

**NATIONAL MARINE FISHERIES SERVICE  
ENDANGERED SPECIES ACT SECTION 7  
LETTER OF CONCURRENCE**

**Title:** Programmatic Letter of Concurrence on the U.S. Coast Guard Marine Events Program, U.S. Caribbean

**Consultation Conducted By:** Endangered Species Act Interagency Cooperation Division, Office of Protected Resources, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce

**Action Agency:** U.S. Coast Guard, Seventh District

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UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
Silver Spring, MD 20910

DEC 15 2017

Refer to NMFS No: FPR-2017-9233

Rear Admiral Peter J. Brown  
Commander  
USCG Seventh District  
Brickell Plaza Federal Building  
909 SE 1<sup>st</sup> Avenue  
Miami, Florida 33131-3050

RE: Programmatic Concurrence Letter for the U.S. Coast Guard Marine Event Program, U.S. Caribbean

Dear Commander:

On September 18, 2009, the Southeast Regional Office (SERO) of the National Marine Fisheries Service (NMFS) received your request for a written concurrence that the U.S. Coast Guard (USCG) Marine Events Program and regulatory actions establishing exclusionary zones in USCG District 7 is not likely to adversely affect species listed as threatened or endangered or critical habitats designated under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 et seq.). In February 2014, NMFS and the USCG agreed to complete the consultation for marine events in the U.S. Caribbean separately. NMFS had previously completed a consultation with USCG on January 23, 2009, that covered events in waters of Puerto Rico and the U.S. Virgin Islands. The 2009 consultation was limited to specific events that occurred annually at the time of the consultation. The current consultation is a programmatic consultation on the Marine Events Program in the U.S. Caribbean and is not event-specific.

SERO transferred the ESA section 7 consultation to the Office of Protected Resources (OPR) on August 25, 2017. After a conference call September 15, 2017 with the USCG, OPR initiated consultation. This response to your request was prepared by NMFS pursuant to section 7(a)(2) of the ESA, implementing regulations at 50 CFR Part 402, and agency guidance for preparation of letters of concurrence.

Note that the U.S. Army Corps of Engineers (USACE) has the authority to issue permits for temporary buoys, markers, and other aids-to-navigation (ATONS) that are installed as part of marine events. Potential effects of temporary buoys, markers, and other ATONS associated with marine events permitted by the USACE on endangered species are covered under a programmatic consultation between SERO and the USACE Jacksonville District, for which a Programmatic Biological Opinion (JAXBO; SER-2015-17616) was issued on November 20, 2017. Therefore, these activities are not considered further in this consultation with the USCG.

This letter underwent pre-dissemination review using standards for utility, integrity, and objectivity in compliance with agency guidelines issued under section 515 of the Treasury and General Government Appropriations Act of 2001 (Data Quality Act; 44 U.S.C. 3504(d)(1) and



3516). A complete record of this informal consultation is on file at the NMFS Office of Protected Resources in Silver Spring, Maryland.

#### **Action Agency's Effect Determinations**

The USCG determined that the issuance of a Marine Event permit or designation of temporary exclusion zone or zones may affect, but is not likely to adversely affect green, leatherback, loggerhead, and hawksbill sea turtles; elkhorn and staghorn corals; blue, fin, sei, and sperm whales; and designated critical habitat for leatherback, green, and hawksbill sea turtles, and elkhorn and staghorn coral. The USCG also made an effects determination for humpback whales. However, on September 8, 2016, NMFS published a final rule (81 FR 62259) identifying 14 Distinct Population Segments (DPSs) of humpback whales. The West Indies DPS, which includes Puerto Rico and the U.S. Virgin Islands (USVI) and the southern tip of Florida, was found not to warrant listing under the ESA. Therefore, humpback whales are not included in this consultation.

Since the 2009 consultation request, NMFS listed additional species including five species of corals as threatened on September 10, 2014 (79 FR 53851), Nassau grouper as threatened on June 29, 2016 (81 FR 42268), and scalloped hammerhead shark Central and Southwest Atlantic DPS as threatened on July 3, 2014 (79 FR 38213). During discussions with the USCG, the USCG decided that their effects determination for elkhorn and staghorn corals also applied to the five subsequently listed corals (pillar, boulder star, mountainous star, lobed star, and rough cactus corals) and this consultation also considers the effects of the action on these species. The USCG did not make an effects determination for Nassau grouper or scalloped hammerhead sharks but this consultation considers the effects of the action on these species as well.

#### **Proposed Action and Action Area**

Implementing regulations for USCG Marine Event permits for activities in navigable waters of the U.S. are detailed at 33 CFR Part 100 (Safety of Life on Navigable Waters). COMDTINST M16751.3, *USCG Permitting of Regattas & Marine Parades* (March 2013) provides direction and sets policy for use by District and Sector Commanders in delegating and exercising effective control over marine events. For regulatory actions for the establishment of temporary exclusionary zones, implementing regulations for USCG are found in 33 CFR Part 6 (Protection and Security of Vessels, Harbors, and Waterfront Facilities), Part 126 (Handling of Dangerous Cargo at Waterfront Facilities), Part 160 (Ports and Waterways Safety – General), or Part 165 (Regulated Navigation Areas and Limited Access Areas), or 49 CFR Parts 171-180 (Hazardous Materials Regulations), depending on the particular trigger for establishment of the temporary exclusionary zone.

Triggering events can include fireworks displays, concerts, air shows, sporting events held ashore, or other events that may not themselves meet the criteria for being considered a marine event (see below) but trigger the need for a Marine Event permit or the establishment of a temporary exclusion zone due to a concentration of vessels, activity in navigable waters and/or introduction of hazards requiring control measures. USCG typically does not issue a permit for the triggering event itself unless the event itself meets all the criteria for consideration as a marine event, which is the case for boat races or regattas and ship parades. Regulatory actions requiring the establishment of temporary exclusionary zones may be taken for triggering events or other activities that do not require a USCG permit because they do not meet the definition of a

marine event detailed below or for other activities such as in-water responses to accidents such as plane crashes or vessel groundings and presidential visits.

The USCG defines marine events that may require authorization via a permit from the agency as a concentration of traffic on the water meeting the following criteria:

- Organized water activity of limited duration and conducted according to a prearranged schedule on navigable waters of the U.S.
- Activity that is likely to cause a high concentration of craft or otherwise interfere with normal navigation
- Activity that is likely to introduce extra or unusual hazards to the safety of human life
- Hazards that cannot be protected against by existing navigation rules

The following are examples of marine events likely to require a permit:

- Events with more than 50 participating vessels or more than 50 swimmers (although these numbers may vary depending upon the specific USCG district)
- Events that generate or expect more than 200 spectator vessels (although number may vary depending upon the specific USCG district)
- Events involving participating vessels traveling at speeds of greater than 30 knots
- Events that will cause participating or spectator vessels to cross a designated shipping lane or otherwise block or cause substantial interference with navigation on a body of water
- Events that, due to their unique nature, present such a substantial threat to the safety of human life that specific operational restrictions and safety protocols, within the bounds of USCG's limited authority, must be delineated via a permit for a marine event
- Controversial events such as organized protest activities occurring in the maritime environment, which could intentionally or unintentionally cause substantial interference with navigation

In some cases, the USCG may determine that a permit is not required for an event but the event sponsor may request USCG oversight and USCG personnel may be sent to observe the event. The action of sending observers to an event that does not require a permit or regulatory action is not included in this consultation.

Table 1 provides information regarding the types of events that may require a Marine Event permit and/or the establishment of an exclusionary zone or zones. Table 1 also identifies the typical water depth for each type of event as well as whether or not temporary buoys are installed. Tables 2 and 3 provide information regarding events that have taken place more than once since the 2009 consultation for the U.S. Caribbean was completed and events that have occurred once since the 2009 consultation, respectively.

The USCG permit is only for portions of the event over which the USCG has authority. The installation of temporary buoys for marine events requires authorization from the USACE and this is covered in the JAXBO consultation with NMFS referenced above.

