

Results of the 1996 Administrative Review", which is a public document on file in the Central Records Unit.)

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675(a)(3)(A)).

Dated: December 9, 1998.

Holly A. Kuga,

*Acting Deputy Assistant Secretary for AD/
CVD Enforcement, Group II.*

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040795A]

Endangered and Threatened Wildlife and Plants; Notice of Availability for the Final Recovery Plan for Shortnose Sturgeon

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

ACTION: Notice of availability.

SUMMARY: NMFS announces the availability of the final recovery plan for the shortnose sturgeon (*Acipenser brevirostrum*), as required by the Endangered Species Act of 1973 (ESA).

ADDRESSES: Requests for a copy of the final recovery plan should be addressed to: Nancy Haley, NMFS, 212 Rogers Avenue, Milford, Connecticut 06460.

FOR FURTHER INFORMATION CONTACT: Nancy Haley, (203) 783-4264, Marta Nammack, (301) 713-1401, or David Bernhart, (727) 570-5312.

SUPPLEMENTARY INFORMATION:

Background

The shortnose sturgeon is an endangered fish species that occurs in large coastal rivers of eastern North America. Nineteen distinct population segments of shortnose sturgeon inhabit rivers ranging from the Saint John River in New Brunswick, Canada, to the St. Johns River, Florida. In addition, a captive broodstock from the Savannah River distinct population segment and its cultured progeny are housed at three hatcheries operated by the U.S. Fish and Wildlife Service (FWS). In the late nineteenth and early twentieth centuries, shortnose sturgeon were commonly taken in a commercial fishery for the closely related, and commercially valuable, Atlantic sturgeon (*Acipenser oxyrinchus*). Shortnose sturgeon were originally listed as an endangered species by FWS

in March 1967 (32 FR 4001), under the Endangered Species Preservation Act (16 U.S.C. 668 *et seq.*). Pollution and overfishing, including bycatch in the shad fishery, were listed as principal reasons for the species' decline. Shortnose sturgeon remained on the endangered species list when Congress passed the ESA in 1973 (ESA) (16 U.S.C. 1531 *et seq.*). NMFS assumed jurisdiction for shortnose sturgeon under a 1974 government reorganization plan (39 FR 41370).

Section 4(f)(1) of the ESA directs NMFS and FWS, the Federal agencies responsible for implementing the ESA, to develop and implement recovery plans to promote conservation and survival of endangered and threatened species, unless a recovery plan would not help to promote species conservation. Highest priority is given to those species that are or may be in conflict with development projects or other commercial activities. Shortnose sturgeon spend their entire life in waters that are heavily impacted by various construction and industrial activities. Hence, the Assistant Administrator for Fisheries determined that a recovery plan, which comprehensively addresses these factors and describes ways to mitigate or minimize harm to shortnose sturgeon, was necessary to promote rangewide recovery of the species. The recovery plan for the shortnose sturgeon, prepared for NMFS by a seven-member recovery team, provides a framework for addressing a multitude of biological concerns and outlines Federal agency responsibilities under the ESA with the sole purpose of insuring long-term survival of the shortnose sturgeon. NMFS published a notice of availability of the draft recovery plan for shortnose sturgeon in the **Federal Register** on August 4, 1997 (62 FR 41951). Comments were received from eight parties during the 30-day comment period. Most comments were editorial and were incorporated as received. Some comments indicated that the readers were confused by the wording in certain sections, and NMFS tried to clarify these parts of the plan. More substantive comments from the reviewers and the NMFS' responses to these comments are listed here.

Comments and Responses

Comment 1: Several reviewers noted that much of the plan relies on data that are not available in peer-reviewed publications and that some sections are based on speculation and conjecture.

Response: NMFS used the best available information to develop this recovery plan. Unfortunately, even though there has been a relatively great

amount of research interest in shortnose sturgeon, not all aspects of its biology or factors affecting its recovery have been well documented in the scientific literature. Moreover, while detailed information on the fish exists in some parts of its range, little published data are available for other shortnose sturgeon populations. Therefore, in some cases, NMFS reported, and identified as such, recent information that has not yet been peer reviewed. Certain recovery tasks were identified to fill gaps in our knowledge of this species and factors affecting its recovery. NMFS determined that it was necessary to outline all possible impacts to this species. If future research indicates that some perceived threats are not significantly affecting shortnose sturgeon recovery, they will be omitted from future versions of the recovery plan.

NMFS has updated some sections and added additional references to support sections where reviewers noted a lack of substantiation. In addition, the References section has been amended to reflect the recent publication of information that was originally cited as unpublished data or personal communications.

Comment 2: Reviewers expressed conflicting views regarding the importance of poaching as a threat to shortnose sturgeon populations and argued from both sides that statements in the recovery plan regarding poaching are based on little hard evidence.

