governments,'' with two exceptions. First, it excludes ''a condition of federal assistance.'' Second, it excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

Critical habitat designation does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Designation of critical habitat may indirectly impact non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) As discussed in the DEA of the proposed designation of critical habitat for the Oregon chub, we do not believe that this rule would significantly or uniquely affect small governments because it would not produce a Federal mandate of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The DEA concludes that incremental impacts may occur due to project modifications that may need to be made for agricultural and development activities; however, these are not expected to affect small governments. Consequently, we do not believe that the critical habitat designation would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Executive Order 12630—Takings

In accordance with E.O. 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of proposing critical habitat for the Oregon chub in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits. The proposed critical habitat for the Oregon chub does not pose significant takings implications for the above reasons.

References Cited

A complete list of all references we cited in the proposed rule and in this document is available on the Internet at *http://www.regulations.gov* or by contacting the Oregon Fish and Wildlife Office (see the **FOR FURTHER INFORMATION CONTACT** section).

Authors

The primary authors of this rulemaking are the staff members of the Oregon Fish and Wildlife Office.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 24, 2009

Will Shafroth

Acting Assistant Secretary for Fish and Wildlife and Parks

[FR Doc. E9–22801 Filed 9–21–09; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2009–0027; 92220–1113–0000; ABC Code: C3]

RIN 1018–AW27

Endangered and Threatened Wildlife and Plants; Proposed Rule To List the Shovelnose Sturgeon as Threatened Due to Similarity of Appearance

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service or USFWS), propose to treat the shovelnose sturgeon *(Scaphirhynchus platorynchus*) as threatened under the ''Similarity of Appearance'' provisions of the Endangered Species Act of 1973, as amended (Act). The shovelnose sturgeon *(Scaphirhynchus platorynchus*) and the endangered pallid sturgeon (*Scaphirhynchus albus*) are difficult to differentiate in the wild and inhabit overlapping portions of the Missouri and Mississippi River basins. Four States where the two species commonly coexist allow for commercial fishing of shovelnose sturgeon which is in demand for its roe (eggs sold as caviar). The close resemblance in appearance between the two species creates substantial difficulty for fishermen, State regulators, and law enforcement personnel in differentiating between shovelnose and pallid sturgeon, both whole specimens and parts (including flesh and roe). This similarity of appearance has resulted in the documented take of pallid sturgeon and is a threat to the species. The determination that the shovelnose sturgeon should be treated as threatened due to similarity of appearance will substantially facilitate law enforcement actions to protect and conserve pallid sturgeon. We also propose a special rule to define activities that would and would not constitute take of shovelnose sturgeon under section 9 of the Act.

DATES: We will accept comments received or postmarked on or before November 23, 2009. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by November 6, 2009.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow instruction for submitting comments to Docket No. FWS–R6–ES–2009–0027.
- *U.S. mail or hand-delivery:* Public Comments Processing, *Attn:* FWS–R6–ES–2009–0027; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (*see* the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Pallid Sturgeon Recovery Coordinator, Billings Field Office, 2900 4th Avenue North, Room 301, Billings, Montana 59101 (telephone 406/247–7365; facsimile 406/247–7364). Persons who

use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800/877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Public Comments

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. If you submit a comment via *http://www.regulations.gov,* your entire comment—including your personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov.*

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), and the Office of Management and Budget's (OMB) Final Information Quality Bulletin for Peer Review, dated December 16, 2004, we will seek independent review of the science in this rule. The purpose of such review is to ensure that our final rule is based on scientifically sound data, assumptions, and analyses. We will send at least three peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed rule.

We will take into consideration all comments, including peer review comments, and any additional information received during the comment period on this proposed rule during the preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

Section 4(b)(5)(E) of the Act requires that we hold one public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register** (*see* **DATES**). Such requests must be made in writing and be addressed to the Pallid Sturgeon Recovery Coordinator at the address in **FOR FURTHER INFORMATION CONTACT.**

Similarity of Appearance Listing

Section 4(e) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*) and implementing regulations (50 CFR 17.50–17.52) authorize the treatment of a species as endangered or threatened if (a) The species so closely resembles in appearance a listed endangered or threatened species that law enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species; (b) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and (c) such treatment of an unlisted species will substantially facilitate the enforcement and further the purposes of the Act. With regard to shovelnose sturgeon, we believe each of these factors apply.

