PROCEEDINGS OF THE

ATLANTIC STATES MARINE FISHERIES COMMISSION

STURGEON MANAGEMENT BOARD

The Westin Alexandria
Alexandria, Virginia
February 3, 2016

Board Approved on August 2, 2016

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2. **Approval of Proceedings of November 2015** by Consent (Page 1)

3. **Move to approve Jared Flowers and David Kazyak to the Sturgeon Stock Assessment Subcommittee** (Page 2). Motion by Louis Daniel; second by Bill Adler. Motion carried (Page 2).

4. **Move to nominate Louis Daniel for Sturgeon Vice-chairman** (Page 5). Motion by Martin Gary; second by Pat Augustine. Motion carried (Page 5).

5. **Move to approve the 2016 FMP review for the 2013 and 2014 fishing years** (Page 7). Motion by Bill Adler; second by Pat Augustine. Motion carried (Page 7).

6. **Adjournment by consent** (Page 7)

ATTENDANCE

Board Members

Terry Stockwell, ME, proxy for P. Keliher (AA)
Sen. Brian Langley, ME (LA)
Stephen Train, ME (GA)
Douglas Grout, NH (AA)
Dennis Abbott, NH, proxy for Sen. Watters (LA)
Ritchie White, NH, (GA)
Jocelyn Cary, MA, proxy for Rep. Peake (LA)
Dan McKiernan, MA, proxy for D. Pierce (AA)
Bill Adler, MA (GA)
Mark Gibson, RI, proxy for J. Coit (AA)
Eric Reid, RI, proxy for Sen. Sosnowski (LA)
Dave Simpson, CT (AA)
Lance Stewart, CT (GA)
Pat Augustine, NY, proxy for Sen. Boyle (LA)
Steve Heins, NY, proxy for J. Gilmore (AA)
Russ Allen, NJ, proxy for D. Chanda (AA)
Emerson Hasbrouck, NY (GA)
Adam Nowalsky, NJ, proxy for Asm. Andrzejczak (LA)
Tom Fote, NJ (GA)
Leroy Young, PA, proxy for J. Arway (AA)
Loren Lustig, PA (GA)
Tom Moore, PA, proxy for Rep. Vereb (LA)
Roy Miller, DE (GA)
John Clark, DE, proxy for D. Saveikis (AA)
Craig Pugh, DE, proxy for Rep. Carson (LA)
Bill Goldsborough, MD (GA)
Ed O'Brien, MD, proxy for Del. Stein (LA)
Rob O'Reilly, VA, proxy for J. Bull (AA)
Kyle Schick, VA, proxy for Sen. Stuart (LA)
Louis Daniel, NC (AA)
Douglas Brady, NC (GA)
Ross Self, SC, proxy for R. Boyles (AA)
Patrick Geer, GA, proxy for Rep. Nimmer (LA)
Malcolm Rhodes, SC (GA)
Jim Estes, FL, proxy for J. McCawley (AA)
Martin Gary, PRFC
Sherry White, USFWS
Kim Damon-Randall, NMFS
Dan Ryan, DC, proxy for B. King

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

Ex-Officio Members

Staff

Robert Beal
Mike Waine
Toni Kerns
Katie Drew
Max Appelman

Guests

The Atlantic Sturgeon Fisheries Management Board of the Atlantic States Marine Fisheries Commission convened in the Edison Ballroom of the Westin Hotel, Alexandria, Virginia, February 3, 2016, and was called to order at 11:36 o'clock a.m. by Chairman John Clark.

CALL TO ORDER

CHAIRMAN JOHN CLARK: The first item of business is to approve the agenda.

APPROVAL OF AGENDA

CHAIRMAN CLARK: Are there any changes to the agenda? Seeing none; the agenda is approved.

APPROVAL OF PROCEEDINGS

CHAIRMAN CLARK: The second item is approval of the proceedings from February, 2014. It has been a while for this board; any changes to the proceedings? Seeing none; that is approved.

PUBLIC COMMENT

CHAIRMAN CLARK: Item Number 3, public comment; we have not had anybody sign up to comment. Would anybody from the public like to make a comment on an item not on the agenda?

UPDATE ON THE 2017 BENCHMARK ASSESSMENT

CHAIRMAN CLARK: Seeing none; we will now move on to Item Number 4, which is an update on the 2017 benchmark assessment that Katie Drew will be giving us.

