

**PROCEEDINGS OF THE
ATLANTIC STATES MARINE FISHERIES COMMISSION
ATLANTIC STURGEON MANAGEMENT BOARD**

**Crowne Plaza Hotel - Old Town
Alexandria, Virginia
May 23, 2013**

Approved February 6, 2014

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1. **Approval of Agenda by Consent** (Page 1)
2. **Approval of Proceedings of February 2013 by Consent** (Page 1)
3. **Move to approve the 2012 FMP Review and State Compliance as presented today** (Page 15).
Motion made by Pat Augustine; second by Bill Cole. Motion carried (Page 15).
4. **Adjournment by consent** (Page 15)

ATTENDANCE

Board Members

Terry Stockwell, ME, proxy for P. Keliher (AA)	Roy Miller, DE (GA)
Douglas Grout, NH (AA)	John Clark, DE, proxy for D. Saveikis (AA)
Dennis Abbott, NH, proxy for Sen. Watters (LA)	Tom O'Connell, MD (AA)
Jocelyn Cary, MA, proxy for Rep. Peake (LA)	Bill Goldsborough, MD (GA)
Paul Diodati, MA (AA)	Jack Travelstead, VA (AA)
Bill Adler, MA (GA)	Kyle Schick, VA, proxy for Sen. Stuart (LA)
Mark Gibson, RI, proxy for R. Ballou (AA)	Bill Cole, NC (GA)
Dave Simpson, CT (AA)	Louis Daniel, NC (AA)
Pat Augustine, NY (GA)	Malcolm Rhodes, SC (GA)
Jim Gilmore, NY (AA)	Ross Self, SC, proxy for R. Boyles (AA)
Russ Allen, NJ, proxy for D. Chanda (AA)	Patrick Geer, GA, proxy for Rep. Burns (LA)
Tom Fote, NJ (GA)	Spud Woodward, GA (AA)
Adam Nowalsky, NJ, proxy for Rep. Vereb (LA)	Jim Estes, FL, proxy for J. McCawley (AA)
Leroy Young, PA, proxy for J. Arway (AA)	Ellen Cosby, PRFC
Mitchell Feigenbaum, PA, proxy for Rep. Vereb (LA)	Bill Archambault, USFWS
	John Bullard, NMFS

(AA = Administrative Appointee; GA = Governor Appointee; LA = Legislative Appointee)

Ex-Officio Members

Dewayne Fox, Technical Committee Chair

Staff

Robert Beal
Mike Waine
Toni Kerns

Kate Taylor
Jeff Kipp

Guests

Kim Damon-Randall, NERO
Anthony Rios, Ofc. of Sen. Boyle, NY
Angela Somma, NMFS
Kelly Place, VA

Kelly Denit, NMFS
Steve Meyers, NMFS
Bob Ross, NMFS

The Sturgeon Management Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Crowne Plaza Hotel Old Town, Alexandria, Virginia, May 23, 2013, and was called to order at 9:05 o'clock a.m. by Chairman Russ Allen.

CALL TO ORDER

CHAIRMAN RUSS ALLEN: Good morning, everybody. Welcome to the Atlantic Sturgeon Board.

APPROVAL OF AGENDA

First up is the approval of the agenda. If anybody has any changes, please make them now. If not, we will consider the agenda approved.

APPROVAL OF PROCEEDINGS

Also, approval of the proceedings from the February 9, 2013 meeting. Does anybody have any changes or comments on that? Seeing none; we will consider this approved.

PUBLIC COMMENT

At this point we will open it up to public comment for anything not on the agenda. Is there anybody out there who wanted to speak? I'm not seeing anybody. First up today is John Bullard, who is going to talk about NOAA Fisheries Sturgeon Draft Biological Opinion and Population Estimate Analysis. Kim is going to take care of that, I believe, so we will just hand it over to Kim.

NOAA FISHERIES STURGEON DRAFT BIOLOGICAL OPINION AND POPULATION ESTIMATE ANALYSIS

MS. KIM DAMON-RANDALL: I'm Kim Damon-Randall. I'm from the Protected Resources Division of the National Marine Fisheries Service's Northeast Regional Office. I'm going to give you an update on Atlantic sturgeon. I'm going to give you brief background just to make sure everybody is on the same page.

I'm going to update the information that is newly available for Atlantic sturgeon. I'm going to give you an overview of the draft batched fisheries biological opinion that was just released on Monday and then talk about some next steps. Just as a brief background, and I'm sure all of you are aware that in February of 2012 five distinct population segments of Atlantic sturgeon were listed, and that listing became effective in April.

Incidental catch in commercial fisheries was determined to be one of the primary threats in both of the listing rules that were published. In April of 2012 all incidental catch became illegal unless it was covered by a Section 7 Incidental Take Statement or a Section 10 Permit. We entered into a formal Section 7 Consultation on the fisheries in the northeast that are known to interact with Atlantic sturgeon.

Our Northeast Fisheries Science Center performed a bycatch analysis which was completed in April of 2011, which identified the fisheries and the gear types that have been observed to interact with Atlantic sturgeon. They incidental catch in sink gill net gear and otter trawl gear. When they went to try to attribute that incidental catch by fishery, there wasn't enough data to do so, so it wasn't possible to determine which specific fishery that takes occur.

At that point we determined that for the consultation, instead of doing the consultation on an FMP-by-FMP basis, we would batch the consultation together. The batch consultation includes groundfish, monkfish, dogfish, skate, squid/mackerel/butterfish, bluefish and summer flounder/scup/black sea bass.

When we do a Section 7 Consultation, we have to perform a jeopardy analysis. The jeopardy analysis examines the future with and without the action under consideration to determine if the proposed action is likely to appreciably reduce the species likelihood of survival and recovery. The effects analysis for sturgeon, we had to determine

the effect of the seven fisheries as they currently operate on each distinct population segment of Atlantic sturgeon.

