

regulation 401 KAR 50:032, "Prohibitory rule for hot mix asphalt plants," to establish an enforceable production limit for asphalt plants in Kentucky to limit their potential to emit.

In the final rules section of this **Federal Register**, the EPA is approving Kentucky's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by April 10, 2000.

ADDRESSES: All comments should be addressed to Joey LeVasseur at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Atlanta Federal Center, Region 4 Air Planning Branch, 61 Forsyth Street S.W., Atlanta, Georgia 30303-3104.

Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur at 404/562-9035 (E-mail: levasseur.joey@epa.gov).

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: January 14, 2000.

A. Stanely Meiburg,

Acting Regional Administrator, Region 4.
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 000303059-0059-01; I.D. No.021700B]

RIN No. 0648-XA49

Endangered and Threatened Wildlife and Plants; 90-Day Findings for a Petition to List North American Populations of Smalltooth Sawfish and Largetooth Sawfish as Endangered Under the Endangered Species Act

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

ACTION: Notice of petition findings; request for information and comments.

SUMMARY: The National Marine Fisheries Service (NMFS) announces 90-day findings for a petition to add North American populations of smalltooth sawfish and largetooth sawfish to the List of Threatened and Endangered Wildlife. NMFS finds that the petition and information available in NMFS records indicate that listing North American populations of smalltooth sawfish as endangered under the Endangered Species Act (ESA) may be warranted; and do not indicate that listing North American populations of largetooth sawfish as endangered may also be warranted. NMFS is now initiating a status review of smalltooth sawfish to determine if the petitioned action for that species is warranted. NMFS will maintain the largetooth sawfish as a candidate species, and continue to solicit more information regarding this species to resolve doubts regarding its range and taxonomy.

DATES: The findings announced in this document were made on March 6, 2000. Comments and information related to this petition finding must be received by May 9, 2000.

ADDRESSES: Information and comments concerning these petition findings should be submitted to Charles A. Oravetz, Assistant Regional Administrator, Protected Resources Division, National Marine Fisheries Service, Southeast Regional Office, 9721 Executive Center Drive North, St. Petersburg, Florida 33702-2432. The petition, findings, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Jennifer Lee, NMFS Southeast Region, (727)570-5312; or Marta Nammack, NMFS Office of Protected Resources, (301) 713-1401.

SUPPLEMENTARY INFORMATION:

Background

NMFS designated smalltooth sawfish (*Pristis pectinata*) and largetooth sawfish (*P. perotteti*) as candidate species under the ESA on June 23, 1999. The candidate species list serves to notify the public that NMFS has concerns regarding these species/vertebrate populations that may warrant listing in the future, and it facilitates voluntary conservation efforts. On November 30, 1999, NMFS received a petition from the Center for Marine Conservation requesting NMFS to list North American populations of those two species of sawfish as endangered. The petitioner submitted biological, distributional, and historical information on sawfish and identified potential threats including (1) destruction, modification or curtailment of habitat or range; (2) overutilization for commercial, recreational or scientific purposes; (3) inadequacy of existing regulatory mechanisms; and (4) other natural or manmade factors affecting the species existence. Also, the petitioner cited references in support of the petition.

Section 4(b)(3) of the ESA contains provisions concerning petitions from interested persons requesting the Secretary of Commerce (Secretary) to add a species or to remove a species from the List of Endangered and Threatened Wildlife and designate critical habitat. Section 4(b)(3)(A) requires that, to the maximum extent practicable, within 90 days after receiving such a petition, the Secretary make a finding on whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. This finding must be promptly published in the **Federal Register**. In determining whether substantial information exists for a petition to list a species, NMFS takes into account information submitted with and referenced in the petition and all other information readily available in NMFS files. NMFS' ESA implementing regulations define "substantial information" as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. 50 CFR 424.14(b). If the petition is found to present such information, the Secretary must conduct

a status review of the involved species and make a determination whether the petitioned action is warranted within 12 months of receipt of the petition (1-year determination).

Under the ESA, a listing determination can address a species, subspecies, or distinct population segment (DPS) of a species (16 U.S.C. 1532(15)). A DPS is a vertebrate population that is discrete in relation to the remainder of the species to which it belongs, and significant in relation to the species to which it belongs (61 FR 4722; February 7, 1996). The petition states that populations of smalltooth sawfish occur in the Atlantic, Pacific and Indian Oceans, and largetooth sawfish in the Atlantic and Pacific Oceans. The petition further states that while the species is widely distributed, smalltooth sawfish exists as "distinct population units...with little chance of recruitment from other stocks". Since the petitioner requested listings for largetooth and smalltooth sawfish in U.S. waters, NMFS considers the petition in the context of DPSs with ranges that lie entirely or partially in U.S. waters.

