NOAA FISHERIES

GARFO

Proposed Critical Habitat for Atlantic Sturgeon

The Gulf of Maine, New York Bight, and Chesapeake Bay Distinct Population Segments

Information Meetings: Annapolis, MD July 13, 2016

Portland ME, July 18, 2016

Gloucester, MA July 21, 2016

Proposed Rules – Federal Register, June 3, 2016

Two Rules with the same public comment period

- 81 FR 35701 – Gulf of Maine, New York Bight, Chesapeake Bay DPSs
- 81 FR 36078 – Carolina & South Atlantic DPSs

Comments due by September 1, 2016

2016 SEPTEMBER						
SUN	MON	TUE	WED	THU	FRI	SAT
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

Purpose of the Information Meeting

- ✓ Review purpose of Critical Habitat
- ✓ Review the Proposed Rule
- ✓ Answer procedural questions to help you develop your comments

Look for the blue waves for links to additional information on the federal rulemaking process and designating critical habitat

We cannot accept public comment or answer substance questions about the proposed rule at today's information meeting.

Some Critical Habitat Basics

Who designates Critical Habitat?

The Secretaries of Commerce and Interior share responsibilities for implementing most of the provisions of the ESA. Authority has been delegated to the Assistant Administrator for Fisheries and to the Director of FWS.

Why do we designate Critical Habitat?

Section 4 of the ESA:

The Secretary, by regulation promulgated in accordance with subsection (b) and to the maximum extent prudent and determinable— (i) shall, concurrently with making a determination under paragraph (1) that a species is an endangered species or a threatened species, designate any habitat of such species which is then considered to be critical habitat;

Full text of the ESA is available at
http://www.nmfs.noaa.gov/pr/laws/esa/text.htm

What is Critical Habitat?

Critical habitat is: (1) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of the Act, on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protections; and (2) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

Critical Habitat is the habitat essential to the species recovery

NOAA Fisheries Image Gallery

Tom Moore, NOAA

NOAA Fisheries Image Gallery

Critical Habitat is the habitat

essential to the species recovery

..no areas outside of the U.S.

..not the entire range

.. not certain

DOD lands.

NOAA Fisheries Image Gallery

Tom Moore, NOAA

NOAA Fisheries Image Gallery

Critical Habitat is the habitat

essential to the species recovery

..no areas outside of the U.S.

..not the entire range

.. not certain

DOD lands.

Does not create preserves or refuges

Does not apply to citizens for

actions that do not involve a

Federal agency

NOAA Fisheries Image Gallery

Tom Moore, NOAA

NOAA Fisheries Image Gallery

Section 7 of the ESA - consultation

Once critical habitat is designated, section 7(a)(2) of the ESA requires Federal agencies to ensure that any action they fund, authorize or carry out is not likely to destroy or adversely modify that habitat. This requirement is in addition to the section 7(a)(2) requirement that Federal agencies ensure that their actions are not likely to jeopardize the continued existence of ESA-listed species. The activity of the federal agency may need to be modified to avoid destroying or adversely modifying the critical habitat.

Section 7 of the ESA - conference

Section 7(a)(4): Each Federal agency shall confer with the Secretary on any agency action which is likely to result in the destruction or adverse modification of critical habitat proposed to be designated for such species.

Once a final rule is published, the conference opinion can be turned into a final biological opinion.

A link to the 2016 revised definition of destruction or adverse modification of critical habitat as well as links to ESA section 7 regulations, policy, and guidance are available at http://www.nmfs.noaa.gov/pr/laws/esa/policies.htm

Questions ?

The Proposed Rule

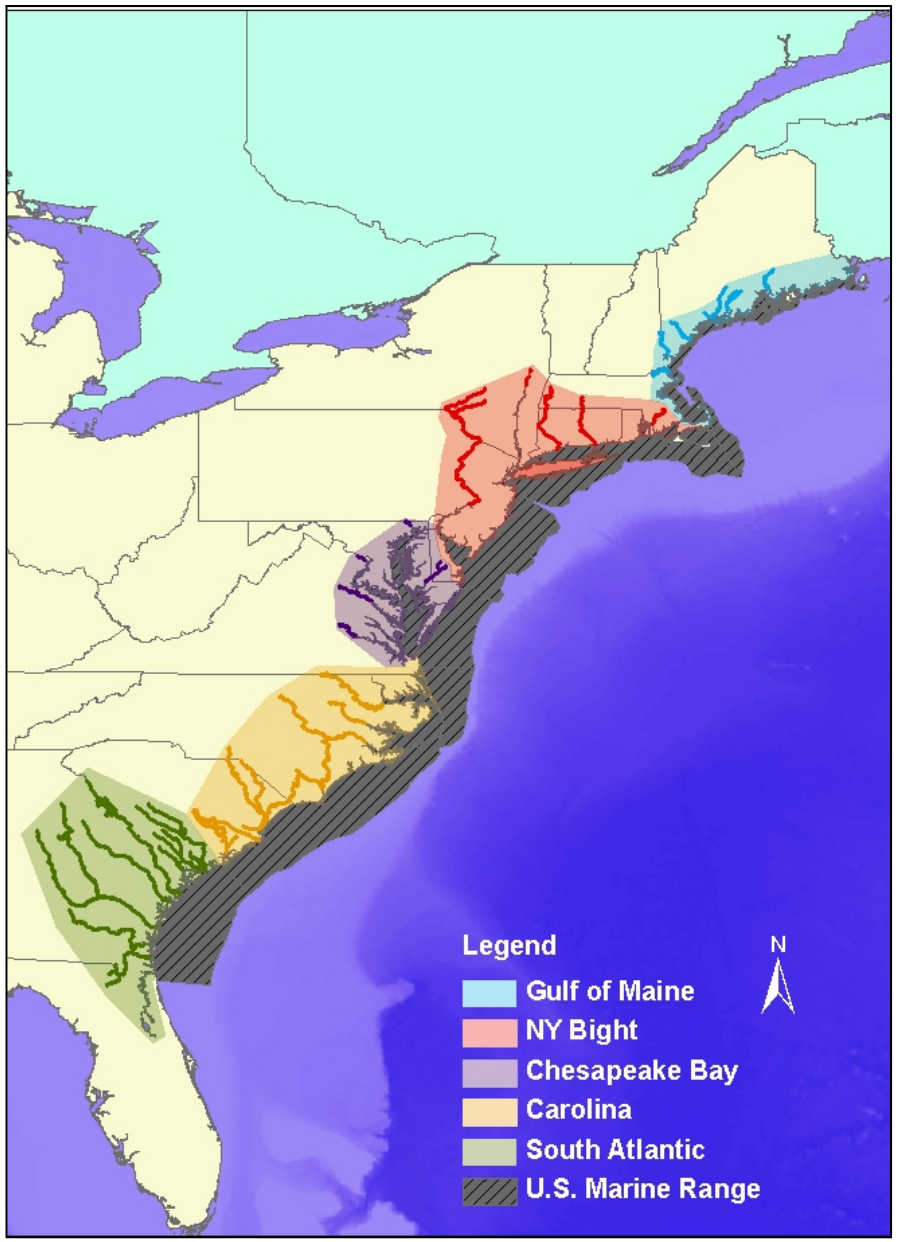
Designation of Critical Habitat for the Gulf of Maine, New York Bight, and Chesapeake Bay Distinct Population Segments of Atlantic Sturgeon

81 FR 35701, June 3, 2016

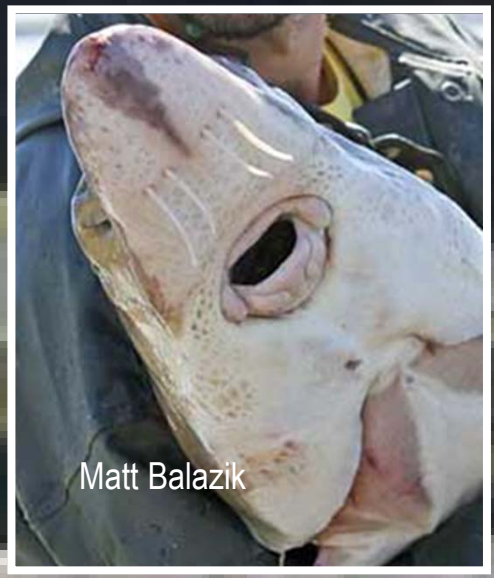
February 6, 2012

NMFS published final rules in the *Federal Register* listing five distinct population segments of Atlantic sturgeon under the ESA. We did not designate critical habitat at the same time but expected to in the future through separate rulemaking.

* Map colors do not represent critical habitat boundaries



Anadromous – require freshwater, estuarine, and marine waters
Benthic (bottom) feeders
Slow growing and late to mature – 7 to 34 years
Do not necessarily spawn every year - return to natal rivers to spawn


Matt Balazik

Editth Carson NOAA

Timeframe for Designating Critical Habitat

From section 4 of the ESA:

The Secretary, by regulation promulgated in accordance with subsection (b) and to the maximum extent prudent and determinable— (i) shall, concurrently with making a determination under paragraph (1) that a species is an endangered species or a threatened species, designate any habitat of such species which is then considered to be critical habitat;

Deadlines for submitting the proposed and final rules to the *Federal Register were/are*:

Proposed rules submitted by May 30, 2016

Final rules submitted no later than June 3, 2017.

Draft supplementary document

Provides the biological information, our consideration of impacts, and the draft economic analysis for the proposed Gulf of Maine, New York Bight, and Chesapeake Bay DPS critical habitat designations.

Available at regulations.gov and at http://www.greateratlantic.fisheries.noaa.gov/protected/atlsturgeon/index.html

Peer review

The biological information was reviewed by four members of the ASMFC Sturgeon Technical Committee. The economic analysis was peer reviewed by three economists with knowledge of the Endangered Species Act.

The peer review plan, the peer review comments, and our response to the comments are available at http://www.cio.noaa.gov/services_programs/prplans/ID294.html

We used a stepwise approach, based on the statutory and regulatory requirements

1. Identified the geographical area occupied at listing
2. Identified physical or biological features essential to the conservation of the DPS
3. Determined whether the features may require special management considerations or protection
4. Identified specific areas that contain these features and delineated the area(s)
5. Considered whether any unoccupied habitat is essential to the conservation
6. Considered the economic, national security, or any other impacts of designating critical habitat (i.e. 4(b)(2) analysis) and whether to exclude any specific areas, but not if this would result in extinction of the DPS
7. Determined whether any area cannot be designated because of an INRMP that provides a benefit to the DPS

The joint regulations for designating critical habitat are at 50 CFR 424. Changes made to the regulations in 2016 can currently be found at http://www.nmfs.noaa.gov/pr/laws/esa/

For the DPSs we:	Response:
Step 1. Identified the geographical area occupied by the DPS at the time of listing (See page 35707 of the proposed rule, also pages 15-16 of the Supp. Document)	The entirety of each DPSs range with the exception of areas that are inaccessible to Atlantic sturgeon because of a dam, other manmade structure or natural feature (e.g., falls) that is impassable by Atlantic sturgeon
Step 2. Identified the physical or biological features essential to the conservation of the DPS (See pages 35707-35709 of the proposed rule, also pages 16-19 of the Supp. Document)	Increasing survival of subadults and adults such that subadults survive to mature and reproduce, and adults survive to spawn more than once, is essential to the conservation of each DPS. We were not able to identify the physical or biological features. Considered available information on prey type, abundance, substrate, etc.
Step 2. (continued)	Increasing successful reproduction and recruitment to the marine environment is essential to the conservation of each DPS. Each DPS has no more than two known spawning rivers. The physical features identified are a group of features, focused on water and substrate.

