



SPECIAL FEATURE

Infofish's Tuna 2021 reflects on COVID fall-out on industry and markets

May 2021 saw the pandemic edition of the (usually) biennial Infofish Tuna conference.² Normally held in Bangkok as a gathering of industry and other tuna stakeholders, this year the conference was held virtually over three days with live presentations, question and answer sessions, as well as the option for those who registered to watch the presentations on their own time for several weeks after the event. Nearly 50 speakers shared insights over six main topical sessions. As in past years, presentations included overviews of contemporary market and industry dynamics, new issues that have emerged since the group last convened in Bangkok, and of course, how the industry survived and has been reshaped by the COVID-19 pandemic. A synthesis of themes from across the event is presented in this special feature.

The COVID-19 pandemic has touched every aspect of tuna business and value chains. Despite significant disruptions, there was only a small reduction in the global traded value in tuna in 2020 (vs. a much larger reduction compared with many other fast-moving consumer goods). This outcome indicates that the tuna industry adapted and showed resilience during the pandemic, though pathways have not been simple. The **fishing industry** was particularly challenged by crew and observer logistics. In the early days of the pandemic, vessel owners had to get crew and observers home in the face of rapid closure of borders and cessation of flights, particularly those from transshipment ports. Some fleets reported absorbing costs of transporting crew and observers home on fishing vessels or chartering planes to return them home safely. Vessel owners and operators also had to contend with strict quarantine regulations before docking. As the pandemic extended, major challenges emerged with crew changes: at times crew stayed on board vessels, working well beyond their original contract periods. Presenters emphasized the mental health challenges that this posed for workers who were unable to be in communication with family and return home and that these conditions posed the risk of intensifying forced and unacceptable work conditions at sea. In a similar vein, exemptions to requirements for observers on fishing and carrier vessels has increased the urgency for electronic monitoring development and implementation.

Operations in tuna fishing and processing had to be flexible and adaptable to achieve two goals: 1) ensuring the **food safety** of tuna products that had taken on new food security significance in the face of disrupted food value chains, and 2) ensuring **worker safety** for crew and factory laborers who were newly visible and essential frontline workers. In both segments, the industry quickly developed and implement procedures and production practices; absorbed costs involved in rolling out sanitary requirements for food, as well as safety, medical and quarantine procedures for workers. They also contended with production disruptions and health risks when outbreaks did occur.

Both fishing firms and processors are now working to implement **vaccination drives for workers**. The Thai processing sector, represented by the Thai Tuna Industry Association (TTIA), reports rapid progress in their vaccination drive. Those involved in sea-going segments raised the challenge of identifying who is responsible for providing vaccines to crew who might be nationals of one country, working on vessel flagged to a second country and operating in the waters of a third country (see story below on Marshall Islands' vaccination drive for fishermen). Spanish industry association OPAGAC highlighted its work lobbying that seafarers are essential and highly vulnerable workers that should be near the front of the vaccination line.

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A lasting challenge across the industry is the high cost of shipping: container rates are almost twice as high as they were pre-pandemic. Demand has surged in the European and US markets for durable goods shipped from Asia, yielding logistical challenges in moving (empty) containers from the US and EU to other locations where they are needed to ship fisheries products for export.

On the upside, the pandemic saw dramatic **boosts to shelf stable tuna sales** around the world. In the early days of the pandemic the surge was driven by fear of shortages, and later sustained on account of increased home consumption. For instance, in the US market, household penetration was up 4.8% in 2020; notably, canned tuna sales dominated suggesting that US consumers are still not adopting pouched product. The EU market saw value grow by 8.6% in 2020 compared with 2019. The Middle East and North African market emerged as one of the few growing markets for canned tuna seeing 11% growth in 2020. It was noted that this market has slow uptake on sustainability assurances compared with the historically dominant developed markets. However, not all the news was rosy. Industry saw a dramatic **decline in food service sales** in the EU and US markets, in particular. In the first quarter of 2021, sales have been slightly above average (pre-pandemic) sales in these markets. Several presenters outlined expectations that sales across categories would stabilize through the year, as well as hopes that the pandemic accelerated demand for convenient and healthy foods and that tuna was in a good position to capitalize on this demand after gaining new exposure.

Perhaps the most notable new topic at the event was the focus on the **rapid shift to sales via the e-commerce channel**. While the shift to e-commerce was underway before the pandemic, it was significantly accelerated during the pandemic as first-time adopters flocked to the channel to avoid grocery stores. All participants suggested that e-commerce is here to stay in all markets. Asia is leading the way on e-commerce accounting for 57% of 2019 global e-commerce sales; pandemic e-commerce sales also spiked across Asia, with China and Korea particularly strong in this channel. Industry representatives highlighted the rapid work that they did to shift logistics in support of the e-commerce boom during the pandemic and the ongoing work and focus that will be devoted to expanding their online presence and visibility. Several presenters argued that companies need to invest in online infrastructure or they will become irrelevant: analysts expect that nearly all growth in retail will come from online sales in the next three years. Notably, 75% of consumers surveyed by Nielsen said they will continue to buy online post-pandemic because of the convenience. Over the last year, there were bumps in the e-commerce road, however. For instance, the shipping industry was not adequately prepared to keep up with the general e-commerce boom due to lack of investment in shipping containers in recent years, a two to three-year lag-time for new vessel construction, challenges with port congestion and lack of land transport for containers.

Sustainability was a recurrent theme throughout the conference. Industry members reported that environmental and social accountability remained a key focus amidst the pandemic, and while there were some slowdowns, industry members reported an ongoing commitment to increasing sustainable and responsible production and sourcing. Beyond the pandemic, two trends were clear. First, **environmental sustainability has moved firmly from being a valued-added or market differentiation proposition to a core element of the basic functioning of the industry**. Presenters highlighted their commitments to enrolment in Fisheries Improvement Projects and obtaining Marine Stewardship Council certification. Several presenters also discussed the industry's contributions to greenhouse gas emissions and to growing attention to ocean industries as sites for reducing greenhouse gas emissions. Second, **assurances of social accountability, particularly at-sea labour conditions, are**

