Supplemental Norfolk Harbor Navigation Improvements Project – Thimble Shoal Channel, Chesapeake Bay Bridge Tunnel – Protective Rock Blanket Project

Virginia Beach, Virginia

Appendix F:
2018 NMFS Batched Biological Opinion

January 2021

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NATIONAL MARINE FISHERIES SERVICE
ENDANGERED SPECIES ACT
BIOLOGICAL OPINION

Action Agencies:	Army Corps of Engineers (USACE), Norfolk District (lead) USACE Baltimore District Bureau of Ocean Energy Management U.S. Environmental Protection Agency U.S. Navy
Activity Considered:	Construction and Maintenance of Chesapeake Bay Entrance Channels and use of sand borrow areas for beach nourishment **F/NER/2018/14816**
Conducted by:	National Marine Fisheries Service Greater Atlantic Regional Fisheries Office
Date Issued:	10/5/18
Approved by:	[signature]

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1.0 INTRODUCTION

This constitutes the biological opinion (Opinion) of NOAA's National Marine Fisheries Service (NMFS) issued pursuant to Section 7 of the Endangered Species Act (ESA) of 1973, as amended, on the effects of the following projects:

- Cape Henry Channel;
- York Spit Channel;
- Rappahannock Shoal;
- York River Entrance Channel;
- Sandbridge Beach Nourishment and Hurricane Protection Project;
- Virginia Beach Hurricane Protection Project;
- Thimble Shoals Channel;
- Atlantic Ocean Channel;
- Norfolk Harbor Channels;
- Craney Island Eastward Expansion; and,
- Dredged Material Disposal Areas: Dam Neck Ocean Disposal Site, Wolf Trap Alternate Placement Site, Rappahannock Shoal Deep Alternate Open Water Site, Craney Island Dredged Material Management Area, and, Norfolk Ocean Dredged Material Disposal Site.

The basis for this Opinion come from information provided in the Biological Assessments (BAs) dated March 2018, past consultations with the USACE Norfolk and Baltimore Districts and scientific papers and other sources of information as cited in this Opinion. We will keep a complete administrative record of this consultation at our Greater Atlantic Regional Fisheries Office. This Opinion replaces the following Opinion, which is hereby withdrawn: Maintenance of Chesapeake Bay Entrance Channels and Use of Sand Borrow Areas for Beach Nourishment (October 16, 2012). This consultation was initiated on March 14, 2018. A draft of the Reasonable and Prudent Measures and Terms and Conditions was sent to you on June 20, 2018. A complete draft of the Opinion was provided to you on June 26, 2018 and September 24, 2018.

2.0 CONSULTATION HISTORY

Consultation between USACE and NMFS on effects of dredging in the Chesapeake Bay navigation channels and borrow areas has been ongoing since the 1980s. We have completed numerous consultations, culminating in four separate biological opinions, most of which have been reinitiated multiple times (see below for detailed history). In all of these Opinions we concluded that the proposed dredging was likely to adversely affect, but not likely to jeopardize any species of listed sea turtle and was not likely to adversely affect any species of listed whales. In February 2012, we published two final rules listing five Distinct Population Segments (DPS) of Atlantic sturgeon. The New York Bight, Chesapeake Bay, South Atlantic and Carolina DPSs are listed as endangered and the Gulf of Maine DPS is listed as threatened. Reinitiation of consultation is required if: (a) the amount or extent of taking specified in the ITS is exceeded; (b) new information reveals effects of these actions that may affect listed species or critical habitat in a manner or to an extent not previously considered; (c) any of the identified actions are subsequently modified in a manner that causes an effect to the listed species that was not considered in the Opinion; or (d) a new species is listed or critical habitat designated that may be affected by the identified actions (50 CFR § 402.16).

Following the listing of Atlantic sturgeon, you prepared BAs to supplement the BAs prepared previously for the channels and dredged material disposal areas listed in Section 1.0. These BAs were submitted to us along with requests to reinitiate consultation and produce new Biological Opinions. Because the actions considered in those Opinions were similar, they took place in the same geographic area, and affected the same species in the same manner, we determined it would be most efficient to combine the analysis of effects of continued dredging of these channels and borrow areas into one consultation. As such, while there were seven independent actions considered (i.e., dredging Baltimore Harbor Entrance Channels, York River Entrance Channel, Sandbridge Shoal, Virginia Beach Nourishment, Port of Norfolk Entrance Channels, Norfolk Harbor Channels and Craney Island Eastward Expansion), we produced one Biological Opinion. This type of “multi-action” consultation is contemplated in the NMFS-USFWS Section 7 Consultation Handbook (see page 5-5), and is referred to as a Batch Opinion. Further below, we detail the consultation history for each of these activities.

Additionally, on August 17, 2017, we published a final rule designating critical habitat for all five DPSs of Atlantic sturgeon (82 FR 39160; effective date September 18, 2017). A portion of the action area for this consultation overlaps with the James River unit of critical habitat designated for the Chesapeake Bay DPS, the effects to which are analyzed in this Opinion.

On September 28, 2017, and December 20, 2017, we received your Biological Assessments and letters requesting reinitiation of formal consultation to assess the potential impacts of dredging and placement activities associated with the Craney Island Eastward Expansion Project and Norfolk Harbor Navigation Improvements Project, respectively. In your requests, you stated that reinitiation had been triggered due to changes in the project that introduce effects not previously considered as well as the need to consider Atlantic sturgeon critical habitat that was designated in August, 2017 (not included in the Batch Opinion in 2012). In emails dated January 4, 2018, and February 5, 2018, we requested additional information from you before we could initiate consultation. We received a revised BA for the Norfolk Harbor Navigation Improvement Project on March 5, 2018. We received the revised BA for the Craney Island Eastward Expansion Project on March 14, 2018. On April 12, 2018, we sent you a letter with our determination that we had received all of the information necessary to reinitiate consultation on the Norfolk Harbor Navigation Improvement Project and the Craney Island Eastward Expansion Project with updates to the remainng project included in the 2012 Batch Opinion. We determined that we initiated consultation on March 14, 2018.

2.1 Norfolk Harbor -- Thimble Shoals and Atlantic Ocean Channel

Previous consultations for Thimble Shoals Channel regarding maintenance dredging operations were conducted on April 16, 1984, March 14, 1985, March 20, 1985, and March 10, 1986 and were concluded informally due to scheduling of dredging outside of the time of year when sea turtles would be present. Formal consultation for dredging activities in Thimble Shoals Channel (TSC) and Atlantic Ocean Channel (AOC) was initiated on April 14, 1999; a biological opinion was issued on February 7, 2001. Consultation was re-initiated on March 30, 2001 to account for sand borrow for beach nourishment in Atlantic Ocean Channel and associated impacts to listed sea turtles and other listed species. An amendment to the February 7, 2001 biological opinion was issued on May 30, 2001. You requested re-initiation of consultation on August 15, 2001 due to a change in the scope of the project; a revised biological opinion was issued on September 6, 2001. On December 4, 2001, you re-initiated consultation on the 50-foot deepening of the Norfolk Harbor and Channels project, which would require the removal of a total of up to 7.5 million cubic yards in the inner Norfolk Harbor and 5 million cubic yards of dredged material from TSC and AOC. In response to the request for re-initiation, we issued a biological opinion on April 25, 2002. In this biological opinion, we concluded that the proposed dredging may adversely affect but is not likely to jeopardize the continued existence of any listed species. An ITS was included with this biological opinion, exempting the lethal take of up to 18 loggerhead and 4 Kemp's ridley sea turtles during each dredge event and the non-lethal capture of an "unquantifiable" number of loggerheads and Kemp's ridleys during each relocation trawling event. Most recently, we issued a biological opinion in response to a request for re-initiation on October 16, 2012. In this biological opinion, we concluded that the proposed dredging may adversely affect but is not likely to jeopardize the continued existence of any listed species. An ITS was included with the 2012 biological opinion, exempting the lethal take of up to 151 loggerhead, 13 Kemp's ridley and 3 green sea turtles, and 25 Atlantic sturgeon, incidental to hopper dredging activities at Thimble Shoals and the Atlantic Ocean Channel over the course of 50 years.

2.2 Baltimore Harbor Entrance Channels and York River Entrance Channel

Formal consultation for dredging activities in Cape Henry Channel (CHC), York Spit Channel (YSC), Rappahannock Shoal Channel (RSC), and York River Entrance Channel (YEC) was initiated on May 18, 1993. We issued a biological opinion on October 6, 1993. Consultation was re-initiated on October 12, 2001, to account for greater dredging quantities, project durations, and associated impacts to listed sea turtles; we issued a new biological opinion on January 24, 2002. In letters dated January 15 and February 6, 2003, you requested re-initiation of consultation as the exempted level of take was exceeded in 2002. We issued a new biological opinion on July 24, 2003. We concluded that the proposed dredging was not likely to jeopardize the continued existence of any listed species. An ITS was included, exempting the annual lethal take of up to 18 loggerhead, up to 4 Kemp's ridley and 1 green sea turtle, depending on the volume of material removed from the channels. The ITS also exempted the capture of up to 120 sea turtles (loggerhead, Kemp's ridley and green) and one lethal take of a loggerhead, Kemp's ridley or green sea turtle during each relocation trawling event. Most recently, we issued a biological opinion in response to a request for re-initiation on October 16, 2012. In this biological opinion, we concluded that the proposed dredging may adversely affect but is not likely to jeopardize the continued existence of any listed species. An ITS was included with this biological opinion, exempting the lethal take of up to 194 loggerheads, 17 Kemp's ridleys, 4 greens, and 32 Atlantic sturgeon incidental to hopper dredging activities at the Baltimore Harbor Entrance Channels over the course of 50 years. In addition, the ITS exempted the lethal take of 20 loggerheads, 2 Kemp's ridleys, and 3 Atlantic sturgeon incidental to hopper dredging activities in the York River Entrance Channel.

2.3 Sandbridge Shoal

Formal consultation for the use of the Sandbridge Shoal borrow area was initiated in May 1992. We issued a biological opinion on April 2, 1993. This biological opinion was amended by letter issued August 20, 2001, to account for greater dredging quantities, project durations, and associated impacts to listed sea turtles. In 2007, you requested that we waive the requirement for 100% endangered species observer coverage for dredging planned for 2007. This request was due to the presence of unexploded ordinance in the area to be dredged and the placement of screening on the dragheads. We granted that request by letter and determined that the use of UXO screening did not require reinitiation of the consultation. The 1993 biological opinion, as amended in 2001, concluded that dredging in Sandbridge Shoal was not likely to jeopardize the continued existence of any species of whale or sea turtle. An ITS was included with the biological opinion, exempting the lethal take of five loggerhead sea turtles and one Kemp's ridley or green sea turtle for each biennial dredge event. This consultation was re-initiated in 2012. In September 2012, we issued a new biological opinion on effects of proposed dredging at Sandbridge Shoal in 2012-2013 with placement of 1.5-2 million cubic yards of sand along Sandbridge Beach. We concluded that the proposed action was not likely to jeopardize any DPS of Atlantic sturgeon or any species of listed sea turtle, and not likely to adversely affect any species of listed whale. The ITS exempted the lethal take of six loggerheads and one Kemp's ridley or green and one Atlantic sturgeon from any of the five DPSs. On October 16, 2012, we replaced the September 2012 biological opinion in response to a request for re-initiation. An ITS was included with this biological opinion, exempting the lethal take of up to 38 loggerheads, 3 Kemp's ridleys, 1 green sea turtle, and 6 Atlantic sturgeon incidental to hopper dredging activities at Sandbridge Shoal over the course of 50 years. Use of the Sandbridge Shoal borrow areas requires coordination with the Bureau of Ocean Energy Management (BOEM); the USACE's Norfolk District was designated the lead agency for purposes of complying with ESA requirements per 50 C.F.R 5402.07 and served as the lead agency for biological consultation.

2.4 Virginia Beach Nourishment and Hurricane Protection Project

Formal consultation for dredging activities at the Thimble Shoals Surround borrow area (TSS) and the Atlantic Ocean Offshore borrow area (AOO) was initiated with your submittal of a BA in January 2005. We issued a biological opinion on December 2, 2005. In this biological opinion, we concluded that the proposed dredging may adversely affect but is not likely to jeopardize the continued existence of loggerhead and Kemp's ridley sea turtles and is not likely to adversely affect leatherback or green sea turtles or right, humpback or fin whales. An ITS was included with this biological opinion, exempting the lethal take of 4 loggerheads and 1 Kemp's ridley during each dredge event and the non-lethal capture of 45 sea turtles (loggerhead, Kemp's ridley and green) during each relocation trawling event. The ITS also exempted one lethal take of a loggerhead, Kemp's ridley or loggerhead sea turtle during each relocation trawling event. We issued a biological opinion in response to a request for re-initiation on October 16, 2012. An ITS was included with this biological opinion, exempting the lethal take of up to 13 loggerheads, 2 Kemp's ridleys or greens, and 22 Atlantic sturgeon incidental to hopper dredging activities for the Virginia Beach Hurricane Project over the course of 50 years.

2.5 Norfolk Harbor Channels

We previously considered effects of maintenance dredging and deepening of the Norfolk Harbor inner channels. These actions were considered in the biological opinion dated April 25, 2002 described in Section 2.1 above. In the biological opinion, we determined that dredging in the inner channels was not likely to adversely affect any species of sea turtles because a hydraulic cutterhead or mechanical dredge would be used and these dredge types are not known to capture, injure or kill sea turtles. We issued a biological opinion in response to a request for re-initiation on October 16, 2012. In this biological opinion, we concluded that the proposed dredging was not likely to adversely affect any species of sea turtles. An ITS was included with this biological opinion, exempting the lethal take of up to 1 Atlantic sturgeon incidental to mechanical dredging activities at the Norfolk Harbor Channels over the course of 50 years.

2.6 Craney Island Eastward Expansion

We completed informal consultation with you on the Craney Island Eastward Expansion project in 2006. In a letter dated June 15, 2006, we concluded that the proposed action was not likely to adversely affect any species of sea turtle. This conclusion was based on the use of mechanical or hydraulic dredges for dredged material removal and the lack of benthic prey at the site. We issued a biological opinion in response to a request for re-initiation on October 16, 2012. In this biological opinion, we concluded that the proposed dredging was not likely to adversely affect any species of sea turtles. An ITS was included with this biological opinion, exempting the lethal take of up to 1 Atlantic sturgeon incidental to mechanical dredging activities at the Craney Island Eastward Expansion project over the course of 50 years.

3.0 DESCRIPTION OF THE PROPOSED ACTION

This Opinion considers the effects of proposed new dredging, continued maintenance dredging, and sand borrow operations in several Federal navigation channels located in the Chesapeake Bay and Atlantic Ocean. The Opinion also evaluates the placement and disposal of dredged material at the Craney Island Dredged Material Management Area (CIDMMA) and open ocean disposal sites, the Dam Neck Ocean Disposal Site (DNODS) and the Norfolk Ocean Disposal Site (NODS). The Opinion considers that dredged material could also be potentially placed at beneficial use sites or upland disposal sites. Construction is scheduled to being in 2023, but is contingent on funding availability. Construction of the Norfolk Harbor and Channels Deepening Project will take approximately 3.5 to 4 years to complete. Table 2 provides the approximate schedule for maintenance dredging, which is also subject to change based on funding availability.

These activities are carried out by you and your contractors as independent actions, as detailed below. The Norfolk District in coordination with the Baltimore District maintains the Port of Baltimore Approach Channels. Additionally, authorization with BOEM, in the form of a lease, is required for use of the Sandbridge Shoal borrow area. The U.S. EPA has regulatory authority over the designation of the ocean disposal sites considered in this Opinion. While you requested consultation on the Craney Island Eastward Expansion Project and Norfolk Harbor Navigation Improvements Project, we are including updates on all projects batched under the 2012 biological opinion, which are reflected in the sections below.

3.1 Port of Hampton Roads Approach Channels – Thimble Shoals and Atlantic Ocean Channel

The Atlantic Ocean Channel (AOC) and Thimble Shoals Channel (TSC) make up the approach channels to the Port of Hampton Roads, Virginia. These channels provide access for all ships calling on port facilities, naval bases, and shipyards in the Hampton Roads area. All commercial tonnage entering and leaving the Port of Hampton Roads passes through these channels. The USACE Norfolk District is responsible for maintaining these Federal navigation channels to ensure safe passage for all vessel traffic. To provide depths needed for safe navigation of large vessels, maintenance dredging of these Federal navigation channels must occur before shoaling causes draft restrictions and/or other safety concerns. The location of TSC and AOC is depicted in Appendix A.

The proposed action involves continued ongoing sand borrow operations, maintenance and new dredging of the AOC and TSC and the use of the associated dredged material placement sites. The project includes the entire footprint of these channels and the shoals contained within each channel, plus the entire footprint of the associated dredged material placement sites. Dredged material would be placed at the DNODS and/or the NODS. Other potential placement sites could include CIDMMA or upland disposal sites (if needed). Material could potentially be used for beneficial use projects as well. The AOC and TSC are preferred sand borrow sources for beach nourishment and port development projects in the Hampton Roads region. You are proposing to borrow from the TSC and AOC for the following projects: the Craney Island Eastward Expansion, Virginia Beach Hurricane Protection Project, Willoughby Spit and Vicinity Hurricane Protection Project, and JEB Fort Story Beach Replenishment Project (U.S. Navy).

The AOC and TSC normally require maintenance dredging every two to five years but dredging is typically located in distinct shoaled areas within the channels. These shoaled areas vary from year to year, but are often located along the toe of the channel. New dredging may also occur when Congress authorizes and appropriates funding for channel improvements. The duration of dredging, the amount of material removed from each shoal, and the frequency in which each shoal is dredged is dependent on several factors. These factors include, but are not limited to: environmental conditions, funding, whether it is new work or maintenance dredging, location, length of time after the last dredging cycle, time of year conservation measures, availability of suitable dredge plant, emergencies, and others. It is important to note that the areas within the channel that are dredged during each maintenance cycle are typically relatively small in comparison to the total channel dimensions. The primary objective is to provide vessels with safe, navigable passage to the Port of Hampton Roads in support of commerce and national defense.

Atlantic Ocean Channel Federal Navigation Project

The Water Resources Development Act (WRDA) of 1986 authorized the AOC. The WRDA authorized the USACE to construct the AOC, which consists of a channel 11.1 miles long, 1,300 feet wide, and -57 feet deep located 3-4 miles east of the Thimble Shoal Channel, in the Atlantic Ocean at the mouth of the Chesapeake Bay off the coast of Virginia Beach, Virginia. As part of the -50-foot inbound construction effort in 2006, the channel was deepened to provide for a depth and width of -52 feet and 1,300 feet, respectively. The AOC is part of the Port of Virginia and Baltimore system of channels, and is the segment providing access for all ships calling on port facilities, naval bases, and shipyards in the Hampton Roads, York River, and Baltimore areas. All commercial tonnage entering and leaving the Ports of Virginia and Baltimore pass through this channel. The channel is currently maintained to full width and a depth of -52 feet to enable loaded colliers, container ship, and military vessels to transit the channel with ship drafts as great as -50 feet. The proposed action would deepen the AOC to a required depth of approximately -59 feet. The AOC is managed by the USACE Norfolk District.

Material is typically dredged via hopper dredge from this channel. Dredged material is placed at Dam Neck Ocean Disposal Site (DNODS). Dredged material also has been used for beneficial uses for the Virginia Beach Hurricane Protection project and the Craney Island Eastern Expansion (CIEE) Project. The sediment composition in this channel segment is largely fine sand (85%) with some silt (15%). The channel has been utilized as a sand borrow source for hurricane protection projects and port development projects, therefore maintenance of the channel has not been required.

Thimble Shoal Federal Navigation Project

The TSC is located in the southern part of the Chesapeake Bay, just off the shoreline of the City of Norfolk and City of Virginia Beach, east of the Craney Island Dredged Material Management Area. The TSC was originally authorized by the River and Harbor Act of August 8, 1917. The authorized channel dimensions are 13.4 miles long, 1,000 feet wide, betwenn the 55-foot contours, to a depth of -55. Although the channel is authorized to be dredged to 55 feet, the channel is currently maintained to a required depth of -50 feet. Thimble Shoal Channel extends from the deep water to the east of Hampton Roads to the deep water at the mouth of the Chesapeake Bay.

The proposed action would authorize a new depth of -61 feet, deepen the TSC from -50 feet to a required depth of approximately -56 feet, and widen the channel east of the Chesapeake Bay Bridge Tunnel to approximately 1,300 feet. The Thimble Shoal Channel is managed by the Norfolk District.

As part of the proposed action, the existing 10 feet of sand cover over the Chesapeake Bay Bridge Tunnel in the Thimble Shoal Channel would be reduced to approximately five feet. The materials covering the tunnel would be sand or potentially sand and rock.

Material dredging is via hopper dredging. Dredged material is placed at the DNODS. The sediments of Thimble Shoal Channel to the west of the Chesapeake Bay Bridge Tunnel are predominantly clays and silts (50-75%). In contrast, sediments in the eastern portion of channel are largely fine to medium-grained sand (75-90%).

3.2 Port of Baltimore Approach Channels

Cape Henry Channel (CHC), York Spit Channel (YSC) and Rappahannock Shoals Channel (RSC) make up the Chesapeake Bay approach channels to the Port of Baltimore. All commercial tonnage entering and leaving the Port of Baltimore pass through these channels. The Norfolk District maintains these Federal navigation channels in coordination with Baltimore District.

In order to provide depths needed for safe navigation of large vessels, maintenance dredging of these Federal navigation channels must occur before shoaling causes draft restrictions and/or other safety concerns. All of these channels and placement sites are depicted in Appendix A.

The proposed project involves continued ongoing maintenance dredging of the CHC, YSC and RSC and the use of the associated dredged material placement sites. New work dredging may also occur when Congress authorizes and appropriates funding for channel improvements. The project includes the entire footprint of these channels and the shoals contained within each channel, plus the entire footprint of the associated dredged material placement sites. The CHC, YSC and RSC normally require dredging every two to five years; dredging is typically located in distinct shoaled areas within the channels and not through the entirety of the channel. These shoaled areas vary from year to year, but are often located along the toe of the channel. The duration of dredging, the amount of material removed from each shoal, and the frequency at which each shoal is dredged is dependent on several factors. These factors include, but are not limited to: environmental conditions, funding, location of the shoal, degree of shoaling, time of year conservation measures, availability of suitable dredge plant, navigation emergencies, and others.

Cape Henry Federal Navigation Project
The CHC was authorized under the River and Harbor Act of 1945 and Section 101 of the River and Harbor Act of 1970 as part of the Baltimore District - USACE 50-Foot Project. The River & Harbor Act of 1945 authorized increasing the channel depth to -39 feet deep and 1,000 feet wide in the CHC and YSC in Virginia. The River and Harbor Act of 1970 authorized a uniform main channel 50 feet deep, and generally 800 (in Maryland) or 1,000 (in Virginia) feet wide through the Chesapeake Bay from the Virginia Capes to Fort McHenry in the Port of Baltimore, a distance of 175 miles. The CHC Federal Navigation Channel is a 1,000 foot wide channel approximately 4.7 nautical miles long located between the -50 foot contours at the entrance to the Chesapeake Bay just south of the Chesapeake Bay Bridge Tunnel. The Norfolk District in coordination with the Baltimore District maintains the CHC.

Rappahannock Shoal Federal Navigation Project
The RSC was authorized under Section 101 of the River and Harbor Act of 1970 as part of the Baltimore District - USACE 50-Foot Project. The River and Harbor Act of 1970 authorized a uniform main channel -50 feet deep, and generally 800 (in Maryland) or 1,000 (in Virginia) feet wide through the Chesapeake Bay from the Virginia Capes to Fort McHenry in the Port of Baltimore, a distance of 175 miles, which includes the RSC. Dredging of the initial phase reduced the channel widths in the RSC from 1,000 to 800 feet wide. The RSC is -50 feet deep, 800 feet wide and approximately 10.3 nautical miles long and traverses the Rappahannock Shoal from southeast to northwest. The Norfolk District in coordination with the Baltimore District maintains the RSC.

York Spit Federal Navigation Project
The YSC was authorized to a depth of -37 feet under the River and Harbor Act of 1930. After World War II, the River & Harbor Act of 1945 authorized increasing the channel depth to -39

feet deep and 1,000 feet wide in the CHC and YSC in Virginia. Finally, the YSC was authorized to -50 feet via Section 101 of the River and Harbor Act of 1970, as part of the Baltimore District USACE 50-Foot Project, which authorized a uniform main channel -50 feet deep, and generally 800 (in Maryland) or 1,000 (in Virginia) feet wide through the Chesapeake Bay from the Virginia Capes to Fort McHenry in the Port of Baltimore, a distance of 175 miles. Dredging of the initial phase reduced the channel widths in the YSC from 1,000 to 800 feet wide. The YSC is 800 feet wide, -52 feet deep and is approximately 18.4 nautical miles long. The YSC is located between the -50 foot contours, just north of the Chesapeake Bay Bridge Tunnel and is maintained by the Norfolk District in coordination with the Baltimore District.

3.3 York River Entrance Channel Federal Navigation Project

The Norfolk District is responsible for maintenance dredging the York River Entrance Channel (YREC) Federal Navigation Project. In order to provide depths needed for safe navigation of larger vessels, maintenance dredging of this Federal navigation channel must occur on or before shoaling causes draft restrictions and/or other safety concerns. The location of YREC is depicted in Appendix A.

The proposed project does not include continued ongoing maintenance dredging of YREC and the use of the associated dredged material placement sites. During the consultation, you informed us that there is no planned federal action for YREC. The federal project is not funded and no maintenance dredging is planned at this time. Should project plans change, further coordination with us should be pursued.

The YREC was first dredged in 1951 and 1952, when the natural entrance channel into the York River was deepened by the USACE for the Department of the Navy. The original channel dimensions provided for a 39-foot deep channel at mean low water, 750 feet wide at the bottom, and approximately 11 miles long. There was no dredging of the YREC between 1952 and 1998. In 1995, the Chief of Engineers authorized dredging under Section 107 of the River and Harbor Act of 1960. The YREC project consisted of a channel 37 feet deep at mean lower low water (mllw), 750 feet wide at the bottom, and approximately 23 miles long. New work was authorized in 1995, and the channel was dredged to its current dimensions in 1999. The channel begins at the 38-foot contour in the Chesapeake Bay and ends at a point adjacent to the piers at the Yorktown U.S. Naval Weapons Station, approximately 8 miles above the river mouth.

3.4 Virginia Beach Nourishment and Hurricane Protection Project

The Virginia Beach Hurricane Protection Project is conducted under authority of the WRDA of 1986, as modified by the WRDA of 1992 and 1996. The project was authorized in Section 102 of the WRDA of 1992 (Public Law [P.L.] 102-580) as amended in 1996, and is funded by the Federal Government and the city of Virginia Beach, Virginia, acting as the project's non-Federal sponsor.

The hurricane protection site is located at Cape Henry, Virginia Beach, Virginia, as generally described in the "Beach Erosion Control and Hurricane Protection Study Virginia Beach, Virginia General Reevaluation Report Main Report and Appendices," dated September 1993 and revised January 1994, and approved by the Assistant Secretary of the Army for Civil Works on February l, l994, and as further defined by Draft plans and Specifications which are incorporated herein by reference. The authorized duration of the initial project of hurricane protection is 50 years, including initial construction and periodic nourishment. Sand to be placed at the hurricane protection site may be obtained from Federal navigation channels or the Thimble Shoals Channel Borrow Area (TSS) and the Atlantic Ocean Channel Borrow Area (AOO). The location of these borrow areas are illustrated in Appendix A.

The TSS area is a rectangle surrounding a short reach of the Thimble Shoals Channel located in the lower Chesapeake Bay between deep water in Hampton Roads and the Atlantic Ocean. It is approximately 2 miles off the Chesapeake Bay shoreline, with its western terminus approximately 5,400 feet east of the Chesapeake Bay Bridge Tunnel. The TSS is about 5,700 feet in length and approximately 1,200 feet wide, totaling about 1,960 acres. Depths in the area range from about 35 to 50 feet and do not include the Thimble Shoals Channel.

The AOO area is roughly triangular in shape and is located in the Atlantic Oceanoff Cape Henry, Virginia. It encompasses about 9,253 acres and extends southeasterly from a point due east of the Cape Henry lighthouse and in the direction of the continental slope. It is bounded to the east by the Atlantic Ocean Channel deepwater route east of the Virginia Beach oceanfront. This borrow site does not include any section of the Atlantic Ocean Channel deepwater route. This borrow site is located about 5 miles from the TSS borrow area.

Maintenance of the hurricane protection project will require that approximately 1,000,000 cubic yards (cy) of sand be dredged and placed on the beach during the initial maintenance, with an additional 2,000,000 cy to be dredged and placed every 3 to 4 years.

The maintenance borrow activities may be rotated among these sites over the 50-year period. Approximately 12.5 million cy of sand may be dredged and used for beach nourishment over the 50-year period, with approximately 8.125 MCY (66%) of the volume to be removed from Atlantic Ocean Channel and Thimble Shoals Channel. The remaining 4.375 MCY is likely to be removed from the AOO and TSS. Dredging will be accomplished via hopper dredge, although there is a possibility that a hydraulic cutterhead dredge may be used in the AOO. Dredged beach-quality sand may be placed on the site by means of hydraulically pumping from the dredging site directly to the beach via a hydraulic dredge and pipeline, if the sand source is less than 2 miles from the beach; or, if the sand source is more than 2 miles from the beach, a hopper dredge may be used.

3.5 Sandbridge Beach Nourishment and Hurricane Protection

The Advanced Engineering and Design Study for Beach Erosion and Hurricane Protection at Virginia Beach, Virginia, including Sandbridge Beach, was authorized by Section 1(a) of the Water Resources Development Act of 1974 (Public Law 93-251, 93'd Congress, H.R. 10203.7 March 1974). The applicable portion of the authorizing act is as follows:

"Sec. I (a) The Secretary of the Army, acting through the Chief of Engineers, is hereby authorized to undertake the Phase I Design Memorandum stage of advanced engineering and design of the following multi-purpose water resources development projects, substantially in accordance with, and subject to the conditions recommended by the Chief of Engineers in the reports here in after designated."

Middle Atlantic Coastal Area

"The project for hurricane-flood protection at Virginia Beach, Virginia: House Document Numbered 92-365, at an estimated cost of $8,954,000 (1974 dollars)."

BOEM will authorize the use of sand from an OCS sand borrow area for the project under the OCS Lands Act, 43 U.S.C. §1337(k). In 1994, OCSLA was amended to allow BOEM to convey, on a noncompetitive basis, the rights to OCS sand, gravel, or shell resources for use in a program for shore protection, beach restoration, or coastal wetlands restoration undertaken by a Federal, State, or local government agency (43 U.S.C.§ 1337(k)(2)(A)(i)). An agreement will be negotiated between BOEM, the USACE Norfolk District, and the City of Virginia Beach for the dredging and relocation of the sand.

The beach nourishment will occur along a five mile stretch of the Sandbridge Beach between the Back Bay National Wildlife Refuge (NWR) at the southern most extent (36.698017 N, -75.924196 W-WSG84 datum) and the U.S. Naval Fleet Anti-Air Warfare Training Center at the northern most extent (36.760823 N, - 75.948829 W) along the beach. The borrow areas (A and B) are located about three miles offshore at Sandbridge Shoal perpendicular to the beach nourishment reach (Appendix A). A no dredging zone separates the two borrow areas to protect underground cable lines. The coordinates for these borrow areas start at the three miles state waters boundary from east to west and are approximate as follows:

Area A: 36.7396 N, - 75.8762 W; 36.7235 N, - 75.8315 W
Area B: 36.7638 N, - 75.8860 W; 36.7537 N, - 75.8387 W

The proposed action would involve beach nourishment at the Sandbridge oceanfront, an area approximately 5 miles long and 725 feet wide (as illustrated in Appendix A). The specific beach area covered extends from the U.S. Naval Fleet Anti-Air Warfare Training Center at Dam Neck to the north to Back Bay NWR to the south. The project dimensions include a 50-foot wide berm at an elevation of 6 feet North American Vertical Datum (NAVD) with a foreshore slope of approximately 1:20 (one vertical value to 20 horizontal) for a distance of approximately 5 miles. The designated borrow area is Sandbridge Shoal (Appendix A), located approximately 3 nautical miles from the shoreline, outside of Virginia's territorial sea. There are two selected borrow areas within Sandbridge Shoal, Area B to the north and Area A to the south; depths range from 30 to 65 feet. The area between the two borrow areas is restricted due to the presence of a buried Navy submarine communications cable. Beach quality sand would most likely be removed by trailing suction hopper dredge with the possibility of using a hydraulic pipeline dredge (i.e. cutterhead).

As previously mentioned, the proposed action will utilize either a hopper style dredge or a hydraulic pipeline dredge to borrow beach quality sand from authorized sites along Sandbridge Shoals to renourish the beach at Sandbridge Beach via the placement of dredged material onto the beach.

3.6 Norfolk Harbor Channels

The Norfolk Harbor Channels are part of the larger Port of Hampton Roads complex and intially included the deep draft channels in the Elizabeth River and Hampton Roads. Portions of the Norfolk Harbor project have been authorized and modified by the Rivers and Harbors Act of July 5, 1884, 2 March 1907, 25 June 1910, 4 March 1913, 8 August 1917, 3 March 1925, 30 August 1935, 2 March 1945, 24 July 1946, 30 June 1948, 3 September 1954, 27 October 1965, the Flood Control Act of 1965, and the WRDA of 1986. On April 16, 2018, you requested informal consultation on the Elizabeth River Southern Branch Navigation Improvements project, which had previously been included as part of the Norfolk Harbor Channels complex. On June 25, 2018, we responded with a letter that concurred with your determination that the proposed action was not likely to adversely affect ESA-listed species under our jurisdiction. The June 2018 consultation included the following channel sections that now comprise the Elizabeth River Southern Branch Navigation Improvements Project:

- A channel 45-feet deep over its 375 feet to 750-foot width from Lamberts Point to the N&W Railroad Bridge (Norfolk Harbor Channel - Lamberts Bend to Paradise Creek);
- A channel 40-feet deep over its 250 to 500-foot width to the U.S. Routes 460 and 13 Highway Bridge (Norfolk Harbor - Southern Branch Channel); hence a channel 35-feet deep over its 250 feet to 300 feet width to a point 0.8-mile above Interstate 64 high level bridge;
- A channel 25-feet deep over its 200 feet to 500 feet width from the junction with the southern Branch of the Elizabeth River to the N&W Railroad Bridge on the eastern Branch of the Elizabeth River (Norfolk Harbor – Eastern Branch Channel);
- A channel 18 feet deep over its 150 feet to 300 feet width and 1.72 mile length on the western Branch of the Elizabeth River (Norfolk Harbor – Western Branch Channel);
- A channel 12 feet deep, 100 feet wide, and 0.73 mile in length in Scotts Creek (Norfolk Harbor – Scotts Creek Channel);

The project considered in this consultation includes the following:

- A channel 55 feet deep over its 800 to 1,500-foot width from the 55-foot contour in Hampton Roads to Lamberts Point (Norfolk Harbor Channel - Sewells Point to Lamberts Bend);
- Sewells Point Anchorages and 50-foot Anchorages;
- A channel 55 feet deep and 800 feet wide from Norfolk Harbor Channel in Hampton Roads to Newport News (Channel to Newport News);
- Newport News Anchorages;
- Craney Island Dredged Material Management Area (CIDMMA) consist of a 2,500 acre upland confined disposal facility for the placement of navigation related dredged material from Norfolk Harbor and adjacent waters.

The Norfolk District is responsible for maintaining these Federal navigation channels and anchorages to ensure safe passage for all vessel traffic. A specific description of the channel reaches, anchorages, and dredged material placement sites serving the greater port of Hampton Roads follows and is depicted in Appendix A.

The Norfolk Harbor Channels provide access for all ships calling on port facilities, naval bases, and shipyards in the Hampton Roads area. All commercial tonnage entering and leaving the Port of Hampton Roads passes through one or more of these channels. The Norfolk District is responsible for maintaining these Federal navigation channels to ensure safe passage for all vessel traffic utilizing the port. In order to provide depths needed for safe navigation of larger vessels, maintenance dredging of these Federal navigation channels must occur before shoaling causes draft restrictions and/or other safety concerns. The proposed project activity will involve ongoing maintenance and future new dredging of the Norfolk Harbor channels and the use of the associated dredged material placement sites. The project includes the entire footprint of these channels and the shoals contained within each channel, plus the entire footprint of the associated dredged material placement sites. Portions of these channels require maintenance dredging annually, but dredging is typically located in distinct shoaled areas within the channels. The duration of dredging, the amount of material removed from each channel reach and the frequency in which each shoal is dredged is dependent on several factors. These factors include, but are not limited to: new dredging (deepening) to authorized depths, environmental conditions and time of year windows, funding, location of the shoal, length of time after the last dredging cycle, availability of suitable dredge plant, emergencies, and others. It is important to note that the areas within the channel that are maintenance dredged during each cycle are relatively small in comparison to the total channel dimensions. However, new dredging projects – such as the proposed deepening and widening - that are initiated to deepen navigation channels to Congressionally-authorized depths involve dredging a large part of the channel to establish required channel depths. The amount of dredged material removed during a period of new deepening may exceed average maintenance dredging volumes, and may also be dependent on how Congress funds the project for the fiscal year. The primary objective of maintenance and new dredging is to provide vessels with safe, navigable passage to the Port of Hampton Roads in support of commerce and national defense.

Channel to Newport News and Anchorages

The Channel to Newport News is located from Norfolk Harbor Channel in Hampton Roads to Newport News. The Channel to Newport News Federal Navigation Project was authorized by the River and Harbor Act of 25 June 1910 and modified by the River and Harbor Acts of 8 August 1917, 21 January 1927, 27 October 1965, and the WRDA of 1986. The project is authorized to a depth of 55 feet and 800 feet wide from Norfolk Harbor Channel in Hampton Roads to Newport News and the Newport News Anchorages, a distance of about 5.4 miles, and two deep-draft anchorage berths opposite Newport News 45 feet deep over a 1,200-foot swinging radius. Material dredged from this area is then placed at the CIDMMA. The proposed action would deepen the Newport News Channel to a required depth of approximately 55 feet. The proposed action would deepen the Anchorage F to a required depth of 51 feet and widen the Anchorage F to 3,620 feet and its associated approach area. Material dredged from this area is then placed at the CIDMMA and could also potentially be placed at the NODS. Dredged material could also be disposed of at upland disposal sites (if needed). Material could potentially be used for beneficial use projects as well.

Norfolk Harbor Channel – Sewells Point to Lamberts Bend and Norfolk Harbor Anchorages

The Sewells Point to Lamberts Bend reach of the Norfolk Harbor Project is located in Norfolk between Sewells Point and Lamberts Bend. This segment of the project is approximately 8 miles long and varies in width between 800 feet to 1,200 feet. The reach also consists of: Anchorage F, Sewells Point East Anchorage (includes the Naval Maneuvering Area and Approach Areas), Sewells Point West Anchorage and (Approach Area), Anchorage G, and all approach areas. The proposed action would deepen Anchorage F to a required depth of 51 feet and widen it to approximately 3,620 feet (and associated modifications to the Approach Area).

The authorized project dimensions for this reach include a channel 55 feet deep and 1,200 feet wide from that depth in Hampton Roads to a point approximately 6 miles upstream from the Hampton Roads Bridge-Tunnel; then 55 feet deep and 800 feet wide to Lamberts Point. The Sewells Point to Lamberts Bend Channel is currently maintained to a required depth of 50 feet MLLW from the 55-foot contour in Hampton Roads (near the Hampton Roads Bridge Tunnel) to Lamberts Point. The proposed action would deepen the Norfolk Harbor Channel and the Norfolk Harbor Entrance Channel to a required depth of 55 feet.

Material is dredged from this area via hydraulic cutterhead pipeline dredge and/or mechanical dredge. Material dredged from this area is then placed at the CIDMMA. The consistency of the dredged material in the Sewells Point to Lamberts Bend Channel is primarily silt and clay (85%), with some sand (15%). The consistency of the Elizabeth River sediment is predominantly clay in the Town Point area of Norfolk. However, as you travel south along the Elizabeth River (towards Chesapeake), the sediments become increasingly more coarse and sandy.

3.7 Craney Island Eastward Expansion

The Craney Island Eastward Expansion (CIEE) project is located on the east side of the existing CIDMMA. The project activities are bounded by the CIDMMA on the west and the Norfolk Harbor Channel – Sewells Point to Lamberts Bend to the east. The CIEE is a water resources development project in the Port of Hampton Roads complex. The project consists of construction of a new 522-acre dredged material containment cell and marine terminal. CIEE was congressionally authorized in the WRDA of 2007 (Public Law 110-114), Section 1001 (45), which became law on November 8, 2007. The CIEE project consists of multiple construction elements within Hampton Roads and the Elizabeth River. The location of the project is illustrated in Appendix A.

In 2012, we formally consulted with you on multiple navigation channels and hurricane protection project sites within Chesapeake Bay and the Atlantic Ocean, including the CIEE project. However, the schedule and timing of the proposed action at the CIEE site was not considered under the previous formal consultation. To address the potential effects, you prepared a new Biological Assessment for hopper dredging activities for the purpose of sand borrow throughout the year, including the period from April 1 to November 30.

The Craney Island Eastward Expansion Project is a dual purpose project that provides a new dredged material containment cell for additional dredged material placement capacity for dredging projects in the Port of Hampton Roads and, at the completion of filling of the containment cell, a new marine terminal. The site may also serve as a logistical and tactical area supporting deployment of national defense forces. Dredging operations are proposed in the

Atlantic Ocean Channel, Thimble Shoals Channel, Cape Henry Channel, and the Thimble Shoals Surround Borrow Area to borrow suitable sand as back-fill material for the main dike footprint and sand fill in the south and north perimeter dike and division dike.

The proposed project will involve multiple construction phases of dredging for sand borrow and associated sand placement of approximately 19,500,000 million cubic yards (MCY). The sand borrow placement is expected to occur over a period of approximately 20 years, contingent upon funding availability. The project area includes the entire footprint of the Atlantic Ocean Channel, Cape Henry Channel, Thimble Shoals Channel east of the Chesapeake Bay Bridge Tunnel (CBBT), and the Thimble Shoals Surround Borrow Area. The sand fill project area includes the CIEE main dike footprint, the south and north containment dike, and the division dike located in the Port of Hampton Roads and Elizabeth River. The estimated volumes of new dredging and fill activities for each construction element are presented in Table 1.

Construction of the CIEE new containment cell will occur in two phases creating a 197-acre south sub-containment cell (south cell) and 325-acre north sub-containment cell (north cell). The south cell will be constructed first. Once the dikes of the south cell are completed it will become the primary placement site for dredged material inflows from Port of Hampton Roads. After the south cell is filled, it will be turned over to the Virginia Port Authority for marine terminal construction. Construction of the north cell will follow completion of the south cell. The work will be accomplished by the Norfolk District and the Virginia Port Authority. A description of the construction elements follows and is depicted in Appendix A.

Table 1. Borrow/Fill Activity at CIEE

Fill Activity	**Total Volume**
CIEE – Main Dike fill (5,500 linear feet), North Cell Construction	15,000,000
CIEE – South Perimeter Dike fill	1,500,000
CIEE – North Perimeter Dike fill	1,500,000
CIEE – Division Dike fill	1,500,000
TOTAL FILL VOLUME 19,500,000	

Sand Borrow and Backfill of Main Dike Footprint

The proposed action involves the dredging, by hopper dredge, of approximately 19.5 MCY of sediments for the purpose of sand borrow. Sand will be borrowed from a combination of the Atlantic Ocean Channel, Cape Henry Channel, Thimble Shoals Channel (east of the CBBT), and the Thimble Shoals Surround Borrow Area. The total volume of sand dredged from each channel or borrow source will be contingent on the availability of suitable sand volume at the time of dredging. These channels and borrow areas have historically and are currently a shared source of suitable sand for other local hurricane protection and beach nourishment projects. Continued maintenance of these projects will affect the available volume of sand at each channel or borrow area over time. Additionally, the amount of sand borrowed from the channels and borrow area during each dredging event will be contingent on federal and state funding.

The borrowed sand will be placed on the CIEE main dike footprint that extends approximately 8,500 feet running north-south, forming the east perimeter of the CIEE project. Sand placement in this area will occur after the dredging of the main dike footprint to remove unsuitable marine clays that comprise the Norfolk geologic formation. Dredging of the main dike will range from a depth of -90 feet to -130 feet and construct a 120 feet wide trench bottom. The main dike will be located approximately 2,500 feet east of the existing CIDMMA. The main dike footprint will require approximately 15 MCY of sand backfill. The length of the main dike that will be constructed with the south cell is approximately 3,000 linear feet. The remaining 5,500 linear feet of main dike will be constructed in a late phase during construction of the north cell.

Construction of Perimeter and Division Dikes
The construction of the south and north perimeter dikes and the division dike for the new containment cell will require placement of 4.5 MCY of suitable sand fill (i.e., 1.5 MCY each). The south, north and division dikes will be approximately 2,500 linear feet in length and approximately 240 feet top width.

3.8 Dredged Material Borrow and Disposal Areas

Thimble Shoals Surround Borrow Area
The Thimble Shoals Surround Borrow Area (TSS) is a rectangle surrounding a short reach of the Thimble Shoals Channel located in the lower Chesapeake Bay between deep water in Hampton Roads and the Atlantic Ocean. It is approximately 2 miles off the Chesapeake Bay shoreline, with its western terminus approximately 5,400 feet east of the Chesapeake Bay Bridge Tunnel. The TSS is about 5,700 feet in length and approximately 1,200 feet wide, totaling about 19,600 acres. Depths in the area range from about 35 to 50 feet and do not include the Thimble Shoals Channel. The area has previously served as a sand borrow source for the Virginia Beach Hurricane Protection Project, Fort Story Hurricane Protection Project (U.S. Navy), and the Willoughby Spit Hurricane Protection Project.

Any material that is not used for dike construction at Craney Island or hurricane protection projects at Virginia Beach, Sandbridge Beach or Ft. Story could be placed at one of the ocean disposal sites noted below.

Dam Neck Ocean Disposal Site
The Dam Neck Ocean Disposal Site (DNODS) site was officially designated as an ocean placement site in 1993, pursuant to Section 102 (c) of the Marine Protection, Research, and Sanctuaries Act of 1972 (as amended, 33 U.S.C. 1401 *et seq*). The administrator of the Environmental Protection Agency (EPA) designated this ocean placement site in March of 1988 (53 FR 10382). This site is authorized to receive dredged material from the Atlantic Ocean Channel, the Cape Henry Channel, and the Thimble Shoal Channel. An Environmental Impact Statement and related Supplements, titled “Final Supplement 1 to the Final Environmental Impact Statement and Appendix: Dam Neck Ocean Disposal Site and Site Evaluation Study,

Norfolk Harbor and Channels, Virginia, Deepening and Disposal" was finalized in May of 1985. The initial deepening of Thimble Shoal Channel by the USACE triggered a need for a placement site relatively close to the dredge site. The DNODS disposal site was developed in 1967 to accommodate the deepening work in Thimble Shoal Channel (-45 feet). The DNODS has an area of about 8-square nautical miles. Water depths at DNODS vary between -31 and -49 feet deep with an average water depth in the placement site of about -40 feet. An estimated 1.5 million cubic yards of dredged material are placed at this site every two years from the aforementioned navigation projects. The remaining capacity at DNODS is estimated to be about 63 million cubic yards. Placement activities at DNODS placement area are performed primarily by hopper dredge. The DNODS is located approximately 3 nautical miles east of Virginia Beach, Virginia.

The DNODS boundary coordinates are as follows:

36.856694 N, - 75.9115 W;
36.856694 N, -75.884139 W;
36.774278 N, - 75.860889 W;
36.774306 N, - 75.905278 W;
36.834861 N, - 75.905278 W.

Wolf Trap Alternate Placement Site

The Wolf Trap Alternative Placement Site (WTA) is a 2,300-acre (4,500 acres with the designated buffer zone) area located in the Chesapeake Bay, east of New Point Comfort and south of Wolf Trap light, east of Mathews County. Water depths over the site range from -32.0 to -37.0 feet mean low low water. As a result of monitoring efforts from both the Virginia Institute of Marine Science and the Waterways Experiment Station from 1987 to 1991, the area was classified into six equally divided cells. It is intended that all six cells be utilized for placement of dredged material, and that the material be placed in a manner consistent within the criteria established in the project's environmental assessment published in July 1992. This placement site is currently used for the periodic maintenance dredging of the York River Entrance and York Spit Channels. The WTA is a 2,300-acre (4,400 acres with the designated buffer zone) area located in the Chesapeake Bay near Mathews County, east of New Point Comfort and south of Wolf Trap light.

The WTA boundary coordinates are as follows:

37.363063 N, -76.178684 W;
37.363063 N, -76.157913 W;
37.274736 N, -76.194135 W;
37.274736 N, -76.173363 W.

Rappahannock Shoal Deep Alternate Open Water Site

The Rappahannock Shoal Alternative Placement Site (RSA) is an area approximately 4.5 nautical miles by 0.8 nautical miles in dimension, has an area of approximately 3,100 acres in size, and is the primary placement site for dredged material from RSC. The site is located approximately 1-mile west of the RSC. The average water depth is -39 feet. The site has capacity to manage dredged material over a 20-year planning period, the site has not been utilized for dredged material placement since 1989. The RSA boundary coordinates are as follows:

37.666797 N,-76.174662 W;

37.666796 N,-76.191337 W;
37.591797 N,-76.191321 W;
37.591799 N,76.174662 W.

Norfolk Ocean Dredged Material Disposal Site
The NODS was officially designated by the Environmental Protection Agency (EPA) pursuant to Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, as suitable for ocean disposal of dredged material on July 2, 1993 (FR. Vol. 5a No. 126). NODS is located in the Atlantic Ocean approximately 17 miles east of Cape Henry and is approximately 50 square nautical miles in size. The site is circular with a radius of 4 nautical miles and the water depth ranges from 43 to 85 feet. The center point coordinate of the site is north latitude 36° 59' and west longitude 75° 39'. The site is authorized to receive dredged materials from the lower Chesapeake Bay. The site is also authorized to receive dredged material from the Thimble Shoal, Cape Henry, Atlantic Ocean Channel, Hampton Roads, and York Spit channels. Up to approximately 250 million cubic yards of dredged material (public and private dredging projects) may be disposed at the site over the next 49 years; however, only material that meets ocean dumping criteria may be disposed at the site.

Craney Island Dredged Material Management Area and Facilities
The Craney Island Dredged Material Management Area (CIDMMA) was authorized by the Rivers and Harbors act of 1946. It was constructed on 2,500 acres of river bottom in Hampton Roads in the City of Portsmouth, Virginia. CIDMMA is the primary dredged material placement area for construction and maintenance of navigation channels in the Hampton Roads port complex. It provides essential dredged material placement capacity for the Federal navigation channels, U.S. Navy facilities, Virginia Port Authority facilities and other commercial port facilities in Hampton Roads. The CIDMMA is an upland confined placement area that is enclosed by a perimeter containment dike and divided into three sub-containment cells by two division dikes.

The CIDMMA receives dredged materials in two different ways. It is either pumped directly into one of three upland containment cells or it is deposited in the rehandling basin and then pumped into the facility. The Craney Island Rehandling Basin (CIRB) is located to the east of the upland containment area and consists of a subaqueous rectangular area 1,400 feet in length by 1,100 feet in width and 40 feet in depth. The CIRB is connected by two access channels being 1,500 feet in length, 20 feet in depth and 200 feet wide. The basin is meant for the deposit of dredged material from dump scows from mechanical dredging operations. The project also provides for a debris channel, a segment of channel that connects the rehandling basin to the CIDMMA bulkhead. The debris channel is 80 feet wide and 13 feet deep. To date, the CIDMMA has received, on average, 3.5 million cubic yards of dredged material per year; however, there have been several years when it has received more than 10 million cubic yards. You estimate that the facility has a realistic lifespan up to 2030, but this may be subject to change as newer technologies and/or new management techniques are employed at the site.

3.9 Information on Dredges That May Be Used

Nearly all dredging in the Chesapeake Bay considered in this Opinion will occur with a hydraulic hopper dredge. However, other dredging methods could include mechanical dredging and also hydraulic cutterhead dredging.

3.9.1 Self-Propelled Hopper Dredges

Hopper dredges are typically self-propelled seagoing vessels. They are equipped with propulsion machinery, sediment containers (i.e., hoppers), dredge pumps, and other specialized equipment required to excavate sediments from the channel bottom. Hopper dredges have propulsion power adequate for required free-running speed and dredging against strong currents.

A hopper dredge removes material from the bottom of the channel in thin layers, usually 2-12 inches, depending on the density and cohesiveness of the dredged material (Taylor, 1990). Pumps within the hull, but sometimes mounted on the dragarm, create a region of low pressure around the dragheads; this forces water and sediment up the dragarm and into the hopper. The more closely the draghead is maintained in contact with the sediment, the more efficient the dredging (i.e., the greater the concentration of sediment pumped into the hopper). In the hopper, the slurry mixture of sediment and water is managed to settle out the dredged material solids and overflow the supernatant water. When a full load is achieved, the vessel suspends dredging, the dragarms are heaved aboard, and the dredge travels to the placement site where dredged material is disposed of.

3.9.2 Hydraulic Cutterhead Pipeline Dredges

The cutterhead dredge is essentially a barge hull with a moveable rotating cutter apparatus surrounding the intake of a suction pipe (Taylor, 1990). By combining the mechanical cutting action with the hydraulic suction, the hydraulic cutterhead has the capability of efficiently dredging a wide range of material, including clay, silt, sand, and gravel.

The largest hydraulic cutterhead dredges have 30 to 42 inch diameter pumps with 15,000 to 20,000 horsepower. The dredge used for this project is expected to have a pump and pipeline with approximately 30" diameter[1]. These dredges are capable of pumping certain types of material through as much as 5-6 miles of pipeline, though up to 3 miles is more typical. The cutterhead pipeline plant employs spuds and anchors in a manner similar to floating mechanical dredges.

3.9.3 Mechanical Dredges

Mechanical dredging will be used in association with CIEE and in some of the Norfolk Harbor Channels. Mechanical dredges are relatively stationary. While operating, the dredge swings slowly in an arc across the channel cut as material is excavated. This is accomplished by pivoting the dredge on vertical pilings called spuds that are alternately raised and lowered from the stern corners of the dredge. Cables to anchors, set roughly perpendicular to the forward section of the dredge, are used to shift the lateral position of the digging area. Periodically, as

1 While 30" dredge is possible for this project, historically a 20-24 inch cutterhead dredge has been used to perform work in the area due to the inflow constraints at Craney Island.

the cut advances, the anchors are reset. Bucket dredging entails lowering the open bucket through the water column, closing the bucket after impact on the bottom, lifting the bucket up through the water column, and emptying the bucket into a barge. An environmental clamshell dredge differs from traditional dredging buckets by having an outer covering that seals when the bucket is closed. Water passes through its top moveable vents as it submerges, thereby reducing turbidity. Once it lifts off the bottom and closes, the covering seals over the bucket and minimizes overspill as the dredge bucket moves back up through the water column.

3.10 Bed Leveling Devices

You have indicated that in certain circumstances, a dredge contractor may employ a bed-leveler device to smooth the channel bottom or to reduce the isolated shoals or ridges in the channel that cannot be economically or effectively dredged with a hopper dredge. Since 2012, bed-leveling has been used on multiple contracts including Thimble Shoals Channel, York Spit Channel, and Cape Henry Channel located in the action area. Bed-leveling may be a preferred alternative during certain phases of the dredging operations (i.e. clean-up phase) and it is possible that a bed leveler will be used in upcoming dredging cycles.

Bed leveling techniques have been documented as far back as 1565 (USACE, 2006). However, the use of bed-levelers in U.S. waters is not well documented. The devices are typically used during final clean-up operations when localized mounds or ridges exist shallower than required dredging depths. Passage of a draghead can create ridges up to two feet high and can require multiple passes to reduce the height during clean-up operations. Often these areas cannot be efficiently or economically dredged to specified depths and make it difficult to maintain hard contact between the draghead and channel bottom. Bed-leveler devices may consist of a large customized plow or a box beam suspended from a work-barge that can be pushed or towed by a tug. The bed-leveler may be towed by a short or long towing line depending on the sea-state. Bed-leveler size and geometry can vary but are typically thirty and fifty feet in width and may weigh from twenty-five to fifty tons. Bed-levelers are generally towed at speeds ranging from 1-2 knots. Bed-leveler operation can be affected by sea state conditions and generally require longer towing line in rougher waters.

The USACE-ERDC has performed an engineering evaluation on various configurations of bed-leveler prototypes to determine their performance aspects for production rates (i.e. ability to remove target material), ability to deflect model turtles, and bed-leveler construction and operation in the field. Model studies were performed at Texas A&M. The study tested conceptual designs using a conventional straight square tube box-beam, a 90-degree raked plow (i.e. inclined), a 90-degree square tube box beam plow, a 130- degree box square tube box beam plow. Model study results indicated that the straight square tube box beam design provided the highest production rate moving sediment in the direction of the bed leveler device but provided the least turtle shedding capability. The 90-degree raked (inclined) plow produced an increased vertical downward force on the towing cables resulting in some operational difficulty. In general, the increase in the sweep angle increased the side-spilling or side-casting of sediment which also accounted for the designs ability to shed model turtles from in front of the bed-leveler device. The 130-degree box beam plow likely provides the optimal mix of production, turtle shedding capability, and operational deployment. The conceptual bed-leveling designs tested in the model study are presented in Appendix B of this Opinion.

3.11 Interrelated or Interdependent Actions

Interrelated actions are those that are part of a larger action and depend upon the larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration (50 CFR § 402.02; see also 1998 FWS-NMFS Joint Consultation Handbook, pp. 4-26 to 4-28). We have identified the potential effects of larger vessesls coming into port as a reslt of the channel deepening as an interrelated or interdependent action.

3.12 Summary of Proposed Action

The proposed construction to deepen and widen the existing channels is scheulded to commence in approximately 2023 and will take approximately 3.5 to 4 years to complete. Following construction, maintenance dredging will continue for approximately the next 50 years. In the remaining channels, maintence dredging has been ongoing since 2012 and has a 50-year project life. Due to the multiple overlapping timelines for ongoing dredging, construction, and future maintenance dredging, and in recognition of the fact that projects may encounter unanticipated delays, throughout the Opinion we will generally refer to the "project life" or "life span of the project," which are intended to encompass all temporal components of the action. The action considered here includes dredging, as summarized in the table below, as well as fill activities associated with the CIEE and continued use of several dredged material disposal sites and placement of sand on Virginia Beach and Sandbridge Beach as well as at the U.S. Navy's Fort Story Facility.

The following tables summarize the anticipated dredging during this period:

Table 2. Anticipated dredging considered in this consultation

Channel	**Type of Dredge**	**Typical Volume Removed**	**Frequency of Dredge Events**	**Number of events over the project life**	**Volume Removed over the project life**
Baltimore Harbor Entrance Channels					
Cape Henry	*H*	*1.1 mcy*	*1-2 years*	*25-50*	*Up to 50 mcy*
York Spit Channel	*H*	*0.5 mcy*	*2 years*	*25*	*12.5 mcy*
Rappahannock Shoals Channel	*H*	*no maintenance dredging to date*	*Every 20 years*	*2*	*Up to 2 mcy*
Total: 64.5 MCY					
VA Beach Hurricane Protection	**H**	**0.27 mcy**	**Every 3 years**	**16**	**4.4 mcy**
Sandbridge	**H or C**	**0.5 mcy**	**Every 2 years**	**25**	**12.5 mcy**
Craney Island Eastward Expansion					
CIEE – Main Dike dredging (8,500 linear feet)	*C or M*	*Subject to Federal Funding*	*Subject to Federal Funding*	*Subject to Federal Funding*	22,400,000
CIEE – Access Channel dredging	*C or M*	*Subject to Federal Funding*	*Subject to Federal Funding*	*Subject to Federal Funding*	1,600,000
CIEE – Wharf Access dredging	*C or M*	*Subject to Federal Funding*	*Subject to Federal Funding*	*Subject to Federal Funding*	7,300,000
Total: 31.3 mcy (6.8 mcy cutterhead; 24.5 mcy mechanical)					

		Construction				Maintenance over the life of the project		Construction + Maintenance	
Channel	**Required Depth (ft)**	**Est. Max Depth (ft)**	**Est. Max Volume (cy)**	**Est. Max Duration (months)**	**Est. Max Bottom Disturbance (sq ft)**	**Est. Total Volume (cy)**	**Est. Total Duration (months)**	**Est. Max Volume (cy)**	**Est. Max Duration (months)**
Atlantic Ocean	59	64	16,074,736	42	78,738,613	15,191,112	62	31,265,848	104
Thimble Shoals	56	61	18,069,823	57	119,644,916	24,331,540	210	42,401,363	276
Thimble Shoals Meeting Areas #1 & #2	56	61	7,191,000	23	13,388,000	3,640,924	31	10,831,924	54
Sewell's Point to Lamberts Bend	55	60	12,147,318	11	57,012,805	42,346,689	78	54,494,008	89
Anchorage F	55	60	1,914,788	14	25,222,454	7,590,328	15	9,505,116	30
Newport News	55	60	4,906,284	4	29,272,754	6,676,305	16	11,582,589	19
Total			**60,303,949**	**151**	**323,279,542**	**99,776,899**	**412**	**160,080,647**	**564**

3.13 Action Area

The action area is defined in 50 CFR § 402.02 as "all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action." The action area for this consultation is the area affected by dredging and disposal activities as well as the area transited by dredges, dredged material disposal vessels, and vessels using the navigation channels. The action area, therefore, is the entirety of the navigation channels, borrow areas and disposal areas noted above. The action area will also encompass the underwater area where dredging will result in increased suspended sediment. The size of the sediment plume will vary depending on the type of dredge used and is detailed below.

3.13.1 Physical Characteristics of the Action Area

The Chesapeake Bay is approximately 320 km (200 m) long and extends from Cape Henry and Cape Charles to Havre de Grace, Maryland. It is 4.5 km (2.8 m) wide at its narrowest (between Kent County's Plum Point near Newtown and the Harford County shore near Romney Creek) and 48 km (30 miles) at its widest (just south of the mouth of the Potomac River). Water depth in the bay averages 6.4 m (21 feet), reaching a maximum depth of 53 m (174 feet).

The lower Chesapeake Bay attained its current configuration after the end of the last Ice Age and it has been relatively stable for the last several thousand years (Bratton et al. 2002), although waters have continued to slowly rise over this time, due to glacial rebound and now the addition of human-induced climate change (Schulte et al. 2015) (Figure 2-15). The Norfolk Harbor has been in use since shipping into and out of Chesapeake Bay began, and has been deepened to accommodate larger ships over the decades. This channel was formed naturally as river valleys (in this case the James/Susquehanna). This dredging has not significantly altered the tidal prism of the lower Chesapeake Bay, due to the small size of the channel relative to the size of the Chesapeake Bay. It has been deepened by prior dredging efforts, with initial dredging to ensure at least -40 feet of depth occurring during 1917-1927 (VIMS 1993). Additional deepening to -45 feet occurred in 1967. In 1986, the channel was authorized to be deepened to -50 feet. The current authorized depth at this time is -55 feet, though most of the channel is at -50 feet at this time. The main shipping channel follows the natural bathymetry of lower Chesapeak Bay. This natural channel, however, has been deepened where needed to accommodate larger vessels.

The typical tidal range in the action area, including the Elizabeth River and nearby open waters of lower Chesapeake Bay, is approximately 2.85 feet, though this varies significantly with time of the month (spring and neap tides) as well as due to storm activity, which can create significant storm surges well beyond the normal tidal range. Tides are diurnal in the Chesapeake Bay, with two high and low tides per day. The mean discharge rate of Chesapeake Bay is approximately 2,500 m3 /sec, over 80% of which is supplied by three rivers (the Susquehanna, Potomac, and James Rivers) (Goodrich 1988). Salinity typically ranges from 20-30 ppt (parts per thousand) in the action area, which covers a broad area from the mouth of Chesapeake Bay into the lower James River. These areas are sufficiently mixed so that anoxic waters are not typical within the action area. Such deep channels can go anoxic in the summer, particularly in the mid to upper Chesapeake Bay, causing a significant "dead zone" of hypoxic waters. The bathymetry of the action area ranges from intertidal shallows to the deep channels, which generally lie within the immediate action area where dredging is proposed and typically range in depth from approximately -20 feet in side and/or natural and unmaintained channels to -50 feet within the channel itself.

The landforms surrounding the project area are comprised primarily of geologically recent (Pleistocene and Holocene) sediments, primarily fine sands, silts, with small amounts of small gravel (College of William and Mary 2006). The subaqueous terrain of the project area is of similar material, with sand, fine sand, shell, mud, with some pebbles or gravel that were deposited during interglacial periods under conditions similar to those that exist in the modern Chesapeake Bay and its tidal tributaries (College of William and Mary 2006).

Frequent dredged material placement and subsequent consolidation results in varying topography throughout the CIDMMA. Although not anticipated, any dredged material unsuitable for open water placement or placement at CIDMMA would likely be dewatered in accordance with Federal and state water quality requirements, and transported to a permitted, upland disposal facility. Dredged material placement and dynamic hydraulic processes at the DNODS and the NODS result in varying topography throughout the sites.

4.0 STATUS OF LISTED SPECIES AND CRITICAL HABITAT

Several ESA-listed species under our jurisdiction occur in the action area for this consultation. We have determined that the proposed action being considered in this Opinion may affect the following ESA-listed species in a manner that will likely result in adverse effects:

Common name	**Scientific name**	**ESA Status**
Loggerhead sea turtle - NWA DPS[2]	*Caretta caretta*	Threatened
Kemp's ridley sea turtle	*Lepidochelys kempii*	Endangered
Green sea turtle - North Atlantic DPS[3]	*Chelonia mydas*	Threatened
Atlantic sturgeon	*Acipenser oxyrinchus oxyrinchus*	
Gulf of Maine (GOM) DPS		Threatened
New York Bight (NYB) DPS		Endangered
Chesapeake Bay (CB) DPS		Endangered
Carolina DPS		Endangered
South Atlantic (SA) DPS		Endangered

We have determined that the proposed action being considered in this Opinion is not likely to adversely affect North Atlantic right whales (*Eubalaena glacialis*), fin whales (*Balaenoptera physalus*), sei whales (*Balaenoptera borealis*), sperm whales (*Physeter macrocephalus*), blue whales (*Balaenoptera musculus*), hawksbill sea turtles (*Eretmochelys imbricata*), leatherback sea turtles (*Dermochelys coriacea*), or shortnose sturgeon (*Acipenser brevirostrum*), all of which are listed as endangered under the ESA. We have also determined that the proposed action being considered in this Opinion is not likely to adversely affect the James and York River Units of the designated critical habitat for the Chesapeake Bay DPS of Atlantic sturgeon. The following discussions are our rationale for these determinations.

[1] NWA DPS = Northwest Atlantic DPS, the only loggerhead sea turtle DPS expected to occur in the action area.
[2] The North Atlantic DPS is the only green sea turtle DPS expected to occur in the action area.

4.1 Species and Critical Habitat Not Likely to be Adversely Affected by the Proposed Action

Federally endangered North Atlantic right whales and fin whales are expected to occur in Virginia nearshore and coastal waters of the action area, including Chesapeake Bay, while federally endangered sei, sperm, and blue whales are not, due to their primarily offshore distribution in the Atlantic Ocean. Transient individual right and fin whales may occasionally be present in the lower Bay and nearshore waters of Virginia for brief periods during annual migrations or during the summer months, but no whales are known to be resident in this area and even transient whales are considered rare within the action area .

Whales in the action area will be exposed to effects of the proposed actions including vessel traffic, increased turbidity/suspended sediment (which may affect prey), and potential removal of prey during dredging. All sand will be placed on beaches or in nearshore shallow areas adjacent to beaches. Whales do not occur in these areas; therefore, no whales will be exposed to effects of sand placement.

There have not been any reports of dredge vessels colliding with listed species but contact injuries resulting from dredge movements could occur at or near the water surface and could therefore involve any of the listed species present in the area. Because the dredge is unlikely to be moving at speeds greater than three knots during dredging operations, blunt trauma injuries resulting from contact with the hull are unlikely during dredging. It is more likely that contact injuries during actual dredging would involve the propeller of the vessel. Contact injuries with the dredge are more likely to occur when the dredge is moving from the dredging area to port, or between dredge locations. While the distance between these areas is relatively short (up to approximately 30 miles), the dredge in transit would be moving at faster speeds (9.8 – 10.8 mph) than during dredging operations (2 – 3 mph), particularly when empty while returning to the borrow area.

Large whales, particularly right whales, are vulnerable to injury and mortality from ship strikes. Ship strike injuries to whales take two forms: (1) propeller wounds characterized by external gashes or severed tail stocks; and (2) blunt trauma injuries indicated by fractured skulls, jaws, and vertebrae, and massive bruises that sometimes lack external expression (Laist *et al*. 2001). Collisions with smaller vessels may result in propeller wounds or no apparent injury, depending on the severity of the incident. Laist *et al*. (2001) reports that of 41 ship strike accounts that reported vessel speed, no lethal or severe injuries occurred at speeds below ten knots, and no collisions have been reported for vessels traveling less than six knots. A majority of whale ship strikes seem to occur over or near the continental shelf, probably reflecting the concentration of vessel traffic and whales in these areas (Laist *et al*. 2001).

Most ship strikes have occurred at vessel speeds of 13-15 knots or greater (Jensen and Silber 2003; Laist *et al*. 2001). An analysis by Vanderlaan and Taggart (2006) showed that at speeds greater than 15 knots, the probability of a ship strike resulting in death increases asymptotically to 100%. At speeds below 11.8 knots, the probability decreases to less than 50%, and at ten knots or less, the probability is further reduced to approximately 30%. As noted above, the speed of the dredge is not expected to exceed 2.6 knots while dredging and 10 knots while transiting to and from the disposal sites. In addition, all vessels will have lookouts on board and operators will receive training on prudent vessel operating procedures to avoid vessel strikes with all protected species. All project related vessels will slow down or alter course if whales are sighted and no vessel will approach within 500 meters of a whale. With these measures in place, interactions between the dredge vessels and any listed whales are extremely unlikely. Therefore, the effects of vessel strike are discountable.

Dredging operations cause sediment to be suspended in the water column. This results in a sediment plume in the water, typically present from the dredge site and decreasing in concentration as sediment falls out of the water column as distance increases from the dredge site. The nature, degree, and extent of sediment suspension around a dredging operation are controlled by many factors including: the particle size distribution, solids concentration, and composition of the dredged material; the dredge type and size, discharge/cutter configuration, discharge rate, and solids concentration of the slurry; operational procedures used; and the characteristics of the hydraulic regime in the vicinity of the operation, including water composition, temperature and hydrodynamic forces (i.e., waves, currents, etc.) causing vertical and horizontal mixing (USACE 1983).

Resuspension of fine-grained dredged material during hopper dredging operations is caused by the dragheads as they are pulled through the sediment, turbulence generated by the vessel and its prop wash, and overflow of turbid water during hopper filling operations. During the filling operation, dredged material slurry is often pumped into the hoppers after they have been filled with slurry in order to maximize the amount of solid material in the hopper. The lower density turbid water at the surface of the filled hoppers overflows and is usually discharged through ports located near the waterline of the dredge. In the vicinity of hopper dredge operations, a near-bottom turbidity plume of resuspended bottom material may extend 2,300 to 2,400 ft down current from the dredge (USACE 1983). In the immediate vicinity of the dredge, a well-defined upper plume is generated by the overflow process. Approximately 1,000 ft behind the dredge, the two plumes merge into a single plume (USACE 1983). Suspended solid concentrations may be as high as several tens of parts per thousand (ppt; grams per liter) near the discharge port and as high as a few parts per thousand near the draghead. In a study done by Anchor Environmental (2003), nearfield concentrations ranged from 80.0-475.0 mg/l. Turbidity levels in the near-surface plume appear to decrease exponentially with increasing distance from the dredge due to settling and dispersion, quickly reaching concentrations less than 1 ppt. By a distance of 4,000 feet from the dredge, plume concentrations are expected to return to background levels (USACE 1983). Studies also indicate that in almost all cases, the vast majority of resuspended sediments resettle close to the dredge within one hour, and only a small fraction takes longer to resettle (Anchor Environmental 2003).

Total suspended sediment (TSS) is most likely to affect whales if a plume causes a barrier to normal behaviors or if elevated levels of suspended sediment affects prey. As whales are highly mobile, individuals are likely to be able to avoid any sediment plume that is present and any effect on their movements or behavior is likely to be insignificant. In addition, the total suspended sediment levels expected (80 – 475 mg/L) are below those shown to have an adverse effect on fish (580.0 mg/L for the most sensitive species, with 1,000.0 mg/L more typical

(Breitburg 1988 in Burton 1993; Summerfelt and Moiser 1976 and Combs 1979 in Burton 1993)). The whales that may be present in the action area feed on krill and small schooling fish. No impacts to these forage fish are likely to result from exposure to increased suspended sediment during dredging operations. Given this information, effects to whales from increased turbidity is extremely unlikely; effects to listed whales will be discountable.

We have also determined that the proposed action will not have any adverse effects on the availability of prey for right, fin, sei, sperm, and blue whales. Right and sei whales feed on copepods. The proposed action will not affect the availability of copepods for foraging right and sei whales because copepods are very small organisms that live in the water column and not in the bottom sediment affected by dredging. Fin and blue whales feed on pelagic krill as well as small schooling fish (e.g., sand lance, herring, mackerel) (Aguilar 2002; Sears 2002), while sperm whales feed on larger organisms that inhabit the deeper ocean regions such as mesopelagic squid (Whitehead 2002). Because there organisms either live pelagically and are highly mobile, or are not located in the actiona area (i.e., mesopelagic squid), effects of dredging and vessels related to the project will not present a pathway of effects to these prey. As a result, the proposed action will not affect the availability of the often pelagic and deepwater prey of foraging sei, sperm, and blue whales.

In addition, the proposed action does not occur in low latitude waters where the overwhelming majority of calving and nursing occurs for these five large whale species (Aguilar 2002; Horwood 2002; Kenney 2002; Sears 2002; Whitehead 2002). Therefore, the proposed action will not affect the oceanographic conditions that are conducive for calving and nursing.

Based on the analysis above, we have determined that the proposed action is not likely to adversely affect these endangered species of whales, and we will not assess them further in this Opinion.

The hawksbill sea turtle is listed as endangered. This species is uncommon in the waters of the continental U.S. Hawksbills prefer coral reef habitats, such as those found in the Caribbean and Central America. Mona Island (Puerto Rico) and Buck Island (St. Croix, U.S. Virgin Islands) contain especially important foraging and nesting habitat for hawksbills. Within the continental U.S., nesting is restricted to the southeast coast of Florida and the Florida Keys, but nesting is rare in these areas. Hawksbills have been recorded from all Gulf of Mexico states and along the U.S. east coast as far north as Massachusetts, but sightings north of Florida are rare. Many of the strandings in states north of Florida have been observed after hurricanes or offshore storms. Aside from Florida, Texas is the only other U.S. state where hawksbills are sighted with any regularity. Since hawksbill sea turtles are extremely unlikely to be present in the action area, impacts to this species as a result of the proposed action are discountable. The lack of any captures of hawksbill sea turtles during dredging operations to date supports this determination.

The leatherback sea turtle is listed as endangered. Adult leatherback sea turtles engage in routine migrations between northern temperate and tropical waters (NMFS and USFWS 1992). Leatherbacks are frequently thought of as a pelagic species that feed on jellyfish (*e.g.*, *Stomolophus, Chryaora*, and *Aurelia* species) and tunicates (*e.g.*, salps, pyrosomas) (Rebel 1974; Davenport and Balazs 1991); however, leatherbacks are also known to use coastal waters of the

U.S. continental shelf (James *et al.* 2005a; Eckert *et al.* 2006; Murphy *et al.* 2006. Leatherbacks are present in the action area between April and November as they migrate to and from southern tropical waters. If suitable forage is present, foraging is expected to occur. Nesting occurs outside of the action area and the presence of leatherbacks in the action area is limited to large juveniles and adults.

Leatherback sea turtles in the action area will be exposed to effects of the proposed actions including vessel traffic and increased turbidity/suspended sediment (which may affect prey. Leatherbacks in the action area are too large to be vulnerable to impingement or entrainment in a dredge. As reported by you, no leatherback sea turtles have been entrained in hopper dredge operations operating along the U.S. Atlantic coast (USACE Sea Turtle Warehouse, 2017). No leatherback sea turtles are likely to be captured during relocation trawling.

Although little is known about a sea turtle's reaction to vessel traffic, it is generally assumed that turtles are more likely to avoid injury from slower-moving vessels since the turtle has more time to maneuver and avoid the vessel. The speed of the dredge is not expected to exceed 3 knots while dredging or while transiting to the pump out site with a full load and it is expected to operate at a maximum speed of 10 knots while empty. In addition, the risk of ship strike will be influenced by the amount of time the animal remains near the surface of the water. For the proposed action, the greatest risk of vessel collision will occur during transit between shore and the areas to be dredged. The presence of an experienced endangered species observer who can advise the vessel operator to slow the vessel or maneuver safely when sea turtles are spotted will further reduce the potential risk for interaction with vessels. To date, there have not been any reports of dredge vessels colliding with leatherback sea turtles. The addition of one to two slow moving vessels in the action area have an insignificant effect on the risk of interactions between leatherback sea turtles and vessels in the action area.

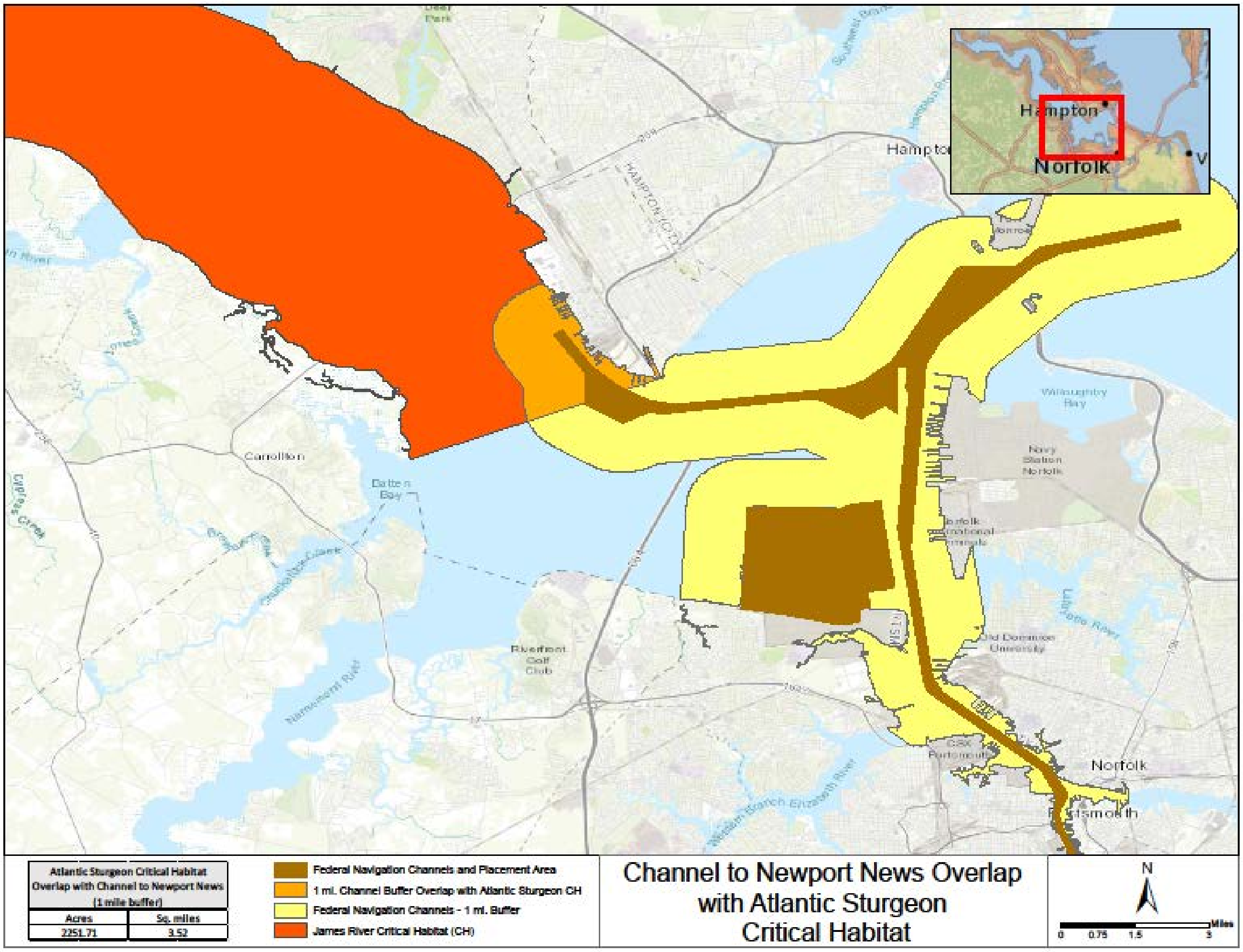
Suspended sediments are most likely to affect leatherback sea turtles if a plume causes a barrier to normal behaviors. As leatherback sea turtles are highly mobile, individuals are likely to be able to avoid any sediment plume that is present and any effect on their movements or behavior is likely to be insignificant due to the small, temporary disruption of normal movements that may result from avoiding the sediment plume are expected to be so small as to not be susceptible to meaningful measurement or detection. Since dredging involves removing the bottom material down to a specified depth, only the benthic environment will be impacted by dredging operations. No effects to the prey base of leatherback sea turtles are anticipated because their preferred prey – jellyfish – are located in the water column.

As all effects to leatherback sea turtles from the proposed actions are likely to be too small to be meaningfully measured or detected or extremely unlikely and, therefore, insignificant or discountable, these actions are not likely to adversely affect this species. We do not anticipate any incidental take of any leatherback sea turtles from any of the activities considered in this Opinion.

Shortnose sturgeon are benthic fish that occur in large coastal rivers of eastern North America. They range from as far south as the St. Johns River, Florida (possibly extirpated from this system) to as far north as the Saint John River in New Brunswick, Canada. The species is anadromous in the southern portion of its range (*i.e.*, south of Chesapeake Bay), while some northern populations are amphidromous (NMFS 1998a), and mostly remain in their native rivers. In Chesapeake Bay, shortnose sturgeon are most often found in Maryland waters of the mainstem bay and tidal tributaries such as the Susquehanna, Potomac, and Rappahannock Rivers (Spells 1998; Litwiler 2001; Kynard et al. 2007, 2009; SSSRT 2010). Documented modern use of Virginia waters of Chesapeake Bay is limited to two individual shortnose sturgeon: one captured in 2016 anda second sturgeon (a confirmed gravid female) caught in 2018. Given the range of the species (remaining mostly in the river systems, with some coastal migrations between rivers), its general restriction to the upper part of Chesapeake Bay (Maryland portion), and the proposed action mostly occurring within the entrance channels of large rivers within the southern portion of Chesapeake Bay, shortnose sturgeon are expected to be extremely rare in areas where the action may occur. As shortnose sturgeon are extremely unlikely to be present in the action area, except for rare transient occurrences, impacts to this species as a result of the proposed action are discountable.

On August 17, 2017, we issued a final rule to designate critical habitat for the threatened Gulf of Maine DPS of Atlantic sturgeon, the endangered New York Bight DPS of Atlantic sturgeon, the endangered Chesapeake Bay DPS of Atlantic sturgeon, the endangered Carolina DPS of Atlantic sturgeon, and the endangered South Atlantic DPS of Atlantic sturgeon (82 FR 39160). The rule was effective on September 18, 2017. The action area for this consultation overlaps slightly with the river mouth of the James River, which is designated as critical habitat for the Chesapeake Bay DPS of Atlantic sturgeon. A portion of the York River Entrance Channel overlaps the York River critical habitat unit; however, during the consultation, you informed us that there is no planned federal action for the channel because the project is not funded and, therefore, no maintenance dredging is planned at this time. Should project plans change or new information become available, further coordination should be pursued.

Figure 1. Channel to Newport News Overlap with Atlantic Sturgeon Critical Habitat



The conservation objective identified in the final rule is to increase the abundance of each DPS by facilitating increased successful reproduction and recruitment to the marine environment. We designated five critical habitat units to achieve this objective for the Chesapekae Bay DPS: (1) Potomac River from the Little Falls Dam downstream to where the main stem river discharges at its mouth into the Chesapeake Bay; (2) Rappahannock River from the U.S. Highway 1 Bridge, downstream to where the river discharges at its mouth into Chesapeake Bay; (3) York River from its confluence with the Mattaponi and Pamunkey rivers downstream to where the main stem river discharges at its mouth into Chesapeake Bay as well as the waters of the Mattaponi River from its confluence with the York River and upstream to the Virginia State Route 360 Brige of the Mattaponi River, and waters of the Pamunkey River from its confluence with the York River and upstream to the Nelson's Bridge Road Route 615 crossing of the Pamunkey River; (4) James River from Boshers Dam downstream to where the main stem river discharges at its mouth into Chesapeake Bay at Hampton Roads; and (5) Nanticoke River from the Maryland State Route 313 Bridge crossing near Sharptown, MD to where the main stem discharges at its mouth into Chesapeake Bay as well as Marshyhope Creek from its confluence with the Nanticoke River and upriver to the Maryland State Route 318 Bridge crossing near

Federalsburg, MD. In total, these designations encompass approximately 773 kilometers (480 miles) of aquatic habitat.

As identified in the final rule, the physical and biological features (PBFs) that are essential to the conservation of the species and that may require special management considerations or protection are:

1) Hard bottom substrate (e.g., rock, cobble, gravel, limestone, boulder, etc.) in low salinity waters (i.e., 0.0 to 0.5 parts per thousand (ppt) range) for settlement of fertilized eggs, refuge, growth, and development of early life stages;
2) Aquatic habitat with a gradual downstream salinity gradient of 0.5 up to as high as 30 ppt and soft substrate (e.g., sand, mud) between the river mouth and spawning sites for juvenile foraging and physiological development;
3) Water of appropriate depth and absent physical barriers to passage (e.g., locks, dams, thermal plumes, turbidity, sound, reservoirs, gear, etc.) between the river mouth and spawning sites necessary to support:
   (i) Unimpeded movement of adults to and from spawning sites;
   (ii) Seasonal and physiologically dependent movement of juvenile Atlantic sturgeon to appropriate salinity zones within the river estuary; and
   (iii) Staging, resting, or holding of subadults or spawning condition adults.

   Water depths in main river channels must also be deep enough (e.g., at least 1.2 m) to ensure continuous flow in the main channel at all times when any sturgeon life stage would be in the river.
4) Water, between the river mouth and spawning sites, especially in the bottom meter of the water column, with the temperature, salinity, and oxygen values that, combined, support:
   (i) Spawning;
   (ii) Annual and interannual adult, subadult, larval, and juvenile survival; and
   (iii) Larval, juvenile, and subadult growth, development, and recruitment (*e.g.*,13 °C to 26 °C for spawning habitat and no more than 30 °C for juvenile rearing habitat, and 6 milligrams per liter (mg/L) dissolved oxygen (DO) or greater for juvenile rearing habitat).

The action area for the proposed work considered in this Opinion overlaps the lower portions of the James Rivercritical habitat unit. Specifically, the northern end of the Newport News Channel and adjacent Newport News anchorage. The total area of the channel and anchorage that overlaps critical habitat in the James River is approximately 0.38 square miles (0.99 square kilometers). To account for potential dredging impacts (e.g., a temporary increase in suspended sediments) in the James River, you included a one mile radius buffer zone around the channel and anchorage, which totals approximately 3.52 square miles (9.12 square kilometers). The critical habitat designation is bank-to-bank within the James River. We have estimated that the total area of the James River critical habitat unit is approximately 166 square miles or 106,240 acres. While the majority of the proposed work in designated critical habitat takes place within the Federal navigation channel, indirect effects from turbidity extend as far as 1,000 feet (305 meters) (cutterhead dredge turbidity plume). If you were to assume a worst-case scenario where a dredge event occurred in the center of the river and the plume extended in a 305 m radius around the dredge (note: we would generally expect the plume to extend only downcurrent of the dredge), the action area would encapsulate a 610 m width of the river. In the overlapping stretch of the James designated as critical habitat, the river is approximately 4.4 miles (7.14 km) wide. The section of the navigation channel and anchorage area that extends into the James River critical habitat unit is approximately 1.5 miles long. Therefore, the action area overlaps with just the southeastern corner of the bank-to-bank critical habitat designation. Each critical habitat unit contains all four of the physical features (referred to as physical or biological features (PBF); however, the action area only contains three PBFs: PBF 2, 3, and 4, as PBF 1 is not present because the salinity level present at the river mouth exceeds that identified in PBF 1.

We have analyzed the potential impacts of the proposed action on this designated critical habitat, inclusive of the three physical and biological features (PBFs) present that have been deemed essential to the conservation of the species and which may require special management considerations or protections. For each PBF, we identify those activities that may affect the PBF. For each feature that may be affected by the action, we then determine whether any effects to the feature are adverse, insignificant, discountable, or entirely beneficial. In making this determination, we consider the action's potential to affect how each PBF supports Atlantic sturgeon's conservation needs in the action area. Part of this analysis is consideration of whether the action will have effects on the ability of Atlantic sturgeon to access the feature, temporarily or permanently, and consideration of the effect of the action on the action area's ability to develop the feature over time. We have determined that the effects to these PBFs from the proposed action will be insignificant or discountable for the following reasons.

