



CCSBT-EC/1010/19

## CONFIDENTIALITY OF DATA AND DOCUMENTS

### Purpose

To consider new data confidentiality rules and arrangements, revisit the confidentiality of documents previously classified as confidential, and to determine whether the reports of meetings and any documents produced for meetings related to CCSBT17 should be restricted from public release.

### (1) New Data Confidentiality Rules and Arrangements

CCSBT 16 tasked the Executive Secretary with developing draft rules and other necessary arrangements for the exchange of confidential data drawing on precedence from other RFMOs, as relevant for consideration by the ESC and the CC at their 2010 meetings.

The Secretariat considered confidentiality arrangements of the other tuna RFMOs as well as CCAMLR<sup>1</sup> and SPRFMO<sup>2</sup>, and considered the rules of the WCPFC<sup>3</sup> to be the most comprehensive. In addition, ICCAT<sup>4</sup> is preparing a set of confidentiality rules based on those of WCPFC. Furthermore, the first meeting of the CCSBT Strategy and Fisheries Management Working Group stated that:

*“... Confidentiality issues have been resolved by WCPFC and it was believed that by following WCPFC’s example, the CCSBT should be able to reach early agreement on provision of operational level data”.*

Consequently, for both robustness and compatibility reasons, CCSBT’s draft rules have been modelled on WCPFC’s confidentiality rules<sup>5</sup>. Adjustments have been made to reflect the CCSBT’s mode of operation and in an attempt to make improvements to the rules and arrangements.

It should be noted that the draft CCSBT data confidentiality rules and arrangements have no influence of what data should be provided to the CCSBT.

The rules and arrangements contain 4 basic elements:

- General rules regarding how the scheme operates.
- Confidentiality Risk Classifications, that define the confidentiality level associated with different data types and therefore determine how the different data will be treated.
- Data Confidentiality Security Policy, which specifies the level of security (including human, physical and electronic security) that shall apply to the different confidentiality levels.
- Procedures for Requesting the Release of Non-Public Domain Data, to ensure that appropriate procedures are followed for requesting and granting access to data, including the signing of confidentiality agreements where appropriate.

<sup>1</sup> Commission for the Conservation of Antarctic Marine Living Resources

<sup>2</sup> South Pacific Regional Fisheries Management Organisation

<sup>3</sup> Western and Central Pacific Fisheries Commission

<sup>4</sup> International Commission for the Conservation of Atlantic Tunas

<sup>5</sup> Known as the “Rules and Procedures for the Protection, Access to, and Dissemination of Data Compiled by the Commission”

The draft confidentiality rules and arrangements have undergone one round of intersessional consultation and the revised draft from that consultation has been submitted to the Extended Scientific Committee for its consideration in paper CCSBT-ESC/1009/07. This draft will be further modified to incorporate comments from the ESC and the modified draft will be presented to the October meeting of the Compliance Committee for its consideration as requested by CCSBT 16. The final draft for the Extended Commission's (EC) consideration will therefore not be available until immediately prior to the EC's meeting.

## **(2) Confidentiality of documents from previous years**

At CCSBT 16 (paragraph 78 of the CCSBT 16 report), a request was made by one Member to:

*“...revisit the issue of confidentiality of documents CCSBT-ESC/0909/04, papers CCSBT-CC/0909/41 and CCSBTCC/0910/BGD01 and to have full discussion of the confidentiality of these documents in the 2010.”*

These documents were classified as confidential because they referred to information from the “Independent Review of Japanese Southern Bluefin Tuna Market Data Anomalies” (Market Review) and the “Independent Review of Australian SBT Farming Operations Anomalies” (Farm Review). Each review was authored by a four person panel, with two people of each panel being appointed by Australia and two people of each panel being appointed by Japan.

