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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XF129

Addition of Species to the Annexes of the Protocol Concerning Specially Protected Areas and Wildlife in the Wider Caribbean Region

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for public comments.

SUMMARY: During a meeting of the Scientific and Technical Advisory Committee (STAC) under the Protocol to the Cartagena Convention on Specially Protected Areas and Wildlife (SPAW Protocol), held in Miami, Florida in November 2016, twelve species of fauna were nominated and recommended to be added to the Annexes of the SPAW Protocol. The Department of State, U.S. Fish and Wildlife Service, and National Marine Fisheries Service solicit comment on the recommendations to add these twelve species to the Annexes.

DATES: Comments must be received by [*INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

ADDRESSES: You may submit comments on the recommendations to add the twelve species to the Annexes of the SPAW Protocol, by including NOAA-NMFS-2016-0166, by either of the following methods:

- *Federal e-Rulemaking Portal:* Go

to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0166. Click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Addition of Species to the Annexes of the SPAW Protocol, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Room 13535, Silver Spring, MD 20910.

Instructions: NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Chelsey Young, NOAA (301) 427-8491; chelsey.young@noaa.gov; and Rosemarie Gnam, U.S. Fish and Wildlife Service (703) 358-1708; rosemarie_gnam@fws.gov. Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

The SPAW Protocol is a protocol to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (Cartagena

Convention or Convention). There is also a protocol to the Convention addressing land-based sources of pollution and a protocol addressing regional cooperation on oil pollution preparedness and response. The SPAW Protocol was adopted in 1990 and entered into force in 2000. The United States ratified the SPAW Protocol in 2003. There are currently 16 State Parties to the SPAW Protocol from throughout the Wider Caribbean Region.

Participants at the November 2016 meeting of the STAC to the SPAW Protocol included representatives from: Antigua and Barbuda, Bahamas, Belize, Colombia, Dominican Republic, France, Grenada, Guyana, Jamaica, the Netherlands, Saint Lucia, and the United States of America. Representatives of several non-governmental organizations also attended as observers.

The U.S. delegation included representatives from the U.S. Department of State; the National Oceanic and Atmospheric Administration, National Marine Fisheries Service and National Ocean Service. Copies of the official “Recommendations of the Meeting,” a full list of participants, and the text of the Cartagena Convention and SPAW Protocol can be obtained at www.cep.unep.org/meetings/2016-meetings/7th-spaw-stac.

Convention and Convention Area

The Cartagena Convention is a regional agreement for the protection and development of the marine environment of the wider Caribbean. The Convention was adopted in 1983 and entered into force in 1986. The United States ratified the Convention in 1984. The Convention area includes the marine environment of the Gulf of Mexico, the Caribbean Sea and the adjacent areas of the Atlantic Ocean south of lat. 30° N. and within 200 nautical miles (nmi) of the Atlantic coasts of the Parties. The United States’

responsibility within this Convention area includes: U.S. waters off of Puerto Rico, the Virgin Islands, and peninsular Florida, including the Atlantic coast; the waters off of a number of islands including coastal barrier islands and the Florida Keys; and the Gulf of Mexico waters under U.S. jurisdiction. The SPAW Protocol provides that each Party may designate related terrestrial areas over which they have sovereignty and jurisdiction (including watersheds) to be covered by the SPAW Protocol. The United States has not designated any terrestrial areas under the SPAW Protocol and “does not intend to designate a terrestrial area under the Protocol unless requested to do so by an interested state or territory . . .” (Senate Executive Report 107-8).

The Annexes and U.S. Obligations Under Each Annex

The SPAW Protocol includes three Annexes. Plant species subject to the highest levels of protection are listed in Annex I, and animal species subject to the highest levels of protection are listed in Annex II. Plants and animals subject to some management, but lesser protections than those afforded to species listed in Annexes I or II, are listed in Annex III.

Annexes I (flora) and II (fauna) are to include endangered and threatened species, or subspecies, or their populations as well as rare species. The SPAW Protocol describes rare species as those “that are rare because they are usually localized within restricted geographical areas or habitats or are thinly scattered over a more extensive range and which are potentially or actually subject to decline and possible endangerment or extinction.”

For fauna listed in Annex II, Parties “shall ensure total protection and recovery to

the species...by prohibiting: (i) the taking, possession or killing (including, to the extent possible, the incidental taking, possession or killing) or commercial trade in such species, their eggs, parts or products; [and] (ii) to the extent possible, the disturbance of such species, particularly during periods of breeding, incubation, estivation or migration, as well as other periods of biological stress.”

For Annex III species, the SPAW Protocol states: “Each Party shall adopt appropriate measures to ensure the protection and recovery of the species of flora and fauna listed in Annex III and may regulate the use of such species in order to ensure and maintain their populations at the highest possible levels.” Therefore, some regulated harvest may be permitted for species on Annex III. The protective provisions of this Annex are not intended to be more restrictive than the provisions of Annexes I and II.

The United States ratified the SPAW Protocol, including Annexes, subject to certain reservations, including the following with respect to Article 11(1): “The United States does not consider itself bound by Article 11(1) of the [SPAW] Protocol to the extent that United States law permits the limited taking of flora and fauna listed in Annexes I and II [] which is incidental, or [] for the purpose of public display, scientific research, photography for educational or commercial purposes, or rescue and rehabilitation.”

