

Ministry for Primary Industries
Manatū Ahu Matua



Review of Future Allocation Model – New Members

New Zealand

Prepared for the 5th Meeting of the Commission for the
Conservation of Southern Bluefin Tuna Strategy and Fisheries
Management Working Group (SFMWG 5)

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Introduction

The southern bluefin tuna stock has improved significantly in recent times; as evidenced by the most recent stock assessment results. The increase in availability of the species combined with greater fishing effort by fleets flagged to non-member countries has invariably raised the likelihood of non-member catch occurring. This in turn is likely to lead to a change in the Membership dynamic of this Commission.

The prospect of wider membership within the Commission for the Conservation of Southern Bluefin Tuna (CCSBT) is a realistic one with States such as Fiji recently making enquiries¹ and existing Members also finding evidence of non-member catch.² The incentives for non-members to enter this fishery will only grow as the stock rebuilds, and CCSBT should act in advance of this likely heightened interest. New Zealand believes that current members should adopt a pragmatic and proactive approach to this eventuality by developing clear rules and guidelines that encourages and enables wider membership without compromising the significant gains made to date.

For much of its existence, CCSBT has applied a compliance model which relied heavily on the assumption of a single market (i.e. Japan) that would drive non-members to cooperate in order to gain access to this lucrative market. However, recent studies have shown that significant quantities of southern bluefin tuna are being consumed in non-member countries, such as China³, with much of it invariably coming from non-member fleets, given the relatively low level of exports reported by Members to those countries as part of the catch documentation scheme. This Commission must recognise that previous assumptions are no longer valid and that it must adopt a more active approach to non-member cooperation.

Defining clear allocation mechanisms that balance the rights of new entrants and existing Members will be a difficult task for this Commission and one that arguably no RFMO has managed to date.⁴ However, by simply ignoring this task, CCSBT exposes itself to a number of risks and prospective States may seek to simply establish catch history outside of the CCSBT management regime in the absence of such guidance. Reaching agreement on a path to membership and allocation ahead of this scenario will allow CCSBT to better dictate the terms surrounding inclusion. Those terms could not only limit the potential for unrestrained effort in the fishery, but also strengthen existing management tools used by current Members (e.g. improved cooperation with the catch documentation scheme).

Recent Discussions

During the 24th meeting of the Commission for the Conservation of Southern Bluefin Tuna (CCSBT 24), members briefly touched on the issue of future allocations for new members as part of its annual discussions on the Strategic Plan. Further discussion was deferred to the 5th Strategy and

¹ Paragraph 98, Report of the 21st annual meeting of the Commission.

² Findings from New Zealand High Seas Patrols in the South Pacific, report presented to 11th meeting of the Compliance Committee.

³ Report to TRAFFIC International Genetic species identification – SBT market presence in China, report presented at 11th meeting of CCSBT Compliance Committee.

⁴ Lodge, M.W., D. Anderson, T. Lobach, G. Munro, K. Sainsbury and A. Willock (2007), Recommended Best Practices for Regional Fisheries Management Organizations: Report of an Independent Panel to Develop a Model for Improved Governance by Regional Fisheries Management Organizations, Chatham House, London.

Fisheries Management Working Group Meeting (SFMWG 5) with New Zealand offering to provide a paper to assist those conversations.

This topic is also directly related to the strategies of developing “options (based on Convention text) for long term allocation arrangements for all Members, including new Members, and apply to TAC increases or decreases” and defining “processes for those seeking cooperating non-member or membership status” in the current Strategic Plan which were assessed as a medium/high and medium priorities respectively.⁵

International Context

The two main international instruments to consider as part of this discussion are the United Nations Convention on the Law of the Sea (UNCLOS) and the United Nations Fish Stocks Agreement (UNFSA). The most relevant articles in terms of new membership and cooperation are provided below for each; however, it should be noted neither UNCLOS nor the UNFSA provide any guidance on allocation principles or processes beyond the overarching statements made under UNFSA article 10(b).⁶

United Nations Convention on the Law of the Sea

Article 63(2)

Where the same stock or stocks of associated species occur both within the exclusive economic zone and in an area beyond and adjacent to the zone, the coastal State and the States fishing for such stocks in the adjacent area shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary for the conservation of these stocks in the adjacent area.

Article 64

1. The coastal State and other States whose nationals fish in the region for the highly migratory species listed in Annex I shall cooperate directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout the region, both within and beyond the exclusive economic zone. In regions for which no appropriate international organization exists, the coastal State and other States whose nationals harvest these species in the region shall cooperate to establish such an organization and participate in its work.

