

RESOLUTION OF THE OUTSTANDING ISSUE OF ADJUSTMENT OF NATIONAL ALLOCATIONS IN ACCORDANCE WITH THE CCSBT1 MUTUAL UNDERSTANDING

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SUMMARY

- The Commission has acknowledged that there is an outstanding issue that needs to be resolved relating to adjustment of national allocations as set out in the 1994 Mutual Understanding reached at CCSBT1. The Mutual Understanding provides that (i) the Commission will increase New Zealand's allocation to an equitable share of the TAC; and (ii) the allocations of Japan and Australia will be adjusted to ensure gradual parity between the two members.
- The two parts of the Mutual Understanding are closely linked and recognise key issues for the three original parties that were important in the negotiation of the Convention leading up to 1994. It is possible to distinguish between the two elements of the Mutual Understanding and therefore in the manner in which they might now be resolved. This distinction is important given the Commission's decision at CCSBT10 to move to consideration of the allocation principles reflected in the Mutual Understanding rather than its exact application.
- Resolution of the New Zealand anomaly is an immediate question of equitable allocation based on its coastal state interests and past conservation efforts both of which are key allocation principles of international law and the CCSBT Convention. The Japan/Australia parity element, having arisen from other considerations, may be amenable to resolution at a later date between the members concerned.
- New Zealand's allocation has not increased since 1994. Its current allocation does not reflect its status as a responsible coastal state or the available catch in the New Zealand EEZ. This situation is inequitable and was explicitly recognised in the CCSBT1 Mutual Understanding.
- The allocation principles reflected in the first element of the CCSBT1 Understanding are those listed in Article 8(4) of the Convention text, which are reinforced by relevant international law of the sea principles.
- Those principles could be accommodated in the current CCSBT environment in one of the following ways:
 1. Reallocation of the TAC in accordance with Article 8(4);
 2. An increase in New Zealand's allocation on the basis of the total actual catch rather than TAC; or
 3. A one-off increase in New Zealand's allocation taking full account of the most recent advice of the Scientific Committee regarding the status of the stock.

- New Zealand has not indicated a preference for any of the three options but notes that the Commission agreed in 2003 that the outstanding issues in respect of national allocations should be resolved no later than CCSBT11, October 2004.

Pursuant to the Resolution to Establish an Extended Commission and an Extended Scientific Committee, adopted at the Seventh Annual Meeting of the Commission for the Conservation of Southern Bluefin Tuna in April 2001, references in this paper to the “Commission” may be read to include the Extended Commission.

INTRODUCTION

1 At CCSBT10, the Extended Commission acknowledged there is an outstanding issue relating to adjustment of national allocations as set out in the Mutual Understanding reached at CCSBT1. The Extended Commission recognised that it needed to address and resolve this issue taking full account of the CCSBT Convention and relevant principles in international law. It further recognised that it should do so no later than CCSBT11, taking into account the context of future consideration of Total Allowable Catch (TAC), national allocations and decisions on the rules for implementation of the Management Procedure (MP).¹

2. New Zealand was invited to prepare a paper in advance of CCSBT11 exploring how the allocation principles reflected in the CCSBT1 Mutual Understanding might be accommodated given the current CCSBT environment, including the admission of two new members to the Extended Commission at CCSBT9, and as the Extended Commission moves towards adopting a MP.

3 This paper responds to the Extended Commission’s request and includes the following:

- I. A summary of the CCSBT1 Mutual Understanding;
- II. An analysis of the background to conclusion of the Mutual Understanding in 1994;
- III. A clear identification of the allocation principles reflected in the CCSBT1 Mutual Understanding, the CCSBT Convention and the relevant principles in international law;
- IV. An analysis of the current CCSBT environment and its potential influence on accommodation of those allocation principles; and
- V. Possible options for accommodating the allocation principles reflected in the CCSBT1 Mutual Understanding at CCSBT11.