**Table 1. Type of activity that may be authorized under the Marine Events Program in the U.S. Caribbean, whether or not the activity typically requires that installation of temporary buoys, and the approximate water depths.**

Type of Activity	Temporary Buoys Installed (Y/N)	General Water Depth (ft)
Powerboat Race	Y	15-54
Jet Ski Race	Y	15-36
Boat Parade	Y	10-50
Sailboat Race (Regatta)	Y	18-108
Fishing Tournament	N	33-3,258
Fireworks Displays	N	12-30
Miscellaneous Events (Examples: Air Show, Swim Race, Rubber Duck Race)	Y	12-80
Establishment of Exclusionary Zones	N	15-50

**Table 2. Events that have occurred more than once since completion of the 2009 consultation. The title of the event, location, time of year, years the event has been held, and the type of event are listed in the table.**

Marine Event	Location	Time of Year	Years Held (Since 2009 Consultation)	Type of Event
Aguada Grand Prix Offshore Event (also known as Aguada Offshore Challenge)	Aguada	June, July, August	2013, 2014, 2016	speedboat race
Carreras Inshore (previously Copa Alcalde, Combate Grand Prix)	Cabo Rojo	August, September, November	2012, 2013, 2014, 2015, 2016	speedboat race
Cierre de Verano (also known as Welcome Summer and Closing Summer Inshore Event, Boquerón Grand Prix)	Cabo Rojo	August, October	2014, 2015	speedboat race
Retorno a la Bahía: Cruce a Nado a la Bahía de Boquerón	Cabo Rojo	May, July	2014, 2015	swim race
Parada del Comodoro	Carolina	November	2014, 2015	boat parade
Fajardo Offshore Grand Prix (also known as Fajardo Offshore Challenge, Fajardo Offshore Festival II, Fajardo Offshore Speedboat Race) near Las Croabas	Fajardo	March, April, September	2012, 2013, 2015, 2016	speedboat race
Puerto del Rey Offshore Tour (also known as Puerto del Rey Grand Prix)	Fajardo	March	2013, 2014	speedboat race
Fajardo Offshore Speedboat Race (different course than later years)	Fajardo	March	2010, 2011	speedboat race

Anniversary Fundación del Pueblo de Guánica (later known as Guánica Mayor's Cup)	Guánica		2013, 2014 (permit denied this year - course change)	speedboat race
Mayagüez Offshore Festival (also known as Offshore Tour, Offshore Cup, Offshore Challenge, or Offshore Grand Prix)	Mayagüez	June, August, September, October, December	2012, 2013, 2014, 2015, 2016	speedboat race
Mayagüez Inshore Series (also known as Copa Alcalde Inshore Series)	Mayagüez	June, August, October	2012, 2013, 2015, 2016	speedboat race
Cruce a Nado Internacional de la Bahía de Ponce	Ponce	August, September	2011, 2012, 2013, 2014, 2015, 2016	swim race
Ponce Offshore Tour	Ponce	December, June	2008, 2014	speedboat race
Salinas Grand Prix (also known as Primera Copa de la Alcaldesa) and Mojo Isleño - Bahía Rincón	Salinas	March, July, October	2013, 2014	speedboat race
Christmas Boat Parade	San Juan	December	2012, 2013, 2014, 2015, 2016	boat parade
San Sebastián Vela Cup	San Juan	January	2016, 2017	sailboat race
Three Kings Across San Juan Bay (Los Reyes se Pasean por la Bahía de San Juan)	San Juan	January	2014, 2015, 2016, 2017	boat parade
Summer Fest Regatta (also known as Puerto Rico Racing Match Nationals, Escuela de Vela, CNSJ IC24 Championship at Bahía Urbana, CNSJ Dinghy Series Challenge)	San Juan	August, September, October, December	2012, 2013, 2014 (August, September and December), 2015, 2016	sailboat race
International Dinghy Regatta	San Juan	January, February	2014, 2016	sailboat race
Offshore Super Series San Juan Bay	San Juan	July, December	2012, 2013	speedboat race
Cataño (San Juan) Offshore Challenge (also known as San Juan Offshore Grand Prix)	San Juan	December	2012, 2013, 2015	speedboat race
Captain Morgan Ironman St. Croix (also known as Ironman St. Croix 70.3 Triathlon)	St. Croix	May	2013, 2014, 2015, 2016	swim race
St. Croix Christmas Boat Parade	St. Croix	December	2013, 2015	boat parade
St. John Carnival 4th of July Fireworks	St. John	July	2013, 2015	fireworks (safety zone)
St. Thomas Lighted Boat Parade	St. Thomas	December	2014, 2015, 2016	boat parade
MSC Industrial Private Fireworks Show (previously Marriott's New Year's Eve Fireworks)	St. Thomas	January	2014, 2015	fireworks (safety zone)
VI Carnival Fireworks (Finale and/or Opening)	St. Thomas	April, May	2012, 2013, 2014, 2015	fireworks (safety zone)
Watersports Activities	St. Thomas	April	2013, 2014, 2015	speedboat and jet ski races

International Rolex Regatta (also known as St. Thomas International Regatta)	St. Thomas	March	2012, 2013, 2014	sailboat race
Thunder in Paradise	St. Thomas	September	2013, 2014	speedboat race

**Table 3. Events that have occurred once since the completion of the 2009 consultation. The title of the event, location, time of year, and type of event are included in the table.**

<b>Marine Event</b>	<b>Location</b>	<b>Time of Year</b>	<b>Type of Event</b>
Primera Parada de Botes Navideña	Cabo Rojo	December	boat parade
Nadalo por el Ambiente II	Cabo Rojo	April	swim race
Festival Centroamericano y del Caribe - Veleros	Cabo Rojo	July, August	sailboat race
Copa de Alcalde de Ceiba	Ceiba	July	speedboat race
Cruce la Bahía de Guayanilla	Guayanilla	July	swim race
PR Open Drag Speedway II	Guayanilla	July	speedboat race
Iron Man Challenge I	Ponce	May	jet ski race
First Jet Ski Watercross	Ponce	June	jet ski race
Discover the Caribbean	Ponce	November	sailboat race
Festival Bahía de Jobos	Salinas	May	swim race
International Air Show	San Juan	October	air show with marker buoys in water
Al Mar X Oscar	San Juan	May	boat parade
San Juan Harbor Swim	San Juan	July	swim race
USVI Poker Run	St. Thomas	July	poker run

### ***Activities***

As described above, the USCG has authority over marine events and marine aspects of triggering events if these actions may result in an extra or unusual hazard that could jeopardize human safety on navigable waters. Activities for which a USCG Marine Event permit may be required include powerboat races, poker runs, boat parades, regattas, fishing tournaments, fireworks events, and miscellaneous events (e.g., air shows, swimming events, rubber duck races) as long as these meet the criteria detailed previously. As shown in Table 1, boat parades, jet ski and powerboat races, regattas, swim races, and other events such as air shows include the installation of temporary buoys usually to mark the racecourse or demarcate spectator areas. The installation of these buoys requires authorization from the USACE, which is considered in the JAXBO consultation referenced above and not analyzed further here.

### ***Powerboat Races***

In the U.S. Caribbean, powerboat races take place within a course demarcated by temporary buoys. The course may be rectangular, triangular, or trapezoidal. Racecourses may also be located around offshore islands or cays, also demarcated by temporary buoys. Powerboats have a high power to weight ratio and a hull with 2 twin outboard engines designed for easy planing

and speeds up to 168 miles per hour (mph). Some powerboat races include the faster V-bottom and catamaran-style powerboats that may attain speeds in excess of 200 mph. Jet skis may participate in some of these races or have their own race events with similar rectangular-shaped courses demarcated by buoys. Powerboat races may take place in nearshore or offshore waters, while jet ski races are always held in nearshore waters. Races take place during daylight-hours only. Spectators include people along the shoreline and recreational vessels that are not race participants. An in-water spectator zone is established for maintaining spectator vessels a safe distance from race participants and patrol vessels associated with the event, typically parallel to the shoreline.

#### *Poker Runs*

Poker runs are not common in the U.S. Caribbean, with our records showing that, since the 2009 consultation with the USCG for annually occurring marine events, one application for this type of event was received, in 2016. Boats move from checkpoint to checkpoint and participants select a card at each point. Checkpoints may offer food or entertainment, either covered by the entry fee or at additional cost. Poker runs are not races so vessel speeds are usually less than powerboat races but high speeds may be achieved. Boats must arrive at the final checkpoint by the time prizes are awarded, usually at the end of day. Poker runs usually require a fee to enter; part of the fee goes to funding the event, including the prizes, while the rest goes to a charity recipient or club treasury, depending on the purpose of the event. Poker runs take place during the day but there is usually a party with food and refreshments at the end of the day so there may be some vessel traffic at night as participants leave the event.

#### *Boat Parades*

Boat parades involve a congregation of vessels moving in a line around an island, within a bay, or back-and-forth along a linear route in a particular area. Boat parades may occur during the day or at night when they are lighted parades. Boat parades often take place during holidays. There may be some in-water spectators as well as spectators along the shoreline of the parade route. Vessels of varying sizes may participate in boat parades.

#### *Regattas*

In sailboat regattas, sailboat speeds typically do not exceed 9-10 knots. Regattas are held during daylight hours and may take place over several days. The racecourse is typically a large oval demarcated by temporary buoys. Water depths for regattas that involve large sailboats, as opposed to those that involve sunfish or similar small sailing vessels, are often greater than for powerboat races due to the length of a sailboat's keel as opposed to the shallow draft of powerboats, particularly when they are planing on the water at high speeds. As for powerboat races, spectators include people along the shoreline and vessels that are not race participants. An in-water spectator zone is established for maintaining spectator vessels outside the racecourse, typically parallel to the shoreline.

#### *Fishing Tournaments*

In the U.S. Caribbean, a number of fishing tournaments are held, particularly in Puerto Rico, involving teams of recreational fishers on boats who compete for prizes based on the total weight of a given species of fish caught within a predetermined time or on length, with mandatory catch-and-release. The species targeted are usually pelagic species such as tuna, marlin, and mahi



mahi, with tournaments taking place mainly in deep waters along or off the shelf edge. The USCG does not permit many fishing tournaments because many of them do not meet the criteria for a Marine Event permit. When permits are issued, tournaments are allowed only during daylight hours in offshore locations and event sponsors must comply with USCG general permit conditions. Events in the U.S. Caribbean usually have a shotgun start from a particular location, usually a recreational fishing organization's dock or marina, for which the USCG may establish a safety zone.

