

substantial information on several factors affecting wood storks in the southeastern United States, including: Impacts of habitat modification and disruption of water regimes (Factor A); predation (Factor C); and contaminants, harmful algal blooms such as red tide events, electrocution mortalities from power lines, road kill, invasion of exotic plants and animals, human disturbance, and stochastic events (Factor E).

Of the five listing factors, Factor A (habitat destruction and modification) continues to be the leading threat to wood stork recovery. However, magnitude of this threat may be reduced due to the increase in wood storks and expansion of the breeding range from Florida into Georgia, South Carolina, and North Carolina. There are a number of regulatory mechanisms implemented by Federal and State agencies to protect wood storks and conserve their habitat. Whether habitat protection and conservation regulatory mechanisms are inadequate can only be assessed in terms of the wood stork population, and recent trends indicate that the range is still expanding and the breeding population has increased, suggesting that current conservation measures are sufficient to allow population growth. Other threats such as disease and predation and other natural or man-made factors (*i.e.*, contaminants, electrocution, road kill, invasion of exotic plants and animals, disturbance, and stochastic events) are known to occur but are not significant. We believe that the conclusions of the 5-year review regarding the listing factors and the recommended change in status of the species from endangered to threatened, as presented in the petition and as modified by any information in our files, still apply.

In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure to a factor and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species may warrant listing as threatened or endangered as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice.

The mere identification of factors that could impact a species negatively may not be sufficient to compel a finding that listing may be warranted. The information must contain evidence sufficient to suggest that these factors may be operative threats that act on the species to the point that the species may meet the definition of threatened or endangered under the Act.

Because we have found that the petition, as well as other information in our files, presents substantial scientific or commercial information indicating that reclassifying the wood stork in the southeastern United States to threatened may be warranted, we are initiating a status review to determine whether reclassifying the wood stork in the southeastern United States to threatened under the Act is warranted. We will issue a 12-month finding as to whether the petitioned action is warranted. As part of our status review, we will examine newly available information on the threats to the species and make a final determination on a 12-month finding on whether the species should be listed as endangered or threatened under the Act. To ensure the status review is complete, we are requesting scientific and commercial information regarding the wood stork throughout its entire range (as described under the Request for Information section).

The "substantial information" standard for a 90-day finding differs from the Act's "best scientific and commercial data" standard that applies to a status review to determine whether a petitioned action is warranted. A 90-day finding does not constitute a status review under the Act. In a 12-month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not mean that the 12-month finding will result in a warranted finding.

References Cited

A complete list of references cited is available on the Internet at <http://www.regulations.gov> and upon request from the U.S. Fish and Wildlife Service, Jacksonville Ecological Services Field Office (*see FOR FURTHER INFORMATION CONTACT*).

Author

The primary authors of this notice are staff of the Jacksonville Ecological Services Field Office (*see FOR FURTHER INFORMATION CONTACT*).

Authority

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

Dated: August 23, 2010.

Wendi Weber,

Acting Deputy Director, Fish and Wildlife Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 100903415-04-02]

RIN 0648-XW96

Listing Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List Atlantic Bluefin Tuna as Threatened or Endangered under the Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: 90-day petition finding; request for information.

SUMMARY: We, NMFS, announce a 90-day finding for a petition to list Atlantic bluefin tuna (*Thunnus thynnus*) as endangered or threatened under the Endangered Species Act (ESA) and to designate critical habitat concurrently with a listing. We find that the petition presents substantial scientific information indicating the petitioned action may be warranted. We will conduct a status review of Atlantic bluefin tuna to determine if the petitioned action is warranted. To ensure that the review is comprehensive, we solicit information pertaining to this species from any interested party.

DATES: Information related to this petition finding must be received by November 22, 2010.

ADDRESSES: You may submit comments, identified by RIN 0648-XW96, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail or hand-delivery: Assistant Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930.

All comments received are a part of the public record and will generally be

posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

The petition and other pertinent information are also available electronically at the NMFS website at http://www.nero.noaa.gov/prot_res/CandidateSpeciesProgram/csr.htm.