For the DPS we:	Response:
Step 3. Determined whether these features may require special management considerations or protection (Pages 35707-35709 of the proposed rule and pages 19-20 of the Supp. Document)	Yes. Activities such as in-water construction, dredging, sand and gravel mining, water withdrawals, etc.
Step 4. Identified specific areas that contain these features and delineated the area(s) (Page 35710 of the proposed rule and pages 20-22 of the Supp. Document)	All areas are the named main stem river, only (no tributaries unless also named), full bank width of the river segment from the upriver boundary (at a dam, major fall, or readily identifiable structure nearest to where the fall line crosses the river) to the river mouth.
Step 5. Considered whether any unoccupied habitat is essential to the conservation of the DPS (Pages 35709-35710 of the proposed rule and page 22 of the Supp. Document)	No. Historical habitat is, generally, accessible to the Gulf of Maine, New York Bight, and Chesapeake Bay DPSs.

For the DPSs we:	Response:
Step 6. Considered the economic, national security, or any other impacts of designating, and whether to exclude any specific areas but not if this would result in extinction of the DPS (Pages 35711-35713 of the proposed rule and pages 23-34 of the Supp. Document)	No exclusions. There are beneficial impacts for designating. Any economic and national security impacts are expected to be co-extensive with listing of the species.
Step 7. Determined whether there were any lands or geographic areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an Integrated Natural Resource Management Plan (INRMP), and whether such plan provides a conservation benefit to the species and its habitat (See pages 35710-35711 of the proposed rule and pages 26-32 of the Supp. Document). We requested information from the Department of Defense for facilities that might occur within proposed critical habitat and whether there was an INRMP for the facility	U.S. Military Academy- West Point, NY; Joint Base Langley - Eustis, VA; Marine Corps Base Quantico, VA; Naval Weapons Station Yorktown, VA; and, Naval Support Facility Dahlgren, VA. The specific areas are not part of the proposed critical habitat

The physical features for reproduction and recruitment

- Hard bottom substrate (e.g., rock, cobble, gravel, limestone, boulder, etc.) in low salinity waters (i.e., 0.0-0.5 parts per thousand range) for settlement of fertilized eggs, refuge, growth, and development of early life stages;

- Aquatic habitat with a gradual downstream salinity gradient of 0.5-30 parts per thousand and soft substrate (e.g., sand, mud) downstream of spawning sites for juvenile foraging and physiological development;

- Water of appropriate depth and absent physical barriers to passage (e.g., locks, dams, reservoirs, gear, etc.) between the river mouth and spawning sites necessary to support: (1) unimpeded movements of adults to and from spawning sites; (2) seasonal and physiologically-dependent movement of juvenile Atlantic sturgeon to appropriate salinity zones within the river estuary, and; (3) staging, resting, or holding of subadults or spawning condition adults. Water depths in the main river channels must also be deep enough (e.g., ≥1.2 m) to ensure continuous flow in the main channel at all times when any sturgeon life stage would be in the river, and;

- Water, especially in the bottom meter of the water column, with the temperature, salinity, and oxygen values that, combined, support: (1) spawning; (2) annual and interannual adult, subadult, larval, and juvenile survival; and (3) larval, juvenile, and subadult growth, development, and recruitment (e.g., 13° C to 26° C for spawning habitat and no more than 30° C for juvenile rearing habitat, and 6 mg/L dissolved oxygen for juvenile rearing habitat).

Gulf of Maine DPS

Five Proposed Critical Habitat Areas:

Penobscot River

Kennebec River

Androscoggin River

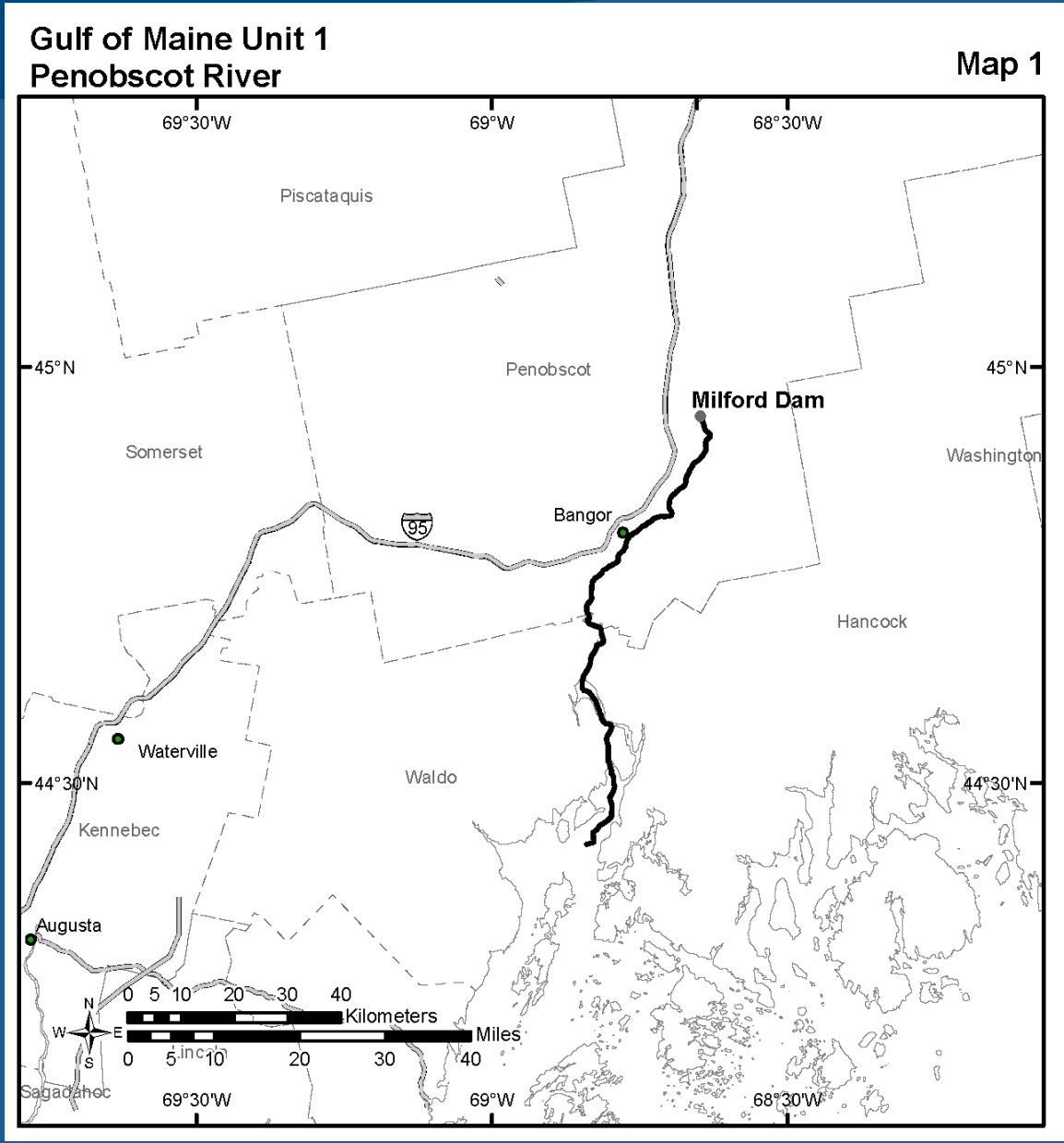
Piscataqua River – includes some waters of the Cocheco and Salmon Falls rivers

Merrimack River

All proposed critical habitat areas are the full bank width of the named main stem river within the upriver and downriver boundaries.