The background to the confidential status of the Market Review and Farm Review documents is captured in the following extracts from annual reports of the Extended Commission:

### Extract from CCSBT 13 (October 2006)

111. In relation to the reports of Japanese Market Review, Japan advised that Mr Kageyama, the facilitator of the Japanese market review panel sent an e-mail on July 24 to the Secretariat which says “...panel wishes to have the report treated as confidential document as body of the report contains commercially sensitive information...”. Copies of the e-mail were sent to DAFF and JFA.
112. However, it was agreed that the Secretariat would write formally to all of the authors of the two reports (the Japanese Market Review and the Australian Farm Review) asking if they wanted the release of the reports to be restricted. The Secretariat would advise members of the authors' wishes intersessionally. Until then, the two reports would be treated as confidential.

### Extract from CCSBT 14 (October 2007)

218. The Extended Commission confirmed that reports of the Japanese Market Review and the Australian Farm Review produced in 2006 would remain confidential.
219. The meeting confirmed that any document that referred to information from a restricted (confidential) document would itself become restricted from public release unless the entity who referred to the restricted document obtained explicit consent from the authors of that document.
220. New Zealand noted that for transparency, it hoped that the reports could be released at some stage in the future.

In relation to paragraph 111 from the CCSBT 13 report (above), the full request in the e-mail from the Market Review panel in relation to confidentiality of the report was:

*“Also, Panel wishes to have the full report treated as confidential document as body of the report contains commercially sensitive information. It would be best if the Commission agrees to only disclose the Executive Summary and maintain full report including the body of the report as classified document”*

The Secretariat wrote to the authors regarding restrictions on the release of the Market and Farm Review reports as requested at paragraph 112 of the CCSBT 13 report (above). The result was that Australian authors of the Market Review agreed to its release, but the Japanese authors did not. And the Japanese authors of the Farm review agreed to its release, but the Australian authors did not.

The current status is that both the Market and Farm Review reports remain confidential and that any other documents that refer to information from these reports are also classified as confidential. This is resulting in a progressive increase in the number of documents being classified as confidential and also means that the total catch levels being used by the CCSBT in its assessments are not publicly available, which is not good for transparency.

Two alternative partial solutions could be:

- Disclose the Executive Summary of both reports, but maintain the body of the reports as confidential. This would be consistent with the initial request of the panel for the Market Review report. Under this arrangement, documents that only referred to information available from the Executive Summary could be re-classified as being publicly available. A disadvantage of this arrangement is that it would not allow the actual catch levels used in CCSBT assessments to become publicly available.
- Establish a “censorship” process to censor the specific items in the Market and Farm Review reports that are commercially confidential, with the intention of releasing the censored report once complete. The censorship process could involve a censorship review by both Australia and Japan, with the outcome of this process being submitted to the authors to seek their agreement for release of the documents.

### **(3) Confidentiality of reports and documents from 2010**

Rule 10 of the Rules of Procedure provides that the reports prepared of Extended Commission meetings will be made available for public release unless a Member makes a request to restrict its release. Such a request must be made before adoption of the report of the Extended Commission. Restrictions on release of a report require a decision from the Extended Commission.

Documents submitted to Extended Commission meetings are also to be made available for public release unless the document contains previously restricted information, or unless the author of the document or the Member (if the author is a representative of a Member) makes a request to restrict its release. Such a request must be made before adoption of the report of the Extended Commission.

The 2006 Farm and Market review reports are confidential<sup>6</sup> and consequently other documents that include estimates of unreported catches derived from these documents must also be kept confidential<sup>6</sup>, including:

- A catch table incorporating this information was prepared by the Secretariat and included in the material considered at the 2010 meeting of the Extended Scientific Committee. The Secretariat requests that Attachment A of this paper (CCSBT-ESC/1009/04) be treated as confidential.
- A paper (CCSBT-ESC/1009/31) from Australia titled “Japanese market update 2010”, which the Secretariat notes refer to figures from both the Market Review report and a subsequent confidential paper (CCSBT-ESC/0909/41).
- A paper (CCSBT-ESC/1009/32) from Japan titled “Monitoring on Japanese domestic markets: 2010 update”, which Japan noted as being confidential to the CCSBT.

At the time of writing this document, no other documents have been nominated to the Secretariat as having a confidential status.

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<sup>6</sup> The discussion of item “2” above under agenda item 16.2 may influence the current confidentiality status.