



# CRITICAL HABITAT





# Critical habitat designation

- Section 4(b)(2) of the ESA requires the Secretary (of Commerce or Interior) to “designate critical habitat, and make revisions thereto, on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat.
- The Secretary may exclude any area from critical habitat if he/she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he/she determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.”



## Critical habitat timing

- Section 4(b)(6)(C) requires a final regulation designating critical habitat of a listed species to be published concurrently with the final listing determination, if prudent and determinable;
- If not determinable at the time of listing, can extend one-year period by not more than one additional year.
  - The final listing for the 5 Atlantic sturgeon DPSs was in February 2012.



## Critical Habitat - definition

- The specific areas within the **geographical area occupied by the species**, at the time it is listed, on which are found **those physical or biological features essential to the conservation of the species** and which **may require special management considerations or protection**; and
- Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that **such areas are essential for the conservation of the species**.



November 2003 amendment to the National Defense  
Authorization Act for FY 2004

Section 4(a)(3)(B)(i) states, “The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.”



# Critical habitat designation process

- Identify areas that meet the definition of critical habitat
- Section 4(b)(2) analysis - Consider impacts and balance benefits, or monetize impacts and benefits, to determine whether the benefits of excluding particular areas from critical habitat outweigh the benefits of inclusion



# 1. Identify areas that meet the definition of critical habitat

- Determine the “geographical area occupied by the species”
- Identify the physical and biological features essential to conservation
- Determine whether any features may require special management considerations or protection
- Delineate the “specific areas” that contain the essential features
- Determine whether any unoccupied areas are “essential for conservation”



## 2. Section 4(b)(2) analysis

- Consider economic (or other) impacts of designating any particular areas as critical habitat
- Weigh the benefits of excluding a particular area against the benefits of including it
- Partnerships and conservation plans, conservation plans permitted under section 10 of the ESA, Tribal lands, national security and homeland security impacts and military lands, Federal lands, and economic impacts are considered in a balancing analysis
- Determine whether any particular areas should be excluded from critical habitat
- Areas may be excluded from critical habitat as long as failure to designate such areas as critical habitat will not result in the extinction of the species



## Who is affected by critical habitat designations?

- The key benefit of designating critical habitat is to put other federal agencies on notice that they must consult with NOAA Fisheries if they intend to authorize, fund, or carry out an action that may affect the critical habitat of a species listed under the Endangered Species Act.
  - In these situations, NOAA provides guidance as to how the action can be carried out in a manner that avoids or minimizes impacts to the critical habitat.



# Atlantic sturgeon CH process

- We entered into a settlement agreement with NRDC/DE RiverKeeper to send proposed rules to the *Federal Register* by November 30, 2015; court extended the deadline to May 27, 2016.
- We gathered biological information into a biological source document.
- We worked with ASMFC sturgeon TC to identify peer reviewers from the states for the biological information.
- New information for a couple of rivers in the southeast was provided by peer reviewers and incorporated into the Southeast's rule (this is why we requested the 6 month extension from the court).
- Our economic analyses were peer reviewed by economic experts.
- We used the biological source documents and the economic analyses to prepare our rules (one rule for 3 GARFO DPSs and one rule for the 2 SERO DPSs).



## Moving Forward

- Both rules will go through internal clearance.
- Will file with the *Federal Register* by May 27, 2016 (which means they will publish in the FR a couple of days later).
- 90 day public comment period
- Public meetings throughout the range to obtain public comment
- If helpful, we can present a summary of the rules to the Sturgeon Board at the August ASMFC meeting



# Atlantic Sturgeon Fishery Management Plan Review

Max Appelman

Atlantic States Marine Fisheries Commission

February 3, 2016



# Overview

- Status of the fishery
- Status of the stock
- State compliance
- PRT Recommendations

# Status of the Fishery



- Complete Atlantic states moratorium since 1997.
- EEZ harvest prohibited in 1998.
- Will remain in effect until stocks exhibit a minimum of 20 protected year classes of spawning females

# Bycatch



- In 2013, a total of 288 Atlantic sturgeon were reported as bycaught in various fisheries on the Atlantic Coast.
  - In 2014, 208 were reported.
- Majority (70%) was reported from the Federal observer program (NEFOP) and the SC Winyah Bay American shad gillnet fishery.
- There continues to be an underreporting concern.

# Ship Strikes



- In 2013 and 2014, there were 26 and 23 Atlantic sturgeon carcasses reported from the Delaware Estuary, of which majority had external injuries that indicate being struck by a ship propeller.
- Includes fish reported in PA's portion of the Delaware River

# Status of the Stock



- ASMFC Stock Assessment – 1998
- ESA Listing Endangered/Threatened – 2012
- A benchmark assessment is currently underway and expected to be peer reviewed in early 2017.

# Habitat



- Restoration of historic spawning habitat
- Veazie dam was removed in November 2013
- Maine DMR telemetry studies have demonstrated that Atlantic Sturgeon use the newly available habitat for spawning

# Compliance



- States are required to submit information on:
  - Results of bycatch monitoring for Atlantic sturgeon in other fisheries;
  - Monitoring results
  - Habitat status
  - Aquaculture operations status
- Ongoing research and notable comments
- All states and jurisdictions met the requirements of the Atlantic Sturgeon FMP

# PRT Recommendations



States are requested to:

1. Continue to coordinate with the ASMFC regarding the progress of Incidental Take Permits under Section 10 of the ESA.
2. Incorporate ongoing research to the extent possible in the upcoming benchmark stock assessment
3. The PRT stresses the importance of mandatory reporting requirements to effectively monitor Atlantic Sturgeon bycatch in other fisheries.



**Questions?**



# **Atlantic Sturgeon Stock Assessment Subcommittee Nominations**

Atlantic States Marine Fisheries Commission

February 3, 2016



## Jared Flowers

- Recent hire at the North Carolina DMF
- Extensive work with sturgeon and other anadromous species in the U.S.
- Qualified and experienced candidate to head the tagging model portion of the assessment (formerly Will Smith)



# David Kazyak

- Postdoc with the U.S. Geological Survey
- Estimating census population size of the Hudson River Atlantic sturgeon population
- SASC intends to incorporate David's study into the assessment
- Experience with genetics data and analysis is a plus for the SASC