

# Biting the allocation bullet — Allocation in international fisheries

---

**Mary Harwood**

*Fisheries and Aquaculture Branch  
Department of Primary Industries and Energy  
Canberra, GPO Box 858, ACT 2601, AUSTRALIA*

## **Introduction**

Who makes allocation decisions in the international context? Where and how are they made, what sorts of criteria are used in theory and what happens in the real world? My aim today is to look at the theory and practice of allocation within international fisheries regimes, including recent approaches that have emerged in the United Nations. As a specific example, I will look at the provisions applying to allocation in the enabling Convention of the Commission for the Conservation of Southern Bluefin Tuna (CCSBT), and give a perspective on what actually happens in the Commission by way of allocation.

An important point to note at the start is that if countries are arguing about allocation in an international fishery, that may reflect a better situation than if no debate were taking place. The fact that an allocation debate is occurring means that at least people are aware that constraint on catch is required, and attempts are being made to find a sustainable solution.

## **Where is the recipe for allocation in international fisheries prescribed?**

### *The Law of the Sea*

UNCLOS (the United Nations Convention on the Law of the Sea) gives little by way of specific direction on the question of allocation for transboundary fisheries. The basic obligation on fishing States and coastal States to cooperate in relation to conservation and management of straddling fish stocks and highly migratory fish stocks is set out in Articles 63(2) and 64 respectively.

### *Regional fisheries regimes*

Allocation is at the heart of achieving sound conservation and management for most transboundary stocks. Concerned countries have used various approaches to construct regimes or informal arrangements under UNCLOS to discuss conservation, management and allocation.

Options include formal commissions such as the International Commission for the Conservation of Antarctic Tunas (ICCAT)

and the CCSBT which are underpinned by legally binding treaties. Alternatively some arrangements provide for allocation, and are legally binding, but avoid establishing a formal commission, e.g. the Bering Sea Pollack Agreement. In other cases, countries cooperate on a voluntary basis, such as in the annual informal consultations between Australia, Japan and New Zealand prior to establishment of the CCSBT which set a total allowable catch (TAC) and national allocations of quota for the southern bluefin tuna fishery.

### *The United Nations Implementing Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks (UNIA)*

A major development in transboundary stock management in recent years has been the negotiation of UNIA. The Agreement, which is over 40 pages long, sets very detailed ground rules for how regional fisheries management regimes should work. It set broad principles for management of transboundary stocks, including application of the precautionary approach, and elaborates on rather vague UNCLOS provisions to set down clear standards a State must meet for control of vessels flying its flag and fishing on the high seas. UNIA also requires cooperation amongst countries to ensure that there is compatibility between those management measures developed for the high seas and those developed for inside Exclusive Economic Zones (EEZs).

UNIA provides substantial guidance on matters relating to conservation and management of transboundary fish stocks. It gives a comprehensive prescription as to how regional fisheries management bodies should be constructed and operate, including a requirement that they have the capacity to

agree on conservation and management measures, and, for the first time in a global treaty, that regional bodies should have provisions whereby they can agree on allocations of fishing rights.

Many existing regional regimes have no reference to allocation in their enabling conventions. Once UNIA enters into force or becomes customary international law, new regimes will have to confront allocation from the start. Older regimes may need to revisit their conventions to provide mechanisms under which allocation decisions can be made.

A key effect of UNIA is to fundamentally limit the freedom to fish on the high seas. By an elaborate series of interconnected provisions, the Agreement requires States whose vessels fish on the high seas in a fishery which is covered by a regional regime to either join that regime, agree to apply its measures or stop fishing. These provisions clarify which countries are obliged to cooperate in managing transboundary resources, and set the scene for making conservation, management and allocation decisions.

### **What's being allocated?**

Allocation may involve determining national quotas amongst countries fishing for a stock. In the case of the CCSBT, members can fish their national allocation anywhere, provided, of course that entry to fish in another country's EEZ is subject to negotiating access with the relevant coastal State.

Allocation may also determine levels of fishing effort amongst participating States (e.g. number of vessels, fishing days, etc) or may be a determination of how much of a stock will be fished inside EEZs and how

much on the high seas, with subsequent subdivision of the high seas component amongst interested States.

### **How is allocation decided?**

In some cases, e.g. CCSBT, there are specific provisions in the enabling convention which demand that the parties meet to set a TAC and national allocations each year, and that once those quotas are decided, parties cannot reserve their position, lodge objections or otherwise withdraw from the obligation to contain their catches within the agreed quota levels. The effect of this is that negotiations amongst the countries' delegates continue until quota matters can be completely settled in the Commission, even if it takes several sessions and many weeks of negotiation in a given year.