The tuna industry saw a rapid shift to e-commerce; analysts predict it is here to stay

becoming a core proposition of the industry. The instruments used to make social assurances are rapidly being developed and multiplying. They include state and inter-state regulations and auditing/oversight procedures, as well as industry and non-governmental organization initiatives. A common refrain for both environmental and social sustainability was a broad commitment to **increasing transparency** as a pathway for improvement. For instance, Susan Jackson of the International Sustainable Seafood Foundation (ISSF) asserted that ‘transparency is no longer a wonky compliance and regulatory issue for governments’, but instead all industries, including retailers, brands and vessels are developing and engaging in traceability tools. Throughout the conference, government and NGOs provided examples of transparency-based initiatives to improve environmental and social conditions and communication about them. Many urged that for transparency initiatives to be meaningful, they must be credible, science based, verified, public and linked to time bound commitments. These changes, along with existing fisheries management requirements and trade policy illustrate that the tuna sector is increasingly subject monitoring. In fact, in summarizing such initiatives, David Vivas, legal advisor at UNCTAD, asserted that ‘fisheries have become one of the most regulated sectors on the planet’. Several new organisations, such as Key Traceability, OSA International, OpenSC and Marine Instruments, have emerged to provide services and technologies (e.g., blockchain product tracing, satellite and machine learning tools for vessel tracking) to stakeholders seeking to comply with growing numbers of regulatory and market demands.

An additional pattern across presentations was a focus on the **imperative for partnership and collaboration among industries, governments and NGOs to achieve and tackle the pressing problems and future visions for the sector such as implementation of interstate regulations and social sustainability practices.** Presenters noted that collaborations will have to be cross-company, cross-country and involve a wide range of stakeholders. Several examples were mentioned: the multi-pronged dimensions of Port State Measures implementation; The Seafood Task Force which involves retailers, processors, vessels, governments and NGOs; Thai Union and NGO, The Nature Conservancy’s collaboration on e-monitoring; and, Bolton Group and NGO Oxfam’s collaboration to update Bolton’s corporate policies and conduct human rights impact assessments in key countries. Thue Barford of Maersk emphasised that the shipping world cannot solve the logistics puzzles in the global economy alone. He asserted that there is a need to move away from traditional, competitive procurement models to more of a partnership model that will enable all actors in value chains to improve forecasting and communication and enhance efficiency. He suggested the need for longer term contracts that are treated more as joint business plans to enable efficient port-to-port planning. While the industry is still dominated by tight competition, the emphasis on collaboration in these realms suggested industry-wide shift in the mechanisms for addressing challenges in the industry.

Finally, technological innovations were on display throughout the conference. **Techno-fixes are now proposed for a wide range of challenges** in the industry ranging from: waste reduction in fish processing, packing and shelf-life; quality control; and a wide range of tools to conduct and improve monitoring, traceability and transparency via the generation, processing and sharing of digital information. While many representatives expressed the need for new technological solutions to problems and showcased digital innovations that present the possibilities for improvements, both success and challenges for the digital pathway are evident. Several organisations shared from their experiences to bring their vision into practical use. One key challenge for digital monitoring of vessels, for instance, will be inter-operability to ensure that systems can communicate with each other and throughout value chains, particularly

*Sustainability,
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and new
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are key themes
in the industry*

as tools and companies addressing similar challenges proliferate. Bubba Cook of WWF reported ‘lessons learned’ in their effort to introduce blockchain traceability into the longline tuna supply chain. While specific to the pilot project collaboration among WWF, ConsenSys, TraSeable and tuna fishing and processing company Sea Quest Fiji Ltd., these lessons likely apply broadly to efforts to introduce new data technologies into the regulatory and management milieu of the tuna industry. They include: the need to have technical and political elements in place from the start; clear pricing of the technological service being provided; the challenge of scaling up from experiments; the reality that regulatory systems lag behind technologies which may make it impossible to use new technologies in practice; and, for the case of product traceability, the significant challenges of moving information throughout the entire value chain to secure full benefits.

FISHERIES TRADE

WTO Chair of fisheries subsidies negotiations revises text

A great deal has happened since the last update on WTO fisheries subsidies in *FFA Trade and Industry News* in November-December 2020.³ The Chair of the Negotiating Group on Rules further ratcheted up the intensity of negotiations, eventually providing for a sequence of *weekly* meetings for negotiators as opposed to the prior week-long cluster each month, as well as pulling in heads of delegation on a more regular basis.

A revised version of the Chair’s ‘final’ text was released on 30 June, following an earlier draft in May.⁴ The fundamental architecture remains the same. There are three prohibitions: 1) banning all subsidies to IUU fishing; 2) banning most subsidies where stocks are overfished; and, 3) prohibiting certain subsidies to fishing characterised by overcapacity and overfishing. The last prohibition remains the principal area of contention with two versions of text on special and differential treatment (S&DT): ALT 1 which provides for maximal S&DT to most developing members except for China, and ALT 2 which provides S&DT but is subject to strict transition periods. This is one of the historical dividing lines in the negotiations. Given the power politics of the negotiations and the need to make arguments based on the sustainability of fishing activities, it seems likely that a variant of ALT 2 is the more likely outcome.

Another historical dividing line – between developed countries wanting a broad ban on almost all subsidies and those wanting flexibility where fisheries management is in place – has largely been resolved with a compromise allowing for subsidies where ‘the subsidizing member demonstrates that measures are implemented to maintain the stock or stocks in the relevant fishery or fisheries at a biologically sustainable level’.⁵ This has been a source of controversy, with developing members and development NGOs such as Pacific Network on Globalisation (PANG) arguing that the balance of the text ‘gives a “reverse Special and Differential Treatment” (SDT) to those with established fishing fleets to continue subsidising unabated’ as their greater state capabilities means they can more easily provide the required ‘demonstration’.⁶

Despite this, some elements of the direction of travel are positive. The June text contains a number of changes compared to the May version, indicating that the process is working as the Chair has taken onboard points raised by the Pacific Group and others. The most important was the removal of the transition period in ALT 2 for artisanal fisheries under the prohibition on overcapacity and overfishing. In short, this discipline would not apply to ‘low income, resource-poor and livelihood fishing’. This removes artisanal fishing from the negotiation which arguably should never have been there in the first place given its miniscule contribution to global subsidies

The Chair has proposed a ‘final’ text which contains important improvements but the ‘balance’ continues to favour developed over developing members

and overfishing and overcapacity. Some have pointed out that the inclusion was a cynical negotiating tactic. The removal means that negotiators have better clarity and can focus on what matters most: subsidies to industrial fishing.

