

**Written Testimony of
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**Legislative Hearing on H.R. 6096, titled the Atlantic Fisheries Statutes Reauthorization Act
of 2012**

**Before the
Subcommittee on Fisheries, Wildlife, Oceans, and Insular Affairs
United States House of Representatives**

July 19, 2012

Chairman Fleming, Ranking Member Sablan, and distinguished members of the Subcommittee, I appreciate the opportunity to speak with you today about H.R. 6096, the Atlantic Fisheries Statutes Reauthorization Act of 2012.

My name is Gregory DiDomenico, Executive Director of the Garden State Seafood Association (GSSA). The GSSA membership is comprised of commercial fishermen, vessel owners, seafood processors and associated businesses in the State of New Jersey. GSSA and its members are involved in all aspects of the fishery management process. Our members occupy advisory panel seats on management councils, participate in cooperative research and have a healthy respect for the ocean environment.

For today's hearing I intend to explain how the recent Endangered Species listing of Atlantic sturgeon is based upon in an outdated and insufficient analysis. Furthermore, it is our opinion that the determination to list the Hudson River DPS is not based on the best available science and does not reflect the true state of the resource as it is today.

The authorization of funds contained in the legislation can prevent serious negative impacts on the U.S. fishing industry and ultimately our coastal economies by completing a thorough analysis of cooperative science and conducting an up to date stock assessment.

Atlantic Sturgeon

The Fishery and the Moratorium

Historically, there was a large commercial fishery for Atlantic sturgeon during the early to mid 1990s. This directed fishery was by far the largest source of fishing-related mortality, reaching a 90-year peak of approximately 100 metric tons before being closed by the Atlantic States Marine Fisheries Commission (ASMFC) throughout the entire range from Maine to Florida, in 1998.

The First Endangered Species Act (ESA) Debate

In September 1998, NMFS issued a ruling citing the entire suite of state and federal protective measures already in place, including those that were to be implemented, as reasons *not* to support an ESA listing of Atlantic sturgeon at that time. In fact, NMFS indicated that by 1998 all state jurisdictions within in the U.S. range of the species had implemented complete prohibitions on both harvest and possession. (See 63 FR 50189). In this same ruling, NMFS went so far as to honor the pending closure of the Exclusive Economic Zone (EEZ) as yet another critical conservation benefit that mitigated any need for an ESA listing. Consistent with the 1998 position, NMFS closed all federal waters to sturgeon fishing in 1999. The Agency stated that “the duration of the moratorium is anticipated to be approximately 41 years from its initiation.” (See 63 FR 50189).

The Present ESA Debate

Today, just 14 years into a 41 year recovery plan, NMFS has listed the Atlantic sturgeon under the ESA and the Agency has never ever conducted a single sturgeon stock assessment. In fact, the Agency has never produced a full population estimate for any sturgeon DPS they propose to list on the entire East Coast. Instead, the NMFS stated on January 6, 2010 that the stock has now “failed to recover in the time since a coastwise fishing moratorium was put in place in 1998” (see 75 FR 838) despite previously acknowledging 41 years would be needed to achieve full recovery. Proposing an ESA listing now, just 14 years into a 41 year plan, with no population assessment is both disingenuous and remarkably unscientific.

Poor Data Persists

To justify the proposed ESA listing of 2010 the NMFS claims that their “best available scientific data” is a single estimate of 870 adults from the Hudson River from 1986-1995. Thus, the entire East Coast Atlantic sturgeon ESA listing is based on this “best available scientific information” which is not a stock assessment at all, which incorporates data points that are 25 years old, and which contains no information on stock condition since the species was afforded full protection in 1998-99. While the Agency has admitted they “may likely underestimate current conditions” (See 75 FR 839), they are unwilling to consider the recent scientific information collected by the New Jersey fishing industry and University of Delaware scientists during 2009-2011.

Cooperative Science Yields New Data

A NOAA grant was used to fund sturgeon tagging activities in the Mid-Atlantic Bight during the 2009 – 2012. The work was conducted by researchers and an experienced New Jersey commercial fisherman using gillnets designed and fished in a specific manner to catch and release sturgeon.

During 2009, researchers caught 55 individual fish in just 20 sampling days with a single 4000 yard gillnet. There were no recaptures and the fish averaged 163 cm in length and ranged from 120-226 cm. and 12 of the fish (21.8% of the total) were larger than 200 cm in total length.