FOR FURTHER INFORMATION CONTACT: Kim Damon-Randall, NMFS, Northeast Regional Office (978) 282-8485 or Marta Nammack, NMFS, Office of Protected Resources (301) 713-1401.

SUPPLEMENTARY INFORMATION:

Background

On May 24, 2010, we received a petition from the Center for Biological Diversity (CBD) to list Atlantic bluefin tuna (*Thunnus thynnus*) as threatened or endangered under the ESA and designate critical habitat concurrently with its listing. The petition contains information on the species, including the taxonomy, historical and current distribution, physical and biological characteristics of its habitat and ecosystem relationships, population status and trends, and factors contributing to the species' decline. In its petition, CBD references information contained in the proposal prepared by Monaco for the 15th Conference of the Parties (CoP15) to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) to list Atlantic bluefin tuna under Appendix I. This document is referenced in this finding as "CITES, 2010." CBD contends that "Atlantic bluefin tuna suffers from mismanagement by an ineffective international organization, rampant illegal fishing as a consequence of extraordinary market demand, complicated and poorly understood population dynamics, and a diversity of habitat threats." The petitioner presents information in the petition regarding the declining trend of both the eastern Atlantic/Mediterranean and western Atlantic stocks and what it characterizes as the lack of management measures both nationally and internationally to fully address and reverse the declines. The petitioner presents genetic information and life history information, asserting that at least two

distinct population segments (DPS) of Atlantic bluefin tuna exist. CBD also contends that the Deepwater Horizon/BP oil spill in the Gulf of Mexico occurred during spawning in the only known spawning grounds of the western Atlantic stock and is likely to have significant long-term effects on bluefin tuna, possibly having the potential to "devastate the population."

ESA Statutory Provisions and Policy Considerations

Section 4(b)(3)(A) of the ESA (16 U.S.C. 1533(b)(3)(A)) requires that we make a finding as to whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating the petitioned action may be warranted. ESA implementing regulations define substantial information as the amount of information that would lead a reasonable person to believe the measure proposed in the petition may be warranted (50 CFR 424.14(b)(1)). In determining whether substantial information exists for a petition to list a species, we take into account several factors, including information submitted with, and referenced in, the petition and all other information readily available in our files. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition (16 U.S.C. 1533(b)(3)(A)), and the finding is to be published promptly in the **Federal Register**. If we find that a petition presents substantial information indicating that the requested action may be warranted, section 4(b)(3)(A) of the ESA requires the Secretary of Commerce (Secretary) to conduct a status review of the species. Section 4(b)(3)(B) requires the Secretary to make a finding as to whether or not the petitioned action is warranted within 12 months of the receipt of the petition. The Secretary has delegated the authority for these actions to the NOAA Assistant Administrator for Fisheries.

The ESA defines an endangered species as "any species which is in danger of extinction throughout all or a significant portion of its range" (ESA section 3(6)). A threatened species is defined as a species that is "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range" (ESA section 3(19)). Under the ESA, a listing determination can address a species, subspecies, or a DPS of a vertebrate species (16 U.S.C. 1532 (16)). Under section 4(a)(1) of the ESA, a species may be determined to be threatened or endangered as a result of any one of the following factors: (A) present or

threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Listing determinations are made solely on the basis of the best scientific and commercial data available, after conducting a review of the status of the species and taking into account efforts made by any state or foreign nation to protect such species.

Life History of the Atlantic Bluefin Tuna

Atlantic bluefin tuna are found throughout the North Atlantic Ocean and adjacent seas, including the Mediterranean Sea. They are pelagic, highly migratory species occupying coastal and open ocean areas up to depths of 200 meters (m) (SCRS, 2008). Based on reproductive isolation due to the existence of separate spawning grounds and the absence of spawning in the middle of the North Atlantic, associated genetic differentiation, and differing ages at maturity, the International Commission for the Conservation of Atlantic Tunas (ICCAT) manages this highly migratory species as two separate stocks the eastern Atlantic and western Atlantic (SCRS, 2008).