2. The provisions of paragraph 1 apply in addition to the other provisions of this Part.

United Nations Fish Stocks Agreement

Article 8(3)

Where a subregional or regional fisheries management organization or arrangement has the competence to establish conservation and management measures for particular straddling fish stocks or highly migratory fish stocks, States fishing for the stocks on the high seas and relevant coastal States shall give effect to their duty to cooperate by becoming members of such organization or participants in such arrangement, or by agreeing to apply the conservation and management measures established by such

⁵ Strategic Plan for the Commission for the Conservation of Southern Bluefin Tuna 2015 – 2020.

⁶ Cox, A. (2009), “Quota Allocation in International Fisheries”, OECD Food, Agriculture and Fisheries Papers, No. 22, OECD Publishing, Paris. <http://dx.doi.org/10.1787/218520326143>

organization or arrangement. States having a real interest in the fisheries concerned may become members of such organization or participants in such arrangement. The terms of participation in such organization or arrangement shall not preclude such States from membership or participation; nor shall they be applied in a manner which discriminates against any State or group of States having a real interest in the fisheries concerned.

Article 10(b)

Functions of subregional and regional fisheries management organizations and arrangements

In fulfilling their obligation to cooperate through subregional or regional fisheries management organizations or arrangements, States shall:

(b) agree, as appropriate, on participatory rights such as allocations of allowable catch or levels of fishing effort;

Article 11

New members or participants

In determining the nature and extent of participatory rights for new members of a subregional or regional fisheries management organization, or for new participants in a subregional or regional fisheries management arrangement, States shall take into account, inter alia:

(a) the status of the straddling fish stocks and highly migratory fish stocks and the existing level of fishing effort in the fishery;

(b) the respective interests, fishing patterns and fishing practices of new and existing members or participants;

(c) the respective contributions of new and existing members or participants to conservation and management of the stocks, to the collection and provision of accurate data and to the conduct of scientific research on the stocks;

(d) the needs of coastal fishing communities which are dependent mainly on fishing for the stocks;

(e) the needs of coastal States whose economies are overwhelmingly dependent on the exploitation of living marine resources; and

(f) the interests of developing States from the subregion or region in whose areas of national jurisdiction the stocks also occur.

Current CCSBT Context

The CCSBT has two types of Membership plus a Cooperating status for Non-Members:

- Membership of the Commission
- Membership of the Extended Commission
- Cooperating Non-Member of the Extended Commission

Membership of the Commission is open to 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.⁷

The Executive Secretary has standing instructions to invite all States and entities whose fishing vessels harvest SBT, or through whose exclusive economic or fishery zone SBT migrates, to cooperate with the Commission by acceding to the Convention or, as the case requires, by becoming a member of the Extended Commission or applying to the Extended Commission for the status of a Cooperating Non-Member (CNM).⁸

The Convention for the Conservation of Southern Bluefin Tuna (the Convention) does currently provide some overarching principles which are relevant in the context of encouraging cooperation of non-members:

With a view to furthering the attainment of the objective of this Convention, the Parties shall cooperate with each other to encourage accession by any State to this Convention where the Commission considers this to be desirable.⁹

In terms of allocation among the Parties, the Convention states that the Commission shall consider:

- (a) relevant scientific evidence;
- (b) the need for orderly and sustainable development of southern bluefin tuna fisheries;
- (c) the interests of Parties through whose exclusive economic or fishery zones southern bluefin tuna migrates;
- (d) the interests of Parties whose vessels engage in fishing for southern bluefin tuna including those which have historically engaged in such fishing and those which have southern bluefin tuna fisheries under development;
- (e) the contribution of each Party to conservation and enhancement of, and scientific research on, southern bluefin tuna;
- (f) any other factors which the Commission deems appropriate.¹⁰

The Convention does not provide any specific guidance on the issue of non-member allocation however the “need for orderly and sustainable development of the fishery” is particularly pertinent given the current rebuild of the stock and the heightened interest that the larger biomass may garner from those not currently involved in the fishery.

Article 5 of the Resolution to Establish the Status of Cooperating Non-Member of the Extended Commission and the Extended Scientific Committee comes closest to directly addressing the issue of non-member allocation. However, in its narrow application to only cooperating non-members, and discretionary and vague direction, it provides little in the way of direct guidance:

⁷ www.ccsbt.org

⁸ Paragraph 2, Resolution to Establish the Status of Cooperating Non-member of the Extended Commission and the Extended Scientific Committee

⁹ Article 5, Convention for the Conservation of Southern Bluefin Tuna.