#### *Fireworks Events*

Fireworks events are held at night and are limited in duration (usually less than an hour). Fireworks displays are required by the USCG permit to be inspected and permitted by the local fire marshall. The USCG establishes an exclusionary zone for fireworks displays requiring a Marine Event permit or serving as a triggering event to keep spectators at least 800 ft from the vessel carrying/firing the fireworks and designating spectator areas.

#### *Miscellaneous Events*

Miscellaneous events include air shows, rubber duck races, and swim events. These events take place during daylight hours. Event logistics depend on the size of the event. All of these events, such as air shows and swim events may require the installation of temporary buoys. Air shows may require the establishment of a safety zone or zones to keep spectators out of specific areas. Swimming competitions in the U.S. Caribbean often take place in bays or, as is the case with the annual swim around St. Croix, nearshore waters around an island. Swim events typically have separate single entrance and exit points for participants. Rubber duck races involve the release of hundreds or thousands of rubber ducks into a water body that then float down a course marked with temporary buoys to be retrieved at the end of the course.

#### *Regulatory Actions*

The USCG also has the authority to take regulatory action for events that do not rise to the level of requiring a Marine Event permit or for other activities requiring the establishment of exclusionary zones. Regulatory action, in the case of the marine activities considered in this consultation, includes the establishment of temporary exclusionary zones such as safety and security zones that are temporary in nature, lasting for the duration of a marine activity. Other temporary exclusionary zones include those established due to the need to exclude boaters from an area around an in-water response to accidents such as plane crashes and vessel groundings or because of presidential visits.

#### *Action Area*

The action area encompasses navigable coastal waters of the United States in Puerto Rico and USVI.

Depending on the activity authorized under the Marine Events Program, water depths may vary, with most boat races and regattas, swim races, and establishment of exclusionary zones in nearshore waters up to approximately 100 feet (ft) in depth (Table 1). Fishing tournaments that meet the requirements for USCG authorization typically occur in offshore waters, including off the shelf edge (Table 1).

Temporary exclusionary zones may be established in any water depth depending on the reason for the regulatory action.

### Affected ESA-listed Species and Designated Critical Habitat

The species found within the action area that may be affected by the proposed action are listed in Table 4 along with their regulatory status. The designated critical habitats within the action area that may be affected by the proposed action are listed in Table 5.

**Table 4. Threatened and endangered species in the action area that may be affected by the USCG's Marine Events Program in the U.S. Caribbean**

Species	ESA Status	Listing Year	Recovery Plan
Blue whale ( <i>Balaenoptera musculus</i> )	E – 35 FR 18319	1970	07/1998
Fin whale ( <i>Balaenoptera physalus</i> )	E – 35 FR 18319	1970	75 FR 47538
Sei whale ( <i>Balaenoptera borealis</i> )	E – 35 FR 18319	1970	76 FR 43985
Sperm whale ( <i>Physeter macrocephalus</i> )	E – 35 FR 18319	1970	75 FR 81584
Green sea turtle ( <i>Chelonia mydas</i> ), North Atlantic and South Atlantic Distinct Population Segments (DPSs)	T – 81 FR 20057	1978 (original listing), 2016 (DPSs)	63 FR 28359
Hawksbill sea turtle ( <i>Eretmochelys imbricata</i> )	E – 35 FR 8491	1970	12/1993
Leatherback sea turtle ( <i>Dermochelys coriacea</i> )	E – 61 FR 17	1970	63 FR 28359
Loggerhead sea turtle ( <i>Caretta caretta</i> ), Northwest Atlantic Ocean DPS	T – 76 FR 58868	1976 (original listing), 2011 (DPSs)	63 FR 28359
Nassau grouper ( <i>Epinephelus striatus</i> )	T – 81 FR 42268	2016	----
Scalloped hammerhead shark ( <i>Sphyrna lewini</i> ), Central and Southwest Atlantic DPS	T - 79 FR 38213	2014	----
Elkhorn coral ( <i>Acropora palmata</i> )	T – 71 FR 26852 and 79 FR 53852	2006	80 FR 12146
Staghorn coral ( <i>Acropora cervicornis</i> )	T – 71 FR 26852 and 79 FR 53852	2006	80 FR 12146
Lobed star coral ( <i>Orbicella annularis</i> )	T – 79 FR 53852	2014	----
Boulder star coral ( <i>Orbicella franksi</i> )	T – 79 FR 53852	2014	----
Mountainous star coral ( <i>Orbicella faveolata</i> )	T – 79 FR 53852	2014	----
Pillar coral ( <i>Dendrogyra cylindrus</i> )	T – 79 FR 53852	2014	----
Rough cactus coral ( <i>Mycetophyllia ferox</i> )	T – 79 FR 53852	2014	----

T = threatened, E = endangered

**Table 5. Designated Critical Habitat in the Action Area**

<b>Critical Habitat Unit</b>	<b>Rule</b>	<b>Year Designated</b>
Leatherback Sea Turtle Critical Habitat	44 FR 17710	1979
Hawksbill Sea Turtle Critical Habitat	63 FR 46693	1998
Green Sea Turtle (North Atlantic DPS <sup>1</sup> ) Critical Habitat	63 FR 46693	1998
Elkhorn and Staghorn Coral Puerto Rico, St. Croix, and St. Thomas/St. John Units	73 FR 72210	2008

### **Consultation History**

A consultation was completed with the USCG on January 23, 2009, covering events that were annually occurring in waters of Puerto Rico and the U.S. Virgin Islands at the time the consultation took place. The consultation was limited to specific events.

The consultation history for this action is as follows:

1. NMFS received the letter requesting a programmatic consultation for the Marine Events Program throughout USCG District 7 on September 18, 2009.
2. In February 2014, NMFS and the USCG agreed to split up the consultation and work toward completion of a separate programmatic consultation for the U.S. Caribbean only. On February 21, 2014, the USCG sent NMFS information regarding annually occurring marine events in Puerto Rico and the U.S. Virgin Islands (USVI) and NMFS initiated consultation that day.
3. On May 29, 2014, NMFS and USCG held a conference call to discuss the consultation.
4. On October 28, 2014, NMFS and USCG met to discuss categories of events to be considered in the consultation and begin drafting the project design criteria (PDCs) for the consultation.
5. NMFS and USCG exchanged information regarding the PDCs via emails dated December 4, 12, 15, and 22, 2014.
6. USCG provided additional information related to marine events and exclusionary zones via email dated May 2, 2017.
7. SERO transferred the consultation to OPR on August 25, 2017.
8. OPR held a conference call with USCG on September 17, 2017, to discuss the consultation.

### **Programmatic Consultation**

NMFS relies on programmatic consultations as an effective tool to implement the ESA section 7(a)(2) consultation requirement (NMFS 2017). The 1998 *Endangered Species Consultation Handbook* defines "programmatic consultation" as a consultation addressing an agency's multiple actions on a program, regional or other basis (Handbook at page xvii). NMFS' experience with programmatic consultation demonstrates that their use increases the efficiency, effectiveness, and conservation value of the ESA section 7(a)(2) consultation process and reduces consultation time for applicants. By looking across numerous individual actions at the programmatic level, the

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<sup>1</sup> On April 6, 2016, NMFS published a final rule listing 11 DPSs of the green sea turtle. NMFS will issue a rule designating critical habitat for the 11 DPSs, if warranted, in a future rulemaking. In the interim, the existing critical habitat designation (i.e., waters surrounding Culebra Island, Puerto Rico, and its surrounding islands and cays; 63 FR 46693; September 2, 1998) remains in effect for the North Atlantic DPS.

federal action agency can propose project design criteria (PDCs)<sup>2</sup>, best management practices (BMPs)<sup>3</sup>, standard operating procedures<sup>4</sup>, and/or standards and guidelines that avoid or minimize impacts to ESA-listed resources. This approach facilitates working with the federal action agency to refine those criteria to avoid/minimize impacts to and conserve ESA-listed resources in a manner that supports recovery. In a tiered approach (i.e., performing additional consultations subsequent to a programmatic consultation at the stage of implementing or authorizing individual activities), a programmatic consultation can establish a framework of analysis and standards that allows future site-level consultations (where needed) to be more effective and efficient.

#### *Project Design Criteria*

PDCs have been identified to limit environmental effects of the activities associated with the USCG's regulatory authority to issue permits for marine events and/or establish temporary exclusionary zones. These PDCs are based on past ESA Section 7 consultations for marine events with the USCG, as well as COMDTINST M16751.3. These PDCs, when applied to in-water activities associated with marine events and temporary exclusionary zones, limit the environmental effects to those that are insignificant, discountable, or beneficial and do not result in take or adverse effects to designated critical habitat. The nature of the in-water activities involved in a proposed marine event and/or the designation of a temporary exclusionary zone will dictate which of the PDCs will be applicable to the activities covered under this consultation. The PDCs are either directly applicable to USCG's actions in exercising its regulatory authority over activities in navigable waters of the U.S. or must be incorporated by USCG into Marine Event permits.

PDCs for the installation of temporary buoys and other markers associated with marine events or the establishment of exclusionary zones are included in the JAXBO consultation and are not repeated here because all such structures require USACE authorization.