In other regimes, allocation isn't specified in the convention for the relevant Commission. A TAC may be set formally in the Commission and countries which wish to fish for that stock then negotiate shares amongst themselves. The agreed shares may subsequently be formalized by the Commission (e.g. ICCAT) or may be left as public or private understandings amongst the relevant parties.

Sometimes, for various reasons, including complex jurisdictional situations where EEZs are not delimited, or there are overlapping or disputed EEZ claims, dealing with allocation is particularly difficult. The Commission for the Conservation of Antarctic Living Resources (CCAMLR) sets TACs for specific stocks, but does not tackle the question of allocation amongst member States. The result is fleets from many countries fishing in high seas areas for an olympic TAC. The lack of alloca-

tion decisions in CCAMLR can be seen as one of the contributing factors to the current unsustainable race to fish for stocks of toothfish and icefish in sub-Antarctic waters. Other factors, such as the absence of a cooperative monitoring and enforcement regime, and the difficulty of controlling flag-of-convenience fishing in remote areas of the sub-Antarctic, also contribute.

### **Are there any ground rules for allocation?**

#### **UNIA**

Article 11 of UNIA sets ground rules for determining allocations to new entrants to regional fisheries regimes. These criteria were the subject of much debate when the Agreement was being negotiated in New York. If a new player wishes to join a regime that is long established, how should their allocation be decided, particularly if the relevant stock is already depleted and there is, essentially, no room for more fishing vessels? In UNIA the criteria finally adopted represent a 'shopping list' balancing the various relevant matters and can be summarized as:

1. the status of the stocks and the existing levels of fishing effort,
2. the respective interests, fishing patterns and fishing practices of new and existing members,
3. countries' respective contributions to conservation, data collection and scientific research,
4. the needs of coastal communities mainly dependent on the stocks,

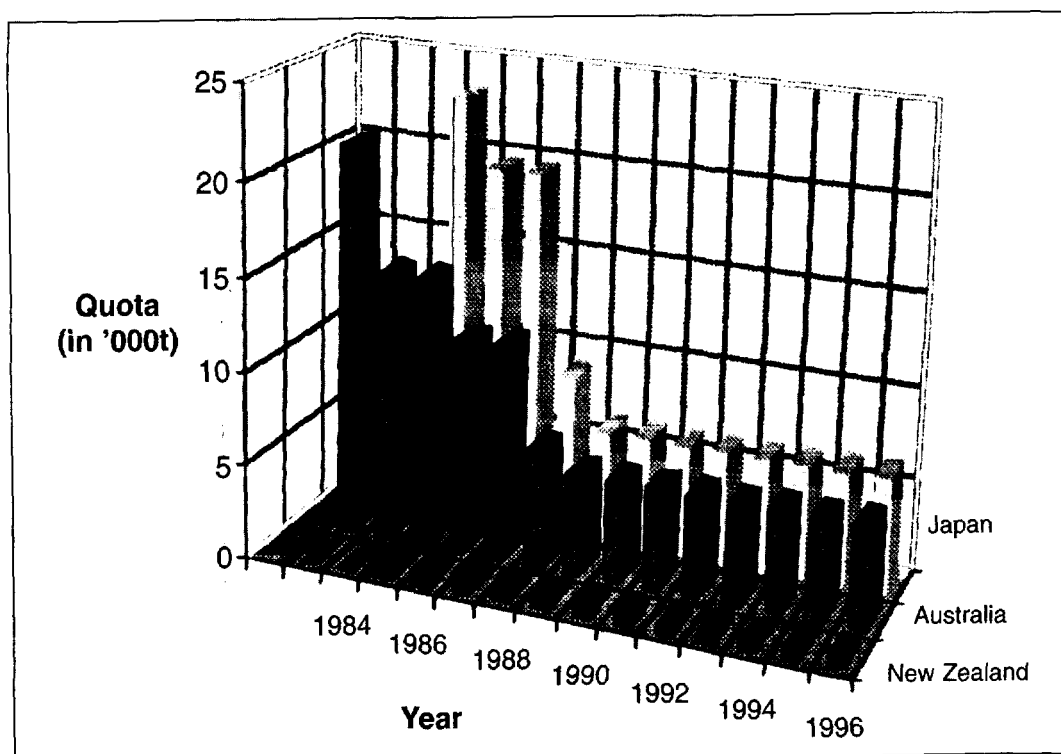


Figure 1. International quota allocation in the southern bluefin tuna fishery 1983–1996.

5. the needs of coastal States whose economies are overwhelmingly dependent on the exploitation of living marine resources, and
6. the interests of developing States in the subregion, in whose EEZs the stocks occur.

