



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
1315 East-West Highway  
Silver Spring, Maryland 20910  
THE DIRECTOR

APR 20 2011

The Honorable Walter B. Jones  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Jones:

Thank you for your cosigned letter regarding the potential listing of Atlantic sturgeon under the Endangered Species Act (ESA). Your letter expressed particular concerns with the use and analysis of available data and the peer review process involved with developing a final rule to list Atlantic sturgeon. To clarify, NOAA's National Marine Fisheries Service (NMFS) is currently developing the final listing determinations, and has not yet determined whether any new scientific information in a final rule must be peer reviewed. The enclosure provides detailed responses to the six specific questions included in your letter.

In undertaking actions related to this rulemaking, NMFS has and will continue to adhere to the requirements of the ESA, the Administrative Procedure Act, the Office of Management and Budget's (OMB) "Final Information Quality Bulletin for Peer Review" issued under the Information Quality Act (Public Law 106-554), and the joint NMFS-U.S. Fish and Wildlife Service (USFWS) "Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities" (59 FR 34270; July 1, 1994). Additional details on how these requirements have been or will be met are incorporated into the enclosed answers to your specific questions.

I hope this information fully addresses your questions and alleviates concerns regarding how data were and are being evaluated as they pertain to this rulemaking. If you have further questions, please contact John Gray, Director of NOAA's Office of Legislative Affairs, at (202) 482-4981.

Sincerely,

Eric C. Schwaab

Enclosure



## Responses to Questions Regarding Potential Listing of Atlantic Sturgeon

### *1. How has the Agency analyzed data submitted during the public comment period?*

On October 6, 2010, NMFS published a proposed rule to list three distinct population segments (DPS) of Atlantic sturgeon in the Northeast and a separate proposed rule to list two DPSs in the Southeast. Public comments on these two proposed rules were solicited through February 3, 2011. Public comments were also accepted during a series of six public hearings—four in the Northeast and two in the Southeast. The Agency is analyzing the information submitted during the public comment period and at the public hearings. A summary of comments received, the analysis of them, and responses to them will be incorporated in the final listing determination. Should any new, influential, scientific information be submitted during the comment period that was not considered in the proposed rules and that affects the Agency's determination, we will, pursuant to the OMB peer review bulletin, submit the draft final rule to peer reviewers.

*2. How were these analyses prepared and by whom, and in what form were the data submitted to peer review?* The analysis of public comments and information received is ongoing and is being conducted by the Agency. No data submitted during the public comment period has been submitted to peer reviewers. As stated above, should any new, influential, scientific information that affects the Agency's final determinations be included in public comments, the final rules will be required to undergo peer review pursuant to OMB's peer review bulletin.

In accordance with our peer review policy (59 FR 34270; July 1, 1994), each proposed rule was submitted to three peer reviewers for their independent review of the information and analyses contained in the proposed rules. These and any additional peer reviewers' comments, along with public comments, will be summarized, considered, and responded to in the final listing determinations. To satisfy the requirements under the OMB Bulletin regarding peer review, the 2007 Atlantic sturgeon status review report was independently peer-reviewed by six experts; substantive comments received from these reviewers were incorporated in the final status review report.

*3. Specifically who (or what entity) is the Agency using to conduct the peer review of this information?* Public comments are not subject to peer review. To ensure that any listings are based on the best scientific and commercial data available, and to comply with our 1994 peer review policy (59 FR 34270; July 1, 1994), the Agency submitted each proposed rule to three independent peer reviewers with extensive expertise on the particular DPSs addressed by the proposed rule. The Northeast proposed rule (75 FR 61872; October 6, 2010)—covering the Gulf of Maine, New York Bight, and Chesapeake Bay DPSs—was submitted to Dr. Gail Wipplehauser, Maine Department of Marine Resources; Mr. Russell Allen, New Jersey Department of Environmental Protection; and Dr. Greg Garman, Virginia Commonwealth University. The Southeast proposed rule (75 FR 61904; October 6, 2010)—covering the Carolina and South Atlantic DPSs—was submitted to Dr. Kenneth Sulak, U.S. Geological Survey; Dr. Douglas Peterson, University of Georgia; and Dr. Joseph Quattro, University of South Carolina. Also, in accordance with the OMB peer review bulletin, the 2007 status review report was peer-reviewed by six independent experts from academia, and their comments were incorporated into the final status review report.