I. SUMMARY OF CCSBT1 MUTUAL UNDERSTANDING

4 The CCSBT1 Mutual Understanding is a decision of the Commission that records and reaffirms the understanding in place between the three original Commission members in relation to future adjustments to national allocation (Annex 1)². At CCSBT1 in 1994, the TAC for SBT was set at 11,750 tonnes and allocations to the members

¹ See CCSBT10 Reports of the Meetings for the Tenth Year of the Commission: Approval of Decisions taken by the Extended Commission; Paragraphs 51-54.

² As provided in the Resolution to Establish an Extended Commission and an Extended Scientific Committee, adopted at the Seventh Annual Meeting of the Commission for the Conservation of Southern Bluefin Tuna in April 2001, members of the Extended Commission have committed to respect the decisions of the Commission as provided by the provisions of the Convention.

were retained at 6,065 tonnes for Japan, 5,265 tonnes for Australia, and 420 tonnes for New Zealand. In recognition of the fact that allocations are inherently dynamic and would need to be re-adjusted to reflect changing circumstances, the Mutual Understanding set out that:

(a) New Zealand would initially raise its voluntary catch limit to 450 tonnes (clause 1); and

(b) Australia would move to equality of national allocations with Japan. At the same time, New Zealand would raise its catch limit to either 1,000 tonnes or 6% of the TAC, whichever is greater (clause 2). It was envisaged that the adjustment would take place in four steps (clause 3). The first adjustment to New Zealand's allocation was due to occur when the TAC reached or exceeded 12,750 tonnes and subsequent adjustment steps were due to occur when the TAC increased by at least an additional 1,000 tonnes (clause 4). Adjustments between the allocations of Australia and Japan were to occur over the same timeframe.

5 The two parts of the Mutual Understanding are closely linked and recognise key issues for the three original parties that were important in the negotiation of the Convention leading up to 1994. However, given the Extended Commission's decisions at CCSBT10, the importance of the Mutual Understanding does not necessarily lie in the detail but in the recognition and implementation of the allocation principles the agreement reflects.

6 The first element of the CCSBT1 Mutual Understanding gives New Zealand the first claim over any increase in TAC and ensures that New Zealand's allocation will increase to 1,000 tonnes or 6% of the TAC, to represent an equitable allocation. The second element of the Mutual Understanding provides for parity between the Australian and Japanese allocations. While this element of the Mutual Understanding, and the part by which national allocations for Japan and Australia would be brought to parity, were linked in the original Mutual Understanding, there is a distinction between these two elements and therefore it is feasible to consider ways in which the two issues might now be separately addressed and resolved. Resolution of the New Zealand anomaly is an immediate question of equitable allocation to reflect coastal state interests and past conservation efforts. Such resolution need not be dependent upon nor should it alter the ongoing existence of the Australia/Japan aspects of the CCSBT1 Mutual Understanding. The Japan/Australia parity element arose from other considerations and may be amenable to resolution at a later date between the members concerned. While all aspects of the 1994 Mutual Understanding remain relevant in the Commission's ongoing work on allocations, progress on one element need not be dependent on movement on the other.

II. ANALYSIS OF THE BACKGROUND TO CONCLUSION OF THE MUTUAL UNDERSTANDING IN 1994

7 The CCSBT1 Mutual Understanding reflected the history of trilateral consultations for conservation of SBT between Japan, Australia and New Zealand, which led to the formation of the CCSBT. When Japan, Australia and New Zealand began trilateral consultations in 1983, Japan and Australia were catching some 20,000 tonnes of SBT each, effectively depleting the SBT stock. Both Japan and Australia had been catching SBT in large quantities, with Japan catching up to 75,000 tonnes of SBT per annum in the 1960s. In comparison, New Zealand SBT fisheries were still at a developing stage, catching around 100 tonnes of SBT in the 1980s. The parties therefore agreed that no formal quota would be imposed for New Zealand until its catch reached 1,000 tonnes, whereas voluntary catch restrictions of 23,150 tonnes for Japan and 14,500 tonnes for Australia were agreed in 1985. In 1986, New Zealand accepted a

“development quota” of 1,000 tonnes, with catch limits for Japan and Australia set at 19,500 tonnes and 11,500 tonnes respectively.

