



Proposed Regulations to implement the Catch Document Scheme for Southern Bluefin Tuna Discussion Document

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1 Background

The Commission for the Conservation of Southern Bluefin Tuna (CCSBT) Catch Documentation Scheme (CDS) is currently administered by the Ministry for Primary Industries (MPI) for New Zealand. The CCSBT is a regional fisheries management organisation that operates wherever southern bluefin tuna are found and caught. The CDS is the primary monitoring, control, and surveillance tool used by the CCSBT. MPI has issued two directives to fishers and Licensed Fish Receivers (LFRs) respectively to administer the scheme. These directives were issued under section 190 of the Fisheries Act 1996 (the Act). MPI is now seeking to create new regulations to replace these directives in order to improve the enforceability of the CDS requirements and, thereby, better meet our international commitments.

Southern bluefin tuna is a highly migratory species that is fished throughout its range by a number of countries including New Zealand. It is a high value species with the majority of the New Zealand catch destined for premium export markets such as Japan. The tuna surface longline fishery is made up of about 60 vessels, most of which are small domestic vessels. Exports for southern bluefin in the 2014 calendar year were approximately \$14 million.

For high value species such as southern bluefin tuna, the risk of illegal, unregulated, and unreported (IUU) fishing is high. The CDS provides for tracking and validation of legitimate southern bluefin tuna product flow from catch to the point of first sale on domestic or export markets. At its annual meeting in October 2008, CCSBT agreed to implement a CDS for southern bluefin tuna.¹ On 1 January 2010, MPI (in accordance with CCSBT obligations) implemented the CDS for New Zealand southern bluefin tuna fisheries. As an interim measure, this was done via two directives rather than regulation.

The CDS requires fishers to attach uniquely numbered tags to southern bluefin tuna at the time of kill. Upon landing, the LFR records the tag number and various information on CCSBT Catch Tagging Forms and Catch Monitoring Forms.

Information from these forms is sent to MPI and the CCSBT Secretariat while copies of the Catch Monitoring Forms travel with the fish until it reaches its final destination market. The Resolution requirements are intended to apply to fishers on all New Zealand-flagged vessels which have caught southern bluefin tuna.

2 Purpose

The purpose of this discussion paper is to seek feedback on the CDS along with any views stakeholders may have on the proposed changes to its implementation.

MPI is seeking public views on the regulatory proposal detailed in this document before 15 July, 2016.

MPI is specifically interested in hearing about how the proposed changes would affect fishers, LFRs, CDS authorised validators, and any other individuals or organisations with an interest in the southern bluefin tuna fishery. We also welcome stakeholder views on appropriate penalty levels for these proposed regulations.

¹ See Appendix One, The Resolution on the Implementation of a CCSBT Catch Documentation Scheme

3 Problem Definition

The CDS is currently administered using two directives issued under section 190 of the Act. This has proved problematic at times in that, unlike regulations, the directives can only be applied to operators who are known to MPI and have therefore been sent a directive. Due to the nature of the fishery, most vessels who are targeting or likely to catch southern bluefin tuna are known to MPI. However, every year MPI is alerted of vessels not on the Authorised Vessel List² having caught southern bluefin tuna as incidental bycatch or new operators entering the fishery for the first time.

Also, the penalties associated with breaches of this section are disproportionately high in relation to the seriousness of the offence and the penalties placed on similar fisheries reporting offences. It is proposed that the CDS be implemented via regulations to improve accessibility and enforceability, and to create more appropriate penalties.³

The main compliance incentive in the southern bluefin tuna fishery is market access. Specifically, it would be difficult for southern bluefin tuna without the correct tag and documentation to be sold in premium markets such as Japan. However, incidences of non-compliance have occurred, and in those cases it has been difficult to establish the evidentiary base for a prosecution as the use of directives creates an immediate defence based on ignorance of the law. This weakness exposes New Zealand to reputational risks within the CCSBT, where high levels of compliance are expected, and Member performance is scrutinised by other Members.