The Atlantic bluefin tuna is the largest of the tuna species. Maximum lengths can exceed 4 meters (m) (13.1 feet), and weights of up to 900 kilograms (kg) (1,984.2 lb) have been reported in various fisheries in the western Atlantic and Mediterranean Sea (SCRS, 2008). As large predators, bluefin tuna play an important role in pelagic ecosystems (Rooker *et al.*, 2007). Juveniles prey primarily on fish, crustaceans, and cephalopods, and adults feed primarily on fish such as herring, anchovy, sand lance, sardine, sprat, bluefish, and mackerel (Fromentin, 2006).

The western Atlantic stock is believed to reach maturity at 8 or more years of age while the eastern Atlantic stock is believed to mature at 4 to 6 years of age (Medina *et al.*, 2002 cited in Fromentin and Powers, 2005). The western Atlantic stock spawns in the Gulf of Mexico from March through May, while in the Mediterranean spawning occurs from May to June in the eastern portion and June to July in the central and western portions (Nishikawa *et al.*, 1985; Mather *et al.*, 1995; Schaefer, 2001, cited in Fromentin and Powers, 2005). Bluefin tuna are oviparous (i.e., lay eggs) and iteroparous (i.e., spawn regularly), and are multiple batch spawners (Schaefer, 2001, cited in Fromentin and Powers,

2005). According to Teo *et al.* (2007), bluefin tuna appear to spawn in consecutive years. Fecundity (i.e., the number of eggs produced) is size dependent. Fromentin (2006) determined that fertilization takes place directly in the water column, and hatching occurs without parental care after 2 days. Larvae are pelagic and resorb the yolk sac within a few days (Fromentin and Powers, 2005).

Analysis of Petition and Information Readily Available in NMFS Files

In the following sections, we use the information presented in the petition and in our files to: (1) describe the distribution of Atlantic bluefin tuna; (2) determine whether Atlantic bluefin tuna populations may meet the criteria for being identified as DPSs; and, (3) evaluate whether Atlantic bluefin tuna populations proposed by the petitioners are at abundance levels that would lead a reasonable person to conclude that listing under the ESA may be warranted due to any of the factors listed under section 4(a)(1) of the ESA.

Analysis of DPS Information

To be considered for listing under the ESA, a group of organisms must constitute a "species." A "species" is defined in section 3 of the ESA to include "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." On February 7, 1996, NMFS and the U.S. Fish and Wildlife Service (collectively, the "Services") adopted a policy to clarify their interpretation of the phrase "distinct population segment of any species of vertebrate fish or wildlife" (61 FR 4722). The joint DPS policy describes two criteria that must be considered when identifying DPSs: (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 remainder of the species (or subspecies) to which it belongs. As further stated in the joint policy, if a population segment is discrete and significant (i.e., it is a DPS), its evaluation for endangered or threatened status will be based on the ESA's definition of those terms and a review of the five factors enumerated in section 4(a)(1) of the ESA.

Under the DPS policy, a population segment may be determined to be discrete if: (1) it is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological or behavioral factors; and/or (2) the population is

delimited by international 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. As noted previously in the petition, CBD presents information to support its claim that there are at least two DPSs of Atlantic bluefin tuna. CBD contends that Atlantic bluefin tuna meet at least one, if not both, of the discreteness criteria. The spawning grounds of the eastern and western stocks are separated (e.g., Gulf of Mexico and Mediterranean Sea), and there are significant genetic differences and unique ages of maturity (markedly separated from other populations of the same taxon). Bluefin tuna in the Mediterranean mature at considerably younger ages (e.g., 4 to 6 years) than fish from the Gulf of Mexico, which were described to mature at age 8 or older and at much larger sizes (SCRS, 2008). Fromentin *et al.* (2005) and several other authors have confirmed that bluefin tuna exhibits a strong homing behavior and strong spawning site fidelity. ICCAT manages the species as two separate stocks with separate Total Allowable Catch (TAC) levels for the western stock and eastern stock (which are delimited by international boundaries within which there are significant management differences).