In 1990, we listed the pallid sturgeon (*Scaphirhynchus albus*) as endangered under the Act (55 FR 36641, September 6, 1990). The pallid sturgeon has a flattened, shovel-shaped snout, possesses a long and slender and completely armored caudal peduncle, and lacks a spiracle and belly scutes (Forbes and Richardson 1905, pp. 38–41). Pallid sturgeon are a bottom-oriented species found only in portions of the Missouri and Mississippi River basins (Kallemeyn 1983, p. 4). The species can be long-lived (40 + years), with females reaching sexual maturity later than males (Keenlyne and Jenkins 1993, pp. 393, 395). Pallid sturgeon at the northern end of their range can obtain sizes much larger than pallid sturgeon at the southern end of their range (USFWS 1993, p. 3). Known threats to the pallid sturgeon include habitat modification, small population size, limited natural reproduction, hybridization, pollution and contaminants, and commercial harvest (55 FR 36641, September 6, 1990; USFWS 2007, pp. 38–59).

The shovelnose sturgeon (*Scaphirhynchus platorynchus*) is similar in appearance to the pallid sturgeon and inhabits overlapping portions of the Missouri and Mississippi River basins. Traditionally, biologists used character indices to distinguish between pallid and shovelnose sturgeon. This approach uses up to 13 morphometric body measurements as well as meristic counts (*i.e.,* the number of dorsal and anal fin rays) to differentiate between the two species. Since shovelnose sturgeon do not obtain maximum sizes as great as pallid sturgeon, it was assumed that adult shovelnose sturgeon could be distinguished from pallid sturgeon by their smaller size. However, throughout their ranges, there is length overlap between the two species. Thus size alone is not a suitable diagnostic character between the two species. Age of the individual also can complicate use of morphometrics in differentiation based on size (Kuhajda *et al.* 2007, pp. 324, 344). Recent data show limited success applying character indices universally across the geographic range of the species (Kuhajda *et al.* 2007, pp. 344–346; Murphy *et al.* 2007, p. 322). We now believe a combination of character indices, based on morphometric measures and meristic counts, as well as genetic testing is necessary to reliably identify a whole specimen or its parts. While genetic tests can differentiate *Scaphirhynchus* eggs from those of other genera, at this time, roe cannot be reliably differentiated as having been derived from shovelnose sturgeon, harvest of which may be legal, or pallid sturgeon, harvest of which is illegal (Curtis 2008). This similarity poses a problem for Federal and State law enforcement agents trying to stem illegal trade in pallid sturgeon roe.

While harvest of pallid sturgeon is prohibited by section 9 of the Act and by State regulations throughout its range, commercial harvest of shovelnose sturgeon has resulted in the documented take of pallid sturgeon (Sheehan *et al.* 1997, p. 3; Bettoli *et al.* 2009, p. 3; USFWS 2007, pp. 45–48). Four States allow commercial harvest of shovelnose sturgeon from waters commonly occupied by pallid sturgeon (USFWS 1993, pp. 3–5). These are Tennessee (Tennessee 2008, pp. 4–5), Missouri (except on the Missouri River upstream of the Kansas River to the Iowa border) (Missouri 2008, pp. 10–11), Kentucky (Kentucky 2008, pp. 1–2), and Illinois (below Mel Price Locks and Dam) (Illinois 2007, pp. 3–5; Illinois 2008, p. 2). In order to protect pallid sturgeon, fishing seasons with maximum harvestable size limits for shovelnose sturgeon have been established (Bettoli *et al.* 2009, pp. 1–2). However, harvestable size limits for shovelnose sturgeon cannot protect pallid sturgeon that fall within the harvestable size limits if pallid sturgeon cannot be reliably differentiated from shovelnose sturgeon.

