

smalltooth sawfish. NMFS believes that this knowledge is extremely important for its determination relating to critical habitat.

Comment 2: Several commenters urged NMFS to initiate recovery efforts for the smalltooth sawfish and requested that NMFS develop a Recovery Program or Recovery Plan.

Response: Section 4(f) of the ESA requires that NMFS develop recovery plans for ESA listed species, unless such a plan will not promote the conservation of the species. NMFS will convene a recovery team to develop a recovery plan for the smalltooth sawfish, after finalizing this rule and the critical habitat designation. NMFS recognizes that the U.S. DPS of smalltooth sawfish is at risk of extinction and that there is an urgent need to begin recovery efforts for this species as soon as possible. NMFS is committed to the recovery effort and intends to take the lead role in smalltooth sawfish recovery and research efforts even before a final recovery plan is developed. NMFS is currently funding studies to better define abundance, movements, and habitat requirements for smalltooth sawfish. NMFS believes that these research efforts are important in the development of the recovery plan and that they are important for the survival and recovery of the species. NMFS is also cooperating with state agencies and academia on their ongoing research and conservation efforts.

Comment 3: One commenter requested that NMFS also list the largetooth sawfish because of the similarity in appearance to the smalltooth sawfish.

Response: Section 4(e) of the ESA allows NMFS to treat any non-listed species as an endangered or threatened species if: (1) the species so resembles a listed species that enforcement personnel would have substantial difficulty differentiating the listed and non-listed species; (2) the effect of this substantial difficulty is an additional threat to the listed species; and (3) such a treatment of an unlisted species will substantially facilitate the enforcement and further the policy of the ESA. NMFS does not believe that treating largetooth sawfish as endangered due to its similarity of appearance to smalltooth sawfish is warranted. NMFS recognizes that largetooth sawfish and smalltooth sawfish closely resemble each other, and that law enforcement personnel may have substantial difficulty differentiating the two species. However, historic records indicate that largetooth sawfish were rarely found in North America, and that

all largetooth sawfish captured in U.S. waters were caught along the coast of Texas and Louisiana, outside of the known current range of smalltooth sawfish (see the sawfish 90-day finding, March 10, 2000; 65 FR 12959). Therefore, the possibility of confusing the two species in the U.S. is very small. It is unlikely that the similarity in appearance of the two species would pose an additional threat to smalltooth sawfish, or that treating largetooth sawfish as endangered would facilitate the enforcement of regulations to protect smalltooth sawfish.

Peer Review

NMFS solicited expert opinions on the status review documents in compliance with the July 1, 1994, Peer Review Policy (59 FR 34270). The responses received from the reviews support the proposed listing action.

Consideration as a "Species" Under the Endangered Species Act

Section 3(16) of the ESA, 16 U.S.C. 1532 (16), defines a species as "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." This definition allows for the listing of DPSs at levels below taxonomically recognized species or subspecies. On February 7, 1996, the U.S. Fish and Wildlife Service (FWS) and NMFS published a joint policy to clarify the phrase "distinct population segment (DPS)" for the purposes of listing, delisting and reclassifying species under the ESA (61 FR 4722). This policy identifies two criteria that must be met for a population segment to be considered a DPS under the ESA: (1) The discreteness of the population segment in relation to the remainder of the species or subspecies to which it belongs; and (2) the significance of the population segment to the species or subspecies to which it belongs.

Discreteness of the U.S. Population of Smalltooth Sawfish

A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors; or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA.

The status review team did not find any indication that the current U.S. population of smalltooth sawfish interacts with smalltooth sawfish elsewhere, suggesting that the U.S. population may be effectively isolated from other populations. However, there are few scientific data on the biology of smalltooth sawfish, and it is not possible to conclusively subdivide this species into discrete populations on the basis of genetics, morphology, behavior, or other biological characteristics. The DPS policy provides for the delineation of a DPS based on international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist. Although several southeastern U.S. states have regulations in place prohibiting fishing for this species, the smalltooth sawfish status review team was unable to identify any mechanisms regulating the exploitation of this species anywhere outside of the U.S. These differences are directly relevant to the inadequacy of existing regulatory mechanisms as a basis for considering the U.S. DPS as a species for purposes of the listing determination, particularly because the review team found no recent verifiable records of smalltooth sawfish populations outside of the U.S. Therefore, NMFS has determined that the U.S. population of smalltooth sawfish is discrete as defined under the DPS policy.

Significance of the U.S. Population of Smalltooth Sawfish

The DPS policy identifies several factors that may be considered in making a determination of a population's significance to the taxon to which it belongs. Among these considerations is evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon. The smalltooth sawfish has already been wholly or nearly extirpated from large areas of its former range in the North Atlantic (Mediterranean, U.S. Atlantic and Gulf of Mexico) and the Southwest Atlantic by fishing and habitat modification, and its status elsewhere is uncertain but likely to be similarly reduced. In fact, the status review did not find any recent verifiable records of smalltooth sawfish populations outside the United States. Reports of this species from outside the Atlantic may be misidentifications of other pristids. Therefore, smalltooth sawfish populations in U.S. waters, while extremely depleted, may be the largest population of smalltooth sawfish in the Western Atlantic. The U.S. population of smalltooth sawfish