



## American Bluefin Tuna Association

November 22, 2010

Ms. Mary Colligan  
Assistant Regional Administrator, Protected Resources  
NMFS, Northeast Regional Office  
55 Great Republic Drive  
Gloucester, MA 01930

RIN **0648-XW96**

Dear Ms. Colligan:

This letter will present ABTA's detailed view on several of the more controversial and unfounded propositions presented in the Center for Biological Diversity (CBD) petition to list Atlantic bluefin tuna as Threatened or Endangered under the Endangered Species Act (ESA) per the NOAA request for comment at 75FR57431. We trust that expected additional scientifically based criticism and petition rejection will result after the expert Peer Review to be conducted later this year. ABTA submitted multiple world renowned scientific or management experts to repudiate the specious case for the bluefin listing proposed by CBD. Following are our summary comments.

1. In the CBD "Introduction" the Petition cites "Atlantic bluefin tuna have been fished nearly to extinction". The latest ICCAT stock assessment of east and west spawning units lends zero credibility to such a preposterous claim. We doubt a single credible pelagic scientist would support this notion given the ICCAT Standing Committee on Research and Statistics that the western spawning unit is at a biomass level capable of supporting maximum sustainable yield (MSY) of 2,585 metric tons (MT) and has, with high probability, been at this level since 1970's despite catches above and below this level. In the absence of this statement being surrounded by the fuzzy qualitative "threatened or endangered" criteria of ESA, it amounts to blatant fear mongering and radical propaganda. Bluefin is highly fecund, more than 40 age classes in the west Atlantic, stocks remain widely distributed albeit in lower than pristine numbers, they are without serious natural predators and capable of swimming at depths below conventional fishing gears. All of these qualities make remote, if not physically impossible, for mankind to fish this species to extinction. Relative to the eastern bluefin spawning unit, SCRS, with a much improved catch and effort data base for the east, has dropped prior references to "fishery collapse" and suggested the current TAC of 13,500 also has a high probability of sustainability and rebuilding the unit to BMS within a reasonable time frame. Ordinarily, a commercial fishery collapse would precede and be noticed prior to a serious extinction threat with a highly migratory tuna.
2. The CBD Introduction also suggest "ESA provides a means to recover species such as the Atlantic bluefin tuna...." This may well be the case for a candidate species where an ESA listing could have a significant impact on reducing mortality. However, anyone remotely familiar with management of highly migratory shared fish stocks such as bluefin should have a basic

**Ms. Mary Colligan**

**-2-**

**November 22, 2010**



understanding that this is not the case here. First, an ESA listing will potentially have zero impact on fishing mortality on western or eastern bluefin tuna. At best, a U.S. ESA listing will end or greatly limit US mortality which amounts to about roughly 1,000 mt annually. As we have seen with swordfish, another species managed by ICCAT, if for whatever reason the U.S. does not achieve its quota, the quota is transferred (sometimes as underages one or two years later) to other ICCAT Parties. Thousands of tons of swordfish quota uncaught by US fishermen have been transferred to other countries and the mortality continues (with increased mortality on non target mammals, turtles and other billfish. The same situation can be expected for bluefin even more quickly given the higher price and demand for the product. We can ban domestic landings and small amounts of imports but the impact on the stock given the continuing legitimate fishery for catches likely exceeding 15,000 mt and certain to increase as the ICCAT controls continue to recover the species, makes an ESA listing exclusively punitive on U.S. fishermen and consumers. U.S. HMS fishermen, we remind NOAA, have a proven exemplary track record leading the way with compliance and conservation and management of all HMS species. The above reality makes the CBD concluding statement that “without protections under the (U.S.) ESA, the drastic declines in populations of Atlantic bluefin tuna are potentially irreversible”. The suggesting the U.S. can conserve bluefin alone is preposterous, of course and second the term “irreversible” is more fear mongering with the specific term “irreversible” (relative to a bluefin decline) ironically first used in 1974 in reference to the eastern Atlantic bluefin unit.

3. The final paragraph under the Petition’s B. Distribution and Habitat makes our above case more emphatic with CBD’s acknowledgement of the scientific fact that “even small rates of mixing from East to West can have significant effects on the western stocks... . Thus while CBD claims that a domestic ESA listing would protect the western bluefin unit, substantial mixing of the spawning units on fishing and feeding grounds refutes any such proposition as the petition notes the scientific evidence on extensive mixing of east and west units.
4. Regarding Section D & E, and giving CBD the benefit of the doubt, the Petition was written (May 2010) well before the September/October 2010 ICCAT SCRS stock assessment for bluefin making most of the CBD biological positions outdated. We are confident NOAA will use the latest scientific advice and the latest ICCAT Plenary actions on new management and conservation agreements set forth at the conclusion of the meeting ongoing in Paris in November 2010 as the basis for the final disposition of the Petition. What follows is a brief summary of ICCAT latest stock assessment for the East and West units.