A recent study documented that commercial fishers misidentified 29 percent of the encountered pallid sturgeon and that a minimum of 1.8 percent of total sturgeon harvest in Tennessee was endangered pallid sturgeon (Bettoli *et al.* 2009, p. 3). Applying this minimum harvest estimate to the 2005–07 commercial

shovelnose fishing season within the Tennessee portion of the Mississippi River results in a minimum harvest estimate of 169 adult pallid sturgeon (Bettoli *et al.* 2009, p. 1). If this minimum estimate of pallid sturgeon take was applied across the four States that commercially harvest shovelnose sturgeon where the species commonly coexist, the data suggest a substantial level of pallid sturgeon take (approximately 3,000 kilograms (6,600 pounds (lb)) of pallid sturgeon flesh and about 320 kilograms (700 lb) pallid sturgeon roe since 2000).

Furthermore, demographic data indicate that total annual pallid sturgeon mortality rates are about three times higher where commercial harvest of shovelnose sturgeon occurs compared to areas without commercial harvest (30 percent versus 7 to 11 percent) (Killgore *et al.* 2007, pp. 454–455). The same study found that maximum identified ages of pallid sturgeon are substantially lower in commercially fished reaches of the Mississippi River (14 years) than in noncommercially fished reaches of the Mississippi River (21 years) (Killgore *et al.* 2007, p. 454). Harvested and protected populations should have considerably different mortality rates (and, therefore, corresponding different maximum ages); however, Colombo *et al.* (2007, p. 449) found similar mortality rates for the endangered pallid sturgeon and the harvested shovelnose sturgeon in the middle Mississippi River. This provides further evidence that illegal harvest of pallid sturgeon is occurring. Because female sturgeon do not begin egg development until ages 9 to 12, may not spawn until ages 15 to 20, and spawning may not occur annually (Keenlyne and Jenkins 1993, p. 395), mortality associated with commercial fishing activity is likely substantially lowering recruitment and negatively impacting population growth. Such take is a threat that needs to be addressed in order to conserve the pallid sturgeon.

State commercial fishing data (Table 1) demonstrate a substantial level of commercial harvest of shovelnose sturgeon, including both flesh and roe, from areas where both shovelnose and pallid sturgeon coexist (Williamson 2003, pp. 118–120; Maher 2008; Scholten 2008a; Scholten 2008b; Travnichek 2008).

TABLE 1—REPORTED COMMERCIAL HARVEST OF SHOVELNOSE STURGEON FLESH AND ROE IN POUNDS FROM 1995 TO 2007 FROM THE PORTIONS OF ILLINOIS, KENTUCKY, MISSOURI, AND TENNESSEE WHERE BOTH SHOVELNOSE STURGEON AND PALLID STURGEON COEXIST

[Scholten 2008a; Scholten 2008b; Travnichek 2008; Williamson 2003]

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Flesh													
Illinois	405	3,475	6,115	2,855	3,798	1,576	3,074	1,541	600	2,931	2,599	*	*
Kentucky	*	*	*	*	25	9,938	13,059	8,324	1,413	5,167	16,324	14,130	10,043
Missouri	6,201	10,142	8,231	9,089	19,655	23,394	77,498	43,211	23,956	28,818	10,002	6,526	5,220
Tennessee	*	*	*	*	*	4,178	2,178	3,519	5,759	4,005	17,297	12,926	7,812
Total	6,606	13,617	14,346	11,944	23,478	39,086	95,809	56,595	31,728	40,921	46,222	33,582	23,075
Roe													
Illinois	0	28	65	87	0	16	208	402	134	585	8,395	*	*
Kentucky	*	*	*	*	*	527	1,021	731	258	554	1,844	1,648	1,738
Missouri	*	*	*	*	*	*	*	*	4,490	3,504	2,356	1,907	1,420
Tennessee	*	*	*	*	*	*	*	660	1,001	665	2,290	2,027	1,366
Total	0	28	65	87	0	543	1,229	1,793	5,883	5,308	14,885	5,582	4,524

Illinois shovelnose harvest includes Mississippi River catch downstream of Mel Price Locks and Dam; Missouri shovelnose harvest includes both Mississippi River (downstream of Mel Price Locks and Dam) and Missouri River (except on the Missouri River upstream of the Kansas River to the Iowa border) catches; and Tennessee and Kentucky shovelnose harvest includes Mississippi River catch. Tennessee's flesh data was extrapolated using length–weight relationships from total fish harvested.

An asterisk (*) indicates no data reported or data otherwise unavailable.