Another important change is to the definition of 'biologically sustainable level'. The Pacific Group has worked hard to ensure that this definition (in footnote 10) provides for the possibility of fisheries management reference points that are *better* than maximum sustainable yield (MSY) (i.e. the use of depletion rates in the WCPFC to manage tuna fisheries) on the one hand; and those that do not require the same data-heavy and expensive tools as MSY (e.g. catch per unit effort), on the other. After some confusion in the May draft, the language now provides clearer guidance to a WTO dispute panel that 'other' reference points of biologically sustainable levels should not be defined against MSY.

A third change is the putting into square brackets of EU language that sought to carve out Sustainable Fisheries Partnership Agreements (and equivalent access arrangements) from the ban on subsidies that are 'contingent upon' fishing outside of a subsidiser's EEZ. A concern for the Pacific here was that this carve out could ultimately allow a distant water fleet to subsidise fishing in a coastal state's EEZ, while that coastal state itself could not use discounted licensing to do the same.

From the perspective of the Pacific Islands, a number of important issues remain unresolved in the Chair's 'final' text. The most important is neatly summarised by the Chair in explaining the decision to square bracket the EU access arrangement carve out:

'Some are of the view that fishing licenses and quota allocations are intrinsic tools of fisheries management and thus should be excluded from all of the disciplines, not just from Article 5.2(a).'

This remains a crucial issue of the Pacific Islands given both the various attempts by DWFNs to undermine sub-regional management arrangements such as the Purse Seine Vessel Day Scheme and the risk that a WTO panel could identify fishing licenses as a 'subsidy' (e.g. by establishing an international market price). Fishing licences are a fundamental part of good fisheries management and are separate from the problem that this agreement is trying to solve. Creating uncertainty over the use of licences and quotas could undermine good fisheries management and create confusion.

Another concern is the transition period in ALT 2 of the S&DT for small fishing nations with under 0.7% share of global marine catch. There is almost no value in a transitional period because the Pacific Islands do not currently have significant subsidies so do not need a 'phase out'. But the option to be able to use government supports for fisheries development is crucial for the future given the Pacific Islands' dependence on fisheries as one of the few resources available. It would be irresponsible to sign away the capacity to do this because of the historical failures of DWFNS to conserve fish stocks. A final concern is the disproportionate burden of notifications. All WTO Members will have increased transparency requirements but these will need to be proportional. For example, catch data by species is a reasonable thing to ask for a large commercial fishery, but it is not a realistic request for an artisanal fishery.

The Pacific Group is advocating that the agreement does not have a perverse effect by undermining fisheries licensing arrangements

Biden's 'worker-centred trade policy' begins a trade-labour standards debate for the 2020s?

In June, United States Trade Representative Katherine Tai set out the Biden-Harris administration's policy on trade and labour.⁸ It is part of a wider set of policies that seeks to 'build back better' through worker rights and job creation, should they be passed by Congress. The trade policy dimension includes consulting trade unions in the formation and negotiation of trade agreements and to build on labour provisions in the United States-Mexico-Canada Agreement (USMCA), including rapid response to petitions alleging abuses of workers' rights. Tai has also emphasised that the WTO does not include any labour standards and that workers are a mere afterthought – a US submission on forced labour on fishing boats seeks to begin to change this.

Tai has promised that 'President Biden and I are committed to crafting a trade policy that is crafted with workers for workers.'⁹ Precisely *how* labour organisations will be involved in trade policy development and feed into negotiations is not clear at this stage. Academic research has shown that while the trade-labour standards linkage has grown stronger in the last decade, both the legal form and implementation of standards has tended to be weak.¹⁰

To an extent, Biden is revitalising the Clinton administration's failed drive to promote trade and labour standards at the WTO in the 1990s, but with the significant change in context that over 80% of FTAs signed since the 2010s *include* labour standards.¹¹ In this sense, the trade-labour linkage is a rising tide and the Biden Administration looks set to generate a storm.

It is important to note some continuities with the Trump administration's trade policy. For example, Trump renegotiated NAFTA with Canada and Mexico, and with bipartisan cooperation the new USMCA incorporated several innovative labour clauses. These amount to the strongest labour standards in any US trade agreement ever, such as a labour annex committing Mexico to wide range labour standards; a revised formal dispute settlement mechanism *and* specific bilateral enforcement mechanisms targeting Mexico; and unique rules of origin that include the requirement that workers earn a *specified* minimum wage of US\$16/hour to qualify for duty-free access.¹²

There are a number of fisheries-specific dimensions to Biden's trade-labour linkage, not least the unprecedented ban on imports from all boats owned by the Dalian Ocean Fishing Company because of indicators of forced labour (see story below). Another is the proposal by the US delegation to the WTO for the inclusion of an article that bans all subsidies to fishing vessels that are linked to or associated with forced labour.

The implications for the Pacific Islands of the US drive to combat forced labour in trade policy are largely positive. Indeed, in many ways, PICs are leading the world with the 2019 adaptation of Minimum Terms and Conditions (MTC) on labour conditions for crews working on both foreign and domestic-flagged fishing vessels licensed to fish in FFA members' waters, effective 1 January 2020. Vessels that fail to meet FFA's crewing MTC will not be deemed in 'good standing' on the FFA Vessel Register, and as such, cannot be licensed to fish in FFA member waters. Once countries put their legislation in place the MTC is binding – three PICs have done this and another two were close as of early 2021, with Covid causing understandable delays. The Biden administration is a potential ally in this ongoing drive.

The US seeks to deepen the trade-labour linkage in its FTAs and at the WTO

US extends anti-slavery drive to WTO Fisheries Subsidies negotiations; PICs are ahead of the game with minimum labour conditions for crews

FISHERIES MANAGEMENT

Indian Ocean yellowfin rebuilding measure falls short due to IOTC member objections¹³

The 25th Annual Session of the Indian Ocean Tuna Commission (IOTC) was held virtually from 7-11 June. The most pressing and contentious agenda item for this meeting was the yellowfin tuna rebuilding plan, given the Indian Ocean's stock remains overfished, with overfishing occurring. In the leadup to this meeting, there was strong lobbying from NGOs, retailers and tuna brand owners to reach an agreement on a measure which reduces yellowfin catch levels to scientifically recommended levels, at a minimum.