New Zealand's tuna surface longline fishery is made up of about 60 vessels, most of which are small domestic vessels. Most of these vessels notify MPI annually of their intention to fish for or incidentally catch southern bluefin tuna. Under the current regime, fishers are required to attach a CCSBT tag to every southern bluefin tuna at the time of kill. Fishers who catch southern bluefin tuna as incidental bycatch and do not have sufficient tags on board are allowed to apply the tag when the fish is landed at the LFR. High levels of compliance with this requirement have been observed to date. However, rare instances where fish were not tagged at the time of landing were dealt with through issuing warnings, as prosecutions under the existing regime are difficult.

Compliance with the reporting requirements is equally high at the LFR level. However, incidents of non-compliance by LFRs have also proven difficult to enforce and have also been dealt with through issuing warnings.

In addition, a 2013 CCSBT-led Quality Assurance Review of MPI's monitoring, compliance, and surveillance systems relating to southern bluefin tuna raised some concern for the standard of approved validators, noting the potential for non-approved validators to become involved in the validation process. Implementing the CDS via regulations would lead to more effective enforcement of the validation process by ensuring that non-approved validators could be prosecuted.

The use of directives under section 190 has limited MPI's ability to enforce the existing requirements of the CDS resolution and is no longer deemed to be an acceptable level of implementation in relation to our commitments to the scheme. Creating new regulations is

² As part of the CDS, CCSBT requires Members to maintain a list of vessels authorised to catch southern bluefin tuna.

³ As per section 252(3)(he) of the Fisheries Act 1996, a person convicted of an offence against section 190(2) is liable to a fine not exceeding \$250,000. Under the Fisheries (Infringement Offences) Regulations 2001, existing infringements for late reporting is \$400 for returns provided within two months of the due date and \$750 for returns provided thereafter.

seen as the most effective way for MPI to enforce the existing requirements of the CDS and best meet our international obligations.

A successfully implemented CDS would create compliance incentives, improve enforceability, and increase stakeholder awareness of the CDS requirements. In evaluating this proposal for CDS regulations, it is also important to consider:

- The importance of controlling international fishing for southern bluefin tuna, which is currently below the biomass that can support the maximum sustainable yield.
- New Zealand's international obligations and reputation as a member of CCSBT.

4 Legal Considerations

Section 5 states that the Act “shall be interpreted, and all persons exercising or performing functions, duties, or powers conferred or imposed by or under it shall act, in a manner consistent with (a) New Zealand's international obligations relating to fishing.”

MPI considers that implementing the CDS using regulations would more effectively meet New Zealand's international obligations under the Convention for the Conservation of Southern Bluefin Tuna. Further legal considerations relating to the proposed regulatory option are outlined in more detail in Appendix Two.

5 Proposed Options

5.1 OPTION 1 – STATUS QUO

5.1.1 Summary

Under the status quo, two directives under section 190 of the Act inform commercial fishers and licensed fish receivers of their CDS reporting requirements.

Under the current regime, the CDS requirements include:

- tagging each individual southern bluefin tuna;
- measuring weight and length of individual fish;
- recording information on a Catch Monitoring Form and a Catch Tagging Form; and
- providing copies of this documentation within a specified timeframe.

However, it is difficult to ensure compliance with the CDS under the status quo. Further, the high penalty under the status quo is often disproportionate in relation to the scale of the offence. The costs of deterring non-compliance is significant, and there are no benefits of the status quo that counterbalance these high costs. The status quo also exposes New Zealand to reputational risks in CCSBT. While incidents of non-compliance are not unexpected, there is a clear expectation that action can and will be taken to address these if and when they occur.

5.1.2 Impact

If the status quo were to continue, there would be little impact on commercial operators or LFRs. A small, but high-risk, level of non-compliance would be likely to continue under the

status quo. Non-compliance with the CDS that is not addressed threatens New Zealand's position of influence within CCSBT and other regional fisheries management organisations, as well as the international reputation of New Zealand's sustainable fisheries. More directly, real or perceived non-compliance could restrict market access for southern bluefin, especially within important tuna markets, which tend to be Members of CCSBT.

