Proposed Critical Habitat for Atlantic Sturgeon

Atlantic States Marine Fisheries Commission

August 2, 2016

Proposed Rules – Federal Register, June 3, 2016

Two Rules with the same public comment period

- 81 FR 35701 – Gulf of Maine, New York Bight, Chesapeake Bay DPSs
- 81 FR 36078 – Carolina & South Atlantic DPSs

Comments due by September 1, 2016

2016 SEPTEMBER						
SUN	MON	TUE	WED	THU	FRI	SAT
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

Some Critical Habitat Basics

Who designates Critical Habitat and when?

- Secretaries of Commerce and Interior share responsibilities for implementing most of the provisions of the ESA.
- Authority has been delegated to the Assistant Administrator for Fisheries and to the Director of FWS.
- Under Section 4 of the ESA, critical habitat is to be designated when we list a species
    - IF we are able to determine what critical habitat is
    - If NOT, then we have an additional year to designate
-

What is Critical Habitat?

(1) specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protections

(2) specific areas outside the geographical area occupied by the species, at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species.

What A Proposed Designation Will and Will Not Do

Proposed Designation is NOT Anticipated to:

- Create new regulations/restrictions on fisheries
- Create new preserves or refuges
- Directly affect a private landowner's use of their land

Proposed Designation WILL:

- Guide federal agencies in avoiding and minimizing impacts to habitat critical to the recovery of Atlantic sturgeon
- Continue to require ESA consultations for actions funded, carried out, or authorized by Federal agencies (e.g., dredging projects)

NOAA Fisheries Image Gallery

NOAA Fisheries Image Gallery

Section 7 of the ESA - consultation

- Section 7(a)(2) of the ESA requires Federal agencies to ensure that any action they fund, authorize or carry out is not likely to destroy or adversely modify that habitat.
- This is in addition to the section 7(a)(2) requirement that Federal agencies ensure that their actions are not likely to jeopardize the continued existence of ESA-listed species.
- Proposed activity may need to be modified to avoid destroying or adversely modifying the critical habitat.

Lawsuit to Designate Critical Habitat

At the time of listing, we could not identify critical habitat for Atlantic sturgeon

We were sued by 2 non-governmental organizations for failure to designate critical habitat within required timeframes

Court ordered settlement date required we propose the rules to designate critical habitat by May 30, 2016 with final rules no more than one year later.

Both regions used a stepwise approach, based on the statutory and regulatory requirements

- Identified the geographical area occupied at listing
- Identified physical or biological features essential to the conservation of the DPS
- Determined whether the features may require special management considerations or protection
- Identified specific areas that contain these features and delineated the area(s)
- Considered whether any unoccupied habitat is essential to the conservation
- Considered the economic, national security, or any other impacts of designating critical habitat (i.e. 4(b)(2) analysis) and whether to exclude any specific areas, but not if this would result in extinction of the DPS
- Determined whether any area cannot be designated because of an INRMP that provides a benefit to the DPS

The joint regulations for designating critical habitat are at 50 CFR 424. Changes made to the regulations in 2016 can currently be found at http://www.nmfs.noaa.gov/pr/laws/esa/

Geographical Area Occupied is the range of the species at the time of listing

We determined that the geographical area occupied is the entirety of the range of each DPS with the exception of areas that are inaccessible to Atlantic sturgeon because of a dam, other manmade structure or natural feature (e.g., falls) that is impassable by Atlantic sturgeon.

Habitat upriver of an impassable dam is considered unoccupied habitat.

Physical and biological features essential for Conservation that may Require Special Management Consideration or Protection

Evaluated Marine and Estuarine Environment

Unable to determine specific features in the ocean and estuaries

Evaluated Riverine Habitats

Able to identify features important for:

- Spawning – hard bottom in freshwater to almost freshwater
- Growth/Development – soft bottom (e.g., mud) with salinity range; water of suitable temperature and with enough oxygen
- Migration/Movement – appropriately deep water, unimpeded passage

Gulf of Maine DPS

Five Proposed Critical Habitat Areas:

Penobscot River

Kennebec River

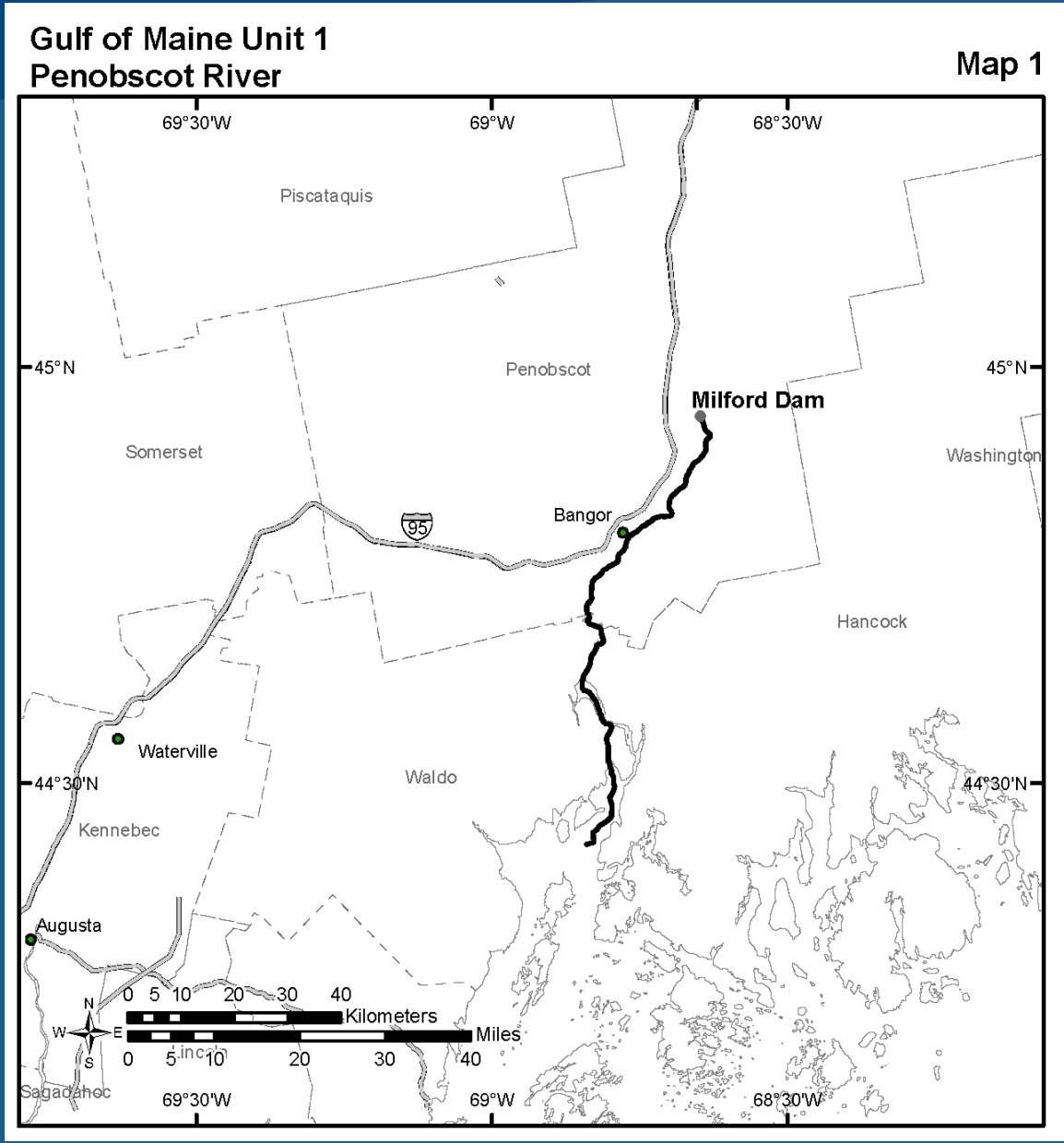
Androscoggin River

Piscataqua River – includes some waters of the Cocheco and Salmon Falls rivers

Merrimack River

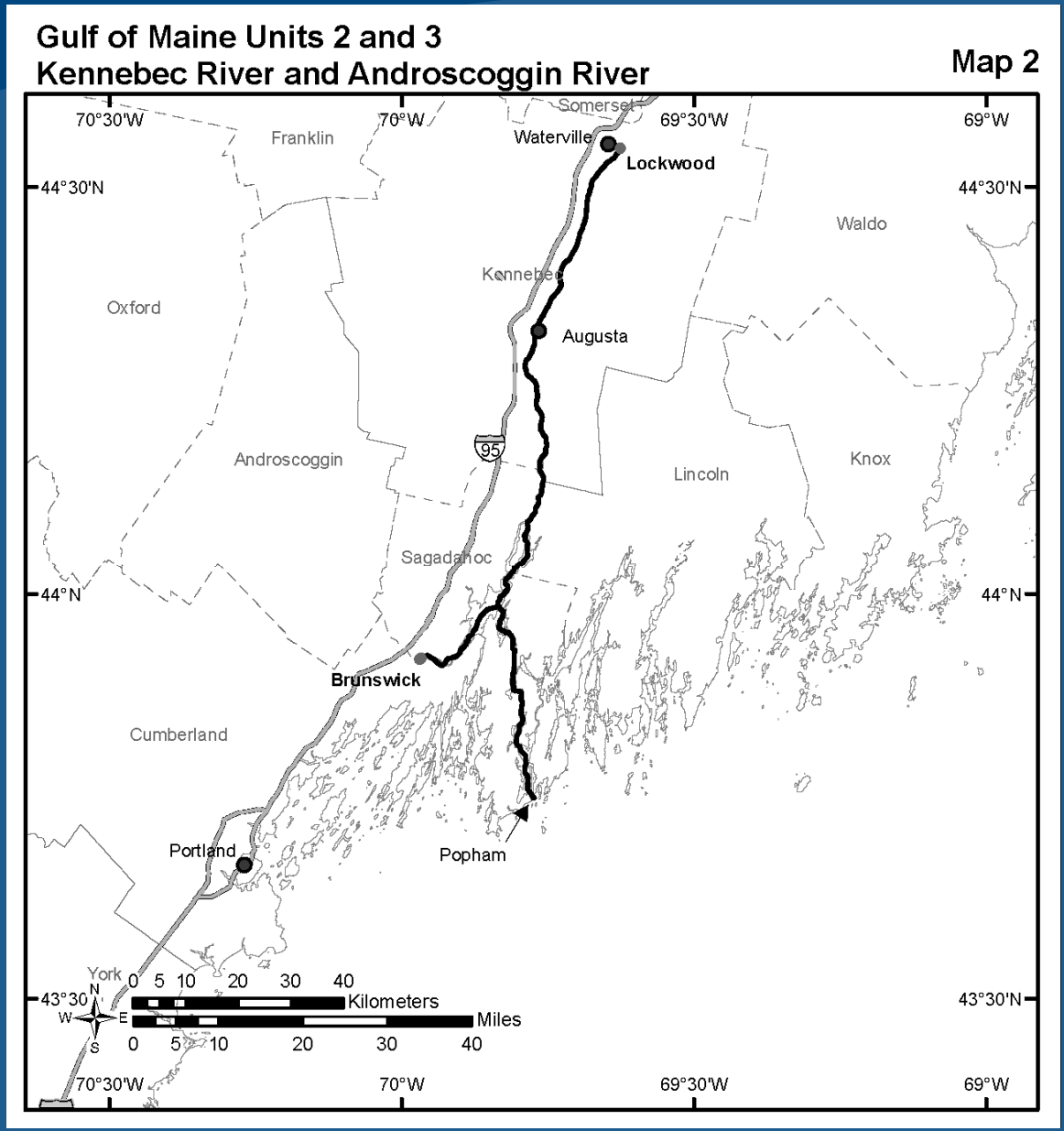
All proposed critical habitat areas are the full bank width of the named main stem river within the upriver and downriver boundaries.

Penobscot River CH
Main stem from the Milford Dam to where the main stem river drainage discharges at its mouth into Penobscot Bay



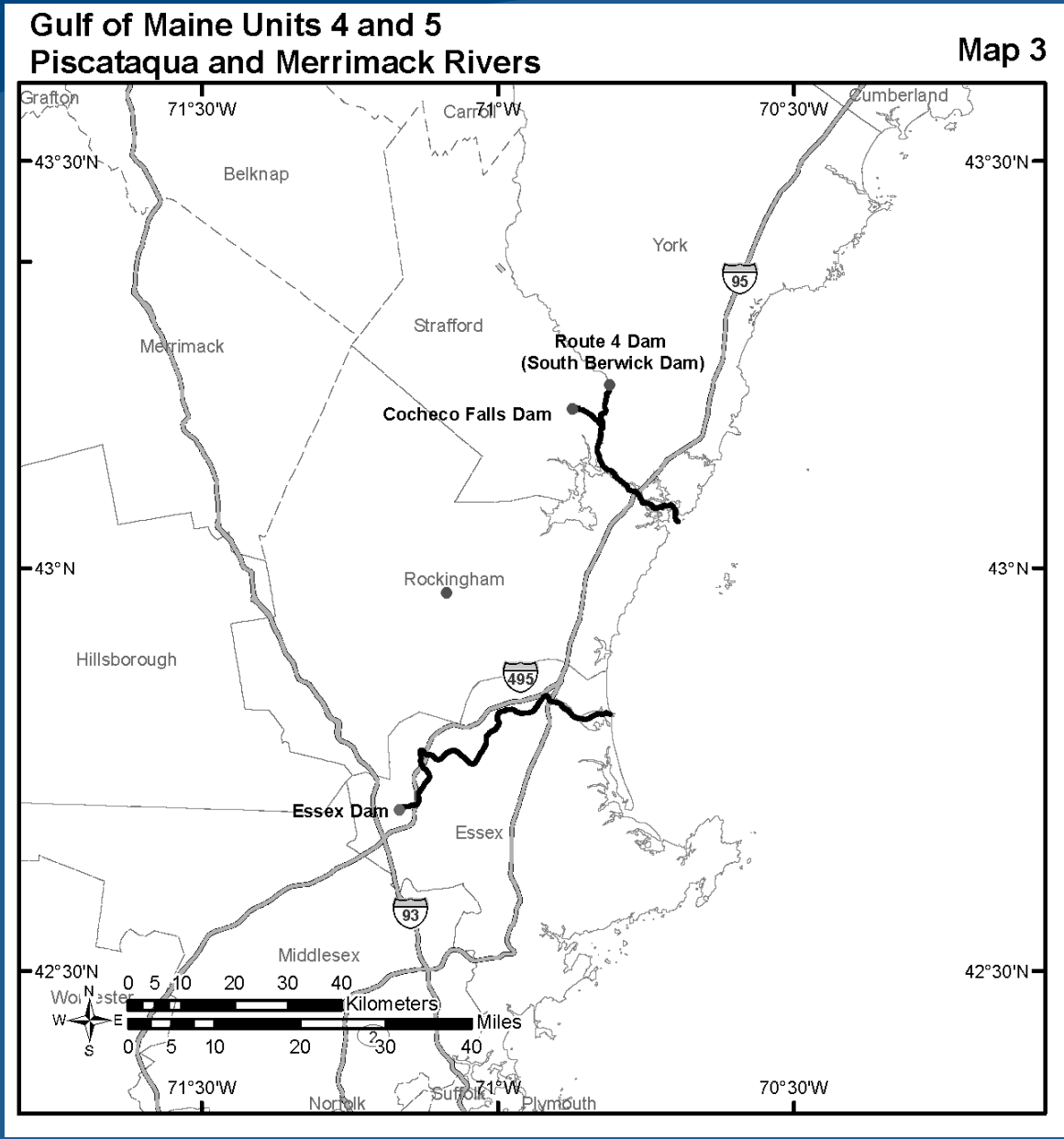
Kennebec River CH
Main stem from
the Ticonic Falls/Lockwood
Dam to where the main
stem river discharges at its
mouth into the Atlantic
Ocean

Androscoggin River CH
Main stem from the
Brunswick Dam to
where the main stem river
drainage discharges into
Merrymeeting Bay



Piscataqua River CH
Entire Piscataqua River main stem and Salmon Falls River and Cocheco rivers downstream of their lowermost dams to the confluence of the Piscataqua River

Merrimack River CH
Main stem from the Essex Dam (also known as the Lawrence Dam)
to where the main stem river discharges at its mouth into the Atlantic Ocean



New York Bight DPS

Four proposed critical habitat areas:

Connecticut River

Housatonic River

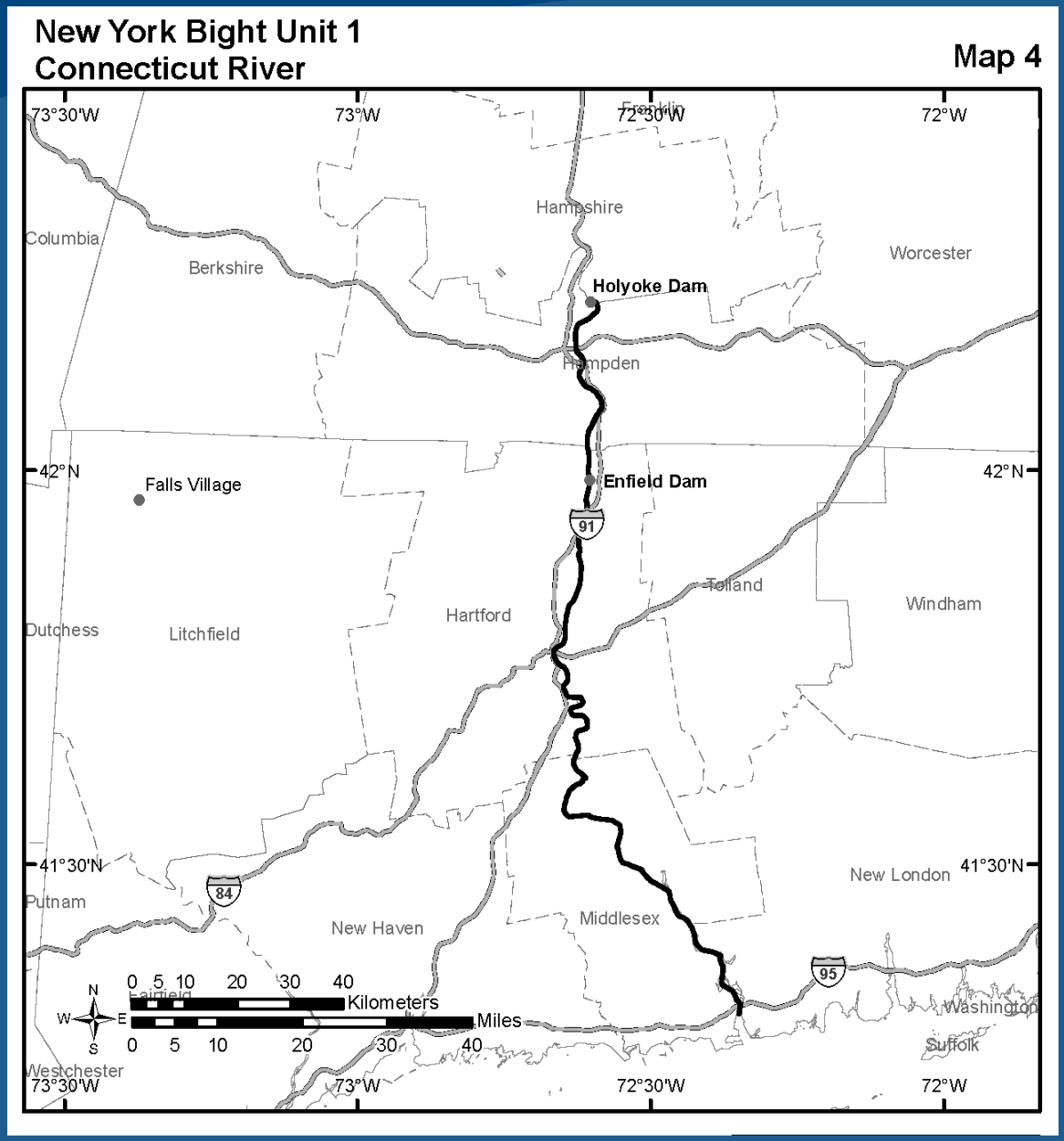
Hudson River

Delaware River

All are the full bank width of the named main stem river within the upriver and downriver boundaries.

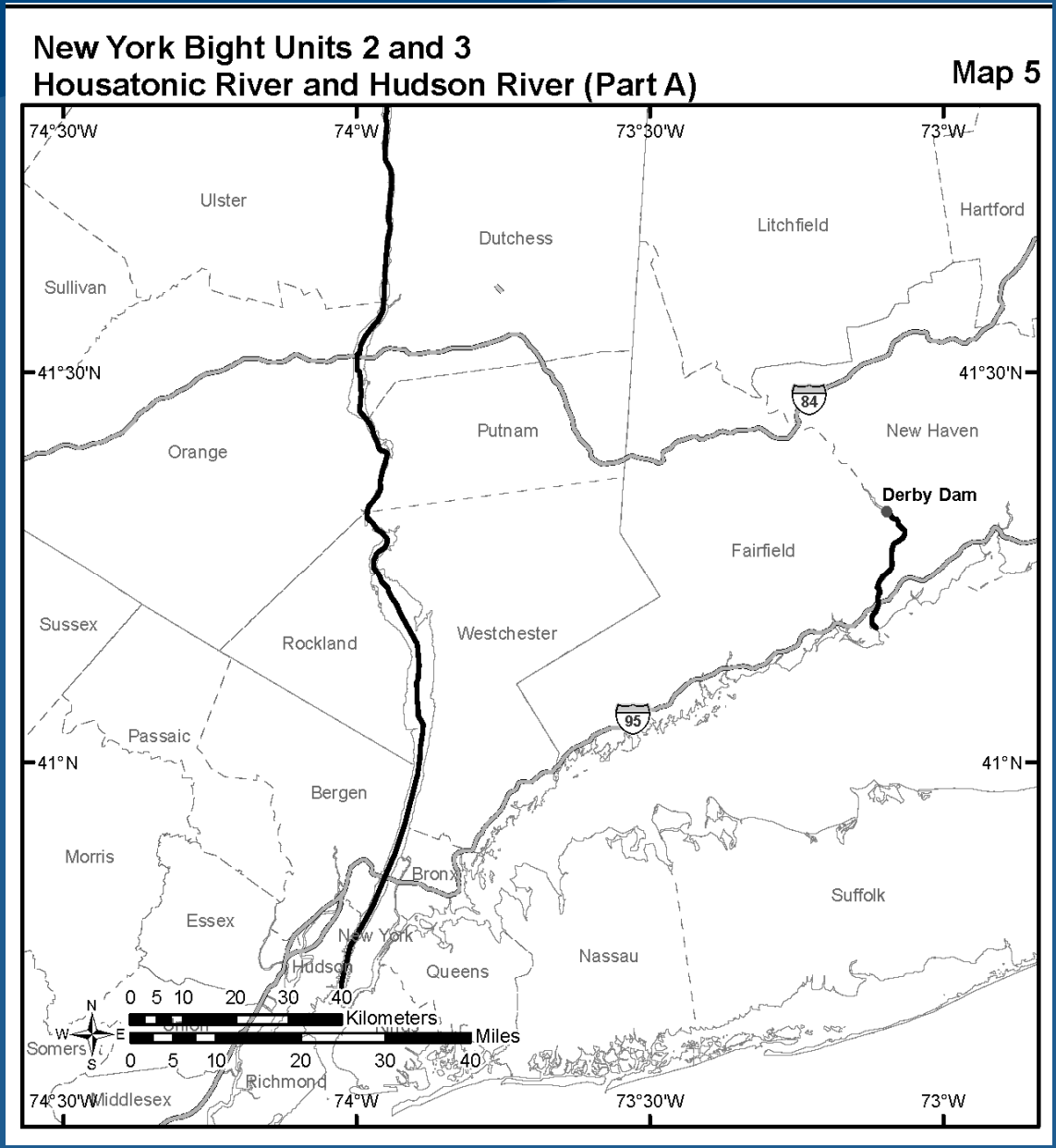
Connecticut River CH

Main stem from the Holyoke Dam downstream to where the main stem river discharges at its mouth into Long Island Sound

