

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 222 and 223

[I.D. 062501B]

RIN 0648-AN62

#### Endangered and Threatened Wildlife; Sea Turtle Conservation Requirements

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

**ACTION:** Public hearing notice; extension of public comment period.

**SUMMARY:** Notice is hereby given that the National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, will extend the public comment period, through February 15, 2002, for the purpose of receiving comments on the proposed rule to amend the regulations protecting sea turtles to enhance their effectiveness in reducing sea turtle mortality resulting from shrimp trawling in the Atlantic and Gulf Areas of the southeastern United States, published in the **Federal Register** on October 2, 2001.

**DATES:** Written comments should be received by February 15, 2002.

**ADDRESSES:** Written comments should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to 301-713-0376. Comments will not be accepted if submitted via e-mail or the Internet.

**FOR FURTHER INFORMATION CONTACT:**

Robert Hoffman (ph. 727-570-5312, fax 727-570-5517, e-mail

Robert.Hoffman@noaa.gov), or Therese A. Conant (ph. 301-713-1401, fax 301-713-0376, e-mail

Therese.Conant@noaa.gov).

**SUPPLEMENTARY INFORMATION:** Turtle excluder devices (TEDs) have proven to be effective at excluding sea turtles from shrimp trawls; however, NMFS has determined that modifications to the design of TEDs need to be made to exclude leatherbacks and large, sexually

mature loggerhead and green turtles. Several approved TED designs are also structurally weak and do not function properly under normal fishing conditions. Additionally, modifications to the trynet and bait shrimp exemptions to the TED requirements are necessary to decrease lethal take of sea turtles. These proposed amendments are necessary to protect endangered and threatened sea turtles in the Atlantic and Gulf Areas.

Dated: December 7, 2001.

**Donald R. Knowles,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 223 and 224

[Docket No. 011130289-1289-01; I.D. 111501C]

#### Endangered and Threatened Wildlife and Plants: 90-Day Finding for a Petition to List North American Green Sturgeon as Threatened or Endangered under the Endangered Species Act

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

**ACTION:** Notice of petition finding; request for information and comments.

**SUMMARY:** NMFS announces a 90-day finding for a petition to list the North American green sturgeon (*Acipenser medirostris*) as a threatened or endangered species and to designate critical habitat under the Endangered Species Act (ESA). NMFS finds that the petition presents substantial scientific information indicating that the petitioned action may be warranted. NMFS will conduct a status review of the green sturgeon to determine if the petitioned action is warranted. To ensure that the review is comprehensive, NMFS is soliciting information and comments pertaining to this species, and seeks suggestions from the public for peer reviewers for the agency's review of the petitioned action.

**DATES:** Information and comments on the action must be received by March 14, 2002.

**ADDRESSES:** Requests for copies of the petition, and information and comments on this action should be submitted to

the Assistant Regional Administrator, Protected Resources Division, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213. The petition is available for public inspection by appointment, Monday through Friday, at the same address.

**FOR FURTHER INFORMATION CONTACT:**

Craig Wingert, NMFS, Southwest Region, (562) 980-4021 or David O'Brien, NMFS, Office of Protected Resources, (301) 713-1401.

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 4 (b)(3)(A) of the ESA (16 U.S.C. 1531 *et seq.*) requires that NMFS make a finding as to whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. NMFS' ESA implementing regulations (50 CFR 424.14) define "substantial information" as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In determining whether substantial information exists for a petition to list a species, NMFS takes into account several factors, including information submitted with and referenced in the petition and all other information readily available in NMFS files. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If NMFS finds that a petition presents substantial information indicating that the requested action may be warranted, section 4 (b)(3)(B) of the ESA requires the Secretary of Commerce (Secretary) to conduct a status review of the species and make a finding as to whether the petitioned action is warranted within 1 year of the receipt of the petition.

#### Analysis of Petition

On June 12, 2001, NMFS received a petition from the Environmental Protection Information Center, Center for Biological Diversity, and Waterkeepers Northern California regarding the North American green sturgeon. The petition requested that NMFS list the North American green sturgeon as either an endangered or threatened species under the ESA, and that it designate critical habitat for the species concurrently with any listing determination.

The green sturgeon is a large, anadromous fish. In North America, the green sturgeon ranges from Alaska to

Mexico in marine waters and forages in estuaries and bays ranging from San Francisco Bay to British Columbia. The green sturgeon is recognized as a single species, but until recently, geographic variation in the species that could indicate the presence of subspecies or distinct populations had received little attention. Although Russian and Asian forms of the green sturgeon are morphologically similar to the North American form, Moyle et al. (1992) indicated the Russian and Asian forms likely belong to a different taxon. Birstein (1993), among others, recently demonstrated genetic differences between the Asian and North American forms, suggesting they are two distinct species. The green sturgeon has been aged to 42 years old, but this is probably an underestimate and ages of 60 to 70 are more likely. Males mature sexually sometime after they reach 120 cm, or approximately 17 years old. Females mature after attaining 145 cm, or approximately 21 years old and may return to spawn every 3 to 7 years. Males spawn more frequently.

Sturgeon species worldwide have experienced population declines because they are a long-lived, late-maturing species that have low fecundity and spawn only periodically, a combination of traits that makes them particularly susceptible to over-fishing and habitat degradation (Musick, 1999). Spawning green sturgeon are highly vulnerable to over-fishing because they tend to hold in deep, cold pools in rivers, thus concentrating the spawning population. In a recent review paper, Musick et al. (2000) cited evidence that green sturgeon populations have declined by 88 percent throughout much of its range, and there appears to have been recent declines in green sturgeon in the Umpqua River in Oregon and the Fraser River in Canada. Each of the known or suspected spawning populations of green sturgeon presently contain at most a few hundred mature females (Musick et al., 2000).