5.1.3 Costs

The primary cost to New Zealand is difficult to quantify, as it relates to possible damage to New Zealand's international reputation, especially as it relates to tuna fisheries, and any resulting loss of export opportunities. This cost could be significant.

In instances of non-compliance, there are potential additional costs to operators attempting to export their product into primary tuna markets. These costs would result from delays in obtaining entry, or having the product refused entry.

5.1.4 Benefits

There are no benefits to maintaining the status quo. The status quo has served as an interim mechanism to implement the CDS. However, experience suggests that this mechanism has significant risks associated with it.

5.2 OPTION 2 – CDS REGULATIONS

5.2.1 Summary

MPI now proposes that the CDS be implemented by regulations under section 297 of the Act. These regulations would improve the enforceability, accessibility, and effectiveness of the CDS. This will also allow MPI to more effectively meet international obligations.

MPI proposes that the regulations include a general requirement for fishers and LFRs to tag and document southern bluefin tuna catches, accompanied by more detailed instructions to be issued by the Chief Executive by gazette notice from time to time, as required. These notices will contain updates on administrative matters and lower level procedures (i.e. how to attach a tag), as well as any format or content changes to the CDS documents. This will allow technical updates to be made via Gazette notice in order to reflect any minor changes agreed at the CCSBT.

The CDS requirements will not change as a result of the CDS being implemented via regulations. The CDS will still require:

- tagging each individual southern bluefin tuna;
- measuring weight and length of individual fish;
- recording information on a Catch Monitoring Form and a Catch Tagging Form; and
- providing copies of this documentation within a specified timeframe.

The requirement to tag each southern bluefin tuna that is caught and killed will apply to fishers on all New Zealand-flagged vessels. The requirement will not apply to non-commercial (i.e. recreational/customary) fishing or fish that are released alive in accordance with the provisions of the Sixth Schedule of the Act (i.e. those that are likely to survive release).

Additionally, it is proposed that more appropriate penalties are set in line with existing penalties for offences of a similar nature.

5.2.2 Impacts

The group most affected by the proposal is the commercial tuna surface longline fishery. The effects on the majority of this group will be low, as they have been operating under the requirements of the CDS since 2010 and these requirements would remain unchanged under this proposal.

Over 90% of the southern bluefin tuna caught in New Zealand is exported based on the higher prices commanded abroad. Compliance with the scheme is a condition for export to members of CCSBT and other cooperating countries. For this reason, there will be strong financial incentives for complying with the regulations. Implementing the CDS through regulations would improve compliance by removing the current onus on MPI to prove that the non-compliant individuals involved were appropriately notified and aware of the requirement, making enforcement more straightforward and more likely to succeed.

5.2.3 Costs

The CDS regulation will be dealt with using existing compliance services, so there are likely to be no additional costs resulting from the changes.

For fishers targeting southern bluefin, LFRs, and fishers who catch southern bluefin as occasional bycatch, compliance costs are not expected to change.

5.3.4 Benefits

Implementing the CDS through regulations will ensure accessibility of the laws that relate to the CDS as industry and LFRs will be able to easily locate regulations as opposed to directives. Setting the CDS in regulations will remove issues relating to operators that may be, or claim to be, unaware of the directive.

Also, by implementing the CDS in a more effective way, New Zealand contributes to the reduction of IUU fishing and increases traceability in a high-value fishery.

5.3 COMPARISON

There are no feasible non-regulatory options as the status quo currently operates via two directives under the Act. Experience to date suggests that effective implementation of the CDS is required to meet our international obligations (since the 2010 adoption of the CDS Resolution by CCSBT member states) and protect and enhance New Zealand's international reputation. A non-regulatory approach is unlikely to be seen by other Members of the CCSBT as an acceptable commitment to the full implementation of the CDS Resolution.