8 In 1988, both Japan and Australia agreed to take a considerable reduction in their SBT quota to 8,800 tonnes and 6,250 tonnes respectively in response to significant concerns about the status of the stock. New Zealand also agreed to a voluntary catch limit of 450 tonnes on the basis that its voluntary reduction would not prejudice its entitlement to a 1,000 tonne allocation. In 1989, the three states agreed to take a further reduction in the TAC, with agreement to allocations of 6,065 tonnes for Japan, 5,265 tonnes for Australia and 420 tonnes for New Zealand. At the same time, the states agreed that New Zealand’s catch limit would be restored to 450 tonnes and then to 1,000 tonnes as soon as the TAC increased.

9 The agreement that New Zealand’s allocation would increase from 420 to 1,000 tonnes was in recognition of the fact that New Zealand:

- (i) was contributing to the conservation of the stock through its voluntary reduction in catch limit;
- (ii) was not a depletor of the SBT stock in that it was not over-fishing and that it caught mostly adult SBT;
- (iii) was still developing its SBT fishery; and
- (iv) is a coastal state through whose exclusive economic zone (EEZ) SBT migrates.

This agreement was recorded as the 1994 CCSBT1 Mutual Understanding. At the time New Zealand made it clear that it did not wish to be a party to the Convention unless its coastal state rights and interests in the SBT fishery were formally recognised by the Commission through an equitable allocation.

III. IDENTIFICATION OF THE ALLOCATION PRINCIPLES REFLECTED IN THE CCSBT1 MUTUAL UNDERSTANDING

10 The CCSBT1 Mutual Understanding does not explicitly refer to the allocation principles on which the Commission based its decision to adjust New Zealand’s allocation and to provide parity between the allocations of Japan and Australia. As the Mutual Understanding is a decision of the Commission, it is possible however to elicit the allocation principles reflected in the Mutual Understanding from the context of its conclusion in 1994. The historical background and the circumstances leading to its conclusion indicate that the following principles are reflected in the Mutual Understanding:

- The allocation principles listed in Article 8(4) of the Convention for the Conservation of Southern Bluefin Tuna (Annex 2), including acceptance that national allocations will change over time to reflect changing circumstances; and
- Relevant principles of international law.

Convention’s allocation principles

11 Japan, Australia and New Zealand adopted the Convention text in May 1993 and it subsequently entered into force in May 1994. At the first annual meeting of the

Commission (in 1994) members concluded the CCSBT1 Mutual Understanding. The Understanding not surprisingly reflects the agreed CCSBT allocation principles as set out in Article 8(4) of the Convention.

12 It is important to note that the principles in Article 8(4) should be applied each time the Commission takes a decision on allocation of the TAC, including reconfirmation of an existing TAC.

13 The allocation principles listed in the Convention text reflect the fact that the CCSBT environment is not static, and that the TAC and national allocations are to be re-adjusted by the Commission in line with changing circumstances. The principles in Article 8(4) are reflected in the CCSBT1 Mutual Understanding in the following ways:

(a) Relevant scientific evidence

Scientific evidence showing the depleted state of the SBT stock and concern about the ability of the stock to rebuild was the compelling reason behind the formation of the CCSBT. The scientific evidence also showed the depletion of SBT stock that over-fishing had caused, with the need to impose voluntary catch limits leading to the drastic reductions in catch in the late 1980s.

(b) The need for orderly and sustainable development of SBT fisheries

The acceptance of this principle underpinned the approach taken by the three members since 1983. The Mutual Understanding reflects this principle in the staged approach it takes to adjustment in New Zealand's national allocation.