The DPS policy also cites examples of potential considerations indicating significance, including: (1) persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon; (3) evidence that the DPS represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or, (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

CBD presents information to support its claim that the two discrete populations are significant, including evidence that: (1) they persist in ecological settings that are unusual or unique for the taxon; (2) loss of a population would result in a significant gap in the range of the species; and (3) there are significant genetic differences between the two stocks. CBD notes that the habitat in the Gulf of Mexico is unique from that found in the Mediterranean. Carlsson *et al.* (2007) provide information on trans-Atlantic migrations of the species as well as genetic evidence indicating that the two

populations are genetically diverse. According to CBD, the genetic differentiation between the two stocks supports the assertion that, if one population were to be lost, this would result in the significant loss of genetic diversity and, therefore, a significant gap in the range of the taxon. Based on the information in the petition, and on information readily available in our files prior to receipt of the petition, there is evidence that the eastern and western Atlantic stocks of Atlantic bluefin tuna may be discrete and significant. Thus, a full DPS analysis will be undertaken.

Abundance

CBD asserts that the eastern Atlantic bluefin tuna population is critically imperiled and faces imminent risk of extinction, basing this contention on information which suggests that the population has declined more than 80 percent since 1970 (CITES, 2010). CBD cites a stock assessment conducted in 2008 by SCRS who determined that the spawning stock biomass (SSB) for the eastern Atlantic stock in 2007 was 78,724 tonnes (t). This contrasts with the biomass peak of 305,136 t in 1958 and 201,479 t in 1997 (CITES, 2010). As noted in the petition, CITES (2010) indicates that the absolute extent of decline over the 50-year historical period from 1957 to 2007 is estimated to be 74.2 percent, and the majority of that decline occurred in the last 10 years.

CBD also contends that the western Atlantic bluefin tuna population is at imminent risk of extinction. According to the petition, a history of intense fishing pressure has resulted in declines of over 80 percent since 1970 (CITES, 2010). The SSB for the western Atlantic stock was estimated in 2007 to be 8,693 t, declining from 49,482 t in 1970 (SCRS, 2009). This represents an 82.4 percent decline over the 38-year historical period (SCRS, 2009). Since the early 1990s, the SSB has remained relatively stable at approximately 15–18 percent of its pre-exploitation biomass (SCRS, 2009).

CBD notes that at the 2010 CITES Conference of the Parties (CoP15), the Principality of Monaco proposed to include the Atlantic bluefin tuna in Appendix I (CBD, 2010). According to the CITES definitions, Appendix I lists species that "are the most endangered among CITES-listed animals and plants. They are threatened with extinction, and CITES prohibits the international trade in specimens of these species except when the purpose of the import is not commercial, for instance for scientific research." The listing proposal did not receive the votes that it needed

to be adopted at CoP15. While the United States voted in favor of Monaco's proposal, its support was based on problems with compliance in the eastern Atlantic and Mediterranean fishery, as well as the fact that the 2010 quota level adopted by ICCAT for this stock was not as low as the United States believed was necessary. Without improvement in these areas, the United States had concerns about the long-term viability of the bluefin tuna stock and fishery. A ban on the international commercial trade of bluefin tuna offered an additional tool to reduce fishing pressure and improve control of the eastern stock in order to enhance its conservation in order to meet ICCAT objectives (K. Blankenbeker, NMFS, personal communication, 2010).

Also, as noted in the petition, the International Union for Conservation of Nature (IUCN) has listed western Atlantic bluefin tuna as critically endangered with an extremely high risk of extinction in the wild in the immediate future. According to IUCN, the population meets the critically endangered criteria of having declined in excess of 80 percent over the last 10 years or 3 generations. Eastern Atlantic bluefin tuna are classified by IUCN as endangered, meaning that this population is at very high risk of extinction in the wild in the near future based on a reduction of at least 50 percent over the last 10 years or 3 generations. While the criteria for listing species under a CITES appendix or under IUCN are different from those used under the ESA, the information used to make these decisions may be informative and will be considered during the development of the status review where appropriate.