Much of the domestic sturgeon fishing pressure has been driven by international sturgeon supply and increasing price trends. Global sturgeon catch declined from the record peak of 32,078 metric tons (70,719,884 lb) in 1978 to 2,658 metric tons (5,859,886 lb) in 2000 (FAO Fisheries Circular 2004, executive summary). This reduction in supply resulted in exponential growth of caviar prices since the 1978 peak (Bardi and Yaxley 2005, p. 2). Since 1998, international trade in all species of sturgeon has been regulated under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) owing to concerns over the impact of international trade on sturgeon populations in the wild. Recent CITES sturgeon quotas have further limited supply and exacerbated price pressures (CITES 2005, pp. 1–5, 8–9; CITES 2006, pp. 1, 5–6, 10–11; CITES 2007, pp. 1, 3–5, 8–9; CITES 2008, pp. 3, 7, 8, 11, 14). We expect commercial pressures on domestic sturgeon to remain constant or possibly increase due in part to the current restrictions on import of beluga sturgeon (*Huso huso*) caviar into the United States (70 FR 57316, September 30, 2005 and 70 FR 62135, October 28, 2005) due to its status as a threatened species and the general trend toward reduced caviar exports from the Caspian Sea and Black Sea sturgeon stocks.

Incidental and illegal harvest of pallid sturgeon is a significant impediment to the survival and recovery of this species in some portions of its range (USFWS 2007, p. 45). Our recent 5-year status review recommended that we identify and implement measures to eliminate or significantly reduce illegal and accidental harvest of pallid sturgeon (USFWS 2007, p. 59).

Treating the shovelnose sturgeon as a threatened species, due to similarity of appearance, will result in a termination of commercial harvest of shovelnose sturgeon and shovelnose-pallid sturgeon hybrids where they commonly coexist with pallid sturgeon, which, in turn, will facilitate the enforcement of take

protections for pallid sturgeon and drastically reduce or eliminate take of pallid sturgeon associated with commercial fishing of shovelnose sturgeon and their roe. Reduction of take of pallid sturgeon will facilitate the species' survival, reproduction, and, ultimately, its recovery. For these reasons, the Service is proposing to treat the shovelnose sturgeon as threatened due to similarity of appearance to the pallid sturgeon in those areas where the two species commonly coexist, in accordance with section 4(e) of the Act.

Section 4(d) ''Special Rule'' Regulating Take

Whenever a species is listed as a threatened species under the Act, the Secretary may specify regulations that he deems necessary to provide for the conservation of that species under a special rule authorized by section 4(d) of the Act. These rules, commonly referred to as ''special rules,'' are found in part 17 of title 50 of the Code of Federal Regulations (CFR) in sections 17.40–17.48. This proposed special rule for 17.44, which deals with fishes, would prohibit take of any shovelnose sturgeon, shovelnose-pallid sturgeon hybrids, or their roe when associated with or related to a commercial fishing activity in those portions of its range that commonly overlap with the range of endangered pallid sturgeon. In this context, commercial fishing purposes is defined as any activity where shovelnose sturgeon and shovelnose-pallid sturgeon hybrid roe or flesh is, is attempted to be, or is intended to be traded, sold, or exchanged for goods or services. Capture of shovelnose sturgeon or shovelnose-pallid sturgeon hybrids in any commercial fishing gear is not prohibited if it is accidental or incidental to otherwise legal commercial fishing activities, such as commercial fishing targeting nonsturgeon species, provided the animal is released immediately upon discovery, with all roe intact, at the point of capture. All otherwise legal activities involving shovelnose sturgeon and shovelnose-pallid sturgeon hybrids that are conducted in accordance with applicable State, Federal, Tribal, and local laws and regulations are not considered to be take under this proposed regulation.

Effects of these Proposed Rules

Listing the shovelnose sturgeon as threatened under the ''similarity of appearance'' provisions of the Act will extend take prohibitions to shovelnose sturgeon, shovelnose-pallid sturgeon hybrids, or their roe when associated with a commercial fishing activity. Capture of shovelnose sturgeon or shovelnose-pallid sturgeon hybrids in any commercial fishing gear is not prohibited if it is accidental or incidental to otherwise legal commercial fishing activities, such as commercial fishing targeting nonsturgeon species, provided the animal is released immediately upon discovery, with all roe intact, at the point of capture. All otherwise legal activities within the identified areas that may involve shovelnose sturgeon and shovelnose-pallid sturgeon hybrids and which are conducted in accordance with applicable State, Federal, Tribal, and local laws and regulations will not be considered take under this proposed regulation.