We also have to estimate the number of Atlantic sturgeon that are likely to be captured, injured or killed or taken by DPS and determine if that annual loss is likely to appreciably reduce the likelihood of survival and recovery of the species. The standard for a Section 7 is to use the best available information.

Originally we did not have any comprehensive population estimates for Atlantic sturgeon. We had estimates of mature adults in two spawning rivers but no comprehensive estimates. At the time biological opinion was initiated in February 2012, we had significant concern regarding possibly recommending major changes to the fisheries without the data to support that need.

We started working with our Northeast Fisheries Science Center to see if there was a way to calculate an ocean abundance estimate. In April of this year the Northeast Fisheries Science Center completed a new method for estimating the ocean population, and this is the first time that this has been done.

Their method is known as the Atlantic Sturgeon Population Index, or ASPI. It is based on the fishery bycatch estimates that they did in 2011, data from the U.S. Fish and Wildlife Service's tagging database, which is a long-standing tagging database for Atlantic sturgeon and also estimates of life history parameters that are available for Atlantic sturgeon in the literature.

The ASPI is a risk analysis model and the inputs include encounter rate and mortality rate. The estimates that they get from the ASPI method are only ocean abundance estimates and only in the area sampled by the Northeast Fisheries Observer Program. Their current estimates range from 165,000 to a little over 744,000 with a mean of 417,934.

The methodology was internally peer reviewed by people within NMFS, their stock assessment biologists and also modelers. It will also be reviewed and considered hopefully by the

Atlantic Sturgeon Stock Assessment Committee. The science center also calculated a swept-area biomass estimate from the Northeast Area Monitoring and Assessment Program, or NEAMAP Survey.

The NEAMAP is a trawl survey that samples coastal areas from Cape Cod to Cape Hatteras, and it samples in nearshore waters out to about 18.3 meters, so a good geographic representation of area occupied by Atlantic sturgeon in the ocean. The data are available for the fall 2007 to present and spring of 2008 to present.

Atlantic sturgeon are frequently sampled in the NEAMAP Survey. However, the net efficiency of sturgeon capture in the survey is not currently known. If you use a 50 percent catchability and the catchability is the product of the probability of capture given encounter and net efficiency and the fraction of the population within the sampling areas; so if you use a 50 percent net efficiency or catchability, the ocean estimate of Atlantic sturgeon is approximately 67,776.

This is the estimate that was used in the biological opinion. If you've read the biological opinion, we determined that this was a valid minimum estimate for the ocean population size. We know it is not a complete sampling of the affected area, but it does represent a significant portion of the action area for the fisheries that we're looking at in the biological opinion, and there are higher rates of encounter of Atlantic sturgeon in the survey.

Additionally, this methodology relies on a lot fewer assumptions than the ASPI method. It is a direct result of empirical Atlantic sturgeon captures in a survey, so we did determine that this was the most valid conservative estimate to use in the biological opinion. Just as an overview of what the biological opinion says, it indicates that the fisheries that are involved in the consultation may adversely affect but are not likely to jeopardize any of the listed species in the

Northeast Region, including the five Atlantic sturgeon DPSs.

There are incidental take statements for sea turtles, and they're listed here just for those of you that are interested in sea turtles and for Atlantic sturgeon. If people are interested, I can go into detail on how the Atlantic sturgeon take estimates are calculated. It is obvious for each of the five different DPSs there is an estimate of take for both gill net and bottom otter trawl gear.

I can go back to this after if people have questions on it. We also have an incidental take statement for Atlantic salmon, and it is basically one salmon every three years in gill net gear with one mortality every three years and one annually in bottom trawl gear with a lethal occurring every two years.

The anticipated level of incidental take of Atlantic sturgeon and Atlantic salmon for the recreational components of the seven fisheries could not be estimated at this time. The incidental take statement also includes four reasonable and prudent measures, or RPMs, and then implementing terms and conditions of the RPMs.

RPMs with their implementing terms and conditions are designed to minimize and monitor the impact of incidental take that might occur that might otherwise result from the proposed actions. Specifically, the RPMs and terms and conditions in this biological opinion ensure that NMFS monitors the impacts of the proposed actions in a way that allows us to detect, identify and report all interactions of the ESA listed species.

We have to ensure that any sturgeon, salmon or sea turtles that are taken are handled in a way as to minimize stress to the animal and increase its survival rate. NMFS also has to continue to investigate and implement gear modifications that are used in the fisheries to reduce incidental takes of the listed species and also the severity of the interactions that occur.

NMFS must also continue to review the available information to determine whether or

not there are areas or conditions within the action area in which listed species are more likely to be taken. NMFS must also ensure that the monitoring and reporting of ESA listed species interactions allows us to detect any adverse effects such as serious injury or mortality, detect whether the anticipated level of take has been met or has been exceeded and also collect data from individual encounters.

The biological opinion is posted on our website. We had some issues with our website on Monday, so it actually went out to ASMFC and the councils by e-mail and then was actually posted on Tuesday. It is currently available at the website up on the screen. It is available for review for 60 days.

Comments that are submitted will go to our Sustainable Fisheries Division for consideration. Comments can be submitted to the e-mail address that is listed there, which is also available on the website. SFD will then provide any substantive comments to the Protected Resources Division for consideration in the final biological opinion. PRD will revise the biological opinion as necessary and finalize it for signature, and this is expected to be signed in the fall of this year.

NMFS is also continuing to work with the states on Section 10 applications to address takes in state waters. The Section 10 permit was issued in December to Georgia for takes of shortnose and Atlantic sturgeon in the commercial shad fishery. NMFS recently sent a draft of an implementing agreement to North Carolina for monitoring and adaptive management.

