

survival and recovery for the listed species.

Dated: June 14, 2004.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060904A]

Endangered and Threatened Wildlife and Plants: Updated Status Review of the North American Green Sturgeon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Status review update; request for information.

SUMMARY: Following receipt of a petition to list the North American green sturgeon (*Acipenser medirostris*; hereafter "green sturgeon") as threatened or endangered under the Endangered Species Act (ESA), NMFS conducted a status review and determined that the petitioned species is comprised of two distinct population segments (DPSs) that qualify as species under the ESA, but that neither DPS warranted listing as a threatened or endangered species. Because of uncertainties regarding their population structure and status, however, NMFS determined that both DPSs should be identified as candidate species. NMFS also committed to re-evaluating the status of both DPSs in 5 years, provided sufficient new information was available indicating that a status review was warranted. However, on March 2, 2004, a U.S. District Court set aside NMFS' finding and remanded the matter back to the agency for re-consideration of whether the green sturgeon is endangered or threatened in a significant portion of its range. NMFS intends to reconvene its Biological Review Team (BRT) to consider the most recent scientific and commercial information available regarding the biological status of green sturgeon. NMFS is requesting that interested parties submit pertinent information to assist the agency in updating its status review and making a new listing determination.

DATES: Information must be received by August 17, 2004.

ADDRESSES: Information on this action should be submitted to the Assistant Regional Administrator, Protected Resources Division, Southwest Region, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213. In response to NMFS's solicitation for new information, comments may be sent via email to GreenSturgeon.Comments@noaa.gov or to the Federal eRulemaking website: <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Craig Wingert, NMFS, Southwest Region (562) 980-4021; Melissa Neuman, NMFS, Southwest Region (562) 980-4115; Scott Rumsey, NMFS, Northwest Region (503) 872-2791; or Lisa Manning, NMFS, Office of Protected Resources (301) 713-1401.

SUPPLEMENTARY INFORMATION:

Electronic Access

The 2003 green sturgeon biological status review is available on the Internet at: http://www.nwr.noaa.gov/1salmon/salmesa/pubs/GSstatus__review.pdf

Background

On June 12, 2001, NMFS received a petition from the Environmental Protection Information Center, Center for Biological Diversity, and Waterkeepers Northern California requesting that NMFS list the green sturgeon as threatened or endangered under the ESA and that critical habitat be designated for the species concurrently with any listing determination. On December 14, 2001, NMFS provided notice of its determination that the petition presented substantial information that a listing may be warranted and requested information to assist with a status review to determine if green sturgeon warranted listing under the ESA (66 FR 64793). To assist in the status review, NMFS formed a Biological Review Team (BRT) comprised of scientists from the Agency's Northwest and Southwest Fisheries Science Centers and from the United States Geological Survey. NMFS also requested technical information and comments from State and Tribal co-managers in California, Oregon, and Washington, as well as from scientists and individuals having research or management expertise pertaining to green sturgeon from California and the Pacific Northwest. The BRT considered information presented in the petition and the best available scientific and commercial information provided in response to NMFS' information request to prepare a final review of the biological status of green sturgeon (NMFS, 2002).

Under the ESA, a listing determination may address a species, subspecies, or a DPS of any vertebrate species which interbreeds when mature (16 U.S.C. 1532(15)). On February 7, 1996, the U.S. Fish and Wildlife Service and NMFS adopted a policy describing what constitutes a DPS of a taxonomic species (51 FR 4722). The joint DPS policy identified two elements that must be considered when making DPS determinations: (1) The discreteness of the population segment in relation to the remainder of the species (or subspecies) to which it belongs; and (2) the significance of the population segment to the remainder of the species (or subspecies) to which it belongs. After conducting the status review, NMFS determined that green sturgeon is comprised of two DPSs that qualify as species under the ESA: (1) a northern coastal DPS consisting of populations in coastal watersheds northward of and including the Eel River; and (2) a southern DPS consisting of coastal or central valley populations south of the Eel River, with the only known population in the Sacramento River.

The BRT considered the following information in order to assess risk factors for each green sturgeon DPS: (1) Abundance trends by examining fisheries data; (2) the effects of harvest bycatch; (3) the possible loss of spawning habitat in, for example, the Eel, South Fork Trinity, and San Joaquin Rivers; (4) concentration of spawning in the Klamath (northern DPS) and Sacramento (southern DPS) River systems; (5) lack of adequate population abundance data; (6) potentially lethal water temperatures and adverse effects by contaminants (southern DPS); (7) entrainment by water projects (southern DPS); and (8) adverse effects by exotic species (southern DPS). Based on this risk assessment, NMFS determined that neither DPS warranted listing as threatened or endangered (68 FR 4433; January 23, 2003). Uncertainties in the structure and status of both DPSs led NMFS to add them to its species of concern list (formerly the candidate species list; 69 FR 19975; April 15, 2004). The biological status review is available online (see Electronic Access), and bound copies of the biological status review and other documents supporting the finding are available upon request from NMFS (see ADDRESSES). Along with the finding, NMFS announced that it would reevaluate the status of green sturgeon in 5 years provided that sufficient new information warrants an update of the status review.