## **SCRS 2010 Report Results**

### *Western Atlantic*

Specifically, the SCRS report states that under the two-line recruitment scenario, the scenario chosen to rebuild the western stock, the assessment indicates “that the stock has been above convention objectives since 1970 and that fishing mortality rates have been below convention objectives since 1983.” (P 26) The report goes on to say that, “recent F (geometric mean from 2007 -2009) is 30% to 40% below FMSY and 20% to 30% above F0.1. Spawning stock biomass is 20% to 60% above SSB MSY and



10% to 30% below SSB F0.1.” (P 23) In short, the SCRS report shows that there has been great success in the west: the stock is at BMSY, it is fully rebuilt and there is a relative SSB of 1.1. This report also shows  
**Ms. Mary Colligan** **-3-** **November 22, 2010**

that the status of western BFT is improving and our quota and other conservation restrictions are paying off.

That there continues to be some debate over which scenario is the proper scenario to use for western BFT: the two-line recruitment scenario, which is based on recruitment levels identified in the west for more than 30 years, or the high recruitment scenario, which is based on recruitment levels allegedly occurring pre-1971 under a higher SSB (even though no stock/recruit relationship has even been established) is a meaningless debate when considering an ESA listing. **If one prefers to consider “two-line” the worst case scenario the stock is rebuilt, stable and underutilized with any yield under 2,585 mt (current quota is 1800 mt and catches have been less with U.S. underachievement).** The stock continues to build biomass under the current program. What is the basis then for the petition leading to a concern about threats or danger of extinction?

The bottom line is that the U.S., including NOAA leaders since 1998, have repeatedly considered the SCRS advice concerning the two-line and high recruitment model results and in response have consistently adopted two line as the official U.S. position. And the the current SCRS report vindicates this judgment. There is nothing in the latest assessment that would compel a change in the U.S. or ICCAT position in basing the management of the western stock. We would also emphasize the often-repeated advice from SCRS that the “Committee has no strong evidence to favor either scenario over the other and notes that both are reasonable (but not extreme) lower and upper bounds on rebuilding potential.” (P 82) Therefore, the low recruitment scenario is sustainable (and in our opinion more plausible) than the high recruitment scenario especially if lower yields continue in the eastern Atlantic and Mediterranean (i.e. more eastern fish migrating west to support western fisheries).

Finally, according to the SCRS report, and specifically the Kobe II Matrix, it is clear that an increase is fully justified in the TAC for the western Atlantic fishery. The plan calls for a greater than 50% chance of success for rebuilding in the west by 2019. According to the Matrix, the TAC in the western Atlantic could be raised to 2500 mt with a 78.2% probability of remaining above BMSY level and an increase to 2,250 mt will allow for an astounding 86.2% probability of remaining above BMSY in 2019. (Table 13 or Table 1 in the Executive Summary) The western Atlantic fishery has been strictly managed since the beginning of ICCAT. While historical landings were as high as 18,761 mt in the 1960s, landings steadied to around 5,000 mt in the 1970s. In 1982 a greater than 60% cut was unilaterally imposed in the west, and then another cut was mandated in the 1990s. The catch levels were restored slightly in early 2000 before the most recent reduction in the TAC was imposed from a level of 2,700 mt down to 1,900 mt in 2009 and now 1,800 mt in 2010.

### ***Eastern Atlantic***

We acknowledge that management in the eastern Atlantic and Mediterranean Sea was a complete disaster for the better part of two decades. But, due in large part to the concentrated attention of the US and other conservation minded entities, and the hard work of scientists reported in the ICCAT 2001



Report of the ICCAT Workshop on Bluefin Mixing major changes have been taking place in those fisheries in recent years. Reporting has improved (and now includes some size data), catches have been reduced dramatically, observers are being required on vessels and at European Community farms, spawning protections are being implemented with an effort to reduce loopholes, and in general management infrastructure is finally developing. As a result, the SCRS has specifically dropped a ny

**Ms. Mary Colligan** **-4-** **November 22, 2010**

reference to “stock collapse” in the current stock assessment. This declaration was prominently noted in the past and used by Environmental Non Government Organizations to press their agenda for CITES and now ESA. The SCRS report now shows definitive reason for cautious optimism for the long-term prospects of the east unit. The significance of SCRS consciously eliminating this concern cannot be over emphasized in light of continuing frivolous efforts to suggest threatened species or extinction concerns for any Northern Atlantic bluefin tuna.