Two proposals for yellowfin stock rebuilding were tabled at the beginning of the meeting – one from the European Union and the other from the Maldives (plus Kenya, South Africa and Comoros). Both the EU and Maldives proposals added a new layer of complication to the existing yellowfin measure (Resolution 19/01), as they aimed to differentiate yellowfin catch reductions based on catch volumes and the development status of Contracting Parties and Cooperating Non-Contracting Parties (CPCs) (i.e. distant water fishing developed coastal, developing coastal and small island developing (SIDS)/least-developed states). The existing measure implements catch reductions by gear type and catch volumes. After some deliberation, the Maldives proposal was selected by the majority of CPCs as the platform for negotiations as it was considered more precautionary and equitable than the EU proposal. The Maldives proposal aimed to reduce and maintain overall Indian Ocean yellowfin catch, eliminate exemptions, reduce the role of supply vessels in purse seine operations to reduce fishing pressure on juvenile yellowfin, account for the development status of CPCs via differentiated catch reductions and strengthen penalty, compliance and monitoring systems.

Following strong opposition from the EU and some other (mostly distant water) CPCs, the Maldives proposal was watered down significantly in an attempt to reach consensus. For example, the original proposal called for a 35% yellowfin catch reduction for distant water CPCs (EU and Japan) and 30% for developed coastal states (China and Korea). In order to obtain the EU's agreement to adopt the proposal, the catch reduction for distant water and developed coastal CPCs has to be reduced to 21%. The Maldives' proposal to completely phase out supply vessels from 2025 was rejected. These compromises diminished the net conservation benefit of the measure, but ultimately the revised proposal reflected the necessary catch reductions to at least bring total allowable yellowfin catch in line with maximum sustainable yield (MSY) (around 401,000 mt).

However, there was strong opposition from a number of developing and SIDS/least-developed CPCs about the disproportionate conservation burden placed on them (i.e. DWFN/developed vs. developing/SIDS/LDCs; industrial vs. artisanal/subsistence fisheries). As consensus could not be reached, rather than go to a vote and risk there being no measure adopted at all, CPCs opted to push for adoption of the measure, with non-consenting CPCs lodging objections, which would result in the new 2021 measure not applying to them (but still being subject to catch reductions under Resolution 19/01).

Iran, India, Oman and Madagascar objected on the grounds of a disproportionate conservation burden on subsistence and artisanal fisheries. Indonesia's objection is on technical grounds related to catch data estimates used to calculate their applicable catch limits. Currently, re-estimates of Indonesia's reported catch data made by IOTC Secretariat are used which is a 10-year legacy stemming from previous data gaps. However, Indonesia now considers their reported catch data to be reliable, after

To reach consensus on a yellowfin rebuilding measure, IOTC CPCs had to agree to lower catch reductions for distant water and developed coastal fleets from 30-35% to 21%

significant efforts in recent years to improve catch data collection. IOTC's re-estimated total annual catch for Indonesia is around 40% less than Indonesia's reported catch levels. A request from Indonesia to carry-over to the new measure a footnote from Resolution 19/01 which indicates its catches are based on its national reports submitted to the Scientific Committee was ignored by CPCs, leaving them with no other option but to object. Indonesia has since indicated that they would be willing to withdraw their objection, if the IOTC re-estimated data is replaced with their own catch estimates by an October 2021 deadline.¹⁴ If these five countries sustain their objections it will likely result in the new measure failing to reduce the total yellowfin catch level by 20% in line with MSY.

While falling short of meeting scientific advice, this new measure sets a baseline for negotiations in 2022, which will take into account a new yellowfin stock assessment and corresponding updated scientific advice. In the meantime, NGOs are pushing for a special session in early 2022 to revisit the new measure, in light of the compromises made and objections received.

Recognizing that FAD management is a key element in reducing juvenile yellowfin catches, Kenya led an ambitious joint proposal to strengthen the existing FAD management proposal (Res. 19/02). The proposal reflected a more precautionary approach to FAD management, including the introduction of 3-month FAD area closure; a reduction from 300 to 150 operational buoys per vessel at any one time; a reduction from 500 to 300 instrumented buoys acquired/in stock annually per vessel; mandatory use of bioFADs; implementation of FAD marking and real-time FAD tracking requirements; reporting of lost FADs; and, no supply vessels after 31 December 2022.

While there was general agreement that FAD management needs to be strengthened and that buoy data collection for scientific purposes could be agreed, there was significant opposition from the EU, Seychelles, Japan and Korea to adopting this proposal overall on the grounds that it was precautionary and not based on scientific advice; they instead called for the establishment of an inter-sessional working group to continue discussions. The Kenya et. al. proposal was revised to accommodate various CPCs positions, becoming less ambitious in the process (e.g. a reduction of 300 to 250 operational buoys per vessel; removal of the FAD closure and FAD market elements; and, purse seiners permitted to be serviced by one supply vessel per fleet). Despite these compromises, consensus could not be reached. Given strong concerns that market boycotts of IOTC yellowfin due to overfishing and weak FAD management would have more negative impacts for coastal states with tuna-reliant economies than distant water nations, Kenya and South Africa called for a vote. Nineteen votes were cast, with 12 CPCs 'for' the proposal, 5 'against' and 2 abstaining. The outcome of the vote was not able to be finalized at the annual session, as there was some dispute over the virtual voting process and how abstaining votes should be treated. Legal advice has since been sought from FAO confirming abstaining votes should not be counted. This means that that Kenya et. al's FAD management proposal should be adopted, as a two-thirds majority was reached on the 'for' votes.

These developments are of interest to Pacific Island countries, WCPFC and other RFMOs more generally. The Indian Ocean yellowfin issue has attracted substantial attention from retailers, brand owners and NGOs, resulting in concrete public commitments to reduce yellowfin sourcing if IOTC fails to take adequate action to bring fishing morality back to long-term sustainable levels. In addition, in this last meeting, some IOTC members have opted to make use of alternative decision-making mechanisms available (i.e. voting, adoption with objections) in an effort to ensure action is taken. While there have been occasions when voting has been considered, WCPFC is yet to resort to a vote when consensus could not be reached.

