



NOAA
FISHERIES

1. *Correspondence (February 1-3, 2022) M*

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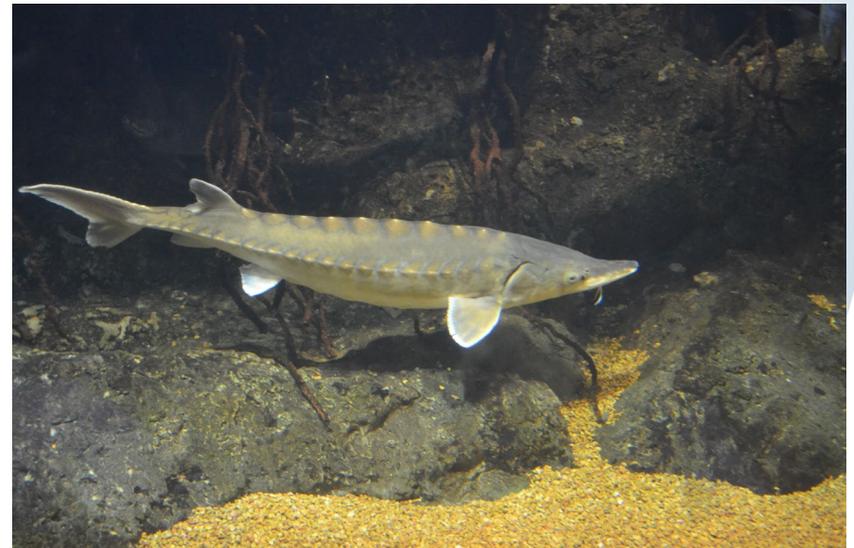
Atlantic Sturgeon Bycatch Working Group

New England Fishery Management Council
February 2, 2022

Spencer Talmage, Sustainable Fisheries
Division, GARFO

Atlantic Sturgeon in the Greater Atlantic Region

- Atlantic sturgeon are a slow growing, late-maturing, anadromous fish ranging from Canada to Florida.
- By the 1900s, overfishing and habitat loss caused drastic declines in Atlantic sturgeon populations.
- There are five Distinct Population Segments (DPS), all listed as endangered or threatened under the Endangered Species Act (ESA):
 - Carolina
 - Chesapeake Bay
 - New York Bight
 - South Atlantic
 - Gulf of Maine
- Primary threats in the region include bycatch in trawl and gillnet fisheries and habitat degradation.



Final “Batched” Biological Opinion

- On May 27, 2021, NOAA Fisheries released its ESA section 7 Biological opinion considering the effects of authorization of eight federal fisheries management plans (FMP) under the Magnuson Stevens Fishery Conservation and Management Act (MSA), two interstate fishery management plans (ISFMP) under the Atlantic Coastal Fisheries Cooperative Management Act, and the implementation of the New England Fishery Management Council’s Omnibus Essential Fish Habitat Amendment 2 on ESA-listed species and designated critical habitat.
- The ten fisheries included in the opinion are (1) American Lobster, (2) Atlantic Bluefish, (3) Atlantic Deep-Sea Red Crab, (4) Mackerel/Squid/Butterfish, (5) Monkfish, (6) Northeast Multispecies, (7) Northeast Skate Complex, (8) Spiny Dogfish, (9) Summer Flounder/Scup/Black Sea Bass, and (10) Jonah Crab fisheries.



Final “Batched” Biological Opinion (contd.)

- The Biological Opinion includes an Incidental Take Statement (ITS).
 - Take is defined as “to harass, harm, pursue, hunt, shoot, capture, or collect, or to attempt to engage in any such conduct.”
 - Under the terms of ESA section 7(b)(4) and section 7(o)(2), taking that is incidental and not the purpose of carrying out an otherwise lawful activity is not considered to be prohibited under the ESA. Such taking, however must be in compliance with the terms and conditions of the ITS issued in the Biological Opinion.
- As part of the ITS, the Biological Opinion establishes reasonable and prudent measures (RPM) which are necessary to minimize the impacts of any incidental take. The RPM further defines implementing terms and conditions.
- These measures are non-discretionary, and must be followed for the exemption for incidental takes to apply to the action.