We're close to having a complete application and we will start processing it soon. The new estimates that I mentioned for ocean will be reviewed and considered for inclusion in the ASMFC benchmark assessment, which is I believe still expected to be completed in 2014 or possibly early 2015.

The results of the stock assessment will help to determine if a new ESA status review is necessary. If a new ESA status review is initiated, NMFS intends to draw heavily on the work of the Stock Assessment Committee and focus just on those areas that are necessary to inform the information gaps to help inform a listing determination. This would be a similar process to what has been undertaken for river herring if you're familiar with that process. That's it.

CHAIRMAN ALLEN: Thank you, Kim, very nice job on that. I'll open it up to questions for Kim starting with Bill Adler.

MR. WILLIAM A. ADLER: In one of your slides you had an estimated ocean estimate of somewhere between 165,000 to upwards of 700,000. That is the estimate of how many sturgeons are swimming around in the ocean, I think.

If that is the case, what is the level they should be at that would say, okay, they're okay? Do they have an estimate of what that number should be if those are the numbers they think they are now?

MS. DAMON-RANDALL: That is a good question. We have not initiated recovery planning at this point. We will be doing so soon. When we do the recovery plan, that is when you come up with hopefully that magic number of what a recovered population looks like. We do know that these estimates are still vastly reduced from what the historic highs were, but we don't know exactly what the number needs to be for it to be recovered.

MR. ADLER: Okay, because that looks like a pretty good number to me, enough fish out there.

MR. JOHN CLARK: Kim, the estimate, if I read the ASPI Report correctly, that number is based on the tag work, the one that is up there right now?

MS. DAMON-RANDALL: Yes.

MR. CLARK: Okay, and they then tried to truth that with NEAMAP estimate, also, so that they – if I recall in the report, it said that the catchability estimate, to get numbers that were similar from the NEAMAP was down around 6 percent to 12 percent; yet in the NEAMAP estimate that you are using in the biological opinion it was 50 percent catchability. I was just curious as to how they decided on these numbers to use for catchability.

MS. DAMON-RANDALL: In their paper they present a range of catchability estimates. They did say that in order for it to be consistent with the ASPI method the range would be lower than that 50 percent catchability. The catchability is, again, the net efficiency, so how many of the fish that are in the area are actually going to be caught by the net and what fraction of the population is in the area to be caught. We feel like it is a higher estimate than just the 6 percent because that NEAMAP Survey does sample a really well-known geographic area that sturgeon occupy at a time when they're actually moving through that area in the spring and in the fall.

MR. CLARK: Do they have any plans to see if they can get a better verification of that like with sensors on the trawls or anything like that to look at that?

MS. DAMON-RANDALL: Specifically for the NEAMAP?

MR. CLARK: Yes.

MS. DAMON-RANDALL: Not that I know of, no.

MR. MITCHELL FEIGENBAUM: I'm wondering how the numbers that you're estimating in this newest work compare with the numbers that were used when NMFS supported or decided to list the species. I think the board members got a letter from at least one concerned citizen indicating that the new population estimates are magnitudes

higher than what were originally used. How do you respond to that?

MS. DAMON-RANDALL: We did not actually have estimates at the time of the listing. We had two partial estimates of spawning adults; one for the Hudson River, which was 867 spawning adults, a total of 867; and one for the Altamaha River, which were 343 spawning adults per year. That is all we had. We didn't have any comprehensive population estimates. The listing actually really focuses on the threats to the species and the magnitude of those threats and how those threats are going to continue to act on the species in the future.

MR. CLARK: Kim, I was just wondering if the estimates will have any influence on the level of monitoring you will be expecting under like a Section 10 Permit if a higher population would mean that you could have a little more leeway or just hypothetically speaking there.

MS. DAMON-RANDALL: I think the estimates will definitely be used in the Section 10 applications in the process of reviewing what needs to be done, but I'm not exactly sure how that would translate to what type of observer coverage would be needed.

MR. ROY MILLER: Thank you for this report, Kim. Of the estimate of 417,934, I thought I noticed some percentages in my quick through the report approaching 49 percent for the Mid-Atlantic by population; so is it a safe assumption that perhaps nearly half of the estimate might be Mid-Atlantic Bight Atlantic Sturgeon; is that a fair conclusion?

MS. DAMON-RANDALL: This estimate, again, is for the ocean population that is sampled by the Northeast Fisheries Observer Program, so that is the Gulf of Maine down to Cape Hatteras. It doesn't include fish from the rivers and it doesn't include that originate in Canadian waters or south of Cape Hatteras.

There are fish from those southern DPSs that are up in the areas that the NEFOP samples, so they are represented to some degree in these estimates. You did see the percentages. The

percentages are based on a genetic mixed stock analysis that was done for the Northeast Fisheries Observer Program samples. They took what was sampled.

It is 173 fish from the Northeast Fisheries Observer Program and they did a genetic analysis on that and those against the referenced populations that they have, which is over 744 fish, and determined which DPS they originated from. Those genetic percentages are based on that mixed stock analysis; so that 49 percent that you're referencing is of that mixed stock that is in the ocean, 49 percent of the fish that have been documented in the NEFOP originated from the New York Bight DPS. You could say that approximately about half of those fish would be New York Bight DPS fish.

MR. JAMES GILMORE: Kim, that was helpful. It answered a bunch of questions I had. However, you focused in on the commercial fisheries and the conflicts which we have in New York like any other state. The one thing you didn't go into was an issue particularly in New York is other development and research programs.