ESA Section 4(a)(1) Factors

Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

In the petition, CBD states that worldwide habitat loss and degradation is one of the primary causes of the decline of Atlantic bluefin tuna. It indicates that threats to habitat from pollution and ocean climate change are having significant impacts globally. CBD cites information from the NMFS Highly Migratory Species (HMS) Essential Fish Habitat (EFH) assessment in which it is stated that habitat for these species is comprised of open ocean environments occurring over broad geographic ranges, and "large-scale impacts such as global climate change that affect ocean temperatures, currents, and potentially food chain dynamics, are most likely to have an impact and pose the greatest

threat to HMS EFH" (NMFS, 2009). CBD indicates that effects from climate change are already impacting the North Atlantic Ocean with increasing water temperatures and sea levels, increased acidification, and changes in circulation patterns and nutrient supplies (Bindoff *et al.* 2007; Beaugrand, 2009). It asserts that changing ocean conditions as a result of climate change and ocean acidification may result in species shifts and ecosystem changes that may negatively affect Atlantic bluefin tuna. CBD states that climate change could impact Atlantic bluefin tuna prey availability, behavior, and water quality. According to CBD, ocean acidification may also decrease the sound absorption in seawater, which could affect spawning habitat, resulting in physiological or anatomical effects to the auditory systems, potential behavioral alterations, and auditory masking.

The petitioners contend that oil and gas activities in the Gulf of Mexico pose a significant threat to the only known spawning grounds for the western Atlantic bluefin tuna population. According to CBD, the Deepwater Horizon/BP oil spill in the Gulf of Mexico occurred during spawning in the only known spawning grounds of the western Atlantic stock and is, therefore, likely to have significant long-term effects on bluefin tuna, possibly having the potential to devastate the population. In response to the oil spill, NMFS is examining, among other things, the historical distributions of spawners and larvae, as well as the distributions expected this year based on maps of optimal larval habitat, to determine the overlap of the oil spill with spawning bluefin tuna and their progeny (C. Porch, NMFS, personal communication, 2010). It is not known how long the oil will remain in the Gulf and what the long-term effects to fish exposed to non-lethal concentrations of oil may be; however, the best available information on the effects from the oil spill to Atlantic bluefin tuna will need to be considered during the status review, including the results of current research and analyses being undertaken by NMFS.

Overutilization for Commercial, Recreational, Scientific or Education Purposes

In 2008, the ICCAT Standing Committee on Research and Statistics (SCRS) advised that, unless fishing mortality rates on the eastern Atlantic and Mediterranean stock of bluefin tuna were substantially reduced in the future, further reduction of SSB was likely, which could lead to a risk of fisheries

and stock collapse (SCRS, 2009). For the eastern Atlantic bluefin tuna population, CBD notes that the SCRS indicated that continued fishing mortality rates at the 2007 levels were expected to drive the SSB to very low levels (approximately 18 percent of the SSB in 1970 and 6 percent of the unfished SSB). CBD cites MacKenzie *et al.* (2009) who predicted that the adult eastern bluefin tuna population in 2011 will be 75 percent lower than in 2005 and that the fishing quotas will permit the capture of all remaining adult fish. These authors noted that, at these low population sizes, reproduction of eastern Atlantic bluefin tuna is increasingly uncertain and could be limited by spawner biomass (MacKenzie *et al.*, 2009). They conclude that the population is at risk of collapse in the next few years, which translates to a 90 percent decline in adult biomass within 3 generations (MacKenzie *et al.*, 2009). It is important to note that MacKenzie *et al.* (2009) made population projections based on the TAC levels ICCAT established for 2008 through 2010 (22,000 t, 19,950 t, and 18,500 t, respectively). However, the TAC for 2010 has been reduced to 13,500 t; therefore, the projections that were made may not reflect the current fishing pressure on the stock and may be overly pessimistic (G. Diaz, NMFS, personal communication, 2010).

