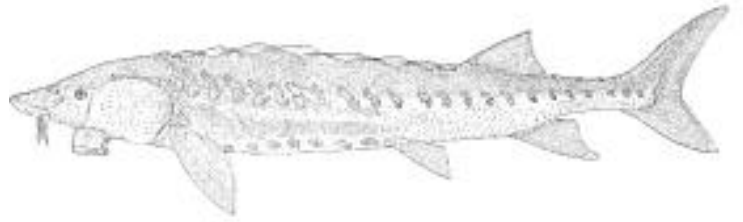


Green Sturgeon ESA Questions & Answers



North American green sturgeon
(*Acipenser medirostris*)

NORTH AMERICAN GREEN STURGEON LISTING UNDER THE ESA: FREQUENTLY ASKED QUESTIONS

Background

On June 12, 2001, NOAA's National Marine Fisheries Service (NMFS) received a petition from the Environmental Protection Information Center (EPIC), Center for Biological Diversity, and WaterKeepers Northern California requesting that NMFS list the green sturgeon as threatened or endangered under the Endangered Species Act (ESA) and that critical habitat be designated for the species concurrently with any listing determination.



Informed by the Biological Review Team's (BRT) 2002 report, NMFS determined that green sturgeon is comprised of two Distinct Population Segments (DPSs) that qualify as species under the ESA: (1) a northern DPS consisting of populations in coastal watersheds northward of and including the Eel River ("Northern DPS"); and (2) a southern DPS consisting of coastal and Central Valley populations south of the Eel River, with the only known population in the Sacramento River ("Southern DPS"). At that time NMFS also determined that neither DPS warranted listing as threatened or endangered (68 FR 4433; January 23, 2003). Uncertainties in the structure and status of both DPSs led NMFS to add them to the Species of Concern List and announce that NMFS would reevaluate the status of green sturgeon in 5 years.

On April 7, 2003, EPIC (and other Plaintiffs) challenged NMFS' not warranted finding. The not warranted finding was set aside by the U.S. District Court and the matter was remanded to NMFS. The Court's March 2004 remand was issued because the Court was not satisfied with NMFS' examination of whether purported lost spawning habitat constituted a significant portion of either DPS' range.

NMFS published a *Federal Register* notice on June 18, 2004, soliciting information from the public to assist in updating the status review and making a new listing determination (69 FR 34135). The public comment period closed on August 17, 2004. The BRT reconvened in November 2004. Co-manager review of the updated status review was initiated on January 27, 2005. The final updated status review for green sturgeon, incorporating co-managers' comments, was completed by the BRT on February 22, 2005, and submitted to NMFS Regional Offices for further consideration.

What was NMFS' determination?

On April 6, 2005, after reviewing new and updated information on the status of green sturgeon and considering whether green sturgeon is in danger of extinction now or in the foreseeable future throughout all or a significant portion of its range, a Proposed Rule to list the Southern DPS of green sturgeon as threatened under the ESA was published in the *Federal Register* (70 FR 17386). NMFS reaffirmed its earlier finding that the Northern DPS does not warrant listing under the ESA at this time, but recommended that it remain on NMFS Species of Concern List (69 FR 19975) due to remaining uncertainties about its status and threats.

After considering public comments on the Proposed Rule, NMFS issued a Final Rule on April 7, 2006, to list the Southern DPS of green sturgeon as threatened under the ESA. The Final Rule takes effect on July 5, 2006. NMFS is soliciting information from the public for the development of an ESA section 4(d) rule and critical habitat designation for the Southern DPS. Information may be submitted to NMFS by July 5, 2006.

Why are there two distinct populations of green sturgeon?

There are two distinct population segments of green sturgeon because recent genetic analyses showed a strong division between the two and because sturgeons generally show fidelity to their spawning sites. This meets the requirement for both discreteness and significance in the DPS policy (USFWS and NOAA 1996).

Why has NMFS revised its previous decision not to list the Southern DPS of green sturgeon under the ESA?

This revision is based on new information that indicates:

- A majority of spawning adults are concentrated into one spawning river
- Threats have remained severe since the last status review
- Fishery-independent data exhibiting a negative trend in juvenile green sturgeon abundance
- Evidence of lost spawning habitat in the upper Sacramento and Feather Rivers.