(c) The interests of parties through whose exclusive economic or fishery zones SBT migrates

The importance of coastal state rights, especially in determining national allocations, was not only reflected in the CCSBT Convention (both in Article 8(4) and in the Preamble), but also mentioned explicitly in various historical trilateral meetings between Japan, Australia and New Zealand prior to 1994. New Zealand is a coastal state through whose EEZ SBT migrates.

The historical fishing in the NZ EEZ (up to 7,500 tonnes per year) by other States, most notably Japan, in the early 1980s clearly demonstrates the available catch in the New Zealand EEZ, and needs to be taken into account in determining an allocation to New Zealand in excess of 420 tonnes. New Zealand agreed to limit its sovereign rights within its EEZ in respect of SBT when it became a member of CCSBT. However, this action was balanced by agreement that New Zealand's allocation would increase to 1,000 tonnes in recognition of its coastal state rights, as provided for under Part V of United Nations Convention on the Law of the Sea 1982 (UNCLOS).

(d) The interests of parties whose vessels engage in fishing for SBT including those which have historically engaged in such fishing and those which have SBT fisheries under development

The allocation of 6,065 tonnes for Japan and 5,265 tonnes for Australia at CCSBT1 was largely in recognition of their historical catch levels. For New Zealand an allocation of 1,000 tonnes was given as a "development quota". This recognised that New Zealand was unable to build up catch history because it had adopted voluntary conservation measures when its SBT fisheries were still at a developing stage. This difference was first mentioned explicitly in trilateral

meetings in 1986, and was consistently accepted by Australia and Japan until 1994 when the CCSBT1 Mutual Understanding formally recorded New Zealand's right to develop its fishery in the context of the Commission.

(e) The contribution of each party to conservation and enhancement of, and scientific research on, SBT

Japan, Australia, and New Zealand took voluntary conservation measures in the early 1980s, which eventually led to the establishment of the CCSBT in 1994 to address the concerns arising from the perilous state of SBT stock caused by over-fishing. The three founding members have contributed to the stock assessment of SBT since the start of the trilateral negotiation in the early 1980s, such as producing independent stock assessment and undertaking biological and genetic studies.

In the case of New Zealand, it has taken a number of voluntary and legislative conservation measures on SBT fisheries. This was despite the fact New Zealand was not responsible for the depletion of the SBT stock. This difference was recognised and recorded in various trilateral consultations which became the basis of the Mutual Understanding.

Relevant principles of international law

14 In concluding the CCBST1 Mutual Understanding, parties to the Convention have clearly taken into account relevant principles in international law, which were also reflected in the Convention text. In its preamble the Convention notes the adoption of UNCLOS; pays due regard to the rights and obligations of the Parties under relevant principles of international law; notes that states have established EEZs within which they exercise jurisdiction for the purposes of exploring and exploiting, conserving and managing living resources; acknowledges the importance of scientific information; and recognises that cooperation is essential to ensure the conservation and optimum utilisation of SBT. Further, Article 4 of the Convention specifically notes that measures adopted pursuant to the Convention shall not prejudice the positions or views of any Party with respect to its rights and obligations under treaties to which it is party or its positions with respect to the law of the sea.

15 The principles of international law relevant to an understanding of the background to the CCSBT1 Mutual Understanding, and therefore an indication of the principles the Mutual Understanding reflects, are:

- **Coastal state interests:** the rights of coastal states to access the fishery within their EEZs (UNCLOS/ref Article 56) and the corresponding obligation to promote optimum utilisation of the living resources without prejudice to their conservation, including recognition of the capacity of coastal states to develop a fishery (UNCLOS/ref Articles 61 and 62);
- **Cooperation:** the obligation of states to cooperate specifically in the management of highly migratory species (UNCLOS/ref Article 64) and generally to cooperate in the conservation and management of resources through subregional or regional organisations (UNCLOS/ref Article 118);
- **Scientific evidence:** the obligation to determine allowable catch and to design other conservation measures on the best scientific evidence available to maintain or restore populations at levels which can produce the maximum sustainable yield (UNCLOS/ref Article 119); and

- **Non-discrimination:** Conservation measures cannot discriminate against fishermen of any state (UNCLOS/ref Article 119(3)). In this context, the Commission must be consistent in its application of the allocation principles.