Analysis of Petition

The sawfish family is characterized by a toothy snout projecting well forward of the head. Approximately 2 ft (0.6m) or greater in length at birth, sawfish commonly grow to 16 ft (4.9m), some reaching lengths of up to 18 ft (5.5m). Sawfish are restricted to shallow coastal, estuarine, and fresh waters. They are often found in brackish water near river mouths and large embayments, preferring partially enclosed waters, lying in deeper holes on bottoms of mud or muddy sand. Sawfish are long lived species that grow slowly, mature late and are ovoviviparous, producing a small number of young, resulting in a very low intrinsic rate of population increase for these species. Such animals are usually successful at maintaining relatively small population sizes in relatively constant environments, but are not able to respond rapidly to additional and new sources of mortality resulting from changes in their environment, such as overexploitation and habitat degradation (Musick, 1999).

Smalltooth sawfish and largetooth sawfish may be morphologically distinguished from each other by the number of pairs of rostral teeth, the placement of their pectoral fins relative to their pelvic fins, and the shape of their caudal fin. Despite these differences in morphology, early literature indicates there were some

problem with identification of these species in early records.

Smalltooth sawfish—Smalltooth sawfish historically inhabited marine habitats in selected parts of the eastern Pacific Ocean, western and eastern Atlantic Ocean, Mediterranean Sea, Indo-Pacific, and Red Sea, and freshwater habitats in North, Central and South America, Africa, and India. In North America, historical records indicate that during the 19th century, smalltooth sawfish were abundant along both coasts of Florida and in the summer north to North Carolina, in estuaries and lower reaches of rivers, as well as out to depths of about 25m along open coasts fronted by mud flats of the Atlantic and Gulf of Mexico coastal waters of the southeastern United States. Smalltooth sawfish migrated north along the coast during summer months but was probably not a permanent resident in western Atlantic waters north of Florida.

There are no quantitative data available to conduct a formal stock assessment for smalltooth sawfish species, however, the decline of this species is well documented by anecdotal reports. Historical record of field observations indicates that smalltooth sawfish were abundant as recent as the 1950's. Reports of smalltooth sawfish becoming entangled in fishing nets are common in early literature and indicate smalltooth sawfish were considered a nuisance by fishermen, doing considerable damage to their nets when entangled and capable of inflicting serious wounds with their saw. As a result, these fish were usually killed on the spot by fishermen when captured or released only after removal of their saw.

During the 20th century, smalltooth sawfish have been recorded with declining frequency. An independent assessment of smalltooth sawfish was performed by Adams and Wilson in 1995, by contacting all state fisheries management agencies from New York south and west to Texas and asking for any records of recent landings. In addition, research institutions and museums with marine holdings were contacted. From the responses received, it appears that the species no longer occurs along the eastern seaboard and that by the 1970's the species was confined in the Gulf of Mexico to a few restricted locales in Florida, Louisiana and Texas waters. Today, official records of smalltooth sawfish landings are rare throughout their range in North America. Incidental commercial catch was likely the most significant factor in the population's decline. Snelson and Williams (1981) attribute the loss of the

species from the Indian River directly to the activities of commercial fishing for other species (Snelson and Williams, 1981). Sawfish are extremely vulnerable to overexploitation due to their exceptional propensity for entanglement in net gear, their restricted habitat, and their low intrinsic rate of increase.

Largetooth sawfish—Largetooth sawfish historically inhabited warm-temperate to tropical marine waters in the Atlantic and eastern Pacific, possibly in the eastern Mediterranean, and freshwater habitats in Central and South America and Africa. It is represented by a closely allied form, *P. microdon* (or forms) along the Pacific Coast of Central America, off northern Australia, off Indo-China, among the East Indies, and in the tropical-subtropical belt of the Indian Ocean. Largetooth sawfish are very similar to *P. microdon* but their exact relationship remains to be determined.

Historical occurrences of largetooth sawfish in North America were much more limited than those of smalltooth sawfish and were strictly confined to shallow (<10 m) warm-temperate and tropical waters (>18° to at least 30°C) in the immediate vicinity of the shore and to estuarine localities, partly enclosed lagoons, and similar situations. In the United States, largetooth sawfish were reported along the Texas coast from the Mexican border (Brownsville) to the Louisiana border (Port Arthur). Evidence to support its historical abundance in this area stems from one literature source, "Notes on Sawfish, *Pristis perotteti* Muller and Henle, not Previously Reported from the Waters of the United States" (Baughman, 1943), that includes a report of seven large largetooth sawfish taken by one fishermen near Galveston, Texas. Oddly, the same scientist indicates in a 1952 publication that West Indian sawfish (*P. microdon*) were sometimes caught in Texas waters and does not mention the largetooth sawfish.

Compared to occurrences of smalltooth sawfish, largetooth and/or West Indian sawfish were relatively rare. Bigelow and Schroeder (1953) noted the fact that all specimens reported from the coast of Texas have been large, in contrast with the abundance of smaller ones further south, suggesting that the production of young is confined chiefly to regions where the temperature of the water is at least as high as 25–26°C. They believed that most of the large specimens taken from the northern, cooler waters had migrated from a tropical nursery, (Bigelow and Schroeder, 1953).

