Discrete Populations Segments (DPSs) under the ESA in 2016, including the North Atlantic DPS on which our comments are entirely focused, triggered the requirement to designate critical habitat to the maximum extent prudent and determinable.

Further, On August 21, 2020, the Federal government and certain conservation organizations entered into a settlement agreement stipulating that NMFS and USFWS shall submit proposed determinations concerning the designation of critical habitat to the Federal Register on or before June 30, 2023 (Center for Biological Diversity et al. v. Bernhardt et al., 1:20-cv-00036-EGS (D.D.C.)).

Section 4 of the Endangered Species Act (ESA) requires the designation of critical habitat for threatened and endangered species to the maximum extent prudent and determinable, based

on the best scientific data available and after taking into consideration national security, economic, and other relevant impacts (16 U.S.C. 1533).

Section 7 of the ESA requires Federal agencies to ensure that actions they authorize – such as the authorization for the southeast U.S. Shrimp fisheries to operate under the ESA - are not likely to destroy or adversely modify such habitat (16 U.S.C. 1536(a)(2)).

Following considerations of the extensive analysis in the Biological Report and Economic Report, the Proposed Rule concludes, in general:

“...it is anticipated that many Federal actions would not result in a destruction or adverse modification determination.” (FR 46615)

More specifically with respect to fisheries, the Economic Report states:

*“... biological opinions considering the effects of fisheries activities on loggerhead turtle critical habitat provide insight into a likely effects determination of impacts of the ten fisheries on the potential green turtle critical habitat.”* (see p. 58)

To that point and with specific respect to the southeast U.S. shrimp fisheries, the Economic Report states:

*“The southeast U.S. shrimp fisheries occur in waters that overlap with winter habitat, breeding habitat, constricted migratory habitat, and Sargassum habitat areas designated as critical habitat for loggerhead turtles. However, NMFS’ 2021 biological opinion concluded that the fisheries are unlikely to affect the primary constituent elements, including breeding and/or foraging areas for constricted migratory habitat, and concentrated components of the Sargassum community in waters suitable for the optimal growth of Sargassum and inhabitation of loggerhead sea turtles (NMFS 2021d).”* (see p. 59)

That statement references the following statement in the 2021 BiOp:

*“Loggerhead Sea Turtle NWA DPS Critical Habitat*

*On July 10, 2014, we designated critical habitat along the southeast Atlantic coast of the United States, around the Florida peninsula, and through the Gulf of Mexico to Texas for the NWA DPS of the loggerhead sea turtle (79 FR 39855). Loggerhead critical habitat is divided into 5 different units: nearshore reproductive habitat, winter habitat, breeding habitat, constricted migratory habitat, and Sargassum habitat. The nearshore reproductive habitat unit is located in nearshore waters extending out 1.6 km offshore; thus, this unit is located solely within state waters, it falls outside our action area. For the other units, we do not expect the proposed action would affect the primary constituent elements (i.e., water temperature and depth for wintering habitat; proximity to the primary Florida migratory corridor and nesting grounds for breeding habitat; constricted continental shelf area and passage conditions for migration to and from nesting,*

*breeding, and/or foraging areas for constricted migratory habitat; and concentrated components of the Sargassum community in water temperatures and depths suitable for the optimal growth of Sargassum and inhabitation of loggerhead sea turtles). Therefore, we conclude the proposed action will have no effect on critical habitat for the NWA DPS of the loggerhead sea turtle.” (see p. 20)*

With that context, the Economic Report goes on to reach the following two very important conclusions:

*“Given the extent of baseline protections afforded the essential features of the potential critical habitat, this analysis concludes that incremental costs of the potential critical habitat to activities related to federal fishery management will be limited to the additional administrative effort required to consider impacts to the critical habitat through consultations that would occur absent designation.” (see p.63)*

*“As noted above, NMFS does not anticipate that critical habitat designation will generate additional conservation efforts for the green sea turtles specific to fishery management activities. As such, incremental costs are anticipated to be limited to the additional administrative effort required to consider effects to the critical habitat of fisheries management activities in consultations that would occur absent designation.” (see p. 66)*

While we recognize this proposed designation of critical habitat itself does not create any new regulations or restrictions on our shrimp fisheries, we must anticipate and prepare for the fact, as confirmed in the Economic Report, that a reinitiation of consultations for the southeast U.S. Shrimp fisheries pursuant to section 7 of the ESA will inevitably occur again in the future. Indeed, Section 2.3.3.4 of the Economic Report indicates that if the proposed critical habitats are designated for the North Atlantic DPS it is projected there will be a total of 57 consultations initiated of which 13 will be formal consultations (see p. 63).