10.2. Reasonable and Prudent Measures

NMFS has determined that the following Reasonable and Prudent Measures (RPMs) and Terms and Conditions (T&Cs) are necessary or appropriate to minimize impacts of the incidental take on large whales, sea turtles, the five DPSs of Atlantic sturgeon, the GOM DPS of Atlantic salmon, and giant manta rays in the ten fisheries assessed in this Opinion (Table 84). In order to be exempt from the prohibitions of section 9 of the ESA and regulations issued pursuant to section 4(d), NMFS must comply with the following T&Cs, which implement the RPMs. These T&Cs are non-discretionary.

Table 84: RPMs, Terms and Conditions, and justifications

Reasonable and Prudent Measures (RPMs)	Terms and Conditions (T&Cs)	Justifications for RPMs and T&Cs
<p><u>RPM 1: GEAR RESEARCH:</u></p> <ul style="list-style-type: none"> NMFS must continue to work with the fishing industry and partners to promote, fund, conduct, and/or review research on gear modifications to reduce incidental takes, and the severity of interactions that do occur, of ESA-listed species. Since fishing characteristics and behavior vary between fisheries, NMFS must annually assess research to better characterize the fisheries covered in this Opinion and the nature of their interactions. NMFS must continue to share gear research results and tools with Canadian partners to assist them in lowering the number and severity of large whale entanglements in their waters. 	<ul style="list-style-type: none"> NMFS must develop and evaluate gear research priorities and information needs for ESA-listed species included in the ITS annually. NMFS must develop a “Roadmap to Ropeless Fishing” within one year of the publication of the Opinion. The Roadmap will identify the research and technology needs related to ropeless fishing, including how these needs will be met. The Roadmap will include consideration of economic, safety, operational, and enforcement aspects of ropeless technology. NMFS must continue to investigate both new and existing modifications to gillnet, bottom trawl, and trap/pot gear and their effects on large whales, sea turtles, Atlantic sturgeon, Atlantic salmon, and giant manta rays. NMFS must continue to support whale scarring research to estimate the number and severity of entanglements. NMFS will convene a working group to review all the available information on Atlantic sturgeon bycatch in the federal large gillnet (>=7 inches stretched) mesh fisheries. Within one year of publication of this Opinion, the working group will develop an action plan to reduce Atlantic sturgeon bycatch in these fisheries by 2024. 	<p>RPM 1 and the accompanying Term and Condition specifies the need for continued gear research and evaluation, as well as further investigation and implementation of results to aid in bycatch reduction of large whales, sea turtles, Atlantic sturgeon, Atlantic salmon, and giant manta rays observed captured or entangled in gillnet, bottom trawl, and trap/pot fishing gear. This is essential for reducing the level and severity of incidental take associated with the fishing industry while maintaining sustainable fishing practices. Improving knowledge on dynamic fisheries and updating protocols and modifying current practices, when paired with updated information on where interactions are most likely to occur, are essential for the long-term reduction of impacts on large whales, sea turtles, Atlantic sturgeon, Atlantic salmon, and giant manta rays.</p>



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Atlantic Sturgeon Bycatch Working Group: ASBWG

- “NMFS will convene a working group to review all the available information on Atlantic sturgeon bycatch in the federal large gillnet (≥ 7 inches stretched) mesh fisheries. Within **one year** of publication of this Opinion, the working group will develop an action plan to reduce Atlantic sturgeon bycatch in these fisheries by 2024”.
- NOAA Fisheries formed the ASBWG in late 2021 to meet this requirement of the May 27, 2021 Opinion.
- Current membership includes:
 - Spencer Talmage, Sustainable Fisheries Division, GARFO
 - Cynthia Ferrio, Sustainable Fisheries Division, GARFO
 - Lynn Lankshear, Protected Resources Division, GARFO
 - Jason Boucher, Resource Evaluation & Assessment Division, NEFSC
 - Henry Milliken, Resource Evaluation & Assessment Division, NEFSC



Federal Advisory Committee Act (FACA)

- The Federal Advisory Committee Act of 1972 formalizes a process to ensure that advisory committees formed by the government are objective and accessible to the public.
- An advisory group is considered to be subject to the requirements of FACA if it meets all of the following conditions:
 - Has at least one member who is not a federal employee,
 - The group provides consensus advice, and
 - The advice provided by the group deals with the operations of the Federal government.