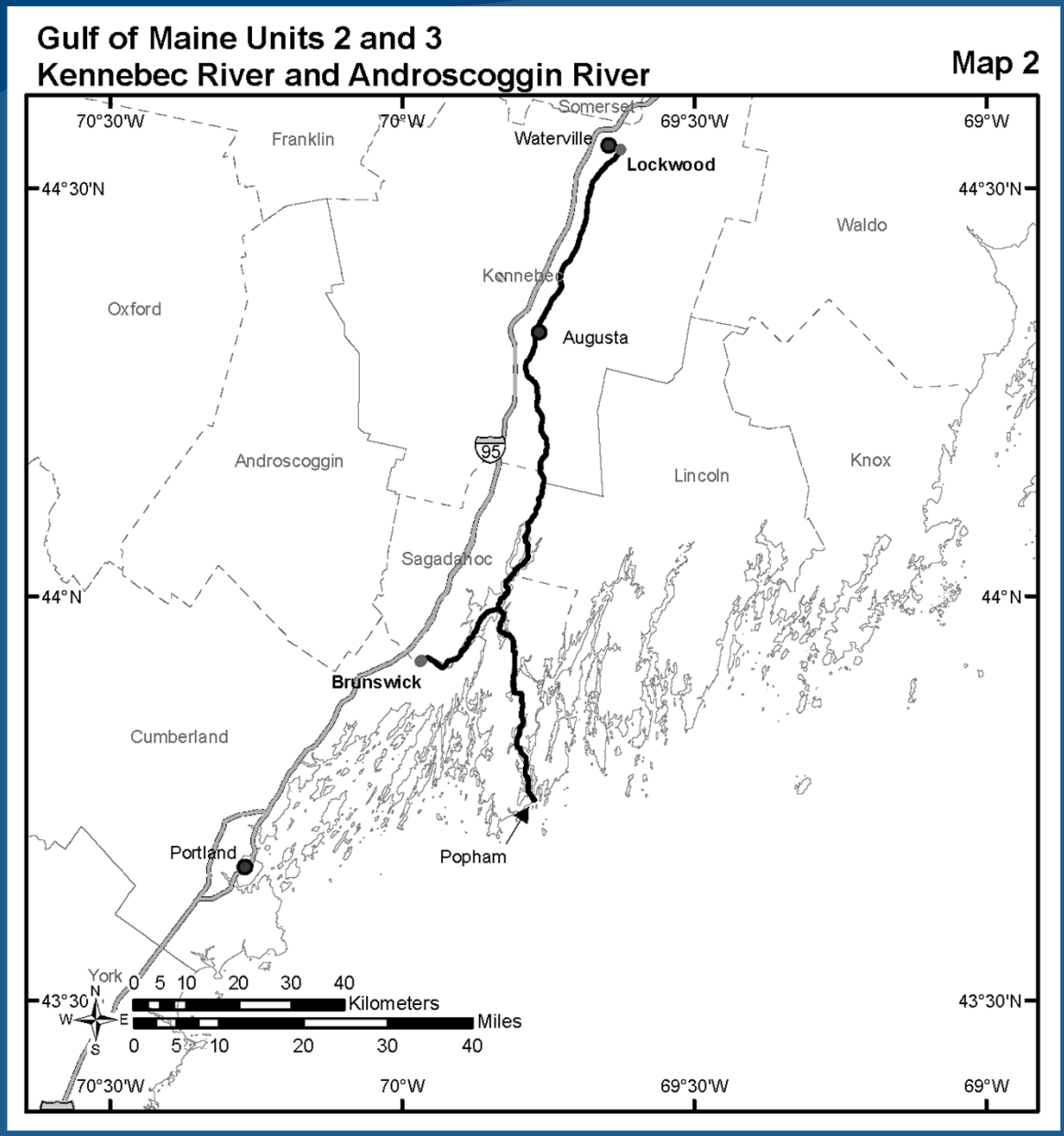
Penobscot River CH

Main stem from the Milford Dam to where the main stem river drainage discharges at its mouth into Penobscot Bay



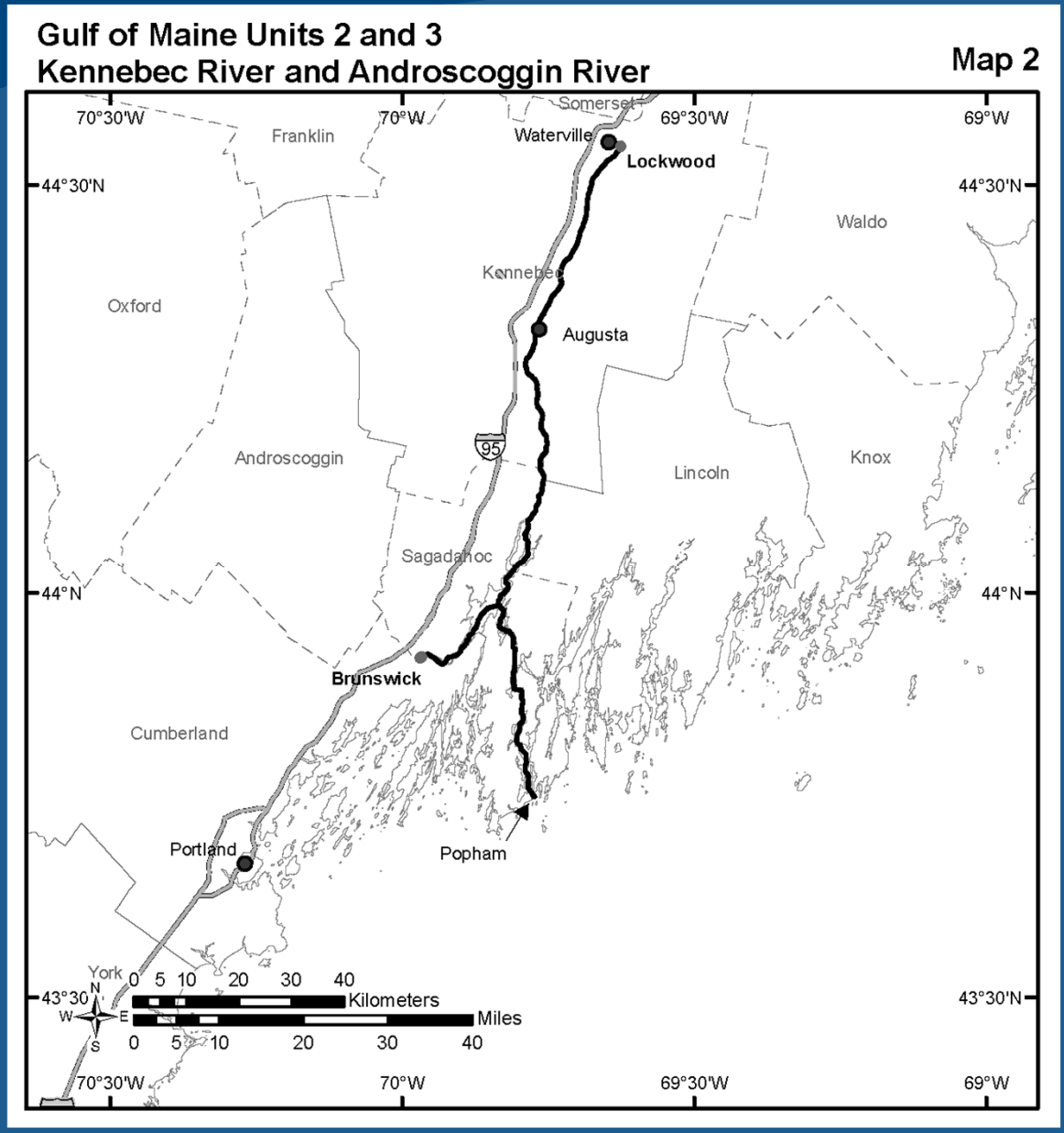
Kennebec River CH

Main stem from the Ticonic Falls/Lockwood Dam to where the main stem river discharges at its mouth into the Atlantic Ocean



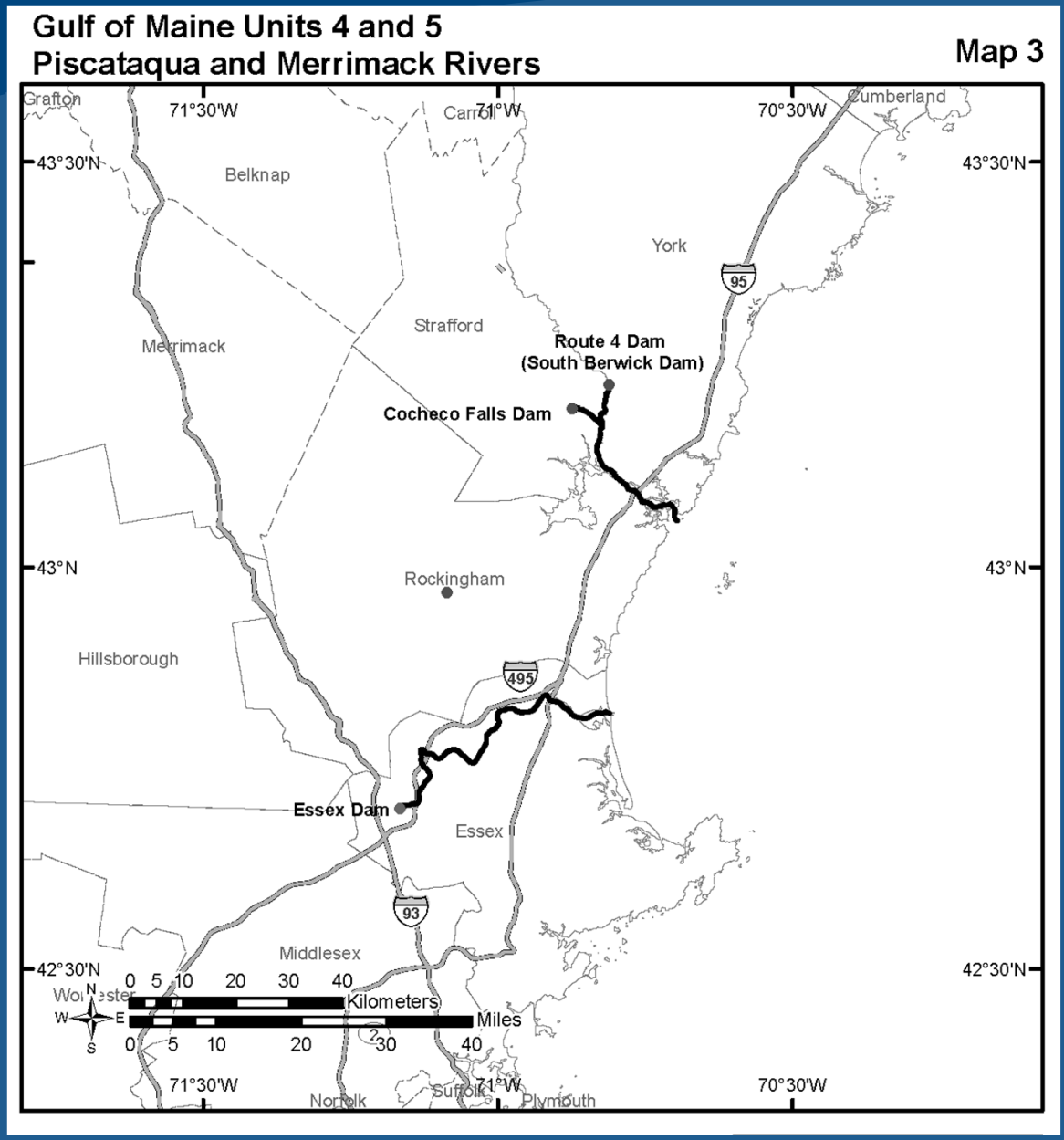
Androscoggin River CH

Main stem from the Brunswick Dam to where the main stem river drainage discharges into Merrymeeting Bay