6 Conclusion

The CDS is currently administered by MPI for New Zealand using two directives issued under section 190 of the Act, which has proved problematic when addressing the rare instances of non-compliance that have occurred to date. Non-compliance with the CDS is a major threat to New Zealand's reputation, and an effective enforcement regime is vital when demonstrating our commitment to the international commitments made under CCSBT. Creating new regulations is seen as the most effective way for MPI to implement the existing requirements of the CDS and best meet our international obligations which is why MPI is now seeking support for these proposed changes.

Appendix One: Resolution on the Implementation of a CCSBT Catch Documentation Scheme

(Adopted at CCSBT 15 in 2008 as amended at the Twenty-First Annual meeting: 16 October 2014)

Referring to the principles adopted to guide the development of a catch documentation scheme (CDS) at CCSBT12 in 2005 and the ‘Resolution on the implementation of a CDS to record all catch of Southern Bluefin Tuna regardless of whether the Southern Bluefin tuna were traded’, adopted at CCSBT 13 in 2006;

Noting the need for Members and Cooperating Non-Members to provide for the tracking and validation of legitimate product flow from catch to the point of first sale on domestic or export markets;

Bearing in mind the need to achieve harmonisation of Catch Documentation Schemes across Regional Fisheries Management Organisations;

Emphasising that a CDS must be applied consistently and comprehensively across all sectors of the global SBT fishery to accurately confirm the SBT catch by each Member and Cooperating Non-member;

In accordance with Article 8.3(b) of the Convention on the Conservation of Southern Bluefin Tuna, the Extended Commission for the Conservation of Southern Bluefin Tuna (CCSBT) adopts the following measure to monitor compliance with the Commission’s conservation measures:

1. General Provisions and Application

1.1 All Members and Cooperating Non-Members shall implement the CCSBT CDS for southern bluefin tuna (SBT) to document the movement of all SBT as outlined in this resolution. The CCSBT CDS incorporates CCSBT CDS documentation and tagging of SBT.

1.2 For transshipments, landings of domestic product, exports, imports and reexports under the jurisdiction of a Member or Cooperating Non-Member or Other State/Fishing Entity Cooperating in the CDS (OSEC), all SBT shall be accompanied by a document described in section 3 of this resolution. There is no waiver of this requirement. However, the exportation/import of fish parts other than the meat (i.e. head, eyes, roe, guts, tails) may be allowed without the document.

1.3 Transfers of SBT into and between farms under the jurisdiction of a Member or Cooperating Non-Member shall be documented on the Farm Stocking Form and Farm Transfer Form as applicable.

1.4 Members or Cooperating Non-Members that prohibit the sale of fish caught by recreational fishers may exempt their recreational fisheries from the requirements of the CCSBT CDS.

1.5 The Commission shall request the cooperation of appropriate authorities of States other than Members and Cooperating Non-Members of the Extended Commission that are involved in catching, landing, transferring and/or farming of SBT in the implementation of this resolution.

1.6 Members, Cooperating Non-Members and OSECs shall not permit the landing as domestic product, transshipment, import, export and/or re-export of SBT caught by vessels not authorised to catch SBT and (if SBT farming is conducted under their jurisdiction) the transfer of SBT to or between, and harvest of SBT from, farms not authorised to farm SBT.

1.7 Members, Cooperating Non-Members and OSECs shall not permit whole SBT to be landed as domestic product, transhipped, exported, imported or reexported without a tag, except that:

1.7.1 in the case of farming operations, the SBT may be landed without a tag provided a tag is attached within 30 hours of kill;

1.7.2 in exceptional circumstances, where a vessel on the CCSBT Record of Authorised Vessels does not have sufficient tags on board the vessel, the tag may be attached at landing;

1.7.3 in exceptional circumstances, where a vessel catches SBT as unexpected bycatch and has no or insufficient tags on board, the tag may be attached at landing.

1.8 In exceptional circumstances, where a tag becomes accidentally detached and cannot be reattached, a replacement tag shall be attached as soon as possible and no later than the time of landing, transshipment or export.

