



# Final advice for an in-season increase to the Total Allowable Catch for southern bluefin tuna

Prepared by the Ministry for Primary Industries

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## Executive summary

1. In January 2018, the Ministry for Primary Industries (MPI) consulted on proposed options for an in-season increase to the southern bluefin tuna (*Thunnus maccoyii*) Total Allowable Catch (TAC) under section 14(6) of the Act. This was based on recent national allocation decisions made by the Commission for the Conservation of Southern Bluefin Tuna (CCSBT).
2. The discussion document sought feedback from tangata whenua and stakeholders on how best to give effect domestically to this international agreement, with three initial options put forward (Options 1, 2, and 3 in Table 1). MPI was particularly interested in views from tangata whenua and stakeholders relating to the recent increase in recreational catch of southern bluefin tuna and how this change should be reflected in the context of an in-season review.

**Table 1. Proposed modified management settings in tonnes (t) for southern bluefin tuna**

Option	TAC	TACC	Additional Annual Catch Entitlement (ACE) <sup>1</sup>	Allowances		
				Customary	Recreational	Other mortality
1 ( <i>status quo</i> )	1,000 t	971 t	0 t	1 t	8 t	20 t
2	1,088 t ↑	971 t	88 t ↑	1 t	8 t	20 t
3	1,088 t ↑	971 t	76 t ↑	1 t	20 t ↑	20 t
3A (new option)	1,088 t ↑	971 t	71 t ↑	1 t	25 t ↑	20 t

3. A total of 18 submissions were received during consultation. Eight submissions supported Option 1, two submissions supported Option 2, five submissions (including a joint submission) supported Option 3, and three submissions provided alternative options (all proposing a larger increase for the recreational sector).
4. After considering the submissions received, MPI included an additional option, Option 3A (Table 1), for your consideration. This option better reflects the most recent information received from the recreational sector that indicated increased recreational catches, and takes into account the alternative options provided within three submissions.
5. Although a number of submitters mentioned wider management issues in the recreational fishery, those are not within the scope of this immediate decision, and will be reviewed later this year.

<sup>1</sup>During an in-season increase, under section 68 of the Act, the Minister shall create an additional amount of Annual Catch Entitlement for the stock that equals the amount by which he or she would have increased the TACC, whilst the TACC remains the unchanged.

6. MPI recommends that you agree to Option 3A. This would provide an 88 tonne in-season increase in the TAC, from 1,000 to 1,088 tonnes. Available Annual Catch Entitlement (ACE) for commercial fishers would increase by 71 tonnes, recreational allowance would increase by 17 tonnes to 25 tonnes, and the customary allowance and the allowance for other fishing related mortality would be maintained at current levels.
7. This option would allow the commercial sector to benefit from increases permitted under the stock rebuilding strategy adopted by the CCSBT, whilst better reflecting the most recent information received from the recreational sector that indicates a notable increase in recreational catches.

## **Introduction and purpose**

8. MPI has consulted with tangata whenua and stakeholders on proposals for an in-season increase in the TAC for southern bluefin tuna. This decision document provides you with MPI's final advice on these proposals and comprises relevant background, statutory considerations, a summary of submissions, and analysis on proposed management options.
9. The full submissions that MPI received on the relevant initial proposals are contained in Appendix 2.

## **Need for review**

10. Recent decisions by the CCSBT have created a utilisation opportunity for New Zealand.
11. The CCSBT is the regional fisheries management organisation responsible for the management of southern bluefin tuna, of which New Zealand is a founding member. The CCSBT sets the Global Total Allowable Catch (GTAC) using a science-based management procedure designed to respond adaptively to the latest indicators from the stock.
12. Based on the latest results of the management procedure operation, the CCSBT agreed to increase the GTAC for 2018-20 by 3,000 tonnes to 17,647 tonnes. Based on allocation agreements reached at the CCSBT, New Zealand's share of the increase is 88 tonnes per annum.
13. In New Zealand, southern bluefin tuna is managed within the Quota Management System, with a 1 October to 30 September fishing year. The TAC effective on 1 October 2017 does not reflect the increase that was confirmed at the Commission meeting that closed on 12 October 2017. Section 14(6) of the Act allows for changes in the TAC to occur in-season for southern bluefin tuna. The use of this mechanism would enable New Zealand to apply its increased national allocation in time to be

utilised in the first fishing year of the three year allocation block, and realise greater economic and social benefits.

14. There is also recent information from the recreational sector that indicates increased catch in the recreational fishery that goes beyond the recreational allowance set out under the TAC. At CCSBT, New Zealand's longstanding position has been that of advocating for credible estimates of mortality across all fishing sectors being accounted for within the country allocation. Therefore, MPI's recommended option (Option 3A) seeks to reflect the best available information on recreational catch, increasing the recreational allowance to 25 tonnes for the remainder of the fishing year.
15. Any approved in-season increase would expire at the end of the fishing year (30 September 2018). MPI plans to review the stock as part of the 1 October 2018 sustainability round review process, to adjust the TAC for the final two years of the three year quota block.

## BIOLOGICAL INFORMATION

16. Southern bluefin tuna is a highly migratory pelagic species, moving between the high seas and states' exclusive economic zones throughout the southern hemisphere, primarily in waters between 30 and 45 degrees south.
17. Adults are broadly distributed in the South Atlantic, Indian and western South Pacific Oceans, especially in temperate latitudes. Juveniles are broadly distributed along the continental shelf of Western and South Australia and in high seas areas of the Indian Ocean. Southern bluefin tuna caught in the New Zealand exclusive economic zone appear to represent the easternmost extent of a stock whose centre is in the Indian Ocean.<sup>2</sup>
18. Southern bluefin tuna are apex predators and have been recorded to live up to 40 years old, weighing over 200 kilograms and reaching over two meters in length. There is uncertainty about the average size and age that southern bluefin tuna become mature. Available data suggests that maturity may be at around 1.5 meters in length and no younger than eight years of age. The Indian Ocean is the only known area that spawning takes place, and this occurs between September and April.<sup>3</sup>

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<sup>2</sup> Ministry for Primary Industries, Fisheries Assessment Plenary, November 2017 Stock Assessments and Stock Status for Southern Bluefin Tuna

<sup>3</sup> <https://www.ccsbt.org>

## CURRENT MANAGEMENT APPROACH

19. The National Fisheries Plan for Highly Migratory Species sets out a series of Management Objectives you are required to take into account when making a decision on the management options presented for southern bluefin tuna. The most relevant being:
- a) Management Objective 1: Promote a viable and profitable tuna fishery in New Zealand;
  - b) Management Objective 2: Maintain / enhance world class game fisheries in New Zealand fisheries waters<sup>4</sup>;
  - c) Management Objective 3: Deliver fair opportunities for access to HMS fisheries;
  - d) Management Objective 5: Māori interests (including customary, commercial, recreational, and environmental) are enhanced;
  - e) Management Objective 6: Maintain a sustainable fishery for HMS within environmental standards;
  - f) Management Objective 10: Recognise and provide for Deed of Settlement obligations; and
  - g) Management Objective 12: Maintain an effective fisheries management regime.
20. The Harvest Strategy Standard states that, where an international organisation or agreement has adopted harvest strategies and rebuilding plans that meet or exceed the minimum standards contained herein, the approach of Ministry and Ministry representatives to the international organisation or agreement will generally be to support those strategies.
21. The CCSBT uses a science-based management procedure that is designed to rebuild the spawning stock biomass to achieve an interim rebuilding target of 20% of unfished spawning stock biomass by 2035 (with 70% probability). This interim target is currently under review by CCSBT members, with New Zealand strongly advocating for a more ambitious rebuilding target (i.e. reaching a higher level of unfished spawning stock biomass within a shorter timeframe).

## CURRENT STOCK STATUS

22. The 2017 stock assessment suggested that the southern bluefin tuna stock remains at a low state, estimated to be 13% of the initial spawning stock biomass, and below the level to produce maximum sustainable yield (MSY).<sup>5</sup> There has been improvement since previous stock assessments, which indicated the stock was at 5.5% of original biomass in 2011 and 9% in 2014.<sup>6</sup>

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<sup>4</sup> According to the Fisheries Act 1996, New Zealand fisheries waters means: all waters in the exclusive economic zone of New Zealand; all waters of the territorial sea of New Zealand; all internal waters of New Zealand; and all other fresh or estuarine waters within New Zealand where fish, aquatic life, or seaweed that are indigenous to or acclimatised in New Zealand are found.