On April 7, 2003, the Environmental Protection Information Center (and

other plaintiffs) challenged NMFS' not warranted finding. The U.S. District Court for the Northern District of California issued an order on March 2, 2004, which set aside NMFS's not warranted finding and remanded the matter back to NMFS for redetermination of whether green sturgeon is in danger of extinction throughout all or a significant portion of its range, or is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. Therefore, these DPSs are now considered candidate species, as well as species of concern. NMFS will make this determination on or before March 2, 2005.

Information Solicited

For the original status review, NMFS solicited information concerning the status of green sturgeon to ensure that the review was complete and based on the best available science (66 FR 64793; December 14, 2001). Specifically, the Agency requested available information on: (1) relevant biological data that could help identify DPSs of green sturgeon (e.g., age structure, genetics, migratory patterns, morphology); (2) the range, distribution, habitat use and abundance of green sturgeon, including information on the spawning populations of the species; (3) current or planned activities and their potential impact on green sturgeon (e.g., harvest impacts, habitat impacting activities or actions); and (4) green sturgeon protection efforts underway in California, Oregon, Washington and Canada.

NMFS also requested information on areas that include the physical and biological features essential to the recovery of the species and that may qualify as critical habitat for green sturgeon. Essential features included, but were not limited to the following: (1) habitat for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for reproduction and rearing of offspring; and (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species. For areas potentially qualifying as critical habitat, NMFS requested information describing: (1) the activities that affect the area or could be affected by the designation; and (2) the economic costs and benefits of additional requirements of management measures likely to result from the designation.

The U.S. District Court's March 2004 remand was issued because the Court was not satisfied with NMFS's examination of whether purported lost spawning habitat constituted a significant portion of either DPS's range. To ensure that the forthcoming status review update is comprehensive, based on the best available data, and specifically addresses the deficiencies outlined by the Court, NMFS is soliciting any new information beyond that considered in the 2002 green sturgeon status review or the January 2003 1-year finding on the following topics for the northern and southern DPSs of green sturgeon: (1) new genetic, morphological, physiological, or ecological information relevant to DPS identification; (2) current or historic information documenting the geographic extent (e.g., area, river mile distance) and magnitude (e.g., abundance of spawning females, reproductive output) of spawning in particular river systems (e.g., Fraser River, Umpqua River, South Fork Trinity River, Eel River, Feather River, and San Joaquin River) where spawning is reported to have occurred historically, but apparently no longer does; (3) information documenting the current geographic extent and magnitude of spawning in areas other than where it is known to presently occur (i.e., areas other than the Sacramento River, Klamath River and Rogue River); (4) the legitimacy of references used to support information regarding current or historic spawning in the systems mentioned above in (2) and (3), particularly citations by Houston (1988) for the Fraser River, Lauman *et al.* (1972) and the Oregon Department of Fish and Wildlife (2002) for the Umpqua River, Moyle *et al.* (1992) and references therein for the South Fork Trinity River, Puckett (1976), Moyle *et al.* (1992) and references therein for the Eel River; Wang (1986) and U.S. Fish and Wildlife Service (1995) for the Feather River, and Moyle *et al.* (1992) and references therein for the San Joaquin River; (5) historic, current or future factors that may be responsible for the reported loss of spawning habitat and associated spawning populations; and (6) fishery-dependent and -independent abundance data for analysis of population trends.

Information on item above one will assist NMFS in determining whether the DPS structure previously identified is correct or needs modification. Items two and three should provide the following types of information: (1) abiotic and biotic characteristics of spawning habitat (e.g., amount, substrate type, water temperature, flow rates,

sedimentation rates); (2) abundance of spawning females from each river system; (3) measures of reproductive output from spawning habitats; and (4) age/size structure of populations from spawning habitats. Item five information should not only identify factors that may be responsible for lost spawning habitat, but should also provide qualitative and/or quantitative data (e.g., changes in mortality rates, growth rates, behavior) that suggest a direct or indirect link to the identified threat(s). Item six will provide updated information for abundance trends analysis that was conducted during the first biological status review.

Information submitted to NMFS should be accompanied by references and a commentary by the presenter on the veracity of the data and whether the information is based on published or unpublished scientific data, professional judgment, or anecdotal accounts. This will be particularly crucial in helping NMFS determine whether purported historic spawning in the Fraser River, Umpqua River, South Fork Trinity River, Eel River, Feather River, and San Joaquin River can be substantiated. In addition, suggestions of novel methods for addressing any of the above topics, in particular assessing the amount and importance of spawning habitat that may have been lost, is requested.

References

The 2003 biological status review of green sturgeon is available via the Internet (see Electronic Access) and a complete list of all references used in this notice is available upon request (see ADDRESSES).

Dated: June 14, 2004.

Laurie Allen,

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

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Groundfish Fisheries of the Bering Sea and Aleutian Islands (BSAI) Area and the Gulf of Alaska, King and Tanner Crab Fisheries in the BSAI, Scallop and Salmon Fisheries Off the Coast of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.