What is NMFS doing to gather more information regarding both the Northern and Southern DPSs of green sturgeon?

We are currently supporting three studies that will help to address uncertainties for the Northern and Southern green sturgeon DPSs:

- Population abundance estimates.
- Population structure.
- Identification of current and historical habitat areas used by green sturgeon.

In the Southern DPS, we are also coordinating with the CALFED Bay-Delta Program and the California Department of Water Resources Interagency Ecological Program to learn more about the factors that best promote adult fish passage, spawning success, and survival of juvenile green sturgeon, while still satisfying human water resource needs.

What kind of impact could this Final Rule have on water diversions, fishing, farmers, etc., in the Central Valley and other areas?

NMFS will begin addressing the threats to the survival of green sturgeon in the Southern DPS. For example, fishing regulations would likely be modified to prohibit directed take. Because there is much overlap in the distribution of listed salmon and green sturgeon in the Southern DPS, NMFS will review how well salmon conservation measures are protecting the green sturgeon Southern DPS. In many cases, no more protection will be needed. NMFS will ask that identified sources of mortality, such as unscreened diversions that entrain and kill fish, be modified so as to eliminate those sources of mortality. Diversion structures that impede passage to spawning and rearing habitat will be assessed to determine whether passage can be facilitated. Other NMFS actions will depend on better defining the risks that exist for the Southern DPS and its habitat and developing the best solutions for eliminating those risks. NMFS expects to work through the CALFED Bay-Delta Program and other public forums to develop least cost approaches to conservation.

Are there any special considerations because the Southern green sturgeon DPS is being listed as threatened instead of endangered?

When a species is listed as *endangered* under the ESA, it automatically receives certain protections, such as the prohibition for anyone under the jurisdiction of the United States to “take” the species. The term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. When a species is listed as *threatened*, those same protections are not automatically transferred to the species. NMFS must propose and publish a separate rule to issue protective regulations and exemptions necessary to provide for the conservation of threatened species. This is called a 4(d) rule, as it is required by section 4(d) of the ESA.

Will NMFS propose a 4 (d) rule?

NMFS will propose a 4(d) rule to issue protective regulations and exemptions for the threatened Southern DPS of green sturgeon. During the development of the 4(d) rule, NMFS will contact and coordinate with State, Tribal, and federal resource managers to identify activities that may adversely affect the Southern DPS as well as potential take exemptions. Public scoping workshops are scheduled for May and June, 2006, in Sacramento, CA, to discuss issues of concern and to gather recommendations for regulations. A proposed 4(d) rule will be published in subsequent *Federal Register* notices.

Will NMFS propose Critical Habitat?

At the time the Final Rule listing the Southern DPS was published, critical habitat designation was undeterminable due to insufficient information. The period for publishing a final rule designating critical habitat has been extended for one additional year, during which NMFS will meet with co-managers and stakeholders to review existing information and evaluate specific areas essential to the conservation of the Southern DPS. NMFS also requests the public to submit input and information regarding critical habitat designation by July 5, 2006. A proposed designation and request for public comment will be published in subsequent *Federal Register* notices.

Will NMFS develop a Recovery Plan for the Southern DPS of green sturgeon?

NMFS is required to develop a recovery plan after a species is added to the Endangered Species List, unless we find that such a plan will not promote the conservation of the species. Recovery is the process by which listed species and their ecosystems are restored and their future is safeguarded to the point that protections under the ESA are no longer needed. Although recovery *actions* can, and should, start immediately upon listing a species as endangered or threatened under the ESA, prompt development and implementation of a recovery *plan* will ensure that recovery efforts target limited resources effectively and efficiently into the future. The recovery plan serves as a road map for species recovery – it lays out where we need to go and how best to get there. NMFS expects to convene a recovery team to develop the recovery plan for the Southern DPS of green sturgeon.

Who should be contacted for more information?

The Southwest Region Protected Resources Division is the lead in developing the listing rule and all subsequent rules. For more information, please contact Melissa Neuman.

By mail: National Marine Fisheries Service
Southwest Regional Office
Protected Resources Division
501 West Ocean Blvd., Suite 4200
Long Beach, CA 90802

By phone: (562)980-4115

By email: Melissa.Neuman@noaa.gov