<sup>5</sup> According to the Fisheries Act 1996, maximum sustainable yield (MSY), in relation to any stock, means the greatest yield that can be achieved over time while maintaining the stock's productive capacity, having regard to the population dynamics of the stock and any environmental factors that influence the stock.

<sup>6</sup> [www.ccsbt.org](http://www.ccsbt.org)

## FISHERY CHARACTERISATION

23. Since the start of New Zealand’s domestic southern bluefin tuna fishery, handline, trolling, and longline have been used to target the species in the New Zealand fisheries waters. All but a few tonnes of the domestic southern bluefin tuna catch is now taken by longline.
24. The TAC is split between the New Zealand fisheries sectors. These allocations are the customary Māori non-commercial allowance, the recreational allowance, and the Total Allowable Commercial Catch (TACC). The TAC also accounts for other sources of mortality.
25. Section 21 of the Act states that, in setting or varying TACC for any quota management stock, you shall have regard to the TAC for that stock and shall allow for—
- (a) the following non-commercial fishing interests in that stock, namely—
    - (i) Maori customary non-commercial fishing interests; and
    - (ii) recreational interests; and
  - (b) all other mortality to that stock caused by fishing.

## TACC

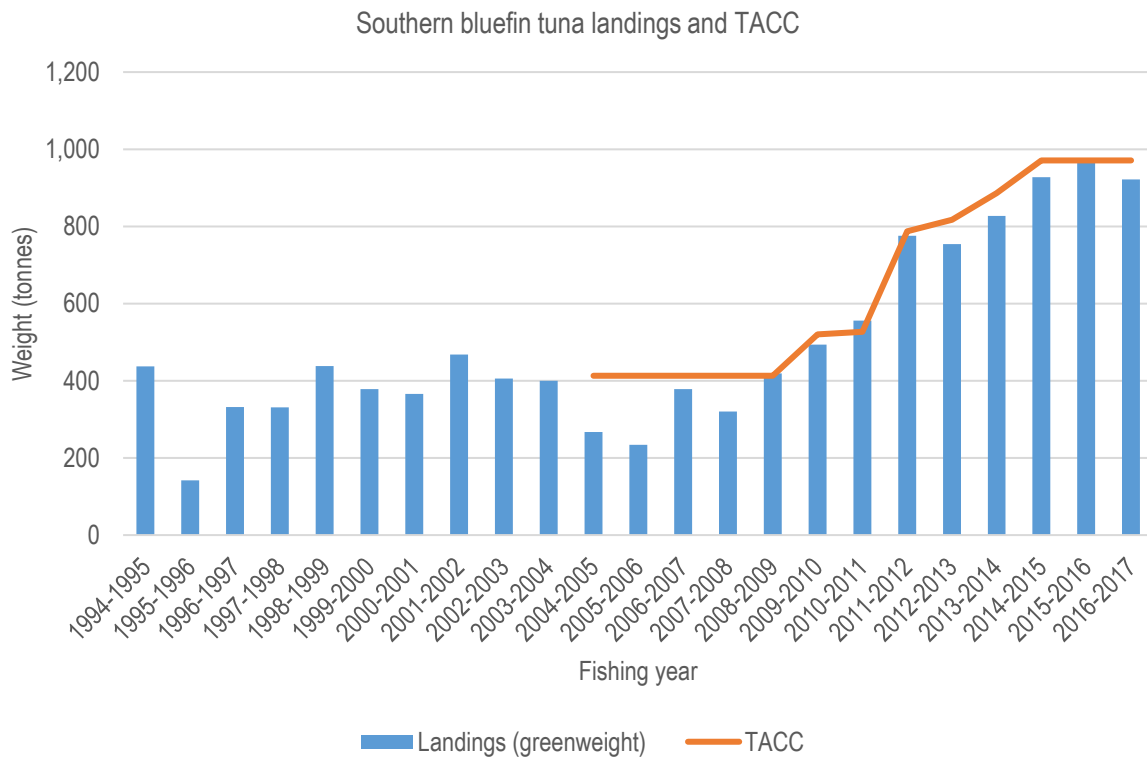
26. Southern bluefin tuna is a valuable product, primarily sold for use as sashimi in the Japanese market. The New Zealand commercial southern bluefin tuna fishery provided export earnings of around \$17.8 million in 2016.
27. Longline fishing targeting southern bluefin tuna primarily occurs off the west coast of the South Island and along the east coast of the North Island. The fishing season for southern bluefin tuna is essentially the same for both areas and generally begins in April/May and finishes in July/August. Southern bluefin tuna catch has steadily increased in recent years, in part reflecting increases to the New Zealand national allocation over that time show in Table 2.

**Table 2. GTAC and New Zealand national allocation from 2012 up until 2020 in tonnes (t).**

	2012	2013	2014	2015-2017	2018-2020
<b>GTAC (t)</b>	10,449	10,949	12,449	12,647	17,647
<b>New Zealand allocation (t)</b>	800	830	910	1,000	1,088



28. Since the introduction of southern bluefin tuna into the Quota Management System in 2004, the number of vessels operating in the fishery has declined from 99 to 32 during the 2016-17 fishing year. The domestic fleet is primarily composed of smaller vessels, which are typically at sea for only a few days each trip, and take southern bluefin tuna both as a target, and as a bycatch of bigeye tuna target sets.
29. For the 2016-17 fishing year, the New Zealand southern bluefin tuna TACC was 971 tonnes. Actual commercial catch was 912 tonnes.



**Figure 1. Commercial catch and TACC of southern bluefin tuna from 1994-1995 to 2016-2017 within New Zealand fishing waters (STN 1).**

30. If an in-season increase in TAC is agreed, the increase is given effect by the generation of additional Annual Catch Entitlement for the commercial sector, following consideration of appropriate allowances for other use in the fishery.

### Customary Māori non-commercial allowance

31. Customary non-commercial fishing for southern bluefin is that fishing which is undertaken under the Fisheries (South Island Customary Fishing) Regulations 1999, the Fisheries (Kaimoana Customary Fishing) Regulations 1998, or regulations 50 -52 of the Fisheries (Amateur Fishing) Regulations 2013. The customary regulatory system provides for the reporting of customary harvest. Best available information from reports indicates that there is minimal, if any southern bluefin catch being taken under the relevant customary fishing regulations. Consequently, MPI is not recommending changes to the current customary fishing allowance.

## Recreational allowance

32. Prior to 2007, recreational catches of southern bluefin tuna were likely rare. This may have been due to the locations and seasons which the fish were found in New Zealand fisheries waters (generally winter months, in areas with little recreational fishing). After 2007, the Pacific bluefin tuna recreational fishery developed and there were reports of bycatch of southern bluefin tuna. Over the last decade, recreational catches of southern bluefin tuna have been recorded in the months from February to September, and is becoming a more targeted species for recreational fishers on both coasts.
33. Compulsory reporting for recreational charter vessel operators was introduced in November 2010. In 2012, four recreational charter vessel operators reported catching southern bluefin tuna in New Zealand fisheries waters. Reported catches since then are illustrated in Table 3, below.

**Table 3. Reported catch of southern bluefin tuna in the recreational fishery**

	2012	2013	2014	2015	2016	2017
<b>NZSFC fish landed</b>	0	0	2	1	7	266
<b>ACV fish landed</b>	4	12	0	5	36	47
<b>Estimated total weight (kilograms)</b>	196 <sup>a</sup>	550	-	1,100	1,440	24,300

<sup>a</sup>In 2012, the estimated weight is the total of four landed fish (131 kilograms) plus two fish released alive (165 kilograms).

