



## **SHORELINES – September 2014**

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### **An Endangered Species Act Trifecta – the Loggerhead Sea Turtle, the Red Knot Rufa Shorebird, and the Atlantic Sturgeon.**

The Endangered Species Act (ESA) was passed in 1973 and authorizes plants or animals to be listed as **threatened** or **endangered** by the U.S. Fish & Wildlife Service (USFWS) for those species “on the land”, i.e., terrestrial; and by the National Marine Fisheries Service (NMFS) for those “in the water”, i.e., marine. For the sake of this conversation, endangered is a term reserved for those species on the brink of extinction, while threatened is a term reserved for species likely to be at the brink of extinction in the not-too-distant future. One might expect there would be more protection measures afforded for endangered species rather than those that are threatened; but in practice there is little difference. The amount of review, consultation, avoidance measures, etc. is almost exactly the same.

It was an interpretation of the ESA that was decades in the making, but the Services (USFWS and NMFS) are now compelled to identify areas of habitat believed to be essential for their conservation for each and every listed species – these areas are designated as **critical habitat**. The USFWS affirms on their critical habitat website that, “The determination and designation of critical habitat is one of the most controversial and confusing aspects of the ESA.” Moreover, non-governmental organizations (NGOs) have created a cottage industry to sue the Services to list species, sue to designate critical habitat, and sue along the way for not meeting deadlines to list species and designate critical habitat. The Services will often settle with the NGOs creating a “sue and settle” paradigm that is consistently employed – including for the species mentioned below. That issue notwithstanding, critical habitat forces federal agencies to make special efforts to protect the important characteristics of these areas when activities are likely to destroy or adversely modify critical habitat.

With this very brief summary in mind, Carteret County has not one – not two – but three species in play regarding their “status” (listing) and critical habitat designation.

**(1) Loggerhead Sea Turtle Terrestrial and Marine Critical Habitat** – Although I disagree with this interpretation, a population assessment of the loggerhead in 2010 triggered a mandatory designation of critical habitat despite the fact the species was first listed as threatened in 1978. No critical habitat was designated thereafter until now and there have been at least four legal actions filed against the Services by NGOs pertaining to the loggerhead since 2007. Also the critical habitat designation includes BOTH the terrestrial and marine habitats as the turtle lives in the water and nests on the land. Thus both the NMFS and USFWS are involved, respectively.

Despite the score of conservation measures that have been implemented voluntarily or mandated by resource agencies in the past 35 years that have improved the habitat and overall survival of the species, critical habitat was still proposed in 2013 and included all the beaches of Bogue Banks, adjacent nearshore waters, and well offshore. The Services further identified the primary threats to loggerheads which included; recreational beach use, fishing, beach driving, coastal development, beach nourishment and dredging, artificial lighting, and host of other threats. The Services then took an additional step by stipulating

that “special management considerations” will be needed to address the threats. One problem however – the Services never disclosed what the special management considerations would be, hence resulting in a “legislate now – regulate later” approach. Accordingly there are many different directions the critical habitat designation could lead to but more review at a minimum to wholesale changes to federal actions and new regulations as a maximum are all in the realm of possibility. The impacts to local beach ordinances and State rules (N.C. Division of Coastal Management) are also an unknown at this point.

The critical habitat designation was predicated on nesting density patterns and we had some very reasonable and legitimate concerns to how this internal standard was applied beyond the macroscopic issues mentioned immediately above. Despite all the public hearings (an overwhelming majority speaking against critical habitat); 22,000 comments received; a Notice of Intent to Sue served by Carteret County; and our personal plea directly to the Services in Washington, D.C. --- the final critical habitat designation was released in early July 2014 with **no changes** pertaining to the land and adjacent waters of Carteret County; or any of North Carolina for that matter. We will see what the impacts will be. The Services aren’t designating critical habitat as a fun educational tool – if no further rules, regulations, or simply more review is not forthcoming; then many will question why the Services designated critical habitat to begin with.



The female loggerhead sea turtle (*Caretta caretta*) is one of the more popular visitors on the beach, laying eggs as early as late April and late as late September. The eggs subsequently incubate in the sand for approximately two months before hatching sometime between late June and mid-November. Dedicated volunteers can be seen early in morning identifying nests or false crawls, assessing nest integrity, and ensuring hatchlings safely make it to the ocean.

**(2) Red Knot Rufa Listing as a Threatened Species** – The USFWS proposed to list this robin-sized shorebird as a threatened species in 2013, and also clearly stated that a critical habitat designation for the Red Knot would be forthcoming in 2014. Its nearly 20,000 mile annual roundtrip from the Southern tip of South America to the far north of the central Canadian Arctic is legendary and stopover areas dot the Atlantic Seaboard along the United States. One of the Red Knot Rufa’s favorite food sources is horseshoe crab eggs and the Delaware Bay is considered as prime area for the crab. However, the horseshoe crab has been harvested for use in fertilizer, and its blood is utilized as a clotting agent for pharmaceuticals. Moreover, the crabs have also been used as bait in eel and conch traps. We expect to see the final listing as a threatened species to be released in September 2014 and the proposed designated areas of critical habitat to be released months thereafter, which will include a public comment period. Whether or not areas of Carteret County will be

included as critical habitat remain to be seen, but if so; then a list of perceived threats requiring special management considerations will be included - akin to the loggerhead.



The Red Knot Rufa (*Calidris canutus rufa*) is perhaps the longest-distance migrant in the entire animal kingdom. Its annual migration back and forth from the southern tip of South America to the Canadian Arctic is legendary.

**(3) Atlantic Sturgeon Critical Habitat** – This could be a big one (geographically speaking) because the Atlantic Sturgeon spawn close to the river and spend most of their lives in estuaries and the marine environment (including inlets). The species was listed as endangered in 2012 by the NMFS over the objections of just about every coastal State along the Atlantic Seaboard. The States' objection was rooted in the fact that the species population is clearly not in decline – low compared to its heyday over a hundred years ago? Absolutely. But not trending downward over the past several decades. The proposed critical habitat designation for the Sturgeon should be released by the end of this year (2014) and obviously could have huge and far-reaching impacts to the fishing and dredging industries (among others). To be honest, the Services have a propensity to not listen or make changes to their species listings and critical habitat proposals as evidenced above – it will be interesting to see what they propose later this year.



The Atlantic Sturgeon (*Acipenser oxyrinchus oxyrinchus*) was once prized for their roe and white meat in the 1800s until the fishery collapsed. These pre-historic looking fish can live for 50 years or more.