16 Although the CCSBT1 Mutual Understanding does not itself explicitly make reference to these principles of international law, it is clear that the Commission members took these principles into account - they are clearly reflected in the Convention text and are integral to the UNCLOS legal framework under which the CCSBT Convention and the CCSBT1 Mutual Understanding were reached. The members of the Commission cannot therefore be said to have set aside these relevant legal principles and obligations simply because there is no direct reference to them in the CCSBT1 Mutual Understanding. Resolution of the CCSBT1 issue must therefore take these principles into account, as should any allocation decision of the Commission.

IV. AN ANALYSIS OF THE CURRENT CCSBT ENVIRONMENT AND ITS POTENTIAL INFLUENCE ON ACCOMMODATION OF THE ALLOCATION PRINCIPLES

17 AT CCSBT10 the Extended Commission recognised that any resolution of the outstanding issue related to the CCSBT1 Mutual Understanding must take account of the current CCSBT environment. This section assesses the main characteristics of the current CCSBT environment, and whether the current environment in any way affects the accommodation of allocation principles reflected in the Mutual Understanding.

18 The current CCSBT environment can be characterised as follows:

- (a) Expanding membership;
- (b) Ongoing relevance of allocation principles reflected in the CCSBT1 Mutual Understanding;
- (c) Ongoing concerns about the status of the stock;
- (d) Evolution of international approach since 1994; and
- (e) Move towards a management procedure.

(a) Expanding membership

19 Korea joined the Commission in 2000 and the Fishing Entity of Taiwan became a member of the Extended Commission in 2001. Each has an allocation of 1,140 tonnes, determined primarily on the basis of previous catch history as a “special entry” consideration to provide an incentive to their earliest entry to the organisation. Arguably such allocations unduly emphasised Article 8(4)(d) of the Convention over other relevant considerations in Article 8(4), such as the contribution of each Party to conservation and enhancement of, and scientific research on, SBT. Ongoing allocation decisions in the Commission should take into account all factors listed in Article 8(4). In addition to the expansion of membership and creation of the Extended Commission, the Commission now provides for Cooperating Non-Members (CNM). In July 2004 the Philippines became the first CNM with a catch limit of 50 tonnes.

20 The CCSBT1 Mutual Understanding was not time bound or otherwise made subject to changes in the Commission’s membership, and the CCSBT Convention explicitly states in Article 19 that no reservations may be made. In particular, changes in the Commission’s membership, or the introduction of CNMs, do not negate or limit the previous decisions of the Commission. Further, additions to the Commission’s

membership do not undermine the rights of coastal state members under international law or the right to development of fisheries, both of which are key principles reflected in the CCSBT1 Mutual Understanding, the Convention, and international law.

(b) Ongoing relevance of the allocation principles reflected in CCSBT1 Mutual Understanding

21 At CCSBT10, the Commission increased the TAC from 11,750 tonnes to 14,030 tonnes. Strict application of the CCSBT1 Mutual Understanding would have seen New Zealand's allocation increase at this point, and the first adjustment between the allocations of Australia and Japan take place. No such adjustments were made at that time. Instead, CCSBT10 recognised that the Commission needed to address and resolve the outstanding issue taking full account of the Convention and relevant principles in international law. It agreed that it should do so no later than CCSBT11.