During 2010, researchers caught 54 individual fish in 17 sampling days. There were no recaptures of 2009 or 2010 tagged fish. The fish averaged 163 cm in length and ranged from 119-230 in total length.

During 2011, researchers caught 214 individual fish in just 29 days of sampling. There were 5 recaptures of fish tagged in 1994 and no recaptures of fish tagged in 2009 or 2010. Thirty six of these fish (16.8%) measured larger than 200 cm and ranged from 71-237 cm in total length.

Most recently in the spring of 2012 a total of 25 sampling days were conducted and a total of 208 Atlantic sturgeon were tagged. Of the fish tagged 196 were considered mature adults, measuring above 130 cm in fork length.

In approximately 82 sampling days during 4 brief spring seasons, scientists and two NJ fisherman caught and released 531 individual sturgeon. Also caught and released were at least 8 mature fish that measured longer than 200 cm fork length. These size class of fish were considered to be virtually non-existent by NMFS and cited that as a reason to justify the proposed ESA listing.

Old Data or Best Available Science

Despite having no reliable stock assessment on Atlantic sturgeon and after industry has demonstrated that large fish previously thought rare are actually relatively abundant, NMFS does not appear willing to accept the results of the tagging research. The new tagging data were submitted to NMFS during the public comment process. In fact, it is our understanding these data were not considered in the peer review process as part of the Agency's 2011 ESA listing process. According to Assistant Administrator Schwaab, public comments may be provided to peer reviewers but this is not a requirement. In this case, we believe the data were not provided for scientific review.

ESA Impacts on Other Directed Fisheries

When commercial fishermen are harvesting Atlantic monkfish, in the Mid-Atlantic region and elsewhere along the East Coast they may inadvertently interact with Atlantic sturgeon. As sturgeon abundance increases so too does the probability that sturgeon may come in contact with fishing gear set for species other than sturgeon. Common sense and sound fisheries management scientific principles dictate that as Atlantic sturgeon benefit from full-scale management protection throughout their range they naturally will rebound and become numerically more abundant.

Particularly threatened by the Atlantic sturgeon listing is the monkfish fishery in Southern New England and the Mid-Atlantic. Monkfish today are the fifth most valuable species of edible finfish harvested by commercial fishermen on the East coast. The majority of Mid-Atlantic monkfish are harvested by gillnets, and these have been identified as having a high level of Atlantic sturgeon interactions.

Our concern is that NMFS will once again gravitate toward precautionary decision-making to the detriment of the fishing industry and coastal economies. Unfortunately, this is precisely where NMFS is headed regarding Atlantic sturgeon, all directly attributed to a lack of scientific information and the lack of agency commitment to generate it.

Solutions

We agree strongly with the recommendations of Representatives Runyan and Pallone that NMFS be required to conduct a sturgeon stock assessment immediately using the best available science to determine the coast-wide condition and abundance of the stock and to inform the ESA listing process. In addition the NMFS should conduct an analysis of genetic samples to determine the structure of the Atlantic sturgeon distinct population segments.

The results of this research should be reported to the committees of jurisdiction of Congress, to inform the findings of the Biological Opinion and be the basis for reasonable and prudent measures or alternatives to avoid negative impacts to numerous mid Atlantic fisheries.

Interjurisdictional Fisheries Act Funding

The State of New Jersey has received consistent IJA grant funding since 2005. Specifically, the New Jersey Department of Environmental Protection has worked with our surfclam industry in support of this fishery that has landed between 1.93 to 2.65 million bushels of surf clams during 2005 and 2009 worth and estimated \$20.0 to \$26.7 million dollars.

Continued funding for this program will enable the State of New Jersey to conduct annual surf clam inventory to closely monitor surf clam stocks and population structure. This information, as well as input from industry, helps managers meet three specific objectives. These objectives include: (1) to provide a current biological assessment of New Jersey's surf clam resource; (2) to provide a basic understanding of the population structure of New Jersey's surf clam population; and (3) to synthesize the information obtained through objectives 1 and 2 to assist fishery managers with the development and implementation of sound management practices. Fulfillment of these core objectives will maximize fishery productivity and maintain a steady contribution from the fishery to the State's economy.

Sincerely,

Gregory P. DiDomenico

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