

NOAA Lists Atlantic Sturgeon Under Endangered Species Act

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Yesterday, NOAA's National Marine Fisheries Service (also referred to as NOAA Fisheries) announced it will list five distinct population segments (DPSs) of Atlantic sturgeon under the Endangered Species Act (ESA). This decision concludes NOAA Fisheries' review of Atlantic sturgeon initiated by the Natural Resources Defense Council's October 2009 petition. (Please see our January 7, 2010 [client alert](#) for further discussion of this petition, the listing process, and potential effects.)

Four DPSs will be listed as endangered: New York Bight, Chesapeake Bay, Carolina, and South Atlantic. A fifth DPS, the Gulf of Maine, will be listed as threatened. The Gulf of Maine DPS includes all Atlantic sturgeon that are spawned in the watersheds from the Maine/Canadian border and extending southward to include all associated watersheds draining into the Gulf of Maine as far south as Chatham, MA. Within this range, Atlantic sturgeon have been documented in the following rivers: Penobscot, Kennebec, Androscoggin, Sheepscot, Saco, Piscataqua, Presumpscot, and Merrimack. The Presumpscot River has been added to this list for the final listing, having not been mentioned in the proposed listing published October 6, 2010. ([76 Fed. Reg. 61872](#).) Among these rivers, only the Kennebec River is known so sustain a spawning population, although it is possible some Atlantic sturgeon may spawn in the Penobscot River. A map of all five Atlantic sturgeon DPSs covered by the listing decision may be seen [here](#).

The primary threats to the Gulf of Maine DPS include dredging activities, water quality, and fisheries bycatch. Dams also pose a risk by limiting access to historic habitat. Dams have the most significant impact within the Gulf of Maine DPS on the Merrimack River where only 42 percent of the historical spawning habitat is accessible. Overall, however, the majority of historical spawning habitat within the DPS remains open to Atlantic sturgeon. No dams on the Kennebec, Androscoggin, or Sheepscot rivers block Atlantic sturgeon movement and on the Penobscot River the final barrier to the remaining 21 percent of the sturgeon's historical range on that river, the Veazie Dam, is scheduled to be removed. The final rule states the impacts of dams on the Saco and Piscataqua rivers are unknown and makes no mention of dams on the Presumpscot River.

The ESA, either through statute or regulation, prohibits the "take" of threatened or endangered species, which includes harming, harassing, wounding, or killing the species. As a result of the listing decision, those individuals and businesses engaged in activities that may impact Atlantic sturgeon will need to take care either to avoid these potential impacts or obtain the necessary incidental take authorization.

Publication of NOAA Fisheries's listing decision is expected in the Federal Register on February 6. The listing for the Northeast (NY Bight, Chesapeake Bay, and Gulf of Maine) and Southeast (Carolina

and South Atlantic) are scheduled to be included in separate final rules published on the same day. The listing for all five DPSs will become effective 60 days after publication. Prior to February 6, the text of the two final rules may be found on NOAA Fisheries's [Atlantic sturgeon webpage](#). We anticipate that pdf copies of the Federal Register publications ultimately will be available on that page as well.

If you have any questions about the Atlantic sturgeon listing or its potential impacts, please feel free to contact Matt Manahan at (207) 791-1189 (mmanahan@pierceatwood.com), Bill Taylor at (207) 791-1213 (wtaylor@pierceatwood.com), or Nick Livesay at (207) 791-1281 (nlivesay@pierceatwood.com).