CBD asserts that the western Atlantic bluefin tuna population is also in imminent danger of extinction due to severe declines and ongoing fishing pressures. As stated previously, according to CBD, this stock has declined over 80 percent since 1970 due primarily to overfishing (CITES, 2010). The SSB has declined approximately 82.4 percent over the 38-year historical period; however, since the early 1990s, it has remained relatively stable at approximately 15–18 percent of its pre-exploitation biomass (SCRS, 2009). In 2008, the SCRS determined that the western Atlantic stock has been below the level required to produce the maximum sustainable yield (MSY) since the mid-1970s, and fishing mortality rates have been above that which would produce MSY throughout the time series used in the stock assessment (which started in 1970). The SCRS also determined that 10 years after ICCAT adopted a rebuilding program (half way through the 20-year rebuilding period), the 2007 SSB was estimated to be 7 percent below the level of the rebuilding plan's first year (SCRS, 2008). Since 1998, the stock has generally stabilized, increasing in some years and decreasing in others (G. Diaz, NMFS, personal

communication, 2010). According to CITES (2010), there is also great uncertainty regarding potential recruitment of the western Atlantic stock. In addition, Safina and Klinger (2008) suggest that the western Atlantic stock is currently in danger of extinction and that a moratorium on fishing this stock should be implemented.

According to the last ICCAT stock assessment (2008), the most pessimistic recruitment scenario indicates that even a closure of the fishery would not achieve rebuilding of the stock by 2019. However, under different assumptions of recruitment, recovery is projected to occur within this timeframe (SCRS, 2009). Fishing mortality of large western Atlantic bluefin tuna has declined recently, and the TAC was not taken for several years primarily because of U.S. underharvest, which ranged from 40 to 80 percent of its national quota in 2006–2008 (SCRS, 2009). SCRS has indicated that there are two plausible explanations for this: (1) the availability of fish to the U.S. fishery has been abnormally low due to a change in the spatial distribution of the stock; and/or (2) the overall size of the population in the Western Atlantic declined substantially from the level of recent years (SCRS, 2009). It is important to note that U.S. catches have steadily increased since 2006, and in 2009, the United States caught its entire base quota.

Predation and Disease

According to CBD, emerging environmental stress on Atlantic bluefin tuna may make them more vulnerable to disease, and tuna ranching may also increase the prevalence and spread of disease. CBD asserts that confined or escaped fish present a threat to wild fish from the spread of disease and parasites, as confined fish are particularly vulnerable to disease. It also notes that diseases in confined fish that are controlled through the use of antibiotics can result in more virulent strains of disease that are then resistant to antibiotics. While it presents some information in the petition regarding disease, CBD does state that disease and predation are not primary threats responsible for the decline of the species.

Inadequacy of Existing Regulatory Mechanisms

CBD states that existing regulatory mechanisms for Atlantic bluefin tuna are inadequate. The petition indicates that the responsibility for overfishing and the poor status of Atlantic bluefin tuna stocks falls on ICCAT and its member countries, and CBD asserts that

there is consensus that the ICCAT process is failing the species.

