



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
GREATER ATLANTIC REGIONAL FISHERIES OFFICE
55 Great Republic Drive
Gloucester, MA 01930

January 19, 2022

Thomas A. Nies
Executive Director
New England Fishery Management Council
50 Water Street Mill 2
Newburyport, MA 01950

Dear Tom:

On May 27, 2021, NOAA's National Marine Fisheries Service (NMFS) issued a Biological Opinion that considered the effects on ESA-listed species and designated critical habitat of our authorization of fisheries managed pursuant to eight fishery management plans (FMP) and two interstate fishery management plans, the North Atlantic Right Whale Conservation Framework, and the New England Fishery Management Council's (NEFMC) Omnibus Essential Fish Habitat Amendment 2. The fisheries are: (1) American Lobster; (2) Atlantic Bluefish; (3) Atlantic Deep-sea Red Crab; (4) Mackerel, Squid, and Butterfish; (5) Monkfish; (6) Northeast Multispecies; (7) Northeast Skate Complex; (8) Spiny Dogfish; (9) Summer Flounder, Scup, and Black Sea Bass; and (10) Jonah Crab FMPs.

The Opinion includes an incidental take statement with reasonable and prudent measures and their implementing terms and conditions, which were determined to be necessary or appropriate to minimize impacts of the incidental take in the fisheries assessed. The terms and conditions include a requirement that NMFS convene a working group to address Atlantic sturgeon bycatch in the Federal large-mesh gillnet (≥ 7 inches stretched) fisheries. The working group must review all available information on Atlantic sturgeon bycatch in these fisheries and complete an action plan by May 27, 2022, the results of which would reduce Atlantic sturgeon bycatch in these fisheries by 2024.

In the summer of 2021, we began work to establish the Atlantic Sturgeon Bycatch Working Group (ASBWG) to meet the requirements of the Opinion. We originally envisioned that the working group would comprise of a diverse group of stakeholders, including Council staff, researchers, and industry members. However, we determined that the provisions of the Federal Advisory Committee Act (FACA) would impose a number of requirements that the Agency would need to follow prior to and during the commencement of ASBWG activities. These include:

- A formal request for the formation of the group, 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;
- Approval of this request by high level officials within NMFS;



- The preparation of 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
- Completion of a required notification period, including publication of notices in the *Federal Register*.

Given the complexities of these requirements, the time that would be needed for compliance, and the deadline for completion of the ASBWG's activities, we decided that formation of a group which would not be subject to FACA was a preferable and necessary course of action. As a result, the ASBWG is currently comprised of Greater Atlantic Regional Fisheries Office and Northeast Fisheries Science Center staff with expertise relevant to the Federal large-mesh gillnet fisheries and Atlantic sturgeon bycatch.

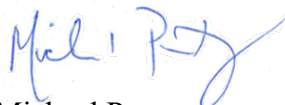
To compensate for lack of direct public membership in the ASBWG, we developed a public participation plan. The plan includes publication of an article in the *NOAA Navigator*, outreach presentations at meetings of the New England and Mid-Atlantic Fishery Management Councils, and publication of a notice in the *Federal Register*.

Both the New England and Mid-Atlantic Fishery Management Councils have recommended that we utilize an exemption that allows state employees to participate in a fisheries advisory group without triggering the requirements of FACA. These recommendations were made in recognition that the inclusion of state employees ensures that the ASBWG possesses the necessary expertise to develop an effective action plan with sufficient connection to the fisheries management process.

I am now soliciting participation from state agencies from North Carolina to Maine. I expect this to cause some delay to the activity of the ASBWG, but agree that involving state employees will result in a better outcome and increased confidence from the public and industry.

I thank you for your recommendation and the addition of an ASBWG presentation to the upcoming Council Agenda. Please contact Spencer Talmage via email at Spencer.Talmage@noaa.gov or phone at (978) 281-9232 with any questions or concerns.

Sincerely,



Michael Pentony
Regional Administrator