



Consideration of the CCSBT's vision in relation to Ecologically Related Species

Purpose

The provisional agenda for the Commission for the Conservation of Southern Bluefin Tuna (CCSBT) Strategy and Fisheries Management Working Group (SFMWG) includes an item on CCSBT's processes with respect to ecologically related species (ERS). The agenda notes that the Commission has often struggled to reach agreement on matters relating to ERS. It suggests the SFMWG consider strategic and operational aspects of the ERSWG to confirm or develop common goals and understanding on these matters.

This paper is designed to open discussion on the role of the CCSBT in managing ERS and the future role of the Ecologically Related Species Working Group (ERSWG). This discussion will assist Australia draft a paper for CCSBT25 on options for how the Extended Commission might provide focus and direction to the work of the ERSWG.

Background

The ERSWG has been in place since the early days of the CCSBT. Its Terms of Reference (TOR) were agreed by the founding Members of the CCSBT—Japan, New Zealand and Australia in 1995. The TOR have not been altered since that time. The TOR are at Attachment A.

Despite the longevity of the group, the ERSWG has met irregularly—just twelve times in 24 years—and made only limited progress on decisions or management measures for ERS during this time. This is in contrast to other, newer, Regional Fisheries Management Organisations, such as the Western and Central Pacific Fisheries Commission, which have over a shorter time and in an arguably more complex fisheries environment, put in place a number of comprehensive measures related to ERS¹.

Historically, external environmental scrutiny of the southern bluefin tuna (SBT) fishery by non-government environmental organisations has focused on the management of stock. However, scrutiny has also covered the limitations of CCSBT measures to mitigate the impact of ERS. This scrutiny is likely to continue to increase.

This paper represents Australia's initial thinking on this matter and how it could best be considered at CCSBT25, but should not be seen as Australia's final position. Australia seeks to work with Members of the Extended Commission to agree on the future role and priorities for the ERSWG for the benefit of the Commission and all Members.

Issues

At previous ERSWG meetings some Members have expressed differing views on the role of the group. These concerns include the objective or mandate of the CCSBT to directly address ERS matters. This relates to how ERS matters are identified in the CCSBT Convention text—some Members have pointed to the Convention's objective which is *to ensure, through appropriate management, the conservation and optimum utilisation of SBT*. It is important for Extended Commission Members to agree whether ERS issues are a matter for the Commission and, if so, to confirm the relative priority of this activity, compared to the other work of the Commission.

¹ See for example <https://www.wcpfc.int/conservation-and-management-measures>



A further concern centres on the nature of the SBT Convention and how the management competence of the Commission is prescribed. A distinction is drawn by some Members between the CCSBT, which is based on stock distribution but is not geographically defined, and other 'spatially defined' Regional Fisheries Management Organisations (RFMOs). This raises the question whether and how ERS measures can be applied by the Commission without duplicating activity by other geographically defined RFMOs.

The voluntary or binding ERS mitigation measures imposed by other RFMOs can also apply to vessels fishing for SBT. But it is important to consider whether the ERS measures of other RFMOs are properly comprehensive in this context and how they apply to all Extended Commission Members.

At ERSWG12 in Wellington in 2017, some Members questioned whether the ERSWG could provide management recommendations directly to the Extended Commission and whether the ERSWG must always report through the Extended Scientific Committee. These matters should be clarified, and the ERSWG Terms of Reference revisited as necessary to clarify the work and reporting arrangements of the group.

At CCSBT24 there was discussion about whether Member compliance with existing ERS recommendations are subject to the Commission's Corrective Actions Policy (CAP). It was noted that only the use of Tori poles is required in all longline SBT fisheries below 30° South, and this is subject to the CAP. But the remaining ERS Measures are considered to be recommendations only, with compliance voluntary and not subject to the CAP. The need for CCSBT ERS measures to be subject to the CAP warrant consideration again by Extended Commission Members.

At previous ERSWG meetings some Members have noted that the ERSWG TOR provides that the working group can provide information and advice on predator and prey species which may affect the condition of the SBT stock. But the role of the working group in considering and advising on the impact of the fishery on non-SBT stocks has been questioned. It would be useful for this aspect of the ERSWG TOR to be considered and clarified by CCSBT Members.

Further, the TOR specifies that the ERSWG reports to the Commission through the Scientific Committee, which may provide comments to the Commission on the reports (including advice and recommendations) of the ERSWG. Given that ERSWG advice may include matters for both scientific and management consideration, the CCSBT could consider whether this mechanism is entirely appropriate for ERS matters.