In the petition, CBD states that in 2008, ICCAT failed to adopt the measures suggested by ICCAT scientists for eastern Atlantic and Mediterranean bluefin tuna. Based on the 2008 stock assessment, SCRS had advised that the maximum TAC for the eastern Atlantic stock be set on the order of 15,000 t or less. SCRS also advised that a time and area closure during the spawning months could greatly facilitate the implementation and monitoring of rebuilding. Additionally, SCRS indicated that a moratorium over the East Atlantic and Mediterranean Sea during 1, 3, or 5 years followed by an F0.1 management strategy would increase the probability of rebuilding the stock by 2023 (SCRS, 2009). In 2008, ICCAT established TACs for eastern bluefin tuna that declined annually for the years 2009 through 2011 (22,000 t, 19,950 t, and 18,500 t, respectively). However, in the petition, CBD did not recognize that, in 2009, ICCAT adopted new 2010 TAC levels for eastern bluefin tuna of 13,500 t, which is within the range of scientific advice, and agreed that, at its 2010 meeting, it would establish TACs for 2011–2013 with the goal of achieving biomass at maximum sustainable yield (Bmsy) through 2022 (the end of the eastern/Mediterranean bluefin tuna recovery period) with at least 60 percent probability, on the basis of 2010 SCRS advice (ICCAT, 2009). CBD also presents information regarding an independent review that ICCAT initiated in 2008 in response to concerns expressed at the United Nations and other international fora about the sustainable management of high seas fisheries. According to CBD, although the review covered all species within ICCAT's management jurisdiction, the Executive Summary of the final report noted that ICCAT's international reputation "will be based largely on how ICCAT manages fisheries on bluefin tuna." They cite that Hurry *et al.* (2008) stated that "ICCAT's members' performance in managing fisheries on bluefin tuna particularly in the eastern Atlantic and Mediterranean Sea is widely regarded as an international disgrace." The petition indicates that the independent review panel concluded that the ICCAT Convention Objectives were not met for either of the two bluefin tuna stocks. The petition goes on to state that the panel recommended that ICCAT suspend fishing on bluefin tuna in the eastern Atlantic and Mediterranean until ICCAT members fully comply with ICCAT recommendations on this stock of

bluefin tuna, and also that ICCAT consider an immediate closure of all known bluefin tuna spawning grounds at least during known spawning periods. According to CBD, ICCAT did not follow these recommendations.

CBD states that ICCAT's management performance for the western Atlantic bluefin tuna stock is also poor. According to the petition, in 2008, it was concluded that the 20-year rebuilding plan that was initiated in 1998 has not resulted in the rebuilding that was projected. CBD notes that the review panel attributed the slow rebuilding of the stock to two potential causes: (1) ICCAT's adoption of quotas at levels that fail to meet rebuilding goals, and (2) the rate of mixing between the two stocks. The SCRS (2008) noted that mixing rates are important as even a small amount of mixing between the larger eastern stock and the smaller western stock could have significant effects on the recovery of the latter.

CBD also cites the lack of data as a significant problem plaguing the management of the eastern bluefin tuna stock. It notes that reported catches from the mid 1970s to 2007 were inaccurate, often underestimating the actual catch. Therefore, according to CBD, the extent of the Atlantic bluefin tuna decline is underestimated. According to the petition, this then leads to overfishing and severe population decline because quotas are not based on the high catch that actually occurred, and there are no fishery independent data that would better characterize the decline.

CBD contends that U.S. fishery management also fails to meet its domestic legal obligation to manage fisheries in order to attain optimum yield. It states that the U.S. management measures for western Atlantic bluefin tuna in the Consolidated Atlantic Highly Migratory Species Fishery Management Plan (HMS FMP) are ineffective at maintaining stocks and meeting the requirements to rebuild the population to healthy levels as mandated by the Magnuson Stevens Act. The petition also references a proposed rule that NMFS recently published to increase the maximum daily retention limit and lengthen the season of the General category fishery and increase the Harpoon category daily incidental retention limit (74 FR 57128; November 4, 2009), and indicates that these proposals were made despite the lack of success of recovery efforts for the western Atlantic bluefin tuna stock. It is important to note, however, that the information available in our files indicates that western bluefin tuna biomass levels are not in decline at this time and have remained stable, at low

levels, since the 1990s. It is also important to note that although NMFS' November 4, 2009, proposed rule was intended to more thoroughly utilize the available U.S. bluefin tuna quota established under the 20-year rebuilding program as, in accordance with the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*), the United States cannot increase or decrease its bluefin tuna quota established by ICCAT. To date, the rule has not been finalized.