The PDCs listed below are non-discretionary requirements of USCG regulatory actions considered in this consultation.

#### General PDCs applicable to all activities addressed in this consultation:

1. The USCG will provide NMFS with a copy of notifications to event sponsors informing them when no permit is required.
2. The USCG will provide NMFS with copies of the Marine Information for Safety and Law Enforcement (MISLE) enterprise database as required by COMDTINST M16751.3 for all permit applications received. The record must also include clear and convincing documentation that explains the environmental review undertaken by the USCG and any resulting decisions for all regulatory actions.

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<sup>2</sup> PDCs are the specific methods, including the technical and engineering specifications or construction limitations, indicating how a project implemented under the programmatic consultation must be sited, constructed, or otherwise carried out to ensure project consistency and to minimize or avoid adverse effects to ESA-listed resources.

<sup>3</sup> BMPs are the combination of practices determined to be effective and practicable (including technological, economic, and agency considerations) means to minimize or avoid adverse effects to ESA-listed resources.

<sup>4</sup> Standard operating procedures are a combination of procedures that describe the expected practices and activities necessary to complete a program or project in accordance with relevant agency regulations, policies, and guidance.

3. The USCG will provide NMFS with copies of all Local Notice to Mariners and Broadcast Notice to Mariners announcements disseminated for all regulatory actions including permitted marine events and temporary exclusionary zones.
4. The USCG, in cooperation with NMFS and the USACE, will develop a pamphlet for the U.S. Caribbean that includes recommended best management practices (BMPs) related to marine events, as well as information regarding application requirements, timelines and application processing, and other regulatory requirements, including compliance with the ESA.
5. Event sponsors will provide protected species awareness training/meetings and require all event officials and participants to attend these prior to the event. The purpose of the meeting shall be to inform all parties of the potential presence of protected species (ESA-listed sea turtles, marine mammals, corals, and fish) and the civil and criminal penalties that could result from the harassment, injury, or death of these species. The event sponsor shall distribute information packages to the participants regarding ESA resources in the area of each event.
6. Marine Event permits and temporary exclusionary zones will include conditions on vessel operations, such as no wake requirements, speed restrictions, anchoring prohibitions, lookout requirements, etc., that fall under the USCG's authority to impose and are also protective of ESA resources.
7. The USCG will demonstrate to NMFS that personnel responsible for regulatory actions have the requisite knowledge, skills, ability and familiarity with COMDTINST M16751.3 and associated authorities to implement regulatory actions in the U.S. Caribbean taking into account ESA requirements.
8. If at any time the USCG deems the event unsafe or not in compliance with environmental standards and stipulations, the event will be stopped. Failure to comply with any of the permit conditions may result in cancellation or early termination of an event.
9. For all race events (i.e., poker runs, powerboat races, regattas), if weather conditions are poor or deteriorate to the point that proper sighting of animals in the racecourse area is not possible (i.e., numerous white caps and streaks created by high winds, heavy cloud cover), the event should be stopped immediately. If conditions improve to allow waterborne spotters to properly sight animals, the event may resume.
10. A copy of the After-Action Report for each action authorized by the USCG under this consultation will be provided to NMFS no later than 2 weeks following the conclusion of the event. Information should be sent to [nmfs.ser.esa.consultations@noaa.gov](mailto:nmfs.ser.esa.consultations@noaa.gov) with the subject line "After-Action Report, FPR-2017-9233, USCG Caribbean Marine Events Programmatic Consultation."

11. Safety boats shall be maneuvered and positioned so that anchoring and towing cables and ropes are not permitted to lay on or sweep over coral reefs, hard bottom, or seagrass. Vessels that are not anchoring should be held stationary over sandy bottom to minimize the potential for damage to ESA resources from slack cables or lines.

Powerboat and Jet Ski Races:

1. Racecourses will be selected based on the draft of vessels that will participate in the event and the water depths in which vessels will operate to ensure that accidental groundings do not occur during the race. When selecting racecourses, areas containing coral reefs, colonized hard bottoms, or other coralline habitats where ESA-listed corals may be present will be avoided to the maximum extent practicable.
2. Spectator areas will also be selected to ensure that water depths are adequate for the expected size and number of vessels. Uncolonized bottoms will be selected as spectator areas to the maximum extent practicable to minimize potential impacts of anchoring on sea turtle and ESA-listed coral habitats. No spectator areas will be located over coral reefs, colonized hard bottoms, or other coralline habitats where ESA-listed corals may be present.
3. The number of vessels per heat and number of heats will be clearly specified on the Marine Event permit application. In areas where the racecourse passes through narrow channels, the number of vessels per heat will be set to ensure there are no bottlenecks in order to avoid vessels trying to pass over shallow areas, which could lead to accidental groundings.
4. Participating vessels will travel to and from the racecourse under the direct supervision of race officials and operate at the speeds not to exceed 5 miles per hour (mph) until arriving at the course and at idle speed until the race begins.
5. The applicant and the USCG will coordinate with the U.S. Fish and Wildlife Service (USFWS) and the appropriate state agencies to ensure that, during sea turtle nesting season, marked and unmarked sea turtle nests are not adversely impacted by spectators on beaches.
6. The USCG will ensure that the applicant conducts thorough surveys between the beach and 100 yards past the seaward perimeter of the racecourse to ensure that no sea turtles are in the area before the race during nesting seasons of the different species of sea turtles that may be present in the area. The race will not begin until there are no sea turtles in the course or within 100 yards of the course.
7. The USCG will ensure that the applicant thoroughly surveys the racecourse for 1 hour prior to any racing activity to ensure that no sea turtles or ESA-listed marine mammals are in or within 100 yards of the course. Personnel aboard watercraft must conduct surveys. Waterborne spotters must not be assigned any other duties that could detract from their ability to keep proper lookout. All observers will be equipped with a two-way

radio dedicated exclusively to sea turtle/marine mammal monitoring in order to communicate sightings. If sea turtles or ESA-listed marine mammals are observed in or within 100 yards of the course, the race will not begin until the sea turtles and/or marine mammals have moved out of the area of their own volition.

8. The USCG will ensure that, if a sea turtle or marine mammal is spotted in or within 100 yards of the racecourse during the race, the applicant takes whatever steps are necessary to ensure that a collision with the animal is avoided. When cetaceans are sighted while a vessel is underway, the vessel should attempt to remain parallel to the animal's course. Excessive speed or abrupt changes in direction should be avoided until the cetacean has left the area. The USCG will ensure that the applicant has made all race participants and safety boats aware of their obligation to stop the race immediately if a sea turtle or marine mammal strays onto or dangerously near the course.
9. The USCG will ensure that the applicant thoroughly surveys the racecourse for 1 hour immediately after any racing activity to ensure that any sea turtles or cetaceans that may have been inadvertently struck and injured or killed can be cared for or disposed of by proper federally permitted authorities. Plans should be made for such an eventuality. Any sea turtle deaths or injuries must be reported by the next working day to the NMFS SERO Protected Resources Division at (727) 824-5312. Any cetacean death or injury should be reported to the Southeast U.S. Stranding Hotline at 305-862-2850. Sea turtle or marine mammal death or injury should also be reported to your local wildlife agency (Puerto Rico Department of Natural and Environmental Resources [PRDNER] 787-724-5700; USVI Department of Planning and Natural Resources [VIDPNR] 340-775-3972 [St. Thomas/St. John] or 340-772-3227 [St. Croix]).
10. Any other race events (shakedown runs, preliminary heats, qualifying heats, demonstrations, etc.) that could harass or threaten the safety of sea turtles or marine mammals are subject to the same precautions described above.

#### Poker Runs and Boat Parades:

1. Vessel transit routes will be selected based on the draft of vessels that will participate in the event and the water depths in which vessels will operate to ensure that accidental groundings do not occur. When selecting transit routes, areas containing coral reefs, colonized hard bottoms, or other coralline habitats where ESA-listed corals may be present will be avoided to the maximum extent practicable.
2. Vessels participating in boat parades will not exceed speeds of 5 mph.
3. Spectator areas will also be selected to ensure that water depths are adequate for the expected size and number of vessels. Uncolonized bottoms will be selected as spectator areas to the maximum extent practicable to minimize potential impacts of anchoring on sea turtle and ESA-listed coral habitats. No spectator areas will be located over coral reefs, colonized hard bottoms, or other coralline habitats where ESA-listed corals may be present.

