Science, Service, Stewardship

River herring (alewife and blueback herring) petition and NMFS response

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Presentation Overview

- Overview of Endangered Species Act petition/response process
- General Endangered Species Act definitions
- Discuss NRDC petition contents
- Overview of status review process
- Discuss NMFS response and next steps
- Discuss potential outcomes

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Petition Process

- Any interested person 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**."

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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**.”

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Negative 90 Day Finding

- Petition and/or information readily available in our files **does not** contain substantial scientific or commercial information indicating the petitioned action may be warranted
- Publish a notice in the *Federal Register* announcing the negative finding
- End of the process

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Positive 90 Day Finding

- Petition and/or information readily available in our files **does** contain substantial scientific or commercial information indicating the petitioned action may be warranted
- Publish positive 90 day finding in the *Federal Register*
- Information may be solicited in the *FR* notice to address data gaps
- Species becomes a NMFS **Candidate Species**

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Positive Finding (continued)

- Initiate a review of the status of the species concerned
- This includes compiling best available information, conducting threats assessment/extinction risk analysis, and submitting report/information to NMFS to make listing determination
- 12 months from date of receipt of petition – determination by NMFS as to whether listing is warranted must be published in *FR* (proposed rule if listing is determined to be warranted)

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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

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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:

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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

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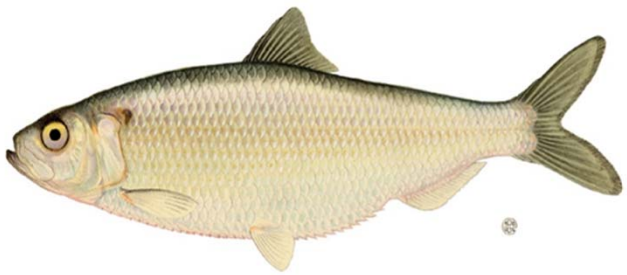
NRDC Petition

- Petition to list both species or distinct population segments (DPS) of river herring as threatened and designate critical habitat
- Petition notes 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

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NRDC Petition (cont.)

Alewives

- List one distinct population segments (DPS) of alewife as threatened
- Alternatively list four DPSs as threatened
  - Central New England
  - Long Island Sound
  - Chesapeake Bay
  - Carolina

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NRDC Petition (cont.)

Blueback herring

- List one distinct population segments (DPS) of blueback herring as threatened
- Alternatively list three DPSs as threatened
  - Central New England
  - Long Island Sound
  - Chesapeake Bay

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NMFS Response

- Positive 90-day finding concluding that petition presents substantial information indicating petitioned action **may be warranted** published on November 2, 2011 (76 FR 50541)
- 90-day finding sought scientific and commercial information until February 3, 2012

http://www.nero.noaa.gov/nero/regs/frdoc/11/1190dayfindingriverherring.pdf

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Status Review 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?)

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Status Review Process (cont.)

- Consider ongoing or planned protective efforts that may affect the species
- Present available information on elements of habitat needed for survival and recovery (e.g., size of habitat, number of different habitats needed for connectivity)
- Under the ESA, **economic impacts of a listing cannot** be considered

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ASMFC Report

- NMFS-NERO staff has been coordinating with ASMFC to identify gaps between stock assessment information and information needed for review of the status of the species

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NMFS Response (cont.)

NMFS is hosting 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

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Next Steps

- Reports from working group meetings will be peer reviewed
  - Stock assessment and Extinction Risk workshop reports- independently peer reviewed by Center for Independent Experts (CIE)
  - NMFS is further seeking qualified peer reviewers for Climate Change Workshop report as well as additional peer review of the Extinction Risk and Stock Structure reports
- NMFS will use stock assessment results, working group reports/products, and peer review reports to prepare a listing determination (e.g., listing is or is not warranted)

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Potential Outcomes

- NMFS proposes to list one or both species as **endangered**
- NMFS proposes to list one or both species as **threatened**
- NMFS determines that listing is **not warranted** for one or both species

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