Federal Advisory Committee Act (FACA)

- Advisory Committees subject to FACA must, among other requirements:
 - Submit a formal request for the formation of the advisory committee, which must include rationale as to why the group is essential to the performance of a duty or responsibility conveyed upon the executive branch by law or the Office of the President,
 - Acquire the approval of the request by “high level officials” of the sponsoring agency,
 - Prepare a charter which would outline the committee’s mission and duties, which must be reviewed by the General Services Administration’s Committee Management Secretariat, and
 - Complete a required notification period.
- NOAA Fisheries determined that compliance with these requirements would be incompatible with the May 27, 2022 deadline placed on the ASBWG, and that the best course of action would be to convene a group consisting only of NOAA Fisheries staff while implementing a public participation plan.



Public Participation plan

- Publication of an article in the NOAA Navigator describing the ASBWG and soliciting input from the public
 - Scheduled for February issue
- Presentations during Council Meetings
- Publication of a notice in the *Federal Register* soliciting comment on the ASBWG
- Further engagement, if necessary



Council Recommendations

- On December 15, 2021, NOAA Fisheries sought to reserve time on the February agendas of the NEFMC and MAFMC.
- Both Councils recommended that NOAA Fisheries utilize an exemption from FACA which would allow the employees of state agencies to participate as members of the ASBWG
- This would provide more expertise to the group regarding Atlantic Sturgeon and large mesh gillnet fisheries, which would be expected to generally improve the products of the ASBWG
- NOAA Fisheries sent a letter on January 19, 2022 to both Councils stating that we agreed with these recommendations. We are currently pursuing state employee participation from North Carolina to Maine.



Current Status of Working Group Products – ToR 1

- To fulfill Term of Reference 1, the WG will produce an introductory section of the Action Plan which:
 - Describes available bycatch information which was reviewed
 - Summarizes commonalities between sources or general trends
 - Identifies information gaps



Current Progress on ToR 1

- Metadata

- Review includes nine peer reviewed scientific papers dealing with distribution and occurrence of Atlantic sturgeon, two peer reviewed scientific papers dealing with Atlantic sturgeon bycatch analyses, Northeast Fisheries Science Center model-derived estimates of bycatch, an Atlantic States Marine Fisheries Commission special report, and the NEFOP database, which contains observer data from 1989 to present.
- Methods used in scientific papers include analysis of NEFOP data, tagging & telemetry, DNA sampling and analysis, fisheries-independent surveys, and remote sensing and modelling
- Seven of the peer reviewed scientific papers had a coastwide study area, while five focused on smaller study areas including the waters off of New York, Delaware Bay, and the Mid-Atlantic Bight



Current Progress on ToR 1

- Characteristics of Atlantic Sturgeon Bycatch
 - Atlantic sturgeon encounters tend to occur in waters <40 m in depth
 - Atlantic sturgeon encounters tend to be highest in April, May, September, and October and lowest in the summer months.
 - These seasonal patterns are seemingly related to migratory patterns of adult Atlantic sturgeon, which are caught more heavily in gillnet gear during these periods.
- Multiple studies developed real-time modelling approaches to predict Atlantic sturgeon presence
 - If available, these could be used to explore dynamic management schemes, or generally as guidance when considering seasonal measures
- Characterization of NEFOP data
 - Jason Boucher has conducted some simple exploratory analyses of available NEFOP data



Current Status of Working Group Products – ToR 2

- Work on ToR 2 will proceed once state employees are integrated into the working group and ToR 1 is considered final.
- Potential Pathways of an Action Plan
 - MSA Action which would affect FMPs with large mesh gillnet components
 - This would need time to move through Council processes, including adoption in 2023 priorities, which may not meet the requirement to reduce bycatch by 2024
 - However, this would provide public input and engagement via the Councils
 - ESA Action implementing requirements outside of MSA
 - This could allow for speedier development and implementation that can help us meet our deadlines
 - There would still be opportunity for public participation via public comment periods or other opportunities announced via the federal register



Next Steps

- Securing State Employee Participation
- Onboard State Members
- Finalize ToR 1, commence/continue work on ToR 2
- Gather public input throughout the process
 - Contact Spencer Talmage at spencer.talmage@noaa.gov or (978) 281-9232



Questions?