22 In highlighting the importance of the allocation principles behind the CCSBT1 Mutual Understanding at CCSBT10, the Commission signalled a desire to accommodate the intent behind the agreement, placing greater emphasis on the principles in the Mutual Understanding rather than its exact application. Such a shift immediately opens up a wider range of options to explore in terms of resolving the outstanding issue of New Zealand's inequitable allocation. This shift also provides an opportunity for further examination of ways to resolve the second element of the Mutual Understanding.

(c) Ongoing concerns about the status of the stock

23 New Zealand has not previously sought to activate the CCSBT1 Mutual Understanding and to increase its national allocation where it has had an opportunity to do so. These decisions have been based primarily on its ongoing concerns about the status of the SBT stock and other priorities it saw for the Commission, primarily the urgent need to secure the involvement of new members in 2000 and 2001.

24 The most recent advice of the Scientific Committee (September 2004, to be considered at CCSBT11) is that it is more likely (compared to the assessment in 2001) that the stock will decline at current catch limits. Furthermore, the Commission has recognised that the current objective of rebuilding the stock to 1980 levels by 2020 is not realistic. Any resolution of the outstanding issue under the Mutual Understanding must take into account the current status of the stock, other relevant advice of the Scientific Committee, and the Commission's management objective.

(d) Evolution of international approach since 1994

25 As noted above in paragraphs 14-16, UNCLOS provides useful insight into the relevant principles of international law governing management of marine living resources. The most significant development in international law since the conclusion of the CCSBT1 Mutual Understanding in 1994 is the entry into force of the United Nations Fish Stocks Agreement (UNFSA)³.

26 Although not all members of the Commission are party to the UNFSA, it is nevertheless relevant to the decision-making capacity of those that are party, namely Australia and New Zealand, and therefore has an impact on the decisions of the Commission itself. The CCSBT Convention provides in its Article 4 that the Convention

³ Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.

and measures adopted pursuant to it are without prejudice to members' rights and obligations under treaties to which they are party. Although the UNFSA is silent on specific allocation principles it clearly strengthens the relevant principles established in UNCLOS and requires Parties to take its General Principles, as listed in its Article 5, into account in fisheries management decisions. Within the broader context of conservation and optimum utilisation of living resources, those principles in UNFSA particularly relevant to this issue are: the duty to cooperate (Article 8); protection of the interests of coastal states (Article 7); and the functions of fisheries management organisations (Articles 9 and 10). These principles further support an equitable resolution of the CCSBT1 Mutual Understanding based on a recognition of New Zealand's coastal state interests, members' duty to cooperate, relevant scientific evidence and the Commission's duty to ensure measures are non-discriminatory.

27 In addition, the development of allocation principles in other regional fisheries management organisations (RFMOs) such as the International Commission for the Conservation of Atlantic Tuna (ICCAT) and the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC), provide helpful guidance to the practice of other RFMOs, in determining equitable allocations of the TAC and highlight the move away from simply allocating on the basis of historical catch.

28 In the case of ICCAT, concerns by a number of members that existing allocation decisions failed to adequately provide for coastal state interests resulted in the development of new allocation principles. Those new principles introduce not only the need to consider the interests of the qualifying participants but also the distribution and biological characteristics of the stocks, including the occurrence of stocks in areas under national jurisdiction. ICCAT also provides a useful example of differentiation between member states in the allocation of resources. In 1998, as part of the rebuilding programme for the western bluefin stocks in the Atlantic, ICCAT adopted an approach to allocation that applies differing allocations (as a percentage of the total TAC) to the three states involved dependent upon the TAC at the time. For example should there be a low TAC the majority of the TAC is allocated to the two coastal states, but with increased TAC a greater proportion of the TAC would be allocated to the distant water fishing members.

