



November 9, 2010

**Press Update:
Judge Denies Motion to Stay Deepening For Atlantic Sturgeon
Litigation of Case Moves On**

On November 4th, Judge Joel Pisano of the federal District of New Jersey denied a motion filed by the Delaware Riverkeeper Network, National Wildlife Federation, NJ Environmental Federation, Clean Water Action and the Delaware Nature Society to stay proceedings on the Delaware Deepening litigation pending the Army Corps of Engineers' compliance with its obligations under the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA) to protect Atlantic sturgeon in the Delaware River. The motion was filed after the National Marine Fisheries Service proposed the Atlantic sturgeon for listing under the Endangered Species Act on October 6, 2010. The Service proposes to list the Atlantic sturgeon in the New York Bight, which includes the Delaware and Hudson Rivers, as an endangered distinct population segment. The Service found that survival of Atlantic sturgeon in the Delaware River is critical to the survival of the New York Bight population segment. In turn, the survival of the New York Bight population segment is critical to the survival of the species as a whole.

Although exact numbers are unknown, it is estimated there are fewer than 300, maybe less than 100, spawning adult Atlantic sturgeon left in the Delaware River – which was once home to the greatest number of Atlantic sturgeon in the US. The Service explicitly found that the Deepening Project will have serious impacts on Atlantic sturgeon in the Delaware River because of habitat destruction and degradation from dredging and associated water quality issues. Vessel strikes from large ocean-going container ships are another threat that the Service drew attention to. The Service must publish its final decision on listing Atlantic sturgeon by October 5, 2011. If the Service finds prior to that point that Atlantic sturgeon are at imminent risk of extinction, the Service can issue an emergency rule to list the species for 240 days. [The Service is taking public comments on the proposed listing rule until January 4, 2011.]

Judge Pisano ruled that our motion to stay was premature because the Corps needs more time to fulfill its obligations under NEPA and the ESA and that granting the stay would cause

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economic harm to the Port of Philadelphia. He also stated that granting our motion to stay is unnecessary because the Corps is currently under an injunction issued by Judge Robinson of the federal District of Delaware in our litigation in front of that court, preventing the Corps from proceeding with further dredging.

Notably, however, even prior to Judge Pisano's ruling, the Corps had already canceled its contract process for the next phase of dredging that was intended to begin on December 1, 2010. We understand that the Corps does not intend to begin further work on the Deepening Project until August 2011, and that it is currently working to fulfill its obligations under the ESA to confer with the National Marine Fisheries Service on the Deepening Project's impacts on Atlantic sturgeon as well as its obligations under NEPA to consider doing a Supplemental Environmental Impact Statement.

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