PBF 2: Transitional salinity zone with soft substrate for juvenile foraging and physiological development

In considering effects to PBF 2, we consider whether the proposed action will have any effect on areas of soft substrate within transitional salinity zones between the river mouth and spawning sites for juvenile foraging and physiological development; therefore, we consider effects of the action on soft substrate, salinity and any change in the ability of the feature to support juvenile foraging and physiological development. We also consider the effects to PBF 2 in light of the value it provides to the conservation of the species in the action area. Finally, we consider whether the action will have effects on access to this feature, temporarily or permanently, and on the action area's ability to develop the feature over time.

In order to successfully complete their physiological development, Atlantic sturgeon must have access to a gradual gradient of salinity from freshwater to saltwater. Atlantic sturgeon move along this gradient as their tolerance to increased salinity increases with age. PBF 2 occurs from approximately the mouth of the James River upstream to the downstream median range of the salt front. Salinity levels in the river are dynamic, and the salt front[4] is defined by a lower

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4 The salt front in an estuary is the line between brackish water and freshwater. The location of the salt front changes with the tide cycle and the season. Daily, as the tide in the ocean rises, it brings saltier ocean water into the

concentration (0.25 ppt) than the salinity level of PBF 2 (0.5 ppt), but in the summer and fall RKM 95 is a reasonable approximation given the lack of real time data and the very small difference we would expect between the area where salinity is 0.5 ppt and 0.25 ppt. The action area that overlaps with critical habitat in the James River is between RKM 15 and RKM 18. In the James River critical habitat unit, the only activity that overlaps with PBF 2 is dredging of the portion of the Newport News channel and anchorage. Using the one mile radius zone around the channel and anchorage, we estimate that there are 2,252 acres of unconsolidated soft substrates within the salinity gradient for juvenile foraging and physiological development potentially meeting the criteria for PBF 2 within critical habitat in the action area.

Here we consider whether those activities may affect PBF 2 and if so, whether the dredging described herein are adverse, insignificant, discountable or entirely beneficial.

In the James River, the proposed action involves the deepening of the Newport News channel and subsequent maintenance dredging of non-continguos shoaled areas every five years. We do not anticipate that the dredging will result in a change in the type of substrate. The portion of the navigation channel and anchorage within critical habitat in the James River is approximately 244 acres. We expect that dredging of the area will result in reduction in benthic habitat through the removal of soft substrate and increased turbidity in the area surrounding the dredge footprint to a 305 meter radius. The area of soft substrate designated as part of PBF 2, and affected by the dredging activities may be slightly larger than 244 acres in the James River, as areas outside of the dredge footprint impacted by sedimentation from the nearfield turbidity plume of dredges may experience a loss of benthic life from burial/suffocation. As stated above, if you were to assume a worst-case scenario where a dredge event occurred in the center of the river and the plume extended in a 305m radius around the dredge (note: we would generally expect the plume to extend only downcurrent of the dredge), the area impacted would be approximately 610 meters wide. We do not expect dredging to impact salinity levels, the other applicable attribute in PBF 2, to an extent that would influence the movement or seasonal location of the salt front. Accoridingly, the salinity gradient feature that is a component of PBF 2 would continue to perform its function to faciltitate the physiologoical development of juveniles. This is explained further, below under PBF 4.

Dredging is likely to entrain and kill at least some potential sturgeon forage items. Turbidity and suspended sediments from dredging activities may also affect benthic resources in those areas where increased turbidity and suspended sediments settle out and result in burial or suffocation of immobile organisms. The TSS levels expected for all of the proposed activities (ranging from 5 mg/L to 475 mg/L) are mostly below those shown to have adverse effects on benthic communities (390 mg/L (EPA 1986). Benthic sampling done by O'Herron and Hastings (1985) in association with past USACE maintenance dredging in the Delaware River found that *Corbicula* recolonized the dredge areas during the subsequent growing season. Until the areas recover and are repopulated by neighboring colonies of benthic invertebrates, juvenile sturgeon will be able to access these areas during their development, but will not be able to use these areas

estuary and pushing the salt front further up the river estuary. As the tide recedes, the salt front occurs further downriver. Seasonally, higher freshwater flow (e.g., in the spring) pushes the salt front further downriver in the estuary. During times of less freshwater input (e.g., during the summer), the salt front is further upriver in the estuary.

for foraging. Sturgeon may be exposed to a temporary reduction in forage in these noncontiguous shoaled areas where dredging occurs for one to two seasons immediately following dredging (O'Herron and Hastings 1985). As the Newport News channel may require maintenance dredging of non-contiguous areas every 5 years, areas dredged in one cycle are expected to fully recover their value for juvenile foraging for two to three years before being dredged again. During this time, sturgeon will be able to access and transit through the area and use it for other aspects of their development.

Soft substrate within the navigation channels and anchorage may also be disturbed on a daily basis by large, deep draft, commercial vessels. Channels requiring maintenance dredging are particularly vulnerable to disturbance from vessels, as once sediments build up (which occurs over time after dredging), they can be close enough to the keels and propellers of large vessels to be a navigation hazard. Given the dynamic nature of the substrates that form these channels, the impacts of natural factors that lead to the accumulation of sediments in these channels, and the disturbance of at least the top layer of sediment when large ships pass overhead, these areas may not support the same abundance of benthic resources as areas outside of the channels do, where the disturbance regime is not as frequent. However, given that Atlantic sturgeon forage on a variety of benthic invertebrates, including worms tht bury into the substrate, it is not entirely clear what impact the disturbance regime has on the ability of these shoaled areas to support the foraging and development of juvenile Atlantic sturgeon. While we do not have fine scale information on sturgeon forage items or sturgeon distribution that we could use to make a conclusive determination about foraging in the channel versus outside the channel, it is reasonable to assume that areas outside the channel that are not subject to disturbance as frequently are more likely to support forage species. Accordingly, the value of PBF 2 outside the channel is greater to the conservation of the species.

In conclusion, although the dredging in the James River of up to 244 acres will affect benthic intvertebrates throughout the life of the project, by removing them with the dredged sediment and limiting the feature's ability to permanently improve in value in the future (the intermittent removal of substrates to maintain the channel depth will affect the availability of forage species while areas are recolonized by benthic invertebrates that juvenile Atlantic sturgeon would otherwise feed on), the area will continue to consist of soft bottom substrate. In addition, the dredging footprint represents a small (up to approximately 0.23% of the James River critical habitat unit potentially supporting PBF 2) and non-contiguous amount of the available soft bottom substrate within the subset of the action area that overlaps critical habitat. Furthermore, the non-contiguous areas of PBF 2 will not be impacted at the same times during dredging events. Considering these factors, as well as the naturally dynamic nature of these areas which may limit their ability to support foraging juvenile Atlantic sturgeon (except for opportunistically), i.e., the function of PBF 2 in the action area even if dredging did not occur, the effects of dredging this small amount of habitat on juvenile foraging or physiological development will be so small that they cannot be meaningfully measured, evaluated, or detected. Therefore, any effects on the value of PBF 2 in the action area to the conservation of the species are insignificant.

PBF 3: Water absent physical barriers to passage between the river mouth and spawning sites

In considering effects to PBF 3, we consider whether the proposed action will have any effect on water of appropriate depth and absent physical barriers to passage (e.g., locks, dams, thermal plumes, turbidity, sound, reservoirs, gear, etc.) between the river mouth and spawning sites necessary to support: unimpeded movements of adults to and from spawning sites; seasonal and physiologically dependent movement of juvenile Atlantic sturgeon to appropriate salinity zones within the river estuary, and; staging, resting, or holding of subadults or spawning condition adults. We also consider whether the proposed action will affect water depth or water flow, because if water is too shallow it can be a barrier to sturgeon movements, and an alteration in water flow could similarly impact the movements of sturgeon in the river. Therefore, we consider effects of the action on water depth and water flow and whether the action results in barriers to passage that impede the movements of Atlantic sturgeon. We also consider whether the action will have effects on access to this feature, temporarily or permanently and consider the effect of the action on the action area's ability to develop the feature over time.

Unlike some southern rivers, given the extent of tidal flow, geomorphology and naturally deep depths of the James River, it is not vulnerable to natural reductions in water flow or water depth that can result in barriers to sturgeon movements; also, we are not aware of any impacts from this action that reduce water depth or water flow in a way that impact sturgeon movements. We are not aware of any complete barriers to passage for Atlantic sturgeon in the James River; that is, we do not know of any structures or conditions that prevent sturgeon from moving up or downstream within the river. There are areas in the James River critical habitat unit where sturgeon movements are affected by water quality (e.g., thermal plumes discharged from power plant outfalls) and noise (e.g., during pile driving at ongoing in-water construction projects); however, impacts on movements are normally temporary and/or intermittent and best available data suggests there is always a zone of passage through the affected river reach. Here we consider whether the dredging activities in the Newport News channels and anchorage may affect PBF 3 and whether those effects are adverse, insignificant, discountable or entirely beneficial.

A study conducted in the James River by Reine et al. (2014) found no evidence that would suggest that the presence of an active dredge represented a physical barrier to sturgeon movement. Similarly, the above referenced dredging project within the Newport News channels and anchorage portion of the James River will not create physical barriers within the river that will impede Atlantic sturgeon movements or use of the river. In areas where the channel is being deepened, the new depth still falls within a range suitable for Atlantic sturgeon use. As stated in other sections, even during times of active dredging, Atlantic sturgeon can still access and use the surrounding area. While some studies indicate that Atlantic sturgeon tend to avoid areas of active dredging (Hatin et al. 2007), other studies (Reine et al. 2014) state that Atlantic sturgeon showed neither attraction to nor avoidance of active dredging activities. Moser and Ross (1993) found that both shortnose and Atlantic sturgeon occupied both undisturbed and regularly dredged areas during concurrent dredging operations with no negative impact. A study by Cameron (2012) showed that sturgeon exhibited no signs of impeded movement up or downriver due to the physical presence of a dredge. Fish were actively tracked freely moving past the dredge during full production mode and showed no signs of avoidance response (e.g., due to noise generated by the dredge) as indicated by the amount of time spent in close proximity to the dredge after release (3.5 – 21.5 hours). In addition, tagged fish showed no evidence of attraction to the dredge. Brundage (personal communication with USACE, 2017) has noted reduced catches in the Marcus Hook Anchorage in the Delaware River when hydraulic dredging was occurring in the adjacent navigation channel. It is not known, however, if the noise produced by pumping the dredged material through the pipeline was causing an avoidance response or if the physical presence of the pipeline and general disturbance of the area may have also contributed to the sturgeon moving away.

In sum, the proposed action may have temporary effects on PBF 3 by creating temporary in-water stressors from construction activities (i.e., presence of dredge and turbidity plumes); however, none of the proposed activities will be barriers to the movement of adult, subadult or juvenile Atlantic sturgeon (because of the salinity levels in the action area, early life stages of Atlantic sturgeon will not be present). Based on our assessment, these impediments to movement are extremely unlikely to affect the value of PBF 3 to the conservation of the species in the action area; that is, it is extremely unlikely that the habitat alterations will create barriers that will affect the movement of Atlantic sturgeon in the action area generally. Specifically, it is extremely unlikely that the habitat alterations will impede the movement of adults to and from spawning sites or the seasonal and physiologically dependent movement of juvenile Atlantic sturgeon to appropriate salinity zones within the river estuary or impede the staging, resting, or holding of subadults or spawning condition adults; therefore, the effects are discountable.

PBF 4: Water with the temperature, salinity, and oxygen values that, combined, provide for dissolved oxygen values that support successful reproduction and recruitment and are within the temperature range that supports the habitat function

In considering effects to PBF 4, we consider whether the proposed action will have any effect on water quality, between the river mouth and spawning sites, especially in the bottom meter of the water column with the temperature, salinity, and oxygen values that, combined, support: spawning; annual and interannual adult, subadult, larval, and juvenile survival; and larval, juvenile, and subadult growth, development, and recruitment. Therefore, we consider effects of the action on temperature, salinity and dissolved oxygen needs for Atlantic sturgeon spawning and recruitment. These water quality conditions are interrelated and both temperature and salinity influence the dissolved oxygen saturation for a particular area. We also consider whether the action will have effects to access to this feature, temporarily or permanently and consider the effect of the action on the action area's ability to develop the feature over time.

As defined, water quality factors of temperature, salinity and dissolved oxygen are interrelated environmental variables, and in a river system such as the James, are constantly changing from influences of the tide, weather, season, etc. The area with PBF 4 (water between the river mouth and spawning sites, especially in the bottom meter of the water column, with the temperature, salinity, and oxygen values that combined support spawning, survival, and larval, juvenile, and subadult development and recruitment), may be present throughout the extent of critical habitat designated in the James River (depending on the life stage); therefore, PBF 4 overlaps with the action area.

Many factors influence salinity in the James River, including stream flow, ocean salinity, sea level, wind stress, and human activities (e.g., dredging activities). Deepening and maintenance dredging in the navigation channel have the potential to affect the spatial and temporal salinity distribution in the action area. However, Ross et al. (2015) stated that dredging in the Delaware River (i.e., increased depth to 45 ft) has not influenced long-term salinity trends (statistical models did not detect a significant salinity trend in the area following completed deepening). While we do expect salt water intrusion further into the James River over time due to climate change, the relative effects of dredging on salinity levels and location (spatial and temporal), in addition to baseline conditions, will be too small to be meaningfully measured or detected

The only pathway for the proposed dredging to impact DO is through increased suspended sediments and turbidity. Sediments suspended during dredging may have minor, temporary, localized effects on DO levels, but we expect sediment to settle out of the water column within an hour before effects would impact the value of the feature for any lifestage of Atlantic sturgeon[5]. While proposed deepening activities in the Newport News channel may have minor effects to the temperature in that section of navigation channel, the area requiring deepening is a small non-contingous portion of the action area that overlaps with critical habitat (up to 10%), and we do not expect any minor changes in temperature to alter how various life stages of Atlantic sturgeon use those respective sections of the river for spawning, rearing, and development.

To summarize, we expect the effects of dredging in the action area on the value of PBF 4 to the conservation of the species (i.e., the current and future development of this feature to provide the temperature, salinity, and oxygen values that, combined, support: spawning; annual and interannual adult, subadult, larval, and juvenile survival; and larval, juvenile, and subadult growth, development, and recruitment) to be too small to be meaningfully measured or detected, and are therefore, insignificant.

4.2 Species Likely to be Adversely Affected by the Proposed Action

This section will focus on the status of the various ESA-listed species likely to be adversely affected within the action area, summarizing information necessary to establish the environmental baseline and to assess the effects of the proposed action.

4.2.1 Status of Sea Turtles

With the exception of loggerheads and greens, sea turtles are listed under the ESA at the species level rather than as subspecies or DPSs. Therefore, information on the range-wide status of Kemp's ridley sea turtles is included to provide the status of each species overall. Information on the status of loggerhead and green sea turtles will only be presented for the DPS affected by this action. Additional background information on the range-wide status of these species can be found in a number of published documents, including sea turtle status reviews and biological reports (NMFS and USFWS 1995, 2007a, 2007b, 2013; 2015; Hirth 1997; Marine Turtle Expert Working Group [TEWG] 1998, 2000, 2007, 2009; Conant *et al.* 2009; Seminoff *et al.* 2015), and

5 We only expect adult, sub-adult, and juvenile lifestages of Altantic sturgeon in the action area; early life stages will not be present due to the salinity levels.

recovery plans for the loggerhead sea turtle (NMFS and USFWS 2008), Kemp's ridley sea turtle (NMFS *et al.* 2011), and green sea turtle (NMFS and USFWS 1991)).

2010 BP Deepwater Horizon Oil Spill

The April 20, 2010, explosion of the Deepwater Horizon (DWH) oil rig affected sea turtles in the Gulf of Mexico. This extensive oiling event contaminated important sea turtle foraging, migratory, and breeding habitats at the surface, in the water column, on the ocean bottom, and on beaches throughout the northern Gulf of Mexico in areas used by different life stages. Sea turtles were exposed to oil when in contaminated water or habitats; breathing oil droplets, oil vapors, and smoke; ingesting oil-contaminated water and prey; and potentially by maternal transfer of oil compounds to embryos (DWH NRDA Trustees 2016). Response activities and shoreline oiling also directly injured sea turtles and disrupted or deterred sea turtle nesting in the Gulf.

During direct at-sea capture events, more than 900 turtles were sighted, 574 of which were captured and examined for oiling (Stacy 2012). Of the turtles captured during these operations, greater than 80% were visibly oiled (DWH NRDA Trustees 2016). Most of the rescued turtles were taken to rehabilitation facilities; more than 90% of the turtles admitted to rehabilitation centers eventually recovered and were released (Stacy 2012; Stacy and Innis 2012). Recovery efforts also included relocating nearly 300 sea turtle nests from the northern Gulf to the east coast of Florida in 2010, with the goal of preventing hatchlings from entering the oiled waters of the northern Gulf. Approximately 14,000 hatchlings were released off the Atlantic coast of Florida, 95% of which were loggerheads (http://www.nmfs.noaa.gov/pr/health/oilspill/gulf2010.htm).

Direct observations of the effects of oil on turtles obtained by at-sea captures, sightings, and strandings only represent a fraction of the scope of the injury. As such, the DWH NRDA (Natural Resource and Damage Assessment) Trustees used expert opinion, surface oiling maps, and statistical approaches to apply the directly observed adverse effects of oil exposure to turtles in areas and at times that could not be surveyed. The Trustees estimated that between 4,900 and up to 7,600 large juvenile and adult sea turtles (Kemp's ridleys, loggerheads, and hard-shelled sea turtles not identified to species), and between 55,000 and 160,000 small juvenile sea turtles (Kemp's ridleys, green turtles, loggerheads, hawksbills, and hard-shelled sea turtles not identified to species) were killed by the DWH oil spill (DWH NRDA Trustees 2016). Nearly 35,000 hatchling sea turtles (loggerheads, Kemp's ridleys, and green turtles) were also injured by response activities. Despite uncertainties and some unquantified injuries to sea turtles (e.g., unrealized reproduction), the Trustees conclude that this assessment adequately quantifies the nature and magnitude of injuries to sea turtles caused by the DWH oil spill and related activities.

Based on this quantification of sea turtle injuries caused by the DWH oil spill, sea turtles from all life stages and all geographic areas were lost from the northern Gulf of Mexico ecosystem. The DWA NRDA Trustees (2016) conclude that the recovery of sea turtles in the northern Gulf of Mexico from injuries caused by the DWH oil spill will require decades of sustained efforts to reduce the most critical threats and enhance survival of turtles at multiple life stages. The ultimate population level effects of the spill and impacts of the associated response activities are likely to remain unknown for some period into the future.

4.2.1.1 Status of Loggerhead Sea Turtles – Northwest Atlantic DPS

The loggerhead is the most abundant species of sea turtle in U.S. waters. Loggerhead sea turtles are found in temperate and subtropical waters and occupy a range of habitats including offshore waters, continental shelves, bays, estuaries, and lagoons. They are also exposed to a variety of natural and anthropogenic threats in the terrestrial and marine environment.

Listing History

Loggerhead sea turtles were listed as threatened throughout their global range on July 28, 1978. Since that time, several status reviews have been conducted to review the status of the species and make recommendations regarding its ESA listing status. Based on a 2007 five-year status review of the species, which discussed a variety of threats to loggerheads including climate change, NMFS and USFWS (2007a) determined that loggerhead sea turtles should not be delisted or reclassified as endangered. However, it was also determined that an analysis and review of the species should be conducted in the future to determine whether DPSs should be identified for the loggerhead (NMFS and USFWS 2007a). Genetic differences exist between loggerhead sea turtles that nest and forage in the different ocean basins (Bowen 2003; Bowen and Karl 2007). Differences in the maternally inherited mitochondrial DNA also exist between loggerhead nesting groups that occur within the same ocean basin (TEWG 2000; Pearce 2001; Bowen 2003; Bowen *et al.* 2005; Shamblin 2007; TEWG 2009; NMFS and USFWS 2008). Site fidelity of females to one or more nesting beaches in an area is believed to account for these genetic differences (TEWG 2000; Bowen 2003).

In part to evaluate those genetic differences, in 2008, NMFS and USFWS established a Loggerhead Biological Review Team (BRT) to assess the global loggerhead population structure to determine whether DPSs exist and, if so, the status of each DPS. The BRT evaluated genetic data, tagging and telemetry data, demographic information, oceanographic features, and geographic barriers to determine whether population segments exist. The BRT report was completed in August 2009 (Conant *et al.* 2009). In this report, the BRT identified the following nine DPSs as being discrete from other conspecific population segments and significant to the species: (1) North Pacific Ocean, (2) South Pacific Ocean, (3) North Indian Ocean, (4) Southeast Indo-Pacific Ocean, (5) Southwest Indian Ocean, (6) Northwest Atlantic Ocean, (7) Northeast Atlantic Ocean, (8) Mediterranean Sea, and (9) South Atlantic Ocean.

The BRT concluded that although some DPSs are indicating increasing trends at nesting beaches (Southwest Indian Ocean and South Atlantic Ocean), available information about anthropogenic threats to juveniles and adults in neritic and oceanic environments indicate possible unsustainable additional mortalities. According to an analysis using expert opinion in a matrix model framework, the BRT report stated that all loggerhead DPSs have the potential to decline in the foreseeable future. Based on the threat matrix analysis, the potential for future decline was reported as greatest for the North Indian Ocean, Northwest Atlantic Ocean, Northeast Atlantic Ocean, Mediterranean Sea, and South Atlantic Ocean DPSs (Conant *et al.* 2009). The BRT concluded that the North Pacific Ocean, South Pacific Ocean, North Indian Ocean, Southeast Indo-Pacific Ocean, Northwest Atlantic Ocean, Northeast Atlantic Ocean, and Mediterranean Sea DPSs were at risk of extinction. The BRT concluded that although the Southwest Indian Ocean and South Atlantic Ocean DPSs were likely not currently at immediate risk of extinction, the extinction risk was likely to increase in the foreseeable future.

On March 16, 2010, NMFS and USFWS published a proposed rule (75 FR 12598) to divide the worldwide population of loggerhead sea turtles into nine DPSs, as described in the 2009 Status Review. Two of the DPSs were proposed to be listed as threatened and seven of the DPSs, including the Northwest Atlantic Ocean DPS, were proposed to be listed as endangered. NMFS and USFWS accepted comments on the proposed rule through September 13, 2010 (75 FR 30769, June 2, 2010). On March 22, 2011 (76 FR 15932), NMFS and USFWS extended the date by which a final determination on the listing action would be made to no later than September 16, 2011. This action was taken to address the interpretation of the existing data on status and trends and its relevance to the assessment of risk of extinction for the Northwest Atlantic Ocean DPS, as well as the magnitude and immediacy of the fisheries bycatch threat and measures to reduce this threat. New information or analyses to help clarify these issues were requested by April 11, 2011.

On September 22, 2011, NMFS and USFWS issued a final rule (76 FR 58868), determining that the loggerhead sea turtle is composed of nine DPSs (as defined in Conant *et al*. 2009) that constitute species that may be listed as threatened or endangered under the ESA. Five DPSs were listed as endangered (North Pacific Ocean, South Pacific Ocean, North Indian Ocean, Northeast Atlantic Ocean, and Mediterranean Sea), and four DPSs were listed as threatened (Northwest Atlantic Ocean, South Atlantic Ocean, Southeast Indo-Pacific Ocean, and Southwest Indian Ocean). Note that the Northwest Atlantic Ocean (NWA) DPS and the Southeast Indo-Pacific Ocean DPS were originally proposed as endangered. The NWA DPS was determined to be threatened based on review of nesting data available after the proposed rule was published, information provided in public comments on the proposed rule, and further discussions within the agencies. The two primary factors considered were population abundance and population trend. NMFS and USFWS found that an endangered status for the NWA DPS was not warranted given the large size of the nesting population, the overall nesting population remains widespread, the trend for the nesting population appears to be stabilizing, and substantial conservation efforts are underway to address threats. This final listing rule became effective on October 24, 2011.

The September 2011 final rule also noted that critical habitat for the two DPSs occurring within the U.S. (NWA DPS and North Pacific DPS) would be designated in a future rulemaking. Information from the public related to the identification of critical habitat, essential physical or biological features for this species, and other relevant impacts of a critical habitat designation was solicited. On July 10, 2014, the USFWS and NMFS published two separate final rules in the Federal Register designating critical habitat for the NWA DPS of loggerhead sea turtles under the ESA (79 FR 39755 for nesting beaches under FWS jurisdiction; 79 FR 39856 for marine areas under NMFS jurisdiction). Effective August 11, 2014, NMFS's final rule for marine areas designated 38 occupied areas within the at-sea range of the DPS. These designated marine areas of critical habitat contain one or a combination of: nearshore reproductive habitat, overwintering habitat, breeding habitat, migratory habitat, and *Sargassum* habitat.

Presence of Loggerhead Sea Turtles in the Action Area

The effects of the proposed action are only experienced within Virginia's nearshore and coastal waters and its portion of Chesapeake Bay and associated river mouths. We have considered the available information on the distribution of the nine DPSs to determine the origin of any loggerhead sea turtles that may occur in the action area. As noted in Conant *et al.* (2009), the range of the four DPSs occurring in the Atlantic Ocean are as follows: NWA DPS – north of the equator, south of 60° N latitude, and west of 40° W longitude; Northeast Atlantic Ocean (NEA) DPS – north of the equator, south of 60° N latitude, east of 40° W longitude, and west of 5° 36' W longitude; South Atlantic DPS – south of the equator, north of 60° S latitude, west of 20° E longitude, and east of 60° W longitude; Mediterranean DPS – the Mediterranean Sea east of 5° 36' W longitude. These boundaries were determined based on oceanographic features, loggerhead sightings, thermal tolerance, fishery bycatch data, and information on loggerhead distribution from satellite telemetry and flipper tagging studies. While adults are highly structured with no overlap, there may be some degree of overlap by juveniles of the NWA, NEA, and Mediterranean DPSs on oceanic foraging grounds (Laurent *et al.* 1993, 1998; Bolten *et al.* 1998; LaCasella *et al.* 2005; Carreras *et al.* 2006, Monzón-Argüello *et al.* 2006; Revelles *et al.* 2007). Previous literature (Bowen *et al.* 2004) has suggested that there is the potential, albeit small, for some juveniles from the Mediterranean DPS to be present in U.S. Atlantic coastal foraging grounds. These conclusions must be interpreted with caution however, as they may be representing a shared common haplotype and lack of representative sampling at Eastern Atlantic rookeries rather than an actual presence of Mediterranean DPS turtles in U.S. Atlantic coastal waters. A re-analysis of the data by the Atlantic Loggerhead Turtle Expert Working Group has found that that it is unlikely that U.S. fishing fleets are interacting with either the NEA or Mediterranean DPS (Peter Dutton, NMFS, Marine Turtle Genetics Program, Program Leader, personal communication, September 10, 2011). Given that the action area is a very small subset of the area fished by U.S. fleets, it is reasonable to assume that based on this analysis, no individuals from the NEA or Mediterranean DPS would be present in the action area. Sea turtles of the South Atlantic DPS do not inhabit the action area of this consultation (Conant *et al.* 2009). As such, the remainder of this consultation will focus on the NWA DPS, listed as threatened.

Distribution and Life History

Ehrhart *et al.* (2003) provided a summary of the literature identifying known nesting habitats and foraging areas for loggerheads within the Atlantic Ocean. Detailed information is also provided in the five-year status review for loggerheads (NMFS and USFWS 2007a), the TEWG (2009) report, and the final revised recovery plan for loggerheads in the Northwest Atlantic Ocean (NMFS and USFWS 2008), which is a second revision to the original recovery plan that was approved in 1984 and subsequently revised in 1991.

In the western Atlantic, waters as far north as the Gulf of Maine and the Canadian Maritimes are used for foraging by juveniles as well as adults (Shoop 1987; Shoop and Kenney 1992; Ehrhart *et al.* 2003; Mitchell *et al.* 2003; NEFSC 2011a). In U.S. Atlantic waters, loggerheads commonly occur throughout the inner continental shelf from Florida to Cape Cod, Massachusetts and in the Gulf of Mexico from Florida to Texas, although their presence varies with the seasons due to changes in water temperature (Shoop and Kenney 1992; Epperly *et al.* 1995a, 1995b; Braun and Epperly 1996; Mitchell *et al.* 2003; Braun-McNeill *et al.* 2008). Loggerheads have been observed in waters with surface temperatures of 7°C to 30°C, but water temperatures ≥11°C are most favorable (Shoop and Kenney 1992; Epperly *et al.* 1995b). The presence of loggerhead sea turtles in U.S. Atlantic waters is also influenced by water depth. Aerial surveys of continental shelf waters north of Cape Hatteras, North Carolina indicated that loggerhead sea turtles were most commonly sighted in waters with bottom depths ranging from 22 to 49 meters deep (Shoop and Kenney 1992). However, more recent survey and satellite tracking data support that they occur in waters from the beach to beyond the continental shelf (Mitchell *et al.* 2003; Braun-McNeill and Epperly 2004; Mansfield 2006; Blumenthal *et al.* 2006; Hawkes *et al.* 2006; McClellan and Read 2007; Mansfield *et al.* 2009).

Loggerhead sea turtles occur year round in ocean waters off North Carolina, South Carolina, Georgia, and Florida. In these areas of the South Atlantic Bight, water temperature is influenced by the proximity of the Gulf Stream. As coastal water temperatures warm in the spring, loggerheads begin to migrate to inshore waters of the Southeast U.S. (e.g., Pamlico and Core Sounds) and also move up the U.S. Atlantic coast (Epperly *et al.* 1995a, 1995b, 1995c; Braun-McNeill and Epperly 2004), occurring in Virginia foraging areas as early as April/May and on the most northern foraging grounds in the Gulf of Maine in June (Shoop and Kenney 1992). The trend is reversed in the fall as water temperatures cool. The large majority leave the Gulf of Maine by mid-September but some turtles may remain in Mid-Atlantic and Northeast areas until late fall. By December, loggerheads have migrated from inshore and more northern coastal waters to waters offshore of North Carolina, particularly off of Cape Hatteras, and waters further south where the influence of the Gulf Stream provides temperatures favorable to sea turtles (Shoop and Kenney 1992; Epperly *et al.* 1995b).

Recent studies have established that the loggerhead's life history is more complex than previously believed. Rather than making discrete developmental shifts from oceanic to neritic environments, research is showing that both adults and (presumed) neritic stage juveniles continue to use the oceanic environment and will move back and forth between the two habitats (Witzell 2002; Blumenthal *et al.* 2006; Hawkes *et al.* 2006; McClellan and Read 2007; Mansfield *et al.* 2009). One of the studies tracked the movements of adult post-nesting females and found that differences in habitat use were related to body size with larger adults staying in coastal waters and smaller adults traveling to oceanic waters (Hawkes *et al.* 2006). A tracking study of large juveniles found that the habitat preferences of this life stage were also diverse with some remaining in neritic waters and others moving off into oceanic waters (McClellan and Read 2007). However, unlike the Hawkes *et al.* (2006) study, there was no significant difference in the body size of turtles that remained in neritic waters versus oceanic waters (McClellan and Read 2007).

Pelagic and benthic juveniles are omnivorous and forage on crabs, mollusks, jellyfish, and vegetation at or near the surface (Dodd 1988; NMFS and USFWS 2008). Sub-adult and adult loggerheads are primarily coastal dwelling and typically prey on benthic invertebrates such as mollusks and decapod crustaceans in hard bottom habitats (NMFS and USFWS 2008). As presented below, Table 3 from the 2008 loggerhead recovery plan (Table 3 in this Opinion) highlights the key life history parameters for loggerheads nesting in the U.S.

Table 3. Typical values of life history parameters for loggerheads nesting in the U.S.

Life History Parameter	Data
Clutch size	100-126 eggs[1]
Egg incubation duration (varies depending on time of year and latitude)	42-75 days[2,3]
Pivotal temperature (incubation temperature that produces an equal number of males and females)	29.0°C[5]
Nest productivity (emerged hatchlings/total eggs) x 100 (varies depending on site specific factors)	45-70%[2,6]
Clutch frequency (number of nests/female/season)	3-5.5 nests[7]
Internesting interval (number of days between successive nests within a season)	12-15 days[8]
Juvenile (<87 cm CCL) sex ratio	65-70% female[4]
Remigration interval (number of years between successive nesting migrations)	2.5-3.7 years[9]
Nesting season	late April-early September
Hatching season	late June-early November
Age at sexual maturity	32-35 years[10]
Life span	>57 years[11]

1 Dodd 1988.
2 Dodd and Mackinnon (1999, 2000, 2001, 2002, 2003, 2004).
3 Blair Witherington, FFWCC, personal communication, 2006 (information based on nests monitored throughout Florida beaches in 2005, n=865).
4 National Marine Fisheries Service (2001); Allen Foley, FFWCC, personal communication, 2005.
5 Mrosovsky (1988).
6 Blair Witherington, FFWCC, personal communication, 2006 (information based on nests monitored throughout Florida beaches in 2005, n=1,680).
7 Murphy and Hopkins (1984); Frazer and Richardson (1985); Ehrhart, unpublished data; Hawkes *et al*. 2005; Scott 2006; Tony Tucker, Mote Marine Laboratory, personal communication, 2008.
8 Caldwell (1962), Dodd (1988).
9 Richardson *et al*. (1978); Bjorndal *et al*. (1983); Ehrhart, unpublished data.
10 Melissa Snover, NMFS, personal communication, 2005; see Table A1-6.
11 Dahlen *et al*. (2000).

Population Dynamics and Status

By far, the majority of Atlantic nesting occurs on beaches of the southeastern U.S. (NMFS and USFWS 2007a). For the past decade or so, the scientific literature has recognized five distinct nesting groups, or subpopulations, of loggerhead sea turtles in the Northwest Atlantic, divided geographically as follows: (1) a northern group of nesting females that nest from North Carolina to northeast Florida at about 29° N latitude; (2) a south Florida group of nesting females that nest from 29° N latitude on the east coast to Sarasota on the west coast; (3) a Florida Panhandle group of nesting females that nest around Eglin Air Force Base and the beaches near Panama City, Florida; (4) a Yucatán group of nesting females that nest on beaches of the eastern Yucatán Peninsula, Mexico; and (5) a Dry Tortugas group that nests on beaches of the islands of the Dry Tortugas, near Key West, Florida and on Cal Sal Bank (TEWG 2009). Genetic analyses of mitochondrial DNA, which a sea turtle inherits from its mother, indicate that there are genetic differences between loggerheads that nest at and originate from the beaches used by each of the five identified nesting groups of females (TEWG 2009). However, analyses of microsatellite loci from nuclear DNA, which represents the genetic contribution from both parents, indicates little to no genetic differences between loggerheads originating from nesting beaches of the five Northwest Atlantic nesting groups (Pearce and Bowen 2001; Bowen 2003; Bowen *et al.* 2005; Shamblin 2007). These results suggest that female loggerheads have site fidelity to nesting beaches within a particular area, while males provide an avenue of gene flow between nesting groups by mating with females that originate from different nesting groups (Bowen 2003; Bowen *et al.* 2005). The extent of such gene flow, however, is unclear (Shamblin 2007).

The lack of genetic structure makes it difficult to designate specific boundaries for the nesting subpopulations based on genetic differences alone. Therefore, the Loggerhead Recovery Team recently used a combination of geographic distribution of nesting densities, geographic separation, and geopolitical boundaries, in addition to genetic differences, to reassess the designation of these subpopulations to identify recovery units in the 2008 recovery plan.

In the 2008 recovery plan, the Loggerhead Recovery Team designated five recovery units for the Northwest Atlantic population of loggerhead sea turtles based on the aforementioned nesting groups and inclusive of a few other nesting areas not mentioned above. The first four of these recovery units represent nesting assemblages located in the Southeast U.S. The fifth recovery unit is composed of all other nesting assemblages of loggerheads within the Greater Caribbean, outside the U.S., but which occur within U.S. waters during some portion of their lives. The five recovery units representing nesting assemblages are: (1) the Northern Recovery Unit (NRU: Florida/Georgia border through southern Virginia), (2) the Peninsular Florida Recovery Unit (PFRU: Florida/Georgia border through Pinellas County, Florida), (3) the Dry Tortugas Recovery Unit (DTRU: islands located west of Key West, Florida), (4) the Northern Gulf of Mexico Recovery Unit (NGMRU: Franklin County, Florida through Texas), and (5) the Greater Caribbean Recovery Unit (GCRU: Mexico through French Guiana, Bahamas, Lesser Antilles, and Greater Antilles).

More recently, Shamblin *et al.* (2011, 2012) evaluated expanded mitochondrial sequences and identified additional genetic diversity in the North Atlantic. Specifically, based on genetics, the PFRU can be subdivided into further discrete units (Shamblin et al. 2011). This expanded genetic assessment found that the Northwest Atlantic loggerhead turtle rookeries can be subdivided into 10 management units, corresponding to the beaches from (1) Virginia through northeastern Florida, (2) central eastern Florida, (3) southeastern Florida, (4) Dry Tortugas, Florida, (5) Cay Sal, Bahamas, (6) southwestern Cuba, (7) Quintana Roo, Mexico, (8) southwestern Florida, (9) central western Florida, and (10) northwestern Florida (Shamblin et al. 2012).

The Loggerhead Recovery Team evaluated the status and trends of the Northwest Atlantic loggerhead population for each of the five recovery units, using nesting data available as of October 2008 (NMFS and USFWS 2008). The level and consistency of nesting coverage varies among recovery units, with coverage in Florida generally being the most consistent and thorough over time. Since 1989, nest count surveys in Florida have occurred in the form of statewide surveys (a near complete census of entire Florida nesting) and index beach surveys (Witherington *et al.* 2009). Index beaches were established to standardize data collection methods and maintain a constant level of effort on key nesting beaches over time.

NMFS and USFWS (2008), Witherington *et al.* (2009), and TEWG (2009) analyzed the status of the nesting assemblages within the NWA DPS using standardized data collected over periods ranging from 10-23 years. These analyses used different analytical approaches, but found the same finding that there had been a significant, overall nesting decline within the NWA DPS. However, with the addition of nesting data from 2008 to 2017, the trend line changes, showing a strong positive trend since 2007 (http://myfwc.com/research/wildlife/sea-turtles/nesting/beach-survey-totals/). The nesting data presented in the Recovery Plan (through 2008) is described below, with updated trend information through 2014 for two recovery units.

From the beginning of standardized index surveys in 1989 until 1998, the PFRU, the largest nesting assemblage in the Northwest Atlantic by an order of magnitude, had a significant increase in the number of nests. However, from 1998 through 2008, there was a 41% decrease in annual nest counts from index beaches, which represent an average of 70% of the statewide nesting activity (NMFS and USFWS 2008). From 1989-2008, the PFRU had an overall declining nesting trend of 26% (95% CI: -42% to -5%; NMFS and USFWS 2008). With the addition of nesting data through 2010, the nesting trend for the PFRU does not show a nesting decline statistically different from zero (76 FR 58868, September 22, 2011). Further, annual nest counts on Florida index beaches have shown an increase over the last six years (FFWC 2015). Florida Fish and Wildlife Commission researchers examined the period between the high count nesting season in 1998 and the most recent nesting season (2014) and found a slight but non-significant increase. The overall change in nest counts from 1989 to 2014 is positive (FFWC 2015, http://www.myfwc.com/research/wildlife/sea-turtles/nesting/loggerhead-trends/).

The NRU, the second largest nesting assemblage of loggerheads in the U.S., has been declining at a rate of 1.3% annually since 1983 (NMFS and USFWS 2008). The NRU dataset included 11 beaches with an uninterrupted time series of coverage of at least 20 years; these beaches represent approximately 27% of NRU nesting (in 2008). Since that 2008 analysis, nesting has increased substantially on North Carolina, South Carolina, and Georgia beaches, with record highs in 2013 (M. Dodd, 2015, pers. comm.). A recent analysis, including nesting data through 2014, indicates no significant trend in NRU nesting for the 32 year time period (M. Dodd, 2015, pers. comm.).

Evaluation of long-term nesting trends for the NGMRU is difficult because of changed and expanded beach coverage. However, the NGMRU has shown a significant declining trend of 4.7% annually since index nesting beach surveys were initiated in 1997 (NMFS and USFWS 2008). The trend was analyzed using nesting data available as of October 2008.

No statistical trends in nesting abundance can be determined for the DTRU because of the lack of long-term data. Similarly, statistically valid analyses of long-term nesting trends for the entire GCRU are not available because there are few long-term standardized nesting surveys representative of the region. Additionally, changing survey effort at monitored beaches and scattered and low-level nesting by loggerheads at many locations currently precludes comprehensive analyses (NMFS and USFWS 2008).

Sea turtle census nesting surveys are important in that they provide information on the relative abundance of nesting each year, and the contribution of each nesting group to total nesting of the species. Nest counts can also be used to estimate the number of reproductively mature females nesting annually. The 2008 recovery plan compiled information on mean number of loggerhead nests and the approximated counts of nesting females per year for four of the five identified recovery units (i.e., nesting groups). This information is dated, but still represents the most comprehensive number of nests per year that is publicly available. They are: (1) for the NRU, a mean of 5,215 loggerhead nests per year (1989-2008) with approximately 1,272 females nesting per year; (2) for the PFRU, a mean of 64,513 nests per year (1989-2007) with approximately 15,735 females nesting per year; (3) for the DTRU, a mean of 246 nests per year (1995-2004, excluding 2002) with approximately 60 females nesting per year; and (4) for the NGMRU, a mean of 906 nests per year (1995-2007) with approximately 221 females nesting per year. For the GCRU, the only estimate available for the number of loggerhead nests per year is from Quintana Roo, Yucatán, Mexico, where a range of 903-2,331 nests per year was estimated (1987-2001) (NMFS and USFWS 2007a). There are no annual nest estimates available for the Yucatán since 2001 or for any other regions in the GCRU, nor are there estimates of the number of nesting females per year for any nesting assemblage in this recovery unit. The above values for average nesting females per year were based upon 4.1 nests per female per Murphy and Hopkins (1984).

Genetic studies of juvenile and a few adult loggerhead sea turtles collected from Northwest Atlantic foraging areas (beach strandings, a power plant in Florida, and North Carolina fisheries) show that the loggerheads that occupy U.S. East Coast waters originate from these Northwest Atlantic nesting groups; primarily from the nearby nesting beaches of southern Florida, as well as the northern Florida to North Carolina beaches, and finally from the beaches of the Yucatán Peninsula, Mexico (Rankin-Baransky *et al.* 2001; Witzell *et al.* 2002; Bass *et al.* 2004; Bowen *et al.* 2004). The contribution of these three nesting assemblages varies somewhat among the foraging habitats and age classes surveyed along the east coast. The distribution is not random and bears a significant relationship to the proximity and size of adjacent nesting colonies (Bowen *et al.* 2004). Bass *et al.* (2004) attribute the variety in the proportions of sea turtles from loggerhead nesting assemblages documented in different east coast foraging habitats to a complex interplay of currents and the relative size and proximity of nesting beaches. More recently, ongoing work at SWFSC (Dutton and LaCasella, unpublished data) provides preliminary results for loggerhead bycatch samples (n=141) from Northeast fisheries from 2003-2012. The preliminary Mixed-Stock Analysis indicates that the majority of the Northeast bycatch is composed of turtles from Florida rookeries in the Northwest Atlantic. The combined central eastern Florida and southeastern Florida Management Units (MU) comprise the majority (79%) of the mean estimated stock composition. The remainder was made up primarily of western Florida MUs (southwestern Florida, central western Florida, northwestern Florida, Dry Tortugas), the northern US MU and to a lesser extent, Mexico. There is great uncertainty around point estimates, due to widespread shared haplotypes; however, there is no significant evidence of contribution from the Mediterranean or South Atlantic MUs (Dutton and LaCasella, unpublished data).

Unlike nesting surveys, in-water studies of sea turtles typically sample both sexes and multiple age classes. In-water studies have been conducted in some areas of the Northwest Atlantic and provide data by which to assess the relative abundance of loggerhead sea turtles and changes in abundance over time (Maier *et al.* 2004; Morreale *et al.* 2005; Mansfield 2006; Ehrhart *et al.* 2007; Epperly *et al.* 2007). The TEWG (2009) used raw data from six in-water study sites to conduct trend analyses. They identified an increasing trend in the abundance of loggerheads from three of the four sites located in the Southeast U.S., one site showed no discernible trend, and the two sites located in the northeast U.S. showed a decreasing trend in abundance of loggerheads. The 2008 loggerhead recovery plan also includes a full discussion of in-water population studies for which trend data have been reported, and a brief summary will be provided here.

Maier *et al.* (2004) used fishery-independent trawl data to establish a regional index of loggerhead abundance for the southeast coast of the U.S. (Winyah Bay, South Carolina to St. Augustine, Florida) during the period 2000-2003. A comparison of loggerhead catch data from this study with historical values suggested that in-water populations of loggerhead sea turtles along the southeast U.S. coast appear to be larger, possibly an order of magnitude higher than they were 25 years ago, but the authors caution a direct comparison between the two studies given differences in sampling methodology (Maier *et al.* 2004). A comparison of catch rates for sea turtles in pound net gear fished in the Pamlico-Albemarle Estuarine Complex of North Carolina between the years 1995-1997 and 2001-2003 found a significant increase in catch rates for loggerhead sea turtles for the latter period (Epperly *et al.* 2007). A long-term, on-going study of loggerhead abundance in the Indian River Lagoon System of Florida found a significant increase in the relative abundance of loggerheads over the last four years of the study (Ehrhart *et al.* 2007). However, there was no discernible trend in loggerhead abundance during the 24-year time period of the study (1982-2006) (Ehrhart *et al.* 2007). At St. Lucie Power Plant, data collected from 1977-2004 show an increasing trend of loggerheads at the power plant intake structures (FPL and Quantum Resources 2005).

In contrast to these studies, Morreale *et al.* (2005) observed a decline in the percentage and relative numbers of loggerhead sea turtles incidentally captured in pound net gear fished around Long Island, New York during the period 2002-2004 in comparison to the period 1987-1992, with only two loggerheads (of a total 54 turtles) observed captured in pound net gear during the period 2002-2004. This is in contrast to the previous decade's study where numbers of individual loggerheads ranged from 11 to 28 per year (Morreale *et al.* 2005). No additional loggerheads were reported captured in pound net gear in New York through 2007, although two were found cold-stunned on Long Island bay beaches in the fall of 2007 (Memo to the File, L. Lankshear, December 2007). Potential explanations for this decline include major shifts in loggerhead foraging areas and/or increased mortality in pelagic or early benthic stage/age classes (Morreale *et al.* 2005). Using aerial surveys, Mansfield (2006) also found a decline in the densities of loggerhead sea turtles in Chesapeake Bay over the period 2001-2004 compared to aerial survey data collected in the 1980s. Significantly fewer loggerheads ($p<0.05$) were observed in both the spring (May-June) and the summer (July-August) of 2001-2004 compared to those observed during aerial surveys in the 1980s (Mansfield 2006). A comparison of median densities from the 1980s to the 2000s suggested that there had been a 63.2% reduction in densities during the spring residency period and a 74.9% reduction in densities during the summer residency period (Mansfield 2006). The decline in observed loggerhead populations in Chesapeake Bay may be related to a significant decline in prey, namely horseshoe crabs and blue crabs, with loggerheads redistributing outside of Bay waters (NMFS and USFWS 2008). A more recent aerial survey effort by the Virginia Aquarium & Marine Science Center found preliminary abundance estimates in 2011-2013 significantly higher than annual estimates for the lower Chesapeake Bay generated from 2001-2004 (Mansfield 2006, VAQ 2014). The 2011-2013 estimates, while preliminary, also suggest that ocean waters may be more important for this species than the waters of Chesapeake Bay.

As with other turtle species, population estimates for loggerhead sea turtles are difficult to determine, largely given their life history characteristics. However, a recent loggerhead assessment using a demographic matrix model estimated that the loggerhead adult female population in the western North Atlantic ranges from 16,847 to 89,649, with a median size of 30,050 (SEFSC 2009). The model results for population trajectory suggest that the population is most likely declining, but this result was very sensitive to the choice of the position of the parameters within their range and hypothesized distributions. The pelagic stage survival parameter had the largest effect on the model results. As a result of the large uncertainty in our knowledge of loggerhead life history, at this point predicting the future populations or population trajectories of loggerhead sea turtles with precision is very uncertain. It should also be noted that additional analyses are underway which will incorporate any newly available information.

As part of the Atlantic Marine Assessment Program for Protected Species (AMAPPS), line transect aerial abundance surveys and turtle telemetry studies were conducted along the Atlantic Coast and annual reports for 2010, 2011, 2012, and 2013 have been produced. AMAPPS is a multi-agency initiative to assess marine mammal, sea turtle, and seabird abundance and distribution in the Atlantic. As presented in NMFS NEFSC (2011a), the 2010 survey found a preliminary total surface abundance estimate within the entire study area of about 60,000 loggerheads (CV=0.13) or 85,000, if a portion of unidentified hard-shelled sea turtles were included (CV=0.10). Surfacing times were generated from the satellite tag data collected during the aerial survey period, resulting in a 7% (5%-11% inter-quartile range) median surface time in the South Atlantic area and a 67% (57%-77% inter-quartile range) median surface time to the north. The calculated preliminary regional abundance estimate is about 588,000 loggerheads along the U.S. Atlantic coast, with an inter-quartile range of 382,000-817,000 (NMFS NEFSC 2011a). The estimate increases to approximately 801,000 (inter-quartile range of 521,000-1,111,000) when based on known loggerheads and a portion of unidentified turtle sightings. The density of loggerheads was generally lower in the north than the south; based on number of turtle groups detected, 64% were seen south of Cape Hatteras, NC, 30% in the southern Mid-Atlantic Bight, and 6% in the northern Mid-Atlantic Bight. These estimates of loggerhead abundance over the U.S. Atlantic continental shelf are considered very preliminary. A more thorough analysis will be completed pending the results of further studies related to improving estimates of regional and seasonal variation in loggerhead surface time (by increasing the sample size and geographical area of tagging) and other information needed to improve the biases inherent in aerial surveys of sea turtles (e.g., research on depth of detection and species misidentification rate). This survey effort represents the most comprehensive assessment of sea turtle abundance and distribution in many years. Additional aerial and vessel surveys as well as tagging research to improve abundance estimates of loggerheads have continued through 2017.

Threats

The diversity of a loggerhead sea turtle's life history leaves them susceptible to many natural and human impacts, including impacts while they are on land, in the neritic environment, and in the oceanic environment. The five-year status review and 2008 recovery plan provide a summary of natural as well as anthropogenic threats to loggerhead sea turtles (NMFS and USFWS 2007a, 2008). Amongst those of natural origin, hurricanes are known to be destructive to sea turtle nests. Sand accretion, rainfall, and wave action that result from these storms can appreciably reduce hatchling success. Other sources of natural mortality include cold-stunning, biotoxin exposure, and native species predation.

Anthropogenic factors that impact hatchlings and adult females on land, or the success of nesting and hatching include: beach erosion, beach armoring, and nourishment; artificial lighting; beach cleaning; beach pollution; increased human presence; recreational beach equipment; vehicular and pedestrian traffic; coastal development/construction; exotic dune and beach vegetation; removal of native vegetation; and poaching. An increased human presence at some nesting beaches or close to nesting beaches has led to secondary threats such as the introduction of exotic fire ants, feral hogs, dogs, and an increased presence of native species (e.g., raccoons, armadillos, and opossums), which raid nests and feed on turtle eggs (NMFS and USFWS 2007a, 2008). Although sea turtle nesting beaches are protected along large expanses of the Northwest Atlantic coast (in areas like Merritt Island, Archie Carr, and Hobe Sound National Wildlife Refuges), other areas along these coasts have limited or no protection. Sea turtle nesting and hatching success on unprotected high density East Florida nesting beaches from Indian River to Broward County are affected by all of the above threats.

Loggerheads are affected by a completely different set of anthropogenic threats in the marine environment. These include oil and gas exploration, coastal development, and transportation; marine pollution; pile driving and underwater explosions; hopper dredging; offshore artificial lighting; power plant entrainment and/or impingement; entanglement in and ingestion of marine debris; marina and dock construction and operation; boat collisions; poaching; and fishery interactions (including both commercial and recreational fisheries).

A 1990 National Research Council (NRC) report concluded that for juveniles, subadults, and breeding adults in coastal waters, the most important source of human caused mortality in U.S. Atlantic waters was fishery interactions. The sizes and reproductive values of sea turtles taken by fisheries vary significantly, depending on the location and season of the fishery, and size-selectivity resulting from gear characteristics. Therefore, it is possible for fisheries that interact with fewer, more reproductively valuable turtles to have a greater detrimental effect on the population than one that takes greater numbers of less reproductively valuable turtles (Wallace *et al.* 2008). The Loggerhead Biological Review Team determined that the greatest threats to the NWA DPS of loggerheads result from cumulative fishery bycatch in neritic and oceanic habitats (Conant *et al.* 2009). Attaining a more thorough understanding of the characteristics, as well as the quantity of sea turtle bycatch across all fisheries is of great importance.

Finkbeiner *et al.* (2011) compiled cumulative sea turtle bycatch information in U.S. fisheries from 1990 through 2007, before and after implementation of bycatch mitigation measures. Information was obtained from peer reviewed publications and NMFS documents (e.g., Opinions and bycatch reports). In the Atlantic, a mean estimate of 137,700 bycatch interactions, of which 4,500 were mortalities, occurred annually (since implementation of bycatch mitigation measures). Kemp's ridleys interacted with fisheries most frequently, with the highest level of mean annual mortality (2,700), followed by loggerheads (1,400), greens (300), and leatherbacks (40). The Southeast/Gulf of Mexico shrimp trawl fishery was responsible for the vast majority of U.S. interactions (up to 98%) and mortalities (more than 80%). While this provides an initial cumulative bycatch assessment, there are a number of caveats that should be considered when interpreting this information, such as sampling inconsistencies and limitations.

Of the many fisheries known to adversely affect loggerheads, the U.S. South Atlantic and Gulf of Mexico shrimp fisheries were considered to pose the greatest threat of mortality to neritic juvenile and adult age classes of loggerheads (NRC 1990, Finkbeiner *et al.* 2011). Significant changes to the U.S. South Atlantic and Gulf of Mexico shrimp fisheries have occurred since 1990, and the effects of these shrimp fisheries on ESA-listed species, including loggerhead sea turtles, have been assessed several times through section 7 consultation. There is also a lengthy regulatory history with regard to the use of Turtle Excluder Devices (TEDs) in the U.S. South Atlantic and Gulf of Mexico shrimp fisheries (Epperly and Teas 2002; NMFS 2002; Lewison *et al.* 2003). A section 7 consultation on the U.S. South Atlantic and Gulf of Mexico shrimp fisheries completed in 2002 estimated the total annual level of loggerhead interactions to be 163,160 (the total number of turtles that enter a shrimp trawl, which may then escape through the TED or fail to escape and be captured) with 3,948 of those being lethal (NMFS 2002).

In addition to improvements in TED designs and TED enforcement, interactions between loggerheads and the shrimp fishery have also been declining because of reductions in fishing effort unrelated to fisheries management actions. The 2002 Opinion take estimates were based in part on fishery effort levels. In recent years, low shrimp prices, rising fuel costs, competition with imported products, and the impacts of recent hurricanes in the Gulf of Mexico have all impacted the shrimp fleets; in some cases reducing fishing effort by as much as 50% for offshore waters of the Gulf of Mexico (GMFMC 2007). As a result, loggerhead interactions and mortalities in the Gulf of Mexico have been substantially less than were projected in the 2002 Opinion. In 2008, the NMFS Southeast Fisheries Science Center (SEFSC) estimated annual number of interactions between loggerheads and shrimp trawls in the Gulf of Mexico shrimp fishery to be 23,336, with 647 (2.8%) of those interactions resulting in mortality (Memo from Dr. B. Ponwith, Southeast Fisheries Science Center to Dr. R. Crabtree, Southeast Region, PRD, December 2008). However, the section 7 consultation on the shrimp fishery, completed in May 2012, was unable to estimate the total annual level of loggerhead interactions at present. Instead, it qualitatively estimated that the shrimp fishery, as currently operating, would result in at least thousands and possibly tens of thousands of interactions annually, of which at least hundreds and possibly thousands are expected to be lethal (NMFS 2012a).

Loggerhead sea turtles are also known to interact with non-shrimp trawl, gillnet, longline, dredge, pound net, pot/trap, and hook and line fisheries. The NRC (1990) report stated that other U.S. Atlantic fisheries collectively accounted for 500 to 5,000 loggerhead deaths each year, but recognized that there was considerable uncertainty in the estimate. The reduction of sea turtle captures in fishing operations is identified in recovery plans and five-year status reviews as a priority for the recovery of all sea turtle species. In the threats analysis of the loggerhead recovery plan, trawl bycatch is identified as the greatest source of mortality. Loggerhead bycatch in U.S. Mid-Atlantic bottom otter trawl gear has been previously estimated for the periods of 1996-2004 (Murray 2008) and 2005-2008 (Warden 2011), with the most recent bycatch analysis estimating the number of loggerhead sea turtle interactions with U.S. Mid-Atlantic bottom trawl gear from 2009-2013 (Murray 2015a). From 2009-2013, 1,156 loggerheads (95% CI: 908-1,488) were estimated to have interacted with bottom trawl gear in the U.S. Mid-Atlantic, of which 479 resulted in mortality. The total number of estimated interactions was equivalent to 166 adults, of which 68 resulted in mortality (Murray 2015a). That equates to an annual average of 231 loggerhead interactions (95% CI: 182-298) for the period of 2009-2013. The trawl fishery targeting Atlantic croaker in the southern Mid-Atlantic had the highest turtle interactions among fisheries investigated, which may be due to larger mesh sizes in the mouth of the trawl and high headline height of the gear. Murray (2015a) found that retained catch, depth, latitude, and sea surface temperature (SST) were associated with the interaction rate, with the rates being highest south of 37°N latitude in warm, shallow (<50 meters deep) waters. This estimate is a decrease from the average annual loggerhead bycatch in U.S. Mid-Atlantic bottom otter trawls during the 1996-2004 and 2005-2008 time periods, which were estimated to be 616 (95% CI: 367-890) and 352 turtles (95% CI: 276-439), respectively (Murray 2008; Warden 2011; Murray 2015a).

There have been several published estimates of the number of loggerheads interacting annually with the dredge fishery for Atlantic sea scallops, ranging from a low of zero in 2005 (Murray 2007) to a high of 749 in 2003 (Murray 2004). Murray (2011) re-evaluated loggerhead sea turtle interactions in scallop dredge gear from 2001-2008. In that paper, the average number of annual observable interactions of hard-shelled sea turtles in the Mid-Atlantic scallop dredge fishery prior to the implementation of chain mats (January 1, 2001 through September 25, 2006) was estimated to be 288 turtles (95% CI: 209-363) [equivalent to 49 adults], 218 of which were loggerheads [equivalent to 37 adults]. After the implementation of chain mats, the average annual number of observable interactions was estimated to be 20 hard-shelled sea turtles (95% CI: 3-42), 19 of which were loggerheads. If the rate of observable interactions from dredges without chain mats had been applied to trips with chain mats, the estimated number of observable and inferred interactions of hard-shelled sea turtles after chain mats were implemented would have been 125 turtles per year (95% CI: 88-163) [equivalent to 22 adults], 95 of which were loggerheads [equivalent to 16 adults]. Interaction rates of hard-shelled turtles were correlated with SST, depth, and use of a chain mat. Results from that analysis suggested that chain mats and fishing effort reductions contributed to the decline in estimated loggerhead sea turtle interactions with scallop dredge gear after 2006 (Murray 2011). A more recent analysis has indicated that the average annual observable sea turtle interactions in the Mid-Atlantic scallop dredge fishery plus unobserved, quantifiable interactions was 22 loggerheads per year (95% CI: 4-67), 9-19 of which were lethal (Murray 2015b). The 22 interactions equate to two adult equivalents per year and 1-2 adult equivalent mortalities. Thus, estimated interactions in the scallop dredge fishery have decreased relative to 2001-2008, although the utility of observers as a monitoring tool for turtle interactions in the fishery seems to be decreasing (Murray 2015b).

An estimate of the number of loggerheads interacting annually with U.S. Mid-Atlantic gillnet fisheries has also recently been published (Murray 2013). From 2007-2011, an annual average of 95 hard-shelled sea turtles (95% CI: 60-138) and 89 loggerheads (equivalent to nine adults) were estimated to have interacted with U.S. Mid-Atlantic gillnet gear. An estimated 52 annual loggerhead interactions (equivalent to five adults) were considered to result in mortality. Gillnet trips landing monkfish had the highest estimated number of loggerhead and hard-shelled sea turtle interactions during 2007-2011. Estimated rates and interactions have decreased relative to those from 1996-2006. Bycatch rates were correlated with latitude, SST, and mesh size. High interaction rates are estimated in the southern Mid-Atlantic, in warm surface temperature water, and in large-mesh gillnets; findings which are consistent with prior loggerhead bycatch analyses (Murray 2013).

The U.S. tuna and swordfish longline fisheries that are managed under the Highly Migratory Species (HMS) Fishery Management Plan (FMP) are estimated to capture 1,905 loggerheads (no more than 339 mortalities) for each three-year period starting in 2007 (NMFS 2004b). NMFS has mandated gear changes for the HMS fishery to reduce sea turtle bycatch and the likelihood of death from those incidental takes that would still occur (Garrison and Stokes 2017). In 2015, there were 30 observed interactions between loggerhead sea turtles and longline gear used in the HMS fishery (Garrison and Stokes 2017). All of the loggerheads were released alive, with 14 out of 30 (47%) released with all gear removed. A total of 242.6 (95% CI: 161.9-363.6) loggerhead sea turtles were estimated to have interacted with the longline fisheries managed under the HMS FMP in 2015 based on the observed bycatch events (Garrison and Stokes 2017).

Including the 2015 estimate, loggerhead interactions since 2000 have been below the historical highs that occurred in the mid-1990s (Garrison and Stokes 2017). Following the implementation of regulations, the bycatch dropped in 2005, but rebounded to be similar to the pre-regulation period. There appears to be a cyclical pattern in loggerhead bycatch rate occurring at four-year intervals since 1996 with a generally increasing trend over a four-year period, followed by a sharp decline. This cycle continued during the 2010-2015 period. The 2014 and 2015 estimates remain relatively low and seem to be consistent with an overall downward trend since the late 1990s. Notably, the estimate for 2015 was consistent with that from 2014 despite a sharp decline in fishing effort (Garrison and Stokes 2017). This fishery represents just one of several longline fisheries operating in the Atlantic Ocean. Lewison *et al*. (2004) estimated that 150,000-200,000 loggerheads were taken in all Atlantic longline fisheries in 2000 (including the U.S. Atlantic tuna and swordfish longline fisheries as well as others).

Documented interactions also occur in other fishery gear types and by non-fishery mortality sources (e.g., hopper dredges, power plants, vessel collisions), although quantitative/qualitative estimates are only available for activities on which NMFS has consulted.

The most recent Recovery Plan for loggerhead sea turtles as well as the 2009 Status Review Report identifies global climate change as a threat to loggerhead sea turtles. However, trying to assess the likely effects of climate change on loggerhead sea turtles is extremely difficult given the uncertainty in all climate change models and the difficulty in determining the likely rate of temperature increases and the scope and scale of any accompanying habitat effects. Additionally, no significant climate change-related impacts to loggerhead sea turtle populations have been observed to date. Over the long-term, climate change related impacts are expected to influence biological trajectories on a century scale (Parmesan and Yohe 2003). As noted in the

2009 Status Review (Conant *et al*. 2009), impacts from global climate change induced by human activities are likely to become more apparent in future years (IPCC 2007). Climate change related increasing temperatures, sea level rise, changes in ocean productivity, and increased frequency of storm events may affect loggerhead sea turtles.

Increasing temperatures are expected to result in rising sea levels (Titus and Narayanan 1995 in Conant *et al*. 2009), which could result in increased erosion rates along nesting beaches. Sea level rise could result in the inundation of nesting sites and decrease available nesting habitat (Daniels *et al*. 1993; Fish *et al*. 2005; Baker *et al*. 2006). The BRT noted that the loss of habitat as a result of climate change could be accelerated due to a combination of other environmental and oceanographic changes such as an increase in the frequency of storms and/or changes in prevailing currents, both of which could lead to increased beach loss via erosion (Antonelis *et al*. 2006; Baker *et al*. 2006; both in Conant *et al*. 2009). Along developed coastlines, and especially in areas where erosion control structures have been constructed to limit shoreline movement, rising sea levels may cause severe effects on nesting females and their eggs as nesting females may deposit eggs seaward of the erosion control structures potentially subjecting them to repeated tidal inundation. However, if global temperatures increase and there is a range shift northwards, beaches not currently used for nesting may become available for loggerhead sea turtles, which may offset some loss of accessibility to beaches in southern portions of the range.

Climate change also has the potential to result in changes at nesting beaches that may affect loggerhead sex ratios. Loggerhead sea turtles exhibit temperature-dependent sex determination. Rapidly increasing global temperatures may result in warmer incubation temperatures and highly female-biased sex ratios (e.g., Glen and Mrosovsky 2004; Hawkes *et al*. 2009); however, to the extent that nesting can occur at beaches further north where sand temperatures are not as warm, these effects may be partially offset. The BRT specifically identified climate change as a threat to loggerhead sea turtles in the neritic/oceanic zone where climate change may result in future trophic changes, thus impacting loggerhead prey abundance and/or distribution. In the threats matrix analysis, climate change was considered for oceanic juveniles and adults as well as for eggs/hatchlings. The report states that for oceanic juveniles and adults, "although the effect of trophic level change from…climate change…is unknown it is believed to be very low." For eggs/hatchlings, the report states that total mortality from anthropogenic causes, including sea level rise resulting from climate change, is believed to be low relative to the entire life stage. However, only limited data are available on past trends related to climate effects on loggerhead sea turtles; current scientific methods are not able to reliably predict the future magnitude of climate change, associated impacts, whether and to what extent some impacts will offset others, or the adaptive capacity of this species.

While there is a reasonable degree of certainty that certain climate change related effects will be experienced globally (e.g., rising temperatures and changes in precipitation patterns), due to a lack of scientific data, the specific effects to sea turtles resulting from climate change, and the severity of and rate at which these impacts will occur, are not predictable or quantifiable at this time (Hawkes *et al*. 2009). Nonetheless, it is likely that once climate change impacts get to a certain level, there will be feedback loops that may cause indications of climate change (e.g., increases in greenhouse gas concentrations, rising global temperatures, and sea level rise) to get much worse much more quickly (Torn and Harte 2006).

In terms of “climate forcing” (which is different from what we are defining as “climate change,” in that it also factors in the effects of cyclical climate patterns such as the North Atlantic and Pacific Decadal Oscillations in addition to ongoing effects from anthropogenically-induced changes in climate under Intergovernmental Panel on Climate Change [IPCC] projections), Van Houtan and Halley (2011) recently developed climate-based models to investigate loggerhead nesting in the Northwest Atlantic and North Pacific. These models, which considered juvenile recruitment and breeding remigration, found that climate conditions/oceanographic influences explain loggerhead nesting variability, with climate models alone explaining an average of 60% (range 18%-88%) of the observed nesting changes over the past several decades. Hindcasts indicate that climatic conditions may have been a factor in past nesting declines in both the Atlantic and Pacific. However, in terms of future nesting projections, modeled climate data show a future positive trend for Atlantic nesting in Florida, with substantial increases through 2040 as a result of the Atlantic Multidecadal Oscillation signal (Van Houton and Halley 2011). Thus, independent of any dramatic losses of sea turtle nesting habitat in the Northwest Atlantic due to climate change, NWA DPS loggerheads are expected to increase their nesting output over the next few decades. Van Houton and Halley (2011) did not project nesting trends in the Northwest Atlantic beyond 2040 as forecasting beyond that point was not deemed possible given their methods. Much like our analyses of climate change, climate forcing analyses can only predict so far into the future.

Summary of Status for the Northwest Atlantic DPS of Loggerhead Sea Turtles
Loggerheads continue to be affected by many factors occurring on nesting beaches and in the water. These include poaching, habitat loss, and nesting predation that affects eggs, hatchlings, and nesting females on land, as well as fishery interactions, vessel interactions, marine pollution, and non-fishery (e.g., dredging) operations affecting all sexes and age classes in the water (NRC 1990; NMFS and USFWS 2007a, 2008). As a result, loggerheads still face many of the original threats that were the cause of their listing under the ESA.

As mentioned previously, a final revised recovery plan for loggerhead sea turtles in the Northwest Atlantic was published by NMFS and USFWS in December 2008. The revised recovery plan is significant in that it identifies five unique recovery units, which comprise the population of loggerheads in the Northwest Atlantic, and describes specific recovery criteria for each recovery unit. The recovery plan noted a decline in annual nest counts for three of the five recovery units for loggerheads in the Northwest Atlantic, including the PFRU, which is the largest (in terms of number of nests laid) in the Atlantic Ocean. The nesting trends for the other two recovery units could not be determined due to an absence of long term data.

NMFS convened a new Loggerhead Turtle Expert Working Group (TEWG) to review all available information on Atlantic loggerheads in order to evaluate the status of this species in the Atlantic. A final report from the Loggerhead TEWG was published in July 2009. In this report, the TEWG indicated that it could not determine whether the decreasing annual numbers of nests among the Northwest Atlantic loggerhead subpopulations were due to stochastic processes resulting in fewer nests, a decreasing average reproductive output of adult females, decreasing numbers of adult females, or a combination of these factors. Many factors are responsible for past or present loggerhead mortality that could impact current nest numbers; however, no single mortality factor stands out as a likely primary factor. It is likely that several factors compound to create the current decline, including incidental capture (in fisheries, power plant intakes, and dredging operations), lower adult female survival rates, increases in the proportion of first-time nesters, continued directed harvest, and increases in mortality due to disease. Regardless, the TEWG stated that "it is clear that the current levels of hatchling output will result in depressed recruitment to subsequent life stages over the coming decades" (TEWG 2009). However, the report does not provide information on the rate or amount of expected decrease in recruitment but goes on to state that the ability to assess the current status of loggerhead stocks is limited due to a lack of fundamental life history information and specific census and mortality data.

While several documents reported the decline in nesting numbers in the NWA DPS (NMFS and USFWS 2008, TEWG 2009), when nest counts through 2010 are analyzed, the nesting trends from 1989-2010 are not significantly different than zero for all recovery units within the NWA DPS for which there are enough data to analyze (76 FR 58868, September 22, 2011). The SEFSC (2009) estimated the number of adult females in the NWA DPS at 30,000, and if a 1:1 adult sex ratio is assumed, the result is 60,000 adults in this DPS. Based on the reviews of nesting data, as well as information on population abundance and trends, NMFS and USFWS determined in the September 2011 listing rule that the NWA DPS should be listed as threatened. They found that an endangered status for the NWA DPS was not warranted given the large size of the nesting population, the overall nesting population remains widespread, the trend for the nesting population appears to be stabilizing, and substantial conservation efforts are underway to address threats. On July 10, 2014, we published a final rule designating critical habitat for NWA DPS (79 FR 39856). Specific areas designated include 38 occupied marine areas within the range of the Northwest Atlantic Ocean DPS. These areas contain one or a combination of habitat types: nearshore reproductive habitat, winter area, breeding areas, constricted migratory corridors, and/or *Sargassum* habitat.

4.2.1.2 Status of Kemp's Ridley Sea Turtles

Listing History

The Kemp's ridley sea turtle was listed as endangered on December 2, 1970 (35 FR 18319). The most recent status review was completed in 2015; no change in listing status was recommended. NMFS and USFWS were petitioned to designate critical habitat for Kemp's ridleys on February 17, 2010; no listing determination has been made.

Distribution and Life History

The Kemp's ridley is one of the least abundant of the world's sea turtle species. In contrast to loggerhead, green, and leatherback sea turtles, which are found in multiple oceans of the world, Kemp's ridleys typically occur only in the Gulf of Mexico and the northwestern Atlantic Ocean (NMFS *et al.* 2011); a very small number of individuals have been documented in the Mediterranean Sea (Tomas and Raga 2008).

Kemp's ridleys likely mature at 10-18 years of age (Caillouet *et al.* 1995; Schmid and Witzell 1997; Shaver and Wibbels 2007; Snover *et al.* 2007; NMFS and USFWS 2015). Nesting occurs from April through July each year with hatchlings emerging after 45-58 days (NMFS *et al.* 2011). Females lay an average of 2.5 clutches within a season (TEWG 1998, 2000) and the mean remigration interval for adult females is two years (Márquez *et al.* 1982; TEWG 1998, 2000).

Once they leave the nesting beach, hatchlings presumably enter the Gulf of Mexico where they feed on available S*argassum* and associated infauna or other epipelagic species (NMFS *et al.* 2011). The presence of juvenile turtles along both the U.S. Atlantic and Gulf of Mexico coasts, where they are recruited to the coastal benthic environment, indicates that post-hatchlings are distributed in both the Gulf of Mexico and Atlantic Ocean (TEWG 2000).

The location and size classes of dead turtles recovered by the Sea Turtle Stranding and Salvage Network (STSSN) suggests that benthic immature developmental areas occur along the U.S. coast and that these areas may change given resource quality and quantity (TEWG 2000). Developmental habitats are defined by several characteristics, including coastal areas sheltered from high winds and waves such as embayments and estuaries, and nearshore temperate waters shallower than 50 meters (NMFS and USFWS 2015). The suitability of these habitats depends on resource availability, with optimal environments providing rich sources of crabs and other invertebrates. Kemp's ridleys consume a variety of crab species, including *Callinectes*, *Ovalipes*, *Libinia*, and *Cancer* species. Mollusks, shrimp, and fish are consumed less frequently (Bjorndal 1997). A wide variety of substrates have been documented to provide good foraging habitat, including seagrass beds, oyster reefs, sandy and mud bottoms, and rock outcroppings (NMFS and USFWS 2015).

Foraging areas documented along the U.S. Atlantic coast include Charleston Harbor, Pamlico Sound (Epperly *et al.* 1995c), Chesapeake Bay (Musick and Limpus 1997), Delaware Bay (Stetzar 2002), and Long Island Sound (Morreale and Standora 1993; Morreale *et al.* 2005). For instance, in the Chesapeake Bay, Kemp's ridleys frequently forage in submerged aquatic grass beds for crabs (Musick and Limpus 1997). Upon leaving Chesapeake Bay in the fall, juvenile Kemp's ridleys migrate down the coast, passing Cape Hatteras in December and January (Musick and Limpus 1997). These larger juveniles are joined by juveniles of the same size from North Carolina and smaller juveniles from New York and New England to form one of the densest concentrations of Kemp's ridleys outside of the Gulf of Mexico (Epperly *et al.* 1995a, 1995b; Musick and Limpus 1997).

Adult Kemp's ridleys are found in the coastal regions of the Gulf of Mexico and southeastern U.S., but are typically rare in the northeastern U.S. waters of the Atlantic (TEWG 2000). Adults are primarily found in nearshore waters of 68 meters or less (mean 33.2 ± 25.3 kilometers from shore) that are rich in crabs and have a sandy or muddy bottom (NMFS and USFWS 2015).

Population Dynamics and Status

The majority of Kemp's ridleys nest along a single stretch of beach near Rancho Nuevo, Tamaulipas, Mexico (Carr 1963; NMFS *et al.* 2011; NMFS and USFWS 2015). There is a limited amount of scattered nesting to the north and south of the primary nesting beach (NMFS and USFWS 2015). Nesting often occurs in synchronized emergences termed *arribadas*. The number of recorded nests reached an estimated low of 702 nests in 1985, estimated to be fewer than 250 adult females nesting in that season (TEWG 2000; NMFS *et al.* 2011; NMFS and USFWS 2015). Conservation efforts by Mexican and U.S. agencies have aided this species by eliminating egg harvest, protecting eggs and hatchlings, and reducing at-sea mortality through fishing regulations (TEWG 2000). From the mid-1980s to the early 2000s, the number of nests observed at Rancho Nuevo and nearby beaches increased 14-16% per year (Heppell *et al.* 2005), allowing cautious optimism that the population was on its way to recovery. The total number of nests for all of Mexico was 22,458 in 2012 (the highest nesting total recorded since 1947), but fell back to 16,944 in 2013 and 12,060 in 2014. Based on an average of 2.5 nests per female per nesting season (NMFS *et al.* 2011), the total number of nests on Mexico beaches represented about 8,984 nesting females in 2012, 6,778 in 2013, and 4,824 in 2014 (NMFS and USFWS 2015). Similar to Mexico, Texas also experienced an overall increase in the number of nests since 2000. At Padre Island National Seashore, the number of observed nests hit an all-time high of 209 in 2012, but then fell back to 153 in 2013 and 119 in 2014 (NMFS and USFWS 2015). The most recent five-year review (NMFS and USFWS 2015) suggests that the population growth rate (measured by numbers of nests) stopped abruptly after 2009, possibly due to the Deepwater Horizon oil spill and other anthropogenic factors such as fisheries bycatch and climate change. Given the lower nesting numbers from 2009-2014, the population was not projected to grow at former rates in 2015. Recent data, however, indicates an increase in nesting. In 2015, there were 14,006 recorded nests in Mexico, and in 2016 overall numbers increased to 18,354 recorded nests (Gladys Porter Zoo 2016). Preliminary information indicates a record high nesting season in 2017, with 24,570 nests recorded on Mexican beaches (J. Pena, pers. comm., 2017). At this time, it is unclear if future Kemp's ridley nesting will steadily and continuously increase, similar to what occurred from 1990-2009, or if nesting will continue to exhibit sporadic declines and increases as recorded in the past eight years.

A small nesting population is also emerging in the U.S., primarily at Padre Island National Seashore in Texas, rising from six nests in 1996, to 42 in 2004, to a record high of 353 nests in 2017 (https://www.nps.gov/pais/learn/nature/2017-nesting-season.htm). It is worth noting that nesting in Texas has paralleled the trends observed in Mexico, with an overall increase in nests from 2000-2009, a significant decline in 2010, an all-time high in 2012, followed by a second decline in 2013-2014, and a rebound from 2015-2017 (NMFS and USFWS 2015).

Threats

Kemp's ridley sea turtles face many of the same natural threats as loggerheads, including destruction of nesting habitat from storm events, predators, and oceanographic-related events such as cold-stunning. Although cold-stunning can occur throughout the range of the species, it may be a greater risk for Kemp's ridleys that use the more northern habitats of Cape Cod Bay and Long Island Sound. From 2009-2013, the number of cold-stunned Kemp's ridleys on Massachusetts beaches averaged 185 turtles (NMFS unpublished data). The numbers ranged from a low of 132 in 2011 to a high of 235 in 2012. However, in 2014, the number of cold-stunned Kemp's ridleys documented in Massachusetts skyrocketed to 1,179, of which 466 died (NMFS unpublished data). As evidenced by this drastic increase, annual cold stun events can vary greatly in magnitude. The extent of episodic major cold stun events may be associated with numbers of sea turtles utilizing Northeast U.S. waters in a given year, oceanographic conditions, and/or the occurrence of storm events in the late fall. Although many cold-stunned turtles can survive if they are found early enough, these events represent a significant source of natural mortality for Kemp's ridley sea turtles.

Like other sea turtle species, the severe decline in the Kemp's ridley population appears to have been heavily influenced by a combination of exploitation of eggs and impacts from fishery interactions. From the 1940s through the early 1960s, nests from Ranch Nuevo were heavily exploited, but beach protection in 1967 helped to curtail this activity (NMFS *et al.* 2011). Following World War II, there was a substantial increase in the number of trawl vessels, particularly shrimp trawlers, in the Gulf of Mexico where adult Kemp's ridley sea turtles occur. Information from fisheries observers helped to demonstrate the high number of turtles captured in these shrimp trawls (USFWS and NMFS 1992). Subsequently, NMFS has worked with the industry to reduce sea turtle captures in shrimp trawls and other trawl fisheries, including the development and use of TEDs. As described above, there is lengthy regulatory history on the use of TEDs in the U.S. South Atlantic and Gulf of Mexico shrimp fisheries (NMFS 2002; Epperly 2003; Lewison *et al.* 2003). The 2002 Opinion on shrimp trawling in the southeastern U.S. concluded that 155,503 Kemp's ridley sea turtles would be captured annually in the fishery with 4,208 of the captures resulting in mortality (NMFS 2002).

Although modifications to shrimp trawls have helped to reduce mortality of Kemp's ridleys, a recent assessment found that the Southeast/Gulf of Mexico shrimp trawl fishery remained responsible for the vast majority of U.S. fishery interactions (up to 98%) and mortalities (more than 80%). Finkbeiner *et al.* (2011) compiled cumulative sea turtle bycatch information in U.S. fisheries from 1990 through 2007, before and after implementation of bycatch mitigation measures. Information was obtained from peer reviewed publications and NMFS documents (e.g., Opinions and bycatch reports). In the Atlantic, a mean estimate of 137,700 bycatch interactions, of which 4,500 were mortalities, occurred annually (since implementation of bycatch mitigation measures). Kemp's ridleys interacted with fisheries most frequently, with the highest level of mean annual mortality (2,700), followed by loggerheads (1,400), greens (300), and leatherbacks (40). While this provides an initial cumulative bycatch assessment, there are a number of caveats that should be considered when interpreting this information, such as sampling inconsistencies and limitations. The most recent section 7 consultation on the shrimp fishery, completed in May 2012, was unable to estimate the total annual level of Kemp's ridley interactions occurring in the fishery. Instead, it qualitatively estimated that the shrimp fishery, as currently operating, would result in at least tens of thousands and possibly hundreds of thousands of interactions annually, of which at least thousands and possibly tens of thousands are expected to be lethal (NMFS 2012a).

This species is also affected by other sources of anthropogenic impact (fishery and non-fishery related), similar to those discussed above. One Kemp's ridley capture in Mid-Atlantic trawl fisheries was documented by NMFS observers between 2009 and 2013 (Murray 2015b), and five Kemp's ridleys were documented by NMFS observers in Mid-Atlantic sink gillnet fisheries between 2007 and 2011 (Murray 2013). Additionally, in the spring of 2000, five Kemp's ridley carcasses were recovered from the same North Carolina beaches where 275 loggerhead carcasses were found. The cause of death for most of the turtles recovered was unknown, but the mass mortality event was suspected by NMFS to have been from a large-mesh gillnet fishery for monkfish and dogfish operating offshore in the preceding weeks (67 FR 71895, December 3, 2002). The five Kemp's ridley carcasses that were found are likely to have been only a minimum count of the number of Kemp's ridleys that were killed or seriously injured as a result of the fishery interaction, since it is unlikely that all of the carcasses washed ashore. The NEFSC also documented 14 Kemp's ridleys entangled in or impinged on Virginia pound net leaders from 2002-2005. Note that bycatch estimates for Kemp's ridleys in various fishing gear types (e.g., trawl, gillnet, dredge) are not available at this time, largely due to the low number of observed interactions precluding a robust estimate. Kemp's ridley interactions in non-fisheries have also been observed; for example, the Oyster Creek Nuclear Generating Station in Barnegat Bay, New Jersey, recorded a total of 56 Kemp's ridleys (36 of which were found alive) impinged or captured on their intake screens from 1992-2011 (NMFS 2011).

The recovery plan for Kemp's ridley sea turtles (NMFS *et al*. 2011) identifies climate change as a threat; however, as with the other species discussed above, no significant climate change-related impacts to Kemp's ridley sea turtles have been observed to date. Atmospheric warming could cause habitat alteration which may change food resources such as crabs and other invertebrates. It may increase hurricane activity, leading to an increase in debris in nearshore and offshore waters, which may result in an increase in entanglement, ingestion, or drowning. In addition, increased hurricane activity may cause damage to nesting beaches or inundate nests with sea water. Atmospheric warming may change convergence zones, currents, and other oceanographic features that are relevant to Kemp's ridleys, as well as change rain regimes and levels of nearshore runoff.

Considering that the Kemp's ridley has temperature-dependent sex determination (Wibbels 2003) and the vast majority of the nesting range is restricted to the State of Tamaulipas, Mexico, global warming could potentially shift population sex ratios towards females and thus change the reproductive ecology of this species. A female bias is presumed to increase egg production (assuming that the availability of males does not become a limiting factor) (Coyne and Landry 2007) and increase the rate of recovery; however, it is unknown at what point the percentage of males may become insufficient to facilitate maximum fertilization rates in a population. If males become a limiting factor in the reproductive ecology of the Kemp's ridley, then reproductive output in the population could decrease (Coyne 2000). Low numbers of males could also result in the loss of genetic diversity within a population; however, there is currently no evidence that this is a problem in the Kemp's ridley population (NMFS *et al*. 2011). Models (Davenport 1997, Hulin and Guillon 2007, Hawkes *et al*. 2007, all referenced in NMFS *et al*. 2011) predict very long-term reductions in fertility in sea turtles due to climate change, but due to the relatively long life cycle of sea turtles, reductions may not be seen until 30 to 50 years in the future.

Another potential impact from global climate change is sea level rise, which may result in increased beach erosion at nesting sites. Beach erosion may be accelerated due to a combination of other environmental and oceanographic changes such as an increase in the frequency of storms and/or changes in prevailing currents. In the case of the Kemp's ridley where most of the critical nesting beaches are undeveloped, beaches may shift landward and still be available for nesting. The Padre Island National Seashore shoreline is accreting, unlike much of the Texas coast, and with nesting increasing and sand temperatures slightly cooler than at Rancho Nuevo, Padre Island could become an increasingly important source of males for the population.

As with the other sea turtle species discussed in this section, while there is a reasonable degree of certainty that certain climate change related effects will be experienced globally (e.g., rising temperatures and changes in precipitation patterns), due to a lack of scientific data, the specific effects of climate change on this species are not predictable or quantifiable at this time (Hawkes *et al*. 2009). Based on the most recent five-year status review (NMFS and USFWS 2015), and following from the climate change discussion on loggerheads, significant impacts from climate change in the future are to be expected, but the severity of and rate at which these impacts will occur is currently unknown.

Summary of Status for Kemp's Ridley Sea Turtles

The majority of Kemp's ridleys nest along a single stretch of beach near Rancho Nuevo, Tamaulipas, Mexico (Carr 1963; NMFS *et al.* 2011; NMFS and USFWS 2015). The number of nesting females in the Kemp's ridley population declined dramatically from the late 1940s through the mid-1980s, with an estimated 40,000 nesting females in a single *arribada* in 1947 and fewer than 300 nesting females in the entire 1985 nesting season (TEWG 2000; NMFS *et al.* 2011). However, the total annual number of nests at Rancho Nuevo gradually began to increase in the 1990s and 2000s (NMFS and USFWS 2015). Based on an average of 2.5 nests per female per nesting season (NMFS *et al.* 2011), the total number of nests on Mexico beaches represented about 4,824 nesting females in 2014 (NMFS and USFWS 2015).The number of adult males in the population is unknown, but sex ratios of hatchlings and immature Kemp's ridleys suggest that the population is female-biased, suggesting that the number of adult males is less than the number of adult females (NMFS and USFWS 2015). While there is still potential for recovery, factors such as the Deepwater Horizon oil spill, an overall decrease in the number of nests since 2009, climate change, and stranding events associated increased skimmer trawl use and poor TED compliance in the northern Gulf of Mexico may have dampened recent population growth.

As with the other sea turtle species, fishery mortality accounts for a large proportion of annual human-caused mortality outside the nesting beaches, while other activities like dredging, pollution, and habitat destruction also contribute to annual human caused mortality, but the levels are unknown. A revised bi-national recovery plan was published in September 2011 by the NMFS, USFWS, and the Secretary of Environment and Natural Resources, Mexico (SEMARNAT) to address these ongoing threats. Based on their recent five-year status review of the species, NMFS and USFWS (2015) determined that Kemp's ridley sea turtles should remain classified as endangered under the ESA and that the Recovery Priority Number for the species be changed from a '5' to a '1.' A recovery priority 1 is defined as a species whose extinction is almost certain in the immediate future because of a rapid population decline or habitat destruction, whose limiting factors and threats are well understood and the needed management actions are known and have a high probability of success, and is a species that is in conflict with construction or other developmental projects or other forms of economic activity.

4.2.1.3 Status of Green Sea Turtles – North Atlantic DPS

Green sea turtles are distributed circumglobally, occurring throughout tropical, subtropical waters, and, to a lesser extent, temperate waters. They can be found in the Pacific, Indian, and Atlantic Oceans as well as the Mediterranean Sea (NMFS and USFWS 1991, 2007b; Seminoff 2004; Seminoff *et al.* 2015). Their movements within the marine environment are not fully understood, but it is believed that green sea turtles inhabit coastal waters of over 140 countries (Groombridge and Luxmoore 1989).

Listing History

The green sea turtle was originally listed under the ESA on July 28, 1978 (43 FR 32800). Breeding populations of the green sea turtle in Florida and along the Pacific coast of Mexico were listed as endangered; while all other populations were listed as threatened. The major factors contributing to its status at the time included human encroachment and associated activities on nesting beaches; commercial harvest of eggs, subadults, and adults; predation; lack of comprehensive and consistent protective regulations; and incidental take in fisheries. Marine critical habitat for the green sea turtle was designated on September 2, 1998, for the waters surrounding Culebra Island, Puerto Rico, and its outlying keys (63 FR 46693).

On April 6, 2016, the NMFS and USFWS issued a final determination that the green sea turtle is comprised of eleven DPSs, constituting the "species," to be listed as threatened or endangered under the ESA (81 FR 20058). Effective May 6, 2016, three DPSs were listed as endangered, eight as threatened. The April 2016 final rule replaced the 1978 global listing of green sea turtles.