Objections to the new yellowfin rebuilding plan were lodged by India, Iran, Oman, Madagascar, Indonesia; the 2021 measure will not apply to them

There was contention around the virtual voting mechanism on a strengthened FAD management measure

FISHERIES REGULATION

US issues first-ever import ban on fishery products from an entire fishing fleet

In late May, US Customs and Border Protection (CBP) announced it had issued a withhold release order (WRO) against Dalian Ocean Fishing Co. Ltd., a Chinese firm based in the northern China port city of Dalian. A withhold release order detains an importer's shipment under authorization of the US 1930 Tariff Act. A section of that Act prohibits the importation of merchandise mined, produced, or manufactured, wholly or in part, in any foreign country by forced labour (or indentured or forced labour).¹⁵ In the case of Dalian Ocean Fishing Company, CBP stated that the reason for the WRO was "information that reasonably indicates the use of forced labour" in its fishing operations.¹⁶ This is the first time such an order has been issued for the entire fleet of a company.¹⁷

According to CBP, merchandise that is detained and not released is subject to exclusion and/or seizure and may lead to criminal investigation of the importer(s). Importers of detained shipments are provided an opportunity to export their shipments or demonstrate to CBP through "clear and convincing evidence" that the merchandise was not produced with forced labour.

According to its website, Dalian Ocean Fishing Co. Ltd., operates a fleet of 33 large-scale ultra-low temperature longline fishing vessels focusing on catching and selling premium tuna, with its major export market being Japan.¹⁸ China's government came to the company's aid, with its Foreign Ministry spokesman quoted as saying the WRO is connected to US protests over mistreatment of the Uighurs and China's new security law in Hong Kong, and is part of a US slander campaign against China being conducted under the pretext of concern for human rights. The spokesman further stated that Dalian Ocean Fishing does not sell its products in the US, although this contradicted a story in the China Youth Daily, a government-sponsored news outlet that said in 2020 the firm sold almost US \$300,000 worth of seafood in the US.¹⁹

The statement that the company does not sell its products in the US also contradicts CBP, which stated in the press conference announcing the WRO that "there are a few fairly recent imports into the US of products from Dalian (Ocean Fishing) and a history of larger imports back in 2018."²⁰ CBP elaborated later that the company is a major supplier to a seafood distributor, though the US is not its largest market. In 2019 the US imported US \$1.8 million worth of seafood from Dalian, and US \$320,808 worth in 2020. In the first four months of 2021 CBP said the US imported US \$763,115 worth of seafood caught by Dalian.²¹

The implications for U.S. importers of actions such as the WRO have been highlighted by an attorney specializing in international customs and trade. According to the attorney, Deborah B. Stern, importers could face exposure even though they believe the US Government's Seafood Import Monitoring Program (SIMP) protects them from importing seafood with ties to forced labour. The Biden administration is cracking down on forced labour and other abuses (see earlier story), with forced labour becoming a higher priority, according to Stern. In the case of a WRO such as that levied on Dalian Ocean Fishing, CBP has stated that downstream products are also covered, and as a result "importers should ensure their supply chains do not in any way touch any activity liable to be hit with a WRO under the heightened enforcement regime".²²

US importers bear the responsibility to prove merchandise was not produced with forced labour

China contends targeting the company is part of a US slander campaign against China

With downstream products also covered, US importers are cautioned to carefully check their supply chains for labour abuse



TUNA INDUSTRY

Marshall Islands vaccine drive extends to fishermen; likely to aid transshipment rebound

The Marshall Islands has seen only one positive COVID-19 case: an American military base worker in quarantine at Kwajalein in October of 2020. Throughout the pandemic, RMI has had no community transmission and remained COVID-free. Along with the two other Freely Associated States – The Federated States of Micronesia and Palau – The Marshall Islands has been included in the US schedule of COVID-19 vaccine distribution²³ and the successful national vaccination drive has led to nearly 80 percent of urban populations vaccinated. The vaccination effort has now shifted to the outer islands with use of the one-shot Johnson & Johnson vaccine given the logistical challenges of administering vaccines that require two separate doses weeks apart and/or storage at ultra-low temperatures. In addition to the vaccination success, RMI, like all Pacific Island countries, has deployed strict border controls. Inbound travel has been halted since March 2020 and until recently, a 14-day quarantine was required before any vessel could dock. While the population has remained healthy, such restrictions have taken a toll on Majuro's transshipment industry. However, recent events suggest the moves toward a recovery.

In early June, the RMI Ministry of Health and Human Services announced that it would begin offering the one-shot Johnson & Johnson vaccine for commercial fishermen in port in Majuro.²⁴ This makes RMI the first Pacific Island country to offer vaccinations widely to commercial fishermen. The vast majority of workers on purse seine and longline vessels are migrant workers from Asian countries. On locally flagged purse seine vessels, about 40 Marshallese work as crew. As noted in the Infofish story above, identifying which authorities are responsible for providing vaccines to fishermen who are often nationals of one country, work on a vessel flagged to another country and operating and/or transshipping in yet another country, is a major challenge for the fishing industry. Glen Joseph, Marshall Islands Marine Resources Authority (MIMRA) Director, put the Ministry of Health's vaccine offer to fishing companies through their local agents and reported immediate interest in the program. Over 50 fishermen were vaccinated on the first day of the campaign, and more vaccinations were expected as more vessels arrive into port in Majuro to tranship cargo. The public health department is working to translate information flyers into multiple languages. The drive began with purse seine vessels and will next target the estimated 30 locally-based longline vessels that employ mainly foreign crew.²⁵

The vaccination drive coincides with Marshall Islands' move to begin reopening borders for economic activity, including for transshipment. 2020 saw a 60% decline in transshipment activity attributed to COVID-19 port entry controls – 180 transshipments, compared with an average of 400 per year over the previous five years.²⁶ The government has recently dropped the 14-day quarantine period for vessels to enter Majuro lagoon, opening the door for a return to more cost-effective transshipment. Following the easing, in May, there were 24 transshipments with 22 of these involving transfer of tuna from purse seiners to carrier vessels and two direct unloadings at Delap Dock.²⁷ An uptick in purse seine activity in the RMI EEZ in May also likely contributed to the jump. The vaccination drive should also contribute to an increase in transshipment activity. It will attract vessels to Majuro for the benefit of getting access to the shot, contribute to safe operation of fishing vessels, reduce the risk of introducing COVID-19 to RMI; all of which in turn promote transshipment activities to return to pre-pandemic levels.