Thus, while we certainly appreciate the optimism expressed in the Proposed Rule and Economic Report that the designation of the proposed critical habitat areas will not result in additional regulations (reasonable and prudent measures) for the southeast U.S. shrimp fisheries, it would be imprudent for our industry to rely upon that prediction. There is certainly no guaranty that a future Biological Opinion resulting from these critical habitat designations will not create new regulations and restrictions (reasonable and prudent measures) that may substantially adversely impact the viability of the southeast U.S. shrimp fisheries in federal waters.

### **Scope of Designation**

The agency has the discretion to exclude any area from critical habitat designation under certain circumstances. Section 4(b)(2) of the ESA states:

*“(2) The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may*

*exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.”*

Pursuant to that authority, the Proposed Rule would exclude from critical habitat designations specific areas off the coasts of northern Texas, Louisiana through Alabama, Georgia and South Carolina, northern North Carolina, Virginia through Massachusetts, and several areas in Puerto Rico as having Low conservation value. These Low conservation areas are identified in Table i of the Biological Report (see p. 9). We agree with and support these exclusions.

Further, the Proposed Rule states that as per ESA section 4(b)(2) cited above, there were no areas that, if excluded, would “*result in the extinction of the species concerned*”, and so there is no such limitation on the authority of the agency to exclude these areas from designation (see FR p. 46576). We also agree with and support this conclusion.

Based on the analyses in the Biological Report, Economic Report and the Section 4 Report, the Proposed Rule would designate as critical habitat the areas off the southern Texas coast (Mexico border to Lavaca-Matagorda Bay, including Laguna Madre and Lavaca-Matagorda Bay), areas off the east and west coasts of Florida, and certain areas in southern North Carolina as having a high conservation value, as well as the area off the northern Texas coast (Lavaca-Matagorda Bay to Galveston Bay) as having Moderate conservation value.

Therefore, given that a future section 7 consultation and resulting Biological Opinion may lead to additional regulations and restrictions and associated economic impacts on the southeast U.S. shrimp fisheries based on these critical habitat designations, we must raise several concerns as follow.

As set forth in the Proposed Rule (see FR p. 46573) and accompanying Biological Report (see p. 28):

*“To begin the critical habitat designation process, NMFS charged a team of green turtle and marine habitat experts from within the agency to follow the above steps and write a biological report (i.e., this report) based on the best available information. The team (we) solicited data and expertise from Federal, State, and Territory agency programs researching green turtles and their habitat. For this report, the best available scientific data included information published in peer-reviewed scientific journals and technical memoranda. When peer-reviewed data were not available, we relied on government reports and unpublished data from scientific studies and surveys performed by scientists at: NMFS; USFWS....”*

Further, as set forth in the Proposed Rule (see p. 46576)

*“The Team was asked to evaluate the conservation value of each specific area containing essential features that may require special management considerations or protection. The Team could not identify quantitative measures and therefore provided a*

*qualitative assessment (e.g., high, moderate, or low conservation value), based on the best available scientific information. High conservation value areas are highly important to the conservation of the DPS. Moderate conservation value areas are moderately important to the conservation of the DPS. Low conservation value areas, while important, are less important to the conservation of the DPS than high or moderate conservation value areas.”*

Of great concern is that there are 284 references to “unpublished data” in the Biological Report. Literally 100 percent of the 16 citations provided for stranding data in Table 3 of the Biological Report are for “unpublished data”. Throughout the Biological Report there are numerous references to and reliance on unpublished data on shrimp trawl bycatch and trawl surveys. Indeed, all of the Essential Features (EFs) considered for determining the conservation value of those critical habitat areas considered to be of moderate and high value and proposed to be designated as critical habitat rely on an extraordinary amount of unpublished data. We must assume that such unpublished data has not been the subject of rigorous peer review. Given what could be at stake for the shrimp fisheries if a future ESA section 7 consultation and Biological Opinion establish additional regulations and restrictions on the fisheries that may threaten the viability of these fisheries, should such unpublished data even be considered “science” in the meaning of “best available science” on which such designations of critical habitat must be based under the ESA?

Further, the Biological Report and this Proposed Rule to designate critical habitat areas rely not on quantitative calculations of the conservation value of specific areas, but instead rely on the opinions of scientists to assign qualitative scores to the conservation value (high, moderate or low) of any particular area. While we certainly recognize that such scientists are indeed experts on the subject, given what could be at stake for the shrimp fisheries, this qualitative rather than quantitative approach seriously undermines our confidence in the reliability of these conservation value scores and any conclusions regarding critical habitat designations based on them. Again, should such opinions qualify as ‘best available scientific data’ required under the ESA to be the basis for critical habitat designation when so much is at stake?