While historic record of field observations indicate there may have

been largemouth sawfish present in North American waters at one time, there are no data to support that there is presently, or ever was, a resident North American population of largemouth sawfish. All of the information included in the petition on the population status of largemouth sawfish pertains to Lake Nicaraguan populations in Central America. NMFS feels applying this information to other stocks is inappropriate because in Lake Nicaragua, historical conditions permitted residence of a large number of sawfish, which reproduced in the lake and constituted a discrete stock, with limited genetic mixing with other stocks (Thorson 1982). Additionally, this Central American population was subjected to a heavy directed commercial fishery in the 1970's and suffered severe declines. In the United States, there are no directed commercial fisheries for sawfish.

Petition Findings

Given the decline in recorded abundance, limited reproductive capacity and documented take by commercial and recreational fishermen, NMFS finds that the petitioner presents substantial scientific and commercial information indicating that a listing of smalltooth sawfish may be warranted based on the criteria specified in 50 CFR 424.14(b)(2). Under section 4(b)(3)(A) of the ESA, this finding requires that a status review of the status of smalltooth sawfish be completed within 1 year of the receipt of the petition (by November 29, 2000) to determine whether the petitioned action to list smalltooth sawfish as endangered is warranted.

NMFS also finds that there is not substantial evidence to warrant initiation of a status review of North American populations of largemouth sawfish, on the basis that the petition did not contain substantial scientific and commercial information to indicate the present existence of such a population eligible for listing. While the petition presented evidence that largemouth sawfish did occur at one time in Texas waters, based on NMFS' review of the petition and on other available information, we believe that the largemouth species is most likely a tropical species, only rarely straying to North American waters.

Listing Factors and Basis for Determination

Under section 4(a)(1) of the ESA, a species can be determined to be threatened or endangered for any one of the following reasons: (1) Present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Listing determinations are made solely on the best scientific and commercial data available, after conducting a review of the status of the species and taking into account efforts made by the State and foreign nations to protect such species.

Within 1 year from the date the petition was received, a finding will be made as to whether listing the North American population of the smalltooth sawfish as endangered is warranted, as required by section 4(b)(3)(B) of the ESA.

Information Solicited

To ensure that the status review is complete and based on the best available scientific and commercial data, NMFS is soliciting information about smalltooth sawfish concerning the following: (1) Historical and current abundance and distribution; (2) the existence of reproducing populations; (3) biological or other relevant data to determine the existence or lack of distinct population segments in U.S. waters; (4) information on any current or planned activities that may adversely impact North American sawfish, especially related to the five listing factors identified here; and (5) ongoing efforts to protect sawfish and their habitat. NMFS requests that data, information, and comments be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications; and the person's name, address, and any association, institution, or business that the person represents. Such information may be submitted to the address given previously.

NMFS is also soliciting data on largemouth sawfish. Even though NMFS

has determined that a formal initiation of a status review of largemouth sawfish under the ESA is not warranted at this time, some concerns about its status still remain. If NMFS becomes aware of new information that would warrant a formal initiation of a status review of the largemouth sawfish, NMFS would announce this in the **Federal Register**.

NMFS also requests quantitative evaluations describing the quality and extent of habitats for both species, as well as information on areas that may qualify as critical habitat. Areas that include the physical and biological features essential to the species should be identified. Essential features include, but are not limited to, the following (1) Habitat for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for reproduction and rearing of offspring; and (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species.

For areas potentially qualifying as critical habitat, NMFS requests information describing the activities that affect the area or could be affected by the designation; and the economic costs and benefits of additional requirements of management measures likely to result from the designation. The economic cost to be considered in the critical habitat designation under the ESA is the probable economic impact "of the [critical habitat] designation upon proposed or ongoing activities" (50 CFR 424.19). NMFS must consider the incremental costs resulting specifically from a critical habitat designation that are above the economic effects attributable to listing the species. Economic effects attributable to listing include actions resulting from section 7 consultations under the ESA to avoid jeopardy to the species and from the taking prohibitions under section 9 or 4(d) of the ESA. Comments concerning economic impacts should distinguish the costs of listing from the incremental costs that can be directly attributed to the designation of specific areas as critical habitat.

References Cited

- Bigelow, H.B. and W.C. Schroeder. 1953. Sawfishes, guitarfishes, skates, rays, and chimaeroids. Fishes of Western North Atlantic. Sears Foundation for Marine Research 1 (2): 1-514.
- Baughman, J. L. 1943. Notes on Sawfish, *Pristis perotteti* Muller and Henle, not Previously Reported from the Waters of the United States. Copeia 1: 43-48.
- Musick, J.A. 1999. Life in the slow lane: ecology and conservation of long-lived marine animals. American Fisheries Society Symposium 23, Bethesda, Maryland.
- Snelson, F.F., Jr. and SE. Williams. 1981. Notes on the occurrence, distribution and biology of elasmobranch fishes in the Indian River Lagoon System, Florida. Estuaries 4(2):110-120.
- Thorson, T.B. 1982. Life history implications of a tagging study of the largetooth sawfish, *Pristis perotteti*, in the Lake Nicaragua-Rio San Juan system. Environmental Biology of Fishes 7(3): 207-228

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

Dated: March 6, 2000.

Andrew A. Rosenberg,

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

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