



Billing Code: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 120705210-2210-01]

RIN 0648-XC101

Endangered and Threatened Wildlife; 90-Day Finding on a Petition to List Five Species of Sturgeon as Threatened or Endangered Under the Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Ninety-day petition finding, request for information, and initiation of status review.

SUMMARY: We, NMFS, announce a 90-day finding on a petition to list five species of sturgeon (*Acipenser sturio*, *A. naccarii*, *A. mikadoi*, *A. sinensis*, and *Huso dauricus*), or any distinct population segments of these species that the Secretary of Commerce determines may exist, as threatened or endangered under the Endangered Species Act (ESA). We find that the petition and information in our files present substantial scientific or commercial information indicating that these petitioned actions may be warranted. We will conduct a status review of these species to determine if the petitioned actions are warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information regarding these species (see below).

DATES: Information and comments on the subject action must be received by [insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by the code NOAA-NMFS-2012-0142, addressed to: Dwayne Meadows, by any of the following methods:

- Electronic Submissions: Submit all electronic comments via the Federal eRulemaking Portal [http:// www.regulations.gov](http://www.regulations.gov)
- Facsimile (fax): 301-713-4060.
- Mail: NMFS, 1315 East-West Highway, Room 13632, Silver Spring, MD 20910.
- Hand delivery: You may hand deliver written comments to our office during normal business hours at the street address given above.

Instructions: All comments received are a part of the public record and may be posted to <http://www.regulations.gov> without change. All personally identifiable information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. We will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Dwayne Meadows, NMFS, Office of Protected Resources, (301) 427-8403.

SUPPLEMENTARY INFORMATION:

Background

On March 12, 2012, we received a petition from the WildEarth Guardians and Friends of Animals to list 15 species of sturgeon (*Acipenser naccarii* – Adriatic sturgeon; *A. sturio* – Baltic sturgeon/common sturgeon; *A. gueldenstaedtii* – Russian sturgeon; *A. nudiventris* – ship sturgeon/bastard sturgeon/fringebarbel sturgeon/spiny sturgeon/thorn sturgeon; *A. persicus* – Persian sturgeon; *A. stellatus* – stellate sturgeon/star sturgeon; *A. baerii* – Siberian sturgeon; *A. dabryanus* – Yangtze sturgeon/Dabry’s sturgeon/river sturgeon; *A. sinensis* – Chinese sturgeon; *A. mikadoi* – Sakhalin sturgeon; *A. schrenckii* – Amur sturgeon; *Huso dauricus* – Kaluga

sturgeon; Pseudoscaphirhynchus fedtschenkoi – Syr-darya shovelnose sturgeon/Syr darya sturgeon; P. hermanni – dwarf sturgeon/Little Amu-darya shovelnose/little shovelnose sturgeon/Small Amu-dar shovelnose sturgeon; P. kaufmanni – false shovelnose sturgeon/Amu darya shovelnose sturgeon/Amu darya sturgeon/big Amu darya shovelnose/large Amu-dar shovelnose sturgeon/shovelfish) as threatened or endangered under the Endangered Species Act (ESA). The petition states that all 15 petitioned sturgeon species are affected by similar threats: both legal and illegal exploitation for meat and/or caviar; habitat loss and degradation; dams or dam construction; water pollution; and increased competition due to habitat loss. Copies of this petition are available from us (see ADDRESSES, above) or at http://www.nmfs.noaa.gov/pr/pdfs/petitions/sturgeon15_petition2012.pdf.

We acknowledged receipt of this petition in a letter dated April 14, 2012, and informed the petitioners that we would determine, pursuant to section 4 of the ESA, whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. As a result of subsequent discussions between us and the U.S. Fish and Wildlife Service (FWS), we have determined that 10 of the 15 petitioned sturgeon species are not marine or anadromous and thus not within our jurisdiction; therefore, those 10 species are the responsibility of the FWS. Accordingly, this 90-day finding considers whether the petitioned actions may be warranted for only the five marine or anadromous sturgeon species included in the petition: Acipenser naccarii (Adriatic sturgeon) and A. sturio (Atlantic sturgeon/Baltic sturgeon/common sturgeon) in the Western Europe region, A. sinensis (Chinese sturgeon) in the Yangtze River region, and A. mikadoi (Sakhalin sturgeon) and Huso dauricus (Kaluga sturgeon) in the Amur River Basin/Sea of Japan/Sea of Okhotsk region.

