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'The use of Trade-Related Measures

In the Commission for the Conservation of Southern Bluefin Tuna'

(TRAFFIC)

THE USE OF TRADE-RELATED MEASURES IN THE COMMISSION FOR THE CONSERVATION OF SOUTHERN BLUEFIN TUNA (CCSBT)

By TRAFFIC Oceania (September 2006)¹

Introduction

TRAFFIC supports the use of trade-related measures to underpin the primary management measure used by CCSBT, i.e. the setting of a global Total Allowable Catch (TAC) for the SBT stock. However, TRAFFIC believes that these measures can play a more effective role in the conservation of Southern Bluefin Tuna (SBT). The following comments on the adequacy of the current trade-related measures for SBT and recommendations for enhanced management measures are made in that context.

Background

The use of trade-related measures, including catch and/or trade documentation schemes and the imposition of trade sanctions on vessels or flag states failing to comply with the conservation and management measures of Regional Fisheries Management Organisations (RFMO), has increased markedly in the last decade. Catch/trade documentation and other trade related measures² are in place in Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR), International Commission for the Conservation of Atlantic Tunas (ICCAT), Inter-American Tropical Tuna Commission (IATTC) and Indian Ocean Tuna Commission IOTC and are under consideration in the Western and Central Pacific Fisheries Commission (WCPFC).

The CCSBT has adopted a number of trade-related measures to support its conservation and management of SBT. These are:

- the adoption in June 2000 of a Trade Information Scheme (TIS);
- the adoption in 2002 of an Action Plan to address Illegal, Unreported and Unregulated (IUU) fishing for SBT; and
- the establishment in 2003 of a list (a so-called “White List”, or “Positive List”) of fishing vessels which are authorised to fish for SBT.

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² While discussion on the compatibility of such measures with the provisions of the World Trade Organisation (WTO) continue, the available assessment of the WTO in relation to the CCAMLR and ICCAT schemes is that they are examples of “appropriate and WTO-consistent (i.e. non-discriminatory) use of trade measures in multilateral environmental agreements.” (WTO, 2000)

Trade Information Scheme

CCSBT meeting reports indicate that the use of a 'trade certification scheme' for SBT was first discussed in 1997.

Attachment A (refer pages 8-9) outlines the evolution of CCSBT discussion of the need for, and comprehensiveness and objectives, of such a scheme. There does not appear to be a clear set of objectives specified, however the CCSBT website describes the objectives of the CCSBT's TIS as follows:

- to collect more accurate and comprehensive data on SBT fishing through monitoring trade; and.
- to deter IUU fishing by effectively denying access to markets for SBT.

The achievement of these objectives will depend on:

- the comprehensiveness of the scheme in terms of its coverage of all sources of mortality on the SBT stock; and
- the extent to which all markets for SBT implement the provisions of the TIS.

The TIS requires that:

- all members and cooperating non-members of the CCSBT³ maintain requirements for all imports of SBT to be accompanied by a completed CCSBT Statistical Document;
- the Document be endorsed by an authorised competent authority in the exporting country and include details of the shipment such as name of fishing vessel, gear type, area of catch, dates, etc;
- the Document include the country of destination;
- shipments not accompanied by this form be denied entry by the member country;
- completed forms be lodged with the CCSBT Secretariat and used to maintain a database for monitoring catches and trade; and
- forms be reconciled against electronic lists of exports submitted by CCSBT members and cooperating non-members.

In 2003 The Report of the Working Group on Trade Information Scheme Matters (CCSBT, 2003):

- noted the emergence of a broader range of markets for SBT including the United States of America (USA), Hong Kong, Korea, the Philippines, Taiwan and the European Union (EU);

³ Members of the extended Commission are Australia, Japan, New Zealand (each since 1994), the Republic of Korea (Oct. 2001) and the Fishing Entity of Taiwan (August 2002). The Philippines became a Cooperating non-Member in August 2004. Discussions with Indonesia and South Africa about Cooperating non-Member status are ongoing at the time of completing this paper.