The current spawning range of green sturgeon in North America has contracted from its historic range, and they now spawn in only a limited number of large river systems. Green sturgeon historically spawned in the Eel, the South Fork Trinity, and the San Joaquin Rivers in California, but apparently no spawning occurs there currently. The only known remaining spawning populations of the North American green sturgeon are in the Sacramento and Klamath River basins in California, with more spawning apparently occurring in the Klamath River basin. It is also possible that spawning occurs in the Rogue River in

Oregon since running-ripe adults and young of the year have been observed in the Rogue River, but exact spawning locations have not been confirmed. The contraction in spawning range, and the reduction in the number and size of green sturgeon spawning populations, could represent a significant reduction in the spawning area and potential for the species. Since North American green sturgeon spawning is limited to low numbers of spawners in a very few rivers, they are vulnerable to local changes in flow and temperature resulting from water diversions, increased sedimentation, entrainment in pumping facilities, and contaminant loading.

The green sturgeon in North America may face ongoing threats from the loss and/or degradation of habitat, particularly in those river systems where they are known or thought to spawn (e.g. Klamath and Sacramento River basins), and impacts to the species from harvest in sport fisheries or as bycatch in other fisheries (e.g. white sturgeon fishery). Specific concerns regarding habitat loss and degradation cited by the petitioners include the construction of dams and operation of large scale water projects in the Sacramento and Klamath Rivers and other coastal systems, and logging agriculture, mining, road construction and urban development in coastal watersheds. Some fisheries that occur in coastal Washington and the Columbia River that target white sturgeon or salmon take green sturgeon as bycatch. Some of this bycatch is in areas where green sturgeon spawning does not occur, suggesting that green sturgeon harvest in some areas is supported by the limited number of known spawning populations (e.g., Klamath and Sacramento River basins).

#### Petition Finding

Given documented declines in abundance and contraction of spawning range, and the possibility of ongoing threats, NMFS has determined that the petition presents substantial information that listing green sturgeon in North America under the ESA may be warranted. Accordingly, NMFS will initiate a status review of the North American green sturgeon. In accordance with section 4 (b)(3)(B) of the ESA, the Secretary will make his determination whether the petitioned action is warranted within 12 months from the date the petition was received (June 12, 2001) following completion of an ESA status review.

#### Listing Factors and Basis for Determination

Under section 4 (a)(1) of the ESA, a species may be determined to be threatened or endangered based on any of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continuing existence. Listing determinations are based solely on the best available scientific and commercial data after taking into account any efforts being made by any state or foreign nation to protect the species.

#### Information Solicited

To ensure that North American green sturgeon status review is complete and is based on the best available scientific and commercial data, NMFS is soliciting information and comments on this species. NMFS specifically requests the following information: (1) Biological or other relevant data that may help identify distinct population segments of this species (e.g., age structure, genetics, migratory patterns, morphology); (2) the range, distribution, habitat use and abundance of this species, including information on the spawning populations of the species; (3) current or planned activities and their possible impact on this species (e.g., harvest impacts, habitat impacting activities or actions); (4) efforts being made to protect this species in California, Oregon, Washington and Canada.

#### Critical Habitat

NMFS is also requesting information on areas that may qualify for critical habitat for the North American green sturgeon. Areas that include the physical and biological features essential to the conservation of the species should be identified. Essential features include, but are not limited to: (1) space 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 development of offspring; and (5) habitats that are protected from disturbance or are representative of the historical, geographical and ecological distributions of the species (50 CFR 424.12).

For areas potentially qualifying as critical habitat, NMFS requests information describing (1) the activities

that affect the areas 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.

#### Peer Review

On July 1, 1994, NMFS, jointly with the U.S. Fish and Wildlife Service, published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270). The intent of the peer review policy is to ensure that listings are based on the best scientific and commercial data available. NMFS is soliciting the names of recognized experts in the field that could take part in the peer review process for this status

review. Independent peer reviewers will be selected from the academic and scientific community, tribal and other Native American groups, Federal and state agencies, the private sector, and public interest groups.

#### References Cited

- Birstein, V.J. 1993. Is *Acipenser medirostris* one or two species? The Sturgeon Quarterly 1(2):8 (1993).
- Moyle, P.B., P.J. Foley and R.M. Yoshiyama. 1992. Status of green sturgeon, *Acipenser medirostris*, in California. Final Report submitted to National Marine Fisheries Service, Terminal Island, CA.
- Musick, J.A., M.M. Harbin, S.A. Berkeley, G.H. Burgess, A.M. Eklund, L.

Findley, R.G. Gilmore, J.T. Golden, D.S. Ha, G.R. Huntsman, J.C. McGovern, S.J. Parker, S.G. Poss, E. Sala, T.W. Schmidt, G.R. Sedberry, H. Weeks, and S.G. Wright. 2000. Marine, Estuarine, and Diadromous Fish Stocks at Risk of Extinction in North America (Exclusive of Pacific Salmonids). Fisheries 25(11): 6–30.

**Authority:** 16 U.S.C. 1531 *et seq.*

Dated: December 10, 2001.

**William T. Hogarth,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

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