



**NOAA
FISHERIES**

Atlantic Sturgeon Bycatch Working Group

Mid-Atlantic Fishery Management Council
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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.



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”.
- “The action plan for sturgeon developed under RPM 1 must include an evaluation of information available on post-release mortality, identification of data needed to better assess impacts, and a plan, including timeframes, for obtaining and using this information to evaluate impacts.
- NOAA Fisheries formed the ASBWG in late 2021 to meet this requirement of the May 27, 2021 Opinion. Initial membership included:
 - 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.



Council Recommendations

- 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. On January 20, 2022, we sent letters to state agencies from North Carolina to Maine.
 - The NEFMC and ASMFC provided feedback on this approach during the presentation it received during the February NEFMC Meeting



Terms of Reference for the ASBWG

- Upon convening for the first time, the group developed draft Terms of Reference. These are:
- ToR 1: Produce a review of available bycatch information relevant to federal large mesh gillnet fisheries, including information on the spatial extent of bycatch; characteristics of bycaught Atlantic sturgeon, such as age, sex, condition, length, and weight; post release mortality; gear configurations most commonly associated with Atlantic sturgeon bycatch; and fisheries most commonly associated with Atlantic sturgeon bycatch.
- ToR 2: Using the review, develop an Action Plan to reduce Atlantic sturgeon bycatch in relevant fisheries by 2024. The scope of the action plan is undefined and could include specific actions by NMFS and partner organizations or specific modifications to Fisheries Management Plans for relevant fisheries



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
 - Coastwide, but relatively more frequent off of New York and Mid-Atlantic Bights
 - 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.
 - 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



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
 - Public comment during the NEFMC meeting highlighted need for additional public outreach to industry



Next Steps

- Securing state employee participation and onboard new members
- Develop ways for the Councils and ASMFC to engage meaningfully with the ASBWG without triggering FACA requirements
- Finalize ToR 1, commence/continue work on ToR 2
- Gather public input throughout the process
 - Enhance and follow the public participation plan
 - Contact Spencer Talmage at spencer.talmage@noaa.gov or (978) 281-9232



Questions?