Under the special 4(d) rule, take would only be prohibited where shovelnose and pallid sturgeons' range commonly overlap (USFWS 1993, pp. 3–5, 16–17). Specifically, this includes the portion of the Missouri River in Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, and South Dakota; the portion of the Mississippi River in Arkansas, Kentucky, Illinois (downstream from Melvin Price Locks and Dam), Louisiana, Mississippi, Missouri (downstream from Melvin Price Locks and Dam), and Tennessee; the Platte River in Nebraska downstream of Elkhorn River confluence; the portion of the Kansas River downstream from Bowersock Dam in Kansas; the Yellowstone River in North Dakota and Montana downstream of the Bighorn River confluence; and the Atchafalaya River in Louisiana. See the map in the rule portion of this document.

This proposed designation of similarity of appearance under section 4(e) of the Act would not extend any other protections of the Act, such as the requirements to designate critical habitat, the recovery planning provisions under section 4(f), or consultation requirements for Federal agencies under section 7, to shovelnose sturgeon. Therefore, should this proposal become final, Federal agencies will not be required to consult with us on activities they authorize, fund, or carry out that may affect shovelnose sturgeon.

Clarity of This Proposed Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR part 1320 implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The OMB regulations at 5 CFR 1320.3(c) define a ''collection of information'' as the obtaining of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, 10 or more persons. Furthermore, 5 CFR 1320.3(c)(4) specifies that ''10 or more persons'' refers to the persons to whom a collection of information is addressed by the agency within any 12-month period. For purposes of this definition, employees of the Federal Government are not included. A Federal agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. This rule does not contain collections of information other than those permit application forms already approved under the Paperwork Reduction Act and assigned OMB control number 1018–0094.

National Environmental Policy Act

We have determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969 (NEPA), need not be prepared in connection with listing regulations adopted pursuant to section 4 of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). The Service believes that this rationale also applies to section 4(d) rules.

References Cited

A complete list of references cited in this rule is available upon request from the Pallid Sturgeon Recovery

Coordinator (*see* **FOR FURTHER INFORMATION CONTACT** section above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we hereby propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding an entry for ''Sturgeon, shovelnose'', in alphabetical order under ''FISHES,'' to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
FISHES							
*	*	*	*	*	*	*	
Sturgeon, shovelnose.	*Scaphirhynchus platorynchus*.	U.S.A. (AL, AR, IA, IL, IN, KS, KY, LA, MN, MO, MS, MT, ND, NE, NM, OH, OK, PA, SD, TN, TX, WI, WV, WY).	Entire	T (S/A)		N/A	17.44(aa)
*	*	*	*	*	*	*	

3. Amend § 17.44 by adding a new paragraph (aa) to read as follows:

§ 17.44 Special rules—fishes.