In the final ESA listing decision, the NMFS and USFWS listed eleven green sea turtle DPSs distributed globally: (1) North Atlantic (threatened), (2) Mediterranean (endangered), (3) South Atlantic (threatened), (4) Southwest Indian (threatened), (5) North Indian (threatened), (6) East Indian-West Pacific (threatened), (7) Central West Pacific (endangered), (8) Southwest Pacific (threatened), (9) Central South Pacific (endangered), (10) Central North Pacific (threatened), and (11) East Pacific (threatened) (81 FR 20058; April 6, 2016). Based on the best available scientific and commercial data, only one listed DPS is likely to occur in the action area, the threatened North Atlantic DPS. The range of the North Atlantic DPS extends from the boundary of South and Central America, north along the coast to include Panama, Costa Rica, Nicaragua, Honduras, Belize, Mexico, and the U.S. It extends due east across the Atlantic Ocean at 48°N and follows the coast south to include the northern portion of the Islamic Republic of Mauritania (Mauritania) on the African continent to 19°N. It extends west at 19°N to the Caribbean basin to 65.1°W, then due south to 14°N, 65.1°W, then due west to 14°N, 77°W, and due south to 7.5°N, 77°W, the boundary of South and Central America. It includes Puerto Rico, the Bahamas, Cuba, Turks and Caicos Islands, Republic of Haiti, Dominican Republic, Cayman Islands, and Jamaica. The North Atlantic DPS includes the Florida breeding population, which was originally listed as endangered under the ESA (43 FR 32800; July 28, 1978).

In regards to discreteness, North Atlantic DPS populations of green sea turtles exhibit minimal mixing with the adjacent South Atlantic DPS and no mixing with the adjacent Mediterranean DPS. Occasionally, juvenile turtles from the North Atlantic may settle into foraging grounds in the South Atlantic or Mediterranean, while adult turtles nesting at sites in the equatorial region of the North Atlantic may travel to, and reside at, foraging grounds in the South Atlantic (Troëng *et al*. 2005). However, the reverse (i.e., turtles from the South Atlantic or Mediterranean DPS settling in North Atlantic waters) has yet to be documented. Furthermore, green sea turtles from the Mediterranean DPS appear to be spatially separated from populations in the Atlantic Ocean (Seminoff *et al*. 2015).

Distribution and Life History
Green sea turtles were once the target of directed fisheries in the U.S. and throughout the Caribbean. In 1890, over one million pounds of green sea turtles were captured in a directed fishery in the Gulf of Mexico (Doughty 1984). However, declines in the turtle fishery throughout the Gulf of Mexico were evident by 1902 (Doughty 1984).

In the North Atlantic, large juvenile and adult green sea turtles are largely herbivorous, occurring in habitats containing benthic algae and seagrasses from Massachusetts to Central America, including the Gulf of Mexico and Caribbean (Wynne and Schwartz 1999). Green sea turtles occur seasonally in U.S. Mid-Atlantic and Northeast waters such as Chesapeake Bay and Long Island Sound (Musick and Limpus 1997; Morreale and Standora 1998; Morreale *et al.* 2005), which serve as foraging and developmental habitats.

Some of the principal feeding areas in the North Atlantic Ocean include the upper west coast of Florida, the Florida Keys, and the northwestern coast of the Yucatán Peninsula. Additional important foraging areas in the western Atlantic include the Mosquito and Indian River Lagoon systems and nearshore wormrock reefs between Sebastian and Fort Pierce Inlets in Florida, Florida Bay, the Culebra archipelago and other Puerto Rico coastal waters, the south coast of Cuba, the Mosquito Coast of Nicaragua, and the Caribbean coast of Panama (Hirth 1971).

Age at maturity for green sea turtles is estimated to be 20-50 years (Balazs 1982; Frazer and Ehrhart 1985; Seminoff 2004). Adult females may nest multiple times in a season (average three nests/season with approximately 100 eggs/nest) and typically do not nest in successive years (NMFS and USFWS 1991; Hirth 1997).

Population Dynamics and Status
Nest count information for green sea turtles provides information on the relative abundance of nesting, and the contribution of each nesting group to total nesting of the species. Nest counts can also be used to estimate the number of reproductively mature females nesting annually. The North Atlantic DPS contains an estimated 167,424 females nesting at 73 sites (81 FR 20058).

In 2015, the Green Turtle Status Review Team (SRT) identified those 73 nesting sites within the North Atlantic DPS, although some represent numerous individual beaches. There are four regions that support high density nesting concentrations for which data were available: Costa Rica (Tortuguero), Mexico (Campeche, Yucatan, and Quintana Roo), U.S. (Florida), and Cuba. Nester abundance was assessed by the SRT for 48 nesting sites within the North Atlantic DPS. Abundance was estimated using the best scientific information available. Remigration intervals and clutch frequencies were used to estimate total nester abundance when counts of nesters were not available. In terms of nester distribution, the largest nesting site (Tortuguero, Costa Rica) hosts 79% of total nester abundance (167,528 nesters). There were also 26 nesting sites for which there were qualitative reports of nesting activity but no nesting data: three in the Bahamas, three in Belize, one in Costa Rica, four in Cuba, one in the Dominican Republic, one in Haiti, six in Honduras, two in Jamaica, one in Mauritania, one in Panama, and three in the Turks and Caicos Islands (Seminoff *et al.* 2015). Green turtle nesting populations in the North Atlantic are some of the most studied in the world, with time series exceeding 40 years in Costa Rica and 35 years in Florida. There are seven sites for which ten years or more of recent data are available for annual nester abundance.

By far, the most important nesting concentration for green sea turtles in the North Atlantic DPS is in Tortuguero, Costa Rica (Seminoff *et al.* 2015). This population has been studied since the 1950s and nesting has increased markedly since the early 1970s. From 1971 to 1975, there were approximately 41,250 nesting emergences per year and from 1992 to 1996 there were approximately 72,200 nesting emergences per year (Bjorndal *et al.* 1999). From 1999 to 2003, about 104,411 nests/year were deposited, which corresponds to approximately 17,402-37,290 nesting females each year (Troëng and Rankin 2005). An estimated 180,310 nests were laid during 2010, the highest level of green sea turtle nesting estimated since the start of nesting track surveys in 1971. This equates to 30,052-64,396 nesters in 2010. This increase has occurred despite substantial human impacts to the population at the nesting beach and at foraging areas (Troëng 1998; Campbell and Lagueux 2005; Troëng and Rankin 2005). The number of females nesting per year on beaches in Mexico, Florida, and Cuba number in the hundreds to low thousands, depending on the site (Seminoff *et al.* 2015).

The 2015 status review also evaluated the status of the Florida breeding population (Seminoff *et al.* 2015). In Florida, nesting occurs in coastal areas of all regions except the Big Bend area of west central Florida. The bulk of nesting occurs along the Atlantic coast of eastern central Florida, where a mean of 5,055 nests were deposited each year from 2001 to 2005 (Meylan *et al.* 2006) and 10,377 each year from 2008 to 2012 (B. Witherington, Florida Fish and Wildlife Conservation Commission, pers. comm., 2013). Nesting has increased substantially over the last 20 years and peaked in 2011 with 15,352 nests statewide (Chaloupka *et al.* 2008; B. Witherington, Florida Fish and Wildlife Conservation Commission, pers. comm., 2013). The estimated total nester abundance for Florida is 8,426 turtles.

The pattern of green sea turtle nesting shows biennial peaks in abundance, with a generally positive trend since establishment of the Florida index beach surveys in 1989. This trend is perhaps due to increased protective legislation throughout the Caribbean (Meylan *et al.* 1995), as well as protections in Florida and throughout the U.S. (Seminoff *et al.* 2015). The statewide Florida index beach surveys (1989-2017) have shown that green sea turtle nest counts have increased over one hundredfold since 1989, from a low of 267 to a high of almost 39,000 in 2017 (http://myfwc.com/research/wildlife/sea-turtles/nesting/beach-survey-totals/). The last four odd-numbered years (2011, 2013, 2015, and 2017) have all broken previous records for the highest numbers of green sea turtle nests on Florida's index beaches.

Most nesting occurs along the east coast of Florida, but occasional nesting has been documented along the Gulf coast of Florida, at Southwest Florida beaches, as well as the beaches in the Florida Panhandle (Meylan *et al.* 1995). More recently, green sea turtle nesting occurred on Bald Head Island, North Carolina (just east of the mouth of the Cape Fear River), Onslow Island, and Cape Hatteras National Seashore. One green sea turtle nested on a beach in Delaware in 2011, although its occurrence was considered very rare.

Similar to the nesting trend found in Florida, in-water studies in Florida have also recorded increases in green sea turtle captures at the Indian River Lagoon site, with a 661% increase over

24 years (Ehrhart *et al.* 2007), and the St Lucie Power Plant site, with a significant increase in the annual rate of capture of immature green sea turtles (SCL<90 centimeters) from 1977 to 2002 or 26 years (3,557 green sea turtles total; Witherington *et al.* 2006).

Threats

Green sea turtles face many of the same natural threats as loggerhead and Kemp's ridley sea turtles. In addition, green sea turtles appear to be particularly susceptible to fibropapillomatosis, an epizootic disease producing lobe-shaped tumors on the soft portion of a turtle's body. Juveniles appear to have the highest incidence of disease and the most extensive lesions, whereas lesions in nesting adults are rare. Also, green sea turtles frequenting nearshore waters, areas adjacent to large human populations, and areas with low water turnover, such as lagoons, have a higher incidence of the disease than individuals in deeper, more remote waters. The occurrence of fibropapilloma tumors may result in impaired foraging, breathing, or swimming ability, leading potentially to death (George 1997).

Incidental fishery mortality accounts for a large proportion of annual human-caused mortality outside the nesting beaches. Witherington *et al.* (2009) observed that because green sea turtles spend a shorter time in oceanic waters, and as older juveniles occur on shallow seagrass pastures (where benthic trawling is unlikely), they avoid high mortalities in pelagic longline and benthic trawl fisheries. Although the relatively low number of observed green sea turtle captures makes it difficult to estimate bycatch rates and annual levels of interactions, green sea turtles have been observed captured in the pelagic driftnet, pelagic longline, southeast shrimp trawl, and Mid-Atlantic trawl and gillnet fisheries. Two green sea turtle captures in Mid-Atlantic trawl fisheries was documented by NMFS observers between 2009 and 2013, and there were 12 observed captures of green sea turtles in Mid-Atlantic sink gillnet gear between 2007 and 2011 (Murray 2009, 2015b).

Finkbeiner *et al.* (2011) compiled cumulative sea turtle bycatch information in U.S. fisheries from 1990 through 2007, before and after implementation of bycatch mitigation measures. Information was obtained from peer reviewed publications and NMFS documents (e.g., Opinions and bycatch reports). In the Atlantic, a mean estimate of 137,700 bycatch interactions, of which 4,500 were mortalities, occurred annually (since implementation of bycatch mitigation measures). Kemp's ridleys interacted with fisheries most frequently, with the highest level of mean annual mortality (2,700), followed by loggerheads (1,400), greens (300), and leatherbacks (40). The Southeast/Gulf of Mexico shrimp trawl fishery was responsible for the vast majority of U.S. interactions (up to 98%) and mortalities (more than 80%). While this provides an initial cumulative bycatch assessment, there are a number of caveats that should be considered when interpreting this information, such as sampling inconsistencies and limitations. The most recent section 7 consultation on the shrimp fishery, completed in May 2012, was unable to estimate the total annual level of green sea turtle interactions occurring in the fishery. Instead, it qualitatively estimated that the shrimp fishery, as currently operating, would result in at least hundreds and possibly low thousands of interactions annually, of which hundreds are expected to be lethal (NMFS 2012a).

Other activities like channel dredging, marine debris, pollution, vessel strikes, power plant impingement, and habitat destruction account for an unquantifiable level of other mortality.

Stranding reports indicate that between 200-400 green sea turtles strand annually along the eastern U.S. coast from a variety of causes most of which are unknown (STSSN database).

The most recent five-year status review for green sea turtles (Seminoff *et al.* 2015) notes that global climate change is affecting the species and will likely continue to be a threat. There is an increasing female bias in the sex ratio of green sea turtle hatchlings. While this is partly attributable to imperfect egg hatchery practices, global climate change is also implicated as a likely cause, as warmer sand temperatures at nesting beaches are likely to result in the production of more female embryos. Climate change may also impact nesting beaches through sea level rise which may reduce the availability of nesting habitat and increase the risk of nest inundation. Loss of appropriate nesting habitat may also be accelerated by a combination of other environmental and oceanographic changes, such as an increase in the frequency of storms and/or changes in prevailing currents, both of which could lead to increased beach loss via erosion. Oceanic changes related to rising water temperatures could result in changes in the abundance and distribution of the primary food sources of green sea turtles, which in turn could result in changes in behavior and distribution of this species. Seagrass habitats may suffer from decreased productivity and/or increased stress due to sea level rise, as well as salinity and temperature changes (Short and Neckles 1999; Duarte 2002).

As noted above, the increasing female bias in green sea turtle hatchlings is thought to be at least partially linked to increases in temperatures at nesting beaches. However, due to a lack of scientific data, the specific future effects of climate change on green sea turtles species are not predictable or quantifiable to any degree at this time (Hawkes *et al*. 2009). For example, information is not available to predict the extent and rate to which sand temperatures at the nesting beaches used by green sea turtles may increase in the short-term future and the extent to which green sea turtles may be able to cope with this change by selecting cooler areas of the beach or shifting their nesting distribution to other beaches at which increases in sand temperature may not be experienced. Based on the most recent five-year status review (Seminoff *et al.* 2015), and following from the climate change discussions on the other hard-shelled sea turtle species, significant impacts from climate change in the future are to be expected, but the severity of and rate at which these impacts will occur is currently unknown.

Summary of Status for the North Atlantic DPS of Green Sea Turtles

In the North Atlantic, nesting groups are considered to be doing relatively well (i.e., the number of sites with increasing nesting are greater than the number of sites with decreasing nesting) (Seminoff *et al.* 2015). However, given the late age to maturity for green sea turtles, caution is urged regarding the status of nesting groups in the North Atlantic DPS since no area has a dataset spanning a full green sea turtle generation (Seminoff *et al.* 2015).

Seminoff *et al.* (2015) concluded that green sea turtle abundance is increasing for four nesting sites in the North Atlantic. They also concluded that nesting at Tortuguero, Costa Rica represents the most important nesting area for green sea turtles in the North Atlantic and that nesting at Tortuguero has increased markedly since the 1970s (Seminoff *et al.* 2015). However, the five-year status review also noted that the Tortuguero nesting stock continues to be affected by ongoing directed captures at their primary foraging area in Nicaragua. The breeding population in Florida appears to be increasing rapidly in recent years based upon index nesting data from 1989-2015.

As with the other sea turtle species, fishery mortality accounts for a large proportion of annual human-caused mortality outside the nesting beaches, while other activities like hopper dredging, pollution, and habitat destruction also contribute to human caused mortality, though the level is unknown.

4.2.2 Status of Atlantic Sturgeon

The section below describes the Atlantic sturgeon listing, provides life history information that is relevant to all DPSs of Atlantic sturgeon, and then provides information specific to the status of each DPS of Atlantic sturgeon. Below, we also provide a description of the Atlantic sturgeon DPSs likely to occur in the action area and their use of the action area.

The Atlantic sturgeon is a subspecies of sturgeon distributed along the east coast of North America from Hamilton Inlet, Labrador, Canada, to Cape Canaveral, Florida (Scott and Scott 1988; ASSRT 2007). We have delineated U.S. populations of Atlantic sturgeon into five DPSs: Gulf of Maine (GOM), New York Bight (NYB), Chesapeake Bay (CB), Carolina, and South Atlantic (SA) (77 FR 5880 and 77 FR 5914; Figure 4)[6]. The results of genetic studies suggest that natal origin influences the distribution of Atlantic sturgeon in the marine environment (Wirgin and King 2011). However, satellite tracking and tagging data along with other genetic data demonstrate that Atlantic sturgeon from all five DPSs and Canada occur throughout the full range of the subspecies. Therefore, Atlantic sturgeon originating from any of the five DPSs can be affected by threats in the marine, estuarine, and riverine environment that occur far from natal spawning rivers.

At present, the NYB, CB, Carolina, and SA DPSs are listed as endangered, while the GOM DPS is listed as threatened (77 FR 5880 and 77 FR 5914; February 6, 2012). The effective date of the listings was April 6, 2012. The DPSs do not include Atlantic sturgeon that are spawned in Canadian rivers. Therefore, Canadian spawned fish are not included in the listings. As described below, individuals originating from all five listed DPSs are likely to occur in the action area. Information general to all Atlantic sturgeon as well as information specific to each DPS is provided below.

Life history

Atlantic sturgeon are long lived (approximately 60 years), late maturing, estuarine dependent, anadromous[7] fish (Bigelow and Schroeder 1953; Vladykov and Greeley 1963; Mangin 1964; Pikitch *et al.* 2005; Dadswell 2006; ASSRT 2007). They are relatively large fish, even amongst sturgeon species (Pikitch *et al.* 2005) and can grow to over 14 feet and weigh up to 800 pounds. Atlantic sturgeon are bottom feeders that suck food into a ventral protruding mouth (Bigelow and Schroeder 1953). Four barbels in front of the mouth assist the sturgeon in locating prey

[6] To be considered for listing under the ESA, a group of organisms must constitute a "species." A "species" is defined in section 3 of the ESA to include "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature."

[7] Anadromous refers to a fish that is born in freshwater, spends most of its life in the sea, and returns to freshwater to spawn (NEFSC FAQ's, available at http://www.nefsc.noaa.gov/faq/fishfaq1a.html, modified June 16, 2011)

(Bigelow and Schroeder 1953). Diets of adult and migrant subadult Atlantic sturgeon include mollusks, gastropods, amphipods, annelids, decapods, isopods, and fish such as sand lance (Bigelow and Schroeder 1953; ASSRT 2007; Guilbard *et al.* 2007; Savoy 2007). Juvenile Atlantic sturgeon feed on aquatic insects, larvae, and other invertebrates (Bigelow and Schroeder 1953; ASSRT 2007; Guilbard *et al.* 2007). The life history of Atlantic sturgeon can be divided into five general categories as described in Table 4 below (adapted from ASSRT 2007).

Figure 2. Map Depicting the 5 Atlantic Sturgeon DPSs

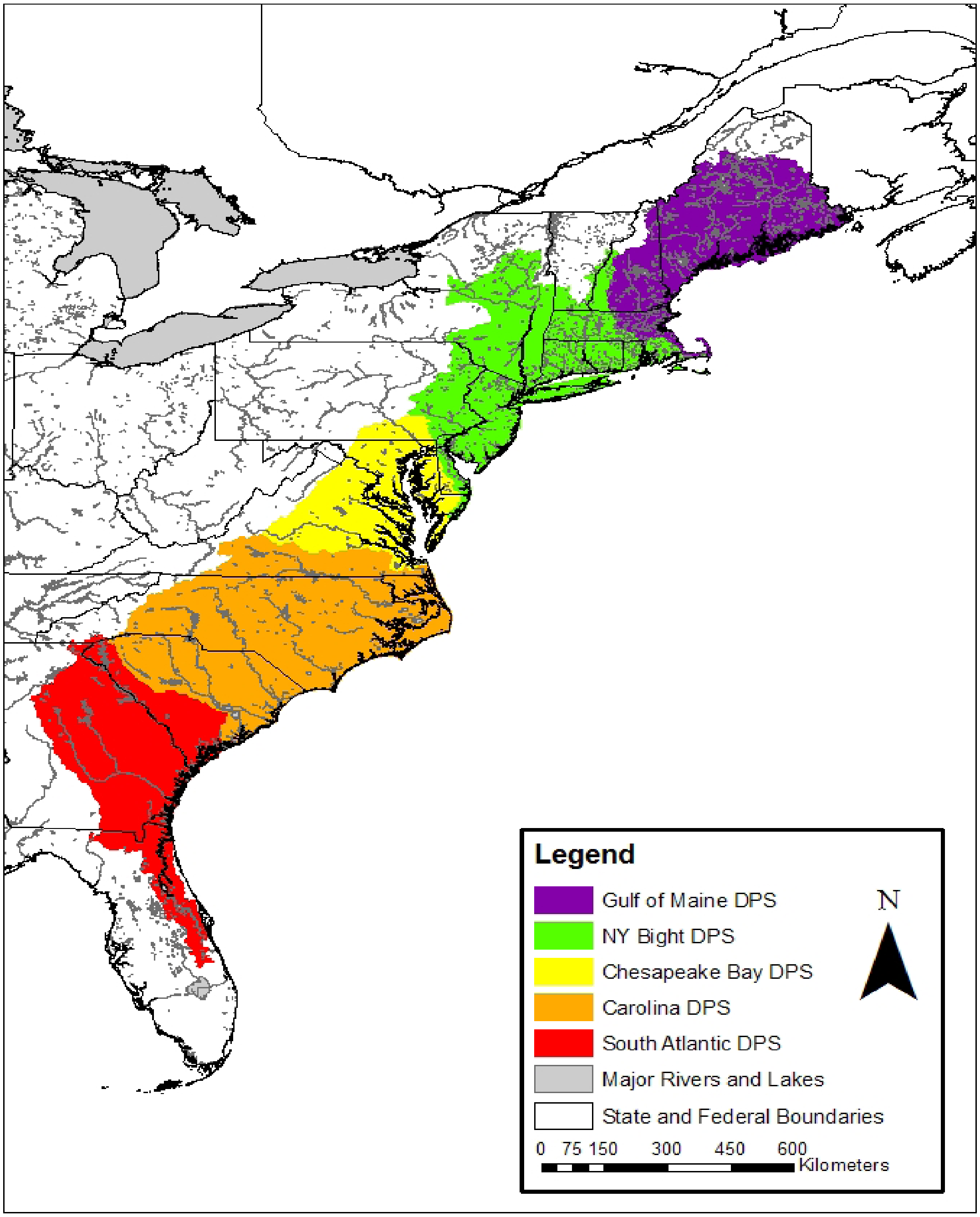


Table 4. Descriptions of Atlantic sturgeon life history stages.

Age Class	Size	Description
Egg		Fertilized or unfertilized
Larvae		Negative photo-taxic, nourished by yolk sac
Young-of-the-Year (YOY)	**0.3 grams; <41 cm TL**	Fish that are > 3 months and < one year; capable of capturing and consuming live food
Sub-adults	**>41 cm and <150 cm TL**	Fish that are at least age 1 and are not sexually mature
Adults	**>150 cm TL**	Sexually mature fish

Rate of maturation is affected by water temperature and gender. In general: (1) Atlantic sturgeon that originate from southern systems grow faster and mature sooner than Atlantic sturgeon that originate from more northern systems; (2) males grow faster than females; (3) fully mature females attain a larger size (i.e., length) than fully mature males. The largest recorded Atlantic sturgeon was a female captured in 1924 that measured approximately 4.26 meters (Vladykov and Greeley 1963). Dadswell (2006) reported seeing seven fish of comparable size in the St. John River estuary from 1973 to 1995. Observations of large-sized sturgeon are particularly important given that egg production is correlated with age and body size (Smith *et al.* 1982; Van Eenennaam *et al.* 1996; Van Eenennaam and Doroshov 1998; Dadswell 2006). The lengths of Atlantic sturgeon caught since the mid-late 20th century have typically been less than three meters (Smith *et al.* 1982, Smith and Dingley 1984; Smith 1985; Scott and Scott 1988; Young *et al.* 1998; Collins *et al.* 2000; Caron *et al.* 2002; Dadswell 2006; ASSRT 2007; Kahnle *et al.* 2007; DFO 2011). While females are prolific, with egg production ranging from 400,000 to four million eggs per spawning year, females spawn at intervals of two to five years (Vladykov and Greeley 1963; Smith *et al.* 1982; Van Eenennaam *et al.* 1996; Van Eenennaam and Doroshov 1998; Stevenson and Secor 1999; Dadswell 2006). Given spawning periodicity and a female's relatively late age to maturity, the age at which 50% of the maximum lifetime egg production is achieved is estimated to be 29 years (Boreman 1997). Males exhibit spawning periodicity of one to five years (Smith 1985; Collins *et al.* 2000; Caron *et al.* 2002). While long-lived, Atlantic sturgeon are exposed to a multitude of threats prior to achieving maturation and have a limited number of spawning opportunities once mature.

Water temperature plays a primary role in triggering the timing of spawning migrations (Greene *et al.* 2009). Spawning migrations generally occur during February-March in southern systems, April-May in Mid-Atlantic systems, and May-July in Canadian systems (Murawski and Pacheco 1977; Smith 1985; Bain 1997; Smith and Clugston 1997; Caron *et al.* 2002). Male sturgeon begin upstream spawning migrations when waters reach approximately 6°C (43°F) (Smith *et al.* 1982; Dovel and Berggren 1983; Smith 1985; Greene *et al.* 2009), and remain on the spawning grounds throughout the spawning season (Bain 1997). Females begin spawning migrations when temperatures are closer to 12° to 13°C (54° to 55°F) (Dovel and Berggren 1983; Smith 1985; Collins *et al.* 2000), make rapid spawning migrations upstream, and quickly depart following spawning (Bain 1997).

The spawning areas in most U.S. rivers have not been well defined. However, the habitat characteristics of spawning areas have been identified based on historical accounts of where fisheries occurred, tracking and tagging studies of spawning sturgeon, and physiological needs of early life stages. Spawning is believed to occur in flowing water between the salt front of estuaries and the fall line of large rivers, when and where optimal flows are 46-76 centimeters/second and depths are 3-27 meters (Borodin 1925; Dees 1961; Leland 1968; Scott and Crossman 1973; Crance 1987; Shirey *et al.* 1999; Bain *et al.* 2000; Collins *et al.* 2000; Caron *et al.* 2002; Hatin *et al.* 2002; Greene *et al*. 2009). Sturgeon eggs are deposited on hard bottom substrate such as cobble, coarse sand, and bedrock (Dees 1961; Scott and Crossman 1973; Gilbert 1989; Smith and Clugston 1997; Bain *et al.* 2000; Collins *et al.* 2000; Caron *et al.* 2002; Hatin *et al.* 2002; Mohler 2003; Greene *et al.* 2009), and become adhesive shortly after fertilization (Murawski and Pacheco 1977; Van den Avyle 1984; Mohler 2003). Incubation time for the eggs increases as water temperature decreases (Mohler 2003). At temperatures of 20° and 18°C, hatching occurs approximately 94 and 140 hours, respectively, after deposition (ASSRT 2007).

Larval Atlantic sturgeon (i.e., less than four weeks old, with TL less than 30 millimeters; Van Eenennaam *et al.* 1996) are assumed to mostly live on or near the bottom and inhabit the same riverine or estuarine areas where they were spawned (Smith *et al.* 1980; Bain *et al.* 2000; Kynard and Horgan 2002; Greene *et al.* 2009). Studies suggest that age-0 (i.e., YOY), age-1, and age-2 juvenile Atlantic sturgeon occur in low salinity waters of the natal estuary (Haley 1999; Hatin *et al.* 2007; McCord *et al.* 2007; Munro *et al.* 2007) while older fish are more salt tolerant and occur in higher salinity waters as well as low salinity waters (Collins *et al.* 2000). Atlantic sturgeon remain in the natal estuary for months to years before emigrating to open ocean as subadults (Holland and Yelverton 1973; Dovel and Berggen 1983; Waldman *et al.* 1996; Dadswell 2006; ASSRT 2007).

After emigration from the natal estuary, subadults and adults travel within the marine environment, typically in waters less than 50 meters in depth, using coastal bays, sounds, and ocean waters (Vladykov and Greeley 1963; Murawski and Pacheco 1977; Dovel and Berggren 1983; Smith 1985; Collins and Smith 1997; Welsh *et al.* 2002; Savoy and Pacileo 2003; Stein *et al.* 2004a; Laney *et al.* 2007; Dunton *et al.* 2010; Erickson *et al.* 2011; Wirgin and King 2011). Tracking and tagging studies reveal seasonal movements of Atlantic sturgeon along the coast. Satellite-tagged adult sturgeon from the Hudson River concentrated in the southern part of the Mid-Atlantic Bight at depths greater than 20 meters during winter and spring, and in the northern portion of the Mid-Atlantic Bight at depths less than 20 meters in summer and fall (Erickson *et al.* 2011). A similar movement pattern for juvenile Atlantic sturgeon has been found based on recaptures of fish originally tagged in the Delaware River (C. Shirey, Delaware Department of Fish and Wildlife, unpublished data reviewed in Greene *et al.* 2009). After leaving the Delaware River estuary during the fall, juvenile Atlantic sturgeon were recaptured by commercial fishermen in nearshore waters along the Atlantic coast as far south as Cape Hatteras from November through early March. In the spring, a portion of the tagged fish re-entered the Delaware River estuary. However, many fish continued a northerly coastal migration through the Mid-Atlantic as well as into southern New England waters where they were recovered throughout the summer months. Movements as far north as Maine were documented. A southerly coastal migration was apparent from tag returns reported in the fall. The majority of these tag returns were reported from relatively shallow nearshore fisheries with few fish reported from waters in excess of 25 meters (C. Shirey, Delaware Department of Fish and Wildlife, unpublished data reviewed in Greene *et al.* 2009). Areas where migratory Atlantic sturgeon commonly aggregate include the Bay of Fundy (e.g., Minas and Cumberland Basins), Massachusetts Bay, Connecticut River estuary, Long Island Sound, New York Bight, Delaware Bay, Chesapeake Bay, and waters off of North Carolina from the Virginia/North Carolina border to Cape Hatteras at depths up to 24 meters (Dovel and Berggren 1983; Dadswell *et al.* 1984; Johnson *et al.* 1997; Rochard *et al.* 1997; Kynard *et al.* 2000; Eyler *et al.* 2004; Stein *et al.* 2004a; Wehrell 2005; Dadswell 2006; ASSRT 2007; Laney *et al.* 2007). These sites may be used as foraging sites and/or thermal refugia.

Determination of DPS Composition in the Action Area

As explained above, the range of all five DPSs overlaps and extends from Canada through Cape Canaveral, Florida. The Chesapeake Bay is known to be used by Atlantic sturgeon originating from all five DPSs. We have considered the best available information from a recent mixed stock analysis to determine from which DPSs individuals in the action area are likely to have originated. We have determined that Atlantic sturgeon in the action area likely originate from the five DPSs at the following frequencies: NYB 51.7%; SA 21.9%; CB 11.8%; GOM 10.1%; and Carolina 2.4%. Approximately 2.2% of the Atlantic sturgeon in the action area originate from Canadian rivers or management units. These percentages are based on genetic sampling of all individuals (n=173) captured during observed fishing trips along the Atlantic coast from Maine through North Carolina, and the results of the genetic analyses for these 173 fish were compared against a reference population of 411 fish and results for an additional 790 fish from other sampling efforts. Therefore, they represent the best available information on the likely genetic makeup of individuals occurring in the action area. The genetic assignments have corresponding 95% confidence intervals. However, for purposes of section 7 consultation, we have selected the reported values without their associated confidence intervals. The reported values, which approximate the mid-point of the range, are a reasonable indication of the likely genetic makeup of Atlantic sturgeon in the action area. These assignments and the data from which they are derived are described in detail in Wirgin *et al.* (2015).

Distribution and Abundance

Atlantic sturgeon underwent significant range-wide declines from historical abundance levels due to overfishing in the mid to late 19th century when a caviar market was established (Scott and Crossman 1973; Taub 1990; MNRPD 1993; Smith and Clugston 1997; Dadswell 2006; ASSRT 2007). Abundance of spawning-aged females prior to this period of exploitation was predicted to be greater than 100,000 for the Delaware River, and at least 10,000 females for other spawning stocks (Secor and Waldman 1999; Secor 2002). Historical records suggest that Atlantic sturgeon spawned in at least 35 rivers prior to this period. Currently, only 17 U.S. rivers are known to support spawning (i.e., presence of YOY or gravid Atlantic sturgeon documented within the past 15 years) (ASSRT 2007). While there may be other rivers supporting spawning for which definitive evidence has not been obtained (e.g., in the Penobscot and York Rivers), the number of rivers supporting spawning of Atlantic sturgeon are approximately half of what they were historically. In addition, only five rivers (Kennebec, Androscoggin, Hudson, Delaware, and James) are known to currently support spawning from Maine through Virginia, where historical records show that there used to be 15 spawning rivers (ASSRT 2007). Thus, there are substantial gaps between Atlantic sturgeon spawning rivers amongst northern and Mid-Atlantic States, which could make recolonization of extirpated populations more difficult.

There are no current, published population abundance estimates for any of the currently known spawning stocks or for any of the five DPSs of Atlantic sturgeon. An estimate of 863 mature adults per year (596 males and 267 females) was calculated for the Hudson River based on fishery-dependent data collected from 1985-1995 (Kahnle *et al.* 2007). An estimate of 343 spawning adults per year is available for the Altamaha River, Georgia, based on fishery-independent data collected in 2004 and 2005 (Schueller and Peterson 2006). Using the data collected from the Hudson and Altamaha Rivers to estimate the total number of Atlantic sturgeon in either subpopulation is not possible, since mature Atlantic sturgeon may not spawn every year (Vladykov and Greeley 1963; Smith 1985; Van Eenennaam *et al.* 1996; Stevenson and Secor 1999; Collins *et al.* 2000; Caron *et al.* 2002), the age structure of these populations is not well understood, and stage to stage survival is unknown. In other words, the information that would allow us to take an estimate of annual spawning adults and expand that estimate to an estimate of the total number of individuals (e.g., yearlings, subadults, and adults) in a population is lacking. The ASSRT presumed that the Hudson and Altamaha Rivers had the most robust of the remaining U.S. Atlantic sturgeon spawning populations and concluded that the other U.S. spawning populations were likely less than 300 spawning adults per year (ASSRT 2007).

Lacking complete estimates of population abundance across the distribution of Atlantic sturgeon, the NEFSC developed a virtual population analysis model with the goal of estimating bounds of Atlantic sturgeon ocean abundance. The NEFSC suggested that cumulative annual estimates of surviving fishery discards could provide a minimum estimate of abundance. The objectives of producing the Atlantic Sturgeon Production Index (ASPI) were to characterize uncertainty in abundance estimates arising from multiple sources of observation and process error and to complement future efforts to conduct a more comprehensive stock assessment (Table 4). The ASPI provides a general abundance metric to assess risk for actions that may affect Atlantic sturgeon in the ocean; however, it is not a comprehensive stock assessment. In general, the model uses empirical estimates of post-capture survivors and natural survival, as well as probability estimates of recapture using tagging data from the USFWS sturgeon tagging database, and federal fishery discard estimates from 2006 to 2010 to produce a virtual population. The USFWS sturgeon tagging database is a repository for sturgeon tagging information on the Atlantic coast. The database contains tag release and recapture information from state and federal researchers. The database records recaptures by the fishing fleet, researchers, and researchers on fishery vessels.

In additional to the ASPI, a population estimate was derived from the NEAMAP trawl surveys (Table5). The NEAMAP trawl surveys are conducted from Cape Cod, Massachusetts to Cape Hatteras, North Carolina in nearshore waters at depths up to 18.3 meters (60 feet) during the fall since 2007 and spring since 2008. Each survey employs a spatially stratified random design with a total of 35 strata and 150 stations. The Atlantic States Marine Fisheries Commission (ASMFC) has initiated a new stock assessment with the goal of completing it in the near future. NMFS will be partnering with them to conduct the stock assessment, and the ocean population abundance estimates produced by the NEFSC will be shared with the stock assessment committee for consideration in the stock assessment.

Table 5. Description of the ASPI model and NEAMAP survey based area estimate method.

Model Name	Model Description
A. ASPI	Uses tag-based estimates of recapture probabilities from 1999 to 2009. Natural mortality based on Kahnle *et al.* (2007) rather than estimates derived from tagging model. Tag recaptures from commercial fisheries are adjusted for non-reporting based on recaptures from observers and researchers. Tag loss assumed to be zero.
B. NEAMAP Swept Area	Uses NEAMAP survey-based swept area estimates of abundance and assumed estimates of gear efficiency. Estimates based on average of ten surveys from fall 2007 to spring 2012.

Atlantic sturgeon are frequently encountered during the NEAMAP surveys. The information from these surveys can be used to calculate minimum swept area population estimates within the strata swept by the surveys. The estimate from fall surveys ranges from 6,980 to 42,160 with coefficients of variation between 0.02 and 0.57, and the estimates from spring surveys ranges from 25,540 to 52,990 with coefficients of variation between 0.27 and 0.65 (Table 6). These are considered minimum estimates because the calculation makes the assumption that the gear will capture (i.e., net efficiency) 100% of the sturgeon in the water column along the tow path and that all sturgeon are with the sampling domain of the survey. We define catchability as: 1) the product of the probability of capture given encounter (i.e., net efficiency), and 2) the fraction of the population within the sampling domain. Catchabilities less than 100% will result in estimates greater than the minimum. The true catchability depends on many factors including the availability of the species to the survey and the behavior of the species with respect to the gear. True catchabilities much less than 100% are common for most species. The average ASPI estimate of 417,934 fish implies a catchability of between 6% and 13% for the spring NEAMAP surveys, and a catchability of between 2% and 10% for the fall NEAMAP surveys. If the availability of Atlantic sturgeon in the areas sampled by the spring NEAMAP surveys were say 50%, then the implied range of net efficiencies for this survey would double to 12% and 26%. The ratio of total sturgeon habitat to area sampled by the NEAMAP surveys is unknown, but is certainly greater than one.

The NEAMAP-based estimates do not include YOY fish and juveniles in the rivers; however, those segments of the Atlantic sturgeon populations are at minimal risk from the proposed action since they are rare to absent within the action area. The NEAMAP surveys are conducted in waters that include the preferred depth ranges of subadult and adult Atlantic sturgeon and take place during seasons that coincide with known Atlantic sturgeon coastal migration patterns in the ocean. Therefore, the NEAMAP estimates are minimum estimates of the ocean population of Atlantic sturgeon but are based on sampling throughout the action area, in known sturgeon coastal migration areas during times that sturgeon are expected to be migrating north and south.

Table 6. Annual minimum swept area estimates for Atlantic sturgeon during the spring and fall NEAMAP surveys. Estimates provided by Dr. Chris Bonzek (VIMS) and assume 100% net efficiencies.

Year	Fall Number	CV	Spring Number	CV
2007	6,981	0.015		
2008	33,949	0.322	25,541	0.391
2009	32,227	0.316	41,196	0.353
2010	42,164	0.566	52,992	0.265
2011	22,932	0.399	52,840	0.480
2012			28,060	0.652

Available data do not support estimation of true catchability (i.e., net efficiency x availability) of the NEAMAP trawl survey for Atlantic sturgeon. Thus, the NEAMAP swept area biomass estimates were produced and presented for catchabilities from 5% to 100%. Assuming the NEAMAP surveys have been 100% efficient would require the unlikely assumption that the survey gear captures all Atlantic sturgeon within the path of the trawl and all sturgeon are within the sampling area of the NEAMAP survey. The 50% efficiency assumption seems to reasonably account for the robust, yet not complete sampling of the Atlantic sturgeon oceanic temporal and spatial ranges and the documented high rates of encounter with NEAMAP survey gear and Atlantic sturgeon. For this Opinion, we have determined that the best available data at this time are the population estimates derived from NEAMAP swept area biomass resulting from the 50% catchability rate (Table 7). The estimates are derived directly from empirical data with fewer assumptions than have been required to model Atlantic sturgeon populations to date.

Table 7. Modeled results from the ASPI and NEAMAP Atlantic sturgeon estimation methods.

Model Run	Model Years	95% low	Mean	95% high
A. ASPI	1999-2009	165,381	417,934	744,597
B.1 NEAMAP Survey, swept area assuming 100% efficiency	2007-2012	8,921	33,888	58,856
B.2 NEAMAP Survey, swept area assuming 50% efficiency	2007-2012	13,962	67,776	105,984
B.3 NEAMAP Survey, swept area assuming 10% efficiency	2007-2012	89,206	338,882	588,558

The ocean population abundance of 67,776 fish estimated from the NEAMAP surveys assuming 50% efficiency (based on net efficiency and the fraction of the total population exposed to the survey) was subsequently partitioned by DPS based on genetic frequencies of occurrence in he sampled area (Table 8). Given the proportion of adults to subadults in the observer database (approximate ratio of 1:3), we have also estimated a number of subadults originating from each DPS. However, this cannot be considered an estimate of the total number of subadults because it only considers those subadults that are of a size vulnerable to capture in commercial sink gillnet and otter trawl gear in the marine environment and are present in the marine environment, which is only a fraction of the total number of subadults.

Table 8. Summary of calculated population estimates based upon the NEAMAP survey swept area model assuming 50% efficiency.

DPS	Estimated Ocean Population Abundance	Estimated Ocean Population of Adults	Estimated Ocean Population of Subadults (of size vulnerable to capture in fisheries)
GOM	7,455	1,864	5,591
NYB	34,566	8,642	25,925
CB	8,811	2,203	6,608
Carolina	1,356	339	1,017
SA	14,911	3,728	11,183
Canada	678	170	509

The ASMFC released a new benchmark stock assessment for Atlantic sturgeon in October 2017 (ASMFC 2017). The assessment used both fishery-dependent and fishery-independent data, as well as biological and life history information. Fishery-dependent data came from commercial fisheries that formerly targeted Atlantic sturgeon (before the moratorium), as well as fisheries that catch sturgeon incidentally. Fishery-independent data were collected from scientific research and survey programs.

Table 9: Stock status determination for the coastwide stock and DPSs (from the ASMFC's Atlantic Sturgeon Stock Assessment Overview, October 2017)

	Mortality Status	Biomass/Abundance Status	
Population	**Probability that $Z > Z_{50\%EPR}$ 80%**	**Relative to Historical Levels**	**Average probability of terminal year of indices > 1998* value**
Coastwide	7%	Depleted	95%
Gulf of Maine	74%	Depleted	51%
New York Bight	31%	Depleted	75%
Chesapeake Bay	30%	Depleted	36%
Carolina	75%	Depleted	67%
South Atlantic	40%	Depleted	Unknown (no suitable indices)

* For indices that started after 1998, the first year of the index was used as the reference value.

At the coastwide and DPS levels, the stock assessment concluded that Atlantic sturgeon are depleted relative to historical levels. The low abundance of Atlantic sturgeon is not due solely to effects of historic commercial fishing, so the 'depleted' status was used instead of 'overfished.' This status reflects the array of variables preventing Atlantic sturgeon recovery (e.g., bycatch, habitat loss, and ship strikes).

As described in the Assessment Overview, Table 9 shows "the stock status determination for the coastwide stock and DPSs based on mortality estimates and biomass/abundance status relative to historic levels, and the terminal year (i.e., the last year of available data) of indices relative to the start of the moratorium as determined by the ARIMA[8] analysis."

Despite the depleted status, the assessment did include signs that the coastwide index is above the 1998 value (95% chance). The GOM, NYB, and Carolina DPS indices also all had a greater than 50% chance of being above their 1998 value; however, the index from the CB DPS (highlighted red) only had a 36% chance of being above the 1998 value. There were no representative indices for the SA DPS. Total mortality from the tagging model was very low at the coastwide level. Small sample sizes made mortality estimates at the DPS level more difficult. The NYB, CB, and SA DPSs all had a less than 50% chance of having a mortality rate higher than the threshold. The GOM and Carolina DPSs (highlighted red) had 74%-75% probability of being above the mortality threshold (ASMFC 2017).

Threats

Atlantic sturgeon are susceptible to over exploitation given their life history characteristics (e.g., late maturity, dependence on a wide-variety of habitats). Similar to other sturgeon species (Vladykov and Greeley 1963; Pikitch *et al.* 2005), Atlantic sturgeon experienced range-wide declines from historical abundance levels due to overfishing (for caviar and meat) and impacts to habitat in the 19th and 20th centuries (Taub 1990; Smith and Clugston 1997; Secor and Waldman 1999).

Because a DPS is a group of populations, the stability, viability, and persistence of individual populations affects the persistence and viability of the larger DPS. The loss of any population within a DPS could result in: (1) a long-term gap in the range of the DPS that is unlikely to be recolonized; (2) loss of reproducing individuals; (3) loss of genetic biodiversity; (4) loss of unique haplotypes; (5) loss of adaptive traits; and (6) reduction in total number. The loss of a population will negatively impact the persistence and viability of the DPS as a whole, as fewer than two individuals per generation spawn outside their natal rivers (Secor and Waldman 1999). The persistence of individual populations, and in turn the DPS, depends on successful spawning and rearing within the freshwater habitat, emigration to marine habitats to grow, and return of adults to natal rivers to spawn.

Based on the best available information, we have concluded that unintended catch in fisheries, vessel strikes, poor water quality, freshwater availability, dams, lack of regulatory mechanisms for protecting the fish, and dredging are the most significant threats to Atlantic sturgeon (77 FR 5880 and 77 FR 5914; February 6, 2012). While all the threats are not necessarily present in the same area at the same time, given that Atlantic sturgeon subadults and adults use ocean waters from Labrador, Canada to Cape Canaveral, Florida, as well as estuaries of large rivers along the U.S. East Coast, activities affecting these water bodies are likely to impact more than one Atlantic sturgeon DPS. In addition, because Atlantic sturgeon depend on a variety of habitats, every life stage is likely affected by one or more of the identified threats.

8 "The ARIMA (Auto-Regressive Integrated Moving Average) model uses fishery-independent indices of abundance to estimate how likely an index value is above or below a reference value" (ASMFC 2017).

Atlantic sturgeon are particularly sensitive to bycatch mortality because they are a long-lived species, have an older age at maturity, have lower maximum fecundity values, and a large percentage of egg production occurs later in life. Based on these life history traits, Boreman (1997) calculated that Atlantic sturgeon can only withstand the annual loss of up to 5% of their population to bycatch mortality without suffering population declines. Mortality rates of Atlantic sturgeon taken as bycatch in various types of fishing gear range between 0% and 51%, with the greatest mortality occurring in sturgeon caught by sink gillnets. Atlantic sturgeon are particularly vulnerable to being caught in sink gillnets; therefore, fisheries using this type of gear account for a high percentage of Atlantic sturgeon bycatch. Fisheries known to incidentally catch Atlantic sturgeon occur throughout the marine range of the species and in some riverine waters as well. Because Atlantic sturgeon mix extensively in marine waters and may access multiple river systems, they are subject to being caught in multiple fisheries throughout their range. In addition, stress or injury to Atlantic sturgeon taken as bycatch but released alive may result in increased susceptibility to other threats, such as poor water quality (e.g., exposure to toxins and low dissolved oxygen). This may result in reduced ability to perform major life functions, such as foraging and spawning, or even post-capture mortality.

As a wide-ranging, anadromous species, Atlantic sturgeon are subject to numerous Federal (U.S. and Canadian), state and provincial, and inter-jurisdictional laws, regulations, and agency activities. While these mechanisms, including the prohibition on possession, have addressed impacts to Atlantic sturgeon through directed fisheries, there are currently insufficient mechanisms in place to address the significant risk posed to Atlantic sturgeon from commercial bycatch.

An ASMFC interstate fishery management plan for sturgeon (Sturgeon FMP) was developed and implemented in 1990 (Taub 1990). In 1998, the remaining Atlantic sturgeon fisheries in U.S. state waters were closed per Amendment 1 to the FMP. NMFS implemented complementary regulations in 1999 that prohibited fishing for, harvesting, possessing, or retaining Atlantic sturgeon or their parts in or from the U.S. Exclusive Economic Zone (EEZ) in the course of a commercial fishing activity.

Commercial fisheries for Atlantic sturgeon still exist in Canadian waters (DFO 2011). Sturgeon belonging to one or more of the DPSs may be harvested in the Canadian fisheries. In particular, the Bay of Fundy fishery in the Saint John estuary may capture sturgeon of U.S. origin given that sturgeon from the GOM and the NYB DPSs have been incidentally captured in other Bay of Fundy fisheries (DFO 2011; Wirgin and King 2011). Because Atlantic sturgeon are listed under Appendix II of the Convention on International Trade in Endangered Species (CITES), the U.S. and Canada are currently working on a conservation strategy to address the potential for captures of U.S. fish in Canadian directed Atlantic sturgeon fisheries and of Canadian fish incidentally captured in U.S. commercial fisheries. At this time, there are no estimates of the number of individuals from any of the DPSs that are captured or killed in Canadian fisheries each year. Based on geographic distribution, most U.S. Atlantic sturgeon that are intercepted in Canadian fisheries are likely to originate from the GOM DPS, with a smaller percentage from the NYB DPS.

Fisheries bycatch in U.S. waters is the primary threat faced by all five DPSs. At this time, we have an estimate of the number of Atlantic sturgeon captured and killed in sink gillnet and otter trawl fisheries authorized by Federal FMPs (NEFSC 2011b) in the Greater Atlantic Region but do not have a similar estimate for Southeast fisheries. We also do not have an estimate of the number of Atlantic sturgeon captured or killed in state fisheries. At this time, we are not able to quantify the effects of other significant threats (e.g., vessel strikes, poor water quality, water availability, dams, and dredging) in terms of habitat impacts or loss of individuals. While we have some information on the number of mortalities that have occurred in the past in association with certain activities (e.g., mortalities in the Delaware and James Rivers that are thought to be due to vessel strikes), we are not able to use those numbers to extrapolate effects throughout one or more DPS. This is because of (1) the small number of data points and, (2) lack of information on the percent of incidences that the observed mortalities represent.

As noted above, the NEFSC prepared an estimate of the number of encounters of Atlantic sturgeon in fisheries authorized by Northeast FMPs (NEFSC 2011b). The analysis estimates that from 2006-2010 there were averages of 1,548 and 1,569 encounters per year in observed gillnet and trawl fisheries, respectively, with an average of 3,118 encounters combined annually. Mortality rates in gillnet gear were approximately 20%. Mortality rates in otter trawl gear were generally lower at approximately 5%.

Based on the results of a NEFSC climate vulnerability analysis, diadromous fish are amongst the functional groups with the highest overall climate vulnerability (data quality is moderate; Hare et al. 2016). Specifically, the overall vulnerability of Atlantic sturgeon to climate change is very high (Hare et al. 2016). The contributing factors to climate exposure included ocean surface temperature, air temperature and ocean acidification, and contributing biological sensitivity attributes included stock status, population growth rate, habitat specialization, and dispersal and early life history (Hare et al. 2016). Hare et al. (2016) noted some of the following studies related to climate change effects on abundance and distribution: 1) juvenile metabolism and survival were impacted by increasing hypoxia in combination with increasing temperature (Secor and Gunderson; 1998); and 2) a 1°C temperature increase reduced productivity by 65% when a multivariable bioenergetics and survival model was used to generate spatially explicit maps of potential production in the Chesapeake Bay (Niklitschek and Secor, 2005).

4.2.2.1 Gulf of Maine DPS of Atlantic sturgeon

The GOM DPS includes the following: all anadromous Atlantic sturgeon that spawn or are spawned in the watersheds from the Maine/Canadian border and, extending southward, all watersheds draining into the Gulf of Maine as far south as Chatham, Massachusetts. The marine range of Atlantic sturgeon from the GOM DPS extends from Hamilton Inlet, Labrador, Canada, to Cape Canaveral, Florida. The riverine range of the GOM DPS and the adjacent portion of the marine range are shown in Figure 2. Within this range, Atlantic sturgeon historically spawned in the Androscoggin, Kennebec, Merrimack, Penobscot, and Sheepscot Rivers (ASSRT 2007). Spawning still occurs in the Kennebec and Androscoggin Rivers, and it is possible that it still occurs in the Penobscot River as well. Spawning in the Androscoggin River was just recently confirmed by the Maine Department of Marine Resources when they captured a larval Atlantic sturgeon during the 2011 spawning season below the Brunswick Dam. There is no evidence of recent spawning in the remaining rivers. In the 1800s, construction of the Essex Dam on the

Merrimack River at river kilometer (rkm) 49 blocked access to 58% of Atlantic sturgeon habitat in the river (Oakley 2003; ASSRT 2007). However, the accessible portions of the Merrimack seem to be suitable habitat for Atlantic sturgeon spawning and rearing (i.e., nursery habitat) (Kieffer and Kynard 1993). Therefore, the availability of spawning habitat does not appear to be the reason for the lack of observed spawning in the Merrimack River. Studies are on-going to determine whether Atlantic sturgeon are spawning in the Penobscot and Saco Rivers. Atlantic sturgeon that are spawned elsewhere continue to use habitats within all of these rivers as part of their overall marine range (ASSRT 2007).

At its mouth, the Kennebec River drains an area of 24,667 square kilometers, and is part of a large estuarine system that includes the Androscoggin and Sheepscot Rivers (ASMFC 1998a; ASSRT 1998; Squiers 1998). The Kennebec and Androscoggin Rivers flow into Merrymeeting Bay, a tidal freshwater bay, and exit as a combined river system through a narrow channel, flowing approximately 32 kilometers (20 miles) to the Atlantic Ocean as the tidal segment of the Kennebec River (Squiers 1998). This lower tidal segment of the Kennebec River forms a complex with the Sheepscot River estuary (ASMFC 1998a; Squiers 1998).

Substrate type in the Kennebec estuary is largely sand and bedrock (Fenster and FitzGerald 1996; Moore and Reblin 2010). Main channel depths at low tide typically range from 17 meters (58 feet) near the mouth to less than 10 meters (33 feet) in the Kennebec River above Merrymeeting Bay (Moore and Reblin 2010). Salinities range from 31 parts per thousand at Parker Head (five kilometers from the mouth) to 18 parts per thousand at Doubling Point during summer low flows (ASMFC 1998a). The 14-kilometer river segment above Doubling Point to Chops Point (the outlet of Merrymeeting Bay) is an area of transition (mid estuary) (ASMFC 1998a). The salinities in this section vary both seasonally and over a tidal cycle. During spring freshets this section is entirely fresh water but during summer low flows, salinities can range from two to three parts per thousand at Chops Point to 18 ppt at Doubling Point (ASMFC 1998a). The river is essentially tidal freshwater from the outlet of Merrymeeting Bay upriver to the site of the former Edwards Dam (ASMFC 1998a). Mean tidal amplitude ranges from 2.56 meters at the mouth of the Kennebec River estuary to 1.25 meters in Augusta near the head of tide on the Kennebec River (in the vicinity of the former Edwards Dam) and 1.16 meters at Brunswick on the Androscoggin River (ASMFC 1998a).

Bigelow and Schroeder (1953) surmised that Atlantic sturgeon likely spawned in Gulf of Maine Rivers in May-July. More recent captures of Atlantic sturgeon in spawning condition within the Kennebec River suggest that spawning more likely occurs in June-July (Squiers *et al.* 1981; ASMFC 1998a; ASSRT 1998). Evidence for the timing and location of Atlantic sturgeon spawning in the Kennebec River includes: (1) the capture of five adult male Atlantic sturgeon in spawning condition (i.e., expressing milt) in July 1994 below the (former) Edwards Dam; (2) the capture of 31 adult Atlantic sturgeon from June 15 through July 26, 1980, in a small commercial fishery directed at Atlantic sturgeon from the South Gardiner area (above Merrymeeting Bay) that included at least four ripe males and one ripe female captured on July 26, 1980; and, (3) the capture of nine adults during a gillnet survey conducted from 1977-1981, the majority of which were captured in July in the area from Merrymeeting Bay and upriver as far as Gardiner, Maine (ASSRT 1998; ASMFC TC 2007). The low salinity values for waters above Merrymeeting Bay are consistent with values found in other rivers where successful Atlantic sturgeon spawning is known to occur.

Age to maturity for GOM DPS Atlantic sturgeon is unknown. However, Atlantic sturgeon riverine populations exhibit clinal variation with faster growth and earlier age to maturity for those that originate from southern waters, and slower growth and later age to maturity for those that originate from northern waters (75 FR 61872; October 6, 2010). Age at maturity is 11 to 21 years for Atlantic sturgeon originating from the Hudson River (Young *et al.* 1998), and 22 to 34 years for Atlantic sturgeon that originate from the Saint Lawrence River (Scott and Crossman 1973). Therefore, age at maturity for Atlantic sturgeon of the GOM DPS likely falls within these values. Of the 18 sturgeon examined from the commercial fishery that occurred in the Kennebec River in 1980, all of which were considered mature, age estimates for the 15 males ranged from 17-40 years, and from 25-40 years old for the three females (Squiers *et al.* 1981).

Several threats play a role in shaping the current status of GOM DPS Atlantic sturgeon. Historical records provide evidence of commercial fisheries for Atlantic sturgeon in the Kennebec and Androscoggin Rivers dating back to the 17th century (Squiers *et al.* 1979). In 1849, 160 tons of sturgeon was caught in the Kennebec River by local fishermen (Squiers *et al*. 1979). After the collapse of sturgeon stock in the 1880s, the sturgeon fishery was almost non-existent. All directed Atlantic sturgeon fishing as well as retention of Atlantic sturgeon bycatch has been prohibited since 1998. Nevertheless, mortalities associated with bycatch in fisheries in state and Federal waters still occurs. In the marine range, GOM DPS Atlantic sturgeon are incidentally captured in Federal and state-managed fisheries, reducing survivorship of subadult and adult Atlantic sturgeon (Stein *et al.* 2004b; ASMFC TC 2007). As explained above, we have estimates of the number of subadults and adults that are killed as a result of bycatch in fisheries authorized under Northeast FMPs. At this time, we are not able to quantify the impacts from other threats or estimate the number of individuals killed as a result of other anthropogenic threats. Habitat disturbance and direct mortality from anthropogenic sources are the primary concerns.

Riverine habitat may be impacted by dredging and other in-water activities, disturbing spawning habitat and also altering the benthic forage base. Many rivers in the GOM DPS have navigation channels that are maintained by dredging. Dredging outside of Federal channels and in-water construction occurs throughout the GOM DPS. While some dredging projects operate with observers present to document fish mortalities, many do not. To date we have not received any reports of Atlantic sturgeon killed during dredging projects in the Gulf of Maine region. At this time, we do not have any information to quantify the number of Atlantic sturgeon killed or disturbed during dredging or in-water construction projects are also not able to quantify any effects to habitat.

Connectivity is disrupted by the presence of dams on several rivers in the Gulf of Maine region, including the Penobscot and Merrimack Rivers. While there are also dams on the Kennebec, Androscoggin, and Saco Rivers, these dams are near the site of historical natural falls and likely represent the maximum upstream extent of sturgeon occurrence even if the dams were not present. Because no Atlantic sturgeon occur upstream of any hydroelectric projects in the Gulf of Maine region, passage over hydroelectric dams or through hydroelectric turbines is not a source of injury or mortality in this area. The extent that Atlantic sturgeon are affected by operations of dams in the Gulf of Maine region is currently unknown; however, the documentation of an Atlantic sturgeon larvae downstream of the Brunswick Dam in the Androscoggin River suggests that Atlantic sturgeon spawning may be occurring in the vicinity of at least that project and therefore, may be affected by project operations. The range of Atlantic sturgeon in the Penobscot River is limited by the presence of the Milford Dam, at the base of which is the presumed historical spawning habitat. Atlantic sturgeon are known to occur in the Penobscot River, but it is unknown if spawning is currently occurring in this river. The Essex Dam on the Merrimack River blocks access to approximately 58% of historically accessible habitat in this river. Atlantic sturgeon occur in the Merrimack River but spawning has not been documented. As with the Penobscot, it is unknown how the Essex Dam affects the likelihood of spawning in this river.

GOM DPS Atlantic sturgeon may also be affected by degraded water quality. In general, water quality has improved in the Gulf of Maine over the past decades (Lichter *et al.* 2006; EPA 2008). Many rivers in Maine, including the Androscoggin River, were heavily polluted in the past from pulp and paper mill industrial discharges. While water quality has improved and most discharges are limited through regulations, many pollutants persist in the benthic environment. This can be particularly problematic if pollutants are present on spawning and nursery grounds, as developing eggs and larvae are particularly susceptible to exposure to contaminants.

There are no direct in-river abundance estimates for the GOM DPS. The Atlantic Sturgeon Status Review Team (ASSRT 2007) presumed that the GOM DPS was comprised of less than 300 spawning adults per year, based on extrapolated abundance estimates from the Hudson and Altamaha riverine populations of Atlantic sturgeon. Surveys of the Kennebec River over two time periods, 1977-1981 and 1998-2000, resulted in the capture of nine adult Atlantic sturgeon (Squiers 2004). However, since the surveys were primarily directed at capture of shortnose sturgeon, the capture gear used may not have been selective for the larger-sized, adult Atlantic sturgeon; several hundred subadult Atlantic sturgeon were caught in the Kennebec River during these studies. As described earlier in Section 4.2.2, we have estimated that there are a minimum of 7,455 GOM DPS adult and subadult Atlantic sturgeon of size vulnerable to capture in U.S. Atlantic waters We note further that this estimate is predicated on the assumption that fish in the GOM DPS would be available for capture in the NEAMAP surveys which extend from Block Island Sound, Rhode Island southward. Recoveries of tagged sturgeon do not support this migration pattern.

Summary of the Gulf of Maine DPS

Spawning for the GOM DPS is known to occur in two rivers (Kennebec and Androscoggin). Spawning may be occurring in other rivers, such as the Sheepscot, Merrimack, and Penobscot, but has not been confirmed. There are indications of potential increasing abundance of Atlantic sturgeon belonging to the GOM DPS. Atlantic sturgeon continue to be present in the Kennebec River; in addition, they are captured in directed research projects in the Penobscot River, and are observed in rivers where they were unknown to occur or had not been observed to occur for many years (e.g., Saco, Presumpscot, and Charles Rivers). These observations suggest that abundance of the GOM DPS of Atlantic sturgeon is sufficient such that recolonization to rivers historically suitable for spawning may be occurring. However, despite some positive signs, there is not enough information to establish a trend for this DPS.

Some of the impacts from the threats that contributed to the decline of the GOM DPS have been removed (e.g., directed fishing), or reduced as a result of improvements in water quality and removal of dams (e.g., the Edwards Dam on the Kennebec River in 1999 and the Veazie Dam on the Penobscot River in 2013). In Maine state waters, there are strict regulations on the use of fishing gear that incidentally catches sturgeon. In addition, in the last several years there have been reductions in fishing effort in state and Federal waters, which most likely would result in a reduction in bycatch mortality of Atlantic sturgeon. A significant amount of fishing in the Gulf of Maine is conducted using trawl gear, which is known to have a much lower mortality rate for Atlantic sturgeon caught in the gear compared to sink gillnet gear (ASMFC TC 2007). Atlantic sturgeon from the GOM DPS are not commonly taken as bycatch in areas south of Chatham, Massachusetts, with only 8% (e.g., 7 of 84 fish) of interactions observed south of Chatham being assigned to the GOM DPS (Wirgin and King 2011). Tagging results also indicate that GOM DPS fish tend to remain within the waters of the Gulf of Maine and only occasionally venture to points south.

Data on Atlantic sturgeon incidentally caught in trawls and intertidal fish weirs fished in the Minas Basin area of the Bay of Fundy (Canada) indicate that approximately 35% originated from the GOM DPS (Wirgin *et al.* 2012). Thus, a significant number of the GOM DPS fish appear to migrate north into Canadian waters where they may be subjected to a variety of threats including bycatch.

As noted previously, studies have shown that in order to rebuild, Atlantic sturgeon can only sustain low levels of bycatch and other anthropogenic mortality (Boreman 1997; ASMFC TC 2007; Kahnle *et al*. 2007; Brown and Murphy 2010). We have determined that the GOM DPS is at risk of becoming endangered in the foreseeable future throughout all of its range (i.e., is a threatened species) based on the following: (1) significant declines in population sizes and the protracted period during which sturgeon populations have been depressed; (2) the limited amount of current spawning; and, (3) the impacts and threats that have and will continue to affect recovery.

4.2.2.2 New York Bight DPS of Atlantic sturgeon

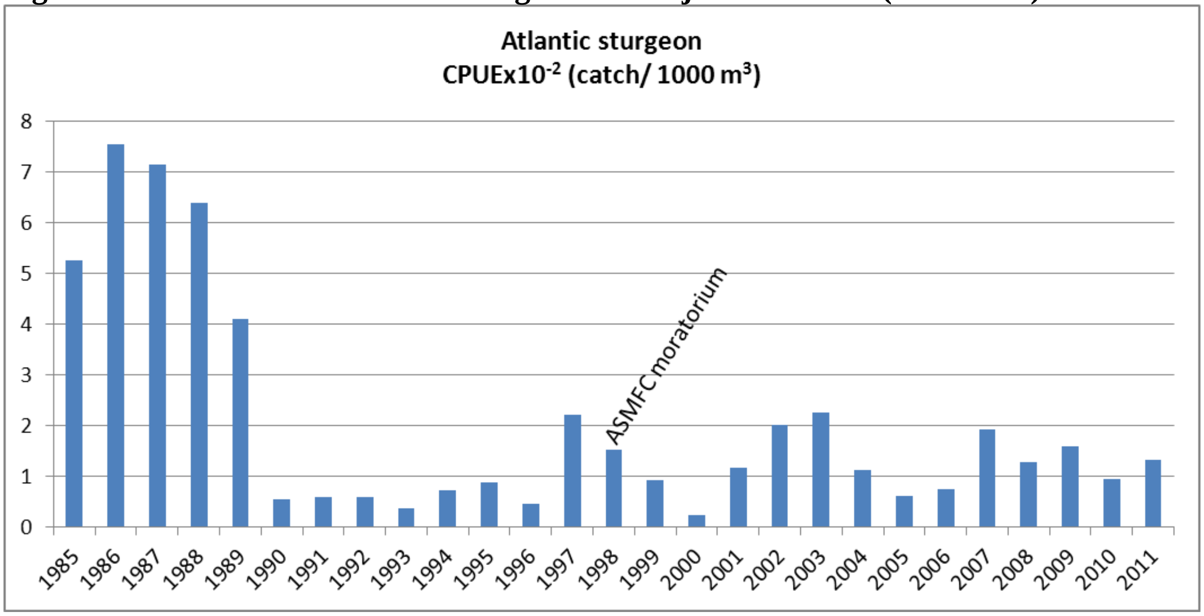
The NYB DPS includes the following: all anadromous Atlantic sturgeon that spawn or are spawned in the watersheds that drain into coastal waters from Chatham, Massachusetts to the Delaware-Maryland border on Fenwick Island. Within this range, Atlantic sturgeon historically spawned in the Connecticut, Delaware, Hudson, and Taunton Rivers (Murawski and Pacheco, 1977; Secor, 2002; ASSRT, 2007). Spawning still occurs in the Delaware and Hudson Rivers, but there is no recent evidence of spawning in the Taunton Rivers (ASSRT, 2007); several age-0 Atlantic sturgeon were captured in the Connecticut in June 2014, suggesting that occassional successful spawning may occur in the Connecticut River (Savoy *et al.* 2017). Atlantic sturgeon that are spawned elsewhere continue to use habitats within the Connecticut and Taunton Rivers as part of their overall marine range (ASSRT 2007; Savoy 2007; Wirgin and King 2011).

The abundance of the Hudson River Atlantic sturgeon riverine population before the over-exploitation of the 1800s is unknown, but has been conservatively estimated at 6,000 adult females (Secor 2002). Current abundance is likely at least one order of magnitude smaller than historical levels (Secor 2002; ASSRT 2007; Kahnle *et al.* 2007). As described above, an estimate of the mean annual number of mature adults (863 total; 596 males and 267 females) was calculated for the Hudson riverine population based on fishery-dependent data collected from 1985-1995 (Kahnle *et al.* 2007). Kahnle *et al.* (1998, 2007) also showed that the level of fishing mortality from the Hudson River Atlantic sturgeon fishery during the period of 1985-1995 exceeded the estimated sustainable level of fishing mortality for the riverine population and may have led to reduced recruitment. All available data on abundance of juvenile Atlantic sturgeon in the Hudson River Estuary indicate a substantial drop in production of young since the mid-1970s (Kahnle *et al.* 1998). A decline appeared to occur in the mid to late 1970s followed by a secondary drop in the late 1980s (Kahnle *et al.* 1998; Sweka *et al.* 2007; ASMFC 2010). Catch-per-unit-effort (CPUE) data suggests that recruitment has remained depressed relative to catches of juvenile Atlantic sturgeon in the estuary during the mid-late 1980s (Sweka *et al.* 2007; ASMFC 2010). The CPUE data from 1985-2011 show significant fluctuations. There appears to be a decline in the number of juveniles between the late 1980s and early 1990s and then a slight increase in the 2000s, but, given the significant annual fluctuation, it is difficult to discern any trend. Despite the CPUEs from 2000-2011 being slightly higher than those from 1990-1999, they are low compared to the late 1980s (Figure 3). There is currently not enough information regarding any life stage to establish a trend for the Hudson River population.

There is no overall, empirical abundance estimate for the Delaware River population of Atlantic sturgeon. Harvest records from the 1800s indicate that this was historically a large population with an estimated 180,000 adult females prior to 1890 (Secor and Waldman 1999; Secor 2002). Sampling in 2009 to target YOY Atlantic sturgeon in the Delaware River (i.e., natal sturgeon) resulted in the capture of 34 YOY, ranging in size from 178 to 349 millimeters TL (Fisher 2009), and the collection of 32 YOY Atlantic sturgeon in a separate study (Brundage and O'Herron 2009 in Calvo *et al.* 2010). Genetics information collected from 33 of these YOY indicates that at least three females successfully contributed to the 2009 year class (Fisher 2011). Therefore, while the capture of YOY in 2009 provides evidence that successful spawning still occurs in the Delaware River, the relatively low numbers suggest the existing riverine population is small.

Several threats play a role in shaping the current status and trends observed in the Delaware River and Estuary. In-river threats include habitat disturbance from dredging, and impacts from historical pollution and impaired water quality. A dredged navigation channel extends from Trenton seaward through the tidal river (Brundage and O'Herron 2009), and the river receives significant shipping traffic. Vessel strikes have been identified as a threat in the Delaware River and may be detrimental to the long-term viability of the NYB DPS, as well as other DPSs (Brown and Murphy 2010).

Figure 3. Hudson River Atlantic sturgeon CPUE juvenile index (1985-2011).



Summary of the New York Bight DPS

Atlantic sturgeon originating from the NYB DPS have been documented to spawn in the Hudson and Delaware Rivers and may spawn in the Connecticut and Housatonic Rivers, although that has not been confirmed. While genetic testing can differentiate between individuals originating from the Hudson or Delaware River, the available information suggests that the straying rate is relatively high between these rivers. Some of the impact from the threats that contributed to the decline of the NYB DPS have been removed (e.g., directed fishing) or reduced as a result of improvements in water quality since passage of the Clean Water Act (CWA). In addition, there have been reductions in fishing effort in state and Federal waters, which may result in a reduction in bycatch mortality of Atlantic sturgeon. Nevertheless, areas with persistent, degraded water quality, habitat impacts from dredging, continued bycatch in state and federally-managed fisheries, and vessel strikes remain significant threats to the NYB DPS.

In its marine range, NYB DPS Atlantic sturgeon are incidentally captured in Federal and state-managed fisheries, reducing survivorship of subadult and adult Atlantic sturgeon (Stein *et al.* 2004a; ASMFC TC 2007). Based on mixed stock analysis results presented by Wirgin and King (2011), more than 40% of the Atlantic sturgeon bycatch interactions in the Mid-Atlantic Bight region were sturgeon from the NYB DPS. Individual-based assignment and mixed stock analysis of samples collected from sturgeon captured in Canadian fisheries in the Bay of Fundy indicated that approximately 1%-2% were from the NYB DPS (Wirgin *et al*. 2012). At this time, we are not able to quantify the impacts from threats other than fisheries or estimate the number of individuals killed as a result of other anthropogenic threats.

Riverine habitat may be impacted by dredging and other in-water activities, disturbing spawning habitat and also altering the benthic forage base. Both the Hudson and Delaware Rivers have navigation channels that are maintained by dredging. Dredging is also used to maintain channels in the nearshore marine environment. Dredging outside of Federal channels and in-water construction occurs throughout the New York Bight region. While some dredging projects operate with observers present to document fish mortalities, many do not. We have reports of one Atlantic sturgeon entrained during hopper dredging operations in Ambrose Channel, New Jersey, and four entrained during hopper dredging operations aboard the McFarland in the Delaware River. We have recently consulted on two Army Corps of Engineers (ACOE) dredging projects: (1) the Deepening and Maintenance of the Delaware River Federal Navigation Channel and (2) the New York and New Jersey Harbor Deepening Project. In both cases, we determined that while the proposed actions may adversely affect Atlantic sturgeon, they were not likely to jeopardize the continued existence of any DPS of Atlantic sturgeon.

In the Hudson and Delaware Rivers, dams do not block access to historical habitat. The Holyoke Dam on the Connecticut River blocks passage past the dam at Holyoke; however, the extent that Atlantic sturgeon would historically have used habitat upstream of Holyoke is unknown. The first dam on the Taunton River may block access to historical spawning habitat. Connectivity also may be disrupted by the presence of dams on several smaller rivers in the New York Bight region. Because no Atlantic sturgeon occur upstream of any hydroelectric projects in the New York Bight region, passage over hydroelectric dams or through hydroelectric turbines is not a source of injury or mortality in this area. The extent to which Atlantic sturgeon are affected by operations of dams in the New York Bight region is currently unknown. Atlantic sturgeon may also be impinged or entrained at power plants in the Hudson and Delaware Rivers, and may be adversely affected by the operation of the power plants, but the power plants have not been found to jeopardize their continued existence.

NYB DPS Atlantic sturgeon may also be affected by degraded water quality. Rivers in the New York Bight region, including the Hudson and Delaware, have been heavily polluted by industrial and sewer discharges. In general, water quality has improved in the Hudson and Delaware over the past several decades (Lichter *et al.* 2006; EPA 2008). While water quality has improved and most discharges are limited through regulations, it is likely that pollutants persist in the benthic environment. This can be particularly problematic if pollutants are present on spawning and nursery grounds, where developing eggs and larvae are particularly susceptible to exposure to contaminants.

Vessel strikes are known to occur in the Delaware River and may also be occurring in the Hudson and other New York Bight rivers. Twenty-nine mortalities believed to be the result of vessel strikes were documented in the Delaware River from 2004-2008, and at least 13 of these fish were large adults. Additionally, 138 sturgeon carcasses were observed on the Hudson River and reported to the NYSDEC between 2007 and 2015. Of these, 69 are suspected of having been killed by vessel strike. Genetic analysis has not been completed on any of these individuals to date, given that the majority of Atlantic sturgeon in the Hudson River belong to the New York Bight DPS, we assume that the majority of the dead sturgeon reported to NYSDEC belonged to the New York Bight DPS. Given the time of year in which the fish were observed (predominantly May through July, with two in August), it is likely that many of the adults were migrating through the river to the spawning grounds. Because we do not know the percent of total vessel strikes that the observed mortalities represent, we are not able to quantify the number of individuals likely killed as a result of vessel strikes in the NYB DPS.

Studies have shown that to rebuild, Atlantic sturgeon can only sustain low levels of anthropogenic mortality (Boreman 1997; ASMFC TC 2007; Kahnle *et al.* 2007; Brown and Murphy 2010). There are no empirical abundance estimates of the number of Atlantic sturgeon in the NYB DPS. As described in Section 4.2.2, we have estimated that there are a minimum of 34,566 NYB DPS adult and subadult Atlantic sturgeon of size vulnerable to capture in U.S. Atlantic waters. We have determined that the NYB DPS is currently at risk of extinction due to: (1) precipitous declines in population sizes and the protracted period in which sturgeon populations have been depressed; (2) the limited amount of current spawning; and (3) the impacts and threats that have and will continue to affect population recovery.

4.2.2.3 Chesapeake Bay DPS of Atlantic sturgeon

The CB DPS includes the following: all anadromous Atlantic sturgeon that spawn or are spawned in the watersheds that drain into the Chesapeake Bay and into coastal waters from the Delaware-Maryland border on Fenwick Island to Cape Henry, Virginia. The marine range of Atlantic sturgeon from the CB DPS extends from Hamilton Inlet, Labrador, Canada, to Cape Canaveral, Florida. The riverine range of the CB DPS and the adjacent portion of the marine range are shown in Figure 2. Within this range, Atlantic sturgeon historically spawned in the Susquehanna, Potomac, James, York, Rappahannock, and Nottoway Rivers (ASSRT 2007). Based on the review by Oakley (2003), 100% of Atlantic sturgeon habitat is currently accessible in these rivers since most of the barriers to passage (i.e., dams) are located upriver of where spawning is expected to have historically occurred (ASSRT 2007). Spawning still occurs in the James River, and the presence of juvenile and adult sturgeon in the York River suggests that spawning may occur there as well, specifically within the Pamunkey River (a tributary of the York River) (Musick *et al.* 1994; ASSRT 2007; Greene *et al*. 2009). The recent capture of an adult sturgeon in spawning condition suggests that spawning may occur in Marshyhope Creek, a tributary to the Nanticoke River (Bruce et al. 2016). However, conclusive evidence of current spawning is only available for the James River, where a study found evidence of Atlantic sturgeon spawning in the fall (Balazik *et al*. 2012). Atlantic sturgeon that are spawned elsewhere are known to use the Chesapeake Bay (Vladykov and Greeley 1963; Wirgin *et al.* 2000; ASSRT 2007; Grunwald *et al.* 2008).

Age to maturity for CB DPS Atlantic sturgeon is unknown. However, Atlantic sturgeon riverine populations exhibit clinal variation with faster growth and earlier age to maturity for those that originate from southern waters, and slower growth and later age to maturity for those that originate from northern waters (75 FR 61872; October 6, 2010). Age at maturity is five to 19 years for Atlantic sturgeon originating from South Carolina rivers (Smith *et al.* 1982) and 11 to 21 years for Atlantic sturgeon originating from the Hudson River (Young *et al.* 1998). Therefore, age at maturity for Atlantic sturgeon of the CB DPS likely falls within these values.

Several threats play a role in shaping the current status of CB DPS Atlantic sturgeon. Historical records provide evidence of the large-scale commercial exploitation of Atlantic sturgeon from the James River and Chesapeake Bay in the 19^{th} century (Hildebrand and Schroeder 1928; Vladykov and Greeley 1963; ASMFC 1998b; Secor 2002; Bushnoe *et al.* 2005; ASSRT 2007) as well as subsistence fishing and attempts at commercial fisheries as early as the 17^{th} century (Secor 2002; Bushnoe *et al.* 2005; ASSRT 2007; Balazik *et al.* 2010). Habitat disturbance caused by in-river work, such as dredging for navigational purposes, is thought to have reduced available spawning habitat in the James River (Holton and Walsh 1995; Bushnoe *et al.* 2005; ASSRT 2007). At this time, we do not have information to quantify this loss of spawning habitat.

Decreased water quality also threatens Atlantic sturgeon of the CB DPS, especially since the Chesapeake Bay system is vulnerable to the effects of nutrient enrichment due to a relatively low tidal exchange and flushing rate, large surface-to-volume ratio, and strong stratification during the spring and summer months (Pyzik *et al.* 2004; ASMFC 1998a; ASSRT 2007; EPA 2008). These conditions contribute to reductions in dissolved oxygen levels throughout the Bay. The availability of nursery habitat, in particular, may be limited given the recurrent hypoxia (low dissolved oxygen) conditions within the Bay (Niklitschek and Secor 2005, 2010). Heavy industrial development during the 20th century in rivers inhabited by sturgeon impaired water quality and impeded these species' recovery.

Although there have been improvements in the some areas of the Bay's health, the ecosystem remains in poor condition. The EPA gave the overall health of the Bay a grade of 45% based on goals for water quality, habitats, lower food web productivity, and fish and shellfish abundance (EPA CBP 2010). This was a 6% increase from 2008. According to the EPA, the modest gain in the health score was due to a large increase in the adult blue crab population, expansion of underwater grass beds growing in the Bay's shallows, and improvements in water clarity and bottom habitat health as highlighted below:

- 12% of the Bay and its tidal tributaries met CWA standards for dissolved oxygen between 2007 and 2009, a decrease of 5% from 2006 to 2008,
- 26% of the tidal waters met or exceeded guidelines for water clarity, a 12% increase from 2008,
- Underwater bay grasses covered 9,039 more acres of the Bay's shallow waters for a total of 85,899 acres, 46% of the Bay-wide goal,
- The health of the Bay's bottom dwelling species reached a record high of 56% of the goal, improving by approximately 15% Bay-wide, and
- The adult blue crab population increased to 223 million, its highest level since 1993.

At this time, we do not have sufficient information to quantify the extent that degraded water quality effects habitat or individuals in the James River or throughout the Chesapeake Bay.

Vessel strikes have been observed in the James River (ASSRT 2007). Eleven Atlantic sturgeon were reported to have been struck by vessels from 2005-2007. Several of these were mature individuals. Because we do not know the percent of total vessel strikes that the observed mortalities represent, we are not able to quantify the number of individuals likely killed as a result of vessel strikes in the CB DPS.

In the marine and coastal range of the CB DPS from Canada to Florida, fisheries bycatch in federally and state-managed fisheries poses a threat to the DPS, reducing survivorship of subadults and adults and potentially causing an overall reduction in the spawning population (Stein *et al.* 2004b; ASMFC TC 2007; ASSRT 2007).

Summary of the Chesapeake Bay DPS

Known spawning for the CB DPS occurs only in the James and Pamunkey Rivers (a triburary of the York River. Spawning may be occurring in other rivers, such as the mainstem York, Rappahannock, Potomac, Nanticoke, and Susquehanna, but has not been confirmed for any of those. There are anecdotal reports of increased sightings and captures of Atlantic sturgeon in the James River. However, this information has not been comprehensive enough to develop a population estimate for the James River or to provide sufficient evidence to confirm increased abundance. Some of the impact from the threats that facilitated the decline of the CB DPS have been removed (e.g., directed fishing) or reduced as a result of improvements in water quality since passage of the CWA. As described in Section 4.2.2, we have estimated that there are a minimum of 8,811 CB DPS adult and subadult Atlantic sturgeon of size vulnerable to capture in U.S. Atlantic waters.

Areas with persistent, degraded water quality, habitat impacts from dredging, continued bycatch in U.S. state and federally-managed fisheries, Canadian fisheries, and vessel strikes remain significant threats to the CB DPS of Atlantic sturgeon. Of the 35% of Atlantic sturgeon incidentally caught in the Bay of Fundy, about 1% were CB DPS fish (Wirgin *et al.* 2012). Studies have shown that Atlantic sturgeon can only sustain low levels of bycatch mortality (Boreman 1997; ASMFC TC 2007; Kahnle *et al.* 2007). The CB DPS is currently at risk of extinction given (1) precipitous declines in population sizes and the protracted period in which sturgeon populations have been depressed; (2) the limited amount of current spawning; and, (3) the impacts and threats that have and will continue to affect the potential for population recovery.

4.2.2.4 Carolina DPS of Atlantic sturgeon

The Carolina DPS includes all Atlantic sturgeon that spawn or are spawned in the watersheds (including all rivers and tributaries) from Albemarle Sound southward along the southern Virginia, North Carolina, and South Carolina coastal areas to Charleston Harbor. The marine range of Atlantic sturgeon from the Carolina DPS extends from the Hamilton Inlet, Labrador, Canada, to Cape Canaveral, Florida. The riverine range of the Carolina DPS and the adjacent portion of the marine range are shown in Figure 2. Sturgeon are commonly captured 40 miles offshore (Dewayne Fox, Delaware State University, pers. comm.). Records providing fishery bycatch data by depth show the vast majority of Atlantic sturgeon bycatch via gillnets is observed in waters less than 50 meters deep (Stein *et al*. 2004b, ASMFC TC 2007), but Atlantic sturgeon are recorded as bycatch out to 500 fathoms.

Rivers known to have current spawning populations within the range of the Carolina DPS include the Roanoke, Tar-Pamlico, Cape Fear, Waccamaw, and Pee Dee Rivers. We determined spawning was occurring if YOY were observed or mature adults were present in freshwater portions of a system (Table 10). However, in some rivers, spawning by Atlantic sturgeon may not be contributing to population growth because of lack of suitable habitat and the presence of other stressors on juvenile survival and development. There may also be spawning populations in the Neuse, Santee, and Cooper Rivers, though it is uncertain. Historically, both the Sampit and Ashley Rivers were documented to have spawning populations at one time. However, the spawning population in the Sampit River is believed to be extirpated, and the current status of the spawning population in the Ashley River is unknown. Both rivers may be used as nursery habitat by young Atlantic sturgeon originating from other spawning populations. Fish from the Carolina DPS likely use other river systems than those listed here for their specific life functions.

Historical landings data indicate that between 7,000 and 10,500 adult female Atlantic sturgeon were present in North Carolina prior to 1890 (Armstrong and Hightower 2002; Secor 2002). Secor (2002) estimates that 8,000 adult females were present in South Carolina during that same time frame. Prior reductions from the commercial fishery and ongoing threats have drastically reduced the numbers of Atlantic sturgeon within the Carolina DPS. Currently, the Atlantic sturgeon spawning population in at least one river system within the Carolina DPS has been extirpated, with potential extirpation in an additional system. The abundances of the remaining river populations within the DPS, each estimated to have fewer than 300 spawning adults, are estimated to be less than 3% of what they were historically (ASSRT 2007). As described in Section 4.2.2, we have estimated that there are a minimum of 1,356 Carolina DPS adult and subadult Atlantic sturgeon of size vulnerable to capture in U.S. Atlantic waters.

Table 10. Major rivers, tributaries, and sounds within the range of the Carolina DPS and currently available data on the presence of an Atlantic sturgeon spawning population in each system.

River/Estuary	Spawning Population	Data
Roanoke River, VA/NC; Albemarle Sound, NC	Yes	collection of 15 YOY (1997-1998); single YOY (2005)
Tar-Pamlico River, NC; Pamlico Sound	Yes	one YOY (2005)
Neuse River, NC; Pamlico Sound	Unknown	
Cape Fear River, NC	Yes	upstream migration of adults in the fall, carcass of a ripe female upstream in mid-September (2006)
Waccamaw River, SC; Winyah Bay	Yes	age-1, potentially YOY (1980s)
Pee Dee River, SC; Winyah Bay	Yes	running ripe male in Great Pee Dee River (2003)
Sampit, SC; Winyah Bay	Extirpated	
Santee River, SC	Unknown	
Cooper River, SC	Unknown	
Ashley River, SC	Unknown	

Threats
The Carolina DPS was listed as endangered under the ESA as a result of a combination of habitat curtailment and modification, overutilization (i.e., being taken as bycatch) in commercial fisheries, and the inadequacy of regulatory mechanisms in ameliorating these impacts and threats.

The modification and curtailment of Atlantic sturgeon habitat resulting from dams, dredging, and degraded water quality is contributing to the status of the Carolina DPS. Dams have curtailed Atlantic sturgeon spawning and juvenile developmental habitat by blocking more than 60% of the historical sturgeon habitat upstream of the dams in the Cape Fear and Santee-Cooper River systems. Water quality (velocity, temperature, and dissolved oxygen) downstream of these dams, as well as on the Roanoke River, has been reduced, which modifies and curtails the extent of spawning and nursery habitat for the Carolina DPS. Dredging in spawning and nursery grounds modifies the quality of the habitat and is further curtailing the extent of available habitat in the Cape Fear and Cooper Rivers, where Atlantic sturgeon habitat has already been modified and curtailed by the presence of dams. Reductions in water quality from terrestrial activities have modified habitat used by the Carolina DPS. In the Pamlico and Neuse systems, nutrient-loading and seasonal anoxia are occurring, associated in part with concentrated animal feeding operations (CAFOs). Heavy industrial development and CAFOs have also degraded water quality in the Cape Fear River. Water quality in the Waccamaw and Pee Dee Rivers has been affected by industrialization and riverine sediment samples contain high levels of various toxins, including dioxins. Additional stressors arising from water allocation and climate change threaten to exacerbate water quality problems that are already present throughout the range of the Carolina DPS. Twenty interbasin water transfers in existence prior to 1993, averaging 66.5 million gallons per day (mgd), were authorized at their maximum levels without being subjected to an evaluation for certification by the North Carolina Department of Environmental and Natural Resources and other resource agencies. Since the 1993 legislation requiring certificates for transfers took effect, almost 170 mgd of interbasin water withdrawals have been authorized, with an additional 60 mgd pending certification. The removal of large amounts of water from the system will alter flows, temperature, and dissolved oxygen. Existing water allocation issues will likely be compounded by population growth and potentially climate change. Climate change is also predicted to elevate water temperatures and exacerbate nutrient-loading, pollution inputs, and lower dissolved oxygen, all of which are current stressors to the Carolina DPS.

Overutilization of Atlantic sturgeon from directed fishing caused initial severe declines in Atlantic sturgeon populations in the Southeast in the mid- to late 19^{th} century, from which they have never rebounded. Continued bycatch of Atlantic sturgeon in commercial fisheries is an ongoing impact to the Carolina DPS. More robust fishery independent data on bycatch are available for the Northeast and Mid-Atlantic than in the Southeast where high levels of bycatch underreporting are suspected.

Although there are statutory and regulatory regulations that authorize reducing the impact of dams on riverine and anadromous species, these mechanisms have proven inadequate for preventing dams from blocking access to habitat upstream and degrading habitat downstream. Water quality continues to be a problem in the Carolina DPS, even with existing controls on some pollution sources. Current regulatory regimes are not effective in controlling water allocation issues (e.g., no restrictions on interbasin water transfers in South Carolina, the lack of ability to regulate non-point source pollution, etc.).

The recovery of Atlantic sturgeon along the Atlantic Coast, especially in areas where habitat is limited and water quality is severely degraded, will require improvements in the following areas: (1) elimination of barriers to spawning habitat either through dam removal, breaching, or installation of successful fish passage facilities; (2) operation of water control structures to provide appropriate flows, especially during spawning season; (3) imposition of dredging restrictions including seasonal moratoriums and avoidance of spawning/nursery habitat; and (4) mitigation of water quality parameters that are restricting sturgeon use of a river (i.e., dissolved oxygen). Additional data regarding sturgeon use of riverine and estuarine environments are needed.

