



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
55 Great Republic Drive
Gloucester, MA 01930-2276

FFR 3 2012

John V. O'Shea, Executive Director
Atlantic States Marine Fisheries Commission
1050 North Highland Street
Suite 200A-N
Arlington, VA 22201

Dear Mr. O'Shea:

On February 6, 2012, NOAA's National Marine Fisheries Service (NMFS) published two final rules to list five Distinct Population Segments (DPS) of Atlantic sturgeon under the Endangered Species Act (ESA). The Gulf of Maine DPS will be listed as threatened and the New York Bight, Chesapeake Bay, Carolina, and South Atlantic DPSs will be listed as endangered. All of the listings are effective as of April 6, 2012. We would like to meet with you and your staff as soon as possible to provide more background on the ESA listing and to begin work addressing sturgeon interactions in your fisheries.

Both the Northeast and Southeast Regional Offices received the Atlantic States Marine Fisheries Commission's (ASMFC) comments on the proposed listing rules by letters dated December 21, 2010, which stated that the ASMFC does not support the listing and provided specific comments on information in the two proposed listing rules. Dr. Crabtree and I very much appreciate the information provided by the ASMFC, which we fully considered in making our final listing determination. We also received comments from several coastal states. In all, 118 commenters (including ASMFC) provided comments during the 120-day comment period and six public hearings. We solicited peer review comments on the proposed listing rules from six peer reviewers with expertise on Atlantic sturgeon: three from academia, two from state resource agencies, and one from a federal resource agency.

Information and data provided by commenters supported or did not conflict with our findings for the five DPSs. Some information submitted by commenters as "new" information was information already included and evaluated in our proposed listing rule determination. Some commenters asked us to consider information, such as increased compliance responsibilities and economic costs on agencies and the public; however, the ESA and its implementing regulations prohibit us from considering economic issues in making listing determinations. Many commenters stated that NMFS should postpone a listing determination until the results of recent research are available, further research can be undertaken, state and Federal moratoria on the harvest and possession of Atlantic sturgeon have been in effect for the full planned duration,



and/or until non-listing alternatives (e.g., entering into multi-agency partnerships and expanding existing programs) have been explored.

The listing may not be postponed. On October 6, 2009, we received a petition from the Natural Resources Defense Council (NRDC) to list Atlantic sturgeon under the ESA. Section 4(b)(3)(B) of the ESA calls for us to make a finding within 12 months of receiving a petition as to whether the petitioned action is warranted, and section 4(b)(6)(A) calls for a final listing determination within 12 months of publication of the proposed listing rule. We based our listing determination on the best available scientific and commercial information on the decline of Atlantic sturgeon, the failure of populations to rebound despite harvest prohibitions, and the ongoing impacts from bycatch and habitat modification, and the inadequacy of existing regulatory mechanisms. We decided to list the Gulf of Maine DPS as threatened, and the New York Bight, Chesapeake Bay, Carolina and South Atlantic DPSs as endangered. The information provided in the peer review and public comments did not provide any basis for revising our evaluation of the status of Atlantic sturgeon, the nature and significance of the threats and impacts they face, or our listing determinations. We plan to continue to work with ASMFC and other state and Federal partners to expand our knowledge of the species and enhance conservation efforts. However, we do not have grounds to postpone the ESA listing.

- In the final rules, we identify incidental catch in fisheries as one of the primary threats to Atlantic sturgeon. This is based primarily on a 2007 analysis by the ASMFC and the Northeast Fisheries Science Center and a previous analysis by Stein *et al.* (2004), which relied on observer data. We know that some fisheries, particularly those that occur exclusively in state waters, may have been unobserved or had low rates of observer coverage. Although information on incidental capture of Atlantic sturgeon in state-managed fisheries is limited, we do know that interactions occur in state-managed fisheries, including some of those managed under ASMFC interstate fishery management plans (e.g., striped bass, shad).

There are certainly some concerns about what an ESA listing means for fisheries that might interact with Atlantic sturgeon. The listing does not mean that fisheries will be closed. However, ESA protections do automatically apply to species listed as endangered. Therefore, effective April 6, 2012, all capture of endangered Atlantic sturgeon will be prohibited. For species listed as threatened, NMFS must implement protective measures through a separate rulemaking. Last year, in anticipation of a possible threatened listing for the Gulf of Maine DPS of Atlantic sturgeon, we proposed protective measures for the DPS that would, with limited exception, prohibit take, including capture, of Gulf of Maine DPS Atlantic sturgeon. The final determination to establish ESA protections for the Gulf of Maine DPS is undergoing agency clearance and review.

The ESA provides exceptions to the prohibition against take of ESA-listed species. For example, section 10 of the ESA provides measures under which NMFS can authorize the incidental, but not intentional, take of a listed species in an otherwise lawful activity (e.g., participating in a state-managed fishery). Given ASMFC's role in management of Atlantic sturgeon, staff from both NMFS regional offices would like to work with you to address incidental capture of Atlantic sturgeon in state-managed fisheries. Therefore, we would like to arrange a meeting with you and your staff to begin work as soon as feasible.

We look forward to coordinating with you on this effort to reduce Atlantic sturgeon incidental take in fisheries. If you have any questions or concerns, please contact David Bernhart at (727) 551-5767 or Kimberly Damon-Randall at (978) 282-8485.

Sincerely,

A handwritten signature in black ink, appearing to read 'DSM', followed by a long horizontal line extending to the right.

Daniel S. Morris

Acting Regional Administrator, Northeast Regional Office

Cc: David Bernhart, SERO
Kimberly Damon-Randall, NERO