1.9 Members and Cooperating Non-Members shall report any exceptional circumstances referred to in 1.7.2, 1.7.3 or 1.8 to the Executive Secretary within 7 days of the landing. The report shall provide details of the exceptional circumstances, the number of SBT tagged and for 1.8, the old (where known) and new tag number(s). 1.10 Members and Cooperating Non-Members shall require that tags be retained on whole SBT to at least the first point of sale for landings of domestic product, and shall encourage the retention of tags on whole fish thereafter.

2. Registers Required

2.1 A record of farms is to be established and maintained by the Executive Secretary to identify authorised farms.

2.2 A record of vessels, maintained by the Executive Secretary, identifies all authorised vessels.

2.3 CCSBT CDS Documents that record information for vessels and/or farms not included on the above-mentioned authorised registers shall not be considered valid Documents for the purposes of this scheme.

3. Documents and Information Required

3.1 The CCSBT CDS Documents are:

3.1.1 Farm Stocking Form – records information on the catch, towing and farming of SBT

- 3.1.2** Farm Transfer Form – records information on the transfers of SBT between farms
- 3.1.3** Catch Monitoring Form – records information on the catch, landing, transshipment, export, and import of all SBT regardless of whether farmed or not, including unexpected catch
- 3.1.4** Catch Tagging Form – records information on individual fish tagged as part of the CDS
- 3.1.5** Re-export or Export after Landing of Domestic Product Form – records information on SBT already tracked on the Catch Monitoring Form to the initial point of landing of domestic product or import that is, either in full or part, exported or re-exported.

3.2 The information to be contained in the CCSBT CDS documentation referred to in 3.1, along with associated instruction sheets, is in Appendix 1 A – D.

3.3 Once approved forms are adopted, only minimal modifications, such as the addition of translations, may be made. No information field may be omitted from the standard form, except where the field is not applicable.

3.4 Any documentation modified, as described in 3.3, shall be provided to the Executive Secretary for distribution to other Members, Cooperating Non-Members, as well as Non-Members known to be involved in the landing, transshipment, import, export, or re-export of SBT.

3.5 Significant amendments to the forms and form content may be made only with the agreement of the Commission at its annual meeting based on recommendations from the CCSBT Compliance Committee.

3.6 CCSBT CDS documents must be uniquely numbered.

4. Tagging

4.1 Members and Cooperating Non-Members shall require that an SBT tag be attached to each whole SBT at the time of kill except:

4.1.1 in the case of farming operations, the tag may be attached within 30 hours of kill;

4.1.2 in exceptional circumstances, where a vessel on the CCSBT Record of Authorised Vessels does not have sufficient tags on board, the tag may be attached at landing;

4.1.3 in exceptional circumstances, where a vessel catches SBT as unexpected bycatch and has no, or insufficient, tags on board, the tag may be attached at landing.

4.2 As outlined at 3.1.4, a Catch Tagging Form records relevant tagging information for individual SBT. The Catch Tagging Form shall be filled in as soon as practicable after the time of kill. Length and weight measurements shall be conducted before the SBT is frozen. Where measurements cannot be accurately done on board the vessel, they may be made at the

time of landing or transshipment, provided the measurements and the associated Catch Tagging Form are filled in before any further transfer of the SBT.

4.3 Completed Catch Tagging Forms shall be provided to the flag Members and Cooperating Non-Members which shall provide the information in the Catch Tagging Form to the Executive Secretary in an electronic format on a quarterly basis.