Still further, we have serious concerns as to the relevance of much of the data and conclusions drawn from those data being profoundly outdated. For example, there are a number of references in the Biological Report to “fishing” as an activity that may pose a threat to green sea turtle critical habitat, but those are taken from the 32 year-old “NMFS, USFWS. 1991. *Recovery Plan for U.S. Population of Atlantic Green Turtle (Chelonia mydas)*”.

Further, the Biological Report goes on to state:

*“A recovery plan, with associated recovery criteria, has yet to be developed for the North Atlantic DPS. To identify the EFs [Essential Features] essential to the conservation of the North Atlantic DPS, we referenced the Recovery Plan for the U.S. Population of the Atlantic Green Turtle (NMFS and USFWS 1991), which includes the North Atlantic DPS within U.S. jurisdiction...” (see p. 42)*

Even the Economic Report on which the Proposed Rule is based also relies heavily on the obsolete 32-year old Recovery Plan to define the threats posed by “fisheries” to green sea turtle critical habitat. (see section 2.3.3 Fishery Management – NMFS, p. 55)

The identification of Essential Features of critical habitat in this Proposed Rule and both the Biological Report and Economic Report rely on incredibly outdated data and conclusions drawn from that data that are 32 years old and that predate the designation of the North Atlantic DPS as well as the extraordinary achievements the shrimp trawl fisheries have made since 1991 to minimize their impacts on sea turtle populations and sensitive habitats. Since that Recovery Plan and the data on which it is based was published, the population has grown 80-fold as can be inferred from the Florida Fish and Wildlife Conservation Commission (FFWCC) nesting data shown in Figure 1.

In that respect, the Recovery Plan and this Proposed Rule are based heavily on information that is simply no longer relevant to the shrimp fisheries of today nor is it altogether relevant to the North Atlantic DPS. This again undermines our confidence in the reliability of the conclusions drawn in this Proposed Rule and associated documents to assign High and Low conservation values to areas and, therefore, to designate critical habitat.

We also note with disappointment that the analysis of economic impacts set forth in the Economic Report do not contemplate or account for the potentially profound economic impacts of future regulations and restrictions (reasonable and prudent measures) associated with these critical habitat area designations and set forth in a future Biological Opinion. While those economic impacts may not technically relate to the sole act of critical habitat designation, the failure to even acknowledge these potential impacts on the shrimp fisheries does not present a complete picture of what economic impacts may be at stake.

Given these concerns regarding the use of “best available science” and the potentially existential consequences for the shrimp fisheries if such critical habitat designations ultimately result in future spatial and/or temporal prohibitions or restrictions on shrimp fishing in critical habitat areas and/or, *inter alia*, the imposition of specific gear requirements or prohibitions, we request the agency to very carefully reevaluate any area identified as having a “Moderate” conservation value for potential exclusion from designation as critical habitat. In the context of shrimp fisheries, this would include the “Lavaca-Matagorda Bay to Galveston Bay area off Texas, and the Bogue Sound, White Oak River, New River, and Cape Fear River areas off North Carolina. With reference to ESA section 4(b)(2), we assert that the benefits of exclusion may well outweigh the benefits of critical habitat designations for these “Moderate” conservation value areas.

For the same reasons, we request the agency to very carefully reconsider the reliability of the data and conclusions drawn from such data to assign a qualitative “High” conservation value to specific areas. In the context of shrimp fisheries, this would include the areas off the southern Texas coast (Mexico border to Lavaca-Matagorda Bay, including Laguna Madre and Lavaca-Matagorda Bay), areas off the east and west coasts of Florida, and certain areas in southern North Carolina. Given our concerns with the quality and relevance of data used to reach these conclusions outlined above, we ask the agency to consider again whether the benefits of

exclusion would outweigh the benefits of critical habitat designations for each of these “High” conservation value areas. We also ask the agency to acknowledge that, by definition, shrimp otter trawl operations do not have any meaningful impact on the large-scale floating sargassum weed areas considered in the Biological Report to have “High” conservation value and proposed for critical habitat designation.

As always, SSA appreciates NOAA’s consideration of our inputs and again, looks forward to working with the agency to ensure it achieves in this proposed action an appropriate balance between science-based conservation objectives and the viability of this iconic U.S. fishery and the many communities that depend on it.

Sincerely,

A handwritten signature in black ink, appearing to read "John Williams". The signature is fluid and cursive, written in a professional style.