In New York we have two very important programs. We have our research on the Hudson, which we essentially have a take permit under. We also have a high-priority project, a bridge over the Hudson River. Your program decided to combine those into one, which was a problem for us because we think we're going to exceed that.

Unfortunately, we had to live with it based upon the original listing. Now that we see a lot more fish, we're thinking that number should be higher because we're going to hit a wall with this. What is going to happen is if the number of fish we're seeing in the Hudson River is true, we're going to exceed that take pretty quickly and then we're going to be in conflict with whether we're building a bridge or if we're doing more research.

We need to resolve this before I guess rest of this is all – you know, based upon the

schedule you have up there, we're not going to get it done until 2014 and 2015, and we're probably going to hit that issue beforehand. It is just a simple request. You don't have to answer this now, but my staff has been having difficulty. We need to sit down with you guys and get this resolved quickly. We're still working on the data so we need to ratchet this up quite a bit if we're going to resolve it before we get into a problem area. Thank you.

MS. DAMON-RANDALL: Would it be okay if I asked a clarifying question? For the Tappan Zee Bridge, which I'm thinking is what you're referring to, we did a Section 7 Consultation on that and that is completely separate. There is nothing else that is part of that consultation except for the Tappan Zee Project. I wasn't sure what things we mixed that you're referring to.

MR. GILMORE: My staff has told me that between the Tappan Zee Bridge Project and our research permit we get one take that is under one permit. They're not separate and that was the concern we had from Day One. If that is incorrect, then maybe that is part of the resolution. I think the numbers, even if they're separate permits, are still going to be problematic because we're going to have to shut one of those projects. I understand that your program is as interested in the data as we are in terms of sturgeon rebuilding. Again, we seem to have a problem and we need to resolve that before the longer term. Thank you.

MS. DAMON-RANDALL: That is in correct; they are two totally separate consultations, but the take estimates are relatively low, if I remember correctly.

MR. PATRICK AUGUSTINE: As a result of this report and the question that Mitchell asked, I got the answer I wanted to hear, but we will now have enough data to move forward with looking at a delisting in the 12, 18, 24 months or is there more data forthcoming? I know this is the beginning of an assessment, but I might have missed the next step. What is the next step of moving forward from your part?

MS. DAMON-RANDALL: The next step is definitely for the bycatch analysis that goes into the ASPI model and any other new data, the genetic analysis that I was referencing, to all be encapsulated in the stock assessment and have the stock assessment go forward. If the stock assessment shows that there are numbers that are out there that are high, we would evaluate whether or not we need to initiate a new status review. We would already have that stock assessment to build off of, so we wouldn't have to start that whole process again in a status review. We would just take what we need from that stock assessment and then fill in any holes that we need for a listing determination.

MR. AUGUSTINE: Thank you, that is a great help; because when we look back and review how the other – well, how the action was taken in the first place, we all felt it was a slam dunk and the data was lacking at that point in time. However, you have a job to and we have a job to do, and our job is to prevent our fisheries from being shut down and not having adequate data. It looks like we're moving in the right direction, so thank you for your effort.

MR. ADAM NOWALSKY: I see two sets of numbers in two consecutive slides. One, we have this ASPI model, which provides a mean estimate of 417,000 ocean sturgeon based on the NEFOP, and then the next slide was another ocean abundance estimate, if I understand correctly, of 67,000.

If I heard you correctly, I heard you say that it was your believe that the NEAMAP was the number that you're currently moving forward with as the minimum estimate of sturgeon. If I'm hearing that correctly, that says to me that while we see this slide of an estimated abundance on the ocean of 165,000 to 744,000 with a mean of 450,000, that sounds great and gives us all cause to say this is good news, but then in the next statement I heard you say that you're moving forward with the assumption that the minimum estimate is really 67,000 fish. Is that correct right now that you're moving

with the estimate of 67,000 and not 417,000, and would that opinion not change until the stock assessment work is done?

MS. DAMON-RANDALL: In the biological opinion we did use the NEAMAP estimate, the 67,000 estimate because we felt like that relies on the fewest assumptions. There are a lot of assumptions that go into the ASPI model, so this is a direct result of the NEAMAP Study. There are less assumptions that go into it, so we felt like it was a better conservative estimate to use.

In Section 7 you're supposed to err on the side of the species, so we used that number as a valid minimum estimate. If we were to use that bigger number, it wouldn't change the outcome of the consultation. It is a no jeopardy option, so it wouldn't change the outcome of the biological opinion in any way.

MR. FEIGENBAUM: Can you just elaborate on that last point for one of us newbies? I don't know what that means. There is a no jeopardy opinion; can you explain what that means?

MS. DAMON-RANDALL: If we had concluded that it was jeopardy, we would have had to propose reasonable and prudent alternatives that modify the fisheries in some way to get that take number down to where it is no longer appreciably reducing the survival and recovery of the species. Those would have been much significant changes to the fisheries that the fishermen would have had to have implemented.

We would have obviously given them some time to implement them, but it could have been things like closed areas, significant gear modifications, things to get the numbers down to where it no longer results in jeopardy. Because it was a no jeopardy opinion, there are no reasonable and prudent alternatives in the biological opinion. The reasonable and prudent measures that implement the terms and conditions of the incidental take statement are all things that the National Marine Fisheries Service has to do.

MS. ELLEN COSBY: Are there any restocking efforts being permitted at this time?

MS. DAMON-RANDALL: No.

MR. THOMAS FOTE: I'm trying to figure out what the reliability of NEAMAP is in sampling sturgeon. I know that we have run into this problem over the years with using the winter trawl survey and the spring survey. It doesn't do a good job on scup, it doesn't do a good job on black sea bass and those other species that we have to extrapolate.

