



11. Admission of New Members

Purpose

To discuss principles for the admission of new members into the SBT fishery.

Discussion

At the Special Meeting held in April 2004, the Extended Commission directed the Secretariat to prepare a discussion paper on the principles for the admission of new members to the SBT fishery, including the setting of catch limits. The Secretariat's discussion paper is at Attachment A.

New Zealand was asked to prepare a discussion paper on the agreement at CCSBT1 concerning the allocation formula for the distribution of an increase in total allowable catch among members. New Zealand's paper is included in the meetings documents as CCSBT-EC/0410/26.

For consideration.

Prepared by the Secretariat

Attachment A

COMMISSION FOR THE CONSERVATION OF SOUTHERN BLUEFIN TUNA

ADMISSION OF NEW MEMBERS

DISCUSSION PAPER

INTRODUCTION

At the Special Meeting of the Extended Commission in April 2004 it was agreed that the Secretariat would prepare a discussion paper on principles that might govern decisions on the admission of new members. The discussion at the Special Meeting had a particular focus on the setting of a quota/catch limit for new entrants.

This paper discusses principles in two parts:

- a general discussion on principles for admission
- a more focussed discussion on setting quotas/catch limits for new members

GENERAL PRINCIPLES

The *UN Law of the Sea* does not directly address participation in regional fisheries bodies. It does not seem to be a useful guide to principles for the admission of new members to the CCSBT.

Part III of the *UN Fish Stocks Agreement* relates directly to the role of regional fisheries bodies. General principles for participation in regional fisheries bodies and other related matters are established. At their core the principles link the right to participation to a country having a “real interest” in the fishery. While “real interest” is not defined, it can be reasonably concluded from the text of Part III that it includes countries that are coastal states through whose waters SBT migrate and states actually fishing for SBT on the high seas at the time of an application to become a member of a regional fisheries bodies.

Article 11 of the Fish Stocks Agreement gives guidance on the nature and extent of participatory rights for new members. These are:

- the status of the fish stock and the existing level of the fishing effort in the fishery
- the interests, fishing patterns and fishing practices of new and existing members or participants
- the contributions to conservation and management of the stock including provision of accurate data and scientific research

- the needs of coastal communities which are dependent mainly on fishing of the stock
- the needs of coastal states whose economies are overwhelmingly dependent on the exploitation of living marine resources
- the interests of developing states in whose area of national jurisdiction the stocks occur

What doesn't seem clear is the status of a potential new entrant who is not currently fishing but wishes to develop an interest in the fishery against these criteria

For countries that have ratified the Fish Stocks Agreement, they are not eligible for access to a fishery unless they have become members of the competent regional fisheries body or participate in the conservation and management activities of that body. A number of major fishing nations have not ratified the Agreement.

Nevertheless, the Fish Stocks Agreement does seem to impose limits on the rights of entry into a fishery, which a regional fisheries body may adopt in its approach to the admission of new members.

Practice of Regional Fisheries Bodies

The Convention for the Conservation of Southern Bluefin Tuna provides in Article 18 for any State whose vessels engage in fishing for southern bluefin tuna, or any other coastal state through whose exclusive economic or fishery zone southern bluefin tuna migrates, to accede to the Convention. This provision is consistent with the criteria established in the Fish Stocks Agreement. There is no provision for a decision making process for existing members to follow on accession of new members.

Other regional fisheries bodies have a range of participation rules.

The *Indian Ocean Tuna Commission's (IOTC)* participation rules include coastal states wholly or partially in the IOTC area of competence and states who engage in fishing in the area for the stocks covered by the IOTC agreement. There are also rules that require membership of the FAO and provisions for membership of economic integration organisations.

The *Commission for the Conservation of Atlantic Tunas' (ICCAT)* participation rule that members must be members of the United Nations.

Membership of the *Inter American Tropical Tuna Commission (IATTC)* is open to any government whose nationals participate in the fisheries covered by the IATTC Convention. However, applications are considered by the existing members and can take a considerable time to resolve.

The *Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC)* prescribes a list of potential states. The list represents countries that have an interest in fisheries in the area of competence and were involved in the discussions leading to the creation of the convention. Members may, by consensus, invite other states and

regional economic integration organisations whose nationals wish to fish in the convention area to accede.

The *North-west Atlantic Fisheries Organisation* (NAFO) reserves participation to states already engaged in the fisheries covered by the convention or those states which can provide to NAFO satisfactory evidence that they expect to begin fishing during the next calendar year.