29 WCPFC is a recent example of an RFMO concluded subsequent to the entry into force of the UNFSA. WCPFC reinforces the approach taken in CCSBT and the UNFSA whereby allocation of the TAC is based upon a number of principles, including but not limited to: the historic catch in the area; past and present fishing patterns; the record of compliance by participants; the needs of coastal communities; the respective contribution of participants to conservation and management of the stocks; and the fishing interests and aspirations of coastal states in whose jurisdiction the stock occurs.⁴

(e) Move towards adopting a management procedure

30 The Commission is working on developing a MP for CCSBT. The MP is aimed at providing an alternative method for determining TACs, although not allocations of that TAC amongst members. It is envisaged that the MP will result in TAC changes from time to time and that members allocations will consequently also need to be adjusted. National allocations could be proportionally adjusted with existing allocations moving up or down according to the outcome of the MP. This approach would wrongly assume that the existing allocations represent an equitable basis for proportional adjustments to be made and that they reflect the allocation principles set out in the Convention

⁴ See Article 10(3) of WCPFC at <http://www.oceanaffairs.org>.

(Article 8(4)). As the CCSBT10 noted, there is an outstanding issue with respect to existing national allocations that should be resolved before the basis or rules are set for future allocation decisions, particularly in an environment where the TAC is likely to change on a regular basis.

V. OPTIONS FOR ACCOMMODATING THE ALLOCATION PRINCIPLES REFLECTED IN CCSBT1 MUTUAL UNDERSTANDING

31 New Zealand was invited to prepare a paper exploring how the allocation principles reflected in the CCSBT1 Mutual Understanding might be accommodated given the current CCSBT environment, including the admission of two new members, and as the Commission moves towards adopting a MP. The following section puts forward possible options for resolving the issue at CCSBT11. In drafting the paper, New Zealand has not listed these options in any order of preference. They are put forward in response to the Commission's request for options to accommodate the allocation principles reflected in the CCSBT1 Mutual Understanding.

(1) Reallocation

Having recognised that an anomaly exists, the Commission should look to the consistent application of the provisions of the Convention regarding allocations in order to rectify this anomaly. The current national allocations are not a reflection of the consistent application of the criteria in Article 8(4). This approach would also recognise that increasingly the Commission objectives of conservation and optimum utilisation are not being achieved due to the failure to apply the provisions of Article 8(4) to the regular setting of national allocations. The Commission must rigorously apply the provisions of Article 8(4) to the allocation of future TACs.

The framework under which the allocation principles would be applied requires further discussion between members. The Secretariat's work on allocations in respect of new members to the Commission also has relevance in this discussion.

(2) "Actual catch" verses "allocated catch"

The current situation of actual catch that is significantly less than allocated catch provides an opportunity for an immediate resolution of the anomaly identified at CCSBT10. For at least the last two years actual catch has been less than allocated catch. The situation into the foreseeable future is unlikely to alter significantly.

By focusing on actual catch rather than allocated catch, there is potential for the Commission to increase New Zealand's allocation without negatively impacting upon the current or foreseeable catch of other members, nor requiring any adjustment to their allocations. Such an approach would also enable resolution of this issue within the current TAC set by the Commission.

The exact nature of the mechanism that could be used requires further detailed discussion between members.

(3) One-off increase in the New Zealand national allocation (taking full account of advice on the status of the stock)

The Commission could agree to a one-off increase in the New Zealand national allocation to immediately resolve the anomaly that currently exists. However, in considering potential options, full account must be taken of the most recent advice of the Scientific Committee regarding the status of the stock, other relevant advice of the Scientific Committee, and the Commission's management objective.

32 While developing any of these three options the Commission may wish to ask Japan and Australia to consider, and in due course report to it, on ways of addressing the outstanding element of the CCSBT1 Mutual Understanding that relates to the relative allocations of those two members. However, the Commission need not defer action on the other issues that it accepted at CCSBT10 need to be resolved at CCSBT11 while this further work is done.

CONCLUSION

33 The allocation principles reflected in the CCSBT1 Mutual Understanding support the increase of New Zealand's national allocation. New Zealand continues to recognise the importance of conservation and optimum utilisation of the SBT stock, which has delayed it from claiming its entitlement to a more equitable share of the TAC, and recognises that resolution of the anomaly in the New Zealand allocation will need to be achieved with the constraints imposed by the current stock status. The Commission has agreed to resolve this issue by CCSBT11.

