

Science, Service, Stewardship



Atlantic bluefin tuna petition and NMFS response

Kim Damon-Randall
Protected Resources Division

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Presentation overview

- Discuss ESA petition process
- Present ESA definitions
- Discuss CBD petition contents
- Present SRT process
- Discuss NMFS response and next steps
- Present possible outcomes



Petition Process



- Any interested person can petition the Secretary of Interior and/or Commerce to list a species under the Endangered Species Act (ESA)
- Upon receiving a petition, the Secretary must make a finding within **90 days** (to the maximum extent practicable) as to whether the petition presents “substantial scientific or commercial information indicating that the petitioned action **may be warranted.**”



Substantial information

Defined as “the amount of information that would lead a **reasonable person** to believe that the measure proposed in the petition **may be warranted.**”



Negative 90 day finding



- Petition and/or information readily available in our files **does not** contain substantial scientific or commercial information indicating the petitioned action may be warranted
- Publish a notice in the *Federal Register* announcing the negative finding
- End of the process



Positive 90 day finding



- Petition and/or information readily available in our files **does** contain substantial scientific or commercial information indicating the petitioned action may be warranted
- Publish positive 90 day finding in the *Federal Register*
- Information may be solicited in the *FR* notice to address data gaps
- Species becomes a NMFS **Candidate Species**



Positive finding continued

- Initiate a review of the status of the species concerned
- Status review team (SRT) or Biological Review Team (BRT) may be formed
- SRT/BRT compiles available information, conducts threats assessment/extinction risk analysis, submits report to NMFS to make listing determination
- 12 months from **date of receipt of petition** – determination by NMFS as to whether listing is warranted must be published in *FR* (proposed rule if listing is determined to be warranted)



ESA definitions

Species = includes any subspecies of fish or wildlife or plants, and any distinct population segment (DPS) of any species or vertebrate fish or wildlife which interbreeds when mature

Endangered species = any species which is in danger of extinction throughout all or a significant portion of its range

Threatened species = any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range



Five Factors

Section 4(a)(1) of the ESA states that “The Secretary shall by regulation promulgated in accordance with subsection (b) determine whether any species is an endangered species or a threatened species because of any of the following factors:



Five Factors continued

- A. the present or threatened destruction, modification, or curtailment of its habitat or range;
- B. overutilization for commercial, recreational, scientific, or educational purposes;
- C. disease or predation;
- D. the inadequacy of existing regulatory mechanisms;
- E. other natural or manmade factors affecting its continued existence



CBD petition

- Received on 5/24/10
- Petition to list the global species or any distinct population segments (DPS) of bluefin tuna as either T or E
- Overfishing, habitat destruction (including impacts from DWH oil spill), and inadequacy of existing regulatory mechanisms identified as primary threats



Petitioners noted:

- Significant declines in eastern and western stock abundance
- ICCAT management measures perceived as not effective at addressing overfishing globally
- Unknown effects from oil spill on spawning ground in the Gulf of Mexico
- Information suggesting at least 2 DPSs – eastern and western



NMFS Response

- Positive 90-day finding concluding that petition presents substantial information indicating petitioned action **may be warranted** published today (filed on 9/16)
- 90-day finding seeks scientific and commercial information for the status review until **November 22, 2010**
- NMFS has initiated a status review with a status review team (SRT)



NMFS response continued

- SRT is comprised of all federal NMFS employees
- Experts from outside federal government can submit info in response to the 90-day finding and may be asked to present info to the team



Status Review Process

- Determine the “species” (e.g., full species, subspecies, DPS)
- Compile best available scientific and commercial information on the status, abundance and trends
- Five factor analysis
- Conduct a threats assessment or extinction risk analysis (may be quantitative or qualitative)
- Consider information on “significant portion of the species range” (e.g., are there areas where the species/DPS is no longer viable (self-sustaining), but once was?)



Status Review Process continued

- Consider ongoing or planned protective efforts that may affect the species
- Present available information on primary constituent elements of habitat needed for survival and recovery (e.g., size of habitat, number of different habitats needed for connectivity)
- SRT will not make a recommendation as to whether listing the species is warranted
- Under the ESA, economic impacts of a listing **cannot** be considered



Next Steps

- SRT will provide NMFS with a status review report (SRR)
- NMFS will use the SRR to make a listing determination (e.g., listing is or is not warranted)
- NMFS will publish this determination 12 months after receiving the petition (by **5/24/11**)



Possible outcomes

NMFS proposes to list the **species** as **endangered**

- 60 to 90 day public comment period, public hearings
- NMFS must make a final determination no later than one year after proposed rule
- If final rule is endangered, all **take** is automatically prohibited
 - Take defined as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.”



Possible outcomes continued

- Take from bycatch or incidental catch in non-directed fisheries prohibited unless authorized through Section 7 or 10 of the ESA
- NMFS must designate critical habitat at time of final listing (to maximum extent prudent) and initiate recovery planning



Possible outcomes continued

NMFS proposes to list the species as **threatened**

- Secretary of Commerce must promulgate protective regulations that are necessary and advisable for the conservation of the species (e.g., a **4(d) rule**)
- Directed take, bycatch, importation and exportation most likely prohibited
- Critical habitat designated
- Recovery planning initiated

NMFS determines that listing is **not warranted**

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Status Review Team Members

Ms. Kim Blankenbeker	NMFS, IA, HQ
Dr. Craig Brown	NMFS, SEFSC
Ms. Kimberly Damon-Randall	NMFS, PRD, NERO
Dr. Guillermo Diaz	NMFS, OST/HMS, HQ
Ms. Sarah Laporte	NMFS, PRD, NERO
Ms. Sarah McLaughlin	NMFS, HMS, NERO
Mr. Mark Murray-Brown	NMFS, HMS, NERO
Ms. Marta Nammack	NMFS, OPR, HQ
Dr. Clay Porch	NMFS, SEFSC
Ms. Margo Schulze-Haugen	NMFS, HMS, HQ