Plus, over the last 30 years you have changed boats to do this numerous times, and we basically had to recalibrate for those switching boats, sizes and nets and the way the speed in which the boat control and the areas you can cover. I have serious questions when we use NEAMAP to basically – I equate it sometimes to MRFSS. It gives us a trend.

It shows us certain things that are going on, but to try to really use it as an exact estimate of stocks of what is going on has been problematic, especially when we look at like bluefish and a number of species because it was really, if I remember right, designed to halibut over years and it does a good job on bottom fish and fish that are laying on the bottom.

When I look at a 50 percent catchability, it sends up a red flag in my mind after watching what is going on with this for 22 years. I'm trying to figure out we come with a 50 percent catchability rate on this because when I'm looking at 12 percent here and 5 percent here and all of a sudden we start deciding in the middle of this 50 percent. It waves red flags in my estimation.

CHAIRMAN ALLEN: I'm going to throw this out to the board at this point to get back to the draft biological opinion and whether or not this board would like to comment on that during the comment period. We could draft up a letter and send it to NMFS. I don't know if anybody has an interest in that. Louis.

DR. LOUIS DANIEL: I had a few questions first. I mean this is what we told you a year and a half ago. I'm glad it has borne out the way that it has, but it blows my mind that we're still waiting and waiting and waiting. We're going to be developing incidental take permits. We have been doing a lot of observing in North Carolina in inside waters.

I agree with Tom on the trawl survey. I think your numbers are way low, but it is not unexpected. It doesn't seem like now that any of the fisheries under the no jeopardy decision are going to have any problems, concerns, worries; everybody is cheering. Inside waters where the states are going to have to pay a lot of money, we still have to continue moving in that mode.

My question would be is if you had this information before you listed them as endangered, which you should have, would you have listed them as endangered? That is my first question. My second question would be what does the word "appreciably" mean in NMFS' opinion? Why is the National Marine Fisheries Service only looking at north of Hatteras? That makes no sense to me. This is a big issue for the entire east coast, and all this effort is going into the northeast.

That seems irresponsible to me to be coming here with a presentation to the Atlantic States Marine Fisheries Commission and nobody seems to care about what is happening south of Hatteras. I care, so those are my primary questions. Then how does the no jeopardy opinion impact us in the states? I'm assuming that these 67,000 fish are adults; is that correct?

MS. DAMON-RANDALL: No, it is a combination of sub-adults and adults.

DR. DANIEL: So sub-adults and adults and everything we're seeing in inside waters are juvenile; so can I assume there is no jeopardy in my fisheries in inside waters in North Carolina and can I stop observing sturgeon now, and can I go ahead and let my General Assembly know that I don't need the one million dollars that I've

asked for to provide an observer program? Those are my big questions.

MS. DAMON-RANDALL: For Question Number 1, I don't know if we had had this information at the time of the listing if they would have been listed as endangered. That is why this needs to go through the stock assessment process and then we need to determine whether or not we need to initiate a status review.

There has been an independent review done of ASPI methodology by Elizabeth Babcock, who is a University of Miami professor, that supports the methodology but she did indicate that there were a couple of errors in the formulas, which does change the number or the range of the estimates. Those are all things that I think need to be part of the stock assessment process so at the end of the stock assessment we have a really good valid number that we can look at whether or not the species is threatened or endangered.

We are committed to doing that. We're committed to working with ASMFC and the stock assessment committee on the stock assessment to ensure that is done. That was Issue Number 1. Now, your second question, "appreciably", there is a lot of interpretation in that. It is not clearly defined, but it means that the action that you're consulting on is going to have some effect on the trajectory of the species, some visible effect.

The jeopardy opinion doesn't necessarily impact the states directly. It is obviously on the federal fisheries, but the information that was used in the jeopardy opinion can be used for some of the state fisheries, especially those that are in the estuarine areas, but it doesn't directly impact the states. It doesn't mean that you don't have to go forward with your Section 10 permits and get coverage for those state fisheries. It is just applicable to the federal fisheries that were part of the consultation.

No information south of Hatteras; the ASPI methodology and the NEAMAP Survey are based on surveys that take place in the northeast. The ASPI relies on the Northeast Fisheries Observer Program data. There is not a similar observer program dataset for Atlantic sturgeon south of Cape Hatteras, so that is why when the science center did their methodology, they relied on the Northeast Fisheries Observer Program data.

There isn't a similar dataset available, and we were asking them to develop an estimate for the area that we're doing our action on, and most of the action area for the seven fisheries is within the northeast regional office boundaries from Maine to Hatteras.

DR. DANIEL: Well, there is SEAMAP, which is the sister program to NEAMAP that is far more lengthy in its time series that surveys the area south of Hatteras. It seems to me at least what you have said here is that the NEAMAP Survey is the primary driver for your estimate and not the observer stuff.

There is a SEAMAP Program that is far more lengthy in its time series than NEAMAP, so that doesn't make any sense to me. I think there needs to be – when this stuff is presented, it needs to be handled coastwide. I don't know about what Florida, Georgia and South Carolina are doing. I know they have minimal fisheries in inside waters that will interact with Atlantic sturgeon.

North Carolina has the bulls eye on its back, and you guys need to be helping us in this issue. I'm calling up to NMFS and asking – you know, we're trying to get an incidental take permit put together. If it is anything like turtles, it is going to be two years before we get anything in place. Meanwhile, I'm out observing in the areas where the sturgeon occur and trying to collect the information to first refute the endangered listing, which may or may not do me any good, but also to have good information to submit an ITP.

At the same time I'm getting creamed at home for trying to put together an observer program to

support these ITPs, and I have no sense whether or not I'm going to need it or not in a year or 16 months or whatever the delay is for you to make a decision on the status. It seems to be just delay, delay, delay when this is having huge financial impacts on the states that we can't afford right now, and it is going to be a waste of time.