ESA Statutory and Regulatory Provisions and Evaluation Framework

Section 4(b)(3)(A) of the ESA of 1973, as amended (U.S.C. 1531 et seq.), requires, to the maximum extent practicable, that within 90 days of receipt of a petition to list a species as threatened or endangered, the Secretary of Commerce make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and to promptly publish such finding in the Federal Register (16 U.S.C. 1533(b)(3)(A)). When we find that substantial scientific or commercial information in a petition indicates that the petitioned action may be warranted (a “positive 90-day finding”), we are required to promptly commence a review of the status of the species concerned, during which we will conduct a comprehensive review of the best available scientific and commercial information. In such cases, we shall conclude the review with a finding as to whether, in fact, the petitioned action is warranted within 12 months of receipt of the petition. Because the finding at the 12-month stage is based on a more thorough review of the available information, as compared to the narrow scope of review at the 90-day stage, a “may be warranted” finding does not prejudice the outcome of the status review.

Under the ESA, a listing determination may address a “species,” which is defined to also include subspecies and, for any vertebrate species, any distinct population segment (DPS) that interbreeds when mature (16 U.S.C. 1532(16)). A joint NOAA-FWS policy clarifies the agencies’ interpretation of the phrase “distinct population segment” for the purposes of listing, delisting, and reclassifying a species under the ESA (“DPS Policy”; 61 FR 4722; February 7, 1996). A species, subspecies, or DPS is “endangered” if it is in danger of extinction throughout all or a significant portion of its range, and “threatened” if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively; 16 U.S.C. 1532(6) and (20)). Pursuant to the ESA and our

implementing regulations, we determine whether species are threatened or endangered because of any one or a combination of the following five section 4(a)(1) factors: the present or threatened destruction, modification, or curtailment of habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; inadequacy of existing regulatory mechanisms; and any other natural or manmade factors affecting the species' existence (16 U.S.C. 1533(a)(1), 50 CFR 424.11(c)).

ESA-implementing regulations issued jointly by NMFS and FWS (50 CFR 424.14(b)) define "substantial information" in the context of reviewing a petition to list, delist, or reclassify a species as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In evaluating whether substantial information is contained in a petition, the Secretary must consider whether the petition: (1) clearly indicates the administrative measure recommended and gives both the scientific and any common name of the species involved; (2) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; (3) provides information regarding the status of the species over all or a significant portion of its range; and (4) is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)).

Court decisions clarify the appropriate scope and limitations of the Services' review of petitions at the 90-day finding stage, in making a determination whether a petitioned action "may be" warranted. As a general matter, these decisions hold that a petition need not establish a

“strong likelihood” or a “high probability” that a species is either threatened or endangered to support a positive 90-day finding.

We evaluate the petitioner’s request based upon the information in the petition including its references, as well as the information readily available in our files. We do not conduct additional research, and we do not solicit information from parties outside the agency to help us in evaluating the petition. We will accept the petitioner’s sources and characterizations of the information presented, if they appear to be based on accepted scientific principles, unless we have specific information in our files that indicates the petition’s information is incorrect, unreliable, obsolete, or otherwise irrelevant to the requested action. Information that is susceptible to more than one interpretation or that is contradicted by other available information will not be dismissed at the 90-day finding stage, so long as it is reliable and a reasonable person would conclude it supports the petitioner’s assertions. In other words, conclusive information indicating the species may meet the ESA’s requirements for listing is not required to make a positive 90-day finding. We will not conclude that a lack of specific information alone negates a positive 90-day finding, if a reasonable person would conclude that the unknown information itself suggests an extinction risk of concern for the species at issue.

To make a 90-day finding on a petition to list a species, we evaluate whether the petition presents substantial scientific or commercial information indicating that the subject species may be either threatened or endangered, as defined by the ESA. First, we evaluate whether the information presented in the petition, along with the information readily available in our files, indicates that the petitioned entity constitutes a “species” eligible for listing under the ESA. Next, we evaluate whether the information indicates that the species at issue faces extinction risk that is cause for concern; this may be indicated in information expressly discussing the species’

status and trends, or in information describing impacts and threats to the species. We evaluate any information on specific demographic factors pertinent to evaluating extinction risk for the species at issue (e.g., population abundance and trends, productivity, spatial structure, age structure, sex ratio, diversity, current and historical range, habitat integrity or fragmentation), and the potential contribution of identified demographic risks to extinction risk for the species. We then evaluate the potential links between these demographic risks and the causative impacts and threats identified in section 4(a)(1).