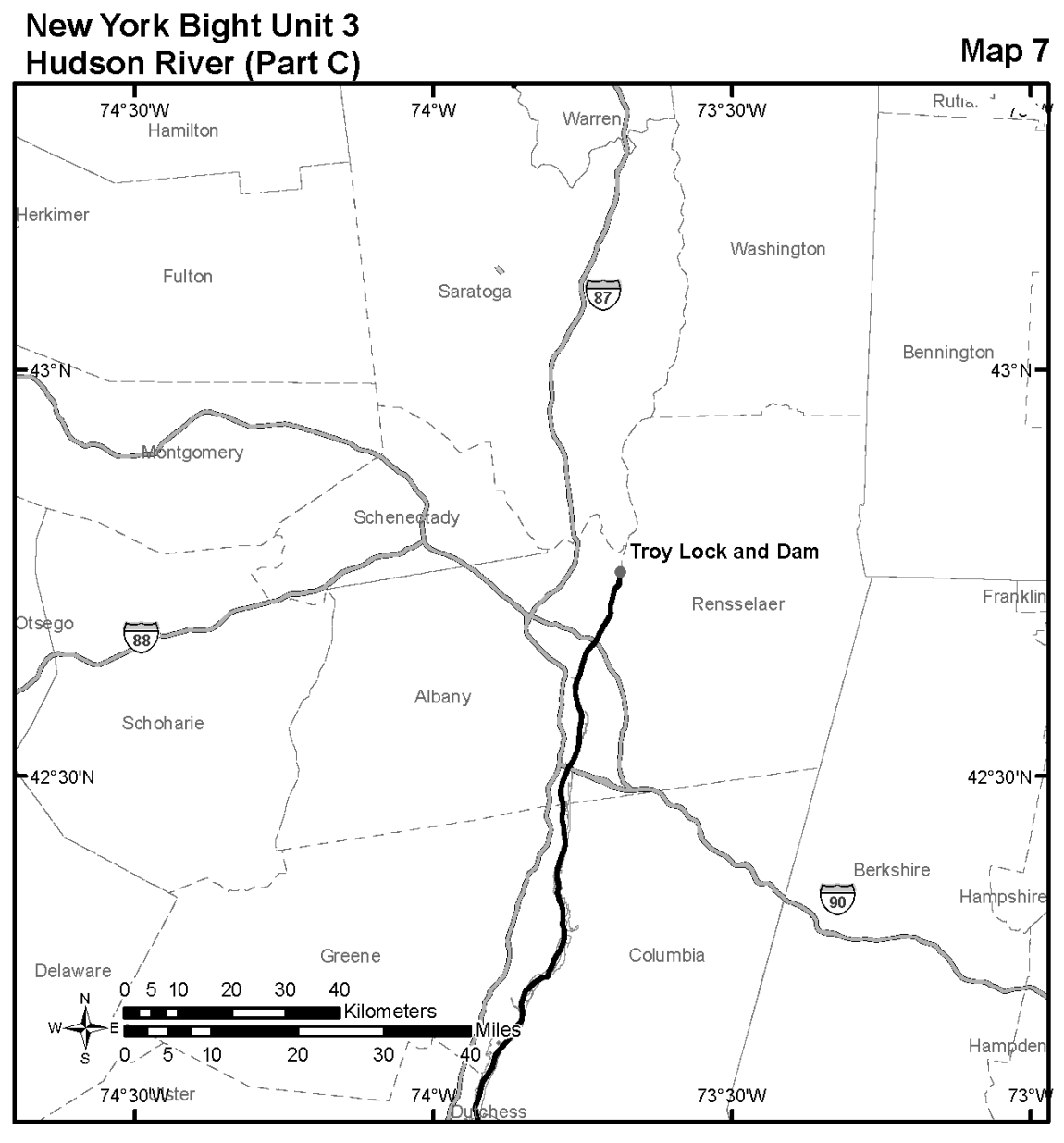


Housatonic River CH
Main stem from the Derby Dam downstream to where the main stem discharges at its mouth into Long Island Sound

Hudson River CH
Main stem from the Troy Lock and Dam (also known as the Federal Dam) to where the main stem river discharges at its mouth into New York City Harbor

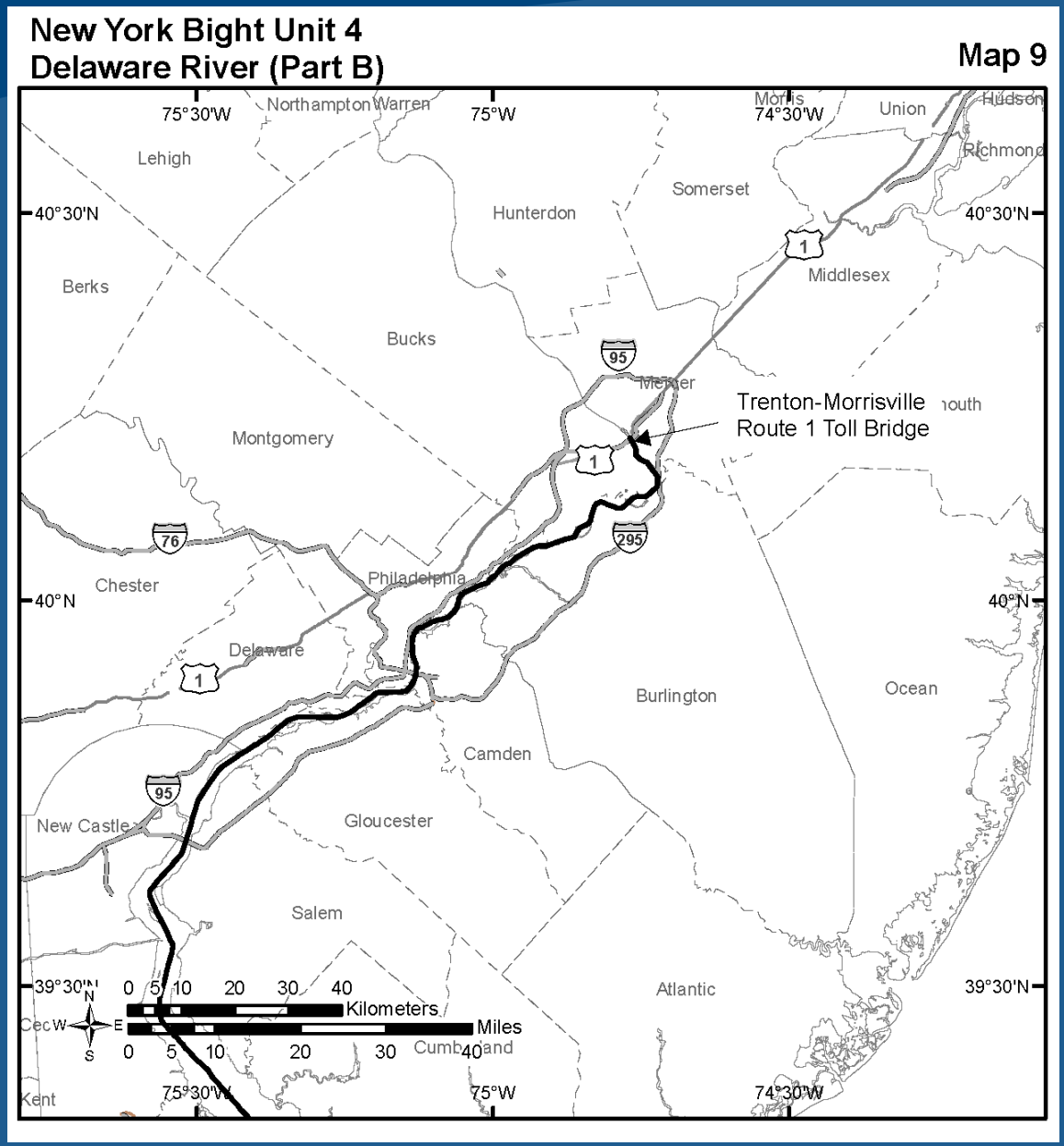


Hudson River CH
Main stem from the Troy Lock and Dam (also known as the Federal Dam) to where the main stem river discharges at its mouth into New York City Harbor