34. In 2017, a mixture of factors, including favourable weather conditions, proximity of fish, and increased recreational interest in southern bluefin tuna, resulted in much higher levels of catch than previously seen in this fishery. An initial estimate of recreational catch based on gamefish club records of 17 tonnes was used to propose an option to increase the allowance for recreational fishing to 20 tonnes, because of the uncertainty around the availability and proximity of southern bluefin tuna to the recreational sector in 2018, given the low level of recreational southern bluefin tuna catch in previous years. Further on, a provisional estimate was generated from records gathered from gamefish clubs showing 266 fish were landed with an estimated total weight of 19.4 tonnes, and 13 were released alive. Additionally, there were 47 fish reported by charter vessel logbooks, provisions for unreported catch, and more catch in August and September, which increased the total estimate to 24.3 tonnes. Given that private recreational vessels are not required to report catches, this figure could be an underestimate however is the best available at this time.
35. Because of the previous low take of southern bluefin tuna, there are currently no measures imposed on the recreational sector in relation to southern bluefin tuna, and

therefore there is nothing preventing them from catching more than the allowance. Changes to the recreational management of the fishery will be further discussed later this year.

36. This paper proposes an increase to 25 tonnes for the recreational allowance under a new option, Option 3A. MPI's initial proposal (Option 3), of an increase to 20 tonnes for the recreational sector, was based on an initial estimate as outlined above and the uncertainty around the availability of southern bluefin tuna to the recreational sector in 2018. Information contained in submission from the NZSFC indicates that there is a significantly high level of interest from the recreational sector to develop the Eastern Bay of Plenty southern bluefin tuna fishery in 2018. Charter vessels have already received bookings for trips targeting southern bluefin tuna, and private vessels are planning trips to target southern bluefin tuna in July. Should southern bluefin tuna be found further offshore than in 2017, NZSFC emphasised the competence of recreational fishers and the capability of their vessels to still engage in the fishery. Option 3A is in recognition of New Zealand's international obligation to manage catch within its national allocation of southern bluefin tuna.

### **All other mortality caused by fishing**

37. The current allowance for all other fishing-related mortality is set at 20 tonnes. This allowance reflects estimated mortality from live releases along with any potential underreporting. MPI does not have any new information that would suggest that a change of this allowance is necessary and therefore proposes to maintain the current allowance.

### **Legal considerations specific to southern bluefin tuna**

38. This section outlines provisions of the Act specific to southern bluefin tuna. General statutory considerations that you are obliged to consider when making your decision include sections 5, 8, 9, 10, 11, 12, 13, 14, 20, and 21 of the Act, and are provided to you in Appendix 1.

### **SECTION 5(a) – INTERNATIONAL OBLIGATIONS**

39. Section 5(a) states that the Act is to be interpreted, and all persons exercising or performing functions, duties, or powers under it are required to act, in a manner consistent with New Zealand's international obligations relating to fishing. As a general principle, where there is a choice in the interpretation of the Act or the exercise of discretion, the decision maker must choose the option that is consistent with New Zealand's international obligations relating to fishing.
40. The three key pieces of international law relating to fishing, and to which New Zealand is a party, are the United Nations Convention on the Law of the Sea, 1982 (UNCLOS) and the 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 (UNSFA), and the United Nations Convention on Biological Diversity 1992 (the CBD).

41. International obligations also derive from New Zealand being a signatory to a number of international conventions, including regional fisheries management organisations and conventions. Of particular relevance to southern bluefin tuna is the Convention for the Conservation of Southern Bluefin Tuna. The objective of this Convention is to ensure, through appropriate management, the conservation and optimum utilisation of southern bluefin tuna.

## **SECTION 5(b) – TREATY OF WAITANGI (FISHERIES CLAIMS) SETTLEMENT ACT 1992**

42. Section 5(b) states the Act is to be interpreted, and all persons exercising or performing functions, duties, or powers under it are required to act, in a manner consistent with the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (the Settlement Act). This obligation furthers the agreements expressed in the Deed of Settlement referred to in the Preamble to the Settlement Act.

## **SECTION 9 – ENVIRONMENTAL PRINCIPLES**

43. In deciding whether to increase the TAC and how to allocate the increased allocation, you are required to take into account the following environmental principles:
  44. (a) associated or dependent species should be maintained above a level that ensures their long-term viability
  45. (b) biological diversity of the aquatic environment should be maintained
  46. (c) habitat of particular significance for fisheries management should be protected.
47. Below is a summary of the interactions between the southern bluefin tuna fishery and the aquatic environment, and how these are likely to be affected by the proposals.

### **Maintaining viability of associated or dependent species (section 9(a))**

#### *Fish bycatch*

48. Bigeye tuna, pacific bluefin tuna, swordfish, and blue sharks are the main fish species associated with the New Zealand southern bluefin tuna surface longline fishery. These species were introduced into the Quota Management System on 1 October 2004 and the TACCs are generally under-caught. Other associated fish species, such as albacore and striped marlin, are not managed under the Quota Management System and have no current sustainability concerns. Fishers are required to report the catch of all species when providing their monthly returns.
49. MPI considers that the potential increase in effort associated with proposed Options 2, 3, or 3A would not be substantial enough to give rise to concerns related to fish bycatch.

## Biological diversity of the aquatic environment (section 9(b))

### *Seabirds*

50. Seabird interactions with New Zealand's commercial fisheries are managed under the framework of the '2013 National Plan of Action to Reduce the Incidental Captures of Seabirds in New Zealand Fisheries' (NPOA-Seabirds).
51. The NPOA-Seabirds established a risk-based approach to managing fishing interactions with seabirds. As a priority, management actions are targeted at the seabird species most at risk, but also aim to minimise captures of all seabird species to the extent practicable.
52. Seabird interactions with vessels in the New Zealand southern bluefin tuna surface longline fishery generally occur at low level but include a number of species at high risk from fishing.<sup>7</sup>
53. Regulatory and non-regulatory management measures are in place to mitigate and manage interactions with seabirds. Regulatory measures require commercial fishers setting surface longlines to use at least two out of three prescribed mitigation measures:
  1. Use tori lines; and
  2. *Either:*
    - a. Set lines at night; *or*
    - b. Use weighted lines.
54. Non-regulatory management measures include initiatives by the Department of Conservation's Protected Species Liaison Officer Programme, such as vessel-specific management plans that describe on-board practices that fishers employ to reduce the risk of seabird capture, and direct mentoring of vessel operators.
55. MPI is reviewing the current regulatory measures, and the NPOA Seabirds will be reviewed in 2018. However MPI considers that the potential increase in effort associated with proposed Options 2, 3, or 3A would not be substantial enough to exacerbate the risk to seabirds from the commercial fishery.

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<sup>7</sup> According to the [Assessment of the risk of commercial fisheries to New Zealand seabirds](#), (Richard, T., Abraham, E.R. (2014) 2006–07 to 2012–13. MPI), species that the southern bluefin tuna surface longline fishery interact with that are considered at high risk from fishing include the black petrel, Gibson's albatross, and norther Buller's albatross.

## *Marine mammals*

56. Fur seal interactions with vessels in the New Zealand southern bluefin tuna fishery have been observed, with most being released alive. The Department of Conservation classifies the fur seal population as, “Not Threatened – least concern”, and note that the New Zealand population has been increasing in recent years and is estimated at being over 200,000 fur seals.<sup>8</sup>
57. There were 3 observed bottlenose dolphin captures in the southern bluefin tuna surface longline fishery between the 2010/11-2015/16 fishing years. All of the 3 bottlenose dolphins were released alive.<sup>9</sup>
58. MPI considers that the potential increase in effort associated with proposed Options 2, 3, or 3A would not be substantial enough to exacerbate the risk to dolphins and fur seals from the commercial fishery.

## *Turtles*

59. There have previously been low numbers of observed captures of sea turtles in the southern bluefin tuna surface long line fishery. All observed turtles captured were released alive. Warmer sea surface temperatures observed so far this year may result in an increased chance of interactions with turtles in the surface longline fishery. MPI will continue to monitor the level of turtle interactions in the coming months but does not consider that the potential for additional effort in the fishery from Options 2, 3 or 3A will significantly increase the risk of interaction. The Department of Conservation Protected Species Liaison Officer Programme developed informal guidelines on turtle handling and release in 2017. These guidelines were included in vessel management plans that were provided to each vessel in the surface longline fleet during visits by liaison officers.