It is all juvenile fish that we're seeing in inside waters; yet these fisheries have been poorly represented by the NEAMAP Survey, in my estimation, because of the limited depths that are fished. The catchability I think is extremely high. I think we're putting precaution on top precaution on top of precaution all the time, and it is killing us. Please, please help us in the states, give us some direction on what to do about these incidental takes of these juvenile fish that are going to cost us millions of dollars while you take your time to make a decision on whether or not you did the right thing in the original listing, which we all know now you didn't do the right thing in the listing decision.

They are not endangered species, so please get off the stance and make a decision, please. Otherwise, I need help and you guys need to tell me what I need to do to get these permits in place so that I avoid a lawsuit from an NGO group that wants gill nets out of the water in North Carolina.

MR. JOHN BULLARD: I think my first week on the job in August I was here when I got to meet someone who has become a good friend, Louis Daniel. My recollection was he talked to me probably a little bit about sturgeon. What I wanted to do – and I talked a little bit about this yesterday – was to try and find out what I should be paying attention to.

I had heard something about a groundfish crisis in the northeast, but I wanted to know what else should be on my front burner. At that meeting in the first week it became clear that sturgeon was something that needed to be on the front burner. The message I got from

Louis and from many fishermen was that we needed to pay attention to sturgeon.

And as I represented I think at that meeting and as I've said before, this has the makings of a good news story in that this is a historic fish whose population is rebuilding, and that is the good news part of it. In places where we are seeing important fish species being depleted, when you see an important fish stock rebuilding, you should rejoice.

But, in this rebuilding with an endangered species listing, there is an exposure. To fishermen there is an exposure to anyone who puts a net in the water, anyone who wants to build a bridge, anyone there is exposure and that is all of us. This is a front-burner problem; that is the message I got loud and clear from ASMFC and from an awful lot of fishermen.

Many people said to me, representing NOAA Fisheries, that the decision we made – many people said, “You have made this decision 20 years ago, but you shouldn't have made this decision when you made it because the stock is coming back. We see sturgeon all over the place and we encounter them.”

The worry I took back with me after that first meeting last August was that there are innocent bystanders that we have to look out for while we do the due diligence of looking at the facts. As I said to you, Louis, back then in August, I said we're going to follow the facts; and if the facts bear this out, we're not going to be on opposite side of this.

We will chase down the facts and if the facts bear it out, we will work this problem to the ground and we will be on the same side. People accused us of hasty decisions and precipitous action in listing something without enough information, too quickly. I don't think we did that but people accused us of that. I think that this step that Kim has laid out is an important step, and I think it is a step that helps get us out of a problem that exposes an awful lot of people to liability, but it is just one step.

It is frustrating because, as Louis has expressed, there are costs in the Section 10s. This costs you a lot of money to prepare the Section 10s. There is an awful lot of work involved. The observers are an awful lot of work in strained budgets. That is one of the things that we talked about yesterday afternoon, budgets under a lot of pressure.

I'm hearing you and the message I'm getting from you is that we need to keep this on the front burner. It stays on the front burner. What I want to say is that we need to do this; we need to proceed as we have laid out and not try and eliminate steps or jump the gun. The stock assessment that has been in the works by ASMFC is a very important step. We need to go ahead with that. That is a very important step.

This draft opinion that Kim has laid out is out for comment. We have already gotten comments that challenge some of the numbers. Adam pointed out the disparity between the NEAMAP and the computer model estimates. We get other comments and they may poke some holes in this, so that is why you put things out for comments, to test the numbers.

I'm sure there is lots of interest, who knows, there will be lawsuits. There have been before and I'm sure there will be again. This has all got to be tested in the public arena, so we will go forward. But what Kim has laid out, this draft opinion, is all I think a very important step. It is a significant step forward.

When the draft opinion becomes whatever it is that is not a draft, the final opinion, that will be another significant step forward. It has, as Kim said, more application to federal waters than state waters, but the information is useful for the states in the Section 10s, which yours is in, right, Louis, I think. Are we reviewing it?

DR. DANIEL: Not yet.

MR. BULLARD: Angie, can you talk about that? As I have said before, those are all very important in terms of the liability, and so we're working with you on that. Do you want to address that, Angie?

MS. ANGELA SINAMON: I'm Angela Sinamon; I'm Chief of the Endangered Species Division for NOAA Fisheries at Headquarters. We have been working with the state of North Carolina on the Section 10 application. My staff has been working with Louis's staff. We have been designing the conservation program that is a requirement of a Section 10 Permit and an implementing agreement with the state.

We sent a draft back and we expect to hear back from North Carolina at the end of this month. We do intend to issue that Section 10 Permit for Atlantic sturgeon at the same time that we issue the Section 10 Permit for turtles, which is the fall of 2013. In our discussions with North Carolina and in developing the conservation plan, we are not anticipating any additional or new observer requirements beyond what the state is already doing to observe for turtles.

I also wanted to respond briefly to the comment from New York. I do know that there was a research permit that was issued for trawling around the Tappan Zee Bridge pre-construction studies and that the state has some other research permits. If the state is concerned about exceeding the amount of take that is allotted in those permits, they can certainly work with my office with a permit modification. We have just done that with Entergy on the Hudson for their trawls and have significantly increased the amount of Atlantic sturgeon that they're allowed to catch in their trawl research.

MR. GILMORE: Actually Angela just answered the question because that was essentially where I was going is that – I mean, there are two issues going here, whether we needed to apply for permits, which is more of the bigger issues, but the ones that are existing right now is there a chance to adjust those numbers because that – again, I think we need to do our jobs here and that is to resolve this, and I hope to God we don't get into court because

that's really not the place we need to go. We need to get this thing fixed at this body working with the feds and getting a resolution so we can work through this thing. Thank you.