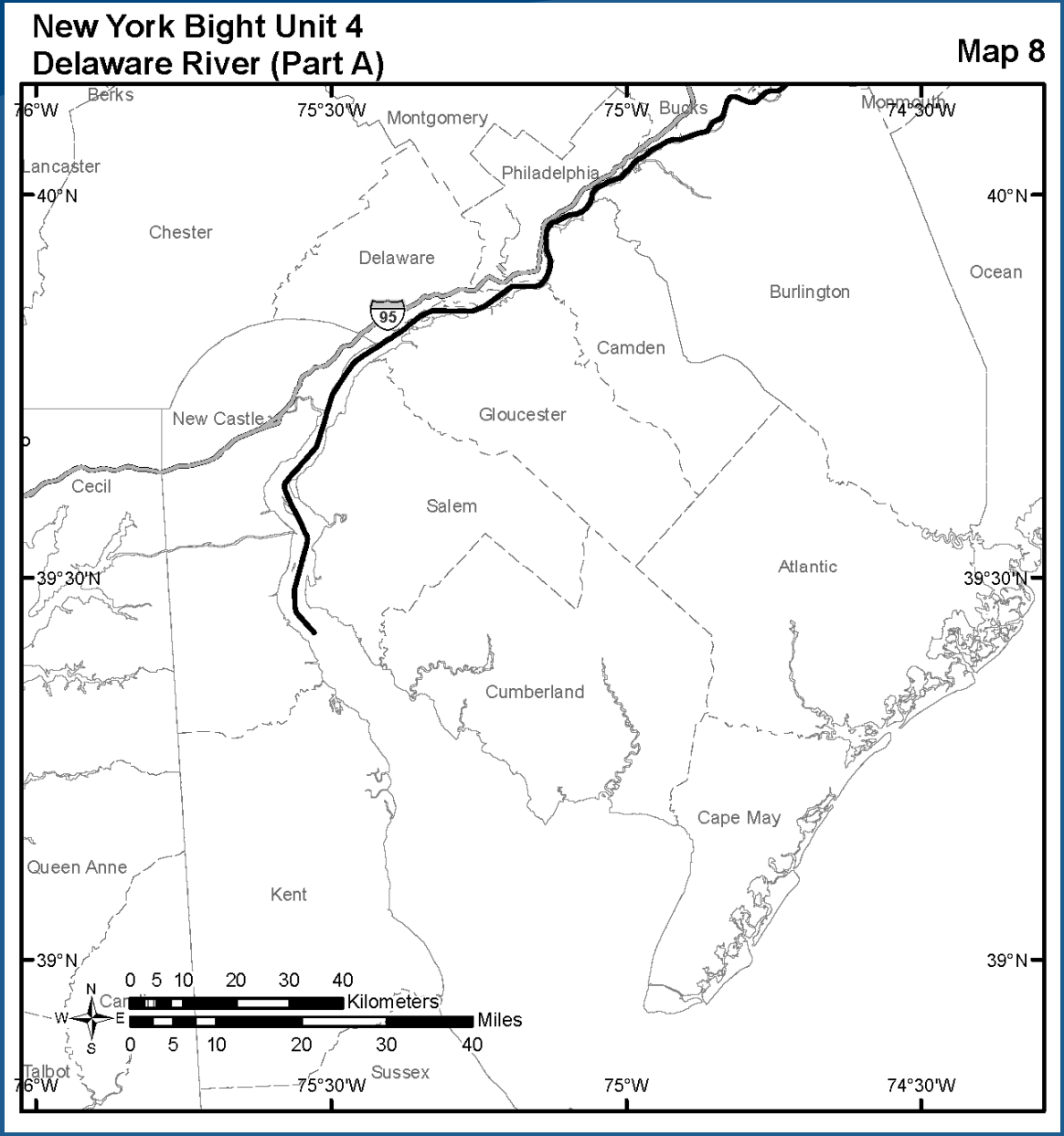
Delaware River CH
Main stem from the crossing of the Trenton-Morrisville Route 1 Toll Bridge, to where the main stem river discharges at its mouth into Delaware Bay

Mouth of the Delaware River:
In 1905, the legislatures of New Jersey and Delaware defined the line of demarcation between the Delaware River and Delaware Bay as an imaginary line from Liston Point, DE to Hope Creek, NJ.



Delaware River CH
Main stem from the crossing of the Trenton-Morrisville Route 1 Toll Bridge, to where the main stem river discharges at its mouth into Delaware Bay

Mouth of the Delaware River:
In 1905, the legislatures of New Jersey and Delaware defined the line of demarcation between the Delaware River and Delaware Bay as an imaginary line from Liston Point, DE to Hope Creek, NJ.



Chesapeake Bay DPS

Five proposed critical habitat areas:

Susquehanna River

Potomac River

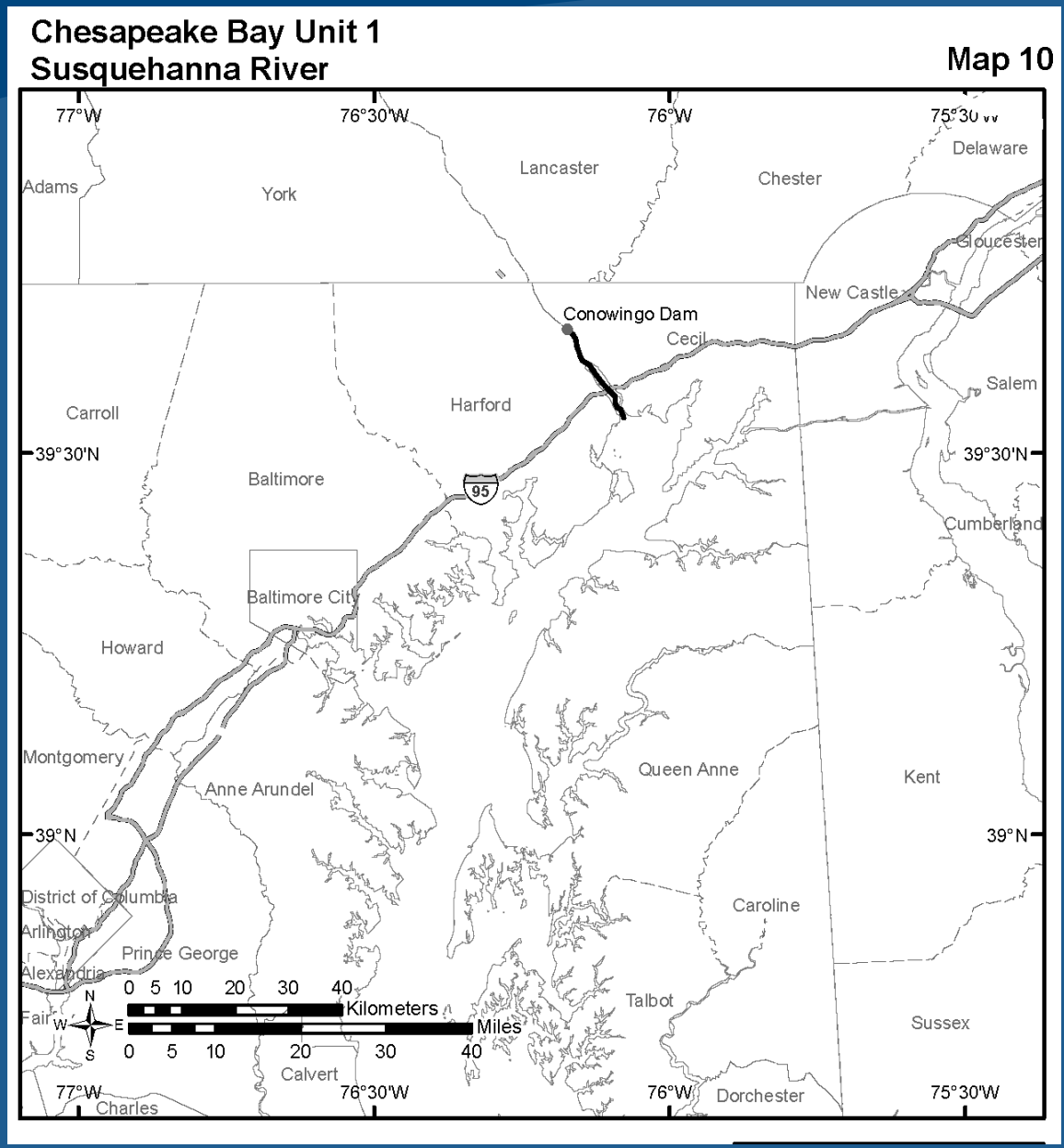
Rappahannock River

York River System – includes Pamunkey and Mattaponi rivers

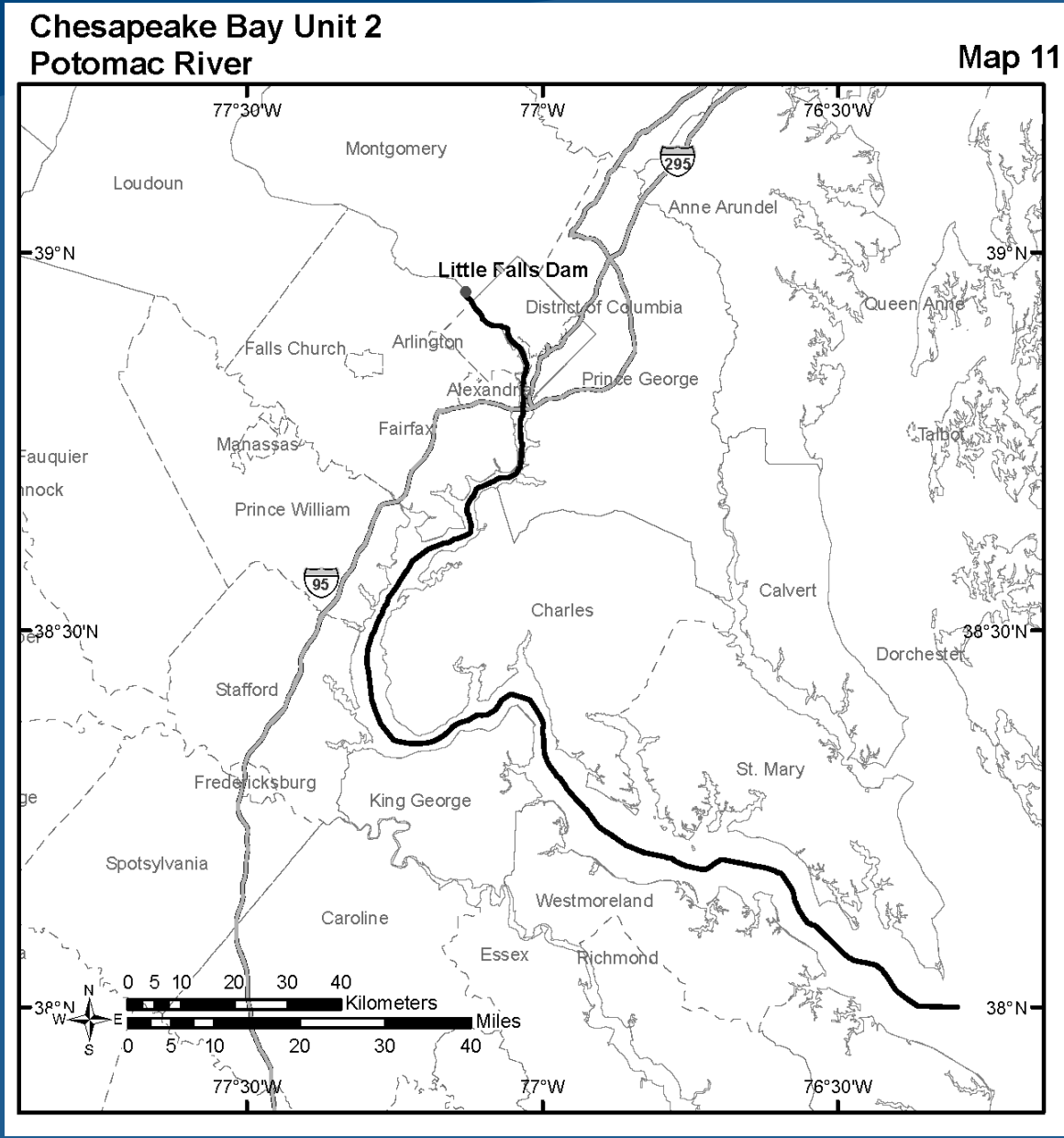
James River

All are the full bank width of the named main stem river within the upriver and downriver boundaries.

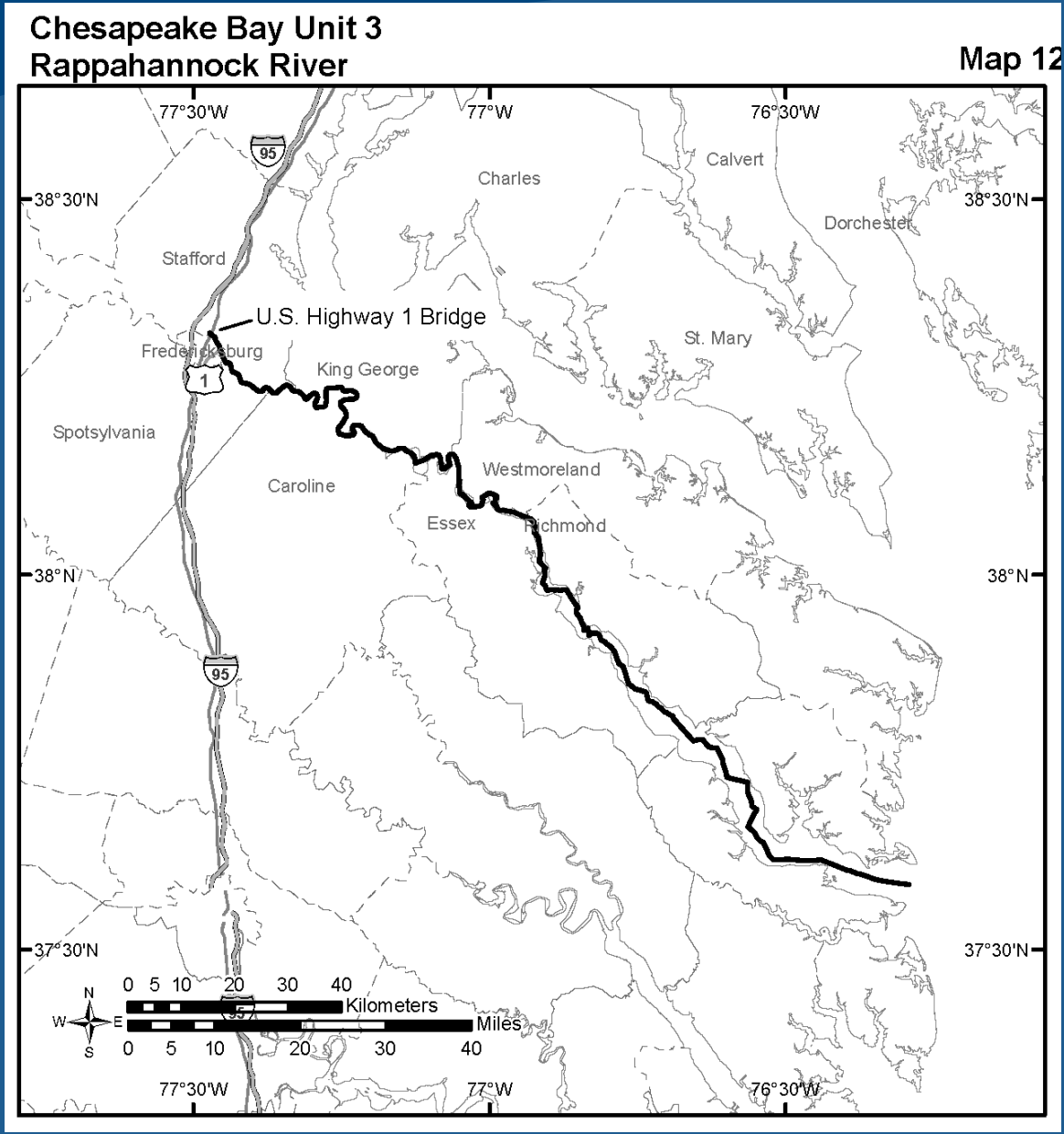
Susquehanna River CH Main stem from the Conowingo Dam to where the main stem river discharges at its mouth into the Chesapeake Bay



Potomac River CH
Main stem from the Little Falls Dam downstream to where the main stem river discharges at its mouth into the Chesapeake Bay