- agreed that the depressed state of the main market, Japan, was likely to encourage further diversification of markets;
- recommended that CCSBT collaborate with relevant RFMOs to ensure that other trade and or catch information schemes were complementary and contributed to the objectives of CCSBT;
- noted the deficiency of the current TIS in monitoring domestic consumption and trade of SBT amongst non-members; and
- recommended that CCSBT investigate strategies to best characterize such catch and trade of SBT.

Despite these findings, and that some members of the CCSBT (Australia and New Zealand) had been seeking the replacement of the TIS by a comprehensive Catch Documentation Scheme (CDS) since as early as 2000, the CCSBT has not been able to reach a consensus on the issue. Australia and New Zealand have identified the following reasons for the move to a CDS:

- provide transparency and give assurance to all members on the accuracy of catch data;
- cover non-exported catch and domestic consumption; and
- improve the credibility and functionality of the Extended commission (CCSBT, 2005).

Other members have not supported such a move, ostensibly because of concerns about practicality, complexity and the costs of such a system and have pointed to the need to demonstrate the requirement for a CDS (CCSBT, 2005).

A CCSBT working group agreed in 2005, and reported back to the Commission, that the principles of a CCSBT CDS should:

- provide an accurate and timely record of the catch of Member and Cooperating Non-Member States consistent with Article 5 of the CCSBT Convention;
- provide for traceability of legitimate product flow to the point of first sale (including auction) for domestic markets or, alternatively, for product being exported;
- provide validation of the catch reporting regime;
- provide a means of identifying and quantifying the catches of non-cooperating states;
- provide tools to restrict the trade of non-cooperating non-members;
- be compatible with systems in place for other tuna RFMOs and takes into account the potential for a global catch monitoring regime;
- be cost effective;
- be tested for practicality with knowledgeable and acceptable industry representatives from each sector;
- ensure that confidentiality of information is assured;

- have a performance measure that the CDS must be capable of accounting for at least 95% of all sources of fishing mortality of SBT;
- be a compatible part of monthly catch reporting;
- include port documentation and transfer/transshipping documentation capable of trace back to catching vessels; and
- be introduced to all fishery sectors in an equitable manner.

However there was no decision taken about the adoption of such a scheme.

Action Plan

The Action Plan adopted in 2002 seeks the cooperation of countries identified as participating or facilitating catch or trade in IUU fishing in supporting the CCSBT's management and conservation measures and provides for the imposition of trade-restrictive measures, to be taken against countries which fail to cooperate.

White List (Positive List)

Since 2003 CCSBT has maintained, and publicised on its web site, a list (a so-called White List, or Positive List) of fishing vessels, which are authorised, by CCSBT members and cooperating non-members, to fish for SBT. Fishing vessels not on the list are deemed not to be authorised to fish for, retain on board, tranship or land SBT. Members and cooperating non-members will not validate trade documents for fishing vessels not on the list and will not accept imports of SBT product from fishing vessels not on the list.

Enhancing the effectiveness of CCSBT trade-related measures

1. Catch/trade documentation

The TIS has failed in its first objective of collecting accurate and comprehensive data on SBT fishing through monitoring trade. This failure was inevitable given the design of the scheme.

The TIS does not provide a mechanism to validate the catch of SBT by all members. SBT product which does not enter international trade is not reported under the TIS. Any catch by members or cooperating non-members that is destined for the domestic market of those members is not captured by the TIS. It is apparent that domestic consumption of SBT is increasing in catching countries such as the Philippines, Republic of Korea and the Fishing Entity Taiwan (CCSBT, 2003). However, the most glaring omission has been the failure of the TIS to account for the catch of Japan that is landed and consumed in Japan. The need to address this issue has been highlighted by Japan's recent admission of a substantial overcatch of SBT by its vessels.

In relation to the second objective, to deter IUU fishing by effectively denying access to markets for SBT, the scheme has undoubtedly had some success. The major market, Japan, has been in a position to deny access to product that was not accompanied by the appropriate documentation. However, the emergence of new markets in countries such as the USA and the EU has created increased pressure on the TIS which relies on such markets cooperating to require the presentation of CCSBT documentation. TRAFFIC

notes that the inclusion, in 2003, of the requirement to specify destination country on the statistical document was made in the light of markets for SBT developing outside CCSBT members and that the USA has passed domestic legislation to recognise CCSBT documents with effect from 1 July 2005.

