

Participating Organizations

Alliance for a Living Ocean
American Littoral Society
Arthur Kill Coalition
Asbury Park Fishing Club
Atlantic Highlands Arts Council
Bayside Regional Watershed Council
Bayside Saltwater Flyrodders
Belford Seafood Co-op
Belmar Fishing Club
Beneath The Sea
Bergen Save the Watershed Action Network
Berkeley Shores Homeowners Civic Association
Cape May Environmental Commission
Central Jersey Anglers
Citizens Conservation Council of Ocean County
Clean Air Campaign, NY
Clean Water Action
Coalition Against Toxics
Coalition for Peace & Justice/Unplug Salem
Coastal Jersey Parrot Head Club
Communication Workers of America, Local 1075
Concerned Businesses of COA
Concerned Citizens of Bensonhurst
Concerned Citizens of COA
Concerned Citizens of Montauk
Eastern Monmouth Chamber of Commerce
Environment NJ
Fishermen's Conservation Association, NJ Chapter
Fishermen's Conservation Association, NY Chapter
Fishermen's Dock Cooperative, Pt. Pleasant
Food and Water Watch, NJ
Friends of Island Beach State Park
Friends of Liberty State Park, NJ
Friends of the Boardwalk, NY
Garden Club of Allenhurst
Garden Club of Bay Head and Mantoloking/Seaweeders
Garden Club of Brielle/Bayberry
Garden Club of Englewood
Garden Club of Fair Haven
Garden Club of Long Beach Island
Garden Club of RFD Middletown
Garden Club of Morristown
Garden Club of Navesink
Garden Club of New Jersey
Garden Club of New Vernon
Garden Club of Oceanport
Garden Club of Princeton
Garden Club of Ridgewood
Garden Club of Rumson
Garden Club of Sea Girt/Holly
Garden Club of Short Hills
Garden Club of Shrewsbury
Garden Club of Spring Lake
Garden Club of Terra Nova
Garden Club of Washington Valley
Great Egg Harbor Watershed Association
Green Party of Monmouth County
Green Party of New Jersey
Highlands Business Partnership
Hudson River Fishermen's Association
Jersey Shore Captains Association
Jersey Shore Parrot Head Club
Jersey Shore Partnership
Junior League of Monmouth County
Keypoint Environmental Commission
Kiwanis Club of Shadow Lake Village
Leonardo Party & Pleasure Boat Association
Mantoloking Environmental Commission
Marine Trades Association of NJ
Monmouth Conservation Foundation
Monmouth County Association of Realtors
Monmouth County Audubon Society
National Coalition for Marine Conservation
Natural Resources Protective Association, NY
NJ Beach Buggy Association
NJ Environmental Lobby
NJ Friends of Clearwater
NJ Marine Education Association
Nottingham Hunting & Fishing Club, NJ
NYC Sea Gypsies
NY Marine Education Association
NY/NJ Baykeeper
Ocean Wreck Divers, NJ
PaddleOut.org
Piscataway Saltwater Sportsmen Club
Rantan Riverkeeper
Religious on Water
Rotary Club of Point Pleasant
Rotary District #7540—Interact
Saltwater Anglers of Bergen County
Sandy Hook Bay Anglers
Save Barnegat Bay
Save the Bay, NJ
SEAS Monmouth
Shark Research Institute
Shark River Cleanup Coalition
Shark River Surf Anglers
Sierra Club, NJ Shore Chapter
Sisters of Charity, Maris Stella
South Monmouth Board of Realtors
Staten Island Tuna Club
Strathmere Fishing & Environmental Club
Sunrise Rod & Gun Club
Surfers' Environmental Alliance
Surfrider Foundation, Jersey Shore Chapter
Surfrider Foundation, South Jersey Chapter
TACK I, MA
Unitarian Universalist Congregation/Monm. Cnty.
United Boatmen of NY/NJ
Viking Village
WATERSPIRIT
Women's Club of Brick Township
Women's Club of Keypoint
Women's Club of Long Branch
Women's Club of Merchantville
Women's Club of Spring Lake
Zen Society, NJ



Ocean Advocacy
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Clean Ocean Action

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June 1, 2015

Kathryn Sullivan, Ph.D.
Administrator
National Oceanic and Atmospheric Administration
1401 Constitution Avenue, NW
Room 5128
Washington, DC 20230
VIA EMAIL

Re: Pending Seismic Survey by the Lamont-Doherty Earth Observatory and Rutgers University Along New Jersey/ Urgent Request for Reinitiation of ESA Consultative Process with Respect to Atlantic Sturgeon