DR. KATIE DREW: I'll keep this quick. We are still on track for a review in early 2017. We are in the process of finalizing the data from all the states for a terminal year of 2015 in the assessment. We've been pretty lucky in getting the acoustic tagging data together. We still have some sources to track down. But for the most part people have been very cooperative in providing that data, which we look forward to using. We have had to switch assessment modelers for the tagging model, but the new person who hopefully will be approved today as the next agenda item is very well qualified and experienced with this kind of tagging model; and is coming up to speed quickly on that front.

We're also in the process of having those acoustically tagged fish genetically analyzed; so that we can assign them to a DPS, and hopefully get down to a more fine scale estimate of mortality from that model. Basically everything is under control and we're still on track for a 2017 assessment review, and if you have any questions I am happy to answer them.

CHAIRMAN CLARK: Any questions for Katie? Yes, Ross.

MR. ROSS SELF: I have heard there have been some concerns about accessing the genetics data. How is that going to play against getting the stock assessment completed on time? Do you have any concerns with that impacting the schedule for completion?

DR. DREW: Not excessive concerns on that front. I think really the only impact would potentially be a reduction in the sample size of fish that we could actually assign to a DPS for some analyses. There are limitations in terms of money and actual sample availability, but I think we'll be able to get the vast majority of available samples analyzed, and included in the assessment, and it should not delay the assessment in that regards.

REVIEW AND POPULATE THE STOCK ASSESSMENT SUBCOMMITTEE MEMBERSHIP

CHAIRMAN CLARK: Any other questions for Katie? Seeing none; we move on to Agenda Item 5, which is Review and Populate the Stock Assessment Subcommittee membership; and I'll turn that over to Max.

MR. MAX APPLEMAN: As Katie alluded to; there are two stock assessment subcommittee memberships that need board approval; that is for Jared Flowers and David Kazyak. First Jared, he is a recent hire at North Carolina DMF. He has done some extensive work with sturgeon and other anadromous species in the U.S.

As Katie mentioned, he is a very qualified and experienced candidate to head the tagging model portion of the assessment; which was formerly headed by Will Smith, who recently left North Carolina and is no longer a member on the Stock Assessment Subcommittee. The other nominee is David Kazyak; who is a postdoc with the USGS.

A lot of his recent work has been focused on estimating census population size of the Hudson River Atlantic sturgeon population; which is part of the objective of the stock assessment. The SAS, the Stock Assessment Subcommittee intends to incorporate David's work into the assessment and kind of avoid any duplicate efforts to do that part.

Also, he has some experience with genetics data and analysis and this is a big plus for the Stock Assessment Subcommittee, since the majority of those members are somewhat unfamiliar with those kinds of datasets; again just looking for board approval here for Jared Flowers and David to the Sturgeon SAS, thank you, Mr. Chair.

CHAIRMAN CLARK: We'll need a motion. Can I have a motion; Dr. Daniel.

DR. LOUIS B. DANIEL: **Motion to approve Jared Flowers and David Kazyak as members of the Stock Assessment Subcommittee.**

CHAIRMAN CLARK: Second by Bill Adler. Is there any objection to these? **Seeing none; the motion passes unanimously, and they are both on the Stock Assessment Subcommittee.**

OVERVIEW OF NOAA FISHERIES CRITICAL HABITAT DESIGNATION PROCESS FOR ATLANTIC STURGEON

CHAIRMAN CLARK: Okay the next item on our agenda is an overview of NOAA Fisheries Critical Habitat Designation Process for Atlantic Sturgeon; and I will turn it over to Kim Damon-Randall of NOAA. She is in the back of the room there.

MS. KIM DAMON-RANDALL: I am going to talk a little bit about process; that critical habitat designation process, just because I'm not sure if everybody is familiar with it. Under the ESA, the Secretary of either Commerce or Interior has to designate critical habitat based on the best available information.

But they also have to consider whether or not the benefits of including critical habitat outweigh the economic impacts, the impacts of national security and other relevant impacts; when they're specifying areas as particular habitat. This is a little bit different than listing, where economics doesn't factor into the listing decision. Areas can be excluded from critical habitat designation if the benefits of excluding outweigh the benefits of including them, as long as it doesn't result in the extinction of the species. Section 4B, 6C requires the final regulation designating critical habitat of a listed species be published concurrently with the final listing determination if prudent and determinable. If it is not

determinable at the time of listing it can be extended one year, but not more than one year. Just as a reminder, the final listing for the five Atlantic sturgeon DPSs was in February, 2012. It is over that one year timeframe that are allotted under the ESA.