Mandate of the ERSWG

The objective of the CCSBT Convention is *to ensure, through appropriate management, the conservation and optimum utilisation of SBT*. Some Commission Members suggest this may preclude the CCSBT from addressing any species other than SBT.

However the preamble of the SBT Convention acknowledges the importance of collecting scientific information relating to SBT and ERS. Article 2 of the Convention defines ERS as living marine resources which are associated with SBT, including but not restricted to both predators and prey of SBT.

Also, Article 8(3) of the Convention provides that '*for the conservation, management and optimum utilisation of southern bluefin tuna*', the CCSBT '*may decide upon other additional measures, if necessary*'. In passing measures under Article 8 paragraph 3, the Commission can consider among other things 'scientific evidence' (per Article 8(4)(a)), including in relation to ERS, in accordance with Article 9(2)(c).

It has been argued that a role for the CCSBT to manage both SBT and ERS is consistent with the 'General Principles' provisions of the *United Nations Fish Stocks Agreement (UNFSA)*. In



particular, Article 5 (e) requires States Parties, through RFMOs, to adopt appropriate measures to conserve and manage species which are not the target species but which are ecologically related to the target stocks. Article 5 (f) requires States Parties, through RFMOs, to minimise catch of non-target species through measures including the use of selective, environmentally safe and cost-effective fishing gear and techniques where practicable. All Parties to the CCSBT Convention are Parties to the UNFSA.

The challenge of achieving optimum utilisation of SBT includes preserving the competence of the CCSBT to manage the fishery. Future growth of the fishery may rely on the establishment of new markets, such as China, the European Union and the United States of America. Domestic legislation and community expectations in these markets relating to the management of ERS may shape future CCSBT requirements. Commission Members may wish to consider the role of the ERSWG in this context.

Providing management advice

The ERSWG TOR asks the ERSWG to provide information and advice on SBT ERS, with specific reference to species which may be affected by SBT fisheries operations and predator or prey species which may affect the condition of the SBT stock. Paragraph five of the TOR allows the ERSWG to provide advice on measures to minimise fishery effects on ERS, including but not limited to gear and operational modifications. Commission Members may wish to consider whether this advice should include management advice aimed at managing ERS interactions.

Reporting through the Scientific Committee

The ERSWG TOR effectively makes the ERSWG a subordinate body to the Extended Scientific Committee. This approach is different to all other CCSBT subsidiary bodies which report directly to the Extended Commission. The case for the ERSWG reporting direct to the Extended Commission could be re-considered.

Broader ERS recommendations and the application ERS measures in other RFMOs

The *CCSBT Recommendation to Mitigate the Impact on Ecologically Related Species of Fishing for Southern Bluefin Tuna* requires that Members and Cooperating Non-Members will, to the extent possible, implement the International Plan of Action for Reducing Incidental Catches of Seabirds in Longline Fisheries (IPOA-Seabirds), the International Plan of Action for the Conservation and Management of Sharks (IPOA-Sharks), and the FAO Guidelines to reduce sea turtle mortality in fishing operations (FAO-Sea turtles), if they have not already done so.

However the Recommendation does not specify how it should be implemented and whether this involves domestic legislation that places binding and enforceable requirements on SBT fishing vessels in national waters and elsewhere. The Commission may wish to consider whether more specific advice in the Recommendation is warranted.

The Resolution also specifies that Members and Cooperating Non-Members will comply with all current binding and recommendatory measures aimed at the protection of ecologically related species, including seabirds, sea turtles and sharks, from fishing, which are adopted from time to time:

- a) by the Indian Ocean Tuna Commission (IOTC), when fishing in its Convention area,
- b) by the Western and Central Pacific Fisheries Commission (WCPFC), when fishing in its Convention area, and
- c) by the International Commission for the Conservation of Atlantic Tunas (ICCAT), when fishing in its Convention area.



The Resolution specifies that compliance with the requirements of these RFMO's is irrespective of whether the Member or Cooperating Non-Member concerned is a member of the relevant Commission or otherwise cooperates with it.

Both IOTC and WCPFC have adopted measures seeking to mitigate seabird bycatch which are potentially binding on their members in relation to their flagged vessels engaging in longline SBT fishing in their respective geographic areas of competence. However there are Members of the CCSBT that are not bound by potentially relevant measures of IOTC and WCPFC. For example New Zealand is a CCSBT member but not a member of IOTC and South Africa is a member of the CCSBT but is not a member of WCPFC.

The drafting of the Resolution therefore creates a potentially unequal situation whereby parties to an RFMO are bound to comply with the requirements of that RFMO with respect to ERS measures, while CCSBT Members who are not also Members of the relevant RFMO are not (as compliance is not subject to action under the CAP). Members may wish to consider the equity, consistency and effectiveness of this arrangement.