**Table 4. Number of observed turtle captures in the southern bluefin tuna surface longline fishery 2010-11 to 2015-16.<sup>10</sup>**

Fishing Year	Number of observed turtle captures in the surface longline fishery
2010-11	3
2011-12	0
2012-13	0
2013-14	0
2014-15	0
2015-16	1

## **Habitats of particular significance for fisheries management (section 9(c))**

60. No habitat of particular significance for fisheries management has been determined for the New Zealand southern bluefin tuna stock.

<sup>8</sup> <http://www.doc.govt.nz/nature/native-animals/marine-mammals/seals/nz-fur-seal/>

<sup>9</sup> <https://psc.dragonfly.co.nz/2017v1/released/whales-and-dolphins/southern-bluefin/all-vessels/eez/2002-03-2015-16/>

<sup>10</sup> <https://psc.dragonfly.co.nz/2017v1/released/turtles/southern-bluefin/all-vessels/eez/2002-03-2015-16/>

## SECTION 14 – ALTERNATIVE TAC FOR STOCKS SPECIFIED IN SCHEDULE 3

61. Section 13(2) sets out the rules of how the TAC should be set. However, section 14(1) allows you to set an alternative TAC for southern bluefin tuna if you consider it appropriate to achieve the purpose of the Act. As southern bluefin tuna is a highly migratory species, migrating over considerable distances and spending only part of its time in New Zealand waters, it is not possible to calculate Maximum Sustainable Yield<sup>11</sup> for the portion of the stock found within New Zealand fisheries waters (STN 1). The national allocation for New Zealand is determined as part of an international agreement through the CCSBT.
62. Under section 14(6) you may increase the TAC within the fishing year of southern bluefin tuna, after considering information about the abundance of tuna during the current fishing year. If you increase the TAC, the TAC shall revert to its previous level at the end of that fishing year (section 14(7)).

### Consultation

63. Under section 12(1) before setting or varying any sustainability measure under the Act you are required to:
- consult with those classes of persons having an interest in the stock or the effects of fishing on the aquatic environment in the area concerned, including, but not limited to, Māori, environmental, commercial and recreational interests; and
  - provide for the input and participation of tangata whenua having a non-commercial interest in the stock concerned or an interest in the effects of fishing on the aquatic environment in the area concerned; and have particular regard to kaitiakitanga.
64. Section 12(2) states that as soon as practicable after setting or varying any sustainability measure, you shall give the persons consulted under 12(1), the reasons in writing for your decisions.
65. MPI consulted with Te Ohu Kaimoana as representatives of commercial Māori interests.
66. Environmental organisations, recreational sector representatives, industry members, and industry representatives were also consulted at two longline workshops and two meetings of the Highly Migratory Species Fish Plan Advisory Group.<sup>12</sup> MPI informed stakeholders of potential upcoming changes to the TAC. MPI then notified around 100 stakeholders via email when the discussion document was made available on the MPI consultation webpage.<sup>13</sup>

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<sup>12</sup> There were around 20 attendees for the two longline workshops, and around 15 attendees for the two Fish Plan Advisory Groups.

<sup>13</sup> MPI notified all stakeholders on the contacts lists for the longline workshop and the Fish Plan Advisory Group, which amounted to around 100.

67. Input and participation by tangata whenua is provided through direct engagement with Iwi Fishery Fora where possible, or through communication with the relevant iwi.
68. On 11 January 2018, MPI sent out a tangata whenua consultation letter which included information on the southern bluefin tuna in-season increase. The tangata whenua consultation letter was sent to leaders Iwi Forums that engage with MPI for them to distribute within their respective fora.

## Submissions received

69. Full submissions are attached as Appendix 1. Submissions on the Southern bluefin tuna proposal were received from:
  - a) Benjamin Newson Turner Fishing
  - b) Alain Jorion
  - c) Andrew Saunders
  - d) Judith Gould
  - e) Aaron Smith
  - f) Jasper Campbell
  - g) Kate James
  - h) Mike Currie
  - i) Robert Hendriks
  - j) Tim Taylor
  - k) Wayne Bird
  - l) Wayne Muir
  - m) Te Ohu Kaimoana (TOKM)
  - n) Iwi Collective Partnerships (ICP)
  - o) Fisheries Inshore New Zealand (FINZ)
  - p) Sanford and New Zealand Japan Tuna Co LTD (NZJT)
  - q) New Zealand Sports Fishing Council (NZSFC)
  - r) New Zealand Recreational Fishing Council (NZRFC)

A total of 18 submissions were received from commercial, recreational, and customary stakeholders, as well as members of the public. Eight submissions supported Option 1, two submissions supported Option 2, five submissions (including a joint submission) supported Option 3, and three submissions provided alternative options that included larger increases for the recreational sector.

70. TOKM raised a number of high level policy issues in its submission that are not addressed in this decision document. The provisions of the Settlement Act have been considered in the development of the proposal in this paper. Officials consider that the proposals are consistent with that Act. The increases in ACE will be allocated to Māori in proportion to their current quota holdings.



## Evaluation of options

### OPTION 1 – MAINTAINING THE STATUS QUO

71. Option 1 would maintain the status quo, where the TAC would remain unchanged for the remainder of the 2017-18 fishing year, at 1,000 tonnes. Within the TAC, allowances would remain as follows:
- i. A customary allowance of 1 tonne;
  - ii. A recreational allowance of 8 tonnes;
  - iii. An allowance for other fishing mortality of 20 tonnes; and
  - iv. A TACC of 971 tonnes.

#### Impact

72. Option 1 would not reflect the recent decision by the CCSBT to increase New Zealand's increased national allocation and the resulting utilisation opportunity. Also, this option would not reflect the most recent information received from the recreational sector that indicated notably increased catches in this fishery.

#### Cost

73. The cost of retaining the status quo comes in the form of foregone benefits by the commercial sector of potential additional export revenue (outlined under Options 2, 3, and 3A).
74. New Zealand's longstanding position at CCSBT of advocating for credible estimates of mortality across all fishing sectors could be undermined if you choose this option. This is because this option does not use the most recent recreational catch estimates when apportioning the 88 tonne increase amongst the sectors.

#### Benefit

75. You could choose to forgo any increase to New Zealand's TAC because it could be argued that the sustainability of the stock may be more certain at a lower TAC level. This option may be seen as beneficial by a number of New Zealanders who place a high level of importance on conservation. However, in the context of the stock, given that 88 tonnes is representative of 0.5% of the overall GTAC, the benefit of foregoing this increase is likely to be negligible.

#### Submitters' views

76. FINZ suggest that to forego such benefits would not align with the current HMS Annual Operational Plan's stated objective of ensuring that resources are, "used in a manner that provides greatest overall economic, social and cultural benefit", nor do they meet the wider utilisation principles found under section 8 of the Act.<sup>14</sup>

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<sup>14</sup> It should be noted that the National Fisheries Plan for Highly Migratory Species sets out the management objectives, whilst the Annual Operational Plan sets out key tasks to implement the management objectives.

77. TOKM considers that Option 1 would be contrary to the purpose of the Act and the Deed of Settlement as it unreasonably constrains utilisation of the fishery.
78. ICP also opposed Option 1 based on the view that rejecting the CCBST New Zealand allocation increase would likely result in a reallocation amongst other CCSBT members, and therefore negate any potential sustainability gains to the stock.
79. Eight submissions were in support of Option 1. Five of those submissions were based around concerns over the sustainability of the stock and the need for greater protection (James, Currie, Taylor, Muir, and Bird), while the remaining three submissions in favour of this option (Saunders, Campbell, and Hendriks) provided no rationale behind their support.

### **Statutory considerations**

80. In setting a TAC under section 14 of Act, you have an obligation to do so in a way you consider will best meet the purpose of Act, that is, to provide for utilisation of fisheries resources whilst ensuring sustainability. MPI considers that this option satisfies the purpose of the Act, however, it does place more emphasis on ensuring sustainability and environmental principles than on utilisation of the southern bluefin tuna fishery.

### **OPTION 2 – INCREASING THE TAC AND MAINTAINING THE RECREATIONAL ALLOWANCE**

81. Under an increased TAC of 1,088 tonnes, Option 2 proposes to make the additional 88 tonnes available to the commercial sector and maintain the other current allowances:
- i. Maintain a customary allowance of 1 tonne;
  - ii. Maintain a recreational allowance of 8 tonnes;
  - iii. Maintain an allowance for other fishing mortality of 20 tonnes;
  - iv. Maintain the TACC of 971 tonnes; and
  - v. Increase the available Annual Catch Entitlement for commercial fishers by 88 tonnes (i.e. allocate all of the increase to the commercial sector).

