Should the Northern Bluefin Tuna be Listed in CITES Appendix II ?

IWMC World Conservation Trust

Foreword

In 1992, at the eighth meting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) held in Kyoto (CoP8), Sweden submitted proposals to list Atlantic populations of the northern bluefin tuna (Thunnus thynnus) in Appendix I or Appendix II. The proposals were withdrawn with the understanding that the International Convention on the Conservation of Atlantic Tunas (ICCAT) was the responsible body to manage this species and would take necessary measures to ensure its sustainable utilization and its proper conservation. It must be recognized that at the following ICCAT meeting, decisions were taken in the right direction, although probably not as far as desirable.

Since then, non-governmental organizations (NGOs) continued to try finding Parties to CITES ready to submit similar proposals but without success, the only Party having accepted to do so for CoP9, Kenya, having withdrawn its proposal soon after having submitted it.

In recent years, NGOs continued to act for the listing of the northern bluefin tuna in CITES Appendices and conducted vast campaigns, in particular to promote a ban on the exploitation of the Mediterranean population. They had some success with companies and individuals, in particular in Europe, those boycotting the use and consumption of products of the species. Regarding CITES, they were and still are searching for sponsors, which must be Parties to the Convention.

Apart from the fact that they consider the species or population as over-exploited and threatened if not endangered, one of their arguments in favour of the listing is that ICCAT is unable or unwilling to make decisions that would ensure the future of the species. Although considerably reduced, the quotas established are considered as far too high, and not respected by many countries and fisheries.

At the time of writing this paper, it appears that the NGOs were successful and that at least one proposal would be submitted for the next CITES meeting (CoP15). This may be attributed to the facts that the status of the species, especially in the Mediterranean Sea, and possibly in other parts of the range, deteriorated and is actually of serious concern, and ICCAT is not doing what it was created for. In addition, it lacks of power to implement and enforce the measures taken. IUU fishing does exist and fishing techniques, including the use of small planes to search the fish schools that is formally prohibited, are widely used by some countries and vessels. The fact that tunas are captured and placed in a controlled environment for artificial feeding and growing, until they have reached favourable weight and fat content for trade to consumer countries, Japan especially, exacerbates the problem.

In such circumstances, it is not surprising that countries and groups try to find other ways than measures, which are not properly implemented, taken under the FAO Code of Conduct for Sustainable Fisheries and Regional Fishery Bodies (RFBs) to achieve their goals. This was recognized as a serious risk at the most recent session of the FAO Committee on Fisheries (Rome, March 2009). CITES, for these countries and groups, is obviously one of these ways. This is not a surprise for IWMC, which expected this long ago and whose representative, at a meeting of the COFI Sub-Committee on Fish Trade at least seven years ago, alerted the Sub-Committee of the risk of CITES involvement if FAO or RFBs, in that case, would not be able to finalize their work on a catch and trade documentation scheme.

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This having been reminded, the purpose of this paper is to show why a listing of the northern bluefin tuna in CITES Appendix II would most likely not change the situation and would generate a significant number of difficulties and considerable paperwork, without real benefit for the conservation and sustainable use of the species.

CITES Listing

Although it is recognized that listing commercially-fished species falls with the scope of competence of CITES, it appears also that one of the greatest problems with CITES listings is the lack of flexibility associated with the process of amendment of its Appendices, in particular with regard to transfer of species from Appendix I to Appendix II and even more de-listing of species. Elephants and whales are good examples to illustrate the concerns where healthy populations exist. Enormous difficulties remain to achieve what is understood as a down-listing. In the case of commercially-exploited aquatic species, the problem may not be mainly transferring from Appendix I to Appendix II, but more likely going from Appendix II to de-listing.

In theory, the process of amendment has flexibility through the postal vote procedure. In practice, this is not at all the case. In addition, when it is question to reduce the protection granted to a species, strong pressure is exerted on Parties to reject the proposed amendment. Thus the de-listing of a commercially-exploited species becomes almost if not totally impossible, as a two-third majority vote is required.