Critical habitat is defined as the specific areas within the geographical area occupied by the species at the time that it is listed, in which are found those physical or biological features that are essential to the conservation of the species and that may require special management consideration or protection. Also it can include specific areas that are outside the geographic area occupied by the species at the time it is listed, if it is determined that those areas are essential for the conservation of the species.

The Secretary shall designate all lands owned or controlled by the Department of Defense, sorry shall not designate; that is an important word, not, all lands that are owned or controlled by the Department of Defense if they have an integrated natural resources management plan that has been determined to provide benefits for the species for which the critical habitat may have been proposed.

We can exclude DOD lands if the in-ramp is protective enough of the listed species and the habitat. In the process we have to first identify the areas that meet the definition of critical habitat, and then we have to do the Section 4B2 analysis, which allows us to consider those impacts and balance the benefits versus the adverse impacts of either including or excluding critical habitat in the designation.

The first thing that we have to do is determine the geographical area that is occupied by the species. For Atlantic sturgeon that is a very wide geographical area that extends from Canada to Florida. Then we have to look at what the physical and biological features are that are essential to the conservation of the species.

Then we have to determine whether any features may require special management considerations or protections. Then we delineate the specific areas that contain those essential features, and we determine whether or not there are any unoccupied areas that are essential for the conservation of the species. The next step is to do the Section 4B2 analysis. We consider the economic or other impacts of designating any particular areas as critical habitat. We need to weigh the benefits of excluding a particular area against the benefits of including it.

We have to look at whether or not there are conservation plans or partnerships, whether or not there are tribal lands, national security and homeland security impacts, and also military lands; and look at the economic impacts of what would happen if that habitat was designated. Then we determine whether any particular areas should be excluded from critical habitat, and areas can again as I said earlier, be excluded as long as the failure to include them does not result in the extinction of the species.

Who is affected by critical habitat? The key benefit of designating critical habitat is to put other federal agencies on notice that they must consult with NOAA Fisheries if they intend to authorize, fund, or carry out an action that may affect the critical habitat of the species listed under the ESA. In these situations we would provide guidance as to how the action can be carried out in a manner that avoids or minimizes impacts to critical habitat. It is very focused on federal actions. For Atlantic sturgeon, some of you may have known that we were sued to designate critical habitat, because we were past that statutory deadline. We entered into a settlement agreement with the Natural Resources Defense Council and Delaware River Keeper that we would file

our proposed rules in the Federal Register by November 30th of 2015.

We actually went back to the court and asked for an extension to that deadline, so it has been extended to May 27, 2016. We've gathered the biological information into biological source documents that form the basis for the designation. New information for a couple of the rivers in the southeast was provided by the peer reviewers.

We did ask the Sturgeon Technical Committee to serve as peer reviewers, and we got some very good information from them. Some of that was new and that is being incorporated into the Southeast Rule as they work forward as they work forward on development of that rule. Both economic analyses were peer reviewed by economic experts.

We used the Biological Source Document and the economic analyses to serve as the basis for the one rule that is being developed for the three distinct population segments in the GARFO region, and one for the two DPSs in the southeast region. Both rules will go through the internal clearance process. They will file with the Federal Register by May 27th, 2016, which means that they'll be actually published in the Federal Register a couple days after that.

We've agreed to doing a 90 day public comment period, normally it is a 60 day public comment period; but we looked at the schedule of the ASMFC meetings and knew that fell right before the August ASMFC meeting, so we decided just to go ahead and extend it for 90 days. We will host public meetings throughout the range to obtain public comment. If it is helpful, we can come to the August ASMFC board meeting if you have one, and present on what the designations include.

CHAIRMAN CLARK: Are there any questions for Kim on this?

MR. DAVID V. BORDEN: Just to the last point. I think it would be very helpful to have a presentation on this at the August board meeting.

MR. WILLIAM A. ADLER: May I ask, it seems to me that the whole coast and all the rivers could be critical habitat. I get very worried about what that means, because I've dealt with that with the whale issue on critical habitats. I guess maybe the Norfolk Navy Base will be okay, because it is military, I guess. I just get worried about how much of this coast and rivers are actually going to be designated, and then what happens to the – for instance the fishing industry that may be impacted there? I am just cautious and I get worried about too much critical habitat.