¹⁰ Article 8, Convention for the Conservation of Southern Bluefin Tuna.

In deciding upon a total allowable catch and its allocation the Extended Commission may negotiate catch limits for Cooperating Non-Members. Cooperating Non-Members shall abide by any negotiated limit.

Although some overall guidance exists within the Convention and its resolutions, there is no agreed mechanism to apply in determining what (if any) portion of the TAC should be allocated to a new member or cooperating non-member. CCSBT's approach towards new member allocations has varied over the years and offers no clear precedent to point to as the preferred option for this Commission.

Potential Allocation Mechanisms

Negotiation

The CCSBT status quo essentially leaves the decision on whether to make an allocation for non-members up for negotiation among the existing Members. This model provides Members with the ultimate say as to what access may be granted to new CNMs. It does, however, create a high level of uncertainty for any State that is considering the move to CNM status since there are no guarantees that any effort to meet CCSBT's obligations and contribute to the future management of the stock will be reflected in their allocation.

The current process also lacks transparency and is more vulnerable to political pressures beyond those that are immediately relevant to the management of the stock.

Catch History

Across many RFMOs, catch history has formed the primary basis for allocation decisions, however, these typically relate to initial allocations either when the RFMO is first established or a new fishery emerges. Catch history is less well suited to situations where initial allocations have already been made and the fishery is either fully or over-allocated.

The primary benefit of using catch history is that it is often easier to quantify than other determining factors, such as the needs of coastal communities, which often include a significant qualitative component.

The main reason for an established RFMO to avoid emphasising catch history as a criteria for new cooperating non-member allocation is the clearly perverse incentive that it creates for States to increase their effort and inflate their catch history immediately prior to joining. As States build catch history as non-cooperating non-members, they not only contribute nothing towards the effective management of the stock but they also undermine the efforts of those that do.

Tender Process

Although usually restricted to domestic fisheries management, CCSBT could utilise a tendering process that would allow cooperating potential-members to bid for an allocative share of the resource. This would allow those non-members to legitimately build catch history while also making a valuable financial contribution towards the improved management of the stock. Tenders could be timed to MP outcomes which result in increases in global TAC.

Source of New Member Allocation

After having determined that an allocation for a cooperating non-member should be made, Members will be faced with the decision on how to resource this new allocation and given that this

Commission is bound by a Management Procedure the options in this regard are obviously constrained.

Existing Members

Any concession to a new CNM within the current quota block would have to be taken from existing allocations given that the total allowable catch is fully allocated. With the exception of allowances made for research mortality and non-member/IUU catch, the TAC now rests entirely within the Membership and therefore any significant CNM allocation would require that Members forego some of their currently agreed allocation.

Any such reduction would undermine the negotiations which led to the current allocations and would be difficult for members to accommodate especially as they also make concessions to allow for the agreed definition of attributable catch to take effect.

Non-Member Estimate

CCSBT 23 set aside part of the total allowable catch in recognition of the potential for IUU fishing and the catch being taken by non-member fleets. Under certain circumstances, it would be expected that a non-member joining the Commission would remove some of the potential for non-member catch and therefore some of their allocation could be covered by using a portion of the estimate.

It should be noted that some members and observers have expressed concerns that the current estimate does not fully reflect the scale of the catch involved and that a reduction in this figure could be difficult to justify under those circumstances.

Future TAC Increases

One scenario which avoids a reduction of current allowances is simply to constrain future CNM allocations to the start of three year blocks where the MP recommends an increase. This would obviously restrict opportunities for non-members to join and do little to encourage cooperation in the meantime. This option does, however, impose a lower burden on existing Members and recognises the sacrifices already made.

Conclusion

The current lack of definitive guidance when dealing with future allocation, particularly in the case of non-members, creates an environment of uncertainty that encourages behaviour detrimental to the management efforts of this Commission.

New Zealand believes that CCSBT should establish a clear path to allocation for future members and cooperating non-members as a matter of priority given that the incentives for non-member interest in this fishery will only grow as we benefit from strong recent recruitment classes.

New Zealand is seeking agreement from Members on:

- The need for an agreed detailed mechanism for future allocations to non-members; and
- Guidance from the Membership on preferred options to consider in developing a proposal for consideration at CCSBT 24.

Should Members agree to the above, New Zealand would welcome the opportunity to lead the drafting of the proposal in collaboration with other Members and the Secretariat.