MR. MARK GIBSON: As a state that does not have a Section 10 application in and has not done much work on one, I'm trying to do risk analysis here, and I'm not doing a very good job of it. I'm sure my colleagues from Rhode Island in the back are trying to do the same thing. I need to hear more about what the exposure risk is and what the urgency is for states to initiate this Section 10 process because if I have to go back and there is a great urgency and a great exposure and potential for great harm and redirect staff, I can't go ask anybody for a million dollars.

I can't ask for that for endangered humans never mind fish. I'd get laughed out the door. We will have to really deconstruct some of our programs to redirect staff and funding to do this. I'm not coming away from this with a clear sense of how much risk and exposure the states have, and I would like to hear some more about that. I don't know whether John or Kim can answer that question.

MS. SINAMON: Could you repeat the question; I'm not sure I understand the actual question.

MR. GIBSON: The bottom line is how much exposure and risk do states have that have not initiated this process and what should my sense of urgency be? This biological opinion looks more favorable than what I have seen before. I'm not coming away from this with a sense of what level of urgency I ought to have when I get back home.

MS. SINAMON: Well, any take of a listed species that is not permitted through Section 10 or exempted through Section 7, there is some liability. The Endangered Species Act does allow any individual or any third party

to take legal action for unexempted or unpermitted takes. The National Marine Fisheries Service also has enforcement capabilities.

As you I'm sure have noticed, we have not exercised our prosecutorial discretion. We're instead trying to work with the states to bring them in for Section 10 Permits. There is, of course, liability that third parties may bring a take case, but our approach is trying to get the states to work with us.

We understand you're under constraints, but we are also responsible for trying to recover listed species, so we really would like to work with the states to develop conservation programs and get any take that is not currently authorized permitted through either Section 10 or all of the federal fisheries covered under Section 7 Consultations.

CHAIRMAN ALLEN: All right, Louis.

DR. DANIEL: I'm excited to hear that from Protected Resources about the permits being issued at the same time as turtles. That is awesome news! That I did not know so I have to say thank you for that. John, it is a huge issue for us and I want to work with you, too. I just am very nervous about this whole process.

I think that it is very important for us to have our technical committee weigh on the biological opinion – that is our technical expertise – and address some of these questions that we have raised. Is 50 percent catchability a reasonable number? Is the SEAMAP data available and does that provide any information and could that simply be put into this model to get an estimate of the southern population? I think those are important.

The thing that really worries me, though – and then I will shut up, Mr. Chairman – and I'm going to go ahead and put it out there and there are going to be some groans, but I'm going to put it out there. We're going to do a stock assessment. We're going to get a result. What does it need to be? What if we have fish that are

in worse condition than sturgeon? Then what do you do?

We're going to base this huge decision on the results of a stock assessment that we know is going to have a lot of uncertainty associated with it, and that is going to have huge implications. It ain't just making the mistake on whether to go up on a size limit or whether to decrease a trip limit or whether to adjust the quota.

It is whether or not we remain a threatened or endangered species or not on this stock assessment and that should worry everybody. If that is what we're waiting on, then I think we're going to really be in some big trouble because then that is going to set the precedent. If you're below 10 percent SPR, it is an endangered species now, so think about that as we move forward.

CHAIRMAN ALLEN: Good points, Louis. I think based on what you suggested maybe we could have the technical committee have a conference call at some point here in the next month and develop a letter to send as comments for the batch opinion based on what they came up with, and I think that would be a good idea. If the board thinks that is a good idea, I think that is the way we should move forward. If I don't see any objection with that, I think that is how we will task the technical committee to do this. Kyle, you had your hand up?

MR. KYLE SCHICK: Yes, I'm just trying to get my – I've just got a little marine in rural Virginia. We have a listing here and now we have the study that gives us an idea of what we have got in the ocean. We didn't have this information when it was listed. We don't know what we need to get unlisted. It seems like we have got the middle, but we don't have each end.

It is very frustrating for me. If I ran a business like that, I wouldn't get a loan at a bank and I wouldn't get insurance from an insurance company. I'm not questioning I guess the effort that everybody puts into this

from all sides of this room. It is enormous and I know everybody has the best interest of the fish, and that is what the goal is.

The goal is to get this fish stock replenished, but I don't see where we're going to get this done. We're caught in paperwork and doing this and words like "appreciable", which are subjective and not quantitative; at what point in time does this board and our states get a number that we know to work towards. How do we get there? I know that this is part of the process, but it seems like to me that in the future – and I don't know if this is the right time to talk about this – in the future we should have this type of information before the listing comes.

We should know we need to get to X level of biomass before somebody says that this is an endangered species; not after. It seems like to me that this document here is going to work against us because now we know we have all these fish. Well, we have to show an appreciable increase, a visible increase which is not quantitative, but we already have that from the listing. I don't know how anybody can satisfy my frustration with this until it is delisted. That is the goal. I know that is the goal for everybody, from the federal side and the states' side. I don't know if there is an answer to that. It is just I had to say it before my head exploded.

CHAIRMAN ALLEN: We share your pain. Are there any other questions for Kim? If not, we're going to move on to consider FMP review and state compliance, and I will hand it over to Kate.

FMP REVIEW AND STATE COMPLIANCE

MS. KATE TAYLOR: The plan review team met to review the compliance reports submitted in 2012 for the 2011 fishing year. The status of the fishery, as you know, there has been a complete moratorium since 1997 in state waters with the EEZ harvest prohibited in 1998. This will remain in effect until the stocks exhibit a minimum of 20 protected year classes of spawning females.

