

CCSBT Response to the report of the Ecologically Related Species Working Group

Purpose

- 1 This paper outlines a proposal that the extended Commission for the Conservation of Southern Bluefin Tuna (ECCSBT) at its October 2007 meeting confirms that the introduction of binding conservation measures to address bycatch is within its mandate.
- 2 Further it is proposed that the ECCSBT;
 - a) Agrees on additional binding mitigation measures to manage seabird bycatch; and
 - b) Decides on the scope of ERSWG consideration; and
 - c) Provides clear direction to the ERSWG on what is expected of it as a technical working group and the nature of advice the ECCSBT expects to receive from the ERSWG.

Introduction

- 3 At the recent ERSWG7 meeting no agreement could be reached on recommendations and advice to ECCSBT despite the fact that the meeting was expertly chaired by Dr Yuji Uozumi of Japan.
- 4 The lack of agreement is disappointing particularly in light of the progress made at the previous ERSWG meeting and the direction from ECCSBT to improve the functionality of the working group (ECCSBT12 and ECCSBT 13).
- 5 Most of the meeting was spent attempting to draft, or attempting to agree how to draft, recommendations on data collection and provision, seabird mitigation, and a shark bycatch. Substantive discussions, without resolution, also traversed the definition of fishing, whether farming should be included in ERSWG deliberations, and text requesting advice to the Commission on these issues. Ultimately all recommendations were referred to the Commission in their original format.

Mandate to make binding measures

- 6 A key issue of difference between some members of the ERSWG was whether ECCSBT has a mandate to introduce binding measures to address the bycatch of SBT fisheries. New Zealand is strongly of the view that

ECCSBT has such a mandate and should exercise that mandate without delay. New Zealand's view is summarised as follows:

- The CCSBT Convention provides for CCSBT to make two types of decisions: (i) binding measures (article 8.3); and (ii) recommendations (article 8.5).
- Decisions on binding measures are divided into those on total allowable catch and catch allocation (article 8.3(a)) and "other additional measures" (article 8.3(b)).
- The scope for decisions on "other additional measures" (which is essentially the same scope for recommendations) is decisions for "the conservation, management and optimum utilisation of southern bluefin tuna".
- The CCSBT Convention text does not explicitly preclude decisions on conservation measures for bycatch species, and there are several strong bases for concluding that the scope should be interpreted broadly so that binding decisions can be made under article 8.3(b), or recommendations under article 8.5, including:
 - The TOR of the ERSWG demonstrate the intent of the CCSBT Parties that they would make conservation measures on bycatch species;
 - It would be illogical for the ERSWG to have the function of providing advice and recommendations on measures for the conservation of bycatch species but then to hold that the CCSBT was not able to make decisions or recommendations based on that advice;
 - As a matter of practice, the CCSBT has already taken decisions on ERS-related issues, including (at CCSBT4) one concerning mitigation of seabird bycatch which was clearly intended to be binding on the Parties;¹ and
 - An interpretation of the CCSBT Parties' obligations under the CCSBT Convention needs to take into account their obligations under both UNCLOS and UNFSA, as well as instruments of soft law such as the FAO Code of Conduct for Responsible Fisheries, which strongly support the conclusion that the scope of the CCSBT should be interpreted broadly to require that conservation measures be taken in relation to bycatch species.

Scope of the ERSWG/ECCSBT mandate

- 7 In different forms the issue of the inclusion of farming within the definition of fishing has been referred to the ECCSBT. This issue acted as an impediment

¹ In section 10.2 of the Report of the CCSBT4, 8-13 September 1997, it is recorded that "[t]he Commission agreed to adopt the [ERSWG's] recommendations in Attachment U...". The ERSWG's recommendations included *inter alia* that "the Commission ... **requires mandatory** use by all Commission parties of Tori poles in all long-line SBT fisheries below 30 degrees south;" (emphasis added).

to the functioning of the ERSWG and requires resolution if the ERSWG is to continue.

Draft recommendations

- 8 Recommendations have been referred to the ECCSBT in original form. This puts the ECCSBT in the difficult position of choosing one recommendation on each issue over the other or further delaying decisions until after the next meeting of the ERSWG if this is to occur. New Zealand proposes an alternative approach: that the ECCSBT agrees that a small group work during the course of CCSBT 14 to develop combined recommendations for decision at that meeting.

Seabird bycatch mitigation

- 9 The distribution of the fishery for southern bluefin tuna in southern latitudes coincides with that of many albatross and petrels. Increasingly scientific information shows that multiple measures are required for effective seabird mitigation. ECCSBT currently requires only a single mitigation measure of its longline fleet. It is clearly time that ECCSBT gives recognition to current scientific understanding and updates its mitigation requirements.

Bycatch data collection and exchange

- 10 CCSBT clearly requires information if it is to assess the impact of its fisheries on bycatch. Information should be collected in a consistent manner across fleets and to facilitate assessment that data should be exchanged between parties. An agreed data collection and exchange resolution is urgently required.

Shark bycatch

- 11 The international concern regarding the sustainable use of shark bycatch is reflected in the fact that the United Nation's Food and Agriculture Organisation (FAO) have adopted an international plan of action for sharks and many countries have prepared or are preparing plans of action that recognise the vulnerability of shark species. ECCSBT has the opportunity to adopt measures that reflect those of other RFMOs and apply those across their fleets.

Terms of reference of the ERSWG

- 12 Much of the last ERSWG meeting was spent in debate over policy issues that are in fact matters that the ECCSBT must decide. This is the seventh meeting of the working group and to date there has been little concrete management advice to the ECCSBT on ecologically related species. The ERSWG has an important role in providing estimates of incidental bycatch of seabirds and fish bycatch and evaluating predator/prey interactions. This in combination with international best practice should be combined to provide the best available information on which to base management advice to the ECCSBT.

- 13 New Zealand considers that it is impracticable for the ECCSBT to assume the role of the ERSWG and deal with all ERS matters but if the ERSWG is to continue then New Zealand is strongly of the view that its TOR require review.
- 14 New Zealand proposes that the ERSWG TOR be amended to:
- a) Confirm that the ERSWG is not a policy forum and that matters of policy are to be referred to the ECCSBT.
 - b) Reflect decisions of ECCSBT on its mandate and the ERSWGs role.
 - c) Emphasise the other elements of the TOR in particular the need to provide information and advice on ERS associated with SBT (TOR 2a) and 2b)). At a minimum ERSWG reports should include best estimates of seabird bycatch by fleet and area and recommended measures (either voluntary or mandatory) to improve seabird bycatch mitigation (TOR 5,9).
 - d) Require that ERSWG group reports include an evaluation of key bycatch species by area and fleet and any risks to key stocks including recommendations for work with other RFMOs or agencies to assess the status of key bycatch stocks (TOR 4,5,6,8)

Summary

- 15 It is proposed that ECCSBT at its October 2007 meeting:
- a) Confirms that it has the mandate to implement binding measures to address fish and non-fish bycatch
 - b) Clarifies the scope of that mandate with respect to the definition of fishing

AND based on a) and b) above agrees:

- c) To implement measures with respect to data collection and exchange, and seabird and shark bycatch
- d) On revisions to the TOR for the ERSWG as indicated in paragraph 14 a)-d) above.
- e) To remind the ERSWG of the ECCSBT's expectations of its performance.