Information presented on impacts or threats should be specific to the species and should reasonably suggest that one or more of these factors may be operative threats that act or have acted on the species to the point that it may warrant protection under the ESA. Broad statements about generalized threats to the species, or identification of factors that could negatively impact a species, do not constitute substantial information that listing may be warranted. We look for information indicating that not only is the particular species exposed to a factor, but that the species may be responding in a negative fashion; then we assess the potential significance of that negative response.

Many petitions identify risk classifications made by other organizations or agencies, such as the International Union on the Conservation of Nature (IUCN), the American Fisheries Society, or NatureServe, as evidence of extinction risk for a species. Risk classifications by other organizations or made under other Federal or state statutes may be informative, but the classification alone may not provide the rationale for a positive 90-day finding under the ESA. For example, as explained by NatureServe, their assessments of a species' conservation status do “not constitute a recommendation by NatureServe for listing under the U.S.

Endangered Species Act” because NatureServe assessments “have different criteria, evidence requirements, purposes and taxonomic coverage than government lists of endangered and threatened species, and therefore these two types of lists should not be expected to coincide.” (<http://www.natureserve.org/prodServices/statusAssessment.jsp>). Thus, when a petition cites such classifications, we will evaluate the source information that the classification is based upon in light of the standards on extinction risk and impacts or threats discussed above.

Sturgeon Species Descriptions

All five of the petitioned species for which we have jurisdiction are migratory and spawn in freshwater habitats while spending part of their life cycle in marine or estuarine waters (i.e., they are anadromous). They are benthic oriented feeders, eating mostly invertebrates and small fishes. All five of the species are protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Acipenser sturio has been protected under CITES Appendix I since 1983, and the other four species were protected under Appendix II of CITES in 1998. The IUCN Red list lists all five species as critically endangered from their most recent analysis in 2010.

A. sturio and A. naccarii in the Western Europe region

Acipenser sturio is a large species that can grow to 5 m in length and weigh up to 400 kg. Lifespan may reach 100 years. It occurred historically in the North and Baltic seas, the English Channel, and most European coasts of the Atlantic Ocean, the Mediterranean Sea and the Black Sea. The species is tolerant of a wide range of salinities, spending most of its life in salt water (close to the coast) and migrating up to 1000 km to spawn in freshwaters. There is only one extant reproductive population that breeds in the Garonne River in France, where the last known natural spawning occurred in 1994. It is now extirpated in Belgium, Denmark, Germany, Italy,

the Netherlands, Norway, Portugal, Spain, Tunisia and the United Kingdom. According to the petitioner and IUCN, its overall population is decreasing, with more than a 90 percent population decline in the past 75 years based mainly on loss of habitat, along with pollution and exploitation. No natural reproduction has been recorded since 1994, and the current wild, native population consist of about 20-750 adults.

Acipenser naccarii is an anadromous species that spawns in freshwater after an estuarine period of growth during which it remains near the shore (at the mouths of the rivers) at a depth of 10 to 40 m. It does not enter pure marine waters. Historically they were found in the southern part of Europe, mostly in the Adriatic Sea area. They grow to 150 to 200 cm in length. The IUCN analysis estimates that this species has declined more than 80 percent in the past three generations, or 60 years, and it may be extinct in the wild. The only remaining spawning sites may be at the confluence of the Po River and its tributaries in Italy, an area of occupancy reduced to less than 10 km². According to the IUCN, there may be fewer than 250 wild individuals remaining.

A. sinensis in the Yangtze River region

Acipenser sinensis is divided into separate populations based on the river of occurrence: the Pearl River Chinese sturgeon and the Yangtze River Chinese sturgeon. This species was historically recorded in southwestern Korea and in western Kyushu, Japan and in the Yellow, Yangtze, Pear, Mingjiang, and Qingtang rivers in China, but has been extirpated from all of these areas except for the two rivers noted above. It reaches over 3 m in length and weighs up to 600 kg. According to the IUCN, the Pearl River Chinese sturgeon spawns in spring and the Yangtze River Chinese sturgeon spawns in the fall and is only present below the Gezhouba Dam. Adults can be found in some fishing grounds of the East China Sea and Yellow Sea (IUCN, 2010). The

IUCN assessment documented an estimated 97.5 percent decline in the spawning population over a 37-year period. Recent surveys between 2005 and 2007 show the total spawning population to be 203-257 individuals (IUCN, 2010).