### **Impact**

82. Option 2 would maximise the potential benefit to the commercial sector from the increase permitted under the stock rebuilding strategy adopted by the CCSBT. However, assigning the full increase to the commercial sector would not reflect the most recent information received from the recreational sector that indicated increased catches in this fishery.

### **Cost**

83. There are no financial costs associated with this option.

84. New Zealand's longstanding position at CCSBT of advocating for credible estimates of mortality across all fishing sectors could be undermined if you choose this option. This is because this option does not use the most recent recreational catch estimates when apportioning the 88 tonne increase amongst the sectors.

### **Benefit**

85. Benefits could be gained by the commercial sector primarily in the form of potential additional export revenues. Based on the average value derived from 2016 export statistics, an increase of 88 tonnes to the allocation of the commercial sector could create an additional \$1.1 million in export revenues if all of the TACC was caught. It should be noted, however, that the commercial sector may not catch all of the allocated entitlement, as has happened in previous fishing years (Figure 1).

### **Submitters' views**

86. TOKM supports Option 2 as an interim arrangement. This is because they consider it releases the increased allocation for use and enables iwi to exercise rangatiratanga over the southern bluefin tuna fishery.
87. Mr Smith also expressed support for Option 2 without providing further comment.

### **Statutory considerations**

88. MPI considers this option also satisfies the purpose of the Act, that is, to provide for the utilisation of the fishery resources while ensuring sustainability. This is because the CCSBT's management procedure ensures the 3,000 tonnes increase to the GTAC, and New Zealand's subsequent 88 tonnes increase, achieves rebuilding targets. Furthermore, the New Zealand increase is representative of 0.5% of the overall GTAC. Therefore, MPI considers the risk of negatively impacting on the rebuild of the stock to be negligible under this option.
89. With regard to associated or dependent species, the biological diversity of the aquatic environment, or any habitats of particular significance, MPI considers that the potential increase in effort associated with Options 2, 3, and 3A would not be substantial enough to exacerbate effects by the commercial fishery.
90. MPI considers that Option 2 better addresses the best available information compared with Option 1. This is because Option 2 addresses the information provided by the CCSBT on the current status of the stock in relation to the agreed interim rebuild targets. However, this option does not address the most recent information provided by the recreational sector, the feedback received through submissions, and updated information on future recreational interest in this fishery. Although there is some uncertainty in recreational catch estimates, available information does indicate that the current allowance significantly underrepresents the catch and value of this sector.

Therefore, MPI considers that this option does not reflect the increased interest in the recreational southern bluefin tuna fishery.

### **OPTION 3 – INCREASING THE TAC AND CHANGING THE RECREATIONAL ALLOWANCE**

91. Under an increased TAC of 1,088 tonnes, Option 3 proposes to split the increase between commercial and recreational fishers:
- i. Maintain a customary allowance of 1 tonne;
  - ii. Increase the recreational allowance by 12 tonnes to 20 tonnes;
  - iii. Maintain an allowance for other fishing mortality of 20 tonnes;
  - iv. Maintain the TACC of 971 tonnes; and
  - v. Increase the available Annual Catch Entitlements for commercial fishers by 76 tonnes.

#### **Impact**

92. Option 3 would allow the commercial sector to benefit from increases permitted under the stock rebuilding strategy adopted by the CCSBT, whilst partly reflecting the most recent information received from the recreational sector that indicated notably increased recreational catches.

#### **Cost**

93. There are no direct financial costs associated with this option. However, there is a potential commercial utilisation cost that comes from the foregone benefit outlined under Option 2. Due to a smaller increase in Annual Catch Entitlement, the potential additional export revenue is estimated to be \$150,000 less than under Option 2. It is important to note that the commercial fisheries industry did not reach the maximum allowable catch during the 2016-17 year. Therefore, the commercial fisheries industry may or may not be constrained by a lower ACE than Option 2.
94. New Zealand's longstanding position at CCSBT of advocating for credible estimates of mortality across all fishing sectors could be undermined if you choose this option. This is because this option does not use the most recent recreational catch estimates when apportioning the 88 tonne increase amongst the sectors.

#### **Benefit**

95. The potential benefits gained by the commercial sector may come in the form of additional export revenues. Based on the average value derived from 2016 export statistics, an increase of 76 tonnes to the commercial sector allowance could create an additional \$950,000 in export revenues if the maximum amount of stock under the TACC is caught.

## Submitters' views

96. TOKM rejects Option 3, believing it to be inconsistent with the Act and the Deed of Settlement 1992, and asks that discussions commence immediately on developing a coherent policy for assigning recreational and customary allowances under the CCSBT Convention and national law.
97. TOKM and FINZ have expressed concerns that Option 3 rewards the currently unconstrained recreational sector through an attribution model.
98. ICP supports Option 3. Given the highly migratory nature of southern bluefin tuna, the CCBST allocation should be fully utilised by New Zealand, with a proportion of the increase shared with recreational fishers given the increase in recreational fishing.
99. Sanford and NZJT support Option 3, however think it is timely to review the management of the recreational fishery and the potential to apply a recreational bag limit based on concerns about potential wastage.
100. FINZ support Option 3, based on the view that it is consistent with the CCSBT's agreed management procedure to achieve the agreed rebuild target reference point for the stock. FINZ also feel that it recognises the opportunity to utilise fisheries resources whilst ensuring long-term sustainability.
101. FINZ support for Option 3 is conditional/dependent upon:
  - a) Development and agreement of a coherent policy that provides the basis for allocation of future TAC and TACC increases;
  - b) The proposed in-season increase in the recreational allowance not being provided for in the absence of appropriate measures to manage and enforce recreational catch limits; and
  - c) An in-season increase to recreational catches needs to be in conjunction with the review and implementation of management options for the recreational fishery.
102. Ms Gould simply expressed support for Option 3, while Mr Jorion has suggested that the entire increase in the New Zealand national allocation be allocated to the recreational sector.

## Statutory considerations

103. For the reasons outlined in Option 2, MPI considers this option satisfies the purpose of the Act. This is because it provides for the utilisation of the southern bluefin tuna fishery while ensuring sustainability.
104. For the reasons outlined in Option 2, MPI considers that this option addresses the environmental principles and the sustainability measures.

105. The TOKM position is that only an allocation of all the TAC increase to the commercial sector would recognise and respect the rangatiratanga of iwi over this traditional fishery and be consistent with the Deed of Settlement. The Deed requires the Crown to make legislation to allocate 20% of any new quota to TOKM for distribution to Māori. The Crown has made legislation and the process for allocation of new quota is specified in section 29B of the Act which is consistent with the Deed. Section 21 of the Act specifies the actions the Minister must take when setting or varying a TACC which include making allowance for recreational fishing. MPI considers that a decision to make an allowance that accommodates the expected recreational catch to be consistent with the Deed of Settlement.
106. MPI considers that Option 3 better addresses the best available information compared with Options 1 and 2. However, Option 3 does not fully address the most recent information provided by the recreational sector, the feedback received through submissions, and updated information on future recreational interest in this fishery. Taking this into consideration, MPI also recognises that the 20 tonnes initially put forward in the discussion document, which was a precautionary figure due to the low historical catch in this fishery, may not be sufficient to account for recreational catch during this fishing year.
107. MPI considers that Option 3 better addresses non-commercial fishing interests in southern bluefin tuna compared with Options 1 and 2, however notes that this option does not increase the recreational allowance to the most recent estimate of recreational catch (of 24.3 tonnes).
108. In response to submitters' views on unrestricted recreational fishing, MPI acknowledges these concerns and accepts that management measures should be considered. For more detail see the next section on 'Other matters'.