Marshall Islands is the first Pacific Island country to extend its vaccination drive to fishermen

Vaccine access and eased quarantine restrictions have boosted transshipment in Majuro

Subway tuna saga demonstrates the need for robust traceability systems

In January 2021, two plaintiffs filed a class-action lawsuit in the US claiming that the tuna used in sandwiches and wraps sold by the US food chain, Subway, is “anything but tuna” – a mixture of non-tuna ingredients combined to imitate the appearance of tuna. They claimed that Subway was deliberately misleading customers by selling products falsely advertised as ‘tuna’ in order to charge a premium price.²⁸

In June, building on the hype of the class-action lawsuit, a *New York Times* reporter sent tuna samples from Subway sandwiches purchased from three different franchises around Los Angeles to a laboratory for DNA testing to determine whether or not one of five different tuna species could be identified. The laboratory report concluded that they could not identify any tuna species, as no amplifiable tuna DNA was present in the sample. A lab spokesman provided two possible explanations – the tuna was so heavily processed that it was not possible to make a species identification or the samples provided did not contain tuna. The *New York Times* reporter failed to understand that DNA testing is not suitable for species identification for shelf-stable tuna products (denatured protein) as the tuna is essentially cooked twice during the production process – once during pre-cooking after the fish has been thawed and a second after cleaning when the packaged tuna product (cans, pouches or jars) is heated for sterilization. The ‘second cooking’ or retort process results in the degradation and fragmentation of the tuna’s DNA to a level which makes species identification unreliable. Reportedly, there is only one laboratory in the US capable of identifying species from small, processed tuna particles. This laboratory recently conducted 30 DNA tests on Subway tuna and detected skipjack, yellowfin or both tuna species in all samples.²⁹

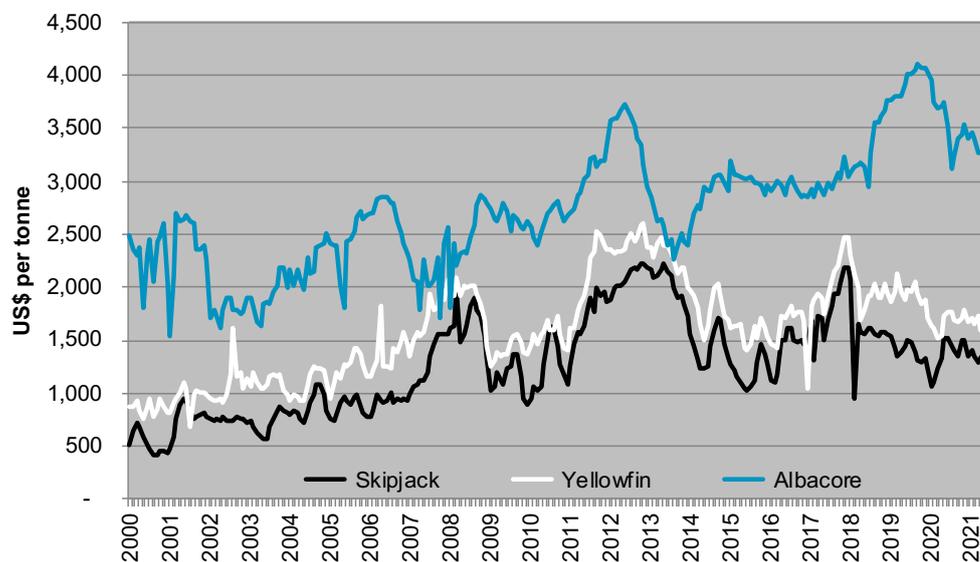
The plaintiffs filing the original class-action in January have since changed course and are now focussing on discrediting Subway’s claim that its tuna is 100% sustainably-caught skipjack and yellowfin tuna. Besides press releases, Subway has launched a new website ‘subwaytunafacts.com’ to address misinformation generated in the media as a result of the class-action and *New York Times* article. It stresses that “Subway Tuna is Real Tuna” and provides details on Subway’s sourcing.³⁰

Subway’s unfortunate experience demonstrates the need for robust, transparent traceability systems to be in place to verify the provenance of tuna. The cost of establishing such systems is likely to far outweigh the credibility risk of false claims such as those experienced by Subway.

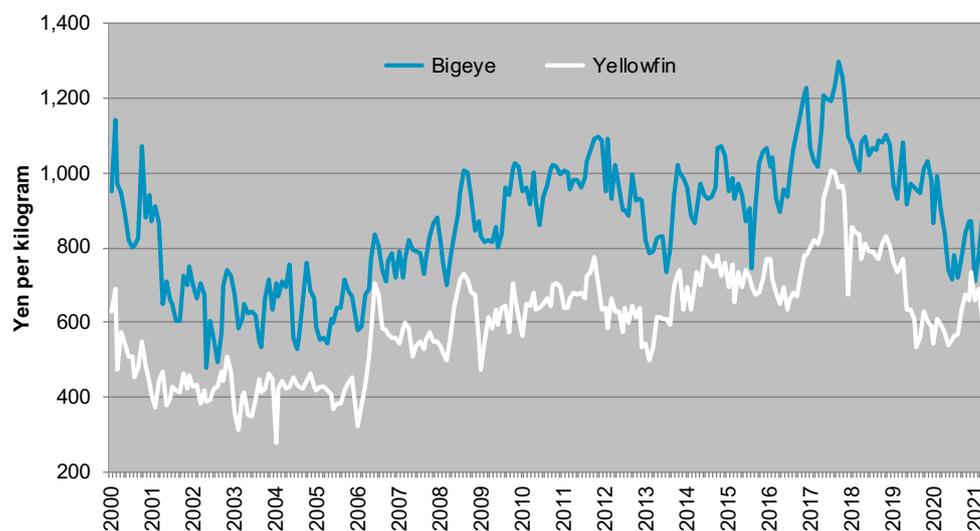
A class-action lawsuit and inconclusive lab tests cast doubt on Subway’s tuna sandwiches actually containing tuna