While these criteria provide a guide as to matters to be considered, the actual allocation outcome for a new entrant will obviously be a matter for negotiation and reconciliation of, in some cases, powerfully competing interests, particularly where stocks are already depleted.

#### *Allocation in the CCSBT*

The CCSBT regime was negotiated not long before UNIA. The allocation history for CCSBT and its precursor informal tripartite

arrangement is shown in Figure 1. In the first two years Australia and New Zealand were prepared to set quotas but Japan had yet to agree to applying a national catch limit.

Article 8(4) of the CCSBT convention sets specific allocation criteria, which can be summarized as:

1. relevant scientific evidence,
2. the need for orderly and sustainable development of the SBT fishery,
3. the interests of parties through whose EEZs SBT migrates,
4. the interests of parties whose vessels fish for SBT, including those which have fished historically and those with SBT fisheries under development,

5. the contribution of each party to conservation and enhancement of and scientific research on SBT, and
6. any other factors the Commission deems appropriate.

For each of these criteria, I'll look briefly at issues which have arisen in the Commission, although it is important to note that many of the CCSBT's recent difficulties relate more to what the overall TAC should be, rather than the proportion of shares amongst member countries.

What does *relevant scientific evidence* actually mean? A major point of discussion in the 1980s was whether scientific evidence indicated that, in terms of impact, it was preferable that catch be taken as larger, rather than smaller, fish and, therefore, whether allocation should favour countries whose fisheries targeted larger (older) fish. Another relevant issue is discarding practices — i.e. if one party retains the whole catch and another discards all fish less than a certain size whether dead or alive, should the allocations be adjusted accordingly? Are conversion factors relevant here? If countries use different factors to convert processed weight to whole weight, should allocations reflect this difference?

Turning to the *need for orderly and sustainable development*, the obvious question is whose need and what for? Should allocation favour a country which most needs the fish for its fleet to remain viable, a country whose catch is more valuable, a country which has the most scope for development, including excess capacity, a country which has reduced and restructured its fleet, or the country which has contributed most in terms of applying high standards of conservation and manage-

ment? If one party has reduced its fleet by half and undergone all the pain of that adjustment and another party has yet to make such adjustment, whose need is greater?

In relation to *the interests of parties through whose EEZs SBT migrates*, current coastal State parties are Australia and New Zealand which have established fisheries for SBT. There are also developing coastal States eligible to join, e.g. Indonesia which has a large tuna longline fishery with a substantial bycatch of SBT, and South Africa whose EEZ embraces part of the migratory path of SBT but which has only limited fishing for SBT. How should allocations be made to these two countries if they join, both of which have SBT in their EEZs, but which have different levels of tuna fishery development?

Moving on to the *interests of parties who have historically fished for SBT and have fisheries under development* — this manifests essentially as who was fishing first, who pioneered and developed the fishery, what are the interests of established fleets and how are these to be balanced against the interests of countries with relatively recently established SBT fisheries?

The *contribution to conservation and scientific research*, is an interesting criterion. What constitutes a contribution? Examples for scientific research might include significant data collection, use of Government research vessels in the fishery and commitment of resources or scientists to research on the fishery. In many international fisheries, countries which have restrained their catch may have made less apparent contribution to scientific research than those with large data holdings due to significant catch levels. Should contributions to conservation be measured in terms of levels of catch restraint

or fleet adjustment, or application of responsible management standards and vessel monitoring systems?

### **How do allocations change from year to year?**

The issues summarized above interweave in complex ways to deliver actual annual allocation outcomes in international fisheries regimes. The reason that 'quota inertia' is apparent in so many regimes (including ICCAT and CCSBT), is that a decision to leave TAC and allocations at the same level for several years can be a reflection of a reluctant compromise amongst parties with long-held differences of view as to the capacity of stocks to withstand additional catch, especially in the case of depleted stocks.

An apparent stability in quota levels may overlay a range of transfer mechanisms. For example, informal reallocation processes, e.g. bilateral lease deals at industry or government levels may occur when countries are not pre-

pared to alter their formal international stake in the fishery, but will approve a lease for a set period provided acceptable conditions can be agreed.

### **Conclusion**

In conclusion, the outcomes in international allocation negotiations are governed by a wide range of influences and interests, some codified through underpinning conventions, but many not subject to such prescription. Sometimes 'who needs a quota decision by when' can be a compelling influence, i.e. if one country's fishing season starts first, their need for settlement on TAC and national allocations may affect the negotiating outcomes. There are no right answers, but international allocation negotiations require good humour and physical stamina and reveal a fascinating interplay of such diverse matters as fishery science, treaty law, the interests of different countries' Governments and fishing fleets and a need for effective communication between people of different cultures.