The *North-east Atlantic Fisheries Organisation* (NEAFC) prescribes a list of eligible states. New members may apply for admission if the application meets with the approval 75% of existing members.

Application of General Principles in the CCSBT Context

In practice, the specific rules of the other regional fisheries bodies are instructive but not particularly relevant to the CCSBT, which must adhere to the terms of its own convention. This provides for members to come from two groups:-

- coastal states having EEZs through which SBT migrate
- states which have been involved in high seas fishing for SBT

It would seem that technically any country could enter the fishery as a high seas fisher, establish a catch history, and then accede to the convention. There are however, some practical difficulties for a country wishing to follow this path:-

- Countries that have ratified the Fish Stocks Agreement cannot enter the fishery without acceding to the convention or abiding by the CCSBT's conservation and management measures.
- The CCSBT has adopted trade management measures – the Trade Information Scheme and the Authorised Vessel List – which could close the Japanese market for SBT for a new entrant. These management measures would militate against the development of a targeted SBT fishery.

The current status of the SBT stock; members' previous sacrifices to manage and conserve the fishery; and contributions to scientific research, are not expressly reflected in the criteria established in Article 18 of the CCSBT convention. However, these are significant matters in the context of the admission of new members and external scientific advice is that increased fishing effort from non-members would be a matter of major concern.

It would seem reasonable to incorporate these three factors into how the CCSBT implemented the admission of new members. Authority for doing so could be drawn from the overarching purpose of the convention to optimise conservation and management of the fishery as specified in Article 3 of the convention. Incorporation of such measures into an implementation policy would not be inconsistent with the Fish Stocks Agreement, the latest international statement on admission criteria for regional fisheries bodies.

In considering admission criteria the reality of the actual potential for new admissions might be taken into account. These include:

At current stock levels and prices, the economics of targeted fishing on the high seas are marginal and a deterrent to developing new SBT fisheries.

The current range of SBT suggests that only four coastal states are relevant – Australia, New Zealand, Indonesia and South Africa. Potential coastal states in South America seem to have little involvement with SBT migrations in their EEZs.

For countries that have ratified the Fish Stocks Agreement, they are prevented from entering the SBT fishery unless they first accede or participate in the conservation and management measures of the CCSBT. The EU has ratified the Agreement. China has not.

Very few countries have recent high seas catch histories. – Japan, Korea, Taiwan, Seychelles Philippines and China.

The CCSBT's trade management measures militate strongly against countries entering the fishery without first becoming a cooperating non-member.

In this context the set of potential members is most likely to be Australia, Japan, New Zealand, Korea, Taiwan, Indonesia, South Africa Philippines, Seychelles and China. Other than the five current members, only Seychelles and China are not in active discussion with the CCSBT over membership or admission as formal cooperating non-members. Seychelles has advised the CCSBT they do not wish to enter the fishery. China's intentions have been sought but no response has been received. It should be noted that China has plans to expand its high seas fishing fleet.

Options

Unless the convention was to be amended, Article 18 must stand as the admission provision for new members and by extension, through the CCSBT resolution, for cooperating non-members. There are, however, a number of options for extending the admission criteria in terms of the interpretation of Article 18 when addressing an application for membership:-

- Option 1.** Take the status of the fishery into account and the scientific advice from external scientist that increased effort from new entrants would be a serious risk to the fishery.
- Option 2.** Recognise the sacrifices the existing membership has taken in managing the fishery
- Option 3** Factor in the research contribution of the applicant.

Adoption of these options might be put into effect by the adoption of an appropriate resolution by the Commission.

Enforcement could be effected by using the CCSBT's trade management measures and the restrictions placed on countries, which have ratified the Fish Stocks Agreement.

QUOTAS/CATCH LIMITS FOR NEW MEMBERS

This is a difficult issue in a fishery like the SBT fishery where the stock is being fully exploited by existing members and fishing non-members. No other regional fisheries body has been able to develop a quantitative allocation formula.

The experience of other regional fisheries bodies is that when the subject has been addressed, a list of allocative criteria has been established, which is used as a framework for subjective negotiations. However, in many cases the criteria have only applied to new or under-exploited fisheries. Fisheries, which are being tightly regulated and fully exploited, are not available for participation by new entrants. The criteria do not directly determine the amount of quota.

ICCAT has developed a set of criteria entitled “*ICCAT Criteria for the Allocation of Fishing Possibilities*”. A copy is at Attachment A. The criteria include past and present fishing practices; stock status and the occurrence of the stock in EEZs and on the high seas; and a range of coastal states interests.