TUNA PRICE TRENDS³¹

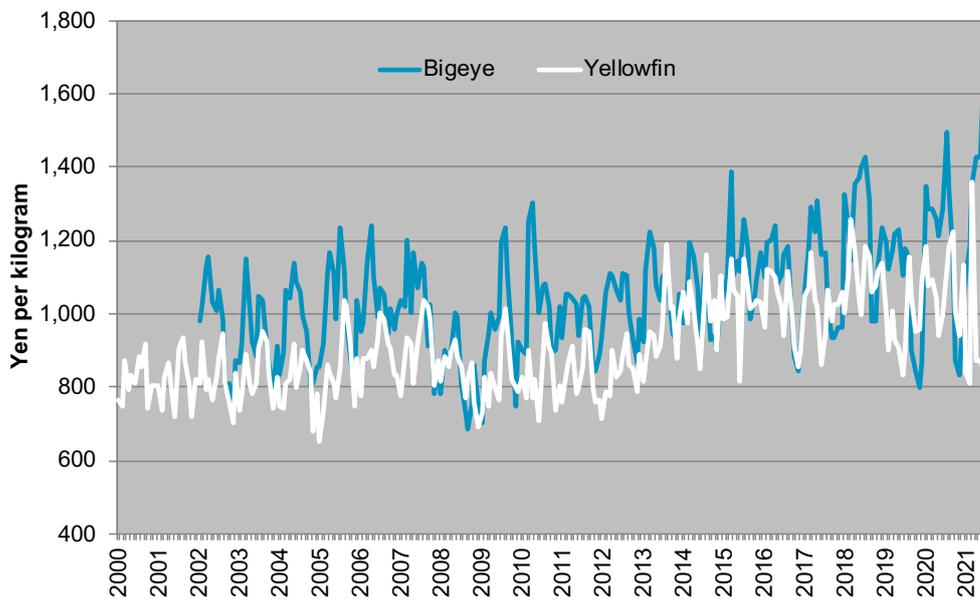
Bangkok canning-grade prices to May 2021³²



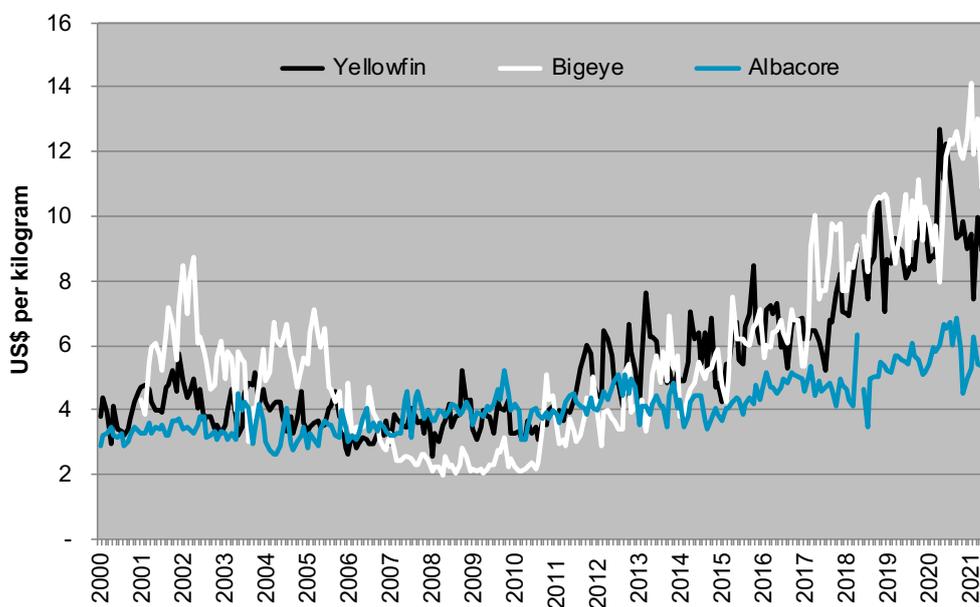
Japan frozen sashimi prices (ex-vessel, Japanese ports) to May 2021³³



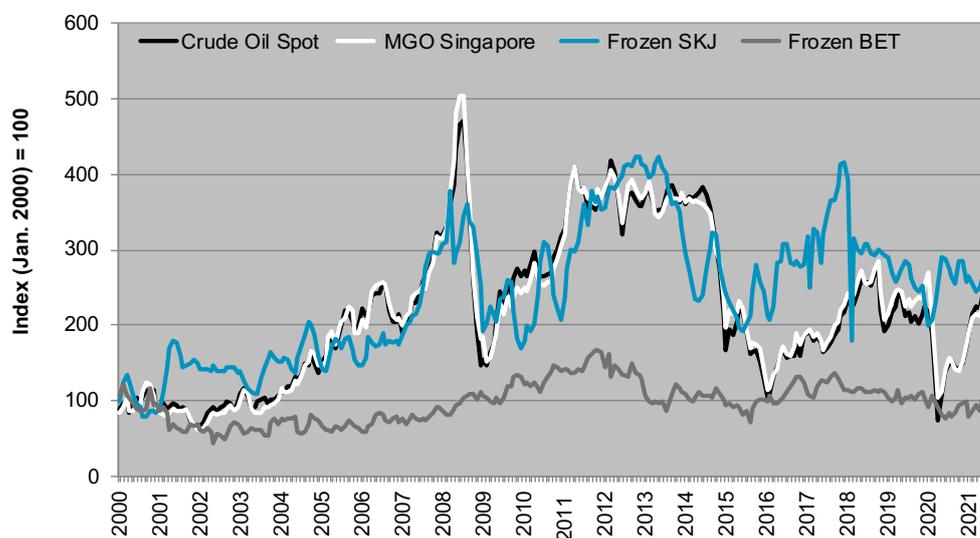
Japan fresh sashimi prices (origin Oceania) to May 2021³⁴



US imported fresh sashimi prices to May 2021³⁵



Crude oil, canning-grade frozen skipjack (SKJ) and frozen bigeye (BET) price index to June 2021³⁶



¹ Prepared for the FFA Fisheries Development Division by Professor Liam Campling, School of Business and Management, Queen Mary University of London, Dr Elizabeth Havice, University of North Carolina at Chapel Hill and Mike McCoy, independent consultant, all Consultant Fisheries Trade and Market Intelligence Analysts, Fisheries Development Division, FFA. Desktop publishing by Antony Price. The authors would like to thank FFA for their input on an earlier draft of this briefing. The contents of this briefing (including all analysis and opinions) are the responsibility of the authors and do not necessarily reflect the positions or thinking of the FFA Secretariat or its Members.

² Information about the Infofish conference is available here: <http://tuna.infofish.org/> Reporting for this story is based off of the author's attendance at the conference. Infofish did not make conference materials publicly available.

³ Liam Campling, Elizabeth Havice and Mike McCoy 2020, 'WTO misses deadline, diverges on development and debates fisheries licensing', *FFA Trade and Industry News*, 13(6): November-December. Available at: https://www.ffa.int/trade_news

⁴ TN/RL/W/276/Rev.1, 30 June 2021. Negotiating Group on Rules – Fisheries Subsidies Revised Draft Consolidated Chair Text.