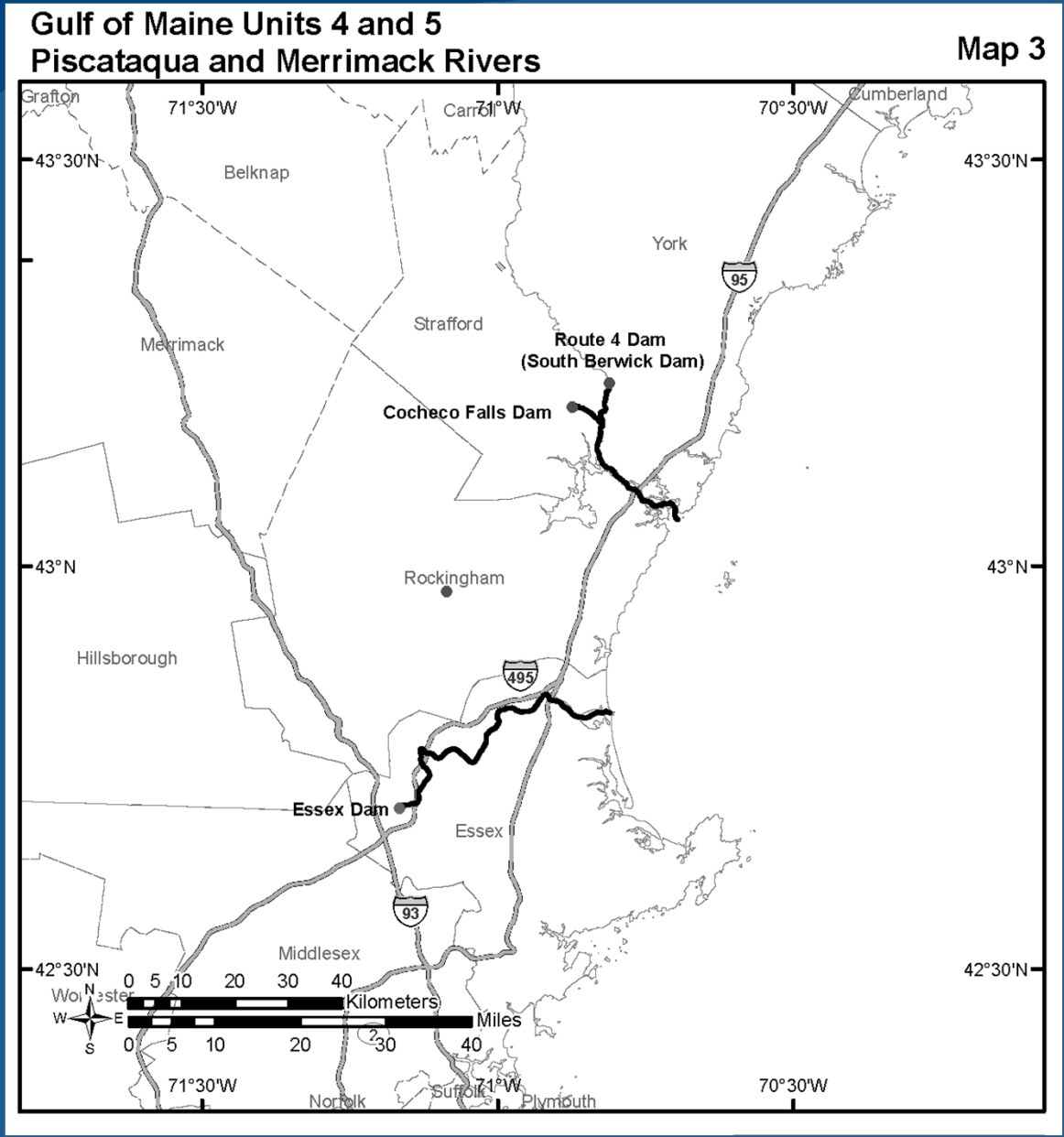
Piscataqua River CH

Piscataqua River from its confluence with the Salmon Falls and Cocheco rivers downstream to where the main stem river discharges at its mouth into the Atlantic Ocean as well as the waters of the Cocheco River from its confluence with the Piscataqua River and upstream to the Cocheco Falls Dam, and waters of the Salmon Falls River from its confluence with the Piscataqua River and upstream to the Route 4 Dam



Merrimack River CH

Main stem from the Essex Dam (also known as the Lawrence Dam)
to where the main stem river discharges at its mouth into the Atlantic Ocean



New York Bight DPS

Four proposed critical habitat areas:

Connecticut River

Housatonic River

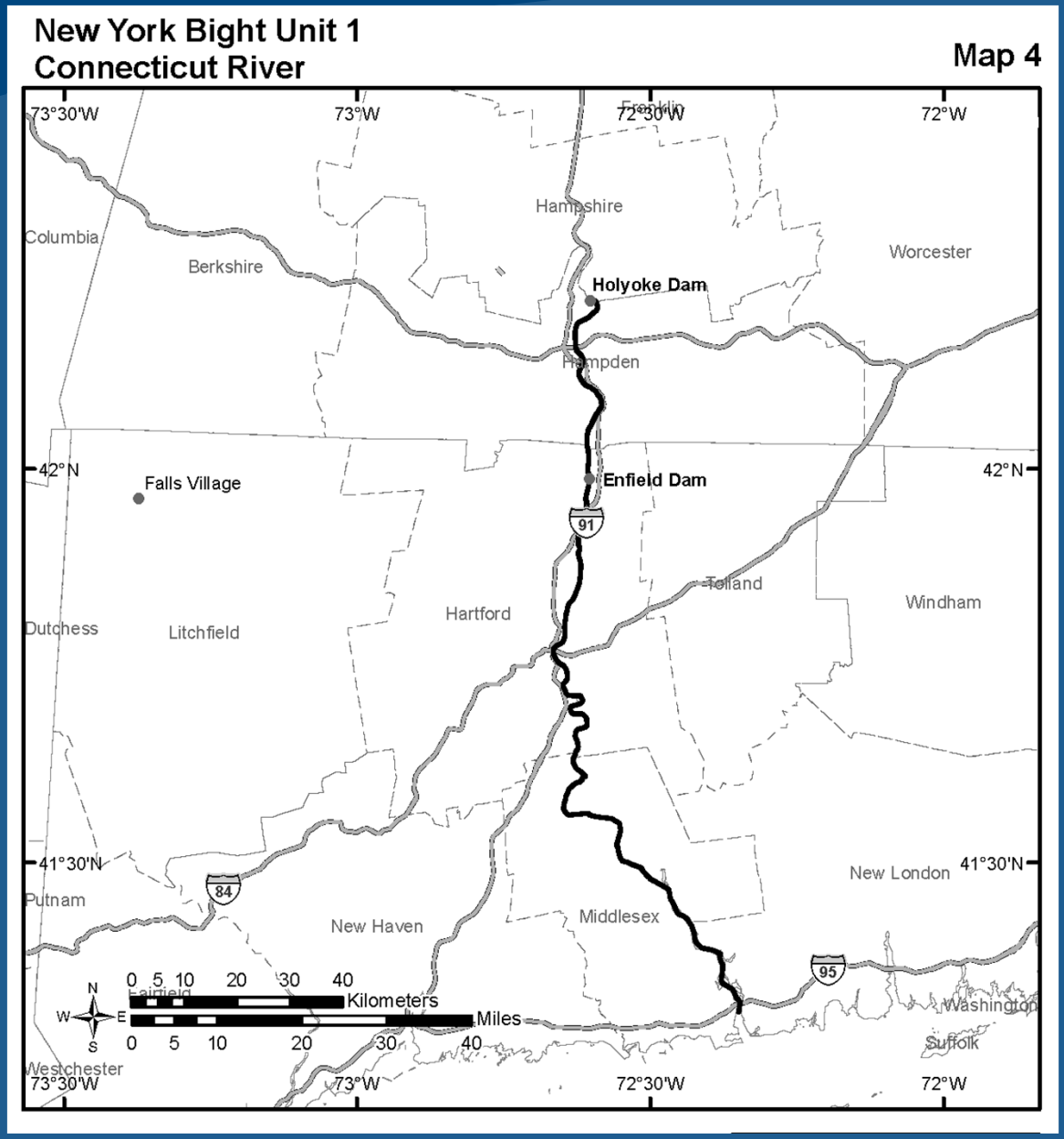
Hudson River

Delaware River

All are the full bank width of the named main stem river within the upriver and downriver boundaries.

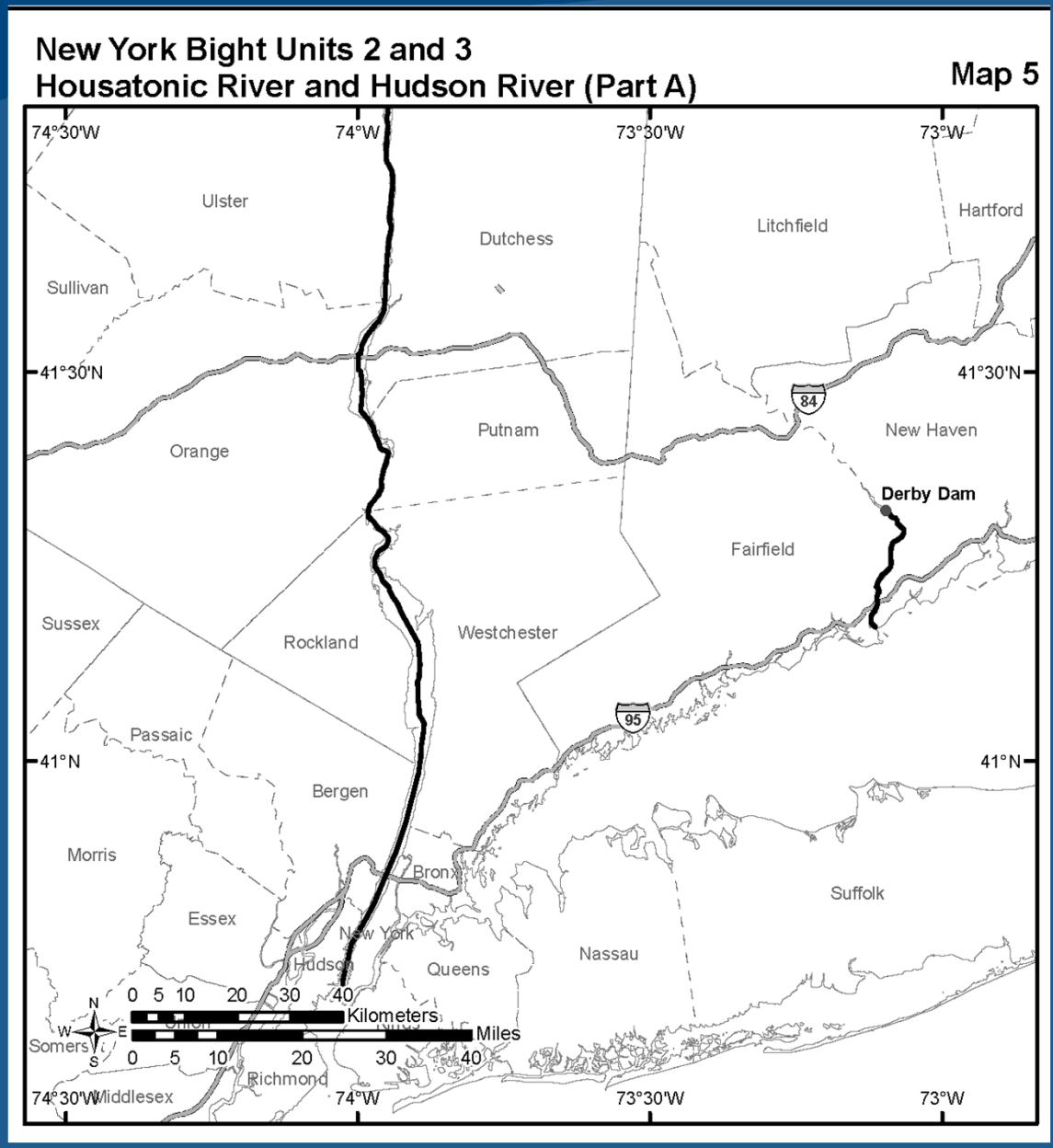
Connecticut River CH

Main stem from the Holyoke Dam downstream to where the main stem river discharges at its mouth into Long Island Sound