4. The applicant and the USCG will coordinate with the USFWS and the appropriate state agencies to ensure that, during sea turtle nesting season, marked and unmarked sea turtle nests are not adversely impacted by spectators on beaches.
5. The USCG will ensure that the applicant thoroughly surveys the vessel routes for 30 minutes prior to the event to ensure that no sea turtles or ESA-listed marine mammals are in or within 100 yards of the routes. Personnel aboard watercraft must conduct surveys. Waterborne spotters must not be assigned any other duties that could detract from their ability to keep proper lookout. All observers will be equipped with a two-way radio dedicated exclusively to sea turtle/marine mammal monitoring in order to communicate sightings. If sea turtles or ESA-listed marine mammals are observed in or within 100 yards of the course, the race will not begin until the sea turtles and/or marine mammals have moved out of the area of their own volition.
6. The USCG will ensure that, if a sea turtle or marine mammal is spotted in or within 100 yards of vessel routes during these events, the applicant takes whatever steps are necessary to ensure that a collision with the animal is avoided. When cetaceans are sighted while a vessel is underway, the vessel should attempt to remain parallel to the animal's course. Excessive speed or abrupt changes in direction should be avoided until the cetacean has left the area. The USCG will ensure that the applicant has made all event participants and safety boats aware of their obligation to stop the event immediately if a sea turtle or marine mammal strays onto or dangerously near the vessel routes.
7. For poker runs, the USCG will ensure that the applicant thoroughly surveys the racecourse for 1 hour immediately after any racing activity to ensure that any sea turtles or cetaceans that may have been inadvertently struck and injured or killed can be cared for or disposed of by proper federally permitted authorities. Plans should be made for such an eventuality.
8. Any sea turtle deaths or injuries must be reported by the next working day to the NMFS Protected Resources Division at (727) 824-5312. Any cetacean death or injury should be reported to the Southeast U.S. Stranding Hotline at 305-862-2850. Sea turtle or marine mammal death or injury should also be reported to your local wildlife agency (PRDNER 787-724-5700; VIDPNR 340-775-3972 [St. Thomas/St. John] or 340-772-3227 [St. Croix]).

Regattas:

1. Racecourses will be selected based on the size of the sailboats and their corresponding keel length that will participate in the event and the water depths in which vessels will operate to ensure that accidental groundings do not occur during the race. When selecting racecourses, areas containing coral reefs, colonized hard bottoms, or other coralline habitats where ESA-listed corals may be present will be avoided to the maximum extent practicable.
2. Spectator areas will also be selected to ensure that water depths are adequate for the expected size and number of vessels. Uncolonized bottoms will be selected as spectator



areas to the maximum extent practicable to minimize potential impacts of anchoring on sea turtle and ESA-listed coral habitats. No spectator areas will be located over coral reefs, colonized hard bottoms, or other coralline habitats where ESA-listed corals may be present.

3. The number of sailboats race and number of races per day will be clearly specified on the Marine Event permit application. Racecourses will not pass through narrow channels or contain other potential bottlenecks that could lead to a concentration of participant vessels in an area in order to avoid vessels trying to pass over shallow areas, which could lead to accidental groundings.
4. The applicant and the USCG will coordinate with the USFWS and the appropriate state agencies to ensure that, during sea turtle nesting season, marked and unmarked sea turtle nests are not adversely impacted by spectators on beaches.
5. The USCG will ensure that the applicant conducts thorough surveys between the beach and 100 yards past the seaward perimeter of the racecourse to ensure that no sea turtles are in the area before the race during nesting seasons of the different species of sea turtles that may be present in the area. The race will not begin until there are no sea turtles in the course or within 100 yards of the course.
6. The USCG will ensure that the applicant thoroughly surveys the racecourse for 1 hour prior to any racing activity to ensure that no sea turtles or ESA-listed marine mammals are in or within 100 yards of the course. Personnel aboard watercraft must conduct surveys. Waterborne spotters must not be assigned any other duties that could detract from their ability to keep proper lookout. If sea turtles or ESA-listed marine mammals are observed in or within 100 yards of the course, the race will not begin until the sea turtles and/or marine mammals have moved out of the area of their own volition.
7. The USCG will ensure that, if a sea turtle or marine mammal is spotted in or within 100 yards of the racecourse during the race, the applicant takes whatever steps are necessary to ensure that a collision with the animal is avoided. When cetaceans are sighted while a vessel is underway, the vessel should attempt to remain parallel to the animal's course. Excessive speed or abrupt changes in direction should be avoided until the cetacean has left the area. The USCG will ensure that the applicant has made all race participants and safety boats aware of their obligation to stop the race immediately if a sea turtle or marine mammal strays onto or dangerously near the course.
8. The USCG will ensure that the applicant thoroughly surveys the racecourse for 1 hour immediately after any racing activity to ensure that any sea turtles or cetaceans that may have been inadvertently struck and injured or killed can be cared for or disposed of by proper federally-permitted authorities. Plans should be made for such an eventuality. Any sea turtle deaths or injuries must be reported by the next working day to the NMFS Protected Resources Division at (727) 824-5312. Any cetacean death or injury should be reported to the Southeast U.S. Stranding Hotline at 305-862-2850. Sea turtle or marine mammal death or injury should also be reported to your local wildlife agency (PRDNER

787-724-5700; VIDPNR 340-775-3972 [St. Thomas/St. John] or 340-772-3227 [St. Croix]).

9. Any other race events (shakedown runs, preliminary heats, qualifying heats, demonstrations, etc.) that could harass or threaten the safety of sea turtles or marine mammals are subject to the same precautions described above.

#### Fishing Tournaments:

1. Lines will not be cast where sea turtles are surfacing to breathe.
2. If participants hook or entangle a sea turtle, the turtle will gently be brought close to the person who has hooked or entangled it and a dip net or a firm hold on the front flippers and shell will be used to safely lift the turtle out of the water and onto the vessel.
3. The line should be cut close to the hook and entangled line should be removed from around the turtle. The turtle's mouth and flipper claws should be avoided while doing this. Blunt scissors or a blunt knife should be used to cut the line.
4. Hooked or entangled turtles should never be lifted above the water by pulling the line as this will result in further injury. If the distance to the vessel from the water is too great to bring the turtle safely on board, cut the line as short as possible to release the turtle.
5. All hooked or entangled sea turtles, even if freed without incident, should be reported to the appropriate wildlife agency. Turtles with serious cuts and/or ingested or deeply imbedded hooks need veterinary care. The turtle should be retrieved as described, kept in the shade, and the local wildlife agency should be contacted immediately (PRDNER 787-724-5700; VIDPNR 340-775-3972 [St. Thomas/St. John] or 340-772-3227 [St. Croix]).

#### Fireworks Events:

1. Barges on which fireworks will be stored and from which they will be fired will anchor in uncolonized bottoms to the maximum extent practicable. No barges will anchor over coral reefs, colonized hard bottoms, or other coralline habitats where ESA-listed corals may be present.

#### Establishment of Exclusionary Zones:

1. No anchoring areas within these zones will be established in areas where ESA-listed corals, coral reefs, colonized hard bottoms, or other coralline resources are located (confirmed by a survey, a copy of which will be provided to NMFS).
2. If the zone or zones require the installation of temporary markers, the PDCs detailed in the JAXBO consultation will be followed as part of the request for USACE authorization of the installation of temporary markers.

3. Zones will be established in a way that permits vessel transit around or outside them through areas with water depths appropriate to the vessel traffic in the area in order to avoid accidental groundings in areas containing ESA-listed corals and critical habitat.

*Project-Specific Review and Consultation Process for the Proposed Action*

Prior to authorizing any new permits or establishing temporary exclusionary zones, the USCG must complete a project-specific review to insure all of the relevant PDCs are met.

If a proposed activity does not comply with the PDCs established in this programmatic consultation, and/or introduces potential effects not previously considered, and/or is likely to result in adverse effects to ESA-listed species or designated critical habitat, then the USCG must submit a request for consultation for the individual activity to NMFS SERO pursuant to the requirements of ESA section 7(a)(2).

*Programmatic Review*

The USCG and NMFS SERO will conduct an annual programmatic review of the operation of the marine events program and designation of temporary exclusionary zones under the USCG authorities detailed in COMDTINST M16751.3, 33 CFR Parts 6, 100, 126, 160, and 165, and 49 CFR Parts 171-180. This review will evaluate, among other things, whether the scope of the activity is consistent with the description of the proposed activities; whether the nature and scale of the effects predicted (see below) continue to be valid; whether the PDCs (see above) are being complied with and continue to be appropriate; and whether the USCG is complying with project-specific review to insure the relevant PDCs are met. To assist in this annual review, the USCG will submit annual reports within 30 days of the end of the first year after conclusion of this consultation and within 30 days of the end of each subsequent year in which the USCG continues to permit marine events and designate temporary exclusion zones under the authorities considered in this consultation. The annual report will include the following information:

1. Date of each permitted marine event or dates temporary exclusionary zones were in place and a description of each activity.
2. USCG permit number for marine events and the name of each event.
3. Contact information and address of the event sponsor for each event.
4. Latitude and longitude, formatted in decimal degrees to five places, for each event using the center point of the racecourse, vessel routes, and/or exclusionary zones. Longitudes should have a negative symbol before them to denote the western hemisphere.
5. Whether compliance with all relevant PDCs for each event was met.
6. Benthic habitat and ESA resources surveys or other information collected for a particular activity.

Information for the annual review should be submitted electronically to [nmfs.ser.esa.consultations@noaa.gov](mailto:nmfs.ser.esa.consultations@noaa.gov) with the subject line "Annual Review, FPR-2017-9233, USCG Caribbean Marine Events Programmatic Consultation".