Finally regarding the eastern unit, the SCRS report states that, “The implementation of recent regulations through [Rec 09-06, and previous recommendations] has clearly resulted in reductions in catch and fishing mortality rates.” And while the report goes on to state that there is some uncertainty involved, that, “...the Committee notes that maintaining catches at the current TAC (13,500 mt) under the current management scheme, for 2011-2013 will likely allow the stock to increase during that period and is consistent with the goal of achieving FMSY and BMSY through 2023 with at least 60% of probability.” (P 27) **Again, the latest stock assessment science indicates a rebuilding of biomass for the eastern unit, so what is the basis for the leap to a threat or danger of extinction of bluefin with ESA.**

### **Petition Section III: Extinction Risk For the Atlantic Bluefin Tuna**

This section claims that “Congress passed the ESA in an effort to widen the protection for vanishing species....” The latest stock assessment does not support any claim that any bluefin unit is “vanishing”. To the contrary, the 2010 assessment scientifically demonstrates the biomasses of the two known units are increasing and there is increasing evidence that additional units are contributing to the stocks of bluefin. The published scientific literature is growing to consider Northern Atlantic bluefin comprised of “metapopulations” or “contingent stocks”. This includes suggestions of additional consideration of past evidence and new research on spawning areas in the Caribbean Sea, Yucatan Straights, offshore North Carolina, Central Atlantic Ocean, Gulf of Guinea and elsewhere.

Under A. Conservation Status the petition notes that “Even the dismal stock status reports....” Is no longer an accurate statement with the 2010 report being the most positive report on progress on management infrastructure in the East, improved data reporting and compliance with quotas and greatly reduced catches.

Under “a. International Union for Conservation of Nature” the petition claims “IUCN is the world’s most foremost authority on the status of threatened species”. We categorically reject this anecdotal, self serving, biased claim and suggest that ICCAT’s SCRS Bluefin Working Group (focused exclusively on bluefin stock status for 40 years) is the world authority on the status and future health of the bluefin resource.



Under “c. CITES Analysis of Atlantic Bluefin Status” the petition suggests “overwhelming evidence” was rejected because of “short sighted commercial interests prevailed” but fails to provide any evidence of the commercial interest negating the dominance of ENGO multimillion dollar efforts to persuade the majority of voting parties not economically benefitting from Atlantic bluefin trade.

#### **Section IV. Eastern and Western North Atlantic Bluefin Tuna Each Comprise a Distinct Population Segment**

**Ms. Mary Colligan**

**-5-**

**November 22, 2010**

We note that U.S. Fish and Wildlife and Department of Interior are under legal challenge for prior judgments regarding “distinct population segment” determinations. We are not clear to what extent the cases and the challenged decisions have applicability to the bluefin case here but we reserve the right for further legal investigation on this issue once the Agency decision on bluefin is made. For background on the existing legal challenge we provide the following link:  
<http://www.martenlaw.com/newsletter/20101119-esa-listing-decisions>

In the case of bluefin, the complexity involves the known fact that at least two separate spawning grounds appear to exist with a presumed high level of fidelity from tagging, there appears to be evidence of additional spawning grounds but most importantly is the fact that extensive mixing challenges the conclusion that the stocks can be treated as “distinct population segment”. We will leave this area for now to be considered by both scientific and legal experts, as it must be before any final determination can be made.

**Pages 13 through 17 of the petition show a gross disregard for the critical conclusions on the importance of mixing in managing the resource under any condition of any unit east or west.** It is regrettable that the authors ignored the most exhaustive scientific analysis conducted to date by the world’s foremost authorities participating in the 2001 ICCAT Workshop on Mixing. NOAA leadership pressed hard to secure the workshop and analysis which was ultimately supported by ICCAT after more than 25 years of ignoring mixing in stock assessments and management advice.

##### **a. Oil and Gas Activities in the Gulf of Mexico**

Clearly the Petitioners rely heavily of the potential impacts to bluefin tuna spawning grounds, larvae and giants resulting from the British Petroleum Deepwater Horizon oil rig tragedy costing immediate human lives. Although ABTA was not completely pleased with either BP or U.S. governments initial recognition of the significant immediate fishery impacts due to fishing ground closures, we were pleased with NOAA’s wise advice against a rush to judgment regarding potential longer term impacts particularly on species with life history needs heavily dependent on coastal nursery or feeding grounds and the corollary lesser impact on high seas environmentally dependent resources such as the large pelagics. NOAA’s repeated pronouncements that only long term studies could determine the extent of temporary or longer lasting impacts has proven is the right approach but early indications are the spill will have tolerable impacts on bluefin spawning giants and larvae survival.