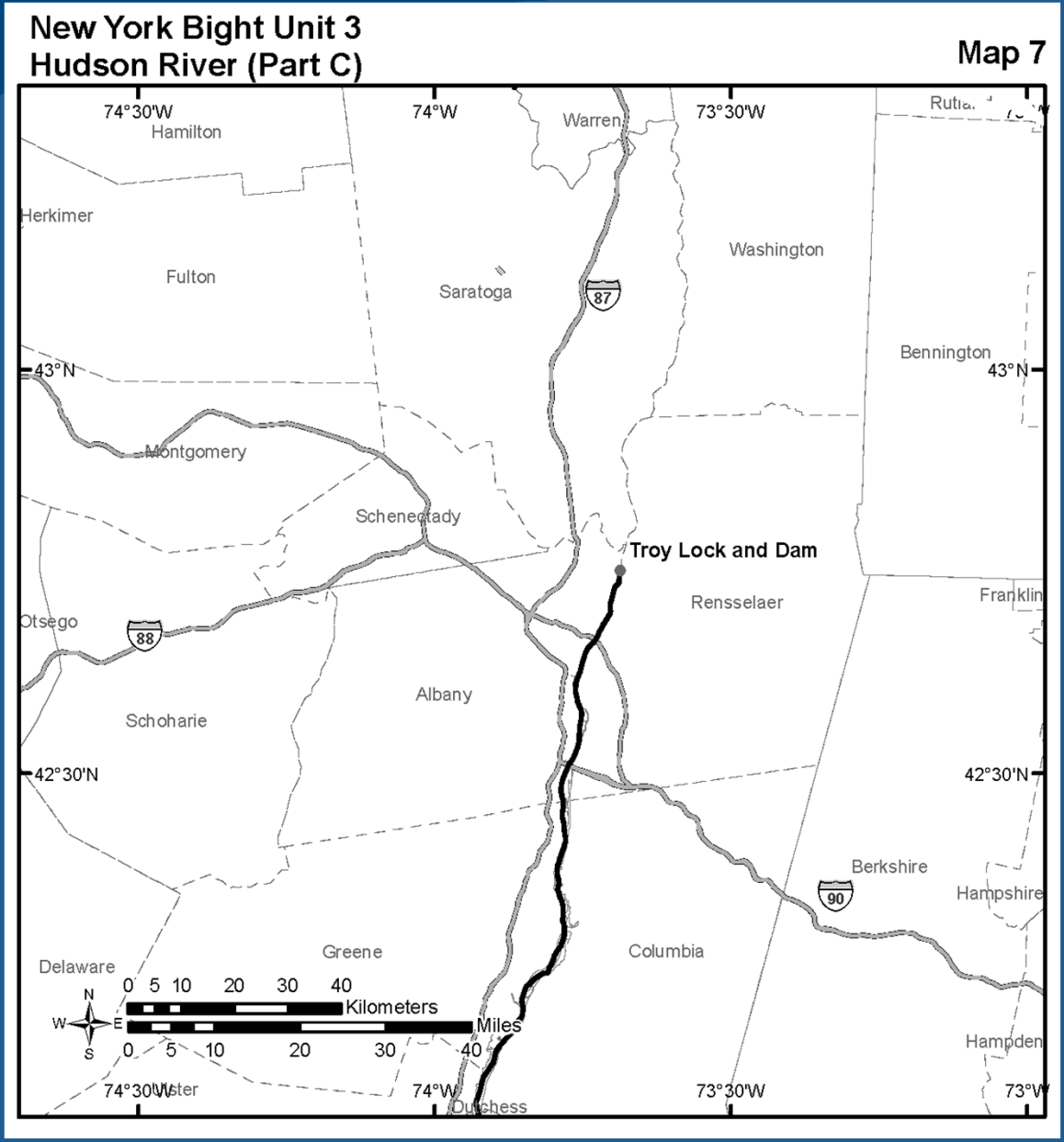
Housatonic River CH

Main stem from the Derby Dam downstream to where the main stem discharges at its mouth into Long Island Sound



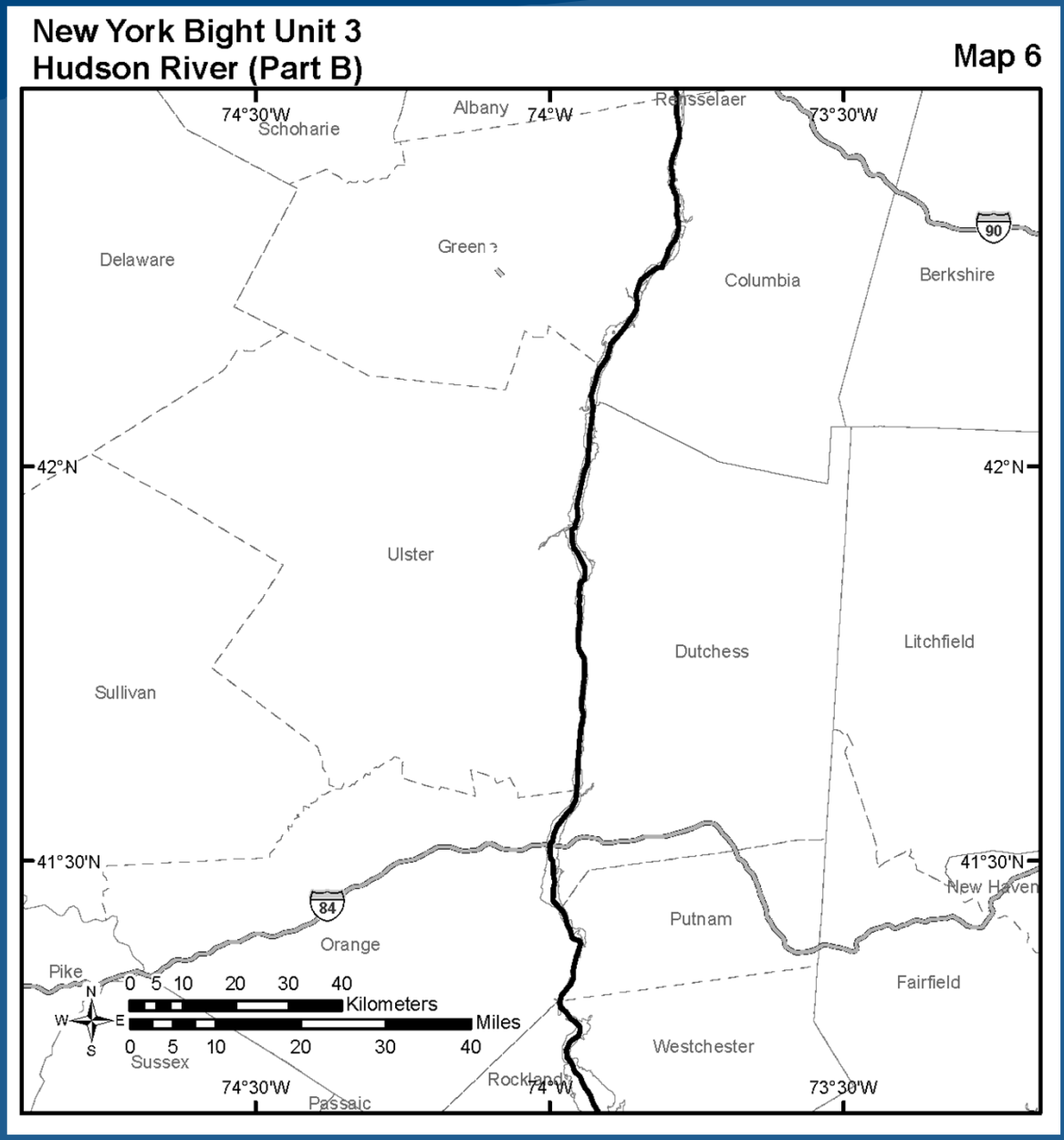
Hudson River CH

Main stem from the Troy Lock and Dam (also known as the Federal Dam) to where the main stem river discharges at its mouth into New York City Harbor