Finally, the petition claims that there are no habitat protections for the western Atlantic bluefin tuna stock. It notes that NMFS designated an area of the Gulf of Mexico as a Habitat Area of Particular Concern and identified bluefin tuna spawning grounds as needing special protection. However, it states that NMFS did not implement any measures that would actually protect the habitat, and, thus, this designation has done little to protect the species.

Other Natural or Manmade Factors Affecting Its Existence

Chemical contaminants, such as endocrine disrupting chemicals (EDCs) and mercury, and offshore aquaculture in the Gulf of Mexico are presented by CBD as potential threats to Atlantic bluefin tuna. CBD cites Storelli *et al.* (2008) and Fossi *et al.* (2002) who warned that EDCs have the potential to result in reproductive alterations in bluefin tuna as a result of bioaccumulation. Storelli *et al.* (2008) concluded that exposure to EDCs over a long lifetime might "create the prerequisite for the development of pathological conditions" in Atlantic bluefin tuna in the Mediterranean. CBD also states that mercury may accumulate in the food chain due to low pH resulting from climate change induced ocean acidification, which will result in increased bioaccumulation in Atlantic bluefin tuna.

The petitioner also suggests that offshore aquaculture in the Gulf of Mexico is an emerging threat to Atlantic bluefin tuna. CBD cites NMFS (2009), stating that potential impacts from

offshore aquaculture include increased nutrient loading, habitat degradation, fish escapement, competition with wild Atlantic bluefin tuna, and spread of pathogens. CBD concludes that offshore aquaculture will affect Atlantic bluefin tuna.

Petition Finding

Based on the above information and the criteria specified in 50 CFR 424.14(b)(2), we find that the petition presents substantial scientific and commercial information indicating that the petitioned action concerning Atlantic bluefin tuna may be warranted. Under section 4(b)(3)(A) of the ESA, this positive 90-day finding requires NMFS to commence a status review of the species. During our status review, we will consider whether there are multiple DPSs within the species' range, whether these are threatened or endangered, and whether the species is in danger of extinction throughout all or a significant portion of its range or likely to become so in the foreseeable future. We now initiate this review, and thus, the Atlantic bluefin tuna is now considered to be a candidate species (69 FR 19976; April 15, 2004). Within 12 months of the receipt of the petition (May 24, 2011), we will make a finding as to whether listing Atlantic bluefin tuna or DPSs of Atlantic bluefin tuna as endangered or threatened is warranted, as required by section 4(b)(3)(B) of the ESA. If warranted, we will publish a proposed rule and solicit public comments before developing and publishing a final determination.

References Cited

A complete list of the references used in this finding is available upon request (see ADDRESSES).

Information Solicited

To ensure the status review is based on the best available scientific and commercial data, we solicit information pertaining to Atlantic bluefin tuna. Specifically, we solicit information in the following areas: (1) historical and current distribution and abundance of

this species throughout its range; (2) historical and current condition; (3) population status and trends; (4) any current or planned activities that may adversely impact the species, especially as related to the five factors specified in section 4(a)(1) of the ESA and listed above; (5) ongoing efforts to protect and restore the species and its habitat; (6) genetic data or other information that would help us determine whether any population segments of Atlantic bluefin tuna meet the DPS policy criteria of discreteness and significance; and (7) whether any particular portions of the range of the Atlantic bluefin tuna constitute significant portions of the range of the species or of any potential DPSs that may exist. We request that all information be accompanied by: (1) supporting documentation such as maps, bibliographic references, or reprints of pertinent publications; and (2) the submitter's name, address, and any association, institution, or business that the person represents.

Peer Review

On July 1, 1994, NMFS, jointly with the U.S. Fish and Wildlife Service, published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270). The intent of the peer review policy is to ensure listings are based on the best scientific and commercial data available. We solicit the names of recognized experts in the field that could take part in the peer review process for this status review. Independent peer reviewers will be selected from the academic and scientific community, tribal and other Native American groups, Federal and state agencies, the private sector, and public interest groups.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: September 14, 2010.

Eric C. Schwaab,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

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