



Thorny skate petition and NMFS response

Kim Damon-Randall/Julie Crocker
Protected Resources Division

**NOAA
FISHERIES
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Presentation overview

- ESA petition process and definitions
- Petition contents
- Status review process
- NMFS response and next steps
- Possible outcomes



Petition Process



- Any interested person can petition the Secretary of Interior and/or Commerce to list a species under the Endangered Species Act (ESA)
- Upon receiving a petition, the Secretary must make a finding within **90 days** (to the maximum extent practicable) as to whether the petition presents “substantial scientific or commercial information indicating that the petitioned action **may be warranted.**”



Substantial information

Defined as “the amount of information that would lead a **reasonable person** to believe that the measure proposed in the petition **may be warranted**.”



Negative 90 day finding



- Petition and/or information readily available in our files **does not** contain substantial scientific or commercial information indicating the petitioned action may be warranted
- Publish a notice in the *Federal Register* announcing the negative finding
- End of the process



Positive 90 day finding



- Petition and/or information readily available in our files **does** contain substantial scientific or commercial information indicating the petitioned action may be warranted
- Publish positive 90 day finding in the *Federal Register*
- Information may be solicited in the *FR* notice to address data gaps
- Species becomes a NMFS **Candidate Species**



Positive finding continued

- Initiate a review of the status of the species concerned
- Status review team (SRT)/Biological Review Team (BRT) *may be* formed
- Status review report –
 - Contains best available scientific/commercial information and threats assessment/extinction risk analysis
 - Information is peer reviewed and used by NMFS to make listing determination
- 12 months from **date of receipt of petition** – determination by NMFS as to whether listing is warranted published in *FR* (proposed rule if listing is determined to be warranted)



ESA definitions

Species = includes any subspecies of fish or wildlife or plants, and any distinct population segment (DPS) of any species or vertebrate fish or wildlife which interbreeds when mature

Endangered species = any species which is in danger of extinction throughout all or a significant portion of its range

Threatened species = any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range



Five Factors

Section 4(a)(1) of the ESA states that “The Secretary shall by regulation promulgated in accordance with subsection (b) determine whether any species is an endangered species or a threatened species because of any of the following factors:



Five Factors continued

- A. the present or threatened destruction, modification, or curtailment of its habitat or range;
- B. overutilization for commercial, recreational, scientific, or educational purposes;
- C. disease or predation;
- D. the inadequacy of existing regulatory mechanisms;
- E. other natural or manmade factors affecting its continued existence



The petition

- May 28, 2015 - petition from Defenders of Wildlife and Animal Welfare Institute (AWI)
- List a "Northwest Atlantic DPS" or a "United States DPS" as threatened or endangered
- Illegal landings, bycatch and discard mortality, inadequacy of existing regulatory mechanisms (related to fishing), global climate change and hypoxia, and natural stochastic events identified by the petitioners as primary threats



The petition (continued)

- 2 petitions in August 2011 - AWI (just thorny skate) and WildEarth Guardians and Friends of Animals (barndoor, thorny, winter, smooth skate)
- Responded to both petitions in one 90-day finding.
- December 2011 – published "negative" 90-day finding as neither petition presented substantial scientific or commercial information, in conjunction with the information in our files, indicating that the petitioned actions may be warranted.



The petition (cont.)

- New petition addresses many of the conclusions made in the 2011 finding and presents alternate views and/or new information.
- New information on thorny skate available since the December 2011 finding is fairly limited.
- At the 90-day finding stage, cannot dismiss information that is susceptible to more than one interpretation or that is contradicted by other available information
- Conclusive information indicating the species may meet the ESA's requirements for listing is not required at 90-day finding stage.



NMFS Response

- Positive 90-day finding concluding that petition presents substantial information indicating petitioned action **may be warranted** published on October 26, 2015 (80 FR 65175)
- 90-day finding seeks scientific and commercial information for the status review until **December 28, 2015**
- NMFS has now initiated a review of the status of the species
- The positive 90 day finding provides no protections under the ESA and results in no changes to existing fisheries management



NMFS Response (cont.)

- Potential threats that warrant further review:
 - bycatch and potentially high post-discard mortality
 - adequacy of existing regulatory mechanisms
 - ocean warming
- Petition claims not supported by available information:
 - illegal landings
 - mis-reporting or under-reporting of landings
 - misidentification or mislabeling of landings
 - hypoxia
 - natural stochastic events



Thorny Skate Bycatch

- Status Review will examine this carefully
- Thorny skate distribution does not overlap with Southern New England skate bait fishery
- Bycatch largely in the Gulf of Maine
- 2014 dead discards (extrapolated from observer data):

Otter Trawl	477 mt
Scallop Dredge	91 mt
Sink Gillnet	11 mt
Longline	1 mt



Status Review Process

- Determine the “species” (e.g., full species, subspecies, DPS)
- Compile best available scientific and commercial information on the status, abundance and trends
- Five factor analysis
- Conduct a threats assessment or extinction risk analysis (may be quantitative or qualitative)
- Consider ongoing or planned protective efforts that may affect the species
- Under the ESA, **economic impacts** of a listing **cannot** be considered



Next Steps

- NMFS will produce a status review report (SRR) that contains: scientific information on the species, an analysis of whether there are any Distinct Population Segments, and information on the threats faced by the species
- SRR will be independently peer reviewed and posted on NMFS webpage
- NMFS will solicit nominations for an Extinction Risk panel and will hold a workshop (open to the public) to obtain individual expert opinions on the extinction risk (likely in early March 2016)



Next Steps Cont.

- NMFS will use the SRR, peer review comments, and the individual expert opinions from the ERA workshop to make a listing determination (e.g., listing is or is not warranted)
- NMFS will publish this determination within 12 months of receiving the petition (by **5/28/16**)



Possible Outcomes

If NMFS determines that listing is **not warranted**:

- no further action
- no change to existing regulations



Possible outcomes cont.

- If NMFS proposes to list the species as **endangered**
- 60 to 90 day public comment period, public hearings
 - NMFS must make a final determination no later than one year after proposed rule
 - If final rule is endangered, all **take** is automatically prohibited
 - Take defined as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.”



Possible outcomes continued

- Take from bycatch or incidental catch in non-directed fisheries prohibited unless authorized through Section 7 or 10 of the ESA
- NMFS must designate critical habitat at time of final listing (to maximum extent prudent) and initiate recovery planning



Possible outcomes continued

If NMFS proposes to list the species as **threatened**:

- Secretary of Commerce must promulgate protective regulations that are necessary and advisable for the conservation of the species (e.g., a **4(d) rule**)
- Directed take, bycatch, importation and exportation most likely prohibited (unless authorized through Section 7 or 10)
- Critical habitat designated
- Recovery planning initiated