CHAIRMAN CLARK: Do you have any response to that, Kim?

MS. DAMON-RANDALL: I think one thing to keep in mind is any federal action that is going to go through a Section 7 consultation that would look at affects to critical habitat, has to impact those physical and biological features that we've identified. We just designated a broader area of critical habitat for right whales. It is pretty much the entire Gulf of Maine in the northeast, so very wide geographic area. But the fishing industry does not have impacts on what those physical and biological features are for right whale critical habitat; so it is not having any impact on the fishing industry. Just keep that in mind that whatever the action is that we're consulting on has to affect those physical and biological features.

CHAIRMAN CLARK: Next question is from Bill Goldsborough.

MR. WILLIAM J. GOLDSBOROUGH: I was just wondering how and to what extend our Habitat Committee is in the loop on this. I suspect they will be meeting at the spring

meeting, but I'm not certain about that. In any case, we certainly want them in the loop.

MS. TONI KERNS: The Habitat Committee has their own spring meeting, so it wouldn't be at the main meeting week. But they do have a meeting, and we can work with Lisa and Kim to have a discussion. But they have not been discussing this listing yet.

CHAIRMAN CLARK: Next we have Tom Fote.

MR. THOMAS P. FOTE: I always love this listing of critical habitat, because it affects maybe fishermen and a few other people; but when it comes to the Army Corps of Engineers and their projects like widening of the channels in every river so they can bring in the huge tankers that are now destroying all the sloping along the riverbank and everything else. They seem to get exempted.

You know the ports also get exempted, because they can even outvote a Governor's Consistency Ruling. Always I look at this with a cynical eye, especially when you get, I guess part of the Department of Defense as a former Army Corps of Engineer officer, I realize that we get exempted from things we shouldn't get exempted; like destroying the lumps off the New Jersey coast to basically put sand on beaches. That is also sturgeon habitat. They're out there swimming.

DR. DANIEL: I stay anxious about all this. I guess my question would be, you know based on history if it would be possible for us to have an opportunity to look at and review this before it's published; as a partner in sturgeon management with the National Marine Fisheries Service. That might have helped the actual listing discussion decision, so perhaps we could be involved in that before it is published in the Federal Register.

MS. DAMON-RANDALL: We did ask the Sturgeon Technical Committee to review the biological information that forms the basis for the critical habitat designation. I would have to talk to our attorneys, but I think because of the way that the federal decision process is, I am not sure we can share anything before it is published, because it would be considered pre-decisional. But I can talk to our attorneys and get back to you on that.

ELECT VICE-CHAIR

CHAIRMAN CLARK: Are there any other questions for Kim? Okay not seeing any; we'll move on to our next item, which is an action item. We need to elect a Vice-Chair. Is there a motion from the floor?

MR. MARTY GARY: **I move to nominate Dr. Louis Daniel from the state of North Carolina to be the next Vice-Chairman of the Atlantic States Marine Fisheries Commission Atlantic Sturgeon Management Board.**

CHAIRMAN CLARK: Pat Augustine, second.

MR. PATRICK AUGUSTINE: **I move to close nomination and cast one vote in favor of Mr. Daniel to become the new Vice-Chair**; welcome sir, congratulations!

CHAIRMAN CLARK: Do we have any objections? Seeing none; congratulations, Louis. You are the new Vice-Chair.

OTHER BUSINESS

CHAIRMAN CLARK: We are already on to other business. Since we are moving right along here, we're going to go ahead and do the FMP Review, which was on the original agenda and Max will take that.

MR. APPELMAN: I'll get through this pretty quickly. As we know there is a complete moratorium for Atlantic sturgeon since 1997, and harvest in the EEZ has been prohibited since '98. These moratoria are expected to remain in place until a

minimum of 20 protected year class of spawning females can be exhibited and that the FMP is modified at that point to permit harvest or possession.

Bycatch, in 2013 a total of 288 Atlantic sturgeons were reported as bycatch in various fisheries on the Atlantic Coast, 208 were reported in 2014. A majority of these were reported from the Federal Observer Program, the NEFOP data, and the South Carolina Winyah Bay American shad gillnet fishery; approximately 70 percent of the 2013 and 2014 reported bycatch.

It is also important to note though that there continues to be an underreporting concern regarding bycatch. This is in part due to the ESA listing that everyone is aware of. This has led to some states to terminate some of their voluntary logbook programs for bycatch reporting. Ship strikes continue to be a source of mortality for Atlantic sturgeon.

