

Science, Service, Stewardship



River Herring (Alewife and Blueback Herring) and the Endangered Species Act

Sarah Walsh Laporte
Protected Resources Division
October 25, 2012

**NOAA
FISHERIES
SERVICE**

NOAA



Presentation Overview

- Petition Process, River Herring Petition and the Endangered Species Act
- NMFS Response and Next Steps
- Possible Outcomes



Credit: J. Prezioso



Petition Process



- Any interested party can petition the Secretary of Interior and/or Commerce to list a species under the Endangered Species Act (ESA)
- Upon receiving a petition, the Secretary must make a finding within **90 days** (to the maximum extent practicable) as to whether the petition presents “substantial scientific or commercial information indicating that the petitioned action **may be warranted.**”



Substantial information

Defined as “the amount of information that would lead a **reasonable person** to believe that the measure proposed in the petition **may be warranted.**”



Natural Resources Defense Council Petition

- Petition to list both species or distinct population segments (DPS) of river herring as threatened and designate critical habitat
- Petition listed dramatic declines in coast-wide abundance
- Fishing-related mortality, water pollution, dams, dredging and global warming were identified in the petition as primary threats



Alewife



**Blueback
Herring**



Positive 90-Day Finding



- Petition received on August 5, 2011 from the Natural Resources Defense Council (NRDC)
- NMFS determined that the Petition and/or information readily available in our files contained substantial scientific or commercial information indicating the petitioned action **may** be warranted
- Published a positive 90-day finding on the petition in the *Federal Register* on November 2, 2011(76 FR 50541)

<http://www.nero.noaa.gov/nero/regs/frdoc/11/1190dayindingriverherring.pdf>



Positive finding continued

- Species became a NMFS **Candidate Species**
- Initiated a review of the status of the river herring
- This includes compiling best available information, conducting threats assessment/extinction risk analysis, and submitting report/information to NMFS to make listing determination
- Listing determination - 12 months from **date of receipt of petition**



ESA Definitions

Species - includes any subspecies of fish or wildlife or plants, and any distinct population segment (DPS) of any species or vertebrate fish or wildlife which interbreeds when mature

Endangered species - any species which is in danger of extinction throughout all or a significant portion of its range

Threatened species - any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range



Five Factors

Section 4(a)(1) of the ESA states that “The Secretary shall by regulation promulgated in accordance with subsection (b) determine whether any species is an endangered species or a threatened species because of any of the following factors:





Five Factor Analysis

- A. the present or threatened destruction, modification, or curtailment of its habitat or range;
- B. overutilization for commercial, recreational, scientific, or educational purposes;
- C. disease or predation;
- D. the inadequacy of existing regulatory mechanisms;
- E. other natural or manmade factors affecting its continued existence



Status Review and Listing Determination Process

- Compile best available scientific and commercial information on the status, abundance and trends of both species (e.g. stock assessment, working group reports, and peer reviews)
- Five factor analysis
- Conduct a threats assessment and extinction risk analysis (may be quantitative or qualitative)
- Consider information on “significant portion of the species range” (e.g., are there areas where the species/DPS is no longer viable (self-sustaining), but once was?)



Status Review Process (continued)

- Consider ongoing or planned protective efforts that may affect the species (PECE analysis)
- Under the ESA, **economic impacts of a listing cannot** be considered





ASMFC Stock Assessment Report

- ASMFC published stock assessment report in May 2012
- NMFS-NERO staff coordinated with ASMFC to identify gaps between stock assessment information and information needed for a thorough ESA review of the status of the species
- ASMFC coast wide stock assessment report (2012) estimated that 23 out of 52 alewife/blueback herring rivers were depleted compared to historic levels and one was increasing (28 could not be determined due to lack of data)



River Herring Workshops

- NMFS hosted three workshops on alewife and blueback herring
 - Stock Structure Workshop June 22th in Gloucester, MA
 - Working Group meeting- June 20- 21th
 - Extinction Risk Workshop July 10th in Boston, MA
 - Working Group meeting- July 11-12th
 - Climate Change Workshop July 18-19th in Gloucester, MA



Workshops (continued)

- Reports from working group meetings were prepared and sent for peer review
 - Stock Structure and Extinction Risk workshop reports were independently peer reviewed by Center for Independent Experts (CIE)
 - NMFS sought qualified peer reviewers for the Climate Change report as well



NMFS Response Next Steps

- NMFS has received the workshop/working group reports and peer review reports
- NMFS will incorporate information from the workshop/working group reports and peer review reports, as well as final ERA and climate change analysis into the listing determination, and will publish a listing determination as soon as possible.



Potential Outcomes for Listing Determination

- NMFS could propose to list either species as **endangered**





Potential Outcomes for Listing Determination

- NMFS could propose to list either species as **endangered**
- NMFS could propose to list either species as **threatened**





Potential Outcomes for Listing Determination

- NMFS could propose to list either species as **endangered**
- NMFS could propose to list either species as **threatened**
- NMFS could determine that listing is **not warranted**





Possible outcomes

If NMFS proposed to list the **species** as **endangered**:

- 60 to 90 day public comment period, public hearings
- NMFS must make a final determination no later than one year after proposed rule
- If final rule is endangered, all **take** is automatically prohibited
 - Take defined as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.”



Possible outcomes (continued)

- Take from bycatch or incidental catch in non-directed fisheries prohibited unless authorized through Section 7 or 10 of the ESA
- NMFS must designate critical habitat at time of final listing (to maximum extent prudent) and initiate recovery planning



Possible outcomes (cont.)

If NMFS proposed to list the species as **threatened**:

- Secretary of Commerce must promulgate protective regulations that are necessary and advisable for the conservation of the species (e.g., a **4(d) rule**)
- Directed take, bycatch, importation and exportation most likely prohibited (unless authorized through Section 7 or 10)
- Critical habitat designated
- Recovery planning initiated



Possible Outcomes (cont.)

If NMFS determined that listing was **not warranted:**

- a not warranted listing determination is published in the *FR*
- the process ends



Summary

- NMFS was petitioned to list river herring under the ESA
- With a positive 90-day finding, river herring became a candidate species, and the status is being reviewed
- NMFS will incorporate information from the stock assessment, workshop/working group reports and peer review reports, public contributions, as well as final ERA and climate change analysis into the listing determination, and will be publishing a listing determination as soon as possible.

An underwater photograph showing three fish swimming in a shallow, clear body of water. The fish are positioned in the upper and middle sections of the frame. The bottom of the water is composed of dark, textured rocks. The lighting is bright, creating a shimmering effect on the water's surface and the fish's scales. The word "Questions?" is overlaid in white text on the left side of the image.

Questions?

Credit: J. Prezioso