Dear Dr. Sullivan--

With respect to the above-referenced project, Clean Ocean Action respectfully requests that National Oceanic and Atmospheric Administration compel the National Marine Fisheries Service ("NMFS") and the National Science Foundation ("NSF") to re-initiate the Endangered Species Act consultation process to evaluate the detrimental effects of the above-referenced proposed survey upon the *Atlantic Sturgeon, a federally-listed endangered species*.¹ The proposed survey is to occur off the Coast of New Jersey as early as June 1, 2015. This request follows the May 27, 2015 release of NSF's Final Environmental Assessment and Finding of No Significant Impact.

The Atlantic Sturgeon is among the oldest fish species in the world. They can grow to approximately 14 feet in length and can live up to 60 years. In the last half of the 20th century, the Atlantic Sturgeon was overharvested, leading to widespread population declines. Current threats to Atlantic Sturgeon include bycatch in fisheries targeting other species, habitat degradation, and loss from human activities. In February 2012, four distinct population segments (DPSs), including that of the New York Bight, were listed as endangered by the U.S. Fish and Wildlife Service.²

¹ The reinitiation process is set forth in 50 CFR 402.16.

² See 77 Fed. Reg. 5914 (Feb. 6, 2012).

In its Environmental Assessment, NSF determined that the Atlantic Sturgeon is one of several endangered species that may be affected by the proposed activity.³ Potential impacts would be associated with underwater noise, which could result in avoidance and other forms of disturbance including tolerance, masking of natural sounds, behavioral disturbance, and temporary or permanent hearing impairment, or non-auditory physical or physiological effects.⁴ Under the federal Endangered Species Act, such a finding triggers a federal consultation between NSF and NMFS to ensure that the proposed seismic survey would not jeopardize the continued survival of the species.⁵

NSF made no such finding. In its Biological Opinion regarding the proposed survey, NMFS did not consider the effects of the proposed survey upon the Atlantic Sturgeon. NMFS stated it does not “believe” that Atlantic Sturgeon are likely to be present in the study area.⁶ NMFS based its “belief” on tagging data, which, not surprisingly, indicated the presence of Atlantic Sturgeon near shore (where most tagging activity occurs).⁷

NMFS erred in concluding that no Atlantic Sturgeon would be present in the study area. We herewith present three (3) studies that are new to the record. These studies demonstrate and establish that Atlantic Sturgeon are present in the proposed study area and therefore must be evaluated through the consultation process. The studies are as follows:

- *Estimation of Atlantic Sturgeon Bycatch in Coastal Atlantic Commercial Fisheries of New England and the Mid-Atlantic*⁸: This assessment report clearly documents interactions between Atlantic Sturgeon and fisheries in the general area of the proposed survey during the months of June, July and August.⁹
- *Marine Distribution and Habitat Use of Atlantic Sturgeon in New York Lead to Fisheries Interactions and Bycatch*¹⁰: This study documents Atlantic Sturgeon having been taken as commercial fishery bycatch in the general area of the survey during the late spring and early summer months.¹¹

³ Final Amended Environmental Assessment for Proposed Survey off New Jersey, 2015, Page 29 Section III Affected Environment. (“There are two fish species listed under the ESA as **Endangered** that could occur in the study area: the New York Bight distinct population segment (DPS) of the Atlantic Sturgeon, and the shortnose sturgeon.”); see also Id. at Page 11 (“As described in the PEIS, Chapter 3, the description of the affected environment focuses only on those resources potentially subject to impacts [from the proposed study].”).

⁴ See id. at 41.

⁵ See 16 USC § 1536(a).

⁶ NMFS ESA § 7 Biological Opinion for NSF Seismic Survey along New Jersey and NMFS IHA Issuance, 2015, page 20, Section 5.1.

⁷ NMFS ESA § 7 Biological Opinion for NSF Seismic Survey along New Jersey and NMFS IHA Issuance, 2015, page 20, Section 5.1. See also, Sheila Eyler, Mike Mangold, & Steve Minkinen, *Atlantic Coast Sturgeon Tagging Database*, (February 2009), U.S. Fish and Wildlife Service Maryland Fishery Resources Office (MFRO) (“The largest tagging programs for Atlantic Sturgeon were in the Hudson River, Long Island Sound, Delaware River/Bay and the Chesapeake Bay.”)