The concept of a viable population able to adapt to changing environmental conditions is critical to Atlantic sturgeon, and the low population numbers of every river population in the Carolina DPS put them in danger of extinction throughout their range; none of the populations are large or stable enough to provide with any level of certainty for the continued existence of Atlantic sturgeon in this part of its range. Although the largest impact that caused the precipitous decline of the species has been curtailed (directed fishing), the population sizes within the Carolina DPS have remained relatively constant at greatly reduced levels (approximately 3% of historical population sizes) for 100 years. Small numbers of individuals resulting from drastic reductions in populations, such as that which occurred due to the commercial fishery, can remove the buffer against natural demographic and environmental variability provided by large populations (Berry 1971; Soulé 1980; Shaffer 1981). Recovery of depleted populations is an inherently slow process for late-maturing species such as Atlantic sturgeon, and they continue to face a variety of other threats that contribute to their risk of extinction. Their late age at maturity provides more opportunities for individual Atlantic sturgeon to be removed from the population before reproducing. While a long life-span also allows multiple opportunities to contribute to future generations, it also increases the timeframe over which exposure to the multitude of threats facing the Carolina DPS can occur. The viability of the Carolina DPS depends on having multiple self-sustaining riverine spawning populations and maintaining suitable habitat to support the various life functions (spawning, feeding, growth) of Atlantic sturgeon populations.

Summary of the Status of the Carolina DPS of Atlantic Sturgeon

Recovery of depleted populations is an inherently slow process for a late-maturing species such as Atlantic sturgeon. Their late age at maturity provides more opportunities for individuals to be removed from the population before reproducing. While a long life-span also allows multiple opportunities to contribute to future generations, this is hampered within the Carolina DPS by habitat alteration and bycatch. This DPS was severely depleted by past directed commercial fishing, and faces ongoing impacts and threats from habitat alteration or inaccessibility, bycatch, and the inadequacy of existing regulatory mechanisms to address and reduce habitat alterations and bycatch that have prevented river populations from rebounding and will prevent their recovery.

The presence of dams has resulted in the loss of more than 60% of the historical sturgeon habitat on the Cape Fear River and in the Santee-Cooper system. Dams are contributing to the status of the Carolina DPS by curtailing the extent of available spawning habitat and further modifying the remaining habitat downstream by affecting water quality parameters (such as depth, temperature, velocity, and dissolved oxygen) that are important to sturgeon. Dredging is also contributing to the status of the Carolina DPS by modifying Atlantic sturgeon spawning and nursery habitat. Habitat modifications through reductions in water quality are contributing to the status of the Carolina DPS due to nutrient-loading, seasonal anoxia, and contaminated sediments.

Interbasin water transfers and climate change threaten to exacerbate existing water quality issues. Bycatch is also a current threat to the Carolina DPS that is contributing to its status. Fisheries known to incidentally catch Atlantic sturgeon occur throughout the marine range of the species and in some riverine waters as well. Because Atlantic sturgeon mix extensively in marine waters and may use multiple river systems for nursery and foraging habitat in addition to their natal spawning river, they are subject to being caught in multiple fisheries throughout their range. In addition to direct mortality, stress or injury to Atlantic sturgeon taken as bycatch but released alive may result in increased susceptibility to other threats, such as poor water quality (e.g., exposure to toxins). This may result in either reduced ability to perform major life functions, such as foraging and spawning, or even post-capture mortality. While many of the threats to the Carolina DPS have been ameliorated or reduced due to existing regulatory mechanisms, such as the moratorium on directed fisheries for Atlantic sturgeon, bycatch and habitat alterations are currently not being addressed through existing mechanisms. Further, despite NMFS's authority under the Federal Power Act to prescribe fish passage and existing controls on some pollution sources, access to habitat and improved water quality continues to be a problem. The inadequacy of regulatory mechanisms to control bycatch and habitat alterations is contributing to the status of the Carolina DPS.

4.2.2.5 South Atlantic DPS of Atlantic sturgeon

The SA DPS includes all Atlantic sturgeon that spawn or are spawned in the watersheds (including all rivers and tributaries) of the Ashepoo, Combahee, and Edisto Rivers (ACE) Basin southward along the South Carolina, Georgia, and Florida coastal areas to the St. Johns River, Florida. The marine range of Atlantic sturgeon from the SA DPS extends from the Hamilton Inlet, Labrador, Canada, to Cape Canaveral, Florida. The riverine range of the SA DPS and the adjacent portion of the marine range are shown in Figure 2. Sturgeon are commonly captured 40 miles offshore (Dewayne Fox, Delaware State University, pers. comm.). Records providing fishery bycatch data by depth show the vast majority of Atlantic sturgeon bycatch via gillnets is observed in waters less than 50 meters deep (Stein *et al.* 2004b, ASMFC TC 2007), but Atlantic sturgeon are recorded as bycatch out to 500 fathoms (900 meters).

Rivers known to have current spawning populations within the range of the South Atlantic DPS include the Combahee, Edisto, Savannah, Ogeechee, Altamaha, and Satilla Rivers. We determined spawning was occurring if YOY were observed, or mature adults were present, in freshwater portions of a system. However, in some rivers, spawning by Atlantic sturgeon may not be contributing to population growth because of lack of suitable habitat and the presence of other stressors on juvenile survival and development. Historically, the Broad-Coosawatchie was documented to have spawning populations; there is also evidence that spawning may have occurred in the St. Johns River or one of its tributaries. However, the historical spawning population present in the St. Johns is believed to be extirpated, and the status of the spawning population in the Broad-Coosawatchie is unknown. The St. Johns River is used as nursery habitat by young Atlantic sturgeon originating from other spawning populations. The use of the Broad-Coosawatchie by sturgeon from other spawning populations is unknown at this time. The presence of historical and current spawning populations in the Ashepoo River has not been documented; however, this river may currently be used for nursery habitat by young Atlantic sturgeon originating from other spawning populations. This represents our current knowledge of the river systems utilized by the South Atlantic DPS for specific life functions, such as spawning, nursery habitat, and foraging; however, fish from the SA DPS likely use other river systems than those listed here for their specific life functions.

Secor (2002) estimates that 8,000 adult females were present in South Carolina before the 1890. Prior to the collapse of the fishery in the late 1800s, the sturgeon fishery was the third largest fishery in Georgia. Secor (2002) estimated from U.S. Fish Commission landing reports that approximately 11,000 spawning females were likely present in the state prior to 1890. Reductions from the commercial fishery and ongoing threats have drastically reduced the numbers of Atlantic sturgeon within the South Atlantic DPS. Currently, the Atlantic sturgeon spawning population in at least two river systems within the South Atlantic DPS has been extirpated. The Altamaha River population of Atlantic sturgeon, with an estimated 343 adults spawning annually, is believed to be the largest population in the Southeast, yet is estimated to be only 6 percent of its historical population size. The ASSRT estimated the abundances of the remaining river populations within the DPS, each estimated to have fewer than 300 spawning adults, to be less than 1 percent of what they were historically (ASSRT 2007).

Threats

The SA DPS was listed as endangered under the ESA as a result of a combination of habitat curtailment and modification, overuse (i.e., being taken as bycatch) in commercial fisheries, and the inadequacy of regulatory mechanisms in ameliorating these impacts and threats.

The modification and curtailment of Atlantic sturgeon habitat resulting from dredging and degraded water quality is contributing to the status of the SA DPS. Dredging is a present threat to the SA DPS and is contributing to its status by modifying the quality and availability of Atlantic sturgeon habitat. Maintenance dredging is currently modifying Atlantic sturgeon nursery habitat in the Savannah River and modeling indicates that the proposed deepening of the navigation channel will result in reduced dissolved oxygen and upriver movement of the salt wedge, curtailing spawning habitat. Dredging is also modifying nursery and foraging habitat in the St. Johns Rivers. Reductions in water quality from terrestrial activities have modified habitat used by the SA DPS. Low dissolved oxygen is modifying sturgeon habitat in the Savannah due to dredging, and non-point source inputs are causing low dissolved oxygen in the Ogeechee River and in the St. Marys River, which completely eliminates juvenile nursery habitat in summer. Low dissolved oxygen has also been observed in the St. Johns River in the summer. Sturgeon are more sensitive to low dissolved oxygen and the negative (metabolic, growth, and feeding) effects caused by it increase when water temperatures are concurrently high, as they are within the range of the SA DPS. Additional stressors arising from water allocation and climate change threaten to exacerbate water quality problems that are already present throughout the range of the SA DPS. Large withdrawals of over 240 million gallons per day mgd of water occur in the Savannah River for power generation and municipal uses. However, permits for users withdrawing less than 100,000 gallons per day (gpd) are not required to get permits, so actual water withdrawals from the Savannah and other rivers within the range of the SA DPS are unknown, but likely much higher. The removal of large amounts of water from the system will alter flows, temperature, and dissolved oxygen. Water shortages and “water wars” are already occurring in the rivers occupied by the SA DPS and will likely be compounded in the future by population growth and, potentially, by climate change. Climate change is also predicted to elevate water temperatures and exacerbate nutrient-loading, pollution inputs, and lower dissolved oxygen, all of which are current stressors to the SA DPS.

Overutilization of Atlantic sturgeon from directed fishing caused initial severe declines in Atlantic sturgeon populations in the Southeast, from which they have never rebounded. Further, continued overutilization of Atlantic sturgeon as bycatch in commercial fisheries is an ongoing impact to the South Atlantic DPS. The loss of large subadults and adults as a result of bycatch impacts Atlantic sturgeon populations because they are a long-lived species, have an older age at maturity, have lower maximum fecundity values, and a large percentage of egg production occurs later in life. Little data exists on bycatch in the Southeast and high levels of bycatch underreporting are suspected. Further, a total population abundance for the DPS is not available, and it is therefore not possible to calculate the percentage of the DPS subject to bycatch mortality based on the available bycatch mortality rates for individual fisheries. However, fisheries known to incidentally catch Atlantic sturgeon occur throughout the marine range of the species and in some riverine waters as well. Because Atlantic sturgeon mix extensively in marine waters and may access multiple river systems, they are subject to being caught in multiple fisheries throughout their range. In addition, stress or injury to Atlantic sturgeon taken as bycatch but released alive may result in increased susceptibility to other threats, such as poor water quality (e.g., exposure to toxins and low DO). This may result in reduced ability to perform major life functions, such as foraging and spawning, or even post-capture mortality.

As a wide-ranging anadromous species, Atlantic sturgeon are subject to numerous Federal (U.S. and Canadian), state and provincial, and inter-jurisdictional laws, regulations, and agency activities. While these mechanisms have addressed impacts to Atlantic sturgeon through directed fisheries, there are currently no mechanisms in place to address the significant risk posed to Atlantic sturgeon from commercial bycatch. Though statutory and regulatory mechanisms exist that authorize reducing the impact of dams on riverine and anadromous species, such as Atlantic sturgeon, and their habitat, these mechanisms have proven inadequate for preventing dams from blocking access to habitat upstream and degrading habitat downstream. Further, water quality continues to be a problem in the South Atlantic DPS, even with existing controls on some pollution sources. Current regulatory regimes are not necessarily effective in controlling water allocation issues (e.g., no permit requirements for water withdrawals under 100,000 gpd in Georgia, no restrictions on interbasin water transfers in South Carolina, the lack of ability to regulate non-point source pollution.)

The recovery of Atlantic sturgeon along the Atlantic coast, especially in areas where habitat is limited and water quality is severely degraded, will require improvements in the following areas: (1) elimination of barriers to spawning habitat either through dam removal, breaching, or installation of successful fish passage facilities; (2) operation of water control structures to provide appropriate flows, especially during spawning season; (3) imposition of dredging restrictions including seasonal moratoriums and avoidance of spawning/nursery habitat; and (4) mitigation of water quality parameters that are restricting sturgeon use of a river (i.e., dissolved oxygen). Additional data regarding sturgeon use of riverine and estuarine environments is needed.

A viable population able to adapt to changing environmental conditions is critical to Atlantic sturgeon, and the low population numbers of every river population in the South Atlantic DPS put them in danger of extinction throughout their range. None of the populations are large or stable enough to provide with any level of certainty for continued existence of Atlantic sturgeon in this part of its range. Although the largest impact that caused the precipitous decline of the species has been curtailed (directed fishing), the population sizes within the South Atlantic DPS have remained relatively constant at greatly reduced levels for 100 years. Small numbers of individuals resulting from drastic reductions in populations, such as occurred with Atlantic sturgeon due to the commercial fishery, can remove the buffer against natural demographic and environmental variability provided by large populations (Berry, 1971; Shaffer, 1981; Soulé, 1980). Recovery of depleted populations is an inherently slow process for a late-maturing species such as Atlantic sturgeon, and they continue to face a variety of other threats that contribute to their risk of extinction. While a long life-span also allows multiple opportunities to contribute to future generations, it also increases the timeframe over which exposure to the multitude of threats facing the South Atlantic DPS can occur.

Summary of the Status of the South Atlantic DPS of Atlantic Sturgeon

The South Atlantic DPS is estimated to number a fraction of its historical abundance. There are an estimated 343 spawning adults per year in the Altamaha and less than 300 spawning adults per year (total of both sexes) in each of the other major river systems occupied by the DPS in which spawning still occurs, whose freshwater range occurs in the watersheds (including all rivers and tributaries) of the ACE Basin southward along the South Carolina, Georgia, and Florida coastal areas to the St. Johns River, Florida. Recovery of depleted populations is an inherently slow process for a late-maturing species such as Atlantic sturgeon. While a long life-span also allows multiple opportunities to contribute to future generations, this is hampered within the SA DPS by habitat alteration, bycatch, and from the inadequacy of existing regulatory mechanisms to address and reduce habitat alterations and bycatch.

Dredging is contributing to the status of the SA DPS by modifying spawning, nursery, and foraging habitat. Habitat modifications through reductions in water quality and dissolved oxygen are also contributing to the status of the SA DPS, particularly during times of high water temperatures, which increase the detrimental effects on Atlantic sturgeon habitat. Interbasin water transfers and climate change threaten to exacerbate existing water quality issues. Bycatch also contributes to the SA DPS's status. Fisheries known to incidentally catch Atlantic sturgeon occur throughout the marine range of the species and in some riverine waters as well. Because Atlantic sturgeon mix extensively in marine waters and may use multiple river systems for nursery and foraging habitat in addition to their natal spawning river, they are subject to being caught in multiple fisheries throughout their range. In addition to direct mortality, stress or injury to Atlantic sturgeon taken as bycatch but released alive may result in increased susceptibility to other threats, such as poor water quality (e.g., exposure to toxins). This may result in reduced ability to perform major life functions, such as foraging and spawning, or even post-capture mortality. While many of the threats to the SA DPS have been ameliorated or reduced due to the existing regulatory mechanisms, such as the moratorium on directed fisheries for Atlantic sturgeon, bycatch and habitat alteration are currently not being addressed through existing mechanisms. Further, access to habitat and good water quality continues to be a problem even with NMFS's authority under the Federal Power Act to prescribe fish passage and existing controls on some pollution sources. There is a lack of regulation for some large water withdrawals, which threatens sturgeon habitat. Current regulatory regimes do not require a permit for water withdrawals under 100,000 gpd in Georgia and there are no restrictions on interbasin water transfers in South Carolina. Existing water allocation issues will likely be compounded by population growth, drought, and, potentially, climate change. The inadequacy of regulatory mechanisms to control bycatch and habitat alterations is contributing to the status of the SA DPS.

5.0 ENVIRONMENTAL BASELINE

Environmental baselines for biological opinions include the past and present impacts of all state, federal or private actions and other human activities in the action area, the anticipated impacts of all proposed federal projects in the action area that have already undergone formal or early Section 7 consultation, and the impact of state or private actions that are contemporaneous with the consultation in process (50 CFR § 402.02). The environmental baseline for this Opinion includes the effects of several activities that may affect the survival and recovery of the listed species in the action area. The activities that shape the environmental baseline in the action area of this consultation generally include: commercial and recreational fisheries, hopper dredging operations, sand mining and beach nourishment activities, commercial shipping and other vessel activities, military operations, scientific research, projects affecting water quality and pollution, global climate change, and recovery activities associated with reducing impacts to listed species.

5.1 Federal Actions that have Undergone Section 7 Consultation

We have undertaken a number of section 7 consultations to address the effects of Federal actions on threatened and endangered species in the action area. Each of those consultations sought to develop ways to reduce the probability of adverse impacts of the action on listed species.

5.1.1 Authorization of Fisheries through Fishery Management Plans

We authorize the operation of several nearshore fisheries in the action area under the authority of the Magnuson-Stevens Fishery Conservation Act and through FMPs and their implementing regulations. Commercial and recreational fisheries in the action area employ gear that is known to harass, injure, and/or kill sea turtles and Atlantic sturgeon.

In the Greater Atlantic Region (Maine through Virginia), a formal ESA section 7 consultation has been conducted on the batched Northeast multispecies, monkfish, spiny dogfish, Northeast skate complex, Atlantic bluefish, Atlantic mackerel/squid/butterfish, and summer flounder/scup/black sea bass fisheries, the last three of which may overlap in part with the action area for the proposed action. This consultation considered adverse effects to loggerhead, green, Kemp’s ridley, and leatherback sea turtles. In the batched fisheries biological opinion, we concluded that the seven fisheries were likely to adversely affect but were not likely to jeopardize the continued existence of any sea turtle species. The biological opinion included an ITS exempting a certain amount of lethal or non-lethal take resulting from interactions with the fisheries. The ITS is summarized in the table below (Table 11).

Table 11. Sea turtle incidental take information from the most recent NMFS GARFO Biological Opinion for seven federally managed fisheries, three of which (in bold) overlap with the action area.

Opinion	Date	Loggerhead	Kemp's ridley	Green	Leatherback
Northeast Multispecies, Monkfish, Spiny Dogfish, **Atlantic Bluefish**, Northeast Skate Complex, **Atlantic Mackerel/Squid/Butterfish**, and **Summer Flounder/ Scup/Black Sea Bass** (Batched Fisheries)	December 16, 2013 (ITS amended March 10, 2016)	1,345 (835 lethal) every 5 years in gillnets; 1,020 (335 lethal) every 5 years in bottom trawls; 1 (lethal or non-lethal) annually in pot/trap gear	4 (3 lethal) annually in gillnets; 3 (2 lethal) annually in bottom trawls	4 (3 lethal) annually in gillnets; 3 (2 lethal) annually in bottom trawls	4 (3 lethal) annually in gillnets; 4 (2 lethal) annually in bottom trawls; 4 (lethal or non-lethal) annually in pot/trap gear

Although there are documented incidental takes of sea turtles in these Federal fisheries, the action area for them includes the entire EEZ along the U.S. Atlantic coast from Maine through Florida. The nearshore and coastal waters of Virginia and those inside Chesapeake Bay represent a tiny fraction of the action area assessed and for which interactions of sea turtles are anticipated in the batched fisheries biological opinion. Thus, the amount of incidental take of sea turtles that occurs in Virginia state waters as a result of Federal fisheries is also a tiny fraction of the amount exempted in that biological opinion. Furthermore, very little commercial and recreational fishing effort for those species occurs in Virginia state waters, and even less occurs within Chesapeake Bay. Scup and summer flounder have a larger state waters recreational component, but that effort is often prosecuted offshore and outside of the bay. In the batched fisheries biological opinion, we also concluded that the potential for interactions (i.e., vessel strikes) between sea turtles and fishing vessels was extremely low and similarly that any effects to their prey and/or habitat would be insignificant and discountable.

Atlantic sturgeon originating from each the five listed DPSs are known to be captured and killed in otter trawl, sink gillnet, and hook and line fisheries operating in the action area. At the time of this writing, the batched fisheries biological opinion covers Atlantic sturgeon interactions in the Greater Atlantic Region. As noted in the *Status of the Species* section above, the NEFSC prepared a bycatch estimate for Atlantic sturgeon captured in sink gillnet and otter trawl fisheries operated from Maine through Virginia. This estimate indicates that, based on data from 2006-2010, annually, an average of 3,118 Atlantic sturgeon are captured in these fisheries with 1,569 in sink gillnet and 1,548 in otter trawls. The mortality rate in sink gillnets is estimated at approximately 20% and the mortality rate in otter trawls is estimated at 5%. Based on this estimate, a total of 391 Atlantic sturgeon are estimated to be killed annually in these fisheries that are prosecuted in the Greater Atlantic Region. We are currently in the process of determining the effects of this annual loss to each of the DPSs. Again, nearshore and coastal waters of Virginia and those inside Chesapeake Bay represent a tiny fraction of the action area assessed and for which interactions of Atlantic sturgeon are anticipated in the batched fisheries Opinion. Nonetheless, any Federal fisheries that use sink gillnets, otter trawls, or hook and line gear are likely to interact with Atlantic sturgeon and be an additional, albeit minor, source of incidental take and mortality in the action area. An updated Atlantic sturgeon bycatch estimate in Northeast sink gillnet and otter trawl fisheries for 2011-2015 was prepared in mid-2016 but is not yet publically available.

5.1.2 Hopper Dredging, Sand Mining, and Beach Nourishment

The construction and maintenance of Federal navigation channels, sand mining ("borrow") activities, beach nourishment, and shoreline restoration/stabilization projects have been identified as sources of sea turtle and Atlantic sturgeon incidental take and mortality in the action area. The majority of these projects in the action area are authorized and carried out by the U.S. Army Corps of Engineers (USACE), with a few facility-specific ones overseen by the National Aeronautics and Space Administration (NASA) and U.S. Navy. In the action area, USACE projects are under the jurisdiction of the Norfolk District of the North Atlantic Division. From 1993-2017, hopper dredging projects in the Norfolk District have resulted in the recorded incidental take of 66 loggerheads, six Kemp's ridleys, one green, and four unidentified hard shell turtles. To date, nearly all of these interactions have occurred in nearshore coastal waters with very few interactions in the open ocean. Few interactions between hopper dredges and Atlantic sturgeon have been reported, with just two records documenting interactions between hopper dredges and Atlantic sturgeon in the action area (in Virginia near the Chesapeake Bay entrance).

We have completed several ESA section 7 consultations with you to consider effects of these dredging, sand mining, and nourishment projects on listed sea turtles and Atlantic sturgeon. Many of these consultations – including this one - are in the process of being reinitiated to consider effects to Atlantic sturgeon critical habitat. In our 2012 biological opinion, over the 50-year period of your maintenance dredging of the Chesapeake Bay entrance channels and use of sand borrow areas for beach nourishment from 2012-2062, we anticipated that up to 937 loggerhead (452 lethal), 275 Kemp's ridley (48 lethal), and 38 green (11 lethal) sea turtles would be incidentally taken. We also anticipated up to 800 Atlantic sturgeon would be incidentally taken during the same action over the same period.

Recently, the U.S. Navy's Dam Annex Shoreline Protection System Repairs operations and NASA's Wallops Island Shoreline Restoration/Infrastructure Protection Program were determined to cause the entrainment of up to one Atlantic sturgeon from any of the five DPSs for approximately every 9.4 million cubic yards of material removed from the borrow areas. This equated to one and two captures, respectively, from any of the five DPSs over the course of the two projects. Three additional biological opinions (two Navy projects and one ACOE project) were also completed in 2012 to assess Atlantic sturgeon interactions in dredging operations in the action area. Table 12 below provides information on biological opinions covering dredging, beach nourishment, and shoreline restoration/stabilization projects in the action area and the associated ITSs for sea turtles (unless otherwise noted, take estimates are per dredge cycle). Takes of sea turtles and Atlantic sturgeon during relocation trawling activities are also included in these consultations. Relocation trawling has been successful at temporarily displacing loggerhead, Kemp's ridley, leatherback, and green sea turtles from channels and nearshore mining areas in both the Atlantic and Gulf of Mexico during periods when hopper dredging was imminent or ongoing.

Table 12. Information on NMFS GARFO consultations for dredging, nourishment, and shoreline restoration/stabilization projects that occur in the action area, and their ITSs for sea turtles.

Project	Date of Opinion	Loggerhead	Kemp's ridley	Green	Leatherback	Notes
U.S. Navy Shoreline Restoration and Protection Project, JEB Little Creek/ Fort Story, VA Beach	7/13/2012	1 loggerhead or Kemp's ridley		0	0	
U.S. Navy Shoreline Protection Sys Repairs, Naval Air Station Oceana, Dam Neck Annex, VA Beach	7/20/2012	1 loggerhead or Kemp's ridley		0	0	
NASA Wallops Isl Shoreline Restoration/ Infrastructure Protection Program	8/3/2012	up to 9	no more than 1	0	0	total takes over 50-year project life
ACOE Dredging of Chesapeake Bay Entrance Channels and Beach Nourishment	10/16/2012	937 non-lethal captures, 452 mortalities	275 non-lethal captures, 48 mortalities	38 non-lethal captures, 11 mortalities	0	total takes over 50-year project life
		Relocation Trawling: up to 938 captures (37 mortalities) of loggerheads, 275 captures (11 mortalities) of Kemp's ridleys, and 37 captures (2 mortalities) of green sea turtles				

5.1.3 Vessel Activity and Military Operations

Potential sources of adverse effects to sea turtles and Atlantic sturgeon from Federal vessel operations in the action area include operations of the U.S. Navy (USN) and the U.S. Coast Guard (USCG), which maintain the largest Federal fleets, as well as the Bureau of Ocean Energy Management (BOEM), Maritime Administration (MARAD), Environmental Protection Agency (EPA), NOAA, and ACOE. We have conducted formal consultations with the USN, USCG, EPA, and NOAA on their vessel-based operations. We have also conducted section 7 consultations with BOEM and MARAD on vessel traffic related to energy projects in the Greater Atlantic Region and implemented conservation measures. Through the section 7 process, where applicable, we have and will continue to establish conservation measures for all these agency vessel operations to avoid or minimize adverse effects to listed species. To date, ocean-going vessels and military activities have not been identified as significant threats to Atlantic sturgeon.

However, the possibility exists for interactions between vessels and these species in marine, estuarine, and riverine environments. However, because of a lack of information on the effects of these activities on sturgeon, the discussion below focuses on sea turtles.

Although consultations on individual Navy and USCG activities have been completed, only a few formal consultations on overall military activities along the U.S. Atlantic coast have been completed at this time. In June 2009, we prepared a biological opinion on Navy activities in each of their four training range complexes along the U.S. Atlantic coast—Northeast, Virginia Capes, Cherry Point, and Jacksonville (NMFS 2009). The Virginia Capes Operating Area overlaps with the action area for this consultation. In August 2017, NMFS prepared an Opinion on the operation of the Surveillance Towed Array Sensor System (SURTASS) Low Frequency Active (LFA) sonar onboard four Navy vessels (NMFS 2017). In addition, the following biological opinions for the Navy (NMFS 1996, 1997, 2008b) and USCG (NMFS 1995, 1998b) contain details on the scope of vessel operations for these agencies and the conservation measures that are being implemented as standard operating procedures. In the U.S. Atlantic, the operation of USCG boats and cutters is estimated to take no more than one individual sea turtle, of any species, per year (NMFS 1995).

Military activities such as ordnance detonation also affect listed species of sea turtles. A section 7 consultation was conducted in 1997 for Navy aerial bombing training in the ocean off the southeast U.S. coast, involving drops of live ordnance (500 and 1,000-lb bombs). The resulting biological opinion for this consultation determined that the activity was likely to adversely affect sea turtles but would not jeopardize their continued existence. In the ITS included within the biological opinion, these training activities were estimated to have the potential to injure or kill, annually, 84 loggerheads, 12 leatherbacks, and 12 greens or Kemp’s ridleys, in combination (NMFS 1997).

We have also conducted recent section 7 consultations on Navy explosive ordnance disposal, mine warfare, sonar testing (e.g., AFTT, SURTASS LFA), and other major training exercises (e.g., bombing, Naval gunfire, combat search and rescue, anti-submarine warfare, and torpedo and missile exercises) in the Atlantic Ocean. These consultations have determined that the proposed Navy activities may adversely affect but would not jeopardize the continued existence of ESA-listed sea turtles (NMFS 2008b, 2009, 2017). We estimated that five loggerhead and six Kemp’s ridley sea turtles were likely to be harmed as a result of training activities in the Virginia Capes Range Complex from June 2009 to June 2010, and that nearly 1,500 sea turtles, including ten leatherbacks, were likely to experience harassment (NMFS 2009). For SURTASS LFA sonar testing, we were unable to estimate the number of sea turtles of each species occurring in USN mission areas that could be incidentally taken, although all takes were expected to result in behavioral harassment rather than serious injury or mortality (NMFS 2017).

Similarly, operations of vessels by other Federal agencies within the action area (BOEM, MARAD, EPA, and ACOE) may adversely affect sea turtles and Atlantic sturgeon. However, vessel activities of those agencies are often limited in scope, as they operate a limited number of vessels or are engaged in research/operational activities that are unlikely to contribute a significant amount of risk.

5.1.4 *Research and Other Permitted Activities*

Research activities either conducted or funded by Federal agencies within the action area may adversely affect ESA-listed sea turtles and fish, and may require a section 7 consultation. Several section 7 consultations on research activities have recently been completed, as described below.

Fish Surveys funded by the USFWS
USFWS Region 5 provides funds to 13 states and the District of Columbia under the Dingell-Johnson Sport Fish Restoration Grant program and the State Wildlife Grant Program. Vermont and West Virginia are the only two Northeast states that do not use these funds to conduct ongoing surveys in marine, estuarine or riverine waters where NMFS listed species are present. The eleven other states (Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia) and the District of Columbia carry out a total of approximately 80-90 studies, mostly on an annual basis. There are several broad categories of fisheries surveys including: hook and line; beach seine; bottom trawl; fishway trap; boat electrofishing; long line; fyke net; gill net; haul seine; push net; and, backpack electrofishing. These surveys occur in state waters (rivers, estuaries, and in nearshore ocean waters), generally from Maine through Virginia, with several studies occurring in Virginia state waters including juvenile fish trawl surveys, juvenile striped bass beach seine surveys, and the Chesapeake Bay Multispecies Monitoring and Assessment Program (ChesMMAP) surveys. These surveys have resulted in the non-lethal capture of both sea turtles (eight loggerheads and one Kemp's ridley) and Atlantic sturgeon (seven total) since 2013.

We completed a biological opinion in 2013 which bundled the eleven independent actions carried out by USFWS (i.e., awarding of each grant fund to each state is an independent action). The biological opinion provides an ITS by activity and provided a summary by state. Overall, we anticipate that the surveys described in the biological opinion, to be funded by USFWS and carried out by the states will result in the capture of up to two sea turtles of any species and 140 Atlantic sturgeon (no more than three lethal) over a five-year period. The only mortalities that we anticipate for Virginia state waters are three Atlantic sturgeon (originating from any of the five DPSs) during striped bass and shad gillnet surveys in the action area.

Section 10(a)(1)(A) Permits
We have issued additional research permits under section 10(a)(1)(A) of the ESA, which authorizes activities for scientific purposes or to enhance the propagation or survival of the affected species. The permitted activities do not operate to the disadvantage of the species and are consistent with the purposes of the ESA, as outlined in section 2 of the Act. A total of 13 section 10(a)(1)(A) permits are currently in effect for sea turtles and Atlantic sturgeon within the action area for this consultation.

Section 10(a)(1)(B) Permits
Section 10(a)(1)(B) of the ESA authorizes us, under some circumstances, to permit non-Federal parties to take otherwise prohibited fish and wildlife if such taking is "incidental to, and not the purpose of carrying out otherwise lawful activities" (50 CFR 217-222). As a condition for issuance of a permit, the permit applicant must develop a conservation plan that minimizes negative impacts to the species. There are currently no active Section 10(a)(1)(B) permits in the

action area for this consultation, although on August 14, 2017, we published a notice in the Federal Register announcing the receipt of an application from Dominion Virginia Power for a section 10(a)(1)(B) permit, which is discussed in more detail below. In addition, most coastal Atlantic states are either in the process of applying for permits or considering applications for state fisheries. Active permits and permit applications are posted online for all ESA-listed species as they become available at http://www.nmfs.noaa.gov/pr/permits/esa_review.htm.

5.1.5 Coal Burning Power Stations

Chesterfield Power Station – James River

The Chesterfield Power Station (CPS) is a coal-fired power plant operated by Dominion Virginia Power (Dominion). The CPS began operations in 1945 and has been operating at its current level since 1992. The station is located at river mile 82 (RKM 132 of the James River in Chesterfield, VA. The six power-generating units at CPS utilize a once-through cooling water system that withdraws water directly from the James River though five cooling water intake structures. The operation of the CPS has resulted in the take of Atlantic sturgeon. An Atlantic sturgeon presumed to be an adult based on its size (no measurements available), was impinged on “trash racks” of the CPS on October 3, 2015. The sturgeon was injured, but returned alive to the James River. Also in October 2015, two yolk-sac Atlantic sturgeon larvae were captured during entrainment sampling conducted pursuat to section 316(b) of the Clean Water Act. After the incidental take of the two larvae, Dominion suspended entrainment sampling on March 2, 2016, prior to the spring spawning of Atlantic sturgeon in the Jams River. On April 10, 2017, we received a complete application from Dominion requesting an Incidental Take Permit (ITP) to take Atlantic sturgeon over a 10-year period. Dominion estimates the take of up to 846 Atlantic sturgeon per year from the Cheseapeake Bay DPS due to entrainment in the CPS cooling water intakes. Dominion also estimates the take of up to two juvenile, sub-adult, or adult Atlantic sturgeon from the Chesapeake Bay DPS over a 10-year period as a result of impingement at the CPS intakes.

5.2 Non-Federally Regulated Fisheries

Sea turtles and Atlantic sturgeon may be vulnerable to capture, injury, and mortality in fisheries occurring in Virginia state waters. Information on the number of sea turtles and Atlantic sturgeon captured or killed in Virginia state fisheries is extremely limited and as such, efforts are currently underway to obtain more information on the numbers of these species captured and killed in state water fisheries. We are currently working with the Northeast Fisheries Observer Program (NEFOP), Atlantic States Marine Fisheries Commission (ASMFC), the Virginia Marine Resources Commission (VMRC), and the Virginia Aquarium and Marine Science Center to assess the impacts of state authorized fisheries on sea turtles and Atlantic sturgeon. We are also currently working with Virginia on applications for ESA section 10(a)(1)(B) Incidental Take Permits to cover their fisheries; however, to date, no permit applications have been submitted. Below, we discuss the different fisheries authorized by the state of Virginia and any available information on interactions between these fisheries and sea turtles/Atlantic sturgeon.

American eel fishery

American eel is exploited in fresh, brackish, and coastal waters from the southern tip of Greenland to northeastern South America. Eel fisheries are conducted primarily in tidal and inland waters. Eels are typically caught with hook and line or with eel traps and may also be caught with fyke nets. Sturgeon and sea turtles are not known to interact with the eel fishery.

Atlantic croaker fishery

An Atlantic croaker fishery using trawl and gillnet gear also occurs within the action area and sea turtle interactions have been observed in the fishery. The average annual bycatch of loggerhead sea turtles in bottom otter trawl gear used in the Atlantic croaker fishery was estimated to be 92 loggerhead sea turtles (with a 95% CI of 63-121) from 2009-2013 (Murray 2015a). Additional information on sea turtle interactions with gillnet gear used in the Atlantic croaker fishery has also been recently published by Murray (2013). The average annual bycatch of loggerhead sea turtles in gillnet gear used in the Atlantic croaker fishery, based on VTR data from 2007-2011, was estimated to be 6 per year with a 95% CI of 2-10 (Murray 2013). These estimates encompass the bycatch of loggerheads in the Atlantic croaker fishery in both state and Federal waters.

Atlantic sturgeon interactions have also been observed in the Atlantic croaker fishery, but a quantitative assessment of the number of Atlantic sturgeon captured in the croaker fishery is not available. A mortality rate of Atlantic sturgeon in commercial trawls has been estimated at 5%. A review of the NEFOP database indicates that from 2006-2010, 60 Atlantic sturgeon (out of a total of 726 observed interactions) were captured during observed trips where the trip target was identified as croaker. This represents a minimum number of Atlantic sturgeon captured in the croaker fishery during this time period as it only considers trips that included a NEFOP observer onboard.

Weakfish fishery

The weakfish fishery occurs in both state and Federal waters, but the majority of commercially and recreationally caught weakfish are caught in state waters (ASMFC 2002). The dominant commercial gears include gillnets, pound nets, haul seines, flynets, and trawls, with the majority of landings occurring in the fall and winter months (ASMFC 2002). Weakfish landings were dominated by the trawl fishery through the mid-1980s, after which gillnet landings began to account for most weakfish landed (ASMFC 2002). Virginia has ranked second among U.S. Atlantic states in annual landings since 1972 (ASMFC 2002). Sea turtle bycatch in the weakfish fishery has occurred (Murray 2013, 2015a) and NMFS originally assessed the impacts of the fishery on sea turtles in an Opinion in 1997 (NMFS 1997b). Currently, the average annual bycatch of loggerhead sea turtles in bottom otter trawl gear used in the weakfish fishery is estimated to be 0 loggerheads (with a 95% CI of 0-1) from 2009-2013 (Murray 2015a). Additional information on loggerhead sea turtle interactions with gillnet gear has also been recently published by Murray (2009a, 2009b). The average annual bycatch of loggerhead sea turtles in gillnet gear used in the weakfish fishery, based on VTR data from 2002-2006, was estimated to be one per year with a 95% CI of 0-1 (Murray 2009b), although the more recent Murray (2013) gillnet bycatch estimate for 2007-2011 does not include a loggerhead bycatch estimate for the weakfish gillnet fishery. These estimates encompass the bycatch of loggerheads in the weakfish fishery in both state and Federal waters.

A quantitative assessment of the number of Atlantic sturgeon captured in the weakfish fishery is not available. A mortality rate of Atlantic sturgeon in commercial trawls has been estimated at

5%. A review of the NEFOP observer database indicates that from 2006-2010, 36 Atlantic sturgeon (out of a total of 726 observed interactions) were captured during observed trips where the trip target was identified as weakfish. This represents a minimum number of Atlantic sturgeon captured in the weakfish fishery during this time period as it only considers observed trips, and most inshore fisheries are not observed. An earlier review of bycatch rates and landings for the weakfish fishery reported that the weakfish-striped bass fishery had an Atlantic sturgeon bycatch rate of 16% from 1989-2000; the weakfish-Atlantic croaker fishery had an Atlantic sturgeon bycatch rate of 0.02%, and the weakfish fishery had an Atlantic sturgeon bycatch rate of 1.0% (ASSRT 2007).

Whelk fishery

A whelk fishery using pot/trap gear is known to occur in Virginia waters of Chesapeake Bay. Whelk pots, which unlike lobster traps are not fully enclosed, have been suggested as a potential source of entrapment for loggerhead sea turtles that may be enticed to enter the trap to get the bait or whelks caught in the trap (Mansfield *et al*. 2001). Loggerhead, leatherback, and green sea turtles are known to become entangled in lines associated with pot/trap gear used in several fisheries including lobster, whelk, and crab species (SEFSC 2001; Dwyer *et al*. 2002: NMFS 2007b). Whelk fisheries in Virginia have been verified as the fisheries involved in a handful of loggerhead, leatherback, and green sea turtle entanglements since 2001, averaging around one per year (Northeast Region Sea Turtle Disentanglement Network [STDN] database). Whelk pots are not known to interact with Atlantic sturgeon.

Crab fisheries

Various crab fisheries, such as horseshoe crab and blue crab, also occur in Virginia state waters. Loggerhead, leatherback, and green sea turtles are known to become entangled in lines associated with pot/trap gear used in several fisheries including lobster, whelk, and crab species (SEFSC 2001; Dwyer *et al*. 2002: NMFS 2007b). The Virginia blue crab fishery has been verified as the fishery involved in a handful of loggerhead and leatherback sea turtle entanglements since 2001 (Northeast Region STDN database). In 2017, crab fisheries in Virginia accounted for two live and possibly one dead leatherbacks entangled in vertical lines of the gear.

The crab fisheries may have detrimental impacts on sea turtles beyond entanglement in the fishing gear itself. Loggerheads are known to prey on crab species, including horseshoe and blue crabs. In a study of the diet of loggerhead sea turtles in Virginia waters from 1983 to 2002, Seney and Musick (2007) found a shift in the diet of loggerheads in the area from horseshoe and blue crabs to fish, particularly menhaden and Atlantic croaker. The authors suggested that a decline in the crab species have resulted in the shift and loggerheads are likely foraging on fish captured in fishing nets or on discarded fishery bycatch (Seney and Musick 2007). The physiological impacts of this shift are uncertain although it was suggested as a possible explanation for the declines in loggerhead abundance noted by Mansfield (2006). Other studies have detected seasonal declines in loggerhead abundance coincident with seasonal declines of horseshoe and blue crabs in the same area (Maier *et al*. 2005). While there is no evidence of a decline in horseshoe crab abundance in the Southeast during the period 1995-2003, declines were evident in some parts of the Mid-Atlantic (ASMFC 2004; Eyler *et al*. 2007). Given the variety of loggerheads prey items (Dodd 1988; Burke *et al*. 1993; Bjorndal 1997; Morreale and Standora

1998) and the differences in regional abundance of horseshoe crabs and other prey items (ASMFC 2004; Eyler *et al*. 2007), a direct correlation between loggerhead sea turtle abundance and horseshoe crab and blue crab availability cannot be made at this time. Nevertheless, the decline in loggerhead abundance in Virginia waters (Mansfield 2006), coincident with noted declines in the abundance of horseshoe crab and other crab species, raises concerns that crab fisheries may be impacting the forage base for loggerheads in some areas of their range.

Atlantic sturgeon are known to be caught in state water horseshoe crab fisheries, which currently operate in all Northeast U.S. states except New Jersey. Along the U.S. East Coast, hand, trawl, and dredge fisheries account for more than 85% of the commercial horseshoe crab landings in the bait fishery. Other methods used are gillnets, pound nets, and traps (ASMFC 2011a). State waters from Delaware to Virginia are closed to horseshoe crab harvest and landing from January 1 to June 7 (ASMFC 2011a). The majority of horseshoe crab landings in 2010 came from Massachusetts, Virginia, and Delaware. Stein *et al*. (2004) examined bycatch of Atlantic sturgeon using the NMFS sea-sampling/observer database (1989-2000) and found that the bycatch rate for horseshoe crabs was low, at 0.05%. An Atlantic sturgeon "reward program," where commercial fishermen were provided monetary rewards for reporting captures of Atlantic sturgeon in the Maryland waters of Chesapeake Bay, operated from 1996 to 2012 (Mangold *et al*. 2007).[9] The data from this program during the 11-year period of 1996-2006 show that one of 1,395 wild Atlantic sturgeon was found caught in a crab pot (Mangold *et al*. 2007).

Fish trap, seine, and channel net fisheries

Incidental captures of loggerheads in fish traps have been reported from several states along the U.S. Atlantic coast (Shoop and Ruckdeschel 1989; W. Teas, NMFS, pers. comm.), while leatherbacks have been documented as entangled in the buoy line systems of conch and sea bass traps off Massachusetts (Northeast Region STDN database). Long haul seines, purse seines, and channel nets are also known to incidentally capture sea turtles in sounds and other inshore waters along the U.S. Atlantic coast, although no lethal interactions have been reported (SEFSC 2001). No information on interactions between Atlantic sturgeon and fish traps, long haul seines, purse seines, or channel nets is currently available; however, depending on where this gear is set and the mesh size, the potential exists for Atlantic sturgeon to be entangled or captured in this gear.

Striped bass fishery

The striped bass fishery occurs in only in state waters, as Federal waters have been closed to the harvest and possession of striped bass since 1990, except that possession is allowed in a defined area around Block Island, Rhode Island (ASMFC 2011b). The ASMFC has managed striped bass since 1981, and provides guidance to states from Maine to North Carolina through an ISFMP. All states are required to have recreational and commercial size limits, recreational creel limits, and commercial quotas. The commercial striped bass fishery is closed in Maine, New Hampshire, and Connecticut, but open in Massachusetts (hook and line only), Rhode Island, New Jersey (hook and line only), Delaware, Maryland, Virginia, and North Carolina. Recreational striped bass fishing occurs all along the U.S. East Coast.

Several states have reported incidental catch of Atlantic sturgeon (NMFS Sturgeon Workshop 2011). Data from the Atlantic Coast Sturgeon Tagging Database (2000-2004) shows that the

[9] The program was terminated in February 2012, with the listing of Atlantic sturgeon under the ESA.

striped bass fishery accounted for 43% of Atlantic sturgeon recaptures (ASSRT 2007). The striped bass-weakfish fishery also had one of the highest bycatch rates of 30 directed fisheries according to NMFS Observer Program data from 1989-2000 (ASSRT 2007). However, greater rates of bycatch do not necessarily translate into high mortality rates. Other factors, such as gear, season, and soak times, may be important variables in understanding Atlantic sturgeon mortality.

State gillnet fisheries
Two 10- to 14-inch (25.6- to 35.9-centimeter) mesh gillnet fisheries, the black drum and sandbar shark gillnet fisheries, occur in Virginia state waters along the tip of the eastern shore. Given the gear type, these fisheries may capture or entangle sea turtles. Entanglements of sea turtles in gillnet sets targeting and/or landing both species have been recorded in the NEFOP database. Similarly, sea turtles are thought to be vulnerable to capture in small mesh gillnet fisheries occurring in Virginia state waters. During May-June 2001, NMFS observed 2% of the Atlantic croaker fishery and 12% of the dogfish fishery (which represent approximately 82% of Virginia's total small mesh gillnet landings from offshore and inshore waters during this time), yet no sea turtle captures were observed (NMFS 2004c). Based on gear type (i.e., gillnets), it is likely that Atlantic sturgeon would be vulnerable to capture in these fisheries. An Atlantic sturgeon "reward program" where fishermen were provided monetary rewards for reporting captures of Atlantic sturgeon, operated in the late 1990s in Virginia. The majority of reports of Atlantic sturgeon captures were in drift gillnets and pound nets. No quantitative information on the number of Atlantic sturgeon captured or killed in Virginia fisheries is currently available.

Poundnet Fishery
This fishery is managed by the states, except for regulations NMFS issued under the authority of the ESA to protect sea turtles. Pound nets with large mesh and stringer leaders set in the Chesapeake Bay have been observed to lethally take turtles as a result of entanglement in the leader. Virginia sea turtle strandings during the spring are consistently high, and given the best available information, including observer reports, the nature and location of the turtle strandings, the type of fishing gear in the vicinity of the greatest number of strandings, and the known interactions between sea turtles and large mesh and stringer pound net leaders, pound nets were considered to be a likely contributor to high sea turtle strandings in 2001 (and likely every spring). NMFS conducted pound net monitoring during the spring of 2002 and 2003. This monitoring documented 23 sea turtles either entangled in or impinged on pound net leaders, 18 of which were in leaders with less than 12 inches (30.5 cm) stretched mesh. Nine animals were found entangled in leaders, of which 7 were dead, and 14 animals were found impinged on leaders, of which one was dead. In this situation, impingement refers to a sea turtle being held against the leader by the current, apparently unable to release itself under its own ability.

In 2004 and 2005, NMFS implemented a coordinated research program with pound net industry participants and other interested parties to develop and test a modified pound net leader design with the goal of eliminating or reducing sea turtle interactions while retaining an acceptable level of fish catch. During the 2-year study, the modified leader was found effective in reducing sea turtle interactions as compared to the unmodified leader. The final results of the 2004 study found that out of eight turtles impinged on or entangled in pound net leaders, seven were in an unmodified leader. One leatherback turtle was found entangled in the vertical lines of a modified leader. In response to the leatherback entanglement, the gear was further modified by increasing the stiffness of the vertical lines for the 2005 experiment. In 2005, 15 turtles entangled in or impinged on the leaders of unmodified leaders, and no turtles were found entangled in or impinged on modified leaders. In addition, there have been documented interactions between pound nets and Atlantic sturgeon; however, neither an interaction rate or mortality rate is currently available.

On February 9, 2015, we published a final rule amending the Bottlenose Dolphin Take Reduction Plan (BDTRP) and its implementing regulations under the Marine Mammal Protection Act (MMPA) to require year-round use of modified leaders for offshore Virginia pound nets in specified waters of the lower mainstem Chesapeake Bay and coastal state waters (80 FR 6925). Seasonality of modified leader use as previously required under the ESA regulations remains in place. Under both the MMPA and ESA, the final rule also included a one-time compliance training for fishermen using modified leaders, new and revised Virginia pound net-related definitions, and requirements to fish all sections of the gear at the same time.

The modified pound net leader regulations issued in the early 2000s reduced the number of interactions compared to the time period before the regulations were in place. To date, only leatherback sea turtles have been documented as entangled in modified pound net leaders in Virginia waters, and all of them but one have occurred in the Cape Henry area of Chesapeake Bay. Sixteen leader entanglements have been documented from 2013-2017, with two of those being lethal. The VMRC also disentangled an unidentified sea turtle in an inshore leader in September 2017. Atlantic sturgeon are known to become entrapped in pound nets and were routinely observed in Maryland waters, primarily through the USFWS reward program (U.S. FWS 2007). We have only anecdotal reports of Atlantic sturgeon entrapped in pound nets in Virginia.

We completed a biological opinion in 2018 on the gear regulations implemented by NMFS for the pound net fishery operating in nearshore coastal and estuarine waters of Virginia, including waters inside Chesapeake Bay. The biological opinion provides an ITS, which exempts the annual incidental take by entrapment, impingement, or entanglement of sea turtles and Atlantic sturgeon. Overall, we anticipate that the activities described in the biological opinion, will result in the take of up to 806 loggerhead sea turtles (up to 2 lethal), 162 Kemp's ridley sea turtles (up to 2 lethal), 17 green sea turtles (up to 2 lethal), 8 leatherback sea turtles (up to 4 lethal), and 13 Atlantic sturgeon (up to 1 lethal).

State recreational fisheries
Observations of state recreational fisheries in Virginia have shown that loggerhead, leatherback, Kemp's ridley, and green sea turtles are known to bite baited hooks, and loggerheads frequently ingest the hooks. Hooked sea turtles have been reported by the public fishing from boats, piers, beaches, banks, and jetties, and from commercial fishermen fishing with both single rigs and bottom longlines (SEFSC 2001). A summary of known impacts of hook-and-line captures on loggerhead sea turtles can be found in the TEWG (1998, 2000, 2009) reports. Stranding data also provide some evidence of interactions between recreational hook-and-line gear and sea turtles, but assigning the gear to a specific fishery is rarely, if ever, possible. In 2017, the Northeast STDN documented one dead Kemp's ridley sea turtle in Virginia waters with a circle hook in its mouth and wrapped around the neck in monofilament line, strong indications that a recreational fisherman may have been at fault.

Atlantic sturgeon have also been observed captured in hook-and-line gear, yet the number of interactions that occur annually is unknown. While most Atlantic sturgeon are likely to be released alive, we currently have no information on post-release survival. Although we do not currently have adequate information to quantifly the level of take that occurs in state fisheries due to the lack of a the federal nexus, we expect that take does occur and will continue to occur into the future. NMFS is currently working on a project to assess the extent of sea turtle interactions that occur in recreational fisheries of the Southeast (North Carolina to Florida) and believes that the survey platform and questionnaire may also be applicable for determining the amount of Atlantic sturgeon interactions as well.

5.3 Other Activities

5.3.1 Maritime Industry

Private and commercial vessels, including fishing vessels, operating in the action area of this consultation also have the potential to interact with sea turtles and Atlantic sturgeon. The effects of fishing vessels, recreational vessels, or other types of commercial vessels on ESA-listed species may involve disturbance or injury/mortality due to collisions or entanglement in anchor lines. During 2007-2010, researchers documented 31 carcasses of adult Atlantic sturgeon in the tidal freshwater portion of the James River, Virginia. Twenty-six of the carcasses had gashes from vessel propellers, and the remaining five carcasses were too decomposed to allow determination of the cause of death. The types of vessels responsible for these mortalities were not explicitly demonstrated. Most (84%) of the carcasses were found in a relatively narrow reach that was modified to increase shipping efficiency (Balazik *et al*. 2012). Listed species may also be affected by fuel oil spills resulting from vessel accidents. Fuel oil spills could affect animals through the food chain. However, these spills typically involve small amounts of material that are unlikely to adversely affect listed species. Larger oil spills may result from severe accidents, although these events would be rare and involve small areas. No direct adverse effects on listed sea turtles and Atlantic sturgeon resulting from fishing vessel fuel spills have been documented.

5.3.2 Pollution

Anthropogenic sources of marine pollution, while difficult to attribute to a specific Federal, state, local, or private action, may affect sea turtles and Atlantic sturgeon in the action area. Sources of pollutants in the action area include atmospheric loading of pollutants such as PCBs; storm water runoff from coastal towns, cities, and villages; runoff into rivers emptying into bays; groundwater discharges; wastewater and sewage treatment plant effluents; and oil spills. The pathological effects of oil spills on sea turtles have been documented in several laboratory studies (Vargo *et al.* 1986). Nutrient loading from land-based sources, such as coastal communities and agricultural operations, is known to stimulate plankton blooms in closed or semi-closed estuarine systems. The effect to larger embayments is unknown. Contaminants could degrade habitat if pollution and other factors reduce the food available to sea turtles and Atlantic sturgeon. The effects from pollution are long term and ongoing.

5.3.3 Coastal Development

Beachfront development, lighting, and beach erosion control all are ongoing activities along the Mid- and South Atlantic coastlines of the U.S. These activities potentially reduce or degrade sea turtle nesting habitats or interfere with hatchling movement to sea. Nocturnal human activities along nesting beaches may also discourage sea turtles from nesting sites. The extent to which these activities reduce sea turtle nesting and hatchling production is unknown. However, more and more coastal counties are adopting stringent protective measures to protect hatchling sea turtles from the disorienting effects of beach lighting. Coastal development may also impact sea turtles and Atlantic sturgeon if it disturbs or degrades foraging habitats or otherwise affects the ability of these species to use coastal habitats. At present, only limited nesting of sea turtles occurs on Virginia beaches, primarily in the southernmost part of the state. Virginia represents the northernmost extreme of loggerhead sea turtle nesting along the U.S. Atlantic coast. From 1970-2015, 166 loggerhead nests have been documented on Virginia's ocean-facing beaches. The state's first and only green sea turtle nest was reported in 2005 and its first and second Kemp's ridley nests were documented in 2012 and 2014, respectively (Virginia DGIF 2016).

5.3.4 Global Climate Change and Ocean Acidification

In addition to the information on climate change presented in the *Status of the Species* section for sea turtles and Atlantic sturgeon, the discussion below presents further background information on global climate change as well as past and projected effects of global climate change throughout the range of the ESA-listed species considered in this Opinion. Below is the available information on projected effects of climate change in the action area and how listed sea turtles and Atlantic sturgeon may be affected by those projected environmental changes. The effects are summarized on the time span of the proposed action, for which we can realistically analyze impacts, yet are discussed and considered for longer time periods when feasible.

In its Fifth Assessment Report (AR5) from 2013, the Intergovernmental Panel on Climate Change (IPCC) stated that the globally averaged combined land and ocean surface temperature data has shown a warming of 0.85°C (likely range: 0.65° to 1.06°C) over the period of 1880-2012. Similarly, the total increase between the average of the 1850-1900 period and the 2003-2012 period is 0.78°C (likely range: 0.72° to 0.85°C). On a global scale, ocean warming has been largest near the surface, with the upper 75 meters of the world's oceans having warmed by 0.11°C (likely range: 0.09° to 0.13°C) per decade over the period of 1971-2010 (IPCC 2013). The mean rate of global averaged sea level rise was 1.7 millimeters/year (likely range: 1.5 to 1.9 millimeters/year) between 1901 and 2010, 2.0 millimeters/year (likely range: 1.7 to 2.3 millimeters/year) between 1971 and 2010, and 3.2 millimeters/year (likely range: 2.8 to 3.6 millimeters/year) between 1993 and 2010.

Climate model projections exhibit a wide range of plausible scenarios for both temperature and precipitation over the next several decades. The global mean surface temperature change for the period 2016-2035 relative to 1986-2005 will likely be in the range of 0.3° to 0.7°C (medium confidence). This assessment is based on multiple lines of evidence and assumes there will be no major volcanic eruptions or secular changes in total solar irradiance. Relative to natural internal variability, near-term increases in seasonal mean and annual mean temperatures are expected to be larger in the tropics and subtropics than in mid- and high latitudes (high confidence). This temperature increase will very likely be associated with more extreme precipitation and faster evaporation of water, leading to greater frequency of both very wet and very dry conditions. Climate warming has also resulted in increased river discharge and glacial and sea-ice melting (Greene *et al.* 2008). The strongest ocean warming is projected for the surface in tropical and Northern Hemisphere subtropical regions. At greater depths, the warming will be most pronounced in the Southern Ocean (high confidence). Best estimates of ocean warming in the top 100 meters are about 0.6° to 2.0°C, and about 0.3° to 0.6°C at a depth of about 1,000 meters by the end of the 21st century (IPCC 2013).

Under Representative Concentration Pathway (RCP) 8.5, the climate change scenario where emission levels continue to rise throughout the 21st century, the projected change in global mean surface air temperature and global mean sea level rise for the mid- and late 21st century relative to the reference period of 1986-2005 is as follows. Global average surface temperatures are likely to be 2.0°C higher (likely range: 1.4° to 2.6°C) from 2046-2065 and 3.7°C higher (likely range: 2.6° to 4.8°C) from 2081-2100. Global mean sea levels are likely to be 0.30 meters higher (likely range: 0.22 to 0.38 meters) from 2046-2065 and 0.63 meters higher (likely range: 0.45 to 0.82 meters) from 2081-2100, with a rate of sea level rise during 2081-2100 of 8 to 16 millimeters/year (medium confidence). There is uncertainty about the magnitude of global sea level rise, projected to rise .30 to 1.22 meters by 2100, as it is primarily dependent on the dynamics of ice sheet melting (Melillo *et al.*, 2014).

The past three decades have witnessed major changes in ocean circulation patterns in the Arctic, and these were accompanied by climate associated changes as well (Greene *et al.* 2008). Shifts in atmospheric conditions have altered Arctic Ocean circulation patterns and the export of freshwater to the North Atlantic (IPCC 2007; Greene *et al.* 2008). With respect specifically to the North Atlantic Oscillation (NAO), changes in salinity and temperature are thought to be the result of changes in the Earth's atmosphere caused by anthropogenic forces (IPCC 2007). The NAO impacts climate variability throughout the Northern Hemisphere (IPCC 2007). Data from the 1960s through the 2000s showed that the NAO index increased from minimum values in the 1960s to strongly positive index values in the 1990s and somewhat declined since (IPCC 2007). This warming extends over 1,000 meters deep and is deeper than anywhere in the world's oceans and is particularly evident under the Gulf Stream/North Atlantic Current system (IPCC 2007). On a global scale, large discharges of freshwater into the North Atlantic subarctic seas can lead to intense stratification of the upper water column and a disruption of North Atlantic Deepwater (NADW) formation (IPCC 2007; Greene *et al.* 2008). There is evidence that the NADW has already freshened significantly (IPCC 2007). This in turn can lead to a slowing down of the global ocean thermohaline (large-scale circulation in the ocean that transforms low-density upper ocean waters to higher density intermediate and deep waters and returns those waters back to the upper ocean), which can have climatic ramifications for the entire world (Greene *et al.* 2008).

There is a high confidence, based on substantial new evidence, that observed changes in marine systems are associated with rising water temperatures, as well as related changes in ice cover, salinity, oxygen levels, and circulation. Ocean acidification resulting from massive amounts of carbon dioxide and pollutants released into the air can have major adverse impacts on the calcium balance in the oceans. Changes to the marine ecosystem due to climate change include shifts in ranges and changes in algal, plankton, and fish abundance (IPCC 2007). These trends have been most apparent over the past few decades, although this may also be due to increased research. Below, we discuss information on future impacts of climate change in the action area.

While predictions are available regarding potential effects of climate change globally, it is more difficult to assess the potential effects of climate change over the next few decades on coastal and marine resources on smaller geographic scales, such as the action area, especially as climate variability is a dominant factor in shaping coastal and marine systems. The effects of future change will vary greatly in diverse coastal regions of the U.S. Warming is very likely to continue in the U.S. over the life span of the project regardless of reduction in greenhouse gases, due to emissions that have already occurred (NAST 2000). It is very likely that the magnitude and frequency of ecosystem changes will continue to increase during the life of the project, and it is possible that they will accelerate. Climate change can cause or exacerbate direct stress on ecosystems through high temperatures, a reduction in water availability, and altered frequency of extreme events and severe storms. Water temperatures in streams and rivers are likely to increase as the climate warms and are very likely to have both direct and indirect effects on aquatic ecosystems. Changes in temperature will be most evident during low flow periods when they are of greatest concern (NAST 2000). In some marine and freshwater systems, shifts in geographic ranges and changes in algal, plankton, and fish abundance are associated with high confidence with rising water temperatures, as well as related changes in ice cover, salinity, oxygen levels and circulation (IPCC 2007).

Expected consequences of climate change for river systems could be a decrease in the amount of dissolved oxygen in surface waters and an increase in the concentration of nutrients and toxic chemicals due to reduced flushing rate (Murdoch *et al.* 2000). Because many rivers are already under a great deal of stress due to excessive water withdrawal or land development, and this stress may be exacerbated by changes in climate, anticipating and planning adaptive strategies may be critical (Hulme 2005). A warmer-wetter climate could ameliorate poor water quality conditions in places where human-caused concentrations of nutrients and pollutants currently degrade water quality (Murdoch *et al.* 2000). Increases in water temperature and changes in seasonal patterns of runoff will very likely disturb fish habitat and affect recreational uses of lakes, streams, and wetlands. Surface water resources along the U.S. Atlantic coast are intensively managed with dams and channels and almost all are affected by human activities; in some systems water quality is either below recommended levels or nearly so. A global analysis of the potential effects of climate change on river basins indicates that due to changes in discharge and water stress, the area of large river basins in need of reactive or proactive management interventions in response to climate change will be much higher for basins impacted by dams than for basins with free-flowing rivers (Palmer *et al.* 2008). Human-induced disturbances also influence coastal and marine systems, often reducing the ability of the systems to adapt so that systems that might ordinarily be capable of responding to variability and change are less able to do so. Because stresses on water quality are associated with many activities, the impacts of the existing stresses are likely to be exacerbated by climate change.

While debated, researchers anticipate: 1) the frequency and intensity of droughts and floods will change across the nation; 2) a warming of about 0.2^{o}C per decade; and 3) a rise in sea level (NAST 2000). Sea level is expected to continue rising; during the 20th century global sea level has increased 15 to 20 centimeters. It is also important to note that ocean temperature in the U.S. Northeast Shelf and surrounding Northwest Atlantic waters have warmed faster than the global average over the last decade (Pershing *et al.* 2015). New projections for the U.S. Northeast Shelf and Northwest Atlantic Ocean suggest that this region will warm two to three times faster than the global average and thus existing projections from the IPCC may be too conservative (Saba *et al.* 2015). Hare *et al.* (2016b) provides a literature summary of other aspects of the climate system that is changing on the U.S. Northeast Shelf including a high rate of sea-level rise, as well as increases in annual precipitation and river flow, magnitude of extreme precipitation events, magnitude and frequency of floods, and dissolved CO_2.

Effects on sea turtles and Atlantic sturgeon globally

Sea turtles

Sea turtle species have persisted for millions of years and throughout this time have experienced wide variations in global climate conditions and have successfully adapted to these changes. As such, climate change at normal rates (thousands of years) is not thought to have historically been a problem for sea turtle species. As explained in the *Status of the Species* sections above, sea turtles are most likely to be affected by climate change due to (1) changing air temperature and rainfall at nesting beaches, which in turn could impact nest success (hatching success and hatchling emergence rate) and sex ratios among hatchlings; (2) sea level rise, which could result in a reduction or shift in available nesting beach habitat and increased risk of nest inundation; (3) changes in the abundance and distribution of forage species, which could result in changes in the foraging behavior and distribution of sea turtle species; and (4) changes in water temperature, which could possibly lead to a northward shift in their range and changes in phenology (timing of nesting seasons, timing of migrations). Over the time period of this action considered in this Opinion, sea surface temperatures are expected to rise less than 1°C. It is unknown if that is enough of a change to contribute to shifts in the range, distribution, and recruitment of sea turtles. Theoretically, we expect that as waters in the action area warm, more sea turtles could be present or sea turtles could be present for longer periods of time.

The nesting range of some sea turtle species may shift northward. Nesting in the Mid-Atlantic generally is extremely rare and no nesting has been documented at any beach in the Northeast. In 2010, one green sea turtle came up on the beach in Sea Isle City, New Jersey; however, it did not lay any eggs. In August 2011, a loggerhead came up on the beach in Stone Harbor, New Jersey, but did not lay any eggs. On August 18, 2011, a green sea turtle laid one nest at Cape Henlopen Beach in Lewes, Delaware, near the entrance to Delaware Bay. The nest contained 190 eggs and was transported indoors to an incubation facility on October 7. A total of 12 eggs hatched, with eight hatchlings surviving. In December, seven of the hatchlings were released in Cape Hatteras, North Carolina. In September 2017, about 100 baby loggerheads successfully emerged from nests on the Maryland side of Assateague Island. It is important to consider that in order for nesting to be successful in the Mid-Atlantic, fall and winter temperatures need to be warm enough to support the successful rearing of eggs and sea temperatures must be warm enough for hatchlings to survive when they enter the water. The projected increase in ocean temperature over the next fifty years is unlikely to allow for more successful rearing of sea turtle eggs in the action area. However, if increased nesting activity is detected, that would constitute new information that may require reinitiation of this Opinion.

As noted above, sea level rise has the potential to remove possible beach nesting habitat. A recent study by the U.S. Geological Survey found that sea levels in a 620-mile "hot spot" along the East Coast are rising three to four times faster than the global average (Sallenger *et al.* 2012). The disproportionate sea level rise is due to the slowing of Atlantic currents caused by fresh water from the melting of the Greenland Ice Sheet. Sharp rises in sea levels from North Carolina to Massachusetts could threaten wetland and beach habitats, and negatively affect sea turtle nesting along the North Carolina coast. If warming temperatures moved favorable nesting sites northward, it is possible that rises in sea level could constrain the availability of nesting sites on existing beaches. In the next 100 years, the study predicted that sea levels will rise an additional 20-27 centimeters along the Atlantic coast "hot spot" (Sallenger *et al.* 2012).

Warming sea temperatures are likely to result in a shift in the seasonal distribution of sea turtles in the action area, such that sea turtles may begin northward migrations from their southern overwintering grounds earlier in the spring and thus would be present in the action area earlier in the year. Likewise, if water temperatures were warmer in the fall, sea turtles could remain in the action area later in the year.

Changes in water temperature may also alter the forage base and thus, foraging behavior of sea turtles. Changes in the foraging behavior of sea turtles in the action area could lead to either an increase or decrease in the number of sea turtles in the action area, depending on whether there was an increase or decrease in the forage base and/or a seasonal shift in water temperature. For example, if there was a decrease in sea grasses in the action area resulting from increased water temperatures or other climate-change related factors, it is reasonable to expect that there may be a decrease in the number of foraging green sea turtles in the action area. Likewise, if the prey base for loggerhead, Kemp's ridley, or leatherback sea turtles is affected, there may be changes in the abundance and distribution of these species in the action area. However, as noted above, because we do not know the adaptive capacity of these individuals or how much of a change in temperature would be necessary to cause a shift in distribution, it is not possible to predict future changes to the foraging behavior of sea turtles. If sea turtle distribution shifted along with prey distribution, it is likely that there would be minimal, if any, impact on the availability of food. Similarly, if sea turtles shifted to areas where different forage was available and sea turtles were able to obtain sufficient nutrition from that new source of forage, any effect would be minimal. The greatest potential for effect to forage resources would be if sea turtles shifted to an area or time where insufficient forage is available; however, the likelihood of this happening seems low because sea turtles feed on a wide variety of species and in a wide variety of habitats. Finally, it is important to note that ocean temperature in the U.S. Northeast continental shelf and surrounding Northwest Atlantic waters have warmed faster than the global average over the last decade (Pershing *et al.* 2015).

<u>Atlantic sturgeon</u>
As there is significant uncertainty in the rate and timing of change as well as the effect of any changes that may be experienced in the action area due to climate change, it is difficult to predict the impact of these changes on Atlantic sturgeon. We have analyzed the available information,

however, to consider likely impacts to sturgeon and their habitat in the action area. We consider here, likely effects of climate change during the life span of the project.

Atlantic sturgeon have persisted for millions of years and have experienced wide variations in global climate conditions, to which they have successfully adapted. Climate change at historical rates (thousands of years) is not thought to have been a problem for sturgeon species. However, at the current rate of global climate change, future effects to sturgeon are possible. Rising sea level may result in the salt wedge moving upstream in affected rivers. Atlantic sturgeon spawning occurs in fresh water reaches of rivers because early life stages have little to no tolerance for salinity. Similarly, juvenile sturgeon have limited tolerance to salinity and remain in waters with a salinity gradient that they adapt to over time. If the salt wedge moves further upstream, sturgeon spawning and rearing habitat could be restricted. In river systems with dams or natural falls that are impassable by sturgeon, the extent that spawning or rearing may be shifted upstream to compensate for the shift in the movement of the salt wedge would be limited. While there is an indication that an increase in sea level rise would result in a shift in the location of the salt wedge, at this time there are no predictions on the timing or extent of any shifts that may occur; thus, it is not possible to predict any future loss in spawning or rearing habitat. However, in all river systems, spawning occurs miles upstream of the salt wedge. It is unlikely that shifts in the location of the salt wedge would eliminate freshwater spawning or rearing habitat. If habitat was severely restricted, productivity or survivability may decrease.

The increased rainfall predicted by some models in some areas may increase runoff and scour spawning areas and flooding events could cause temporary water quality issues. Rising temperatures predicted for all of the U.S. could exacerbate existing water quality problems with dissolved oxygen (DO) and temperature. While this occurs primarily in rivers in the southeast U.S. and the Chesapeake Bay, it may start to occur more commonly in the northern rivers. Atlantic sturgeon are tolerant to water temperatures up to approximately 28°C (82.4°F); these temperatures are experienced naturally in some areas of rivers during the summer months. If river temperatures rise and temperatures above 28°C are experienced in larger areas, sturgeon may be excluded from some habitats.

Increased droughts (and water withdrawal for human use) predicted by some models in some areas may cause loss of habitat including loss of access to spawning habitat. Drought conditions in the spring may also expose eggs and larvae in rearing habitats. If a river becomes too shallow or flows become intermittent, all sturgeon life stages, including adults, may become susceptible to strandings or habitat restriction. Low flow and drought conditions are also expected to cause additional water quality issues. Any of the conditions associated with climate change are likely to disrupt river ecology causing shifts in community structure and the type and abundance of prey. Additionally, cues for spawning migration and spawning could occur earlier in the season causing a mismatch in prey that are currently available to developing sturgeon in rearing habitat.

Atlantic sturgeon in the action area are most likely to experience the effects of global climate change in warming water temperatures, which could change their range and migratory patterns. Warming temperatures predicted to occur over the next 100 years would likely result in a northward shift/extension of their range (i.e., into the St. Lawrence River, Canada) while truncating the southern distribution, thus affecting the recruitment and distribution of sturgeon rangewide. The increase in sea surface temperature over the life of the proposed action is expected to be minimal, and thus, it is unlikely that this expanded range will be observed in the near future. If any shift does occur, it is likely to be minimal and thus, it seems unlikely that this small increase in temperature will cause a significant effect to shortnose and Atlantic sturgeon or a significant modification to the number of sturgeon likely to be present in the action area over the life of the proposed action. However, even a small increase in temperate can affect DO concentrations. A one degree change in temperature in Chesapeake Bay could make parts of Chesapeake Bay inaccessible to sturgeon due to decreased levels of DO (Batiuk *et al.* 2009) and projections, from global climate models representing a wide range of potential futures, suggest water temperature increases in the bay of 2-5.5°C (3.5-9°F) by the end of the 21st century (Muhling et al. 2018).

Although the action area does not include spawning grounds for Atlantic sturgeon, sturgeon are migrating through the action area to reach their natal rivers to spawn. Elevated temperatures could modify cues for spawning migration, resulting in an earlier spawning season, and thus, altering the time of year sturgeon may or may not be present within the action area. This may cause an increase or decrease in the number of sturgeon present in the action area. However, because spawning is not triggered solely by water temperature, but also by day length (which would not be affected by climate change) and river flow (which could be affected by climate change), it is not possible to predict how any change in water temperature will affect the seasonal movements of sturgeon through the action area.

In addition, changes in water temperature may also alter the forage base and thus, foraging behavior of sturgeon. Any forage species that are temperature-dependent may also shift in distribution as water temperatures warm and cause a shift in the distribution of sturgeon. However, because we do not know the adaptive capacity of these species or how much of a change in temperature would be necessary to cause a shift in distribution, it is not possible to predict how these changes may affect foraging sturgeon. If sturgeon distribution shifted along with prey distribution, it is likely that there would be minimal, if any, impact on the availability of food. Similarly, if sturgeon shifted to areas where different forage was available and sturgeon were able to obtain sufficient nutrition from that new source of forage, any effect would be minimal. The greatest potential for effect to forage resources would be if sturgeon shifted to an area or time where insufficient forage was available; however, the likelihood of this happening seems low because sturgeon feed on a wide variety of species and in a wide variety of habitats.

5.4 Reducing Threats to ESA-listed Species

5.4.1 Education and Outreach Activities

Education and outreach activities are considered some of the primary tools that will effectively reduce the threats to all protected species. For example, NMFS has been active in public outreach to educate fishermen about handling and resuscitation techniques for sea turtles and sturgeon, and educates recreational fishermen and boaters on how to avoid interactions with these species. NMFS also has a program called “SCUTES” (Student Collaborating to Undertake Tracking Efforts for Sturgeon), which offers educational programs and activities about the movements, behaviors, and threats to sturgeon. NMFS intends to continue these outreach efforts in the action area in an attempt to reduce interactions with protected species, and to reduce the likelihood of injury to protected species when interactions do occur.

5.4.2 *Stranding and Salvage Programs*

The Sea Turtle Stranding and Salvage Network (STSSN) we manage does not directly reduce the threats to sea turtles. However, the extensive network of STSSN participants along the Atlantic and Gulf of Mexico coasts not only collects data on dead sea turtles, but also rescues and rehabilitates live stranded turtles, reducing mortality of injured or sick animals. Data collected by the STSSN are used to monitor stranding levels, to identify areas where unusual or elevated mortality is occurring, and to identify sources of mortality. These data are also used to monitor incidence of disease, study toxicology and contaminants, and conduct genetic studies to determine population structure. All of the states that participate in the STSSN tag live turtles when encountered (either via the stranding network through incidental takes or in-water studies). Tagging studies help improve our understanding of sea turtle movements, longevity, and reproductive patterns, all of which contribute to our ability to reach recovery goals for the species.

A salvage program is also in place for sturgeon. Sturgeon carcasses can provide pertinent life history data and information on new or evolving threats. Their use in scientific research studies can reduce the need to collect live sturgeon. Our Sturgeon Salvage Program is a network of individuals qualified to retrieve and/or use sturgeon carcasses and parts for scientific research and education. All carcasses and parts are retrieved opportunistically and participation in the network is voluntary.

5.4.3 *Sea Turtle Disentanglement Network*

We established the Northeast Sea Turtle Disentanglement Network (STDN) in 2002 in response to the high number of leatherback sea turtles found entangled in pot gear along the U.S. Northeast Atlantic coast. The STDN is a component of the larger STSSN program, and it operates in all states in the region. The STDN responds to entangled sea turtles and disentangles and releases live animals, thereby reducing serious injury and mortality. In addition, the STDN collects data on live and dead sea turtle entanglement events, providing valuable information for management purposes. We oversee the STDN program and manage the STDN database. As knowledge of the network and number of participants involved in the network has increased, so have reports of sea turtle entanglements in Virginia waters increased over the past several years. In 2017, the STDN documented eleven sea turtle entanglements in the state of Virginia in gears such as pound nets, the vertical lines of crab traps, and monofilament or unknown line.

5.4.4 *Regulatory Measures for Sea Turtles*

Numerous efforts are ongoing to reduce threats to listed sea turtles. Below, we detail efforts that are ongoing within the action area. The majority of these activities are related to regulations that have been implemented to reduce the potential for incidental mortality of sea turtles from commercial fisheries. These include sea turtle release gear requirements for TEDs in the southern part of the summer flounder trawl fishery and mesh size restrictions in Virginia’s gillnet fisheries. The summaries below discuss all of these measures in more detail.

Large Mesh Gillnet Requirements in the Mid-Atlantic

In March 2002, NMFS published new restrictions for the use of gillnets with larger than 8-inch (20.3 cm) stretched mesh, in Federal waters (3-200 nautical miles) off of North Carolina and Virginia. These restrictions were published in an interim final rule under the authority of the ESA (67 FR 13098) and were implemented to reduce the impact of the monkfish and other large-mesh gillnet fisheries on ESA-listed sea turtles in areas where sea turtles are known to concentrate. Following review of public comments submitted on the interim final rule, NMFS published a final rule on December 3, 2002, that established the restrictions on an annual basis. As a result, gillnets with larger than 8-inch (20.3 cm) stretched mesh are not allowed in Federal waters (3-200 nautical miles) in the areas described as follows: (1) North of the North Carolina/South Carolina border at the coast to Oregon Inlet at all times; (2) north of Oregon Inlet to Currituck Beach Light, NC from March 16 through January 14; (3) north of Currituck Beach Light, NC, to Wachapreague Inlet, VA, from April 1 through January 14; and (4) north of Wachapreague Inlet, VA, to Chincoteague, VA, from April 16 through January 14. On April 26, 2006, NMFS published a final rule (71 FR 24776) that included modifications to the large-mesh gillnet restrictions. The new final rule revised the gillnet restrictions to apply to stretched mesh that is ≥7 inches (17.9 cm). Federal waters north of Chincoteague, VA, remain unaffected by the large-mesh gillnet restrictions. These measures are in addition to the HPTRP measures that prohibit the use of large-mesh gillnets in southern Mid-Atlantic waters (territorial and Federal waters from Delaware through North Carolina out to 72°30’W longitude) from February 15 through March 15, annually. The measures are also in addition to comparable North Carolina and Virginia regulations for large-mesh gillnet fisheries in their respective state waters that were enacted in 2005.

Modified Scallop Dredge Gear in the Mid-Atlantic Sea Scallop Fishery

To reduce post-interaction mortality to sea turtles resulting from capture in the sea scallop dredge bag, NMFS has required the use of a chain-mat modified dredge in the Atlantic sea scallop fishery since 2006 (71 FR 50361, August 25, 2006; 71 FR 66466, November 15, 2006; 73 FR 18984, April 8, 2008; 74 FR 20667, May 5, 2009). Federally permitted scallop vessels south of 41°09’N from the shoreline to the outer boundary of the EEZ are required to modify their dredge gear by adding an arrangement of horizontal and vertical chains (a “chain mat”) over the opening of the dredge bag from of May 1 through November 30 each year. This modification is not expected to reduce the overall number of sea turtle interactions with gear. However, it is expected to reduce the severity of the interactions.

Since May 1, 2013, all limited access scallop vessels, as well as Limited Access General Category vessels with a dredge width of 10.5 feet or greater, have been required to use a Turtle Deflector Dredge (TDD) in the Mid-Atlantic (west of 71°W) from May 1 through October 31 each year (77 FR 20728, April 6, 2012). The purpose of the TDD requirement is to deflect sea turtles over the dredge frame and bag rather than under the cutting bar, so as to reduce sea turtle injuries due to contact with the dredge frame on the ocean bottom (including being crushed under the dredge frame). The TDD has specific components that are defined in the regulations. When combined with the effects of chain mats, which decrease captures in the dredge bag, the TDD should provide greater sea turtle benefits by reducing post-interaction mortality due to interactions with the dredge frame, compared to a standard New Bedford dredge.

To eliminate confusion, the seasons and areas for these two gear measures designed to protect sea turtles were later aligned through the final rule for Framework 26 to the Atlantic Sea Scallop FMP (80 FR 22119; April 21, 2015). Following the enactment of the final rule, sea turtle chain mats and TDDs are now required west of 71°W longitude from May through November.

TED Requirements for the Summer Flounder Fishery
As mentioned above, significant measures have been developed to reduce the incidental take of sea turtles in summer flounder trawls and trawls that meet the definition of a summer flounder trawl (which would include fisheries for other species like scup and black sea bass) by requiring TEDs in trawl nets used in the area of greatest turtle bycatch off the North Carolina and part of the Virginia coast from North Carolina/South Carolina border to Cape Charles, Virginia. The TED requirements for the summer flounder trawl fishery do not, however, require the use of larger TEDs that are required in the U.S. Southeast shrimp trawl fisheries.

Sea Turtle Entanglements and Rehabilitation
A final rule (70 FR 42508) published on July 25, 2005, allows any agent or employee of NMFS, USFWS, USCG, or any other Federal land or water management agency, or any agent or employee of a state agency responsible for fish and wildlife, when acting in the course of his or her official duties, to take endangered sea turtles encountered in the marine environment if such taking is necessary to aid a sick, injured, or entangled endangered sea turtle, or dispose of a dead endangered sea turtle, or salvage a dead endangered sea turtle that may be useful for scientific or educational purposes. NMFS already affords the same protection to sea turtles listed as threatened under the ESA (50 CFR 223.206(b)).

5.4.5 Regulatory Measures for Atlantic Sturgeon

Sturgeon Recovery Planning
Several conservation actions aimed at reducing threats to Atlantic sturgeon are currently ongoing. In the near future, we will be convening a recovery team and drafting a recovery plan which will outline recovery goals and criteria and steps necessary to recover all Atlantic sturgeon DPSs. Numerous research activities are underway for sturgeon, involving us and other Federal, state, and academic partners, to obtain more information on the distribution and abundance of sturgeon throughout their range, including in the action area. Efforts are also underway to better understand threats faced by sturgeon and ways to minimize these threats, including bycatch and water quality. Fishing gear research is underway to design fishing gear that minimizes interactions with Atlantic sturgeon while maximizing retention of targeted fish species. Several states are in the process of preparing ESA section 10 Habitat Conservation Plans aimed at minimizing the effects of state fisheries on Atlantic sturgeon.

Research Activity Guidelines
Research activities aid in the conservation of listed species by furthering our understanding of the species' life history and biological requirements. We recognize, however, that many scientific research activities involve capture and may pose some level of risk to individuals or to the species. Therefore, it is necessary for research activities to be carried out in a manner that minimizes the adverse impacts of the activities on individuals and the species while obtaining crucial information that will benefit the species. Guidelines developed by sturgeon researchers in cooperation with NMFS staff (Moser *et al.* 2000; Damon-Randall *et al.* 2010; Kahn and

Mohead 2010) provide standardized research protocols that minimize the risk to sturgeon from capture, handling, and sampling. These guidelines must be followed by any entity receiving a federal permit to do research on Atlantic sturgeon.

Protections for the GOM DPS of Atlantic Sturgeon
The prohibitions listed under section 9(a)(1) of the ESA automatically apply when a species is listed as endangered but not when listed as threatened. When a species is listed as threatened, section 4(d) of the ESA requires the Secretary of Commerce (Secretary) to issue regulations, as deemed necessary and advisable, to provide for the conservation of the species. The Secretary may, with respect to any threatened species, issue regulations that prohibit any act covered under section 9(a)(1). Whether section 9(a)(1) prohibitions are necessary and advisable for a threatened species is largely dependent on the biological status of the species and the potential impacts of various activities on the species. On June 10, 2011, we proposed protective measures for the GOM DPS of Atlantic sturgeon (76 FR 34023). On November 19, 2013 we published a final rule that applied all prohibitions of section 9(a)(1) to the GOM DPS beginning on December 19, 2013 (78 FR 69310).

5.5 Summary of Available Information on Listed Species Likely to be Adversely Affected by the Proposed Action in the Action Area

5.5.1 Sea Turtles

As described in sections 4.2.1.1 - 4.2.1.3, the occurrence of loggerhead, Kemp's ridley, and green sea turtles along the U.S. Atlantic coast is primarily temperature dependent (Thompson 1984; Keinath *et al.* 1987; Shoop and Kenney 1992; Musick and Limpus 1997; Morreale and Standora 1998, 2005; Mitchell *et al.* 2003; Braun-McNeill and Epperly 2004; James *et al.* 2005a). In general, sea turtles move up the U.S. Atlantic coast from southern wintering areas as water temperatures warm in the spring (Keinath *et al.* 1987; Shoop and Kenney 1992; Musick and Limpus 1997; Morreale and Standora 1998, 2005; Mitchell *et al.* 2003; Braun-McNeill and Epperly 2004; James *et al.* 2005a). The trend reverses in the fall as water temperatures cool. By December, sea turtles have passed Cape Hatteras, returning to more southern waters for the winter (Keinath *et al.* 1987; Shoop and Kenney 1992; Musick and Limpus 1997; Morreale and Standora 1998, 2005; Mitchell *et al.* 2003; Braun-McNeill and Epperly 2004; James *et al.* 2005a). Recreational anglers have reported sightings of sea turtles in waters defined as inshore waters (bays, inlets, rivers, or sounds; Braun-McNeill and Epperly 2004) as far north as New York as early as March-April, but in relatively low numbers (Braun-McNeill and Epperly 2004). Greater numbers of loggerheads, Kemp's ridleys, and greens are found in inshore, nearshore, and offshore waters of North Carolina and Virginia from May through November and in inshore, nearshore, and offshore waters of New York from June through October (Keinath *et al.* 1987; Morreale and Standora 1993; Braun-McNeill and Epperly 2004). The hard-shelled sea turtles (loggerheads, Kemp's ridleys, and greens) appear to be temperature limited to water no further north than Cape Cod.

Extensive survey effort of the continental shelf from Cape Hatteras to Nova Scotia, Canada in the 1980s (CeTAP 1982) revealed that loggerheads were observed at the surface in waters from the beach to waters with bottom depths of up to 4,481 meters. However, they were generally found in waters where bottom depths ranged from 22-49 meters deep (the median value was 36.6

meters; Shoop and Kenney 1992). However, 84.5% of loggerhead sightings occurred in waters where the bottom depth was less than 80 meters (Shoop and Kenney 1992). The CeTAP study did not include Kemp's ridley and green sea turtle sightings, given the difficulty of sighting these smaller sea turtle species (CeTAP 1982).

Sea turtles are generally present in Virginia waters from May to November each year, with the highest number of individuals present from June to October. Sea turtles occur throughout the Virginia portion of Chesapeake Bay, from shallow waters along the shoreline and near river mouths to deeper waters in the bay's interior and near its confluence with the Atlantic Ocean. One of the main factors influencing sea turtle presence in Mid-Atlantic waters is seasonal temperature patterns (Ruben and Morreale 1999). Temperature is correlated with the time of year, with warmer waters in the late spring, summer, and early fall being the most suitable for cold-blooded sea turtles. Sea turtles are most likely to occur in the action area when water temperatures are above 11°C, although depending on seasonal weather patterns and prey availability, they could be also present in months when water temperatures are cooler (as evidenced by fall and winter cold stunning records as well as year round stranding records). Sea turtles have also been documented in the action area through aerial and vessel surveys, satellite tracking programs, and by fisheries observers. The majority of sea turtle observations in the Chesapeake Bay and vicinity are of loggerhead sea turtles, yet all four species of sea turtles have been recorded in the action area.

To some extent, water depth also dictates the number of sea turtles occurring in a particular area. Satellite tracking studies of sea turtles in the Northeast U.S. found that foraging turtles mainly occurred in areas where the water depth was between approximately 16 and 49 feet (Ruben and Morreale 1999). This depth was interpreted not to be as much an upper physiological depth limit for turtles, as a natural limiting depth where light and food are most suitable for foraging turtles (Morreale and Standora 1990). The action area and the depths preferred by sea turtles do overlap, suggesting that if suitable forage is present, adult and juvenile loggerheadand green sea turtles as well as juvenile Kemp's ridley sea turtles may be foraging in the areas where the proposed action will occur.

5.5.2 Atlantic Sturgeon

The marine and estuarine range of all five Atlantic sturgeon DPSs overlaps and extends from Canada through Cape Canaveral, Florida. Based on the best available information, Atlantic sturgeon originating from any of five DPSs could occur in the Virginia waters of Chesapeake Bay. The dredging activities associated with the proposed action will not typically occur upstream of the mouths of major Chesapeake Bay rivers, so eggs and early life stages will not be present in the action area. Juvenile, subadult, and adult Atlantic sturgeon are likely to occur in the Virginia portion of Chesapeake Bay as they are known to be present throughout the bay in spring, summer, and fall. Atlantic sturgeon are known to use the Chesapeake Bay for life functions such as spawning migrations, foraging, and as juvenile nursery habitat prior to entering marine waters as subadults.

Diets of adult and subadult Atlantic sturgeon include mollusks, gastropods, amphipods, annelids, decapods, isopods, and fish such as sand lance (Bigelow and Schroeder 1953; ASSRT 2007; Guilbard *et al.* 2007; Savoy 2007). Juvenile Atlantic sturgeon feed on aquatic insects, insect larvae, and other invertebrates (Bigelow and Schroeder 1953; ASSRT 2007; Guilbard *et al.* 2007). Because of the benthic nature of their prey, it is likely that foraging Atlantic sturgeon could swim into and ultimately be entrapped during dredging operations in the action area.

Atlantic sturgeon from all five DPSs can be found in Virginia nearshore and coastal waters and within Chesapeake Bay, typically from spring through fall. Migratory behaviors occur from April to November for adults and subadults and year round for juveniles (Dovel and Berggren 1983; Secor *et al.* 2000; Welsh *et al.* 2002; Horne and Stence 2016). Each of these life stages are expected to wander among coastal and estuarine habitats of the bay. Foraging behaviors typically occur in areas where suitable forage and appropriate habitat conditions are present. These areas include tidally influenced flats and mud, sand, and mixed cobble substrates (Stein *et al.* 2004). The areas to be dredged and the depths preferred by Atlantic sturgeon do overlap, suggesting that if suitable forage and/or habitat features are present, adult and subadults from any of the five listed DPSs and Chesapeake Bay DPS juveniles may be foraging or undertaking migrations in the areas where the proposed action will occur.