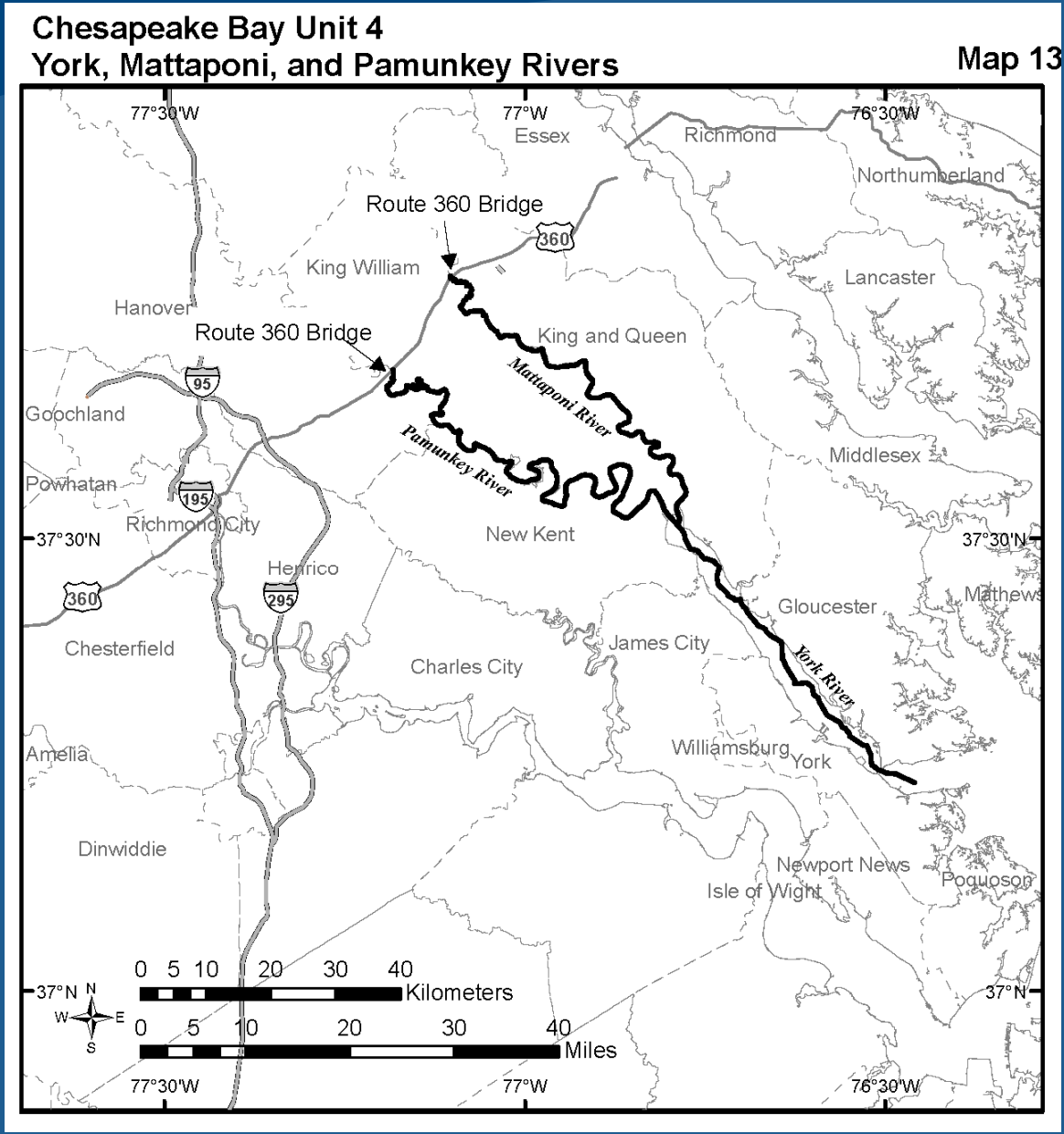


Rappahannock River CH Main stem from the U.S. Highway 1 Bridge, to where the river discharges at its mouth into the Chesapeake Bay



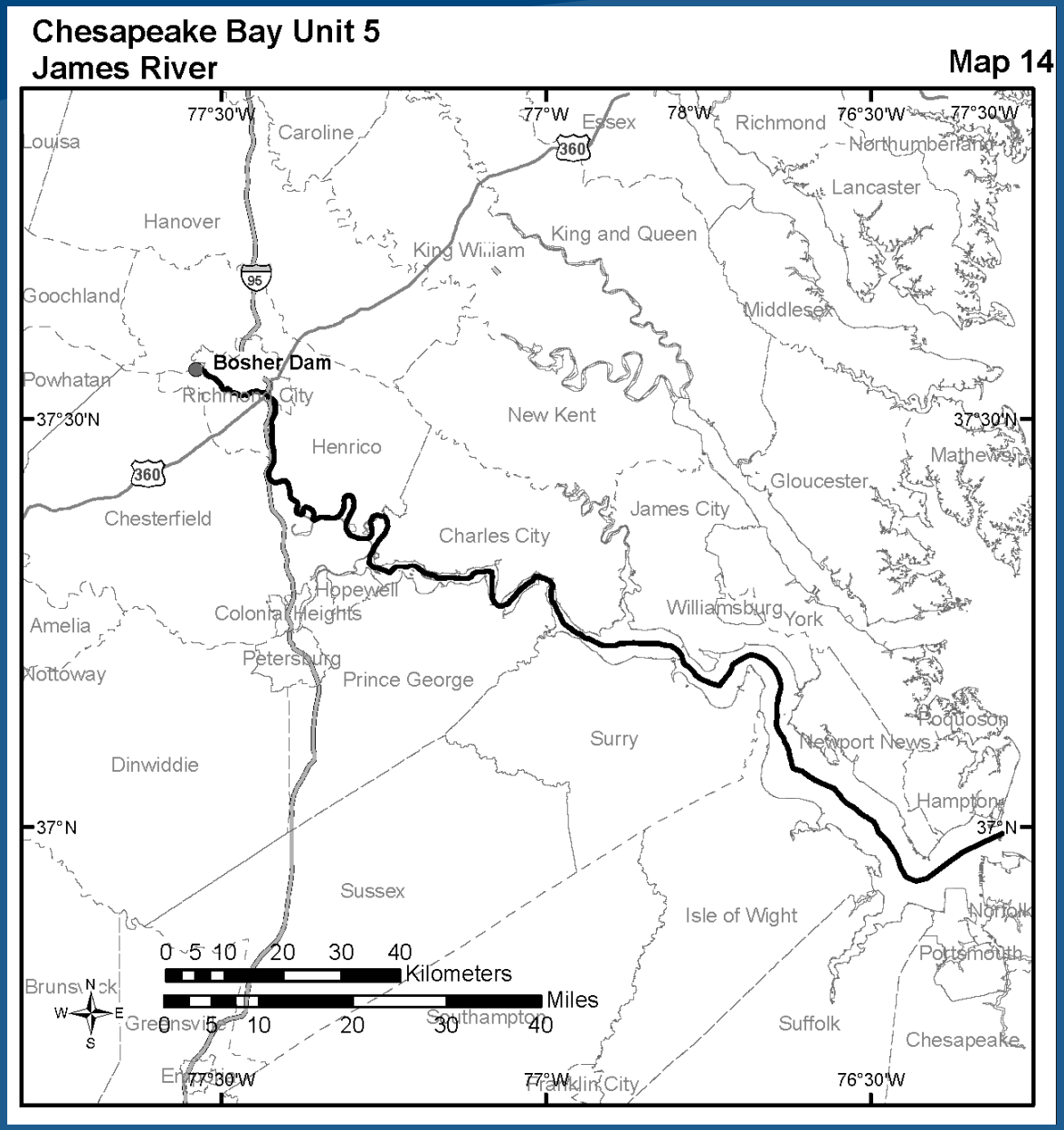
York River System CH

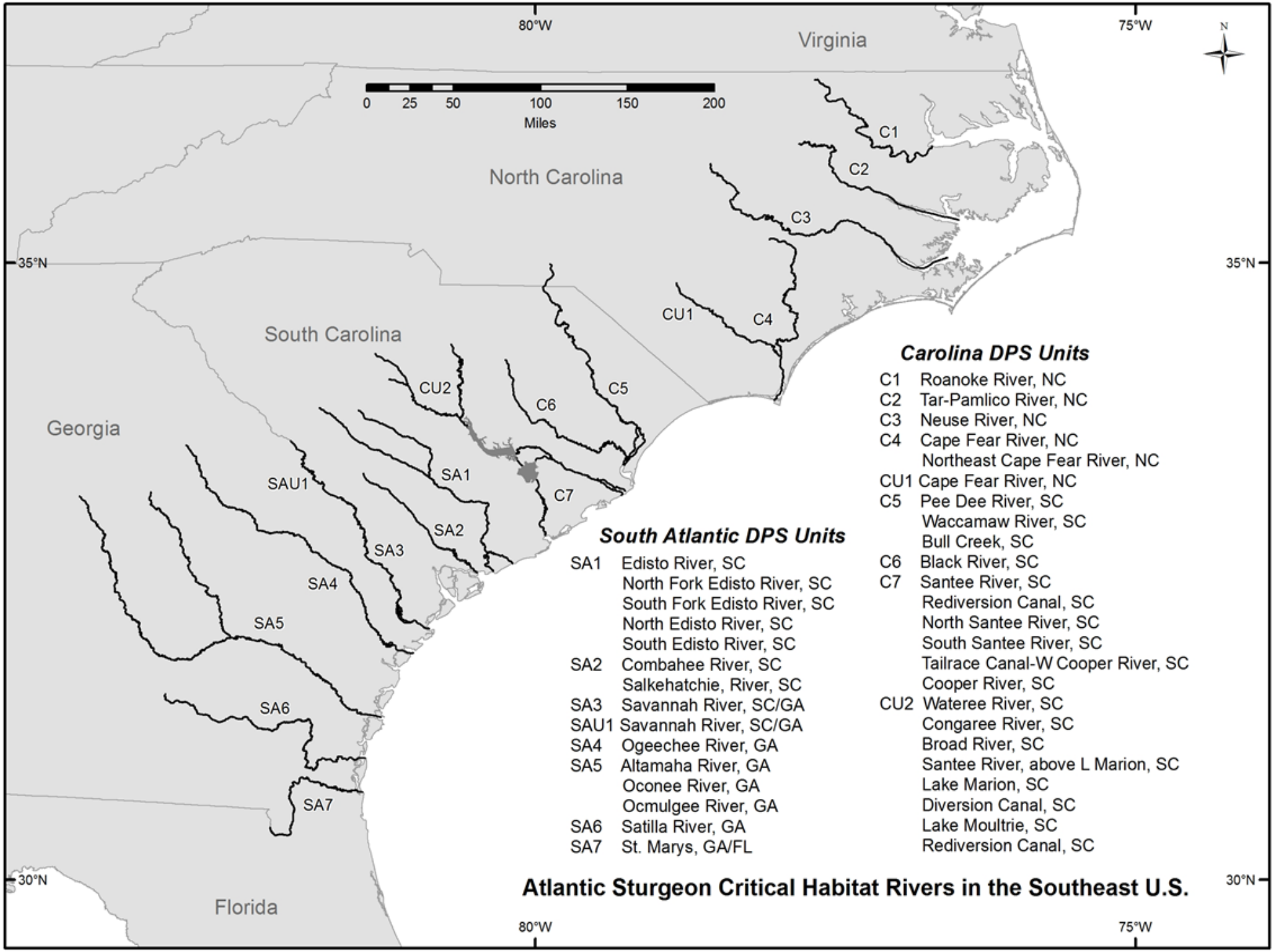
York River from its confluence with the Mattaponi and Pamunkey rivers downstream to where the main stem river discharges at its mouth into the Chesapeake Bay as well as the waters of the Mattaponi River from its confluence with the York River and upstream to the Virginia State Route 360 Bridge of the Mattaponi River, and waters of the Pamunkey River from its confluence with the York River and upstream to the Virginia State Route 360 Bridge crossing of the Pamunkey River