4.4 A tagging programme shall meet the minimum procedural and information standards set out in Appendix 2.

4.5 Members and Cooperating Non-Members shall prohibit the unauthorised use of SBT tags.

5. Validation

5.1 The CCSBT CDS documentation must be validated (or signed in the case of transshipments at sea) as applicable by:

5.1.1 for landings of domestic product, an official of the flag Member or Cooperating Non-Member of the catching vessel or, when the fishing vessel is operating under a charter arrangement, by a competent authority or institution of the chartering Member or Cooperating Non-Member; and

5.1.2 for all SBT transshipments subject to CCSBT Resolution on Establishing a Program for Transshipment by Large-Scale Fishing Vessels, the observer required by that resolution; and

5.1.3 for all export of SBT, an official of the exporting Member or Cooperating Non-Member; and

5.1.4 for all re-export of SBT, an official of the re-exporting Member, Cooperating Non-Member, or OSEC.

5.2 The authority to validate CDS documents may be delegated to an authorised person by an official of the relevant State/fishing entity. Members, Cooperating Non-Members and OSECs who utilise delegated person/s shall submit a certified copy of such delegation/s to the Executive Secretary. The individual who certifies a CCSBT CDS Document shall not be the same person who validates the Document.

5.3 Members, Cooperating Non-Members and OSECs shall provide to the Executive Secretary information on validation (including type of validation, name of the organization which validates the documents, title and name and signature of officials who validate the documents, sample impression of stamp or seal, and a list of all persons holding delegated authority to validate CCSBT CDS documentation prior to those officials and persons exercising the authority). Members, Cooperating Non-Members and OSECs shall inform the Executive Secretary of any changes in a timely fashion.

5.4 The Executive Secretary will maintain and update the information specified in 5.3 and provide it to all Members, Cooperating Non-Members and OSECs and promptly circulate any changes.

5.5 Members, Cooperating Non-Members and OSECs shall not validate any CCSBT CDS documentation referred to in 3.1 that is not complete, has obviously incorrect information, or has not been validated as required by this resolution.

5.6 No Member or Cooperating Non-Member or OSEC shall accept any SBT for transshipment, landing of domestic product, export, import, or re-export where any or all required documents do not accompany the relevant consignment of SBT, where fields of information required on the form are not completed, or where the form has not been validated as required by this resolution.

5.7 Full or partial consignments of untagged whole SBT must not be validated or accepted for transshipment, landing of domestic product, export (including export after landing of domestic product), import or re-export (except where the tag is no longer required to be attached to the SBT because further processing has occurred, as outlined at Appendix 2).

5.8 Members and Cooperating Non-Members shall undertake an appropriate level of audit, including inspections of vessels, landings, and where possible markets, to the extent necessary to validate the information contained in the CDS documentation.

5.9 Members and Cooperating Non-Members shall include in their annual review of SBT fisheries, details on the level of coverage and type of audit undertaken, in accordance with 5.8, and the level of compliance.

6. Exchange of Information and Confidentiality of Data

6.1 Members, Cooperating Non-Members and OSECs shall retain all original CCSBT CDS Documents (or scanned electronic copies of the original documents) received by them for a minimum of 3 years after the most recent signed date on the form. Members, Cooperating Non-Members and OSECs shall also retain a copy of any CCSBT CDS Documents issued by them for a minimum of 3 years after the most recent issuing state/entity signed date on the form. Copies of these CDS Documents (except the Catch Tagging Form⁶) shall be forwarded⁷ to the Executive Secretary on a quarterly basis.

6.2 The Executive Secretary shall compile the raw data from CDS documentation into an electronic database. The Executive Secretary shall ensure the confidentiality of the raw data in its database and release to any State/fishing entity only the raw data relating to the CCSBT CDS Documents it validated. If a State/fishing entity requests CCSBT CDS Documents relating to another State/fishing entity, the Executive Secretary may release those data only with the latter's agreement.

6.3 The Executive Secretary shall report to the Extended Commission on and circulate to all Members and Cooperating Non-Members the data collected by the CCSBT CDS each year by 1 June for the period of 1 January - 31 December of the preceding year and by 1 December for the period of 1 January - 30 June of the current year. The information to be contained in the reports is specified in Appendix 3. The Executive Secretary shall provide an electronic copy of the report only to a designated authority of each Member and Cooperating Non-Member.