Response: The impact of poaching on shortnose sturgeon populations is unknown and likely varies across the range of this species. NMFS recognizes that poaching is likely to be a significant source of mortality in some population segments (e.g., southern populations). Consequently, NMFS identified poaching in the Factors Affecting Recovery Section and listed increased enforcement of the ESA section 9 prohibition to further discourage this illegal activity as a recovery task (task 2.2C). As suggested, the importance of genetic data as a forensic enforcement tool was added to the Recovery section.

Comment 3: One reviewer suggested that the potential importance of diseases should be emphasized more in the recovery plan, and another reviewer said that a greater consideration of potential threats from Atlantic sturgeon stocking was needed.

Response: Stocking of Atlantic sturgeon has been a very recent development, and there is no conclusive information concerning the impacts of this action on shortnose sturgeon. The potential for increased incidence of disease resulting from this activity is

noted in the Factors Affecting Recovery section. In addition, a recovery task (task 2.4I) specifically recommends investigation of disease, competition for resources, and direct mortality to shortnose sturgeon resulting from introduced species or stock transfers. New information on disease research was added to the Recovery section. In the Implementation Schedule, the duration of recovery task 2.4I activities was updated to "ongoing" to reflect one reviewer's statement that FWS is surveying wild fish to assess incidence level and impacts of fish pathogens on wild populations of shortnose sturgeon.

Comment 4: Several reviewers emphasized the need to establish the point at which a population segment is functionally extirpated before restoration efforts can be considered.

Response: NMFS agrees that this is an important issue and should be added to the recovery plan to guide future restoration actions. Accordingly, two new recovery tasks were added to the plan: 1.1E - develop a standardized sampling protocol and determine minimum sampling required to assess the presence of shortnose sturgeon; and 3.3B - determine minimum population size below which restoration may be considered. NMFS has already initiated development of the sampling protocol (1.1E); thus, this task is ongoing. NMFS envisions that task 3.3B would be conducted at the same time that listing criteria are developed.

Comment 5: One reviewer questioned the designation of certain population segments in the recovery plan, specifically those in the Penobscot River.

Response: In the Introduction section, NMFS defined the criterion and reviewed background justification (per NMFS/FWS policy on distinct population segments, 61 FR 4722) used to designate population segments. In the Recovery Approach section under Introduction, the process for revising the list of recognized population segments is newly outlined. That is, after sufficient sampling has been conducted to determine that a population segment has been extirpated (task 1.1E, see Comment 4) or is below a minimum size (task 3.2B, see Comment 4), the list in Table 1 could be revised. NMFS reviewed the designation of the Penobscot River and concluded that this system should remain on the list in Table 1. Additional information that supports this decision was added to pertinent sections of the Population Status narrative.

Comment 6: One reviewer recommended that the recovery plan

specify additional uses of cultured sturgeon to promote recovery.

Response: In response to this suggestion, NMFS added as recovery tasks: (1) the use of cultured fish to study the effects of contaminants on shortnose sturgeon growth, survival, and reproduction (task 2.4F); and (2) the use of cultured fish to develop genetic markers to identify illegally marketed shortnose sturgeon products (task 2.2D). NMFS advocates the use of cultured shortnose sturgeon as surrogate study specimens to relieve sampling on wild populations and to enhance the recovery of the species. Stocking cultured fish in river systems where wild shortnose sturgeon populations still exist provides limited research value and may be detrimental to wild stocks.

Comment 7: A reviewer requested that the recovery plan address the potential for commercial aquaculture of shortnose sturgeon.

Response: The ESA prohibits commerce in endangered species or their products. Therefore, NMFS did not address the development of commercial aquaculture operations for this species.

Comment 8: Several reviewers felt that restoration of shortnose sturgeon in areas where they historically occurred should be given a higher priority in the recovery plan. Other reviewers felt that restoration attempts with other anadromous species have been too costly and of limited success; therefore, they should receive even less focus as a recovery option for shortnose sturgeon.

Response: NMFS maintains that reintroduction of cultured shortnose sturgeon in systems where they have been extirpated is a viable recovery action provided the conditions for breeding, stocking, and monitoring (as outlined in an approved Shortnose Sturgeon Breeding and Stocking Protocol) are adequately met. While restoration activities are potentially important, NMFS cannot justify elevating the priority of these tasks, particularly in light of the more critical actions needed to preserve extant population segments, the high cost of stocking efforts, and the problems encountered with restoration efforts for other anadromous species. Therefore, restoration efforts were assigned "priority 3" in the Implementation Schedule.

Comment 9: One reviewer expressed concern that there were inadequate mechanisms in the plan to successfully implement recovery actions.