### **OPTION 3A – INCREASING THE TAC AND CHANGING THE RECREATIONAL ALLOWANCE FURTHER**

109. Based on the feedback received through submissions and updated information on future recreational interest in this fishery, MPI has added Option 3A in recognition that the high level of recreational catch seen in 2017 is likely reflective of a long-term shift in recreational behaviour that may become the norm rather than the exception.
110. MPI's initial proposal (Option 3), of 20 tonnes for the recreational sector, was based on an initial estimate of the 2017 recreational catch, and the uncertainty around the availability and proximity of southern bluefin tuna to the recreational sector in 2018, given the low level of recreational southern bluefin tuna catch in previous years. Submission from the NZSFC indicates that there is a significantly high level of interest from the recreational sector to develop the Eastern Bay of Plenty southern bluefin tuna fishery in 2018. Charter vessels have already received bookings for trips

targeting southern bluefin tuna, and private vessels are planning trips to target southern bluefin tuna in July. Should southern bluefin tuna be found further offshore than in 2017, NZSFC emphasised the competence of recreational fishers and the capability of their vessels to still engage in the fishery.

111. Under an increased TAC of 1,088 tonnes, Option 3A proposes to increase the Annual Catch Entitlement available to commercial fisher and the recreational allowance:
- i. Maintain a customary allowance of 1 tonne;
  - ii. Increase the recreational allowance by 17 tonnes to 25 tonnes;
  - iii. Maintain an allowance for other fishing mortality of 20 tonnes;
  - iv. Maintain the TACC of 971 tonnes; and
  - v. Increase the available Annual Catch Entitlements for commercial fishers by 71 tonnes.

### **Impact**

112. Option 3A would allow the commercial sector to benefit from increases permitted under the stock rebuilding strategy adopted by the CCSBT, whilst best reflecting the most recent information received from the recreational sector that indicated notably increased recreational catches.

### **Cost**

113. There are no direct financial costs associated with this option. However, there is a potential commercial utilisation cost that comes from the foregone benefit outlined under Option 2. Due to a smaller increase in Annual Catch Entitlement, the potential additional export revenue is estimated to be \$212,500 less than under Option 2.
114. There is a potential conservation cost of this option that comes in the form of the foregone benefit outlined under Option 1. That is, higher catches could pose potential risk of negatively impacting on the rebuild of the stock. However, MPI considers this risk to be negligible for reasons outlined under Option 2.

### **Benefit**

115. MPI believes that an increase to the recreational allowance is required in order to meet both our international commitments through the CCSBT and our obligations under the Act.
116. MPI also recognises that 25 tonnes is more likely to fully account for the recreational take in the coming year, if similar levels of effort to those seen in 2017 are experienced.

## Submitters' views

117. This additional option was added after the consultation. No submissions explicitly supported this option, however, included below are those submissions that supported a larger increase to the recreational allowance than was proposed in the original options.
118. Benjamin Newson Turner Fishing supports Option 3, however feels that a 30 tonne recreational allowance would better allow for expansion of the recreational fishery and provide New Zealand with a stronger advocacy position at CCSBT. Benjamin Newson Turner Fishing also expects that the recreational allowance will be lowered once recreational bag limits are applied.
119. NZSFC suggest that a 40 tonne allowance be made for recreational harvest in the in-season adjustment to the TAC, in order to keep options open until data on the size of the catch in 2018 is available. NZSFC is concerned that a 20 tonne allowance could be seen as a benchmark that would influence future allocation decisions.
120. NZRFC support Option 3 and wish to emphasise the value of the recreational fishery for southern bluefin tuna and the potential gains in terms of increased tourism. NZRFC also suggest that 20 tonnes would not adequately account for the likely catch from the recreational sector, and that this allocation should be increased.

## Statutory considerations

121. For the reasons outlined in Option 3, MPI considers this option satisfies the purpose of the Act given that it provides for the utilisation of the southern bluefin tuna fishery while ensuring sustainability.
122. For the reasons outlined in Option 3, MPI considers that this option addresses the environmental principles and the sustainability measures, whilst also having regard to non-commercial fishing interests.
123. The TOKM position is that only an allocation of all the TAC increase to the commercial sector would recognise and respect the rangatiratanga of iwi over this traditional fishery and be consistent with the Deed of Settlement. The Deed requires the Crown to make legislation to allocate 20% of any new quota to TOKM for distribution to Māori. The Crown has provided for the process for allocation of new quota in section 29B of the Act which is consistent with the Deed. Section 21 of the Act specifies the actions the Minister must take when setting or varying a TACC which include making allowance for recreational fishing. MPI considers that a decision to make an allowance that accommodates the expected recreational catch to be consistent with the Deed of Settlement.
124. MPI considers that Option 3A best addresses the best available information. Compared with the previous options, Option 3A addresses the most recent information



provided by the recreational sector, the feedback received through submissions and updated information on future recreational interest in this fishery.

## Other matters

### ADDITIONAL SUGGESTIONS ON RECREATIONAL MANAGEMENT

125. Sanford and NZJT suggest that you consider MPI facilitating a discussion around imposing a recreational bag limit of one fish per private recreational vessel per day, and three fish per recreational charter vessel per trip from the 2018-19 fishing year.
126. FINZ raises concerns around reported incidences of fish dumping by recreational fishers during the 2016-17 southern bluefin tuna season at Waihou Bay. FINZ states that, “increasing recreational allowances rewards uncontrolled or poor fishing practices through the adoption of an attribution policy that accounts for unmanaged and uncontrolled increases in recreational and other types of fishing related mortality”. FINZ suggests that new recreational management measures be put in place to address this prior to the 2018 sustainability round.
127. NZRFC suggests that you consider placing a limit of one southern bluefin tuna per angler, and make fish dumping by recreational fishers illegal following on from reported fish dumping of southern bluefin tuna last year both on land and at sea.
128. MPI acknowledges these concerns, and agrees that management measures should be considered. Further discussion around these issues will take place later this year.

## Conclusion and recommendation

129. Recent decisions by the CCSBT have created a utilisation opportunity for New Zealand by increasing our national allocation of southern bluefin tuna by 88 tonnes. Under the status quo, this increase would not be given effect domestically during the current fishing year. Under Options 2, 3, and 3A, this increase would be given effect domestically during the current fishing year, with the increase being apportioned among the sectors.
130. MPI recommends that you approve Option 3A, which increases the recreational allowance by 17 tonnes to 25 tonnes and generates an additional 71 tonnes of ACE for the commercial sector. MPI considers that this option best meets New Zealand’s international and domestic obligations.
131. MPI notes that you have broad discretion in exercising your powers of decision making, and may make your own independent assessment of the information presented to you in making your decision. You are not bound to choose the option recommended by MPI.

*Option 1*

**Agree** to maintain the southern bluefin tuna TAC at 1000 tonnes and retain the following within the TAC:

- i. 1 tonne for Māori customary non-commercial fishing interests;
- ii. 8 tonnes for recreational fishing interests;
- iii. 20 tonnes for other sources of fishing-related mortality; and
- iv. a TACC of 971 tonnes

**Agreed / Not Agreed**

**OR:** *Option 2*

**Agree** to increase the southern bluefin tuna TAC from 1,000 to 1,088 tonnes and within the TAC:

- i. Maintain 1 tonne for Māori customary non-commercial fishing interests;
- ii. Maintain 8 tonnes for recreational fishing interests;
- iii. Maintain 20 tonnes for other sources of fishing-related mortality;
- iv. Maintain a TACC of 971 tonnes; and
- v. Increase the 2017-2018 Annual Catch Entitlement for southern bluefin tuna by 88 tonnes.

**Agreed / Not Agreed**

**OR:** *Option 3*

**Agree** to increase the southern bluefin tuna TAC from 1,000 to 1,088 tonnes and within the TAC:

- i. Maintain 1 tonne for Māori customary non-commercial fishing interests;
- ii. Increase the allocation to recreational fishing interests by 12 tonnes to 20 tonnes;
- iii. Maintain 20 tonnes for other sources of fishing-related mortality;
- iv. Maintain a TACC of 971 tonnes; and
- v. Increase the 2017-2018 Annual Catch Entitlement for southern bluefin tuna by 76 tonnes.

**Agreed / Not Agreed**

**OR:** *Option 3A*

**Agree** to increase the southern bluefin tuna TAC from 1,000 to 1088 tonnes and within the TAC:

- i. Maintain 1 tonne for Māori customary non-commercial fishing interests;
- ii. Increase the allocation to recreational fishing interests by 17 tonnes to 25 tonnes;
- iii. Maintain 20 tonnes for other sources of fishing-related mortality;
- iv. Maintain a TACC of 971 tonnes; and
- v. Increase the 2017-2018 Annual Catch Entitlement for southern bluefin tuna by 71 tonnes.