**Effects of the Action**

Under the ESA, "effects of the action" means the direct and indirect effects of an action on the ESA-listed species or designated critical habitat, together with the effects of other activities that

are interrelated or interdependent with that action, that will be added to the environmental baseline (50 CFR § 402.02). The applicable standard to find that a proposed action is not likely to adversely affect ESA-listed species or designated critical habitat is that all of the effects of the action are expected to be discountable, insignificant, or completely beneficial. Beneficial effects are contemporaneous positive effects without any adverse effects to the species or critical habitat. Insignificant effects relate to the size of the impact and should never reach the scale where take occurs. Discountable effects are those extremely unlikely to occur.

We considered the potential effects of the proposed action on the four species of whales (sperm, sei, blue, and fin), four species of sea turtles (loggerhead Northwest Atlantic DPS, green North and South Atlantic DPS, hawksbill, and leatherback), two species of fish (Nassau grouper and scalloped hammerhead shark Central and South Atlantic DPS), and seven species of coral (elkhorn, staghorn, pillar, rough cactus, boulder star, mountainous star, and lobed star) that are in the action area and may be affected by the action. We also considered potential effects of the proposed action on designated critical habitat for hawksbill sea turtles, green sea turtles (North Atlantic DPS), leatherback sea turtles, and elkhorn and staghorn corals.

**Whales and Sea Turtles:** Leatherback sea turtles are a pelagic species that only come inshore during nesting season and do not use nearshore habitats to shelter or forage. Loggerhead sea turtles are not common around Puerto Rico and USVI. The only nesting of these animals reported for Puerto Rico has been on the east coast of the main island and a beach on Culebra Island, also located off the east coast of the main island (PRDNER, unpublished data) and on Buck Islands, St. Croix (National Park Service 2002, 2003, 2004, 2005). Similarly, over a period of more than 20 years, only four strandings of this species have been reported in Puerto Rico (PRDNER, unpublished data) and one in waters off St. Croix, USVI in 2003 (Virgin Islands Department of Planning and Natural Resources, unpublished data). ESA-listed whale species are found in deep waters off the shelf edge predominantly during the months of their winter migrations through the warmer waters of the Caribbean Sea. In contrast, green and hawksbill sea turtles are common in nearshore and shelf edge waters around the main island of Puerto Rico and its surrounding islands and cays and USVI year-round. ESA-listed corals are present in various coral reef and colonized hard ground habitats ranging from shallow, nearshore waters to the shelf edge around the islands.

Leatherback sea turtles and ESA-listed whale species could be directly affected by vessel strikes during offshore powerboat races and fishing tournaments, as these events take place in deeper waters. Leatherback sea turtles could also be affected by vessel strikes due to the operation of vessels associated with inshore marine events or the establishment and patrolling of temporary exclusionary zones where these occur in close proximity to nesting beaches during leatherback nesting season. Loggerhead, hawksbill, and green sea turtles could also be directly affected by vessel strikes associated with the operation of vessels associated with inshore and offshore marine events and temporary exclusionary zones. However, we believe these effects will be discountable due to the history of the events identified in Tables 2 and 3, for which the USCG has no record of collisions with marine mammals or sea turtles. The USCG has no record of sightings of sea turtles or ESA-listed whale species as part of the required observer monitoring associated with permitted marine events in the U.S. Caribbean that have occurred in the past. The majority of events, with the exception of boat parades, during which vessels operate very slowly and follow a set course, and fireworks displays, which are done from a stationary barge, are

conducted during daylight hours, so observers can easily spot sea turtles and whales that may be affected by an activity, as required by the PDCs. In addition, the required implementation of the PDCs that include the use of observers prior to, during, and following events, including beach patrols in areas where sea turtles may be nesting, the restrictions on vessel transit and speeds, and the safety trainings that will be given to event participants will ensure the record of no collisions with sea turtles and marine mammals during marine events in the U.S. Caribbean continues.

The behavior of sea turtles and marine mammals may be temporarily altered because the animals are likely to swim away from concentrations of motorized vessels, swimmers, sailboats, and other on-water groupings of vessels and people associated with permitted marine events or the establishment and management of temporary exclusion zones. None of the activities being considered as part of this consultation would result in barriers to movement, so animals are expected to swim away from the disturbance associated with a particular action. The required PDCs will minimize behavioral impacts to sea turtles and marine mammals by requiring observers in order to ensure animals are not in areas where vessels will be concentrated, requiring a delay of race starts if animals are within the racecourse, and establishing speed restrictions outside racecourses and when races are not underway. Because the activities considered in this consultation are all of short duration and there will be no restrictions to movement of animals within the action area associated with particular activities, we believe any temporary changes in behavior would result in insignificant effects to sea turtles and marine mammals.

In terms of fishing tournaments, sea turtles could be accidentally hooked or entangled in lines, although the USCG has no record of any impacts to sea turtles during the fishing tournaments that were permitted in the U.S. Caribbean in the past (and considered in the 2009 consultation). In addition, most of the fishing tournaments that take place in Puerto Rico and USVI are not issued Marine Event permits because they do not meet the criteria described in COMDTINST M16751.3 and described in the description of the action section above. While NMFS believes the hooking or entanglement of a sea turtle to be unlikely given the lack of any record of interactions with sea turtles from the 2009 consultation when the USCG was still issuing Marine Event permits for annually occurring fishing tournaments, we have included handling procedures for sea turtles that may be hooked or entangled during fishing tournaments in the PDCs for this consultation. With the implementation of the PDCs for sea turtle handling should animals be hooked or entangled and the lack of evidence of the hooking or entanglement of sea turtles during fishing tournaments based on USCG records from previously permitted events in the U.S. Caribbean, NMFS believes fishing tournaments will have a discountable effect on sea turtles.

Nassau Grouper and Scalloped Hammerhead Shark: Puerto Rico once had significant fisheries landings of Nassau grouper and at least one major spawning aggregation site on the southwest of Puerto Rico that seems to have disappeared along with the population of this fish (NMFS 2013). There are occasional reports of juvenile settlement in shallow nearshore waters suggesting there are either unknown spawning aggregation sites, mating in small groups, or influxes of larvae from other Caribbean islands (Aguilar-Perera et al. 2006). Nassau grouper likely also had major spawning aggregation sites off St. Thomas and fish can still be observed during spawning season off the north coast and at Grammanik Bank off the south coast (Jackson et al. 2014; Kadison et al. 2009). Data from the Marine Recreational Information Program (MRIP) from Puerto Rico

from 2001-2016 indicate that scalloped hammerhead sharks, neonates and juveniles, rather than reproductive adults, are caught in recreational fisheries, although some of the sharks may actually be bonnetheads and were misidentified by fishers (M. Wunderlich, NMFS SERO, pers. comm. to L. Carrubba, NMFS OPR, October 13, 2017). Shark research conducted in St. Thomas and St. John, USVI, resulted in the capture of nine neonate scalloped hammerhead sharks in one of the bays used in the study over a one-year period (DeAngelis 2006). Nassau grouper and scalloped hammerhead juveniles use coastal embayments, seagrass beds, coral reefs, and red mangroves as habitats. Adult Nassau grouper use coral reefs in deeper waters as habitat while adult scalloped hammerhead sharks are considered oceanic, though they may cruise over coral reefs in deeper waters.

Adult Nassau grouper and scalloped hammerheads are not likely to be affected by any activities under the Marine Events Program. Fishing tournaments are the only activity that would be held in deeper waters where these animals may be present, but the permitting of fishing tournaments under the Marine Events Program in the U.S. Caribbean is rare (there have been no fishing tournaments permitted since the 2009 consultation was completed because of the change in Marine Event permitting requirements) and these species are not the target of these fishing tournaments. In addition, in the past when fishing tournaments were permitted under the Marine Events Program in the U.S. Caribbean, there were no reports of participants catching Nassau grouper or scalloped hammerhead sharks.

Marine events could affect younger life stages of Nassau grouper and scalloped hammerhead sharks through potential temporary impacts to habitat from accidental groundings, vessel anchoring, and anchoring of temporary marker buoys, barges, or other structures associated with a marine event or the demarcation of temporary exclusion zones. The installation of buoys and other temporary markers that are regulated by the USACE are covered under the JAXBO consultation and not discussed further here. The possible temporary impacts to habitat of younger life stages of Nassau grouper and scalloped hammerhead shark from accidental grounding of vessels and anchoring of participant and spectator vessels will be minimized through the implementation of the required PDCs that restrict the locations of racecourses, spectator areas, and other areas where vessel transit and anchoring will occur to ensure that water depths are adequate for the draft of the vessels, no impacts to coral habitats occur, and impacts to seagrass habitat are avoided as much as possible. Given the limited numbers of marine events in the U.S. Caribbean authorized by the USCG annually, the required PDCs that will insure impacts to benthic habitats are avoided and minimized, as well as the extensive coral and seagrass habitats that are available to younger life stages of Nassau grouper and scalloped hammerhead sharks in the U.S. Caribbean, we believe the effects to these species from USCG permitted marine events and the establishment of temporary exclusionary zones will be insignificant.