In 2013 there were 26 sturgeon carcasses reported in the Delaware Estuary and an additional 23 reported in 2014, and this does include fish reporter from Pennsylvania's portion of the Delaware River. As we've alluded to, the current moratorium is partially in response to the 1998 assessment and again in 2012 after several status reviews, NMFS did publish a final rule declaring the Gulf of Maine DPS as threatened and the other four as endangered.

In response to this listing, the board initiated that coastwide assessment, which is currently underway and scheduled for review in early 2017. As Katie explained, the TC, the Stock Assessment Subcommittee and its working groups are working very hard to see that that assessment is completed on schedule.

A quick habitat highlight that I wanted to provide for the board is that in Maine on the Penobscot River, the last of three dams have been removed, which blocked historical habitat since 1830. According to some telemetry results, Maine DMR has demonstrated that Atlantic sturgeons have been using this newly available habitat for spawning, so that is good news for Maine.

As part of compliance, states are required to submit information on the results of bycatch in other fisheries, any independent monitoring results, the status of habitat, and information on aquaculture operations. Also we ask that states provide an overview of any ongoing research; and there was an extensive list of those studies included in the FMP review document that went out in supplemental materials. There are a couple copies in the back of the room if anyone wants to look at that. After review the Plan Review Team found that all states and jurisdictions did meet the requirements for the Atlantic sturgeon FMP. There were a few recommendations though from the PRT. One is for states to continue to coordinate with the commission regarding the progress of incidental take permits under Section 10 of the ESA. North Carolina and Georgia have received Section 10 ITPs for commercial gillnet operations.

I am aware that Rhode Island is also pursuing an ITP for their fisheries. These are the only states that I'm aware of at this point, so if a state was left out here, please get in touch with me and let me know. That concludes the FMP Review. Thank you, Mr. Chair I'll take any questions.

CHAIRMAN CLARK: Questions; Dr. Daniel.

DR. DANIEL: Maybe a comment and a question. First, North Carolina we do have our ITP in place. We have been doing observed trips in all the areas where we've seen sturgeon, and we've seen a lot of sturgeon; mostly juveniles. Most of the big sturgeon basically are represented by big holes in gillnets, we think.

That is going to increase that number significantly, the 288. It just dawned on me, I'm wondering, and Katie may be able to answer this question, if there is enough information in the Observer Program thus far to be of any use in the stock assessment, because that should be providing us with some, at least over time it is going to provide us with some good CPUE and abundance information. I don't know if you've even considered that yet or it is probably too short a time series to use at this point.

DR. DREW: That's a good question. We are intending to use the federal observer program, try to look at that as a CPUE of bycatch over time as an index of abundance; because it is a longer time series. But we'll definitely be including North Carolina, and actually South Carolina's bycatch information.

Partly as just trying to get estimates of bycatch that we can compare to the observer program; to kind of give us some bounds on what is being taken. We will look at it for a potential CPUE, but as you point out, the time series is really too short to have a lot of contrast to be useful in that effect. But it is definitely information that we are looking at and will incorporate into the stock assessment.

CHAIRMAN CLARK: Any more questions about the FMP review? Not seeing any; can we get a motion to approve the FMP review?

MR. ADLER: Yes, I make a motion to approve the FMP report.

CHAIRMAN CLARK: Do we have a second? Pat Augustine seconds the motion. **The motion is up, are there any objections to this motion? Seeing none; the motion is approved.**

Is there any other business to come before the Sturgeon Board? Seeing none; we are adjourned, thank you. I'm sorry, Roy, did you have something?

MR. ROY W. MILLER: I did Mr. Chairman. This was not on the agenda so I am just proposing that this question be considered in the future. We might want to consider how to provide our fishermen in our respective jurisdictions a greater level of comfort with reporting bycatch of Atlantic sturgeon. My perception is that there is considerable reluctance to provide that kind of information for fear of running afoul of the legal system. I would like to explore in the future perhaps, better ways to communicate that information to increase that level of comfort, so that we get more accurate landings statistics – or not landings but more accurate – bycatch statistics.

ADJOURNMENT

CHAIRMAN CLARK: Thanks, Roy. Let me slow down then. Is there anything else to come before the Sturgeon Board? Now seeing now; we are adjourned, thank you.

(Whereupon the meeting was adjourned at 12:04 o'clock p.m. on February 3, 2016.)

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