The United States has not designated any terrestrial area under the SPAW Protocol. As the United States explained at the time the SPAW Protocol was ratified, “The United States does not plan to designate terrestrial area under the Protocol since no state or territory has identified a need or desire to designate terrestrial area. . . .” (Senate

Treaty Document 103-5). In addition, “Several terrestrial species, *e.g.* bats (*Tadarida brasiliensis* and *Brachyphylla cavernarum*) and falcons (*Falco peregrinus*), are listed in the Annexes. The listing of these species, however, is not intended to describe the relevant terrestrial scope of the Protocol. As the United States has not designated any terrestrial area, the Protocol obligations will not apply with respect to such species.” *Id.*

Summary of Annexes

Annex I contains a total of 53 plant species. All plant species on Annex I are either: (1) listed under the U.S. Endangered Species Act (ESA); (2) endemic to Florida and protected under Florida law; (3) occur only on Federal land and are fully protected where they occur; (4) are not native to the United States, and are listed in the Appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) where primarily commercial trade would be prohibited; or (5) are not native to, nor believed to be commercially imported into the United States. 56 FR 12026, 12028 (March 21, 1991). There have been no additions to Annex I since the adoption of the SPAW Protocol.

Annex II currently contains 114 species and 3 groups of species, including all sea turtles and all marine mammals in the region. Most of these animal species are either: (1) listed under the U.S. Endangered Species Act or the Marine Mammal Protection Act; (2) are not native to the United States and are listed in Appendix I of CITES; (3) are offered complete protection by domestic legislation in all range States (whereby the Lacey Act, among other things, prohibits commercial trade in specimens taken, possessed, transported or sold in violation of foreign law); or (4) are endemic to foreign countries

and are not commercially imported into the United States. Six new species were added to Annex II by the SPAW Parties in December 2014. *Id.*

Annex III currently contains 43 species of plants and 32 species of animals in addition to species of corals, mangroves, and sea-grasses that occur in the region.

Composition of the Annexes

The plant and animal species present on each Annex can be found here:

<http://www.car-spaw-rac.org/?Annexes-of-the-SPAW-Protocol,83>.

Species Recommended by SPAW STAC to Be Added to the SPAW Protocol

Annexes

ANNEX II

Species	Common name
BIRDS	
<i>Passerina ciris</i>	Painted bunting
FISH	
<i>Pristis pectinata</i>	Smalltooth sawfish

ANNEX III

Species	Common name
SNAILS	
<i>Liguus fasciatus</i>	Florida tree snail
SHARKS AND RAYS	

<i>Manta birostris</i> <i>Manta alfredi</i> <i>Manta sp. cf. birostris</i>	Manta rays
<i>Sphyrna lewini</i> , <i>Sphyrna mokarran</i> <i>Sphyrna zygaena</i>	Hammerheads
<i>Carcharhinus longimanus</i>	Oceanic whitetip shark
<i>Rhincodon typus</i>	Whale shark
<i>Epinephelus striatus</i>	Nassau grouper

Circumstances of SPAW STAC Recommendations

Article 11(4) of the SPAW Protocol details the requirements for amending the Annexes and states, in part, that a Party may submit a nomination of a species for inclusion in or deletion from the Annexes; that the Party shall submit supporting documentation; and that the SPAW STAC shall review the nomination. At the November 2016 meeting in Miami, Florida, the SPAW STAC reviewed the species proposed by Parties for listing under the SPAW Protocol and made recommendations to the ninth SPAW Conference of the Parties (COP9) meeting, expected to be held in March 2017. The STAC determined that the procedures for nominating species and the supporting documentation were satisfactory for positive recommendations to the COP regarding the species identified above.

Species Under the Jurisdiction of the National Marine Fisheries Service

Ten of the twelve species that were recommended by the STAC to be added to the Annexes at the November 2016 meeting fall under the jurisdiction of the National Marine

Fisheries Service (NMFS). The majority of the species under NMFS' jurisdiction have been recommended to be added to Annex III and include manta rays (*Manta birostris*, *M. alfredi*, and *M. c.f. birostris*), hammerhead sharks (*Sphynra lewini*, *S. mokarran*, and *S. zygaena*), the oceanic whitetip shark (*Carcharhinus longimanus*), the whale shark (*Rhincodon typus*), and the Nassau grouper (*Epinephelus striatus*). The Nassau grouper is listed as a threatened species under the ESA. One species of fish, the smalltooth sawfish (*Pristis pectinata*), has been recommended to be added to Annex II. The smalltooth sawfish is currently listed as endangered under the ESA, and was originally listed under the ESA in 2003.

Species Under the Jurisdiction of the U.S. Fish and Wildlife Service

Two of the twelve species that were recommended by the STAC to be added to the Annexes at the November 2016 Miami meeting fall under the jurisdiction of the U.S. Fish and Wildlife Service (FWS). One bird species, the Painted bunting (*Passerina ciris*) has been recommended to be added to Annex II. One snail species, the Florida tree snail (*Liguus fasciatus*), has been recommended to be added to Annex III.

Both the Painted bunting and the Florida tree snail are terrestrial species. As explained earlier in this Notice, the United States has not designated any terrestrial area under the SPAW Protocol and the obligations under the SPAW Protocol do not apply in the United States with respect to terrestrial species. Accordingly, no obligations under the SPAW Protocol would apply to these two terrestrial species if they are added to the SPAW Annexes.

Comments Solicited

The Department of State, U.S. Fish and Wildlife Service, and National Marine Fisheries Service solicit comments and information that will inform the United States' consideration of the potential listing of these twelve species in the SPAW Annexes.

Dated: January 9, 2017.

Donna S. Wieting,
Director, Office of Protected Resources,
National Marine Fisheries Service.

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