6.0 EFFECTS OF THE ACTION

This section of the Opinion assesses the direct and indirect effects of the proposed action on threatened and endangered species or critical habitat, together with the effects of other activities that are interrelated or interdependent (50 CFR § 402.02). Indirect effects are those that are caused later in time, but are still reasonably certain to occur. Interrelated actions are those that are part of a larger action and depend upon the larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration (50 CFR§402.02). We have identified the use of the deeper channels by larger vessels as an interdependent or interrelated action. The action area for this consultation overlaps slightly with the river mouths of the James and York Rivers, which are designated as critical habitat for the Chesapeake Bay DPS of Atlantic sturgeon. In section 4.1, we determined the effects of the proposed action are not likely to adversely affect critical habitat.

This Opinion examines the likely effects (direct and indirect) of the proposed action on five DPSs of Atlantic sturgeon and four species of sea turtles and their habitat in the action area within the context of the species current status, the environmental baseline and cumulative effects. As explained in the Description of the Action, the action under consideration in this Opinion is the continued use of sand borrow areas for beach nourishment and hurricane protection as well as maintenance of federal navigation channels over the life of these projects. Additionally, we consider the effects of the use of dredged material disposal sites (onshore and offshore) as well as the CIEE.

The effects of dredging on listed species will be different depending on the type of dredge used. As such, the following discussion of effects of dredging will be organized by dredge type. Below, the discussion will consider the effects of dredging, including the risk of entrainment or capture of Atlantic sturgeon and sea turtles. We also consider effects of dredging and disposal on water quality, including turbidity/suspended sediment. Last, there is a discussion of other effects that are not specific to the type of equipment used. This includes effects on prey and foraging, changes in the characteristics of the dredged area and effects of dredge vessel traffic.

6.1 Hopper Dredge

6.1.1 Interactions with Hopper Dredges – Sea Turtles

As outlined above, sea turtles are likely to occur in Chesapeake Bay from April through mid-November each year with the largest numbers present from June through October of any year. The majority of sea turtles in the Chesapeake Bay are juvenile loggerheads; however, adult loggerheads, juvenile Kemp's ridley, and adult green sea turtles have also been documented in the area. The Chesapeake Bay is an important foraging area for sea turtles and an important developmental habitat for juvenile sea turtles, particularly loggerheads.

Entrainment is the direct uptake of aquatic organisms by the suction field generated at the draghead. Hydraulic dredges operate for prolonged periods underwater, with minimal disturbance, but generate continuous flow fields of suction forces while dredging. Loggerhead, Kemp's ridley and green sea turtles are vulnerable to entrainment in the draghead of the hopper dredge. Given their large size, leatherback sea turtles are not vulnerable to entrainment. As reported by you, no leatherback sea turtles have been entrained in hopper dredge operations operating along the U.S. Atlantic coast (USACE Sea Turtle Warehouse, 2017). Sea turtles are likely to be feeding on or near the bottom of the water column during the warmer months, with loggerhead and Kemp's ridley sea turtles being the most common species in these waters. Although not expected to be as numerous as loggerheads and Kemp's ridleys, green sea turtles are also likely to occur seasonally in the Bay.

Most sea turtles are able to escape from the oncoming draghead due to the slow speed that the draghead advances (up to 3 mph or 4.4 feet/second); however, dead sea turtles have been reported impailed on the draghead. For example, on July 23, 2018, you reported to us the lethal take of an adult loggerhead sea turtle, which was observed impailed on the teeth of the starboard draghead during hopper dredging in the Cape Henry channel. Interactions with a hopper dredge result primarily from crushing when the draghead is placed on the bottom or when an animal is unable to escape from the suction of the dredge and becomes stuck on the draghead (impingement). Entrainment occurs when organisms are sucked through the draghead into the hopper. Mortality most often occurs when animals are sucked into the dredge draghead, pumped through the intake pipe and then killed as they cycle through the centrifugal pump and into the hopper.

Interactions with the draghead can also occur if the suction is turned on while the draghead is in the water column (i.e., not seated on the bottom). Procedures are implemented to minimize the operation of suction when the draghead is not properly seated on the bottom sediments, which reduces the risk of these types of interactions.

Sea turtles may become entrained in hopper dredges as the draghead moves along the bottom. Because entrainment is believed to occur primarily while the draghead is operating on the bottom, it is likely that only those species feeding or resting on or near the bottom would be vulnerable to entrainment. Turtles can also be entrained if suction is created in the draghead by current flow while the device is being placed or removed, or if the dredge is operating on an uneven or rocky substrate and rises off the bottom. Recent information from you suggests that the risk of entrainment is highest when the bottom terrain is uneven or when the dredge is conducting "clean up" operations at the end of a dredge cycle when the bottom is trenched and the dredge is working to level out the bottom. In these instances, it is difficult for the dredge operator to keep the draghead buried in the sand and sea turtles near the bottom may be more vulnerable to entrainment.

There is some evidence to indicate that turtles can become entrained in trunions or other water intakes (see Nelson and Shafer 1996). For example, a large piece of a loggerhead sea turtle was found in a UXO screening basket on Virginia Beach in 2013. The hopper dredge was operated with UXO screens on the draghead designed to prevent entrainment of any material with a diameter greater than 1.25 inchces. The pieces of turtle found were significantly larger. Because an inspection of the UXO screens revealed no damage, it is suspected that the sea turtle was entrained in another water intake port. There are also several examples of relatively large sturgeon (2-3' length) detected in inflow screening alive and relatively uninjured. Given the damage anticipated from passing through the pumps, it is possible that these sturgeon were entrained somewhere other than the draghead. You are currently investigating potential sources of entrainment and exploring the use of screening to minimize possible entrainment in areas other than the draghead.

Sea turtles have been found resting in deeper waters, which could increase the likelihood of interactions from dredging activities. In 1981, observers documented the take of 71 loggerheads by a hopper dredge at the Port Canaveral Ship Channel, Florida (Slay and Richardson 1988). This channel is a deep, low productivity environment in the Southeast Atlantic where sea turtles are known to rest on the bottom, making them extremely vulnerable to entrainment. The large number of turtle mortalities at the Port Canaveral Ship Channel in the early 1980s resulted in part from turtles being buried in the soft bottom mud, a behavior known as brumation. Since 1981, 77 loggerhead sea turtles have been taken by hopper dredge operations in the Port Canaveral Ship Channel, Florida. Chelonid turtles have been found to make use of deeper, less productive channels as resting areas that afford protection from predators because of the low energy, deep water conditions. Sea turtle brumation has not been documented in the Chesapeake Bay.

6.1.1.1 Background Information on Sea Turtles Interactions with Hopper Dredges

Sea turtles have been killed in hopper dredge operations along the East and Gulf coasts of the US. Documented turtle mortalities during dredging operations in the USACE South Atlantic Division (SAD; i.e., south of the Virginia/North Carolina border) are more common than in the USACE North Atlantic Division (NAD; Virginia-Maine) presumably due to the greater abundance of turtles in these waters and the greater frequency of hopper dredge operations. For example, in the USACE SAD, over 400 sea turtles have been entrained in hopper dredges since 1980 and in the Gulf Region over 160 sea turtles have been killed since 1995. Records of sea turtle entrainment in the USACE NAD began in 1994. Through October 2015, 85 sea turtles deaths (see Table 13) related to hopper dredge activities have been recorded in waters north of the North Carolina/Virginia border (USACE Sea Turtle Database[10]); the majority of these turtles have been entrained in dredges operating in Chesapeake Bay, but sea turtles can also be killed by direct contact with the draghead.

Before 1994, endangered species observers were not required on board hopper dredges and

10 The USACE Sea Turtle Data Warehouse is maintained by the USACE's Environmental Laboratory and contains information on USACE dredging projects conducted since 1980 with a focus on information on interactions with sea turtles.

dredge baskets were not inspected for sea turtles or sea turtle parts. The majority of sea turtle takes in the NAD have occurred in the Norfolk District. This is largely a function of the large number of loggerhead and Kemp's ridley sea turtles that occur in the Chesapeake Bay each summer and the intense dredging operations that are conducted to maintain the Chesapeake Bay entrance channels and for beach nourishment projects at Virginia Beach. Since 1992, the take of 10 sea turtles (all loggerheads) has been recorded during hopper dredge operations in the Philadelphia, Baltimore and New York Districts. Hopper dredging is relatively rare in New England waters where sea turtles are known to occur, with most hopper dredge operations being completed by the specialized Government owned dredge Currituck which operates at low suction and has been demonstrated to have a very low likelihood of entraining or impinging sea turtles. To date, no hopper dredge operations (other than the Currituck) have occurred in the New England District in areas or at times when sea turtles are likely to be present.

Table 13. Sea Turtle Takes in USACE NAD Dredging Operations

Project Location	Year of Operation	Cubic Yardage Removed	Observed Takes
Cape Henry Channel	2018	n/a	1 loggerhead
Thimble Shoals Channel	2016	1,098,514	1 loggerhead
York Spit Channel	2015	815,979	6 loggerheads
Cape Henry Channel	2014	2,165,425	3 loggerheads 1 Kemp's ridley
Sandbridge Shoal	2013	815,842	1 loggerhead[11]
Cape Henry Channel	2012	1,190,004	1 loggerhead
York Spit	2012	145,332	1 Loggerhead
Thimble Shoal Channel	2009	473,900	3 Loggerheads
York Spit	2007	608,000	1 Kemp's Ridley
Cape Henry	2006	447,238	3 Loggerheads
Thimble Shoal Channel	2006	300,000	1 loggerhead
Delaware Bay	2005	50,000	2 Loggerheads
Thimble Shoal Channel	2003	1,828,312	7 Loggerheads 1 Kemp's ridley 1 unknown
Cape Henry	2002	1,407,814	6 Loggerheads 1 Kemp's ridley 1 green
VA Beach Hurricane Protection Project (Cape Henry)	2002	1,407,814	1 Loggerhead

11 Sea turtle observed in cage on beach (material pumped directly to beach from dredge).

York Spit Channel	2002	911,406	8 Loggerheads 1 Kemp's ridley
Cape Henry	2001	1,641,140	2 loggerheads 1 Kemp's ridley
VA Beach Hurricane Protection Project (Thimble Shoals)	2001	4,000,000	5 loggerheads 1 unknown
Thimble Shoal Channel	2000	831,761	2 loggerheads 1 unknown
York River Entrance Channel	1998	672,536	6 loggerheads
Atlantic Coast of NJ	1997	1,000,000	1 Loggerhead
Thimble Shoal Channel	1996	529,301	1 loggerhead
Delaware Bay	1995	218,151	1 Loggerhead
Cape Henry	1994	552,671	4 loggerheads 1 unknown
York Spit Channel	1994	61,299	4 loggerheads
Delaware Bay	1994	NA	1 Loggerhead
Cape May NJ	1993	NA	1 Loggerhead
Off Ocean City MD	1992	1,592,262	3 Loggerheads
			TOTAL = 88 Turtles

It should be noted that the observed takes may not be representative of all the turtles killed during dredge operations. Typically, endangered species observers are required to observe a total of 50% of the dredge activity (i.e., 6 hours on watch, 6 hours off watch). As such, if the observer was off watch or the cage was emptied and not inspected or the dredge company either did not report or was unable to identify the turtle incident, there is the possibility that a turtle could be taken by the dredge and go unnoticed. Additionally, in older biological opinions (i.e., prior to 1995), we frequently only required 25% observer coverage and monitoring of the overflows which has since been determined to not be as effective as monitoring of the intakes. These conditions may have led to sea turtle takes going undetected.

We raised this issue with you during the 2002 season, after several turtles were taken in the Cape Henry and York Spit Channels, and expressed the need for 100% observer coverage. On September 30, 2002, you informed the dredge contractor that when the observer was not present, the cage should not be opened unless it is clogged. This modification was to ensure that any sea turtles that were taken and on the intake screen (or in the cage area) would remain there until the observer evaluated the load. Your letter further stated, "crew members will only go into the cage and remove wood, rocks, and man-made debris; any aquatic biological material is left in the cage for the observer to document and clear out when they return on duty. In addition, the observer is the only one allowed to clean off the overflow screen. This practice provides us with 100% observation coverage and shall continue." Theoretically, all sea turtle parts were observed under this scheme, but the frequency of clogging in the cage is unknown at this time. The most effective way to attain 100% observer coverage is to have a NMFS-approved endangered species observer monitoring all loads at all times. This level of observer coverage would document all turtle interactions and better quantify the impact of dredging on turtle populations.

It is likely that not all sea turtles killed by dredges are observed onboard the hopper dredge. Several sea turtles stranded on Virginia shores with crushing type injuries from May 25 to October 15, 2002. The Virginia Aquarium and Marine Science Center (formerly the Virginia Marine Science Museum (VMSM)) found 10 loggerheads, 2 Kemp's ridleys, and 1 leatherback exhibiting injuries and structural damage consistent with what they have seen in animals that were known dredge takes. While in some cases it may not be conclusively determined that these strandings were the result of dredge interactions, the link is possible given the location of the strandings (e.g., in the southern Chesapeake Bay near ongoing dredging activity), the time of the documented strandings in relation to dredge operations, the lack of other ongoing activities which may have caused such damage, and the nature of the injuries (e.g., crushed or shattered carapaces and/or flipper bones, black mud in mouth). Additionally, in 1992, three dead sea turtles were found on an Ocean City, Maryland beach while dredging operations were ongoing at a borrow area located 3 miles offshore. Necropsy results indicate that the deaths of all three turtles were dredge related. It is unknown if turtles observed on the beach with these types of injuries were crushed by the dredge and subsequently stranded on shore or whether they were entrained in the dredge, entered the hopper and then were discharged onto the beach with the dredge spoils.

A dredge could crush an animal as it was setting the draghead on the bottom, or if the draghead was lifting on and off the bottom due to uneven terrain, but the actual cause of these crushing injuries cannot be determined at this time. Further analyses need to be conducted to better understand the link between crushed strandings and dredging activities, and if those strandings need to be factored into an incidental take level. As mentioned above, necropsy results can determine whether the cause of death was due to an interaction with dredge gear. When necessary, we believe that necropsies on stranded sea turtles will help determine not only whether the death was due to dredging activities, but also relevant information about the nature of the interaction (i.e., the specific dredging activity that led to the interaction). Regardless, it is possible that dredges are taking animals that are not observed on the dredge, which may result in strandings on nearby beaches.

Due to the nature of interactions between listed species and dredge operations, it is difficult to predict the number of interactions that are likely to occur from a particular dredging operation. Projects that occur in an identical location with the same equipment year after year may result in interactions in some years and none in other years as noted above in the examples of sea turtle takes. Dredging operations may go on for months, with sea turtle takes occurring intermittently throughout the duration of the action. For example, dredging occurred at Cape Henry over 160 days in 2002 with 8 sea turtle takes occurring over 3 separate weeks while dredging at York Spit in 1994 resulted in 4 sea turtle takes in one week. In Delaware Bay, dredge cycles have been conducted during the May-November period with no observed entrainment; in contrast, as many as two sea turtles have been entrained in as little as three weeks. Even in locations where thousands of sea turtles are known to be present (i.e., Chesapeake Bay) and where dredges are operating in areas with preferred sea turtle depths and forage items (as evidenced by entrainment of these species in the dredge), the numbers of sea turtles entrained is an extremely small percentage of the likely number of sea turtles in the action area. This is likely due to the distribution of individuals throughout the action area, the relatively small area which is affected at any given moment and the ability of some sea turtles to avoid the dredge even if they are in the immediate area.

The number of interactions between dredge equipment and sea turtles seems to be best associated with the volume of material removed, which is closely correlated to the length of time dredging takes, with a greater number of interactions associated with a greater volume of material removed and a longer duration of dredging. The number of interactions is also heavily influenced by the time of year dredging occurs (with more interactions correlated to times of year when more sea turtles are present in the action area) and the type of dredge plant used (sea turtles are apparently capable of avoiding pipeline and mechanical dredges as no takes of sea turtles have been reported with these types of dredges). The number of interactions may also be influenced by the terrain in the area being dredged, with interactions more likely when the draghead is moving up and off the bottom frequently. Interactions are also more likely at times and in areas when sea turtle forage items are concentrated in the area being dredged, as sea turtles are more likely to be spending time on the bottom while foraging.

We have compiled a dataset representing all of the hopper dredge projects in the Norfolk District that have reported the cubic yardage removed as well as the number of takes observed. The table below includes records for all projects in the Norfolk District since 1994 and indicates the volume of material removed during “sea turtle season” (i.e., April - November).

Table 14. Projects in Norfolk District since 1994.

Project Location	Dredging Dates	CY of Material Removed	% during sea turtle season	Volume Removed during turtle season	total sea turtles	Log	KR	green	unknown
Cape Henry Channel	7/23/18	n/a	1.000	1.000	1	1	0	0	0
Thimble Shoals Channel	4/26/17-8/31/17	1,098,514	1.000	1,098,514	1	1	0	0	0
York Spit Channel	5/23/15 – 8/4/15	815,979	1.000	815,979	6	6	0	0	0
Cape Henry Channel	4/2/15 – 6/1/15	478,566	1.000	478,566	0	0	0	0	0
Cape Henry Channel	4/23/14 – 9/5/14	1,686,859	1.000	1,686,859	4	3	1	0	0
Thimble Shoals Channel	4/23/14 – 7/31/14	863,933	1.000	863,933	0	0	0	0	0
VA Beach Hurricane Protection (Thimble Shoal Channel)	6/26/13 – 8/1/13	724,290	1.000	724,290	0	0	0	0	0
Sandbridge Beach	3/14/13 – 6/25/13	851,842	0.35	851,842	1	1	0	0	0
VA Beach Hurricane Protection (Atlantic Ocean Channel)	1/6/13-3/3/13	716,000	0.00	-	0	0	0	0	0
Craney Island	12/30/12-3/31/13, 4/1/13 –	1,534,123	0.05	188,123	0	0	0	0	0

	4/12/13								
Cape Henry Channel	1/29/12 - 4/12/12	1,190,004	0.162	192,780.65	1	1	0	0	0
York Spit	3/1/12 - 3/8/12, 4/3/12 - 4/5/2012	145,332	0.200	29,066.40	1	1	0	0	0
Cape Henry Channel	2/9/11- 5/10/11	957,996	0.444	425,350.22	0	0	0	0	0
York Spit	1/9/11- 4/24/11	1,503,517	0.153	230,038.10	0	0	0	0	0
Thimble Shoals	12/19/10- 2/27/11; 4/19/11- 4/21/11	368,104	0.000	-	0	0	0	0	0
Thimble Shoals	4/4/09- 5/20/09	370,412	1.000	370,412.00	3	3	0	0	0
York Spit	6/18/07- 7/03/07; 7/13/07- 08/05/07	415,626	1.000	415,626.00	1	0	1	0	0
Atlantic Ocean Channel (Deepening)	12/24/05- 04/8/06; 4/16/06- 4/19/06	1,185,436	0.109	129,212.52	0	0	0	0	0
Cape Henry Channel	6/15/06- 7/21/06	447,238	1.000	447,238.00	3	3	0	0	0
Thimble Shoal Channel	6/13/06- 6/30/06; 7/10/06- 7/27/06	419,624	1.000	419,624.00	1	1	0	0	0
York Spit Channel	04/01/04- 04/06/04; 5/23/04-	93,665	1.000	93,665.00	0	0	0	0	0

	5/28/04								
Thimble Shoal Channel	4/5/04-4/20/04; 4/30/04-5/01/04; 5/29/04-6/16/04	426,588	1.000	426,588.00	0	0	0	0	0
York River Entrance Channel	9/9/03-9/11/03; 10/17/03-11/30/03	268,641	1.000	268,641.00	0	0	0	0	0
Sandbridge Beach	05/1/03-5/25/03	1,500,000	1.000	1,500,000.00	0	0	0	0	0
Thimble Shoal Channel (VA Beach)	8/24/03-12/28/03	1,300,223	0.778	1,011,573.49	9	7	1	0	1
Cape Henry Channel	4/12/02-8/19/02; 10/21/02-11/02/02	2,449,285	1.000	2,449,285.00	8	6	1	1	0
York Spit Channel	8/20/02-10/21/02; 11/03/02-11/05/02	978,846	1.000	978,846.00	9	8	1	0	0
Cape Henry Channel	09/17/01-01/14/02	1,641,140	0.622	1,020,789.08	3	2	1	0	0
VA Beach Hurricane Protection (Thimble Shoal Channel)	6/26/01-11/30/01	4,000,000	1.000	4,000,000.00	6	5	0	0	1
Cape Henry Channel	04/08/00-06/02/00	541,037	1.000	541,037.00	0	0	0	0	0
Thimble Shoal	6/22/00-	1,370,316	0.667	914,000.77	3	2	0	0	1

Channel	7/31/00; 8/13/00-9/19/00; 12/16/99-1/23/00								
Cape Henry Channel	1/5/98-3/25/98	1,169,639	0.000	-	0	0	0	0	0
York River Entrance Channel	8/22/98-11/03/98	853,743	1.000	853,743.00	6	6	0	0	0
York Spit Channel	3/26/98-5/31/98	371,200	0.924	342,988.80	0	0	0	0	0
Cape Henry Channel	1/05/98-3/25/98	1,169,639	0.000	-	0	0	0	0	0
Thimble Shoal Channel	05/07/96-06/03/96	282,431	1.000	282,431.00	1	1	0	0	0
Cape Henry Channel	02/19/95-5/16/95	534,362	0.409	218,554.06					
Cape Henry Channel	4/11/94-5/12/94; 5/27/94-6/20/94	739,642	1.000	739,642.00	5	4	0	0	1
York Spit Channel	6/21/94-6/28/94	141,434	1.000	141,434.00	4	4	0	0	0
			TOTAL:	**25,150,672**	***77***	**66**	**6**	**1**	**4**

6.1.1.2 Predicted Entrainment in Proposed Hopper Dredging

Based on the data in Table 14, we calculate that an average of one sea turtle is entrained for approximately every 320,000 cubic yards (cy) removed (25,150,672 CY removed April – November divided by 77 sea turtles). This calculation has been based on a number of assumptions including the following: that sea turtles are evenly distributed throughout all channel reaches for which takes have occurred, that all dredges will take an identical number of sea turtles, and that sea turtles are equally likely to be encountered throughout the April to November time frame. Based on these calculations, we expect that for any hopper dredging project in any of the channels or borrow areas considered in this Opinion during the time of year when sea turtles are likely to be present, one sea turtle is likely to be entrained for every 320,000 cy of material removed by a hopper dredge. While this estimate is based on several assumptions, it is reasonable because it uses the best available information on entrainment of sea turtles from past dredging operations in the action area, includes multiple projects over several years, and all of the projects have had observer coverage.

Of the 77 entrained sea turtles, 73 have been identifiable to species; 66 were loggerheads, 6 Kemp's ridley and 1 green. Overall, of those identified to species, 90% were loggerheads, 8% Kemp's ridley and 2% green. The high percentage of loggerheads is likely due to several factors including their tendency to forage on the bottom where the dredge is operating and the fact that this species is the most numerous of the sea turtle species in Northeast and Mid-Atlantic waters. It is likely that the documentation of only one green sea turtle entrainment in Virginia dredging operations is a reflection of the low numbers of green sea turtles that occur in waters north of North Carolina.

Based on the above information, it is reasonable to expect that one sea turtle is likely to be injured or killed for approximately every 320,000 cy of material removed from the channels and borrow areas considered in this Opinion when dredging is carried out between April and November, and that 90% will be loggerheads, 8% will be Kemp's ridley and 2% will be green. Because sea turtles do not occur in the action area from December – March, we do not expect any entrainment during these months. Based on the information outlined above and the volume of material estimated to be removed from each reach during the time of year when sea turtles are likely to be present (in parentheses below), we anticipate the following levels of entrainment during hopper dredge activities:

Table 15. Estimated Sea Turtle Takes During Construction

Project	Total Volume	Number of Interactions			
		Total Sea Turtles	Loggerhead	Kemp's ridley	Green
Atlantic Ocean Channel	16,074,736	50	45	4	1
Thimble Shoals Channel	18,069,823	56	50	4	2
Thimble Shoals Channel Meeting Area #1 & #2	7,191,000	22	20	2	0
Sewells Point to Lamberts Bend	12,147,318	38	34	3	1
Anchorage F	1,914,788	6	5	1*	1*
Newport News Channel	4,906,284	15	14	1	0
CIEE	19,500,000	61	55	5	1
		TOTAL:	**223**	**20**	**6**

*1 Kemp's ridley or green

Table 16. Estimated Sea Turtle Takes During Maintenance Dredging

Project	Total Volume (cubic yards)	Number of Interactions			
		Total Sea Turtles	Loggerhead	Kemp's ridley	Green
Atlantic Ocean Channel	15,191,112	47	42	4	1
Thimble Shoals Channel	24,331,540	76	68	6	2
Thimble Shoals Channel Meeting Area #1 & #2	3,640,924	11	10	1	0
Sewells Point to Lamberts Bend	42,346,689	132	119	10	3
Anchorage F	7,590,328	24	22	2	0
Newport News Channel	6,676,305	21	19	2	0
	TOTAL:		**280**	**25**	**6**

Project	Total Volume (cubic yards)	Number of Interactions			
		Total Sea Turtles	Loggerhead	Kemp's ridley	green
Baltimore Harbor Entrance Channels	64,500,000	215	194	17	4
Virginia Beach Hurricane Project (TSS and AO borrow areas)	4,400,000	15	13	1*	1*
Sandbridge Shoal	12,500,000	42	38	3	1
	TOTAL:		**245**	**21**	**6**

*1 Kemp's ridley or green

6.1.2 Hopper Dredge Entrainment – Atlantic Sturgeon

Atlantic sturgeon are vulnerable to entrainment in hopper dredges. Entrainment is believed to occur primarily when the draghead is not in firm contact with the channel bottom, so the potential exists that sturgeon feeding or resting on or near the bottom may be vulnerable to entrainment. Additionally, the size and flow rates produced by the suction power of the dredge, the condition of the channel being dredged, and the method of operation of the dredge and draghead all relate to the potential of the dredge to entrain sturgeon (Reine and Clarke 1998). These parameters also govern the ability of the dredge to entrain other species of fish, sea turtles, and shellfish.

The risk of interactions is related to both the amount of time sturgeon spend on the bottom and the behavior the fish are engaged in (i.e., whether the fish are overwintering, foraging, resting or migrating) as well as the intake velocity and swimming abilities of sturgeon in the area (Clarke 2011). Intake velocities at a typical large self-propelled hopper dredge are 11 feet per second. As noted above, exposure to the suction of the draghead intake is minimized by not turning on the suction until the draghead is properly seated on the bottom sediments and by maintaining contact between the draghead and the bottom.

A significant factor influencing potential entrainment is based upon the swimming stamina and size of the individual fish at risk (Boysen and Hoover 2009). Swimming stamina is positively correlated with total fish length. Entrainment of larger sturgeon is less likely due to the increased swimming performance and the relatively small size of the draghead opening. Juvenile entrainment is possible depending on the location of the dredging operations and the time of year in which the dredging occurs. Typically, major concerns of juvenile entrainment relate to fish below 200 mm (Hoover *et al.*, 2005; Boysen and Hoover, 2009). Juvenile sturgeon are not as powerful swimmers as older, larger fish and they are prone to bottom-holding behaviors, which make them more vulnerable to entrainment when in close proximity to dragheads (Hoover *et al.*, 2011).

In general, entrainment of large mobile animals, such as sturgeon, is relatively rare. Several factors are thought to contribute to the likelihood of entrainment. In areas where animals are present in high density, the risk of an interaction is greater because more animals are exposed to the potential for entrainment. The risk of entrainment is likely to be higher in areas where the movements of animals are restricted (e.g., in narrow rivers or confined bays) where there is limited opportunity for animals to move away from the dredge than in unconfined areas such as wide rivers or open bays. The hopper dredge draghead operates on the bottom and is typically at least partially buried in the sediment. Sturgeon are benthic feeders and are often found at or near the bottom while foraging or while moving within rivers. Sturgeon at or near the bottom could be vulnerable to entrainment if they were unable to swim away from the draghead.

Entrainment of Atlantic sturgeon during hopper dredging operations in Federal navigation channels appears to be relatively rare. From 1990-2012, USACE documented 28 incidents of sturgeon entrainment on monitored hopper dredges (see Appendix C). Of these, 20 were Atlantic sturgeon, five were shortnose and two were Gulf sturgeon (one unknown). Since that report was generated, one Atlantic sturgeon was entrained in the Ambrose Channel, New York

(October 2012; alive); one Atlantic sturgeon was entrained in the Delaware River in May 2013 (released alive); five sturgeon were entrained in the Delaware River by hopper dredges in 2014; and two sturgeon were entrained in 2017. USACE-Norfolk District and Baltimore District hopper dredging projects have been monitored in the Chesapeake Bay from 1994 to present. During this period, observers have been present during the removal of more than 18 million cubic yards of dredged material from the channels considered in this consultation (see Table 14 above) with only two documented entrainments of Atlantic sturgeon.

As explained above, since 1994, endangered species observers have been present for at least a portion of all hopper dredging done during the April – November time frame in the action area. Only two entrained Atlantic sturgeon have been documented during any hopper dredge activity in the action area, both in YSC in April 2011. Additionally, during sea turtle relocation trawling conducted in the fall of 2003 in conjunction with the 50-foot deepening of the inbound element of the Thimble Shoal Channel, 14 Atlantic sturgeon were captured by the trawler and released live in and around the channel; no incidental takes of Atlantic sturgeon by hopper dredge were observed during this period.

On a hopper dredge, it is possible to monitor entrainment because the dredged material is retained on the vessels as opposed to the direct placement of dredged material both overboard or in confined disposal facilities by a hydraulic pipeline dredge. A hopper dredge contains screened inflow cages from which an observer can inspect recently dredged contents. Typically, the observer inspection is performed at the completion of each load while the vessel is transiting to the authorized placement area and does not impact production of the dredging operations.

In the fall of 2003, the Norfolk District captured fourteen Atlantic sturgeon during sea turtle relocation trawling activities supporting hopper dredging operations in Thimble Shoals Channel in the Chesapeake Bay. The Atlantic sturgeon were captured in the immediate vicinity of the dredging operation with no entrainment observed by NMFS approved observers onboard the hopper dredge before, during or after the relocation trawling where Atlantic sturgeon were captured.

Given the large size of adults (greater than 150cm) and the size of the openings on the dragheads, adult Atlantic sturgeon are unlikely to be vulnerable to entrainment. USACE reports that from 1990-2012, 37 confirmed interactions with sturgeon occurred during dredge operations (see Appendix C). Of these, 22 were reported as Atlantic sturgeon (20 individuals; two individuals were observed in 2 separate pieces), with 19 of these entrained in hopper dredges. Of the entrained Atlantic sturgeon for which size is available, all were subadults (larger than 50cm but less than 150cm). Information on these interactions is presented in Table 17. Most of these interactions occurred within rivers and harbors.

Table 17. USACE Atlantic Sturgeon Entrainment Records from Hopper Dredge Operations 1990-2012

Project Location	Corps Division/District *	Month/Year Interaction Observed	Cubic Yards Removed	Observed** Entrainment
Winyah Bay, Georgetown (SC)	SAD/SAC	Oct-90	517,032	1
Savannah Harbor (GA)	SAD/SAS	Jan-94	2,202,800	1
Savannah Harbor	SAD/SAS	Dec-94	2,239,800	2
Wilmington Harbor, Cape Fear River (NC)	SAD/SAW	Sep-98	196,400	1
Charleston Harbor (SC)	SAD/SAC	Mar-00	5,627,386	2
Brunswick Harbor (GA)	SAD/SAS	Feb-01	1,459,630	1
Charleston Harbor	SAD/SAC	Jan-04	1,449,234	1
Brunswick Harbor	SAD/SAS	Mar-05	966,000	1
Brunswick Harbor	SAD/SAS	Dec-06	1,198,571	1
Savannah Entrance Channel	SAD/SAS	Jan-07	973,463	1
Savannah Entrance Channel	SAD/SAS	Mar-09	261,780	1
Brunswick Entrance Channel	SAD/SAS	Feb-10	1,728,339	3
Wilmington Harbor	SAD/SAW	Dec-10	857,726	1
York Spit (VA)	NAD/NAN	Apr-11	1,630,713	2
Charleston Harbor	SAD/SAC	Mar-12	1,100,000	1
		Total	**22,408,874**	**20**

* SAD= South Atlantic Division; NAD= North Atlantic Division; SAC=Charleston District; SAS=Savannah District; SAW=Wilmington District; NANY=New York District; NAN=Norfolk District.

** Records based on sea turtle observer reports which record listed species entrained as well as all other organisms entrained during dredge operations.

The only instances of observed Atlantic sturgeon entrainment in hopper dredges in our Gretaer Atlantic Region are two sturgeon entrained at York Spit, VA in 2011 (both were killed), one live Atlantic sturgeon entrained in Sandy Hook, NJ in 2008, one dead Atlantic sturgeon entrained in Ambrose Channel, NY in 2012, and seven in the Delaware River between 2013 and 2017. As described in the discussion of sea turtles above, many other hopper dredge projects have occurred in our Greater Atlantic Region; nearly all of which overlap with times and areas where Atlantic sturgeon are known to be present. Because observers have been present on these dredges and we expect that any interactions with Atlantic sturgeon would have been reported to us, the interaction rate between hopper dredges and Atlantic sturgeon seems to be very low (1 Atlantic sturgeon for every 9 mcy removed for the action area, just considering the volume of material removed when observers were present). Even just considering the projects listed in Table 17, where entrainment was recorded, we calculate an entrainment rate of one Atlantic sturgeon for approximately every 1.2 million cy of material removed. If we consider all projects in the action area where observers were present (see table 14) as well as projects outside the action area where interactions with Atlantic sturgeon were recorded (see table 17), we calculate an entrainment rate of 1 Atlantic sturgeon for every 2 mcy removed.

The entrainment estimate generated above using all projects in the Chesapeake Bay where observers have been present plus all projects in rivers and bays where entrained Atlantic sturgeon have been observed is an overestimate because it does not consider other projects outside the action area where no entrainment occurred. However, at this time, it is the best available estimate of entrainment rates for Atlantic sturgeon and hopper dredges. Just using the projects within the Chesapeake Bay (table 14) is likely to be an underestimate because there has only been observer coverage between April and November and Atlantic sturgeon may be present year round.

Based on the above information, we expect one Atlantic sturgeon to be entrained for approximately every two mcy of material removed with a hopper dredge. Given the size of adult Atlantic sturgeon (greater than 150cm) and the size of observed entrained sturgeon (less than 150cm), we do not anticipate the entrainment of any adult Atlantic sturgeon. Given the location of the channels and borrow areas to be dredged, juveniles, subadults, and adults will be present; therefore, we anticipate that all entrained Atlantic sturgeon will be juveniles and subadults less than 150cm in size.

There is evidence that some Atlantic sturgeon, particularly juveniles and small subadults, could be entrained in the dredge and survive. However, as the extent of internal injuries and the likelihood of survival is unknown, and the size of the fish likely to be entrained is impossible to predict, it is reasonable to conclude that any Atlantic sturgeon entrained in the hopper dredge are likely to be killed. Based on the NEFOP mixed-stock analysis, we have determined that Atlantic sturgeon in the action area likely originate from the five DPSs at the following frequencies: NYB 49%; South Atlantic 20%; Chesapeake Bay 14%; Gulf of Maine 11%; and Carolina 4%; we anticipate that entrained Atlantic sturgeon will occur at similar frequencies.

Table 18. Expected Entrainment of Atlantic sturgeon in hopper dredges during construction

Project	Total Volume	Number of Interactions					
		Total Atlantic sturgeon	**NYB DPS**	**SA DPS**	**CB DPS**	**GOM DPS**	**Carolina DPS**
Atlantic Ocean Channel	16,074,736	8	4	2	1	1	0
Thimble Shoals Channel	18,069,823	9	5	2	1	1	0
Thimble Shoals Meeting Areas #1 & #2	7,191,000	4	2	1	1	0	0
Sewell's Point to Lamberts Bend	12,147,318	6	3	1	1	1	0
Anchorage F	1,914,788	1	1*	1*	1*	1*	1*
Newport News Channel	4,906,284	3	1	1	1*	1*	1*
CIEE	19,500,000	10	5	2	1	1	1
		Total:	**21**	**10**	**7**	**6**	**3**

Table 19. Expected Entrainment of Atlantic sturgeon in hopper dredges during maintenance over the life of the project.

Project	Total Volume	Number of Interactions					
		Total Atlantic sturgeon	**NYB DPS**	**SA DPS**	**CB DPS**	**GOM DPS**	**Carolina DPS**
Atlantic Ocean Channel	15,191,112	8	4	2	1	1	0
Thimble Shoals Channel	24,331,540	12	6	2	2	1	1
Thimble Shoals Meeting Areas #1 & #2	3,640,924	2	1	1*	1*	1*	1*
Sewell's Point to Lamberts Bend	42,346,689	21	11	4	3	2	1
Anchorage F	7,590,328	4	2	1	1	0	0
Newport News Channel	6,676,305	3	3	1	1*	1*	1*
		Total:	**27**	**11**	**9**	**6**	**4**

Project	Total Volume	Number of Interactions					
		Total Atlantic sturgeon	**NYB DPS**	**SA DPS**	**CB DPS**	**GOM DPS**	**Carolina DPS**
Baltimore Harbor Entrance Channels	64,500,000	32	16	6	5	4	1
Virginia Beach Hurricane Project	4,400,000	2	1	1*	1*	1*	1*
Sandbridge Shoal	12,500,000	6	3	1	1	1*	1*
		Total:	**20**	**8**	**7**	**6**	**3**

*Using the 1 fish per 2 mil cy of dredge material method for estimating takes from entrainment in hopper dredges described above, we estimated take of <1 sturgeon, so using our mixed-stock analysis the individual could originate from any one of the these DPSs.

6.1.3 Interactions with the Sediment Plume - Hopper Dredge

Physical and biological impairments to the water column can occur from increases in turbidity which can alter light penetration. The proposed dredging will cause temporary increases in turbidity and suspension of sediments during dredging operations. As a result, the increase in turbidity can impact primary productivity and respiration of organisms within the project area. The re-suspension of sediments from dredging and dredged material placement can prevent or reduce gas-water exchanges in the gills of fish (Germano and Cary, 2005; Clarke and Wilber, 2000). The amount of impact that this can have on a species is dependent on the sensitivity of that species. This increase in turbidity can also impact prey species' predator avoidance response ability due to the decreased clarity in the water column.

Increased suspended sediment resulting from dredging can also reduce dissolved oxygen. Low dissolved oxygen conditions can be generated by the dredging operations from the resuspension of sediments and the biochemical oxygen demand of the surrounding water (Johnston, 1981). This can be particularly important during the summer months when water temperatures are warmer and less capable of holding dissolved oxygen. Dredging during the warmer months can exacerbate low dissolved oxygen conditions (Hatin *et al.*, 2007a).

Dredging operations cause sediment to be suspended in the water column. This results in a sediment plume in the water, typically present from the dredge site and decreasing in concentration as sediment falls out of the water column as distance increases from the dredge site. The nature, degree, and extent of sediment suspension around a dredging operation are controlled by many factors including: the particle size distribution, solids concentration, and composition of the dredged material; the dredge type and size, discharge/cutter configuration, discharge rate, and solids concentration of the slurry; operational procedures used; and the characteristics of the hydraulic regime in the vicinity of the operation, including water composition, temperature and hydrodynamic forces (i.e., waves, currents, etc.) causing vertical and horizontal mixing (USACE 1983).

Resuspension of fine-grained dredged material during hopper dredging operations is caused by the dragheads as they are pulled through the sediment, turbulence generated by the vessel and its prop wash, and overflow of turbid water during hopper filling operations. During the filling operation, dredged material slurry is often pumped into the hoppers after they have been filled with slurry in order to maximize the amount of solid material in the hopper. The lower density, turbid water at the surface of the filled hoppers overflows and is usually discharged through ports located near the waterline of the dredge. Use of this “overflow” technique results in a larger sediment plume than if no overflow is used. In 1998, a study was done of overflow and nonoverflow hopper dredging using the McFarland hopper dredge (USACE 2013). Monitoring of the sediment plumes was accomplished using a boat-mounted 1,200-kHz Broad-Band Acoustic Doppler Current Profiler (ADCP). The instrument collects velocity vectors in the water column together with backscatter levels to determine the position and relative intensity of the sediment plume. Along with the ADCP, a MicroLite recording instrument with an Optical Backscatterance (OBS) Sensor was towed by the vessel at a depth of 15 ft. The MicroLite recorded data at 0.5-sec intervals. Navigation data for monitoring were obtained by a Starlink differential Global Positioning System (GPS). The GPS monitors the boat position from the starting and ending points along each transect.

Transects were monitored in the test area to obtain the background levels of suspended materials prior to dredging activities. A period of 8 minutes following the dredge passing during non-overflow dredging showed the level of suspended material to be returning to background levels. No lateral dispersion of the plume out of the channel was observed during the non-overflow dredging operation. During overflow dredging, a wider transect was performed to determine the lateral extent of the plume. No significant change above background levels could be detected. At 1-hr elapsed time following the end of the overflow dredging operation, the levels of suspended material returned to background conditions. Again, no lateral dispersion of the plume out of the channel area was observed.

Overall, water quality impacts are anticipated to be minor and temporary in nature. Once dredging operations are complete the project area will soon return to ambient conditions due to the dilution or re-deposition of suspended sediments along with the strong littoral currents of the Chesapeake Bay, its river mouths, and the Atlantic Ocean.

No information is available on the effects of total suspended solids (TSS) on juvenile and adult sea turtles. TSS is most likely to affect sea turtles if a plume causes a barrier to normal behaviors or if sediment settles on the bottom affecting sea turtle prey. As sea turtles are highly mobile they are likely to be able to avoid any sediment plume, which is expected to be limited to the navigation channel and for no more than 8 minutes. Any effect on sea turtle movements between foraging areas or while migrating through the action area is likely to be so small that it cannot be meaningfuly measured or detected and is therefore insignificant.

Studies of the effects of turbid water on fish suggest that concentrations of suspended solids can reach thousands of milligrams per liter before an acute toxic reaction is expected (Burton 1993). The TSS levels expected for all of the proposed activities (ranging from 5 mg/L to 475 mg/L) are below those shown to have adverse effect on fish (580 mg/L for the most sensitive species, with 1,000 mg/L more typical; see summary of scientific literature in Burton 1993) and benthic communities (390 mg/L (EPA 1986)). With the exception of near field hopper dredge impacts, TSS levels will not reach levels that are toxic to benthic communities. We expect elevated levels of TSS to settle out of the water column in about an hour. Mobile prey items will likely be able to uncover themselves from any deposited sediment, while a small percentage of non-mobile prey in the near field range of a hopper may be buried/suffocated. Therefore, effects to sturgeon and sea turtle foraging opportunities from TSS impacts to benthic communities in the navigation channel are largely temporary and limited to a small area (i.e., the near-field range of where remaining hopper dredge deepening and maintenance dredging of shoals will occur). Using the data you have provided, the total area subject to deepening and maintance dredging is approximately 7,492 acres. The additional area potentially impacted by near field hopper dredging plumes beyond the area to be dredged would be slightly larger, as turbidity plumes extend away from the dredge footprint. This area is approximately .26% of the area in Chesapeake Bay. Effects on sturgeon and sea turtle fitness from reduced prey in these small areas relative to available foraging areas in the rest of the action area are too small to be meaningfully measured or detected, and are insignificant.

The life stages of sturgeon most vulnerable to increased sediment are eggs and non-mobile larvae, which are subject to burial and suffocation. As noted above, because of the distance of the projects from the spawning grounds, no Atlantic sturgeon eggs and/or larvae will be present in the action area. Any Atlantic sturgeon in the action area during dredging would be capable of avoiding any sediment plume by swimming around it. Laboratory studies (Niklitschek 2001 and Secor and Niklitschek 2001) have demonstrated shortnose and Atlantic sturgeon are able to actively avoid areas with unfavorable water quality conditions and that they will seek out more favorable conditions when available. While the increase in suspended sediments may cause sturgeon to alter their normal movements, any change in behavior will only involve movement further up in the water column, or movement to an area just outside of the navigation channel. Based on the best available information, we will not be able to meaningfully detect, evaluate, or measure the effects of re-suspended sediment on sturgeon resulting from proposed activities when added to baseline conditions. Therefore, effects on mobile sturgeon are insignificant.

6.2 Hydraulic Cutterhead Dredge

Hydraulic pipeline dredges tend to be more efficient than the hopper style dredges because the pipeline conveys sand directly to the placement site. However, hydraulic pipeline dredges are not well-adapted to work in environments with high wave energy. Most pipeline dredges have a cutterhead on the suction end. A cutterhead is a mechanical device that has rotating blades or teeth to break up or loosen the bottom material so that it can be sucked through the dredge. Some cutterheads are rugged enough to break up rock for removal. Pipeline dredges are mounted (fastened) to barges and are not usually self-powered, but are towed to the dredging site and secured in place by special anchor piling, called spuds. To move the dredge, the operator's raises and lowers opposite spuds to crab crawl the dredge along at a much slower pace than hopper style dredges and are subsequently less maneuverable. A hydraulic pipeline dredge removes material by controlling the dragline on which the suction cutterhead is attached. This style of dredge works more efficiently when it can move slowly and remove deeper materials as it moves along using the spuds. Material is directly mixed with water as it is sucked into the pipeline and hydraulically pumped and sent directly to the spoil disposal site. This makes this style dredge more efficient that a hopper style dredge that is required to move to a pump-out site to dispose of material. The suction is created by hydraulic pumps either located on board or in route along the pipeline acting as a booster and creates the same low pressure around the drag heads as a hopper dredge to force the material along the pipeline. As with the hopper style dredge, the more closely the cutterhead is maintained in contact with the sediment, the more efficient the dredging.

Sea turtles are not known to be vulnerable to entrainment in cutterhead dredges. This is thought to be due to the size of sea turtles and their swimming ability that allows them to escape the intake velocity near a cutterhead. There are no records of any sea turtles being entrained in cutterhead dredges in the Chesapeake Bay or anywhere else. Based on the available information, we do not anticipate any entrainment of sea turtles any time a cutterhead dredge is used.

6.2.1 Available Information on the Risk of Entrainment of Sturgeon in Cutterhead Dredge

As noted above, a cutterhead dredge operates with the dredge head buried in the sediment; however, a flow field is produced by the suction of the operating dredge head. The amount of suction produced is dependent on linear flow rates inside the pipe and the pipe diameter (Clausner and Jones 2004). High flow rates and larger pipes create greater suction velocities and wider flow fields. The suction produced decreases exponentially with distance from the dredge head (Boysen and Hoover 2009). With a cutterhead dredge, material is pumped directly from the dredged area to a disposal site. As such, there is no opportunity to monitor for biological material on board the dredge; rather, observers work at the disposal site to inspect material.

It is generally assumed that sturgeon are mobile enough to avoid the suction of an oncoming cutterhead dredge and that any sturgeon (with the exception of eggs and immobile larvae) in the vicinity of such an operation would be able to avoid the intake and escape. However, in mid-March 1996, two shortnose sturgeon were found in a dredge discharge pool on Money Island, near Newbold Island in the upper Delaware River. The dead sturgeon were found on the side of the spoil area into which the hydraulic pipeline dredge was pumping. An assessment of the condition of the fish indicated that the fish were likely alive and in good condition prior to entrainment and that they were both adult females. The area where dredging was occurring was a known overwintering area for shortnose sturgeon and large numbers of shortnose sturgeon were known to be concentrated in the general area. A total of 509,946 cy were dredged between Florence and the upper end of Newbold Island during this dredge cycle. Since that time, dredging occurring in the winter months in the Newbold – Kinkora range of the Delaware River required that inspectors conduct daily inspections of the dredge spoil area in an attempt to detect the presence of any sturgeon. In January 1998, three shortnose sturgeon carcasses were discovered in the Money Island Disposal Area. The sturgeon were found on three separate dates: January 6, January 12, and January 13. Dredging was being conducted in the Kinkora and Florence ranges at this time which also overlaps with the shortnose sturgeon overwintering area. A total of 512,923 cy of material was dredged between Florence and upper Newbold Island during that dredge cycle. While it is possible that not all shortnose sturgeon killed during dredging operations were observed at the dredge disposal pool, USACE has indicated that due to flow patterns in the pool, it is expected that all large material (i.e., sturgeon, logs etc.) will move towards the edges of the pool and be readily observable. Monitoring of dredge disposal areas used for deepening of the Delaware River with a cutterhead dredge has occurred. Dredging in Reach C occurred from March – August 2010 with 3,594,963 cy of material removed with a cutterhead dredge. Dredging in Reach B occurred in November and December 2011, with 1,100,000 cy of material removed with a cutterhead dredge. In both cases, the dredge disposal area was inspected daily for the presence of sturgeon. No sturgeon were detected.

In an attempt to understand the behavior of sturgeon while dredging is ongoing, the USACE worked with sturgeon researchers to track the movements of tagged Atlantic and shortnose sturgeon while cutterhead dredge operations were ongoing in Reach B (ERC 2011). The movements of acoustically tagged sturgeon were monitored using both passive and active methods. Passive monitoring was performed using 14 VEMCO VR2 and VR2W single-channel receivers, deployed through the study area. These receivers are part of a network that was established and cooperatively maintained by Environmental Research and Consulting, Inc. (ERC), Delaware State University (DSU), and the Delaware Department of Natural Resources and Environmental Control (DNREC). Nineteen tagged Atlantic sturgeon and three tagged shortnose sturgeon (all juveniles) were in the study area during the time dredging was ongoing. Eleven of the 19 juvenile Atlantic sturgeon detected during this study remained upriver of the dredging area and showed high fidelity to the Marcus Hook anchorage. Three of the juvenile sturgeon detected during this study (Atlantic sturgeons 13417, 1769; shortnose sturgeon 58626) appeared to have moved through Reach B when the dredge was working. The patterns and rates of movement of these fish indicated nothing to suggest that their behavior was affected by dredge operation. The other sturgeon that were detected in the lower portion of the study area either moved through the area before or after the dredging period (Atlantic sturgeons 2053, 2054), moved through Reach B when the dredge was shut down (Atlantic sturgeons 1774, 58628, 58629), or moved through the channel on the east side of Cherry Island Flats (shortnose sturgeon 2090, Atlantic sturgeon 2091) opposite the main navigation channel. It is unknown whether some of these fish chose behaviors (routes or timing of movement) that kept them from the immediate vicinity of the operating dredge. In the report, Brundage speculates that this could be to avoid the noisy area near the dredge but also states that on the other hand, the movements of the sturgeon reported here relative to dredge operation could simply have been coincidence.

A similar study was carried out in the James River (Virginia) (Cameron 2012). Dredging occurred with a cutterhead dredge between January 30 and February 19, 2009 with 166,545 cy of material removed over 417.6 hours of active dredge time. Six subadult Atlantic sturgeon (77.5 – 100 cm length) were caught, tagged with passive and active acoustic tags, and released at the dredge site. The study concluded that: tagged fish showed no signs of impeded up- or downriver movement due to the physical presence of the dredge; fish were actively tracked freely moving past the dredge during full production mode; fish showed no signs of avoidance response (e.g., due to noise generated by the dredge) as indicated by the amount of time spent in close proximity to the dredge after release (3.5 – 21.5 hours); and, tagged fish showed no evidence of attraction to the dredge.

Several scientific studies have been undertaken to understand the ability of sturgeon to avoid cutterhead dredges. Hoover *et al.* (2011) demonstrated the swimming performance of juvenile lake sturgeon and pallid sturgeon (12 – 17.3 cm FL) in laboratory evaluations. The authors compared swimming behaviors and abilities in water velocities ranging from 10 to 90 cm/second (0.33-3.0 feet per second). Based on the known intake velocities of several sizes of cutterhead dredges. At distances more than 1.5 meters from the dredges, water velocities were negligible (10 cm/s). The authors conclude that in order for a sturgeon to be entrained in a dredge, the fish would need to be almost on top of the drag head and be unaffected by associated disturbance (e.g., turbidity and noise). The authors also conclude that juvenile sturgeon are only at risk of entrainment in a cutterhead dredge if they are in close proximity, less than 1 meter, to the cutterhead.

Boysen and Hoover (2009) assessed the probability of entrainment of juvenile white sturgeon by evaluating swimming performance of young of the year fish (8-10 cm TL). The authors determined that within 1.0 meter of an operating dredge head, all fish would escape when the pipe was 61 cm (2 feet) or smaller. Fish larger than 9.3 cm (about 4 inches) would be able to avoid the intake when the pipe was as large as 66 cm (2.2 feet). The authors concluded that regardless of fish size or pipe size, fish are only at risk of entrainment within a radius of 1.5 – 2 meters of the dredge head; beyond that distance, velocities decrease to less than 1 foot per second.

Clarke (2011) reports that a cutterhead dredge with a suction pipe diameter of 36” (larger than the one to be used for this project) has an intake velocity of approximately 95 cm/s at a distance of 1 meter from the dredge head and that the velocity reduces to approximately 40cm/s at a distance of 1.5 meters, 25cm/s at a distance of 2.0 meters and less than 10cm/s at a distance of 3.0 meters. Clarke also reports on swim tunnel performance tests conducted on juvenile and subadult Atlantic, white and lake sturgeon. He concludes that there is a risk of sturgeon entrainment only within 1 meter of a cutterhead dredge head with a 36” pipe diameter and suction of 4.6m/second.

6.2.2 Predicted Entrainment of Atlantic sturgeon in a cutterhead dredge

The risk of an individual sturgeon being entrained in a cutterhead dredge is difficult to calculate. While a large area overall will be dredged, the dredge operates in an extremely small area at any given time (i.e., the river or ocean bottom in the immediate vicinity of the intake). None of the dredging is proposed in habitat where sturgeon are known to aggregate (i.e., deep holes). An individual would need to be in the immediate area where the dredge is operating to be entrained (i.e., within 1 meter of the dredge head). The overall risk of entrainment is low. It is likely that the nearly all Atlantic sturgeon in the action area will never encounter the dredge as they would not occur within 1 meter of the dredge. Information from the tracking studies in the James and Delaware River supports these assessments of risk, as none of the tagged sturgeon were attracted to or entrained in the operating dredges.

The entrainment of five sturgeon in the upper Delaware River indicates that entrainment of sturgeon in cutterhead dredges is possible. However, there are several factors that may increase the risk of entrainment in that area of the river as compared to the areas where cutterhead dredging will occur for this action. All five entrainments occurred during the winter months in an area where shortnose sturgeon are known to concentrate in dense aggregations; sturgeon in these aggregations rest on the bottom and exhibit little movement and may be slow to respond to stimuli such as an oncoming dredge. Additionally, the area where dredging was occurring is fairly narrow and constricted which may limit the ability of sturgeon to avoid the oncoming dredge. These conditions are not present in any of the areas where a cutterhead dredge will be used.

Because the only entrainment of Atlantic or shortnose sturgeon in cutterhead dredges in the United States has been the five shortnose sturgeon found at the disposal site in the upper Delaware River it is difficult to predict the number of Atlantic sturgeon that are likely to be entrained during cutterhead dredging in the action area. Based on the available information presented here, entrainment in a cutterhead dredge is likely to be rare, and would only occur if a sturgeon was within 1 meter of the dredge head. However, because we know that entrainment is possible, we expect that over the project life considered here, some entrainment with a cutterhead dredge will occur. Based on the predicted rarity of the entrainment event, we expect that no more than one Atlantic sturgeon will be entrained each year that a cutterhead dredge is used for dredging in one of the channels discussed herein; this expected amount of entrainment is inclusive of the use of a cutterhead dredge in Norfolk Harbor and the CIEE expansion. Due to the suction, travel through up to several miles of pipe and any residency period in the disposal area, all entrained Atlantic sturgeon are expected to be killed.

Based on the mixed stock analysis, it is likely that most of the entrained Atlantic sturgeon will originate from the New York Bight DPS but could also originate from the Gulf of Maine, Chesapeake Bay or South Atlantic DPS. Given the mixed stock percentages presented above and an estimate of no more than one mortality per year, we expect the following mortality of Atlantic sturgeon in cutterhead dredges:

Table 20. Expected Takes of Atlantic Sturgeon by Cutterhead Dredges

Number of Atlantic Sturgeon over the life span of the Project	**DPS**
25	New York Bight
10	South Atlantic
8	Chesapeake Bay
5	Gulf of Maine
2	Carolina

6.2.3 Interactions with the Sediment Plume from Cutterhead Dredges

The increased turbidity and suspended sediments related to the cutterhead dredging and placement activities are anticipated to have short term, temporary impacts to water quality. Placement of sand at the designated beach nourishment site will be via hydraulic pipeline. Sand will be deposited directly on the beach and graded to profile. Fine particles that may be present in the sand will be transported and dispersed in the swash zone.

Dredging operations cause sediment to be suspended in the water column. This results in a sediment plume in the waterway, typically present from the dredge site and decreasing in concentration as sediment falls out of the water column as distance increases from the dredge site. Dredging with a pipeline dredge minimizes the amount of material re-suspended in the water column as the material is essentially vacuumed up and transported to the disposal site in a pipe.

As reported by you, a near-field water quality modeling of dredging operations in the Delaware River was conducted in 2001. The purpose of the modeling was to evaluate the potential for sediment contaminants released during the dredging process to exceed applicable water quality criteria. The model predicted suspended sediment concentrations in the water column at downstream distances from a working cutterhead dredge in fine-grained dredged material. Suspended sediment concentrations were highest at the bottom of the water column, and returned to background concentrations within 100 meters downstream of the dredge.

In 2005, FERC presented us with an analysis of results from the DREDGE model used to estimate the extent of any sediment plume associated with the proposed dredging at the Crown Landing LNG berth (FERC 2005). The model results indicated that the concentration of suspended sediments resulting from hydraulic dredging would be highest close to the bottom and would decrease rapidly downstream and higher in the water column. Based on a conservative (i.e., low) TSS background concentration of 5mg/L, the modeling results indicated that elevated TSS concentrations (i.e., above background levels) would be present at the bottom 2 meters of the water column for a distance of approximately 1,150 feet. Based on these analyses, elevated suspended sediment levels are expected to be present only within 1,150 feet of the location of the cutterhead. Turbidity levels associated with cutterhead dredge sediment plumes typically range from 11.5 to 282 mg/L with the highest levels detected adjacent to the cutterhead and concentrations decreasing with greater distance from the dredge (see U. Washington 2001).

No information is available on the effects of total suspended solids (TSS) on juvenile and adult sea turtles. Of the effects causing increased levels of TSS discussed above, sea turtles may be exposed to sediment plumes from cutterhead dredging. TSS is most likely to affect sea turtles if a plume causes a barrier to normal behaviors or if sediment settles on the bottom affecting sea turtle prey. In all cases where sea turtles would be exposed to increased TSS resulting from proposed activities in this Opinion (mainly the lower Chesapeake Bay), the area is sufficiently wide for the highly mobile sea turtles to avoid any sediment plume with minor movements. Any effect on sea turtle movements is likely to be too small to be meaningfully measured or detected, and is therefore, insignificant.

Studies of the effects of turbid waters on fish suggest that concentrations of suspended solids can reach thousands of milligrams per liter before an acute toxic reaction is expected (Burton 1993). The studies reviewed by Burton demonstrated lethal effects to fish at concentrations of 580mg/L to 700,000mg/L depending on species. Sublethal effects have been observed at substantially lower turbidity levels. For example, prey consumption was significantly lower for striped bass larvae tested at concentrations of 200 and 500 mg/L compared to larvae exposed to 0 and 75 mg/L (Breitburg 1988 in Burton 1993). Studies with striped bass adults showed that pre-spawners did not avoid concentrations of 954 to 1,920 mg/L to reach spawning sites (Summerfelt and Moiser 1976 and Combs 1979 in Burton 1993).

The life stages of sturgeon most vulnerable to increased sediment are eggs and non-mobile larvae, which are subject to burial and suffocation. As noted above, no sturgeon eggs and/or larvae will be present in the action area. Juvenile, subadult, and adult Atlantic sturgeon are frequently found in turbid water and would be capable of avoiding any sediment plume by swimming higher in the water column. All sturgeon in the action area would be sufficiently mobile to avoid any sediment plume. Therefore, any Atlantic sturgeon in the action area during dredging would be capable of avoiding any sediment plume by swimming around it.

6.3 Mechanical Dredge

Mechanical dredging will be used in association with CIEE and in some of the Norfolk Harbor Channels. Aquatic species can be captured in dredge buckets and may be injured or killed from entrapment in the bucket or burial in sediment during dredging and/or when sediment is deposited into the dredge scow. Fish captured and emptied out of the bucket could suffer stress or injury, which could also lead to mortality.

6.3.1 Impacts to Sea Turtles

No sea turtles have been captured in mechanical dredges in the action area. You have no records of any sea turtles being captured in mechanical dredges anywhere. Most mobile organisms, including adult and juvenile sea turtles, are able to avoid mechanical dredge buckets. The slow movement of the dredge bucket through the water column and the relatively small area of bottom impacted by each pass of the bucket makes the likelihood of interaction between a dredge bucket and an individual fish relatively low. Based on all available evidence, the risk of sea turtles being captured in a mechanical dredge is extremely unlikely and, therefore, discountable. As such, we do not anticipate any capture of sea turtles during any mechanical dredging considered here.

6.3.2 Capture of Atlantic sturgeon in the dredge bucket

In rare occurrences sturgeon have been captured in dredge buckets and placed in the scow. Very few mechanical dredge operations have employed observers to document interactions between sturgeon and the dredge; because of that we do not know if the lack of observations is a result of fish not being captured at other projects or that captures occur but are not observed. Captures of two shortnose and one Atlantic sturgeon have been documented at the Bath Iron Works (BIW) facility in the Kennebec River, Maine. It is unknown if these observations are the result of a unique situation in this river or whether interactions have occurred elsewhere but have just been undocumented. Observer coverage at dredging operations at BIW has been 100% for approximately 15 years and three observations of captured sturgeon have been documented. Dredging occurs every one to two years at this location. An Atlantic sturgeon was killed in the Cape Fear River in a bucket and barge operation (NMFS 1998).

Due to the nature of interactions between listed species and dredge operations, it is difficult to predict the number of interactions that are likely to occur from a particular dredging operation. Projects that occur in an identical location with the same equipment year after year may result in interactions in some years and none in other years. For example, dredging in the BIW sinking basin prior to 2003 resulted in no interactions with shortnose sturgeon but one shortnose sturgeon was killed by the clamshell dredge in the last hour of the last day of dredging of a dredge event running from April 7 to April 30, 2003. An additional shortnose sturgeon was captured in this area in 2009, but none were captured between 2003 and 2009 or 2009-2011. Based on all available evidence, the risk of capture in a mechanical dredge is low due to the slow speed at which the bucket moves and the relatively small area of the bottom it interacts with at any one time. Atlantic sturgeon are highly mobile and it is anticipated that they will be able to avoid the dredge bucket in nearly all instances.

Based on the occurrence of Atlantic sturgeon in the area where mechanical dredging will take place and the documented vulnerability of this species to capture with mechanical dredges, it is likely that a small number of sturgeon will be captured by mechanical dredges working at CIEE or the Norfolk Harbor channels. Due to the relatively low level of risk that an individual Atlantic sturgeon would be captured in the slow moving dredge bucket, no more than one Atlantic sturgeon is likely to be captured during dredging at CIEE and no more than one during dredging in the Norfolk Harbor channels.

Atlantic sturgeon captured in the dredge bucket could be injured or killed. Sources of mortality include injuries suffered during contact with the dredge bucket or burial in the dredge scow. Of the three captures of sturgeon with mechanical dredges in the Kennebec River (two shortnose (in 2003 and 2009), one Atlantic (in 2001)), one of the shortnose sturgeon was killed. This fish was killed during the last hour of a 24-hour a day dredging operation that had been ongoing for approximately four weeks. This fish suffered from a large laceration, likely experienced due to contact with the dredge bucket. Of the other two fish, both were observed alive in the dredge scow and were released, with no visible external injuries. Assuming that the risk of mortality once captured is similar across dredging projects, we expect a similar mortality in the action area as has been observed at BIW. Therefore, we expect no more than one of the two captured Atlantic sturgeon to be injured or killed during dredging operations. Due to the potential co-occurrence of juvenile, sub-adult, and adult sturgeon, captured sturgeon could be from any one of these three life stages. Injury or mortality could result from contact with the dredge bucket or through suffocation due to burial in the scow. The dead Atlantic sturgeon could originate from any of the five DPSs; however, any juvenile Atlantic sturgeon would be from the Chesapeake Bay DPS.

6.3.3 Interactions with the Sediment Plume from Mechanical Dredges

Mechanical dredges include many different bucket designs (e.g., clamshell, closed versus open bucket, level-cut bucket) and backhoe dredges, representing a wide range of bucket sizes. TSS concentrations associated with mechanical clamshell bucket dredging operations have been shown to range from 105 mg/L in the middle of the water column to 445 mg/L near the bottom (210 mg/L, depth-averaged) (USACE 2001). Furthermore, a study by Burton (1993) measured TSS concentrations at distances of 500, 1,000, 2,000 and 3,300 feet (152, 305, 610 and 1006 meters) from dredge sites in the Delaware River and were able to detect concentrations between 15 mg/L and 191 mg/L up to 2,000 feet (610 meters) from the dredge site. In support of the New York/New Jersey Harbor Deepening Project, the U.S. Army Corps of Engineers conducted extensive monitoring of mechanical dredge plumes (USACE 2015). The dredge sites included Arthur Kill, Kill Van Kull, Newark Bay, and Upper New York Bay. Although briefly addressed in the report, the effect of currents and tides on the dispersal of suspended sediment were not thoroughly examined or documented. Independent of bucket type or size, plumes dissipated to background levels within 600 feet (183 meters) of the source in the upper water column and 2,400 feet (732 meters) in the lower water column. Based on these studies, elevated suspended sediment concentrations at several hundreds of mg/L above background may be present in the immediate vicinity of the bucket, but would settle rapidly within a 2,400- foot (732 meter) radius of the dredge location.

6.4 Habitat Impacts from Dredging

6.4.1 Effects on Sea Turtle Foraging

Since dredging involves removing the bottom material down to a specified depth, the benthic environment will be impacted by dredging operations. No sea grass beds occur in the areas to be dredged with a hopper dredge, therefore green sea turtles will not use the areas as foraging areas. Thus, we anticipate that the dredging activities are not likely to disrupt normal feeding behaviors for green sea turtles. Records from previous dredge events occurring in the action area indicate that some benthic resources, including whelks, horseshoe crabs, blue crabs and rock crabs are entrained during dredging. Other sources of information indicate that potential sea turtle forage items are present in the channel, including jellyfish, clams, mussels, sea urchins, whelks, horseshoe crabs, blue crabs and rock crabs.

Of the listed species found in the action area, loggerhead and Kemp's ridley sea turtles are the most likely to utilize the channel areas for feeding, foraging mainly on benthic species, namely crabs and mollusks (Morreale and Standora 1992, Bjorndal 1997). As noted above, suitable sea turtle forage items occur in some of the areas to be dredged. However, at least some areas of soft substrate in the channel experience daily disturbance (sedimentation from propellers/prop wash); we expect that this has some impact on the ability of these areas to support an abundant and diverse community of benthic invertebrates. This may mean that areas outside the channel are more likely to be used by foraging sea turtles; however, we do not have fine scale information on sea turtle forage items or sea turtle distribution that we could use to make a conclusive determination about foraging in the channel versus outside the channel. This disturbance is more likely to disturb or displace non-mobile organisms that occur at the surface of the sediment and is less likely to impact mobile prey (such as crabs) or benthic invertebrates that bury deep into the substrate (such as worms).

Dredging can effect sea turtles by reducing prey species through the alteration of the existing biotic assemblages; this occurs through the entrainment of prey items as well as displacement or crushing under the cutterhead pipeline that lies on the bottom and transports dredged material to the disposal site. Some of the prey species targeted by turtles, including crabs, are mobile; therefore, some individuals are likely to avoid the dredge. However, there is likely to be some entrainment of mobile sea turtle prey items as well as benthic invertebrates that do not have sufficient (or any) mobility to avoid the dredge.

Previous studies in the upper Chesapeake Bay have demonstrated rapid recovery and resettlement by benthic biota and similar biomass and species diversity to pre-dredging conditions (Johnston, 1981; Diaz, 1994). Similar studies in the lower portions of the Chesapeake Bay produced rapid resettlement of dredging and placement areas by infauna (Sherk, 1972).

McCauley et al. (1977) observed that while infauna populations declined significantly after dredging, infauna at dredging and placement areas recovered to pre-dredging conditions within 28 and 14 days, respectively. Therefore, the effects to benthic communities are anticipated to be short term. Rapid recovery and resettlement of benthic species is expected.

While there is likely to be some reduction in the amount of prey, these losses are limited in space and time. That is, these reductions will only be experienced in the areas being dredged and will only last as long as it takes benthic resources to return to the area. Given the small portion of the total habitat available for foraging sea turtles, and the temporary nature of these impacts, any effects on foraging from remaining deepening, periodic maintenance dredging of shoaled areas, and temporarily removing habitat under cutterhead pipelines are too small to be meaningfully measured or detected, and are therefore insignificant. We do not expect that these reductions in forage will have impacts on the fitness of any sea turtles.

Based on this analysis, while there will be a small reduction in sea turtle prey due to dredging, these effects will be too small to be meaningfully measured, detected, or evaluated and are, therefore, insignificant to foraging loggerhead and Kemp's ridley sea turtles. No effects to the prey base of green sea turtles is anticipated.

6.4.2 Effects on Atlantic Sturgeon Foraging

Atlantic sturgeon feed on a variety of benthic invertebrates; primarily soft bodied invertebrates such as worms (Guilbard *et al.* in Munro *et al.* 2007; Savoy in Munro *et al*. 2007). The proposed dredging will occur in the navigation channel and adjacent anchorage areas. As explained in the discussion above about effects on sea turtle foraging, we expect the daily disturbance in the navigation channel (e.g., sedimentation from propellers/prop wash) to have some impact on the ability of these areas to support an abundant and diverse community of benthic invertebrates; however, we expect that this disturbance is more likely to disturb or displace non-mobile organisms that occur at the surface of the sediment and is less likely to impact mobile invertebrates (such as crabs) or benthic invertebrates that bury deep into the substrate (such as worms). Dredging is likely to entrain and kill at least some of these potential forage items. Turbidity and suspended sediments from dredging activities, as well as the placement of sand at the beneficial use sites may affect benthic resources in those areas. As noted in Section 6.5.1, the TSS levels expected for all of the proposed activities (ranging from 5 mg/L to 500 mg/L) are expected to have some adverse effects on some benthic communities (390 mg/L (EPA 1986).

Sturgeon may forage in the full extent of the action area, primarily over soft substrates. Using the data you have provided, the combined areas that are subject to frequent maintenance dredging and the areas remaining to be deepened/widened are approximately 7,492 acres. This area is approximately .26% of the area in Chesapeake Bay.

Impacts from the placement of the cutterhead dredge pipe during beach nourishment will be minor and temporary. In sum, there is likely to be some permanent reduction in the amount of sturgeon prey in frequently dredged shoaling areas, as well as a temporary removal of habitat under the cutterhead pipeline. Given the limited area where benthic resources will be removed or displaced, effects on sturgeon from reductions in benthic resources in a limited area and for limited periods of time, will be too small to be meaningfully measured or detected, and are therefore insignificant.

6.4.3 Effects of Deepening and Maintenance Dredging on Substrate/Habitat Type

During the consultation process, we requested information on the potential of the proposed deepening to alter the substrate type in areas to be dredged. If substrate type was altered, the benthic community that recolonizes the dredged area could be fundamentally different than the original community and this could affect the availability of forage items for listed species. However, you have indicated that the remaining sub-surface strata below the dredging pay-prism is consistent with the maintenance material removed during a typical dredging operation (USACE 2012; USACE 2017c). The maintenance material removed from this project historically consists of a mixture of sand and mud. Typical material densities vary in range from silt/mud between 1137 (g/l) to 1337 (g/l) and sands 1526 (g/l) to 1874 (g/l). You have indicated that the same ratio is anticipated as a result of the deepening project and that no alterations in the type of sediment occurring in the dredged areas will result from the proposed action.

Based on the information provided by you and confirmation sampling that has occurred to date, no changes in substrate type are anticipated to result from dredging. Effects to forage items are considered in sections 7.4, 7.8.2, and 7.8.3.

6.4.4 Effects of Deepening on Salinity

Salinity is the concentration of inorganic salts (total dissolved solids, or "TDS") by weight in water, and is commonly expressed in units of "psu" (practical salinity units) or "ppt" (parts per thousand). For example, ocean water with a salinity of 30 ppt contains ~30 grams of salt per 1,000 grams of water. The action area experiences a wide variety of salinity influenced by multiple factors. Also, the salinity gradient effects the distribution of listed species in the action area with sea turtles less likely to occur as salinity decreases and Atlantic sturgeon juveniles more prevalent in the low salinity reaches. Here, we consider whether the proposed deepening could alter the salinity regime in the estuary.

6.4.4.1 Existing Salinity Conditions in the Chesapeake Bay

The distribution of salinity in the Chesapeake estuary exhibits significant variability on both spatial and temporal scales, and at any given time reflects the opposing influences of freshwater inflow from tributaries (and groundwater) versus saltwater inflow from the Atlantic Ocean. Saltwater inflow from the ocean is in turn dependent on the tidal discharge and the ocean salinity. Salinity at the bay mouth typically ranges from about 25 to 30 ppt. Tributary inflows by definition have "zero" salinity in the sense of ocean-derived salt; however, these inflows contain small but finite concentrations of dissolved salts, typically in the range of 100 to 250 parts per million (ppm) or from 0.1 to 0.25 ppt TDS.

A longitudinal salinity gradient is a permanent feature of salt distribution in the Chesapeake Bay estuary. That is, salinity is always higher at the mouth and downstream end of the system and decreases in the upstream direction. Salinty concentrations can also vary by season. The winter average varies from over 23 ppt at the mouth of the Bay to less than 2 ppt near the head of the estuary at the Susquehanna flats. In spring, salinity levels generally decrease throughout the Bay and tributaries. In summer, surface salinity distribution is similar to winter levels. Surface salinity levels are highest in the Fall – approximately 29 ppt at the mouth of the Bay.

There is also a lateral salinity gradient present in the bay portion of the estuary, with higher salinities on the eastern shrore and fresher water on the western shore. This lateral salinity gradient also occurs in the tidal rivers that flow into the Bay due to the Coriolis effect. For example, in the James River where there is one primary source of fresh water, there is lower salinity on the western shore than on the eastern shore because of the effects of the Earth's rotation. Under most conditions in the estuary, there is only a small vertical salinity gradient, due to the dominance of tidal circulation and mixing relative to the normal freshwater inflow. However, under prolonged high-flow conditions, such as during the spring freshet, vertical salinity gradients of as much as 5 ppt can occur in the lower bay, with corresponding smaller vertical gradients at locations further upstream to the limit of the salt line. At any given point in the estuary between the bay mouth and the location of the salt line, the salinity of the water column will vary directly with the phase of the tidal currents. Maximum salinity at a point occurs around the time of slack water after high tide, and minimum salinity occurs at the time of slack after low. This condition reflects the significant role played by tidal currents in advecting higher salinity water in the upstream direction during flood flow, with lower salinity water being advected in the downstream direction during ebb. For periods longer than a single tidal cycle, the salinity at a given location varies in response to other important forcing functions, including the short-term and seasonal changes in freshwater inflow, wind forcing over the estuary and adjacent portions of the continental shelf, and salinity and water level changes at the bay mouth. Over longer periods (years to decades and longer), sea level changes and modifications to the geometry of the estuary also affect the long-term patterns of salinity distribution.

The four longitudinal salinity zones within the Chesapeake Estuary, starting at the downstream end, are referred to as: polyhaline (18 - 30 ppt) at the mouth of the bay; mesohaline (5 - 18 ppt) in the mid-bay; oligohaline (0.5 - 5 ppt) and fresh (0.0 - 0.5 ppt) in the upper bay. Although these zones are useful to describe the long-term average distribution of salinity in the estuary, the longitudinal salinity gradient is dynamic and subject to short and long-term changes caused by variations in freshwater inflows, tides, storm surge, weather (wind) conditions, etc. These variations can cause a specific salinity value (isohaline) to move upstream or downstream by as much as 16 km in a day due to semi-diurnal tides, and by more than 32 km over periods ranging from a day to weeks or months due to storm and seasonal effects on freshwater inflows.

6.4.4.2 Effects of Salinity Changes on sturgeon

Changes in salinity could affect the distribution of shortnose and Atlantic sturgeon in the bay. In the Chesapeake Bay, Atlantic sturgeon are known to congregate and overwinter within brackish river waters (Bushnoe and Musick, 2006). Previous studies have noted that subadult Atlantic sturgeon typically occupy both the oligohaline and moderately mesohaline (<10ppt) environments (Dovel and Berggren, 1983; Kiefer and Kynard, 1993; Moser and Ross, 1995; Simpson, 2008). For both of these species, early life stages (i.e., eggs and larvae) have little to no tolerance to salinity and therefore, spawning occurs in fresh water. Tolerance to salinity increases with age and size (Jenkins *et al.* 1993, McEnroe and Cech 1985). During at least the first year, shortnose and Atlantic sturgeon are limited in distribution to fresh water; as a result their distribution is typically upstream of the "salt wedge." If the salt wedge moved further upstream, there could be a reduction in available spawning or rearing habitat.

Given the availability and location of spawning habitat in the river, it is unlikely that the salt front would shift far enough upstream to result in a significant restriction of spawning or nursery habitat. Atlanitic sturgeon fall spawning habitat in the James River (between RKM 105 and the fall line near Richmond, VA) is approximately 10 km upstream of the current median range of the salt front (RKM 95). Atlantic sturgeon spring spawning habitat in the James River (RKM 90-95) is approximately 40 km upstream of the current median range of the salt front (RKM 47.5). However, without an upstream barrier to passage, and spawning habitat extending to Richmond, VA, it is unlikely that salt front movement upstream would significantly limit spawning and nursery habitat. The available habitat for juvenile sturgeon of both sturgeon species could decrease over time; however, even if the salt front shifted several miles upstream, it seems unlikely that the decrease in available habitat would have a significant effect on juvenile sturgeon.

Overall, the effects of remaining deepening on salinity and resulting changes to sturgeon habitat use, above baseline conditions, are too small to be meaningfully measured or detected, and are therefore, insignificant.

6.4.4.3 Effects of Salinity Change on Sea Turtles

Sea turtles occur in saline water. Sea turtles do not occur in the reaches of the river where we expect salinity changes resulting from the deepening project. No impacts to sea turtles from increase in salinity will occur.

6.4.5 Effects of Deepening on Dissolved Oxygen

Atlantic sturgeon are known to be more sensitive to low dissolved oxygen levels than many other fish species and juvenile sturgeon are particularly sensitive to low dissolved oxygen levels. In comparison to other fishes, sturgeon have a limited behavioral and physiological capacity to respond to hypoxia (multiple references reviewed and cited in Secor and Niklitschek 2001, 2003). Sturgeon basal metabolism, growth, consumption and survival are all very sensitive to changes in oxygen levels, which may indicate their relatively poor ability to oxyregulate. Sturgeon may be negatively affected, primarily through changes in behavior and distribution, when dissolved oxygen levels are below 5mg/l, particularly at times when water temperatures are higher than 28ºC (see Flourney *et al.*1992; Campbell and Goodman 2004).

In certain areas and during certain times of year, dissolved oxygen levels in the Chesapeake Bay may be stressful to sturgeon. As sea turtles are air breathers, they are not directly affected by dissolved oxygen levels; however, if dissolved oxygen levels affect sea turtle prey, sea turtles could be affected as well. We have considered whether the deepening project and subsequent maintenance are likely to affect dissolved oxygen levels in the action area. Dissolved oxygen levels could be affected due to increases in suspended sediment and if submerged aquatic vegetation was affected.

There will be small, short-term increases in suspended sediment and turbidity near where dredging and beach nourishment. However, given the short duration and limited geographic extent of these increases in suspended sediment and turbidity any effects to dissolved oxygen are similarly likely to be limited to small areas and for short periods of time. As such, any effects to sea turtles or Atlantic sturgeon will be insignificant and discountable.

6.5 On Shore Dredged Material Disposal

We have considered whether the disposal of sand at Sandbridge Beach, Virginia Beach and Ft. Story would impact sea turtles. Limited loggerhead sea turtle nesting (less than 10 nests per year) occurs on Virginia Beach; no nesting is known to occur on Sandbridge Beach or at Ft. Story. However, as noted above, there is the potential for a northward shift in nesting by sea turtles. The disposal of material at these beaches is meant to stabilize and restoring eroding habitats and maintain existing beach. None of the activity is likely to reduce the suitability of these beaches for potential future nesting.

As indicated above, all material removed by cutterhead dredge will be disposed of at a beach location. When a cutterhead dredge is used, the material is piped directly from the intake to an onshore disposal area. The pipe will extend up to 3 miles, depending on the distance between the dredge site and the disposal site. The pipe will be approximately 30" in diameter and be laid on the ocean bottom. While the presence of the pipe will cause a small amount of benthic habitat to be unavailable to sturgeon and sea turtles, the effects from the loss of this area of potential forage will be too small to be meaningfully measured, detected or evaluated. In addition, while the discharge of sediment could cause a small increase in suspended sediment in the immediate vicinity of sand placement, any effects are likely to be minor and temporary. Impacts associated with this action include a short term localized increase in turbidity during disposal operations. During the discharge of sediment at a disposal site, suspended sediment levels have been reported as high as 500mg/L within 250 feet of the disposal vessel and decreasing to background levels (i.e., 15-100mg/L depending on location) within 1000-6500 feet (USACE 1983). For this project, you report that because the dredged material is clean sand, the material will settle out within minutes and any sediment plume will be localized and temporary. Any sea turtles or sturgeon (juvenile, sub-adult, and adults) in the vicinity of the beach disposal sites during disposal may alter their movements to temporarily avoid the disposal area; however, as any effects to movements will be temporary and too small to be meaningfully measured, detected, or evaluatated; therefore, these effects will be insignificant.. Effects of disposal on prey resources are considered below in section 6.6.3.

6.6 Use of Offshore/Ocean Dredged Material Disposal Sites

The use of offshore dredged material disposal sites can affect sea turtles and sturgeon by: exposing them to increased levels of turbidity and suspended sediments; increasing the potential for exposure to contaminants; affecting benthic resources; and, increasing vessel traffic in the area. Vessel traffic is discussed in Section 6.8. Other impacts are discussed here.

6.6.1 Turbidity and Suspended Sediments

Dredged material placement operations at the ocean disposal sites are anticipated to have localized and temporary impacts to water quality. Dredged material designated for placement at these sites will be transported to the ocean placement site via bottom dump scow or split hull barges. Upon release from the barge, dredged material will enter the water column as a dense fluid plume, which will descend vertically. The dense fluid plume will descend to the bottom at a high velocity, leaving behind a low-density turbidity cloud, which will contain a small amount of total solids and settle within a few hours (USACE, 2010a). This temporary increase in turbidity in the water column when dredged material is released will cause short-term impacts that may include lower levels of dissolved oxygen for a few hours following material placement at the immediate site.

During the discharge of sediment at offshore disposal sites, suspended sediment levels have been reported as high as 500.0 mg/l within 250 feet of the disposal vessel and decreasing to background levels (i.e., 15.0-100.0 mg/l depending on location and sea conditions) within 1,000-6,500 feet (USACE 1983). Total suspended solids near the center of the dredged material placement plume body have been observed to reach near background levels in 35 to 45 minutes (Battele 1994 in USACE and USEPA 2009).

TSS is most likely to affect sea turtles and Atlantic sturgeon if a plume causes a barrier to normal behaviors or if sediment settles on the bottom and affects benthic prey. As sea turtles and adult/sub-adult Atlantic sturgeon are highly mobile, individuals are likely to be able to avoid any sediment plume that is present and any effect on their movements or behavior is likely to be insignificant due to the small, temporary disruption of normal movements that may result from avoiding the sediment plume are expected to be so small as to not be susceptible to meaningful measurement or detection.

6.6.2 Contaminants

In order to be eligible for ocean disposal, material must meet stringent criteria as required by the Clean Water Act and Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (as described in the EPA/USACE joint testing guidelines, available at http://water.epa.gov/type/oceb/oceandumping/dredgedmaterial/upload/gbook.pdf; last accessed July 7, 2018). By law and regulation, the disposal of dredged material must have no unacceptable adverse effects. All dredged material disposal sites, including the ones considered here, are required to have and are managed under a dredged material monitoring and management plan that assesses the health and well-being of the site and surrounding environment. Monitoring of the disposal site is a part of this plan, which is designed to ensure that any degradation of resources or alteration in seafloor characteristics are identified and corrective actions implemented by permitting agencies (USEPA 2004).

The testing of dredged material is overseen by EPA and the USACE. Sediments are tested for possible contamination prior to any planned dredging to ensure that proposed dredging and the dredge material disposal are conducted in a way that minimizes the potential pathways for contaminant exposure. EPA and the USACE have jointly developed comprehensive testing procedures, which may include physical, chemical and biological tests, to evaluate dredged material placed into ocean waters.

Laboratory and evaluation methods that apply to dredged material proposed for ocean disposal in accordance with the Marine Protection, Research and Sanctuaries Act (MPRSA) are published in the 1991 USEPA/USACE guidance document entitled "Ecological Evaluation for Dredged Material Proposed for Ocean Disposal in the Marine Environment." An overview of the

Dredged Material Testing Framework is contained in EPA's Ocean Dumping Program Update (1996). As described by EPA, “the acute toxicity of a sediment is determined by quantifying the mortality of appropriately sensitive organisms that are put into contact with the sediment, under either field or laboratory conditions, for a specified period.” Also, bioacummulation is described as, “the accumulation of contaminants in the tissues of organisms through any route, including respiration, ingestion, or direct contact with contaminated sediment or water” (EPA 1996). The regulations require that bioaccumulation be considered as part of the environmental evaluation of dredged material proposed for ocean dumping. This consideration involves predicting whether there will be a cause-and-effect relationship between an animal's presence in the area influenced by the dredged material and an environmentally important elevation of its tissue content or body burden of contaminants above that in similar animals not influenced by the disposal of the dredged material.”

In order for the dredged material to be disposed of at an in-water disposal site, it must be tested in accordance with the USACE and EPA procedures for suitability. Material that can be disposed of at the disposal site cannot be acutely toxic to any aquatic species. Further, the material must not present a risk of bioaccumulation; that is, even if it is not acutely toxic, it must not increase the potential for bioaccumulation of toxins in higher trophic level species that may prey upon benthic organisms present at the disposal site. In the BAs, you report that water column bioassay testing of dredged material from the areas considered in this Opinion, using sensitive benchmark water column species were conducted in accordance with Section 103 of the Marine Protection, Research, and Sanctuary Act (MPRSA). Test results have shown that the discharge of dredged material at designated placement sites complies with the limiting permissible concentration (LPC) defined in Section 103 of the MPRSA and is not acutely toxic to sensitive benchmark organisms and no unacceptable adverse effects were observed from the liquid phase or liquid and particulate phase of the dredged material. The high flushing rate (due to the water exchange and tidal fluctuations) of the Chesapeake Bay and Atlantic Ocean is anticipated to minimize potential dredging plumes and cause them to be more quickly dispersed, minimizing long term impacts to water quality.

For purposes of this consultation, we consider that sediment that is suitable for ocean disposal would not be toxic to marine life and would not be likely to cause adverse effects to sea turtles, Atlantic sturgeon or their prey. Because the material to be disposed was tested to ensure it is not acutely toxic and will not increase the risk of bioaccumulation of toxins or contaminants in any marine species, effects to sea turtles and Atlantic sturgeon will be too small to be meaningfully, measured, detected, or evaluated and are, therefore, insignificant.

6.6.3 Effects to the Benthic Environment

Disposal operations can also affect foraging animals by burying benthic prey. Direct impacts to fish or other mobile species during placement of the dredged material would be expected to be minimal due to the small contact footprint of the fluidized sediments as they leave the barge (typically 50 foot by 100 foot). Given the small area impacted by each disposal event, mobile species are expected to be able to avoid the falling sediment and would not be subject to burial. The only species that are likely to be buried are immobile benthic organisms. Sea grasses and macroalgae that green sea turtles forage on are not present at the dispsosal sites. Some species of mollusks and gastropods that loggerheads and Atlantic sturgeon feed on have limited mobility and could be buried during disposal operations.

The loss of potential benthic prey species would be minimized spatially and temporally through use of a grid system for the placement of dredged material. Some buried animals will be able to unbury themselves. Areas where dredged material will be placed are expected to be recolonized by individuals from nearby similar habitats. Because the characteristics of the sediment from the project would be similar to those in and around the disposal sites, benthic invertebrates would be expected to quickly recolonize the cells used for the placement of this material. Thus, any reduction in benthic prey at the disposal site will be temporary and limited to the small area where dredged material will be placed. Green sea turtles will not have any reduction in prey. The potential loss of prey for loggerhead and Kemp's ridley sea turtles will be extremely small, as only a fraction of the benthic species that loggerheads and Kemp's ridleys prey on will be affected, and those losses will occur in a very small area. Effects to foraging loggerhead and Kemp's ridley sea turtles will be too small to meaningfully measure, detect, or evaluate and are, therefore, insignificant.