IATTC does not have allocative criteria. For managed fisheries, catch for the IATTC area of competence is limited by maintaining catch for members at a specified previous catch level using fishing season controls, gear restrictions quotas etc. New members could only enter if an existing member reduced their catch.

In the processes leading up to the creation of the *WCPFC*, consideration has not been given to the allocation of fishing rights.

The IOTC has not yet established any management processes that involve setting catch limits.

NEAFC have established criteria for allocating catch to new entrants. The criteria mainly apply to new fisheries that are not subject to catch limitations and include historical catch in the NEAFC area, current fishing presence and contributions to relevant research. These criteria are used to allocate access to a ‘cooperation quota’ which is set by NEAFC for non-members. NEAFC publicises the fact that stocks regulated by NEAFC are fully allocated and that opportunities for access are minimal.

The *NAFO* convention provides a set of general criteria for allocating catch including historical involvement in the fishery, dependence of coastal communities and contributions to conservation. NAFO maintains a quota for “others” for use by non-members. Like the NEAFC, access for new entrants is likely only to be available for un-regulated fisheries.

Current Situation in CCSBT

The CCSBT has members with full participation rights, and provision for cooperating non-members, which can fully participate except for taking decisions and voting. Cooperating non-members must formally agree to observe the conservation and management measures of the CCSBT, including adherence to

any catch limit. Three countries are being considered for admission as cooperating non-members – Indonesia, Philippines and South Africa.

Scientific advice to the CCSBT is that at an annual catch of around 16,000 tonnes per annum there is an equal chance of the stock declining or recovering. This assessment may be amended after the stock assessment update is completed at the Scientific Committee meeting in September 2004.

In the context of this advice, the CCSBT has agreed to a total allowable catch (TAC) of 14,030 tonnes for members and 900 tonnes for cooperating non-members. National allocations against these totals are:-

Japan	6,065 tonnes
Australia	5,265 tonnes
Taiwan	1,140 tonnes
Korea	1,140 tonnes
New Zealand	420 tonnes
	<u>14,030 tonnes (94%)</u>
Indonesia	800 tonnes
Philippines	50 tonnes
South Africa	30 tonnes*
	<u>850 tonnes (6%)</u>

* Initial offer

A set of de facto allocation criteria has applied in setting the national allocations not too dissimilar to the structures applying in NAFO and NEAFC and the allocative principles of ICCAT:-

- Separate TACs for members and non-members
- Catch history
- Coastal state status
- Recognition of sacrifice
- Stock status

The allocations for the three original members, *Japan, Australia and New Zealand* reflect relative catch history and large reductions in quotas to conserve the fishery.

The allocations for the two more recent members, *Korea and Taiwan* reflect catch histories and an equity adjustment to reflect the sacrifice already taken by the existing members. Both countries' national allocations are well below their reported catch histories prior to joining the CCSBT.

The allocation for *Indonesia* incorporates a similar reduction over historical catch levels accepted by existing members but also reflects more recent catch history.

The catch limit for the *Philippines* is around the average catch of recent years but below their maximum catch.

For *South Africa*, which is the initial stages of developing a tuna fishery, the interpretation of catch history is being assessed by the CCSBT.

Options

Two options are presented, which reflect the bounds of possible models.

Option 1

Having used a de facto formula to set catch limits for almost all of the potential participants in the SBT fishery, which is generally satisfactory, could form the base of an allocative criteria for the few remaining potential new entrants. This option could be specified along the following lines:-

- Only members and formal cooperating non –members would be allocated catch quotas and would be recognised by Commission members in the context of the CCSBT trade management measures
- Separate TACs would be allocated to members and cooperating non-members/new entrants reflecting scientific advice on the status of the stock.
- The TAC for existing members would not be less than 93% of the total TAC.
- The TAC for non-members/new entrants would not be more than 7% of the agreed total TAC.
- If a cooperating non-member became a full member, or a new entrant acceded directly, their allocation would be transferred to the members' TAC and the percentage shares outline above adjusted accordingly.
- The individual non-member/new entrant's catch allocation would be calculated by taking account of:
 - recent catch history in own right
 - recent catch history by third party fishing in their EEZ
 - any status as a developing coastal state
 - history of cooperation with the CCSBT
 - the application of a discounting factor to ensure equity with existing members which have made sacrifices to manage and conserve the fishery.

Weights might be allocated to these criteria to assist in calculating a catch allocation, although establishing weights is likely to be very subjective.

Option 2

An alternative to Option 1 would be a less quantified set of allocation criteria similar to that adopted by the ICCAT, which would apply to all participants in the fishery. Broad judgements and consensus would be required to implement this model