6.4 The Executive Secretary will post on the public area of the CCSBT web site a subset of the report comprising:

- Flag State/fishing entity;
- Harvest year;
- Product destination (including landings of domestic product);
- Gear code;
- Net weight;
- Estimated whole weight (calculated by applying a conversion factor to the net weight);
- Copies of all modified CDS forms provided in accordance with paragraph 3.4.

6.5 On request by the Scientific Committee, Compliance Committee, or other subsidiary body of the Commission, the Executive Secretary shall, with the approval of the Commission, provide to that body data collected by the CCSBT CDS more frequently or at a greater level of detail than specified in 6.3.

6.6 The Executive Secretary shall analyse the data provided in 6.1 and notify the relevant Member(s) or Cooperating Non-Member(s) of any identified discrepancies.

7. Verification of CDS Documentation

7.1 Each Member and Cooperating Non-Member shall ensure that its competent authorities, or other authorised individual or institution, take steps to identify each consignment of SBT landed as domestic product in, imported into or exported or re-exported from its territory and examine the validated CCSBT CDS Documents for each consignment of SBT. These competent authorities, or authorised individuals or institutions, may also examine the content of the consignment to verify the information contained in the CCSBT CDS Document and in related documents and, where necessary, shall carry out verifications with the operators concerned.

7.2 Each Member and Cooperating Non-Member shall review information, and investigate and resolve any irregularities identified in relation to their information in the CDS reports, including any discrepancies identified during the comparison of data from the Executive Secretary. Among other matters, Members and Cooperating Non-Members shall cross-check the report provided by the Executive Secretary under 6.3 using information available to it.

7.3 Each Member, Cooperating Non-Member and OSEC shall, as soon as practicable, identify to the Executive Secretary and relevant Members, Cooperating Non-Members and OSECs, any consignments of SBT where there are:

7.3.1 doubts about the information contained in any associated CDS documentation; or

7.3.2 incomplete, missing or unvalidated CCSBT CDS documentation.

7.4 Each Member and Cooperating Non-Member shall co-operate and take all necessary steps with relevant authorities, and within domestic law, to review, investigate and resolve any concerns identified in 7.1 and 7.2, and notify the Executive Secretary of the outcome of any such action for inclusion in its report to the Commission.

7.5 The Compliance Committee will consider the summary information compiled by the Executive Secretary in 6.3 and 6.4, including any irregularities and anomalies identified and the outcome of any investigations notified under 7.3.

7.6 The Commission, may, on the recommendation of the Compliance Committee, consider any action as may be required in relation to the findings and outcomes of any verification investigation. Such action may be, but is not limited to, a review of this or other relevant compliance measures.

7.7 Members, Cooperating Non-members and OSECs shall cooperate to ensure that CDS documents are not forged and/or do not contain misinformation.

8. Access to and Security of Information

8.1 Subject to each Member's, Cooperating Non-Member's and OSEC's national law, the information produced from the CCSBT CDS shall be confidential and may only be used in support of CCSBT purposes or for any other purpose agreed by the Commission.

8.2 Where necessary, in support of catch verification procedures, Members, Cooperating Non-Members and OSECs agree to exchange the necessary supporting information and, where relevant, evidence as may be necessary to verify the integrity of the flow of CDS information and to reconcile any discrepancies.

9. Implementation and Review

9.1 This resolution will enter into force on 1 January 2010.⁸ From that date, it replaces the CCSBT Southern Bluefin Tuna Statistical Document Programme adopted by CCSBT on 1 June 2000. For SBT caught before 1 January 2010, the tagging requirements of the CDS may be exempted until 30 June 2010 and the CCSBT CDS Documents shall be completed in the most practicable manner.

9.2 The Compliance Committee will review this resolution no later than at its 2011 meeting to identify any implementation issues, strengths, and weaknesses, and to recommend options to improve this resolution and its supporting procedures at the Extended Commission meeting. This review will include any concerns associated with the breakage or loss of tags and the extent of the use of exemptions in 1.8 and 1.9 as reported by Members and Cooperating Non-Members to the Executive Secretary. The date for a subsequent review will also be agreed at this time.