⁵ Article 5.1.1, TN/RL/W/276/Rev.1, 30 June 2021

⁶ PANG 2021, 'PANG analysis of the May 2021 Chair's Draft Consolidated Text on Fisheries Subsidies Negotiations at the World Trade Organization'. Pacific Network on Globalisation.

⁷ TN/RL/W/276/Rev.1/Add.1, 30 June 2021. Fisheries Subsidies Revised Draft Consolidated Chair Text

Chair's Explanatory Note Accompanying TN/RL/W/276/REV.1, Addendum

⁸ USTR Press release, Remarks of Ambassador Katherine Tai Outlining the Biden-Harris Administration's "Worker-Centered Trade Policy", June 2021. Available at: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/june/remarks-ambassador-katherine-tai-outlining-biden-harris-administrations-worker-centered-trade-policy>

⁹ USTR Press release, 'Remarks of Ambassador Katherine Tai at Flint Worker Roundtable Hosted by Congressman Dan Kildee, June 2021. Available at: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/june/remarks-ambassador-katherine-tai-flint-worker-roundtable-hosted-congressman-dan-kildee>

¹⁰ Harrison, J., Barbu, M., Campling, L., Richardson, B. and Smith, A. 2019, 'Governing labour standards through free trade agreements: limits of the European Union's Trade and Sustainable Development chapters', *Journal of Common Market Studies*, 57(2): 260-277 <https://doi.org/10.1111/jcms.12715> (open access); LEVERAGING Phillip Paiement 2018, 'Leveraging Trade Agreements for Labor Law Enforcement: Drawing Lessons From the Us-Guatemala CAFTA Dispute'. *Georgetown Journal of International Law*. Available at: <https://www.law.georgetown.edu/international-law-journal/wp-content/uploads/sites/21/2018/08/GT-GJIL180022.pdf>

¹¹ Barbu, M., Campling, L., Smith, A., Harrison, J. Richardson, B. 2018, 'The Trade-Labour Nexus: Global Value Chains and Labour Provisions in European Union Free Trade Agreements', *Global Labour Journal*, 9(3): 258-280: <https://mulpress.mcmaster.ca/globallabour/issue/view/336> (open access)

¹² Campos Ortiz, F.E. 2019, Labor Regimes and Free Trade in North America: From the North American Free Trade Agreement to the United States–Mexico–Canada Agreement. *Latin American Policy*, 10: 268-285. <https://doi.org/10.1111/lamp.12171>; Corvaglia, M.A (2020), Labour Rights Protection and its Enforcement Under the Usmca: Insights from a Comparative Legal Analysis. Forthcoming in the *World Trade Review*, Available at SSRN: <https://ssrn.com/abstract=3877396>

¹³ Various IOTC25 meeting papers; insights from IOTC25 attendees. All documents available at: <https://www.iotc.org>

¹⁴ Matilde Mereghetti, 'Indonesia willing to resolve yellowfin dispute with IOTC', *Undercurrent News*, 7 July 2021. Available at: <https://www.undercurrentnews.com>

¹⁵ US Customs and Border Protection 2019, 'CPB Issues Detention Order on Tuna Harvested

by Forced Labor Abord the Tunago No. 61, 6 February 2019. Available at: <https://www.cbp.gov>

¹⁶ Huffman 2021, 'US Customs stops Chinese tuna, swordfish imports over forced labor findings', *Undercurrent News*, 28 May 2021. Available at: <https://www.undercurrentnews.com>

¹⁷ For details of similar action taken against a single vessel see: Campling, Havice & McCoy, 'US authorities issue detention order on tuna harvested by forced labour aboard Vanuatu-flagged tuna longliner', *FFA Trade and Industry News*, January - February 2019. Available at: <https://www.ffa.int>

¹⁸ Dalian Ocean Fishing Company website, accessed 14 June 2021. Available at: <http://www.chinatuna.com.cn/Corporateintro?lang=en>

¹⁹ Godfrey 2021, 'China brushes off US sanctions against Dalian Ocean Fishing', *Seafood Source News*, 4 June 2021. Available at: <https://www.seafoodsource.com>

²⁰ *ibid.*

²¹ Huffman, 28 May 2021.

²² Godfrey, 4 June 2021.

²³ US Department of the Interior 2020, 'Interior applauds inclusion of insular areas through operation warp speed to receive COVI-19 vaccines', *Press Release US Department of Interior*, 16 December. <https://www.doi.gov/oia/press/interior-applauds-inclusion-insular-areas-through-operation-warp-speed-receive-covid-19>

²⁴ Giff Johnson 2021, 'Vaccine offered to fishing fleet', *The Marshall Islands Journal*, 18 June 2021.

²⁵ *ibid.*

²⁶ Giff Johnson 2021, 'May sees rise in tuna boat numbers', *The Marshall Islands Journal*, 11 June 2021.

²⁷ *ibid.*

²⁸ Christine Blank, 'Subway "fake tuna" lawsuit shifts focus to sustainability', *Seafood Source*, 21 June 2021. Available at: <https://www.seafoodsource.com>

²⁹ Christine Blank, 'Subway defends tuna, top DNA lab asserts widely-publicized tests were inadequate', *Seafood Source*, 25 June 2021. Available at: <https://www.seafoodsource.com>; Julia Carmel, 'The Big Tuna Sandwich Mystery', *New York Times*, 19 June 2021. Available at: <https://www.nytimes.com>

³⁰ 'Subway has launched a website to reveal 'truth' about its tuna', *FIS*, 15 July 2021. Available at: <https://wwf.zoom.us/j/97661521906?pwd=Vm54UnYwNUxUNE9YZUdEM3YwQXRBDz09>

³¹ All databases are provided by the Fisheries Development Division at FFA.

³² Customs Department, Thailand. http://www.customs.go.th/statistic_report.php?lang=en&show_search=1

³³ FFA database

³⁴ Japan Customs. https://www.customs.go.jp/toukei/info/index_e.htm

³⁵ US National Marine Fisheries Service. <https://foss.nmfs.noaa.gov/apexfoss/?p=215:2:10663896522198::NO>

³⁶ Y Charts: https://ycharts.com/indicators/average_crude_oil_spot_price; Ship & Bunker: <https://shipandbunker.com/prices/apac/sea/sg-sin-singapore#MGO>