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This has already been identified as a major administrative burden, but it is also a legal problem where the language of the criteria to down-list or de-list is more restrictive than the language used to list species, due to the application of the "precautionary approach", which is used when not abused by protectionist groups and countries to oppose to any reduction of CITES controls.

The "precautionary approach" does not justify listing commercially-exploited species under CITES as much as it is "to prevent a species from becoming endangered or to promote sustainable use thereof". These arguments disregard scientific knowledge and methodology as well as fisheries economics and management.

CITES Criteria

In the past, the CITES criteria to amend the Appendices were not at all appropriate for the listing of commercially-exploited aquatic species. Now, after a full revision, to which FAO fisheries experts participated actively, the CITES listing criteria were considerably improved and the suggestions made by these experts were fully taken into consideration. On a scientific point of view, we may therefore consider the CITES criteria as solid and fully applicable to fish species.

Under these new criteria it is very likely, to say the least, that the northern bluefin tuna, in particular its Mediterranean population, would be eligible to a listing in Appendix II if not in Appendix I, and this would have to be recognized by the FAO Ad Hoc Panel of Experts to assess the proposals for listing aquatic species that should be convened immediately after these proposals for CoP15 would be known.

However, the criteria do not consider issues linked with the implementation and enforcement of the CITES provisions applicable to listed species, such as look-alike issues, identification of parts and derivatives in trade, issuance of permits and certificates, establishment of non-detriment findings, introduction from the sea, etc. These issues nevertheless exist and would generate such difficulties that it is likely that the effect expected from the listing would not be reached.

Species vs. Stocks

CITES deals with species. Although this term, as defined by CITES, includes subspecies and geographically separated populations, it must be kept in mind that the latter populations, as agreed by the Conference of the Parties, are separated in accordance with political boundaries, except when this is not possible, e.g. in international waters or for stocks of marine species designated by other bodies. Nevertheless, when a stock of fish is occurring, permanently or due to its natural movements, in waters under the jurisdiction of a State, this part of the stock is considered as belonging to the State in question.

On the other hand, fish stocks are treated as such by the fisheries community and their management under a RFB is conducted on that basis, even if quotas may be attributed to individual States.

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CITES Permitting System vs. Catch and Trade Documentation

Under CITES any specimen of listed species subject to international trade - export, import, re-export, introduction from the sea - must be accompanied by the proper document - export permit, import permit for Appendix-I species (and for Appendix II under national stricter domestic measures), re-export certificate, certificate of introduction from the sea. Each trade transaction requires the issuance of a new document, which means that a specimen may require the issuance of several documents if it crosses several boundaries. This makes the traceability of the specimen, which is more and more required for food products, extremely difficult and therefore facilitate illegal activities.

The interest of catch and trade documentation, such as that established by some RFBs, is that the same document follows the specimen.

The virtual examples below, which include also fishing operations conducted in waters 'not under the jurisdiction of any State' and therefore subject to the still unresolved problematic of 'introductions from the sea', illustrate some of the difficulties that would have to be faced, in case of listing in Appendix II of commercially-exploited marine species, as the northern bluefin tuna, to follow the CITES provisions regarding the issuance of documentations.

Example 1

Country A exports specimens of a species listed in Appendix II, taken in waters under its jurisdiction, to country B. Country A shall issue an export permit. The permit shall be presented to country B before import.

If country B re-export the same specimens, or some of them, or any processed specimens thereof, it shall issue a re-export certificate for each shipment. The certificate shall be presented to the country of import before import.

Difficulties: **None in particular. This is equivalent to any CITES trade in specimens of terrestrial species.**

Example 2

Country A exports specimens of a species listed in Appendix II, taken in waters under its jurisdiction by a vessel from any other country to which it has granted fishing rights, to countries B, C and D. Country A must issue an export permit for each country of import. The relevant permit must be presented to country B, C and D before import.