**Agreed / Not Agreed**

## Appendix 1 - Statutory considerations

This section provides an overview of your legal obligations under the Fisheries Act 1996 (the Act or the Fisheries Act) when setting or varying TACs, TACCs and deemed values for New Zealand fish stocks.

Where relevant, stock-specific details relating to these obligations are set out in the section of the discussion paper relating southern bluefin tuna.

### SECTION 5(a) – INTERNATIONAL OBLIGATIONS

Section 5(a) says the Act is to be interpreted, and all persons exercising or performing functions, duties, or powers under it are required to act, in a manner consistent with New Zealand’s international obligations relating to fishing. As a general principle, where there is a choice in the interpretation of the Act or the exercise of discretion, the decision maker must choose the option that is consistent with New Zealand’s international obligations relating to fishing.

The three key pieces of international law relating to fishing, and to which New Zealand is a party, are the United Nations Convention on the Law of the Sea, 1982 (UNCLOS) and the 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 (UNSF), and the United Nations Convention on Biological Diversity 1992 (the CBD).

International obligations also derive from New Zealand being a signatory to a number of international conventions, including regional fisheries management organisations and conventions. Of particular relevance to southern bluefin tuna is the Convention for the Conservation of Southern Bluefin Tuna. The objective of this Convention is to ensure, through appropriate management, the conservation and optimum utilisation of southern bluefin tuna.

### SECTION 5(B) – TREATY OF WAITANGI (FISHERIES CLAIMS) SETTLEMENT ACT 1992

Section 5(b) says the Act is to be interpreted, and all persons exercising or performing functions, duties, or powers under it are required to act, in a manner consistent with the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (the **Settlement Act**). This obligation furthers the agreements expressed in the Deed of Settlement referred to in the Preamble to the Settlement Act.

The development of customary regulations, Iwi Fisheries Forums, and providing for the input and participation of iwi in fisheries decisions, discussed elsewhere in this paper, are some of the ways in which the obligations in the Settlement Act are given effect to.

### SECTION 8 – PURPOSE OF THE FISHERIES ACT 1996

Section 8 says the purpose of the Act is to provide for the utilisation of fisheries resources while ensuring sustainability.

“Ensuring sustainability” is defined as: “maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations; and avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment”. “Utilisation” of fisheries resources is defined as “conserving, using, enhancing, and developing fisheries resources to enable people to provide for their social, economic, and cultural wellbeing.”

The Supreme Court has stated that the purpose statement incorporates “the two competing social policies reflected in the Act” and that “both policies are to be accommodated as far as is practicable in the administration of fisheries under the quota management system....[I]n the attribution of due weight to each policy that given to utilisation must not be such as to jeopardise sustainability”.<sup>15</sup>

## SECTION 9 – ENVIRONMENTAL PRINCIPLES

Section 9 prescribes three environmental principles that you must take into account when exercising powers in relation to the utilising of fisheries resources or ensuring sustainability.

### **Principle 1: Associated or dependent species should be maintained above a level that ensures their long-term viability.**

The Act defines “associated and dependent species” as “any non-harvested species taken or otherwise affected by the taking of a harvested species”. “Harvested species” is defined to mean “any fish, aquatic life or seaweed that may for the time being be taken with lawful authority”. So this principle is focussed on species (such as protected species) that cannot be commercially harvested.

The term “long-term viability” (in relation to a biomass level of a stock or species) is defined in the Act as a low risk of collapse of the stock or species, and the stock or species has the potential to recover to a higher biomass level. This principle therefore requires the continuing existence of species by maintaining populations in a condition that ensures a particular level of reproductive success.

Where fishing is affecting the viability of associated and dependent species, appropriate measures such as method restrictions, area closures, and potentially adjustments to the TAC of the target stock should be considered.

### **Principle 2: Biological diversity of the aquatic environment should be maintained.**

“Biological diversity” is defined in the Act as ‘the variability among living organisms, including diversity within species, between species, and of ecosystems’. Determining the level of fishing or the impacts of fishing that can occur requires an assessment of the risk that fishing might cause catastrophic decline in species abundance or cause biodiversity to be reduced to an unacceptable level.

### **Principle 3: Habitat of particular significance for fisheries management should be protected.**

Habitat is defined in the Oxford Dictionary of English to mean the natural home or environment of an animal, plant or species. In MPI’s view, in the fisheries context, this means those waters and substrates necessary for fish to spawn, breed, feed or grow to maturity. These should be protected and adverse effects on them avoided, remedied, or mitigated.

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<sup>15</sup> *Recreational Fishing Council Inc v Sanford Limited and Ors* [2009] NZSC 54 at [39].

## SECTION 10 – INFORMATION PRINCIPLES

Section 10 prescribes four information principles that you must take into account when exercising powers in relation to the utilising of fisheries resources or ensuring sustainability:

- a) Decisions should be based on the best available information;
- b) Decision makers should take into account any uncertainty in the available information;
- c) Decision makers should be cautious when information is uncertain, unreliable, or inadequate; and
- d) The absence of, or any uncertainty in, any information should not be used as a reason for postponing or failing to take any measure to achieve the purpose of the Act.

Less than full information suggests caution in decision-making, not deferral of a decision completely. “The fact that a dispute exists as to the basic material upon which the decision must rest, does not mean that necessarily the most conservative approach must be adopted. The obligation is to consider the material and decide upon the weight which can be given it with such care as the situation requires.”<sup>16</sup>

Both scientific and anecdotal information need to be considered and weighed accordingly when making management decisions. The weighting assigned to particular information is subject to the certainty, reliability, and adequacy of that information.

As a general principle, information outlined in the MPI Fishery Assessment Plenary Report is considered the best available information on stock status and should be given significant weighting.<sup>17</sup> The information presented in the Plenary Report is subject to a robust process of scientific peer review and is assessed against the Research and Science Information Standard for New Zealand Fisheries.<sup>18</sup> Corroborated anecdotal information also has a useful role to play in the stock assessment process and in the management process.

## SECTION 11 – SUSTAINABILITY MEASURES

Section 11(1) allows sustainability measures (such as a TAC) to be set or varied after the following factors are taken into account:

- (a) Any effects of fishing on the stock and the aquatic environment;
- (b) Any existing controls that apply to the stock or area concerned; and
- (c) The natural variability of the stock concerned.

Section 11(2) says that before any sustainability measure is set or varied you must have regard to any provision of:

- (a) Any regional policy statement, regional plan, or proposed regional plan under the Resource Management Act 1991;
- (b) Any management strategy or management plan under the Conservation Act 1987;
- (c) Sections 7 and 8 of the Hauraki Gulf Marine Park Act 2000;
- (ca) regulations made under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012; and
- (d) a planning document lodged with the Minister of Fisheries by a customary marine title group under section 91 of the Marine and Coastal Area (Takutai Moana) Act 2011

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<sup>16</sup> *Greenpeace NZ Inc v Minister of Fisheries* (HC, Wellington CP 492/93, 27/11/95, Gallen J) p 32.

<sup>17</sup> <https://www.mpi.govt.nz/dmsdocument/26332-fisheries-assessment-plenary-november-2017-stock-assessments-and-stock-status>

<sup>18</sup> A non-binding MPI Policy Document.

that apply to the coastal marine area and are considered by you to be relevant.

Section 11(2A) requires you to take into account:

- (a) Any conservation services or fisheries services;
- (b) Any relevant approved fisheries plan ; and
- (c) Any decisions not to require conservation services or fisheries services.

Services of particular relevance to the decisions in this paper relate to programmed research used to monitor stock abundance. To date national fisheries plans have been approved only for deepwater and highly migratory species. The Highly Migratory Species Fisheries Plan must be taken into account in relation to the management of southern bluefin tuna.