James River CH

James River from Boshers Dam downstream to where the main stem river discharges at its mouth into the Chesapeake Bay at Hampton Roads





Carolina DPS Units

C1 Roanoke River, NC
C2 Tar-Pamlico River, NC
C3 Neuse River, NC
C4 Cape Fear River, NC
Northeast Cape Fear River, NC
CU1 Cape Fear River, NC
C5 Pee Dee River, SC
Waccamaw River, SC
Bull Creek, SC
C6 Black River, SC
C7 Santee River, SC
Rediversion Canal, SC
North Santee River, SC
South Santee River, SC
Tailrace Canal-W Cooper River, SC
Cooper River, SC
CU2 Wateree River, SC
Congaree River, SC
Broad River, SC
Santee River, above L Marion, SC
Lake Marion, SC
Diversion Canal, SC
Lake Moultrie, SC
Rediversion Canal, SC

South Atlantic DPS Units

SA1 Edisto River, SC
North Fork Edisto River, SC
South Fork Edisto River, SC
North Edisto River, SC
South Edisto River, SC
SA2 Combahee River, SC
Salkehatchie, River, SC
SA3 Savannah River, SC/GA
SAU1 Savannah River, SC/GA
SA4 Ogeechee River, GA
SA5 Altamaha River, GA
Oconee River, GA
Ocmulgee River, GA
SA6 Satilla River, GA
SA7 St. Marys, GA/FL

Atlantic Sturgeon Critical Habitat Rivers in the Southeast U.S.

Proposed Critical Habitat Units in North Carolina

Proposed Designation Within the:

- Roanoke River
- Tar – Pamlico Rivers
- Neuse River
- Cape Fear & NE Cape Fear Rivers

Proposed Critical Habitat Units in South Carolina

Proposed Designation Within the:

- Waccamaw River
- Pee Dee River
- Black River
- Santee River
- Cooper River
- Wateree River
- Congaree River
- Broad River
- Edisto River
- Combahee – Salkehatchie Rivers
- Savannah River (SC/GA)

Additional Water Bodies

- Bull Creek – Between Pee Dee and Waccamaw Rivers

Proposed Critical Habitat Units in Georgia

Proposed Designation Within the:

- Savannah River (SC/GA)
- Ogeechee River
- Altamaha River
- Ocmulgee River
- Oconee River
- Satilla River
- St. Marys River (GA/FL)

Unoccupied Habitat

Based on our conservation objective we determined areas outside the current range of the Carolina and South Atlantic DPSs (e.g., above a currently impassable dam/barrier) have, or could, support the objective should they become accessible in the future.

Identified 1 Area in North Carolina

- Cape Fear River – From Huske Lock and Dam (Lock and Dam #3) downstream to Lock and Dam #2

Identified Several Areas in South Carolina

- Wateree River – From the Wateree Dam downstream to the confluence with the Congaree River
- Broad River – From the Parr Shoals Dam downstream to the confluence with the Saluda River
- Congaree River – From the confluence of the Saluda River and Broad River downstream to the Santee River
- Lake Marion – From the Santee River downstream to the Diversion Canal
- Diversion Canal – From Lake Marion downstream to Lake Moultrie
- Lake Moultrie – From the Diversion Canal downstream to the Pinopolis Dam and the Rediversion Canal
- Rediversion Canal – From Lake Moultrie downstream to the St. Stephen Powerhouse
- Santee River – From the confluence of the Congaree River and Wateree River downstream to Lake Marion

Identified 1 Area in Georgia

- Savannah River (SC/GA) – Main stem from the Augusta Diversion Dam downstream to the New Savannah Bluff Lock and Dam

How to Comment on GARFO Proposed Rule (81 FR 35701) – by September 1, 2016

• Electronic Submissions: Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0107, Click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

• Mail: Kimberly B. Damon-Randall, Assistant Regional Administrator, Protected Resources Division, NMFS, Greater Atlantic Regional Office, 55 Great Republic Drive, Gloucester, MA 01930

• Public Hearing: oral and written comments will be accepted.

Request for Public Comments/Information

We Need YOUR Help Collecting Information Regarding:

- The physical and biological features we identified as essential to conservation of the species
- The rivers included in our proposal based on availability of spawning habitat
- Bathymetric data from many sturgeon rivers is lacking and would be helpful to sturgeon recovery
- The overall accuracy, quality, completeness, and relevance of the scientific information and data considered
- Any additional data that were not considered

How to Comment on SERO Proposed Rule (81 FR 36078) – by September 1, 2016

Identify by the code **NOAA-NMFS-2015-0157**, by any of the following methods:

Electronically:

Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0157* or attach your comments.

Mail or Hand Delivery:

Attn: Andrew Herndon, Southeast Regional Office, NOAA Fisheries, 263 13th Avenue South, St. Petersburg, FL 33701

Reference Docket Number "NOAA-NMFS-2015-0157" in all written correspondence

Request for Public Comments/Information

We Need YOUR Help Collecting Information Regarding:

- The physical and biological features we identified as essential to conservation of the species
- The rivers we've included, or excluded, in our proposal based on availability of spawning habitat
- Our proposal to include unoccupied areas that are essential to the conservation of the species
- The overall accuracy, quality, completeness, and relevance of the scientific information and data considered
- Any additional data that were not considered

Additional Resources and Information

Copy of the Propose Rule and Draft Economic Impact Available at:
http://sero.nmfs.noaa.gov/protected_resources/sturgeon

Maps of the Proposed Critical Habitat Units Available at:
http://sero.nmfs.noaa.gov/maps_gis_data/protected_resources/critical_habitat

Submit Public Comments Electronically at:
www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0157

Submit Written Public Comments via U.S. Mail:
Attn: Andrew Herndon, Southeast Regional Office, NOAA Fisheries, 263 13th Avenue South, St. Petersburg, FL 33701

Reference Docket Number "NOAA-NMFS-2015-0157" in all written correspondence

Comment on Proposed Rules Designating Critical Habitat for Atlantic Sturgeon

Atlantic Sturgeon Management Board
August 2, 2016

Comment on CHD's for Atlantic Sturgeon

- Staff solicited feedback from the Sturgeon Technical Committee and the Habitat Committee on the proposed rules
  - Note: several states are preparing comment individually; comment overview is incomplete.

- Overall, there is support for the proposed critical habitat units and boundaries

Comment on CHD's for Atlantic Sturgeon

- Most "coastwide" comments were in regards the process and outcomes of Section 7 consultations
  - Timing/efficiency of process (e.g., time limited grants, administrative costs)
  - Federally funded sampling programs that may be impacted (i.e., multi-species impacts)
- Some scientific information requires updating
  - Evidence that juvenile sturgeon captured in the CT river are genetically unique

Comment on CHD's for Atlantic Sturgeon

- Proposed habitat boundaries may be inappropriate based on best available info
  - e.g., upstream boundaries for Ogeechee and Satilla River are far upstream from known sturgeon populations
- Critical habitat left out of the proposed rule; new information over the last few years
  - e.g., evidence in support of designating portions of the Marshyhope and Nanticoke Rivers as critical habitat

Comment on CHD's for Atlantic Sturgeon

Moving forward:

1. Sturgeon Management Board submit comment directly
2. States submit comment specific to the proposed areas within their jurisdictions
3. Both; Board- and state-level comment

Reminder: comment due September 1, 2016