The temporary localized increase in sediment loading within the water column at the dredging and placement area (NODS) has the potential to directly impact demersal species, such as the Atlantic sturgeon. Deposition of suspended sediments may induce impacts to demersal eggs and larvae through deposition and or smothering, especially in the dredging and placement areas (Johnston, 1981). There are no anticipated impacts to Atlantic sturgeon eggs and/or larvae because the project site and placement site are not located within known spawning grounds of the sturgeon and consist of soft marine clay substrate in marine waters and sturgeon spawn in freshwater over hard bottom substrate. Although other demersal species may be impacted initially, impacts over the duration of the project are not anticipated after disposal operations cease. The high flushing rate, small area of impact during actual disposal will minimize water quality impacts to non-motile demersal organisms. Effects to demersal species will be too small to meaningfully measure, detect, or evaluate and are, therefore, insignificant.

6.7 Craney Island Eastward Expansion

Dredged material removal and fill activities at the CIEE project site will permanently convert approximately 522-acres of subaqueous benthic habitat in the footprint of the containment cell to uplands and provide the foundation for a future marine terminal. As reported in the BA, an assessment of the benthic habitat conducted for the project using the Benthic Index of Biotic Integrity (B-IBI) indicates much of the existing benthic habitat within the project site is degraded (USACE, 2006a). The proposed activities will temporarily disrupt the benthic community processes in the access channel and wharf dredging areas and permanently effect benthic processes in the footprint of the containment cell and marine terminal. New work dredging and fill activities will result in the permanent loss of the benthic community in the footprint of the new containment cell and result in a conversion of shallow water benthic habitat to a deep-water benthic habitat with similar sediment characteristics (access channels and wharf access area) potentially altering the benthic species composition at the site based on bathymetry preferences. Future maintenance dredging events in the access channels and wharf access area will temporarily and locally disrupt the benthic community through removal of shoaled material and result in periodic re-colonization of the channel and wharf area. Here, we consider the permanent loss of the benthic substrate. Other effects of the CIEE (dredging, turbidity, etc.) are considered in other sections of this Opinion.

As noted in Section 2.6, we previously determined that the dredged material removal and fill activities at the CIEE were not likely to adversely affect listed sea turtles. Green sea turtles feed primarily on seagrasses (Bjorndal 1997) while loggerhead and Kemp's ridleys feed primarily on crustaceans and mollusks. You have indicated that there is a total absence of submerged aquatic vegetation (SAV) at the site of the proposed expansion. The lack of SAV eliminates the potential for this site to be used by foraging green sea turtles. Kemp's ridley's also typically forage near SAV beds (Musick and Limpus 1997). You have also indicated that sampling at the proposed expansion site has demonstrated that the presence of crustaceans and mollusks is rare. As such, this area is not likely to be used by foraging loggerhead and Kemp's ridleys. Given the degraded nature of this habitat, the effects to listed sea turtles from the loss of benthic habitat, i.e., the loss of potentially opportunistic foraging grounds that will result from the conversion to uplands, will be so small they cannot be meaningfully measured, detected or evaluated and are, therefore, insignificant.

Atlantic sturgeon are likely to forage nearly anywhere where suitable benthic resources are present. However, given the nature of the habitats in the CIEE area (i.e., no SAV, degraded benthic communities), it is unlikely that this area is used by foraging Atlantic sturgeon. As such, effects from the loss of future benthic foraging opportunities that will result from the conversion of this habitat to uplands, are extremely unlikely and, therefore, discountable.

6.8 Vessel Traffic

Dredge and Disposal Vessels

Deepening and maintenance dredging activities require the use of dredge and support vessels. Hopper and cutterhead dredges are autonomous vessels, while some mechanical dredging takes place from a barge with a mounted excavator. Barges typically require one or two tug boats to position them. Mechanical dredging also involves a scow vessel where contractors deposit the dredged material. A maximum of four project vessels (combination of barge, tug boats, and scows) would likely be needed for any of the deepening or maintenance dredging activities.

There have not been any reports of dredge vessels colliding with listed species but although they do not possess characteritics commonly associated with vessel strikes (e.g., deep drafts and high speed) contact injuries resulting from dredge movements could occur at or near the water surface and; therefore, involve any of the listed species present in the area. Because the dredge is unlikely to be moving at speeds greater than three knots during dredging operations, blunt trauma injuries resulting from contact with the hull are unlikely during dredging. It is more likely that contact injuries during actual dredging would involve the propeller of the vessel. Contact injuries with the dredge are more likely to occur when the dredge is moving from the dredging area to port, or between dredge locations. While the distance between these areas is relatively short, the dredge in transit would be moving at faster speeds than during dredging operations, particularly when empty while returning to the borrow area.

The dredge vessel may collide with sea turtles when they are at the surface. Sea turtles have been documented with injuries consistent with vessel interactions. It is reasonable to believe that the dredge vessels considered in this Opinion could inflict such injuries on sea turtles, should they collide. As mentioned, sea turtles are found distributed throughout the action area in the warmer months, generally from May through mid-November.

Interactions between vessels and sea turtles occur and can take many forms, from the most severe (death or bisection of an animal or penetration to the viscera), to severed limbs or cracks to the carapace which can also lead to mortality directly or indirectly. Sea turtle stranding data for the U.S. Gulf of Mexico and Atlantic coasts, Puerto Rico, and the U.S. Virgin Islands show that between 1986 and 1993, about 9% of living and dead stranded sea turtles had propeller or other boat strike injuries (Lutcavage et al. 1997). According to 2001 STSSN stranding data, at least 33 sea turtles (loggerhead, green, Kemp's ridley and leatherbacks) that stranded on beaches within the northeast (Maine through North Carolina) were struck by a boat. This number underestimates the actual number of boat strikes that occur since not every boat struck turtle will strand, every stranded turtle will not be found, and many stranded turtles are too decomposed to determine whether the turtle was struck by a boat. It should be noted, however, that it is not known whether all boat strikes were the cause of death or whether they occurred post-mortem (NMFS SEFSC 2001). More recently, boat strike wounds were confirmed to be ante-mortem in over 75% of sea turtles that were found dead or stranded along the U.S. Atlantic coast (B. Stacy, NMFS, pers. comm., 2017) and a majority of sea turtles struck in Virginia waters were healthy prior to those collisions (Barco *et al.* 2016).

Information is lacking on the type or speed of vessels involved in turtle vessel strikes. However, there does appear to be a correlation between the number of vessel struck turtles and the level of recreational boat traffic (NRC 1990). Although little is known about a sea turtle's reaction to vessel traffic, it is generally assumed that turtles are more likely to avoid injury from slower-moving vessels since the turtle has more time to maneuver and avoid the vessel. The speed of the dredge is not expected to exceed 3 knots while dredging or while transiting to the pump out site with a full load and it is expected to operate at a maximum speed of 10 knots while empty. In addition, the risk of ship strike will be influenced by the amount of time the animal remains near the surface of the water. For the proposed action, the greatest risk of vessel collision will occur during transit between shore and the areas to be dredged. The presence of an experienced endangered species observer who can advise the vessel operator to slow the vessel or maneuver safely when sea turtles are spotted will further reduce the potential risk for interaction with vessels. The addition of one to two slow moving vessels in the action area have an insignificant effect on the risk of interactions between sea turtles and vessels in the action area.

Information regarding the risk of vessel strikes to Atlantic sturgeon is discussed in the Status of the Species and Environmental Baseline sections above. As explained there, we have limited information on vessel strikes and many variables likely affect the potential for vessel strikes in a given area. Assuming that the risk of vessel strike increases with an increase in vessel traffic, we have considered whether an increase in vessel traffic in the action area during dredging and disposal (one to two slow moving vessels per day) would increase the risk of vessel strike for Atlantic sturgeon in this area. Given the large volume of traffic in the action area and the wide variability in traffic in any given day, the increase in risk from the addition of one to two vessels per day in addition to the baseline is too small to be meaningfully measured, detected, or evaluated and the increased risk to Atlantic sturgeon is insignificant.

Deepening and Widening of Federal Navigation Channels
Throughout the consultation process on the Norfolk Harbor Channels and Craney Island Eastward Expansion projects, you have maintained that the project was formulated, evaluated, and authorized by Congress based on the parameter that no tonnage will be induced or attracted to the port's facilities as a direct result of the proposed deepening and widening of the channels. Increasing the depth of the channel will allow segments of the current container and dry bulk vessel fleets to carry more cargo as well as allowing the fleets to shift to more efficient sized vessels. Therefore, the new channel depth will improve the economic efficiency of ships moving through the Chesapeake Bay ports, resulting in a reduction in total vessel trips. The number of vessel calls of the largest twenty-foot equivalent unit (TEU) ships is not anticipated to increase in the future; however, the number of smaller sized ships in the deep draft fleet (e.g., Panamax-size ships) may decrease due to the increased efficiency of cargo loading in the future (USACE 2018). These vessels will continue to carry the same tonnage from the origin ports but will be able to operate more efficiently in the Chesapeake Bay with a deepened channel from reduced lightering. These factors will more efficiently apportion operating costs for the same amount of total tonnage and further reduce total vessel trips through the port (USACE 2011).

Similarly, beyond the use of project vessels discussed above, we do not expect maintenance dredging of the channels to increase baseline levels of vessel traffic in the Chesapeake Bay. The effects of baseline (i.e., non-project related vessels) vessel traffic is included in the discussion of threats facing the species as addressed in the *Status of the Species* and *Environmental Baseline* sections of this Opinion. Accordingly, the increase in risk of a vessel strike from the addition of project vessels, including maintenance vessels, to baseline conditions is so small it cannot be meaningfully measured, detected or evaluated and is, therefore, insignificant.

6.9 Unexploded Ordinance and Munitions of Concern

The United States Army Environmental Command (USAEC) defines unexploded ordnance (UXO) or munitions of explosive concern (MEC) as military munitions that have been (1) primed, fused, armed or otherwise prepared for action; (2) fired, dropped, launched, projected, or placed in such a manner to constitute a hazard to operations, installations, personnel, or material, and (3) remain unexploded either by malfunction, design, or any other case. UXO/MEC comes in many shapes and sizes, may be completely visible or partially or completely buried, and may be easy or virtually impossible to recognize as a military munition. UXO/MEC can be found in the ocean. UXO/MEC may look like a bullet or bomb, or be in many pieces, but even small pieces of UXO/MEC can be dangerous. If disturbed, (touched, picked up, played with, kicked, thrown, etc.) UXO/MEC may explode without warning, resulting in serious injury or even death. Sandbridge Shoal borrow area occurs in an area associated with past and current military activities and has produced UXO/MEC during dredging operations.

The presence of UXO in dredged material presents two unique challenges. First, it poses a potential explosive safety hazard to dredging or observer personnel and potential damage to equipment and vessel. Second, any subsequent beneficial use of dredged material must also address the possibility of the presence of UXO and/or its removal.

The presence of UXO was documented during the previous Sandbridge Hurricane Protection Projects constructed in 2002 and 2007. Over 100 UXO were recovered during dredging operations and were transported to and properly disposed of at an undisclosed naval installation. Recent dredging of the Cape Henry Channel, documented UXO/MEC in the observer cages on April 15, 2011 and May 8, 2011. On April 1, 2006, the Dredge Padre Island operated by the Great Lakes Dredge & Dock Company was conducting maintenance dredging activities in the Atlantic Ocean Channel (AOC) when it suffered a ruptured dredge clean out section and severed drag head as a result of an explosion presumed to be from an ordnance device that was pumped into the draghead and associated lines. Unexploded ordnance had been previously retrieved from the draghead on three different occasions in February 2006. During the last dredging cycle of the AOC in February 2011, it was documented that UXO/MEC was encountered four times, mostly 5-inch shells, two of which were determined to be live ordnance. A UXO/MEC device also is presumed to be the cause of an explosion on a hydraulic cutter-head dredge conducting maintenance dredging in Norfolk Harbor in April 2005 rupturing the primary pump casing on the dredge. The Coast Guard rendered assistance to the dredge plant to provide additional pump-out capacity for the incoming water and stabilize the plant. Fortunately, in most incidents ordnance has not detonated and has been safely removed or jettisoned from the vessel.

As a safety precaution, in any area where UXO may be encountered (including some if not all portions of Sandbridge Shoal), you will install special intake screening to be permanently placed over the drag head or cutterhead to effectively prevent any UXO from entering the dredge and/or being subsequently placed within the associated placement site. Additionally, you will install screening at the point where the material is discharged onto the beach. Special intake screening for UXO/MEC will be specified and installed to prevent entrainment of any material greater than 1-1/4 inches in diameter. Typical allowable openings specified by USACE-Norfolk District are 1-1/4 inches x 6 inches. While use of this screening poses challenges for monitoring interactions with listed species (see section 10 below), its use is not expected to change the entrainment rates calculated above. That is because, while it may prevent turtles or sturgeon from entering the intake pipes, it does not change the way the dredge operates or the suction power at the intake. So, while sea turtles or sturgeon may be less likely to be sucked through the dredge plant (as this could be prevented by the small size of the intakes as caused by the screening), the risk of an interaction does not change, and our analysis remains the same.

6.10 Bed Leveling Devices

Bed-leveling is often associated with hopper dredging (and other types of dredging) operations. Bed-levelers redistribute sediments, rather than removing them. Plows, I-beams, or other seabed-leveling mechanical dredging devices are used to lower high spots left in channel bottoms and dredged material deposition areas by hopper dredges or other type dredges. Leveling devices typically weigh about 30 to 50 tons, are fixed with cables to a derrick mounted on a barge pushed or pulled by a tugboat at about one to two knots.

We have considered the potential for sea turtles to be crushed as the leveling device passes over a turtle which fails to move or is not pushed out of the way by the sediment wedge "wave" generated by and pushed ahead of the device. Sea turtles at Brunswick Harbor, Georgia, may have been crushed and killed in 2003 by bed-leveling which commenced after the hopper dredge finished its work in a particular area. Brunswick Harbor is a site where sea turtles captured by relocation trawlers sometimes show evidence of brumating (over-wintering) in the muddy channel bottom, which could explain why, if they were in fact crushed, they failed to react quickly enough to avoid the bed-leveler.

You have engaged in efforts to design bed leveler devices that are more likely to push sea turtles out of the way (much like a deflector on a hopper dredge); it is thought that this would reduce any potential for crushing. The available information on bed leveling and sea turtles indicates that crushing is extremely unlikely outside of areas where sea turtles are brumating. Brumation is not known to occur in the action area. Additionally, the proposed modifications (i.e., integrated deflector configurations) to traditional bed-levelers are expected to further reduce the potential for impacts to sea turtles; therefore, any effects to sea turtles are discountable.

Atlantic sturgeon are likely to be able to avoid being crushed by a bed-leveler. These fish are highly mobile. The bed leveler will be pushing a sand wave in front of it that should cause sturgeon to relocate out of the path of the bed leveler. In addition, the bed leveler will be moving very slowly at approximately one to two knots. The low rate of entrainment of this species in any type of dredge suggests an ability to avoid interactions with dredge gear, including bed levelers. No reports of injured or dead sturgeon have been reported in association with any bed leveling activities. Therefore, we believe that any effects of the bed leveler on Atlantic sturgeon are extremely unlikely and will be discountable. As such, we do not anticipate any Atlantic sturgeon to be injured or killed if a bed leveler is used.

6.11 Effects of relocation trawling as required by the Incidental Take Statement

In the Incidental Take Statement accompanying this Biological Opinion (see Section 10), consistent with past Opinions considering dredging in these channels and borrow areas, we have determined that relocation trawling is necessary and appropriate when certain conditions are met to minimize the number of sea turtles captured and killed during dredging operations. The effects of relocation trawling on listed species in the action area are outlined below.

Relocation trawling is undertaken with the goal of moving sea turtles out of the area being dredged and placing them in area outside of the dredge area. There is evidence to suggest that relocation trawling can be effective at minimizing dredge interactions when the density of sea turtles in the dredge area is high. Relocation trawling has occurred occasionally in the Chesapeake Bay. Research is currently ongoing by the USACE to determine if “captureless” trawling can be as effective or more effective at displacing sea turtles from the path of the dredge. This technique uses an open bag that is thought to displace turtles from the path of the dredge without the stress of capturing the turtles and relocating them. Preliminary information available from use of captureless trawling in association with dredging activities in the Southeastern U.S. shows promise. However, the unintentional mortality of sea turtles during this type of trawling suggests that great care needs to be taken to ensure that the trawl is fishing properly. Relocation trawling can also capture species other than sea turtles. Atlantic sturgeon have been captured in relocation trawling activities in the action area.

Relocation trawling will be required if two sea turtles are entrained in one 24-hour period, or four sea turtles are entrained in a two month period, or in other circumstances where entrainment indicates that the density of sea turtles in the action area is high and would result in entrainment at a higher rate than predicted.

6.11.1 Past Relocation Trawling in the Action Area

Relocation trawling occurred in the action area in 2001, 2002 and 2003. No relocation trawling has occurred since the Fall of 2003. Relocation trawling occurred in Thimble Shoal Channel from September 6 to October 17, 2001. Twelve turtles (9 loggerheads and 3 Kemp's ridleys) were caught and released during this time period. Trawling in the Cape Henry Channel was conducted from October 13 to November 12, 2001, for 12 hours per day and with 15-30 minute tow times. Four turtles (three loggerheads and one green) were caught in water temperatures ranging from approximately 15.5 to 19°C. The turtles were relocated approximately four miles off the Virginia coast.

In 2002, several incidents of relocation trawling were initiated in Cape Henry and York Spit Channels as a result of triggering a term and condition from the January 2002 BO. From May 26 to June 6, trawling was conducted in Cape Henry, and two loggerheads were captured (in 174 30-minute tows). From September 20-25, trawling was performed in York Spit and no turtles were captured (in 103 30-minute tows). No turtles were taken by the dredge during this time. From October 10 to November 3, trawling was conducted in York Spit and Cape Henry Channels (in whichever channel the dredge was operating) with 15-30 minute tow times for 12 hours a day. Fifteen turtles were relocated (11 loggerheads, 3 Kemp's ridleys, and 1 green), and an additional Kemp's ridley turtle was found dead in the trawl. During the October to November trawling period, 5 turtles were captured by the dredge, but 2 of these incidents involved decomposed turtle parts (i.e., cause of death determined not to be related to the current dredging operations).

Relocation trawling also occurred in Thimble Shoals in 2003. Trawling occurred September 15 and 16 (20 30-minute tows, no turtles), September 20 – 22 (31 30-minute tows, 1 loggerhead) and from September 30 – October 22 (234 30-minute tows, 16 loggerheads and 5 Kemp's ridleys) and November 10 – November 28 (2 loggerheads, 1 Kemp's ridley). A total of 25 turtles were relocated during this time period. During this period of relocation trawling, fourteen Atlantic sturgeon were captured and released alive within and nearby the channel.

Most recently, the Baltimore District conducted relocation trawling during maintenance dredging of Cape Henry Channel in 2014. The relocation trawling was conducted over a 5-day period, 24 -27 July 2014 and 30 July 2014. A total of zero turtles were relocated during this time period.

The maximum number of turtles relocated in one year was 25 live uninjured turtles in 2003 (September 15-16, 20-22, September 30-October 22 and November 10-28). Only one mortality has been observed. The only incidence of Atlantic sturgeon capture in relocation trawling was in the fall of 2003 with 14 individuals captured.

6.11.2 Effects of Relocation Trawling on Sea Turtles

Relocation trawling conducted in association with dredging activities is specifically targeting sea turtles and as such, we expect sea turtles to be captured in the trawls. It is difficult to determine the magnitude, or the frequency, of these interactions, but potential capture levels can be estimated by previous capture rates from Virginia relocation trawling.

The maximum number of turtles caught in one year was 25, with the maximum in one month being 15. As it cannot be foreseen as to whether relocation trawling will occur in any given year or month, this anticipated capture level for relocation trawling associated with this project has been estimated with the assumption that trawling could occur every month whenever sea turtles are present and dredging occurs. Relocation trawling could therefore occur any time from April 1 to November 30 when the dredge is operating. Considering that a maximum of 15 turtles have been captured in one month of relocation trawling, if trawling occurred for all eight months that sea turtles were present, a maximum of 120 sea turtles could be captured annually during relocation trawling. We recognize that because relocation trawling is not likely to be required for every project, and even when required is unlikely to occur continuously for an 8-month period, this annual estimate is likely significantly higher than the number of relocation captures that would reasonably occur in a typical year. Therefore, we believe our best assessment of the maximum number of turtles that would be captured during relocation trawling in any given year is 25. Most of the captured sea turtles are likely to be loggerheads; however, we expect that some will be Kemp's ridley and greens. Of the 59 sea turtles captured during past relocation trawling, 44 were loggerheads, 13 Kemp's ridleys and 2 greens. We expect future relocation trawling to capture these species in a similar ratio (75% loggerhead, 22% Kemp's ridley and 3% green). No leatherback sea turtles are anticipated to be captured during relocation trawling due to the rarity of this species in the area and the lack of documented captures during other relocation trawling operations in the action area.

With an estimate of 25 captures per year (the maximum number of turtles caught in one year) for the duration of construction and maintenance dredging and the ratio of species noted above, we expect the following total number of captures over the life span of the project:

Table 21. Maximum sea turtle takes by relocation trawling

Species	Number of Captures
Loggerhead	937
Kemp's Ridley	275
Green	38

The relocation trawling capture estimation uses the best available information, but makes several assumptions. First, this estimation assumes that turtle distribution in the action area is not variable by month. The number used for the calculations were determined by a fall trawling event, and it is possible that turtle and/or sturgeon abundance in the action area will be higher or lower in the spring and summer. Second, this estimation assumes that turtle and sturgeon distribution will be relatively constant over the years. Relocation trawling has been conducted in Virginia only three years, and this limited amount of data was used to generate this estimated take level (e.g., one year of data noting the maximum number of turtles taken). This take estimation was based upon the best available data, but it is possible that turtle distribution may increase or decrease in future years, changing the number of turtles taken in the trawl from what was anticipated. Third, the estimated capture rate was generated under the assumption that relocation trawling would be conducted for 12 hours/day as it has in the past. If the frequency of trawling is increased beyond 12 hours/day, more turtles could be taken (e.g., if trawling is completed 24 hours/day, the capture rates could double. Fourth, this assumes that trawling will need to be completed each week that dredging occurs and that all dredging will be conducted during the April to November time frame. It is highly unlikely that this will occur, as the term and condition requiring trawling may not be triggered for every project or dredging may not need to be completed during the entire "turtle season." Finally, this estimation assumes that different trawl companies and trawlers do not have any variation in turtle catch rates. This take level was generated with one company's trawl data, and if a different vessel is more or less successful at catching turtles, the anticipated take amount may be different. However, a standardized trawling protocol is required of all relocation trawling activities, so it is unlikely that the various trawl companies would have significantly different capture rates.

Relocation trawling moves animals out of their preferred environment, which may result in additional stress on the animal. While the effects of this relocation are not fully known or quantifiable, if the sea turtle is not injured or its swimming ability impaired, it is likely that the turtle could find other suitable foraging habitat or move to its desired location. Typically sea turtles are relocated at least 3 miles from the capture location. Some turtles captured during relocation trawling operations return to the dredge site and are subsequently recaptured. The likelihood of recapture may be related to where the animal was relocated, relocation distance, duration of dredging projects, and an individual turtle's preferences or site fidelity. In Canaveral Channel in the early 1980s toward the end of a 90-day dredging project, about 25-33% of the turtles caught in a given day were recaptures of turtles previously relocated in the project. Relocation sites were 5 miles north, 5 miles south, and 5 miles east of the channel. One of those turtles was caught and relocated on 7 different occasions. One was caught and removed one night and taken again on the following night. Some turtles appear to return to the area regardless of where they are moved, while others are never seen again (E-mails, C. Oravetz to E. Hawk, T. Henwood to E. Hawk, September 27, 2002). In any event, relocating animals out of the channels may subject them to stress and require the turtles to undergo extra effort to migrate back to their intended habitat.

Sea turtles forcibly submerged in any type of restrictive gear can eventually suffer fatal consequences from prolonged anoxia and/or seawater infiltration of the lung (Lutcavage *et al.*1997). A study examining the relationship between tow time and sea turtle mortality in the shrimp trawl fishery showed that mortality was strongly dependent on trawling duration, with the proportion of dead or comatose sea turtles rising from 0% for the first 50 minutes of capture to 70% after 90 minutes of capture (Henwood and Stuntz 1987). However, metabolic changes that can impair a sea turtle's ability to function can occur within minutes of a forced submergence. While most voluntary dives appear to be aerobic, showing little if any increases in blood lactate and only minor changes in acid-base status, the story is quite different in forcibly submerged sea turtles, where oxygen stores are rapidly consumed, anaerobic glycolysis is activated, and acid-base balance is disturbed, sometimes to lethal levels (Lutcavage and Lutz 1997). Forced submergence of Kemp's ridley sea turtles in shrimp trawls resulted in an acid-base imbalance after just a few minutes (times that were within the normal dive times for the species) (Stabenau *et al.*1991). Conversely, recovery times for acid-base levels to return to normal may be prolonged. Henwood and Stuntz (1987) found that it took as long as 20 hours for the acid-base levels of loggerhead sea turtles to return to normal after capture in shrimp trawls for less than 30 minutes. This effect is expected to be worse for sea turtles that are recaptured before metabolic levels have returned to normal.

Following the recommendations of the NRC to reexamine the association between tow times and sea turtle deaths, the data set used by Henwood and Stuntz (1987) was updated and re-analyzed (Epperly *et al.*2002; Sasso and Epperly 2006). Seasonal differences in the likelihood of mortality for sea turtles caught in trawl gear were apparent. For example, the observed mortality exceeded 1% after 10 minutes of towing in the winter (defined in Sasso and Epperly (2006) as the months of December-February), while the observed mortality did not exceed 1% until after 50 minutes in the summer (defined as March-November; Sasso and Epperly 2006). In general, tows of short duration (<10 minutes) in either season have little effect on the likelihood of mortality for sea turtles caught in the trawl gear and would likely achieve a negligible mortality rate (defined by the NRC as <1%). Intermediate tow times (10-200 minutes in summer and 10-150 minutes in winter) result in a rapid escalation of mortality, and eventually reach a plateau of high mortality, but will not equal 100%, as a sea turtle caught within the last hour of a long tow will likely survive (Epperly *et al.*2002; Sasso and Epperly 2006). However, in both seasons, a rapid escalation in the mortality rate did not occur until after 50 minutes (Sasso and Epperly 2006) as had been found by Henwood and Stuntz (1987). Although the data used in the reanalysis were specific to bottom otter trawl gear in the U.S. south Atlantic and Gulf of Mexico shrimp fisheries, the authors considered the findings to be applicable to the impacts of forced submergence in general (Sasso and Epperly 2006).

Sea turtle behaviors may influence the likelihood of them being captured in bottom trawl gear. Video footage recorded by the NMFS, Southeast Fisheries Science Center (SEFSC), Pascagoula Laboratory indicated that sea turtles will keep swimming in front of an advancing shrimp trawl, rather than deviating to the side, until they become fatigued and are caught by the trawl or the trawl is hauled up (NMFS 2002a). Sea turtles have also been observed to dive to the bottom and hunker down when alarmed by loud noise or gear (Memo to the File, L. Lankshear, December 4, 2007), which could place them in the path of bottom gear such as a bottom otter trawl. With respect to oceanographic features, a review of the data associated with the 11 sea turtles captured by the scallop dredge fishery in 2001 concluded that the sea turtles appeared to have been near the shelf/slope front (D. Mountain, pers. comm.).

Tows for relocation trawling will be less than 30 minutes in duration. Based on the analysis by Sasso and Epperly (2006) and Epperly *et al.*(2002) as well as information on captured sea turtles from past NJ trawl surveys, the NEAMAP and NEFSC trawl surveys, and the NEFSC FSB observer program, a 30-minute tow time for the trawl gear to be used will likely eliminate the risk of death from forced submergence for sea turtles caught in the trawl gear.

During spring and fall bottom otter trawl surveys conducted by the NEFSC from 1963-2009, 71 loggerhead sea turtles were observed captured. Only one of the 71 loggerheads suffered injuries (cracks to the carapace) causing death (Wendy Teas, SEFSC, pers. comm. to Linda Despres, NEFSC, 2007). All others were alive and returned to the water unharmed. The one leatherback sea turtle captured in the NEFSC trawl survey was released alive and uninjured. NEFSC trawl survey tows are approximately 30 minutes in duration. All sea turtles captured in the NEAMAP surveys as well as the NJ trawl surveys have also been released alive and uninjured.

Only one mortality of a sea turtle during relocation trawling has been recorded in the action area. On November 3, 2002, during relocation trawling conducted in York Spit Channel (with 15-30 minute tows), a dead Kemp's ridley sea turtle was recovered (REMSA 2002). The fresh dead turtle was bleeding with wounds to the head. VMSM conducted a necropsy and concluded that the animal appeared to be a healthy, fresh dead juvenile Kemp's ridley with the only noted abnormalities to the head. This suggests that the cause of death could have been trawl related. Mortality of sea turtles during relocation trawling is expected to be very rare. As such, we anticipate that during each year that relocation trawling occurs, no more than 1 sea turtle will be seriously injured or killed. We expect mortalties to occur in proportion to the ratio of species captured. Therefore, we expect 75% of the mortalities to be loggerheads, 22% to be Kemp's ridleys and 3% to be greens. As such, we expect the following mortalities during relocation trawling over the 50-year period considered here: 37 loggerheads, 11 Kemp's ridleys, and 2 greens.

6.11.3 Effects of Relocation Trawling on Atlantic sturgeon

The capture of Atlantic sturgeon in otter trawls used for commercial fisheries is well documented (see for example, Stein *et al.*2004 and ASMFC 2007). Atlantic sturgeon are also captured incidentally in trawls used for scientific studies. Atlantic sturgeon can occur in the action area year round. While it is possible that relocation trawling may be beneficial in removing these fish from the channels being dredged, we have no information to determine if it is reasonable to expect this to occur. Relocation trawling occurred in 2001, 2002 and 2003; however, Atlantic sturgeon were captured during only one of these relocation trawl events. Fourteen Atlantic sturgeon were captured during relocation trawling in November 2003.

Because Atlantic sturgeon are known to be vulnerable to capture in trawls and Atlantic sturgeon have been captured during past relocation trawling in the action area, it is reasonable to expect that Atlantic sturgeon will be captured during future relocation trawling events. Based on past events, we expect that no more than 14 Atlantic sturgeon are likely to be captured in any year that relocation trawling is required. We expect the Atlantic sturgeon that will be captured to consist of individuals from the five DPSs at the following frequencies: NYB 49%; South Atlantic 20%; Chesapeake Bay 14%; Gulf of Maine 11%; and Carolina 4%.

The short duration of the tow and careful handling of any sturgeon once on deck is likely to result in a low potential for mortality. None of the 14 Atlantic sturgeon captured in past relocation trawling had any evidence of injury or mortality. We reviewed results of short-tow trawl surveys (i.e., 20-30 minute tow time surveys carried out by NEFSC, VIMS (NEAMAP), and the States of New Jersey and Connecticut). None of the more than six hundred Atlantic sturgeon captured during these trawl surveys have been injured or killed. Based on this information, we expect that all Atlantic sturgeon captured during relocation trawling will be alive and will be released uninjured.

6.11.4 Summary of Effects of Relocation Trawling

Relocation trawling is only required when the risk of entrainment of sea turtles is higher than normal and is undertaken to minimize the potential for injury and mortality of sea turtles in the dredge. The short tow times and relocation of turtles away from the active dredge site have the goal of benefiting sea turtles. As noted above, there is the potential for some stress and a very low potential for injury or mortality. We have estimated the following maximum annual levels of capture and mortality due to relocation trawling:

Table 22. Maximum annual and total takes over the proect life from relocation trawling

Species	**Number Captured Per Year**	**Number of Mortalities per Year**	**Number Captured**	**Number of Mortalities**
Sea Turtles	***25 total***	***1***	***1,250***	***50***
Loggerhead	19	1*	937	37
Kemp's Ridley	5	1*	275	11
Green	1	1*	38	2
Atlantic sturgeon	***14 total***	***0***	***700 total***	***0***
NYB DPS	≤ 7	0	≤350	0
SA DPS	≤ 3	0	≤150	0
CB DPS	≤ 2	0	≤100	0
GOM DPS	≤ 2	0	≤100	0
Carolina DPS	≤ 1	0	≤50	0

*1 loggerhead, Kemp's ridley or green annually

We expect that one turtle (either a loggerhead, Kemp's ridley, or green turtle) may be killed during relocation trawling activities each dredge cycle. In addition, a number of sea turtles (loggerheads, Kemp's ridley and green) are likely to be captured during relocation trawling and released uninjured. While this action may temporarily disrupt normal foraging and migratory behaviors, these displaced turtles are likely to rapidly resume normal behaviors. As such, the capture and displacement of live, uninjured sea turtles is not likely to have any significant effect on sea turtles in the Chesapeake Bay or the species as a whole. We have also required that any live sea turtles captured during the relocation trawling be weighed and measured. While this requirement will cause additional handling of these individuals and may cause stress, this is likely to be temporary and there are no known lasting effects of taking these measurements. As such, the weighing and measuring of live, uninjured sea turtles is not likely to have any significant effect on sea turtles in the Chesapeake Bay or the species as a whole.

At this time, we have only preliminary information regarding the potential for captureless trawling to successfully minimize entrainment of sea turtles during dredging. Potential benefits to this trawling method are that the trawler can operate closer to the dredge, and therefore potentially intercept animals in the immediate pathway to the dredge; there may be less "down time" for the trawler as it does not need to stop operating every 30 minutes to haul in the trawl, handle and relocate animals, which means that the trawl is operating for a greater percentage of time, and there may be less stress and potential for injury to animals "caught" in the trawl. Potential disadvantages are that by merely disturbing animals off the bottom and not moving them outside the area being dredged, the "relocation" may be less effective and because the animals are not being brought on board the trawl vessel there is no means to monitor the number of turtles encountered so it would be difficult to gauge the success of the trawling operation (other than in any reduction in entrainment). As such, at this time, we expect that future relocation trawling will use a traditional capture methodology. If in the future you proposes to use captureless relocation trawling in the action area, we will review the proposal to determine if it will: (1) achieve the same expected reduction in sea turtle entrainment as traditional relocation trawling, and (2), if it is likely to cause any effects to sea turtles or sturgeon not considered in this Opinion. If we determine that captureless trawling is at least as effective as traditional relocation trawling, that it will not cause any effects to sea turtles or sturgeon not considered in this Opinion, and takes can be monitored to ensure that the number of exempted takes are not exceeded, then no further consultation is likely to be necessary and the proposed "captureless" trawling will be considered to be within the scope of this consultation.

6.12 Tissue Sampling

Genetic samples will be taken from all captured fish. This will be done by taking a small (1 cm^2) tissue sample, clipped with surgical scissors from a section of soft fin rays. This procedure does not appear to impair the sturgeon's ability to swim and is not thought to have any long-term adverse impact (Kahn and Mohead 2010). Many researchers have removed tissue samples according to this same protocol reporting no adverse effects (Wydoski and Emery 1983); therefore, we do not anticipate any long-term adverse effects to the sturgeon from this activity.

7.0 CUMULATIVE EFFECTS

Cumulative effects as defined in 50 CFR 402.02 include the effects of future State, tribal, local, or private actions that are reasonably certain to occur within the action area considered in this Opinion. Future Federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the ESA. Effects of ongoing Federal activities, are considered in the *Environmental Baseline* and *Status of the Species* sections above and are also factored into the *Integration and Synthesis of Effects* section below.

Sources of human-induced mortality, injury, and/or harassment of sea turtles and Atlantic sturgeon in the action area that are reasonably certain to occur in the future include interactions in state-regulated and recreational fishing activities, vessel collisions, ingestion of plastic debris, pollution, underwater noise, and global climate change. While the combination of these activities may affect sea turtles and Atlantic sturgeon, preventing or slowing a species' recovery, the magnitude of these effects is currently unknown.

State Water Fisheries
Future recreational and commercial fishing activities in state waters may capture, injure, or kill sea turtles and sturgeon. However, it is not clear to what extent these future activities would affect listed species differently than the current state fishery activities described in the *Environmental Baseline* section. Atlantic sturgeon are captured and killed in fishing gear

operating in the action area; however, at this time we are not able to quantify the number of interactions that occur. However, this Opinion assumes effects in the future would be similar to those in the past and are, therefore, reflected in the anticipated trends described in the *Status of the Species* and *Environmental Baseline* sections.

Fishing activities are considered one of the most significant causes of death and serious injury for sea turtles. Finkbeiner *et al*. (2011) compiled cumulative sea turtle bycatch information in U.S. fisheries from 1990 through 2007, before and after implementation of bycatch mitigation measures. In the Atlantic, a mean estimate of 137,700 bycatch interactions, of which 4,500 were mortalities, occurred annually (since implementation of bycatch mitigation measures). Kemp's ridleys interacted with fisheries most frequently, with the highest level of mean annual mortality (2,700), followed by loggerheads (1,400), greens (300), and leatherbacks (40). The Southeast/Gulf of Mexico shrimp trawl fishery was responsible for the vast majority of U.S. interactions (up to 98%) and mortalities (more than 80%). Fishing gear in state waters, including bottom trawls, gillnets, trap/pot gear, and pound nets, interacts with sea turtles each year. NMFS is working with state agencies to address the bycatch of sea turtles in state water fisheries within the action area of this consultation where information exists to show that these fisheries capture sea turtles. Action has been taken by some states to reduce or remove the likelihood of sea turtle bycatch and/or the likelihood of serious injury or mortality in one or more gear types. However, given that state managed commercial and recreational fisheries along the U.S. Atlantic coast are reasonably certain to occur within the action area in the foreseeable future, additional interactions of sea turtles with these fisheries are anticipated. There is insufficient information to quantify the number of sea turtle interactions with state water fisheries as well as the number of sea turtles injured or killed as a result of these interactions. While actions have been taken to reduce sea turtle bycatch in some state water fisheries, the overall effect of these actions is unknown, and the future effects of state water fisheries on sea turtles cannot be quantified. However, this Opinion assumes effects in the future would be similar to those in the past and are, therefore, reflected in the anticipated trends described in the *Status of the Species* and *Environmental Baseline* sections.

Vessel Interactions

Our STSSN data indicate that vessel interactions are responsible for a number of sea turtle strandings within the action area each year. In the U.S. Atlantic from 1997-2005, 14.9% of all stranded loggerheads were documented as having sustained some type of propeller or collision injuries (NMFS and USFWS 2007a). The incidence of propeller wounds rose from approximately 10% in the late 1980s to a record high of 20.5% in 2004 (STSSN database). Such collisions are reasonably certain to continue into the future. Collisions with boats can stun, injure, or kill sea turtles, and many live-captured and stranded sea turtles have obvious propeller or collision marks (Dwyer *et al*. 2003). However, it is not always clear whether the collision occurred pre- or post-mortem. We believes that vessel interactions with sea turtles will continue in the future. An estimate of the number of sea turtles that will likely be killed by vessels is not available at this time. Similarly, we are unable at this time to assess the risk that vessel operations in the action area pose to Atlantic sturgeon. While vessel strikes have been documented in several rivers, the extent that interactions occur in the marine environment is currently unknown. However, this Opinion assumes effects in the future would be similar to those in the past and are, therefore, reflected in the anticipated trends described in the *Status of* *the Species* and *Environmental Baseline* sections.

Debris, Pollution, and Contaminants
Human activities in the action area causing marine debris and pollution are reasonably certain to continue in the future, as are impacts from them on sea turtles and Atlantic sturgeon. However, the level of impacts cannot be projected. Sources of contamination in the action area include atmospheric loading of pollutants, stormwater runoff from coastal development, groundwater discharges, and industrial development. Chemical contamination may have effects on listed species' reproduction and survival. Excessive turbidity due to coastal development and/or construction sites could influence sea turtle or sturgeon foraging ability. Marine debris (e.g., discarded fishing line or lines from boats, plastics) also has the potential to entangle ESA-listed species in the water or to be consumed by them. Sea turtles commonly ingest plastic or mistake debris for food and sometimes this may lead to asphyxiation. This Opinion assumes effects in the future would be similar to those in the past and are therefore reflected in the anticipated trends described in the *Status of the Species* and *Environmental Baseline* sections.

In the future, global climate change is expected to continue and may impact ESA-listed species and their habitat in the action area. As noted in the *Status of the Species* and *Environmental Baseline* sections, the likely rate of change associated with climate impacts is on a century scale, which makes the ability to discern changes in the abundance, distribution, or behavior of these species in the action area as a result of climate change impacts challenging in the short term.

8.0 INTEGRATION AND SYNTHESIS OF EFFECTS

In the effects analysis outlined above, we considered potential effects from construction and maintenance dredging in several channels and borrow areas in the Chesapeake Bay and near its entrance as well as the CIEE. These effects include: (1) dredging with mechanical, cutterhead and hopper dredges; (2) bed leveling; and, (3) physical alteration of the action area including disruption of benthic communities. In addition to these categories of effects, we considered the potential for collisions between listed species and project vessels as well as the effect of taking fin clip samples from Atlantic sturgeon for genetic testing. We anticipate the mortality of loggerhead, Kemp's ridley and green sea turtles and Atlantic sturgeon from the five DPSs. Mortality of sea turtles will result from entrainment in hopper dredges operating in the Bay and as a result of relocation trawling. We also anticipate non lethal take of sea turtles and Atlantic sturgeon from relocation trawling. Mortality of Atlantic sturgeon will occur from entrainment in hopper and/or cutterhead dredges and capture in mechanical dredges. As explained in the *Effects of the Action* section, effects of the dredging and disposal on habitat and benthic resources will be insignificant and discountable. We do not anticipate any take of sea turtles or Atlantic sturgeon due to any of the other effects including vessel traffic and dredge disposal.

We have determined that the proposed action is likely to result in the following levels of capture and mortality over the life of these projects:

Table 23. Total non-lethal and lethal takes

Species	Non-lethal Capture	Mortality
NWA DPS of Loggerhead sea turtle	937	785 (748 in hopper dredge; 37 in trawl)
Kemp's ridley sea turtle	275	77 (66 in hopper dredge; 11 in trawl)
North Atlantic DPS of Green sea turtle	38	20 (18 in hopper dredge; 2 in trawl)
NYB DPS of Atlantic sturgeon	350	94 (68 hopper, 25 cutterhead, 1 mechanical)
SA DPS of Atlantic sturgeon	150	40 (29 hopper, 10 cutterhead, 1 mechanical)
CB DPS of Atlantic sturgeon	100	34 (23 hopper, 8 cutterhead, 1 mechanical)
GOM DPS of Atlantic sturgeon	100	24 (18 hopper, 5 cutterhead, 1 mechanical)
Carolina DPS of Atlantic sturgeon	50	13 (10 hopper, 2 cutterhead, 1 mechanical)

In the discussion below, we consider whether the effects of the proposed actions reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of the listed species in the wild by reducing the reproduction, numbers, or distribution of the listed species that will be adversely affected by the action. The purpose of this analysis is to determine whether the proposed actions, in the context established by the status of the species, environmental baseline, and cumulative effects, would jeopardize the continued existence of any listed species. In the NMFS/USFWS Section 7 Handbook, for the purposes of determining jeopardy, survival is defined as:

> "the species' persistence as listed or as a recovery unit, beyond the conditions leading to its endangerment, with sufficient resilience to allow for the potential recovery from endangerment. Said in another way, survival is the condition in which a species continues to exist into the future while retaining the potential for recovery. This condition is characterized by a species with a sufficient population, represented by all necessary age classes, genetic heterogeneity, and number of sexually mature individuals producing viable offspring, which exists in an environment providing all requirements for completion of the species' entire life cycle, including reproduction, sustenance, and shelter."

Recovery is defined as, "improvement in the status of listed species to the point at which listing is no longer appropriate under the criteria set out in Section 4(a)(1) of the Act." We summarize below the status of the species and consider whether the proposed action will result in reductions in reproduction, numbers or distribution of these species and then consider whether any reductions in reproduction, numbers or distribution resulting from the proposed action would reduce appreciably the likelihood of both the survival and recovery of these species, as those terms are defined for purposes of the Endangered Species Act.

8.1 Atlantic sturgeon

As explained above, the proposed actions are likely to result in the mortality of a total of 205 Atlantic sturgeon from the Gulf of Maine, New York Bight, Chesapeake Bay, South Atlantic and Carolina DPSs over the project life. Based on the proposed dredge schedule and known maintenance and nourishment needs, in a typical year we expect that no more than two Atlantic sturgeon would be entrained. We do not anticipate the mortality of any early life stages because the high salinities in the action area preclude these life stages from being present. We do not anticipate any mortality of adults because these fish are large enough to avoid entrainment in the dredge. The proposed action is also likely to result in the capture of up to 700 Atlantic sturgeon during sea turtle relocation trawling; these captures could be subadults or adults. No mortality due to capture in relocation trawling is anticipated. All other effects to Atlantic sturgeon, including effects to habitat and prey due to dredging and dredge material disposal, will be insignificant and discountable.

8.1.1 Determination of DPS Composition

We have considered the best available information to determine from which DPSs individuals that will be affected by the proposed actions are likely to have originated. Using mixed stock analysis explained above, we have determined that Atlantic sturgeon in the action area likely originate from the five DPSs at the following frequencies: NYB 49%; South Atlantic 20%; Chesapeake Bay 14%; Gulf of Maine 11%; and Carolina 4%. Given these percentages, we expect that in the worst case that all 205 sturgeon likely to be killed during dredging were Atlantic sturgeon, 94 will originate from the New York Bight DPS, 40 from the South Atlantic DPS, 34 from the Chesapeake Bay DPS, 24 from the Gulf of Maine DPS, and 13 from the Carolina DPS.

8.1.2 Gulf of Maine DPS

The GOM DPS is listed as threatened. While Atlantic sturgeon occur in several rivers in the GOM DPS, recent spawning has only been documented in the Kennebec; spawning is suspected to also occur in the Androscoggin River. No total population estimates are available for any river population or the DPS as a whole. As discussed in section 4.2.2.1, we have estimated a total of 7,455 GOM DPS adults and subadults in the ocean (1,864 adults and 5,591 subadults).This estimate is the best available at this time and represents only a percentage of the total GOM DPS population as it does not include young of the year or juveniles and does not include all adults and subadults. GOM origin Atlantic sturgeon are affected by numerous sources of human induced mortality and habitat disturbance throughout the riverine and marine portions of their range. While there are some indications that the status of the GOM DPS may be improving, there is currently not enough information to establish a trend for any life stage or for the DPS as a whole.

Based on mixed-stock analysis, we expect that 11% of the sub-adult and adult Atlantic sturgeon in the action area will originate from the GOM DPS. While some adults from the GOM DPS are expected to be present in the action area, we do not anticipate any mortality of adult Atlantic sturgeon from the GOM DPS. Over the life of the project, we anticipate the mortality of up to 24 subadult GOM DPS Atlantic sturgeon and the non-lethal capture of up to 100 subadult and adult GOM DPS Atlantic sturgeon.

Capture during relocation trawling will temporarily prevent captured sturgeon from carrying out normal behaviors such as foraging and migrating. However, these behaviors are expected to resume as soon as the fish are returned to the water. The capture of live Atlantic sturgeon is not likely to reduce the numbers of GOM DPS Atlantic sturgeon. Similarly, as the capture of live GOM DPS Atlantic sturgeon will not affect the fitness of any individual, no effects to reproduction are anticipated. The capture of live GOM DPS Atlantic sturgeon is also not likely to affect the distribution of GOM DPS Atlantic sturgeon throughout their range. As any effects to individual GOM DPS Atlantic sturgeon captured during relocation trawling and temporarily removed from the water will be minor and temporary there are not anticipated to be any population level impacts.

The number of subadult GOM DPS Atlantic sturgeon we expect to be killed due to the proposed action (24 between now and the conclusion of the proposed action) represents an extremely small percentage of the GOM DPS. While the death of 24 GOM DPS Atlantic sturgeon over this period will reduce the number of GOM DPS Atlantic sturgeon compared to the number that would have been present absent the proposed action, it is not likely that this reduction in numbers will change the status of this species as this loss represents a very small percentage of the GOM DPS population of subadults and an even smaller percentage of the overall DPS as a whole. Even if there were only 5,591 subadults in the GOM DPS, the loss would represent only 0.43% of the subadults in the DPS. The percentage would be much less if we also considered the number of young of the year, juveniles, adults, and other subadults not included in the NEAMAP-based oceanic population estimate.

Because there will be no loss of adults, the reproductive potential of the GOM DPS will not be affected in any way other than through a reduction in numbers of individual future spawners as opposed to current spawners. The loss of 24 female subadults would have the effect of reducing the amount of potential reproduction, as any dead GOM DPS Atlantic sturgeon would have no potential for future reproduction. This small reduction in potential future spawners is expected to result in an extremely small reduction in the number of eggs laid or larvae produced in future years and similarly, an extremely small effect on the strength of subsequent year classes. Even considering the potential future spawners that would be produced by the individual that would be killed as a result of the proposed action, any effect to future year classes is anticipated to be extremely small and would not change the status of this species. The loss of 24 male subadults may have less of an impact on future reproduction as other males are expected to be available to fertilize eggs in a particular year. The proposed action will also not affect the spawning grounds within the rivers where GOM DPS fish spawn.

The proposed action is not likely to reduce distribution because while sturgeon may temporarily avoid areas where dredging or disposal activities are underway, all of these changes in distribution will be temporary and limited to movements to relatively nearby areas. We do not anticipate that any impacts to habitat will impact how GOM DPS sturgeon use the action area. Additionally, given the small percentage of the species that will be killed as a result of the proposed actions, there is not likely to be any loss of unique genetic haplotypes and no loss of genetic diversity

Based on the information provided above, the death of up to 24 sub-adult GOM DPS Atlantic sturgeon over the life of the proposed action, will not appreciably reduce the likelihood of survival of the GOM DPS (i.e., it will not decrease the likelihood that the species will continue to persist into the future with sufficient resilience to allow for the potential recovery from endangerment). The action will not affect GOM DPS Atlantic sturgeon in a way that prevents the species from having a sufficient population, represented by all necessary age classes, genetic heterogeneity, and number of sexually mature individuals producing viable offspring, and it will not result in effects to the environment which would prevent Atlantic sturgeon from completing their entire life cycle, including reproduction, sustenance, and shelter. This is the case because: (1) the death of 24 subadult GOM DPS Atlantic sturgeon represents an extremely small percentage of the population of the DPS; (2) the death of 24 GOM DPS Atlantic sturgeon will not change the status or trends of the DPS as a whole; (3) the loss of 24 GOM DPS Atlantic sturgeon is not likely to have an effect on the levels of genetic heterogeneity in the population; (4) the loss of 24 subadult GOM DPS Atlantic sturgeon is likely to have such a small effect on reproductive output that the loss of these individuals will not change the status or trends of the DPS; (5) the action will have only a minor and temporary effect on the distribution of GOM DPS Atlantic sturgeon in the action area and no effect on the distribution of the DPS throughout its range; and, (6) the action will have no effect on the ability of GOM DPS Atlatnic sturgeon to shelter andonly an insignificant effect on foraging GOM DPS Atlantic sturgeon.

In certain instances, an action that does not appreciably reduce the likelihood of a species' survival might affect its likelihood of recovery or the rate at which recovery is expected to occur. As explained above, we have determined that the proposed actions will not appreciably reduce the likelihood that the GOM DPS will survive in the wild. Here, we consider the potential for the actions to reduce the likelihood of recovery from the perspective of ESA Section 4. As noted above, recovery is defined as the improvement in status such that listing under Section 4(a) as "in danger of extinction throughout all or a significant portion of its range" (endangered) or "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range…" (threatened) is no longer warranted. Thus, we have considered whether the proposed action will appreciably reduce the likelihood that the GOM DPS of Atlantic sturgeon can rebuild to a point where it is no longer in danger of becoming endangered within the foreseeable future throughout all or a significant portion of its range.

A Recovery Plan for the GOM DPS has not yet been developed. The Recovery Plan will outline the steps necessary for recovery and the demographic criteria, which once attained, would allow the species to be delisted. We know that in general, to recover, a listed species must have a sustained positive trend of increasing population over time. In order for that to happen for GOM Atlantic sturgeon, individuals must have access to enough habitat in suitable condition for foraging, migrating, resting, and spawning. Conditions must be suitable for the successful development of early life stages. Mortality rates must be low enough to allow for recruitment to all age classes so that successful spawning can continue over time and over generations. For Atlantic sturgeon, habitat conditions must be suitable both in the natal river and in other rivers and estuaries where foraging by subadults and adults will occur and in the ocean where subadults and adults migrate, overwinter and forage. Habitat connectivity must also be maintained so that individuals can migrate between important habitats without delays that impact their fitness. Here, we consider whether this proposed action will affect the GOM DPS likelihood of recovery. The proposed actions are not expected to modify, curtail or destroy the range of the species since it will result in an extremely small reduction in the number of GOM DPS Atlantic sturgeon and since it will not affect the overall distribution of GOM DPS Atlantic sturgeon. Any effects to habitat will be insignificant and discountable and will not affect the ability of Atlantic sturgeon to carry out any necessary behaviors or functions. Any impacts to available forage will also be insignificant. The proposed actions will result in an extremely small amount of mortality annually (one individual) and a subsequent small reduction in future reproductive output. For these reasons, it is not expected to affect the persistence of the GOM DPS of Atlantic sturgeon. These actions will not change the status or trend of the GOM DPS of Atlantic sturgeon. The very small reduction in numbers and future reproduction resulting from the proposed actions will not reduce the likelihood of improvement in the status of the GOM DPS of Atlantic sturgeon. The effects of the proposed actions will not delay the recovery timeline or otherwise decrease the likelihood of recovery. The effects of the proposed actions will also not reduce the likelihood that the status of the species can improve to the point where it is recovered and could be delisted. Therefore, the proposed actions will not appreciably reduce the likelihood that the GOM DPS of Atlantic sturgeon can be brought to the point at which they are no longer listed as threatened. Based on the analysis presented herein, the proposed actions are not likely to appreciably reduce the survival and recovery of this species.

Despite the threats faced by individual GOM DPS Atlantic sturgeon inside and outside of the action area, the proposed actions will not increase the vulnerability of individual sturgeon to these additional threats and exposure to ongoing threats will not increase susceptibility to effects related to the proposed actions. We have considered the effects of the proposed action in light of cumulative effects explained above, including climate change, and have concluded that even in light of the ongoing impacts of these activities and conditions; the conclusions reached above do not change. Based on the analysis presented herein, the proposed actions, resulting in the mortality of 24 subadult GOM DPS Atlantic sturgeon and the non-lethal capture of up to 100 subadult and adult GOM DPS Atlantic sturgeon over the life span of the project, are not likely to appreciably reduce the survival and recovery of this species.

8.1.3 New York Bight DPS

The NYB DPS is listed as endangered. While Atlantic sturgeon occur in several rivers in the NYB DPS, recent spawning has only been documented in the Delaware and Hudson rivers. The capture of age-0 Atlantic sturgeon in the Connecticut River indicates that spawning, at least in some years, is likely occurring in that river as well. Based on Mixed Stock Analysis, we expect that 49% of the subadult and adult Atlantic sturgeon in the action area will originate from the NYB DPS.

NYB origin Atlantic sturgeon are affected by numerous sources of human induced mortality and habitat disturbance (e.g., impingement at water intakes, dredging, bycatch in commercial and recreational fisheries, in-water construction activities, vessel traffic) throughout the riverine and marine portions of their range. As discussed in section 4.2.2.2, we have estimated a total of 34,566 NYB DPS adults and subadults in the ocean (8,642 adults and 25,925 subadults). This estimate is the best available at this time and represents only a percentage of the total NYB DPS population as it does not include young of the year or juveniles and does not include all adults and subadults. The largest single source of mortality appears to be capture as bycatch in commercial fisheries operating in the marine environment. A bycatch estimate provided by NEFSC indicates that approximately 376 Atlantic sturgeon die as a result of bycatch each year. While there are some indications that the status of the NYB DPS may be improving, there is currently not enough information to establish a trend for any life stage or for the DPS as a whole.

Based on mixed-stock analysis, we expect that 49% of the sub-adult and adult Atlantic sturgeon in the action area will originate from the NYB DPS. While some adults from the NYB DPS are expected to be present in the action area, we do not anticipate any mortality of adult Atlantic sturgeon from the NYB DPS. Because juveniles do not leave their natal rivers, they are not impacted by the proposed action.

Over the life of the proposed action, we anticipate the mortality of up to 94 subadult NYB DPS Atlantic sturgeon. These sturgeon could be killed due to entrainment in a hopper or cutterhead dredge, or capture in a mechanical dredge. These fish could be subadults originating from the Delaware or Hudson River. While it is possible that entrained fish could survive, we assume here that these fish will be killed.

Capture during relocation trawling will temporarily prevent captured sturgeon from carrying out normal behaviors such as foraging and migrating. However, these behaviors are expected to resume as soon as the fish are returned to the water. The capture of live Atlantic sturgeon is not likely to reduce the numbers of NYB DPS Atlantic sturgeon. Similarly, as the capture of live NYB DPS Atlantic sturgeon will not affect the fitness of any individual, no effects to reproduction are anticipated. The capture of live NYB DPS Atlantic sturgeon is also not likely to affect the distribution of NYB DPS Atlantic sturgeon throughout their range. As any effects to individual NYB DPS Atlantic sturgeon captured during relocation trawling and temporarily removed from the water will be minor and temporary there are not anticipated to be any population level impacts.

While overall we anticipate the death of 94 subadult Atlantic sturgeon from the NYB DPS over the life span of the project, we do not anticipate that there would be a loss of more than 1 NYB DPS subadult in most years and never more than 2 NYB DPS Atlantic sturgeon killed per year. Here, we consider the effect of the loss of these subadults on the reproduction, numbers and distribution of the NYB DPS.

Any New York Bight DPS subadults could originate from the Delaware or Hudson River. We have limited information from which to determine the percentage of NYB DPS fish in the Chesapeake Bay that are likely to originate from the Delaware vs. the Hudson River. Given the sizes of the two populations, the worst case scenario is that all 94 NYB fish that are killed are Delaware River fish (rather than some Delaware River, some Hudson River); however, that appears to be unlikely. Individual assignments of NYB DPS Atlantic sturgeon that have undergone genetic testing indicates that in the oceanic environment, approximately 91% of NYB individuals originate from the Hudson River. This is likely due to the greater number of Hudson River origin Atlantic sturgeon than Delaware River Atlantic sturgeon. Thus, of the 94 NYB Atlantic sturgeon likely to be killed, eight are likely to originate from the Delaware River and 86 from the Hudson River.

Some Delaware River fish have a unique genetic haplotype (the A5 haplotype); however, whether there is any evolutionary significance or fitness benefit provided by this genetic makeup is unknown. Genetic evidence indicates that while spawning continued to occur in the Delaware River and in some cases Delaware River origin fish can be distinguished genetically from Hudson River origin fish, there is free interchange between the two rivers. This relationship is recognized by the listing of the New York Bight DPS as a whole and not separate listings of a theoretical Hudson River DPS and Delaware River DPS. Thus, while we can consider the loss of Delaware River fish on the Delaware River population and the loss of Hudson River fish on the Hudson River population, it is more appropriate, because of the interchange of individuals between these two populations, to consider the effects of these mortalities on the New York Bight DPS as a whole.

While overall we anticipate the death of 94 subadult Atlantic sturgeon from the NYB DPS over the life spand of the project, we do not anticipate that there would be a loss of more than 2 NYB DPS subadult per year. The mortality of 2 subadult Atlantic sturgeon from the NYB DPS each year represents a very small percentage of subadult population (*i.e.*, approximately 0.08% of the population, just considering the minimum estimated number of subadults; the percentage would be much less if the number of YOY, juveniles and adults was considered). While the death of these subadult Atlantic sturgeon will reduce the number of NYB DPS Atlantic sturgeon compared to the number that would have been present absent the proposed actions, it is not likely that this reduction in numbers will change the status of this species as this loss represents a very small percentage of the subadult population and an even smaller percentage of the overall population of the DPS (juveniles, subadults and adults combined). Even when converting these fish to adult equivalents[12] (using a conversion rate of 0.48 considering the adult equivalent), and assuming no growth in the adult population, the annual mortality of 1 subadult represents an extremely small percentage of the adult population (approximately 0.11%).

Because there will be no loss of adults, the reproductive potential of the NYB DPS will not be affected in any way other than through a reduction in numbers of individual future spawners. The loss of 94 subadults over a 50-year period would have the effect of reducing the amount of potential reproduction as any dead NYB DPS Atlantic sturgeon would have no potential for future reproduction. This small reduction in potential future spawners is expected to result in an extremely small reduction in the number of eggs laid or larvae produced in future years and similarly, an extremely small effect on the strength of subsequent year classes. Even considering the potential future spawners that would be produced by the individual that would be killed as a result of the proposed actions, any effect to future year classes is anticipated to be extremely small and would not change the status of this species. The proposed actions will also not affect the spawning grounds within the Hudson River or Delaware River where NYB DPS fish spawn. There will be no effects to spawning adults and therefore no reduction in individual fitness or any future reduction in spawning by these individuals.

The proposed action is not likely to reduce distribution. Although the action will temporarily affect the distribution of individual sturgeon by displacing sturgeon captured with the trawl from

[12] The "adult equivalent" rate converts a number of subadults to adult equivalents (the number of subadults that would, through natural mortality, live to be adults; for Atlantic sturgeon, this is calculated as 0.48).

one area and relocating them to an alternate area and sturgeon may temporarily avoid areas where dredging or disposal activities are underway, all of these changes in distribution will be temporary and limited to movements to relatively nearby areas. We do not anticipate that any impacts to habitat will permanently impact how sturgeon use the action area. Further, the action is not expected to reduce the river by river distribution of Atlantic sturgeon. Additionally, given the small percentage of the species that will be killed as a result of the proposed actions, there is not likely to be any loss of unique genetic haplotypes and no loss of genetic diversity

Based on the information provided above, the death of up to 94 NYB DPS Atlantic sturgeon over the project life considered here, will not appreciably reduce the likelihood of survival of the New York Bight DPS (i.e., it will not decrease the likelihood that the species will continue to persist into the future with sufficient resilience to allow for the potential recovery from endangerment). The actions will not affect NYB DPS Atlantic sturgeon in a way that prevents the species from having a sufficient population, represented by all necessary age classes, genetic heterogeneity, and number of sexually mature individuals producing viable offspring, and it will not result in effects to the environment which would prevent Atlantic sturgeon from completing their entire life cycle, including reproduction, sustenance, and shelter. This is the case because: (1) the death of 94 subadult NYB DPS Atlantic sturgeon represents an extremely small percentage of the poplation of the DPS; (2) the death of 94 subadult NYB DPS Atlantic sturgeon will not change the status or trends of the species as a whole; (3) the loss of 94 subadult NYB DPS Atlantic sturgeon is not likely to have an effect on the levels of genetic heterogeneity in the population; (4) the loss of 94 subadult NYB DPS Atlantic sturgeon is likely to have such a small effect on reproductive output that the loss of these individuals will not change the status or trends of the species; (5) the actions will have only a minor and temporary effect on the distribution of NYB DPS Atlantic sturgeon in the action area and no effect on the distribution of the species throughout its range; and, (6) the actions will have no effect on the ability of NYB DPS Atlantic sturgeon to shelter and only an insignificant effect on individual foraging NYB DPS Atlantic sturgeon.

In certain instances, an action that does not appreciably reduce the likelihood of a species' survival might affect its likelihood of recovery. As explained above, we have determined that the proposed actions will not appreciably reduce the likelihood that the NYB DPS will survive in the wild. Here, we consider whether the action will appreciably reduce the likelihood of recovery from the perspective of ESA Section 4. As noted above, recovery is defined as the improvement in status such that listing under Section 4(a) as "in danger of extinction throughout all or a significant portion of its range" (endangered) or "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range…" (threatened) is no longer appropriate. Thus, we have considered whether the proposed action will appreciably reduce the likelihood that the NYB DPS of Atlantic sturgeon shortnose sturgeon can rebuild to a point where it is no longer in danger of extinction through all or a significant part of its range.

A Recovery Plan for the NYB DPS has not yet been developed. The Recovery Plan will outline the steps necessary for recovery and the demographic criteria which once attained would allow the species to be delisted. We know that in general, to recover, a listed species must have a sustained positive trend of increasing population over time. To allow that to happen for sturgeon, individuals must have access to enough habitat in suitable condition for foraging, resting, migrating, and spawning. Conditions must be suitable for the successful development of early life stages. Mortality rates must be low enough to allow for recruitment to all age classes so that successful spawning can continue over time and over generations. For Atlantic sturgeon, habitat conditions must be suitable both in the natal river and in other rivers and estuaries where foraging by subadults and adults will occur and in the ocean where subadults and adults migrate, overwinter and forage. Habitat connectivity must also be maintained so that individuals can migrate between important habitats without delays that impact their fitness. Here, we consider whether this proposed action will affect the NYB DPS likelihood of recovery.

The proposed actions are not expected to modify, curtail or destroy the range of the species since it will result in an extremely small reduction in the number of NYB DPS Atlantic sturgeon and since it will not affect the overall distribution of NYB DPS Atlantic sturgeon. Any effects to habitat will be insignificant and discountable and will not affect the ability of Atlantic sturgeon to carry out any necessary behaviors or functions. Any impacts to available forage will also be insignificant. The proposed actions will result in a small amount of mortality (no more than two individuals per year) and a subsequent small reduction in future reproductive output. For these reasons, it is not expected to affect the persistence of the NYB DPS of Atlantic sturgeon. These actions will not change the status or trend of the NYB DPS of Atlantic sturgeon. The very small reduction in numbers and future reproduction resulting from the proposed actions will not reduce the likelihood of improvement in the status of the NYB DPS of Atlantic sturgeon. The effects of the proposed actions will not delay the recovery timeline or otherwise decrease the likelihood of recovery. The effects of the proposed actions will also not reduce the likelihood that the status of the species can improve to the point where it is recovered and could be delisted. Therefore, the proposed actions will not appreciably reduce the likelihood that the NYB DPS of Atlantic sturgeon can be brought to the point at which they are no longer listed as endangered. Based on the analysis presented herein, the proposed actions are not likely to appreciably reduce the survival and recovery of this species.

Despite the threats faced by individual NYB DPS Atlantic sturgeon inside and outside of the action area, the proposed actions will not increase the vulnerability of individual sturgeon to these additional threats and exposure to ongoing threats will not increase susceptibility to effects related to the proposed actions. Based on the analysis presented herein, the proposed actions, resulting in the mortality of up to 94 subadult NYB DPS Atlantic sturgeon and the non-lethal capture of up to 350 subadult and adult NYB DPS Atlantic sturgeon over the life span of the project, is not likely to appreciably reduce the survival and recovery of this species.

8.1.4 Chesapeake Bay DPS

The CB DPS is listed as endangered. Individuals originating from the CB DPS are likely to occur in the action area. While Atlantic sturgeon occur in several rivers in the CB DPS, recent spawning has only been documented in the James River and York River systems. Chesapeake Bay DPS origin Atlantic sturgeon are affected by numerous sources of human induced mortality and habitat disturbance (e.g., impingement at water intakes, dredging, bycatch in commercial and recreational fisheries, in-water construction activities, vessel traffic) throughout the riverine and marine portions of their range. No total population estimates are available for any river population or the DPS as a whole. As discussed in section 4.2.2.3, we have estimated a total of 8,811 CB DPS adults and subadults in the ocean (2,203 adults and 6,608 subadults). This estimate is the best available at this time and represents only a percentage of the total CB DPS population as it does not include young of the year or juveniles and does not include all adults and subadults. There is currently not enough information to establish a trend for any life stage or for the DPS as a whole.

Based on our mixed-stock analysis, we expect that 14% of the Atlantic sturgeon in the action area will originate from the CB DPS. Over the 50-year period considered here, we anticipate the mortality of up to 34 subadult and juvenile CB DPS Atlantic sturgeon. These sturgeon could be killed due to entrainment in a hopper or cutterhead dredge, or capture in a mechanical dredge. While it is possible that entrained/entrapped fish could survive, we assume here that these fish will be killed. We also anticipate the non-lethal capture of up to 100 subadult,adult, and juvenile CB DPS Atlantic sturgeon.

Capture during relocation trawling will temporarily prevent captured sturgeon from carrying out normal behaviors such as foraging and migrating. However, these behaviors are expected to resume as soon as the fish are returned to the water. The capture of live Atlantic sturgeon is not likely to reduce the numbers of CB DPS Atlantic sturgeon. Similarly, as the capture of live CB DPS Atlantic sturgeon will not affect the fitness of any individual, no effects to reproduction are anticipated. The capture of live CB DPS Atlantic sturgeon is also not likely to affect the distribution of CB DPS Atlantic sturgeon throughout their range. As any effects to individual CB DPS Atlantic sturgeon captured during relocation trawling and temporarily removed from the water will be minor and temporary there are not anticipated to be any population level impacts.

While overall we anticipate the death of 34 juvenile and subadult Atlantic sturgeon from the CB DPS over the life span of the projecct, we do not anticipate that there would be a loss of more than 1 CB DPS subadult or juvenile in any year. Here, we consider the effect of the loss of a total of these subadults on the reproduction, numbers and distribution of the CB DPS.

The reproductive potential of the CB DPS will not be affected in any way other than through a reduction in numbers of individuals. The loss of a total of 34 juvenile and subadults, with no more than one per year, would have the effect of reducing the amount of potential reproduction as any dead CB DPS Atlantic sturgeon would have no potential for future reproduction. However, this small reduction in potential future spawners is expected to result in an extremely small reduction in the number of eggs laid or larvae produced in future years and similarly, an extremely small effect on the strength of subsequent year classes. Even considering the potential future spawners that would be produced by the individual that would be killed as a result of the proposed actions, any effect to future year classes is anticipated to be extremely small and would not change the status of this species. Reproductive potential of other captured or injured individuals is not expected to be affected in any way. Additionally, we have determined that any impacts to behavior will be minor and temporary and that there will not be any delay or disruption of any normal behavior including spawning; there will also be no reduction in individual fitness or any future reduction in numbers of individuals. The proposed actions will also not affect the spawning grounds within the rivers where CB DPS fish spawn. The actions will also not create any barrier to pre-spawning sturgeon accessing the overwintering sites or the spawning grounds used by CB DPS fish.

Because we do not have a population estimate for the CB DPS, it is difficult to evaluate the effect of the mortality caused by these actions on the species. However, because the proposed action will result in the loss of only one individual per year, with a total of no more than 34, it is unlikely that these deaths will have a detectable effect on the numbers and population trend of the CB DPS.

The proposed action is not likely to reduce distribution. Although the action will temporarily affect the distribution of individual sturgeon by displacing sturgeon captured with the trawl from one area and relocating them to alternate area and sturgeon may temporarily avoid areas where dredging or disposal activities are underway, all of these changes in distribution will be temporary and limited to movements to relatively nearby areas. We do not anticipate that any impacts to habitat will permanently impact how sturgeon use the action area. Further, the action is not expected to reduce the river by river distribution of Atlantic sturgeon. Additionally, given the small percentage of the species that will be killed as a result of the proposed actions, there is not likely to be any loss of unique genetic haplotypes and no loss of genetic diversity

Based on the information provided above, the death of up to 34 CB DPS Atlantic sturgeon over the life span of the project, will not appreciably reduce the likelihood of survival of the CB DPS (i.e., it will not decrease the likelihood that the species will continue to persist into the future with sufficient resilience to allow for the potential recovery from endangerment). The actions will not affect CB DPS Atlantic sturgeon in a way that prevents the species from having a sufficient population, represented by all necessary age classes, genetic heterogeneity, and number of sexually mature individuals producing viable offspring, and it will not result in effects to the environment which would prevent Atlantic sturgeon from completing their entire life cycle, including reproduction, sustenance, and shelter. This is the case because: (1) the death of one juvenile or subadult CB DPS Atlantic sturgeon in any year and the total loss of 34 juvenile and subadults will not change the status or trends of the species as a whole; (2) the death of 34 juvenile and subadule CB DPS Atlatnic sturgeon represents and extremely small percentage of the species; (3) the loss of 34 juvenile and subadult CB DPS Atlantic sturgeon is not likely to have an effect on the levels of genetic heterogeneity in the population; (4) the loss of 34 juvenile and subadult CB DPS Atlantic sturgeon over the life span of the project will not result in the loss of any age class; (5) the actions will have only a minor and temporary effect on the distribution of CB DPS Atlantic sturgeon in the action area and no effect on the distribution of the species throughout its range; and, (6) the actions will have no effect on the ability of CB DPS Atlantic sturgeon to shelter and only an insignificant effect on any foraging CB DPS Atlantic sturgeon.

In certain instances, an action that does not appreciably reduce the likelihood of a species' survival might affect its likelihood of recovery. As explained above, we have determined that the proposed action will not appreciably reduce the likelihood that the CB DPS of Atlantic sturgeon will survive in the wild. Here, we consider whether the action will appreciably reduce the likelihood of recovery from the perspective of ESA Section 4. As noted above, recovery is defined as the improvement in status such that listing under Section 4(a) as "in danger of extinction throughout all or a significant portion of its range" (endangered) or "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range…" (threatened) is no longer appropriate. Thus, we have considered whether the proposed action will appreciably reduce the likelihood that the CB DPS of Atlantic sturgeon shortnose sturgeon can rebuild to a point where it is no longer in danger of extinction through all or a significant part of its range.

A Recovery Plan for the CB DPS has not yet been developed. The Recovery Plan will outline the steps necessary for recovery and the demographic criteria, which once attained would allow the species to be delisted. We know that in general, to recover, a listed species must have a sustained positive trend of increasing population over time. To allow that to happen for sturgeon, individuals must have access to enough habitat in suitable condition for foraging, migrating, resting, and spawning. Conditions must be suitable for the successful development of early life stages. Mortality rates must be low enough to allow for recruitment to all age classes so that successful spawning can continue over time and over generations. For Atlantic sturgeon, habitat conditions must be suitable both in the natal river and in other rivers and estuaries where foraging by subadults and adults will occur and in the ocean where subadults and adults migrate, overwinter and forage. Habitat connectivity must also be maintained so that individuals can migrate between important habitats without delays that impact their fitness. Here, we consider whether this proposed action will affect the CB DPS likelihood of recovery.

The proposed actions are not expected to modify, curtail or destroy the range of the species since it will result in an extremely small reduction in the number of CB DPS Atlantic sturgeon and since it will not affect the overall distribution of CB DPS Atlantic sturgeon. Any effects to habitat will be insignificant and discountable and will not affect the ability of Atlantic sturgeon to carry out any necessary behaviors or functions. Any impacts to available forage will also be insignificant. The proposed actions will result in an extremely small amount of mortality (on average, less than one individual per year) and a subsequent small reduction in future reproductive output. For these reasons, it is not expected to affect the persistence of the CB DPS of Atlantic sturgeon. These actions will not change the status or trend of the CB DPS of Atlantic sturgeon. The very small reduction in numbers and future reproduction resulting from the proposed actions will not reduce the likelihood of improvement in the status of the CB DPS of Atlantic sturgeon. The effects of the proposed actions will not delay the recovery timeline or otherwise decrease the likelihood of recovery. The effects of the proposed actions will also not reduce the likelihood that the status of the species can improve to the point where it is recovered and could be delisted. Therefore, the proposed actions will not appreciably reduce the likelihood that the CB DPS of Atlantic sturgeon can be brought to the point at which they are no longer listed as endangered. Based on the analysis presented herein, the proposed actions, are not likely to appreciably reduce the survival and recovery of this species.

Despite the threats faced by individual CB DPS Atlantic sturgeon inside and outside of the action area, the proposed actions will not increase the vulnerability of individual sturgeon to these additional threats and exposure to ongoing threats will not increase susceptibility to effects related to the proposed actions. We have considered the effects of the proposed actions in light of cumulative effects explained above, including climate change, and have concluded that even in light of the ongoing impacts of these activities and conditions; the conclusions reached above do not change. Based on the analysis presented herein, the proposed actions, resulting in the mortality of 34 juvenile and subadult CB DPS Atlantic sturgeon and the non-lethal capture of up to 100 subadult and adult CB DPS Atlantic sturgeon over the life span of the project, is not likely to appreciably reduce the survival and recovery of this species.

8.1.5 Carolina DPS

We expect that 4% of the Atlantic sturgeon in the action area will originate from the CA DPS. Individuals originating from the CA DPS are likely to occur in the action area. The CA DPS is listed as endangered. The CA DPS consists of Atlantic sturgeon originating from at least five rivers where spawning is still thought to occur. Carolina DPS origin Atlantic sturgeon are affected by numerous sources of human induced mortality and habitat disturbance throughout the riverine and marine portions of their range. There is currently not enough information to establish a trend for any life stage, for any of the spawning populations or for the DPS as a whole. Over the 50-year period considered here, we anticipate the mortality of up to 13 subadult CA DPS Atlantic sturgeon and the non-lethal capture of up to 50 subadult and adult CA DPS Atlantic sturgeon.

Capture during relocation trawling will temporarily prevent captured sturgeon from carrying out normal behaviors such as foraging and migrating. However, these behaviors are expected to resume as soon as the fish are returned to the water. The capture of live Atlantic sturgeon is not likely to reduce the numbers of CA DPS Atlantic sturgeon. Similarly, as the capture of live CA DPS Atlantic sturgeon will not affect the fitness of any individual, no effects to reproduction are anticipated. The capture of live CA DPS Atlantic sturgeon is also not likely to affect the distribution of CA DPS Atlantic sturgeon throughout their range. As any effects to individual CA DPS Atlantic sturgeon captured during relocation trawling and temporarily removed from the water will be minor and temporary there are not anticipated to be any population level impacts.

While overall we anticipate the death of 13 subadult Atlantic sturgeon from the CA DPS over a 50-year period, we do not anticipate that there would be a loss of more than 1 CA DPS subadult in any year. Here, we consider the effect of the loss of a total of these subadults on the reproduction, numbers and distribution of the CA DPS.

The reproductive potential of the CA DPS will not be affected in any way other than through a reduction in numbers of individuals. The loss of a total of 13 subadults, with no more than one per year, would have the effect of reducing the amount of potential reproduction as any dead CA DPS Atlantic sturgeon would have no potential for future reproduction. However, this small reduction in potential future spawners is expected to result in an extremely small reduction in the number of eggs laid or larvae produced in future years and similarly, an extremely small effect on the strength of subsequent year classes. Even considering the potential future spawners that would be produced by the individual that would be killed as a result of the proposed actions, any effect to future year classes is anticipated to be extremely small and would not change the status of this species. Reproductive potential of other captured or injured individuals is not expected to be affected in any way. Additionally, we have determined that any impacts to behavior will be minor and temporary and that there will not be any delay or disruption of any normal behavior including spawning; there will also be no reduction in individual fitness or any future reduction in numbers of individuals. The proposed actions will also not affect the spawning grounds within the rivers where CA DPS fish spawn. The actions will also not create any barrier to pre-spawning sturgeon accessing the overwintering sites or the spawning grounds used by CA DPS fish.

Because we do not have a population estimate for the CA DPS, it is difficult to evaluate the effect of the mortality caused by these actions on the species. However, because the proposed actions will result in the loss of only one individual per year, with a total of no more than 13, it is unlikely that these deaths will have a detectable effect on the numbers and population trend of the CA DPS.

The proposed action is not likely to reduce distribution because while the action will temporarily affect the distribution of individual sturgeon by displacing sturgeon captured with the trawl from one area and relocating them to alternate area and sturgeon may temporarily avoid areas where dredging or disposal activities are underway, all of these changes in distribution will be temporary and limited to movements to relatively nearby areas. We do not anticipate that any impacts to habitat will permanently impact how sturgeon use the action area. Further, the action is not expected to reduce the river by river distribution of Atlantic sturgeon. Additionally, given the small percentage of the species that will be killed as a result of the proposed actions, there is not likely to be any loss of unique genetic haplotypes and no loss of genetic diversity

Based on the information provided above, the death of up to 13 CA DPS Atlantic sturgeon over the life of the project, will not appreciably reduce the likelihood of survival of the CA DPS (*i.e.*, it will not decrease the likelihood that the species will continue to persist into the future with sufficient resilience to allow for the potential recovery from endangerment). The actions will not affect CA DPS Atlantic sturgeon in a way that prevents the species from having a sufficient population, represented by all necessary age classes, genetic heterogeneity, and number of sexually mature individuals producing viable offspring, and it will not result in effects to the environment which would prevent Atlantic sturgeon from completing their entire life cycle, including reproduction, sustenance, and shelter. This is the case because: (1) the death of 13 subadult CA DPS Atlantic sturgeon represents and extremely small percentage of the species; (2) the death of one subadult CA DPS Atlantic sturgeon in any year and the total loss of 13 subadults is likely to have a small effect on reproductive output and will not change the status or trends of the species as a whole; (3) the loss of 13 subadult CA DPS Atlantic sturgeon is not likely to have an effect on the levels of genetic heterogeneity in the population; (4) the actions will have only a minor and temporary effect on the distribution of CA DPS Atlantic sturgeon in the action area and no effect on the distribution of the species throughout its range; and, (5) the actions will have no effect on the ability of CA DPS Atlantic sturgeon to shelter and only an insignificant effect on any foraging CA DPS Atlantic sturgeon.

In certain instances, an action that does not appreciably reduce the likelihood of a species' survival might affect its likelihood of recovery. As explained above, we have determined that the proposed action will not appreciably reduce the likelihood that the CA DPS of Atlantic sturgeon will survive in the wild. Here, we consider whether the action will appreciably reduce the likelihood of recovery from the perspective of ESA Section 4. As noted above, recovery is defined as the improvement in status such that listing under Section 4(a) as "in danger of extinction throughout all or a significant portion of its range" (endangered) or "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range…" (threatened) is no longer appropriate. Thus, we have considered whether the proposed action will appreciably reduce the likelihood that CA DPS of Atlantic sturgeon can rebuild to a point where it is no longer in danger of extinction through all or a significant part of its range.

A Recovery Plan for the CA DPS has not yet been developed. The Recovery Plan will outline the steps necessary for recovery and the demographic criteria, which once attained would allow the species to be delisted. We know that in general, to recover, a listed species must have a sustained positive trend of increasing population over time. To allow that to happen for sturgeon, individuals must have access to enough habitat in suitable condition for foraging, resting and spawning. Conditions must be suitable for the successful development of early life stages. Mortality rates must be low enough to allow for recruitment to all age classes so that successful spawning can continue over time and over generations. There must be enough suitable habitat for spawning, foraging, resting and migrations of all individuals. For Atlantic sturgeon, habitat conditions must be suitable both in the natal river and in other rivers and estuaries where foraging by subadults and adults will occur and in the ocean where subadults and adults migrate, overwinter and forage. Habitat connectivity must also be maintained so that individuals can migrate between important habitats without delays that impact their fitness. Here, we consider whether this proposed action will affect the CA DPS likelihood of recovery.

The proposed actions is not expected to modify, curtail or destroy the range of the species since it will result in an extremely small reduction in the number of CA DPS Atlantic sturgeon and since it will not affect the overall distribution of CA DPS Atlantic sturgeon. Any effects to habitat will be insignificant and discountable and will not affect the ability of Atlantic sturgeon to carry out any necessary behaviors or functions. Any impacts to available forage will also be insignificant. The proposed actions will result in an extremely small amount of mortality (13 individuals over the life of the project) and a subsequent small reduction in future reproductive output. For these reasons, it is not expected to affect the persistence of the CA DPS of Atlantic sturgeon. These actions will not change the status or trend of the CA DPS of Atlantic sturgeon. The very small reduction in numbers and future reproduction resulting from the proposed actions will not reduce the likelihood of improvement in the status of the CA DPS of Atlantic sturgeon. The effects of the proposed actions will not delay the recovery timeline or otherwise decrease the likelihood of recovery. The effects of the proposed actions will also not reduce the likelihood that the status of the species can improve to the point where it is recovered and could be delisted. Therefore, the proposed actions will not appreciably reduce the likelihood that the CA DPS of Atlantic sturgeon can be brought to the point at which they are no longer listed as endangered. Based on the analysis presented herein, the proposed actions, is not likely to appreciably reduce the survival and recovery of this species.

Despite the threats faced by individual CA DPS Atlantic sturgeon inside and outside of the action area, the proposed actions will not increase the vulnerability of individual sturgeon to these additional threats and exposure to ongoing threats will not increase susceptibility to effects related to the proposed actions. We have considered the effects of the proposed actions in light of cumulative effects explained above, including climate change, and have concluded that even in light of the ongoing impacts of these activities and conditions; the conclusions reached above do not change. Based on the analysis presented herein, the proposed actions, resulting in the mortality of 13 subadult CA DPS Atlantic sturgeon and the non-lethal capture of up to 50 subadult and adult CA DPS Atlantic sturgeon over the life of the project, is not likely to appreciably reduce the survival and recovery of this species.

8.1.6 South Atlantic DPS

Individuals originating from the SA DPS are likely to occur in the action area. The SA DPS is listed as endangered. We expect that 20% of the subadult and adult Atlantic sturgeon in the action area will originate from the SA DPS. Most of these fish are expected to be subadults, with few adults from the SA DPS expected to be present. SA DPS origin Atlantic sturgeon are affected by numerous sources of human induced mortality and habitat disturbance (e.g., impingement at water intakes, dredging, bycatch in commercial and recreational fisheries, in-water construction activities, vessel traffic) throughout the riverine and marine portions of their range.

Over the life span of the project, we anticipate the mortality of up to 40 subadult SA DPS Atlantic sturgeon. These sturgeon could be killed due to entrainment in a hopper or cutterhead dredge, or capture in a mechanical dredge. While it is possible that entrained/entrapped fish could survive, we assume here that these fish will be killed. In addition, we expect the non-lethal capture of up to 150 subadult and adult SA DPS Atlantic sturgeon.

Capture during relocation trawling will temporarily prevent captured sturgeon from carrying out normal behaviors such as foraging and migrating. However, these behaviors are expected to resume as soon as the fish are returned to the water. The capture of live Atlantic sturgeon is not likely to reduce the numbers of SA DPS Atlantic sturgeon. Similarly, as the capture of live SA DPS Atlantic sturgeon will not affect the fitness of any individual, no effects to reproduction are anticipated. The capture of live SA DPS Atlantic sturgeon is also not likely to affect the distribution of SA DPS Atlantic sturgeon throughout their range. As any effects to individual SA DPS Atlantic sturgeon captured during relocation trawling and temporarily removed from the water will be minor and temporary there are not anticipated to be any population level impacts.

The number of SA DPS Atlantic sturgeon we expect to be killed (40 subadults) due to the deepening and maintenance of the navigation channels represents an extremely small percentage of the SA DPS. While we anticipate the death of 40 subadult Atlantic sturgeon from the SA DPS over the life span of the project, we do not anticipate that there would be a loss of more than 1 SA DPS subadult in any year. Here, we consider the effect of the loss of a total of these subadults on the reproduction, numbers and distribution of the SA DPS.

No total population estimates are available for any river population or the SA DPS as a whole. As discussed in section 4.2.2.5, we have estimated a total of 14,911 SA DPS adults and subadults in the ocean (3,728 adults and 11,183 subadults). This estimate is the best available at this time and represents only a percentage of the total SA DPS population as it does not include young of the year or juveniles and does not include all adults and subadults. SA origin Atlantic sturgeon are affected by numerous sources of human induced mortality and habitat disturbance throughout the riverine and marine portions of their range. There is currently not enough information to establish a trend for any life stage or for the DPS as a whole.

While the death of 40 SA DPS Atlantic sturgeon over the life of the project will reduce the number of SA DPS Atlantic sturgeon compared to the number that would have been present absent the proposed action, it is not likely that this reduction in numbers will change the status of this species as this loss represents a very small percentage of the SA DPS population of subadults and an even smaller percentage of the DPS as a whole. Even if there were only 11,183 subadults in the SA DPS, the loss of up to 40 would represent less than 0.36% of the subadults in the DPS. The percentage would be much less if we also considered the number of young of the year, juveniles, adults, and other subadults not included in the NEAMAP-based oceanic population estimate.

The reproductive potential of the SA DPS will not be affected in any way other than through a reduction in numbers of individuals. The loss of a total of 40 subadults, with no more than one per year, would have the effect of reducing the amount of potential reproduction as any dead SA DPS Atlantic sturgeon would have no potential for future reproduction. However, this small reduction in potential future spawners is expected to result in an extremely small reduction in the number of eggs laid or larvae produced in future years and similarly, an extremely small effect on the strength of subsequent year classes. Even considering the potential future spawners that would be produced by the individual that would be killed as a result of the proposed actions, any effect to future year classes is anticipated to be extremely small and would not change the status of this species. Reproductive potential of other captured or injured individuals is not expected to be affected in any way. Additionally, we have determined that any impacts to behavior will be minor and temporary and that there will not be any delay or disruption of any normal behavior including spawning; there will also be no reduction in individual fitness or any future reduction in numbers of individuals. The proposed actions will also not affect the spawning grounds within the rivers where SA DPS fish spawn. The actions will also not create any barrier to pre-spawning sturgeon accessing the overwintering sites or the spawning grounds used by SA DPS fish.

The proposed action is not likely to reduce distribution because while the action will temporarily affect the distribution of individual sturgeon by displacing sturgeon captured with the trawl from one area and relocating them to alternate area and sturgeon may temporarily avoid areas where dredging or disposal activities are underway, all of these changes in distribution will be temporary and limited to movements to relatively nearby areas. We do not anticipate that any impacts to habitat will permanently impact how sturgeon use the action area. Further, the action is not expected to reduce the river by river distribution of Atlantic sturgeon. Additionally, given the small percentage of the species that will be killed as a result of the proposed actions, there is not likely to be any loss of unique genetic haplotypes and no loss of genetic diversity

Based on the information provided above, the death of up to 40 SA DPS Atlantic sturgeon over the life of the project, will not appreciably reduce the likelihood of survival of the SA DPS (i.e., it will not decrease the likelihood that the species will continue to persist into the future with sufficient resilience to allow for the potential recovery from endangerment). The actions will not affect SA DPS Atlantic sturgeon in a way that prevents the species from having a sufficient population, represented by all necessary age classes, genetic heterogeneity, and number of sexually mature individuals producing viable offspring, and it will not result in effects to the environment which would prevent Atlantic sturgeon from completing their entire life cycle, including reproduction, sustenance, and shelter. This is the case because: (1) the death of 40 subadult SA DPS of Atlantic sturgeon represents and extremely small percentage of the species; (2) the death of one subadult SA DPS Atlantic sturgeon in any year and the total loss of 40 subadults is likely to have a small effect on reproductive output and will not change the status or trends of the species as a whole; (3) the loss of 40 subadult SA DPS Atlantic sturgeon is not likely to have an effect on the levels of genetic heterogeneity in the population; (4) the actions will have only a minor and temporary effect on the distribution of SA DPS Atlantic sturgeon in the action area and no effect on the distribution of the species throughout its range; and, (5) the actions will have no effect on the ability of SA DPS Atlantic sturgeon to shelter and only an insignificant effect on individual foraging SA DPS Atlantic sturgeon.