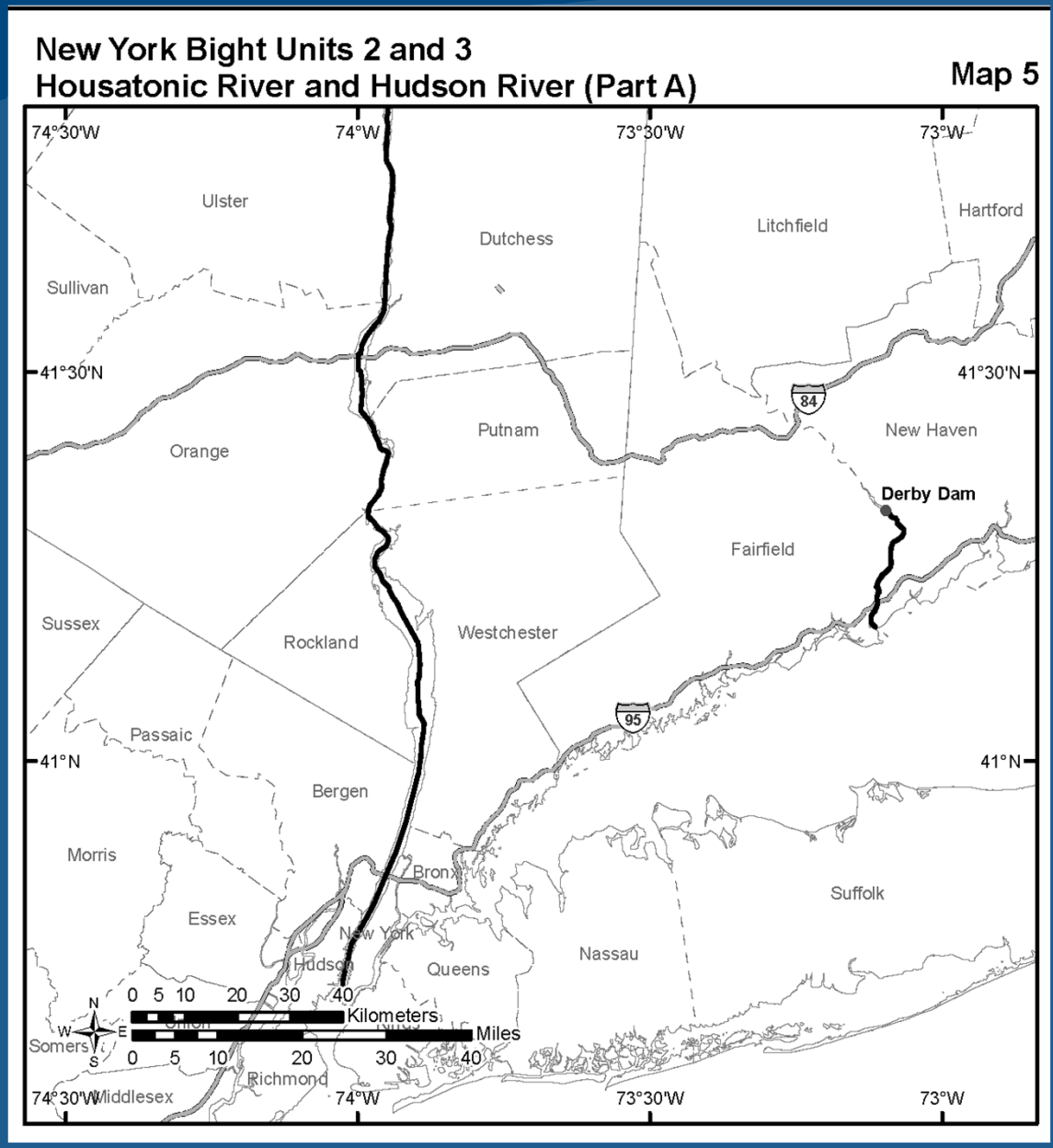
Hudson River CH

Main stem from the Troy Lock and Dam (also known as the Federal Dam) to where the main stem river discharges at its mouth into New York City Harbor



Hudson River CH

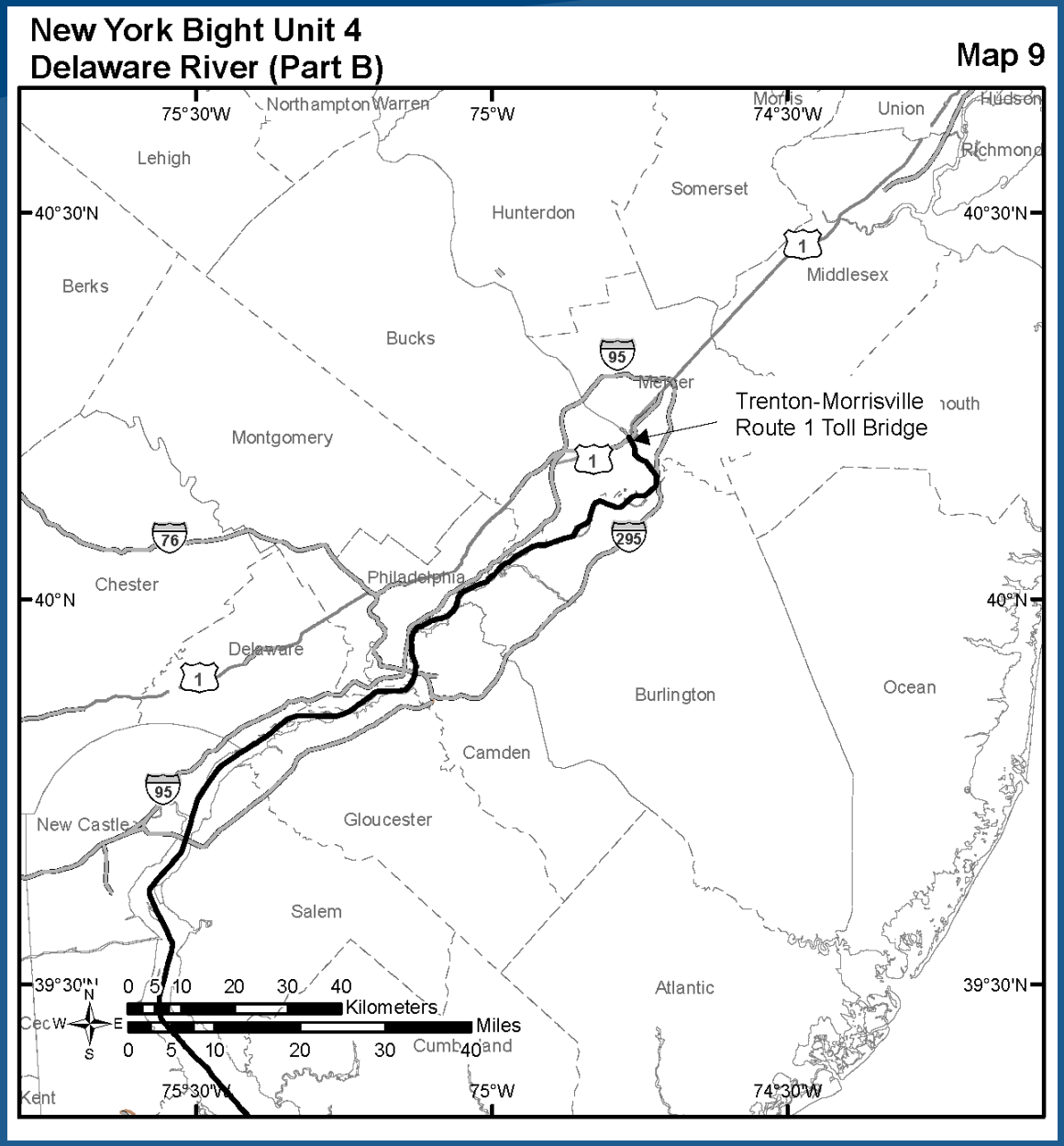
Main stem from the Troy Lock and Dam (also known as the Federal Dam) to where the main stem river discharges at its mouth into New York City Harbor



Delaware River CH

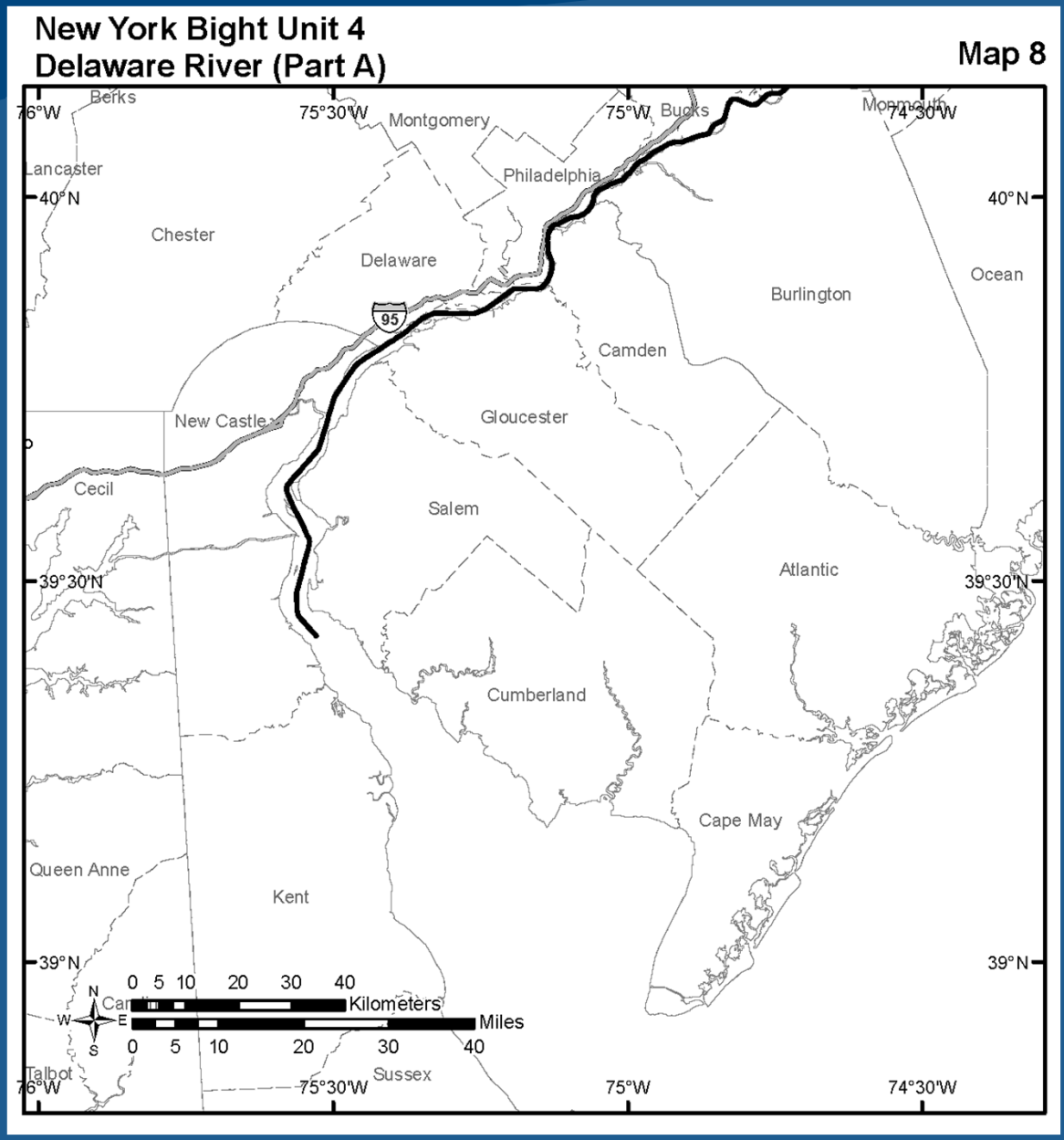
Main stem from the crossing of the Trenton-Morrisville Route 1 Toll Bridge, to where the main stem river discharges at its mouth into Delaware Bay

Mouth of the Delaware River:
In 1905, the legislatures of New Jersey and Delaware defined the line of demarcation between the Delaware River and Delaware Bay as an imaginary line from Liston Point, DE to Hope Creek, NJ.