Corals: ESA-listed corals could be affected by the activities covered under this consultation, including nearshore and offshore activities, due to the potential for accidental groundings and anchoring of vessels and the placement of temporary in-water structures such as marker buoys. As stated previously, the placement of temporary marker buoys and other temporary in-water structures and required implementation of PDCs is covered under the JAXBO consultation and the effects and conclusions related to these temporary structures will not be discussed further here. In terms of accidental groundings, the required implementation of the PDCs that specify

how racecourses, spectator areas, and other areas that may require vessel anchoring are to be selected, as well as limits on vessel speeds and locations of particular activities to protect areas containing ESA-listed corals limit the possibility for direct impacts to ESA-listed corals associated with vessel operation and anchoring. The majority of events are conducted during daylight hours, which, along with the restrictions on vessel speeds and location of activities, reduces the possibility of vessel groundings because operators will be able to see and avoid shallow areas where ESA-listed corals may be present. The USCG found no history of accidental groundings or other habitat impacts associated with marine events it has permitted in the U.S. Caribbean. Therefore, NMFS believes the potential effects of USCG permitted marine events and the establishment of temporary exclusionary zones in the U.S. Caribbean on ESA-listed corals will be discountable.

**Green sea turtle critical habitat:** Critical habitat for the North Atlantic DPS of green sea turtles includes waters extending seaward three nautical miles from the mean high water line of Culebra Island, Puerto Rico, including outlying cays (Cayo Norte, Cayo Ballena, Cayos Geniquí, Isla Culebrita, Arrecife Culebrita, Cayo de Luís Peña, Las Hermanas, El Mono, Cayo Lobo, Cayo Lobito, Cayo Botijuela, Alcarraza, Los Gemelos, and Piedra Steven), that provide habitat necessary for the continued survival and recovery of green sea turtles in the region. This area provides important green sea turtle development habitat. Designated critical habitat for the green sea turtle North Atlantic DPS in Culebra, Puerto Rico has the potential to be affected by vessel operation and anchoring associated with USCG regulatory actions such as marine events and the designation of temporary exclusionary zones that are the subject of this consultation. Seagrass beds that serve as the principal dietary component of juvenile and adult green turtles and coral reefs and other topographic features within the waters around Culebra Island and surrounding islands and cays that provide green sea turtles with shelter during interforaging periods and serve as refuge from predators are in areas where regulatory actions including permitted marine events and the establishment of temporary exclusionary zones as described in this consultation could take place. Benthic mapping by NOAA's Biogeography Program documented 1,444 acres of seagrass, 22,556 acres of coral reefs and colonized hard bottom, and 32,068 acres of unconsolidated bottom without seagrass or coral around all of Culebra (Kågesten et al. 2015). The implementation of the PDCs for protection of benthic habitats will minimize the potential for accidental groundings by requiring that racecourses and other vessel operations take place in areas with water depths sufficient to accommodate the draft of the vessel and sailboat keel lengths. Implementation of the PDCs will also minimize the potential impacts of vessel anchoring associated with permitted marine events and the establishment of temporary exclusionary zones because the PDCs require that anchoring take place in uncolonized substrate to the maximum extent practicable. Therefore, we believe the potential effect to seagrass and coral habitats used by green sea turtles around Culebra from the proposed action is insignificant.

**Hawksbill sea turtle critical habitat:** The essential features for hawksbill sea turtle critical habitat include breeding/nesting areas, food resources, water quality and quantity, and vegetation and soil types. Areas containing these features have been identified as waters extending from the mean high water line of Mona and Monito Islands, Puerto Rico. These islands are 41 miles from mainland Puerto Rico. Beaches on Mona support significant numbers of hawksbill sea turtle nests each year. There are extensive coral reefs and hard bottom and some seagrass beds around the east, west, and south coasts of Mona Island and one area of shallower water off the southwest



coast of Monito Island that contains coral reefs and colonized hard bottom. Mapping by NOAA's Biogeography Program documented approximately 65 acres of seagrass beds, 2,000 acres of coral reefs and colonized hard bottom, and 109 acres of unconsolidated bottom without colonization of corals or seagrass around Mona Island.<sup>5</sup>

Designated critical habitat for hawksbill sea turtles around Mona and Monito has the potential to be affected primarily by vessel operation associated with the establishment of temporary exclusionary zones. We do not anticipate permitted marine events to take place in hawksbill sea turtle critical habitat due to the location of Mona and Monito Islands in relation to the main island of Puerto Rico and because the islands and surrounding waters form a marine protected area managed by PRDNER. There have been no requests for or permitted marine events in the area of Mona and Monito based on information provided by the USCG as part of this and the 2009 ESA Section 7 consultation. However, there have been activities that required the establishment of temporary exclusionary zones such as the M/V Jireh grounding on the southern shore of Mona Island. The implementation of the PDCs will limit the potential for impacts to areas containing seagrass or corals containing the essential feature of hawksbill sea turtle critical habitat because vessel operations must take place in areas with water depths that are adequate to accommodate the draft of the vessels and anchoring of vessels in uncolonized bottom is required to the maximum extent practicable. We anticipate that any potential impacts to hawksbill sea turtle critical habitat would be minor. We also anticipate that any potential impacts will be infrequent, as temporary exclusionary zones will only be established under special circumstances such as the example of the large vessel grounding. Because of the distance from mainland Puerto Rico, we do not anticipate numerous activities taking place in hawksbill sea turtle critical habitat. Therefore, we believe the potential effect to hawksbill sea turtle critical habitat from the proposed action is insignificant.

Leatherback sea turtle critical habitat: Leatherback sea turtle critical habitat is designated in waters adjacent to Sandy Point Beach, St. Croix, USVI. This area provides courting and breeding habitat and access to and from nesting areas on Sandy Point Beach. Based on information from the USCG, a sailboat parade around St. Croix is the only permitted marine event that passed through leatherback sea turtle critical habitat. No anchoring of vessels occurred as a result of the event and sailboats transited through deep waters with no potential for accidental grounding. Because the area adjacent to leatherback critical habitat is a National Wildlife Refuge managed by the USFWS, we do not anticipate permitted marine events that require establishment of a racecourse and spectator area to take place in this area. There have been no requests for Marine Event permits specific to the area of Sandy Point Beach though there is a sailboat parade that passes through critical habitat based on a review of the information provided by the USCG and our records from this and the 2009 ESA consultation. Therefore, we believe the ability of the area to function as courting and breeding habitat for leatherback sea turtles would not be affected by the proposed action.

Similarly, the ability of leatherback sea turtles to access nesting areas on Sandy Point Beach would not be affected because all marine events except fireworks displays generally take place during the day (poker runs may generate vessel traffic at night and some boat parades occur at night, but neither of those activities is expected to take place off Sandy Point Beach at night

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<sup>5</sup> Approximate acreage estimated from benthic mapping described in Kendall, M.S., et al. 2001.



during nesting season and poker runs are not expected off Sandy Beach at all), and fireworks displays permitted in USVI have always been located in areas where the human population is concentrated, such as Charlotte Amalie in St. Thomas. If a marine event or temporary exclusionary zone was established in leatherback critical habitat, it would very likely occupy a small portion of the critical habitat area, based on the small size of USCG permitted marine events in the U.S. Caribbean that have taken place to date. The activity would also likely be of short duration, as most marine events take place over several hours, with speedboat races and regattas being the only events that sometimes take place over a few days and, as stated, these events are not expected to occur adjacent to the refuge. A temporary exclusionary zone established by the USCG for a marine event would be of short duration as well, lasting only as long as the event. A temporary exclusionary zone could also be established for a vessel grounding or other response action but would be infrequent in nature. No vessel groundings have been reported in leatherback critical habitat. Therefore, we believe the potential effect to leatherback sea turtle critical habitat from the proposed action is insignificant.

Elkhorn and staghorn coral critical habitat: Designated critical habitat for elkhorn and staghorn corals in Puerto Rico and USVI has the potential to be affected by the proposed action, particularly vessel operations. The Puerto Rico unit is approximately 1,383 mi<sup>2</sup>, the St. Thomas/St. John unit is approximately 121 mi<sup>2</sup>, and the St. Croix unit is approximately 126 mi<sup>2</sup>. While the essential feature of elkhorn and staghorn coral critical habitat is not present throughout the entirety of these marine areas, as noted above in the hawksbill and green sea turtle critical habitat paragraphs, NOAA benthic habitat mapping has revealed that there are extensive areas containing coral habitats in the action area. Areas containing the essential feature of elkhorn and staghorn coral critical habitat are present throughout the action area. Elkhorn and staghorn coral critical habitat could be damaged due to operation of vessels associated with permitted marine events and the establishment of temporary exclusionary zones, primarily through potential anchoring in coral habitat or grounding of vessels. However, the implementation of the PDCs requiring that no anchoring take place in areas containing the essential feature of elkhorn and staghorn coral critical habitat, the establishment of racecourses and other vessel operations in areas with water depths that are adequate for the draft of the vessel, and required speed limits will ensure that the potential for accidental groundings and vessel anchoring in areas containing the essential feature of elkhorn and staghorn coral critical habitat is minimal. Based on information from the USCG in our project file, including information from the previous 2009 consultation, no accidental groundings have occurred as a result of permitted marine events or the establishment and management of temporary exclusionary zones. Therefore, we anticipate accidental groundings and vessel anchoring damage to coral critical habitat, if it occurs at all, would be minor. We believe the impacts to elkhorn and staghorn coral associated with vessel operations as part of the proposed action will be insignificant.