In certain instances, an action that does not appreciably reduce the likelihood of a species' survival might affect its likelihood of recovery. As explained above, we have determined that the proposed action will not appreciably reduce the likelihood that the SA DPS of Atlantic sturgeon will survive in the wild. Here, we consider whether the action will appreciably reduce the likelihood of recovery from the perspective of ESA Section 4. As noted above, recovery is defined as the improvement in status such that listing under Section 4(a) as "in danger of extinction throughout all or a significant portion of its range" (endangered) or "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range…" (threatened) is no longer appropriate. Thus, we have considered whether the proposed action will appreciably reduce the likelihood that SA DPS of Atlantic sturgeon can rebuild to a point where it is no longer in danger of extinction through all or a significant part of its range.

A Recovery Plan for the SA DPS has not yet been developed. The Recovery Plan will outline the steps necessary for recovery and the demographic criteria, which once attained would allow the species to be delisted. We know that in general, to recover, a listed species must have a sustained positive trend of increasing population over time. To allow that to happen for sturgeon, individuals must have access to enough habitat in suitable condition for foraging, resting and spawning. Conditions must be suitable for the successful development of early life stages. Mortality rates must be low enough to allow for recruitment to all age classes so that successful spawning can continue over time and over generations. There must be enough suitable habitat for spawning, foraging, resting and migrations of all individuals. For Atlantic sturgeon, habitat conditions must be suitable both in the natal river and in other rivers and estuaries where foraging by subadults and adults will occur and in the ocean where subadults and adults migrate, overwinter and forage. Habitat connectivity must also be maintained so that individuals can migrate between important habitats without delays that impact their fitness. Here, we consider whether this proposed action will affect the SA DPS likelihood of recovery.

The proposed actions are not expected to modify, curtail or destroy the range of the species since it will result in an extremely small reduction in the number of SA DPS Atlantic sturgeon and since it will not affect the overall distribution of SA DPS Atlantic sturgeon. Any effects to habitat will be insignificant and discountable and will not affect the ability of Atlantic sturgeon to carry out any necessary behaviors or functions. Any impacts to available forage will also be insignificant. The proposed actions will result in an extremely small amount of mortality (on average, less than one individual per year) and a subsequent small reduction in future reproductive output. For these reasons, it is not expected to affect the persistence of the SA DPS of Atlantic sturgeon. These actions will not change the status or trend of the SA DPS of Atlantic sturgeon. The very small reduction in numbers and future reproduction resulting from the proposed actions will not reduce the likelihood of improvement in the status of the SA DPS of Atlantic sturgeon. The effects of the proposed actions will not delay the recovery timeline or otherwise decrease the likelihood of recovery. The effects of the proposed actions will also not reduce the likelihood that the status of the species can improve to the point where it is recovered and could be delisted. Therefore, the proposed actions will not appreciably reduce the likelihood that the SA DPS of Atlantic sturgeon can be brought to the point at which they are no longer listed as endangered. Based on the analysis presented herein, the proposed actions, are not likely to appreciably reduce the survival and recovery of this species.

Despite the threats faced by individual SA DPS Atlantic sturgeon inside and outside of the action area, the proposed actions will not increase the vulnerability of individual sturgeon to these additional threats and exposure to ongoing threats will not increase susceptibility to effects related to the proposed actions. We have considered the effects of the proposed actions in light of cumulative effects explained above, including climate change, and have concluded that even in light of the ongoing impacts of these activities and conditions; the conclusions reached above do not change. Based on the analysis presented herein, the proposed actions, resulting in the mortality of 40 subadult SA DPS Atlantic sturgeon and the non-lethal capture of up to 150 subadult and adult SA DPS Atlantic sturgeon over the life of the project, is not likely to appreciably reduce the survival and recovery of this species.

8.2 North Atlantic DPS of Green sea turtles

The North Atlantic DPS of green sea turtles is listed as threatened under the ESA. North Atlantic DPS green sea turtles face numerous threats on land and in the water that affect the survival of all age classes, as is the case with other sea turtle species.

The greatest abundance of green sea turtle nesting in the North Atlantic occurs on beaches in Tortuguero, Costa Rica. Nesting in the area has increased considerably since the 1970s and nest count data from 1999-2003 suggested that 17,402-37,290 females nested there per year Seminoff *et al*. 2015). In 2010, an estimated 180,310 nests were laid at Tortuguero, the highest level of green sea turtle nesting estimated since the start of nesting track surveys in 1971. This equated to somewhere between 30,052 and 64,396 nesters in 2010 (Seminoff *et al*. 2015).

The results of genetic analyses show that green sea turtles in the Atlantic do not contribute to green sea turtle nesting elsewhere in the species’ range (Bowen and Karl 2007). Therefore, increased nesting by green sea turtles in the Atlantic is not expected to affect green sea turtle abundance in other ocean basins in which the species occurs. We recognize that the nest count data available for green sea turtles in the Atlantic clearly indicates increased nesting at many sites. However, we also recognize that the nest count data, including data for green sea turtles in the Atlantic, only provides information on the number of females currently nesting, and is not necessarily a reflection of the number of mature females available to nest or the number of immature females that will reach maturity and nest in the future. Given the late age to maturity for green sea turtles (20 to 50 years) (Balazs 1982; Frazer and Ehrhart 1985; Seminoff 2004), caution is urged regarding the trend for any of the nesting groups since no area has a dataset spanning a full green sea turtle generation (NMFS and USWS 2007b).

In this Opinion, we have considered the potential impacts of the proposed action on green sea turtles. We expect the mortality of 20 green sea turtles and the non-lethal capture of 38 green sea turtles over the life of the project. As there will be very few mortalities to green sea turtles as a result of the proposed action and no effects to the prey base that would cause sea turtles to leave the action area to forage elsewhere, the proposed action is not likely to reduce the numbers of green sea turtles in the action area or the DPS as a whole. Similarly, no effects to reproduction are anticipated. Despite the threats faced by individual green sea turtles inside and outside of the action area, the proposed action will not increase the vulnerability of individual sea turtles to these additional threats and exposure to ongoing threats will not increase susceptibility to effects related to the proposed action. Over the time period of this action considered in this Opinion, sea surface temperatures are expected to rise less than 1°C. It is unknown if that is enough of a change to contribute to shifts in the range, distribution, and recruitment of sea turtles. Theoretically, we expect that as waters in the action area warm, more sea turtles could be present or sea turtles could be present for longer periods of time. We have considered the effects of the proposed action in light of cumulative effects explained above, including climate change, and have concluded that even with the ongoing impacts of these activities and conditions, the conclusions reached above do not change.

As described in the *Status of the Species, Environmental Baseline, and Cumulative Effects* sections above, green sea turtles in the action area continue to be affected by multiple anthropogenic impacts including bycatch in commercial and recreational fisheries, habitat alteration and other factors that result in mortality of individuals at all life stages.

In this Opinion, we determined that green sea turtles could be entrained in a hopper dredge operating in any of the channels or borrow areas considered in this consultation and could also be captured and killed during relocation trawling. We have estimated that the proposed actions are likely to result in the mortality of 20 green sea turtles and the non-lethal capture of 38 green sea turtles over the project life. We determined that all other effects of these actions on this species will be insignificant and discountable. This estimate is based on the best available information, and the following assumptions: (1) that all dredging will occur in the April – November time period when sea turtles are present in the action area; and, (2) that any dredging that could occur with a hopper or cutterhead dredge, occurs with a hopper dredge. The number of mortalities would be less than 20 if some of the dredging occurred between December and March and if more of it was carried out with a cutterhead dredge. No mortalities of green sea turtles are expected whenever a cutterhead dredge is used. No green turtles are present in the action area from December – March, therefore, hopper dredging that occurs during this time of year will not result in the mortality of any green sea turtles.

Based on the proposed dredge schedule and known maintenance and nourishment needs, in a typical year during the initial construction period, approximately 1 million cubic yards of material will be removed from the channels and borrow areas considered here; in the worst case, if all channels and borrow areas were dredged in one year, up to 5 million cubic yards of material could be removed. However, it is extremely unlikely that this would happen given the cost of such an operation and the limited number of dredges that are available for this kind of work. Therefore, in a typical year, we expect that no more than 1 green sea turtle would be entrained. All other effects to greens, including effects to habitat and prey due to dredging and dredge disposal, will be insignificant and discountable.

The lethal removal of 20 green sea turtles from the action area over the life spand of the project would reduce the number of green sea turtles as compared to the number of green sea turtles that would have been present in the absence of the proposed actions (assuming all other variables remained the same). However, this does not necessarily mean that the species will experience reductions in reproduction, numbers or distribution in response to these effects to the extent that survival and recovery would be appreciably reduced.

The lethal removal of one green sea turtle in a particular year and a total of 20 over the life of the project, whether males or females, immature or mature animals, would reduce the number of green sea turtles as compared to the number of green that would have been present in the absence of the proposed actions assuming all other variables remained the same; the loss of one green sea turtles represents a very small percentage of the species as a whole. Even compared to the number of nesting females (17,000-37,000), which represent only a portion of the number of greens worldwide, the mortality of 20 greens represents approximately 0.12% of the nesting population. The loss of these sea turtles would be expected to reduce the reproduction of green sea turtles as compared to the reproductive output of green sea turtles in the absence of the proposed action. As described in the *Status of the Species* section above, we consider the trend for green sea turtles to be stable. However, as explained below, the death of these green sea turtles will not appreciably reduce the likelihood of survival for the species for the following reasons.

While generally speaking, the loss of a small number of individuals from a subpopulation or species may result in an appreciable reduction on the numbers, reproduction and distribution of the species; this is likely to occur only when there are very few individuals in a population, the individuals occur in a very limited geographic range or the species has extremely low levels of genetic diversity. This situation is not likely in the case of greens because: the species is widely geographically distributed, it is not known to have low levels of genetic diversity, there are several thousand individuals in the population and the number of greens is likely to be increasing and at worst is stable. These actions are not likely to reduce distribution of greens because the actions will not impede greens from accessing foraging grounds or cause more than a temporary disruption to other migratory behaviors.

Based on the information provided above, the death of 20 green sea turtles over the life span of the project will not appreciably reduce the likelihood of survival (i.e., it will not decrease the likelihood that the species will continue to persist into the future with sufficient resilience to allow for the potential recovery from endangerment). The actions will not affect green sea turtles in a way that prevents the species from having a sufficient population, represented by all necessary age classes, genetic heterogeneity, and number of sexually mature individuals producing viable offspring and it will not result in effects to the environment which would prevent green sea turtles from completing their entire life cycle, including reproduction, sustenance, and shelter. This is the case because: (1) the species' nesting trend is stable; (2) the death of 20 green sea turtles represents an extremely small percentage of the species as a whole; (3) the loss of 20 green sea turtles will not change the status or trends of the species as a whole; (4) the loss of 20 green sea turtles is not likely to have an effect on the levels of genetic heterogeneity in the population; (5) the loss of 20 green sea turtles is likely to have an undetectable effect on reproductive output of the species as a whole; (6) the actions will have no effect on the distribution of greens in the action area or throughout its range; and (7) the actions will have no effect on the ability of green sea turtles to shelter and only an insignificant effect on individual foraging green sea turtles.

In certain instances, an action may not appreciably reduce the likelihood of a species survival (persistence) but may affect its likelihood of recovery or the rate at which recovery is expected to occur. As explained above, we have determined that the proposed actions will not appreciably reduce the likelihood that green sea turtles will survive in the wild. Here, we consider the potential for the actions to reduce the likelihood of recovery. As noted above, recovery is defined as the improvement in status such that listing is no longer appropriate. Thus, we have considered whether the proposed actions will affect the likelihood that the species can rebuild to a point where listing is no longer appropriate. A Recovery Plan for Green sea turtles was published by NMFS and USFWS in 1991. The plan outlines the steps necessary for recovery and the criteria, which, once met, would ensure recovery. In order to qualify for delisting, green sea turtles must experience sustained population growth, as measured in the number of nests laid per year, over time. Additionally, "priority one" recovery tasks must be achieved and nesting habitat must be protected (through public ownership of nesting beaches) and stage class mortality must be reduced. Here, we consider whether these proposed actions will affect the population size and/or trend in a way that would affect the likelihood of recovery.

The proposed actions will not appreciably reduce the likelihood of survival of green sea turtles. Also, it is not expected to modify, curtail or destroy the range of the species since it will result in an extremely small reduction in the number of green sea turtles in any geographic area and since it will not affect the overall distribution of green sea turtles other than to cause minor temporary adjustments in movements in the action area. As explained above, the proposed actions are likely to result in the mortality of up to 20 green sea turtles, with the loss of no more than one per year; however, the loss of these individuals over this time period is not expected to affect the persistence of green sea turtles or the species trend. The actions will not affect nesting habitat and will have only an extremely small effect on mortality. The effects of the proposed actions will not hasten the extinction timeline or otherwise increase the danger of extinction; further, the actions will not prevent the species from growing in a way that leads to recovery and the actions will not change the rate at which recovery can occur. This is the case because while the actions may result in a small reduction in the number of greens and a small reduction in the amount of potential reproduction due to the loss of 20 individuals, these effects will be undetectable over the long-term and the action is not expected to have long term impacts on the future growth of the population or its potential for recovery. Therefore, based on the analysis presented above, the proposed actions will not appreciably reduce the likelihood that green sea turtles can be brought to the point at which they are no longer listed as endangered or threatened.

In addition to the threats faced by individual green sea turtles inside and outside of the action area, the proposed actions may increase the vulnerability of individual sea turtles to these threats and exposure to ongoing threats may increase susceptibility to effects related to the proposed actions. We have considered the effects of the proposed actions in light of cumulative effects explained above, including climate change, and has concluded that even in light of the ongoing impacts of these activities and conditions; the conclusions reached above do not change. Based on the analysis presented herein, the proposed actions, resulting in the mortality of 20 green sea turtles and nonlethal capture of 38 sea turtles over the life span of the project, is not likely to appreciably reduce the survival and recovery of this species.

8.3 Kemp's ridley sea turtles

Kemp's ridley sea turtles are listed as a single species classified as "endangered" under the ESA. Kemp's ridleys occur in the Atlantic Ocean and Gulf of Mexico. The only major nesting site for Kemp's ridleys is a single stretch of beach near Rancho Nuevo, Tamaulipas, Mexico (Carr 1963; U.S. FWS and NMFS 1992; NMFS and U.S. FWS 2015).

Nest count data provides the best available information on the number of adult females nesting each year. As is the case with the other sea turtles species discussed above, nest count data must be interpreted with caution given that these estimates provide a minimum count of the number of nesting Kemp's ridley sea turtles. In addition, the estimates do not account for adult males or juveniles of either sex. Without information on the proportion of adult males to females, and the age structure of the Kemp's ridley population, nest counts cannot be used to estimate the total population size (Meylan 1982; Ross 1996; Zurita *et al.* 2003; Hawkes *et al.* 2005; letter to J. Lecky, NMFS Office of Protected Resources, from N. Thompson, NMFS Northeast Fisheries Science Center, December 4, 2007). Nevertheless, the nesting data does provide valuable information on the extent of Kemp's ridley nesting and the trend in the number of nests laid. Estimates of the adult female nesting population reached a low of approximately 250-300 in 1985 (U.S. FWS and NMFS 1992; TEWG 2000). From 1985 to 1999, the number of nests observed at Rancho Nuevo and nearby beaches increased at a mean rate of 11.3% per year (TEWG 2000). Recent population abundance for Kemp's ridleys, based on nests and hatchling recruitment, was estimated by Gallaway *et al*. (2013). They estimated the female population size for age-2 and older in 2012 to be 188,713 (SD = ±32,529). Assuming females comprise 76% (sex ratio = 0.76; TEWG 1998, 2000) of the population, they estimated the total population (males and females) of age 2 years and over at 248,307. Based on the number of hatchlings released in 2011 and 2012 (1+ million) and recognizing mortality over the first two years is high, Gallaway *et al.* (2013) thought the total population, including hatchlings younger than 2 years, may exceed 1 million turtles (NMFS and USFWS 2015).

The most recent five-year review of the Kemp's ridley suggests that the population growth rate (as measured by numbers of nests) stopped abruptly after 2009. Given the recent lower nest numbers, the population is not projected to grow at former rates. As a result, the status review team determined that the population is not recovering and cannot meet recovery goals unless survival rates improve (NMFS and U.S. FWS 2015). However, some positive outlooks for the species include recent conservation actions (including the protection of females, nests, and hatchlings on nesting beaches since the 1960s) and the enhancement of survival in marine habitats through the implementation of TEDs in the early 1990s and a decrease in the amount of shrimping off the coast of Tamaulipas and in the Gulf of Mexico (NMFS and U.S. FWS 2015). There is also the recent record nesting year in Mexico and Texas for Kemp's ridleys in 2017.

In this Opinion, we determined that Kemp's ridley sea turtles could be entrained in a hopper dredge operating in any of the channels or borrow areas considered in this consultation and could also be captured and killed during relocation trawling. We have estimated that the proposed actions are likely to result in the mortality of 77 Kemp's ridley sea turtles and the non-lethal capture of 275 Kemp's ridley sea turtles over the project life. We determined that all other effects of the actions on this species will be insignificant and discountable. While this estimate is based on the best available information, and the following assumptions: (1) that all dredging will occur in the April – November time period when sea turtles are present in the action area; and, (2) that any dredging that could occur with a hopper or cutterhead dredge, occurs with a hopper dredge. The number of mortalities would be less than 77 if some of the dredging occurred between December and March and if any of it was carried out with a cutterhead dredge.

The mortality of 77 Kemp's ridleys over the project time period represents a very small percentage of the Kemp's ridleys worldwide. Even taking into account just nesting females, the death of 77 Kemp's ridley represents less than 1% of the population; considering that there is not likely to be more than 1 mortality of a Kemp's ridley per year, the annual impact is less than 0.014% of the population. While the death of 77 Kemp's ridley will reduce the number of Kemp's ridleys compared to the number that would have been present absent the proposed actions, it is not likely that this reduction in numbers will change the status of this species as this loss represents a very small percentage of the population. Reproductive potential of Kemp's ridleys is not expected to be affected in any other way other than through a reduction in numbers of individuals.

A reduction in the number of Kemp's ridleys would have the effect of reducing the amount of potential reproduction as any dead Kemp's ridleys would have no potential for future reproduction. While the species is thought to be female biased, there are likely to be several thousand adult males as well. Given the number of nesting adults, it is unlikely that the loss of 1 Kemp's ridley per year or 77 over the life span of the project would affect the success of nesting in any year. Additionally, this small reduction in potential nesters is expected to result in a small reduction in the number of eggs laid or hatchlings produced in future years and similarly, a very small effect on the strength of subsequent year classes. Even considering the potential future nesters that would be produced by the individuals that would be killed as a result of the proposed actions, any effect to future year classes is anticipated to be very small and would not change the current trend of this species. Additionally, the proposed actions will not affect nesting beaches in any way or disrupt migratory movements in a way that hinders access to nesting beaches or otherwise delays nesting.

The proposed actions are not likely to reduce distribution because the actions will not impede Kemp's ridleys from accessing foraging grounds or cause more than a temporary disruption (due to relocation trawling) to other migratory behaviors. Additionally, given the small percentage of the species that will be killed as a result of the proposed actions, there is not likely to be any loss of unique genetic haplotypes and no loss of genetic diversity. The capture of live Kemp's ridley sea turtles is also not likely to affect the distribution of Kemp's ridley sea turtles in the action area or affect the distribution of sea turtles throughout their range. As any effects to individual live Kemp's ridley sea turtles temporarily removed from the water will be minor and temporary there are not anticipated to be any population level impacts.

While generally speaking, the loss of a small number of individuals from a subpopulation or species may have an appreciable reduction on the numbers, reproduction and distribution of the species this is likely to occur only when there are very few individuals in a population, the individuals occur in a very limited geographic range or the species has extremely low levels of genetic diversity. This situation is not likely in the case of Kemp's ridleys because: the species is widely geographically distributed, it is not known to have low levels of genetic diversity, there are several thousand individuals in the population and the number of Kemp's ridleys is likely to be stable and at worst is growing a slower rates than the pre 2009 growth rate.

Based on the information provided above, the death of 77 Kemp's ridley sea turtles over the life span of the project will not appreciably reduce the likelihood of survival (i.e., it will not decrease the likelihood that the species will continue to persist into the future with sufficient resilience to allow for the potential recovery from endangerment). The actions will not affect Kemp's ridleys in a way that prevents the species from having a sufficient population, represented by all necessary age classes, genetic heterogeneity, and number of sexually mature individuals producing viable offspring and it will not result in effects to the environment which would prevent Kemp's ridleys from completing their entire life cycle, including reproduction, sustenance, and shelter. This is the case because: (1) the death of 77 Kemp's ridleys represents an extremely small percentage of the species as a whole; (2) the death of 77 Kemp's ridleys will not change the status or trends of the species as a whole; (3) the loss of these Kemp's ridleys is not likely to have an effect on the levels of genetic heterogeneity in the population; (4) the loss of these Kemp's ridleys is likely to have such a small effect on reproductive output of the species; (5) the actions will have only a minor and temporary effect on the distribution of Kemp's ridleys in the action area and no effect on the distribution of the species throughout its range; and, (6) the actions will have no effect on the ability of Kemp's ridleys to shelter and only an insignificant effect on individual foraging Kemp's ridleys.

In certain instances, an action may not appreciably reduce the likelihood of a species survival (persistence) but may affect its likelihood of recovery or the rate at which recovery is expected to occur. As explained above, we have determined that the proposed actions will not appreciably reduce the likelihood that Kemp's ridley sea turtles will survive in the wild. Here, we consider the potential for the actions to reduce the likelihood of recovery. As noted above, recovery is defined as the improvement in status such that listing is no longer appropriate. Thus, we have considered whether the proposed actions will affect the likelihood that Kemp's ridleys can rebuild to a point where listing is no longer appropriate. In 2011, NMFS and the USFWS issued a recovery plan for Kemp's ridleys (NMFS and USFWS 2011). The plan includes a list of criteria necessary for recovery. These include:

1. An increase in the population size, specifically in relation to nesting females[13];
2. An increase in the recruitment of hatchlings[14];
3. An increase in the number of nests at the nesting beaches;
4. Preservation and maintenance of nesting beaches (i.e. Rancho Nuevo, Tepehuajes, and Playa Dos); and,

[13]A population of at least 10,000 nesting females in a season (as measured by clutch frequency per female per season) distributed at the primary nesting beaches in Mexico (Rancho Nuevo, Tepehuajes, and Playa Dos) is attained in order for downlisting to occur; an average of 40,000 nesting females per season over a 6-year period by 2024 for delisting to occur

[14] Recruitment of at least 300,000 hatchlings to the marine environment per season at the three primary nesting beaches in Mexico (Rancho Nuevo, Tepehuajes, and Playa Dos).

5. Maintenance of sufficient foraging, migratory, and inter-nesting habitat.

Although Kemp's ridleys have not continued to grow at the pre 2009 rates a trend over the last several years, as explained above, the loss of one Kemp's ridley per year during the proposed actions will not affect the population trend. The number of Kemp's ridleys likely to die because of the proposed actions is an extremely small percentage of the species. This loss will not affect the likelihood that the population will reach the size necessary for recovery or the rate at which recovery will occur. As such, the proposed actions will not affect the likelihood that criteria one, two or three will be achieved or the timeline on which they will be achieved. The action area does not include nesting beaches; therefore, the proposed actions will have no effect on the likelihood that recovery criteria four will be met. All effects to habitat will be insignificant and discountable; therefore, the proposed actions will have no effect on the likelihood that criteria five will be met.

The effects of the proposed actions will not hasten the extinction timeline or otherwise increase the danger of extinction. Further, the actions will not prevent the species from growing in a way that leads to recovery and the actions will not change the rate at which recovery can occur. This is the case because while the actions may result in a small reduction in the number of Kemp's ridleys and a small reduction in the amount of potential reproduction due to the average loss of one individual per year, these effects will be undetectable over the long-term and the actions are not expected to have long term impacts on the future growth of the population or its potential for recovery. Therefore, based on the analysis presented above, the proposed actions will not appreciably reduce the likelihood that Kemp's ridley sea turtles can be brought to the point at which they are no longer listed as endangered or threatened.

In addition to the threats faced by individual Kemp's ridley sea turtles inside and outside of the action area, the proposed actions may increase the vulnerability of individual sea turtles to these threats and exposure to ongoing threats may increase susceptibility to effects related to the proposed actions. We have considered the effects of the proposed actions in light of cumulative effects explained above, including climate change, and have concluded that even in light of the ongoing impacts of these activities and conditions; the conclusions reached above do not change. Based on the analysis presented herein, the proposed actions, resulting in the mortality of one Kemp's ridley sea turtle per year, is not likely to appreciably reduce the survival and recovery of this species.

8.4 Northwest Atlantic DPS of Loggerhead sea turtles

The Northwest Atlantic DPS of loggerhead sea turtles is listed as "threatened" under the ESA. It takes decades for loggerhead sea turtles to reach maturity. Once they have reached maturity, females typically lay multiple clutches of eggs within a season, but do not typically lay eggs every season (NMFS and USFWS 2008). There are many natural and anthropogenic factors affecting the survival of loggerheads prior to their reaching maturity as well as for those adults who have reached maturity. As described in the *Status of the Species, Environmental Baseline* and *Cumulative Effects* sections above, loggerhead sea turtles in the action area continue to be affected by multiple anthropogenic impacts including bycatch in commercial and recreational fisheries, habitat alteration, dredging, power plant intakes and other factors that result in mortality of individuals at all life stages. Negative impacts causing death of various age classes occur both on land and in the water. Many actions have been taken to address known negative impacts to loggerhead sea turtles. However, many remain unaddressed, have not been sufficiently addressed, or have been addressed in some manner but the success of which cannot be quantified.

The SEFSC (2009) estimated the number of adult females in the NWA DPS at 30,000, and if a 1:1 adult sex ratio is assumed, the result is 60,000 adults in this DPS. Based on the reviews of nesting data, as well as information on population abundance and trends, NMFS and USFWS determined in the September 2011 listing rule that the NWA DPS should be listed as threatened. They found that an endangered status for the NWA DPS was not warranted given the large size of the nesting population, the overall nesting population remains widespread, the trend for the nesting population appears to be stabilizing, and substantial conservation efforts are underway to address threats. This stable trend is expected to continue over the time period considered in this Opinion.

In this Opinion, we determined that loggerheads could be entrained in a hopper dredge operating in any of the channels or borrow areas considered in this consultation. We have estimated that, over the life span of the project considered here, the proposed actions are likely to result in the mortality of 785 NWA DPS loggerhead sea turtles and the non-lethal capture of 937 loggerheads. We determined that all other effects of the action on this species will be insignificant and discountable. This estimate is based on the best available information, and the following assumptions: (1) that all dredging will occur in the April – November time period when sea turtles are present in the action area; and, (2) that any dredging that could occur with a hopper or cutterhead dredge, occurs with a hopper dredge. The number of mortalities would be less than 748 if some of the dredging occurred between December and March and if any of it was carried out with a cutterhead dredge. No mortalities of sea turtles are expected whenever a cutter head dredge is used.

As stated above, we expect the lethal entrainment of 785 loggerheads over the time period considered here; with an average mortality rate of approximately 9 loggerheads per year. The lethal removal of up to 785 loggerhead sea turtles from the action area over this time period would be expected to reduce the number of loggerhead sea turtles from the recovery unit of which they originated as compared to the number of loggerheads that would have been present in the absence of the proposed actions (assuming all other variables remained the same). However, this does not mean that these recovery units will experience reductions in reproduction, numbers or distribution in response to these effects to the extent that survival and recovery would be appreciably reduced. The 2008 recovery plan compiled the most recent information on the mean number of loggerhead nests and the approximated counts of nesting females per year for four of the five identified recovery units (i.e., nesting groups). They are: (1) for the NRU, a mean of 5,215 nests per year with approximately 1,272 females nesting per year; (2) for the PFRU, a mean of 64,513 nests per year with approximately 15,735 females nesting per year; (3) for the DTRU, a mean of 246 nests per year with approximately 60 females nesting per year; and (4) for the NGMRU, a mean of 906 nests per year with approximately 221 females nesting per year. For the GCRU, the only estimate available for the number of loggerhead nests per year is from Quintana Roo, Yucatán, Mexico, where a range of 903-2,331 nests per year was estimated from 1987-2001 (NMFS and USFWS 2007a). There are no annual nest estimates available for the

Yucatán since 2001 or for any other regions in the GCRU, nor are there any estimates of the number of nesting females per year for any nesting assemblage in this recovery unit. However, the 2008 recovery plan indicates that the Yucatán nesting aggregation has at least 1,000 nesting females annually. It should be noted here, that the above numbers only include nesting females (i.e., do not include non-nesting adult females, adult males, or juvenile males or females in the population).

It is likely that the loggerhead sea turtles in Chesapeake Bay originate from several of the recovery units. Limited information is available on the genetic makeup of loggerheads in an area as extensive as the action area.

Genetic analysis of samples collected from immature loggerheads captured in pound nets in the Pamlico-Albemarle Estuarine Complex in North Carolina between 1995-1997 indicated that 80% of the juveniles and sub-adults utilizing the foraging habitat originated from the south Florida nesting stock, 12% from the northern nesting stock, 6% from the Yucatán nesting stock, and 2% from other rookeries (including the Florida Panhandle, Dry Tortugas, Brazil, Greece, and Turkey nesting stocks) (Bass *et al*. 2004). In a separate study, genetic analysis of samples collected from loggerheads from Massachusetts to Florida also found that all five western Atlantic loggerhead stocks were represented (Bowen *et al.* 2004). However, earlier studies by Rankin-Baransky *et al*. (2001) and Witzell *et al*. (2002) indicated that only a few nesting stocks were represented along the U.S. Atlantic coast: south Florida (59% and 69% of the loggerheads sampled, respectively), northern (25% and 10%, respectively), and Mexico (16% and 20%, respectively). Most recently, Haas *et al.* (2008) found that 89% of the loggerheads captured in the U.S. Atlantic scallop fishery from 1996-2005 originated from the south Florida nesting stock, 4% were from the Mexican stock, 3% were from the northern (northeast Florida to North Carolina) stock, 1% were from the northwest Florida stock, and 0% were from the Dry Tortugas stock. The remaining 3% of loggerheads sampled were attributed to nesting stocks in Greece. However, a re-analysis of loggerhead genetics data by the Atlantic Loggerhead TEWG has found that it is unlikely that U.S. fishing fleets are interacting with the Mediterranean DPS (Peter Dutton, NMFS, pers. comm.) and that loggerheads from Greek nesting stocks are unlikely to occur in the action area.

The previously defined loggerhead nesting stocks do not share the exact delineations of the recovery units identified in the 2008 recovery plan. However, the PFRU encompasses the south Florida stock, the NRU is roughly equivalent to the northern nesting stock, the northwest Florida stock is included in the NGMRU, the Mexico stock is included in the GCRU, and the DTRU encompasses the Dry Tortugas stock. Based on the genetic analysis presented in Haas *et al.* (2008), which is the most recent and one of the most comprehensive (in terms of the area from which samples were acquired) of the loggerhead genetics studies referenced above, the vast majority of the loggerheads in the action area are likely to originate from the PFRU (90%), with the remainder originating from the NRU (3%), GCRU (5%), NGMRU (1.5%), and DTRU (0.5%). Therefore, we expect that 707 of the loggerheads will be from the PFRU, 24 from the NRU, 39 from the GCRU, 12 from the NGMRU, and 4 from the DTRU. The best available information indicates that the proportion of the interactions from each recovery unit are consistent with the relative sizes of the recovery units, and we conclude, based on the available evidence, that none of the recovery units will be disproportionately impacted by the proposed actions. Thus, genetic heterogeneity should be maintained in the species even in the face of this level of mortality resulting from the proposed actions.

The loss of 707 loggerheads over the life span of the project (approximately 8 per year) represents an extremely small percentage of the number of sea turtles in the PFRU. Even if the total population was limited to 15,735 loggerheads (the number of nesting females), the annual average loss of up to 8 individuals would represent approximately 0.05% of the population. Similarly, the loss of no more than 1 loggerhead from the NRU over 24 years represents an extremely small percentage of the recovery unit. Even if the total population was limited to 1,272 sea turtles (the number of nesting females), the loss of 1 individual in a given year would represent approximately 0.08% of the population. The loss of no more than 1 loggerhead over years from the GCRU, which is expected to support at least 1,000 nesting females, represents less than 0.1% of the population, even just considering the number of adult nesting females, which is only a fraction of the total population. The loss of no more than 1 loggerhead over 12 years from the NGMRU, represents 0.5% of the population, even just considering the apppoximately 221 adult nesting females, which is only a fraction of the total population. The loss of no more than 1 loggerhead over 4 from the DTRU, which is expected to support at least 60 nesting females, represents 1.6% of the population, even just considering the number of adult nesting females, which is only a fraction of the total population and an even smaller percentage of the DPS as a whole.

The loss of such a small percentage of the individuals from any of these recovery units represents an even smaller percentage of the species as a whole. The impact of these losses is even less when considering that these losses will occur over a span of many years. Considering the extremely small percentage of the populations that will be killed, it is unlikely that these deaths will have a detectable effect on the numbers and population trends of loggerheads in these recovery units or the number of loggerheads in the population as a whole.

All of the loggerheads that are expected to be killed will be juveniles. Thus, any effects on reproduction are limited to the loss of these individuals on their year class and the loss of future reproductive potential. Given the number of nesting adults in each of these populations, it is unlikely that the expected loss of loggerheads would affect the success of nesting in any year. Additionally, this small reduction in potential nesters is expected to result in a small reduction in the number of eggs laid or hatchlings produced in future years and similarly, a very small effect on the strength of subsequent year classes. Even considering the potential future nesters that would be produced by the individuals that would be killed as a result of the proposed actions, any effect to future year classes is anticipated to be very small and would not change the stable trend of this species. Additionally, the proposed actions will not affect nesting beaches in any way or disrupt migratory movements in a way that hinders access to nesting beaches or otherwise delays nesting.

The proposed action is not likely to reduce distribution because while the action will temporarily affect the distribution of individual loggerheads by displacing sea turtles captured with the trawl from one area and relocating them to alternate area, changes in distribution will be temporary and limited to movements to relatively nearby areas. We do not anticipate that any impacts to habitat will permanently impact how loggerheads use the action area. Further, the action is not expected to reduce the distribution of loggerhead sea turtles. Additionally, given the small percentage of the species that will be killed as a result of the proposed actions, there is not likely to be any loss of unique genetic haplotypes and no loss of genetic diversity

While generally speaking, the loss of a small number of individuals from a subpopulation or species may have an appreciable reduction on the numbers, reproduction and distribution of the species this is likely to occur only when there are very few individuals in a population, the individuals occur in a very limited geographic range or the species has extremely low levels of genetic diversity. This situation is not likely in the case of loggerheads because: the species is widely geographically distributed, it is not known to have low levels of genetic diversity, there are several thousand individuals in the population and the number of loggerheads is likely to be stable or increasing over the time period considered here.

Based on the information provided above, the death of up to 785 loggerheads over the life span of the project will not appreciably reduce the likelihood of survival (i.e., it will not decrease the likelihood that the species will continue to persist into the future with sufficient resilience to allow for the potential recovery from endangerment). The actions will not affect loggerheads in a way that prevents the species from having a sufficient population, represented by all necessary age classes, genetic heterogeneity, and number of sexually mature individuals producing viable offspring and it will not result in effects to the environment which would prevent loggerheads from completing their entire life cycle, including reproduction, sustenance, and shelter. This is the case because: (1) the death of these loggerheads represents an extremely small percentage of the species as a whole; (2) the death of these loggerheads will not change the status or trends of the species as a whole; (3) the loss of these loggerheads is not likely to have an effect on the levels of genetic heterogeneity in the population; (4) the loss of these loggerheads is likely to have a small effect on reproductive output; (5) the actions will have only a minor and temporary effect on the distribution of loggerheads in the action area and no effect on the distribution of the species throughout its range; and, (6) the actions will have no effect on the ability of loggerheads to shelter and only an insignificant effect on individual foraging loggerheads.

In certain instances, an action may not appreciably reduce the likelihood of a species survival (persistence) but may affect its likelihood of recovery or the rate at which recovery is expected to occur. As explained above, we have determined that the proposed actions will not appreciably reduce the likelihood that loggerhead sea turtles will survive in the wild. Here, we consider the potential for the actions to reduce the likelihood of recovery. As noted above, recovery is defined as the improvement in status such that listing is no longer appropriate. Thus, we have considered whether the proposed actions will affect the likelihood that the NWA DPS of loggerheads can rebuild to a point where listing is no longer appropriate. In 2008, NMFS and the USFWS issued a recovery plan for the Northwest Atlantic population of loggerheads (NMFS and USFWS 2008). The plan includes demographic recovery criteria as well as a list of tasks that must be accomplished. Demographic recovery criteria are included for each of the five recovery units. These criteria focus on sustained increases in the number of nests laid and the number of nesting females in each recovery unit, an increase in abundance on foraging grounds, and ensuring that trends in neritic strandings are not increasing at a rate greater than trends in in-water abundance. The recovery tasks focus on protecting habitats, minimizing and managing predation and disease, and minimizing anthropogenic mortalities.

Loggerheads have a stable trend; as explained above, the loss of 785 loggerheads over the life span of the proposed actions will not affect the population trend. The number of loggerheads likely to die as a result of the proposed actions is an extremely small percentage of any recovery unit or the DPS as a whole. This loss will not affect the likelihood that the population will reach the size necessary for recovery or the rate at which recovery will occur. As such, the proposed actions will not affect the likelihood that the demographic criteria will be achieved or the timeline on which they will be achieved. The action area does not include nesting beaches; all effects to habitat will be insignificant and discountable; therefore, the proposed actions will have no effect on the likelihood that habitat based recovery criteria will be achieved. The proposed actions will also not affect the ability of any of the recovery tasks to be accomplished.

The effects of the proposed actions will not hasten the extinction timeline or otherwise increase the danger of extinction; further, the actions will not prevent the species from growing in a way that leads to recovery and the actions will not change the rate at which recovery can occur.

In summary, the effects of the proposed actions will not hasten the extinction timeline or otherwise increase the danger of extinction; further, the actions will not prevent the species from growing in a way that leads to recovery and the actions will not change the rate at which recovery can occur. This is the case because while the actions may result in a small reduction in the number of loggerheads and a small reduction in the amount of potential reproduction due to the loss of these individuals, these effects will be undetectable over the long-term and the actions are not expected to have long term impacts on the future growth of the population or its potential for recovery. Therefore, based on the analysis presented above, the proposed actions will not appreciably reduce the likelihood that loggerhead sea turtles can be brought to the point at which they are no longer listed as threatened.

In addition to the threats faced by individual loggerhead sea turtles inside and outside of the action area, the proposed actions may increase the vulnerability of individual sea turtles to these threats and exposure to ongoing threats may increase susceptibility to effects related to the proposed actions. We have considered the effects of the proposed actions in light of other threats, including climate change, and have concluded that even in light of the ongoing impacts of these activities and conditions, the conclusions reached above do not change. Based on the analysis presented herein, the proposed actions are not likely to appreciably reduce the survival and recovery of the NWA DPS of loggerhead sea turtles.

9.0 CONCLUSION

After reviewing the best available information on the status of endangered and threatened species under our jurisdiction, the environmental baseline for the action area, the effects of the action, and the cumulative effects, it is our biological opinion that the proposed action may adversely affect but is not likely to jeopardize the continued existence of any DPS of Atlantic sturgeon, Kemp’s ridley or green sea turtles or the Northwest Atlantic DPS of loggerhead sea turtles and is not likely to adversely affect leatherback sea turtles, hawksbill sea turtles, shortnose sturgeon, fin whales, sei whales, blue whale, sperm whales, and North Atlantic right whales. As described above, it is our biological opinion that the proposed action is not likely to adversely affect critical habitat for the Chesapeake Bay DPS of Atlantic sturgeon designated in the action area.

10.0 INCIDENTAL TAKE STATEMENT

Section 9 of the ESA prohibits the take of endangered species of fish and wildlife. "Fish and wildlife" is defined in the ESA "as any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, non-migratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof." 16 U.S.C. 1532(8). "Take" is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. "Harm" is further defined by us to include any act which actually kills or injures fish or wildlife. Such an act may include significant habitat modification or degradation that actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns including breeding, spawning, rearing, migrating, feeding, or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. "Otherwise lawful activities" are those actions that meet all State and Federal legal requirements except for the prohibition against taking in ESA Section 9 (51 FR 19936, June 3, 1986), which would include any state endangered species laws or regulations. Section 9(g) makes it unlawful for any person "to attempt to commit, solicit another to commit, or cause to be committed, any offense defined [in the ESA.]" 16 U.S.C. 1538(g). See also 16 U.S.C. 1532(13)(definition of "person"). Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited under the ESA provided that such taking is in compliance with the terms and conditions of this Incidental Take Statement.

The measures described below are non-discretionary, and must be undertaken by you so that they become binding conditions for the exemption in section 7(o)(2) to apply. You have a continuing duty to regulate the activity covered by this Incidental Take Statement. If you (1) fail to assume and implement the terms and conditions or (2) fail to require any contractors to adhere to the terms and conditions of the Incidental Take Statement through enforceable terms that are added contracts or other documents as appropriate, the protective coverage of section 7(o)(2) may lapse. In order to monitor the impact of incidental take, you must report the progress of the action and its impact on the species to us as specified in the Incidental Take Statement [50 CFR §402.14(i)(3)] (See U.S. Fish and Wildlife Service and National Marine Fisheries Service's Joint Endangered Species Act Section 7 Consultation Handbook (1998) at 4-49).

10.1 Amount or Extent of Incidental Take

The proposed dredging project has the potential to directly affect green, loggerhead and Kemp's ridley sea turtles, and individuals from the New York Bight, Gulf of Maine, Chesapeake Bay, South Atlantic and Carolina DPSs of Atlantic sturgeon which may become entrained in or interact with the dredge. These interactions are likely to cause mortality. This level of take is expected to occur over the duration of the project and is not likely to jeopardize the continued existence of listed species.

This ITS exempts the following incidental take over the life span of the project:

Species	Non-lethal Capture	Mortality
NWA DPS of Loggerhead sea turtle	937	748
Kemp’s ridley sea turtle	275	66
North Atlantic DPS of Green sea turtle	38	18
NYB DPS of Atlantic sturgeon	350	68
SA DPS of Atlantic sturgeon	150	29
CB DPS of Atlantic sturgeon	100	23
GOM DPS of Atlantic sturgeon	100	18
Carolina DPS of Atlantic sturgeon	50	10

The tables below illustrate our expectations of where these takes will occur:

Hopper Dredging

Sea Turtle Takes Incidental to Construction Dredging

Project	**Total Volume**	**Number of Interactions**			
		Total Sea Turtles	**Loggerhead**	**Kemp's ridley**	**Green**
Atlantic Ocean Channel	16,074,736	50	45	4	1
Thimble Shoals Channel	18,069,823	56	50	4	2
Thimble Shoals Channel Meeting Area #1 & #2	7,191,000	22	20	2	0
Sewells Point to Lamberts Bend	12,147,318	38	34	3	1
Anchorage F	1,914,788	6	5	1*	1*
Newport News Channel	4,906,284	15	14	1	0
CIEE	19,500,000	61	55	5	1
		TOTAL:	**223**	**20**	**6**

*1 Kemp's ridley or green

Sea Turtle Take Incidental to Maintenance Dredging over the Project Life Span

Project	Total Volume (cubic yards)	Number of Interactions			
		Total Sea Turtles	Loggerhead	Kemp's ridley	Green
Atlantic Ocean Channel	15,191,112	47	42	4	1
Thimble Shoals Channel	24,331,540	76	68	6	2
Thimble Shoals Channel Meeting Area #1 & #2	3,640,924	11	10	1	0
Sewells Point to Lamberts Bend	42,346,689	132	119	10	3
Anchorage F	7,590,328	24	22	2	0
Newport News Channel	6,676,305	21	19	2	0
		TOTAL:	**280**	**25**	**6**

Project	Total Volume (cubic yards)	Number of Interactions			
		Total Sea Turtles	Loggerhead	Kemp's ridley	green
Baltimore Harbor Entrance Channels	64,500,000	215	194	17	4
Virginia Beach Hurricane Project (TSS and AO borrow areas)	4,400,000	15	13	1*	1*
Sandbridge Shoal	12,500,000	42	38	3	1
		TOTAL:	**245**	**21**	**6**

*1 Kemp's ridley or green

Atlantic Sturgeon Takes Incidental to Construction Dredging

Project	Total Volume	Number of Interactions					
		Total Atlantic sturgeon	**NYB DPS**	**SA DPS**	**CB DPS**	**GOM DPS**	**Carolina DPS**
Atlantic Ocean Channel	16,074,736	8	4	2	1	1	0
Thimble Shoals Channel	18,069,823	9	5	2	1	1	0
Thimble Shoals Meeting Areas #1 & #2	7,191,000	4	2	1	1	0	0
Sewell's Point to Lamberts Bend	12,147,318	6	3	1	1	1	0
Anchorage F	1,914,788	1	1*	1*	1*	1*	1*
Newport News Channel	4,906,284	3	1	1	1*	1*	1*
CIEE	19,500,000	10	5	2	1	1	1
		Total:	**21**	**10**	**7**	**6**	**3**

*Using the 1 fish per 2 mil cy of dredge material method for estimating takes from entrainment in hopper dredges described above, we estimated take of <1 sturgeon, so using our mixed-stock analysis the individual could originate from any one of the these DPSs.

Atlantic Sturgeon Takes Incidental to Maintenance Dredging over the Project Life Span

Project	Total Volume (cubic yards)	Number of Interactions					
		Total Atlantic sturgeon	NYB DPS	SA DPS	CB DPS	GOM DPS	Carolina DPS
Atlantic Ocean Channel	15,191,112	8	4	2	1	1	0
Thimble Shoals Channel	24,331,540	12	6	2	2	1	1
Thimble Shoals Meeting Areas #1 & #2	3,640,924	2	1	1*	1*	1*	1*
Sewell's Point to Lamberts Bend	42,346,689	21	11	4	3	2	1
Anchorage F	7,590,328	4	2	1	1	0	0
Newport News Channel	6,676,305	3	3	1	1*	1*	1*
		Total:	**27**	**11**	**9**	**6**	**4**

*Using the 1 fish per 2 mil cy of dredge material method for estimating takes from entrainment in hopper dredges described above, we estimated take of <1 sturgeon, so using our mixed-stock analysis the individual could originate from any one of the these DPSs.

Atlantic Sturgeon Takes Incidental to Maintenance Dredging over the Project Life Span

Project	Total Volume (cubic yards)	Number of Interactions					
		Total Atlantic sturgeon	NYB DPS	SA DPS	CB DPS	GOM DPS	Carolina DPS
Baltimore Harbor Entrance Channels	64,500,000	32	16	6	5	4	1
Virginia Beach Hurricane Project	4,400,000	2	1	1*	1*	1*	1*
Sandbridge Shoal	12,500,000	6	3	1	1	1*	1*
		Total:	**20**	**8**	**7**	**6**	**3**

*Using the 1 fish per 2 mil cy of dredge material method for estimating takes from entrainment in hopper dredges described above, we estimated take of <1 sturgeon, so using our mixed-stock analysis the individual could originate from any one of the these DPSs.

Cutterhead Dredging

DPS	**Number of Atlantic Sturgeon over Project Period**
New York Bight	25
South Atlantic	10
Chesapeake Bay	8
Gulf of Maine	5
Carolina	2

Mechanical Dredging

One Atlantic sturgeon (any DPS) at CIEE and one (any DPS) in Norfolk Harbor

Relocation Trawling

Species	**Number Captured over project period**	**Number of Mortalities over project period**
Sea Turtles	***1,250***	***50***
Loggerhead	938	37
Kemp's Ridley	275	11
Green	37	2
Atlantic sturgeon	***700 total***	***0***
NYB DPS	≤350	0
SA DPS	≤150	0
CB DPS	≤100	0
GOM DPS	≤100	0
Carolina DPS	≤50	0

When a hopper dredge is used, NMFS-approved endangered species observers are typically required on board the dredge to monitor for the entrainment of sea turtles and sturgeon. The endangered species observer program has been in place on hopper dredges since 1994 and is effective at monitoring take during hopper dredge operations. The use of observers relies on screening placed on the draghead being large enough to allow large sized pieces of biological material to pass through and be caught in cages that retain material that is then inspected by the observer. When UXO screening is in place on the draghead, the size of material that can pass through the dredge is significantly smaller, making detection by an observer extremely unlikely. As described in the *Description of the Action* section, due to safety concerns, you are likely to require UXO screening for dredges working in the following areas: Thimble Shoals Channel; Atlantic Ocean Channel; Cape Henry Channel; Thimble Shoal Surround Borrow Area; and Sandbridge Shoal. It is likely that only internal soft tissue (e.g., intestine) or small, fragmented, external parts (e.g., pieces of shell) of the crushed/impinged animal would be entrained. These parts are extremely unlikely to be detected by ESA observers, and if detected, are likely to be too small to be identifiable as a particular species (pers. comm. Chris Slay, Coast Wise Consulting, Inc.; Trish Bargo, East Coast Observers, Inc.; April 4, 2012).

Additionally, animals may impinge on the UXO screens. Animals impinged on the UXO screen may free or dislodge themselves from the screen once the suction of the dredge has been turned off. Animals that free themselves may suffer severe injuries that may result in death. As the entire interaction occurs underwater, it would not be observed by an on-board observer. As such, in these cases, we have determined that it is not reasonable and appropriate to require endangered species observers on the dredge. As there is no practical way for on board endangered species observers to monitor the impingement/entrainment of listed species during hopper dredging operations with UXO screening in place, we explored several alternatives, for monitoring the interactions as described below.

We considered the following alternatives to (1) monitor take of listed species during hopper dredge operations with UXO screening in place or (2) modify the activity to eliminate the potential for take, thereby eliminating the need to monitor take.

1. Install a camera near the draghead: A camera installed on a draghead would allow users at the surface to observe underwater interactions. However, there are technical challenges to using video, including visibility due to water clarity and available light, improper focus, inappropriate camera angle, and the range of the viewing field. The use of video would require additional resources, and it is unlikely that it would be effective for monitoring this type of dredge work. For these dredges, turbidity levels (i.e., up to 450 mg/l) near the draghead while dredging operations are underway are too high to visually detect any animal impinged on or within the vicinity of the draghead. Therefore, this is not a reasonable and appropriate means to monitor take.

2. Use of sonar/fish finder: Sonar can be used to detect animals within the water and within the vicinity of the dredge. However, studies would need to take place to establish the signatures of sea turtles and sturgeon so that they could be readily identified electronically; this information is not currently available. As such, at this time, sonar alone could not indicate the take of an individual animal or identify the species

potentially being taken. As such, the use of such devices would not be reasonable or appropriate for monitoring take.

3. Placement of observers on the shoreline: Observers placed on the shoreline may be able to detect stranded animals either in the water or on the shore. However, animals may not strand in the direct vicinity of the operation or at a time concurrent with when the operations are active. Typically, injured or deceased animal do not immediately float to the surface and it may take days for the animal to wash up on the shore. While the fortuitous reporting of stranded sea turtles and subsequent necropsy to determine cause of death is a good method to monitor take, it is not a reasonable and appropriate means to observe for take during dredging operations.

4. Relocation trawling: While relocation could reduce the number of sea turtles and Atlantic sturgeon in the area being dredged and therefore minimize take, using relocation trawling would not serve to monitor the number of animals affected during dredging. Additionally, while relocation trawling can minimize the number of animals in the area to be dredged and minimize the potential for take, it does not eliminate the potential for take. Therefore, we could not require relocation trawling and assume that no interactions with the dredge would occur.

5. Time of year restriction: If there was a time of year when no listed species were likely to occur in the action area, dredging could be scheduled to occur in that time of year. This would eliminate the potential for take and negate the need for monitoring. However, because Atlantic sturgeon occur in the action area year round and safety and navigational concerns require dredging year-round, this is not practicable.

6. Use of alternate dredge types: The use of a mechanical dredge would eliminate the potential for sea turtle takes and would greatly reduce the number of Atlantic sturgeon takes; similar benefits could be obtained by requiring the use of a cutterhead dredge. However, you choose the type of dredge based on practical and technological constraints, including water depth, oceanic conditions, vessel traffic and maneuverability, substrate type and distance to the disposal area. Therefore, while use of alternate dredge types may minimize take, it is not practicable to require that mechanical or cutterhead dredges be used in all instances.

Both agencies agreed that none of these methods would serve to eliminate the potential for take or were reasonable or appropriate for monitoring take. In situations where individual takes cannot be observed, a proxy must be considered. This proxy must be rationally connected to the taking and provide a clear standard for when the authorized level of take has been exceeded, thus, triggering reinitiation of consultation. As explained in section 6.0 of this Opinion, the estimated number of sea turtles and Atlantic sturgeon to be adversely affected by this action is related to the volume of material removed via dredge, the time of year and the duration of dredging activity.

Therefore, the volume of material removed from the action area can serve as a proxy for monitoring actual take. As explained in the *Effects of the Action*, one sea turtle is entrained for every 320,000 cy of material dredged; one Atlantic sturgeon is entrained for every 2 mcy. This estimate provides a proxy for monitoring the amount of incidental take during hopper and cutterhead dredging operations when UXO screening is in place and direct observations of impingements cannot occur. This will be used as the primary method of determining whether incidental take has occurred; that is, we will consider that one sea turtle (Kemp's ridley or loggerhead) has been taken for every 320,000 cubic yards material removed during hopper dredging operations involving a UXO screen. Similarly, we will consider that one subadult Atlantic sturgeon has been taken for every 2.0 million cubic yards of material removed during hopper dredging operations involving a UXO screen or each time that a cutterhead dredge is used. In addition, there is a possibility that a sea turtle or an Atlantic sturgeon may remain impinged on UXO screens after the suction has been turned off. These animals can be visually observed, via a lookout, when the draghead is lifted above the water. Animals documented on the draghead by the lookout will be considered a take and this monitoring will be considered as a part of the monitoring of the actual take level. Similarly, if we receive any reports of injured or killed sea turtles or sturgeon in the area (i.e., via the STSSN) and we determine that interaction with the hopper dredge operating during this project was the cause of death, we will consider those animals to be taken by this action.

Once you reach the authorized number of sea turtles or Atlantic sturgeon takes provided in this Incidental Take Statement (either through observed takes or by proxy, or a combination of the two), any additional entrainment of a sea turtle or Atlantic sturgeon will exceed the exempted level of take and reinitiation is required.

If a cutterhead dredge is used without UXO screening, inspectors will visually inspect the area where sand is being placed; this is expected to detect any Atlantic sturgeon entrained in the cutterhead dredge.

10.2 Reasonable and Prudent Measures

The following reasonable and prudent measures (RPMs) are necessary and appropriate to minimize and monitor impacts of incidental take resulting from the proposed actions. In order to be exempt from prohibitions of section 9 of the ESA, you must comply with the following terms and conditions, which implement the reasonable and prudent measures described above and outline required reporting/monitoring requirements. These terms and conditions are non-discretionary.

The reasonable and prudent measures, with their implementing terms and conditions, are designed to minimize and monitor the impact of incidental take that might otherwise result from the proposed actions. Specifically, these RPMs and Terms and Conditions will keep us informed of when and where dredging activities and relocation trawling are taking place and will require you to report any take in a reasonable amount of time, as well as implement measures to monitor for entrainment during dredging and relocation trawling. The third column below explains why each of these RPMs and Terms and Conditions are necessary and appropriate to minimize or monitor the level of incidental take associated with the proposed action and how they represent only a minor change to the action as proposed by you.

RPMs, TCs, and Justifications Applicable to Norfolk Harbor Channels and Craney Island Eastward Improvements Projects

Reasonable and Prudent Measures (RPMs)	**Terms and Conditions (TCs)**	**Justifications for RPMs & TCs**
RPMs Applicable for All Dredge Activities		
1. We must be contacted prior to the commencement of dredging and again upon completion of the dredging activity.	1. You must contact us at incidental.take@noaa.gov 3 days before the commencement of each dredging activity and again within 3 days of the completion of the activity. This correspondence will serve both to alert us of the commencement and cessation of dredging activities and to give us an opportunity to provide you with any updated contact information or reporting forms. At the start of dredging activities, you must include the total volume and area you anticipate removing, the Reach where dredging will occur (with RKMs) and the type of dredge to be used. At the end of the dredging event, you must report to us the actual volume and area removed, location where dredging occurred (with RKMs), and the equipment used (type of dredge).	These RPMs and TCs are necessary and appropriate because they serve to ensure that we are aware of the dates and locations of all dredging that may result in take. This will allow us to monitor the duration and seasonality of dredging activities as well as give us an opportunity to provide you with any updated species information or contact information for our staff. This is only a minor change because it is not expected to result in any delay to the project and will merely involve occasional e-mails between you and our staff.
2. All dredges must be operated in a manner that will reduce	2. If sea turtles are present during dredging or material transport, vessels transiting the area must post a bridge watch, avoid	These RPMs and TCs are necessary and appropriate as they will require that dredge operators use best

the risk of interactions with listed species.	intentional approaches closer than 100 yards when in transit, and reduce speeds to below 4 knots if bridge watch identifies a listed species in the immediate vicinity of the dredge as determined by the line of sight from the vessel bridge.	management practices, including slowing down to 4 knots should listed species be observed, that will minimize the likelihood of take. This represents only a minor change as following these procedures should not increase the cost of the dredging operation or result in any delays of reduction of efficiency of the dredging project.
3. All Atlantic sturgeon captured must have a fin clip taken for genetic analysis. This sample must be transferred to a NMFS-approved laboratory capable of performing the genetic analysis.	3. You must ensure that fin clips are taken (according to the procedure outlined in Appendix D) of any Atlantic sturgeon captured during the project (including relocation trawling) and that the fin clips are sent to a NMFS approved laboratory capable of performing genetic analysis. Fin clips must be taken prior to preservation of other fish parts or whole bodies. To the extent authorized by law, you are responsible for the cost of the genetic analysis.	These RPMs and TCs are necessary and appropriate to ensure the proper handling and documentation of any interactions with listed species as well as requiring that these interactions are reported to us in a timely manner with all of the necessary information. This is essential for monitoring the level of incidental take associated with the proposed action. Genetic analysis must be conducted on Atlantic sturgeon samples to determine the appropriate DPS of origin and accurately record take of this species. These RPMs and TCs represent only a minor change as compliance will not result in delay of the project or decrease in the

		efficiency of the dredging operations.
4. Any dead sturgeon must be transferred to us or to an appropriately permitted research facility identified by us so that a necropsy can be undertaken to attempt to determine the cause of death. Sturgeon should be held in cold storage.	4. In the event of any lethal takes of Atlantic sturgeon, any dead specimens or body parts must be photographed, measured, and preserved (refrigerate or freeze) until disposal procedures are discussed with us. The form included as Appendix F (sturgeon salvage form) must be completed and submitted to us.	These RPMs and TCs are necessary and appropriate to ensure the proper handling and documentation of any interactions with listed species as well as requiring that these interactions are reported to us in a timely manner with all of the necessary information. This is essential for monitoring the level of incidental take associated with the proposed action. These RPMs and TCs represent only a minor change as compliance will not result in any increased cost, delay of the project or decrease in the efficiency of the dredging operations.
5. Any dead sea turtles must be held until proper disposal procedures can be discussed with us. Turtles should be held in cold storage.	5. In the event of any lethal takes of sea turtles, any dead specimens or body parts must be photographed, measured, and preserved (refrigerate or freeze) until disposal procedures are discussed with us. If a decomposed turtle or turtle part is captured or entrained during dredging operations, an incident report must be completed and the specimen must be photographed. Any turtle parts that are considered 'not fresh' (i.e., they were	These RPMs and TCs are necessary and appropriate to ensure the documentation of any interactions with listed species as well as requiring that these interactions are reported to us in a timely manner with all of the necessary information. In some cases, when the cause of death is uncertain, a necropsy may be necessary to aid in the determination of whether or not a mortality should count toward the

	obviously dead prior to the dredge take and you anticipate that they will not be counted towards the ITS) must be frozen and transported to a nearby stranding or rehabilitation facility for review. You must ensure that the observer submits the incident report for the decomposed turtle part, as well as photographs, to us within 24 hours of the take (see Appendix G) and request concurrence that this take should not be attributed to the Incidental Take Statement. We shall have the final say in determining if the take should count towards the Incidental Take Statement.	ITS. This is essential for monitoring the level of incidental take associated with the proposed action. These RPMs and TCs represent only a minor change as compliance will not result in any increased cost, delay of the project or decrease in the efficiency of the dredging operations
7. All sturgeon captures, injuries, or mortalities in the immediate dredging area must be reported to us within 24 hours.	6. In the event of any captures or entrainment of Atlantic sturgeon (lethal or non-lethal), you must follow the Sturgeon Take Standard Operating Procedures (SOPs) found at: www.greateratlanticfisheries.noaa.gov/protected/section7/reporting.html) We shall have the final say in determining if the take should count towards the Incidental Take Statement. 7. If the cause of death is unknown (e.g., dead sturgeon incidentally collected during dredging or relocation trawlng	These RPMs and TCs are necessary and appropriate to ensure the documentation of any interactions with listed species as well as requiring that these interactions are reported to us in a timely manner with all of the necessary information. In some cases, when the cause of death is uncertain, a necropsy may be necessary to aid in the determination of whether or not a mortality should count toward the ITS. This is essential for monitoring the level of incidental take associated with the proposed action. These RPMs and TCs represent

	in the Norfolk Harbor Navigation Channels) NMFS will have the mortality assigned to the incidental take statement if a necropsy determines that the death was due to injuries sustained from an interaction with dredge gear.	only a minor change as compliance will not delay of the project or decrease in the efficiency of the dredging operations.
8. All sea turtle captures, injuries, or mortalities and any sea turtle sightings in the immediate dredging area must be reported to us within 12 hours.	9. In the event of any captures or entrainment of sea turtles (lethal or non-lethal), you must follow the Sea Turtle Take Standard Operating Procedures (SOPs) found at: www.greateratlanticfisheries.noaa.gov/protected/section7/reporting.html) We shall have the final say in determining if the take should count towards the Incidental Take Statement. 10. If the cause of death is unknown, dead sea turtles found along the coastline (e.g., beaches) within two weeks of when dredge operations occurred in the Norfolk Harbor Navigation Channels and in an area where the carcass reasonably could have drifted from dredge operations, will have the mortality assigned to the incidental take statement if a necropsy determines that the death was due to injuries sustained from an interaction with dredge gear (using the process	These RPMs and TCs are necessary and appropriate to ensure the documentation of any interactions with listed species as well as requiring that these interactions are reported to us in a timely manner with all of the necessary information. In some cases, when the cause of death is uncertain, a necropsy may be necessary to aid in the determination of whether or not a mortality should count toward the ITS. This is essential for monitoring the level of incidental take associated with the proposed action. These RPMs and TCs represent only a minor change as compliance will not result in delay of the project or decrease in the efficiency of the dredging operations

	outlined in Appendix L, the November 27, 2017, stranding/dredge take memo). Sea turtle injuries consistent with hopper dredge interactions may include: - crushing wounds/injuries; - partial carapace or body part; - jagged edges to injury; - internal organs completely or partially missing or displaced; - excoriated skin injuries; or - peeling or missing scutes, not related to decomposition, around injury area	
8. You shall implement measures that would reduce the number of sea turtles in the dredging channel so that the possibility of entrainment would be minimized.	11. Sea turtle relocation trawling must be initiated following the take of two (2) turtles (any species) in a 24-hour time period or four (4) turtles within a two month period, or in other circumstances that we deem appropriate. Such circumstances include a large number of cumulative takes during the project (e.g., ½ of the anticipated incidental take level for the channel being dredged reached before the anticiapated amount of volume is removed that dredge cycle), or other evidence indicating that protected species presence is high. All trawls must follow the standard protocol described in Appendix H. The trawling and relocation survey	These RPMs and TCs are necessary and appropriate as they will serve to minimize risk of long term injury and mortality during dredging. This represents only a minor change as following these procedures should not increase the cost of the dredging operation or result in any delays of reduction of efficiency of the dredging project.

	must be initiated within 24 hours of the incidental take or you must suspend dredging operations until such trawling can be initiated. Trawling must continue for at least 5 consecutive days, unless precluded by inclement weather, after which we may continue or suspend the survey. After the trawling survey is completed, we shall immediately discuss with you the results of the trawling to determine if additional measures are needed to relocate turtles found in the channel. 12. The results of each turtle take from the relocation trawl trawling survey must be recorded on the Sea Turtle Relocation Trawling Data Report (Appendix I), or a similar form including the same information. The preliminary results of the trawling survey must be submitted to us immediately after the survey is completed so that we can determine if additional trawling is warranted. A final report summarizing the results of the trawling and any takes of listed species must be submitted to us within 30 working days of completion of the trawling survey.	
RPMs Applicable for All Hopper Dredges		

9. You shall ensure that all hopper dredges are outfitted with state-of-the-art sea turtle deflectors on the draghead and operated in a manner that will reduce the risk of interactions with sea turtles.	13. All hopper dredges must be equipped with the rigid deflector draghead as designed by your Engineering Research and Development Center, formerly the Waterways Experimental Station (WES), or if that is unavailable, a rigid sea turtle deflector attached to the draghead. Deflectors must be checked and/or adjusted by a designated expert prior to a dredge operation to insure proper installation and operation during dredging. The deflector must be checked after every load throughout the dredge operation to ensure that proper installation is maintained. Since operator skill is important to the effectiveness of the WES-developed draghead, operators must be properly instructed in its use. Dredge inspectors must ensure that all measures to protect sea turtles are being followed during dredge operations.	These RPMs and TCs are necessary and appropriate as the use of draghead deflectors is accepted standard practice for hopper dredges operating in places and at times of year when sea turtles are known to be present and has been documented to reduce the risk of entrainment for sea turtles, thereby minimizing the potential for take of these species. This represents only a minor change as all of the hopper dredges likely to be used for this project, including the McFarland which may be used for maintenance dredging, already have draghead deflectors, dredge operators are already familiar with their use, and the use will not affect the efficiency of the dredging operation. Additionally, maintenance of the existing channel is conducted with draghead deflectors in place.
RPMs for when UXO Screening Not In Place on Hopper Dredge		
10. For all hopper dredge operations where UXO screening is not in place, a NMFS-approved observer must be present on board the hopper dredge any time it is operating. You shall ensure	14. You must ensure that all contracted personnel involved in operating hopper dredges receive thorough training on measures of dredge operation that will minimize takes of sea turtles. Training shall include measures discussed in Appendix J.	These RPMs and TCs are necessary and appropriate because they require that you have sufficient observer coverage to ensure the detection of any interactions with listed species. This is necessary for

that dredges are equipped and operated in a manner that provides endangered/threatened species observers with a reasonable opportunity for detecting interactions with listed species and that provides for handling, collection, and resuscitation of turtles injured during project activity. Full cooperation with the endangered/threatened species observer program is essential for compliance with the ITS.	15. When UXO screening is not in place, observer coverage on hopper dredges must be sufficient for 100% monitoring of hopper dredging operations. This monitoring coverage must involve the placement of a NMFS-approved observer on board the dredge for every day that dredging is occurring. You must ensure that your dredge operators and/or any dredge contractor adhere to the attached "Monitoring Specifications for Hopper Dredges" with trained NMFS-approved observers, in accordance with the attached "Observer Protocol" and "Observer Criteria" (Appendix J). No observers can be deployed to the dredge site until you have written confirmation from us that they have met the qualifications to be a "NMFS-approved observer" as outlined in Appendix J. If substitute observers are required during dredging operations, you must ensure that our approval is obtained before those observers are deployed on dredges. 16. You shall require of the dredge operator that, when the observer is off watch, the cage shall not be opened unless it is clogged. You shall also require that if it is necessary to clean the cage when the observer is off	the monitoring of the level of take associated with the proposed action. The inclusion of these RPMs and TCs is only a minor change as you included some level of observer coverage in the original project description and the increase in coverage (i.e., the addition of any months/activities that were not previously subject to observer coverage) will represent only a small increase in the cost of the project and will not result in any delays. These also represent only a minor change as in many instances they serve to clarify the duties of the inspectors or observers.

	watch, any aquatic biological material is left in the cage for the observer to document and clear out when he/she returns on duty. In addition, the observer shall be the only one allowed to clean off the overflow screen.	
11. You shall ensure that all measures are taken to protect any turtles or sturgeon that survive entrainment in a hopper dredge.	17. The procedures for handling live sea turtles must be followed in the unlikely event that a sea turtle survives entrainment in the dredge (Appendix K). Any live sturgeon must be photographed, weighed and measured if possible, and released immediately overboard while the dredge is not operating. You must make arrangements with a NMFS-approved facility that agrees to receive any sea turtles injured during dredging. This arrangement must include procedures for transferring these turtles to the care of the facility. To the extent authorized by law, arrangements must address funding of any necessary care and/or rehabilitation. This plan must be developed in cooperation with our Sea Turtle Stranding Coordinator and is subject to approval by us. This plan must be in place and approved before December 31, 2019.	These RPMs and TCs are necessary and appropriate as they will require that dredge operators use best management practices that will minimize the likelihood of take. This represents only a minor change as following these procedures should not result in any delays of reduction of efficiency of the dredging project. Further, they are necessary and appropriate to ensure that any sea turtles or sturgeon that survive entrainment in a hopper dredge are given the maximum probability of remaining alive and not suffering additional injury or subsequent mortality through inappropriate handling. This represents only a minor change as following these procedures will not result in any delays to the proposed project.
RPMs for UXO Screening on Hopper Dredge		

12. You shall ensure that for all dredge operations where UXO screening is in place, a lookout/bridge watch, knowledgeable in listed species identification, will be present on board the hopper dredge at all times to inspect the draghead each time it is removed from the water.	18. The lookout will inspect the draghead for impinged sea turtles or Atlantic sturgeon each time it is brought up from completing a dredge cycle. Should a sea turtle or Atlantic sturgeon be found impinged on the draghead, the incident should be recorded (Appendix G) and we must contacted within 24 hours.	These RPMs and TCs are necessary and appropriate to ensure the documentation of any interactions with listed species as well as requiring that these interactions are reported to us in a timely manner with all of the necessary information. This is essential for monitoring the level of incidental take associated with the proposed action. These RPMs and TCs represent only a minor change as compliance will not result in any increased cost, delay of the project or decrease in the efficiency of the dredging operations.
RPMs for UXO Screening on Hopper or Cutterhead Dredge		
13. For all hopper or cutterhead dredge operations where UXO screening is in place, you shall provide monthly reports to us regarding the status of dredging and interactions or observations of listed species.	19. You will provide us with reports every 30 days, via email (brian.d.hopper@noaa.gov and incidental.take@noaa.gov) recording the days that dredging occurred, summaries of the bridge watch reports on draghead inspection, the volume of material removed during the previous 30 day period and any observations of listed species.	These RPMs and TCs are necessary and appropriate to ensure the documentation of any interactions with listed species as well as requiring that these interactions are reported to us in a timely manner with all of the necessary information. This is essential for monitoring the level of incidental take associated with the proposed action. These RPMs and TCs represent only a minor change as compliance will not result in any

		increased cost, delay of the project or decrease in the efficiency of the dredging operations.
RPMs for when UXO Screening Not in Place on Cutterhead Dredge		
14. Prior to finalizing contract specifications and initiating contract solicitation processes for new cutterhead dredging projects, you must work with us to develop monitoring plans for cutterhead dredges and/or dredged material disposal sites.	20. You will schedule a meeting with us prior to finalizing contract specifications and initiating contract solicitation processes for new cutterhead dredging projects to determine the scope of a monitoring plan. This monitoring plan must be agreed to by us prior to initiation of contracting processes and must be implemented in all subsequent cutterhead dredge contracts, unless modified by agreement of USACE and NMFS. The goal of the monitoring plan will be to accurately determine entrainment of Atlantic sturgeon in future cutterhead dredging projects when no UXO screening is in place; however, physical screening of dredge material by observers is not required.	These RPMs and TCs are necessary and appropriate as they serve to ensure that sturgeon have a minimized risk of injury or mortality from cutterhead dredging activities when UXO screening is not in place. The Norfolk District has been monitoring/screening inflow from cutterhead dredges at Craney Island since 2012 with no observed Atlantic sturgeon during the period; therefore, we have agreed that this does not need to be included in the monitoring plan. The monitoring plan represents only a minor change as it will not result in any significant delays to dredging or significant modifications of the dredge plan and any increased cost will be very small in comparison to the total costs of the project.or changes to dredging operations.
RPMs for Mechanical Dredging		

15. A lookout/bridge watch must be present to observe all mechanical dredging activities where dredged material will be deposited for any capture of sturgeon.	21. For mechanical dredging you must require a lookout to watch for captured sturgeon in the dredge bucket and to monitor the scow/hopper for sturgeon. Any interactions with sturgeon must be reported to us.	These RPMs and TCs are necessary and appropriate because they require that you have sufficient observer coverage to ensure the detection of any interactions with listed species. This is necessary for the monitoring of the level of take associated with the proposed action. The inclusion of these RPMs and TCs is only a minor change as you included some level of observer coverage in the original project description and the increase in coverage (i.e., the addition of any months/activities that were not previously subject to observer coverage) will represent only a small increase in the cost of the project and will not result in any delays. These also represent only a minor change as in many instances they serve to clarify the duties of the inspectors or observers.
16. You must ensure that all measures are taken to protect any sturgeon that survive capture in the mechanical dredge.	22. Any sturgeon observed in the dredge scow/hopper during mechanical dredging operations must be removed with a net and, if alive, returned to the water away from the dredge site.	These RPMs and TCs are necessary and appropriate to ensure that any sturgeon that survive capture in a mechanical dredge are given the maximum probability of remaining alive and not suffering additional injury or subsequent mortality through inappropriate handling. This represents only a minor change

		as following these procedures will not result in an increase in cost or any delays to the proposed project.

RPMs, TCs, and Justifications Applicable to Baltimore Harbor Entrance Channels, York River Entrance Channel, Sandbridge Shoal, and Virginia Beach Nourishment Projects

Reasonable and Prudent Measures (RPMs)	**Terms and Conditions (TCs)**	**Justifications for RPMs & TCs**
RPMs Applicable for All Dredge Activities		
1. NMFS must be contacted prior to the commencement of dredging and again upon completion of the dredging activity.	1. To implement RPM #1, the USACE must contact NMFS (Brian D. Hopper: by email (brian.d.hopper@noaa.gov) or phone (410) 573-4592) within 3 days of the commencement of each dredging cycle and again within 3 days of the completion of dredging activity. This correspondence will serve both to alert NMFS of the commencement and cessation of dredging activities and to give NMFS an opportunity to provide USACE with any updated contact information or reporting forms.	The reasonable and prudent measures, with their implementing terms and conditions, are designed to minimize and monitor the impact of incidental take that might otherwise result from the proposed action. Specifically, these RPMs and Terms and Conditions will keep us informed of when and where dredging activities are taking place and will require USACE to report any take in a reasonable amount of time, as well as implement measures to monitor for entrainment during dredging. USACE has reviewed the RPMs and Terms and Conditions outlined above and has agreed to implement all of these measures as described herein and in the referenced Appendices. We have determined that all of these RPMs and Terms and Conditions are necessary and appropriate to minimize or monitor the level of incidental take associated with the
2. All dredges must be operated in a manner that will reduce the risk of interactions with sea turtles.	2. To implement RPM #2, if sea turtles are present during dredging or material transport, vessels transiting the area must post a bridge watch, avoid intentional approaches closer than 100 yards when in transit, and reduce speeds to below 4 knots if bridge watch identifies a listed species in the immediate vicinity of the dredge.	

3. All (alive or dead) Atlantic sturgeon must have a fin clip taken for genetic analysis. This sample must be transferred to NMFS.	3. To implement RPM #3, the USACE must ensure that fin clips are taken (according to the procedure outlined in Appendix D) of any sturgeon captured during the project and that the fin clips are sent to NMFS for genetic analysis. Fin clips must be taken prior to preservation of other fish parts or whole bodies.	proposed action and represent only a minor change to the action as proposed by the USACE.
4. Any dead sturgeon must be transferred to us or to an appropriately permitted research facility identified by us so that a necropsy can be undertaken to attempt to determine the cause of death. Sturgeon should be held in cold storage.	4. To implement RPM #4, in the event of any lethal takes of Atlantic sturgeon, any dead specimens or body parts must be photographed, measured, and preserved (refrigerate or freeze) until disposal procedures are discussed with NMFS. The form included as Appendix F (sturgeon salvage form) must be completed and submitted to NMFS.	
5. Any dead sea turtles must be held until proper disposal procedures can be discussed with us. Turtles should be held in cold storage.	5. To implement RPM #5, in the event of any lethal takes of sea turtles, any dead specimens or body parts must be photographed, measured, and preserved (refrigerate or freeze) until disposal procedures are discussed with NMFS. 6. To implement RPM #5, if a decomposed turtle or turtle part is entrained during dredging operations, an incident report must be completed and the specimen must be photographed. Any turtle parts that are	

	considered 'not fresh' (i.e., they were obviously dead prior to the dredge take and USACE anticipates that they will not be counted towards the ITS) must be frozen and transported to a nearby stranding or rehabilitation facility for review. USACE must ensure that the observer submits the incident report for the decomposed turtle part, as well as photographs, to NMFS within 24 hours of the take (see Appendix G) and request concurrence that this take should not be attributed to the Incidental Take Statement. NMFS shall have the final say in determining if the take should count towards the Incidental Take Statement.	
6. All sturgeon and turtle captures, injuries or mortalities associated with any dredging activity and any sturgeon and sea turtle sightings in the action area must be reported to NMFS within 24 hours.	7. To implement RPM #6, the USACE must contact NMFS within 24 hours of any interactions with sturgeon or sea turtles, including non-lethal and lethal takes. NMFS will provide updated contact information when alerted of the start of dredging activity. Until alerted otherwise, the USACE should provide reports by e-mail (brian.d.hopper@noaa.gov) or phone (410) 573-4592 or the Section 7 Coordinator by phone (978) 281-9306 or fax 978-281-9394). Take information should also be reported	

	by e-mail to: incidental.take@noaa.gov. 8. To implement RPM #6, the USACE must photograph and measure any sturgeon or sea turtles observed during project operations (including whole sturgeon or sea turtles or body parts observed at the disposal location or on board the dredge, hopper or scow) and the corresponding form (Appendix G) must be completed and submitted to NMFS within 24 hours by fax (978-281-9394) or e-mail (incidental.take@noaa.gov). 9. To implement RPM #6, any time that take is greater than the estimated level of take for a particular project (e.g. annual estimate for a channel or borrow area based on the volume of material removed), USACE must immediately contact NMFS to review the situation. At that time, USACE will discuss with NMFS whether any new management measures could be implemented to prevent the total incidental take level from being exceeded and will work with NMFS to determine whether the level of take during that year represents new information revealing	

	effects of the action that may not have been previously considered. 10. To implement RPM #6, the USACE must submit a final report summarizing the results of dredging and any takes of listed species to NMFS within 30 working days of the completion of each dredging contract (by mail to the attention of the Section 7 Coordinator, NMFS Protected Resources Division, 55 Great Republic Drive, Gloucester, MA 01930).	
7. You shall implement measures that would reduce the number of sea turtles in the dredging channel so that the possibility of entrainment would be minimized.	11. To implement RPM#7, sea turtle relocation trawling must be initiated following the take of two (2) turtles (any species) in a 24-hour time period or four (4) turtles within a two month period, or in other circumstances that NMFS deems appropriate. Such circumstances include a large number of cumulative takes during the project (e.g., ½ of the anticipated incidental take level for the channel being dredged based on volume to be removed that dredge cycle), or other evidence indicating that protected species presence is high. All trawls must follow the standard protocol described in Appendix H. The trawling and	

	relocation survey must be initiated within 24 hours of the incidental take or the ACOE must suspend dredging operations until such trawling can be initiated. Trawling must continue for at least 5 consecutive days, unless precluded by inclement weather, after which NMFS may continue or suspend the survey. After the trawling survey is completed, the NMFS and ACOE shall immediately discuss the results of the trawling to determine if additional measures are needed to relocate turtles found in the channel. 12. To implement RPM #7, the results of each turtle take from the relocation trawl trawling survey must be recorded on the Sea Turtle Relocation Trawling Data Report (Appendix I), or a similar form including the same information. The preliminary results of the trawling survey must be submitted to NMFS immediately after the survey is completed so that NMFS can determine if additional trawling is warranted. A final report summarizing the results of the trawling and any takes of listed species must be submitted to NMFS	

	within 30 working days of completion of the trawling survey.	
RPMs Applicable for All Hopper Dredges		
8. The USACE shall ensure that all hopper dredges are outfitted with state-of-the-art sea turtle deflectors on the draghead and operated in a manner that will reduce the risk of interactions with sea turtles.	13. To implement RPM #8, all hopper dredges must be equipped with the rigid deflector draghead as designed by the USACE Engineering Research and Development Center, formerly the Waterways Experimental Station (WES), or if that is unavailable, a rigid sea turtle deflector attached to the draghead. Deflectors must be checked and/or adjusted by a designated expert prior to a dredge operation to insure proper installment and operation during dredging. The deflector must be checked after every load throughout the dredge operation to ensure that proper installation is maintained. Since operator skill is important to the effectiveness of the WES-developed draghead, operators must be properly instructed in its use. Dredge inspectors must ensure that all measures to protect sea turtles are being followed during dredge operations.	
RPMs for when UXO Screening Not In Place on Hopper Dredge		

9. For all hopper dredge operations where UXO screening is not in place, a NMFS-approved observer must be present on board the hopper dredge any time it is operating. The USACE shall ensure that dredges are equipped and operated in a manner that provides endangered/threatened species observers with a reasonable opportunity for detecting interactions with listed species and that provides for handling, collection, and resuscitation of turtles injured during project activity. Full cooperation with the endangered/threatened species observer program is essential for compliance with the ITS.	14. To implement RPM #9, the USACE must ensure that all contracted personnel involved in operating hopper dredges receive thorough training on measures of dredge operation that will minimize takes of sea turtles. Training shall include measures discussed in Appendix J. 15. To implement RPM #9, when UXO screening is not in place, observer coverage on hopper dredges must be sufficient for 100% monitoring of hopper dredging operations. This monitoring coverage must involve the placement of a NMFS-approved observer on board the dredge for every day that dredging is occurring. The observer must work a shift schedule appropriate to allow for the observation of at least 50% of the dredge loads (e.g., 12 hours on, 12 hours off). The USACE must ensure that USACE dredge operators and/or any dredge contractor adhere to the attached "Monitoring Specifications for Hopper Dredges" with trained NMFS-approved observers, in accordance with the attached "Observer Protocol" and "Observer Criteria" (Appendix J). No observers can be deployed to the dredge site until USACE has written	

	confirmation from NMFS that they have met the qualifications to be a "NMFS-approved observer" as outlined in Appendix J. If substitute observers are required during dredging operations, USACE must ensure that NMFS approval is obtained before those observers are deployed on dredges. 16. To implement RPM #9, the USACE shall require of the dredge operator that, when the observer is off watch, the cage shall not be opened unless it is clogged. The USACE shall also require that if it is necessary to clean the cage when the observer is off watch, any aquatic biological material is left in the cage for the observer to document and clear out when they return on duty. In addition, the observer shall be the only one allowed to clean off the overflow screen.	
10. The USACE shall ensure that all measures are taken to protect any turtles or sturgeon that survive entrainment in a hopper dredge.	17. To implement RPM #10, the procedures for handling live sea turtles must be followed in the unlikely event that a sea turtle survives entrainment in the dredge (Appendix K). Any live sturgeon must be photographed, weighed and measured if possible, and released	

	immediately overboard while the dredge is not operating.	
RPMs for UXO Screening on Hopper Dredge		
11. The USACE shall ensure that for all dredge operations where UXO screening is in place, a lookout/bridge watch, knowledgeable in listed species identification, will be present on board the hopper dredge at all times to inspect the draghead each time it is removed from the water.	18. To implement RPM #11, the lookout will inspect the draghead for impinged sea turtles or Atlantic sturgeon each time it is brought up from completing a dredge cycle. Should a sea turtle or Atlantic sturgeon be found impinged on the draghead, the incident should be recorded (Appendix G) and NMFS contacted.	
RPMs for UXO Screening on Hopper or Cutterhead Dredge		
12. For all hopper or cutterhead dredge operations where UXO screening is in place, USACE shall provide monthly reports to NMFS regarding the status of dredging and interactions or observations of listed species.	19. To implement RPM #12, USACE will provide us with reports every 30 days, via email (brian.d.hopper@noaa.gov and incidental.take@noaa.gov) recording the days that dredging occurred, summaries of the bridge watch reports on draghead inspection, the volume of material removed during the previous 30 day period and any observations of listed species.	

RPMs for when UXO Screening Not in Place on Cutterhead Dredge		
13. Prior to finalizing contract specifications and initiating contract solicitation processes for new cutterhead dredging projects scheduled for calendar year 2013, the USACE must work with NMFS to develop monitoring plans for cutterhead dredges and/or dredged material disposal sites.	20. To implement RPM #13, USACE will schedule a meeting with NMFS prior to finalizing contract specifications and initiating contract solicitation processes for new cutterhead dredging projects to determine the scope of a monitoring plan. This monitoring plan must be agreed to by us prior to initiation of contracting processes and must be implemented in all subsequent cutterhead dredge contracts, unless modified by agreement of USACE and NMFS. The goal of the monitoring plan will be to accurately determine entrainment of Atlantic sturgeon in future cutterhead dredging projects when no UXO screening is in place.	
RPMs for Mechanical Dredging		
14. A lookout/bridge watch must be present to observe all mechanical dredging activities where dredged material will be deposited for any capture of sturgeon.	21. To implement RPM#14, for mechanical dredging USACE must require a lookout to watch for captured sturgeon in the dredge bucket and to monitor the scow/hopper for sturgeon. Any interactions with sturgeon must be reported to us.	
15. The USACE must ensure that all measures are taken	22. To implement RPM #15, any sturgeon observed in the dredge	

to protect any sturgeon that survive capture in the mechanical dredge.	scow/hopper during mechanical dredging operations must be removed with a net and, if alive, returned to the water away from the dredge site.	

11.0 CONSERVATION RECOMMENDATIONS

In addition to Section 7(a)(2), which requires agencies to ensure that all projects will not jeopardize the continued existence of listed species, Section 7(a)(1) of the ESA places a responsibility on all federal agencies to "utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species." Conservation Recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information. As such, we recommend that you consider the following Conservation Recommendations:

(1) To the extent practicable, you should avoid dredging in the spring (March-May) and fall (September – November) when listed species are most likely to occur in the action area.

(2) You should conduct studies in conjunction with cutterhead dredging where disposal occurs on the beach to assess the potential for improved screening to: (1) establish the type and size of biological material that may be entrained in the cutterhead dredge, and (2) verify that monitoring the disposal site without screening is providing an accurate assessment of entrained material.

(3) You should support studies to determine the effectiveness of using a sea turtle deflector to minimize the potential entrainment of sturgeon during hopper dredging.

(4) You should explore alternative means for monitoring for interactions with listed species when UXO screening is in place including exploring the potential for video or other electronic monitoring.

(5) You should conduct studies using a VEMCO Positioning System (VPS) to determine what life stages of sturgeon occur in the navigation channels and the extent to which sturgeon use the navigation channels throughout the year.

12.0 REINITIATION OF CONSULTATION

This concludes formal consultation on the Norfolk Harbor Navigation Improvements and Craney Island Eastward Expansion projects. As provided in 50 CFR §402.16, reinitiation of formal consultation is required where discretionary federal agency involvement or control over the action has been retained (or is authorized by law) and if: (1) the amount or extent of taking specified in the incidental take statement is exceeded; (2) new information reveals effects of the action that may not have been previously considered; (3) the identified action is subsequently modified in a manner that causes an effect to listed species; or (4) a new species is listed or critical habitat designated that may be affected by the identified action. In instances where the amount or extent of incidental take is exceeded, the federal agency must reinitiate Section 7 consultation immediately. Consultation may be reinitiated by meeting any one or more of the above-identified triggers.

This is a batched biological opinion because it involves multiple projects and multiple action agencies. Whether one project, multiple projects or all projects meet a reinitiation trigger, any future consultations will be completed with the production of one consultation document (i.e., a batch biological opinion). For example, as in this case, if you or another action agency proposes new construction in a navigation channel (trigger #3), in addition to addressing the impacts from the new activity, the new batch biological opinion would provide updates on all of the remaining projects. Our batch biological opinion will include a new analysis for the reinitiated projects as well as any necessary updates to the other projects and will replace the prior biological opinion. In addition, a batch biological opinion may include new reasonable and prudent measures (RPMs) and terms and conditions (TCs), which will only apply to the projects being reinitiated, except by written agreement. Alternatively, it may be necessary to reinitiate consultation with all action agencies on all activities, in which case new RPMs and TCs for all projects may be warranted. For example, if a new species is listed that may be affected by dredging activities throughout the action area, it would be necessary for all action agencies to coordinate and reinitiate consultation on all of the activities. The production of one biological opinion, as described above, will be the default whenever one project, multiple projects, or all projects covered under this batched biological opinion meet a reinitiation trigger. However, a circumstance may arise where NMFS and the action agencies agree to carry out a standalone consultation on an individual project covered under this batch biological opinion, which would result in a separate biological opinion for that project. Under such circumstances, this batched biological opinion will need to be revised, updated, or replaced to account for the removal of that project from the impact analysis contained herein.