* * * * *

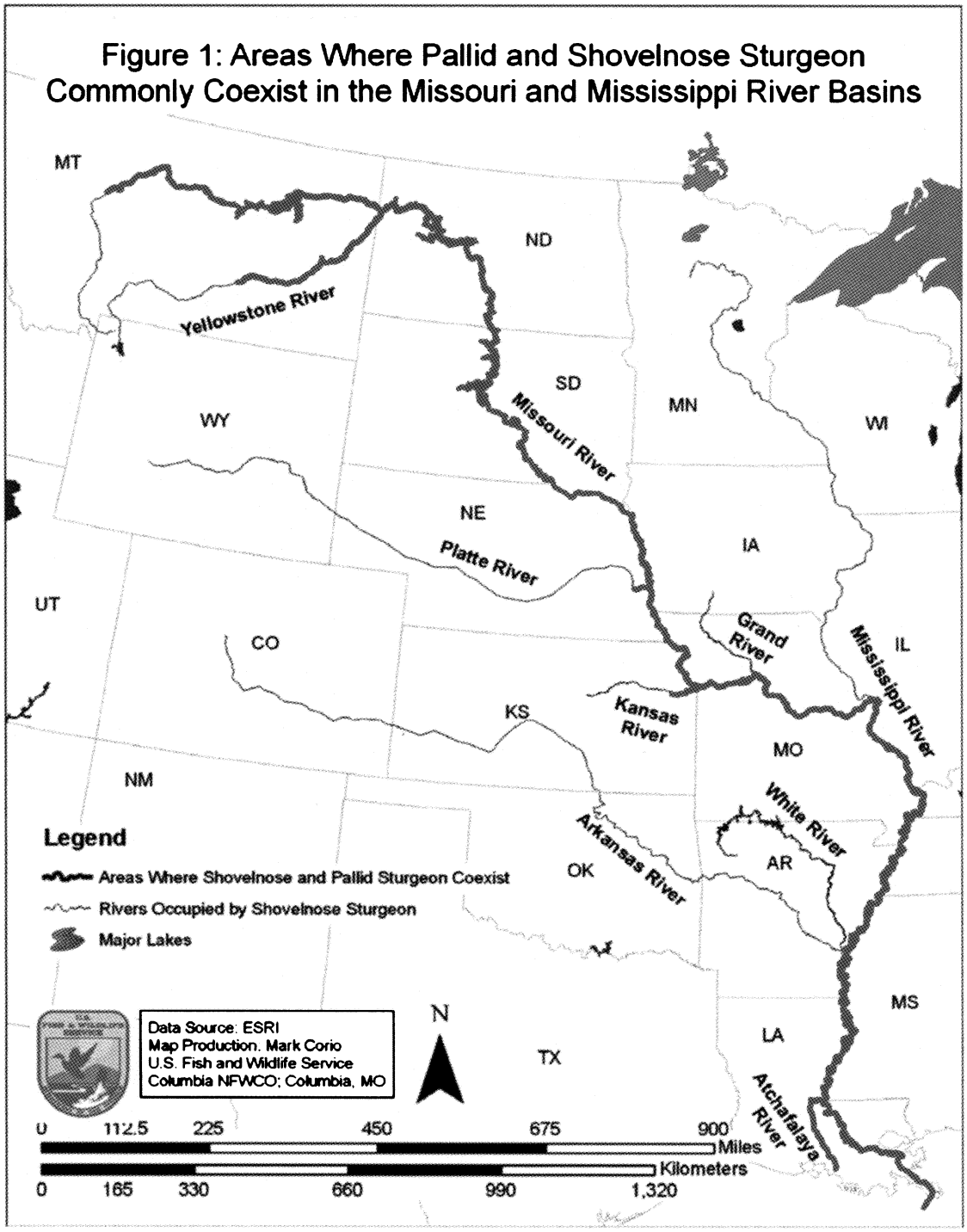
(aa) Shovelnose sturgeon (*Scaphirhynchus platorynchus*).

(1) Within the geographic areas set forth in paragraph (aa)(2) of this section, except as expressly noted in this paragraph, take of any shovelnose sturgeon, shovelnose-pallid sturgeon hybrids, or their roe associated with or related to a commercial fishing activity is prohibited. Capture of shovelnose sturgeon or shovelnose-pallid sturgeon hybrids in any commercial fishing gear is not prohibited if it is accidental or incidental to otherwise legal commercial fishing activities, such as commercial fishing targeting nonsturgeon species, provided the animal is released immediately upon discovery, with all roe intact, at the point of capture.

(2) The shovelnose and shovelnose-pallid sturgeon hybrid populations covered by this special rule occur in portions of AR, IA, IL, KS, KY, LA, MO, MS, MT, ND, NE, SD, and TN. The specific areas are: (1) The portion of the Missouri River in IA, KS, MO, MT, ND, NE, and SD; (2) the portion of the Mississippi River downstream from the Melvin Price Locks and Dam in AR, IL, KY, LA, MO, MS, and TN; (3) the Platte River downstream of the Elkhorn River confluence in NE; (4) the portion of the Kansas River downstream from the Bowersock Dam in KS; (5) the Yellowstone River downstream of the Bighorn River confluence in ND and MT; and (6) the Atchafalaya River in LA.

(3) A map showing the area covered by this special rule (the area of shared habitat between shovelnose and pallid sturgeon) follows:

BILLING CODE 4310–55–P



Dated: September 1, 2009.

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E9–22541 Filed 9–21–09; 8:45 am]

BILLING CODE 4310–55–C