

**Talking Points/Questions and Answers re. NMFS Proposed Designation of Critical Habitat for Atlantic Sturgeon**

***Prepared by NMFS GAR PRD for the NOAA Chesapeake Bay Program, May 2017***

- NMFS published proposed rules for the designation of critical habitat for five Distinct Population Segments of Atlantic sturgeon in June 2016 (see 81 FR 35701 and 81 FR 36078). We are working to finalize these designations consistent with a consent decree requiring publication in the *Federal Register* by June 3, 2017.
- All of the areas proposed for critical habitat are in rivers; we are not proposing to designate critical habitat in the mainstem Chesapeake Bay or marine waters.
- Atlantic sturgeon critical habitat was proposed for some tributaries of the Chesapeake Bay, including portions of the Susquehanna and Potomac rivers in Maryland and portions of the James, York (including Mattaponi and Pamunkey) and Rappahannock rivers in Virginia. The proposed designation does not include any tributaries of these rivers.
- We held a 105-day public comment period that included a public information session in Annapolis. We notified the heads of state wildlife or fisheries agencies about the proposed rule via phone call and letter. Information was also provided to the MidAtlantic Fisheries Management Council and the Atlantic States Marine Fisheries Commission.
- The critical habitat designation does not result in refuges or preserves. We do not prohibit in-water work or other activities that occur in designated critical habitat. Once critical habitat is designated, federal agencies must consult with us for any federally-authorized, implemented, or funded activity that may affect critical habitat. Consultation is not required when a private citizen will engage in an activity on private land that does not require any authorization from a Federal agency, and does not include any Federal funds to carry out the activity.
- We know that Maryland and Virginia fishermen and aquaculturists may have concerns about the designation. At this time, we do not anticipate new restrictions on fishing activities including the harvest of wild oysters or ongoing oyster restoration activities. Most aquaculture activities in the states have already been considered under section 7 of the ESA where we assessed effects on Atlantic sturgeon and their habitat. We will work with the Army Corps of Engineers to efficiently carry out any additional new analysis. We do not anticipate disruption of ongoing oyster aquaculture activities.

**Q:** *Will the designation of critical habitat in the Chesapeake Bay affect the commercial harvesting of oysters, including the public fisheries in Maryland and Virginia?*

**A:** We do not anticipate that the critical habitat designation will result in impacts to the commercial harvesting of oysters because these commercial fisheries are not federally authorized (e.g., permitted) or funded; as such, there is no requirement for section 7 consultation with us even if commercial harvest occurs in areas that we have designated as critical habitat.

**Q:** *Will the designation of critical habitat in the Chesapeake Bay affect oyster aquaculture operations in Maryland and Virginia?*

**A:** Aquaculture activities in Chesapeake Bay require a permit from the Army Corps of Engineers. Section 7 consultation may be required before a permit can be issued. However, most aquaculture activities in the Chesapeake Bay area have already been considered under section 7 of the ESA where we assessed effects on species listed under the ESA (i.e., Atlantic sturgeon, shortnose sturgeon, sea turtles) and their habitat. NMFS will work with the Army Corps of Engineers to efficiently carry out any additional new analysis. We do not anticipate disruption of ongoing oyster aquaculture activities.

**Q:** *Will the designation of critical habitat in the Chesapeake Bay affect oyster restoration in Maryland and Virginia?*

**A:** We do not anticipate that the critical habitat designation will result in the disruption of oyster restoration. Projects that are authorized, funded or carried out by a Federal agency would need to undergo ESA section 7 consultation if that consultation had not already occurred. NMFS will work with the appropriate Federal agency to efficiently carry out any additional new analysis.

**For More Information:**

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For Maps, Copies of Presentations and Other Materials:  
<https://www.greateratlantic.fisheries.noaa.gov/protected/atlsturgeon/>