#### *Additive Effects*

When completed according to the PDCs of this programmatic consultation, we conclude the powerboat and jet ski races, poker runs, boat parades, regattas, fishing tournaments, fireworks events, miscellaneous events, and establishment of temporary exclusionary zones are not likely to adversely affect ESA-listed sea turtles, whales, Nassau grouper, scalloped hammerhead sharks, or corals, or designated critical habitat for green (North Atlantic DPS), leatherback, and hawksbill sea turtles and elkhorn and staghorn corals. We now must determine if, when

considered additively, the activities authorized by the USCG under its authorities related to marine navigation and safety that are the subject of this consultation are likely to adversely affect the above-mentioned species and designated critical habitat. It is necessary to analyze additive effects because this programmatic consultation will cover all applicable marine events in the U.S. Caribbean until such time as the Marine Events Program changes or reinitiation of consultation is required. In some cases, the same marine events occur annually and in other cases a number of marine events may occur in the same locations in one year such as San Juan Bay and Charlotte Amalie Harbor. Therefore, we analyzed those routes of effects that have the potential to be additive due to chronic stress or cumulative effects.

Green and hawksbill sea turtles may be affected by the additive effects of impacts to forage and refuge habitat associated with permitted marine events and the establishment of temporary exclusionary zones. However, given the small number of activities that occur in the U.S. Caribbean annually (see Tables 2 and 3) and the required PDCs to protect benthic habitat from the impacts of vessel anchoring and operation, we believe habitat impacts associated with the proposed action will be minimal. Based on the extent of refuge and foraging habitat available to green and hawksbill sea turtles in the U.S. Caribbean, any impacts due to the proposed action would be insignificant compared to the amount of habitat available in the action area. Thus, we consider the potential additive effect of impacts to green and hawksbill sea turtle refuge and forage habitat from the proposed action to be insignificant.

Sea turtles and whales could be adversely affected by localized temporary increases in vessel traffic associated with the additive effects of permitted marine events and the establishment and management of temporary exclusionary zones in the action area. However, we do not anticipate a significant number of activities to be authorized by the USCG, based on the record of USCG regulatory actions associated with marine events and the establishment of temporary exclusionary zones provided by the USCG for this consultation and in our files from previous consultations, including the ESA Section 7 consultation completed in 2009 for events that were permitted annually in the U.S. Caribbean at the time of consultation. The USCG and we have no record of vessel interactions with sea turtles or marine mammals during or associated with permitted marine events and temporary exclusionary zone establishment and management. The majority of the activities will take place in nearshore waters, and vessels participating in the activities considered in this consultation are generally small in size. Therefore, additive effects to ESA-listed whales as a result of the proposed action are unlikely.

Sea turtles and ESA-listed whales are highly mobile and likely would avoid the areas where vessels associated with permitted marine events or the establishment and management of temporary exclusionary zones are concentrated while these activities are being conducted and generating noise from things like high-speed races. A very conservative estimate by a NMFS fisheries biologist states that an activity would have to introduce more than 300 new vessels into an area used by sea turtles to potentially result in a single take of sea turtles in a given year (Barnette 2013). Given that our records and information provided by the USCG indicate that only races involving motorized vessels result in large numbers of vessels in an area and on average the largest activities have had 60 participant vessels or less and 30 or fewer spectator vessels, the activities considered in this consultation are not likely to increase vessel traffic in any single area to the level that would be required in order to potentially result in a single take of

a sea turtle. Therefore, given the low likelihood of a vessel strike, the risk of injury or death to ESA-listed whales and sea turtles from interactions with vessels associated with marine events and other USCG regulatory activities considered in this consultation is discountable. We believe that the effects will be limited to temporary avoidance of an area while vessels are in use; therefore, we consider the potential additive effect of vessel activities on ESA-listed whales and sea turtles to be insignificant.

Sea turtles could be adversely affected by the additive effects of hooking and entanglement associated with fishing tournaments. Fishing tournaments involve the use of hook-and-line gear by several individuals on each participant vessel. Based on our records from the previous marine events consultation with USCG for annually occurring events previously permitted in the U.S. Caribbean that was completed in 2009, as well as information provided by the USCG for this programmatic consultation, no sea turtle hooking or entanglement has been reported during USCG-permitted fishing tournaments conducted in the U.S. Caribbean. Given that any fishing tournaments permitted by the USCG as part of the proposed action will be required to meet the PDCs for fishing tournaments, we believe that the risk of hooking and entanglement of sea turtles is discountable. Thus, the potential additive effect of hooking and entanglement is considered discountable.

Younger life stages of Nassau grouper and scalloped hammerhead shark could be affected by the additive effects of impacts to forage and refuge habitat associated with permitted marine events and the establishment of temporary exclusionary zones. Given the small number of activities that occur in the U.S. Caribbean annually (see Tables 2 and 3) and the required PDCs to protect benthic habitat from the impacts of vessel anchoring and operation, habitat impacts associated with the proposed action will be minimal. There are extensive coral and seagrass habitats and numerous coastal embayments in the U.S. Caribbean that may provide habitat to younger life stages of Nassau grouper and scalloped hammerhead sharks. Any impacts to benthic habitat that may be used by these species due to the proposed action would be very small compared to the amount of habitat available in the action area. Thus, we consider the potential additive effect of impacts to Nassau grouper and scalloped hammerhead shark as a result of impacts to habitat from the proposed action to be insignificant. As noted previously, the proposed action is not expected to have any effect on adult Nassau grouper and scalloped hammerhead shark because of the PDCs restricting activities in areas containing coral habitats and the nearshore location of marine events and temporary exclusionary zones. Therefore, no additive effects to adults of either species are expected.

Activities authorized under the proposed action could result in additive effects to ESA-listed corals associated with vessel operation. The PDCs in this programmatic consultation have requirements related to the design of racecourses and transit routes for some events and siting of spectator and other areas such as temporary exclusionary zones to avoid anchoring of vessels in areas containing ESA-listed corals. While some racecourses may be located in areas containing ESA-listed corals, the PDCs require that sufficient water depths be present to ensure that accidental groundings associated with vessel operation during activities considered in this programmatic consultation do not occur. Based on the information in our project files and provided by the USCG, there are no records of accidental groundings or other interactions with ESA-listed corals from past USCG authorized activities of the type included in this

programmatic consultation. Given that activities authorized by the USCG will be required to meet the PDCs included in this programmatic consultation and based on information regarding previous activities of the same type as those covered in this programmatic consultation, we believe that the impacts to ESA-listed corals associated with the proposed action are discountable. Thus, we consider the potential additive effect of the proposed action on ESA-listed corals to be discountable.

Activities authorized under by the USCG as part of the proposed action considered in this programmatic consultation could lead to additive effects to green sea turtle (North Atlantic DPS), hawksbill sea turtle, leatherback sea turtle, and elkhorn and staghorn coral critical habitat associated with anchoring and operation of vessels. The PDCs in this programmatic consultation have anchoring requirements for vessels associated with USCG-authorized activities considered in this programmatic consultation to protect designated critical habitat from damage associated with vessel anchoring. The PDCs also have requirements related to the establishment of racecourses and transit routes and other vessel operations associated with the activities considered in this programmatic consultation to ensure that all vessel operations occur in waters with depths that are adequate to avoid accidental groundings based on the draft of the vessels and the length of the keel for sailboats. These requirements will also prevent interference with leatherback sea turtle courtship and mating in their designated critical habitat off Sandy Point Beach in St. Croix. As noted previously, there is no record of accidental groundings or other impacts to coral reefs or colonized hard bottom or to sea turtle themselves associated with activities previously permitted by the USCG that are of the same type as those considered in this programmatic consultation. Therefore, we concluded that the potential effects of vessel anchoring and other vessel operations on hawksbill, green, leatherback, and elkhorn and staghorn coral critical habitat are discountable. Thus, we consider the potential additive effect of vessel anchoring associated with the proposed action on designated critical habitat for hawksbill, green, and leatherback sea turtles, and elkhorn and staghorn coral to be discountable.

### **Conclusion**

Based on this analysis, NMFS concurs with the USCG that all effects of the proposed action are not likely to adversely affect the subject ESA-listed species and/or designated critical habitats.

### **Reinitiation of Consultation**

Reinitiation of consultation is required and shall be requested by the USCG, or by NMFS, where discretionary federal involvement or control over the action has been retained or is authorized by law and (1) new information reveals effects of the action that may affect an ESA-listed species or designated critical habitat in a manner or to an extent not previously considered; (2) the identified action is subsequently modified in a manner that causes an effect to the ESA-listed species or designated critical habitat that was not considered in this concurrence letter; or if (3) a new species is listed or critical habitat designated that may be affected by the identified action (50 CFR § 402.16).

Please direct questions regarding this letter to Dr. Lisamarie Carrubba, Consultation Biologist, Office of Protected Resources, Silver Spring, 301-427-8493 or [lisamarie.carrubba@noaa.gov](mailto:lisamarie.carrubba@noaa.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'Cathryn E. Tortorici', with a long horizontal stroke extending to the right.

Cathryn E. Tortorici  
Chief, ESA Interagency Cooperation Division  
Office of Protected Resources

cc: F/SER4 – Wilber, Rivera  
F/SER3 – Bernhart  
USCG – Lehman, López

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