## **SECTION 12 – CONSULTATION AND INPUT AND PARTICIPATION OF TANGATA WHENUA**

Section 12(1) says that before setting or varying any sustainability measure under the Act you are required to:

- consult with those classes of persons having an interest in the stock or the effects of fishing on the aquatic environment in the area concerned, including, but not limited to, Māori, environmental, commercial and recreational interests; and
- provide for the input and participation of tangata whenua having a non-commercial interest in the stock concerned or an interest in the effects of fishing on the aquatic environment in the area concerned; and have particular regard to kaitiakitanga.

The Act defines “kaitiakitanga” to mean “the exercise of guardianship; and, in relation to any fisheries resources, includes the ethic of stewardship based on the nature of the resources, as exercised by the appropriate tangata whenua in accordance with tikanga Māori”. “Tikanga Māori” means “Māori customary values and practices”.

Iwi Fisheries Forums and Forum Fisheries Plans are the main ways in which input and participation of tangata whenua is provided for. Information provided by Forums and iwi views on the management of fisheries resources and fish stocks set out in Iwi Fisheries Plans express how tangata whenua exercise kaitiakitanga in respect of the stocks and areas.

Section 12(2) says that as soon as practicable after setting or varying any sustainability measure, you shall give the persons consulted under 12(1), the reasons in writing for your decisions.

## SECTIONS 13 & 14 - SETTING AND VARIATION OF THE TOTAL ALLOWABLE CATCH (TAC)

### Section 13 – Total Allowable Catch

The TAC for most stocks in the Quota Management System (QMS) is set under section 13 of the Act.

Under s 13 the general premise is to set a TAC that maintains the biomass of a fishstock at or above a level that can produce the maximum sustainable yield (MSY). That biomass level is abbreviated as  $B_{MSY}$ .

MSY is defined, in relation to any fish stock, as being “the greatest yield that can be achieved over time while maintaining the stock’s productive capacity, having regard to the population dynamics of the stock and any environmental factors that influence the stock.”

Section 13(2) of the Act requires a TAC to be set that maintains a stock at or above MSY or that moves or restores it to or above that level, having regard to the interdependence of stocks.

Section 13(2A) says that if you consider that the current level of a stock or the level of a stock that can produce the MSY is not able to be estimated reliably using the best available information, he or she must:

- not use this lack of information as a reason for postponing, or failing to set a TAC for the stock, and
- have regard to the interdependence of stocks, the biological characteristics of the stock and any environmental conditions affecting the stock, and
- set a TAC using the best available information that is not inconsistent with the objective of maintaining the stock at or above, or moving the stock towards or above, a level which can produce the MSY.

### Section 14 – Alternative Total Allowable Catch for stock specified in Schedule 3

Section 14 says that notwithstanding anything in section 13, if satisfied, in the case of any quota management stock listed in Schedule 3, that the purpose of this Act would be better achieved by setting or varying a TAC otherwise than in accordance with section 13(2) you may at any time, set or vary a TAC for that stock that he or she considers appropriate to achieve the purpose of this Act. In other words section 14 allows a TAC to be set or varied for the limited number of stocks listed on Schedule 3 otherwise than by reference to  $B_{MSY}$ .

Schedule 3 stocks are ones where:

- it is not possible because of the biological characteristics of the stock to estimate  $B_{MSY}$ ;
- a national allocation for New Zealand has been determined as part of an international agreement;
- the stock is managed on a rotational or enhanced basis; or
- the stock comprises one or more highly migratory species.

Section 14(8) of the Act allows for stocks to be added to or deleted from Schedule 3.

Section 14(6) of the Act outlines that, after considering information about the abundance during the current fishing year of any stock listed in Schedule 3 to the Act, you may increase the TAC within the fishing year for the stock. If a TAC has been increased during the fishing year in this way, the TAC shall revert to its previous level at the end of that fishing year (section 14(7)).

## SECTIONS 20 & 21 - SETTING AND VARIATION OF THE TOTAL ALLOWABLE CATCH (TAC)

After setting or varying the TAC, a separate decision arises in respect of allocating the TAC, i.e., deciding what portion of the TAC is to be available for commercial and other purposes.

Section 20 requires a Total Allowable Commercial Catch (TACC) to be set for each QMS stock and allows it to be varied from time to time. Section 20(4) further clarifies that a TACC set under this section shall have effect on and from the first day of the next fishing year.

Section 68 of the Act allows you to increase the commercial allocation prior to the start of the next fishing season by creating additional Annual Catch Entitlement (ACE) for the current fishing year. Before creating additional ACE under section 68, you must consider matters referred to under section 21

Section 21 of the Act says that in setting or varying the TACC you must have regard to the TAC and allow for:

- a) Māori customary non-commercial fishing interests;
- b) Recreational interests; and
- c) All other mortality to that stock caused by fishing.

The Courts have in a number of cases considered what is involved in allowing for non-commercial interests. In *Snapper 1*<sup>19</sup> the Court of Appeal said that the recreational allowance is simply the best estimate of what recreational fishers will catch while being subject to the controls which the Minister decides to impose upon them e.g. bag limits and minimum lawful sizes. Having set the TAC the Minister in effect apportions it between the relevant interests.<sup>20</sup>

The Supreme Court in *Kahawai*<sup>21</sup> endorsed this approach and said that the words “allow for” require the Minister both to take into account the interests and make provision for them in the calculation of the TACC.<sup>22</sup> The Supreme Court went on to say that s 20 and s 21 prescribe a framework within which the Minister must operate when setting the TACC. The framework requires apportionment of the TAC by the Minister among the various interests and other mortality. The sequential nature of the method of allocation provided for in s 21 does not indicate that non-commercial fishing interests are to be given any substantive priority over commercial interests. In particular the allowance for recreational interests is to be made keeping commercial interests in mind.<sup>23</sup>

The Supreme Court further said that in the end, within the limits provided for by the Act, the Minister makes a policy decision as to what allocations are appropriate for non-commercial interests and other mortality and what is to be the TACC. These decisions are interdependent. The Act does not confer priority for any interests over the other. It leaves that to the judgment of the Minister.<sup>24</sup>

Under the customary fishing regulations (Fisheries (South Island Customary Fishing) Regulations 1999 and the Fisheries (Kaimoana Customary Fishing) Regulations 1998), customary take is regulated through the authorisation system which requires that all

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<sup>19</sup> *New Zealand Fishing Industry Association (Inc) v Minister of Fisheries* CA 82/97, 22 July 1997 (“*Snapper 1*”).

<sup>20</sup> *Snapper 1*, p 17.

<sup>21</sup> *New Zealand Recreational Fishing Council Inc v Sanford Limited* [2009] NZSC 54 (“*Kahawai*”).

<sup>22</sup> *Kahawai* [55]

<sup>23</sup> *Kahawai* [61]

<sup>24</sup> *Kahawai* [65]



customary fishing is to be undertaken in accordance with tikanga and the overall sustainability of the fishery. This framework was put in place to give effect to legal obligations in the Settlement Act.<sup>25</sup>

When allowing for Māori customary non-commercial interests, you must take into account:

- a) Any mātaihai reserve in the relevant quota management area; and
- b) Any temporary area closure or temporary fishing method restriction or prohibition imposed in the area for the purposes of improving the availability or size of a species for customary fishing purposes or recognising a customary fishing practice in the area.

The intent is that the purposes of measures enacted to provide for customary fishing are not adversely affected or reasons for limited customary take are ignored when setting the customary allowance.

An allowance is to be made for all other mortality to a stock that results from fishing. This includes illegal catch, discards, and incidental mortality from fishing gear.

## **HARVEST STRATEGY STANDARD (HSS)**

The Harvest Strategy Standard (HSS) is a policy statement of best practice in relation to the setting of fishery and stock targets and limits for fishstocks in New Zealand's Quota Management System (QMS). It is intended to provide guidance on how fisheries law will be applied in practice, by establishing a consistent and transparent framework for decision-making to achieve the objective of providing for utilisation of New Zealand's QMS species while ensuring sustainability.

The HSS outlines the Ministry's approach to relevant sections of the Act and, as such, forms a core input to the Ministry's advice to you on the management of fisheries, particularly the setting of TACs under sections 13 and 14.

The HSS is not however legally binding and you are not obliged to choose options based upon it.

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<sup>25</sup> Where the customary regulations don't apply customary fishing is regulated under regulations 50-52 of the Fisheries (Amateur Fishing) Regulations 2013 and a similar authorisation system applies.