Here is an early promising excerpt released by NOAA finding this past August 4, 2010

"The vast majority of the oil from the BP oil spill has either evaporated or been burned, skimmed, recovered from the wellhead or dispersed much of which is in the process of being degraded. A significant amount of this is the direct result of the robust federal response efforts. A third (33 percent) of the total amount of oil released in the Deepwater Horizon/BP spill was captured or mitigated by the Unified Command recovery operations, including burning, skimming, chemical dispersion and direct recovery from the wellhead, according to a [federal science report](#) released today. An additional 25 percent of the total oil naturally evaporated or dissolved, and 16 percent was dispersed naturally into microscopic droplets. The residual amount, just over one quarter (26 percent), is either on or just below the surface as residue and weathered tarballs, has washed ashore or been collected from

Ms. Mary Colligan

-6-

November 22, 2010

the shore, or is buried in sand and sediments. Dispersed and residual oil remain in the system until they degrade through a number of natural processes. Early indications are that the oil is degrading quickly.

These estimates were derived by the National Oceanic and Atmospheric Administration (NOAA) and the Department of the Interior (DOI), who jointly developed what is known as an Oil Budget Calculator, to provide measurements and best estimates of what happened to the spilled oil."

Please also consider the following early findings.

1. From: "Spawning Bluefin Tuna & the Deepwater Horizon Oil Spill", 2010, Tag A Giant Foundation

**"Because they are a highly adapted mobile species, it is possible that bluefin will be able to detect the spill and give it a wide enough berth so that not even their larvae could drift into the contaminated area, resulting in no adverse impacts, at least in the short term"** ["Spawning Bluefin Tuna & the Deepwater Horizon Oil Spill", 2010, Tag A Giant Foundation. Tag a Giant is one of Dr. Barbara Block's organizations.]

"Bluefin tuna are distributed throughout the Gulf of Mexico, but there are two spawning hotspots - one in the north-western GOM and one in the north-eastern GOM. The latter area overlaps the spill area. Bluefin tuna prefer to spawn in cyclonic eddies - circular swirls of current - offshore of the continental shelf in temperatures 75-80°F." As you will see from further citations, most of the spawning however occurs in the western Gulf outside of the spill zone.

2. From: Oceanographic preferences of Atlantic bluefin tuna, Thunnus Thynnus, on their Gulf of Mexico breeding grounds, Marine Biology 2007 152:1105 -1119, Teo, Boustany and Block

"Richards et al. (1989) observed that Atlantic bluefin tuna larvae were associated with the Loop Current frontal zone. This led Bakun (1996) to hypothesize that Atlantic bluefin tuna may be preferentially using the Loop Current frontal zone for spawning because of the alternating zones of positive and negative vorticity. **However, other larval surveys showed that the majority of bluefin tuna larvae were found in the western GOM (Nishida et al 1998)."**



**"Of the Atlantic bluefin tuna observed to have spawned in the GOM, the majority of the fish spawned in the western GOM. This result is supported by large-scale larval tuna surveys in the GOM by the RV Shoyo Maru and RV Oregon II, which also found that the majority of larval bluefin tuna are found in the western GOM (Nishida et al. 1998)."**

3. From: Comparative Influence of Ocean Conditions on Yellowfin and Atlantic Bluefin Tuna Catch from Longlines in the Gulf of Mexico, PLoS One, 2010, Teo and Block

*note: It is possible to use data from this paper to validate BFT preference for spawning in the Western GOM. The authors used long line by-catch data to show when and where BFT were present in the same waters as YFT and therefore theoretically susceptible to being caught by LL as by-catch. However, they found that overwhelmingly, the probability for BFT to be caught in YFT long lines only takes place during*

**Ms. Mary Colligan**

**-7-**

**November 22, 2010**

*BFT spawning season because at all other times BFT are not found in the GOM. BFT preference for the west GOM is clearly indicated in the charts accompanying the text.*

Short term immediate research investigating impacts on giants (4 pop-up satellite NOAA tagged fish on the eastern boundary of the closed spill area ) all successfully traveled thousands of miles (3 to Prince Edward Island, CA and 1 to Southern Tail of Grand Banks) from the immediate spill area. 2010 young of the year fish have been caught this past season in the Mid -Atlantic States. None of this is intended to minimize the need for further long term research as suggested by NOAA to investigate potential impacts.

But, we would point out that in a the natural state the vast majority of larvae die and with the new age and growth scientific finding, there are more than 40 year classes of bluefin supporting the western stock. This suggests that even a worst case scenario of one or two year classes being impacted by the spill to some extent may not be all that influential on the overall status of the resource.

We are anxious to review the expert peer review of all of the issues raised in the petition and we are confident that there will be little scientific support that bluefin are either endangered or threatened with extinction.

Thank you for considering the nominations of ABTA for a Peer Review of the SRT initial CBD Petition determination in light of the ESA criteria. We stand ready to assist Protected Resources in any way we can.

Sincerely,

Richard P. Ruais  
Executive Director



CC: New England Congressional Delegation  
Dr. Jane Lubchenko  
Dr. Eric Schwaab