Delaware River CH

Main stem from the crossing of the Trenton-Morrisville Route 1 Toll Bridge, to where the main stem river discharges at its mouth into Delaware Bay



Chesapeake Bay DPS

Five proposed critical habitat areas:

Susquehanna River

Potomac River

Rappahannock River

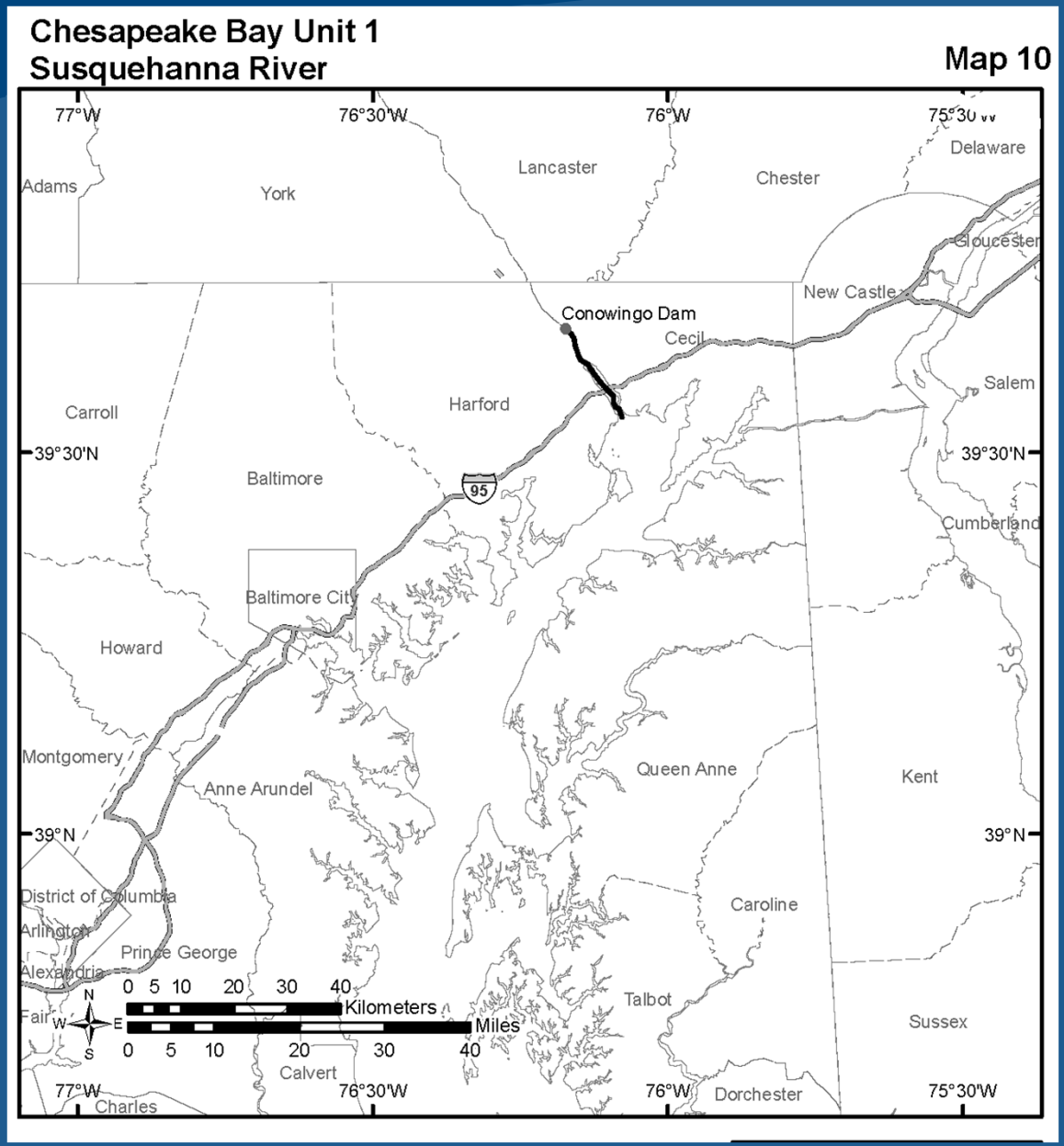
York River System – includes Pamunkey and Mattaponi rivers

James River

All are the full bank width of the named main stem river within the upriver and downriver boundaries.

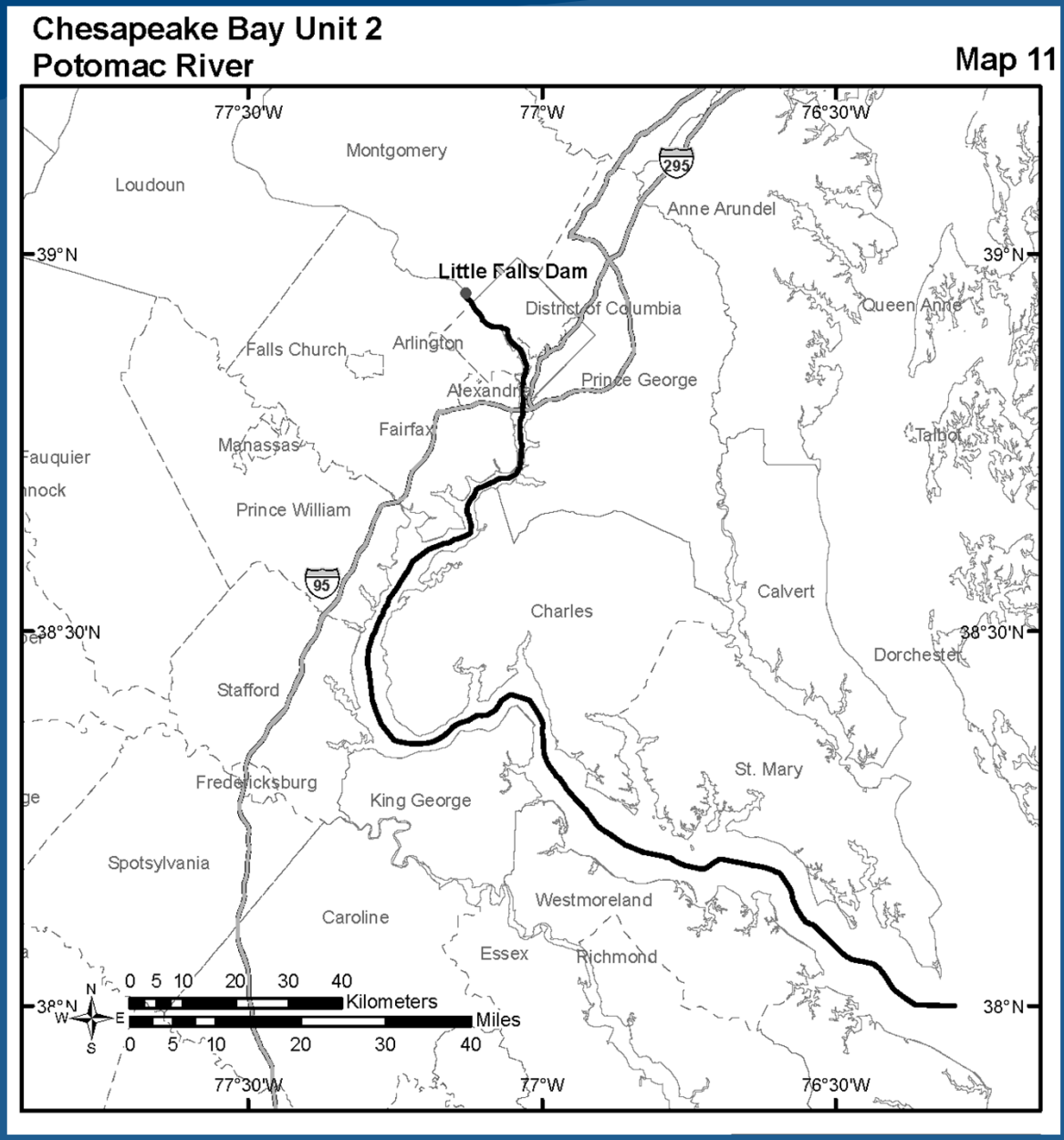
Susquehanna River CH

Main stem from the Conowingo Dam to where the main stem river discharges at its mouth into the Chesapeake Bay



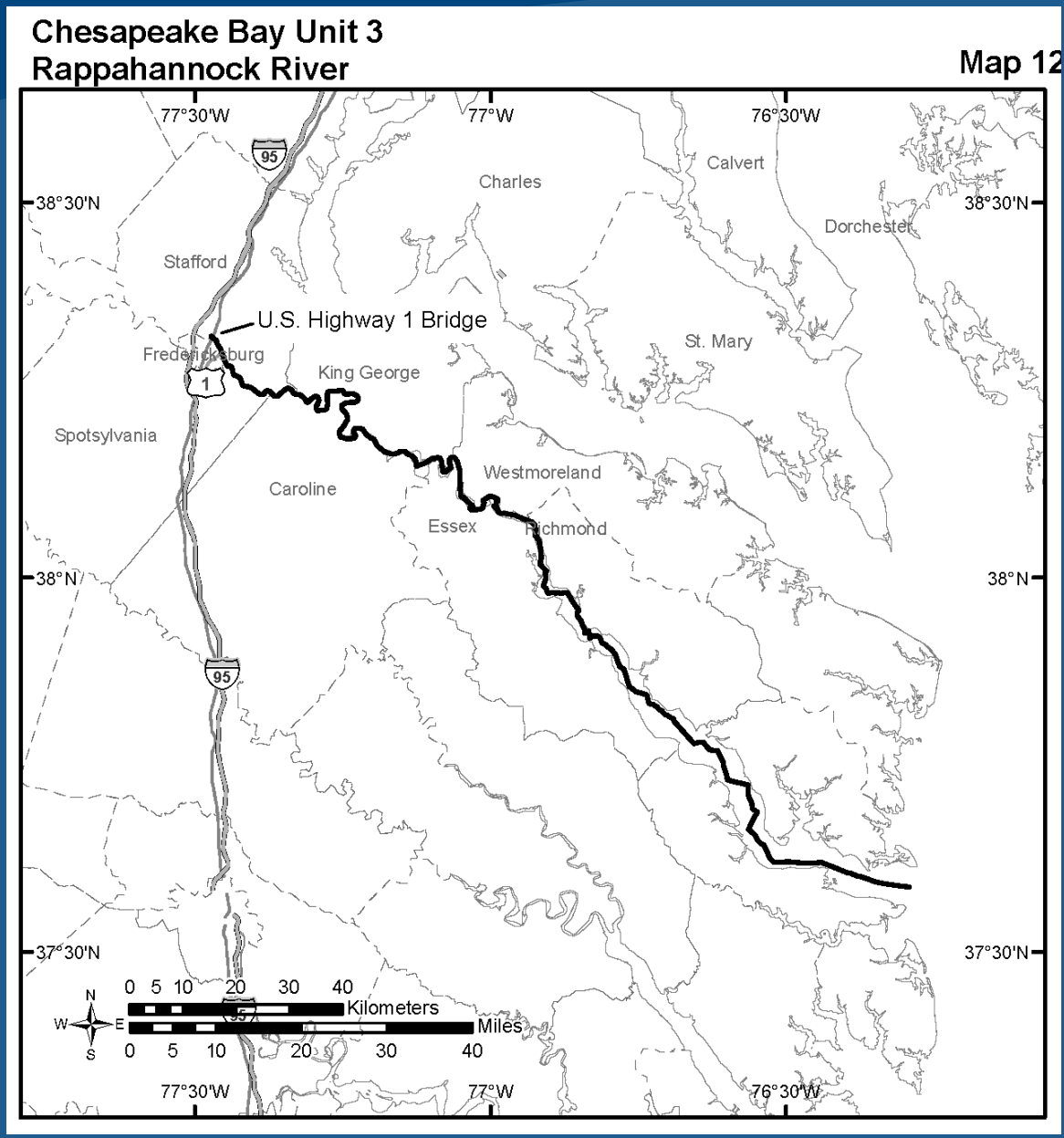
Potomac River CH

Main stem from the Little Falls Dam downstream to where the main stem river discharges at its mouth into the Chesapeake Bay