A. mikadoi and Huso dauricus in the Amur River Basin/Sea of Japan/Sea of Okhotsk region

Acipenser mikadoi is historically native to the northwest Pacific Ocean in Japan and Russia, with an uncertain presence in China, South Korea, and North Korea. The species had been considered conspecific with North American green sturgeon (A. medirostris) until chromosome and morphometric differences were found; we accepted the status of A. mikadoi as a separate valid species in our 2002 status review of green sturgeon. Maximum length is about 1.5 m and the species reaches maturity between 8 to 10 years of age. It spawns in June through July in the Tumnin River and in April and May in the rivers of Hokkaido, Japan. It is found at sea throughout the Sea of Okhotsk, in the Sea of Japan as far east as the eastern shore of Hokkaido, along the Asian coast as far south as Wonsan, North Korea, and to the Bering Strait on the coast of the Kamchatka Peninsula. According to the IUCN, the species historically ascended Russian coastal rivers (the Suchan, Adzemi, Koppi, Tumnin, Viakhtu, and Tym rivers) and the Ishikari and Teshio rivers of Japan. It also inhabited the mouths of small rivers of the Asian Far East and Korean Peninsula, as well as the Amur River, and rivers of the Sakhalin Island. Now, it spawns persistently only in the Tumnin River. The IUCN analysis documents that the species has been declining over the past century. Over the past 45 years there has been an estimated 80 percent decline in wild, mature individuals. Current population estimates range from 10-30 adults entering the Tumnin River for spawning annually.

Huso dauricus is a very large species, reaching 5.6 m in length and 1000 kg in weight. Maximum age is reported to be 80 years. This species historically inhabited the entire Amur River from its estuary to its uppermost sections and its tributaries, including the Shilka, Onon, Argun, Nerch, Sungari, Nonni, Ussuri, and Neijian rivers. It is a semi-anadromous species that inhabits all types of benthic habitats in the large rivers and lakes of the Amur River basin. It is semi-anadromous because some populations do not migrate to the sea as adults. According to the petitioners, multiple populations have been documented. Spawning peaks from the end of May to July and young enter the Sea of Okhotsk during the summer. Generation length is 20 or more years and it has spawning intervals of 4 to 5 years for females and 3 to 4 years for males (IUCN, 2010). This species has been in sharp decline in both stock and recruitment since the 19th century, with the IUCN analysis estimating a decline of 80 percent.

Analysis of the Petition

We have determined, based on the information provided in the petition and readily available in our files, that the petition presents substantial scientific or commercial information indicating that the petitioned actions may be warranted for the five species under our jurisdiction. The petition contains a detailed narrative justification for the recommended measure, species taxonomic description, geographic distribution, preferred habitat characteristics, population status and trends, threats contributing to the species' decline, and is accompanied by appropriate supporting documentation. We agree that each of the five petitioned species is a valid taxonomic species. We have no specific information in our files that indicates the petition's status information is incorrect, unreliable, or obsolete. Below is a synopsis of our analysis of the status information provided in the petition and readily available in our files for each species.

A. sturio and A. naccarii in the Western Europe region

The IUCN first rated A. sturio as “critically endangered” in 1996 and reconfirmed that ranking in 2010 by documenting a greater than 90% decline in the past 75 years. The petitioners argue that A. sturio is highly vulnerable to exploitation because of its life history and the age it must reach before it can reproduce. The species is prized for its flesh and its caviar and was an important commercial species until the beginning of the 20th century. The petitioners and IUCN also argue that bycatch is the major current threat. The species was added to CITES Appendix II in 1975 and transferred to Appendix I in 1983. According to the petitioners, the development of river systems, particularly for hydroelectric dams, has also negatively impacted the population because adults are unable to return to their natal rivers to breed. It remains in just one location, where 27 spawning grounds (of less than 10 km² total area) remain potentially accessible. The extraction of gravel in the Garonne River is a potential threat to the spawning habitat there. Dam construction, pollution and river regulation may have also led to loss and degradation of spawning sites. The petition also cites the 16th Meeting of the CITES Animals Committee in December 2000, quoting a press release (Cemagref, in litt., 26 January 2000) that reported an escape of several thousand juvenile and several hundred gravid females of A. baerii into the Gironde River (Bordeaux region) during two storms. While the survival of these escaped fish and their effect on the wild population of A. sturio are not known, the introduction of new pathological germs, food competition, and hybridization with A. sturio needs to be considered. The IUCN assessment estimates the current adult population may be as low as 20 to 750 individuals.