4. *If the new data have not yet been properly analyzed or submitted for peer review, please explain the entire process by which you intend to accomplish this task.* Public comments submitted as part of the rulemaking process are not necessarily subject to peer review. The information submitted during the public comment period is being reviewed by our Atlantic sturgeon biologists and will be summarized, considered, and responded to in the final listing determinations. NMFS is reviewing the information and preparing responses to all public comments received. Should any new, influential, scientific information be submitted during the comment period that was not considered in the proposed rules and that affects the Agency's determination, we will, pursuant to the OMB peer review bulletin, submit the draft final rule to peer reviewers.

5. *We understand the Agency has never conducted a single stock assessment on any sturgeon DPS being proposed for listing. In fact, the only estimate of spawning-age individuals (from the Hudson River DPS) dates back to 1985 and does not even reflect the 14 years of recovery since the entire East Coast directed fishery was closed. Please explain how your Agency can propose to list several individual DPS units having never assessed the status of any one of these populations.* Although a stock assessment has not been conducted by NMFS, a stock assessment was conducted by the Atlantic States Marine Fisheries Commission in 1998. Additionally, NMFS convened a status review team of Atlantic sturgeon experts from USFWS, U.S. Geological Survey, and NMFS in 2006. This team compiled the best available information on the status, trends, and threats to Atlantic sturgeon populations throughout their range. This information was used to prepare a status review report, which was completed in 2007. Eight state and regional Atlantic sturgeon experts from various states—including Maine, Connecticut, New York, Delaware, Pennsylvania, North Carolina, and South Carolina—also provided input on the information contained in the status review report. The report was also independently peer-reviewed by six other Atlantic sturgeon experts. The two available population estimates—one for the Hudson River population from 1998 by Dr. Kahnle (New York Department of Environmental Conservation) and one for the Altamaha River from 2006 by Dr. Schueller and Dr. Peterson (University of Georgia)—were incorporated into the status review report and are considered in the proposed rules because they are considered the best available population estimates. We received a petition from the Natural Resources Defense Council on October 6, 2009, to list Atlantic sturgeon under the ESA. This petition was reviewed and accepted on January 6, 2010. As a result, publication of a finding, using the best available data, was required within 1 year of receiving the petition (i.e., by October 6, 2010).

6. *We understand the Agency convened the Atlantic Sturgeon Status Review Team (ASSRT) on two separate occasions (2003 and 2005) to examine the available information and provide management advice to NMFS. We believe the most recent data, especially that submitted by the state agencies and the ASMFC, along with tagging data from NJ/DE/VA documenting the presence of more fish plus an abundance of especially large, mature fish previously thought not to exist, should be closely examined by the ASSRT prior to any listing. Does the Agency plan to reconvene the ASSRT to examine the newly available scientific and commercial data to inform the listing decision? If not, why not?* The ASSRT, which was charged with gathering and evaluating the best available data and completing a status review, was convened in 2006. Before that, however, we partnered with the Atlantic States Marine Fisheries Commission (ASMFC)

and the USFWS in 2003 and 2005 to bring together Atlantic sturgeon researchers and managers to discuss what was known about the abundance, distribution, and threats to Atlantic sturgeon and identify potential efforts to ameliorate some of the threats. From these workshops, bycatch of Atlantic sturgeon in various fisheries was identified as a significant threat. Thus, in 2007, the ASMFC and NMFS Northeast Fisheries Science Center jointly convened a workshop to estimate Atlantic sturgeon bycatch rates and numbers caught by fishery, state, and season using data from the NMFS Observer Program. The results of this effort were published in a bycatch report in August 2007 (after the status review had been completed). We used the bycatch report, the ASSRT's status review report, and other new information in developing the proposed rules to list Atlantic sturgeon.

The overall rulemaking process—including the 90-day public comment period, the six public hearings, and the peer reviews—has provided an opportunity for any additional information to be presented to the Agency for consideration prior to completing a final determination. The new information must be evaluated by the Agency and in accordance with relevant policies. A second status review by the ASSRT prior to making a final listing determination is not required under the ESA, nor is it possible within the statutory timeframe for making a final determination. A final determination, incorporating the responses to public and peer reviewer comments, must be published by October 6, 2011 (1 year after publication of the proposed rules).