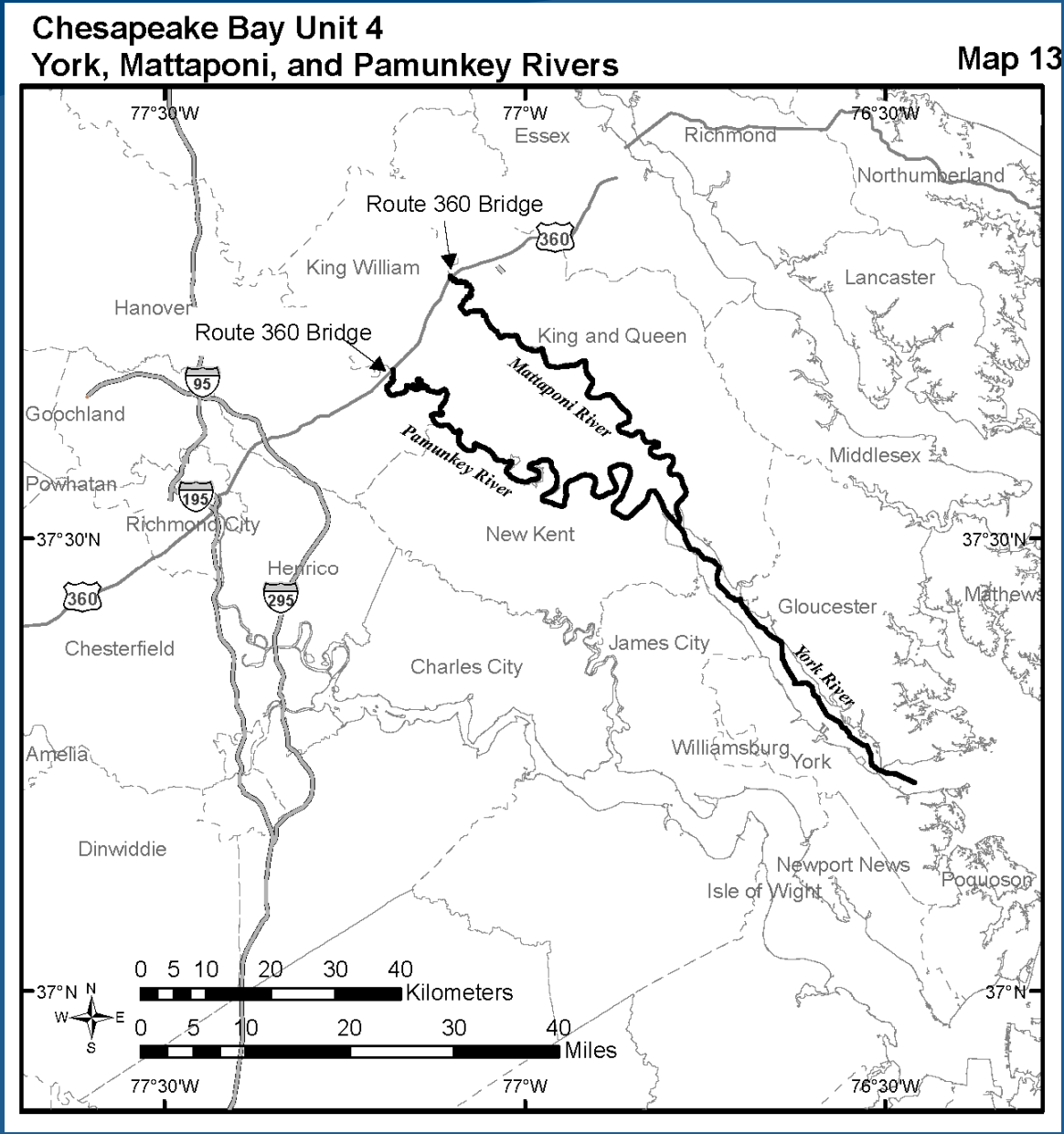
Rappahannock River CH

Main stem from the U.S. Highway 1 Bridge, to where the river discharges at its mouth into the Chesapeake Bay



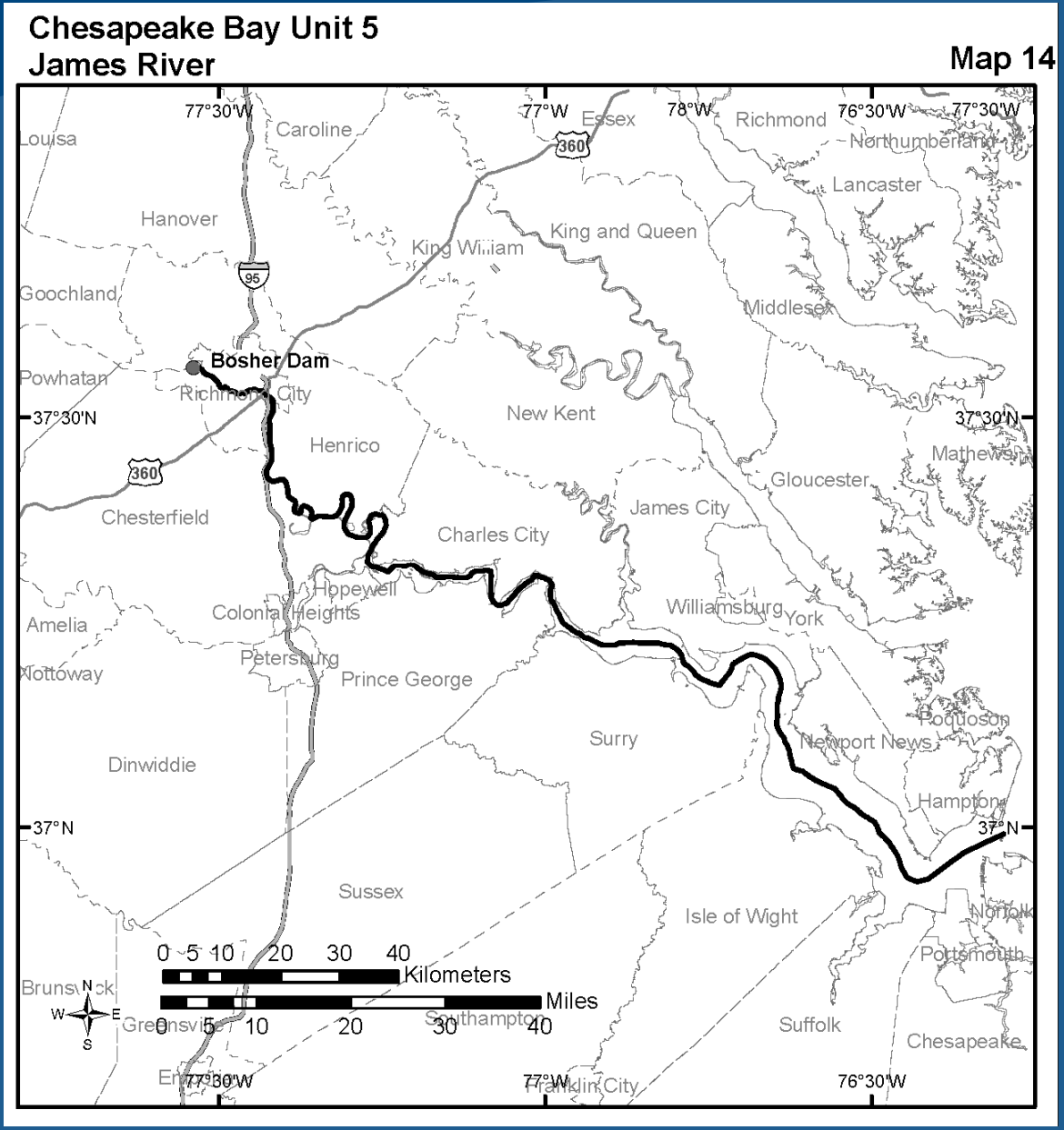
York River System CH

York River from its confluence with the Mattaponi and Pamunkey rivers downstream to where the main stem river discharges at its mouth into the Chesapeake Bay as well as the waters of the Mattaponi River from its confluence with the York River and upstream to the Virginia State Route 360 Bridge of the Mattaponi River, and waters of the Pamunkey River from its confluence with the York River and upstream to the Virginia State Route 360 Bridge crossing of the Pamunkey River



James River CH

James River from Boshers Dam downstream to where the main stem river discharges at its mouth into the Chesapeake Bay at Hampton Roads



Summary

All of the critical habitat areas for the Gulf of Maine, New York Bight, and Chesapeake Bay DPSs occur in tidally-affected riverine waters of a coastal estuary within the geographic area occupied by each DPS

Critical Habitat is designated based on the physical or biological features requiring special management considerations or protections

Critical Habitat is based on the best available information – additional critical habitat may be proposed in the future as new information becomes available.

Critical Habitat is not a refuge or preserve

- Activities are not prohibited within critical habitat
- Federal agency actions (including activities by non-federal entities that require a federal agency action) may need to be modified if the action would destroy or adversely modify the critical habitat

How to Comment – by September 1, 2016

- Electronic Submissions: Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0107, Click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- Mail: Kimberly B. Damon-Randall, Assistant Regional Administrator, Protected Resources Division, NMFS, Greater Atlantic Regional Office, 55 Great Republic Drive, Gloucester, MA 01930

- Public Hearing: oral and written comments will be accepted.

How to Comment – by September 1, 2016

Both public hearings will take place on July 21 at NOAA Fisheries Greater Atlantic Regional Office, 55 Great Republic Drive, Gloucester, MA 01930

July 21, 3-5pm
To participate by phone, Call: 888-324-6920, Passcode: 8025674
View the presentation via webinar (3-3:30pm), Event number: 660 914 489
Event password: Meeting123

July 21, 6-8pm
To participate by phone, Call: 888-324-6920 , Passcode: 9659499
View the presentation via webinar (6-6:30pm), Event number: 663 090 775
Event password: Meeting123

Questions - Contacts

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