The IUCN first assessed A. naccarii as “vulnerable” in 1996 and elevated its ranking to “critically endangered” in 2009, reporting that exploitation for food, either legal or illegal, is a major threat to the continued survival of the species, especially exploitation of pre-reproductive

fish. The species is fished for its meat and the roe is not currently consumed as caviar. Dams, particularly hydropower dams on the Po River, water pollution, and competition for habitat with an introduced catfish (Silurus glanis) also contribute to this species' decline. According to the IUCN, "without continuous re-stocking the survival of this species is doubtful as continued successful reproduction in the wild can no longer be confirmed". Also, A. baerii was introduced in captive breeding facilities and hybridized with A. naccarii in Italy in the 1990s. Subsequently, A. baerii has also been found in the wild occasionally in Italy, with fish sporadically escaping from rearing plants or angling ponds, or being released when they become too large for private aquaria. These events may also have contributed to A. naccarii's decline.

A. sinensis in the Yangtze River region

The IUCN first assessed A. sinensis as "endangered" in 1996 and elevated its ranking to "critically endangered" in 2010, owing to declines in the species from overharvest, habitat destruction, and potentially from water pollution. Construction of the Gezhouba dam in 1981 blocked the migration routes of this species to all but one of its spawning grounds in the Yangtze River. The species has been extirpated in most of the rest of its range.

A. mikadoi and Huso dauricus in the Amur River Basin/Sea of Japan/Sea of Okhotsk region

The IUCN first assessed A. mikadoi as "endangered" in 1996 and elevated its ranking to "critically endangered" in 2010, owing to overharvest, poaching, habitat degradation and pollution. Only one spawning site remains.

The IUCN first assessed H. dauricus as "rare" in 1986, elevated its ranking to "endangered" in 1996, and elevated it again to "critically endangered" in 2010, owing to overharvest, poaching, and recent pollution. The species is poached for caviar roe. One study documented parasite effects on fecundity (CITES, 2000). According to the IUCN assessment, at

the end of the 19th century annual commercial catch was 500 tonnes. The species was added to CITES Appendix II in 1998.

Petition Finding

After reviewing the information contained in the petition, as well as information readily available in our files, we conclude the petition presents substantial scientific information indicating the petitioned actions of listing five species of sturgeon, or DPSs of these species, under our jurisdiction as threatened or endangered may be warranted. Therefore, in accordance with section 4(b)(3)(B) of the ESA and NMFS' implementing regulations (50 CFR 424.14(b)(2)), we will commence a review of the status of these species and make determinations within 12 months of receiving the petition as to whether the petitioned actions are warranted.

Information Solicited

To ensure that the status review is based on the best available scientific and commercial data, we are soliciting information on whether these five sturgeon species are endangered or threatened. Specifically, we are soliciting information in the following areas throughout the range of these species: (1) historical and current distribution and abundance; (2) historical and current population trends; (3) biological information (life history, genetics, population connectivity, DPS structure, etc.); (4) landings and trade data; (5) management, regulatory, and enforcement information; (6) any current or planned activities that may adversely impact the species; and (7) ongoing or planned efforts to protect and restore the species and their habitats. We request that all information be accompanied by: (1) supporting documentation such as maps, bibliographic references, or reprints of pertinent publications; and (2) the submitter's name, address, and any association, institution, or business that the person represents.

References Cited

A complete list of references is available upon request from NMFS Protected Resources Headquarters Office (see ADDRESSES).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Dated: August 21, 2012.

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

[FR Doc. 2012-21061 Filed 08/24/2012 at 8:45 am; Publication Date: 08/27/2012]