Species impacted by fishing and species impacting on SBT

The ERSWG has devoted some effort in considering species incidentally impacted by fishing for SBT. In particular the group has considered species such as seabirds, sharks and marine mammals and reptiles.

As noted above the ERSWG TOR provides that the working group can provide information and advice on predator and prey species which may affect the condition of the SBT stock. The role of the CCSBT in managing predator stocks, particularly the capacity of the Commission to manage ERS stocks by methods other than modifying SBT fishing practice, could be considered.

Summary of questions to be discussed by the SFMWG:

- What does SFMWG consider to be the scope of the mandate of the ERSWG?
- Do the current TOR need to be revised to better reflect the agreed scope?
- Is a reliance on binding ERS measures in place by other RFMO's an appropriate approach to dealing with ERS issues by the Extended Commission?
- Should the current *Recommendation to Mitigate the Impact on Ecologically Related Species of Fishing for Southern Bluefin Tuna* be subject to the Corrective Actions Policy?
- Should the ERSWG report directly to the Extended Commission?
- What type of advice or recommendations should the ERSWG provide?



Attachment A

TERMS OF REFERENCE FOR THE WORKING GROUP ON ECOLOGICALLY RELATED SPECIES (ERS)

(adopted at the Second Annual Meeting (12 – 15 September 1995))

Terms of Reference for the Working Group on Ecologically Related Species (ERS)

1. The Ecologically Related Species Working Group will report to the Commission through the Scientific Committee. The Scientific Committee may provide comments to the Commission on the reports (including advice and recommendations) of the Ecologically Related Species Working Group.
2. To provide information and advice on issues relating to species associated with southern bluefin tuna (SBT) (ecologically related species), with specific reference to:
 - a) species (both fish and non-fish) which may be affected by SBT fisheries operations;
 - b) predator and prey species which may affect the condition of the SBT stock.
3. (a) With respect to species identified in 2 a) above, to monitor trends and review existing information and relevant research, including but not limited to studies on:
 - (i) the population biology of ecologically related species;
 - (ii) the identification of factors affecting populations of ecologically related species;
 - (iii) the assessment of the SBT and other fisheries effects on ecologically related species and of the proportion of the SBT and other fisheries effects to the overall effects;
 - (iv) modification to gear and operational aspects of the SBT fishery to minimise the effects on ecologically related species
- (b) With respect to species identified in 2 b) above, to monitor trends and review existing information and relevant research, including but not limited to studies on:
 - (i) the population biology of ecologically related species;
 - (ii) the identification of factors affecting population of ecologically related species;
 - (iii) the assessment of the effects of ecologically related species on the condition of the SBT stock
4. To provide recommendations on data collection programs and research projects with respect to species and issues identified in 2 above, including recommendations on research priorities and estimated costs of such research.
5. To provide advice on measures to minimise fishery effects on ecologically related species, including but not limited to gear and operational modifications.
6. To provide advice on other measures which may enhance the conservation and management of ecologically related species.
7. To review these terms of reference and to recommend to the Commission changes as and when appropriate.
8. To co-operate and liaise with relevant experts, scientists (from Convention parties and elsewhere) and inter-governmental and non-governmental organisations, in data collection and analysis on ecologically related species subject to the provisions of the data handling criteria (Annex1).
9. To respond to requests for advice on specific matters from the Commission.



Annex 1 Data Handling Criteria for the Ecologically Related Species (ERS) Working Group

1. Collection of Data and Samples

- a) The ERS Working Group will provide recommendations on the information required and advice on how to collect the relevant data and samples.
- b) The collection of data on and samples of ERS should follow agreed data collection protocols consistent with those of the Scientific Committee, and those of the relevant national authority.
- c) The collection of data and samples of ERS should be conducted in a way that does not interfere with the safe and smooth operation of the vessels.

2. Management of the Data and Samples

- a) The ERS Working Group shall use procedures that ensure strict confidentiality in the use and distribution of data.
- b) Unless otherwise agreed, samples of ERS collected on the high seas will be held by the flag States; that flag States should facilitate access by other interested scientists to the ERS samples.
- c) Participants in the ERS working group should assist each other's work by sharing data and samples on ERS.

3. Analyses of Data and Samples

Analyses of the data and samples on behalf of the Commission may be conducted by scientists from the Convention Parties and other relevant experts designated by the ERS Working Group.

4. Consideration of the Results of the Analyses

Results of analyses which use data and samples collected under these criteria will not be published without the consent of the parties who provide the data and samples.