John Williams,  
Executive Director



**Figure 1:**

Source: Florida Fish & Wildlife Conservation Commission

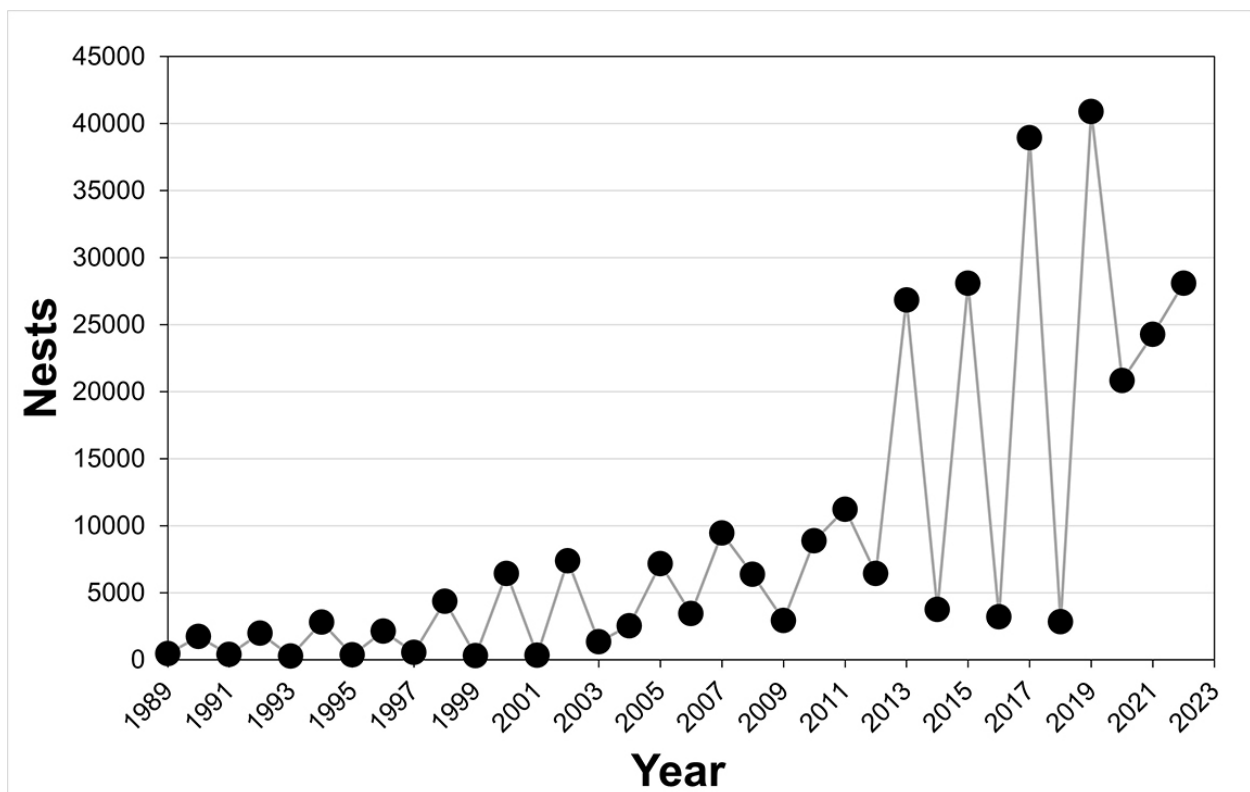
Index Nesting Beach Survey Totals (1989-2022)

<https://myfwc.com/research/wildlife/sea-turtles/nesting/beach-survey-totals/>

### Green Turtle Nests

Green turtle nest counts have increased eightyfold since standardized nest counts began in 1989 – a trend that differs dramatically from that of the loggerheads that nest on the same beaches. In 2022, green turtle nest counts on the 27 core index beaches reached more than 28,000 nests recorded. These numbers **DO NOT** represent Florida’s total annual nest counts because they are collected only on a subset of Florida’s beaches (27 out of 229 beaches) and only during a 109-day time window (15 May through 31 August). Nesting green turtles tend to follow a two-year reproductive cycle and, typically, there are wide year-to-year fluctuations in the number of nests recorded. Green turtles set record highs in 2011, 2013, 2015, 2017 and 2019. The nest count in 2022 did not set another record high but was only marginally higher than 2020, an unusually high “low year”. Changes in the typical two-year cycle have been documented in the past as well (e.g., 2010-2011) and are not reason of concern.

**Below:** Annual green turtle nest counts on core index beaches. Since 1989, nest counts have ranged from less than 300 to almost 41,000 in 2019. Numbers show a mostly biennial pattern of fluctuation, with records set on 2011, 2013, 2015, 2017 and 2019.



Number of green turtle nests counted on core index beaches in Florida, from 1989 to 2022.