34 New Zealand is a coastal state whose rights have been recognised in the Convention and various other regional and international instruments, and in whose water foreign vessels have built up their catch history. It is one of three original members of the Commission. It has taken voluntary conservation measures which have prevented it from developing its SBT fisheries. These factors are matters that are to be considered by the Commission in accordance with Article 8(4) of the Convention each time the Commission sets and allocates a TAC. Nevertheless, New Zealand's national allocation is disproportionately small compared to all other member states and is inequitable on the basis of the available catch within its EEZ. Increasing New Zealand's national allocation would not only address this anomaly, but would also be consistent with the allocation principles reflected in the Convention and the CCSBT1 Mutual Understanding in the current CCSBT environment

ANNEX 1: CCSBT1 MUTUAL UNDERSTANDING

FUTURE ADJUSTMENTS TO QUOTA ALLOCATION

1. As soon as the global quota is increased, New Zealand will raise its present voluntary catch limit of 420 tonnes to 450 tonnes.
2. As the global quota is increased, Australia will move to equality of national allocations with Japan. At the same time, New Zealand will raise its catch limit to either 1,000 tonnes or 6% of the global quota, whichever is greater.

The adjustments will take place in four steps, upon the condition that at least 90% of the quota allocated to Australia and New Zealand in the year prior to each adjustment being made (excluding any frozen portion) is caught. Should any of the trilateral partners fail to qualify for movement to a subsequent step in any one year, this will not prejudice that country's aspirations to complete the four steps. Catches of Australian or New Zealand quota by vessels operated by nations outside the trilateral group will not count as part of the 90%. If catches by such nations exceed 10% in any one year the implications of these developments will be reviewed.

3. The four steps will be taken as follows:

Step 1: New Zealand will raise its catch limit to the equivalent of 4.161 percent of the global quota. After calculating the Japanese and Australian allocations according to the ratio between the two allocations for the previous year, the difference between the Australian and Japanese allocation will be reduced by one quarter; namely an amount of one eighth of the difference will be moved from the Japanese allocation to the Australian allocation.

Step 2: New Zealand will raise its catch limit to the equivalent of 4.861 percent of the global quota. After calculating the Japanese and Australian allocation according to the ratio between the two allocations for the previous year, the difference between the Australian and Japanese allocations will be reduced by one third; namely an amount of one sixth of the difference will be moved from the Japanese allocation to the Australian allocation.

Step 3: New Zealand will raise its catch limit to the equivalent of 5.469 percent of the global quota. After calculating the Japanese and Australian allocations according to the ratio between the two allocations for the previous year, the difference between the Australian and Japanese allocations will be reduced by one half; namely an amount of one quarter of the difference will be moved from the Japanese allocation to the Australian allocation.

Step 4: New Zealand will raise its catch limit to the equivalent of six percent of the global quota, or 1,000 tonnes, whichever is greater. When the New Zealand catch exceeds 1,000 tonnes, then New Zealand will subject itself to a quota in the same way as Australia and Japan. This will in no way diminish New Zealand's determination to adhere

to the voluntary catch limits. After calculating the Japanese and Australian allocations according to the ration between the two allocations for the previous year, the difference between the two will be eliminated; namely an amount of one half of the difference will be moved to the Australian allocation.

4. The first adjustment will occur when the global quota reaches or exceeds 12,750 tonnes and subsequent adjustment steps will only occur when the increase in global quota since the last adjustment is at least 1,000 tonnes. If the increase in the last adjustment is greater than 5,000 tonnes, then a two step adjustment will be made at one time.

ANNEX 2: ARTICLE 8(4) OF THE CONVENTION

Article 8

4. In deciding upon allocations among the Parties under paragraph 3 above 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.