Difficulties : **1) Country A must know who is the importer in each country of import; and 2) it must also know the quantity of specimens for each country of import**.

For re-export, see example 1.

Example 3

A vessel from country C takes specimens of a species listed in Appendix II in waters under the jurisdictions of countries A and B, from which it has been granted fishing rights, and transport them to countries C, D and E. Countries A and B must each issue an export permit for each country of import. The relevant permit must be presented to country C, D and E before import.

Difficulties : 1) Countries A and B must know who is the importer in each country of import ; and 2) they must know the quantity of specimens taken in their own waters and exported to each country of import. This would be very difficult when the specimens taken in countries A and B are mixed, as this would likely be the case, in particular if the harvested stock is shared between both countries.

For re-export, see example 1.

Difficulty: **How would the re-exporting country know the origin of each re-exported specimen?**

Example 4

Vessels from one or more countries take live specimens of a species listed in Appendix II, in the waters under the jurisdiction of two or more countries, as well as in waters not under the jurisdiction of any State. They bring them to an operation in country A, where the fish are kept in a controlled environment for growing before being exported to any country for final consumption or re-export.

Regarding the specimens taken in the waters of specific countries, the situation is similar to that presented in example 3. Regarding the specimens taken in waters not under the jurisdiction of any State, a certificate of introduction from the sea must be issued, unless the State of introduction is entitled to the exemption provided by CITES Article XIV, paragraph 4, an infrequent possibility which is not taken into account below and does not apply to the northern bluefin tuna.

Which is the State of introduction is the first question. As indicated below, this has not been agreed upon yet within CITES and discussions are going on. It has to be noted however that the introduction from the sea is the only trade, as this term is defined by CITES, that involves one country only. Therefore, each CITES Party may decide which country is the country of introduction and this might generate conflicts in case of disagreement, and so additional difficulties.

In any case, the certificate of introduction from the sea must be issued by the country of introduction, which may be either the port State or the flag State, although they may be the same. If it is agreed by both that the certificate has to be issued by the flag State, then this State must issue an export permit to be presented before import in the port State.

If the port State ships some of or all the specimens, processed or not, to another State, it shall issue either an export permit, if it was the State of introduction, or a re-export certificate if the State of introduction was the flag State and was different.

Difficulties: **They are evidently numerous**.

It must be noted that these examples are based on the CITES provisions only, without taking into account the numerous stricter domestic measures adopted by many Parties, in particular a number of the main importing States.

Look Alike Issues and Identification of Parts and Derivatives

There are look-alike problems between the northern bluefin tuna and the other two species of bluefin tuna, even for whole fishes. This is also the case for parts and derivatives of other tuna species. Although it might be unlikely that specimens of the northern bluefin tuna, if listed in CITES Appendices, be traded on a large scale under the name of other tuna species, the value of which on the international market is much lower, it remains obvious that look-alike problems, and therefore problems of identification, mainly for parts and derivatives, would generate serious difficulties. In addition, in spite of the value differences, mixing species nevertheless could be of interest for unscrupulous and well organized dealers.

Further more, and even more problematic, it is very likely, if the northern bluefin tuna would be listed in a CITES Appendix, that this would incite, for look-alike reasons, to the listing in Appendix II of the other bluefin tunas at a first step, and then of other tunas, with all the possible consequences for the fishery industry.

International Waters

Many fish species do not occur only in national waters or waters under the jurisdiction of individual States. This is also the case of the northern bluefin tuna and this is of specific significance in the Mediterranean Sea where the EEZ limit of 200 miles does not apply. CITES includes specific rules for specimens taken in international waters and brought into territories of States. These specimens are called specimens "introduced from the sea".