TRAFFIC is of the view that a comprehensive CDS that covers all phases of catch, transshipment, processing and trade would add considerable value to CCSBT's suite of management measures. TRAFFIC notes that all but one member of the CCSBT are also members of CCAMLR and are therefore familiar with the operation and benefits available from such a scheme.

TRAFFIC notes that the objectives of the CCAMLR scheme are:

- to monitor the international trade in toothfish;
- to identify the origins of toothfish imported into or exported from the territories of CCAMLR Contracting Parties;
- to determine whether toothfish catches in the CCAMLR Area are conducted in a manner consistent with CCAMLR Conservation Measures; and
- to gather catch data for the scientific evaluation of the stocks.

TRAFFIC considers that each of these objectives is consistent with the management needs of SBT. Further, in response to the concerns raised about the introduction of a CDS by some members of the Commission, TRAFFIC believes that:

- a CDS would be cost-effective since it would contribute to the pursuit of the Commission's management objective and would overcome the shortcomings and the costs of the current TIS;
- the feasibility and effectiveness of a CDS have been demonstrated elsewhere; and
- the recent revelations about overcatch leave no doubt that the scheme is required.

TRAFFIC recommends that the CCSBT introduce, as a matter of urgency, a CDS consistent with the following principles:

- The primary objective of a CDS should be to validate the catch of members and cooperating non-members.
- The secondary objective should be to ensure that any catch taken in contravention of CCSBT conservation and management measures cannot be marketed.
- As identified in the TRAFFIC/WWF report *Follow the Leader* (Willock and Lack, 2006) the effectiveness of the CDS will be enhanced by maximising the harmonization of the scheme with those in place in other RFMOs. In developing the details of a CDS, CCSBT should draw on the experiences of other RFMOs and seek to ensure harmonization with existing schemes. This issue might usefully be discussed at the meeting of Tuna RFMOs in January 2007.
- In developing the CDS, CCSBT should take into account the findings of the upcoming FAO report, *Recent Developments in Catch Certification and Trade Documentation* (Miyake, in prep.).

- CCSBT should determine how the information from the scheme will be used to enhance the conservation of SBT. That is, CCSBT should establish how it will respond, for example, to information from the scheme that identifies overcatch by members or cooperating non-members.
- The CDS should be electronic rather than paper-based.
- The CDS data should be made available on request in order to facilitate analyses of trade flows and trends.

2. *Complementary measures*

- CCSBT should monitor carefully emerging markets for SBT and seek, and facilitate where necessary, the cooperation of these markets in implementing the requirements of the CCSBT catch/trade documentation scheme.
- CCSBT should continue efforts for Indonesia to become, as a transitional step, cooperating non-members and ultimately members of the CCSBT. This would be a major contribution to securing comprehensive coverage of catch by the CDS.
- The CDS should be supported by the introduction of an international observer program to validate catches of members and cooperating non-members. TRAFFIC considers that the introduction of an international observer program is a high priority for CCSBT in order to ensure the integrity of the TAC. Such a program would be a useful adjunct to a comprehensive catch/trade documentation scheme in terms of validating catch of SBT. Should the TIS be retained in its current form, or until such time as a transition to CDS is completed, an international observer program could play a vital role in providing accurate data on the nature and extent of catch in the fishery. Such a program could also play an important role in the collection and validation of data on interactions with ecologically related species such as turtles and sharks.
- Currently VMS is monitored by individual flag State members of the CCSBT. However, recent experience has shown that not all of these States are controlling the operations of their vessels so as to ensure compliance with the conservation and management measures of the CCSBT. TRAFFIC believes that CCSBT should move to a centralised VMS. This would also be consistent with the increased independence and auditing of catch and trade flowing from the adoption of a CDS and an international observer program.
- CCSBT should expand its use of vessel lists to include “black listed” (negative listed) boats⁴. This would be consistent with approaches taken by CCAMLR and ICCAT. CCSBT members and cooperating non-members should deny licenses to any black-listed vessels.