In 2011 a total of 429 Atlantic sturgeon were reported as bycaught in various fisheries along the Atlantic Coast. The majority occurred in the Delaware River Gill Net Fishery and the South Carolina Winyah Bay American Shad Gill Net Fishery; although in both of these instances there were no mortalities reported.

There were eight mortalities of Atlantic sturgeon reported in the Rhode Island anchored gill net fishery, and that is of the nine that were caught that year, which is up from two the previous year. There are underreporting concerns in all fisheries that were reporting Atlantic sturgeon. Additionally, for the board's consideration, in 2011 there were 21 Atlantic sturgeon carcasses reported from the Delaware Estuary of which 17 had external injuries that were most likely the result of being struck by a ship propeller.

An additional adult-sized male Atlantic sturgeon carcass with signs of vessel strikes was reported in the Nanticoke River as well. We have just gone through most of the status of the stock, but I would like to point out that a new benchmark assessment has been initiated. We're expecting that assessment to be completed by the end of 2014 with peer review in very early 2015.

Some ongoing research that was highlighted in the compliance reports; there is work being done by Connecticut, New York, Delaware and New Jersey on sturgeons in the Mid-Atlantic Region. The Virginia Institute of Marine Science also was conducting work on reducing sturgeon interactions in the Striped Bass Anchored Gill Net Fishery.

That research found that the use of the raised footlines often aided in reduced Atlantic sturgeon bycatch while not greatly affecting the striped bass catch. Additionally, North Carolina DMF, South Carolina DNR, the University of Georgia, and North Carolina State University were conducting research on the research and management of

endangered and threatened species in the southeast.

Another one to point out is that in 2011 the University of Georgia completed its tenth year of an ongoing study focusing on Atlantic sturgeon populations in the Altamaha River. That ongoing research has seen that the total juvenile biomass reached its highest point in the time series in 2011 for age one and age two fish.

Some habitat highlights reported in the compliance reports is that one dam was removed on the Penobscot River in 2012 in Maine and another one is scheduled for removal on that river this year. There is ongoing consultation with New York DEC on a proposed high-voltage power transmission line in the Hudson River.

In 2011 the Virginia Commonwealth University and partners constructed two Atlantic sturgeon spawning reefs in the tidal James River in 2010 and in 2011. The FMP states that states are required to submit information on the result of bycatch monitoring, any independent monitoring results, status of habitat and information on any aquaculture operations in the compliance reports.

The PRT finds that all states are in compliance with the FMP, but the PRT does recommend that states further improve understanding of critical habitat utilization and population estimates of Atlantic sturgeon will hopefully also be aided in the stock assessment and to specify when no Atlantic sturgeon are encountered gear that typically encounter sturgeon; to continue to educate fishing communities on the identification techniques to distinguish shortnose and Atlantic sturgeon; and also to expand programs to estimate sturgeon bycatch in their fisheries. Thank you, Mr. Chairman.

CHAIRMAN ALLEN: Are there any questions for Kate? Louis.

DR. DANIEL: A question I guess maybe to Mark through the Chair. You asked the question about your vulnerability. Since September we have seen 24 sturgeon in our Gill Net Observer

Program, so that is new information that could go into next year's report, and we will have that information available. We very, very rarely see one dead. I don't think we've had one out of twenty-four are dead. I think it said that eight of the nine in Rhode Island were dead. That surprises me. Do you know why?

MR. GIBSON: They have been in the water for a while; they have been in the net for a while. That is the only explanation I would have.

DR. DANIEL: So there are no attendance requirements or no minimum soak times or anything in Rhode Island?

MR. GIBSON: I believe we do have those. I can't tell you what they are.

DR. DANIEL: It just surprises me that you've got eight out of nine; that is a high percentage that is unusual, at least from what we see in North Carolina where water temperatures are generally higher. Anyway, it is just a point of information.

CHAIRMAN ALLEN: That may have occurred through sea lice or something like that while the net is sitting in the water. That happens a lot in New Jersey, also, especially in the monkfish fishery, so I'm not sure. Pat.

MR. AUGUSTINE: Mr. Chairman, before I make a motion, on your recommendations, Kate, what do we expect to do on it or just an awareness issue? There are some key things in there, but are we expecting states to just take that upon themselves or are we as ASMFC going to generate any other communication tools?

There are things on there that – improve understanding of critical habitat; how do we do that? I don't need an answer, but they're recommendations and I just think we need to know how we're going to go about addressing those, if we are going to address them other than just giving the board an

awareness that these are things we should be looking at. I don't know if you need to respond to it. **If not, I'd like to make a motion, Mr. Chairman, that we approve the 2012 FMP Review and State Compliance as presented today.**

CHAIRMAN ALLEN: Second by Bill Cole. Is there any objection to that motion? Seeing none; **the motion is approved.** Is there anything else anybody wants to discuss on sturgeon while we're here? Bob.

OTHER BUSINESS

EXECUTIVE DIRECTOR ROBERT E. BEAL: Since this is the last coast-wide board, I just wanted to ask the commissioners to help me in thanking someone and give them best wishes. Melissa Paine is in the back of the room and she has been with the commission for seven years and has worked on a lot of projects in the science department and has done a great job for us.

Obviously, Melissa looks a little different than the last time we all saw her; and once the baby is born, Melissa is going to move on from the commission and not be here. This will be her last face-to-face meeting with all of us. I just wanted to ask you guys to help me thank Melissa for the great time and wish her and Chris all the best of luck.

ADJOURNMENT

CHAIRMAN ALLEN: With that, if there is no objection, we will consider this the end of the Sturgeon Board Meeting.

(Whereupon, the meeting was adjourned at 10:10 o'clock a.m., May 23, 2013.)