9.3 The Executive Secretary will monitor available technology associated with electronic documentation and fish tags to assist the Compliance Committee in its reviews.

Appendix Two: Statutory Considerations

MPI has considered the following statutory considerations in relation to the management options in this paper. These are summarised below:

Statutory considerations relating to both Option 1 and 2:

Section 5(a) – Application of international obligations: There are a wide range of international obligations relating to fishing (including sustainability and utilisation of fish stocks and maintaining biodiversity). CCSBT resolved in October 2008 to establish a CDS, to be in place by 1 January 2010. In order to meet New Zealand's international obligations under the Convention for the Conservation of Southern Bluefin Tuna, MPI implemented the CDS as two directives under Section 190 of the Fisheries Act 1996. Option 2 would strengthen MPI's ability to meet these obligations effectively.

Section 5(b) – Application of Treaty of Waitangi (Fisheries Claims) Settlement Act 1992: MPI considers that options 1 and 2 are consistent with the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

Section 8 – Purpose: The purpose of the Act is to provide for the utilisation of fisheries resources while ensuring sustainability. Impacts on utilisation are likely to be minimal as the CDS has been implemented since 2010. Any impacts on utilisation are balanced by overall sustainability benefits if greater ability to monitor the stock is achieved amongst members of CCSBT. Reducing IUU fishing will potentially improve sustainability by ensuring catches are more likely to remain within global catch limits. In turn, maintaining catches within sustainable limits is likely to improve utilisation in the New Zealand fishery.

Section 9 – Environmental Principles: Section 9 requires that certain environment principles are taken into account when exercising or performing functions, duties, or powers conferred or imposed by or under the Act, in relation to the utilisation of fisheries resources or ensuring sustainability. The regulatory proposal is unlikely to increase catches of southern bluefin tuna, or any associated or dependent species or have any significant impact on associated and dependent species. The regulatory proposal would contribute to the maintenance of biological diversity, as part of a broader framework of monitoring, control and surveillance measures designed to ensure catches stay within agreed catch limits for southern bluefin tuna. The regulatory proposal does not affect habitats of particular significance to fisheries management.

Section 10 – Information principles: Section 10 requires that decisions should be based on the best available information. Decision makers should consider any uncertainty in the information available and should be cautious when information is uncertain, unreliable or inadequate. 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. As the CDS has been implemented since 2010, there is no scarcity of information on its effects on New Zealand fisheries.

Statutory considerations relating to Option 2:

Section 297 – General Regulations: The Governor-General may by Order in Council make regulations for a wide range of purposes provided under s 297, including:

Section 297(1)(h), which provides for regulations to be made prescribing the accounts, records, returns and information that any person or class of persons may be required to keep or provide;

Section 297(1)(n), which provides for regulations to be made creating offences in respect of the contravention of, or non-compliance with any regulations made under the Act; and imposing fines;

Section 297(1)(o), which provides for regulations to be made implementing any provisions of, or giving effect to any treaties or agreements to which New Zealand is a party and declaring any such regulations to apply beyond the outer limits of New Zealand fisheries waters in respect of any New Zealand citizen, person entitled to reside in New Zealand indefinitely, body incorporated in New Zealand, or any New Zealand ship or vessel registered under this Act;

Section 297(2)(a) - regulations may authorise the Minister or Chief Executive to issue or impose any authority, approval, requirement, prohibition, restriction, condition, direction, instruction, order, permit, notice or circular.

Section 297(2)(b) - regulations may exempt any person or species or vessel from compliance with or the application of any provisions of the regulations; or authorise the Minister or the chief executive to grant such exemptions as the regulations may specify.

Section 297(3)(b) outlines that regulations made under section 297 may be applied to New Zealand nationals and New Zealand ships when they are outside New Zealand fisheries waters.

MPI considers that the proposed regulations to implement the CDS fit within these provisions of section 297.