⁸ Atlantic States Marine Fisheries Commission (ASMFC). *Special Report to the ASMFC Atlantic Sturgeon Management Board: Estimation of the Atlantic Sturgeon Bycatch in Coastal Atlantic Commercial Fisheries of New England and the Mid-Atlantic* (August 2007) available at <http://www.nefmc.org/monk/cte%20mtg%20docs/120403/bycatchReportAug07.pdf>

⁹ Id. at 31-33 (Figures 9, 10, and 11).

¹⁰ Keith J. Dunton, Adrian Jordaan, David O. Conover, Kim A. McKown, Lisa A. Bonacci & Michael G. Frisk (2015) *Marine Distribution and Habitat Use of Atlantic Sturgeon in New York Lead to Fisheries Interactions and Bycatch, Marine and*

- *Use of Pop-up Satellite Archival Tags to Identify Oceanic-migratory Patterns for Adult Atlantic Sturgeon*¹²: This study presents a tagging-based model which illustrates that sturgeon distribution extends beyond the western edge of the study,¹³ and that Atlantic Sturgeon utilize a critical migratory corridor along the continental shelf of New Jersey that includes the proposed survey area.¹⁴

In accordance with 50 CFR 402.14(b), if new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered, reinitiation of consultation is required.

Formal consultation is required under federal law because (1) Atlantic Sturgeon would be present in the study area, (2) they will, as NSF concedes, be affected by the proposed study and (3), as NMFS has already determined, any listed species in the study area will be adversely affected by the seismic airgun pulses. With respect to the last point, NMFS's Biological Opinion states that the proposed seismic studies "would expose listed species to seismic airgun pulses, as well as sound emitted from a multi-beam bathymetric echosounder and sub-bottom profiler and other stressors."¹⁵ The Biological Opinion further provides that listed species occurring in the survey area would be subjected to harassment; defined as "an intentional or unintentional human act or omission that creates the probability of injury to an individual animal by disrupting one or more behavioral patterns that are essential to the animal's life history or its contribution to the population the animal represents."¹⁶ Accordingly, NMFS is required by law to reinitiate the consultation process with NSF with respect to the proposed project's affect upon Atlantic Sturgeon. Due to new information regarding the range and frequency of the Atlantic Sturgeon occurring within the study area, the fragility of the New York Bight DPS Atlantic Sturgeon's population, and the potential impacts the proposed survey would have on the species, Clean Ocean Action believes that NMFS should determine that the proposed action may affect, and is likely to adversely affect the Atlantic Sturgeon, and therefore, reinitiation of formal consultation is required.

In closing, this is the second urgent request Clean Ocean Action has sent to you concerning the subject project. By letter dated May 26, 2015, we previously alerted you to the fact that the proposed project was authorized to take 26 times more marine mammals than previously stated, and no public review of those revised numbers (which include more than 12,500 bottle nose dolphins) has been permitted. We are now alerting you that the proposed study has failed to properly evaluate the potential impacts to the Atlantic Sturgeon. We urge you to compel NMFS to reinitiate the formal consultation process to review whether the proposed survey will jeopardize the Atlantic Sturgeon population in the New York Bight, and to re-notice the Incidental Harassment

Coastal Fisheries, Dynamics, Management, and Ecosystem Science, 7:1, 18-32, available at

<http://www.tandfonline.com/doi/full/10.1080/19425120.2014.986348>

¹¹ *Id.* at 27 (Panels C-G).

¹² D.L. Erickson et al., *Use of Pop-up Satellite Archival Tags to Identify Oceanic-migratory Patterns for Adult Atlantic Sturgeon*, *Journal of Applied Ichthyology* 2011, pages 356-365. available at

<http://afs.tandfonline.com/doi/full/10.1080/19425120.2014.986348#.VWc7ds-6fGg>

¹³ *Id.* at 362 (Figures 7 and 8).

¹⁴ *Id.* at 363.

¹⁵ NMFS ESA § 7 Biological Opinion for NSF Seismic Survey along New Jersey and NMFS IHA Issuance, 2015, section 6 Effects of the Proposed Actions, page 103.

¹⁶ *Id.*

Authorization if NOAA intends to authorize the proposed survey proponents to harass more than 18,000 marine mammals.

Respectfully,



Cindy Zipf
Executive Director

cc: Regional Administrator John K. Bullard. NMFS Greater Atlantic Region
U.S. Senator Cory Booker
US NJ Congressional Delegation
NJ Senate President Stephen Sweeney
New Jersey's 9th Legislative District
NJ DEP Commissioner Bob Martin
Atlantic States Marine Fisheries Commission
open letter