⁴ Black listed (negative listed) are vessels that are known to be engaged in IUU fishing

References:

CCSBT (2003). Report of the 10th Annual Meeting of the Commission, Attachment 11, Report of the Working Group on Trade Information Scheme Matters, 7-10 October 2003.

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http://www.traffic.org/news/RFMO_report_06.pdf#search=%22follow%20the%20leader%22

WTO (2000). The Environmental Benefits of Removing Trade Restrictions and Distortions: The Fisheries Sector, Note by the Secretariat, WTO, Geneva, WT/CTE/W/167, 16 October.

Attachment 1A: CCSBT MEETINGS

Meeting 4(1):

The proponents of the scheme at that time (Australia and New Zealand) noted that such a scheme would:

- “provide accurate information on the origin and volume of SBT entering international trade”
- “be a necessary part of a coordinated approach to documenting and controlling rapidly expanding non-member catch”.

Meeting 4(2):

- New Zealand considered a trade certification scheme “a necessary measure to encourage accession/cooperation by non-members”
- Australia pointed to the uncertainty in the Japanese import statistics as confirming the need for a more accurate collection of data on SBT trade

Meeting 5(1):

- The Commission recognised the importance of a trade certification scheme to collect more accurate and comprehensive information on SBT fishing activities
- A letter to non-members advising of the CCSBT’s consideration of the introduction of trade certification scheme pointed to the following drivers for such an action:
 - Commission members are concerned about recent significant increases in catches by non-members, which have the potential to jeopardize the recovery programme and could, if maintained, lead to the eventual economic collapse of the fishery for all fishing fleets
 - Commission members believe that their ability to conserve and manage SBT under the convention has been compromised by the lack of provision of comprehensive scientific data on the SBT stock. This lack of data, including catch and effort data from non-members, makes it difficult to conduct accurate stock assessments of the status of the SBT stock
 - In these circumstances the Commission is considering the establishment of a scheme to collect more accurate and comprehensive data on SBT fishing, by monitoring SBT trade.

Meeting 5(2):

- The meeting adopted the TIS and agreed that it be implemented by 1 June 2000
- The meeting discussed, but left unresolved, the issue as to whether the catch of the Japanese fishing fleet landed in Japan would be subject to the TIS. Japan advised

that only such product that was subsequently exported would be subject to the TIS.

Meeting 6(2):

- Australia stressed the importance that Japan fully participate in the scheme and provide the same level of information on its domestic catch that other parties are expected to provide.

Special Meeting (November 2000)

- Australia and New Zealand noted the need to improve information collection to include comprehensive catch and landings by all members and that there was a need to pick up a domestic component of the SBT catch that was not included in the TIS.

Meeting 9 (2002):

- Australia and New Zealand expressed concerns that the TIS is a trade only scheme and does not record catches that are not exported to a CCSBT member, including Japan's entire catch. Australia, Korea and New Zealand expressed their view that the CCSBT needed to move to a catch documentation scheme (CDS) such as that operated by CCAMLR.
- Japan noted that the original purpose of the TIS was to better account for the catch from non-members and that catch by the members was already being reported.

Meeting 10 (2003):

- The issue of monitoring all catch, including non-traded catch was discussed and the secretariat asked to prepare a paper on catch monitoring options.

Meeting 11 (2004):

- Australia and New Zealand supported a move to a catch documentation system similar to that in other RFMOs and Korea expressed the view that CCSBT should have a system compatible with the other tuna RFMOs.

Meeting 12 (2005):

- New Zealand and Australia supported a move to a comprehensive CDS to improve transparency and give assurance to all members on the accuracy of the catch data, to catch trade with non-members, non-ported SBT and domestic consumption.
- Other members noted the need to strength catch monitoring systems but were concerned about practicality complexity and the costs of such a system. They felt that there needed to be a demonstrated requirement for a CDS before such a system could be implemented.