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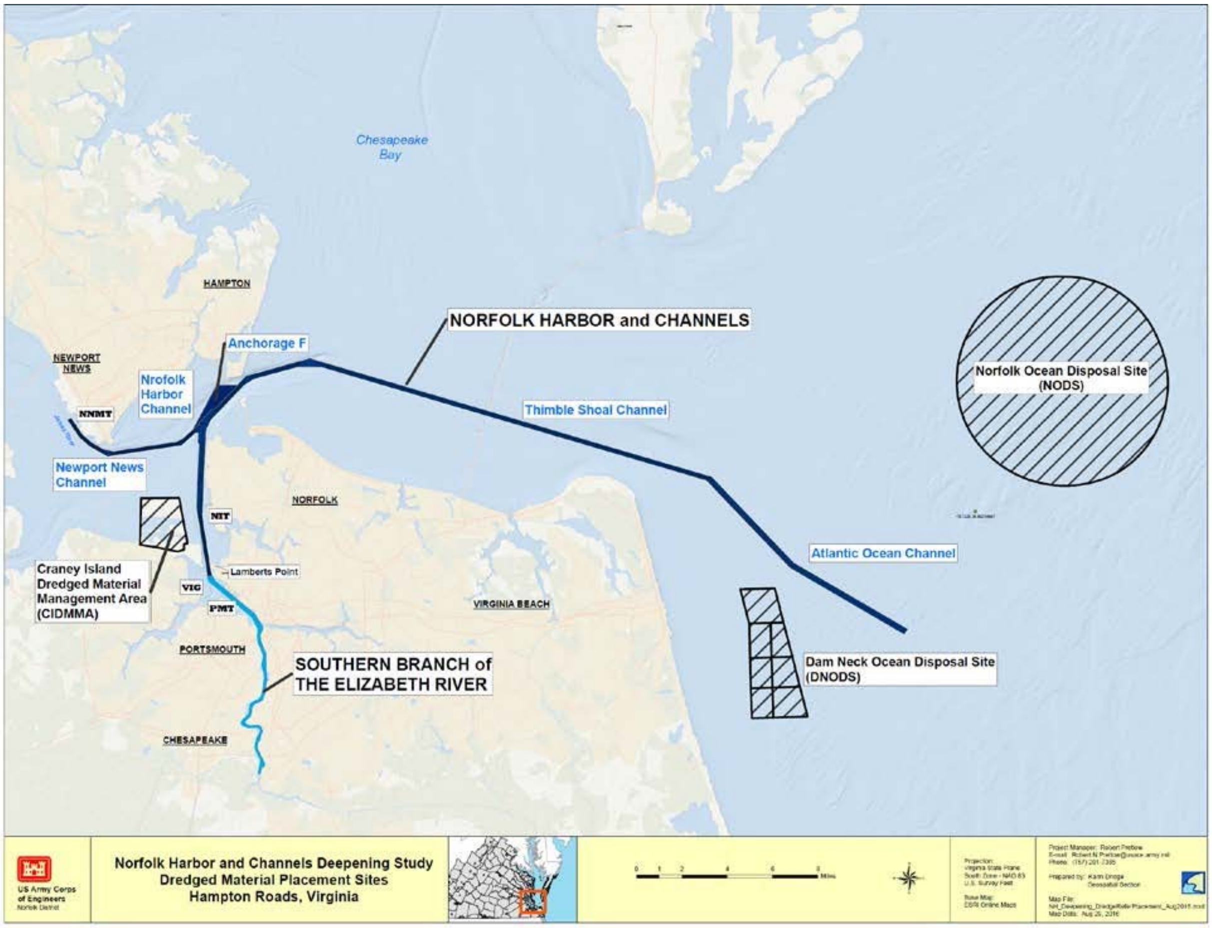
APPENDIX A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NEWPORT NEWS
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Craney Island Dredged Material Management Area (CIDMMA)
Lamberts Point
VIG
PMT
VIRGINIA BEACH
Atlantic Ocean Channel
PORTSMOUTH
SOUTHERN BRANCH of THE ELIZABETH RIVER
Dam Neck Ocean Disposal Site (DNODS)
CHESAPEAKE
US Army Corps of Engineers
Norfolk District
Norfolk Harbor and Channels Deepening Study
Dredged Material Placement Sites
Hampton Roads, Virginia
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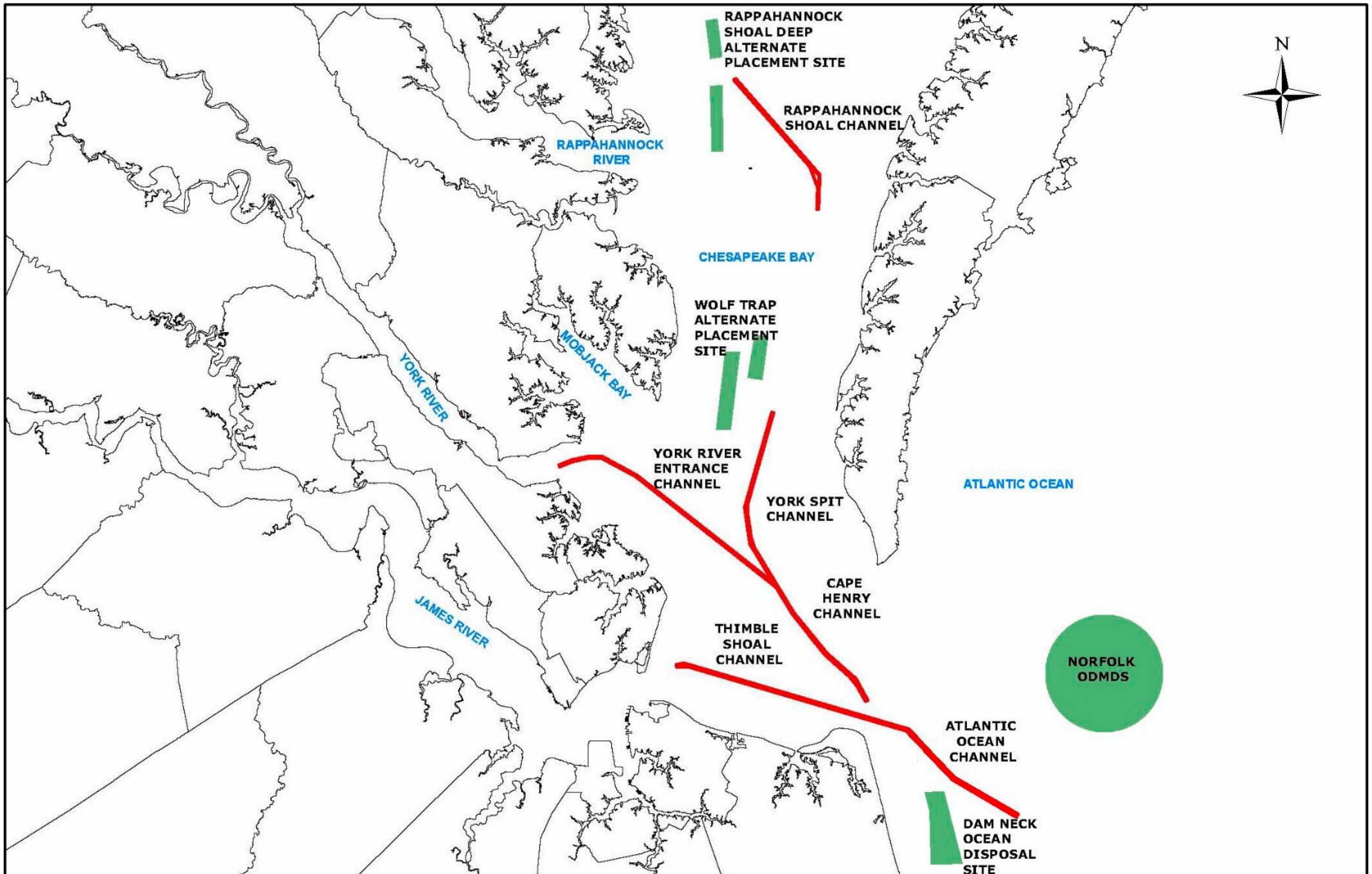


US Army Corps of Engineers
Norfolk District

LOWER CHESAPEAKE BAY FEDERAL NAVIGATION PROJECT CHANNELS AND DREDGED MATERIAL PLACEMENT SITES: ATLANTIC OCEAN CHANNEL, CAPE HENRY CHANNEL, RAPPHANNOCK SHOAL CHANNEL, THIMBLE SHOAL CHANNEL, YORK RIVER ENTRANCE CHANNEL, YORK SPIT CHANNEL AND DAM NECK OCEAN DISPOSAL SITE, NORFOLK OCEAN DREDGED MATERIAL DISPOSAL SITE, WOLF TRAP ALTERNATE PLACEMENT SITE, AND RAPPAHANNOCK SHOAL DEEP ALTERNATE PLACEMENT SITE

Feet
0 47,500 95,000
1 inch = 53,750 feet

Legend
Lower Chesapeake Bay Channels
Dredged Material Placement Sites

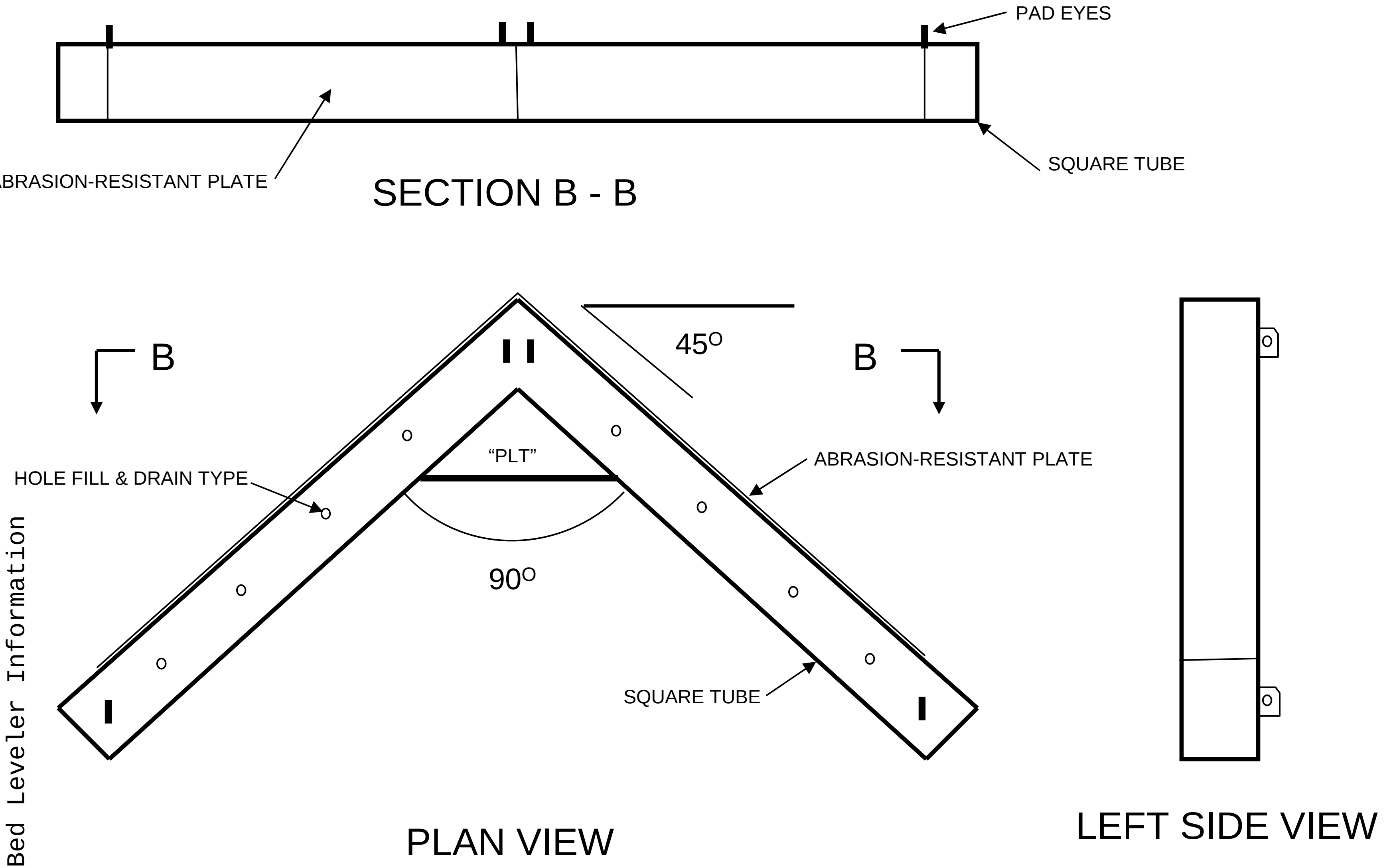
Projection:
Virginia State Plane
South Zone - NAD 83
U.S. Survey Feet

Data Source: Operations Branch GIS Data

Project Manager: Keith Lockwood
E-mail: keith.b.lockwood@usace.army.mil
Phone: (757) 201-7004

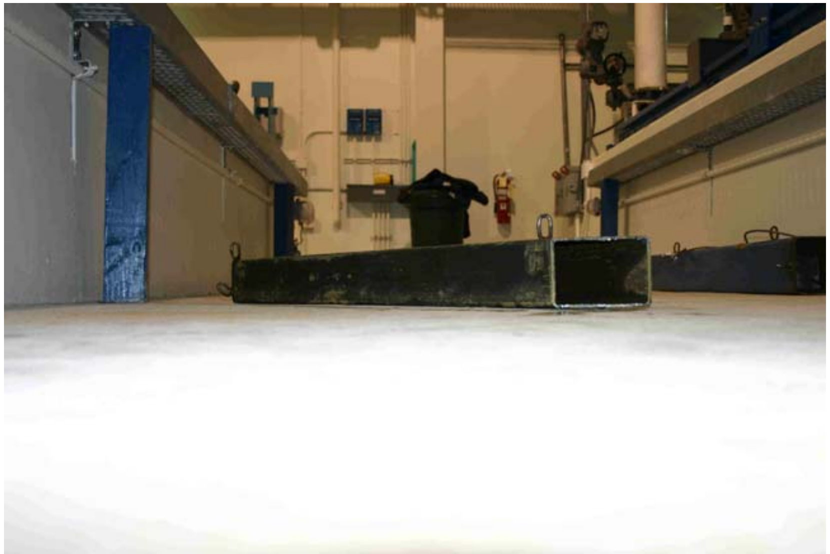
Prepared by: Katy Damico
CENAO-WR-OT

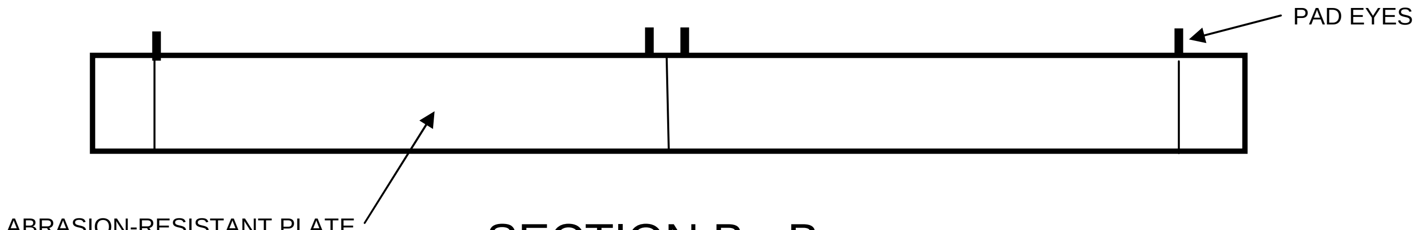
Map File: Lower_ChesBay_Channels_Map.mxd
Map Date: 13 JUNE 2011



90 DEGREE BED LEVELER
CONCEPTUAL DESIGN

90 DEGREE BED LEVELER MODEL PHOTOGRAPHS





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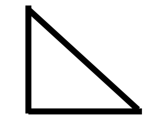

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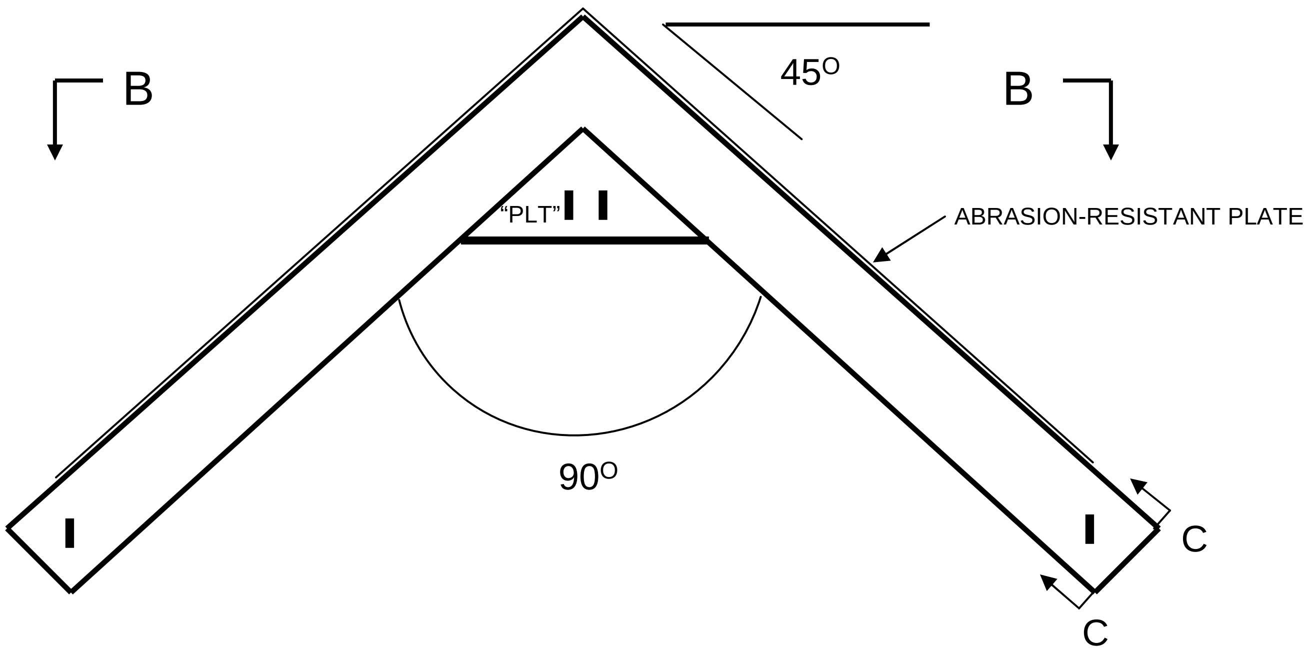
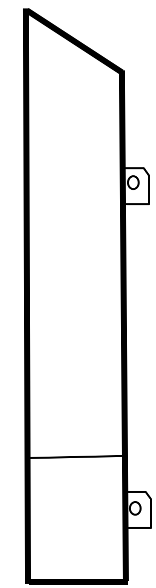
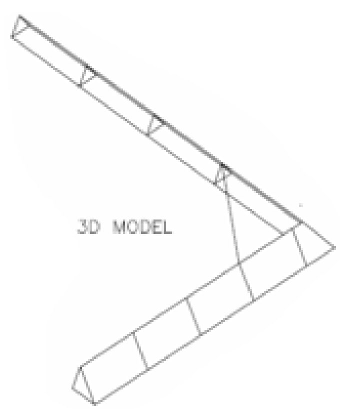


PLAN VIEW

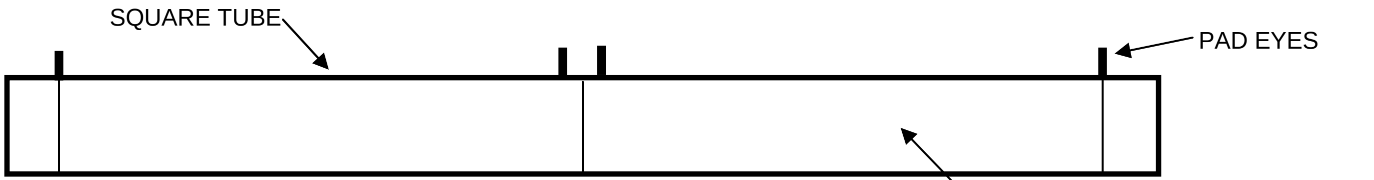


LEFT SIDE VIEW



90 DEGREE RAKED BED LEVELER CONCEPTUAL DESIGN

90 DEGREE RAKED BED LEVELER MODEL PHOTOGRAPHS



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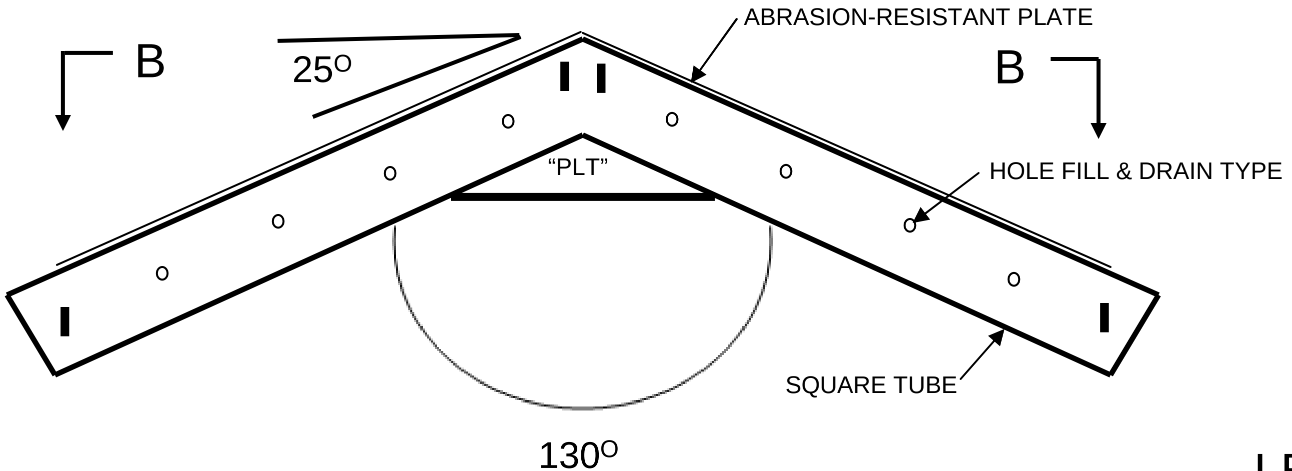

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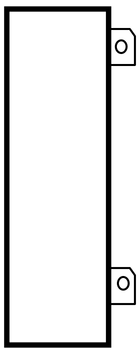
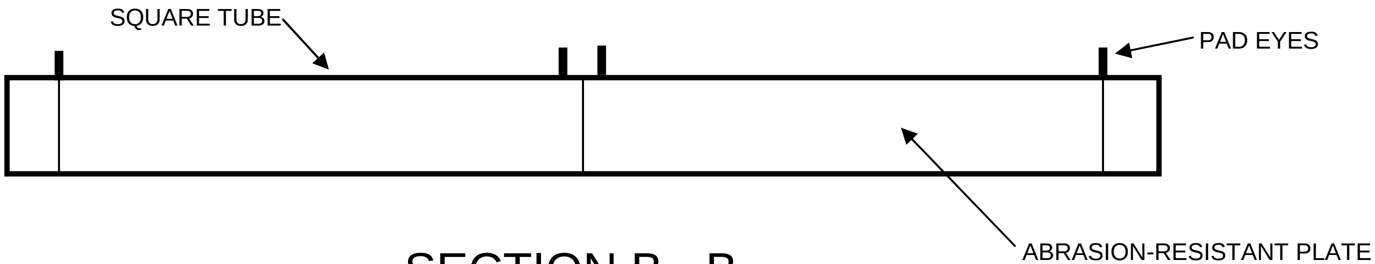


LEFT SIDE VIEW

130 DEGREE BED LEVELER
CONCEPTUAL DESIGN

130 DEGREE BED LEVELER MODEL PHOTOGRAPHS



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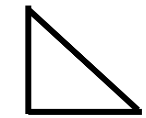

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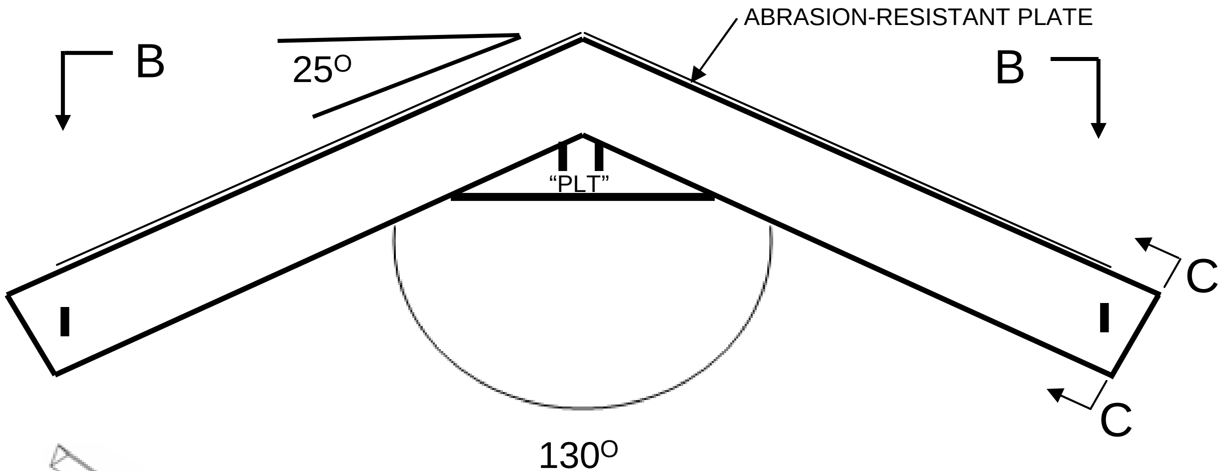

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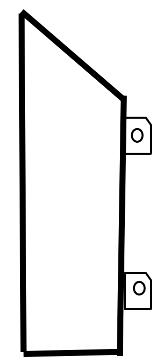
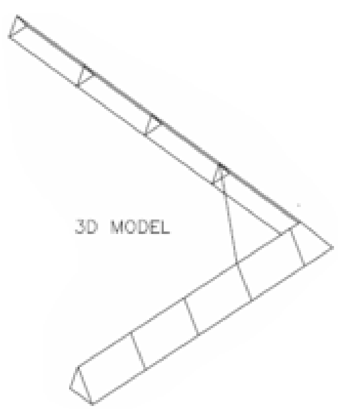


LEFT SIDE VIEW



130 DEGREE RAKED BED LEVELER
CONCEPTUAL DESIGN

Sturgeon Take Records from Dredging Operations 1990 - Mar 2012

Take #	Date	Corps District	Location	Sp	Dredge Type/ Name	Status	Specimen Description	Notes	Photos	Documentation
1	30 Oct 90	SAC	Winyah Bay Georgetown	A	H *Ouchita*	Dead	~69cm, rear half	Overflow Screening	N	Chris Slay pers com Observer report DACW 60-90-C-0067
2	15 Jan 94	SAS	Savannah Harbor	A	H *RN Weeks*	NA	NA	Found by Turtle observer	No	Steve Calver pers com 14 Jun 05 Observer load sheet and final rpt #DACW21-93-C-0072
3	07 Dec 94	SAS	Savannah Harbor	A	H *Dodge Island*	Live released	71cm, whole fish	Starboard Skimmer Screening	Yes We have efile	Chris Slay pers com Observer report
4	07 Dec 94 Different Load	SAS	Savannah Harbor	A	H *Dodge Island*	Dead	77.5cm, whole fish	Starboard Skimmer Screening	Yes We have efile	Chris Slay pers com Observer report
5	Feb 96	NAP	Delaware River Newbold Island	S	P *Ozark*	Dead	83cm, female w/eggs	In DMA Money Island		NMFS memo for record From Laurie Silva 19 Apr 96
6	Feb 96	NAP	Delaware River Newbold Island	S	P *Ozark*	Dead	63cm, mature male	In DMA Money Island		NMFS memo for record From Laurie Silva 19 Apr 96
7	06 Jan 98	NAP	Delaware River Kinkora Range	S	P *??*	Dead	Either 657mm or 573mm **???**	In DMA Money Island	Y Not e-file	Memo for file 20 Jan 98 From Greg Wacik NAP
8	12 Jan 98	NAP	Delaware River Florence Range	S	P *??*	Dead	Either 657mm or 573mm **???**	In DMA Money Island	Y Not e-file	Memo for file 20 Jan 98 From Greg Wacik NAP
9	13 Jan 98	NAP	Delaware River Florence Range	S	P *??*	Dead	Either 657mm or 573mm **???**	In DMA Money Island	Y Not e-file	Memo for file 20 Jan 98 From Greg Wacik NAP
10	7 Sep 98	SAW	Wilmington Har Cape Fear River	A	H *McFarland*	Dead	Head only (1 ft long)	In turtle Inflow screen		Observer incident report Pers com Bill Adams- SAW 26 Jul 04
11	01 Mar 00	SAC	Charleston Harbor	A	H *Stuyvesant*	Dead	Missing head and tail	Main Overflow Screening	No	Chris Slay pers com Observer reporting forms
12	12 Apr 00	SAC	Charleston Harbor	A	H *Stuyvesant*	Dead	71.6cm, whole fish	Starboard Overflow screening	No	Chris Slay pers com Observer reporting forms
13	03 Dec 00	SAW	Wilmington Har MOTSU	A	C *New York*	Dead	82.5cm, whole fish decomposing	In bucket	Y Not e-file Payonk? ?	Chris Slay pers com Phil Payonk pers com 30 Jul 04 Bill Adams pers com 28 Jul 04 #DACW54-00-C-0013

Sturgeon Take Records from Dredging Operations 1990 - Mar 2012

Take #	Date	Corps District	Location	Sp	Dredge Type/ Name	Status	Specimen Description	Notes	Photos	Documentation
14	24 Feb 01	SAS	Brunswick Harbor	A	H *RN Weeks*	Dead	Head only	Just mentions take on all forms, no other info.	No	Daily and Weekly Reports, Load sheet.
15	19 Jun 01	NAE	Kennebec River Bath Iron Works	A	C *??*	Live released		Put in scow, released unharmed		Julie Crocker NMFS pers com 19 Jul 04 2003 Chesapeake BA, Section 7.2 Normandeau Associates, Inc 2001
16	30 Apr 03	NAE	Kennebec River Bath Iron Works	S	C Reed and Reed dredge company	Dead	Fish nearly cut in half		Y We have e-file	Julie Crocker NMFS pers com 19 Jul 04 2003 Chesapeake BA, Section 7.2 Normandeau Associates, Inc 2001
17	6 Oct 03	NAE	Kennebec River Doubling Point	S	H *Padre Island*	Dead	38.1inches	In hopper	Y We have e-file	Observer incident report Kennebec River BA Jul 04 Memo for Commander, from Bill Kavanaugh, 1 Jul 04 Bill Kavanaugh pers com 15 Jul 04 Julie Crocker pers com 19 Jul 04
18	6 Oct 03	NAE	Kennebec River Doubling Point	S	H *Padre Island*	Dead	37.0 inches	In hopper Did not dive Probably died	Y We have e-file	Observer incident report Kennebec River BA Jul 04 Memo for Commander, from Bill Kavanaugh, 1 Jul 04 Bill Kavanaugh pers com 15 Jul 04 Julie Crocker pers com 19 Jul 04
19	6 Oct 03	NAE	Kennebec River Doubling Point	S	H *Padre Island*	Live	Swam away	In hopper	Y We have e-file	Observer incident report Kennebec River BA Jul 04 Memo for Commander, from Bill Kavanaugh, 1 Jul 04 Bill Kavanaugh pers com 15 Jul 04 Julie Crocker pers com 19 Jul 04

Sturgeon Take Records from Dredging Operations 1990 - Mar 2012

Take #	Date	Corps District	Location	Sp	Dredge Type/ Name	Status	Specimen Description	Notes	Photos	Documentation
20	06 Oct 03	NAE	Kennebec River Doubling Point	S	H *Padre Island*	Dead	Found alive	In hopper	Y We have e-file	Observer incident report Kennebec River BA Jul 04 Memo for Commander, from Bill Kavanaugh, 1 Jul 04 Bill Kavanaugh pers com 15 Jul 04 Julie Crocker pers com 19 Jul 04
21	08 Oct 03	NAE	Kennebec River Doubling Point	S	H *Padre Island*	Live	Good condition	In hopper	Y We have e-file	Observer incident report Kennebec River BA Jul 04 Memo for Commander, from Bill Kavanaugh, 1 Jul 04 Bill Kavanaugh pers com 15 Jul 04 Julie Crocker pers com 19 Jul 04
22	07 Jan 04	SAC	Charleston Harbor	A	H *Manhattan Island*	Live	Whole fish 49 inches total length May have died later when released	Found by Coastwise turtle observers	Yes (We Have e-file)	Robert Chappell pers com 28 Jun 04 Observer daily report 7 Jan 04
23	13 Dec 04	SAM	Gulfport Harbor Channel	G	H *Bayport*	Dead	Trunk of fish 59.5cm	Found by turtle observers		Observer incident report Susan Rees pers com 7 Jan 05
24a	28 Dec 04	SAM	Mobile Bar Channel	G	H *Padre Island*	Dead	Trunk of fish 2 ft, 1inch	Found by Turtle observers	Yes (We Have e-file)	Observer incident report Susan Rees pers com 7 Jan 05 #W91278-04-C-0049
24b	01 Jan 05	SAM	Mobile Bar Channel	G	H *Padre Island*	Dead	Head only of fish 22.5cm	2nd part of take on 28 Dec 04	Yes taken But we Have not received	Observer incident report Susan Rees pers com 7 Jan 05 #W91278-04-C-0049
25	2 Mar 05	SAS	Brunswick Harbor	A	H *RN Weeks*	Dead	Posterior section only 60 cm section w/tail	Found by turtle observer	Yes (We Have e-file)	Chris Slay pers com 7 Jun 05 Steve Calver pers com 14 Jun 05
26	26 Dec 06	SAS	Brunswick	A	H *Newport*	Dead	Head only	Caught in port screen and	Black and	Incident and load report

Sturgeon Take Records from Dredging Operations 1990 - Mar 2012

Take #	Date	Corps District	Location	Sp	Dredge Type/ Name	Status	Specimen Description	Notes	Photos	Documentation
								turtle part caught in starboard screen	White	
27	17 Jan 07	SAS	Savannah Entrance Channel	A	H *Glenn Edwards*	Dead	Whole fish, FL 104 cm	Fresh Dead, 60 Horseshoe crab in with load	Coastwise took photo	Incident and Load report
28	2 Mar 09	SAS	Savannah Entrance Channel	A	H *Dodge Island*	Dead	Total Length 111 cm	Fresh Dead, found in starboard aft inflow box, load #42		Incident, Load and Daily report
29	6 Feb 10	SAS	Brunswick Entrance Channel	A	H *Glenn Edwards*	Dead	No measurements	Fore screen contents, Load #19 with 12 Horseshoe crab		No incident report, just listed on load sheet and daily summary
30	7 Feb 10	SAS	Brunswick Entrance Channel	A	H *Glenn Edwards*	Dead	No measurements	Fore screen contents, Load #25 with 20 Horseshoe crab		No incident report, just listed on load sheet and daily summary
31	2 Feb 10	SAS	Brunswick Entrance Channel	A	H *Bayport*	Dead	No measurements, head to mid body in load #193 and mid body to tail recovered in load #194.	Stbd screen contents, load #193 and overflow screen in #194,		No incident report, just listed on load sheet and daily summary
32	7 Dec 10	SAW	Wilmington Harbor	A	H Terrapin Island	Dead	Whole fish, FL 61 cm	Fresh Dead, water temp 12 C, air 2 C, load 6	Coastwise took photo	Incident and Load report
33	10 Apr 11	NAO	York Spit Channel	A	H Terrapin Island	Dead	Total Length 24.5" in, Fork Length 13.5", Middle of anus to Anal Fin 3.8"	During Clean up. Torn in half, only posterior from pectoral region to tail, no head. Fins and tail torn but complete		Hopper daily report from, QCR, e-mail, incident report, daily report, load sheets

Sturgeon Take Records from Dredging Operations 1990 - Mar 2012

Take #	Date	Corps District	Location	Sp	Dredge Type/ Name	Status	Specimen Description	Notes	Photos	Documentation
34	11Apr 11	NAO	York Spit Channel	A	H Liberty Island	Dead		During cleanup. Another piece taken on 4/13/11 matches perfectly.	Y	E-mail
35	14 Mar 12	SAC	Charleston Harbor Channel	A	H Glenn Edwards	Dead	Fresh dead, body part 26"-30" long X 13" width, no head or tail	Load 129 (0024-0345) found in starboard draghead, during cleanup mode. Given to South Carolina DNR	Yes	E-mail, load sheet, incident report
NT	25 May 05	NAO	York Spit Channel	?	H *McFarland*	Dead	Approx. 2 ft estimate from photos	Too decomposed to identify	Yes (We Have e-file)	Observer final report, REMSA 2004
NDNEF	26 Jun 96	NAN	East Rock Away Long Island	?	H Dodge Island	Dead	(~3'), couldn't identify and doesn't mention condition (fresh or dead already)? Chris Starbird.	Load sheet states Carp or sturgeon	No	Load sheet, Daily and Weekly Summary mentions. No way to confirm.
NDNEF	About 98	SAW	Wilmington Har Cape Fear River	A	P *??*	Dead				NMFS 1998 Shortnose Recovery Plan p. 53
NDNEF	About 98	SAW	Wilmington Har Cape Fear River	A	C	Dead				NMFS 1998 Shortnose Recovery Plan p. 53
NDNEF	About 98	SAJ or SAS	Kings Bay	A	H *??*	Dead				NMFS 1998 Shortnose Recovery Plan p. 52 Chris Slay pers com

Sp=sturgeon species
A=Atlantic sturgeon (*Acipenser oxyrhynchus oxyrhynchus*)
S=Shortnose sturgeon (*Acipenser brevirostrum*)
G=Gulf sturgeon (*Acipenser oxyrhynchus desotoi*)
NT = Non-take incident by dredge
SAC=Charleston

SAW=Wilmington
SAS=Savannah
SAJ=Jacksonville
SAM=Mobile
NAE=New England
NAO=Norfolk
NAN=New York
NAP=Philadelphia
H=Hopper
P=Hydraulic Cutterhead pipeline
C=Mechanical clamshell or bucket, bucket and barge
DMA=Dredged material disposal area
NDNEF=No documentation, no evidence found to confirm citation

APPENDIX D

Procedure for obtaining fin clips from sturgeon for genetic analysis

1. Wash hands and use disposable gloves. Ensure that any knife, scalpel or scissors used for sampling has been thoroughly cleaned and wiped with alcohol to minimize the risk of contamination.
2. For any sturgeon, after the specimen has been measured and photographed, take a one-cm square clip from the pelvic fin.
3. Place fin clips in small screw top vials (2 ml screw top plastic vials are preferred) with preservative. Avoid using glass vials.
4. Label each vial with fish's unique ID number that matches the ID number you record on the metadata sheet. This is critical for accurate tracking and record keeping .
5. RNAlater™ is the preferred preservative and is not hazardous. Ninety-five percent absolute ETOH (un-denatured) is an accepted alternative. Note that ETOH is a Class 3 Hazardous Material due to its flammable nature.
6. If non-screw top vials are used, seal individual vials with leak proof positive measure (e.g., tape).
7. Package vials together (e.g., in one box) with an absorbent material within a double-sealed container (e.g., zip lock baggie).
8. If using excepted quantities of ETOH, follow DOT and IATA packaging regulations, including affixing ETOH warning label to air package. Accepted quantities of ETOH is 30 mL per inner package and 1 L for the total package.
9. A sub-sample of the fin clip must be sent to the sturgeon genetics archive at the USGS facility in Leetown, WV.
   a. Submit sample metadata to rjohnson1@usgs.gov with a cc to incidental.take@noaa.gov. Electronic metadata must be provided in order to properly identify and archive samples. A copy of the electronic metadata was emailed to the Federal agency point of contact for this Opinion and a list of the metadata fields is included below. Retain a copy of metadata sheets for your records.
   b. Mail samples to:

Robin Johnson
U.S. Geological Survey
Leetown Science Center
Aquatic Ecology Branch
11649 Leetown Road
Kearneysville, WV 25430

10. Send a subsample and associated metadata to the NMFS-approved lab for processing to determine DPS or river of origin per the agreement you have with that facility.

Metadata to be recorded for each genetic sample submitted to USGS and other NMFS-approved lab:

- Collection Date
- Species (ATS/SNS)
- Collector
- Collector Email
- Collector Phone Number
- Permit/Biological Opinion Number
- Permit Holder, Responsible Party (RP), or Principal Investigator (PI)
- Holder, RP, or PI Email
- Holder, RP, or PI Phone Number
- Unique Fish ID
- PIT Tag Number
- Location Collected
- Latitude
- Longitude
- Fork Length (mm)
- Total Length (mm)
- Weight (g)
- Sex
- Preservative
- Tag Info Available (Y/N)
- Tag Info
- Mortality (Y/N)
- Mortality Type
- Release of Information to Interested Party
- Recapture (Y/N)
- Comments

APPENDIX E
Protocol for Collecting Tissue from Sea Turtles for Genetic Analysis

Materials for Collecting Genetic Tissue Samples

< surgical gloves
< alcohol swabs
< betadine swabs
< sterile disposable biopsy punches
< sterile disposable scalpels
< permanent marker to externally label the vials
< scotch tape to protect external labels on the vials
< pencil to write on internal waterproof label
< waterproof label, 1/4" x 4"
< screw-cap vial of saturated NaCl with 20% DMSO*, wrapped in parafilm
< piece of parafilm to wrap the cap of the vial after sample is taken
< vial storage box

* The 20% DMSO buffer within the vials is nontoxic and nonflammable. Handling the buffer without gloves may result in exposure to DMSO. This substance soaks into skin very rapidly and is commonly used to alleviate muscle aches. DMSO will produce a garlic/oyster taste in the mouth along with breath odor. The protocol requires that you wear gloves each time you collect a sample and handle the buffer vials. DO **NOT** store the buffer where it will experience extreme heat. The buffer must be stored at room temperature or cooler, such as in a refrigerator.

Please collect two small pieces of muscle tissue from all live, comatose, and dead stranded loggerhead, green, leatherback, and hybrid sea turtles (and any hawksbills, although this would be a rare incident). A muscle sample can be obtained no matter what stage of decomposition a carcass is in. Please utilize the equipment in these kits for genetic sampling of **turtles only** and contact the NMFS sea turtle stranding coordinator when you need additional biopsy supplies.

Sampling Protocol for Dead Turtles

1. Put on a pair of surgical gloves. The best place to obtain the muscle sample is on the ventral side where the front flippers insert near the plastron. It is not necessary to cut very deeply to get muscle tissue.

2. Using a new (sterile and disposable) scalpel cut out two pieces of muscle of a size that will fit in the vial.

3. Transfer both samples directly from the scalpel to a single vial of 20% DMSO saturated with salt.

4. Use the pencil to write the stranding ID, date, species ID and SCL on the waterproof label and place it in the vial with the samples.

5. Label the outside of the vial using the permanent marker with stranding ID, date, species ID and SCL .

6. Apply a piece of clear scotch tape over the what you have written on the outside of the vial to protect the label from being erased or smeared.

7. Wrap parafilm around the cap of the vial by stretching as you wrap.

8. Place the vial in the vial storage box.

9. Complete the Sea Turtle Biopsy Sample Collection Log.

10. Attach a copy of the STSSN form to the Collection Log - be sure to indicate on the STSSN form that a genetic sample was taken.

11. Dispose of the used scalpel and gloves. It is very important to use a new scalpel for each animal to avoid cross contamination.

At the end of the calendar year submit all genetic samples to:

Sea Turtle Stranding Coordinator
NMFS Protected Resources Division
55 Great Republic Drive
Gloucester, MA 01930
(978)281-9328

APPENDIX F

STURGEON SALVAGE FORM

For use in documenting dead sturgeon in the wild under ESA permit no. 17273 (version 7-24-2015)

INVESTIGATORS'S CONTACT INFORMATION

Name: First ________________ Last ________________________

Agency Affiliation ________________ Email______________________

Address ____

____

Area code/Phone number ________________________________

UNIQUE IDENTIFIER (Assigned by NMFS)

DATE REPORTED:

Month ☐☐ Day☐☐ Year 20☐☐

DATE EXAMINED:

Month ☐☐ Day☐☐ Year 20☐☐

SPECIES: (check one)

☐ shortnose sturgeon

☐ Atlantic sturgeon

☐ Unidentified *Acipenser* species

Check "Unidentified" if uncertain . See reverse side of this form for aid in identification.

LOCATION FOUND: ☐Offshore (Atlantic or Gulf beach) ☐Inshore (bay, river, sound, inlet, etc)

River/Body of Water________________ City________________________ State ____

Descriptive location (be specific)____

____

____

Latitude ______________N (Dec. Degrees) Longitude ______________ W (Dec. Degrees)

CARCASS CONDITION at time examined: (check one)

☐ 1 = Fresh dead

☐ 2 = Moderately decomposed

☐ 3 = Severely decomposed

☐ 4 = Dried carcass

☐ 5 = Skeletal, scutes & cartilage

SEX:

☐ Undetermined

☐ Female ☐ Male

How was sex determined?

☐ Necropsy

☐ Eggs/milt present when pressed

☐ Borescope

MEASUREMENTS: Circle unit

Fork length ________ cm / in

Total length ________ cm / in

Length ☐ actual ☐ estimate

Mouth width (inside lips, see reverse side) ________ cm / in

Interorbital width (see reverse side) ________ cm / in

Weight ☐ actual ☐ estimate ________ kg / lb

TAGS PRESENT? Examined for external tags including fin clips? ☐ Yes ☐ No Scanned for PIT tags? ☐ Yes ☐ No

Tag #	Tag Type	Location of tag on carcass

CARCASS DISPOSITION: (check one or more)

☐1 = Left where found

☐2 = Buried

☐3 = Collected for necropsy/salvage

☐4 = Frozen for later examination

☐5 = Other (describe) ________________________

Carcass Necropsied?

☐Yes ☐No

Date Necropsied:____________

Necropsy Lead:

____

PHOTODOCUMENTATION:

Photos/vide taken? ☐ Yes ☐ No

Disposition of Photos/Video:__________

____

____

SAMPLES COLLECTED? ☐ Yes ☐ No

Sample	How preserved	Disposition (person, affiliation, use)

Comments:

____

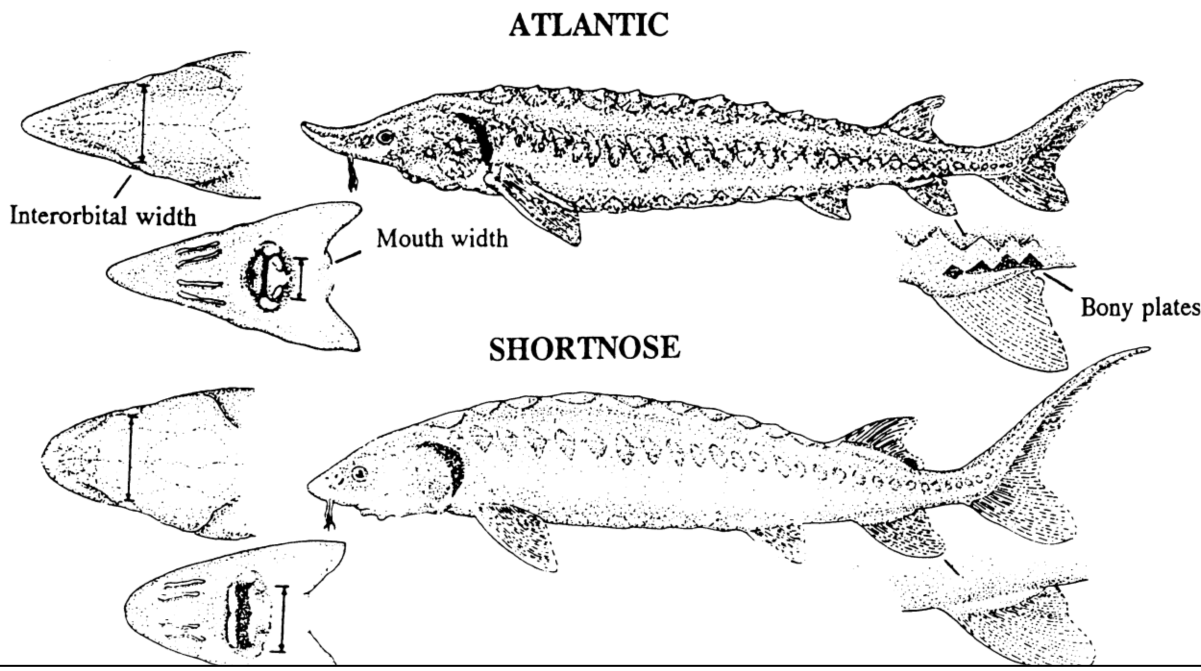
____

____

Distinguishing Characteristics of Atlantic and Shortnose Sturgeon (version 7-24-2015)

Characteristic	Atlantic Sturgeon, *Acipenser oxyrinchus*	Shortnose Sturgeon, *Acipenser brevirostrum*
Maximum length	> 9 feet/ 274 cm	4 feet/ 122 cm
Mouth	Football shaped and small. Width inside lips < 55% of bony interorbital width	Wide and oval in shape. Width inside lips > 62% of bony interorbital width
*Pre-anal plates	Paired plates posterior to the rectum & anterior to the anal fin.	1-3 pre-anal plates almost always occurring as median structures (occurring singly)
Plates along the anal fin	Rhombic, bony plates found along the lateral base of the anal fin (see diagram below)	No plates along the base of anal fin
Habitat/Range	Anadromous; spawn in freshwater but primarily lead a marine existence	Freshwater amphidromous; found primarily in fresh water but does make some coastal migrations

* From Vecsei and Peterson, 2004



Describe any wounds / abnormalities (note tar or oil, gear or debris entanglement, propeller damage, etc.). Please note if no wounds / abnormalities are found.

____

____

____

____

____

Data Access Policy: Upon written request, information submitted to National Marine Fisheries Service (NOAA Fisheries) on this form will be released to the requestor provided that the requestor credit the collector of the information and NOAA Fisheries. NOAA Fisheries will notify the collector that these data have been requested and the intent of their use.

Submit completed forms (within 30 days of date of investigation) to: **Greater Atlantic Regional Fisheries Office Contacts** – Edith Carson (Edith.Carson@noaa.gov , 978-282-8490) or Lynn Lankshear (Lynn.Lankshear@noaa.gov, 978-282-8473); **Southeast Region Contact**- Stephania Bolden (Stephania.Bolden@noaa.gov, 727-551-5768).

APPENDIX G

Take Report Form for ESA-Listed Species

Use one form per individual animal taken

Biological Opinion PCTS No.

Species taken:

- ☐ **Green sea turtle**
- ☐ **Kemp's ridley sea turtle**
- ☐ **Leatherback sea turtle**
- ☐ **Loggerhead sea turtle**
- ☐ **Unknown sea turtle**
- ☐ **Atlantic sturgeon**
- ☐ **Shortnose sturgeon**
- ☐ **Unknown sturgeon**
- ☐ **Atlantic salmon**

Condition when taken (select one):

- ☐ Alive
- ☐ Fresh Dead
- ☐ Moderately Decomposed
- ☐ Severely Decomposed
- ☐ Dried
- ☐ Skeletal

Date take observed:

Animal was:

- ☐ Released alive with no visible injuries
- ☐ Released alive with visible injuries
- ☐ Released dead
- ☐ Held for Necropsy
- ☐ Transferred to rehabilitation (sea turtles only)

Date: ________________

Rehabilitation facility:

SPECIES CONDITION KEY

Fresh dead – no foul smell

Moderately decomposed – scutes and skin are intact or just beginning to peel, internal organs intact

Severely decomposed – foul smell with scutes lifting or gone, skin peeling, internal organs beginning to liquefy

Dried carcass – leathery, internal organs have decomposed

Skeletal remains - bones only

Location of the take:

Latitude and Longitude in Decimal Degrees to six places:

Latitude:

Longitude:

Sediment type in area (e.g., SAV, cobble, silt/mud, shellfish present):

Body of water where take occurred:

- ☐ Atlantic Ocean
- ☐ River (name): ________________________________
- ☐ Bay or Sound (name): ________________________
- ☐ Creek (name): _______________________________

Take activity (select all that apply):

- ☐ Pile Driving
- ☐ Bridge/Road Construction
- ☐ Dredging
- ☐ Beach Renourishment
- ☐ Vessel Operation
- ☐ Relocation trawling
- ☐ Blasting

If dredging project:

Type of dredge/name:

Load number:

Location on dredge mechanism where specimen was found (screen, hopper):

Was draghead deflector used: ☐ Yes ☐ No

Was rigid deflector used: ☐ Yes ☐ No

Condition of deflector:

Condition of screening or UXO screen:

If construction project:

Vessel or Rig Name: Exclusion Zone, if required:

If installing or extracting piles:

Tools: ☐ Impact Hammer

☐ Vibratory Hammer

☐ Other (specify) ________________________

If pile driving:

Pile Type	Diameter	Number

If using explosives:

Type	Size	Number

<u>Refer to your Biological Opinion for guidance on handling and resuscitating live animals</u>

Indicate type and location of visible injuries (see diagrams). Check all that apply:

Type of Injury	Dorsal Surface	Ventral Surface -
Cuts/Gashes (not severed)	☐	☐
Severed body, limbs, or organs	☐	☐

Describe injuries and list any missing body parts:

For live animals - indicate behavior when taken:

☐ Active (alert, moving head, fins or flippers)

☐ Slow and lethargic (minimal movement and responsiveness)

☐ No movement but may or may not respond to reflex test

For dead animals, does the BiOp require necropsy:

☐ Yes ☐ No

Was resuscitation attempted:

☐ Yes, length of time ________ hours Outcome: ☐ Alive ☐ Dead

☐ No ☐ N/A, animal confirmed dead, or alive and moving when taken

Fish measurements in centimeters – measurements should be exact.
Provide the reason for any estimated measure (e.g., tail missing)

	Exact	Estimated	Reason for Estimated Measure
Total Length: ____________ cm	☐	☐	____________
Fork Length: ____________ cm	☐	☐	____________
Mouth Width: ____________ cm	☐	☐	____________
Interorbital Width: ________ cm	☐	☐	____________

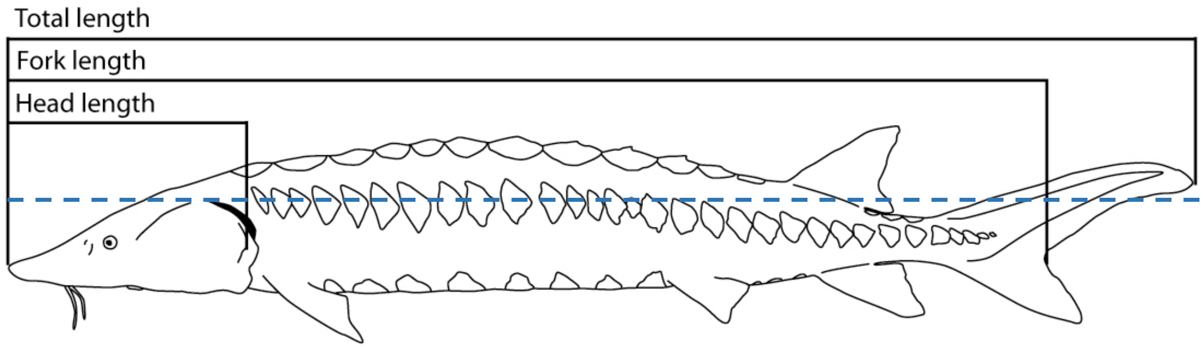
Turtle measurements in centimeters – measurements should be exact.
Provide the reason for any estimated measure (e.g., shell crushed and flattened)

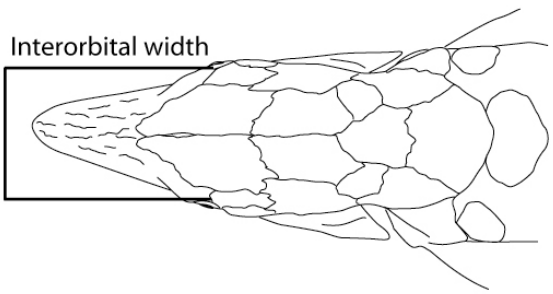
	Exact	Estimated	Reason for Estimated Measure
Curved Carapace Length: ________ cm (notch to tip length with measuring tape)	☐	☐	____________
Straight Carapace Length:________ cm (notch to tip length with calipers)	☐	☐	____________
Straight Carapace Width: ________ cm (widest points with calipers)	☐	☐	____________
Weight: ________ kg	☐	☐	____________

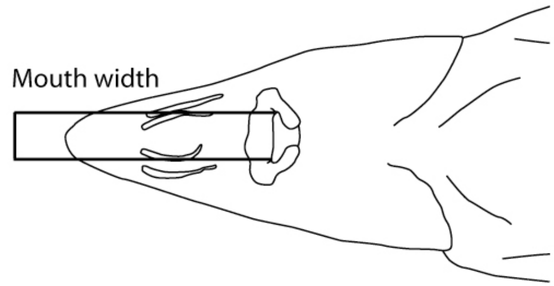
Shortnose and Atlantic Sturgeon -

Dorsal

Ventral

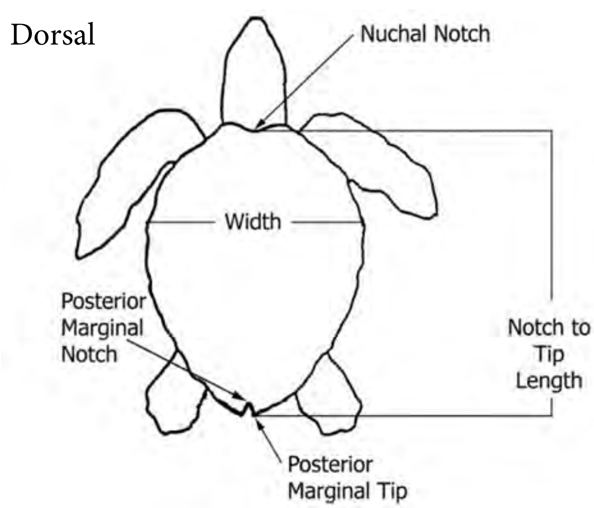




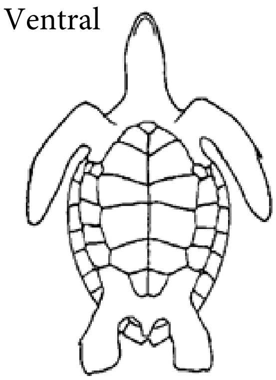


Sea Turtles -

Dorsal



Ventral



Checklist for samples required to be collected and submitted per the BiOp's Standard Operating Procedures, RPMs, and T&Cs

Photographs and/or Video: Submit with this form to **incidental.take@noaa.gov**

Biopsy punch (sea turtles): Current Disposition (person/affiliation):

Fin Clip (fish): Current Disposition (person/affiliation):

Tags present[1]: **Type (e.g., PIT, flipper)** **Number** **Location on animal**

____

____

____

Tags inserted or applied[1]: **Type (e.g., PIT, flipper)** **Number** **Location on animal**

____

____

____

[1] For sturgeon, also send PIT tag #, date, location, and length to Mike_mangold@fws.gov.

Contact information for person completing this form

Name:

Email:

Phone Number:

Agency/Organization name if other than the Federal Action Agency for the BiOp:

APPENDIX H

Sea Turtle Trawling and Relocation Guidelines
(as derived from ACOE South Atlantic Division protocol)

Note that: In this BO, NMFS has determined that relocation trawling is necessary to minimize the take of sea turtles in dredging operations. NMFS has also determined that handling and measuring as outlined in the ITS is necessary to monitor the take of sea turtles. Additionally, NMFS has determined that genetic sampling of dead sea turtles is necessary to monitor take. However, external or internal sampling procedures (e.g., flipper tagging, PIT tagging, blood letting, skin tag sampling, laparoscopies, gastric lavages, mounting satellite or radio transmitters, genetics sampling, etc.) performed on live sea turtles are not permitted under this BO unless the observer holds a valid sea turtle research permit (obtained pursuant to section 10 of the ESA, from the NMFS' Office of Protected Resources, Permits Division) authorizing sampling, either as the permit holder, or as designated agent of the permit holder.

Sea turtle trawling procedures

1. Trawling shall be conducted under the supervision of a biologist approved by the NMFS. A letter stating that NMFS has approved the supervising biologist must be obtained prior to the commencement of trawling.

2. Sea turtles captured pursuant to relocation trawling shall be handled in a manner designed to ensure their safety and viability, and shall be released over the side of the vessel, away from the propeller, and only after ensuring that the vessel's propeller is in the neutral, or disengaged, position (i.e., not rotating). Captured turtles shall be kept moist, and shaded whenever possible, until they are released. Resuscitation guidelines are included in part in Appendix C.

3. Any turtles captured during the survey shall be measured in accordance with standard biological sampling procedures prior to release, and weighed when possible. Sampling data shall be recorded on the Sea Turtle Relocation Report (Appendix I).

4. Turtles shall be kept no longer than 12 hours prior to release and shall be released at least 3 miles away from the dredge site (if it can be done safely, turtles may be transferred onto another vessel for transport to the release area to enable the relocation trawler or relative abundance trawler to keep sweeping the dredge site without interruption).

7. The trawler will be equipped with two 60-foot nets constructed from 8-inch mesh (stretch) fitted with mud rollers and flats as specified in the Turtle Trawl Nets Specifications. Paired net tows will be made for 10 to 12 hours per day or night. Trawling will be conducted with the tidal flow using repetitive 15-30 minute (total time) tows in the channel. Tows will be made in the center, green and red sides of the channel such that the total width of the channel bottom is sampled. Positions at the beginning and end of each tow will be determined from GPS Positioning equipment. Trawl speeds shall not exceed 3.5 knots. Tow speed will be recorded at the approximate midpoint of each tow.

7. Methods and equipment will be standardized including data sheets, nets, trawling direction to tide, length of station, length of tow, and number of tows per station. Water temperature measurements will be taken at the water surface each day using a laboratory thermometer. Data on each tow, including weather conditions, air temperature, wind velocity and direction, sea state-wave height, and precipitation, will be recorded on the Sea Turtle Trawling Report.

8. Before trawling begins, the necessary state permits for trawling in Virginia state waters must be obtained from the appropriate party (e.g., State of Virginia, Virginia Marine Resources Commission).

Turtle Trawl Nets Specifications

DESIGN: 4 seam, 4 legged, 2 bridal trawl net
WEBBING: 4 inch bar, 8 inch stretch
top - 36 gauge twisted nylon dipped
side - 36 gauge twisted nylon dipped
bottom - 84 gauge braided nylon dipped
NET LENGTH: 60 ft from cork line to cod end
BODY TAPER: 2 to 1
WING END HEIGHT: 6 ft
CENTER HEIGHT: Dependent on depth of trawl 14 to 18 ft
COD END: Length 50 meshes x 4" = 16.7 ft
Webbing 2 inch bar, 4 inch stretch, 84 gauge braid nylon dipped, 80 meshes around, 40 rigged meshes with 1/4 x 2 inch choker rings, 1 each ½ x 4 inch at end
cod end cover - none
chaffing gear - none
HEAD ROPE: 60 ft ½ inch combination rope (braid nylon with stainless cable center)
FOOT ROPE: 65 ft ½ inch combination rope
LEG LINE: top - 6 ft, bottom 6 - ft
FLOATS: size - tuna floats (football style), diameter - 7 inch length - 9 inch, number - 12 each, spacing - center on top net 2 inches apart
MUD ROLLERS: size 5 inch diameter 5.5 inch length, number - 22 each, spacing - 3 ft attached with 3/8 inch polypropelene rope (replaced with snap on rollers when broken)
TICKLER CHAINS: NONE (discontinued- but previously used 1/4 inch x 74 ft galvanized chain)
WEIGHT: 20 ft of 1/4 inch galvanized chain on each wing, 40 ft per net looped and tied
DOOR SIZE: 7 ft x 40 inches (or 8 ft x 40 inches), Shoe - 1 inch x 6 inch, bridles - 3/8 inch high test chain
CABLE LENGTH (bridle length, total): 7/16 inch x 240-300 ft varies with bottom conditions
FLOAT BALL: none
LAZY LINES: 1 inch nylon
PICKUP LINES: 3/8 inch polypropelene
WHIP LINES: 1 inch nylon

APPENDIX I

RELOCATION TRAWLING REPORT

Part 1 - Sea Turtle Relocation Report

(*Note that any other reporting form submitted for turtles taken in trawling activities related to maintenance dredging should include the following information*.)

Channel: ________________________________ Date: ___________________________
Tow #:_________________________________ Net (circle): Port Starboard
Day of trawling effort (e.g., 3rd day) __________ Hour of trawling effort (that day) __________
Water depth__________________________ Water temperature ______________________
Other environmental conditions____

Describe capture location (include state, county, lat and long): ___________________________
____
Describe capture method and/or type of gear in use when turtle was caught:_________________
____

Species Information: *(please designate cm/m or inches.)*
Species ______________________________ Weight (kg or lbs)___________________________
Sex (circle): Male Female Unknown How was sex determined? ___________________
Straight carapace length ________________ Straight carapace width ______________________
Curved carapace length ________________ Curved carapace width ______________________
Plastron length _______________________ Plastron width ______________________________
Tail length __________________________ Head width ________________________________
Condition of specimen/description of animal____
____

Existing Flipper Tag Information
Left _______________________________ Right __________________________________
PIT Tag # _________________________________

Miscellaneous:
Genetic biopsy taken: YES NO
Photos Taken: YES NO Is this a Recapture: YES NO

Turtle Release Information:
Date ____________________________ Time ______________________________
Lat ______________________________ Long ______________________________
State ____________________________ County ____________________________

Remarks: (note if turtle was involved with tar or oil, gear or debris entanglement, wounds or mutilations, propellor damage, papillomas, old tag locations, etc.)
____
____

Part 2-

Sturgeon Relocation Form

Channel: ________________________________ Date: ___________________________

Tow #:_______________________________ Net (circle): Port Starboard

Day of trawling effort (e.g., 3rd day) __________ Hour of trawling effort (that day) __________

Water depth_______________________ Water temperature ______________________

Other environmental conditions____

Describe capture location (include state, county, lat and long): ___________________________

____

Describe capture method and/or type of gear in use when turtle was caught:_________________

____

Species Information: *(please designate cm/m or inches.)*

Species _____________________________ Weight (kg or lbs)___________________________

Length (TL) _______________ Length (FL) _____________________

Condition of specimen/description of animal____

____

Existing Tag Information

PIT Tag # _________________________________

Other Tags: ____

Miscellaneous:

Fin clip taken: YES NO

Photos Taken: YES NO Is this a Recapture: YES NO

Release Information:

Date ___________________________ Time _______________________________

Lat ____________________________ Long _______________________________

State __________________________ County _____________________________

Remarks: (note if fish was involved with tar or oil, gear or debris entanglement, wounds or mutilations, propellor damage, old tag locations, etc.)

____

____

APPENDIX J

MONITORING SPECIFICATIONS FOR DREDGES

Part 1. – HOPPER DREDGES

I. EQUIPMENT SPECIFICATIONS

A. Baskets or screening

Baskets or screening must be installed over the hopper inflows with openings no smaller than 4 inches by 4 inches to provide 100% coverage of all dredged material and shall remain in place during all dredging operations. Baskets/screening will allow for better monitoring by observers of the dredged material intake for sea turtles, sturgeon and their remains. The baskets or screening must be safely accessible to the observer and designed for efficient cleaning.

B. Draghead

The draghead of the dredge shall remain on the bottom **at all times** during a pumping operation, except when:

1) the dredge is not in a pumping operation, and the suction pumps are turned completely off;
2) the dredge is being re-oriented to the next dredge line during borrow activities; and
3) the vessel's safety is at risk (i.e., the dragarm is trailing too far under the ship's hull).

At initiation of dredging, the draghead shall be placed on the bottom during priming of the suction pump. If the draghead and/or dragarm become clogged during dredging activity, the pump shall be shut down, the dragarms raised, whereby the draghead and/or dragarm can be flushed out by trailing the dragarm along side the ship. If plugging conditions persist, the draghead shall be placed on deck, whereby sufficient numbers of water ports can be opened on the draghead to prevent future plugging.

Upon completion of a dredge track line, the drag tender shall:

1) throttle back on the RPMs of the suction pump engine to an idling speed (e.g., generally less than 100 RPMs) **prior to** raising the draghead off the bottom, so that no flow of material is coming through the pipe into the dredge hopper. Before the draghead is raised, the vacuum gauge on the pipe should read zero, so that no suction exists both in the dragarm and draghead, and no suction force exists that can impinge a turtle on the draghead grate;
2) hold the draghead firmly on the bottom with no flow conditions for approximately 10 to 15 seconds before raising the draghead; then, raise the draghead quickly off the bottom and up to a mid-water column level, to further reduce the potential for any adverse interaction with nearby turtles;

3) re-orient the dredge quickly to the next dredge line; and

4) re-position the draghead firmly on the bottom prior to bringing the dredge pump to normal pumping speed, and re-starting dredging activity.

C. Floodlights

Floodlights must be installed to allow the NMFS-approved observer to safely observe and monitor the baskets or screens.

D. Intervals between dredging

Sufficient time must be allotted between each dredging cycle for the NMFS-approved observer to inspect and thoroughly clean the baskets and screens for sea turtles and/or turtle parts and document the findings. Between each dredging cycle, the NMFS-approved observer should also examine and clean the dragheads and document the findings.

II. OBSERVER PROTOCOL

A. Basic Requirement

A NMFS-approved observer with demonstrated ability to identify sea turtle and sturgeon species must be placed aboard the dredge s) being used, starting immediately upon project commencement to monitor for the presence of listed species and/or parts being entrained or present in the vicinity of dredge operations.

B. Duty Cycle

Observers are required at times and locations outlined in the ITS. While onboard, the observer must work a shift schedule appropriate to allow for the observation of at least 50% of the dredge loads (e.g., 12 hours on, 12 hours off). The USACE shall require of the dredge operator that, when the observer is off watch, the cage shall not be opened unless it is clogged. The USACE shall also require that if it is necessary to clean the cage when the observer is off watch, any aquatic biological material is left in the cage for the observer to document and clear out when they return on duty. In addition, the observer shall be the only one allowed to clean off the overflow screen.

C. Inspection of Dredge Spoils

During the required inspection coverage, the trained NMFS-approved observer shall inspect the galvanized screens and baskets at the completion of each loading cycle for evidence of sea turtles or shortnose sturgeon. The Endangered Species Observation Form shall be completed for each loading cycle, whether listed species are present or not. If any whole (alive or dead) or turtle parts are taken incidental to the project(s), NMFS Protected Resources Division must be contacted by phone (978-281-9328) or e-mail (incidental.take@noaa.gov) within 24 hours of the take. An incident report for sea turtle/shortnose sturgeon take (Appendix E) shall also be completed by the observer and sent via FAX 978) 281-9394 or e-mail (incidental.take@noaa.gov) within 24 hours of the take. Incident reports shall be completed for every take regardless of the state of decomposition. NMFS will determine if the take should be attributed to the incidental take level, after the incident report is received. Every incidental take (alive or dead, decomposed or fresh) should be photographed, and photographs shall be sent to NMFS either electronically (incidental.take@noaa.gov) or through the mail. Weekly reports, including all completed load sheets, photographs, and relevant incident reports, as well as a final report, shall be submitted to NMFS NER, Protected Resources Division, 55 Great Republic Drive, Gloucester, MA 01930-2298.

D. Information to be Collected

For each sighting of any endangered or threatened marine species (including whales as well as sea turtles), record the following information on the Endangered Species Observation Form (Appendix E):

1) Date, time, coordinates of vessel
2) Visibility, weather, sea state
3) Vector of sighting (distance, bearing
4) Duration of sighting
5) Species and number of animals
6) Observed behaviors (feeding, diving, breaching, etc.)
7) Description of interaction with the operation

E. Disposition of Parts

If any whole turtles or sturgeon (alive or dead, decomposed or fresh) or turtle or shortnose sturgeon parts are taken incidental to the project(s), NMFS Protected Resources must be contacted within 24 hours of the take (phone: 978-281-9328 or e-mail (incidental.take@noaa.gov). All whole dead sea turtles or sturgeon, or turtle or shortnose sturgeon parts, must be photographed and described in detail on the Incident Report of Sea Turtle Mortality (Appendix E). The photographs and reports should be submitted by email (incidental.take@noaa.gov) or mail (Attn: Section 7 Coordinator, NMFS, Protected Resources Division, 55 Great Republic Drive, Gloucester, MA 01930-2298). After NMFS is notified of the take, it may instruct the observer to save the animal for future analysis if there is freezer space. Disposition of dead sea turtles/ sturgeon will be determined by NMFS at the time of the take notification. If the species is unidentifiable or if there are entrails that may have come from a turtle, the subject should be photographed, placed in plastic bags, labeled with location, load number, date and time taken, and placed in cold storage.

Live turtles (both injured and uninjured) should be held onboard the dredge until transported as soon as possible to the appropriate stranding network personnel for rehabilitation (Appendix C). No live turtles should be released back into the water without first being checked by a qualified veterinarian or a rehabilitation facility. The NMFS Stranding Network Coordinator ((978) 282-8470) should also be contacted immediately for any marine mammal injuries or mortalities.

III. OBSERVER REQUIREMENTS

Submission of resumes of endangered species observer candidates to NMFS for final approval ensures that the observers placed onboard the dredges are qualified to document takes of endangered and threatened species, to confirm that incidental take levels are not exceeded, and to provide expert advice on ways to avoid impacting endangered and threatened species. NMFS does not offer certificates of approval for observers, but approves observers on a case-by-case basis.

A. Qualifications

Observers must be able to:

1) differentiate between leatherback *Dermochelys coriacea*), loggerhead *Caretta caretta* , Kemp's ridley *Lepidochelys kempii*), green *Chelonia mydas*), and hawksbill *Eretmochelys imbricata*) turtles and their parts, and shortnose (*Acipenser brevirostrum* and Atlantic (*Acipenser oxyrinchus oxyrinchus*) sturgeon and their parts;
2) handle live sea turtles and sturgeon and resuscitate and release them according accepted procedures;
3) correctly measure the total length and width of live and whole dead sea turtle and sturgeon species;
4) observe and advise on the appropriate screening of the dredge's overflow, skimmer funnels, and dragheads; and
5) identify marine mammal species and behaviors.

B. Training

Ideally, the applicant will have educational background in marine biology, general experience aboard dredges, and hands-on field experience with the species of concern. For observer candidates who do not have sufficient experience or educational background to gain immediate approval as endangered species observers, the below observer training is necessary to be considered admissible by NMFS. We can assist the USACE by identifying groups or individuals capable of providing acceptable observer training. Therefore, at a minimum, observer training must include:

1) instruction on how to identify sea turtles and sturgeon and their parts;
2) instruction on appropriate screening on hopper dredges for the monitoring of sea turtles and sturgeon (whole or parts);
3) demonstration of the proper handling of live sea turtles and sturgeon incidentally captured during project operations. Observers may be required to resuscitate sea turtles according to accepted procedures prior to release;
4) instruction on standardized measurement methods for sea turtle and sturgeon lengths and widths; and

5) instruction on how to identify marine mammals; and
6) instruction on dredging operations and procedures, including safety precautions onboard a vessel.

Part 2. MECHANICAL DREDGES

I. EQUIPMENT SPECIFICATIONS

A. Floodlights

Should dredging occur at night or in poor lighting conditions, floodlights must be installed to allow the NMFS-approved observer to safely observe and monitor dredge bucket and scow.

B. Intervals between dredging

Sufficient time must be allotted between each dredging cycle for the NMFS-approved observer to inspect the dredge bucket and scow for shortnose sturgeon and/or sturgeon parts and document the findings.

II. OBSERVER PROTOCOL

A. Basic Requirement

A NMFS-approved observer with demonstrated ability to identify shortnose sturgeon must be placed aboard the dredge(s) being used; starting immediately upon project commencement to monitor for the presence of listed species and/or parts being taken or present in the vicinity of dredge operations.

B. Duty Cycle

A NMFS-approved observer must be onboard during dredging until the project is completed. While onboard, observers shall provide the required inspection coverage to provide 100% coverage of all dredge-cycles.

C. Inspection of Dredge Spoils

During the required inspection coverage, the NMFS-approved observer shall observe the bucket as it comes out of the water and as the load is deposited into the scow during each dredge cycle for evidence of shortnose sturgeon. If any whole sturgeon (alive or dead) or sturgeon parts are taken incidental to the project(s), NMFS must be contacted **within 24 hours** of the take (phone: 978-281-9328 or email (incidental.take@noaa.gov . An incident report for sturgeon take shall also be completed by the observer and sent to NMFS via FAX (978) 281-9394 or e-mail incidental.take@noaa.gov) within 24 hours of the take. Incident reports shall be completed for every take regardless of the state of decomposition. Every incidental take (alive or dead, decomposed or fresh) must be photographed. A final report including all completed load sheets, photographs, and relevant incident reports are to be submitted to the attention of the Section 7 Coordinator, NMFS Protected Resources Division, 55 Great Republic Drive, Gloucester, MA 01930.

D. Inspection of Disposal

The NMFS-approved observer shall observe all disposal operations to inspect for any whole sturgeon or sturgeon parts that may have been missed when the load was deposited into the scow. If any whole sturgeon (alive or dead) or sturgeon parts are observed during disposal operation, the procedure for notification and documentation outlined above should be completed.

E. Disposition of Parts

As required above, NMFS must be contacted as soon as possible following a take. Any dead sturgeon should be refrigerated or frozen until disposition can be discussed with NMFS. Under no circumstances should dead sturgeon be disposed of without confirmation of disposition details with NMFS.

III. OBSERVER REQUIREMENTS

Submission of resumes of endangered species observer candidates to NMFS for final approval ensures that the observers placed onboard the dredges are qualified to document takes of endangered and threatened species, to confirm that incidental take levels are not exceeded, and to provide expert advice on ways to avoid impacting endangered and threatened species. NMFS does not offer certificates of approval for observers, but approves observers on a case-by-case basis.

A. Qualifications

Observers must be able to:

1) differentiate between shortnose (*Acipenser brevirostrum*) and Atlantic (*Acipenser oxyrinchus oxyrinchus*) sturgeon and their parts;
2) handle live sturgeon;
3) correctly measure the total length and width of live and whole dead sturgeon species;

B. Training

Ideally, the applicant will have educational background in biology, general experience aboard dredges, and hands-on field experience with the species of concern. For observer candidates who do not have sufficient experience or educational background to gain immediate approval as endangered species observers, we note below the observer training necessary to be considered admissible by NMFS. We can assist the USACE by identifying groups or individuals capable of providing acceptable observer training. Therefore, at a minimum, observer training must include:

1) instruction on how to identify sturgeon and their parts;

2) instruction on appropriate screening on hopper dredges for the monitoring of sturgeon whole or parts);

3) demonstration of the proper handling of live sturgeon incidentally captured during project operations;

4) instruction on standardized measurement methods for sturgeon lengths and widths; and

5) instruction on dredging operations and procedures, including safety precautions onboard.

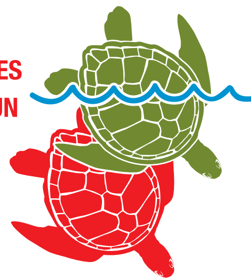
SEA TURTLE HANDLING AND RESUSCITATION REQUIREMENTS

IF YOU ENCOUNTER AN ENTANGLED, INJURED OR UNRESPONSIVE SEA TURTLE, please immediately call the National Marine Fisheries Service Northeast Region Hotline:

866-755-NOAA (6622)

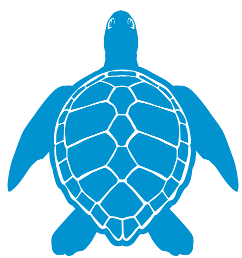
Any sea turtle taken incidentally during fishing must be handled with care to prevent injury, observed for activity, and returned to the water according to the following procedures:

A **A SEA TURTLE THAT IS ACTIVELY MOVING OR IS DEAD (THAT IS, IF MUSCLES ARE STIFF AND/OR THE FLESH HAS BEGUN TO ROT) MUST BE RELEASED OVER THE VESSEL'S STERN ONLY:**



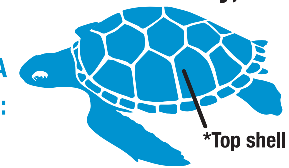
- When fishing gear is not in use,
- When the engine is in neutral, and
- In areas where the turtle is unlikely to be recaptured or injured by vessels.

OTHERWISE, YOU MUST CONSIDER THE TURTLE UNRESPONSIVE AND ATTEMPT RESUSCITATION AS DESCRIBED IN B.



You are strongly encouraged to read the full regulation, which can be found at 50 CFR 223.206(d)(1).

B **YOU MUST ATTEMPT RESUSCITATION ON SEA TURTLES THAT ARE UNRESPONSIVE AS FOLLOWS:**



1 Place the turtle top shell up* and elevate its hindquarters at least 6" (or 15-30°) for at least 4 hours and up to 24 hours.

- The amount of elevation depends on the turtle's size; larger turtles require greater elevation.
- In warm weather (over 60 °F), keep the turtle shaded and moist, preferably by placing a damp towel over the head, shell, and flippers. You must NOT place the turtle into a container of water.

2 Periodically rock the turtle gently side to side by holding the outer edge of the shell and lifting one side about 3", then alternate to the other side.

3 Periodically gently touch the eye and pinch the tail (reflex tests) to see if there is a response.

C **IF THE TURTLE REVIVES AND BECOMES ACTIVE DURING RESUSCITATION EFFORTS**, you must release it over the vessel's stern as described in A. If the turtle does not respond to the reflex test (as described in B 3) or move within 4 hours (up to 24 hours, if possible), you must return the turtle to the water in the same manner.

APPENDIX K

Sea turtle handling and resuscitation measures as found at 50 CFR 223.206(d)(1).

(d) (1) (i) Any specimen taken incidentally during the course of fishing or scientific research activities must be handled with due care to prevent injury to live specimens, observed for activity, and returned to the water according to the following procedures.

(A) Sea turtles that are actively moving or determined to be dead as described in (d)(1)(i)(C) of this section must be released over the stern of the boat. In addition, they must be released only when fishing or scientific collection gear is not in use, when the engine gears are in neutral position, and in areas where they are unlikely to be recaptured or injured by vessels.

(B) Resuscitation must be attempted on sea turtles that are comatose, or inactive, as determined in paragraph (d)(1) of this section by:

(1) placing the turtle on its bottom shell (plastron) so that the turtle is right side up, and elevating its hindquarters at least 6 inches (15.2 cm) for a period of 4 up to 24 hours. The amount of the elevation depends on the size of the turtle; greater elevations are needed for larger turtles. Periodically, rock the turtle gently left to right and right to left by holding the outer edge of the shell (carapace) and lifting one side about 3 inches (7.6 cm) then alternate to the other side. Gently touch the eye and pinch the tail (reflex test) periodically to see if there is a response.

(2) sea turtles being resuscitated must be shaded and kept damp or moist but under no circumstance be placed into a container holding water. A water-soaked towel placed over the head, neck, and flippers is the most effective method in keeping a turtle moist.

(3) sea turtles that revive and become active must be released over the stern of the boat only when fishing or scientific collection gear is not in use, when the engine gears are in neutral position, and in areas where they are unlikely to be recaptured or injured by vessels. Sea turtles that fail to respond to the reflex test or fail to move within 4 hours (up to 24, if possible) must be returned to the water in the same manner as that for actively moving turtles.

© A turtle is determined to be dead if the muscles are stiff (rigor mortis) and/or the flesh has begun to rot; otherwise the turtle is determined to be comatose or inactive and resuscitation attempts are necessary.

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
GREATER ATLANTIC REGIONAL FISHERIES OFFICE
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NOV 27 2017

MEMORANDUM FOR: The File

FROM: Julie Crocker Julia E. Crocker
Acting Assistant Regional Administrator for Protected Resources

SUBJECT: Characteristics and process for when strandings should be considered hopper dredge takes

Sea turtles are occasionally taken in hopper dredging activities. Observers are typically placed on hopper dredges to monitor the intake for turtles or turtle parts. Turtles that interact with hopper dredges often have the same characteristics. Sometimes, strandings are found with injuries that are consistent with those seen by observers onboard hopper dredges. Such strandings can involve dead turtles washed up on the beach, found in the dredge material or pipeline, or found floating in nearshore waters. In the Greater Atlantic Region, most of the sea turtle/hopper dredge interactions have occurred in Virginia. The Incidental Take Statement (ITS) of the 2012 Biological Opinion on the maintenance of Chesapeake Bay Entrance Channels notes that "...should we receive any reports of injured or killed sea turtles or sturgeon in the area (i.e., via the STSSN [Sea Turtle Stranding and Salvage Network]) and necropsy documents that interactions with the hopper dredge operating during this project was the cause of death, we will consider those animals to be taken by this action." As such, it is important to explore the characteristics of hopper dredge interactions in order to determine when a dredge can be positively identified as the cause of death in a stranding. This information is critical for monitoring sea turtle takes against the authorized takes contained in the ITS of a Biological Opinion.

The characteristics outlined below have been observed in sea turtle interactions with hopper dredges; however, not every dredge interaction shows all of these characteristics. The Virginia Aquarium and Marine Science Center previously explored this issue to determine whether trauma in stranded turtles is consistent with observed dredge takes (Trapani *et al.* 2008). We referred to this information in the development of these criteria. The 2012 Chesapeake Bay dredging Biological Opinion notes that a necropsy is needed to document dredging as the cause of death. We will share these criteria with the appropriate STSSN partner and work with them to ensure necropsies are conducted, whenever possible, on strandings that exhibit potential dredge-related injuries (as outlined below). A necropsy isn't necessarily required to determine a stranding was related to dredge activity (through the process outlined below); however, a necropsy may be needed to attribute the take towards the ITS in some Biological Opinions (e.g., Chesapeake Bay dredging). These criteria will apply to all areas where suspect dredge strandings are found, not only in Virginia.

Characteristics

Injury type

To assign take of a turtle with an unknown cause of death to a dredge ITS, the turtle must exhibit injuries inconsistent with another mortality source (e.g., no ligature injuries or serial parallel wounds as would be seen in fishery interactions or vessel strikes, respectively). The types of injuries occurring from hopper dredge interactions may include:

- Crushing wounds/injuries;
- Partial carapace or body part[1];
- Jagged edges to injury;
- Internal organs completely or partially missing or displaced;
- Excoriated skin injuries; or
- Peeling or missing scutes, not related to decomposition, around injury area.

Other characteristics

- Heavy inundation of the body cavity, organs, and/or tissue (especially open wounds) by mud, silt, or other sediment; or
- Hopper dredging occurring in the area within the last one to two weeks.

  When evaluating whether a stranding would be attributable to a dredging ITS, all possible mortality sources will be considered. Any mortality source that may result in characteristics similar to those outlined here will be reviewed. Current and past hopper dredging activity and location (within two states of the stranding location) will be documented and environmental conditions (e.g., currents, wind patterns) will be evaluated to determine if a stranding in a certain location may be related to local dredge activity. The condition of the stranding in relation to the location of the dredging activity will also be considered.

Process

When a stranding is documented with one or more of the injury characteristics noted above, the following steps will occur in order to ascertain whether the dredge was the cause of turtle death.

- STSSN responder will fill out the STSSN form and note on the top of the form that the case is a suspect dredge interaction.
- STSSN responder will perform a necropsy, if possible.
- The STSSN form and any necropsy results will be forwarded to the GARFO STSSN coordinator within three working days.
- A team of three GARFO Protected Resources Division biologists[2] will review the case, considering the characteristics presented in this memo, as well as the STSSN data. If a necropsy was not completed, the team will review all relevant information available, as the completion of a necropsy should not preclude a determination.
- The team will discuss the case and make a consensus determination as to whether the stranding represents a dredge take and should be counted towards an ITS. The relevant ITS will also be identified.

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[1] A partial carapace or body part may also be seen with vessel strikes, so this injury descriptor would need to be evaluated in conjunction with the other injury types.

[2] The team will include two sea turtle biologists and one section 7 biologist. While staff may change, the team currently includes Zach Jylkka, Kate Sampson, and Carrie Upite (lead).

- A memo from the team lead to the GARFO Assistant Regional Administrator for Protected Resources will be prepared with the team's rationale.
- GARFO section 7 staff will inform and distribute the associated rationale to the lead action agency (typically the Army Corps of Engineers).
- If determined to be a dredge take, the interaction will be included in the respective incidental take reporting logs.

Literature Cited

Trapani, C.M., D.D. Boyd and P.D. Bargo. 2008. Sea Turtle/Dredge Interactions in Virginia, USA: A Diagnostic View of Observed Takes vs. Strandings. Page 131 in: Kalb, H., Rohde, A., Gayheart, K. and Shanker, K., compilers. Proceedings of the Twenty-Fifth Annual Symposium on Sea Turtle Biology and Conservation. NOAA Technical Memorandum NMFS-SEFSC-582. 204 pp.