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The sentence "marine environment not under the jurisdiction of any State" was not defined in the text of CITES. Although this did not affect on the implementation of the treaty for many years, the efforts from certain countries and NGOs to involve CITES in commercial fisheries incited CITES to consider this issue within the whole problematic of the treatment of the

"introduction from the sea", which is considered as a form of international trade.

At CoP14 (The Hague, 2007), the Conference of the Parties agreed that "the marine environment not under the jurisdiction of any State" means those marine areas beyond the areas subject to the sovereignty or sovereign rights of a State consistent with international law, as reflected in the United Nations Convention on the Law of the Sea.

However, CITES has not been able yet to determine what means "introduction from the sea", in other words which of the port State or the flag State should be considered as the State of introduction, responsible to issue certificates of introduction from the sea and to establish the relevant non-detriment findings. A working group established by the Standing Committee of CITES, in which a representative of IWMC is participating, is pursuing its activities on this issue and will meat in September 2009 to propose a solution for consideration at CoP15. The divergences of views within the group remain strong and a number of questions is still in need of answers. It is therefore not sure that the group would be able to find an agreement in time.

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IUU Fishing

One of the arguments of those promoting the listing of commercially-exploited aquatic species, such as the northern bluefin tuna, is that CITES would help combating that fishing. They forget that CITES is implemented by the same States as those that are members of FAO and RFBs, as well as those that are authorizing if not promoting IUU fishing. To expect that they will better implement CITES than the Code of Conduct and other existing measures is rather optimistic and not actually realistic.

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As IUU fishing problems in many instances come down to the ability of States to develop and enforce their laws, the only thing that should be promoted is the need for CITES and FAO to cooperate to increase capacity building in developing countries. One area of capacity building where CITES could potentially provide assistance is in law development and enforcement and monitoring of trade. Concerning law enforcement capacity building, CITES as an organization also has strong links with Interpol and the World Customs Organization, which could prove helpful in fisheries law enforcement coordination.

From the smallest local fisheries manager all the way up to the largest international fisheries organization, they are all aware of the legal tools at their disposal to stop biological depletion of an aquatic resource.

Some of these tools --which include regulating fishing gear, declaring species off-seasons, closing fishing areas, among dozens of regulations-- have proved effective, if enforcement is at hand.

Trade regulations under CITES should be the last resource in the long list of options available, and should be limited to specific cases where these regulations would be effective and agreed by all interested parties. This was expected to be the case for example when all sturgeons were listed in Appendix II at CoP10 (Harare, 1997). However, the results were not at the level of the expectations. This would not be the case for the northern bluefin tuna. To resource to CITES for enforcement in such case would be like using the World Health Organization (WHO) to resolve an import-duty controversy.

Conclusion

It is obvious that fisheries, on a global basis, are faced with serious problems that need being solved if marine resources have to be kept at levels sufficient to ensure their conservation and sustainable use for the sake of human food supply for this and the future generations. This is in particular the case of the northern bluefin tuna. Efforts must be made to set up systems to ensure the proper management of stocks and the implementation and enforcement of the necessary regulations, including possibly catch and trade certification and labelling.

These efforts should be made first by the fisheries community if it wants avoiding interference by other forces, such as CITES.

In certain circumstances, it may be found that CITES could be useful but this should be determined by all those concerned and not left to the only decision of CITES Parties. However, keeping in mind that FAO, RFBs, CITES and other conventions are composed in whole or in part of the same States, it is first at the national level that the coordination should be realized to ensure that these States speak with the same voice in the various relevant institutions to which they belong, what is often far from the case at the present time. This would be the only way to protect their own interests and to conserve the marine resources of the world.

Finally, in case of listing in Appendix II of commercially-exploited marine species in general and the northern bluefin tuna in particular, in spite of the opposition of a minority of Parties, it is likely that some of latter at least would enter reservations. So, they would be considered as non-Party concerning the trade in specimens of these species and the listing would therefore loose most of its expected effect.

Lausanne, 3 September 2009.