Response: Recovery plans do not, in and of themselves, recover listed species. This plan provides a stepping

stone from which all concerned parties may systematically and collectively advance shortnose sturgeon recovery. One recovery task (task 2.6A) specifically addresses the need for NMFS to appoint a Recovery Coordinator and an Implementation Team(s) to promote the recovery plan's recommendations, organize recovery efforts, and seek funding for specific recovery tasks. While this recovery plan identifies actions needed to recover shortnose sturgeon, a long-term commitment by NMFS, other Federal and state agencies, and the public is necessary to assure the long-term recovery goal for shortnose sturgeon.

Recent Capture of Shortnose Sturgeon in Albemarle Sound

During the final agency review of the recovery plan, NMFS received new information concerning the occurrence of shortnose sturgeon in Albemarle Sound (North Carolina). On April 18, 1998, the North Carolina Division of Marine Fisheries captured an adult shortnose sturgeon (652 millimeters in fork length) in Bachelors Bay in western Albemarle Sound. Although historical accounts indicate that shortnose sturgeon were once collected in Salmon Creek, a small tributary of the Chowan River, the species was thought to be extirpated from this region. Per recovery plan criterion, the capture of a shortnose sturgeon, within the generation time of the species (30 years), provides evidence for the existence of a shortnose sturgeon population segment within the capture region. Further investigation is necessary to determine in which tributary or tributaries of Albemarle Sound reproduction occurs. Shortnose sturgeon may spawn in the Roanoke or Chowan Rivers or, possibly, other smaller tributaries of Albemarle Sound based on physical characteristics of these systems and historical and anecdotal reports. Therefore, NMFS amends the list of distinct shortnose sturgeon population segments to include an Albemarle Sound population, bringing the number of shortnose sturgeon population segments to 20. This information is not included in this version of the recovery plan but, along with any additional changes, should be added to subsequent versions of the recovery plan.

Recovery Task Priority Assignments

Priority 1 recovery tasks are actions that must be taken to prevent extinction or to identify those actions necessary to prevent extinction. An action that must be taken to prevent a significant decline in population numbers, habitat quality, or other significant negative impacts

short of extinction is a priority 2 task. All other actions necessary to provide for full recovery of listed species are priority 3 tasks.

NMFS has modified the priorities assigned to certain recovery tasks in the Implementation Schedule to better reflect NMFS guidance on priority rankings (55 FR 24296). These changes resulted in downgrading from priority 1 to 2 the following recovery tasks: 1.2B, 1.2C, 1.3A, 2.2C, 2.3A, 2.4A, 2.4B, 2.4E, and 2.4F. Recovery task 1.1D was changed from priority 1 to priority 3, and tasks 2.6A, 2.6B, and 3.1H were changed from priority 2 to priority 3. In many cases, the above changes were made in recognition that there is insufficient information available for many shortnose sturgeon populations to determine which factors may be limiting recovery and threatening the survival of specific populations. As new information becomes available, priority rankings for recovery tasks may warrant additional changes.

Authority: 16 U.S.C. 1531–1543 *et seq.*

Dated: December 10, 1998.

Rolland A. Schmitt,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120798B]

Marine Mammals; File No. 259–1481

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dr. Ronald J. Schusterman, Long Marine Laboratory, University of California Santa Cruz, 100 Shaffer Road, Santa Cruz, CA 95060, has applied in due form for a permit to take California sea lions (*Zalophus californianus*), harbor seals (*Phoca vitulina*) and elephant seals (*Mirounga angustirostris*), for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before January 19, 1999.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS,

1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (562/980–4001).

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

FOR FURTHER INFORMATION CONTACT: Sara Shapiro or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant seeks authorization to continue studies on pinniped bioacoustics cognition using captive animals trained to participate in behavioral experiments. The acoustic experiments will use pure-tone detection and discrimination tasks and the cognitive studies will involve visual, auditory and cross-modal matching-to-sample tasks.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: December 11, 1998.

Ann D. Terbush,

*Chief, Permits and Documentation Division,
Office of Protected Resources, National
Marine Fisheries Service.*

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COMMODITY FUTURES TRADING COMMISSION

**Chicago Mercantile Exchange:
Proposed Amendments to the Cash
Settlement Provisions of the CME
Brazilian Real Futures Contract**

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of proposed amendments to the terms and conditions of commodity futures contract.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has submitted proposed amendments related to the cash settlement provisions of its Brazilian Real futures contract. Under the proposal, the CME proposes to adopt procedures to set an alternative cash settlement price in the event the Central Bank of Brazil does not determine and/or the SISBACEN does not disseminate the official average offer rate of Brazilian reais per U.S. dollar on the last day of trading. That alternative cash settlement price would be based on the results of the CME survey of financial institutions inside of Brazil who are active in the Brazilian reais per commercial U.S. dollar spot and/or non-deliverable forward (NDF) markets. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATES: Comments must be received on or before January 4, 1999.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the amendments to the CME Brazilian Real futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Thomas Leahy of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, 20581, telephone (202) 418–5278. Facsimile number: (202) 418–5527. Electronic mail: tleahy@cftc.gov.